CHAPTER 5
Municipalities and Counties

ARTICLE 1
Ambulance Service

5-1-1. Political subdivisions; ambulance service.

A. A municipality or county may:

(1) provide ambulance service to transport sick or injured persons to a place of treatment in the absence of an established ambulance service only as authorized by the department of transportation;

(2) contract with other political subdivisions or with private ambulance services for the operation of its ambulance service;

(3) lease ambulances and other equipment necessary to the operation of its ambulance service;

(4) in the course of its operation of an ambulance service, proceed to the scene of a disaster beyond its subdivision boundaries when requested, providing no local established ambulance service is available or, if one exists, such local ambulance service deems its capacity inadequate or insufficient for emergency transportation of the disaster victims; and

(5) transport sick or injured persons from the subdivision boundaries to any place of treatment.

B. No personal action shall be maintained in any court of this state against any member or officer of a political subdivision for any tort or act done, or attempted to be done, when done by the authority of the political subdivision or in execution of its orders under this section. In all such cases, political subdivisions shall be responsible. Any member or officer of the political subdivision may plead the provisions of this section in bar of such action whether it is now pending or hereafter commenced.

History: 1953 Comp., § 12-15-1, enacted by Laws 1967, ch. 167, § 1; recompiled as 1953 Comp., § 12-27-1, by Laws 1972, ch. 51, § 9; Laws 1974, ch. 82, § 7; 2023, ch. 100, § 6.

ANNOTATIONS

Cross references. — For the Ambulance Standards Act, *see* 65-6-1 NMSA 1978 et seq.

For definition of duty, rights and laws affecting emergency vehicles, *see* 66-1-4 to 66-1-4.20, 66-7-6, 66-7-332 NMSA 1978.

For duty of other drivers upon approach of emergency vehicle, *see* 66-7-332 NMSA 1978.

The 2023 amendment, effective July 1, 2024, removed a reference to the state corporation commission due to the transfer of certain powers and duties to the department of transportation, and made technical changes; and redesignated former Subsections A through E as Paragraphs A(1) through A(5), respectively, and in Paragraph A(1), after "authorized by the", deleted "state corporation commission" and added "department of transportation"; and redesignated former Subsection F as Subsection B.

No duty to provide service. — This section does not impose a mandatory duty on the county to provide an ambulance service. *Gallegos v. Trujillo*, 1992-NMCA-090, 114 N.M. 435, 839 P.2d 645, cert. denied, 114 N.M. 314, 838 P.2d 468.

"Operation". — "Operation" should not be extended to include funding decisions by a county or the allocation or nonallocation of 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.

No waiver of governmental immunity. — The language of Subsection F of this section constitutes a bar to personal actions against public employees; it does not provide an independent statutory waiver of governmental immunity. *Gallegos v. Trujillo*, 1992-NMCA-090, 114 N.M. 435, 839 P.2d 645, cert. denied, 114 N.M. 314, 838 P.2d 468.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability for personal injury or property damage from operation of ambulance, 84 A.L.R.2d 121.

ARTICLE 2
Television Translator Stations

5-2-1. Television translator stations; construction by political subdivisions.

Any county or municipality in the state is authorized to appropriate annually from its general fund a reasonable sum for the acquisition, construction, improvement or maintenance of translator stations for the purpose of receiving and transmitting television broadcasting signals.

History: 1953 Comp., § 11-6-41, enacted by Laws 1975, ch. 311, § 1.

5-2-2. Appropriation prohibited.

No county or municipality shall appropriate from its general fund to acquire, improve or maintain any translator station originally or hereafter constructed or presently or hereafter licensed and maintained by a commercial television station.

History: 1953 Comp., § 11-6-42, enacted by Laws 1975, ch. 311, § 2.

ARTICLE 3
Auditoriums

5-3-1. Definitions.

The following terms wherever used or referred to in this act [5-3-1 to 5-3-8 NMSA 1978] shall have the following meanings unless a different meaning clearly appears from the context.

A. The term "municipality" shall mean any incorporated county, city, town or village in the state of New Mexico, having a population of at least five thousand.

B. The term "auditorium" shall mean a public auditorium or building of a similar nature used for general civic purposes.

C. The term "bonds" shall mean bonds, notes, temporary bonds, interim certificates, negotiable instruments or any other evidences of indebtedness of any nature whatsoever.

History: Laws 1935, ch. 51, art. 1, § 1; 1941 Comp., § 6-301; 1953 Comp., § 6-3-1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 543.

Exemption from taxation of municipally owned or operated stadium, auditorium, and similar property, 16 A.L.R.2d 1376.

Maintenance of auditorium, community recreational center, building, or the like, by municipal corporation as governmental or proprietary function for purposes of tort liability, 47 A.L.R.2d 544.

20 C.J.S. Counties §§ 145 to 149; 63 C.J.S. Municipal Corporations §§ 950 to 972.

5-3-2. [Authority of municipality to acquire auditorium; necessity of elections waived; bonds not general obligations.]

That any municipality shall have power to purchase, improve, erect and maintain public auditoriums, or to authorize the improvement or erection of same by agreement with the officers of the county in which the municipality is located, and shall have power to issue and sell bonds for the purposes herein mentioned. Bonds issued hereunder may be sold by such municipality for cash at one time or from time to time at public or private sale at not less than par. That notwithstanding the provisions of any general, special or local law it shall not be necessary for any governing body of such municipality to submit to the people of such municipality in which said auditorium is proposed to be erected the question as to whether such auditorium shall be erected, nor shall it be necessary to submit to the people of such municipality in which said auditorium is to be erected the issuance of any bonds authorized hereunder to pay for or finance the erection of any such auditorium. Provided, however, that any bonds issued hereunder shall not constitute general obligations of any such municipality, but the payment thereof shall be secured only by a lien against the auditorium and real estate upon which the same is erected and a pledge of the net revenues of said auditorium as hereinafter provided; and provided further that any bonds issued hereunder shall be payable solely and only out of the income derived from the operation of such auditorium and by the property upon which the lien aforesaid is provided.

History: Laws 1935, ch. 51, art. 1, § 2; 1941 Comp., § 6-302; 1953 Comp., § 6-3-2.

ANNOTATIONS

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

Section contemplates special fund arising solely from sources separate and apart from general taxation and that the site upon which the auditorium would rest should not be acquired by purchase or otherwise with funds arising in whole or in part from general taxation. *Wiggs v. City of Albuquerque*, 1952-NMSC-013, 56 N.M. 214, 242 P.2d 865.

Statutory lien to be read into bonds. — In view of provision that bonds issued for municipal auditoriums not be general obligation bonds, but that payment be secured only by lien against the auditorium premises, as well as a pledge of the net revenues to arise from operating the auditorium, the statutory lien thus created is to be read into the bonds. *Wiggs v. City of Albuquerque*, 1952-NMSC-013, 56 N.M. 214, 242 P.2d 865.

Suit to enjoin plan held timely. — Since this section itself declares that bonds issued shall be secured by a lien upon the site and the property built and pledges net revenues to arise from its operation to secure the bond issues, a suit to enjoin city from enacting an ordinance in pursuance of a plan held not premature. *Wiggs v. City of Albuquerque*, 1952-NMSC-013, 56 N.M. 214, 242 P.2d 865.

Effect on municipalities under 5,000 population. — Considering the fifth subsection of 14-21-3, 1953 Comp., (repealed) in the light of this subsection, and in view of the decision in *Varney v. City of Albuquerque*, 1936-NMSC-010, 40 N.M. 90, 55 P.2d 40,

106 A.L.R. 222 (1936), no municipality of less than 5,000 could issue bonds and construct a municipal auditorium. 1939 Op. Att'y Gen. No. 39-3027.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 501, 546 et seq.; 64 Am. Jur. 2d Public Securities and Obligations § 105.

Auditorium or stadium as public purpose for which public funds may be expended or taxing power exercised, 173 A.L.R. 415.

20 C.J.S. Counties §§ 143, 144, 218 to 226; 64 C.J.S. Municipal Corporations § 1708, 1709.

5-3-3. [Auditorium revenue bonds; mortgage or lien to secure payment.]

Whenever it shall be declared necessary by the governing body, by ordinance duly adopted, as hereinafter provided, municipalities are hereby authorized to make and issue revenue bonds, payable solely out of the net income to be derived from the operation of an auditorium, and to pledge irrevocably, such income to the payment thereof, and to execute a mortgage or other lien upon the auditorium premises to secure the payment of said bonds.

History: Laws 1935, ch. 51, art. 1, § 3; 1941 Comp., § 6-303; 1953 Comp., § 6-3-3.

ANNOTATIONS

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

Section contemplates special fund arising solely from sources separate and apart from general taxation and that the site upon which the auditorium would rest should not be acquired by purchase or otherwise with funds arising in whole or in part from general taxation. *Wiggs v. City of Albuquerque*, 1952-NMSC-013, 56 N.M. 214, 242 P.2d 865.

"Debt" within constitutional prohibition created. — The mortgage lien on municipal auditoriums declared by this section creates a "debt" within the prohibition found in N.M. Const., art. IX, § 12, except as the creation of same may have received an approving vote by referendum. *Wiggs v. City of Albuquerque*, 1952-NMSC-013, 56 N.M. 214, 242 P.2d 865.

5-3-4. [Terms and conditions of bonds; sale.]

Revenue bonds issued under the provisions of this act [5-3-1 to 5-3-8 NMSA 1978] shall bear interest at not to exceed four and one-half (4 ½) per cent per annum, payable annually or semiannually, shall be payable at the option of such municipality at the end

of ten years from date thereof; and due by their terms in not more than twenty years from date thereof; as determined by the municipality; shall be serial in form and maturity and numbered from one upward, consecutively, and shall be sold for cash, at not less than par, and at either public or private sale.

History: Laws 1935, ch. 51, art. 1, § 4; 1941 Comp., § 6-304; 1953 Comp., § 6-3-4.

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. — 20 C.J.S. Counties §§ 222 to 225; 64A C.J.S. Municipal Corporations § 1684.

5-3-5. [Issuance of bonds; execution.]

Governing bodies of municipalities issuing bonds under the provisions of this act [5-3-1 to 5-3-8 NMSA 1978], may authorize the issuance thereof by ordinance adopted by the affirmative vote of two-thirds of all the members of said governing bodies, at either regular or special meeting called for that purpose, wherein the necessity thereof shall be declared and, when issued, shall be signed by the mayor or other executive head and attested by the clerk of said governing body, with the seal of said municipality affixed thereto.

History: Laws 1935, ch. 51, art. 1, § 5; 1941 Comp., § 6-305; 1953 Comp., § 6-3-5.

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. — 64A C.J.S. Municipal Corporations § 1699.

5-3-6. [Lease of auditorium by municipality.]

That any municipality shall have power to lease any auditorium from the United States of America, the president of the United States of America, the federal emergency administration, the public works administration or such other federal or state agency or agencies as heretofore or may hereafter be designated or created by the United States or the state of New Mexico, and to make contract or contracts of lease with such agencies for the use, occupation and maintenance of such auditorium at such rental and upon such terms and conditions as shall be agreed upon by the parties.

History: Laws 1935, ch. 51, art. 1, § 6; 1941 Comp., § 6-306; 1953 Comp., § 6-3-6.

ANNOTATIONS

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

Constitutionality of lending to other governmental agency. — New Mexico Const., art. IX, § 14, has no application where the lending of credit is under legislative sanction by one subordinate governmental agency to another governmental agency. *Wiggs v. City of Albuquerque*, 1952-NMSC-013, 56 N.M. 214, 242 P.2d 865.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 20 C.J.S. Counties § 148; 63 C.J.S. Municipal Corporations § 1041.

5-3-7. [Ratification of issuance and sale of bonds by electorate.]

That where any of the federal or state agencies specified in Paragraph 3 of this act purchase bonds from any municipality as defined herein, for the purpose of enabling such municipality to purchase, improve, erect and maintain public auditoriums, whether the said bonds be issued hereunder or under the provisions of any other act, and such federal or state agency requires that the issuance and sale of such bonds shall be thereafter submitted to the people for ratification and approval, the municipality shall have and it hereby is given the power to pledge to such federal or state agency the good faith of the municipality that said municipality will submit to the vote of the people therein at the time and in the manner required by the constitution of New Mexico the ratification and approval of the issuance and sale of such bonds by such municipality.

History: Laws 1935, ch. 51, art. 1, § 7; 1941 Comp., § 6-307; 1953 Comp., § 6-3-7.

ANNOTATIONS

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

Compiler's notes. — "Paragraph 3 of this act" evidently refers to Section 6 of the act, compiled as 5-3-6 NMSA 1978.

Intention to purchase bonds necessary to charge discrimination. — A person who did not suggest that he might become a purchaser of any bond under proposed bond issue could not complain that statute authorizing issuance and sale of revenue bonds to raise funds for building a municipal auditorium was discriminatory. *Wiggs v. City of Albuquerque*, 1952-NMSC-013, 56 N.M. 214, 242 P.2d 865.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 20 C.J.S. Counties § 221; 64A C.J.S. Municipal Corporations § 1664 et seq.

5-3-8. [Public Works Act not affected.]

Nothing herein contained shall be construed to affect in any way any of the provisions of Chapter 6 of the Laws of 1934.

History: Laws 1935, ch. 51, art. 1, § 8; 1941 Comp., § 6-308; 1953 Comp., § 6-3-8.

ANNOTATIONS

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

Compiler's notes. — Laws 1934, ch. 6, referred to in this section, is not compiled in NMSA 1978 since it was enacted to implement the National Industrial Recovery Act which was declared unconstitutional in A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570, 97 A.L.R. 947 (1935).

5-3-9. Cities of five thousand or more; authority; joint action with county; bond issue; election; form of bonds; installment payments; tax levy; estimate of cost.

A. Any incorporated city, town or village having a population of at least five thousand shall have power to purchase, improve or erect public auditoriums or buildings of a similar nature for general civic purposes, or to authorize the improvement or erection of public auditoriums or buildings of a similar nature by agreement with the officers of the county in which the municipality is located, and shall have power to issue and sell bonds for the purposes herein mentioned. Provided, that the total indebtedness of any such city, town or village shall not exceed the percentage now provided by law of the value of the taxable property therein as shown by the last preceding assessment for state or county taxes. If a majority of all the legal votes cast at a legal election shall be in favor of the issuance of the bonds, it shall be the duty of the authorities of the city, town or village to have the bonds issued as soon as practicable.

B. Any bonds, lawfully issued, may be issued in serial form or in form of term bonds, and consistent with convenient denominations, the principal of the serial bonds shall be payable serially either in substantial equal annual installments, or in such annual installments as to require a substantially equal levy for principal and interest each year until all the bonds of the issue have been paid in full. Provided, that the first installment shall be payable in not more than five years and the final installment shall be payable in not more than thirty years after the date of the bonds. The bonds shall bear interest at the rate of not to exceed six percent a year, payable either annually or semiannually. The interest payments may be evidenced by coupons in the usual form, payable upon presentation in such place as may be provided in the bonds.

C. After the bonds are duly issued and sold, a special tax shall be levied upon all property within the city, town or village each year until the bonds and interest shall be paid in full. The special tax shall be levied and collected in the same manner as other taxes are levied and collected, sufficient to pay interest thereon and that portion of

principal or sinking fund which may be necessary for the payment due upon the bonds during the succeeding year as provided in this section.

D. No election shall be called to vote upon any bond issue until the city, town or village engineer or some other competent engineer shall have filed, under oath, with the clerk or other proper officer of the city, town or village, a carefully prepared estimate of the approximate cost of the proposed improvement to be made, and no bonds shall be issued in excess of the estimate. It shall be the duty of the proper authorities of the city, town or village to provide by ordinance for the levy, collection and payment of a sufficient amount of money each year to meet the interest, sinking fund and principal requirements of the bonds and the ordinance shall not be repealed until the bonds and interest are paid in full.

History: Laws 1927, ch. 29, § 1; C.S. 1929, § 90-2101; 1941 Comp., § 6-309; 1953 Comp., § 6-3-9; Laws 1959, ch. 196, § 1.

ANNOTATIONS

Constitutionality. — This section, which prior to the 1959 amendment authorized cities to issue bonds for construction of public auditorium on two-thirds vote of legal voters, did not run counter to provision of N.M. Const., art. IX, § 12, that no city, town or village shall contract any debt unless approved by majority vote of qualified electors, and precluded issuance of such bonds under 14-21-4, 1953 Comp. (now repealed) authorizing issuance of bonds for construction of public or needful buildings on majority vote. *Varney v. City of Albuquerque*, 1936-NMSC-010, 40 N.M. 90, 55 P.2d 40.

Purpose of section. — This section was enacted for the primary purpose of dealing with a particular subject, civic auditoriums for cities, and superseded a general statute referring to public buildings, or needful buildings. *Varney v. City of Albuquerque*, 1936-NMSC-010, 40 N.M. 90, 55 P.2d 40).

Effect on municipalities under 5000 population. — Considering the fifth subsection of 14-21-3, 1953 Comp. (repealed), in the light of this section, and in view of the decision in *Varney v. City of Albuquerque*, 40 N.M. 90, 55 P.2d 40, 106 A.L.R. 222 (1936), no municipality of less than 5,000 could issue bonds and construct a municipal auditorium. 1939 Op. Att'y Gen. No. 39-3037.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64A C.J.S. Municipal Corporations § 1621 et seq.

5-3-10. [Use of auditorium.]

Such public auditorium or building shall be used only for public purposes and shall not be leased, occupied or used for commercial purposes.

History: Laws 1927, ch. 29, § 2; C.S. 1929, § 90-2102; 1941 Comp., § 6-310; 1953 Comp., § 6-3-10.

ANNOTATIONS

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

5-3-11. Counties authorized to issue bonds and erect public auditoriums.

The board of county commissioners of the several counties in this state having a population of twenty-five thousand are hereby authorized and empowered to issue the bonds of such counties for the purpose of acquiring suitable sites for public auditoriums within their counties, and for the building of such auditoriums. Such public auditoriums are declared to be necessary public buildings.

History: 1941 Comp., § 6-311, enacted by Laws 1941, ch. 101, § 1; 1953 Comp., § 6-3-11; Laws 1955, ch. 254, § 1.

ANNOTATIONS

Generally. — This section unequivocally and clearly states that only counties having a population in excess of 25,000 are authorized to issue county auditorium bonds. 1953 Op. Att'y Gen. No. 53-5782.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Auditorium or stadium as public purpose for which public funds may be expended or taxing power exercised, 173 A.L.R. 415.

20 C.J.S. Counties § 218.

5-3-12. [Application of courthouse building laws.]

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., § 6-312, enacted by Laws 1941, ch. 101, § 2; 1953 Comp., § 6-3-12.

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. — 20 C.J.S. Counties § 221.

5-3-13. [Federal aid and other donations authorized.]

The respective boards of county commissioners of such counties 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 of county commissioners 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 any such auditorium.

History: 1941 Comp., § 6-313, enacted by Laws 1941, ch. 101, § 3; 1953 Comp., § 6-3-13.

ANNOTATIONS

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

5-3-14. [Contracting power.]

The boards of county commissioners of the several counties are hereby authorized and empowered to enter into any and all contracts and to do and perform any and all things necessary and proper to carry into effect the provisions hereof.

History: 1941 Comp., § 6-314, enacted by Laws 1941, ch. 101, § 4; 1953 Comp., § 6-3-14.

ANNOTATIONS

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

5-3-15. [Supervision and control of auditorium.]

Any auditorium constructed pursuant hereto shall be under the supervision and control of the board of county commissioners of the county wherein it is located, and shall be maintained and used for such purposes as the boards of county commissioners may from time to time determine.

History: 1941 Comp., § 6-315, enacted by Laws 1941, ch. 101, § 5; 1953 Comp., § 6-3-15.

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. — Auditorium: maintenance of auditorium, community recreational center, building or the like by municipal corporation as governmental or proprietary function for purposes of tort liability, 47 A.L.R.2d 544.

20 C.J.S. Counties § 147.

ARTICLE 4
Playgrounds and Recreational Equipment

5-4-1. [Governmental unit subject to act.]

This act [5-4-1 to 5-4-9 NMSA 1978] shall apply to all municipalities, counties and school districts of the state of New Mexico.

History: 1941 Comp., § 71-1001, enacted by Laws 1945, ch. 67, § 1; 1953 Comp., § 6-4-1.

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. — Liability of local government entity for injury resulting from use of outdoor playground equipment at municipally owned park or recreation area, 73 A.L.R.4th 496.

5-4-2. Dedication of lands and buildings as playgrounds and recreation centers.

The governing body of such municipality or county may dedicate and set apart for use as playgrounds, recreation centers, zoos and other recreation purposes, any lands or buildings, or both, owned or leased by such municipality or county, and not dedicated or devoted to another or inconsistent public use; and authorized or provided by law for the acquisition of lands or buildings for public purposes by such municipality or county, acquire or lease lands or buildings, or both, within or beyond the constituted limits of such municipality or county, for playgrounds, recreation centers, zoos and other public recreational purposes, and when the governing body of the city, town or county, so dedicates, sets apart, acquires or leases lands or buildings for such purposes, it may provide for their conduct, equipment and maintenance according to the provisions of

this act [5-4-1 to 5-4-9 NMSA 1978], by making an appropriation from the general municipality or county funds.

History: 1941 Comp., § 71-1002, enacted by Laws 1945, ch. 67, § 2; 1953 Comp., § 6-4-2; Laws 1963, ch. 53, § 1.

ANNOTATIONS

Horse race not recreational purpose. — Although persons may attend a horse race as a source of recreation, a horse race is not ordinarily attended for that primary purpose and does not normally constitute such an activity. It is not the same type of activity as is contemplated by the terms playground, zoo and recreational center and is not, therefore, a recreational purpose within the meaning of this section. 1967 Op. Att'y Gen. No. 67-136.

Neither is library. — A library, being a place of study, of storing books and of recreational reading is not a "place of recreation". 1967 Op. Att'y Gen. No. 67-136.

Purchase of stock in corporation conducting recreational facility is not within the provisions of this section. 1967 Op. Att'y Gen. No. 67-136.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 500; 59 Am. Jur. 2d Parks, Squares, and Playgrounds § 7.

Maintenance of auditorium, community recreational center, building or the like by municipal corporation as governmental or proprietary function for purposes of tort liability, 47 A.L.R.2d 544.

Power of municipal corporation to exchange its real property, 60 A.L.R.2d 220.

20 C.J.S. Counties § 147; 64 C.J.S. Municipal Corporations § 1557.

5-4-3. Establishing system of supervised recreation; powers of managing boards.

The governing body of any such municipality or county may establish a system of supervised recreation and it may, by resolution or ordinance, vest the power to provide, maintain and conduct playgrounds, recreation centers, zoos and other recreational activities and facilities in the school board, park board or other existing body or in a playground and recreation board as the governing body may determine. Such governing body or any board so designated shall have the power to maintain and equip playgrounds, recreation centers, zoos and buildings thereon, and it may, for the purpose of carrying out the provisions of this act [5-4-1 to 5-4-9 NMSA 1978], employ play leaders, playground directors, supervisors, recreation superintendents, zoo directors or such other officers or employees as they deem proper; make such expenditures

therefor as the board shall deem necessary or advisable, from any fund provided for by said municipality or county, said expenditures not to exceed the amount of such appropriation. Such governing body may determine by ordinance or resolution the method by which zoo animals shall be obtained, traded, loaned, borrowed or disposed of, notwithstanding the provisions of Section 4 [5-4-4 NMSA 1978] of this act, or Sections 6-5-1 through 6-5-9, or Sections 14-47-1 through 14-47-12 NMSA 1953 [repealed].

History: 1941 Comp., § 71-1003, enacted by Laws 1945, ch. 67, § 3; 1953 Comp., § 6-4-3; Laws 1963, ch. 53, § 2.

ANNOTATIONS

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

Sections 14-47-1 to 14-47-12, 1953 Comp., referred to in this section, were repealed by Laws 1965, ch. 300, § 595. For present provisions, *see* 3-54-1 to 3-54-3 NMSA 1978.

Sections 6-5-1 to 6-5-9, 1953 Comp., referred to in this section, were repealed by Laws 1967, ch. 250, § 20. For present provisions, *see* 13-1-28 NMSA 1978 et seq.

Cross references. — For creation of county and municipality recreational fund, *see* 7-12-15 NMSA 1978.

Legislative intent. — The legislature intended the municipality to have the exclusive control of the operation of premises, for the benefit of such municipality, although it may delegate this. 1967 Op. Att'y Gen. No. 67-136.

5-4-4. [Petition for establishment of a supervised recreational system; election.]

Whenever a petition signed by at least twenty-five percent (25%) of the qualified and registered voters in the municipality or county shall be filed in the office of the clerk of such municipality or county requesting the governing body of such municipality or county to provide, establish, maintain and conduct a supervised recreation system, it shall be the duty of the governing body of such municipality or county to cause the question petitioned for to be submitted to the voters at a special election to be held in such municipality or county within ninety days from the date of filing of such petition, which election shall be held as now provided by law for the holding of other such elections in municipalities or counties. Provided, that this section shall not limit the power of the governing body of such municipality or county to provide such facilities of its own motion.

History: 1941 Comp., § 71-1004, enacted by Laws 1945, ch. 67, § 4; 1953 Comp., § 6-4-4.

ANNOTATIONS

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

5-4-5. Establishment of joint recreational systems.

Any two or more municipalities or counties may jointly provide, establish, maintain and conduct a recreation system and acquire property for and establish and maintain playgrounds, recreation centers, zoos and other recreational facilities and activities. Any school board may join with any municipality or county in conducting and maintaining a recreational system, and may expend such funds as are included in its maintenance budget for such purpose.

History: 1941 Comp., § 71-1005, enacted by Laws 1945, ch. 67, § 5; 1953 Comp., § 6-4-5; Laws 1963, ch. 53, § 3.

ANNOTATIONS

Municipality may acquire property within boundaries of another, with the consent of the second municipality. 1967 Op. Att'y Gen. No. 67-136.

5-4-6. Acceptance of grants and donations by supervisory boards; limitation.

A playground and recreation board or other authority in which is invested the power to provide, establish, maintain and conduct such supervised recreation system may accept any grant or devise of real estate or any gift or bequest of money or other personal property or any donation to be applied, principal or income, for either temporary or permanent use for playgrounds, zoos or recreational purposes, but if the acceptance thereof for such purposes will subject such municipalities or counties to additional expense for improvement, maintenance or removal, the acceptance of any grant or devise of real estate shall be subject to the approval of the governing body of the municipality or county.

History: 1941 Comp., § 71-1006, enacted by Laws 1945, ch. 67, § 6; 1953 Comp., § 6-4-6; Laws 1963, ch. 53, § 4.

5-4-7. [Disposition of funds received by gift or bequest.]

Money received for such purpose, unless otherwise provided by the terms of the gift or bequest shall be deposited with the treasurer of such municipality or county, to the account of the playground and recreation board or commission or other body having charge of such work, and the same may be withdrawn and paid out by such body in the same manner as other money appropriated for recreation purposes.

History: 1941 Comp., § 71-1007, enacted by Laws 1945, ch. 67, § 7; 1953 Comp., § 6-4-7.

ANNOTATIONS

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

5-4-8. Power to issue bonds.

The governing body of any municipality is hereby authorized to issue and dispose of negotiable bonds thereof, subject to the limitation and in accordance with Article IX of the constitution, for the purpose of securing funds for the acquisition of lands or buildings for playgrounds, recreation centers, zoos and other recreational purposes and the equipment thereof, to the extent and in accordance with the provisions of Sections 14-40-16 through 14-40-21 NMSA 1953 [repealed].

History: 1941 Comp., § 71-1008, enacted by Laws 1945, ch. 67, § 8; 1953 Comp., § 6-4-8; Laws 1963, ch. 53, § 5.

ANNOTATIONS

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

Sections 14-40-16 to 14-40-21, NMSA 1953, referred to in this section, were repealed by Laws 1965, ch. 300, § 595. For present provisions, *see* 3-30-5 to 3-30-9 NMSA 1978.

Counties have no inherent power to issue bonds, and can do so only pursuant to statutory or constitutional authority. 1957 Op. Att'y Gen. No. 57-304.

School bonds legal where facilities attached to school grounds. — A school district could legally issue bonds for playground and recreational facilities which are to constitute part of the school grounds, but not in event they are to be entirely separate therefrom. 1948 Op. Att'y Gen. No. 48-5127.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 C.J.S. Municipal Corporations § 1571 et seq.

5-4-9. [Payment of expenses incurred in equipping, operating and maintaining recreational facilities.]

All expenses incurred in the equipment, operation and maintenance of such recreational facilities and activities shall be paid from the treasuries of the respective

municipality or county, and governing bodies of the same may annually appropriate, and cause to be raised by taxation, money for such purpose.

History: 1941 Comp., § 71-1009, enacted by Laws 1945, ch. 67, § 9; 1953 Comp., § 6-4-9.

ANNOTATIONS

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

5-4-10. Revenue bonds.

A. The governing body of any municipality or the board of county commissioners of any county may issue recreational revenue bonds, payable solely from the net income derived from the tax on cigarettes authorized by the Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978] and distributed to the municipality or county from the county and municipality recreational fund, and may pledge irrevocably the payment of these revenue bonds from the net income distributed from the county and municipality recreational fund.

B. The proceeds received from the sale of revenue bonds authorized in this section shall be used solely for the purpose of acquiring, constructing, repairing, extending or improving recreational facilities within or without the municipality or county or for refunding recreational bonds payable from the tax on cigarettes as further provided in Section 5-4-11 NMSA 1978. Bonds for such recreational facilities purpose and for refunding may be combined as a single issue.

History: 1953 Comp., § 6-4-10, enacted by Laws 1965, ch. 88, § 1; 1969, ch. 23, § 1; 1975, ch. 226, § 1.

ANNOTATIONS

Cross references. — For county and municipality recreational fund, *see* 7-12-15 NMSA 1978.

5-4-11. Revenue bonds; refunding authorization; escrow; detail.

A. Any municipality or county, having issued recreational revenue bonds payable from the cigarette tax pursuant to Sections 5-4-10 through 5-4-15 NMSA 1978 or pursuant to any other laws thereunto enabling the governing body of any municipality or the board of county commissioners of any county having issued such revenue bonds payable only out of the cigarette tax, may issue refunding revenue bonds for the purpose of refinancing, paying and discharging all or any part of such outstanding bonds of any one or more or [of] all 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 or otherwise concerning the outstanding bonds; or

(4) for any combination of such purposes.

B. There also may be pledged irrevocably for the payment of interest and principal on refunding bonds, the cigarette tax distributed to the municipality or county from the county and municipality recreational fund.

C. Any such refunding bonds 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 said refunded bonds or otherwise appertaining thereto, except for any such bond which is voluntarily surrendered for exchange or payment by the holder. Refunding bonds may be delivered in exchange for the outstanding bonds refunded or may be sold at either public or private sale.

D. No bonds may be refunded under Sections 5-4-10 through 5-4-15 NMSA 1978 unless the bonds either mature or are callable for prior redemption under their terms within fifteen years from the date of issuance of the refunding bonds, or unless the holders thereof voluntarily surrender them for exchange or payment. Provision shall be made for paying the bonds refunded within said period of time. Interest on any bond may be increased. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds, but only to the extent that any costs incidental to the refunding or any interest on the bonds refunded in arrears or about to become due within three years from the date of the refunding bonds, or both said incidental costs and interest, are capitalized with the proceeds of refunding bonds. The principal amount of the refunding bonds may also exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded. The principal amount of the refunding bonds 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.

E. The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a qualified depository, which is a member of the federal deposit insurance corporation to be applied to the payment of the bonds being refunded upon their presentation therefor. To the extent

any incidental expenses have been capitalized, such refunding bond proceeds may be used to defray such expenses, and any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest thereon and the principal thereof, or both interest and principal, or may be deposited in a reserve therefor, 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 said refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other moneys available for its purpose. Any proceeds in escrow, pending such use, may be invested or reinvested in bills, certificates of indebtedness, notes or bonds which are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States of America. Such proceeds and investments in escrow, together with any interest 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 or dates in connection with which the municipality shall exercise a prior redemption option. Any purchaser of any refunding bond issued under Sections 3-31-1 through 3-31-12 NMSA 1978 is in no manner responsible for the application of the proceeds thereof by the municipality or county or any of their officers, agents or employees.

F. Refunding bonds may bear such additional terms and provisions as may be determined by the municipality or county subject to the limitations in this section and Sections 5-4-10 through 5-4-15 NMSA 1978.

History: 1953 Comp., § 6-4-10.1, enacted by Laws 1975, ch. 226, § 2.

ANNOTATIONS

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

5-4-12. Terms of bonds.

A. Recreational revenue bonds issued as authorized in Section 5-4-10 NMSA 1978 shall:

(1) bear interest at a net effective interest rate and a coupon rate or rates of not exceeding the maximum rates permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978] and such interest shall be payable annually or semiannually;

(2) be serial in form and maturity or may consist of one bond payable one time or in installments;

(3) be numbered consecutively from one upward; and

(4) be sold for cash at a public or private sale.

B. Recreational revenue bonds may be payable at any time or times not exceeding twenty years from the date of the bonds.

History: 1953 Comp., § 6-4-11, enacted by Laws 1965, ch. 88, § 2; 1975, ch. 226, § 3.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Power of governmental unit to issue bonds as implying power to refund them, 1 A.L.R.2d 134.

5-4-13. Ordinance or resolution issuing bonds; validation.

At any regular or special meeting called for the purpose of issuing recreational revenue bonds, the governing body of the municipality or H-class county by ordinance, or board of county commissioners of a county, by resolution, each adopted by a two-thirds vote of all the members of the governing body or board of county commissioners, whichever is applicable, may issue recreational revenue bonds authorized in Section 5-4-10 NMSA 1978. The revenue bonds shall be:

A. signed by the presiding officer of the governing body of the municipality or board of county commissioners;

B. attested by the municipal clerk or county clerk;

C. validated by the seal of the municipality or county; or the revenue bonds may be authenticated as provided under the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978]; and

D. if such bonds bear coupons, the coupons shall bear the facsimile signature of the treasurer of the municipality or county.

History: 1953 Comp., § 6-4-12, enacted by Laws 1965, ch. 88, § 3; 1975, ch. 226, § 4.

5-4-14. Retirement of bonds only from cigarette tax proceeds; tax levy irrevocable.

A. Recreational revenue bonds issued under the authority of Sections 5-4-10 through 5-4-15 NMSA 1978 are:

(1) not general obligations of the municipality or county issuing them; and

(2) collectible only from the proportionate income distributed to the county or municipality from the county and municipality recreational fund, which distributions are pledged.

B. Each recreational revenue bond shall state that the bond is collectible solely from the proportionate income distributed from such county and municipality recreational fund which distributions are pledged. The bondholder may not look to any other fund for the payment of principal and interest of such bond.

C. If any recreational revenue bonds are issued under the provisions of Section 5-4-10 NMSA 1978, the law establishing the additional cigarette tax from which money is pledged for the payment of revenue bonds shall not be repealed and the amount of money so received shall not be decreased until the principal amount of the revenue bonds and their interest has been paid.

History: 1953 Comp., § 6-4-13, enacted by Laws 1965, ch. 88, § 4; 1975, ch, 226, § 5.

5-4-15. Proceeds not to be divested [diverted]; exclusions of this act.

A. Any person diverting or expending money received from the sale of recreational revenue bonds for any purpose other than those purposes authorized in Section 5-4-10 NMSA 1978, is guilty of a misdemeanor.

B. The provisions of Sections 5-4-10 through 5-4-15, 7-12-2, 7-12-6 and 7-12-14 [repealed] NMSA 1978 do not apply to any municipality that issued bonds pursuant to the authority granted by Chapter 151 [repealed] of the Laws of 1953 until the bonds have been fully paid.

History: 1953 Comp., § 6-4-14, enacted by Laws 1965, ch. 88, § 5.

ANNOTATIONS

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

Laws 1983, ch. 211, § 42 repealed 7-12-14 NMSA 1978, effective July 1, 1983. Chapter 151 of Laws 1953, referred to in Subsection B, was repealed by Laws 1965, ch. 300, § 595.

Compiler's notes. — The words "this act" in the catchline to this section apparently refer to Laws 1965, ch. 88, compiled as 5-4-10, 5-4-12 to 5-4-15 NMSA 1978.

5-4-16. School districts; community recreational facilities.

A. A school district may construct, own or operate community recreational facilities within the school district. A school district may operate the community recreational facilities on land owned by the school district or on land acquired by the school district for the community recreational facilities.

B. A local school board of a school district may enter into agreements with any state or federal agency or department to obtain assistance in acquiring, constructing or operating community recreational facilities.

C. Local operational funds may not be expended to purchase land or construct buildings pursuant to this section except as provided in Section 22-8-41 NMSA 1978.

History: 1953 Comp., § 6-4-15, enacted by Laws 1967, ch. 233, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 59 Am. Jur. 2d Parks, Squares, and Playgrounds § 1 et seq.; 68 Am. Jur. 2d Schools § 72.

78A C.J.S. Schools and School Districts § 522.

ARTICLE 5
Joint City-County Building

5-5-1. Short title.

This act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] shall be known as the "Joint City-County Building Law".

History: 1953 Comp., § 6-9-1, enacted by Laws 1959, ch. 300, § 1.

5-5-2. Legislative declaration.

It is hereby declared as a matter of legislative determination that providing counties and cities, towns and villages constituting county seats in the state of New Mexico with the purposes, powers and duties, rights, privileges and immunities provided in this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] will serve a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants thereof and of the state of New Mexico; and that the acquisition, improvement, equipment, maintenance and operation of any project herein authorized is in the public interest and constitutes a part of the established and permanent policy of the state of New Mexico. For the accomplishment of these purposes the provisions of this law shall be broadly construed.

History: 1953 Comp., § 6-9-2, enacted by Laws 1959, ch. 300, § 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 et seq.

20 C.J.S. Counties § 145; 64 C.J.S. Municipal Corporations § 1541.

5-5-3. Definitions.

As used in the Joint City-County Building Law, the following words or phrases shall be defined as follows:

A. "city" means any incorporated city, town or village that is a county seat in the state of New Mexico, whether incorporated or governed under a general act, special act or special charter of any type and includes any combination of such cities, towns or villages located in adjacent counties;

B. "council" or "city council" means the city council, city commission, board of commissioners, board of trustees or other governing body of a city in which the legislative powers of the city are vested. "Councilmen" means the members of the council;

C. "county" means any county or combination of adjacent counties in the state of New Mexico;

D. "board" means the board of county commissioners. "Commissioners" or "county commissioners" means the members of a board;

E. "municipality" means a city or county;

F. "governing body" means a council or board;

G. "building" means any building for use as a county courthouse, city hall, jail, regional jail, library, museum, utility office, garage for housing county and city vehicles, transportation office, communications office, maintenance shop, warehouse, cafeteria and restaurant facilities for county and city personnel, sheriff's office, police station, fire station, records office and administration building and for similar uses, or any combination thereof, to be acquired and jointly owned by a county and a city as tenants in common;

H. "site" means land and any estate, interest or right therein on which to locate a building. Any building site may include landscaped grounds and off-street parking facilities, including improved or unimproved parking lots and buildings erected above or below the surface of the land for the accommodation of parked motor and other vehicles;

I. "acquisition" or "acquire" means the acquisition by purchase, construction, installation, reconstruction, condemnation, lease, rent, gift, grant, endowment, bequest, devise, contract and other acquisition as may be deemed necessary or desirable by the board and council, or any combination thereof;

J. "improvement" or "improve" means the extension, betterment, alteration, reconstruction, repair and other improvement as may be deemed necessary or desirable by the board and council, or any combination thereof;

K. "equipment" or "equip" means furnishing all necessary or desirable, related or appurtenant, facilities, or any combination thereof;

L. "project" means any building site therefor, structure, facility and undertaking of any kind that a county and a city are authorized by the Joint City-County Building Law to acquire, improve, equip, maintain and operate. A project may consist of any kind or all kinds of personal and real property, including land, improvements and fixtures thereon, property of any nature appurtenant thereto or used in connection therewith and every estate, interest and right therein, legal or equitable, including terms for years, or any combination thereof;

M. "disposition" or "dispose" means the sale, lease, exchange, transfer, assignment and other disposition as may be deemed necessary or desirable by the board and council, or any combination thereof;

N. "federal government" means the United States or any federal agency, instrumentality or corporation;

O. "state" means the state of New Mexico or, except where the subject matter or context is repugnant thereto, any state agency, instrumentality or corporation;

P. "publication" or "publish" means publication once a week for at least three consecutive weeks commencing at least twenty days prior to the election in any newspaper published in a county;

Q. for the purpose of computing any period of time prescribed in the Joint City-County Building Law, including publications, the day of the first publication, other act or designated time shall be excluded and the day of the last publication, other act or designated time shall be included; and

R. whenever such construction is applicable, words used in the Joint City-County Building Law importing singular or plural number may be construed so that one number includes both; words importing masculine gender shall be construed to apply to the feminine gender as well; and the word "person" may extend to and include a firm and corporation, except in any reference to any election; provided, however, that these rules of construction shall not apply to any part of that law containing express provisions excluding such construction or where the subject matter or context is repugnant thereto.

History: 1953 Comp., § 6-9-3, enacted by Laws 1959, ch. 300, § 3; 1977, ch. 28, § 1; 1983, ch. 264, § 1; 2019, ch. 212, § 190.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, revised the definition of "Councilmen" and removed the definition of "elector" as used in the Joint City-County Building Law; in Subsection B, after "Councilmen means the", deleted "aldermen or other"; and deleted Subsection P, which defined "elector", and redesignated former Subsections Q through S as Subsections P through R, respectively.

5-5-4. Jointly owned projects.

Any county and city shall have the power, if so authorized by a resolution adopted at any regular or special meeting by at least two-thirds of all commissioners and by an ordinance adopted at any regular or special meeting by at least three-fifths of all councilmen, to acquire a building or buildings and a site or sites therefor wholly within the county and wholly within the city.

History: 1953 Comp., § 6-9-4, enacted by Laws 1959, ch. 300, § 4.

5-5-5. Powers of county and city.

Every county and city having been authorized to acquire any building, in addition to other powers conferred by the Joint City-County Building Law, shall thereafter have the following powers, jointly and severably [severally]:

A. to improve, equip, use, supervise, maintain, control, operate and dispose of the building and site therefor, any part thereof or interest therein; and to acquire, improve, maintain, operate and dispose of a site, equipment, fixtures, other improvements and appurtenances therefor;

B. to insure or provide for the insurance of any project or part thereof against such risks and hazards as the county and city may deem advisable;

C. to exercise the power of eminent domain in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978];

D. to receive, control, invest and order the expenditure of any and all money and funds pertaining to any project;

E. to arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for or in connection with any project;

F. to hire and retain independent contractors, agents and employees, including but not limited to engineers, architects, fiscal agents, attorneys at law and any other

persons necessary or desirable to effect the purposes of the Joint City-County Building Law and to prescribe their compensation, duties and other terms of employment;

G. to fix and levy and from time to time increase and decrease rates, tolls and charges for commodities, services or facilities furnished by, through or in connection with any project;

H. to make and keep records in connection with any project;

I. to arbitrate any differences arising in connection with any project;

J. to commence, defend, conduct, terminate by settlement or otherwise, and otherwise participate in any litigation or other court, judicial or quasi-judicial action either at law or in equity, by suit, action, mandamus or other proceedings, concerning any project;

K. to use for or in connection with any project money, real or personal property legally available therefor to a municipality, not originally acquired therefor;

L. to levy and collect from year to year for use or in connection with any project general (ad valorem) property taxes in the manner provided by law, including but not necessarily limited to the payment of indebtedness incurred therefor;

M. to use for or in connection with any project the proceeds of any tolls, rates, charges, fees, license taxes, other excise taxes or quasi-excise taxes legally available therefor which the municipality is empowered to fix, levy and collect;

N. to make contracts and execute all instruments necessary or convenient, including but not limited to contracts with the federal government and the state;

O. to acquire any construction work, improvement or improvements of any nature in connection with any project without public advertisement and letting; provided, however, that where the entire cost, value or amount of such work including labor and materials shall exceed five thousand dollars ($5,000) except such work done by employees of the county or city with supplies and materials purchased by either as provided in this section, or except by labor or supplies and materials, or all of such, supplied under agreement with the federal government or state, or both, shall be done only under independent contract to be entered into by the county or city, or by both, with the lowest responsible bidder submitting the lowest and best bid upon proper terms after due public notice by publication has been given asking for competitive bids; the county or city, or both, shall have the right to reject any and all bids and to waive any irregularity in any bid. Any contract may be let on a lump sum or unit basis. No contract shall be entered into for such work unless the contractor shall give an undertaking with a sufficient surety or sureties approved by the board or council or both and in an amount fixed thereby for the faithful performance of the contract. Upon default in the performance of any contract, the proper official may advertise and relet the remainder of

the work without further resolution and deduct the cost from the original contract price and recover any excess cost by suit on the original bond, or otherwise. The county or city, or both, shall have the power to make any improvement, or portion thereof, in connection with any project, directly by the officers, agents and employees thereof, with supplies and materials purchased or otherwise acquired therefor. All supplies and materials purchased therefor by the board or council, or both, (but not by a contractor) costing five hundred dollars ($500) or more shall be purchased only after notice by publication for competitive bids. The board or council, or both, shall accept the lowest bid, kind, quality and material being equal, but either or both shall have the right to reject any and all bids, to waive any irregularity in any bid, and to select a single item from any bid; but the provision as to bidding shall not apply to the purchase of patented and manufactured products offered for sale in a noncompetitive market or solely by a manufacturer's authorized dealer;

P. to borrow money and incur indebtedness and other obligations and to evidence the same by the issuance of notes and bonds in accordance with the provisions of the Joint City-County Building Law;

Q. to refund any bonds without an election; provided, however, that the obligation shall not be increased by any refunding except for any extension of the maturity of any bond refunded by not to exceed fifteen years and for any increase in interest rates; and provided further that otherwise the terms and conditions of refunding bonds shall be substantially the same as those of the original issue of bonds, unless authorized by a majority of the taxpaying electors voting upon a proposal authorizing the issuance of the refunding bonds;

R. to exercise all or any part or combination of the powers granted by the Joint City-County Building Law; and

S. to do and perform any and all other acts and things necessary, convenient, desirable or appropriate to carry out the provisions of the Joint City-County Building Law, and to have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in that act. Such specific powers shall not be considered as a limitation upon any power necessary, convenient, desirable or appropriate to carry out the purposes and intent of that act.

History: 1953 Comp., § 6-9-5, enacted by Laws 1959, ch. 300, § 5; 1981, ch. 125, § 46.

ANNOTATIONS

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

Cross references. — For the Joint Powers Agreements Act, *see* 11-1-1 NMSA 1978.

5-5-6. Agreements between county and city.

A county and a city may from time to time enter into agreements, long terms and short terms, with each other concerning any project, including but not necessarily limited to agreements concerning any power granted to either or both by this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978], the exercise of such powers, and conditions and limitations thereupon, and including by way of example and not by limitation, a contract allocating a portion of any project to the exclusive use and control of any party thereto, a contract concerning the construction and equipment of a building, the plans and specifications therefor, and the work and materials incidental thereto, including the acquisition or improvement of the site therefor, or both, a contract for the ownership, care, custody, control, improvement, operation and maintenance of any project after its acquisition and for defraying expenses incurred therefor, a contract concerning the appointment of personnel therefor or providing for rules, regulations and orders for the use by the public and charges, if any, therefor, a contract for the allocation between the county and city of the total utilization of said building, the method of effecting such allocation, and delineating the rights, if any, of leasing any space in said building and its facilities, and a contract concerning the maintenance of records of and for any project.

History: 1953 Comp., § 6-9-6, enacted by Laws 1959, ch. 300, § 6.

5-5-7. Borrowing money and securities evidencing loans.

Any county and city shall each have the power, separately and severably from time to time to borrow money and issue the following securities to evidence such loans, to finance in whole or in part the cost of any project or any part thereof:

short-term notes;

general obligation bonds, maturing serially is [in] not to exceed thirty years from the date thereof; and

revenue bonds, maturing serially is [in] not to exceed forty years from the date thereof.

History: 1953 Comp., § 6-9-7, enacted by Laws 1959, ch. 300, § 7.

ANNOTATIONS

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

5-5-8. Short-term notes.

A municipality, upon the affirmative vote of at least two-thirds of the members of its governing body present and constituting a quorum, is hereby authorized to borrow money without an election in anticipation of the collection of taxes or other revenues and to issue short-term notes to evidence the amount so borrowed. Such short-term

notes shall be payable from the fund for which the money was borrowed; shall mature before the close of the fiscal year in which the money is so borrowed; and shall not be extended or funded except in compliance with the provisions of this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] concerning the issuance of general obligation bonds.

History: 1953 Comp., § 6-9-8, enacted by Laws 1959, ch. 300, § 8.

5-5-9. Limitations upon incurring debts.

No general obligation bonds or other evidences of indebtedness, the payment of which is secured wholly or in part by a pledge of any proceeds of general ad valorem property taxes or to which the full faith and credit of a municipality are pledged, shall be issued, except as follows:

A. a county shall so borrow money only for the purpose of erecting necessary public buildings in connection with any project, and in any such case only after the proposition to create such debt shall have been submitted at a general or special election to the qualified electors of the county and approved by a majority of those voting thereon;

B. a city shall so contract any such debt only by an ordinance that shall be irrepealable until the indebtedness therein provided for shall have been fully paid or discharged and that shall specify the purposes to which the funds to be raised shall be applied. No such debt shall be created unless the question of incurring the debt shall, at a regular election for councilmen or other officers of the city, have been submitted to a vote of the qualified electors thereof and a majority of those voting on the question shall have voted in favor of creating the debt; and

C. no municipality shall ever become indebted to an amount in the aggregate, including existing indebtedness, exceeding four percent on the value of the taxable property within the municipality as shown by the last preceding assessment for state or county taxes, but excluding debts contracted by a city for the construction or purchase of a system for supplying water or of a sewer system for the city; and all bonds or obligations issued in excess of that amount shall be void.

History: 1953 Comp., § 6-9-9, enacted by Laws 1959, ch. 300, § 9; 1977, ch. 28, § 2; 2019, ch. 212, § 191.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, deleted "registered" preceding "qualified elector" throughout the section.

5-5-10. General obligation bond and debt elections.

The governing body of any municipality may fix a date for an election and may order the submission at the election of a question or proposal to authorize the issuance of

general obligation bonds or the incurrence of any other indebtedness for any project or part thereof authorized by the Joint City-County Building Law subject to the limitations of Section 5-5-9 NMSA 1978; and notice of the election shall be given by publication, commencing at least twenty days prior to the election. The notice of election shall be signed by the clerk of the municipality and by the chairman of the board, mayor of the city or other titular head of the municipality; and the notice shall contain:

A. the time and place or places of holding the election;

B. the hours during the day in which the polls will be open, which shall be the same as then provided for general elections;

C. the purpose of the proposal for issuing bonds or otherwise incurring an indebtedness;

D. the maximum amount of bonds and the maximum rate of interest, not to exceed six per centum per annum, in the case of any bond proposal; and

E. the maximum number of years, not exceeding thirty, from the date of the bonds or other evidence of indebtedness, during which the bond shall mature or the indebtedness shall be defrayed.

The statement as to the place or places of holding the election may merely refer generally to the place or places theretofore designated for holding the general, regular municipal or other election with which the bond or other debt election may be consolidated, or refer generally to the place or places for holding a previous election, or may consist of some other similarly sufficient statement designating such place or places by reference thereto or a general description thereof.

A special registration shall be held for any qualified elector not registered for any such debt election which is not consolidated with nor held within the sixty days next succeeding an election for which a registration was held. In such event, the special registration shall be held for a ten-day period commencing the twenty-ninth day next preceding the election and ending the twentieth day next prior thereto. The county clerk or other official required by law to conduct registrations for the municipality, upon being given timely notice of the election by the governing body, shall give notice of the special registration by publication, commencing at least thirty-two days next prior to the election, and stating the place and the days and hours the special registration will be held.

Except for notices of elections, except for the necessity of and the time of holding registrations for elections and except for any provisions inconsistent with any provision in the Joint City-County Building Law specifically made or necessarily implied, any debt election for any project shall be held, conducted, canvassed and otherwise governed as nearly as practicable as then provided for a regular municipal election in the case of any city election and as then provided for a general election in the case of a county election.

History: 1953 Comp., § 6-9-10, enacted by Laws 1959, ch. 300, § 10; 1977, ch. 28, § 3.

5-5-11. Authorization of bonds.

A board by resolution or a council by ordinance shall authorize the issuance by the municipality, upon the affirmative vote of at least a majority of the members of the governing body present and constituting a quorum, of any general obligation bond series upon being authorized so to do by the electors of the municipality voting thereon, as provided in Chapter 5, Article 5 NMSA 1978 in detail, or the issuance by the municipality or county, upon the affirmative vote of at least two-thirds of the members of its governing body present and constituting a quorum, of any revenue bond series without necessarily being authorized at an election or by any other preliminaries.

History: 1953 Comp., § 6-9-11, enacted by Laws 1959, ch. 300, § 11; 1977, ch. 28, § 4; 1983, ch. 198, § 1.

5-5-12. Payment of bonds.

The principal of and interest on general obligation bonds herein authorized to be issued, and any prior redemption premium or premiums, shall be payable from the proceeds of general (ad valorem) property taxes levied without limitation as to rate or amount, except to the extent other revenues are made available therefor. The principal of and interest on revenue bonds herein authorized to be issued and any prior redemption premium or premiums shall be payable solely from the gross or net revenues derived from the operation of any project for the acquisition or improvement of which the bonds are issued, including without limiting the generality of the foregoing, revenues of a prior existing project which is improved by the expenditure of the bond proceeds, and revenues of improvements theretofore or thereafter acquired for such project which are not acquired by the expenditure of such bond proceeds, and from revenues and proceeds of any tolls, rates, charges, fees, license taxes, other excise taxes or quasi-excise taxes which the municipality is empowered to fix, levy and collect (but excluding any general (ad valorem) property taxes), or any combination of such revenues and proceeds. Any such revenues or proceeds pledged directly or as additional security for the payment of bonds of any one issue or series which revenues are not exclusively pledged therefor may subsequently be pledged directly or as additional security for the payment of the bonds of one or more issues or series subsequently authorized. If more than one series of bonds shall be issued hereunder payable from the same revenues or proceeds, priority of lien thereof on such revenues shall depend on the provisions of the proceedings authorizing the issuance of such bonds, it being within the discretion of the governing body at the time it authorizes the first such series to provide that subsequent series of bonds payable from such revenues may not be issued, that subsequent series of bonds shall be subordinate as to lien or that subsequent series of bonds shall enjoy parity of lien if such conditions and restrictions as may be specified in such proceedings can be met. All bonds of the same issue or series shall be equally and ratably secured without priority by reason of number, date of maturity, date of bonds, of sale, of execution or of delivery, by a lien on

said revenues and proceeds in accordance with the provisions of this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] and the proceedings authorizing said bonds, except to the extent the proceedings shall otherwise specifically provide. All bonds not issued payable solely from such revenues and proceeds shall be the general obligations of the municipality, and the full faith and credit of the municipality shall be pledged for the payment thereof.

History: 1953 Comp., § 6-9-12, enacted by Laws 1959, ch. 300, § 12.

5-5-13. Municipality's limited liability on bonds and recital therein.

Neither the governing body nor any person executing any bond authorized by this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] shall be liable personally thereon by reason of its issuance hereunder. Except for general obligation bonds, bonds issued pursuant to this act shall not be a debt, liability or general obligation of the municipality issuing them, and it shall not be liable thereon, nor shall it thereby pledge its full faith and credit for their payment, nor shall the bonds be payable out of any funds other than the revenues and proceeds pledged to the payment thereof; and each such bond shall in substance so state. Such bonds shall not constitute a debt or indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction. The payment of bonds shall not be secured by an encumbrance, mortgage or other pledge of property of the municipality, except for revenues and tax proceeds pledged for their payment. No property of the municipality, subject to said exceptions, shall be liable to be forfeited or taken in payment of the bonds.

History: 1953 Comp., § 6-9-13, enacted by Laws 1959, ch. 300, § 13.

5-5-14. Incontestable recital in bonds.

It may be provided in any proceedings authorizing any bonds hereunder that such bond shall recite that it is issued under authority of this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978]. Such recital shall conclusively impart full compliance with all of the provisions of this act, and all bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

History: 1953 Comp., § 6-9-14, enacted by Laws 1959, ch. 300, § 14.

5-5-15. Form of bonds.

Any general obligations bonds or revenue bonds herein authorized to be issued shall bear such date or dates, shall be in such denomination or denominations, and shall mature serially, commencing not later than three years from the date therefrom, at times not exceeding the estimated life of the improvements acquired with the bond proceeds nor the maximum limitation stated in Section 7 [5-5-7 NMSA 1978] hereof, shall bear interest payable annually or semiannually, except that interest on any bond may be first payable for any period not in excess of one year, at such rate or rates not greater than

six per centum per annum, shall be payable in such medium of payment at such place or places within or without the state and at the option of the governing body may be in one or more series, may be made subject to prior redemption in such order or by lot in advance of maturity at such time or times without or with the payment of such premium or premiums not exceeding six per centum of the principal amount of each bond redeemed, may provide for the payment of interest thereon from the proceeds thereof for a period not to exceed three years from the date thereof, may be issued with privileges for registration for payment as to principal and as to both principal and interest, or either, and generally shall be issued in such manner, in such form, either coupon or registered, carrying such conversion or registration privileges, with such recitals, terms, covenants and conditions and with such other details as may be provided by the governing body in the proceedings authorizing the bonds, except as herein otherwise provided. Pending preparations of the definite bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued. Except for payment provisions herein specifically provided, said bonds and any interest coupons thereto attached shall be fully negotiable and constitute negotiable instruments within the meaning of and for all the purposes of the Negotiable Instruments Law [repealed] as that law is now or may hereafter be in force in the state of New Mexico. 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 governing body:

A. proof of ownership;

B. proof of loss or destruction;

C. a surety bond in twice the face amount of the bond and coupons; and

D. payment of the cost of preparing and issuing the new bond.

History: 1953 Comp., § 6-9-15, enacted by Laws 1959, ch. 300, § 15.

ANNOTATIONS

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

The Negotiable Instruments Law was repealed by Laws 1961, ch. 96, § 10-102. For provisions relating to negotiable instruments under the Uniform Commercial Code, *see* 55-3-101 to 55-3-605 NMSA 1978.

5-5-16. Alternate bond form.

Notwithstanding any other provision of law, the governing body may in any proceedings authorizing bonds hereunder provide for the initial issuance of one or more bonds (in this section called "bond") aggregating the amount of the entire issue and may

make such provision for installment payments of the principal amount of any such bond as it may consider desirable and may provide for the making of any such bond payable to bearer or otherwise, registrable as to principal or as to both principal and interest, and where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bond. The governing body may further make provisions in any such resolution for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal or principal and interest.

History: 1953 Comp., § 6-9-16, enacted by Laws 1959, ch. 300, § 16.

5-5-17. Execution of bonds.

Any such general obligation bonds or revenue bonds shall be executed in the name of and on behalf of the municipality and signed by the chairman of the board, mayor of the city or other titular head of the municipality with its seal affixed thereto and attested by its clerk. Except for such bonds which are registrable for payment of interest, interest coupons payable to bearer shall be attached to the bonds and shall bear the original or facsimile signature of said two officials. The bonds and coupons bearing the signatures of the officers in office at the time of the signing thereof shall be the valid and binding obligations of the municipality, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices.

History: 1953 Comp., § 6-9-17, enacted by Laws 1959, ch. 300, § 17.

ANNOTATIONS

Cross references. — For facsimile signatures of public officers, *see* 6-9-1 to 6-9-6 NMSA 1978.

5-5-18. Sale of bonds.

Any general obligation bonds or revenue bonds shall be sold at public or private sale for not less than the principal amount thereof and accrued interest at a price which will not result in a net interest cost to the municipality of more than six per centum per annum computed to maturity according to standard tables of bond values. Nothing herein contained shall be construed as permitting the sale of bonds for other than lawful money of the United States of America.

History: 1953 Comp., § 6-9-18, enacted by Laws 1959, ch. 300, § 18.

5-5-19. Application of proceeds.

All moneys received from the issuance of any bonds herein authorized shall be used solely for the purpose (or purposes) for which issued, including without limiting the generality of the foregoing, the payment of preliminary expenses; provided, however, that any unexpended balance of such bond proceeds remaining after the completion of the acquisition of [or] improvement of the project or part thereof for which such bonds were issued shall be paid immediately into the fund created for the payment of the principal of said bonds and shall be used therefor. The validity of said bonds shall not be dependent on or affected by the validity or regularity of any proceedings relating to the acquisition or improvement of the project for which the bonds are issued; and the purchaser or purchasers of the bonds shall in no manner be responsible for the application of the proceeds of the bonds by the municipality or any of its officers, agents and employees.

History: 1953 Comp., § 6-9-19, enacted by Laws 1959, ch. 300, § 19.

ANNOTATIONS

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

5-5-20. Covenants in bond proceedings.

Any proceedings authorizing the issuance of bonds under this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] may contain covenants (notwithstanding such covenants may limit the exercise of powers conferred by this act) as to any one or more of the following:

A. the tolls, rates, rentals, charges, license taxes, other excise taxes or quasi-excise taxes, and general taxes to be fixed, charged or levied, the collection, use and disposition thereof, and their sufficiency, including but not limited to joint billing for and the discontinuance of facilities, commodities or projects, the foreclosure of liens for delinquencies and the collection of penalties;

B. the creation and maintenance of reserves or sinking funds and the regulation, use and disposition thereof;

C. a fair and reasonable payment by any municipality from its general fund or other available moneys to the account of a designated project for the facilities or commodities furnished or services rendered thereby to the municipality or any of its departments, boards or agencies;

D. the purpose or purposes to which the proceeds of the sale of bonds may be applied and the use and disposition thereof;

E. the issuance of other or additional bonds payable from or constituting a charge against or lien upon any revenues pledged for the payment of bonds and the creation of future liens and incumbrances [encumbrances] thereagainst;

F. the operation and maintenance of any project;

G. the insurance to be carried thereon and use and disposition of insurance moneys;

H. books of account and the inspection and audit thereof;

I. events of default, rights and liabilities arising therefrom, and the rights, liabilities, powers and duties arising upon the breach by the municipality of any covenants, conditions or obligations;

J. the vesting in a trustee or trustees, and the limitation of liabilities thereof, and as to the terms and conditions upon which the holders of the bonds or any portion, percentage or amount of them may enforce any covenants made under this act or duties imposed thereby;

K. the terms and conditions upon which the holders of the bonds or of a specified portion, percentage or amount thereof or any trustee therefor shall be entitled to the appointment of a receiver, which receiver may enter and take possession of any project, operate and maintain the same, prescribe tolls, fees, rates, rentals, charges and taxes, and collect, receive and apply all revenues thereafter arising therefrom and in the same manner as the municipality itself might do;

L. a procedure by which the terms of any proceedings authorizing bonds or any other contract with any holders of bonds, including but not limited to an indenture of trust or similar instrument, may be amended or abrogated, and as to the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

M. the terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;

N. the exercise of all or any combination of powers herein granted; and

O. all such acts and things as may be necessary or convenient or desirable in order to secure the bonds of the governing body or, in its discretion, tend to make the bonds more marketable, notwithstanding that such covenant, act or thing of like or different character may not be enumerated herein, it being the intention hereof to give a municipality power to do all things in the issuance of bonds and for their security except as herein specifically limited.

History: 1953 Comp., § 6-9-20, enacted by Laws 1959, ch. 300, § 20.

ANNOTATIONS

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

5-5-21. Remedies of bondholders.

Subject to any contractual limitations binding upon the holders of any issue or series of bonds, or trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion, percentage or number of such holders, any holder of bonds or trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of bonds similarly situated:

A. by mandamus or other suit, action or proceeding at law or in equity to enforce his rights against the municipality and its governing body and any of its officers, agents and employees and to require and compel the municipality or its governing body or any such officers, agents or employees to perform and carry out its and their duties, obligations or other commitments under this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] and its and their covenants and agreements with the bondholders;

B. by action or suit in equity to require the municipality and its governing body to account as if they were the trustee of an express trust;

C. by action or suit in equity to have appointed a receiver, which receiver may enter and take possession of any project revenues from which are pledged for the payment of the bonds, prescribe sufficient tolls, fees, rates, rentals, charges and excise taxes or quasi-excise taxes, and collect, receive and apply all revenues or other moneys pledged for the payment of the bonds in the same manner as the municipality itself might do;

D. by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders; and

E. bring suit upon the bonds.

No right or remedy conferred by this act upon any holder of bonds or any trustee therefor is intended to be exclusive of other right or remedy but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this act or by any other law. The failure of any bondholder so to proceed as herein provided shall not relieve the municipality, its governing body or any of its officers, agents and employees of any liability for failure to perform or carry out any duty, obligation or other commitment.

History: 1953 Comp., § 6-9-21, enacted by Laws 1959, ch. 300, § 21.

5-5-22. Publication of authorizing proceedings; effect; right to contest legality; time limitation.

The governing body may provide for the publication once in a newspaper of general circulation in the municipality of any proceedings adopted by the governing body ordering the issuance of any bonds. For a period of thirty days after the date of such publication, any person in interest shall have the right to contest the legality of any bond which may be authorized thereby (except for any bond delivered for value, containing a recital therein that it is issued under authority of this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] and thus being incontestable for any cause whatsoever, as herein provided), and of the provisions made for the security and payment of any such bonds and of any other provisions in such proceedings; and after the expiration of such thirty-day period no one shall have any cause of action to contest the regularity, formality or legality thereof for any cause whatsoever.

History: 1953 Comp., § 6-9-22, enacted by Laws 1959, ch. 300, § 22.

5-5-23. Revenue bond charges.

Whenever revenue bonds are issued hereunder, it shall be the duty of the governing body to impose, in connection with the revenues and proceeds pledged for their payment, tolls, rates, charges, fees, license taxes, other excise taxes or quasi-excise taxes fully sufficient to pay the principal of and interest on the bonds, and to carry out all commitments made in the proceedings authorizing their issuance.

History: 1953 Comp., § 6-9-23, enacted by Laws 1959, ch. 300, § 23.

5-5-24. Pledging of occupation taxes.

Occupation taxes authorized by Section 3-38-3 NMSA 1978 may be pledged for the retirement of revenue bonds issued pursuant to the Joint City-County Building Law.

History: 1953 Comp., § 6-9-23.1, enacted by Laws 1965, ch. 90, § 1.

5-5-25. Exemption from taxation.

Bonds issued by any municipality pursuant hereto and the income therefrom shall at all times be free from taxation by the state of New Mexico and any subdivision thereof, except for any estate, inheritance and transfer taxes.

History: 1953 Comp., § 6-9-24, enacted by Laws 1959, ch. 300, § 24.

5-5-26. Sufficiency of act.

This act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978], without reference to other statutes of the state except as herein otherwise specifically provided or necessarily implied, shall constitute full authority for the acquisition, improvement, operation and maintenance of any project and the borrowing of money and the authorization and issuance of bonds hereunder. No other act or law with regard to said purposes that provides for an election, requires an approval or in any way impedes or restricts the carrying out of the acts herein authorized to be done, shall be construed as applying to any proceedings taken hereunder or acts done pursuant hereto, it being intended that this act shall provide a separate method of accomplishing its objectives and not an exclusive one; and this act shall not be construed as repealing, amending or changing any such other act or law.

History: 1953 Comp., § 6-9-25, enacted by Laws 1959, ch. 300, § 25.

5-5-27. Liberal construction.

This act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] being necessary to secure the public health, safety, convenience and welfare, it shall be liberally construed to effect its purposes.

History: 1953 Comp., § 6-9-26, enacted by Laws 1959, ch. 300, § 26.

ARTICLE 6
Dances (Repealed.)

5-6-1 to 5-6-5. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 181, § 1 repealed 5-6-1 through 5-6-5 NMSA 1978, as enacted by Laws 1861, p. 30, §§ 1 and 2, Laws 1869, ch. 32, §§ 14 and 15, and Laws 1963, ch. 142, § 1, regulating dances, effective June 18, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

ARTICLE 7
Fire District Bonds

5-7-1. Short title.

This act [5-7-1 to 5-7-7 NMSA 1978] may be cited as the "Fire District Bond Act".

History: Laws 1983, ch. 162, § 1.

5-7-2. Definitions.

As used in the Fire District Bond Act:

A. "fire district bonds" means the bonds authorized in the Fire District Bond Act;

B. "governing body" means the board of county commissioners of a county or the city council, city commission or board of trustees of a municipality;

C. "pledged revenues" means the revenues, net income or net revenues authorized to be pledged to the payment of particular bonds as specifically provided in Section 3 [5-7-3 NMSA 1978] of the Fire District Bond Act; and

D. "project revenues" means the net revenues of the fire district as well as revenues received by the fire district from the fire protection fund as provided in Sections 59-15-1 through 59-15-18 NMSA 1978 [repealed], which may be pledged to fire district bonds pursuant to Subsection B of Section 3 of the Fire District Bond Act.

History: Laws 1983, ch. 162, § 2.

ANNOTATIONS

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

Sections 59-15-1 through 59-15-18 NMSA 1978, relating to the fire protection fund, were repealed by Laws 1984, ch. 127, § 997. For present comparable provisions, *see* Chapter 59A, Article 53 NMSA 1978.

5-7-3. Fire district bonds; authority to issue; pledge of revenues; limitation on time of issuance.

A. In addition to any other law authorizing a county or municipality to issue revenue bonds, a county or municipality may issue fire district bonds pursuant to the Fire District Bond Act for the purposes specified in this section.

B. Fire district bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping and rehabilitating any fire district project, including, where applicable, purchasing, otherwise acquiring or improving the ground therefor, or for any combination of the foregoing purposes. The county or municipality may pledge irrevocably any or all of the project 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 such bonds. The net revenues of any fire district project shall not be pledged to the bonds issued for any fire district project which clearly is unrelated in its purpose; but nothing in this section shall prevent the pledge to any of such bonds of any such revenues received from any existing, future

or disconnected facilities and equipment which are related to and which may constitute a part of the particular fire district project. Any general determination by the governing body of the county or municipality that any facilities or equipment are reasonably related to and shall constitute a part of a specified fire district project shall be conclusive if set forth in the proceedings authorizing such fire district bonds.

History: Laws 1983, ch. 162, § 3.

5-7-4. Use of proceeds of bond issue.

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

History: Laws 1983, ch. 162, § 4.

5-7-5. Fire district bonds; terms.

County or municipal fire district bonds:

A. shall bear interest at a coupon rate or coupon rates not exceeding the maximum coupon rate which is permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; provided that interest shall be payable annually or semiannually and may or may not be evidenced by coupons; and provided further that 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 county's or municipality's option 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 ordinance;

C. may mature at any time or times 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;

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; and

F. may be sold at public or private sale.

History: Laws 1983, ch. 162, § 5.

5-7-6. Ordinance authorizing fire district bonds; two-thirds majority required.

A. At a regular or special meeting called for the purpose of issuing fire district bonds as authorized in Section 3 [5-7-3 NMSA 1978] of the Fire District Bond Act, the governing body may adopt an ordinance that:

(1) declares the necessity for issuing fire district bonds;

(2) authorizes the issuance of fire district 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.

History: Laws 1983, ch. 162, § 6.

ANNOTATIONS

Compiler's notes. — This section was enacted without a Subsection B.

5-7-7. Fire district bonds not general county or municipal obligations; authentication.

A. Fire district bonds or refunding bonds issued as authorized in the Fire District Bond Act are:

(1) not general obligations of the county or municipality; 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 or municipal fund for the payment of the interest and principal of the bonds.

B. The bonds and coupons shall be signed and sealed as provided by the ordinance issuing the same, and the Uniform Facsimile Signature of Public Officials Act shall be applicable.

History: Laws 1983, ch. 162, § 7.

ANNOTATIONS

Cross references. — For the Uniform Facsimile Signature of Public Officials Act, *see* 6-9-1 NMSA 1978 et seq.

ARTICLE 8
Land Development Fees and Rights

5-8-1. Short title.

This act [5-8-1 to 5-8-42 NMSA 1978] may be cited as the "Development Fees Act".

History: Laws 1993, ch. 122, § 1.

ANNOTATIONS

Cross references. — For land use easements, *see* Chapter 47, Article 12 NMSA 1978.

Law reviews. — For article, "Water Supply and Urban Growth in New Mexico: Same Old, Same Old or a New Era," see 43 Nat. Resources J. 803 (2003).

5-8-2. Definitions.

As used in the Development Fees Act:

A. "affordable housing" means any housing development built to benefit those whose income is at or below eighty percent of the area median income; and who will pay no more than thirty percent of their gross monthly income towards such housing;

B. "approved land use assumptions" means land use assumptions adopted originally or as amended under the Development Fees Act;

C. "assessment" means a determination of the amount of an impact fee;

D. "capital improvement" means any of the following facilities that have a life expectancy of ten or more years and are owned and operated by or on behalf of a municipality or county:

(1) water supply, treatment and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage and flood control facilities;

(2) roadway facilities located within the service area, including roads, bridges, bike and pedestrian trails, bus bays, rights of way, traffic signals, landscaping and any local components of state and federal highways;

(3) buildings for fire, police and rescue and essential equipment costing ten thousand dollars ($10,000) or more and having a life expectancy of ten years or more; and

(4) parks, recreational areas, open space trails and related areas and facilities;

E. "capital improvements plan" means a plan required by the Development Fees Act that identifies capital improvements or facility expansion for which impact fees may be assessed;

F. "county" means a county of any classification;

G. "facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development, including schools and related facilities;

H. "hook-up fee" means a reasonable fee for connection of a service line to an existing gas, water, sewer or municipal or county utility;

I. "impact fee" means a charge or assessment imposed by a municipality or county on new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, development fees and any other fee that functions as described by this definition. The term does not include hook-up fees, dedication of rights of way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs if the dedication or construction is required by a previously adopted valid ordinance or regulation and is necessitated by and attributable to the new development;

J. "land use assumptions" includes a description of the service area and projections of changes in land uses, densities, intensities and population in the service area over at least a five-year period;

K. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, and H class counties, including any home rule municipality or H class county chartered under the provisions of Article 10, Section 6 of the constitution of New Mexico;

L. "new development" means the subdivision of land; reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units;

M. "qualified professional" means a professional engineer, surveyor, financial analyst or planner providing services within the scope of his license, education or experience;

N. "roadway facilities" means arterial or collector streets or roads that have been designated on an officially adopted roadway plan of the municipality or county, including bridges, bike and pedestrian trails, bus bays, rights of way, traffic signals, landscaping and any local components of state or federal highways;

O. "service area" means the area within the corporate boundaries or extraterritorial jurisdiction of a municipality or the boundaries of a county to be served by the capital improvements or facility expansions specified in the capital improvements plan designated on the basis of sound planning and engineering standards; and

P. "service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements or facility expansions.

History: Laws 1993, ch. 122, § 2.

ANNOTATIONS

Cross references. — For establishment of H class county, *see* 4-44-3 NMSA 1978.

5-8-3. Authorization of fee.

A. Unless otherwise specifically authorized by the Development Fees Act, no municipality or county may enact or impose an impact fee.

B. If it complies with the Development Fees Act, a municipality or county may enact or impose impact fees on land within its respective corporate boundaries.

C. A municipality and county may enter into a joint powers agreement to provide capital improvements within an area subject to both county and municipal platting and subdivision jurisdiction or extraterritorial jurisdiction and may charge an impact fee under the agreement, but if an impact fee is charged in that area, the municipality and county shall comply with the Development Fees Act.

D. A municipality or county may waive impact fee requirements for affordable housing projects.

History: Laws 1993, ch. 122, § 3; 2001, ch. 176, § 1.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, added Subsection D.

No vested development rights under impact fee ordinance. — Where the municipal impact fee ordinance exempted developers who possessed development rights that vested prior to the ordinance's date of enactment from paying the impact fee; prior to the date the ordinance was enacted, the municipal planning commission approved a site plan for subdivision of land owned by plaintiff; the approved plan established zoning, tract boundaries, vehicle access, bicycle and trail access, public transit access, internal circulation requirements, building heights, setbacks, and common landscape

standards; none of the tracts were platted; and the regulations which were promulgated pursuant to the ordinance defined vested rights as development rights acquired and resulting from building permit approval, final plat approval, preliminary plat approval, or site plan for subdivision or site plan for building permit approval and defined site plan for subdivision as a plat that covers at least one lot and specifies access and building criteria, under the ordinance, a developer receives development rights at the time it receives approval of a reliable platting pattern, the developer's original site plan for subdivision did not confer the development rights necessary to establish vested rights under the ordinance, because it did not provide a reliable platting pattern, and the developer was not exempt from paying impact fees. *Andalucia Dev. Corp., Inc. v. City of Albuquerque*, 2010-NMCA-052, 148 N.M. 277, 234 P.3d 929.

No common law vested development rights. — Where the municipal impact fee ordinance exempted developers who possessed development rights that vested prior to the ordinance's date of enactment from paying the impact fee; prior to the date the ordinance was enacted, the municipal planning commission approved a site plan for subdivision of land owned by plaintiff; the approved plan established zoning, tract boundaries, vehicle access, bicycle and trail access, public transit access, internal circulation requirements, building heights, setbacks, and common landscape standards; none of the tracts were platted; and development of the property was subject to subsequent municipal approvals and the continuance of the project remained entirely within the municipality's discretion, the original site plan for subdivision did not confer a vested development right under common law and the developer was not exempt from paying impact fees. *Andalucia Dev. Corp., Inc. v. City of Albuquerque*, 2010-NMCA-052, 148 N.M. 277, 234 P.3d 929.

5-8-4. Items payable by fee.

A. An impact fee may be imposed only to pay the following specified costs of constructing capital improvements or facility expansions:

(1) estimated capital improvements plan cost;

(2) planning, surveying and engineering fees paid to an independent qualified professional who is not an employee of the municipality or county for services provided for and directly related to the construction of capital improvements or facility expansions;

(3) fees actually paid or contracted to be paid to an independent qualified professional, who is not an employee of the municipality or county, for the preparation or updating of a capital improvements plan; and

(4) up to three percent of total impact fees collected for administrative costs for municipal or county employees who are qualified professionals.

B. Projected debt service charges may be included in determining the amount of impact fees only if the impact fees are used for the payment of principal and interest on bonds, notes or other obligations issued to finance construction of capital improvements or facility expansions identified in the capital improvements plan.

History: Laws 1993, ch. 122, § 4.

5-8-5. Items not payable by fee.

Impact fees shall not be imposed or used to pay for:

A. construction, acquisition or expansion of public facilities or assets that are not capital improvements or facility expansions identified in the capital improvements plan;

B. repair, operation or maintenance of existing or new capital improvements or facility expansions;

C. upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;

D. upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;

E. administrative and operating costs of a municipality or county except as provided in Paragraph (4) of Subsection A of Section 4 [5-8-4 NMSA 1978] of the Development Fees Act;

F. principal payments or debt service charges on bonds or other indebtedness, except as allowed by Section 4 of the Development Fees Act; or

G. libraries, community centers, schools, projects for economic development and employment growth, affordable housing or apparatus and equipment of any kind, except capital improvements defined in Paragraph (3) of Subsection C [D] of Section 2 [5-8-2 NMSA 1978] of the Development Fees Act.

History: Laws 1993, ch. 122, § 5.

ANNOTATIONS

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

The reference in Subsection G to Subsection C of 5-8-2 NMSA 1978, appears to actually refer to Subsection D of that section.

5-8-6. Capital improvements plan.

A. A municipality or county shall use qualified professionals to prepare the capital improvements plan and to calculate the impact fee. The capital improvements plan shall follow the infrastructure capital improvement planning guidelines established by the department of finance and administration and shall address the following:

(1) a description, as needed to reasonably support the proposed impact fee, which shall be prepared by a qualified professional, of the existing capital improvements within the service area and the costs to upgrade, update, improve, expand or replace the described capital improvements to adequately meet existing needs and usage and stricter safety, efficiency, environmental or regulatory standards;

(2) an analysis, which shall be prepared by a qualified professional, of the total capacity, the level of current usage and commitments for usage of capacity of the existing capital improvements;

(3) a description, which shall be prepared by a qualified professional, of all or the parts of the capital improvements or facility expansions and their costs necessitated by and attributable to new development in the service area based on the approved land use assumptions;

(4) a definitive table establishing the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of capital improvements or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial and industrial;

(5) the total number of projected service units necessitated by and attributable to new development within the service area based on the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;

(6) the projected demand for capital improvements or facility expansions required by new service units accepted over a reasonable period of time, not to exceed ten years; and

(7) anticipated sources of funding independent of impact fees.

B. The analysis required by Paragraph (2) of Subsection A of this section may be prepared on a system-wide basis within the service area for each major category of capital improvement or facility expansion for the designated service area.

C. The governing body of a municipality or county is responsible for supervising the implementation of the capital improvements plan in a timely manner.

History: Laws 1993, ch. 122, § 6.

5-8-7. Maximum fee per service unit.

The fee shall not exceed the cost to pay for a proportionate share of the cost of system improvements, based upon service units, needed to serve new development.

History: Laws 1993, ch. 122, § 7.

5-8-8. Time for assessment and collection of fee.

A. Assessments of an impact fee shall be made at the earliest possible time. Collection of the impact fee shall occur at the latest possible time.

B. For land that has been platted in accordance with the subdivision or platting procedures of a municipality or county before the effective date of the Development Fees Act or for land on which new development occurs or is proposed without platting, the municipality or county may assess the impact fees at the time of development approval or issuance of a building permit, whichever date is earlier. The assessment shall be valid for a period of not less than four years from the date of development approval or issuance of a building permit, whichever date is earlier.

C. For land that is platted after the effective date of the Development Fees Act, the municipality or county shall assess the fees at the time of recording of the subdivision plat and this assessment shall be valid for a period of not less than four years from the date of recording of the plat.

D. Collection of impact fees shall occur no earlier than the date of issuance of a building permit.

E. For new development that is platted in accordance with the subdivision or platting procedures of a municipality or county before the adoption of an impact fee, an impact fee shall not be collected on any service unit for which a valid building permit has been issued.

F. After the expiration of the four-year period described in Subsections B and C of this section, a municipality or county may adjust the assessed impact fee to the level of current impact fees as provided in the Development Fees Act.

History: Laws 1993, ch. 122, § 8.

ANNOTATIONS

Compiler's notes. — The phrase "effective date of the Development Fees Act", in Subsections B and C, refers to the effective date of Laws 1993, ch. 122, which was July 1, 1993.

5-8-9. Additional fee prohibited; exception.

Except as provided in Subsection F of Section 8 [5-8-8 NMSA 1978] of the Development Fees Act, after assessment of the impact fees attributable to the new development or execution of an agreement for payment of impact fees, additional impact fees or increases in fees may not be assessed for any reason unless the number of service units to be developed increases. In the event of an increase in the number of service units, the impact fees to be imposed are limited to the amount attributable to the additional service units.

History: Laws 1993, ch. 122, § 9.

5-8-10. Agreement with owner regarding payment.

A municipality or county is authorized to enter into an agreement with the owner of a tract of land for which a plat has been recorded providing for a method of payment of the impact fees over an extended period of time otherwise in compliance with the Development Fees Act.

History: Laws 1993, ch. 122, § 10.

5-8-11. Collection of fees if services not available.

Impact fees may be assessed but shall not be collected unless the:

A. collection is made to pay for a capital improvement or facility expansion that has been identified in the capital improvements plan and the municipality or county commits to complete construction within seven years and to have the service available within a reasonable period of time after completion of construction considering the type of capital improvement or facility expansion to be constructed but in no event longer than seven years;

B. municipality or county agrees that the owner of a new development may construct to adopted municipal or county standards or finance the capital improvements or facility expansions and agrees that the costs incurred or funds advanced will be credited against the impact fees otherwise due from the new development or agrees to reimburse the owner for such costs from impact fees paid from other new developments that will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to the property owner of record at the time the plat of the other new development is recorded; or

C. time period set forth in Subsection A of this section can be extended, provided the municipality or county obtains a performance bond or similar surety securing performance of the obligation to construct the capital improvements or facility expansions but in no event longer than seven years from commencement of construction of the capital improvements or facility expansion for which fees have been

collected. The municipality or county shall establish written procedures to ensure that the owner of a new development shall not lose the value of the credits. Any refund for fees shall be made as provided in Section 17 [5-8-17 NMSA 1978] of the Development Fees Act.

History: Laws 1993, ch. 122, § 11.

5-8-12. Entitlement to services.

Any new development for which an impact fee has been paid is entitled to the permanent use and benefit of the services for which the fee was exacted and is entitled to receive prompt service from any existing facilities with actual capacity to serve the new service units.

History: Laws 1993, ch. 122, § 12.

5-8-13. Authority of municipality or county to spend funds or enter into agreements to reduce fees.

Municipalities or counties may spend funds from any lawful source or pay for all or a part of the capital improvements or facility expansions to reduce the amount of impact fees. A developer and a municipality or county may agree to offset or reduce part or all of the impact fee assessed on that new development, provided that the public policy which supports the reduction is contained in the appropriate planning documents of the municipality or county and provided that the development's new proportionate share of the system improvement is funded with revenues other than impact fees from other new developments.

History: Laws 1993, ch. 122, § 13.

5-8-14. Requirement for governmental entities to pay fees.

Governmental entities shall pay all impact fees imposed under the Development Fees Act.

History: Laws 1993, ch. 122, § 14.

5-8-15. Credits against facilities fees.

Any construction of, contributions to or dedications of on-site or off-site facilities, improvements, or real or personal property with off-site benefits not required to serve the new development, in excess of minimum municipal and county standards established by a previously adopted and valid ordinance or regulation and required by a municipality or county as a condition of development approval shall be credited against impact fees otherwise due from the development. The credit shall include the value of:

A. dedication of land for parks, recreational areas, open space trails and related areas and facilities or payments in lieu of that dedication; and

B. dedication of rights of way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs.

History: Laws 1993, ch. 122, § 15.

5-8-16. Accounting for fees and interest.

A. The order, ordinance or resolution imposing an impact fee shall provide that all money collected through the adoption of an impact fee shall be maintained in separate interest-bearing accounts clearly identifying the payor and the category of capital improvements or facility expansions within the service area for which the fee was adopted.

B. Interest earned on impact fees shall become part of the account on which it is earned and shall be subject to all restrictions placed on the use of impact fees under the Development Fees Act.

C. Money from impact fees may be spent only for the purposes for which the impact fee was imposed as shown by the capital improvements plan and as authorized by the Development Fees Act.

D. The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours of the municipality or county.

E. As part of its annual audit process, a municipality or county shall prepare an annual report describing the amount of any impact fees collected, encumbered and used during the preceding year by category of capital improvement and service area identified as provided in Subsection A of this section.

History: Laws 1993, ch. 122, § 16.

5-8-17. Refunds.

A. Upon the request of an owner of the property on which an impact fee has been paid, the municipality or county shall refund the impact fee if existing facilities are available and service is not provided or the municipality or county has, after collecting the fee when service was not available, failed to complete construction within the time allowed under Section 11 [5-8-11 NMSA 1978] of the Development Fees Act or service is not available within a reasonable period of time after completion of construction considering the type of capital improvement or facility expansion to be constructed, but

in no event later than seven years from the date of payment under Subsection A of Section 11 of the Development Fees Act.

B. Upon completion of the capital improvements or facility expansions identified in the capital improvements plan, the municipality or county shall recalculate the impact fee using the actual costs of the capital improvements or facility expansion. If the impact fee calculated based on actual costs is less than the impact fee paid, including any sources of funding not anticipated in the capital improvements plan, the municipality or county shall refund the difference if the difference exceeds the impact fee paid by more than ten percent, based upon actual costs.

C. The municipality or county shall refund any impact fee or part of it that is not spent as authorized by the Development Fees Act within seven years after the date of payment.

D. A refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section 56-8-3 NMSA 1978.

E. All refunds shall be made to the record owner of the property at the time the refund is paid. However, if the impact fees were paid by a governmental entity, payment shall be made to the governmental entity.

F. The owner of the property on which an impact fee has been paid or a governmental entity that has paid the impact fee has standing to sue for a refund under this section.

History: Laws 1993, ch. 122, § 17.

5-8-18. Compliance with procedures required.

Except as otherwise provided by the Development Fees Act, a municipality or county shall comply with that act to levy an impact fee.

History: Laws 1993, ch. 122, § 18.

5-8-19. Hearing on land use assumptions.

To impose an impact fee, a municipality or county shall schedule and publish notice of a public hearing to consider land use assumptions within the designated service area that will be used to develop the capital improvements plan.

History: Laws 1993, ch. 122, § 19.

5-8-20. Information about assumptions available to public.

On or before the date of the first publication of the notice of the hearing on land use assumptions, the municipality or county shall make available to the public its land use assumptions, the time period of the projections and a description of the general nature of the capital improvement facilities that may be proposed.

History: Laws 1993, ch. 122, § 20.

5-8-21. Notice of hearing on land use assumptions.

A. The municipality or county shall publish notice of the hearing conforming to locally adopted regulations governing change-of-zone requests, except as otherwise provided in this section.

B. The notice shall contain:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON LAND
USE ASSUMPTIONS RELATING
TO POSSIBLE ADOPTION OF
IMPACT FEES";

(2) the time, date and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the land use assumptions that will be used to develop a capital improvements plan under which an impact fee may be imposed;

(4) an easily understandable map of the service area to which the land use assumptions apply; and

(5) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the land use assumptions.

C. The municipality or county, within thirty days after the date of the public hearing, shall approve or disapprove the land use assumptions.

D. An ordinance, order or resolution approving land use assumptions shall not be adopted as an emergency measure and its adoption must comply with the procedural requirements of the Development Fees Act.

History: Laws 1993, ch. 122, § 21.

5-8-22. System-wide land use assumptions.

A. A municipality or county may adopt system-wide land use assumptions for water supply and treatment facilities in lieu of adopting land use assumptions for each service area for such facilities.

B. Prior to adopting system-wide land use assumptions, a municipality or county shall follow the public notice, hearing and other requirements for adopting land use assumptions.

C. After adoption of system-wide land use assumptions, a municipality or county is not required to adopt additional land use assumptions for a service area for water supply, treatment and distribution facilities or wastewater collection and treatment facilities as a prerequisite to the adoption of a capital improvements plan or impact fee, provided the capital improvements plan and impact fee are consistent with the system-wide land use assumptions.

History: Laws 1993, ch. 122, § 22.

5-8-23. Capital improvements plan required after approval of land use assumptions.

If the governing body adopts an ordinance, order or resolution approving the land use assumptions, the municipality or county shall provide for a capital improvements plan to be developed by qualified professionals using generally accepted engineering and planning practices in accordance with Section 6 [5-8-6 NMSA 1978] of the Development Fees Act.

History: Laws 1993, ch. 122, § 23.

5-8-24. Hearing on capital improvements plan and impact fee.

Upon completion of the capital improvements plan, the governing body shall schedule and publish notice of a public hearing to discuss the adoption of the capital improvements plan and imposition of the impact fee. The public hearing must be held by the governing body of the municipality or county to discuss the proposed ordinance, order or resolution adopting a capital improvements plan and imposing an impact fee.

History: Laws 1993, ch. 122, § 24.

5-8-25. Information about plan available to public.

On or before the date of the first publication of the notice of the hearing on the capital improvements plan and impact fee, the plan shall be made available to the public.

History: Laws 1993, ch. 122, § 25.

5-8-26. Notice of hearing on capital improvements plan and impact fee.

A. The municipality or county shall publish notice of the hearing conforming to locally adopted regulations governing change-of-zone requests, except as otherwise provided in this section.

B. The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON CAPITAL IMPROVEMENTS PLAN AND ADOPTION OF IMPACT FEES";

(2) the time, date and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the proposed capital improvements plan and the adoption of an impact fee;

(4) an easily understandable map of the service area in which the proposed fee will be imposed;

(5) the amount of the proposed impact fee per service unit; and

(6) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the plan and proposed fee.

History: Laws 1993, ch. 122, § 26.

5-8-27. Advisory committee comments on capital improvements plan and impact fees.

The advisory committee created under Section 37 [5-8-37 NMSA 1978] of the Development Fees Act shall file its written comments on the proposed capital improvements plan and impact fees before the fifth business day before the date of the public hearing on the plan and fees.

History: Laws 1993, ch. 122, § 27.

5-8-28. Approval of capital improvements plan and impact fee required.

A. The municipality or county, within thirty days after the date of the public hearing on the capital improvements plan and impact fee, shall approve, disapprove or modify the adoption of the capital improvements plan and imposition of an impact fee.

B. An ordinance, order or resolution approving the capital improvements plan and imposition of an impact fee shall not be adopted as an emergency measure and its adoption must comply with the procedural requirements of the Development Fees Act.

History: Laws 1993, ch. 122, § 28.

5-8-29. Consolidation of land use assumptions and capital improvements plan.

A. In lieu of separately adopting the land use assumptions and capital improvements plan for a service area containing not greater than three hundred units, a municipality or county may consolidate the land use assumptions and the capital improvements plan, and adopt the assumptions, the plan and the impact fee simultaneously.

B. If a municipality or county elects to consolidate the land use assumptions and capital improvements plan as authorized by Subsection A of this section, the municipality or county shall first comply with Section 20 [5-8-20 NMSA 1978] of the Development Fees Act and follow the public notice and hearing requirements for adopting a capital improvements plan and impact fee as provided in Section 21 [5-8-21 NMSA 1978] of that act, except:

(1) the headline for the notice by publication shall read as follows:

"NOTICE OF PUBLIC HEARING ON
ADOPTION OF LAND USE
ASSUMPTIONS AND
IMPACT FEES";

(2) the notice shall state that the municipality or county intends to adopt land use assumptions, a capital improvements plan and impact fees at the hearing and does not intend to hold separate hearings to adopt the land use assumptions, capital improvements plan and impact fees;

(3) the notice shall specify a date, not earlier than sixty days after publication of the first notice, and must state that if a person, by not later than the date specified, makes a written request for separate hearings, the governing body shall hold separate hearings to adopt the land use assumptions and capital improvements plan; and

(4) the notice shall provide the name and mailing address of the official of the municipality or county to whom a request for separate hearings shall be sent.

C. In addition to the requirements of Subsection B of this section, the municipality or county shall comply with all other requirements for adopting land use assumptions, a capital improvements plan and an impact fee.

History: Laws 1993, ch. 122, § 29.

5-8-30. Periodic update of land use assumptions and capital improvements plan required.

A. A municipality or county imposing an impact fee shall update the land use assumptions and capital improvements plan at least every five years. The initial five-year period begins on the day the capital improvements plan is adopted.

B. The municipality or county shall review and evaluate its current land use assumptions and shall cause an update of the capital improvements plan to be prepared in accordance with the Development Fees Act.

History: Laws 1993, ch. 122, § 30.

5-8-31. Hearing on updated land use assumptions and capital improvements plan.

The governing body of the municipality or county shall, within sixty days after the date it receives the update of the land use assumptions and the capital improvements plan, schedule and publish notice of a public hearing to discuss and review the update and shall determine whether to amend the plan.

History: Laws 1993, ch. 122, § 31.

5-8-32. Hearing on amendments to land use assumptions, capital improvements plan or impact fee.

A public hearing shall be held by the governing body of the municipality or county to discuss the proposed ordinance, order or resolution amending land use assumptions, the capital improvements plan or the impact fee. On or before the date of the first publication of the notice of the hearing on the amendments, the land use assumptions and the capital improvements plan, including the amount of any proposed amended impact fee per service unit, shall be made available to the public.

History: Laws 1993, ch. 122, § 32.

5-8-33. Notice of hearing on amendments to land use assumptions, capital improvements plan or impact fee.

A. The municipality or county shall publish notice of the hearing conforming to locally adopted regulations governing change-of-zone requests, except as otherwise provided in this section.

B. The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON AMENDMENTS
TO LAND USE ASSUMPTIONS, CAPITAL
IMPROVEMENTS PLAN OR
IMPACT FEES";

(2) the time, date and location of the hearing;

(3) a statement that the purpose of the hearing is to consider amendments to land use assumptions, capital improvements plan or impact fees;

(4) an easily understandable description and map of the service area on which the update is being prepared; and

(5) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the update.

History: Laws 1993, ch. 122, § 33.

5-8-34. Advisory committee comments on amendments.

The advisory committee created under Section 37 [5-8-37 NMSA 1978] of the Development Fees Act shall file its written comments with the applicable municipality or county on the proposed amendments to the land use assumptions, capital improvements plan or impact fees before the fifth business day before the date of the public hearing on the amendments.

History: Laws 1993, ch. 122, § 34.

5-8-35. Approval of amendments required.

A. The municipality or county, within thirty days after the date of the public hearing on the amendments, shall approve, disapprove, revise or modify the amendments to the land use assumptions, the capital improvements plan or impact fees.

B. An ordinance, order or resolution approving the amendments to the land use assumptions, the capital improvements plan or impact fees shall not be adopted as an emergency measure and such adoption must comply with the procedural requirements of the Development Fees Act.

History: Laws 1993, ch. 122, § 35.

5-8-36. Determination that no update of land use assumptions, capital improvements plan or impact fee is needed.

A. If at the time an update under Section 30 [5-8-30 NMSA 1978] of the Development Fees Act is required, the governing body determines that no changes to the land use assumptions, capital improvements plan or impact fees are needed, it may, as an alternative to the updating requirements of Sections 30 through 35 [5-8-30 to 5-8-35 NMSA 1978] of the Development Fees Act, publish notice of its determination conforming to locally adopted regulations governing change-of-zone requests, except as otherwise provided in this section.

B. The notice shall contain the following:

(1) a headline to read as follows:

"NOTICE OF DETERMINATION NOT TO UPDATE LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN OR IMPACT FEES";

(2) a statement that the governing body of the municipality or county has determined that no change to the land use assumptions, capital improvements plan or impact fees are necessary;

(3) an easily understandable description and a map of the service area in which the updating has been determined to be unnecessary;

(4) a statement that if, within a specified date, which date shall be at least sixty days after publication of the notice, a person makes a written request to the designated official of the municipality or county requesting that the land use assumptions, capital improvements plan or impact fees be updated, the governing body may accept or reject such request by following the requirements of Sections 30 through 35 of the Development Fees Act; and

(5) a statement identifying the name and mailing address of the official of the municipality or county to whom a request for an update should be sent.

C. The advisory committee shall file its written comments on the need for updating the land use assumptions, capital improvements plan and impact fees before the fifth business day before the earliest notice of the governing body's decision that no update is necessary is mailed or published.

D. If by the date specified in Paragraph (4) of Subsection B of this section, a person requests in writing that the land use assumptions, capital improvements plan or impact

fees be updated, the governing body shall cause, accept or reject an update of the land use assumptions and capital improvements plan to be prepared in accordance with Sections 30 through 35 of the Development Fees Act.

E. An ordinance, order or resolution determining the need for updating land use assumptions, capital improvements plan or impact fees shall not be adopted as an emergency measure and its adoption must comply with the procedural requirements of the Development Fees Act.

History: Laws 1993, ch. 122, § 36.

5-8-37. Advisory committee.

A. On or before the date on which the order, ordinance or resolution is adopted under Section 19 [5-8-19 NMSA 1978] of the Development Fees Act, the governing body of a municipality or county shall appoint a capital improvements advisory committee.

B. The advisory committee shall be composed of not less than five members who shall be appointed by a majority vote of the governing body. Not less than forty percent of the membership of the advisory committee must be representative of the real estate, development or building industries. No members shall be employees or officials of a municipality or county or other governmental entity.

C. The advisory committee serves in an advisory capacity and shall:

(1) advise and assist the municipality or county in adopting land use assumptions;

(2) review the capital improvements plan and file written comments;

(3) monitor and evaluate implementation of the capital improvements plan;

(4) file annual reports with respect to the progress of the capital improvements plan and report to the municipality or county any perceived inequities in implementing the plan or imposing the impact fee; and

(5) advise the municipality or county of the need to update or revise the land use assumptions, capital improvements plan and impact fee.

D. The municipality or county shall make available to the advisory committee any professional reports with respect to developing and implementing the capital improvements plan.

E. The governing body of the municipality or county shall adopt procedural rules for the advisory committee to follow in carrying out its duties.

History: Laws 1993, ch. 122, § 37.

5-8-38. Duties to be performed within time limits.

If the governing body of the municipality or county does not perform a duty imposed under the Development Fees Act within the prescribed period, a person who has paid an impact fee or an owner of land on which an impact fee has been paid has the right to present a written request to the governing body of the municipality or county stating the nature of the unperformed duty and requesting that it be performed within sixty days after the date of the request. If the governing body of the municipality or county finds that the duty is required under the Development Fees Act and is late in being performed, it shall cause the duty to commence within sixty days after the date of the request and continue until completion.

History: Laws 1993, ch. 122, § 38.

5-8-39. Records of hearings.

A record shall be made of any public hearing provided for by the Development Fees Act. The record shall be maintained and be made available for public inspection by the municipality or county for at least ten years after the date of the public hearing.

History: Laws 1993, ch. 122, § 39.

5-8-40. Prior impact fees replaced by fees under Development Fees Act.

An impact fee that is in place on the effective date of the Development Fees Act shall be replaced by an impact fee imposed under that act by July 1, 1995. Any municipality or county having an impact fee that has not been replaced under that act by July 1, 1995 shall be liable to any party who, after the effective date of that act, pays an impact fee that exceeds the maximum permitted under that act by more than ten percent for an amount equal to two times the difference between the maximum impact fee allowed and the actual impact fee imposed, plus reasonable attorneys' fees and court costs.

History: Laws 1993, ch. 122, § 40.

5-8-41. No effect on taxes or other charges.

The Development Fees Act does not prohibit, affect or regulate any tax, fee, charge or assessment specifically authorized by state law.

History: Laws 1993, ch. 122, § 41.

5-8-42. Moratorium on development prohibited.

A moratorium shall not be placed on new development for the sole purpose of awaiting the completion of all or any part of the process necessary to develop, adopt or update impact fees.

History: Laws 1993, ch. 122, § 42.

5-8-43. Purpose; transfer of development rights.

A. The purpose of this section is to:

(1) clarify an application of existing authority;

(2) provide guidelines for counties and municipalities to regulate transfers of development rights consistent with comprehensive plans;

(3) encourage the conservation of ecological, agricultural and historical land; and

(4) require public notification of transfers of development rights.

B. A municipality or county may, by ordinance, provide for voluntary transfer of all or partial development rights from one parcel of land to another parcel of land.

C. The ordinance shall identify on a zoning map areas from which development rights may be transferred and areas to which development rights may be transferred.

D. The ordinance shall provide for:

(1) the voluntary transfer of a development right from one parcel of land to increase the intensity of development of another parcel of land;

(2) joint powers agreements, if applicable, for administration of transfers of development rights across jurisdictional boundaries;

(3) the method of transfer of development rights, including methods of determining the accounting for the rights transferred;

(4) the reasonable rules to effect and control transfers and ensure compliance with the provisions of the ordinance; and

(5) public notification to the areas to which development rights may be transferred.

E. Transference of a development right shall be in writing and executed by the owner of the parcel from which the development right is being transferred and acknowledged by the transferor. A development right shall not be subject to condemnation.

F. As used in this section, "development right" means the rights permitted to a lot, parcel or area of land under a zoning ordinance or local law respecting permissible use, area, density or height of improvements executed thereon, and development rights may be calculated and allocated in accordance with density or height limitations or any criteria that will effectively quantify a development right in a reasonable and uniform manner.

G. Nothing in this section shall be construed to authorize a municipality or a county to impair existing property rights.

History: Laws 2003, ch. 229, § 1.

ANNOTATIONS

Cross references. — For property law in general, *see* Chapter 47 NMSA 1978.

ARTICLE 9
Enterprise Zones

5-9-1. Short title.

Sections 1 through 15 [5-9-1 to 5-9-15 NMSA 1978] of this act may be cited as the "Enterprise Zone Act".

History: Laws 1993, ch. 33, § 1.

5-9-2. Purpose.

It is the purpose of the Enterprise Zone Act to provide for the establishment of enterprise zones in a wide variety of geographic areas in order to stimulate the creation of new jobs, particularly for economically disadvantaged workers and long-term unemployed individuals, and to promote revitalization of economically distressed areas by providing or encouraging:

A. tax relief at the state and local levels;

B. zoning relief at the local level; and

C. improvement of local services and betterment of the economic status of enterprise zone residents in their own community, particularly through the increased involvement of private, local and neighborhood organizations.

History: Laws 1993, ch. 33, § 2.

5-9-3. Definitions.

As used in the Enterprise Zone Act:

A. "business facility" means the place of business within an enterprise zone of a business that is established within or begins operations in an enterprise zone;

B. "economically disadvantaged worker" means an employed person whose income as an unrelated individual or whose family income is less than the federally established poverty level and is below seventy percent of the lower living-standard-income level as determined and published by the United States department of labor;

C. "enterprise zone" means any geographical area that is designated as an enterprise zone in accordance with the provisions of the Enterprise Zone Act;

D. "local government" means:

(1) the governing body of any county, incorporated municipality or Indian nation, tribe or pueblo; or

(2) the entity designated as a governing body in a joint powers agreement entered into between or among the entities described in Paragraph (1) of this subsection for the purpose of creating and administering an enterprise zone;

E. "long-term unemployed worker" means a person with limited opportunity for employment or reemployment in the same or similar occupation in the same area in which an individual resides, including any older individuals who may have substantial barriers to employment by reason of age; and

F. "project" means an activity, undertaking or series of activities or undertakings designed to create new jobs, encourage business development and eliminate slums or blighted areas in enterprise zones that conform to an approved enterprise zone plan for job and business development, slum clearance and redevelopment, rehabilitation and preservation in the enterprise zone.

History: Laws 1993, ch. 33, § 3.

5-9-4. Designation of enterprise zones; revocation of designation.

A. No area shall be designated an enterprise zone until the local government has promulgated an ordinance governing:

(1) the parameters relating to the size and population characteristics of an enterprise zone; and

(2) the contents of an enterprise zone plan.

B. The local government may designate an enterprise zone by duly enacted resolution on or after January 1, 1994.

C. The designation by the local government of an area as an enterprise zone shall remain in effect from the date of the designation until the earliest of:

(1) December 31 of the fifteenth calendar year following the year in which the designation was made;

(2) the termination date specified in the designating resolution; or

(3) the date upon which the local government revokes the designation pursuant to Subsection D of this section.

D. The local government may revoke the designation of an area as an enterprise zone if it determines after notice and a public hearing that the operation and administration of the enterprise zone is not in substantial compliance with the law, ordinance, resolution or the approved enterprise zone plan for that enterprise zone.

E. The secretary of economic development shall have the authority to make performance audits at any time of any designated enterprise zone to determine whether the enterprise zone is in compliance with the Enterprise Zone Act, local zone ordinances, resolutions, joint powers agreements and the enterprise zone plan. If an enterprise zone is determined to be out of compliance, the secretary may immediately revoke the designation of the area as an enterprise zone.

F. Automatic state revocation shall be made by the secretary of economic development if the annual reporting requirements required in Section 8 [5-9-8 NMSA 1978] of the Enterprise Zone Act are not made.

G. If state revocation of an enterprise zone occurs, the local government responsible for the enterprise zone loses its right to designate successor enterprise zones for forty-eight months after the date of the secretary's revocation letter to the local government, and:

(1) all tax increment financing agreements and tax credits then in force shall cease at the end of the calendar year in which revocation occurred; and

(2) all accumulated money in the enterprise zone fund of the revoked enterprise shall revert back proportionately to the units of government originally impacted by the tax increment authorization agreement.

History: Laws 1993, ch. 33, § 4.

5-9-5. Eligibility requirements.

A. An area may be designated an enterprise zone if the area meets the requirements of this section.

B. The local government may designate as an enterprise zone an area within a municipality:

(1) that has a population not exceeding twenty-five percent of the population of the municipality and a land area not exceeding twenty-five percent of the land area of the municipality;

(2) that, when combined with the population and land area of any existing enterprise zones within that municipality, produces a combined population less than twenty-five percent of the population of the municipality and a combined land area less than twenty-five percent of the land area of the municipality; and

(3) in which there is widespread poverty, unemployment and general distress in the area, as evidenced by substantial deterioration, abandonment or demolition of commercial or residential structures and as evidenced by one or more of the following criteria:

(a) the average rate of unemployment in the area under consideration as an enterprise zone for the most recent eighteen-month period for which data is available exceeds the average rate of unemployment for the state for that period by at least one percentage point; or

(b) at least sixty percent of the households living in the area under consideration as an enterprise zone have income below eighty percent of the median income of households of the municipality as determined pursuant to Section 119 of the federal Housing and Community Development Act of 1974, as that section may be amended or renumbered.

C. The local government may designate as an enterprise zone an area within a county:

(1) that has a population not exceeding twenty-five percent of the population within the unincorporated portion of the county and a land area not exceeding twenty-five percent of the unincorporated land area of the county;

(2) that, when combined with the population and land area of any existing enterprise zones within that county, produces a combined population less than twenty-five percent of the population within the unincorporated portion of the county and a combined land area less than twenty-five percent of the unincorporated land area of the county; and

(3) in which there is widespread poverty, unemployment and general distress in the area under consideration as an enterprise zone, as evidenced by substantial deterioration, abandonment or demolition of commercial or residential structures and one or more of the following criteria:

(a) the average rate of unemployment in the area under consideration as an enterprise zone for the most recent eighteen-month period for which data is available exceeds the average rate of unemployment for the state for that period by at least one percentage point; or

(b) at least sixty percent of the households living in the area under consideration as an enterprise zone have incomes below eighty percent of the median income of households of the county as determined pursuant to Section 119 of the federal Housing and Community Development Act of 1974, as that section may be amended or renumbered.

D. The local government may designate as an enterprise zone an area within an Indian nation, tribe or pueblo:

(1) that has a population not exceeding twenty-five percent of the population of the Indian nation, tribe or pueblo and a land area not exceeding twenty-five percent of the land area of the Indian nation, tribe or pueblo;

(2) that, when combined with the population and land area of any existing enterprise zones within that Indian nation, tribe or pueblo, produces a combined population less than twenty-five percent of the population of the Indian nation, tribe or pueblo and a combined land area less than twenty-five percent of the land area of the Indian nation, tribe or pueblo; and

(3) in which there is widespread poverty, unemployment and general distress in the area under consideration as an enterprise zone, as evidenced by substantial deterioration, abandonment or demolition of commercial or residential structures and as evidenced by one or more of the following criteria:

(a) the average rate of unemployment in the area under consideration as an enterprise zone for the most recent eighteen-month period for which data is available exceeds the average rate of unemployment for the state for that period by at least one percentage point; or

(b) at least sixty percent of the households living in the area under consideration as an enterprise zone have incomes below eighty percent of the median income of households of the Indian nation, tribe or pueblo as determined pursuant to Section 119 of the federal Housing and Community Development Act of 1974, as that section may be amended or renumbered.

E. Copies of all ordinances, resolutions, joint powers agreements and enterprise zone plans of a local government made under the Enterprise Zone Act shall be mailed within ten days after their adoption to the secretary of economic development, the secretary of finance and administration and the secretary of taxation and revenue.

F. An enterprise zone plan shall have been developed and approved by the local government after public hearing and prior to the designation of an area as an enterprise zone.

G. The business assistance and incentives provided under the provisions of the Enterprise Zone Act are prohibited to intrastate business relocations. This limitation does not apply to the expansion of an in-state business entity through the establishment of a new branch, affiliate or subsidiary if:

(1) the establishment of the new branch, affiliate or subsidiary will not result in an increase in unemployment in the area of original location or any other area in New Mexico where the existing business entity conducts business operations; and

(2) there will not be a closing down of operations of the existing business entity in the area of its original in-state location or in any other in-state areas where the existing business entity conducts business operations.

History: Laws 1993, ch. 33, § 5.

ANNOTATIONS

Cross references. — For Section 119 of the federal Housing and Community Development Act of 1974, *see* 42 USCS § 5318.

5-9-6. Enterprise zone plan; incentives and initiatives.

A. The enterprise zone plan shall include:

(1) a map of the enterprise zone;

(2) a narrative describing how the enterprise zone will eliminate economic distress in the enterprise zone;

(3) a description of local incentives and initiatives to be implemented in the enterprise zone;

(4) the concurrences of any other local government or nongovernmental entity involved in providing local incentives and initiatives;

(5) the termination date for the enterprise zone;

(6) a listing of properties within the enterprise zone to which the tax increment procedures authorized by the Enterprise Zone Act are to be applied;

(7) a boundary description of the enterprise zone;

(8) a list of street addresses contained in the enterprise zone; and

(9) any other information the local government requires by ordinance to be included in the plan.

B. The local incentives and initiatives to be implemented may use local funds and, to the extent permitted by law, funds from federal or state programs and may include:

(1) a reduction of taxes or fees applying within the enterprise zone when the reduction is permitted by law;

(2) programs to increase the level of efficiency of local services provided within the enterprise zone;

(3) preferences to be granted to businesses operating within the enterprise zone;

(4) mechanisms to increase the equity ownership of residents and employees of businesses operating within the enterprise zone; and

(5) methods to involve private entities, organizations, neighborhood associations and community groups in the enterprise zone.

C. At any time after an enterprise zone is designated, the local government may change the enterprise zone plan after public hearing on the proposed changes.

History: Laws 1993, ch. 33, § 6.

5-9-7. Administration.

The local government that created the enterprise zone shall organize, coordinate and direct the administration of the enterprise zone in accordance with law, applicable ordinances, resolutions, any joint powers agreements and the enterprise zone plan. It may enter into a contract with an appropriate organization to provide the management of the activities of the zone. The local government is solely responsible for meeting the

reporting requirements listed in Section 8 [5-9-8 NMSA 1978] of the Enterprise Zone Act.

History: Laws 1993, ch. 33, § 7.

5-9-8. Evaluation and reporting requirements.

The local government that designated an enterprise zone shall make an annual progress report to the secretary of economic development due on the second Friday of January in the next calendar year including the following:

A. the number of new jobs created within the enterprise zone;

B. the percentage of jobs filled by economically disadvantaged workers and the percentage of long-term unemployed workers within the enterprise zone;

C. the local and private entity commitments and degree of compliance;

D. compliance with the enterprise zone plan;

E. the impact of the creation of the enterprise zone on the level of distress in the zone; and

F. new dollar investments in the enterprise zone for new or expanded business opportunities.

History: Laws 1993, ch. 33, § 8.

5-9-9. State agency cooperation; business incentives.

A. State agencies shall cooperate with, assist, and where possible, give preference in selection to a business located within an enterprise zone for any statutorily authorized state-administered grant and loan programs including, but not limited to, investments and loans through the severance tax permanent fund at market rates, in-plant training program instruction and job training through the federal Job Training Partnership Act, matching funds through community development block grants and such other incentives that are or become available through the economic development department or through any other sources at the state level.

B. The economic development department shall conduct workshops throughout the state for the purpose of explaining the provisions of the Enterprise Zone Act to local governments.

History: Laws 1993, ch. 33, § 9.

ANNOTATIONS

Cross references. — For the federal Job Training Partnership Act, *see* 29 USCS § 1501.

5-9-10. Tax increment method of financing.

A. Effective for property tax years beginning on or after January 1, 1994, the local government administering an enterprise zone may elect by resolution to use the tax increment procedures set forth in Section 11 [5-9-11 NMSA 1978] of the Enterprise Zone Act for financing enterprise zone projects. Such procedures may be used in addition to or in conjunction with other methods provided by law for financing such projects.

B. The tax increment method of financing enterprise zone projects is the dedication for further use in enterprise zone projects of that increase in property tax revenue directly resulting from the increased net taxable value of a parcel of project property attributable to its rehabilitation, redevelopment or other improvement because of its inclusion within an enterprise zone project.

History: Laws 1993, ch. 33, § 10.

5-9-11. Tax increment procedures.

A. Upon approval of an enterprise zone project, the local government administering an enterprise zone shall notify the county assessor and the taxation and revenue department of the approval and of the identification of the parcels of property within the project subject to taxation under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978].

B. Upon receipt of notification pursuant to Subsection A of this section, the county assessor and the taxation and revenue department shall identify the parcels of project property within the enterprise zone within their respective valuation jurisdictions and at the time tax rates are certified under the Property Tax Code shall certify to the county treasurer the net taxable value of the property as of January 1 of the year in which the notification was made. This certified value is the "base value" for the distribution of property tax revenues authorized by the Property Tax Code under the tax increment method. If property within the enterprise zone becomes tax exempt because of acquisition by any local government, the county assessor and the taxation and revenue department shall note that fact on their respective records and so notify the county treasurer, but the county assessor, the taxation and revenue department and the county treasurer shall preserve the record of the base value for the purpose of distribution of property tax revenues when the parcel again becomes taxable.

C. If a property within the enterprise zone that became tax exempt because of acquisition by a local government again becomes taxable, the local government administering the enterprise zone shall notify the county assessor and the taxation and revenue department of the property which, because of improvements to the property,

are to be revalued for property tax purposes. A new taxable value of this property shall then be determined by the county assessor or by the taxation and revenue department if the property is within the valuation jurisdiction of that department.

D. The amount by which the general property tax revenue received from the tax on property within an enterprise zone exceeds that which would have been received by application of the same rates to the base value before inclusion in the enterprise zone shall be credited to the local government administering the enterprise zone and deposited in the enterprise zone fund of that local government. This transfer shall take place only after the county treasurer has been notified to apply the tax increment method to a specific property included in an enterprise zone. Unless the entire enterprise zone is specifically included by the local government for purposes of tax increment financing, the payment by the county treasurer to the local government shall be limited to those properties specifically included. The remaining revenue shall be distributed to participating units of government as authorized by the Property Tax Code.

E. The procedures and methods specified in this section shall be followed annually for a maximum period of five years following the date of notification of inclusion of property as coming under the provisions of this section.

History: Laws 1993, ch. 33, § 11.

5-9-12. Enterprise zone fund; creation; use.

A. Every local government administering an enterprise zone shall create an "enterprise zone fund" for purposes of the Enterprise Zone Act.

B. Enterprise zone fund proceeds shall be used by a local government administering an enterprise zone to acquire property within the enterprise zone, prepare property for redevelopment, provide necessary infrastructure improvements, pay all necessary related expenses to redevelop and finance enterprise zone projects and fund the administration of the enterprise zone in an amount not to exceed ten percent of the funds available annually. None of the proceeds shall be used for the construction of buildings or other improvements that are not owned by a local government participating in an enterprise zone.

History: Laws 1993, ch. 33, § 12.

5-9-13. Tax increment method approval.

The tax increment method shall be used only upon prior approval by a majority of the units of government participating in property tax revenue derived from property within an enterprise zone project. The local government administering the enterprise zone shall request in writing such approval for a period of no more than five years for property included in the tax increment funding. The governing body of each other participating unit shall approve or disapprove by ordinance or resolution the use of the

method for their respective units. All participating units shall notify the local government seeking approval within thirty days of receipt of the request. Upon approval by a majority of the participating units of the tax increment method of financing, it shall be deemed approved for the period requested.

History: Laws 1993, ch. 33, § 13.

5-9-14. Tax increment method; base value for distribution.

If the tax increment method of financing enterprise zone projects is used, the base value shall be the value used in calculating the limit of general obligation indebtedness imposed by the constitution of New Mexico and the statutes of New Mexico.

History: Laws 1993, ch. 33, § 14.

5-9-15. Regulations.

The secretary of finance and administration and the secretary of taxation and revenue are authorized to promulgate such rules and regulations necessary for the proper administration of Sections 10 through 14 [5-9-10 to 5-9-14 NMSA 1978] of the Enterprise Zone Act.

History: Laws 1993, ch. 33, § 15.

ARTICLE 10
Local Economic Development

5-10-1. Short title.

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

History: Laws 1993, ch. 297, § 1; 2016, ch. 14, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1993, ch. 297, § 16 made the Local Economic Development Act effective upon the certification of a proposed amendment (Laws 1993, H.J.R. No. 12) to Article 9, Section 14 of the constitution of New Mexico. The amendment was adopted at a general election on November 8, 1994 and certified by the secretary of state on November 29, 1994.

The 2016 amendment, effective May 18, 2016, changed "This act" to "Chapter 5, Article 10 NMSA 1978".

5-10-2. Findings and purpose of act.

A. The legislature finds that:

(1) development of the New Mexico economy is vital to the well-being of the state and its residents;

(2) it is difficult for municipalities and counties in New Mexico to attract and retain businesses capable of enhancing the local and state economy without the resources necessary to compete with other states and locales;

(3) municipalities and counties may need to be able to provide land, buildings and infrastructure as a tool for basic business growth and the introduction of basic business ventures into the state;

(4) it is in the best interest of the state, municipalities and counties to encourage local or regional solutions to economic development; and

(5) the access to public resources needs to be carefully controlled and managed for the continued and future benefit of New Mexico citizens.

B. The purpose of the Local Economic Development Act is to implement the provisions of the 1994 constitutional amendment to Article 9, Section 14 of the constitution of New Mexico to allow public support of economic development to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources. Further, the purpose of that act is to allow municipalities and counties to enter into joint powers agreements to plan and support regional economic development projects, including investments in arts and cultural districts created pursuant to the Arts and Cultural District Act [15-5A-1 to 15-5A-7 NMSA 1978].

History: Laws 1993, ch. 297, § 2; 2007, ch. 160, § 8.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, provided that a purpose of the Local Economic Development Act was to permit municipalities and counties to support arts and cultural districts created pursuant to the Arts and Cultural District Act.

5-10-3. Definitions.

As used in the Local Economic Development Act:

A. "arts and cultural district" means a developed district of public and private uses that is created pursuant to the Arts and Cultural District Act [15-5A-1 to 15-5A-7 NMSA 1978];

B. "broadband telecommunications network facilities" means the electronics, equipment, transmission facilities, fiber-optic cables and any other item directly related to a system capable of transmission of internet protocol or other formatted data at current federal communications commission baseline speed standard, all of which will be owned and used by a provider of internet access services;

C. "cultural facility" means a facility that is owned by the state, a county, a municipality or a qualifying entity that serves the public through preserving, educating and promoting the arts and culture of a particular locale, including theaters, museums, libraries, galleries, cultural compounds, educational organizations, performing arts venues and organizations, fine arts organizations, studios and media laboratories and live-work housing facilities;

D. "department" means the economic development department;

E. "economic development project" or "project" means the project of a qualifying entity for which public support may be provided pursuant to the Local Economic Development Act;

F. "governing body" means the city council, city commission or board of trustees of a municipality or the board of county commissioners of a county;

G. "local government" means a municipality or county;

H. "municipality" means an incorporated city, town or village;

I. "new full-time economic base job" means a job:

(1) that is primarily performed in New Mexico;

(2) that is held by an employee who is hired to work an average of at least thirty-two hours per week for at least forty-eight weeks per year;

(3) that is:

(a) involved, directly or in a supervisory capacity, with the production of: 1) a service; provided that the majority of the revenue generated from the service is from sources outside the state; or 2) tangible or intangible personal property for sale; or

(b) held by an employee who is employed at a regional, national or international headquarters operation or at an operation that primarily provides services for other operations of the qualifying entity that are located outside the state; and

(4) that is not directly involved with natural resources extraction or processing, on-site services where the customer is present for the delivery of the service, retail,

construction or agriculture except for value-added processing performed on agricultural products that would then be sold for wholesale or retail consumption;

J. "person" means an individual, corporation, association, partnership or other legal entity;

K. "public support" means the provision of assistance by the state to a local or regional government or the provision of direct or indirect assistance to a qualifying entity by a local or regional government for an economic development project. "Public support":

(1) includes the provision of:

(a) land, buildings or other infrastructure, by purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance;

(b) the placement of new broadband telecommunications network facilities; provided that the facilities shall not serve a public facility or location that already meets federal communications commission baseline speed standards;

(c) rights-of-way infrastructure, including trenching and conduit, for the placement of new broadband telecommunications network facilities;

(d) public works improvements essential to the location or expansion of a qualifying entity;

(e) payments for professional services contracts necessary for local or regional governments to implement a plan or provide public support for a project;

(f) direct loans or grants for land, buildings or infrastructure;

(g) technical assistance to cultural facilities;

(h) loan guarantees securing the cost of land, buildings or infrastructure in an amount not to exceed the revenue that may be derived from an increment of the: 1) municipal gross receipts tax imposed at a rate not to exceed one-fourth percent and dedicated by the ordinance imposing the increment for projects; or 2) county gross receipts tax imposed at a rate not to exceed one-eighth percent and dedicated by the ordinance imposing the increment for projects;

(i) grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity and grants or subsidies to cultural facilities;

(j) land for a publicly held industrial park or a publicly owned cultural facility, by purchase; and

(k) the construction of a building for use by a qualifying entity; but

(2) does not include the purchase, lease, grant or other acquisition or conveyance of water rights;

L. "qualifying entity" means a corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or a combination of two or more of the following:

(1) an industry for the manufacturing, processing or assembling of agricultural or manufactured products;

(2) a commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but, other than as provided in Paragraph (5), (6) or (9) of this subsection, not including any enterprise for sale of goods or commodities at retail or for distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;

(3) a business, including a restaurant or lodging establishment, in which all or part of the activities of the business involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but, other than as provided in Paragraph (5) or (9) of this subsection, not including businesses primarily engaged in the sale of goods or commodities at retail;

(4) an Indian nation, tribe or pueblo or a federally chartered tribal corporation;

(5) a telecommunications sales enterprise that makes the majority of its sales to persons outside New Mexico;

(6) a facility for the direct sales by growers of agricultural products, commonly known as farmers' markets;

(7) a business that is the developer of a metropolitan redevelopment project;

(8) a cultural facility; and

(9) a retail business;

M. "regional government" means any combination of municipalities and counties that enter into a joint powers agreement to provide public support for economic development projects pursuant to a plan adopted by all parties to the joint powers agreement; and

N. "retail business" means a business that is primarily engaged in the sale of goods or commodities at retail and that is located:

(1) in a municipality with a population, according to the most recent federal decennial census, of:

(a) fifteen thousand or less; or

(b) more than fifteen thousand if the economic development project is not funded or financed with state government revenues; or

(2) in an unincorporated area of a county.

History: Laws 1993, ch. 297, § 3; 1998, ch. 90, § 3; 1999, ch. 245, § 1; 2000, ch. 103, § 5; 2007, ch. 160, § 9; 2013, ch. 201, § 1; 2016, ch. 14, § 2; 2017, ch. 6, § 1; 2019, ch. 208, § 1; 2019, ch. 274, § 6; 2020, ch. 74, § 3; 2021, ch. 3, § 1; 2021, ch. 135, § 1.

ANNOTATIONS

2021 Multiple Amendments. – Laws 2021, ch. 3, § 1 and Laws 2021, ch. 135, § 1, both effective July 1, 2021, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2021, ch. 135, § 1 as the last act signed by the governor is set out above and incorporates both amendments. The amendments enacted by Laws 2021, ch. 3, § 1 and Laws 2021, ch. 135, § 1 are described below. To view the session laws in their entirety, *see* the 2021 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2021, ch. 3, § 1, revised the definitions of "broadband telecommunications network facilities," "economic development project," and "regional government," and added the definition of "public support", as used in the Local Economic Development Act, and Laws 2021, ch. 135, § 1, included retail businesses located in unincorporated areas of a county in the definition of "retail business", as used in the Local Economic Development Act.

Laws 2021, ch. 3, § 1, effective July 1, 2021, revised the definitions of "broadband telecommunications network facilities," "economic development project," and "regional government," and added the definition of "public support", as used in the Local Economic Development Act; in Subsection B, after "federal communications commission", deleted "minimum" and added "baseline"; in Subsection E, after "means the", deleted the remainder of the subsection and added "project of a qualifying entity for which public support may be provided pursuant to the Local Economic Development Act"; added a new Subsection K and redesignated former Subsections K through M as Subsections L through N, respectively; and in Subsection M, after "agreement to provide", added "public support".

Laws 2021, ch. 135, § 1, effective July 1, 2021, included retail businesses located in unincorporated areas of a county in the definition of "retail business", as used in the Local Economic Development Act; and in Subsection M (now Subsection N), redesignated former Paragraphs M(1) and M(2) as Subparagraphs M(1)(a) and M(1)(b),

respectively, in Subparagraph M(1)(b), after "more than fifteen thousand", deleted "but less than thirty-five thousand", and deleted former Subparagraph M(2)(b), and added a new Paragraph M(2).

The 2020 amendment, effective May 20, 2020, revised the definitions of "economic development project" and "retail business", and added definitions for "new full-time economic base job" as used in the Local Economic Development Act; in Subsection E, after "means", added "the provision of public support or assistance by the state to a local or regional government or", after "qualifying entity by a local or regional government.", added "Economic development project", added new paragraph designations "(1)" and "(2)" and redesignated former Paragraphs E(1) through E(10) as Subparagraphs E(1)(a) through E(1)(j), respectively, in Subparagraph E(1)(g), redesignated subparagraph designations "(a)" and "(b)" as items "1)" and "2)"; and added new Subsection I and redesignated former Subsections I through L as Subsections J through M, respectively; in Subsection M, Paragraph M(1), deleted "ten" and added "fifteen", and in Paragraph M(2), after "more than", deleted "ten" and added "fifteen".

2019 Amendments. — Laws 2019, ch. 274, § 6, effective July 1, 2019, revised the definition of "economic development project" as used in the Local Economic Development Act, and pledged a limited amount of municipal gross receipts revenue and county gross receipts revenue for project loan guarantees; in Subsection E, added new paragraph designations "(1)" through "(10)", in Paragraph E(7), after "derived from", deleted "the municipal infrastructure" and added "an increment of the", added new subparagraph designations "(a)" and "(b)", in Subparagraph E(7)(a), after "gross receipts tax", added "imposed at a rate not to exceed one-fourth percent and dedicated by the ordinance imposing the increment to a project", and in Subparagraph E(7)(b), after "gross receipts tax", added "imposed at a rate not to exceed one-eighth percent and dedicated by the ordinance imposing the increment to a project".

Laws 2019, ch. 208, § 1, effective June 14, 2019, revised the definition of "economic development project" as used in the Local Economic Development Act, and excluded the acquisition of water rights from the permissible uses of local economic development act funds; and in Subsection E, after "qualifying entity", added "but does not include the purchase, lease, grant or other acquisition or conveyance of water rights".

The 2017 amendment, effective June 16, 2017, added the definition for "broadband telecommunications network facilities" and amended the definition of "economic development project" to include assistance to acquire or convey rights-of-way infrastructure; added a new Subsection B and redesignated the succeeding subsections accordingly; and in Subsection E, after "buildings or other infrastructure", added "rights-of-way infrastructure, including trenching and conduit, for the placement of new broadband telecommunications network facilities".

The 2016 amendment, effective May 18, 2016, amended the definition of "qualifying entity" to include a restaurant or lodging establishment; in Subsection I, in Paragraph

(3), after "business", added "including a restaurant or lodging establishment"; in Subsection K, in the introductory sentence, after "population", added "according to the most recent federal decennial census", after "of", added the Paragraph designation "(1)", and after "ten thousand or less", added "or" and added new Paragraph (2).

The 2013 amendment, effective July 1, 2013, added retail business as a qualifying entity; in Subsection (2) of Subsection I, after "(5), (6)", added "or (9)"; added Paragraph (9) of Subsection I; and added Subsection K.

The 2007 amendment, effective July 1, 2007, added Subsections A and B; included technical assistance, grants and subsidies to cultural facilities in the definition of "economic development project"; and included a cultural facility in the definition of "qualifying entity".

The 2000 amendment, effective May 17, 2000, added Subsection G(7).

The 1999 amendment, effective June 18, 1999, inserted "or (6)" in Subsection G(2), and added Subsection G(6).

The 1998 amendment, effective May 20, 1998, added the language in Subsection B beginning "the provision of direct loans or grants" to the end of the subsection, inserted "nation" following "Indian" in Paragraph G(4), and made minor stylistic changes throughout the section.

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

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

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

(1) the value of any land or building contributed to any project pursuant to a project participation agreement;

(2) revenue generated through the imposition of an increment of the municipal gross receipts tax at a rate not to exceed one-fourth percent and dedicated to furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic

Development Finance Act [Chapter 6, Article 25 NMSA 1978]; provided that no more than the greater of fifty thousand dollars ($50,000) or ten percent of the revenue collected shall be used for promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the governing body;

(3) revenue generated through the imposition of an increment of the county gross receipts tax at a rate not to exceed one-eighth percent and dedicated to furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act; provided that no more than the greater of fifty thousand dollars ($50,000) or ten percent of the revenue collected shall be used for promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the governing body;

(4) the proceeds of a revenue bond issue to which municipal infrastructure gross receipts tax revenue is pledged;

(5) the proceeds of a revenue bond issue to which the revenue from an increment of the county gross receipts tax, imposed at a rate not to exceed one-eighth percent and dedicated by the ordinance imposing the increment to provide public support for projects, is pledged; or

(6) funds donated by private entities to be used for defraying the cost of a project.

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

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

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

E. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of approving arts and cultural districts as a qualifying purpose and cultural facilities or retail businesses as a qualifying entity eligible to utilize revenue generated by the Municipal Local Option Gross Receipts and Compensating Taxes Act [Chapter 7, Article 19D NMSA 1978] or the County Local Option Gross Receipts and Compensating Taxes Act [Chapter 7, Article 20E NMSA 1978] for furthering or implementing economic development plans and providing public support for projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act.

F. The question shall be submitted to the voters of the municipality or county as a separate question at a regular local or county election or at a special election called for that purpose by the governing body. A special local election shall be called, conducted and canvassed as provided in the Local Election Act [Chapter 1, Article 22 NMSA 1978]. A special county election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections.

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

History: Laws 1993, ch. 297, § 4; 1998, ch. 90, § 4; 2003, ch. 349, § 17; 2007, ch. 160, § 10; 2009, ch. 172, § 1; 2013, ch. 201, § 2; 2018, ch. 79, § 73; 2019, ch. 274, § 7; 2021, ch. 3, § 2.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, added language related to providing public support for projects as defined in the Local Economic Development Act to conform to new definitions in the act, and made technical amendments; in Subsection B, Paragraph B(5), after "imposing the increment to", deleted "a project" and added "provide public support for projects"; in Subsection D, after each occurrence of "implementing economic development plans and", added "providing public support for"; and in Subsection E, after each occurrence of "Gross Receipts", added "and Compensating", and after "implementing economic development plans and", added "providing public support for".

The 2019 amendment, effective July 1, 2019, authorizes the use of one-fourth percent of municipal gross receipts tax or one-eighth percent of county gross receipts as pledges for economic development project bonds; in Subsection B, Paragraph B(2), after "gross receipts tax", deleted "pursuant to the Municipal Local Option Gross Receipts Taxes Act for" and added "at a rate not to exceed one-fourth percent and dedicated to", in Paragraph B(3), after "gross receipts tax", deleted "pursuant to the County Local Option Gross Receipts Taxes Act for" and added "at a rate not to exceed one-eighth percent and dedicated to", and in Paragraph B(5), after "gross receipts tax,", deleted "revenue" and added "imposed at a rate not to exceed one-eighth percent and dedicated by the ordinance imposing the increment to a project".

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 2018 amendment, effective July 1, 2018, provided that elections called to approve arts and cultural districts as a qualifying purpose and cultural facilities or retail businesses as a qualifying entity for the purpose of expending funds from the economic development fund for arts and cultural district purposes shall be called, conducted and canvassed as provided in the Local Election Act, and made technical and conforming changes; and in Subsection F, deleted "municipal" and added "local" in two places, and after "as provided in the", deleted "Municipal Election Code" and added "Local Election Act".

Temporary provisions. — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

The 2013 amendment, effective July 1, 2013, removed the restriction on public support of economic development projects in rural areas involving retail sales; in Subsection D, after "cultural facilities", added "or retail businesses" and after "gross receipts tax before" deleted "June 30, 2007" and added "July 1, 2013" and in the second sentence,

after "qualifying purpose and cultural facilities", added "or retail businesses" and after "cultural district purposes, cultural facilities", added phrase "or retail businesses"; in Subsection E, after "cultural facilities", added "or retail businesses"; and in Subsection G, after "cultural facilities", added "or retail businesses".

The 2009 amendment, effective June 19, 2009, in Subsection B, after "shall not exceed", changed "five" to "ten".

The 2007 amendment, effective July 1, 2007, added Subsections D through G.

The 2003 amendment, effective June 20, 2003, inserted "or projects as defined in the Statewide Economic Development Finance Act" in Paragraphs B(2) and (3); and added "or the Statewide Economic Development Finance Act" to the end of Subsection C.

The 1998 amendment, effective May 20, 1998, in Subsection B, added the last sentence at the end of the introductory language, designated Paragraph B(1), deleted "shall not be subject to the limits of this subsection" at the end of the paragraph, and added Paragraphs B(2) through (6); and added Subsection C.

The purchase of water rights is not included among the permissible uses of public money under the Local Economic Development Act. — The anti-donation clause, N.M. Const., Art. IX, § 14, prohibits the state, a county, school district, or municipality from making any donation to or in aid of any person, association or public or private corporation, with certain exceptions; among the exceptions to the anti-donation clause's prohibition is N.M. Const., Art. IX, § 14(D), which allows a state, county, or municipality to create new job opportunities by providing "land, buildings or infrastructure" for facilities to support new or expanding businesses. The Local Economic Development Act, 5-10-1 to 5-10-17 NMSA 1978, was enacted to implement N.M. Const., Art. IX, § 14(D), and authorizes a local government to provide public support for economic development projects permitted by N.M. Const., Art. IX, § 14(D). As commonly understood and used by the legislature, however, "land, buildings or infrastructure" do not include water rights or the acquisition of water rights, and therefore, an agreement between the New Mexico economic development department and the village of Los Lunas, under which the state will provide funding for the acquisition of consumptive use water rights and the equivalency in water credits for a Facebook data center project in Los Lunas, New Mexico, would be in violation of the anti-donation clause and the Local Economic Development Act. The acquisition of water rights is not included among the permissible uses of public money under the Local Economic Development Act or the New Mexico constitution. *Purchase of Water Rights under the Local Economic Development Act* (11/13/18), Att'y Gen. Adv. Ltr. 2018-07.

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

At the request of a local or regional government, the department shall provide technical assistance in the development of an economic development plan or economic

development project or technical assistance to cultural facilities with respect to economic development projects.

History: Laws 1993, ch. 297, § 5; 2007, ch. 160, § 11.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, required the economic development department to provide technical assistance to cultural facilities with respect to economic development projects.

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

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

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

(1) describe the local or regional government's economic development and community goals, including any economic development goals with an arts and cultural component, and assign priority to and strategies for achieving those goals;

(2) describe the types of qualifying entities and economic activities that will qualify for public support;

(3) describe the criteria to be used to determine eligibility for public support and a qualifying entity to participate in an economic development project;

(4) describe the manner in which a qualifying entity may submit an application for public support pursuant to Section 5-10-8 NMSA 1978, including the type of information required from the qualifying entity sufficient to ensure its solvency and ability to perform its contractual obligations, its commitment to remain in the community and its commitment to the stated economic development goals of the local or regional government;

(5) describe the process the local or regional government will use to verify the information submitted on an application for public support pursuant to Section 5-10-8 NMSA 1978;

(6) if an economic development project is determined to be unsuccessful or if a qualifying entity seeks to leave the area, describe the methods the local or regional government will use to terminate the local or regional government's public support and recoup its investment;

(7) identify revenue sources, including those of the local or regional government, that will be used to provide public support for economic development projects;

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

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

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

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

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

History: Laws 1993, ch. 297, § 6; 1998, ch. 90, § 5; 2007, ch. 160, § 12; 2021, ch. 3, § 3.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, revised the criteria of an economic development plan to include language related to public support for economic development projects; in Subsection B, Paragraph B(2), after "will qualify for", deleted "economic development projects" and added "public support", in Paragraph B(3), after "eligibility", deleted "of an economic development project" and added "for public support", in Paragraph B(4), after "may submit an", deleted "economic development

project", and after "application", added "for public support pursuant to Section 5-10-8 NMSA 1978", in Paragraph B(5), after "submitted on an", deleted "economic development project", and after "application", added "for public support pursuant to Section 5-10-8 NMSA 1978", in Paragraph B(6), after "terminate", deleted "its economic assistance" and added "the local or regional government's public support", and in Paragraph B(7), after "will be used to", added "provide public".

The 2007 amendment, effective July 1, 2007, amended Subsection A to provide that an economic development plan or comprehensive plan to include an analysis of the role of arts and cultural activities in economic development.

The 1998 amendment, effective May 20, 1998, substituted "including" for "other than" and "that will" for "which must" in Paragraph B(7); in Paragraph B(8), substituted "entities" for businesses" and "entity" for "business" in the first clause; and in Paragraph B(9), substituted "entity" for "basic business" in the third clause.

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

A. Two or more municipalities, two or more counties or one or more municipalities and counties may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] to develop a regional economic development plan, which may consist of existing local plans. The parties to the agreement shall be deemed a regional government for the purposes of the Local Economic Development Act.

B. The joint powers agreement shall require that the governing body of each local government approve public support for each economic development project. The agreement may also provide for appointment of a project manager who shall be responsible for the management of projects and project funds. The agreement may provide for a regional body consisting of representatives from the governing bodies of each local government that is a party to the agreement and may determine the powers and duties of that body in implementing the regional government's plan and providing public support for projects.

History: Laws 1993, ch. 297, § 7; 2021, ch. 3, § 4.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, revised the criteria for joint powers agreements to develop regional economic development plans between local governments to include language related to public support for economic development projects; and in Subsection B, after "local government approve", added "public support for", and after "regional government's plan and", added "providing public support for".

5-10-8. Applications for public support.

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

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

History: Laws 1993, ch. 297, § 8; 2021, ch. 3, § 5.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, added language related to public support for qualifying entities' economic development projects; in the section heading, deleted "economic development project", and added "for public support"; and in Subsection A, after "local or regional government an", deleted "economic development project", and after "application", added "for public support of a qualifying entity's economic development project".

5-10-9. Project evaluation; department.

A. The local or regional government shall review each application for public support submitted pursuant to Section 5-10-8 NMSA 1978, and any public support shall be approved by ordinance.

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

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

History: Laws 1993, ch. 297, § 9; 2007, ch. 160, § 13; 2021, ch. 3, § 6.

ANNOTATIONS

Cross references. — For the definition of a "qualifying entity", *see* 5-10-3 NMSA 1978.

The 2021 amendment, effective July 1, 2021, added language related to public support for economic development projects; in Subsection A, after "shall review each", deleted "project", after "application", added "for public support submitted pursuant to Section 5-10-8 NMSA 1978", and after "and", deleted "projects" and added "any public support";

and in Subsection C, after "type or amount of", deleted "assistance" and added "public support".

The 2007 amendment, effective July 1, 2007, amended Subsection C to permit a local or regional government to negotiate with a qualifying entity.

5-10-10. Local or regional government participation in economic development projects; project participation agreement; duties and requirements.

A. If a local or regional government provides public support for an economic development project without the participation of the state, the local or regional government and the qualifying entity shall enter into a project participation agreement pursuant to this section.

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

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

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

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

(1) the contributions to be made by each party to the participation agreement;

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

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

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

History: Laws 1993, ch. 297, § 10; 2013, ch. 43, § 1; 2020, ch. 74, § 4.

ANNOTATIONS

The 2020 amendment, effective May 20, 2020, provided for participation agreements when a local or regional government provides public support for an economic development project without the participation of the state; in the section heading, added "Local or regional government participation in economic development projects"; in Subsection A, added "If a local or regional government provides public support for an economic development project without the participation of the state", and after "project participation agreement", added "pursuant to this section"; in Subsection C, after "provide security to each local or regional government", deleted "the state"; and in Subsection D, deleted "The project participation agreement for an economic development project that uses public support provided by the state to a local or regional government shall include a recapture agreement for the state.".

The 2013 amendment, effective July 1, 2013, required security for state contributions to local economic development projects; in Subsection B, added the second sentence; added Subsections C and D; in Subsection E, at the beginning of the introductory sentence, after "The", added "project"; and in Paragraph (2) of Subsection E, after "security provided to", deleted "the local or regional government" and added "each governmental entity that provides public support for an economic development project".

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

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

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

C. The local or regional government shall provide for an annual independent audit in accordance with the Audit Act [12-6-1 to 12-6-15 NMSA 1978] of each special fund and

project account. The audit shall be submitted to the local or regional government. The audit is a public record.

History: Laws 1993, ch. 297, § 11; 2021, ch. 3, § 7.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, added language related to public support for economic development projects; and in Subsection A, after "pledged for", deleted "funding or financing of" and added "public support for".

5-10-12. Plan and project termination.

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

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

History: Laws 1993, ch. 297, § 12; 2021, ch. 3, § 8.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, added language related to public support for economic development projects; in Subsection A, after "any or all", added "public support for economic development"; and in Subsection B, after "and termination", added "of public support for".

5-10-13. Limitations.

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

History: Laws 1993, ch. 297, § 13.

ANNOTATIONS

Severability. — Laws 1993, ch. 297, § 14 provided for the severability of the act if any part or application thereof is held invalid.

5-10-14. Local Economic Development Act fund.

A. The "Local Economic Development Act fund" is created in the state treasury. Income from the fund shall be credited to the fund. Money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year. The department shall administer the fund, and money in the fund is appropriated to the department to pay the cost of administering the fund and for economic development projects pursuant to the Local Economic Development Act. Money in the fund shall be expended on warrants of the department of finance and administration pursuant to vouchers signed by the secretary of economic development.

B. The following may be used to provide public support for certain economic development projects of qualifying entities pursuant to Section 2 [5-10-17 NMSA 1978] of this 2021 act and shall be separately accounted for in the fund:

(1) fifty percent of the tax revenue attributable to the state gross receipts tax and the state compensating tax, as determined pursuant to Subsection A of Section 2 of this 2021 act, and distributed pursuant to Subsection A of Section 5 [7-1-6.67 NMSA 1978] of this 2021 act; and

(2) that portion of the tax revenue attributable to the local option gross receipts tax and county compensating tax imposed by a county and local option gross receipts tax and municipal compensating tax imposed by a municipality dedicated pursuant to Subsection B of Section 2 of this 2021 act and distributed pursuant to Subsection B of Section 5 of this 2021 act.

History: Laws 2020, ch. 74, § 1; 2021, ch. 3, § 9; 2021 (1st S.S.), ch. 2, § 1.

ANNOTATIONS

The 2021 (1st S.S.) amendment, effective April 7, 2021, provided that a portion of state and local gross receipts and compensating tax revenue imposed on certain economic development projects may be provided as public support for certain projects pursuant to the Local Economic Development Act; and added Subsection B.

The 2021 amendment, changed the name of the "Local and Regional Economic Development Support Fund" to the "Local Economic Development Act Fund", deleted language related to the source of money credited to the fund, and revised the permitted uses of the fund; in the section heading, after "Local", deleted "and regional" and deleted "support" and added "act"; deleted "The fund consists of gifts, grants, donations and bequests made to the fund and appropriations made to the department for projects

pursuant to the Local Economic Development Act", after "administering the fund and for", deleted "participation in local and regional", and after "economic development projects", deleted "as determined by the department" and added "pursuant to the Local Economic Development Act".

Laws 2021, ch. 3, § 9, effective July 1, 2021, and Laws 2021 (1st S.S.), ch. 2, § 1, effective April 7, 2021, both enacted amendments to this section. The section was set out as amended by Laws 2021 (1st S.S.), ch. 2, § 1. *See* 12-1-8 NMSA 1978.

5-10-15. State participation in economic development projects; project participation agreement; duties and requirements; economic development department.

A. The department may participate with local or regional governments in economic development projects that:

(1) provide for:

(a) the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure;

(b) rights-of-way infrastructure, including trenching and conduit, for the placement of new broadband telecommunications network facilities;

(c) public works improvements essential to the location or expansion of a qualifying entity;

(d) payments for professional services contracts necessary for local or regional governments to implement a plan or project;

(e) the provision of direct loans or grants for land, buildings or infrastructure;

(f) loan guarantees securing the cost of land, buildings or infrastructure;

(g) grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity and grants or subsidies to cultural facilities;

(h) the purchase of land for a publicly held industrial park or a publicly owned cultural facility;

(i) technical assistance to cultural facilities; or

(j) the construction, rehabilitation or remodeling of a building for use by a qualifying entity; and

(2) that also:

(a) provide new full-time economic base jobs;

(b) are primarily engaged in the sale of goods or commodities at retail if: 1) the department has determined that the retail project would not substantially compete with a specific business already in operation in the state; and 2) the business is located outside a class A county and is located in a municipality with a population of fifteen thousand or less according to the most recent federal decennial census or is located within the unincorporated portion of a county; or

(c) provide extensions or improvements to infrastructure, excluding buildings, on government owned land not obtained through the issuance of industrial revenue bonds pursuant to the Industrial Revenue Bond Act [Chapter 3, Article 32 NMSA 1978] or the County Industrial Revenue Bond Act [Chapter 4, Article 59 NMSA 1978] in a municipality with a population of less than sixty thousand according to the most recent federal decennial census or in an unincorporated area not located within ten miles of the external boundaries of a municipality with a population of sixty thousand or more according to the most recent federal decennial census; provided that the project shall not include a participating qualifying entity; and provided further that the department shall prioritize participation in a project pursuant to this subparagraph based on: 1) the likelihood of creating jobs; 2) the economic impact on the local economy; and 3) contributions from the local or regional government or other New Mexico governmental entity, the federal government or private entities; but

(3) do not include the purchase, lease, grant or other acquisition or conveyance of water rights.

B. If the department participates in an economic development project in which a qualifying entity participates, the department, the local or regional government and the qualifying entity shall enter into a project participation agreement pursuant to this section.

C. If the department participates in an economic development project that does not include a qualifying entity, the department shall not enter into a project participation agreement pursuant to this section, but shall enter into an intergovernmental agreement with the participating local or regional government.

D. The project participation agreement shall require that public support provided for the economic development project shall be in exchange for a substantive contribution from the qualifying entity as determined by the department.

E. The qualifying entity shall provide security to the state and each local or regional government or any other New Mexico governmental entity providing public support for the economic development project. The security shall secure the qualifying entity's obligations based on terms stated in the project participation agreement with the department and the local or regional government and shall reflect a proportional decline in security as the substantive contribution requirements are met by the qualifying entity.

The department at the discretion of the secretary of economic development may release at any time the security for that portion of the public support provided by the state.

F. If a qualifying entity fails to perform its substantive contribution, the state, local, regional or other participating New Mexico governmental entity may enforce the project participation agreement to recover its proportional share of that portion of the public support for which the qualifying entity failed to provide a substantive contribution; provided that the recovery shall be:

(1) limited to the amount of public support provided by the governmental entity enforcing the project participation agreement, unless otherwise authorized by another participating governmental entity; and

(2) proportional to the failed performance of the substantive contribution and shall take into account all previous substantive contributions for the economic development project performed by the qualifying entity, based on the terms stated in the project participation agreement.

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

(1) the contributions to be made by the qualifying entity, the state and the local or regional government or other New Mexico governmental entity;

(2) the security provided to the state and each local or regional government or other New Mexico governmental entity by the qualifying entity in the form of a letter of credit, lien, mortgage or other indenture and the pledge of the qualifying entity's financial or material participation and cooperation to guarantee the qualifying entity's performance pursuant to the project participation agreement;

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

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

(5) provisions allowing the department and the local or regional government or other New Mexico governmental entity to recover that portion of the public support for which the qualifying entity failed to provide a substantive contribution as determined by the department.

History: Laws 2020, ch. 74, § 2; 2021, ch. 135, § 2.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, clarified that the economic development department may participate with local or regional governments in economic

development projects that provide for rehabilitation or remodeling as well as construction of a building for use by a qualifying entity, removed a non-compete clause for retail businesses, authorized municipalities to enter into project participation agreements with the economic development department, and provided that a project can occur within the unincorporated portion of a county; and in Subsection A, Subparagraph A(1)(j), after "construction", added "rehabilitation or remodeling", and in Subparagraph A(2)(b), after "federal decennial census or is located", deleted "more than ten miles from the closest municipality with a population greater than fifteen thousand according to the most recent federal decennial census" and added "within the unincorporated portion of a county".

5-10-16. Grants to reimburse rent, lease or mortgage payments for certain businesses.

A. Prior to January 1, 2023, the department may transfer to the authority funds appropriated by the legislature to the department for the purpose of providing recovery grants to recovery entities pursuant to this section.

B. The department and the authority shall enter into a memorandum of understanding to develop a program for the authority to accept a transfer of funds from the department pursuant to Subsection A of this section, to provide recovery grants to recovery entities, to accept and review applications for recovery grants and to disburse recovery grants to recovery entities. The authority shall require documentation from applicants of employment levels and rent, lease and mortgage payments for taxable year 2020 and subsequent taxable years in which a recovery entity applies for a recovery grant. The authority shall prioritize funding to applicants that had the greatest decline in business revenues between comparable quarters in taxable year 2019 to taxable year 2020. The department shall provide oversight of the program and may set policies and promulgate rules in accordance with this section. The authority may designate one or more application periods and shall review applications received in each period and provide a determination to the applicant within a reasonable amount of time after review. The first application period shall accept applications no later than June 30, 2021, and the last application period shall accept applications no later than December 31, 2021; provided that an application period for funds set aside pursuant to Subsection E of this section shall accept applications no later than June 30, 2022. The authority shall prioritize funding to applicants that had the greatest decline in business revenues between comparable quarters in taxable year 2019 to taxable year 2020.

C. To receive a recovery grant, a recovery entity shall agree to:

(1) use the proceeds of the recovery grant for reimbursement of rent, lease or mortgage obligations of the recovery entity for its business locations within the state of New Mexico;

(2) provide a written certification signed by an appropriate officer of the recovery entity that certifies that:

(a) the officer understands that, pursuant to the Local Economic Development Act, the recovery grant shall be accompanied by new job creation in accordance with department rules and policies and the terms of the agreement issued by the authority to the recovery entity in advance of disbursement of the recovery grant;

(b) all documents submitted in support of the recovery grant application are true and accurate to the best of the officer's knowledge;

(c) the officer has a reasonable basis to believe that, as of the date of a recovery grant application and receipt of any recovery grant, the recovery entity does not expect to permanently cease business operations or file for bankruptcy;

(d) as of the date of a recovery grant application and of receipt of a recovery grant, the recovery entity is current on all obligations pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978], the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978], the Withholding Tax Act [Chapter 7, Article 3 NMSA 1978], the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] and the Unemployment Compensation Law [Chapter 51 NMSA 1978] applicable to the recovery entity's business operations; and

(e) all recovery grant proceeds will be used for the purpose of payment of rent, lease or mortgage payments of the recovery entity pursuant to the Local Economic Development Act;

(3) provide documentation to the authority demonstrating a decline in business revenues between taxable years 2019 and 2020;

(4) upon request, provide the department and the authority with information relevant to the reporting requirements of the department and the authority pursuant to Subsection H of this section; and

(5) submit an application to the authority for a recovery grant pursuant to rules established by the authority, but no later than June 30, 2022.

D. Up to one hundred thousand dollars ($100,000) in a recovery grant may be provided to each recovery entity in quarterly payments in an amount of up to twenty-five percent of the total amount of the recovery grant awarded to the recovery entity. The department shall promulgate rules to determine the amount of a recovery grant; provided that, for each quarterly payment a recovery entity may be awarded a specified amount for each job created depending on the wages provided and the relative decline in business revenues for taxable year 2020, not to exceed a total of twenty-five thousand dollars ($25,000) per quarter. To remain eligible for additional quarterly payments, a recovery entity shall provide documentation to the department and to the authority demonstrating the following:

(1) the recovery entity remains active and open and can demonstrate a net increase in the number of full-time-equivalent employees relative to the immediately preceding quarter, as submitted quarterly to the workforce solutions department from the date of application to the date of receipt of a recovery grant payment;

(2) the recovery entity is current on state and local tax obligations; and

(3) the recovery entity paid rent, lease or mortgage obligations of the recovery entity for its business locations within the state of New Mexico from the date of application to the present request for a subsequent quarterly payment that exceeds all payments to the recovery entity to date pursuant to this section.

E. If, on the effective date of this section, there remains in effect a public health order that requires businesses to remain closed, the department and the authority shall set aside a portion of the funds available for recovery grants until such time as the public health order ceases to be in effect or is changed to permit all businesses subject to the public health order to be open. The portion set aside shall be estimated, at the discretion of the department and the authority, to represent the number of recovery entities and employees impacted by the public health order, but in no case shall exceed twenty percent of the total funds appropriated pursuant to Section 11 of this 2021 act.

F. If a recovery entity loses eligibility in a quarter, the authority shall set aside funds for the recovery entity to access should the recovery entity become eligible again in a succeeding quarter.

G. Information obtained by the department and the authority regarding individual recovery entity grant applicants shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]; provided that nothing in this section shall prevent the department and the authority from disclosing broad demographic information and information relating to the total amount of recovery grants made, the total outstanding balance of recovery grants made and the names of the recovery entities that received recovery grants.

H. The department and the authority shall submit an annual report in each year of 2021 through 2023 to the legislature, the legislative finance committee, the New Mexico finance authority oversight committee, the revenue stabilization and tax policy committee and the interim legislative committee concerning economic and rural development. The report shall provide information regarding recovery grants made pursuant to this section. The report shall include:

(1) the total dollar value of recovery grants made to date, along with breakouts of disbursements by quarterly payment number;

(2) the number of recovery entities assisted, in total and by county;

(3) the total number of new jobs created and the total number of employees currently employed by recovery entities that received grants;

(4) the total projected annual payroll for the jobs created;

(5) the total number of recovery grant applications;

(6) the number of recovery entities, if any, that received initial payments but were determined to be ineligible for additional quarterly payments; and

(7) an overview of the industries and types of business entities represented by recovery entities that received recovery grants.

I. As used in this section:

(1) "authority" means the New Mexico finance authority;

(2) "recovery entity" means a corporation, limited liability company, partnership, joint venture, syndicate, association or other person that:

(a) is a business operating in New Mexico with one or more employees but with fewer than seventy-five people employed at any of the business's business locations;

(b) is current on all state or local tax obligations; and

(c) experienced a decline in business revenue between one or more comparable quarters in taxable years 2019 and 2020, as determined by the economic development department and the authority based on documentation provided by the business;

(3) "recovery grant" means a grant disbursed to a recovery entity by the authority from funds provided by the department for the purpose of reimbursement of rent, lease or mortgage payments of the recovery entity pursuant to the Local Economic Development Act; and

(4) "taxable year" means "taxable year" as that term is used in the Income Tax Act or the Corporate Income and Franchise Tax Act, as applicable to a recovery entity.

History: Laws 2021, ch. 3, § 10.

ANNOTATIONS

Emergency clauses. — Laws 2021, ch. 3, § 13 contained an emergency clause and was approved February 26, 2021.

Compiler's notes. — "Section 11 of this 2021 act", as referenced in Subsection E, provided that two hundred million dollars ($200,000,000) is appropriated from the general fund to the economic development department for expenditure in fiscal years 2021 through 2023 to provide grants pursuant to 5-10-16 NMSA 1978. Any unexpended or unencumbered balance remaining at the end of fiscal year 2023 shall revert to the general fund.

5-10-17. Gross receipts tax and compensating tax revenue as public support for certain projects.

A. A qualifying entity that meets the following requirements may receive public support for the qualifying entity's economic development project from funds in the Local Economic Development Act fund pursuant to Subsection B of Section 5-10-14 NMSA 1978 in an amount equal to fifty percent of the net receipts attributable to the state gross receipts tax and state compensating tax imposed on the expenses related to the construction of the qualifying entity's project, as determined by the department, related to the economic development project and the amount dedicated pursuant to Subsection B of this section; provided that the public support shall be provided for a period of no more than ten years, beginning on the date the applicable project participation agreement with the qualifying entity is executed:

(1) the qualifying entity signs a project participation agreement with the governing body of each local government that has jurisdiction of the area in which the qualifying entity's economic development project is located and the local government has passed an ordinance dedicating local government gross receipts tax revenue pursuant to Subsection B of this section;

(2) the qualifying entity signs a project participation agreement with the department; provided that the department shall not sign the agreement unless the applicable local governments have signed a project participation agreement pursuant to Paragraph (1) of this subsection; and provided further that the project participation agreement shall provide that if, at the end of the ten-year period, the economic development project fails to meet the three-hundred-fifty-million-dollar ($350,000,000) requirement pursuant to Paragraph (3) of this subsection, the department shall seek to recover some or all of the public support provided to the qualifying entity and shall transfer any amount recovered to the general fund and to the contributing local government based on each entity's pro rata share of public support to the economic development project;

(3) the economic development project has a reasonable expectation to incur, within ten years of the date the project participation agreement with the local government and the department is executed, at least three hundred fifty million dollars ($350,000,000) in expenses related to the construction and infrastructure of the project in the state;

(4) the qualifying entity and the economic development project meet all other requirements to receive public support pursuant to the Local Economic Development Act; and

(5) prior to the end of each month, the qualifying entity submits the appropriate documents, including tax documents of the qualifying entity and its contractors submitted to the taxation and revenue department, to the department and to the local governments with which the qualifying entity signed a project participation agreement, on forms and in a manner determined by the department, of the taxable expenses related to the construction of the economic development project for the previous month.

B. A local government may dedicate, by ordinance, fifty percent of the tax revenue attributable to the gross receipts and compensating taxes imposed by the local government on the qualifying entity's receipts for expenses related to the construction of the economic development project to the Local Economic Development Act fund for the purposes provided in Subsection B of Section 5-10-14 NMSA 1978.

C. Within thirty days after execution of a project participation agreement with a qualifying entity, the department shall issue a report to the department of finance and administration and the legislative finance committee that shall identify the qualifying entity intended to receive public support pursuant to this section, the estimated expenses related to the construction of the qualifying entity's project as determined by the department, the location of the project, the amount of public support pledged by the department and each local government for the project pursuant to this section and the amount of any other public support pledged for the project pursuant to the Local Economic Development Act.

D. As soon as practicable, the taxation and revenue department shall implement a rate type to identify gross receipts and compensating taxes reported and paid to the taxation and revenue department for expenses related to the construction of an economic development project. Once implemented, all such gross receipts and compensating taxes shall be reported and paid with that rate type.

E. If the taxation and revenue department has not implemented the rate type provided in Subsection D of this section, and if the requirements of Subsection A of this section have been met, the economic development department and the local governments that signed a project participation agreement with the qualifying entity shall:

(1) review the documents submitted by a qualifying entity pursuant to Paragraph (5) of Subsection A of this section;

(2) estimate the amount equal to fifty percent of the tax revenue attributable to the gross receipts tax and compensating tax imposed on the taxable expenses related to the construction of the economic development project appropriate to:

(a) the local government's gross receipts and compensating taxes if a local government; and

(b) the state gross receipts and compensating taxes if the department;

(3) if a local government, on the first business day of each month, submit the estimated amount and the supporting documents to the department; and

(4) if the department, on or before the twenty-fifth day of December, March, June and September, provide the estimates and any supporting documentation to the taxation and revenue department, on forms and in a manner determined by that department.

F. The taxation and revenue department shall review the amounts estimated pursuant to Subsection E of this section for accuracy and computation, make any necessary corrections or adjustments and make a final determination of the amounts to be distributed from the relevant tax revenue pursuant to Section 5 [7-1-6.67 NMSA 1978] of this 2021 act.

History: Laws 2021 (1st S.S.), ch. 2, § 2.

ANNOTATIONS

Emergency clauses. — Laws 2021, ch. 2, § 6 contained an emergency clause and was approved April 7, 2021.

ARTICLE 11
Public Improvement District

5-11-1. Short title.

Chapter 5, Article 11 NMSA 1978 may be cited as the "Public Improvement District Act".

History: Laws 2001, ch. 305, § 1; 2013, ch. 45, § 1.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, added the NMSA chapter and article for the Public Improvement District Act; and at the beginning of the sentence, deleted "Sections 1 through 27 of this act" and added "Chapter 5, Article 11 NMSA 1978".

Applicability. — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1 through 4 and 6 through 10, do not apply to an application for formation of a public improvement district submitted to a governing body prior to January 1, 2014.

5-11-2. Definitions.

As used in the Public Improvement District Act:

A. "allowable base" means the sum of the appraised value, not including the value of public infrastructure improvements, of:

(1) taxable property in a district that is owned by persons other than the applicant or the applicant's related entities;

(2) commercial, industrial or retail property in a district that is owned by the applicant or the applicant's related entities for which a certificate of completion has been issued; and

(3) all other taxable property in a district not described in Paragraphs (1) and (2) of this subsection, to the extent that its appraised value is less than or equal to the appraised value of property described in Paragraph (1) of this subsection;

B. "applicant" means a person that applies for the formation of a district pursuant to the Public Improvement District Act;

C. "clerk" means the clerk of the municipality or county, or any person appointed by the district board to be the district clerk pursuant to Section 5-11-6 NMSA 1978;

D. "county" means a county that forms a public improvement district pursuant to the Public Improvement District Act in an unincorporated area or in an incorporated area with the municipality's consent;

E. "debt service" means the principal of, interest on and premium, if any, on the bonds, when due, whether at maturity or prior redemption; the fees and costs of registrars, trustees, paying agents or other agents necessary to handle the bonds; and the costs of credit enhancement or liquidity support;

F. "development agreement" means an agreement between a property owner or developer and the county, municipality or district, concerning the improvement of specific property within the district, which agreement may be used to establish obligations of the owner or developer, the county or municipality or the district concerning the zoning, subdivision, improvement, impact fees, financial responsibilities and other matters relating to the development, improvement and use of real property within a district;

G. "district" means a public improvement district formed pursuant to the Public Improvement District Act by a municipality or by a county in an unincorporated area or in an incorporated area with the municipality's consent;

H. "district board" means the board of directors of the district, which shall be composed of members of the governing body, ex officio, or, at the option of the governing body, five directors appointed by the governing body of the municipality or county in which the district is located, until replaced by elected directors, which shall occur not later than six years after the date on which the resolution establishing the district is enacted, as provided in Section 5-11-9 NMSA 1978;

I. "election" means an election held in compliance with the provisions of Sections 5-11-6 and 5-11-7 NMSA 1978 and pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978];

J. "enhanced services" means public services provided by a municipality or county within the district at a higher level or to a greater degree than otherwise available to the land located in the district from the municipality or county, including such services as public safety, fire protection, street or sidewalk cleaning or landscape maintenance in public areas. "Enhanced services" does not include the basic operation and maintenance related to infrastructure improvements financed by the district pursuant to the Public Improvement District Act;

K. "general plan" means the general plan described in Section 5-11-3 NMSA 1978, as the plan may be amended from time to time;

L. "governing body" means the body or board that by law is constituted as the governing body of the municipality or county in which the public improvement district is located;

M. "municipality" means an incorporated city, village or town;

N. "owner" means:

(1) the person who is listed as the owner of real property in the district on the current property tax assessment roll in effect at the time that the action, proceeding, hearing or election has begun. For purposes of voting in elections held pursuant to the Public Improvement District Act, when the owner of record title is a married person, only one spouse in whose name title is held may vote at such election. Where record title is held in more than one name, each owner may vote the number of fractions of acres represented by the owner's legal interest or proportionate share of and in the lands within the district;

(2) the administrator or executor of an estate holding record title to land within the district;

(3) the guardian of a minor or incompetent person holding record title to land within the district, appointed and qualified under the laws of the state;

(4) an officer of a corporation holding record title to land within the district, which officer has been authorized by resolution of the corporation's board of directors to act with respect to such land;

(5) the general partner of a partnership holding record title to land within the district;

(6) the trustee of a trust holding record title to land within the district; or

(7) the manager or member of a limited liability company holding record title to land within the district who has been authorized to represent the company;

O. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or other association;

P. "public infrastructure improvements" means all improvements listed in this subsection and includes both on-site improvements and off-site improvements that directly or indirectly benefit the district. Such improvements include necessary or incidental work, whether newly constructed, renovated or existing, and all necessary or desirable appurtenances. "Public infrastructure improvements" includes:

(1) sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;

(2) drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;

(3) water systems for domestic, commercial, office, hotel or motel, industrial, irrigation, municipal or fire protection purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;

(4) highways, streets, roadways, bridges, crossing structures and parking facilities, including all areas for vehicular use for travel, ingress, egress and parking;

(5) trails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking;

(6) pedestrian malls, parks, recreational facilities and open space areas for the use of members of the public for entertainment, assembly and recreation;

(7) landscaping, including earthworks, structures, lakes and other water features, plants, trees and related water delivery systems;

(8) public buildings, public safety facilities and fire protection and police facilities;

(9) electrical generation, transmission and distribution facilities;

(10) natural gas distribution facilities;

(11) lighting systems;

(12) cable or other telecommunications lines and related equipment;

(13) traffic control systems and devices, including signals, controls, markings and signage;

(14) school sites and facilities with the consent of the governing board of the public school district for which the site or facility is to be acquired, constructed or renovated;

(15) library and other public educational or cultural facilities;

(16) equipment, vehicles, furnishings and other personalty related to the items listed in this subsection; and

(17) inspection, construction management and program management costs;

Q. "public infrastructure purpose" means:

(1) planning, design, engineering, construction, acquisition or installation of public infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of such infrastructure;

(2) acquiring, converting, renovating or improving existing facilities for public infrastructure, including facilities owned, leased or installed by an owner;

(3) acquiring interests in real property or water rights for public infrastructure, including interests of an owner;

(4) establishing, maintaining and replenishing reserves in order to secure payment of debt service on bonds;

(5) funding and paying from bond proceeds interest accruing on bonds for a period not to exceed three years from their date of issuance;

(6) funding and paying from bond proceeds fiscal, financial and legal consultant fees, trustee fees, discount fees, district formation and election costs and all costs of issuance of bonds issued pursuant to the Public Improvement District Act, including fees and costs for bond counsel, financial advisors, consultants and

underwriters, costs of obtaining credit ratings, bond insurance premiums, fees for letters of credit and other credit enhancement costs and printing costs;

(7) providing for the timely payment of debt service on bonds or other indebtedness of the district;

(8) refinancing any outstanding bonds with new bonds, including through the formation of a new public improvement district; and

(9) incurring expenses of the district incident to and reasonably necessary to carry out the purposes specified in this subsection;

R. "related entities" means two or more entities that are owned in an amount greater than fifty percent by the same person, either directly or through one or more persons;

S. "special levy" means a levy imposed against real property within a district that may be apportioned according to direct or indirect benefits conferred upon affected real property, as well as acreage, front footage, the cost of providing public infrastructure for affected real property, or other reasonable method, as determined by the governing body or district board, as applicable; and

T. "treasurer" means the treasurer of the governing body or the person appointed by the district board as the district treasurer pursuant to Section 5-11-6 NMSA 1978.

History: Laws 2001, ch. 305, § 2; 2009, ch. 46, § 1; 2013, ch. 45, § 2; 2019, ch. 212, § 192.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, revised the definition of "election", and deleted the definition of "resident qualified elector", as used in the Public Improvement District Act; in Subsection I, after "NMSA 1978", added "and pursuant to the provisions of the Local Election Act"; and deleted former Subsection S and redesignated former Subsections T and U as Subsections S and T, respectively.

The 2013 amendment, effective July 1, 2013, defined the additional terms; and added Subsections A, B, O and R.

Applicability. — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1 through 4 and 6 through 10, do not apply to an application for formation of a public improvement district submitted to a governing body prior to January 1, 2014.

The 2009 amendment, effective June 19, 2009, added Subsection L(7).

5-11-2.1. Formation of a public improvement district; application requirements.

A. An application for the formation of a district shall be submitted to the governing body. Each application shall be supported by a petition signed by the owners of at least twenty-five percent of the real property by assessed valuation proposed to be included in the district and shall contain, at a minimum, the following:

(1) a description of the proposed district, including:

(a) a legal description of its boundaries;

(b) the identity and addresses of all persons or entities with any interest in the property, including submitting a current title report on the property as evidence of the names of persons with any interest in the property;

(c) the names and addresses of any resident qualified electors located within the proposed boundaries, if applicable;

(d) an explanation as to how the district boundaries were chosen;

(e) adequate information to establish financial parameters for the operation of the district, if applicable; and

(f) information regarding the future ownership and maintenance of the public infrastructure improvements or enhanced services;

(2) a detailed description of the types of public infrastructure improvements or enhanced services to be provided by the district, including, if applicable:

(a) the estimated construction or acquisition costs of the public infrastructure improvements, including costs for repair and replacement of public infrastructure improvements;

(b) the estimated annual operation and maintenance costs of the public infrastructure improvements;

(c) projection of working capital needs for enhanced services; and

(d) any governmental approvals and licenses that are expected to be required for both the public and private improvements to be constructed and operated;

(3) a feasibility study containing the information required in Subsection A of Section 5-11-16 NMSA 1978;

(4) a description of the applicant's professional experience and evidence demonstrating its financial capacity to undertake the development associated with the public infrastructure, enhanced services and private development, as applicable;

(5) a disclosure form to owners describing:

(a) that the applicant intends to file an application for formation of a public improvement district;

(b) the purpose of the proposed public improvement district;

(c) a description of what a public improvement district is; and

(d) the rate, method of apportionment and manner of collection of a special levy, if one is proposed, in sufficient detail to enable each owner or resident within the district to estimate the maximum amount of the proposed levy;

(6) certification that the disclosure pursuant to Paragraph (5) of this subsection has been provided to each owner;

(7) a description of how the proposed district meets the existing development objectives of the municipality or county, to the extent that the municipality or county has adopted policies identifying such objectives, including how the district is consistent with:

(a) the goals of promoting orderly development;

(b) the municipality's or county's comprehensive plan;

(c) growth management policies and zoning requirements; and

(d) the municipality's or county's applicable policies for development, growth management and zoning; and

(8) any other information that the governing body may reasonably require after its initial review of the application.

B. The requirements of Paragraph (5) of Subsection A of this section shall not apply if the petition is signed by the owner of all the land in the district described in the petition submitted to the governing body.

C. The governing body may charge a fee to be applied by the governing body to the costs incurred in connection with the processing and review of the application and formation of the district in accordance with this section. Upon formation of the district, the governing body may charge an additional administrative expense fee to be applied by the governing body to the costs and expenses incurred in the formation of the district, specifically the review of the feasibility study and current appraisal of the project.

History: Laws 2013, ch. 45, § 10.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 45, § 13 made Laws 2013, ch. 45, § 10 effective July 1, 2013.

Applicability. — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1 through 4 and 6 through 10, do not apply to an application for formation of a public improvement district submitted to a governing body prior to January 1, 2014.

5-11-3. Resolution declaring intention to form district.

A. If the public convenience and necessity require, and on presentation of an application required by Section 10 [5-11-2.1 NMSA 1978] of this 2013 act that is supported by a petition signed by the owners of at least twenty-five percent of the real property by assessed valuation proposed to be included in the district, the governing body may adopt a resolution declaring its intention to form a public improvement district to include contiguous or noncontiguous property, which shall be wholly within the corporate boundaries of the municipality or county. If the governing body fails to act within ninety days following presentation of a petition to create a public improvement district, the petition shall be deemed to have been accepted by the governing body, which shall adopt a resolution and hold a public hearing pursuant to this section. The resolution shall state the following:

(1) the area or areas to be included in the district;

(2) the purposes for which the district is to be formed;

(3) that a general plan for the district is on file with the clerk that includes a map depicting the boundaries of the district and the real property proposed to be included in the district, a general description of anticipated improvements and their locations, general cost estimates, proposed financing methods and anticipated tax levies, special levies or charges, and that may include possible alternatives, modifications or substitutions concerning locations, improvements, financing methods and other information provided in the general plan;

(4) the rate, method of apportionment and manner of collection of a special levy, if one is proposed, in sufficient detail to enable each owner or resident within the district to estimate the maximum amount of the proposed levy;

(5) a notice of public hearing in conformity with the requirements of Section 5-11-4 NMSA 1978;

(6) the place where written objections to the formation of the district may be filed by an owner;

(7) that formation of the district may result in the levy of property taxes or the imposition of special levies to pay the costs of public infrastructure constructed by the

district and for their operation and maintenance and may result in the assessment of fees or charges to pay the cost of providing enhanced services;

(8) a reference to the Public Improvement District Act; and

(9) whether the district will be governed by a district board comprised of the members of the governing body, ex officio, or comprised of five directors initially appointed by the governing body.

B. The resolution shall direct that a hearing on formation of the district be scheduled and that notice be mailed and published as provided in Section 5-11-4 NMSA 1978.

C. Before adopting a resolution pursuant to this section, a general plan for the district shall be filed with the clerk.

History: Laws 2001, ch. 305, § 3; 2003, ch. 435, § 1; 2013, ch. 45, § 3.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required the filing of an application for formation of a public improvement district; eliminated the authority of a governing body to require the petitioners to prepare a study of the feasibility and costs of the proposed district; in Subsection A, in the first sentence, after "on presentation of", added "an application required by Section 10 of this 2013 act that is supported by"; and deleted former Subsection B, which authorized a governing body to require that the petitioners prepare a study of the feasibility and cost of the proposed district and which authorized the district to require the petitioners to deposit the estimated cost of the study with the treasurer of the governing body.

Applicability. — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1 through 4 and 6 through 10, do not apply to an application for formation of a public improvement district submitted to a governing body prior to January 1, 2014.

The 2003 amendment, effective June 20, 2003, inserted the penultimate sentence in the undesignated paragraph of Subsection A; and updated the internal references.

5-11-4. Notice and public hearing.

A. The notice of public hearing to be held concerning the formation of a public improvement district pursuant to the Public Improvement District Act shall be mailed by registered or certified United States mail, postage prepaid, to all owners of real property in the proposed district at least thirty days prior to the date of the hearing. In addition, notice shall be published once each week for two successive weeks in a newspaper of general circulation in the municipality or county in which the proposed district lies. The last publication shall be at least three days before the date of the hearing. The notice shall comply with requirements of Subsections B and C of this section.

B. The clerk shall execute a notice, which shall read substantially as follows:

"To whom it may concern:

The governing body of the (municipality) (county) of _____, on (Date), adopted the attached resolution declaring its intention to form a tax-levying public improvement district. A hearing on formation will be held on (Date), at (Time) at (Location). All persons owning or claiming an interest in property in the proposed district who object to the inclusion of their land in the district, to the formation of the district or to the contents of the general plan must file a written objection with the undersigned at the following address before the time set for the hearing.

(Date) _____

_____
Clerk

_____
Address

(Name of municipality or county)".

C. A summary of the resolution declaring the governing body's intention to form the district shall be attached to the notice, and the clerk shall cause a copy to be mailed to the owners of real property in the district and to all other persons claiming an interest in such property who have filed a written request for a copy of the notice within the six months preceding or at any time following the adoption of the resolution of intent to form the district. The clerk shall also publish a copy of the notice and resolution summary at least twice in a newspaper of general circulation in the municipality or county in which the proposed district lies. The clerk shall execute an affidavit of mailing stating the date of mailing and the names and addresses of the persons to whom the notices and copies of the resolutions were mailed. The clerk shall obtain an affidavit from the newspaper in which the publication was made. The clerk shall cause both affidavits to be placed in the official records of the municipality or county. The affidavits are conclusive evidence of the mailing and publishing of notice. Notice shall not be held invalid for failure of delivery to the addressee.

D. If the clerk is informed that the person listed on the assessment roll is no longer the owner and the name and address of the successor owner become known, the clerk shall cause a copy of the notice and resolution to be mailed to the successor owner as soon as practicable after learning of the change of ownership.

History: Laws 2001, ch. 305, § 4.

5-11-5. Hearing on objections.

A. Any person claiming an interest in real property that the resolution discloses is situated in the district may file a written objection with the clerk before 5:00 p.m. on the business day preceding the date and time set for the hearing. The objection may raise one or more of the following issues:

(1) that the objector's property would not be substantially benefited, directly or indirectly, from the public infrastructure improvements or enhanced services proposed to be financed, as set forth in the general plan, and that the property should be excluded from the district;

(2) that the district should not be formed, stating the specific reasons; and

(3) that the general plan should be modified, stating the reasons for modification.

B. At the hearing, including any adjournments or continuances, the governing body shall hear and pass on the written objections and the testimony and evidence presented in support of or opposition to the objections. The hearing shall be either transcribed by a court reporter or recorded by a tape recorder. The court reporter's transcript or a tape recording certified to be true and correct by the clerk shall be filed or otherwise preserved in the official records of the governing body.

C. In furtherance of the hearing, the clerk, on written request being presented, shall issue subpoenas or subpoenas duces tecum to compel the attendance and testimony of any person or the submission of any documents at the hearing. Compliance with the subpoena shall be enforced as if the subpoena were issued by a clerk of the state district court.

D. Testimony at the hearing need not be under oath, unless requested by any owner or required by the governing board. Requests by owners that the testimony be under oath must be made in writing and be filed with, or served on, the clerk before the hearing begins or the request is deemed waived.

E. The minutes or a copy of a written transcript or a tape recording of the proceedings of a hearing conducted pursuant to this section shall be open to public inspection three working days after the conclusion of a hearing. Any person may request to examine or be furnished copies, printouts, photographs, transcripts or recordings of a hearing during regular office hours of the governing body. The custodian of the records shall furnish the copies, printouts, photographs, transcripts or recordings and may charge a reasonable fee which does not exceed the actual cost of reproducing the item requested.

History: Laws 2001, ch. 305, § 5.

ANNOTATIONS

Cross references. — For subpoena power, *see* Rule 1-045 NMRA.

Home rule municipality. — The provisions of the Public Improvement District Act, 5-11-1 NMSA 1978 et seq., do not expressly limit the legislative powers of a home rule municipality; thus, such a municipality has the authority to enter into a contract, or development agreement, with a private developer to facilitate the construction of retail business establishments. 2002 Op. Att'y Gen. No. 02-02.

In order to avoid the constitutional pitfalls associated with development agreements, a home rule municipality should include in any authorizing ordinance items such as: (a) who can enter into an agreement; (b) how it is entered into; (c) its duration; (d) what zoning rules will be affected; (e) description and proposed use of the property; (f) how the agreement is consistent with current municipal planning documents; and (g) how to handle Procurement Code, 13-1-28 to 13-1-199 NMSA 1978, issues. 2002 Op. Att'y Gen. No. 02-02.

5-11-6. Order forming district; formation determination; election.

A. After the hearing, the governing body shall determine whether the district should be formed based upon the interests, convenience or necessity of the owners, residents of the district and citizens of the municipality or county in which the proposed district would be located. If the governing body determines that the district should be formed, it shall adopt a resolution ordering that the district be formed, deleting any property determined not to be directly or indirectly benefited by the district or modifying the general plan and then ordering that a formation determination be conducted and an election be held on the question whether to form the district. A resolution ordering a formation of the district shall state that the district will be governed by a district board consisting of members of the governing body, ex officio, or, upon determination of the governing body, five directors appointed by the governing body, and shall contain the names of the five initial directors and the terms of office of each. If the governing body appoints a district board, it shall appoint a treasurer and a clerk from the appointed members.

B. Before submitting the question of formation of the district to the qualified electors of the proposed district, a formation determination shall be conducted by the governing body among the owners unless a petition is presented to the governing body pursuant to Subsection F of Section 5-11-7 NMSA 1978. In the formation determination, each owner shall have the number of votes or portions of votes equal to the number of acres or portions of acres rounded upward to the nearest one-fifth of an acre owned by that owner in the submitted district.

C. A formation or other determination shall not be a local election for purposes of the Local Election Act [Chapter 1, Article 22 NMSA 1978]. The governing body or the district board may establish local procedures for noticing, conducting and canvassing determinations, which may include determinations made by unanimous written approval

of the owners in affidavits executed by the owners and confirmed in a review by the district board.

D. Should the formation determination by the owners result in a three-fourths' majority vote in favor of formation, the question shall also be submitted to a vote of the qualified electors of the proposed district. The conduct of a formation election by qualified electors shall meet the requirements of Section 5-11-7 NMSA 1978.

E. The right of the qualified electors to vote on the question of formation of the district shall not be assigned or delegated to the property owners, or related entities of the property owners, signing a petition submitted to the governing body for formation of a district.

History: Laws 2001, ch. 305, § 6; 2013, ch. 45, § 4; 2019, ch. 212, § 193.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, required a formation determination be conducted among the owners of a proposed public improvement district prior to submitting the question of formation of the district to qualified voters of that district; in Subsection A, after "ordering that", added "a formation determination be conducted and"; in Subsection B, added "Before submitting the question of formation of the district to the qualified electors of the proposed district", after "formation", deleted "election" and added "determination", after "shall", deleted "include" and added "be conducted by the governing body among", after "Subsection", deleted "I" and added "F", added "In the formation determination", and deleted "The right to vote on the question of formation of the district shall not be assigned or delegated to the property owners signing a petition submitted to the governing body for formation of a district or related entities of such property owners."; added a new Subsection C and subsection designation "D."; in Subsection D, added "Should the formation determination by the owners result in a three-fourths' majority vote in favor of formation", and after "qualified electors", added "of the proposed district"; and added Subsection E.

The 2013 amendment, effective July 1, 2013, prohibited the assignment of the right to vote on the question of formation of a public improvement district to the property owners who sign the petition that is submitted to the governing body or to related entities of those property owners; and in Subsection B, added the third sentence.

Applicability. — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1 through 4 and 6 through 10, do not apply to an application for formation of a public improvement district submitted to a governing body prior to January 1, 2014.

5-11-7. Notice and conduct of election; waiver.

A. Any election by qualified electors pursuant to the Public Improvement District Act shall be a nonpartisan election called, conducted and canvassed pursuant to the

provisions of the Election Code [Chapter 1 NMSA 1978]. In addition to those matters required for notice as provided in the Local Election Act [Chapter 1, Article 22 NMSA 1978], the notice of election shall state:

(1) if the election is a formation election, the boundaries of the proposed district;

(2) if the election is a bond election, the amount of bonds to be authorized for the district, the maximum rate of interest to be paid on the bonds and the maximum term of the bonds, not exceeding thirty years;

(3) if the election is a property tax levy election pursuant to Section 5-11-19 NMSA 1978, the maximum tax rate per one thousand dollars ($1,000) of assessed valuation to be imposed, the purposes for which the revenues raised will be used and the existing maximum tax rate, if any;

(4) that a general plan is on file with the clerk;

(5) the purposes for which the property taxes or the special levies will be imposed, and the revenues raised will be used, including a description of the public improvements to be financed with tax revenues, special levies, district revenues or bond proceeds; and

(6) that the imposition of property taxes or special levies will result in a lien for the payment thereof on property within the district.

B. The district board or, in the case of a formation election, the governing body, shall determine the date of the election by passing a resolution to place the ballot question on a regular local election or general election ballot or by adopting a proclamation calling for a special election.

C. Except as otherwise provided by this section, the election shall comply with the Local Election Act. The ballot material provided to each qualified elector shall include:

(1) for a formation election, an impartial description of the district improvements contemplated and a brief description of arguments for and against the formation of the district, if any;

(2) for an election concerning the imposition of property taxes, an impartial description of the taxes to be imposed, the method of apportionment, collection and enforcement and other details sufficient to enable each elector to determine the amount of tax it will be obligated to pay; a brief description of arguments for and against the imposition of taxes that are the subject of the election, if any; and a statement that the imposition of property taxes is for the provision of certain but not necessarily all public infrastructure improvements and services that may be needed or desirable within the

district, and that other taxes, levies or assessments by other governmental entities may be presented for approval by owners and qualified electors; and

(3) for a formation election, the ballot, which shall pose the question to be voted upon as "district, yes" and "district, no"; for a bond election, "bonds, yes" and "bonds, no"; for a property tax election, if no tax is in place, "property tax, yes" and "property tax, no"; and for an election to change an existing maximum or eliminate an existing tax, "tax change, yes" and "tax change, no", specifying the type of tax to which the proposed change pertains.

D. At least a three-fourths' majority of the votes cast by qualified electors at the election shall be required for formation, issuing the bonds, imposing the tax or special levy or changing the tax or special levy. Failure of a required majority to vote in favor of the matter submitted shall not prejudice the submission of the same or similar matters at a later election.

E. If a person listed on the assessment roll is no longer the owner of land in the district and the name of the successor owner becomes known to the governing body or the district board, as applicable, and is verified by recorded deed or other similar evidence of transfer of ownership, the successor owner is deemed to be the owner for the purposes of the Public Improvement District Act.

F. Notwithstanding any other provision of the Public Improvement District Act, if a petition for formation is signed by owners of all of the land in the district described in the petition and is approved by the municipality or county, the municipality or county may waive any or all requirements of posting, publication, mailing, notice, hearing and owner determination. On receipt of such a petition, and after approval by an election of qualified electors, if any, the municipality or county shall declare the district formed without being required to comply with the provisions of the Public Improvement District Act for posting, publication, mailing, notice, hearing or owner determination.

G. If no person is registered to vote within the district or proposed district areas within seventy days immediately preceding any scheduled election date, the election required to be held pursuant to the Public Improvement District Act shall be canceled. Under such circumstances, when the question is on the formation of the district, the results of the formation determination of the owners shall prevail, unless the formation determination was waived by the governing body pursuant to Subsection F of this section. To the extent allowable by the constitution of New Mexico, when the question is on any other allowable action otherwise requiring a vote of the qualified electors, the owners or the owners of the proposed district areas shall make a determination, the result of which shall prevail.

History: Laws 2001, ch. 305, § 7; 2019, ch. 212, § 194.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, provided that any election pursuant to the Public Improvement District Act shall be conducted pursuant to the provisions of the Election Code, and revised certain notice of election provisions; in Subsection A, in the introductory paragraph, after "nonpartisan election called,", deleted "by posting notices in three public places within the boundaries of the district not less than twenty days before the election. Notice shall also be published in a newspaper of general circulation in the municipality or county, or, if there is no newspaper so circulated in the municipality, in a newspaper of general circulation in the county in which the municipality is located once a week for two consecutive weeks before the election" and added "conducted and canvassed pursuant to the provisions of the Election Code. In addition to those matters required for notice as provided in the Local Election Act", deleted Paragraphs A(1) and A(2) and redesignated former Paragraphs A(3) through A(8) as Paragraphs A(1) through A(6), respectively, in Paragraph A(3), after "pursuant to Section", deleted "19 of the Public Improvement District Act" and added "5-11-19 NMSA 1978"; in Subsection B, after "date of election", deleted "and the polling places for the election and may consolidate county precincts. The district board or governing body may establish provisions for voting by mail." and added "by passing a resolution to place the ballot question on a regular local election or general election ballot or by adopting a proclamation calling for a special election"; deleted Subsections C and D and redesignated former Subsection E as Subsection C; in Subsection C, in the introductory clause, after "comply with the", deleted "general election laws of this state" and added "Local Election Act"; deleted former Subsections F and G, added new subsection designation "D." and redesignated former Subsections H through J as Subsections E through G, respectively; in Subsection D after "special levy.", deleted "The canvass may be continued for an additional period not to exceed thirty days at the election of the governing body or district board for the purposes of completing the canvass."; in Subsection E, after "becomes known", added "to the governing body or the district board, as applicable"; in Subsection G, after "district" added "or proposed district areas", after "within", deleted "fifty" and added "seventy", and after "shall be", deleted "held by vote of the owners. Each owner shall have the number of votes or portion of votes equal to the number of acres or portion of acres rounded upward to the nearest one-fifth of an acre owned in the district by that owner." and added the remainder of the subsection; and deleted former Subsection K.

Application of the Election Code to public improvement district formation elections. — The Election Code's thirty-day limitation period for filing a complaint to contest an election applies to a public improvement district formation election under the Public Improvement District Act. *Glaser v. LeBus*, 2012-NMSC-012, 276 P.3d 959.

Where the petitioners filed a complaint to contest an election to form a public improvement district under the Public Improvement District Act thirteen months after the election, the action was barred by the thirty-day limitation for filing a complaint to contest an election under the Election Code. *Glaser v. LeBus*, 2012-NMSC-012, 276 P.3d 959.

Election Code applies to public improvement district formation elections. — The formation election provisions of the Public Improvement District Act incorporate the

election contest procedures of the Election Code. *Glaser v. LeBus*, 2012-NMCA-028, 274 P.3d 114.

Elements of election contest. — An election contest is a challenge to the result of an election, as well as a challenge to the inherent validity of an election when the challenge would necessarily require overturning the results or effects of an election. An election contest can derive from a violation of a provision of the Election Code, from a violation of another statute governing the particular election at issue, or from the New Mexico Constitution. *Glaser v. LeBus*, 2012-NMCA-028, 274 P.3d 114.

Plaintiff's complaint presented an election contest under the Public Improvement District Act. — Where plaintiff alleged that the petition and ballot to form a public improvement district were invalid because they did not meet statutory requirements; that the information provided to the municipality and the voters prior to the formation election was false, fraudulent, or misleading; and that the ballot did not present a question that specifically addressed the authority to tax, the challenges to the underlying validity of the election based on a failure to comply with statutory requirements was an election contest governed by the Election Code's election contest procedures. *Glaser v. LeBus*, 2012-NMCA-028, 274 P.3d 114.

5-11-7.1. Posting of notices.

For any election conducted pursuant to the Public Improvement District Act, in addition to the notice requirements set forth in Section 5-11-7 NMSA 1978, the owners shall ensure that notices shall be posted in three conspicuous public places within the boundaries of the district not less than twenty days before the first day for voting in the election.

History: Laws 2019, ch. 212, § 274.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286, contained an emergency clause and was approved April 3, 2019.

5-11-8. Formation; debt limitation.

A. If the formation of the district is approved by at least a three-fourths' majority of the votes cast at the election, the governing body shall cause a copy of the resolution ordering formation of the district to be delivered to the county assessor, the county treasurer and the county in which the district is located and to the taxation and revenue department and the local government division of the department of finance and administration. A notice of the formation showing the number and date of the resolution and giving a description of the land included in the district shall be recorded with the county clerk.

B. Except as otherwise provided in this section, a district shall be a political subdivision of the state, separate and apart from the municipality or county. The amount of indebtedness evidenced by general obligation bonds issued pursuant to Section 5-11-19 NMSA 1978, special levy bonds issued pursuant to Section 5-11-20 NMSA 1978 and revenue bonds issued pursuant to Section 5-11-21 NMSA 1978 shall not exceed the estimated cost of the public infrastructure improvements plus all costs connected with the public infrastructure purposes and issuance and sale of bonds, including, without limitation, formation costs, credit enhancement and liquidity support fees and costs. The total aggregate outstanding amount of bonds and any other indebtedness for which the full faith and credit of the district are pledged shall not exceed sixty percent of the market value of the real property and improvements in the district after the public infrastructure improvements of the district are completed plus the value of the public infrastructure owned or to be acquired by the district with the proceeds of the bonds and shall not affect the general obligation bonding capacity of the municipality or county in which the district is located.

C. Bonds issued by a district shall not be a general obligation of the state, the county or the municipality in which the district is located and shall not pledge the full faith and credit of the state, the county or the municipality in which the district is located, irrespective of whether the district board is governed by the governing body of the county or municipality in which the district is located.

D. Following formation of the district, the district board shall administer in a reasonable manner the implementation of the general plan for the public infrastructure improvements of the district.

History: Laws 2001, ch. 305, § 8; 2017, ch. 147, § 1.

ANNOTATIONS

Compiler's notes. — Senate Bill 356, enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed by the governor on March 15, 2017. Pursuant to the First Judicial District Court's decision in State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al., D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, Senate Bill 356 was chaptered into law by the Secretary of State.

The 2017 amendment, effective July 1, 2017, required that the treasurer of the county in which a public improvement district is formed be notified of that formation; in Subsection A, after "the county assessor", added "the county treasurer"; in Subsection B, deleted "19 of the Public Improvement District Act" and added "5-11-19 NMSA 1978", deleted "20 of that act" and added "5-11-20 NMSA 1978", and deleted "21 of that act" and added "5-11-21 NMSA 1978".

5-11-9. Appointment of directors; qualifications; terms; resumption of governance by governing body.

A. The governing body, at its option, may authorize the appointment of a separate district board. In the case of an appointed district board, three of the appointed directors shall serve an initial term to expire following a regular local election and not to exceed six years. Two of the appointed directors shall serve an initial term to expire following a regular local election and not to exceed four years. The resolution forming the district shall state which directors shall serve the longer terms and which shall serve the shorter terms. If a vacancy occurs on the district board because of death, resignation or inability of the director to discharge the duties of director, the governing body shall appoint a director to fill the vacancy, who shall hold office for the remainder of the unexpired term until a successor is appointed or elected.

B. At the end of the appointed directors' terms, the governing body shall resume governance of the district as its board either directly or through the governing body's designees or, at the governing body's option, shall hold an election of new directors by majority vote of the qualified electors or if the election is canceled pursuant to Subsection G of Section 5-11-7 NMSA 1978, an owner's determination conducted by ballot shall decide the new directors.

History: Laws 2001, ch. 305, § 9; 2009, ch. 46, § 2; 2013, ch. 45, § 5; 2019, ch. 212, § 195.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, revised the provisions related to staggered terms of appointed district board directors, and provided for the governance of the district during vacancies on the board; in Subsection A, after "initial term", deleted "of" and added "to expire following a regular local election and not to exceed", after "initial term", deleted "of" and added "to expire following a regular local election and not to exceed", after "directors shall serve", deleted "four-year" and added "the longer", and after "which shall serve", deleted "six-year" and added "the shorter"; deleted former Subsection B and redesignated former Subsection C as Subsection B; and in Subsection B, after "qualified electors", deleted "and owners" and added "or if the election is canceled pursuant to Subsection G of Section 5-11-7 NMSA 1978, an owner’s determination conducted by ballot shall decide the new directors".

The 2013 amendment, effective July 1, 2013, provided for the resumption of governance of a public improvement district by the governing body at the end of the appointed directors’ terms; and in Subsection C, after "the governing body shall", added "resume governance of the district as its board either directly or through the governing body’s designees or, at the governing body’s option, shall".

The 2009 amendment, effective June 19, 2009, deleted former Subsection C which provided that at the end of the appointed director’s initial term, the governing body could

either resume governance of the district as its board or hold an election of new directors and added a new Subsection C.

5-11-10. Powers of a public improvement district.

A. In addition to the powers otherwise granted to a district pursuant to the Public Improvement District Act, the district board, in implementing the general plan, may:

(1) enter into contracts and expend money for any public infrastructure purpose with respect to the district;

(2) enter into development agreements with municipalities, counties or other local government entities in connection with property located within the boundaries of the district;

(3) enter into intergovernmental agreements as provided in the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] for the planning, design, inspection, ownership, control, maintenance, operation or repair of public infrastructure or the provision of enhanced services by the municipality or the county in the district and any other purpose authorized by the Public Improvement District Act;

(4) sell, lease or otherwise dispose of district property if the sale, lease or conveyance is not a violation of the terms of any contract or bond covenant of the district;

(5) reimburse the municipality or county in which the district is located for providing enhanced services in the district;

(6) operate, maintain and repair public infrastructure;

(7) establish, impose and collect special levies for the purposes of funding public infrastructure improvements or enhanced services;

(8) employ staff, counsel and consultants;

(9) reimburse the municipality or county in which the district is located for staff and consultant services and support facilities supplied by the municipality or county;

(10) accept gifts or grants and incur and repay loans for any public infrastructure purpose;

(11) enter into agreements with owners concerning the advance of money by owners for public infrastructure purposes or the granting of real property by the owner for public infrastructure purposes;

(12) levy property taxes, impose special levies or fees and charges for any public infrastructure purpose on any real property located in the district and, in conjunction with the levy of such taxes, fees and charges, set and collect administrative fees;

(13) pay the financial, legal and administrative costs of the district;

(14) enter into contracts, agreements and trust indentures to obtain credit enhancement or liquidity support for its bonds and process the issuance, registration, transfer and payment of its bonds and the disbursement and investment of proceeds of the bonds;

(15) with the consent of the governing body of the municipality or county that formed the district, enter into agreements with persons outside of the district to provide enhanced services to persons and property outside of the district; and

(16) use public easements and rights of way in or across public property, roadways, highways, streets or other thoroughfares and other public easements and rights of way, whether in or out of the geographical limits of the district, the municipality or the county.

B. Public infrastructure improvements other than personalty may be located only in or on lands, easements or rights of way owned by the state, a county, a municipality or the district, whether in or out of the district, the municipality or the county.

C. An agreement pursuant to Paragraph (11) of Subsection A of this section may include agreements to repay all or part of such advances, fees and charges from the proceeds of bonds if issued or from advances, fees and charges collected from other owners or users or those having a right to use any public infrastructure. A person does not have authority to compel the issuance or sale of the bonds of the district or the exercise of any taxing power of the district to make repayment under any agreement.

D. Notwithstanding the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], or local procurement requirements that may otherwise be applicable to the municipality or county in which the district is located, the district board, whether appointed or composed of members of the governing body, ex officio, may enter into contracts to carry out any of the district's authorized powers, including the planning, design, engineering, financing, construction and acquisition of public improvements for the district, with a contractor, an owner or other person or entity, on such terms and with such persons as the district board determines to be appropriate.

History: Laws 2001, ch. 305, § 10.

5-11-11. Perpetual succession.

The district has perpetual succession until terminated pursuant to Section 24 [5-11-24 NMSA 1978] of the Public Improvement District Act.

History: Laws 2001, ch. 305, § 11.

5-11-12. Records; board of directors; open meetings.

A. The district shall keep the following records, which shall be open to public inspection:

(1) minutes of all meetings of the district board;

(2) all resolutions;

(3) accounts showing all money received and disbursed;

(4) the annual budget; and

(5) all other records required to be maintained by law.

B. The district board shall appoint a clerk and treasurer for the district.

History: Laws 2001, ch. 305, § 12.

5-11-13. Change in district boundaries or general plan.

A. Following formation of the district, an area may be deleted from the district only following a hearing on notice to the owners of land in the district given in the manner prescribed for the formation hearing, adoption of a resolution of intention to do so by the district board, a determination by the owners and voter approval by the qualified electors as provided in the local [Local] Election Act [Chapter 1, Article 22 NMSA 1978] and the Public Improvement District Act. Lands within the district that are subject to the lien of property taxes, special levies or other charges imposed pursuant to the Public Improvement District Act shall not be deleted from the district while there are bonds outstanding that are payable by such taxes, special levies or charges.

B. Following formation of the district, an area may be added to the district upon a determination by the owners of land in the proposed addition area and the approval of the qualified electors residing therein, as well as a determination by the owners of land in the district and approval of the qualified electors of the district, as provided in the Local Election Act and the Public Improvement District Act.

C. The district board, following a hearing on notice to the owners of real property located in the district given in the manner prescribed for the formation hearing, may amend the general plan in any manner that it determines will not substantially reduce the benefits to be received by any land in the district from the public infrastructure on

completion of the work to be performed under the general plan. No election shall be required solely for the purposes of this subsection.

History: Laws 2001, ch. 305, § 13; 2019, ch. 212, § 196.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, provided that changes in district boundaries shall comply with provision of the Local Election Act; in Subsection A, after "as provided in", deleted "Sections 6 and 7 of the Public Improvement District Act" and added "the Local Election Act and the Public Improvement District Act"; and in Subsection B, after "qualified electors", deleted "in the same manner as required for the formation of a district" and added "of the district, as provided in the Local Election Act and the Public Improvement District Act".

5-11-14. Participation by municipality or county.

The governing body of the municipality or county by resolution may summarily provide public services to the district or participate in the costs of any public infrastructure purpose.

History: Laws 2001, ch. 305, § 14.

5-11-15. Other districts or improvements.

The formation of a district pursuant to the Public Improvement District Act shall not prevent the subsequent establishment of similar districts or the improvement or assessment of land in the district by the municipality or county or the exercise by the municipality or county of any of its powers on the same basis as on all other land in its corporate boundaries.

History: Laws 2001, ch. 305, § 15.

5-11-16. Project approval.

A. Before constructing or acquiring any public infrastructure improvement, the district board shall have approved a study of the feasibility and benefits of the public infrastructure improvement project to be prepared, which shall include:

(1) a description of the public infrastructure improvement to be constructed or acquired and enhanced services to be provided and estimated costs thereof, if any, and other information reasonably necessary to understand the project;

(2) a map showing, in general, the location of the project within the district;

(3) an estimate of the cost to construct, acquire, operate and maintain the project;

(4) an estimated schedule for completion of the project, a map or description of the area to be benefited by the project and a plan for financing the project;

(5) an estimated or projected annual mill or special levy for all owners in the proposed district;

(6) the current, direct and overlapping tax and assessment burden on taxable property that is proposed to be taxed and the assessed valuation of the taxable property as shown on the most recent assessment roll;

(7) the expected market absorption of the development within the district and the effect of the bond issuance by the district on tax rates within the district, calculated at the beginning, middle and end of the market absorption period or based on the phasing of the project to be financed, as applicable;

(8) projections of working capital needs for a period that shall be the longer of:

(a) thirty years following the creation of a tax upon the district taxable property; or

(b) the final maturity date of any bonds issued by the district;

(9) an analysis of:

(a) the impact of the proposed debt financing, operation and maintenance costs, user charges and other district costs on the ultimate end users of the property, including projected property tax rates, special levies, fees, charges and other costs that would be borne by the property in the district;

(b) the impact that the costs described in Subparagraph (a) of this paragraph will have on the marketability of the private development; and

(c) a comparison of proposed tax rates and charges in adjoining and similar areas outside of the proposed district;

(10) a financing plan for any private development in the district that is not to be dedicated to the municipality or county; and

(11) a market absorption study for the private development in the district prepared by an independent consultant, which shall include the ability of the market to absorb the private development and a market absorption calendar for the private development.

B. Prior to approval of a project, the district board shall provide notice and opportunity to comment to the owners and the municipality or county.

C. In the event that project approval and formation of the public improvement district are occurring concurrently, a single feasibility study may be used to satisfy the requirement in Subsection A of this section and Paragraph (3) of Subsection A of Section 10 [5-11-2.1 NMSA 1978] of this 2013 act.

D. For public infrastructure improvement projects undertaken by a district after formation, the district board shall hold a public hearing on the study and provide notice of the hearing by publication not less than two weeks in advance in the official newspaper of the municipality or county or, if there are none in the municipality or county, a newspaper of general circulation in the county. If the district board is composed of members other than the governing body, the notice shall be mailed to the governing body of the municipality or county in which the district is located. After the hearing, the district board may reject, amend or approve the report. If the report is amended substantially, a new hearing shall be held before approval. If the report is approved, the district board shall adopt a resolution approving the public infrastructure improvement of the project, identifying the areas benefited, the expected method of financing and an appropriate system of providing revenues to operate and maintain the project.

History: Laws 2001, ch. 305, § 16; 2013, ch. 45, § 6.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, expanded the issues that must be addressed in a feasibility and benefits study to include issues related to taxes and assessments, market absorption, working capital needs and debt financing; required a public improvement district to provide notice and an opportunity to comment on the study; in Subsection A, in the introductory sentence, after "public infrastructure", added "improvement" and after "district board shall", deleted "cause" and added "have approved"; added Paragraphs (5) through (11) of Subsection A; and added Subsections B and C.

Applicability. — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1 through 4 and 6 through 10, do not apply to an application for formation of a public improvement district submitted to a governing body prior to January 1, 2014.

5-11-17. Finances.

The projects to be constructed or acquired as shown in the general plan may be financed from the following sources of revenue:

A. proceeds received from the sale of bonds of the district;

B. money of the municipality or county contributed to the district;

C. annual property taxes or special levies;

D. state or federal grants or contributions;

E. private contributions;

F. user, landowner and other fees and charges;

G. proceeds of loans or advances; and

H. any other money available to the district by law.

History: Laws 2001, ch. 305, § 17.

5-11-18. Recording documents.

A. The district shall file and record with the county clerk the resolution ordering formation of the district, the general plan of the district and the canvass of any general obligation bond election.

B. Upon formation of a district, and within thirty days before June 1 and December 1 of each year, a district shall file and record with the county clerk the notice requirements described in Subsection A of Section 11 [5-11-18.1 NMSA 1978] of this 2013 act and include contact information for the district board.

History: Laws 2001, ch. 305, § 18; 2013, ch. 45, § 7.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required a public improvement district to file and record with the county clerk notice of obligations to purchasers; and added Subsection B.

Applicability. — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1 through 4 and 6 through 10, do not apply to an application for formation of a public improvement district submitted to a governing body prior to January 1, 2014.

5-11-18.1. Notice obligations to purchaser; requirements; remedies.

A. Prior to accepting an offer to purchase, a seller or an agent or broker of a seller of residential real property that is located in a district established pursuant to the Public Improvement District Act has an affirmative duty to provide to the purchaser of the property a written notice of information filed with the county clerk pursuant to Subsection

B of Section 5-11-18 NMSA 1978, in addition to the disclosure required by Section 47-13-4 NMSA 1978, that includes:

(1) information that the property is within a public improvement district;

(2) the purpose of the district;

(3) an explanation that the purchaser is obligated to pay any property tax or special levy that is imposed by the district board;

(4) an explanation that the property tax or special levy imposed by the district board is in addition to any other state, county or other local governmental taxes and assessments;

(5) for special levies:

(a) if a special levy has not been authorized by the district board, information that a special levy has not been authorized; or

(b) if a special levy has been authorized by the district board: 1) the maximum special levy that is authorized to be imposed upon the property in the district; or 2) that the special levy to be imposed on the property in the district has been prepaid in full as provided in the rate or method of apportionment;

(6) for general obligation bonds:

(a) if general obligation bonds have not been issued, information that general obligation bonds have not been issued; or

(b) if general obligation bonds have been issued: 1) the amount of general obligation bonds that are outstanding; 2) the amount of annual debt service on outstanding general obligation bonds; 3) that the maximum rate and amount of property taxes that may be imposed upon the property in the district are limited only by the amount of debt outstanding; and 4) the estimated or projected annual mill levy or special levy per one thousand dollars ($1,000) of assessed value as of the date of the disclosure with an explanation that the estimated levy or rate may be increased by the district board when necessary to meet debt obligations;

(7) information that the failure to pay the property tax or special levy could result in the foreclosure of the property;

(8) information that more information concerning the rate of the property tax or the amount of the assessment and the due dates of each may be obtained from the governing body that authorized the formation of the district; and

(9) information that a feasibility study was completed as part of the formation of the district and that the feasibility study is available through the governing body that authorized the formation of the district.

B. The provisions of Paragraphs (5) through (7) of Subsection A of this section shall be set apart in a clear and conspicuous manner and in at least twelve-point bold type.

C. This section does not apply to a transfer:

(1) of property under a court order or foreclosure sale;

(2) of property by a trustee in bankruptcy;

(3) of property to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) of property by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;

(5) of property by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship or trust;

(6) of property from one co-owner to another co-owner of an undivided interest in the real property; or

(7) of only a mineral interest or leasehold interest.

D. In the event of a finalized sale, any person who suffers any loss of money or property, real or personal, as a result of a violation of Subsection A or B of this section by a seller or an agent or broker of a seller may bring an action to recover actual damages and may be granted injunctive relief under the principles of equity and on terms that the court considers reasonable. The court shall award attorney fees and costs to the party complaining of a violation if the party prevails and actual damages are awarded. The court shall award attorney fees and costs to the party charged with a violation of Subsection A or B of this section if the court finds that the party complaining of such violation brought an action that was groundless. The relief provided in this subsection is in addition to remedies otherwise available against the same conduct under the common law or other laws of this state.

History: Laws 2013, ch. 45, § 11.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 45, § 13 made Laws 2013, ch. 45, § 11 effective July 1, 2013.

5-11-19. General obligation bonds; tax levy; exception.

A. At any time after the hearing on formation of the district, the district board, or, if before formation, the governing body may from time to time order that the question of authorizing the issuance of general obligation bonds to provide money for public infrastructure purposes consistent with the general plan be presented to the owners for a determination and that a general obligation bond election be called to submit the question to the qualified electors. The question shall include authorization for a levy, including a limitation on the levy, of a property tax to pay debt service on the bonds. The election shall be held pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978] and may be held in conjunction with the formation election.

B. If general obligation bonds are approved by a determination of the owners and approved at an election, the district board may issue and sell general obligation bonds of the district; provided that the district board shall have determined by resolution that the principal amount of all district general obligation bonds currently outstanding and the district general obligation bonds proposed for issuance and sale shall not result in a total annual debt service that exceeds five-tenths percent of the allowable base.

C. Bonds may be sold in a public offering or in a negotiated sale.

D. After the bonds are issued, the district board shall enter in its minutes a record of the bonds sold and their numbers and dates and shall annually levy and cause a property tax to be collected, at the same time and in the same manner as other property taxes are levied and collected on all taxable property in the district, sufficient, together with any money from the sources described in Section 5-11-17 NMSA 1978 to pay debt service on the bonds when due. Money derived from the levy of property taxes that are pledged to pay the debt service on the bonds shall be kept separately from other funds of the district. Property tax revenues not pledged to pay debt service on bonds may be used to pay other costs of the district, including costs of formation, administration, operation and maintenance, services or enhanced services. A district's levy of property taxes shall constitute a lien on all taxable property within the district, including, without limitation, all leased property or improvements to leased land, which shall be subject to foreclosure in the same manner as other property tax liens under the laws of this state. The lien shall include delinquencies and interest thereon at a rate not to exceed ten percent per year, the actual costs of foreclosure and any other costs of the district resulting from the delinquency. The proceeds of any foreclosure sale shall be deposited in the special bond fund for payment of any obligations secured thereby.

E. Subject to the determination and election provisions of this section, a district may issue general obligation bonds at such times and in such amounts as the district deems appropriate to carry out a project or projects in phases.

F. Pursuant to this section, the district may issue and sell refunding bonds to refund general obligation bonds of the district authorized by the Public Improvement District Act. No determination or election is required in connection with the issuance and sale of refunding bonds. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

History: Laws 2001, ch. 305, § 19; 2009, ch. 46, § 3; 2013, ch. 45, § 8; 2019, ch. 212, § 197.

ANNOTATIONS

Cross references. — For property tax liens, *see* 7-38-48 NMSA 1978.

The 2019 amendment, effective April 3, 2019, provided that the determination of the issuance of general obligation bonds by the district board be conducted pursuant to the Local Election Act, and made conforming technical amendments; in Subsection A, after "time order", deleted "and call" and added "that the question of authorizing the issuance of general obligation bonds to provide money for public infrastructure purposes consistent with the general plan be presented to the owners for a determination and that", after "qualified electors", deleted "the question of authorizing the district to issue general obligation bonds of the district to provide money for any public infrastructure purposes consistent with the general plan.", and after "The election", added "shall be held pursuant to the provisions of the Local Election Act and".

The 2013 amendment, effective July 1, 2013, prohibited a public improvement district from selling general obligation bonds until it has determined that the principal amount of its bonds will not exceed a total debt service of five-tenths percent of the value of taxable property in the district; and in Subsection B, after "may issue and sell general obligation bonds of the district", added the remainder of the sentence.

Applicability. — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1 through 4 and 6 through 10, do not apply to an application for formation of a public improvement district submitted to a governing body prior to January 1, 2014.

The 2009 amendment, effective June 19, 2009, in Subsection A, added the next to the last sentence.

5-11-20. Special levy; bonds; imposition.

A. At any time after the hearing on formation of the district, the district board may from time to time order that a hearing be held to determine whether a special levy should be imposed and special levy bonds issued to provide money for any public infrastructure purpose consistent with the general plan. The question of imposing a special levy may be considered at the hearing on district formation upon notice that both issues will be heard at that time, which notice shall include the information required in Subsection B of this section.

B. Notice of hearing shall be provided at least two weeks in advance of the hearing itself in a newspaper of general circulation in the municipality or county in which the district is located. The notice shall include the following:

(1) a description of the method by which the amount of the proposed special levy will be determined for each class of property to which the levy is proposed to apply, in sufficient detail to enable the owner of the affected parcel to determine the amount of the special levy;

(2) a description of the project to be financed with special levy bonds or revenues; and

(3) a statement that any person affected by the proposed special levy may object in writing or in person at the hearing.

C. Prior to issuing special levy bonds, the district board shall set a maximum levy for each class of property that may be imposed for debt service on the special levy bonds.

D. Unless a local government has enacted an ordinance providing a greater limitation, no special levy bonds may be issued if at the time of issuance of such bonds the estimated total tax and assessment obligation for a class of property, including projected ad valorem taxes and special levies as provided in the feasibility study, exceeds one and ninety-five hundredths percent of the anticipated, average market value of each class of property at the time of issuance of a certificate of occupancy as determined by a member appraiser of the appraisal institute.

E. Special levy bonds may be sold in a public offering or in a negotiated sale.

F. After the bonds are issued, the district board shall enter in its minutes a record of the bonds sold and their numbers and dates and shall annually impose and cause a special levy to be collected, at the same time and in the same manner as property taxes are levied and collected on all property within the district that may be subject to the levy, including, without limitation, all leased property or improvements to leased land, sufficient, together with any other money lawfully available to pay debt service on the bonds when due, except to the extent that the district board has provided for other imposition, collection and foreclosure procedures in connection with special levies. Money derived from the imposition of the special levy when collected that is pledged to pay the debt service on the bonds shall be kept separately from other funds of the district. Special levy revenues not pledged to pay debt service on bonds may be used to pay other costs of the district, including costs of formation, administration, operation and maintenance, service or enhanced services.

G. The district board shall specify conditions under which the obligation to pay special levies may be prepaid and permanently satisfied.

H. Special levies against privately owned residential property shall be subject to the following provisions:

(1) the amount of special levy that may be imposed shall not be increased over time by an amount exceeding two percent per year, except that the amount of special levy actually imposed may be increased by up to ten percent as a result of the delinquency or default by the owner of any other parcel within the district, but in no case shall the amount of the special levy imposed exceed the maximum special levy provided in the rate and method of apportionment;

(2) the special levy shall be imposed for a specified time period, after which no further special levy shall be imposed and collected, except that special levies imposed solely to finance the cost of ongoing district services, maintenance or operations or enhanced services may be levied while such services, maintenance or operations or enhanced services are continuing; and

(3) nothing in this subsection shall preclude the establishment of different categories of residential property or changing the amount of the special levies for a parcel whose size or use is changed. A change in the amount of a special levy imposed upon a parcel due to a change in its size or use shall not require voter approval if the method for changing the amount of special levy was approved in the election approving the special levy in sufficient detail to enable the owner of the affected parcel to determine how the change in size or use of the parcel would affect the amount of the special levy.

I. A district's imposition of a special levy shall constitute a lien on the property within the district subject to the special levy, including property acquired by the state or its political subdivisions after imposition of the special levy, which shall be effective during the period in which the special levy is imposed and shall have priority co-equal to the lien of property taxes. A special levy shall be subject to foreclosure by the district at any time after six months following written notice of delinquency to the owner of the real property to which the delinquency applies. The lien shall include delinquencies, penalties and interest thereon at a rate not to exceed the maximum legal rate of interest per year and penalties otherwise applicable for delinquent property taxes, the district's actual costs of foreclosure and any other costs of the district resulting from the delinquency. All rights of redemption applicable to property sold in connection with property tax foreclosures pursuant to the laws of this state shall apply to property sold following foreclosure of a special levy lien. The portion of proceeds of any foreclosure sale necessary to discharge the lien for the special levy shall be deposited in the special bond fund for payment of any obligations secured thereby.

J. No holder of special levy bonds issued pursuant to the Public Improvement District Act may compel any exercise of the taxing power of the district, municipality or county to pay the bonds or the interest on the bonds. Special levy bonds issued pursuant to that act are not a debt of the district, municipality or county, nor is the

payment of special levy bonds enforceable out of any money other than the revenue pledged to the payment of the bonds.

K. Subject to the requirements of this section, a district may issue special levy bonds at such times and in such amounts as the district deems appropriate to carry out a project or projects in phases.

L. Pursuant to this section, the district may issue and sell refunding bonds to refund any special levy bonds of the district authorized by the Public Improvement District Act. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

History: Laws 2001, ch. 305, § 20; 2013, ch. 45, § 9.

ANNOTATIONS

Cross references. — For property tax enforcement provisions, *see* 7-38-48 NMSA 1978 et seq.

The 2013 amendment, effective July 1, 2013, added minimum procedural requirements for the issuance of special levy bonds; added Subsections C and D; and in Paragraph (1) of Subsection H, at the beginning of the sentence, after "the", deleted "maximum" and after "within the district", added the remainder of the sentence.

Applicability. — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1 through 4 and 6 through 10, do not apply to an application for formation of a public improvement district submitted to a governing body prior to January 1, 2014.

Approval of a special levy. — A public improvement district special levy may be approved either by a resolution of the board of directors of the district or by an election. *Glaser v. LeBus*, 2012-NMSC-012, 276 P.3d 959.

5-11-21. Revenue bonds; fees and charges.

A. At any time after the hearing on formation of the district, the district board may hold a hearing on the question of authorizing the district board to issue one or more series of revenue bonds of the district to provide money for any public infrastructure purposes consistent with the general plan.

B. If revenue bonds are approved by resolution, the district board may issue and sell revenue bonds of the district.

C. The revenue bonds may be sold in a public offering or in a negotiated sale; however, if the bonds are to be sold in a public offering, no revenue bonds may be issued by the district unless the revenue bonds receive one of the four highest investment grade ratings by a nationally recognized bond rating agency.

D. The district board may pledge to the payment of its revenue bonds any revenues of the district or revenues to be collected by the municipality or county in trust for the district and returned to the district.

E. The district shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient, together with any money from the sources described in Section 17 [5-11-17 NMSA 1978] of the Public Improvement District Act, to pay when due the principal and interest of all revenue bonds for the payment of which revenue has been pledged. The establishment or revision of any rates, fees and charges shall be identified and noticed concurrently with the annual budget process of the district pursuant to Section 23 [5-11-23 NMSA 1978] of the Public Improvement District Act.

F. If, in the resolution of the district board, the revenues to be pledged are limited to certain types of revenues, only those types of revenues may be pledged and only those revenues shall be maintained.

G. No holder of revenue bonds issued pursuant to the Public Improvement District Act may compel any exercise of the taxing power of the district, municipality or county to pay the bonds or the interest on the bonds. Revenue bonds issued pursuant to that act are not a debt of the district, municipality or county, nor is the payment of revenue bonds enforceable out of any money other than the revenue pledged to the payment of the bonds.

H. Subject to the requirements of this section, a district may issue revenue bonds at such times and in such amounts as the district deems appropriate to carry out a project in phases.

I. Pursuant to this section, the district may issue and sell refunding bonds to refund revenue bonds of the district authorized by the Public Improvement District Act. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

History: Laws 2001, ch. 305, § 21.

5-11-22. Terms of bonds.

For any bonds issued in connection with Section 19, 20 or 21 [5-11-19, 5-11-20 or 5-11-21 NMSA 1978] of the Public Improvement District Act, the district board shall prescribe the denominations of the bonds, the principal amount of each issue and the form of the bonds and shall establish the maturities, which shall not exceed thirty years, interest payment dates and interest rates, whether fixed or variable, not exceeding the maximum rate stated in the notice of the election or the resolution of the district board. The bonds may be sold by competitive bid or negotiated sale for public or private offering at, below or above par. The proceeds of the bonds shall be deposited with the treasurer, or with a trustee or agent designated by the district board, to the credit of the

district to be withdrawn for the purposes provided by the Public Improvement District Act. Pending that use, the proceeds may be invested as determined by the district. The bonds shall be made payable as to both principal and interest solely from revenues of the district, and shall specify the revenues pledged for such purposes, and shall contain such other terms, conditions, covenants and agreements as the district board deems proper. The bonds may be payable from any combination of taxes, levies or revenues of the types described in Sections 19, 20 and 21 of the Public Improvement District Act.

History: Laws 2001, ch. 305, § 22.

5-11-23. District taxes; annual financial estimate; annual financial estimate and budget; certification to local government division.

A. All property taxes for the operation and maintenance expenses of the district shall not exceed an amount equal to three dollars ($3.00) per one thousand dollars ($1,000) of net taxable value for all real and personal property in the district, unless a higher rate is approved by a vote of the qualified electors voting at an election conducted pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978] not less than three years after the date of the formation of the district.

B. Once approved at an election or, in the case of a special levy, by resolution of the district board, the maximum rate of a property tax shall remain in effect until increased or decreased at a subsequent election, and the maximum rate of a special levy shall remain in effect until increased or decreased by resolution of the district board at a subsequent hearing.

C. If a maximum property tax rate is in effect, the district board, on petition of twenty-five percent of the qualified electors, or by the owners of twenty-five percent of the land area of the district, shall call an election pursuant to the provisions of the Local Election Act to reduce the maximum tax rate but not below the lesser of that rate determined by the district board to be necessary to maintain the district's facilities and improvements where the tax was authorized for operation and maintenance, or the actual rate then in effect, but in no event shall the rate be reduced below the rate necessary to satisfy the district's obligations in connection with any outstanding bonds issued pursuant to the Public Improvement District Act.

D. If a maximum special levy is in effect, the district board, on petition of twenty-five percent of the qualified electors, or by the owners of twenty-five percent of the land area of the district, shall hold a hearing to determine whether to reduce the maximum special levy but not below the lesser of that rate determined by the district board to be necessary to maintain the district's facilities and improvements, where the special levy was authorized for operation and maintenance, or the actual rate then in effect, but in no event shall the rate be reduced below the rate necessary to satisfy the district's obligations in connection with any outstanding bonds issued pursuant to the Public Improvement District Act.

E. Upon presentation to the district board of a petition signed by the owners of a majority of the property in the district, the district board shall adopt a resolution to reduce or eliminate the portion of the tax or special levy, beginning the next fiscal year, required for one or more services or enhanced services specified in the petition. Signatures on a petition to reduce or eliminate a tax or special levy shall be valid for a period of sixty days.

F. When levying property tax or imposing a special levy, the district board shall make annual statements and estimates of the operation and maintenance expenses of the district, the costs of public improvements to be financed by the taxes or special levy and the amount of all other expenditures for public infrastructure improvements and enhanced services proposed to be paid from the taxes or special levy and of the amount to be raised to pay general obligation bonds of the district or special levy bonds, all of which shall be provided for by the levy and collection of property taxes on the net taxable value of the real property in the district or by the imposition and collection of special levies. The district board shall file the annual statements and estimates with the clerk. The district board shall publish a notice of the filing of the estimate, shall hold hearings on the portions of the estimate not relating to debt service on general obligation bonds or special levy bonds and shall adopt a budget. The district board, on or before the date set by law for certifying the annual budget of the municipality or county, shall fix, levy and assess the amounts to be raised by property taxes or special levies of the district and shall cause certified copies of the order to be delivered to the local government division of the department of finance and administration. All statutes relating to the levy and collection of property taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, apply to district property taxes and to special levies, except to the extent that the district board has provided for other imposition, collection and foreclosure procedures in connection with special levies.

History: Laws 2001, ch. 305, § 23; 2019, ch. 212, § 198.

ANNOTATIONS

Cross references. — For property taxes in general, *see* Chapter 7, Article 38 NMSA 1978.

The 2019 amendment, effective April 3, 2019, provided that an election called for the purpose of changing the maximum property tax rate be conducted pursuant to the Local Election Act; in Subsection A, after "voting at an election", added "conducted pursuant to the provisions of the Local Election Act"; and in Subsection C, after "shall call an election", added "pursuant to the provisions of the Local Election Act".

5-11-24. Dissolution of district.

A. The district shall be dissolved by the district board by a resolution of the district board upon a determination that each of the following conditions exist:

(1) all improvements owned by the district have been, or provision has been made for all improvements to be, conveyed to the municipality or county in which the district is located;

(2) either the district has no outstanding bond obligations or the municipality or county has assumed all of the outstanding bond obligations of the district; and

(3) all obligations of the district pursuant to any development agreement with the municipality or county have been satisfied.

B. All property in the district that is subject to the lien of district taxes or special levies shall remain subject to the lien for the payment of general obligation bonds and special levy bonds, notwithstanding dissolution of the district. The district shall not be dissolved if any revenue bonds of the district remain outstanding unless an amount of money sufficient, together with investment income thereon, to make all payments due on the revenue bonds either at maturity or prior redemption has been deposited with a trustee or escrow agent and pledged to the payment and redemption of the bonds. The district may continue to operate after dissolution only as needed to collect money and make payments on any outstanding bonds.

History: Laws 2001, ch. 305, § 24.

5-11-25. Limitation of liability.

Neither any member of the board of directors of a district nor any person acting on behalf of the district, while acting within the scope of his authority, shall be subject to any personal liability for any action taken or omitted within that scope of authority.

History: Laws 2001, ch. 305, § 25.

5-11-26. Cumulative authority.

The Public Improvement District Act shall be deemed to provide an additional and alternative method for the doing of things authorized by that act and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing; provided that the issuance of bonds under the provisions of the Public Improvement District Act need not comply with the requirements of any other law applicable to the issuance of bonds, except the Public Securities Limitation of Action Act [6-14-4 to 6-14-7 NMSA 1978], which shall apply.

History: Laws 2001, ch. 305, § 26; 2009, ch. 46, § 4.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, added the exception at the end of the sentence.

Home rule municipality. — The provisions of the Public Improvement District Act, 5-11-1 NMSA 1978 et seq., do not expressly limit the legislative powers of a home rule municipality; thus, such a municipality has the authority to enter into a contract, or development agreement, with a private developer to facilitate the construction of retail business establishments. 2002 Op. Att'y Gen. No. 02-02.

5-11-27. Liberal interpretation.

The Public Improvement District Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes of that act.

History: Laws 2001, ch. 305, § 27.

ANNOTATIONS

Severability. — Laws 2001, ch. 305, § 29 provided for the severability of the act if any part or application is held invalid.

ARTICLE 12
Radio Towers

5-12-1. Amateur radio antennas; limit on regulations.

A. Amateur radio antenna towers constructed prior to the effective date of this section are exempted from subsequent changes in zoning regulations by the municipality or county and may be repaired as required.

B. A municipality or county should reasonably accommodate amateur radio service communications by allowing antenna structures to be erected at heights and dimensions sufficient to accommodate amateur radio service communications, but a municipality or county may regulate amateur radio antennas by requiring amateur radio antennas or support structures to meet screening, setback and placement, construction and health and safety standards. However, the regulation should constitute the minimum practicable regulation to accomplish the local municipality's or county's purpose.

C. As used in this section, "amateur radio antenna" means an antenna structure operated by a federally licensed amateur radio operator for amateur radio activities and does not mean citizens band or commercial antennas.

History: Laws 2002, ch. 90, § 1.

ANNOTATIONS

Effective date of this section. — The phrase "effective date of this section", referred to in Subsection A, means July 1, 2002, the effective date of Laws 2002, ch. 90, § 1.

ARTICLE 13
Convention Center Financing

5-13-1. Short title.

Chapter 5, Article 13 NMSA 1978 may be cited as the "Convention Center Financing Act".

History: Laws 2003, ch. 87, § 1; 2014, ch. 15, § 1.

ANNOTATIONS

Cross references. — For the Civic and Convention Center Funding Act, *see* Chapter 5, Article 14 NMSA 1978.

The 2014 amendment, effective May 21, 2014, added the NMSA chapter and article for the Convention Center Financing Act; and at the beginning of the sentence, changed "This act" to "Chapter 5, Article 13 NMSA 1978".

5-13-2. Definitions.

As used in the Convention Center Financing Act:

A. "convention center" includes a civic center or convention center that includes space for rent by the public for the primary purpose of increasing tourism;

B. "convention center fee" means the fee imposed by a local governmental entity pursuant to the Convention Center Financing Act on vendees for the use of lodging facilities;

C. "local governmental entity" means a qualified municipality or a county authorized by the Convention Center Financing Act to impose convention center fees;

D. "lodging facility" means a hotel, motel or motor hotel, a bed and breakfast facility, an inn, a resort or other facility offering rooms for payment of rent or other consideration;

E. "qualified municipality" means an incorporated municipality or an H class county;

F. "room" means a unit of a lodging facility, such as a hotel room;

G. "vendee" means a person who rents or pays consideration to a vendor for use of a room; and

H. "vendor" means a person or the person's agent who furnishes rooms for occupancy for consideration.

History: Laws 2003, ch. 87, § 2; 2013, ch. 190, § 1; 2014, ch. 15, § 2.

ANNOTATIONS

The 2014 amendment, effective May 21, 2014, changed the definition of "convention center"; and in Subsection A, after "convention center", deleted "and any facility".

The 2013 amendment, effective June 14, 2013, expanded the scope of the Convention Center Financing Act to civic centers and to all municipalities; deleted former Subsection A, which defined "additional municipality" and added a new Subsection A; in Subsection C, after "or a county", deleted "or an additional municipality"; and in Subsection E, after "incorporated municipality", deleted "that has a population of more than seventy thousand but less than one hundred thousand according to the 2000 federal decennial census located in a class A county" and added "or an H class county".

5-13-3. Authorized local governmental entities.

A. The following local governmental entities are authorized to impose convention center fees:

(1) a qualified municipality if the governing body of the qualified municipality has enacted an ordinance to impose a convention center fee; and

(2) a county in which a qualified municipality is located, provided that:

(a) a qualified municipality within the county has enacted an ordinance to impose a convention center fee;

(b) the board of county commissioners of the county has enacted an ordinance to impose a convention center fee;

(c) the qualified municipality and the county have entered into a joint powers agreement pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] to collect the revenue from the convention center fee and to expend the revenue as required in the Convention Center Financing Act; and

(d) the fee shall only apply to lodging facilities located within twenty miles of the corporate limits of the qualified municipality.

B. Two qualified municipalities may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act to collect revenue from a convention center fee and to expend the revenue as required by the Convention Center Financing Act if the municipalities:

(1) are located in the same county within twenty miles of the corporate limits of each other; and

(2) have each enacted an ordinance to impose a convention center fee.

History: Laws 2003, ch. 87, § 3; 2013, ch. 190, § 2.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, expanded the scope of the Convention Center Financing Act to civic centers and to all municipalities; deleted former Subsection C, which provided for the imposition of convention center fees by additional municipalities within twenty miles of a qualified municipality; and added Subsection B.

5-13-4. Imposition of convention center fee; use of proceeds.

A. A local governmental entity may impose by ordinance a fee on the use of a room within a lodging facility within the local governmental entity. The fee may be referred to as the "convention center fee". The amount of the convention center fee shall not exceed two dollars fifty cents ($2.50) per room for each day the room is occupied by a vendee.

B. A convention center fee imposed pursuant to this section shall be reviewed by the governing body of the local governmental entity annually. The local governmental entity shall adjust the amount of the convention center fee by ordinance to result in an amount of revenue equivalent to the following percentage of the actual operating and maintenance costs for the preceding fiscal year of the convention center to which the revenue from the fee is dedicated pursuant to Subsection E of this section:

(1) through fiscal year 2025, one hundred twenty percent;

(2) for fiscal year 2026, one hundred percent; and

(3) for fiscal year 2027 and subsequent fiscal years, a percentage that is two percent less than the prior fiscal year.

C. If convention center fees imposed are subject to the provisions of a joint powers agreement between two local governmental entities, the local governmental entities that are parties to the joint powers agreement shall jointly determine changes in the rate of convention center fees to be imposed.

D. A qualified municipality shall not decrease the convention center fee while revenue bonds to which the revenue of the convention center fees is pledged remain outstanding.

E. A local governmental entity shall dedicate the revenue from the convention center fee as provided in this subsection at the time that the ordinance imposing the fee is enacted. A local governmental entity that is a party to a joint powers agreement regarding the imposition of a convention center fee shall enact an ordinance that includes the provisions stated in the joint powers agreement and limit the use of the revenue to the following:

(1) costs of acquisition of land for and the design, construction, equipping, furnishing, landscaping, operation and maintenance of a convention center located within the qualified municipality;

(2) payments of principal, interest or prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by the Convention Center Financing Act; and

(3) costs of collecting and otherwise administering the convention center fee; provided that administration costs shall not be paid until all required payments on the revenue bonds issued pursuant to the Convention Center Financing Act are made and that no more than five percent of the revenue collected in any fiscal year shall be used to pay administration costs.

History: Laws 2003, ch. 87, § 4.

5-13-5. Exemptions.

The convention center fee shall not apply:

A. if a vendee:

(1) has been a permanent resident of the lodging facility for a period of at least fifteen consecutive days; or

(2) enters into or has entered into a written agreement for a room at a lodging facility for a period of at least fifteen consecutive days;

B. if the local governmental entity by ordinance exempts lodging facilities whose maximum daily room charge is less than the amount stated in the ordinance;

C. to rooms at institutions of the federal government, the state or any political subdivision thereof;

D. to rooms at religious, charitable, educational or philanthropic institutions or other nonprofit organizations, including rooms at summer camps operated by such institutions;

E. to clinics, hospitals or other medical facilities;

F. to privately owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill; or

G. if the vendor does not offer at least three rooms at its lodging facility. The convention center fee shall be imposed on the lodging facilities of a vendor that owns three or more lodging facilities within local governmental entities that have imposed a convention center fee, regardless of the number of rooms available for occupancy.

History: Laws 2003, ch. 87, § 5; 2004, ch. 98, § 1.

ANNOTATIONS

The 2004 amendment, effective May 19, 2004, amended Subsection A to change "thirty" to "fifteen" in both paragraphs; amended Subsection B to delete "consideration paid by a vendee is less than two dollars ($2.00) a day" and inserted in its place "local governmental entity by ordinance exempts lodging facilities whose maximum daily room charge is less than the amount stated in the ordinance"; and amended Subsection D to add "or other nonprofit organizations".

5-13-6. Collection of convention center fee.

A. A vendor providing rooms in a local governmental entity that has imposed a convention center fee shall collect the proceeds on behalf of the local governmental entity and shall act as a trustee for the fees collected.

B. The convention center fee shall be collected from vendees in accordance with the ordinance imposing the convention center fee and shall be accounted for separately from the rent fixed by the vendor for rooms.

History: Laws 2003, ch. 87, § 6.

5-13-7. Audit of vendors.

A local governmental entity assessing a convention center fee shall include verification of the collection of the correct convention center fee in any audit of a vendor conducted pursuant to Section 3-38-17.1 NMSA 1978.

History: Laws 2003, ch. 87, § 7.

5-13-8. Financial reporting.

The chief executive officer of a local governmental entity assessing a convention center fee shall report to the local government division of the department of finance and administration on a quarterly basis any expenditure of convention center fee funds.

History: Laws 2003, ch. 87, § 8.

5-13-9. Enforcement.

A. An action to enforce the Convention Center Financing Act may be brought by:

(1) the attorney general or the district attorney in the county of jurisdiction; or

(2) a vendor who is collecting the proceeds of a convention center fee in the county of jurisdiction.

B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Convention Center Financing Act.

C. The court shall award costs and reasonable attorney fees to the prevailing party in a court action to enforce the provisions of the Convention Center Financing Act.

History: Laws 2003, ch. 87, § 9.

5-13-10. Collection of delinquencies.

A. A local governmental entity shall by ordinance provide that a vendor is liable for the payment of the proceeds of convention center fees that the vendor failed to remit to the local governmental entity. Failure of the vendor to collect the fee is not cause for the local governmental entity to forgive convention center fees due and owed by the vendor. The ordinance shall provide for a civil penalty for each occurrence of failure to remit convention center fees in an amount equal to the greater of ten percent of the amount that was not duly remitted to the local governmental entity or one hundred dollars ($100).

B. The local governmental entity may bring an action in the district court of the judicial district in which the local governmental entity is located for collection of amounts due, including without limitation, penalties on the amounts due on the unpaid principal at a rate not exceeding one percent per month, the costs of collection and reasonable attorney fees incurred in connection with the court action to collect the unpaid convention center fees.

History: Laws 2003, ch. 87, § 10.

5-13-11. Lien for convention center fee; payment; certificate of lien.

A. The convention center fee assessed by a local governmental entity constitutes a lien in favor of that local governmental entity upon the personal and real property of the vendor providing lodging facilities in that local governmental entity. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be determined from the date of filing.

B. Under process or order of court, a person shall not sell the property of a vendor without first ascertaining from the clerk or treasurer of the local governmental entity in which the vendor is located the amount of any convention center fees due. Convention center fees due the local governmental entity shall be paid from the proceeds of the sale before payment is made to the judgment creditor or any other person with a claim on the sale proceeds.

C. The clerk or treasurer of the local governmental entity shall furnish a certificate of lien to a person applying for a certificate showing the amount of all liens in the records of the local governmental entity against any vendor pursuant to the Convention Center Financing Act.

History: Laws 2003, ch. 87, § 11.

5-13-12. Ordinance requirements.

The ordinance imposing a convention center fee or any ordinance amending the imposition of a convention center fee shall:

A. state:

(1) the rate of the convention center fee to be imposed;

(2) the times, place and method for the payment of the convention center fee proceeds to the local governmental entity;

(3) the accounts and other records to be maintained in connection with the convention center fee;

(4) a procedure for making refunds and resolving disputes relating to the convention center fee;

(5) the procedure for preservation and destruction of records and for their inspection and investigation;

(6) vendor audit requirements;

(7) applicable civil and criminal penalties; and

(8) a procedure of liens, distraint and sales to satisfy those liens; and

B. provide other rights, privileges, powers, immunities and other details relating to the collection of the convention center fee and the remittance of the proceeds thereof to the local governmental entity.

History: Laws 2003, ch. 87, § 12.

5-13-13. Revenue bonds.

A. Revenue bonds may be issued at any time by a qualified municipality that has imposed a convention center fee to defray wholly or in part the costs authorized in Paragraph (1) of Subsection E of Section 4 [5-13-4 NMSA 1978] of the Convention Center Financing Act. The revenue bonds may be payable from and payment may be secured by a pledge of and lien on the revenue derived from:

(1) the proceeds of the convention center fee of the qualified municipality and the proceeds of the convention center fee of a local governmental entity that has entered into a joint powers agreement with the qualified municipality to impose a convention center fee, the proceeds of which shall be dedicated to the payment of revenue bonds for a convention center in the qualified municipality;

(2) a convention center to which the bonds pertain, after provision is made for the payment of the operation and maintenance expenses of the convention center;

(3) that portion of the proceeds of the occupancy tax of the qualified municipality available for payment of revenue bonds pursuant to Paragraph (1) of Subsection B of Section 3-38-23 NMSA 1978;

(4) any other legal available revenues of the qualified municipality; or

(5) a combination of revenues from the sources designated in Paragraphs (1) through (4) of this subsection.

B. The bonds shall bear interest at a rate or rates as authorized in the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], and the first interest payment may be for any period authorized in the Public Securities Act.

C. Except as otherwise provided in the Convention Center Financing Act, revenue bonds authorized in that act shall be issued in accordance with the provisions of Sections 3-31-2 through 3-31-6 NMSA 1978.

History: Laws 2003, ch. 87, § 13.

5-13-14. Refunding bonds.

A. A qualified municipality having issued revenue bonds as authorized in the Convention Center Financing Act may issue refunding revenue bonds payable from

pledged revenues authorized for the payment of revenue bonds at the time of the refunding or at the time of the issuance of the bonds being refunded as the governing body of the qualified municipality may determine, notwithstanding that the revenue sources or the pledge of such revenues or both are thereby modified.

B. Refunding bonds may be issued for the purpose of refinancing, paying and discharging all or a part of outstanding bonds of any one or more outstanding bond issues:

(1) for the acceleration, deceleration or other modification of the payment of the obligations, including any capitalization of any interest 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 or otherwise concerning the outstanding bonds; or

(4) for any combination of the purposes specified in Paragraphs (1) through (3) of this subsection.

C. The interest on a bond refunded shall not be increased to a rate in excess of the rate authorized in the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978] and shall be paid as authorized in that act.

D. Refunding bonds for any other purpose permitted by the Convention Center Financing Act may be issued separately or issued in combination in one series or more.

E. Except as otherwise provided in the Convention Center Financing Act, refunding bonds authorized in that act shall be issued in accordance with the provisions of Sections 3-31-10 and 3-31-11 NMSA 1978.

History: Laws 2003, ch. 87, § 14.

5-13-15. Penalties.

A local governmental entity shall by ordinance provide for penalties by creating a misdemeanor and imposing a fine of not more than five hundred dollars ($500) or imprisonment for not more than ninety days or both for a violation by any person of the provisions of the convention center fee ordinance for a failure to pay the fee or to remit the proceeds thereof to the local governmental entity.

History: Laws 2003, ch. 87, § 15.

ARTICLE 13A
Sports and Recreation Facility Financing Act

5-13A-1. Short title.

This act [5-13A-1 to 5-13A-14 NMSA 1978] may be cited as the "Sports and Recreation Facility Financing Act".

History: Laws 2008, ch. 76, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2008, ch. 76, § 15 contained an emergency clause and was approved February 29, 2008.

5-13A-2. Definitions.

As used in the Sports and Recreation Facility Financing Act:

A. "local governing body" means the governing body of a qualified municipality authorized pursuant to the provisions of the Sports and Recreation Facility Financing Act to impose sports and recreation facility fees;

B. "lodging facility" means a hotel, motel or motor hotel; a bed and breakfast facility; an inn; or any other facility offering rooms for payment of rent or other consideration;

C. "qualified municipality" means an incorporated municipality with a population of more than one thousand but less than one thousand one hundred that is located in a class B county with a population of greater than fourteen thousand but less than fifteen thousand according to the most recent federal decennial census;

D. "room" means a unit of a lodging facility, such as a hotel room;

E. "sports and recreation facility fee" means the fee imposed by a local governing body pursuant to the Sports and Recreation Facility Financing Act on vendees for the use of lodging facilities;

F. "vendee" means a person who rents or pays consideration to a vendor for use of a room; and

G. "vendor" means a person or the person's agent who furnishes rooms for occupancy for consideration.

History: Laws 2008, ch. 76, § 2.

ANNOTATIONS

Emergency clauses. — Laws 2008, ch. 76, § 15 contained an emergency clause and was approved February 29, 2008.

5-13A-3. Authorization; sports and recreation facility fee imposition; local governing body.

A local governing body may impose a sports and recreation facility fee if the local governing body has enacted an ordinance to impose a sports and recreation facility fee and the ordinance has been approved by referendum as required in the Sports and Recreation Facility Financing Act.

History: Laws 2008, ch. 76, § 3.

ANNOTATIONS

Emergency clauses. — Laws 2008, ch. 76, § 15 contained an emergency clause and was approved February 29, 2008.

5-13A-4. Imposition of sports and recreation facility fee; use of proceeds; referendum.

A. A local governing body may impose by ordinance a fee on the use of a room located within a qualified municipality. The fee may be referred to as the "sports and recreation facility fee". The amount of the sports and recreation facility fee shall not exceed two and four-tenths percent of the gross room charge for each day the room is occupied by a vendee. The sports and recreation facility fee shall be imposed for a period of not more than twenty years from the effective date of the ordinance imposing the sports and recreation facility fee.

B. An ordinance imposing the sports and recreation facility fee shall go into effect only after a referendum on the question of imposing the sports and recreation facility fee is held and a majority of the qualified electors voting on the question votes in favor of imposition of the sports and recreation facility fee.

C. The local governing body shall adopt a resolution calling for an election, to be held within seventy-five days of the date the ordinance is adopted, on the question of imposing the sports and recreation facility fee.

D. The question of imposing the sports and recreation facility fee may be submitted to the voters as a separate question at a general election or at a special election called for that purpose by the local governing body. If a special election is called, it shall be called, conducted and canvassed in substantially the same manner as provided by law for municipal elections. If a majority of the voters voting on the question approves the

question to impose the sports and recreation facility fee, the ordinance shall become effective in accordance with applicable law. If the question of imposing the sports and recreation facility fee fails, the local governing body shall not again propose the imposition of the sports and recreation facility fee for a period of one year from the date of the election.

E. The question of imposing the sports and recreation facility fee shall include the uses for which the fee will be used.

F. A sports and recreation facility fee imposed pursuant to this section shall be reviewed by the local governing body annually.

G. A local governing body shall not decrease the sports and recreation facility fee while revenue bonds to which the revenue of the sports and recreation facility fee is pledged remain outstanding.

H. A local governing body shall dedicate the revenue from the sports and recreation facility fee at the time that the ordinance imposing the fee is enacted and limit the use of the revenue generated by the fee to the following:

(1) the design, construction, equipping, furnishing, landscaping and other costs associated with the development of a sports and recreation facility located within the qualified municipality;

(2) payments of principal, interest or prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by the Sports and Recreation Facility Financing Act, including payments into a sinking fund or reserve fund required by the revenue bond ordinance;

(3) costs of collecting and otherwise administering the sports and recreation facility fee; provided that the administrative costs shall not be paid if there are current payments due pursuant to Paragraph (2) of this subsection, and provided that no more than ten percent of the revenue collected in a fiscal year shall be used to pay administrative costs;

(4) operation costs of the sports and recreation facility designed, constructed, equipped, furnished, landscaped or otherwise developed with funding generated pursuant to the Sports and Recreation Facility Financing Act; and

(5) payments into a capital reserve fund established for the future payment for capital maintenance and improvements and equipment replacement costs of the sports and recreation facility located within the qualified municipality; provided that no payments shall be made pursuant to this paragraph if there are current payments due pursuant to Paragraph (2) of this subsection.

History: Laws 2008, ch. 76, § 4.

ANNOTATIONS

Emergency clauses. — Laws 2008, ch. 76, § 15 contained an emergency clause and was approved February 29, 2008.

5-13A-5. Exceptions.

The sports and recreation facility fee shall not apply:

A. if the local governing body by ordinance exempts lodging facilities whose maximum daily room charge is less than an amount stated in the ordinance;

B. to rooms at institutions of the federal government, the state or any political subdivision of the federal government or the state;

C. to rooms at religious, charitable, educational or philanthropic institutions or other nonprofit organizations, including rooms at summer camps operated by such organizations;

D. to clinics, hospitals or other medical facilities;

E. to privately owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill; or

F. if the vendor does not offer at least three rooms at the vendor's lodging facility.

History: Laws 2008, ch. 76, § 5.

ANNOTATIONS

Emergency clauses. — Laws 2008, ch. 76, § 15 contained an emergency clause and was approved February 29, 2008.

5-13A-6. Collection of sports and recreation facility fee.

A. A vendor providing rooms in a qualified municipality in which the local governing body has imposed a sports and recreation facility fee shall collect the fee on behalf of the local governing body and shall remit the fees collected to the local governing body on or before the twenty-fifth day of the month following the month in which the fees are collected along with the occupancy tax also collected.

B. The sports and recreation facility fee shall be collected by a vendor from vendees as a room surcharge at the time that rent is collected by the vendor and shall be accounted for separately from the rent fixed by the vendor for the rooms.

History: Laws 2008, ch. 76, § 6.

ANNOTATIONS

Emergency clauses. — Laws 2008, ch. 76, § 15 contained an emergency clause and was approved February 29, 2008.

5-13A-7. Audit of vendors.

A local governing body imposing a sports and recreation facility fee shall include verification of the collection of the correct sports and recreation facility fee in any audit of a vendor conducted pursuant to Section 3-38-17.1 NMSA 1978.

History: Laws 2008, ch. 76, § 7.

ANNOTATIONS

Emergency clauses. — Laws 2008, ch. 76, § 15 contained an emergency clause and was approved February 29, 2008.

5-13A-8. Financial reporting.

The chief financial officer of a local governing body assessing a sports and recreation facility fee shall report to the local government division of the department of finance and administration on a quarterly basis any expenditure of sports and recreation facility funds.

History: Laws 2008, ch. 76, § 8.

ANNOTATIONS

Emergency clauses. — Laws 2008, ch. 76, § 15 contained an emergency clause and was approved February 29, 2008.

5-13A-9. Enforcement.

An action to enforce the Sports and Recreation Facility Financing Act may be brought by:

A. the municipal attorney of the qualified municipality, or a person designated by the qualified municipality, as approved by the local governing body; or

B. a vendor who is collecting the proceeds of a sports and recreation facility fee in the county in which the qualified municipality is located.

History: Laws 2008, ch. 76, § 9.

ANNOTATIONS

Emergency clauses. — Laws 2008, ch. 76, § 15 contained an emergency clause and was approved February 29, 2008.

5-13A-10. Collection of delinquencies.

A. A local governing body shall by ordinance provide that a vendor is liable for the payment of the proceeds of sports and recreation facility fees that the vendor failed to remit to the local governing body. Failure of the vendor to collect the fee is not cause for the local governing body to forgive sports and recreation facility fees due and owed by the vendor. The ordinance shall provide for a civil penalty for each occurrence of failure to remit sports and recreation facility fees in the amount due. The civil penalty shall be an amount equal to the greater of ten percent of the amount that was not duly remitted to the local governing body or one hundred dollars ($100).

B. The local governing body may bring an action in the district court of the judicial district in which the qualified municipality is located for collection of amounts due, including, without limitation, interest on the amounts due on the unpaid principal at a rate not exceeding one percent per month, the costs of collection and reasonable attorney fees incurred in connection with the court action to collect the delinquent sports and recreation facility fees.

History: Laws 2008, ch. 76, § 10.

ANNOTATIONS

Emergency clauses. — Laws 2008, ch. 76, § 15 contained an emergency clause and was approved February 29, 2008.

5-13A-11. Lien for sports and recreation facility fee payment; certificate of lien.

A. The sports and recreation facility fee assessed by a local governing body constitutes a lien in favor of that local governing body upon the personal and real property of the vendor providing lodging facilities in that qualified municipality. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978.

B. Under process or order of the court, a person shall not sell the property of a vendor without first ascertaining from the clerk or treasurer of the qualified municipality in which the vendor is located the amount of sports and recreation facility fees due. Sports and recreation facility fees due to the local governing body shall be paid from the proceeds of the sale consistent with the lien priorities set forth in Sections 3-36-1 through 3-36-7 NMSA 1978.

C. The clerk or treasurer of the qualified municipality shall furnish a certificate of lien to a person applying for a certificate showing the amount of all liens in the records of the

qualified municipality against any vendor pursuant to the Sports and Recreation Facility Financing Act.

History: Laws 2008, ch. 76, § 11.

ANNOTATIONS

Emergency clauses. — Laws 2008, ch. 76, § 15 contained an emergency clause and was approved February 29, 2008.

5-13A-12. Ordinance requirements.

The ordinance imposing a sports and recreation facility fee or any ordinance amending the imposition of a sports and recreation facility fee:

A. shall state:

(1) the rate of the sports and recreation facility fee to be imposed;

(2) the time, place and method for the payment of the sports and recreation facility fee proceeds to the local governing body;

(3) the accounts and other records to be maintained in connection with the sports and recreation facility fee;

(4) a procedure for making refunds and resolving disputes relating to the sports and recreation facility fee;

(5) the procedures for preservation, destruction, inspection and investigation of records;

(6) vendor audit requirements;

(7) applicable civil penalties;

(8) a procedure for liens and sales to satisfy those liens;

(9) that the ordinance is not effective until the imposition of the sports and recreation facility fee has been approved pursuant to a referendum in which a majority of voters voting within the qualified municipality votes in favor of imposition of the sports and recreation facility fee; and

(10) that the sports and recreation facility fee shall be imposed for a period not exceeding twenty years from the effective date of the ordinance imposing the sports and recreation facility fee; and

B. shall provide other rights, privileges, powers, immunities and details relating to the collection of the sports and recreation facility fee and the remittance of the proceeds of that fee to the local governing body.

History: Laws 2008, ch. 76, § 12.

ANNOTATIONS

Emergency clauses. — Laws 2008, ch. 76, § 15 contained an emergency clause and was approved February 29, 2008.

5-13A-13. Revenue bonds.

A. Revenue bonds may be issued at any time by a qualified municipality that has imposed a sports and recreation facility fee to defray wholly or in part the costs authorized by the Sports and Recreation Facility Financing Act. The revenue bonds may be payable from, and payment may be secured by, a pledge of and lien on the revenue derived from:

(1) the proceeds of the sports and recreation facility fee of the qualified municipality dedicated to the payment of revenue bonds for a sports and recreation facility in the qualified municipality;

(2) a sports and recreation facility to which the bonds pertain, after provision is made for the payment of the operation and maintenance expenses of the sports and recreation facility;

(3) that portion of the proceeds of the occupancy tax of the qualified municipality available for payment of revenue bonds pursuant to Section 3-38-23 NMSA 1978;

(4) any other legal available revenues of the qualified municipality; or

(5) a combination of revenues from the sources designated in this subsection.

B. The bonds shall bear interest at a rate or rates as authorized in the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], and the first interest payment may be for any period authorized in the Public Securities Act.

C. Except as otherwise provided in the Sports and Recreation Facility Financing Act, revenue bonds authorized pursuant to that act shall be issued in accordance with the provisions of Sections 3-31-2 through 3-31-6 NMSA 1978.

History: Laws 2008, ch. 76, § 13.

ANNOTATIONS

Emergency clauses. — Laws 2008, ch. 76, § 15 contained an emergency clause and was approved February 29, 2008.

5-13A-14. Refunding bonds.

A. A qualified municipality having issued revenue bonds may issue refunding bonds payable from pledged revenues authorized for the payment of the revenue bonds at the time of the refunding or at the time of the issuance of the bonds being refunded, as the local governing body may determine, regardless of whether the revenue sources or the pledge of the revenues or both are modified at the time of the refunding.

B. Refunding bonds may be issued for the purpose of refinancing, paying and discharging all or a part of outstanding bonds of one or more outstanding bond issues:

(1) for the acceleration, deceleration or other modification of the payment of the obligations, including capitalization of interest that is 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 or otherwise concerning the outstanding bonds; or

(4) for any combination of the purposes set forth in this subsection.

C. The interest on a bond refunded shall not be increased to a rate in excess of the rate authorized in the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978] and shall be paid as authorized in that act.

D. Refunding bonds for any other purpose permitted by the Sports and Recreation Facility Financing Act may be issued separately or issued in combination in one series or more.

E. Except as otherwise provided in the Sports and Recreation Facility Financing Act, refunding bonds authorized in that act shall be issued in accordance with the provisions of Sections 3-31-10 and 3-31-11 NMSA 1978.

History: Laws 2008, ch. 76, § 14.

ANNOTATIONS

Emergency clauses. — Laws 2008, ch. 76, § 15 contained an emergency clause and was approved February 29, 2008.

ARTICLE 14
Civic and Convention Center Funding

5-14-1. Short title.

This act [5-14-1 to 5-14-15 NMSA 1978] may be cited as the "Civic and Convention Center Funding Act".

History: Laws 2003, ch. 374, § 1.

ANNOTATIONS

Cross references. — For the Convention Center Financing Act, *see* 5-13-1 NMSA 1978.

5-14-2. Definitions.

As used in the Civic and Convention Center Funding Act:

A. "convention center fee" means the fee imposed by a local government entity pursuant to the Civic and Convention Center Funding Act on vendees for the use of lodging facilities;

B. "county" means a county within which a qualified municipality is located;

C. "local governmental entity" means a qualified municipality or a county authorized by the Civic and Convention Center Funding Act to impose convention center fees;

D. "lodging facility" means a hotel, motel or motor hotel, a bed and breakfast facility, an inn, a resort or other facility offering rooms for payment of rent or other consideration;

E. "qualified municipality" means an incorporated municipality that has a population of more than fifty thousand but less than seventy thousand according to the most recent federal decennial census and that is located in a class A county;

F. "room" means a unit of a lodging facility, such as a hotel room;

G. "vendee" means a person who rents or pays consideration to a vendor for use of a room; and

H. "vendor" means a person or his agent who furnishes rooms for occupancy for consideration.

History: Laws 2003, ch. 374, § 2.

5-14-3. Authorized local governmental entities.

The following local governmental entities are authorized to impose a convention center fee:

A. a qualified municipality if the governing body of the qualified municipality has by resolution authorized the development and construction of a civic and convention center within the qualified municipality; and

B. a county, provided that:

(1) a qualified municipality within the county has enacted an ordinance to impose a convention center fee; and

(2) the qualified municipality and the county have entered into a joint powers agreement pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] to collect the revenue from the convention center fee and to expend the revenue as required in the Civic and Convention Center Funding Act.

History: Laws 2003, ch. 374, § 3.

5-14-4. Imposition of convention center fee; use of proceeds.

A. A local governmental entity that has met the requirements of Section 5-14-3 NMSA 1978 may impose by ordinance a fee on the use of a room at a lodging facility within the local governmental entity; provided that a fee imposed by a county shall only apply to lodging facilities located within twenty miles of the corporate limits of the qualified municipality. The fee may be referred to as the "convention center fee". The amount of the convention center fee shall not exceed two percent of the gross room revenue for each day the room is occupied by a vendee. The convention center fee may be imposed in increments and, pursuant to Subsection D of this section, may be decreased in increments.

B. The convention center fee shall be imposed only for the period necessary for payment of principal and interest on revenue bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed thirty years from the date of the ordinance imposing the fee.

C. A local governmental entity shall dedicate the revenue from the convention center fee at the time that the ordinance imposing the fee is enacted and limit the use of the revenue to the following:

(1) the design, construction, equipping, furnishing, landscaping and other costs associated with the development of a civic and convention center and adjoining parking garage located within the qualified municipality;

(2) payments of principal, interest or prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by the Civic and Convention Center Funding Act, including payments into any sinking fund or reserve fund required by the revenue bond ordinance;

(3) costs of collecting and otherwise administering the convention center fee; provided that administration costs shall not be paid if there are current payments due pursuant to Paragraph (2) of this subsection and that no more than ten percent of the revenue collected in any fiscal year shall be used to pay administration costs;

(4) operation costs of the civic and convention center and adjoining parking garage located within the qualified municipality; provided that no such costs shall be paid if there are current payments due pursuant to Paragraph (2) of this subsection; and

(5) payments into a capital reserve fund established for the future payment for capital maintenance and improvements and equipment replacement costs of the civic and convention center and adjoining parking garage located within the qualified municipality; provided that:

(a) no payments shall be made pursuant to this paragraph if there are current payments due pursuant to Paragraph (2) of this subsection; and

(b) at least once every five years, the local governmental entity shall compare the amount of money in the fund with the expected future expenditures from the fund and decide if the convention center fee can be reduced pursuant to Subsection D of this section.

D. A local governmental entity may decrease the rate of a convention center fee if:

(1) all required payments have been made pursuant to Subsection C of this section and the required levels of and estimated payments from any reserve fund, sinking fund or capital reserve fund can be sustained at a decreased rate;

(2) the decreased fee will not otherwise directly or indirectly impair outstanding revenue bonds issued under Section 5-14-13 NMSA 1978; and

(3) the local government division of the department of finance and administration finds that the requirements of Paragraphs (1) and (2) of this subsection have been satisfied and otherwise approves the fee decrease.

History: Laws 2003, ch. 374, § 4; 2004, ch. 97, § 1.

ANNOTATIONS

The 2004 amendment, effective March 9, 2004, amended Subsection A to add the last sentence, deleted Subsection C, redesignated Subsection D as Subsection C, amended

Subsection C to add the language after the comma in Paragraph (2), deleted from Paragraph (3) "until all required payments on revenue bonds issued pursuant to the Civic and Convention Center Funding Act are made" and insert in its place "if there are current payments due pursuant to Paragraph (2) of this subsection", added Paragraphs (4) and (5) and added Subsection D.

5-14-5. Exemptions.

The convention center fee shall not apply:

A. if a vendee:

(1) has been a permanent resident of the lodging facility for a period of at least thirty consecutive days; or

(2) enters into or has entered into a written agreement for a room at a lodging facility for a period of at least thirty consecutive days;

B. if the consideration paid by a vendee is less than two dollars ($2.00) a day;

C. to rooms at institutions of the federal government, the state or any political subdivision thereof;

D. to rooms at religious, charitable, educational or philanthropic institutions, including rooms at summer camps operated by such institutions;

E. to clinics, hospitals or other medical facilities;

F. to privately owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill; or

G. if the vendor does not offer at least three rooms at its lodging facility. The convention center fee shall be imposed on the lodging facilities of a vendor that owns three or more lodging facilities within local governmental entities that have imposed a convention center fee, regardless of the number of rooms available for occupancy.

History: Laws 2003, ch. 374, § 5.

5-14-6. Collection of convention center fee.

A. A vendor providing rooms within a local governmental entity that has imposed a convention center fee shall collect the proceeds on behalf of the local governmental entity and shall act as a trustee for the fees collected.

B. The convention center fee shall be collected from vendees in accordance with the ordinance imposing the convention center fee and shall be accounted for separately from the rent fixed by the vendor for rooms.

History: Laws 2003, ch. 374, § 6.

5-14-7. Audit of vendors.

A local governmental entity imposing a convention center fee shall include verification of the collection of the correct convention center fee in any audit of a vendor conducted pursuant to Section 3-38-17.1 NMSA 1978.

History: Laws 2003, ch. 374, § 7.

5-14-8. Financial reporting.

The chief executive officer of a local governmental entity imposing a convention center fee shall report to the local government division of the department of finance and administration on a quarterly basis any expenditure of convention center fee funds.

History: Laws 2003, ch. 374, § 8.

5-14-9. Enforcement.

A. An action to enforce the Civic and Convention Center Funding Act may be brought by:

(1) the attorney general or the district attorney in the county of jurisdiction; or

(2) a vendor who is collecting the proceeds of a convention center fee in the county of jurisdiction.

B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Civic and Convention Center Funding Act.

C. The court shall award costs and reasonable attorney fees to the prevailing party in a court action to enforce the provisions of the Civic and Convention Center Funding Act.

History: Laws 2003, ch. 374, § 9.

5-14-10. Collection of delinquencies.

A. A local governmental entity shall by ordinance provide that a vendor is liable for the payment of the proceeds of convention center fees that the vendor failed to remit to the local governmental entity. Failure of the vendor to collect the fee is not cause for the local governmental entity to forgive convention center fees due and owed by the vendor. The ordinance shall provide for a civil penalty for each occurrence of failure to remit convention center fees in an amount equal to the greater of ten percent of the amount that was not duly remitted to the local governmental entity or one hundred dollars ($100).

B. The local governmental entity may bring an action in the district court of the judicial district in which the local governmental entity is located for collection of amounts due, including without limitation, penalties on the amounts due on the unpaid principal at a rate not exceeding one percent per month, the costs of collection and reasonable attorney fees incurred in connection with the court action to collect the unpaid convention center fees.

History: Laws 2003, ch. 374, § 10.

5-14-11. Lien for convention center fee; payment; certificate of lien.

A. The convention center fee assessed by a local governmental entity constitutes a lien in favor of that local governmental entity upon the personal and real property of the vendor providing lodging facilities in that local governmental entity. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be determined from the date of filing.

B. Under process or order of court, a person shall not sell the property of a vendor without first ascertaining from the clerk or treasurer of the local governmental entity in which the vendor is located the amount of any convention center fees due. Convention center fees due the local governmental entity shall be paid from the proceeds of the sale before payment is made to the judgment creditor or any other person with a claim on the sale proceeds.

C. The clerk or treasurer of the local governmental entity shall furnish a certificate of lien to a person applying for a certificate showing the amount of all liens in the records of the local governmental entity against any vendor pursuant to the Civic and Convention Center Funding Act.

History: Laws 2003, ch. 374, § 11.

5-14-12. Ordinance requirements.

The ordinance imposing a convention center fee or any ordinance amending the imposition of a convention center fee shall:

A. state:

(1) the rate of the convention center fee to be imposed;

(2) the times, place and method for the payment of the convention center fee proceeds to the local governmental entity;

(3) the accounts and other records to be maintained in connection with the convention center fee;

(4) a procedure for making refunds and resolving disputes relating to the convention center fee;

(5) the procedure for preservation and destruction of records and for their inspection and investigation;

(6) vendor audit requirements;

(7) applicable civil and criminal penalties; and

(8) a procedure of liens, distraint and sales to satisfy those liens; and

B. provide other rights, privileges, powers, immunities and other details relating to the collection of the convention center fee and the remittance of the proceeds to the local governmental entity.

History: Laws 2003, ch. 374, § 12.

5-14-13. Revenue bonds.

A. Revenue bonds may be issued at any time by a qualified municipality that has imposed a convention center fee to defray wholly or in part the costs authorized in Paragraph (1) of Subsection C of Section 5-14-4 NMSA 1978. The revenue bonds may be payable from and payment may be secured by a pledge of and lien on the revenue derived from:

(1) the proceeds of the convention center fee of the qualified municipality and the proceeds of the convention center fee of a county that has entered into a joint powers agreement with the qualified municipality to impose a convention center fee, the proceeds of which shall be dedicated to the payment of revenue bonds for a civic and convention center in the qualified municipality;

(2) a civic and convention center to which the bonds pertain, after provision is made for the payment of the operation and maintenance expenses of the civic and convention center;

(3) that portion of the proceeds of the occupancy tax of the qualified municipality available for payment of revenue bonds pursuant to Paragraph (1) of Subsection B of Section 3-38-23 NMSA 1978;

(4) any other legal available revenues of the qualified municipality; or

(5) a combination of revenues from the sources designated in Paragraphs (1) through (4) of this subsection.

B. The bonds shall bear interest at a rate or rates as authorized in the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], and the first interest payment may be for any period authorized in the Public Securities Act.

C. Except as otherwise provided in the Civic and Convention Center Funding Act, revenue bonds authorized in that act shall be issued in accordance with the provisions of Sections 3-31-2 through 3-31-6 NMSA 1978.

History: Laws 2003, ch. 374, § 13; 2004, ch. 97, § 2.

5-14-14. Refunding bonds.

A. A qualified municipality having issued revenue bonds as authorized in the Civic and Convention Center Funding Act may issue refunding revenue bonds payable from pledged revenues authorized for the payment of revenue bonds at the time of the refunding or at the time of the issuance of the bonds being refunded as the governing body of the qualified municipality may determine, notwithstanding that the revenue sources or the pledge of such revenues or both are thereby modified.

B. Refunding bonds may be issued for the purpose of refinancing, paying and discharging all or a part of outstanding bonds of any one or more outstanding bond issues:

(1) for the acceleration, deceleration or other modification of the payment of the obligations, including any capitalization of any interest 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 or otherwise concerning the outstanding bonds; or

(4) for any combination of the purposes specified in Paragraphs (1) through (3) of this subsection.

C. The interest on a bond refunded shall not be increased to a rate in excess of the rate authorized in the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978] and shall be paid as authorized in that act.

D. Refunding bonds for any other purpose permitted by the Civic and Convention Center Funding Act may be issued separately or issued in combination in one series or more.

E. Except as otherwise provided in the Civic and Convention Center Funding Act, refunding bonds authorized in that act shall be issued in accordance with the provisions of Sections 3-31-10 and 3-31-11 NMSA 1978.

History: Laws 2003, ch. 374, § 14.

5-14-15. Penalties.

A local governmental entity shall by ordinance provide for penalties by creating a misdemeanor and imposing a fine of not more than five hundred dollars ($500) or imprisonment for not more than ninety days or both for a violation by any person of the provisions of the convention center fee ordinance for a failure to pay the fee or to remit the proceeds thereof to the local governmental entity.

History: Laws 2003, ch. 374, § 15.

ARTICLE 15
Tax Increment for Development

5-15-1. Short title.

Chapter 5, Article 15 NMSA 1978 may be cited as the "Tax Increment for Development Act".

History: Laws 2006, ch. 75, § 1; 2009, ch. 179, § 1.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, changed the reference to the act to the chapter and article of NMSA 1978.

5-15-2. Findings and purpose.

A. The purpose of the Tax Increment for Development Act is to create a mechanism for providing gross receipts tax financing and property tax financing for public infrastructure for the purpose of supporting economic development and job creation.

B. The legislature finds and declares that the powers conferred by the Tax Increment for Development Act are for public uses and purposes for which public money may be expended and the public power exercised, and that it is necessary and in the public interest for the provisions enacted in the Tax Increment for Development Act to be declared as a matter of legislative determination.

History: Laws 2006, ch. 75, § 2.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contained an emergency clause and was approved March 6, 2006.

5-15-3. Definitions.

As used in the Tax Increment for Development Act:

A. "base gross receipts taxes" means:

(1) the total amount of gross receipts tax revenue attributable to the gross receipts sourced to a tax increment development district pursuant to Section 7-1-14 NMSA 1978, as calculated by the taxation and revenue department, in the base period and designated by the governing body to be available as part of the gross receipts tax increment; and

(2) any amount of gross receipts taxes that would have been collected in the base period if any applicable additional gross receipts taxes imposed after that base period had been imposed in that base period;

B. "base period" means, unless as revised pursuant to Sections 5-15-25.1 and 5-15-25.2 NMSA 1978:

(1) the first twelve months following designation of a new reporting location code by the taxation and revenue department following notice of the formation of a district pursuant to Section 5-15-9 NMSA 1978; or

(2) upon request by the governing body forming the district to the secretary, and upon the secretary's approval, the most recent twelve-month period for which gross receipts tax revenue data is available from filed returns;

C. "base property taxes" means:

(1) the portion of property taxes produced by the total of all property tax levied at the rate fixed each year by each governing body levying a property tax on the assessed value of taxable property within the tax increment development area last certified for the year ending immediately prior to the year in which a tax increment

development plan is approved for the tax increment development area, or, when an area is added to an existing tax increment development area, "base property taxes" means that portion of property taxes produced by the total of all property tax levied at the rate fixed each year by each governing body levying a property tax upon the assessed value of taxable property within the tax increment development area on the date of the modification of the tax increment development plan and designated by the governing body to be available as part of the property tax increment; and

(2) any amount of property taxes that would have been collected in such year if any applicable additional property taxes imposed after that year had been imposed in that year;

D. "county option gross receipts tax" means gross receipts taxes imposed by counties pursuant to the County Local Option Gross Receipts Taxes Act [Chapter 7, Article 20E NMSA 1978] and designated by the governing body of the county to be available as part of the gross receipts tax increment;

E. "developer" means the owner or developer who has entered into an agreement pursuant to Subsection A of Section 5-15-4 NMSA 1978 with the governing body that formed the district or the owner's or developer's successors or assigns;

F. "district" means a tax increment development district;

G. "district board" means a board formed in accordance with the provisions of the Tax Increment for Development Act to govern a tax increment development district;

H. "enhanced services" means public services provided by a municipality or county within the district at a higher level or to a greater degree than otherwise available to the land located in the district from the municipality or county, including such services as public safety, fire protection, street or sidewalk cleaning or landscape maintenance in public areas; provided that "enhanced services" does not include the basic operation and maintenance related to infrastructure improvements financed by the district pursuant to the Tax Increment for Development Act;

I. "governing body" means the city council or city commission of a city, the board of trustees or council of a town or village or the board of county commissioners of a county;

J. "gross receipts tax increment" means the gross receipts taxes sourced to a tax increment development district in excess of the base gross receipts taxes collected in the district;

K. "gross receipts tax increment bonds" means bonds issued by a district in accordance with the Tax Increment for Development Act, the pledged revenue for which is a gross receipts tax increment;

L. "local government" means a municipality or county;

M. "municipal option gross receipts tax" means those gross receipts taxes imposed by municipalities pursuant to the Municipal Local Option Gross Receipts Taxes Act [Chapter 7, Article 19D NMSA 1978] and designated by the governing body of the municipality to be available as part of the gross receipts tax increment;

N. "municipality" means an incorporated city, town or village;

O. "new full-time economic base job" means a job:

(1) that is primarily performed in New Mexico;

(2) that is held by an employee who is hired to work an average of at least thirty-two hours per week for at least forty-eight weeks per year;

(3) that is:

(a) involved, directly or in a supervisory capacity, with the production of: 1) a service; provided that the majority of the revenue generated from the service is from sources outside the state; or 2) tangible or intangible personal property for sale; or

(b) held by an employee that is employed at a regional, national or international headquarters operation or at an operation that primarily provides services for other operations of the qualifying entity that are located outside the state; and

(4) that is not directly involved with natural resources extraction or processing, on-site services where the customer is typically present for the delivery of the service, call center, retail, construction or agriculture except for value-added processing performed on agricultural products that would then be sold for wholesale or retail consumption;

P. "owner" means a person owning real property within the boundaries of a district;

Q. "person" means an individual, corporation, association, partnership, limited liability company or other legal entity;

R. "project" means a tax increment development project;

S. "property tax increment" means all property tax collected on real property within the designated tax increment development area that is in excess of the base property tax until termination of the district and distributed to the district in the same manner as distributions are made under the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978];

T. "property tax increment bonds" means bonds issued by a district in accordance with the Tax Increment for Development Act, the pledged revenue for which is a property tax increment;

U. "public improvements" means on-site improvements and off-site improvements that directly or indirectly benefit a tax increment development district or facilitate development within a tax increment development area and that are dedicated to the governing body in which the district lies. "Public improvements" includes:

(1) sanitary sewage systems, including collection, transport, treatment, dispersal, effluent use and discharge;

(2) drainage and flood control systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;

(3) water systems for domestic, commercial, office, hotel or motel, industrial, irrigation, municipal or fire protection purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;

(4) highways, streets, roadways, bridges, crossing structures and parking facilities, including all areas for vehicular use for travel, ingress, egress and parking;

(5) trails and areas for pedestrian, equestrian, bicycle or other non-motor vehicle use for travel, ingress, egress and parking;

(6) pedestrian and transit facilities, parks, recreational facilities and open space areas for the use of members of the public for entertainment, assembly and recreation;

(7) landscaping, including earthworks, structures, plants, trees and related water delivery systems;

(8) public buildings, public safety facilities and fire protection and police facilities;

(9) electrical generation, transmission and distribution facilities;

(10) natural gas distribution facilities;

(11) lighting systems;

(12) cable or other telecommunications lines and related equipment;

(13) traffic control systems and devices, including signals, controls, markings and signage;

(14) school sites and facilities with the consent of the governing board of the public school district for which the facility is to be acquired, constructed or renovated;

(15) library and other public educational or cultural facilities;

(16) equipment, vehicles, furnishings and other personal property related to the items listed in this subsection;

(17) inspection, construction management, planning and program management and other professional services costs incidental to the project;

(18) workforce housing; and

(19) any other improvement that the governing body determines to be for the use or benefit of the public;

V. "state gross receipts tax" means the gross receipts tax imposed pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], but does not include that portion distributed to municipalities pursuant to Sections 7-1-6.4 and 7-1-6.46 NMSA 1978 or to counties pursuant to Section 7-1-6.47 NMSA 1978;

W. "sustainable development" means land development that achieves sustainable economic and social goals in ways that can be supported for the long term by conserving resources, protecting the environment and ensuring human health and welfare using mixed-use, pedestrian-oriented, multimodal land use planning;

X. "tax increment development area" means the land included within the boundaries of a tax increment development district;

Y. "tax increment development district" means a district formed for the purposes of carrying out tax increment development projects;

Z. "tax increment development plan" means a plan for the undertaking of a tax increment development project;

AA. "tax increment development project" means activities undertaken within a tax increment development area to enhance the sustainability of the local, regional or statewide economy; to support the creation of jobs, schools and workforce housing; and to generate tax revenue for the provision of public improvements and may include:

(1) acquisition of land within a designated tax increment development area or a portion of that tax increment development area;

(2) demolition and removal of buildings and improvements and installation, construction or reconstruction of streets, utilities, parks, playgrounds and improvements necessary to carry out the objectives of the Tax Increment for Development Act;

(3) installation, construction or reconstruction of streets, water utilities, sewer utilities, parks, playgrounds and other public improvements necessary to carry out the objectives of the Tax Increment for Development Act;

(4) disposition of property acquired or held by a tax increment development district as part of the undertaking of a tax increment development project at the fair market value of such property for uses in accordance with the Tax Increment for Development Act;

(5) payments for professional services contracts necessary to implement a tax increment development plan or project;

(6) borrowing to purchase land, buildings or infrastructure in an amount not to exceed the revenue stream that may be derived from the gross receipts tax increment or the property tax increment estimated to be received by a tax increment development district; and

(7) grants for public improvements essential to the location or expansion of a business;

BB. "taxing entity" means the governing body of a political subdivision of the state, the gross receipts tax increment or property tax increment of which may be used for a tax increment development project; and

CC. "workforce housing" means decent, safe and sanitary dwellings, apartments, single-family dwellings or other living accommodations that are affordable for persons or families earning less than eighty percent of the median income within the county in which the tax increment development project is located; provided that an owner-occupied housing unit is affordable to a household if the expected sales price is reasonably anticipated to result in monthly housing costs that do not exceed thirty-three percent of the household's gross monthly income; provided that:

(1) determination of mortgage amounts and payments is to be based on down payment rates and interest rates generally available to lower- and moderate-income households; and

(2) a renter-occupied housing unit is affordable to a household if the unit's monthly housing costs, including rent and basic utility and energy costs, do not exceed thirty-three percent of the household's gross monthly income.

History: Laws 2006, ch. 75, § 3; 2019, ch. 212, § 199; 2019, ch. 275, § 1; 2025, ch. 130, § 2.

ANNOTATIONS

The 2025 amendment, effective July 1, 2025, defined the terms "base period" and "developer", and revised the definition of the term "base gross receipts taxes" as used in the Tax Increment for Development Act; in Subsection A, Paragraph A(1), after "amount of gross receipts" deleted "taxes collected within" and added "tax revenue attributable to the gross receipts sourced to", after "tax increment development district" added "pursuant to Section 7-1-14 NMSA 1978", after "as" deleted "estimated by the governing body that adopted a resolution to form that district, in consultation with" and added "calculated by", and after "in the" deleted "calendar year preceding the formation of the tax increment development district or, when an area is added to an existing district, the amount of gross receipts taxes collected in the calendar year preceding the effective date of the modification of the tax increment development plan" and added "base period", in Paragraph A(2), after "collected in" deleted "such year" and added "the base period" and after "imposed in that" deleted "year" and added "base period"; added new Subsection B and redesignated former Subsections B and C as Subsections C and D, respectively; added new Subsection E and redesignated the succeeding subsections accordingly; and in Subsection J, after "taxes" deleted "collected within" and added "sourced to".

2019 Amendments. — Laws 2019, ch. 275, § 1, effective July 1, 2019, defined "new full-time economic base job", and revised the definition of "gross receipts tax increment", as used in the Tax Increment for Development Act; in Subsection H, after "gross receipts taxes collected", deleted "for the duration of the existence of a tax increment development district and distributed to the district in the same manner as distributions are made under the provisions of the Tax Administration Act" and added "in the district"; and added new Subsection M and redesignated former Subsections M through AA as Subsections N through BB

Laws 2019, ch. 212, § 199, effective April 3, 2019, removed the definition of "resident qualified elector" from the Tax Increment for Development Act; and deleted Subsection S and redesignated former Subsections T through AA as Subsections S through Z, respectively.

Applicability. — Laws 2019, ch. 275, § 10 provided that the provisions of this act shall not apply to dedications of gross receipts tax increments by the state board of finance made prior to the effective date of this act.

5-15-4. Resolution for formation of a district.

A. A tax increment development plan may be approved by the governing body of the municipality or county within which tax increment development projects are proposed. Upon filing with the clerk of the governing body of an approved tax increment development plan and upon receipt of a petition bearing the signatures of the owners of at least fifty percent of the real property located within a proposed tax increment development area, the governing body may adopt a resolution declaring its intent to form a tax increment development district. Prior to the formation of a district, the owner or developer of the real property located within an area proposed to be designated as a

tax increment development area may enter into an agreement with the governing body concerning the improvement of specific property within the district, and that agreement may be used to establish obligations of the owner or developer and the governing body concerning the zoning, subdivision, improvement, impact fees, financial responsibilities and other matters relating to the development, improvement and use of real property within the district.

B. A governing body may adopt a resolution on its own motion upon its finding that a need exists for the formation of a district.

C. The resolution to form a district shall include:

(1) the area or areas to be included within the boundaries of the district;

(2) the purposes for which the district is to be formed;

(3) a statement that a tax increment development plan is on file with the clerk of the governing body and that the plan includes a map depicting the boundaries of the tax increment development area and the real property proposed to be included in the area;

(4) the rate of any proposed property tax levy;

(5) identification of gross receipts tax increment and property tax increment financing mechanisms proposed;

(6) identification of gross receipts tax increments and property tax increments proposed to secure proposed gross receipts tax increment bonds or property tax increment bonds;

(7) requirement of a public hearing for the formation of the district and notice of the hearing;

(8) a statement that formation of a district may result in the use of gross receipts tax increments or property tax increments to pay the costs of construction of public improvements made by the district; and

(9) a reference to the Tax Increment for Development Act.

D. A resolution may direct that, prior to holding a hearing on formation of a district, petitioners for the formation of a district prepare a study of the feasibility, the financing and the estimated costs of improvements, services and benefits to result from the formation of the proposed district. The governing body may require those petitioners to deposit with the clerk or treasurer of the governing body an amount equal to the estimated costs of conducting the study and other estimated formation costs. The deposit shall be reimbursed from the proceeds from the sale of bonds issued by the tax

increment development district if the district is formed and if gross receipts tax increment bonds or property tax increment bonds are issued by that district pursuant to the Tax Increment for Development Act.

E. A resolution adopted pursuant to this section shall direct that a public hearing on formation of the district be scheduled and that notice of the hearing be mailed and published.

F. A governing body of the municipality or county within which tax increment development projects are proposed that adopts a resolution to form a district shall notify the secretary of taxation and revenue, the secretary of finance and administration and the director of the legislative finance committee of the governing body's action within ten days following the date on which the resolution was adopted. A copy of the adopted resolution shall be included in the notice sent pursuant to this subsection. All resolution materials, including fiscal and economic studies, shall also be available electronically to the public.

History: Laws 2006, ch. 75, § 4; 2009, ch. 179, § 2.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, after "plan may be approved", added "by the governing body of the municipality or county within"; in Subsection D, in the last sentence, after "deposit shall be reimbursed", added "from the proceeds from the sale of bonds issued by the tax increment development district"; and added Subsection F.

5-15-5. Contents of tax increment development plan.

A tax increment development plan shall include:

A. a map depicting the geographical boundaries of the area proposed for inclusion within the tax increment development area;

B. the estimated time necessary to complete the tax increment development project;

C. a description and the estimated cost of all public improvements proposed for the tax increment development project;

D. whether it is proposed to use gross receipts tax increment bonds or property tax increment bonds or both to finance all or part of the public improvements;

E. the estimated annual gross receipts tax increment to be generated by the tax increment development project and the portion of that gross receipts tax increment to be allocated during the time necessary to complete the payment of the tax increment development project;

F. the estimated annual property tax increment to be generated by the tax increment development project and the portion of that property tax increment to be allocated during the time necessary to complete the payment of the tax increment development project;

G. the general proposed land uses for the tax increment development project;

H. the number and types of jobs expected to be created by the tax increment development project;

I. the amount and characteristics of workforce housing expected to be created by the tax increment development project;

J. the location and characteristics of public school facilities expected to be created, improved, rehabilitated or constructed by the tax increment development project;

K. a description of innovative planning techniques, including mixed-use transit-oriented development, traditional neighborhood design or sustainable development techniques, that are deemed by the governing body to be beneficial and that will be incorporated into the tax increment development project; and

L. the amount and type of private investment in each tax increment development project.

History: Laws 2006, ch. 75, § 5.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contained an emergency clause and was approved March 6, 2006.

5-15-6. Notice of public hearing.

A. Upon adoption of a resolution indicating an intent to form a tax increment development district, a governing body shall set a date no sooner than thirty days and no later than sixty days after the adoption of the resolution for a public hearing regarding the formation of the district.

B. Notice of the hearing shall be provided by the governing body by:

(1) publication once each week for two consecutive weeks in a newspaper of general circulation in the municipality or county in which the proposed district is located;

(2) posting in a prominent location on property located within the proposed tax increment development area for fourteen days prior to the hearing; and

(3) written notice via registered or certified United States mail, postage prepaid, no later than ten days prior to the hearing to:

(a) all owners of real property within the proposed tax increment development area; and

(b) the secretary of taxation and revenue, the secretary of finance and administration and the director of the legislative finance committee.

C. The notice of the hearing shall contain:

(1) the date, time and place of the hearing;

(2) information regarding alternative methods for submission of objects or comments;

(3) a statement that the formation of a district is proposed;

(4) a map showing the boundaries of the proposed district;

(5) a statement that a tax increment development plan is on file with the clerk of the governing body and may be reviewed upon request;

(6) a summary of the resolution as set forth in Subsection D of this section; and

(7) a copy of the application.

D. A summary of the resolution declaring the governing body's intent to form a tax increment development district shall be attached to a notice issued pursuant to this section. The clerk of the governing body shall mail a copy of the notice to each owner of real property within the proposed tax increment development area and to all other persons claiming an interest in the property who have filed a written request for a copy of the notice within the six months preceding or at any time following the adoption of the resolution. The clerk of the governing body shall publish a copy of the notice and resolution summary at least twice in a newspaper of general circulation in the municipality or county in which the proposed tax increment development district is located. The clerk of the governing body shall obtain an affidavit from that newspaper after each publication is made. The clerk of the governing body shall cause the affidavits to be placed in the official records of the municipality or county. The affidavits are conclusive evidence of the mailing and publishing of notice. Notice shall not be held invalid for failure of delivery to the addressee.

E. A clerk of a governing body who is informed of a transfer of ownership of real property within a proposed district and who obtains the name and address of the current

property owner shall mail a copy of the notice and resolution as soon as practicable after learning of the transfer.

History: Laws 2006, ch. 75, § 6; 2009, ch. 179, § 3.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection B(3), after "postage prepaid", added the remainder of the sentence; in Subsection B(3)(a), after "development area", deleted "no later than ten days prior to the hearing"; added Subsection B(3)(b); and added Subsections C(6) and C(7).

5-15-7. Public hearing.

A. At a public hearing conducted pursuant to the Tax Increment for Development Act, the governing body shall hear all relevant evidence and testimony and make findings. A record of the hearing shall be kept and may consist of a transcription by a court reporter, an electronic recording or minutes taken by a designated person. The record shall be preserved in the official records of the governing body and shall be open to public inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

B. Testimony at a hearing is not required to be given under oath.

C. At the conclusion of a hearing, the governing body shall determine whether the tax increment development district should be formed based upon the interests, convenience or necessity of the owners, the residents of the proposed tax increment development district and the residents of the municipality or county in which the proposed tax increment development district is to be located. The governing body shall make the following findings before adopting a resolution to approve the formation of a district:

(1) the tax increment development plan reasonably protects the interests of the governing body in meeting its goals to support:

(a) job creation;

(b) workforce housing;

(c) public school facility creation and improvement, including the creation and improvement of facilities for charter schools; and

(d) underdeveloped area or historical area redevelopment;

(2) the tax increment development plan demonstrates elements of innovative planning techniques, including mixed-use transit-oriented development, traditional

neighborhood design or sustainable development techniques, that are deemed by the governing body to benefit community development;

(3) the tax increment development plan incorporates sustainable development considerations; and

(4) the tax increment development plan conforms to general or long-term planning of the governing body.

D. If the governing body determines that the district should be formed, it shall:

(1) adopt a resolution ordering that the tax increment development district be formed;

(2) order that a formation determination among the owners of real property within the proposed district be conducted or declare that the formation determination is waived pursuant to Subsection B of Section 5-15-8 NMSA 1978; and

(3) set the matter for an election or declare that an election is canceled pursuant to Subsection I of Section 5-15-8 NMSA 1978.

History: Laws 2006, ch. 75, § 7; 2019, ch. 212, § 200.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, provided that a formation determination be ordered when a governing body determines that a tax increment development district should be formed; in Subsection D, added paragraph designations "(1)" and "(3)" and new paragraph D(2), and in Paragraph D(3), after "declare that an election is", deleted "waived, as provided in the Tax Increment for Development Act" and added "canceled pursuant to Subsection I of Section 5-15-8 NMSA 1978".

5-15-8. Formation determination; election.

A. The formation determination and election procedures set forth in this section shall be used for:

(1) formation of a new tax increment development district;

(2) selection of a district board member;

(3) adoption of a property tax levy by a tax increment development district;

(4) use of property tax increment financing by a tax increment development district; or

(5) issuing of property tax increment bonds to be repaid by funds raised by property tax increments.

B. A formation determination may be waived and a tax increment development district shall be formed upon the governing body's adoption of a resolution to form a tax increment development district if a petition is presented to a governing body in accordance with the Tax Increment for Development Act and if the petition contains the signatures of all owners of the real property within the proposed tax increment development area and states that the owners waive the right to a formation determination.

C. A formation or other determination shall not be a local election for purposes of the Local Election Act [Chapter 1, Article 22 NMSA 1978]. The governing body or district board may establish local procedures for noticing, conducting and canvassing determinations, which may include determinations by unanimous written approval of the owners in affidavits executed by the owners and confirmed in a review by the district board.

D. An election by the qualified electors pursuant to the Tax Increment for Development Act shall be a nonpartisan election called, conducted and canvassed pursuant to the provisions of the Election Code [Chapter 1 NMSA 1978].

E. In addition to the notice requirements in the Local Election Act, the notice of election shall state:

(1) if the election is a formation election, the boundaries of the proposed tax increment development district;

(2) if the election is a bond election, the purpose for which the bonds are to be issued and the amount of the issue;

(3) if the election is a property tax levy election, the maximum tax rate per one thousand dollars ($1,000) of assessed valuation to be imposed, the purposes for which the revenues raised will be used and the existing maximum tax rate, if any;

(4) that an approved tax increment development plan is on file with the clerk of the governing body;

(5) the purposes for which property taxes will be imposed and for which the revenues raised will be used, including a description of the public improvements to be financed with tax revenues, bond proceeds or other revenues of the tax increment development district; and

(6) that the imposition of property taxes will result in a lien for the payment on property within the district.

F. The district board, or, in the case of a formation election, the governing body, shall determine the date of the election, which shall comply with the provisions of the Local Election Act. The ballot material provided to each qualified electors shall include:

(1) for a formation election, an impartial description of the tax increment development plan and a brief description of arguments for and against the formation of the tax increment development district, if any;

(2) for an election concerning the imposition of property taxes, an impartial description of the taxes to be imposed, the method of apportionment, collection and enforcement and other details sufficient to enable each qualified elector to determine the amount of tax it will be obligated to pay; a brief description of arguments for and against the imposition of taxes that are the subject of the election, if any; and a statement that the imposition of property taxes is for the provision of certain, but not necessarily all, public improvements that may be needed or desirable within the tax increment development district, and that other taxes, levies or assessments by other governmental entities may be presented for approval by owners and qualified electors;

(3) for an election concerning the use of property tax increment financing, an impartial description of the estimated increment to be generated over the life of the project and the nature and extent of the public improvements to be constructed and maintained using such financing;

(4) for a formation election, the question to be voted upon as "district, yes" and "district, no";

(5) for a property tax imposition election, the question to be voted upon as "property tax, yes" and "property tax, no";

(6) for an election to change an existing maximum tax or eliminate an existing tax, the question to be voted upon as "tax change, yes" and "tax change, no" and shall specify the type of tax to which the proposed change pertains; and

(7) for an election concerning the use of property tax increment bonds, the ballot shall pose the question to be voted upon as "bonds, yes" and "bonds, no".

G. Failure of a majority to vote in favor of the matter submitted shall not prejudice the submission of the same or similar matters at a later election; provided that an election on the same question shall not be held within one year of the failure of a majority to vote in favor of that question.

H. If a person transfers real property located in a district and the name of the successor owner becomes known to the governing body or the district board, as applicable, and is verified by recorded deed or other similar evidence of transfer of ownership, the successor owner is deemed to be the owner of the real property for the purposes of the Tax Increment for Development Act.

I. If there are no persons registered to vote within a district or proposed district areas within seventy days immediately preceding a scheduled election date, an election required to be held pursuant to the Tax Increment for Development Act shall be canceled and the determination made by the owners of property within the district or proposed district areas shall prevail, unless an election is otherwise required by the constitution of New Mexico or the determination was waived by the governing body pursuant to Subsection B of this section. Each owner shall have the number of votes or portion of votes equal to the number of acres or portion of acres rounded upward to the nearest one-fifth of an acre owned in the district by that owner.

History: Laws 2006, ch. 75, § 8; 2019, ch. 212, § 201.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, provided that an election to form a tax increment development district shall be held pursuant to the Election Code, and provided additional notice requirements; added new Subsection C and redesignated former Subsections C through E as Subsection D through F, respectively; in Subsection D, after "election called,", deleted "by posting notices in three public places within the boundaries of the district not less than twenty days before the election. Notice shall also be published in a newspaper of general circulation once each week for two consecutive weeks before the election in the municipality or county in which the proposed district is located" and added "conducted and canvassed pursuant to the provisions of the Election Code"; in Subsection E, after the subsection designation, added "In addition to the notice requirements in the Local Election Act", deleted former Paragraphs E(1) and E(2) and redesignated former Paragraphs E(3) through E(8) as Paragraphs E(1) through E(6), respectively; in Subsection F, after "date of the election", deleted "and the polling places for the election and may consolidate county precincts. The district board or the governing body may establish provisions for voting by mail."; deleted former Subsections F and G; deleted subsection designation "H.", placing the language from former Subsection H in Subsection F, after "shall comply with the", deleted "general election laws of the state", added "provisions of the Local Election Act"; deleted Subsections I and J, added new subsection designation G and redesignated former Subsections K and L as Subsections H and I, respectively; in Subsection H, after "known", added "to the governing body of the district board, as applicable"; in Subsection I, after "shall be", deleted "held by vote of" and added "canceled and the determination made by", and after "proposed district", added "areas shall prevail, unless an election is otherwise required by the constitution of New Mexico or the determination was waived by the governing body pursuant to Subsection B of this section"; and deleted former Subsection M.

5-15-8.1. Posting of notices.

For any election conducted pursuant to the Tax Increment for Development Act, in addition to the notice requirements set forth in Section 5-15-8 NMSA 1978, the owners shall ensure that notices shall be posted in three conspicuous public places within the

boundaries of the district not less than twenty days before the first day for voting in the election.

History: Laws 2019, ch. 212, § 275.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286, contained an emergency clause and was approved April 3, 2019.

5-15-9. Formation of a district.

A. If the formation of the tax increment development district is approved in accordance with the provisions of Section 5-15-8 NMSA 1978, the governing body shall deliver a copy of the resolution ordering formation of the tax increment development district to each of the following persons or entities:

(1) the county assessor, the county treasurer and the clerk of the county in which the district is located;

(2) the school district within which any portion of the property located within a tax increment development area lies;

(3) any other taxing entities within which any portion of the property located within a tax increment development area lies;

(4) the taxation and revenue department;

(5) the local government division of the department of finance and administration; and

(6) the director of the legislative finance committee.

B. A notice of the formation showing the number and date of the resolution and giving a description of the land included in the district shall be recorded with the clerk of the county in which the district is located.

C. A tax increment development district shall be a political subdivision of the state, separate and apart from a municipality or county.

D. By the July 1 following at least ninety days after receipt of the notice required by this section, the taxation and revenue department shall designate a reporting location code for the tax increment development district pursuant to Section 7-1-14 NMSA 1978.

History: Laws 2006, ch. 75, § 9; 2009, ch. 179, § 4; 2017, ch. 143, § 1; 2019, ch. 212, § 202; 2025, ch. 130, § 3.

ANNOTATIONS

Compiler's notes. — Senate Bill 67, enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed by the governor on March 14, 2017. Pursuant to the First Judicial District Court's decision in *State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al*., D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, Senate Bill 67 was chaptered into law by the Secretary of State.

The 2025 amendment, effective July 1, 2025, required the taxation and revenue department to designate a reporting location code within a certain period of time for newly formed tax increment development districts; and added Subsection D.

The 2019 amendment, effective April 3, 2019, required the formation of a tax increment development district to be approved in accordance with the provisions of Section 5-15-8 NMSA 1978; in Subsection A, after "approved", deleted "by a majority of the voters casting votes at the election, or if an election is held by vote of the owners of property within the district or proposed district" and added "in accordance with the provisions of Section 5-15-8 NMSA 1978".

The 2017 amendment, effective June 16, 2017, required that the treasurer of the county in which a tax increment development district is formed be notified of that formation; and in Paragraph A(1), after "the county assessor", added "the county treasurer".

The 2009 amendment, effective June 19, 2009, added Paragraph (6) of Subsection A.

5-15-10. Governance of the district.

A. Following formation of a tax increment development district, a district board shall administer in a reasonable manner the implementation of the tax increment development plan as approved by the governing body.

B. The district shall be governed by the governing body that adopted a resolution to form the district or by a five-member board composed of four members appointed by that governing body; provided, however, that the fifth member of the five-member board is the secretary of finance and administration or the secretary's designee with full voting privileges.

C. Two of the appointed directors shall serve an initial term to expire following a regular local election and not to exceed six years. Two of the appointed directors shall serve an initial term to expire following a regular local election and not to exceed four years. The resolution forming the district shall state which directors shall serve the longer terms and which shall serve the shorter terms. If a vacancy occurs on the district

board because of the death, resignation or inability of the director to discharge the duties of the director, the governing body shall appoint a director to fill the vacancy, and the director shall hold office for the remainder of the unexpired term until a successor is appointed or elected.

D. In the case of an appointed board of directors that is not the governing body, at the end of the appointed directors' initial terms, the board shall hold an election of new directors by majority vote of qualified electors in accordance with the Local Election Act [Chapter 1, Article 22 NMSA 1978] and the Tax Increment for Development Act. If the election is canceled pursuant to Subsection I of Section 5-15-8 NMSA 1978, a determination by the owners conducted by ballot shall select the new directors.

History: Laws 2006, ch. 75, § 10; 2009, ch. 179, § 5; 2019, ch. 212, § 203.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, revised the length of terms for certain members of the district board; in Subsection C, after each occurrence of "initial term", deleted "of" and added "to expire following a regular local election and not to exceed", after "directors shall serve", deleted "four-year" and added "the longer", and after "which shall serve", deleted "six-year" and added "the shorter"; deleted former Subsection D and redesignated former Subsection E as Subsection D; and in Subsection D, after "in accordance with the", added Local Election Act and the", and after "Tax Increment for Development Act.", deleted "Each owner shall have the number of votes or portion of votes equal to the number of acres or portion of acres rounded upward to the nearest one-fifth of an acre owned in the district by that owner" and added "If the election is canceled pursuant to Subsection I of Section 5-15-8 NMSA 1978, a determination by the owners conducted by ballot shall select the new directors.".

The 2009 amendment, effective June 19, 2009, in Subsection B, after "board composed of", added "four" and after "governing body", added the remainder of the sentence; and in Subsection C, at the beginning of the sentence, changed "Three" to "Two".

5-15-11. Records; open meetings.

A. A district shall keep the following records, which shall be open to the public:

(1) minutes of all meetings of the district board;

(2) all resolutions;

(3) accounts showing all money received and disbursed;

(4) the annual budget; and

(5) all other records required to be maintained by law.

B. A district board shall appoint a clerk and treasurer for the district.

C. All meetings of a district shall be open meetings held in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

History: Laws 2006, ch. 75, § 11.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contained an emergency clause and was approved March 6, 2006.

5-15-12. District powers; limitations.

A. In addition to other express or implied authority granted by law, a district shall have the power to:

(1) enter into contracts or expend money for any public purpose with respect to the district;

(2) enter into agreements with a municipality, county or other local government entity in connection with real property located within the district;

(3) enter into an intergovernmental agreement in accordance with the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] for the planning, design, inspection, ownership, control, maintenance, operation or repair of public infrastructure or the provision of enhanced services by the municipality or county in which the district lies or for any other purpose authorized by the Tax Increment for Development Act;

(4) sell, lease or otherwise dispose of district property if the sale, lease or conveyance is not a violation of the terms of any contract or bond covenant of the district;

(5) reimburse a municipality or county in which the tax increment development district is located for providing services within the tax increment development area;

(6) operate, maintain and repair public infrastructure until dedicated to the governing body;

(7) employ staff, counsel, advisors and consultants;

(8) reimburse a municipality or county in which the district is located for staff and consultant services and support facilities supplied by the municipality or county;

(9) accept gifts or grants and incur and repay loans for a public purpose;

(10) enter into an agreement with an owner concerning the advance of money by an owner for a public purpose or the granting of real property by the owner for a public purpose;

(11) levy property taxes in accordance with election requirements of the Tax Increment for Development Act for a public purpose on real property located in the district;

(12) pay the financial, legal and administrative costs of the district;

(13) enter into contracts, agreements and trust indentures to obtain credit enhancement or liquidity support for its bonds and process the issuance, registration, transfer and payment of its bonds and the disbursement and investment of proceeds of the bonds in accordance with the provisions for investment of funds by municipal treasurers;

(14) borrow money within the limits of the Tax Increment for Development Act to fund the construction, operation and maintenance of public improvements until dedicated to the governing body or for any other lawful public purposes related to the purposes of the Tax Increment for Development Act; and

(15) use public easements and rights of way in or across public property, roadways, highways, streets or other thoroughfares and other public easements and rights of way of the district, municipality or county.

B. Notwithstanding the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978] or local procurement requirements that may otherwise be applicable to the municipality or county in which the district is located, the district board may enter into contracts to carry out any of the tax increment development district's authorized powers, including the planning, design, engineering, financing, construction and acquisition of public improvements for the district, with a contractor, an owner or other person or entity, on such terms and with such persons as the district board determines to be appropriate.

C. A district shall not have the power of eminent domain for any purpose.

D. A casino shall not be located in a district, and a district shall not use the proceeds of property tax increment bonds or gross receipts tax increment bonds to finance public improvements for a casino.

History: Laws 2006, ch. 75, § 12.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contained an emergency clause and was approved March 6, 2006.

5-15-13. Authority to impose property tax levy.

A district has the power to establish a property tax levy upon real property located within the tax increment development area, with the following limitations:

A. the maximum property tax levy a district may impose is five dollars ($5.00) 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], which may be used for operation, maintenance and capital improvements, in furtherance of the purposes of the Tax Increment for Development Act;

B. a district may impose a property tax levy only after authorization through a determination made by the owners of real property in the district and by a majority of votes cast by the qualified resident electors of a district in an election held in accordance with the Local Election Act [Chapter 1, Article 22 NMSA 1978] and the Tax Increment for Development Act; and

C. a property tax levy imposed by a district shall not be effective for more than four years.

History: Laws 2006, ch. 75, § 13; 2019, ch. 212, § 204.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, provided that a district may impose a property tax levy only after authorization through a determination by the owners of real property in the district in accordance with the Local Election Act and the Tax Increment for Development Act; in Subsection B, after "authorization", added "through a determination made by the owners of real property in the district and", and after "accordance with the", added "Local Election Act and the".

5-15-14. Property tax levy rescission election.

A. A property tax levy imposed by a district may be rescinded within the four-year period during which a property tax levy imposed by a district is effective if:

(1) thirty-three and one-third percent of the number of persons who voted in the election for the imposition of that property tax levy sign a petition to rescind the property tax levy; and

(2) each person who signs the petition is a qualified elector of the district or an owner of real property within the tax increment development area.

B. The petition shall be filed with the district board for verification of the signatures, as to both number and qualifications of the persons signing. If the district board verifies that the petition contains the requisite number of signatures by persons qualified to sign the petition pursuant to Subsection A of this section, the question of rescission of the property tax levy imposed by the district shall be placed on the ballot for:

(1) a special election held in accordance with the special election procedures of the Election Code [Chapter 1 NMSA 1978] that is called and held within ninety days; provided that the date does not conflict with the provisions of Section 1-24-1 NMSA 1978; or

(2) the next occurring regular local election or general election if that election is to be held within less than one hundred twenty days.

C. A petition for rescission of a property tax levy imposed by a district may be submitted only once each year during the four-year period during which a property tax levy by a district is effective.

History: Laws 2006, ch. 75, § 14; 2019, ch. 212, § 205.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, provided that the date for a special election on the question of rescission of a property tax levy must not conflict with the provisions of Section 1-24-1 NMSA 1978; in Subsection B, in Paragraph B(1), after "ninety days;", added "provided that the date does not conflict with the provisions of Section 1-24-1 NMSA 1978", and in Paragraph B(2), after "occurring", added "regular local election or", and after "within less than", deleted "ninety" and added "one hundred twenty".

5-15-15. Tax increment financing; gross receipts tax increment to secure bonds.

A. A tax increment development plan, as originally approved or as later modified, may contain a provision that gross receipts tax increments sourced to the tax increment development area pursuant to Section 7-1-14 NMSA 1978 and distributed to the district pursuant to Section 7-1-6.54 NMSA 1978 may be dedicated for the purpose of securing gross receipts tax increment bonds pursuant to the Tax Increment for Development Act.

B. A municipality may dedicate a portion of any of the following to pay the principal of, the interest on and any premium due in connection with the bonds of, loans or advances to, or any indebtedness incurred by, whether funded, refunded, assumed or otherwise, the authority for financing or refinancing, in whole or in part, a tax increment development project within the tax increment development area:

(1) an increment of a municipal option gross receipts tax that is dedicated by the ordinance imposing the increment to the tax increment development project; and

(2) an amount distributed to municipalities pursuant to Sections 7-1-6.4 and 7-1-6.46 NMSA 1978.

C. A county may dedicate a portion of any of the following to pay the principal of, the interest on and any premium due in connection with the bonds of, loans or advances to, or any indebtedness incurred by, whether funded, refunded, assumed or otherwise, the district for financing or refinancing, in whole or in part, a tax increment development project within the tax increment development area:

(1) an increment of a county option gross receipts tax that is dedicated by the ordinance imposing the increment to the tax increment development project; and

(2) the amount distributed to counties pursuant to Section 7-1-6.47 NMSA 1978.

D. Subject to the provisions of Subsection G of this section, the state board of finance may dedicate a gross receipts tax increment attributable to the state gross receipts tax to pay the financing and refinancing costs, the principal of, the interest on and any premium due in connection with gross receipts tax increment bonds issued to finance a tax increment development project within the tax increment development area; provided that:

(1) beginning July 1, 2029 the increment from the state gross receipts tax is no more than the average of:

(a) the increment from municipal option gross receipts taxes dedicated by resolution by the municipality, if the district is located in a municipality; and

(b) the increment from county option gross receipts taxes dedicated by resolution by the county;

(2) the state board of finance has adopted a resolution dedicating an increment attributable to the state gross receipts tax for the purpose of securing gross receipts tax increment bonds pursuant to Subsection G of this section; and

(3) the dedication shall be conditioned on the gross receipts tax increment bonds being issued no later than four years after the state board of finance has adopted the resolution dedicating the increment.

E. The gross receipts tax increment generated by the imposition of municipal or county option gross receipts taxes specified by statute for particular purposes may nonetheless be dedicated for the purposes of the Tax Increment for Development Act if intent to do so is set forth in the tax increment development plan approved by the

governing body, if the purpose for which the increment is intended to be used is consistent with the purposes set forth in the statute authorizing the municipal or county option gross receipts tax.

F. An imposition of a gross receipts tax increment attributable to a gross receipts tax by a taxing entity may be dedicated for the purpose of securing gross receipts tax increment bonds with the agreement of the taxing entity, evidenced by a resolution adopted by a majority vote of that taxing entity. A taxing entity shall not agree to dedicate for the purposes of securing gross receipts tax increment bonds more than seventy-five percent of its gross receipts tax increment attributable to gross receipts taxes by the taxing entity. A resolution of the taxing entity to dedicate a gross receipts tax increment or to increase the dedication of a gross receipts tax increment shall become effective only on July 1 of the calendar year pursuant to Subsection A of Section 5-15-3 NMSA 1978 and after base gross receipts taxes have been calculated.

G. The state board of finance shall condition a dedication of a gross receipts tax increment attributable to the state gross receipts tax on the approval required pursuant to Section 5-15-21 NMSA 1978, on calculation of base gross receipts taxes and that the initial gross receipts tax increment bonds issuance secured by a portion of the gross receipts tax increment attributable to the state gross receipts tax shall be issued no later than four years after the state board of finance has adopted the resolution making the dedication. Subject to the limitations provided in Subsection D of this section, the state board of finance shall not agree to dedicate more than seventy-five percent of the gross receipts tax increment attributable to the state gross receipts tax within the district. The resolution of the state board of finance shall become effective on July 1 of the calendar year pursuant to Subsection A of Section 5-15-3 NMSA 1978 following calculation of base gross receipts taxes and the notification period pursuant to Section 5-15-27 NMSA 1978 and shall find that:

(1) the state board of finance has reviewed the request for the use of the state gross receipts tax;

(2) based upon review by the state board of finance of the applicable tax increment development plan, the dedication by the state board of finance of a portion of the gross receipts tax increment within the district for use in meeting the required goals of the tax increment plan is reasonable and in the best interest of the state; and

(3) based upon the review by the state board of finance, the use of the state gross receipts tax is likely to stimulate the creation of jobs, economic opportunities and general revenue for the state through the addition of new businesses to the state and the expansion of existing businesses within the state; provided that, when reviewing the applicable tax increment development plan to create jobs and economic opportunities, the state board of finance shall prioritize in its consideration net, new full-time economic base jobs that would not have occurred on a similar scale and time line but for the use of the state gross receipts tax increment. The benefit to be evaluated is the marginal benefit of the speed-up in time or the incremental change in job creation above

expected normal growth and shall exclude retail jobs, call center jobs and service jobs where the customer is typically on site.

H. The governing body of the jurisdiction in which a tax increment development district has been established shall timely notify the assessor of the county in which the district has been established, the taxation and revenue department and the local government division of the department of finance and administration when:

(1) a tax increment development plan has been approved that contains a provision for the allocation of a gross receipts tax increment;

(2) any outstanding bonds of the district have been paid off; and

(3) the purposes of the district have otherwise been achieved.

History: Laws 2006, ch. 75, § 15; 2009, ch. 179, § 6; 2019, ch. 274, § 8; 2019, ch. 275, § 2; 2025, ch. 130, § 4.

ANNOTATIONS

The 2025 amendment, effective July 1, 2025, clarified language in the section; in Subsection A, after "gross receipts tax increments" deleted "collected within" and added "sourced to", and after "tax increment development area" deleted "after the effective date of approval of the tax increment development plan" and added "pursuant to Section 7-1-14 NMSA 1978 and distributed to the district pursuant to Section 7-1-6.54 NMSA 1978"; in Subsection F, after "calendar year" added the remainder of the subsection; and in Subsection G, after "Section 5-15-21 NMSA 1978" added "on calculation of base gross receipts taxes", after "calendar year" added "pursuant to Subsection A of Section 5-15-3 NMSA 1978" and after "following" added "calculation of base gross receipts taxes and".

2019 Amendments. — Laws 2019, ch. 275, § 2, effective July 1, 2019, eliminated the municipal regional transit gross receipts tax as a gross receipts tax increment that may be used to secure gross receipts tax increment bonds, authorized the state board of finance to dedicate a gross receipts tax increment attributable to the state gross receipts tax to pay the financing and refinancing costs, the principal of, interest on and any premiums due in connection with gross receipts tax increments bonds issued to finance a project within the district, in the section heading, added "to secure bonds"; in Subsection A, after the subsection designation, deleted "Notwithstanding any law to the contrary, but in accordance with the provisions of the Tax Increment for Development Act"; in Subsection B, in the introductory paragraph, after the subsection designation, deleted "As to a district formed by a municipality, a portion of any of the following gross receipts tax increments may be paid by the state directly into a special fund of the district" and added "A municipality may dedicate a portion of a gross receipts tax increment from any of the following taxes", deleted former Paragraph B(5) and redesignated former Paragraph B(6) as Paragraph B(5), and deleted former Paragraph

B(7); in Subsection C, in the introductory paragraph, after the subsection designation, deleted "As to a district formed by a county, all or a portion of any of the following gross receipts tax increments may be paid by the state directly into a special fund of the district" and added "A county may dedicate a portion of a gross receipts tax increment from any of the following taxes", and deleted former Paragraph C(7); added new Subsection D and redesignated former Subsections D through G as Subsections E through H, respectively; in Subsection G, in the introductory paragraph, after the subsection designation, deleted "An imposition of a gross receipts tax increment attributable to the imposition of the state gross receipts tax within a district less the distributions made pursuant to Section 7-1-6.4 NMSA 1978 may be dedicated for the purpose of securing gross receipts tax increment bonds with the agreement of the state board of finance, evidenced by a resolution adopted by a majority vote of the state board of finance." and added "The state board of finance shall condition a dedication of a gross receipts tax increment attributable to the state gross receipts tax on the approval required pursuant to Sections 5-15-21 NMSA 1978 and that the initial gross receipts tax increment bonds issuance secured by a portion of the gross receipts tax increment attributable to the state gross receipts tax shall be issued no later than four years after the state board of finance has adopted the resolution making the dedication. Subject to the limitations provided in Subsection D of this section", and after "calendar year", added "following the notification period pursuant to Section 5-15-27 NMSA 1978", in Paragraph G(3), after the paragraph designation, added "based upon the review by the state board of finance", and after "businesses within the state;", added the remainder of the subsection.

Laws 2019, ch. 274, § 8, effective July 1, 2019, removed restrictions on which municipal and county local option tax rates can be pledged for tax increment development projects; in Subsection B, Paragraph B(1), after the "municipal option gross receipts tax", deleted "authorized pursuant to the Municipal Local Option Gross Receipts Taxes Act" and added "that is dedicated by the ordinance imposing the increment to the tax increment development project", deleted former Paragraphs B(2) through B(5) and redesignated former Paragraphs B(6) and B(7) as Paragraphs B(2) and B(3), respectively; and in Subsection C, Paragraph C(1), after the "county option gross receipts tax", deleted "authorized pursuant to the County Local Option Gross Receipts Taxes Act" and added "that is dedicated by the ordinance imposing the increment to the tax increment development project", and deleted former Paragraphs C(2) through C(5) and redesignated former Paragraphs C(6) and C(7) as Paragraphs C(2) and C(3), respectively.

Applicability. — Laws 2019, ch. 275, § 10 provided that the provisions of this act shall not apply to dedications of gross receipts tax increments by the state board of finance made prior to the effective date of this act.

The 2009 amendment, effective June 19, 2009, in Subsection C(6), deleted "state gross receipts tax" and added the remainder of the sentence; added Subsection C(7); and in Subsection F, after "with a district", added "less the distributions made pursuant to Section 7-1-6.4 NMSA 1978".

5-15-15.1. Filing fee for evaluating use of state gross receipts tax increment.

Prior to approval of a dedication of a gross receipts tax increment attributable to the state gross receipts tax by the state board of finance pursuant to Section 5-15-15 NMSA 1978, a tax increment development district shall submit a filing fee to the state board of finance to pay the reasonable costs, as determined by the department of finance and administration, of evaluating the tax increment development plan and the district's requested use of a state gross receipts tax increment.

History: 1978 Comp., § 5-15-15.1, as enacted by Laws 2019, ch. 275, § 3.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 275, § 11 made Laws 2019, ch. 275, § 3 effective July 1, 2019.

Applicability. — Laws 2019, ch. 275, § 10 provided that the provisions of Laws 2019, ch. 275 shall not apply to dedications of gross receipts tax increments by the state board of finance made prior to July 1, 2019.

5-15-16. Bonding authority; gross receipts tax increment.

A. A district may issue gross receipts tax increment revenue bonds, the pledged revenue for which is a gross receipts tax increment dedicated in accordance with the provisions of the Tax Increment for Development Act, for any one or more of the purposes authorized by that act.

B. A district may pledge irrevocably the revenue from a gross receipts tax increment received by the district to the payment of the interest on and principal of the gross receipts tax increment bonds for any of the purposes authorized in the Tax Increment for Development Act. A law that imposes or authorizes the imposition of a municipal or county gross receipts tax or that affects the municipal or county gross receipts tax shall not be repealed, amended or otherwise directly or indirectly modified in any manner to adversely impair any outstanding gross receipts tax increment bonds that may be secured by a pledge of any municipal or county option gross receipts tax increment, unless those outstanding bonds have been discharged in full or provision has been fully made for those bonds.

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

D. Except as otherwise provided in the Tax Increment for Development Act, gross receipts tax increment bonds:

(1) may have interest, principal value or any part thereof payable at intervals or at maturity as may be determined by the governing body;

(2) may be subject to a prior redemption at the district's option at a time and upon terms and conditions, with or without the payment of a premium, as determined by the district board;

(3) may mature at any time not exceeding twenty-five years after the date of issuance;

(4) may be serial in form and maturity, may consist of one bond payable at one time or in installments or may be in another form determined by the district board;

(5) 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 the Public Securities Short-Term Interest Rate Act [6-18-1 to 6-18-16 NMSA 1978]; and

(6) may be sold at public or negotiated sale.

E. At a regular or special meeting, the district board may adopt a resolution that:

(1) declares the necessity for issuing gross receipts tax increment bonds;

(2) authorizes the issuance of gross receipts tax increment bonds by an affirmative vote of a majority of all the members of the district board; and

(3) designates the sources of gross receipts increments thereof to be pledged to the repayment of the gross receipts tax increment bonds.

History: Laws 2006, ch. 75, § 16; 2019, ch. 275, § 4.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, added clarifying language; in Subsection A, after "gross receipts tax increment", added "dedicated in accordance with the provisions of the Tax Increment for Development Act", and after "authorized by", deleted "the Tax Increment for Development"; in Subsection B, after "irrevocably", deleted ‘any or all of" and added "the revenue from", and after "municipal or county", added "option"; and in Subsection D, in Paragraph D(5), after "Public Securities Act and the", added "Public Securities".

Applicability. — Laws 2019, ch. 275, § 10 provided that the provisions of this act shall not apply to dedications of gross receipts tax increments by the state board of finance made prior to July 1, 2019.

5-15-17. Property tax increment bonds.

A. Notwithstanding any law to the contrary, but in accordance with the Tax Increment for Development Act, a tax increment development plan, as originally approved or as later modified, may contain a provision that a portion of property taxes levied after the effective date of the approval of the tax increment development plan upon taxable property within a tax increment development area each year, by or for the benefit of any public body, may be dedicated for securing property tax increment bonds pursuant to the Tax Increment for Development Act, according to the following procedures:

(1) the base property taxes shall be paid into the funds of each public body as are all other taxes collected by or for the public body;

(2) the portion of the property taxes in excess of the base property tax amount shall be allocated to, and, when collected, paid into a special fund of the district to pay the principal of, the interest on and any premiums due in connection with the bonds of, loans or advances to, or indebtedness incurred by, whether funded, refunded, assumed or otherwise, the authority for financing or refinancing, in whole or in part, a tax increment development project within the tax increment development area. Unless and until the total assessed value of the taxable property in a tax increment development area exceeds the base assessed value of the taxable property in the tax increment development area, all of the taxes levied upon the taxable property in the tax increment development area shall be paid into the funds of the respective public bodies; and

(3) when the bonds, loans, advances and indebtedness, if any, including interest thereon and any premiums due in connection with the bonds, loans, advances and indebtedness have been paid, all taxes upon taxable property in a tax increment development area shall be paid into the funds of the respective public bodies.

B. The portion of property taxes in excess of the amount of base property taxes may be irrevocably pledged by the district for the payment of the principal of, the interest on and any premiums due in connection with the bonds, loans, advances and indebtedness.

C. Upon general reassessment of taxable property valuations in a county, including all or part of a tax increment development area in which a property tax increment has been pledged for property tax increment bonds, the portions of valuations for assessment shall be proportionately adjusted in accordance with that reassessment or change.

D. A tax increment development plan, as originally approved or as later modified, may contain a provision that the taxes levied upon taxable property within the tax increment development area may continue to be allocated after the effective date of the adoption of the property tax increment provision if the existing bonds are in default or about to go into default; except that those taxes shall not be allocated after all bonds of the district issued pursuant to the plan, including loans, advances and indebtedness, if any, and interest thereon, and any premiums due in connection with the loans, advances and indebtedness have been paid.

E. The property tax increment generated by the imposition of property taxes may nonetheless be dedicated for the purposes of the Tax Increment for Development Act if intent to do so is set forth in the tax increment development plan approved by the governing body and if the property tax was not approved in an election.

F. The municipality in which a tax increment development district has been established shall timely notify the assessor of the county in which the district has been established when:

(1) a tax increment development plan has been approved;

(2) any outstanding obligation incurred by the district has been paid off; and

(3) the purposes of the district have otherwise been achieved.

G. As used in this section, "taxes" includes all levies authorized to be made on an ad valorem basis upon real and personal property.

H. The increment attributable to a levy by a taxing entity shall not be dedicated for the purpose of securing property tax increment bonds without the agreement of the taxing entity. The agreement shall be evidenced by a resolution adopted by a majority vote of that taxing entity. A taxing entity shall not agree to dedicate for the purpose of securing property tax increment bonds more than seventy-five percent of the property tax increment attributable to a property tax levy by that taxing entity.

History: Laws 2006, ch. 75, § 17.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contained an emergency clause and was approved March 6, 2006.

5-15-18. Bonding authority; property tax increment.

A. Subject to the limitations and in accordance with Article 9 of the constitution of New Mexico and Sections 6-15-1 and 6-15-2 NMSA 1978, a district board may issue and dispose of property tax increment bonds for the purpose of securing funds for

undertaking tax increment development projects within the purposes of the Tax Increment for Development Act.

B. Before property tax increment bonds are issued, the district board shall submit the question of authorizing the issuance of property tax increment bonds to the owners for a determination and to a vote of the qualified electors within the tax increment development area.

C. The district board shall give notice of a property tax increment bond election as required by the Local Election Act [Chapter 1, Article 22 NMSA 1978] and the Tax Increment for Development Act.

D. The ballot question shall state the purpose for which the property tax increment bonds are to be issued and the amount of the issue. If property tax increment bonds are to be issued for more than one purpose, a separate ballot question shall be submitted to the voters for each purpose to be voted upon. The ballot question shall contain words indicating the purpose of the bond issued and a place for a vote in favor of or in opposition to each property tax increment bond issue.

E. Except as otherwise provided in the Tax Increment for Development Act, property tax increment bonds:

(1) may have interest, principal value or any part thereof payable at intervals or at maturity, as determined by the governing body;

(2) may be subject to a prior redemption at the district's option at a time or upon terms and conditions with or without payment of premium or premiums, as determined by the district board;

(3) may mature at any time not exceeding twenty-five years after the date of issuance;

(4) may be serial in form and maturity or may consist of one bond payable at one time or in installments or may be in another form, as determined by the district board;

(5) 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 the Public Securities Short-Term Interest Rate Act [6-18-1 to 6-18-16 NMSA 1978]; and

(6) may be sold at public or negotiated sale.

F. Except as otherwise provided by law, the district board shall determine the denominations, places of payment, terms and conditions and the form of property tax increment bonds.

G. The secretary and treasurer of the district board shall sign property tax increment bonds.

H. The property tax increment bonds may be executed in the manner provided by the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978].

History: Laws 2006, ch. 75, § 18; 2019, ch. 212, § 206.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, required the question of authorizing the issuance of property increment bonds be submitted to the owners for a determination before property tax increment bonds are issued; in Subsection B, after "shall submit", added "the question of authorizing the issuance of property tax increment bonds to the owners for a determination and", and after "development area", deleted "and the nonresident electors owning property within the tax increment development area the question of issuing the property tax increment bonds"; in Subsection C, after "notice of", deleted "the time and place of holding the election and the purpose for which the property tax increment bonds are to be issued. Notice of", and after "required by", added "the Local Election Act and"; in Subsection D, after "bond issue.", deleted "The ballots shall be deposited in a separate ballot box, unless voting machines are used."; and in Subsection E, in Paragraph E(5), after "Public Securities Act and the", added "Public Securities".

5-15-19. Refunding bonds.

A. A district board that has issued bonds in accordance with the Tax Increment for Development Act may issue refunding bonds for the purpose of refinancing, paying and discharging all or any part of outstanding bonds for the:

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

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

(3) purpose of modifying or eliminating restrictive contractual limitations:

(a) pertaining to the issuance of additional bonds; or

(b) concerning the outstanding bonds or facilities relating to the outstanding bonds.

B. A district board may pledge irrevocably for the payment of interest, principal and premium, if any, on refunding bonds the appropriate pledged revenues, which may be pledged to an original issue of bonds.

C. Refunding bonds may be issued separately or in combination in one series or more.

D. Refunding bonds shall be authorized by resolution. Bonds that are refunded 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 such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

E. 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 if provision is duly and sufficiently made for the payment of the refunded bonds.

F. The proceeds of refunding bonds, including accrued interest and premiums appertaining to the sale of refunding bonds, shall be immediately applied to the retirement of the bonds being refunded or placed in escrow in a commercial bank or trust company that possesses and exercises trust powers and that is a member of the federal deposit insurance corporation. The proceeds shall be applied to the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that the refunding bond proceeds, including accrued interest and premiums 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 on those bonds and the principal of those bonds, or both interest and principal as the district board determines. This section does not require the establishment of an escrow if the refunded bonds and 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. 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; provided that the par value of the certificates of deposit is collateralized by a pledge of obligations or by a pledge of payment that is unconditionally guaranteed by the United States; and further provided that the par value of those 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 at any designated prior redemption date or dates in connection with which the municipality shall exercise a prior redemption option. A purchaser of a refunding bond issued is not responsible for the application of the proceeds by the district or any of its officers, agents or employees.

G. Refunding bonds may bear additional terms and provisions as determined by the district subject to the limitations in this section relating to original bond issues. Refunding bonds are not subject to the provisions of any other statute.

H. District refunding bonds:

(1) may have interest, principal value or any part thereof payable at intervals or at maturity, as determined by the district board;

(2) may be subject to prior redemption at the district's option at a time or times and upon terms and conditions with or without payment of premium or premiums, as determined by the district board;

(3) may be serial in form and maturity or may consist of a single bond payable in one or more installments or may be in another form, as determined by the district board; and

(4) 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].

I. At a regular or special meeting, a district board may adopt a resolution by majority vote to authorize the issuance of the refunding bonds.

History: Laws 2006, ch. 75, § 19.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contained an emergency clause and was approved March 6, 2006.

5-15-20. General bonding authority of a tax increment development district; other limitations.

A. A district board shall not issue bonds against gross receipts tax increments attributable to:

(1) the state gross receipts tax without:

(a) the state board of finance adopting a resolution dedicating a gross receipts tax increment attributable to the state gross receipts tax for the purpose of securing the gross receipts tax increment bonds pursuant to Subsection G of Section 5-15-15 NMSA 1978; and

(b) the approval required by Section 5-15-21 NMSA 1978; and

(2) a gross receipts tax imposed by a taxing entity without the agreement of the taxing entity as evidenced by a resolution adopted pursuant to Subsection B or C of Section 5-15-15 NMSA 1978.

B. Except as otherwise provided in this section, a district board shall not issue bonds against either gross receipts tax increments or property tax increments without the express written authorization of the department of finance and administration, as evidenced by a letter signed by the secretary of finance and administration. A district formed and approved by a class A county or by a municipality within a class A county if the municipality has a population of more than sixty-five thousand persons, according to the most recent federal decennial census, is not required to obtain express written authorization of the department of finance and administration for the issuance of gross receipts tax increment bonds or property tax increment bonds.

C. Prior to the issuance of indebtedness evidenced by the gross receipts tax increment bonds or property tax increment bonds issued by a district pursuant to the Tax Increment for Development Act, the property owners within the district shall contribute a minimum of twenty percent of the initial public infrastructure costs, which may be reimbursed with proceeds of gross receipts tax increment or property tax increment bonds; unless the project to be financed with gross receipts tax increment bonds or property tax increment bonds is a metropolitan redevelopment project pursuant to the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978].

D. The amount of indebtedness evidenced by the gross receipts tax increment bonds or property tax increment bonds issued pursuant to the Tax Increment for Development Act shall not exceed the estimated cost of the public improvements plus all costs connected with the public infrastructure purposes and the issuance and sale of bonds, including, without limitation, formation costs, credit enhancement and liquidity support fees and costs.

E. The indebtedness evidenced by the gross receipts tax increment bonds or property tax increment bonds shall not affect the general obligation bonding capacity of the municipality or county in which the tax increment development district is located.

F. The indebtedness evidenced by the gross receipts tax increment bonds or property tax increment bonds shall be payable only from the special funds into which are deposited the gross receipts tax increments and property tax increments as set forth in the Tax Increment for Development Act.

G. Bonds issued by a tax increment development district shall not be a general obligation of the state, the county or the municipality in which the tax increment development district is located and shall not pledge the full faith and credit of the state, the county or the municipality in which the tax increment development district is located.

History: Laws 2006, ch. 75, § 20; 2019, ch. 275, § 5.

ANNOTATIONS

Cross references. — For the classification of counties for salary purposes, *see* 4-44-1 NMSA 1978.

The 2019 amendment, effective July 1, 2019, provided that a district board shall not issue bonds against gross receipts tax increments attributable to the state gross receipts tax without the board of finance dedication of a portion of the state gross receipts tax increment for the purpose of securing the gross receipts tax increment bonds and legislative approval of the bonds or to gross receipts tax imposed by a taxing entity without the taxing entity's agreement as evidenced by a resolution; in Subsection A, added "A district board shall not issue bonds against gross receipts tax increment attributable to:", and added new Paragraphs A(1) and A(2); added new subsection designation "B" and redesignated former Subsections B through F as Subsections C through G, respectively.

Applicability. — Laws 2019, ch. 275, § 10 provided that the provisions of this act shall not apply to dedications of gross receipts tax increments by the state board of finance made prior to the effective date of this act.

5-15-20.1. Debt service reserve account.

After the retirement of all bonds issued pursuant to the tax increment development plan, any balance in a debt service reserve account established for the payment of those bonds shall be paid to the governments that have dedicated a tax increment to the district in proportion to the amount of tax increment attributable to their dedication.

History: Laws 2009, ch. 179, § 8.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 179 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-15-21. Approval required for issuance of bonds against state gross receipts tax increments.

A. In addition to all other requirements of the Tax Increment for Development Act, prior to a district board issuing bonds that are issued in whole or in part against a gross receipts tax increment attributable to the state gross receipts tax sourced to a district and before a distribution attributable to the state gross receipts tax is made pursuant to Section 7-1-6.54 NMSA 1978, the New Mexico finance authority shall review the proposed issuance of the bonds and determine that the proceeds of the bonds will be used for a tax increment development project in accordance with the district's tax increment development plan and present the proposed issuance of the bonds to the legislature for approval.

B. The issuance of the bonds and the maximum amount of bonds to be issued shall be specifically authorized by law.

History: Laws 2006, ch. 75, § 21; 2009, ch. 179, § 7; 2019, ch. 275, § 6; 2025, ch. 130, § 5.

ANNOTATIONS

The 2025 amendment, effective July 1, 2025, after "state gross receipts tax" replaced "within" with "sourced to".

The 2019 amendment, effective July 1, 2019, clarified that legislative approval is required not only prior to the issuance of gross receipts tax increment bonds, but also before a distribution is made pursuant to Section 7-1-6.54 NMSA 1978; in Subsection A, after "within a district", added "and before a distribution attributable to the state gross receipts tax is made pursuant to Section 7-1-6.54 NMSA 1978".

Applicability. — Laws 2019, ch. 275, § 10 provided that the provisions of this act shall not apply to dedications of gross receipts tax increments by the state board of finance made prior to July 1, 2019.

The 2009 amendment, effective June 19, 2009, after "district board issuing bonds", added "that are issued in whole or in part"; and in Subsection B, after "issuance of the bonds", added "and the maximum amount of bonds to be issued".

5-15-22. Exemption from taxation.

The bonds authorized by the Tax Increment for Development Act and the income from the bonds or any other instrument executed as security for the bonds shall be exempt from all taxation by the state or any political subdivision of the state.

History: Laws 2006, ch. 75, § 22.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contained an emergency clause and was approved March 6, 2006.

5-15-23. Protection from impairment.

If the provisions set forth in the Tax Increment for Development Act impair the ability of a municipality, county or other public body to meet its principal or interest payment obligations for revenue bonds or general obligation bonds outstanding prior to the effective date of the Tax Increment for Development Act that are secured by the pledge of all or part of the municipality, county or other public body's revenue gross receipts tax or property tax, then the amount otherwise payable to the district pursuant to the Tax Increment for Development Act shall be paid instead to the municipality, county or public body in an amount sufficient to meet any required payment.

History: Laws 2006, ch. 75, § 23.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contained an emergency clause and was approved March 6, 2006.

5-15-24. Tax increment accounting procedures.

A district board shall separately account for all revenues and indebtedness based on gross receipts tax increments and property tax increments. The district board shall individually account for all gross receipts tax increments.

History: Laws 2006, ch. 75, § 24.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contained an emergency clause and was approved March 6, 2006.

5-15-25. Modification of tax increment development area boundaries or tax increment development plan.

A. Following formation of a district, an area may be eliminated from the tax increment development area only following a hearing conducted upon notice given to the owners of land in the tax increment development area in the manner prescribed for the formation hearing, adoption of a resolution of intention to do so by the district board, a determination by the owners of real property within the district to eliminate the area and voter approval by the qualified electors as provided in the Local Election Act [6-9-1 to 6-9-6 NMSA 1978] and the Tax Increment for Development Act. Real property within the tax increment development area that is subject to the lien of property taxes, special

levies or other charges imposed pursuant to the Tax Increment for Development Act shall not be eliminated from the district while there are bonds outstanding that are payable by those taxes, special levies or charges.

B. Following formation of a district, an area may be added to the district upon a determination by the owners of real property in the proposed additional area and the approval of the qualified electors residing therein, as well as a determination by the owners of real property in the district and approval of the qualified electors, as provided in the Local Election Act and the Tax Increment for Development Act.

C. The district board, following a hearing conducted upon notice given to the owners of real property located in the district in the manner prescribed for the formation hearing, may, subject to the approval of the governing body that approved the district's tax increment development plan, amend the tax increment development plan in any manner that it determines will not substantially reduce the benefits to be received by any land in the district from the public infrastructure on completion of the work to be performed under the general plan. A determination by the owners and an election shall not be required solely for the purposes of this subsection.

History: Laws 2006, ch. 75, § 25; 2019, ch. 212, § 207.

ANNOTATIONS

The 2019 amendment, effective April 3, 2019, provided that the modification of a tax increment development area be made by a determination by the owners of real property within the district as provided in the Local Election Act; in Subsection A, after "by the district board,", added "a determination by the owners of real property within the district to eliminate the area", and after "as provided in", added "the Local Election Act and"; in Subsection B, after "as well as", added "a determination by", and after "qualified electors,", deleted "in the same manner as required for the formation of a district" and added "as provided in the Local Election Act and the Tax Increment for Development Act"; and in Subsection C, after "general plan.", deleted "An" and added "A determination by the owners and an".

5-15-25.1. Base period revision; resolution; comment period; submission of materials.

A. A district may revise the base period that the district uses to determine its gross receipts tax increment. To initiate the process of revising its base period, a district board shall:

(1) adopt a resolution declaring that intent; and

(2) forward copies of the adopted resolution to the secretary of taxation and revenue, the secretary of finance and administration, the developer and the local governments that have dedicated a tax increment to the district.

B. The taxation and revenue department, the department of finance and administration, the developer and the local governments that have dedicated a tax increment to the district may submit written comments to the district with copies sent to the state board of finance for fifteen days after receiving a copy of a district board's resolution indicating the board's intent to revise the base period used to determine the district's gross receipts tax increment.

C. No more than forty-five days after adopting the resolution declaring the intent to revise the base period that the district uses to determine its gross receipts tax increment, the district board shall submit to the state board of finance and send copies to the developer and any local government that has dedicated a tax increment to the district:

(1) a copy of the resolution;

(2) all comments on the matter that the district received from the taxation and revenue department, the department of finance and administration, the developer and the local governments that have dedicated a tax increment to the district; and

(3) any other related documentation.

History: Laws 2014, ch. 11, § 1; 2025, ch. 130, § 6.

ANNOTATIONS

The 2025 amendment, effective July 1, 2025, removed the definition of "developer" and clarified language in the section; deleted former Subsection D and substituted each occurrence of "year" with "period" throughout the section.

5-15-25.2. Base period revision; approval.

A. The state board of finance may approve the revision of the base period used to determine a district's gross receipts tax increment:

(1) once during the lifetime of the district;

(2) if no gross receipts tax increment bonds attributable to the district have been issued;

(3) if there is no unresolved objection to the revision by the developer or by a local government that has dedicated a tax increment to the district; and

(4) upon a finding that the revision is reasonable and in the best interest of the state.

B. If the state board of finance approves the revision of the base period used to determine a district's gross receipts tax increment, the state board of finance shall notify the district, the secretary of taxation and revenue, the developer and the local governments that have dedicated a tax increment to the district.

History: Laws 2014, ch. 11, § 2; 2025, ch. 130, § 7.

ANNOTATIONS

The 2025 amendment, effective July 1, 2025, removed the definition of "developer" and clarified language in the section; in Subsection A, deleted former Paragraph A(2) and former Subsection C; and substituted each occurrence of "year" with "period" throughout the section.

5-15-25.3. Base period revision; effect.

A. Upon notice of the approval of a revision of the base period used to determine a district's gross receipts tax increment, the district shall:

(1) return to the taxation and revenue department any gross receipts tax increment credited to the period between the time that the revenue collection began and the end of the revised base period and distributed to the district;

(2) update the district tax increment development plan to reflect the revision; and

(3) file with the clerk of the governing body that formed the district the revised tax increment development plan.

B. Upon receipt of the revenue identified in Paragraph (1) of Subsection A of this section, the taxation and revenue department shall remit to the taxing entities that have dedicated a gross receipts tax increment to the district an amount of that revenue in proportion to the amount of gross receipts tax increment attributable to their dedication.

History: Laws 2014, ch. 11, § 3; 2025, ch. 130, § 8.

ANNOTATIONS

The 2025 amendment, effective July 1, 2025, after each occurrence of "base" deleted "year" and added "period".

5-15-26. Termination of tax increment development district.

A. A district shall be terminated by a resolution of the district board that all of the following conditions exist:

(1) all improvements owned by the district have been, or provision has been made for all improvements to be, conveyed to the municipality or county in which the district is located;

(2) either the district does not have any outstanding bond obligations or the municipality or county has assumed all of the outstanding bond obligations of the district; and

(3) all obligations of the district pursuant to any agreement with the municipality or county have been satisfied.

B. Property in the district that is subject to the lien of district taxes shall remain subject to the lien for the payment of bonds, notwithstanding termination of the district. The district shall not be terminated if any bonds of the district remain outstanding unless an amount of money sufficient, together with investment income thereon, to make all payments due on the bonds either at maturity or prior redemption has been deposited with a trustee or escrow agent and pledged to the payment and redemption of the bonds. The district may continue to operate after termination only as needed to collect money and make payments on any outstanding bonds.

History: Laws 2006, ch. 75, § 26.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contained an emergency clause and was approved March 6, 2006.

5-15-27. Dedication of gross receipts tax increment; notice to taxation and revenue department.

A. If the state board of finance or a taxing entity approves a dedication or increase in the dedication of a gross receipts tax increment to a district, the state board of finance or the taxing entity shall notify the taxation and revenue department of that approval at least one hundred twenty days before the date on which the taxation and revenue department is requested to designate a reporting location code pursuant to Section 7-1-14 NMSA 1978 for the district in order to calculate the district's base gross receipts taxes; provided that the effective date of the dedication by the state board of finance is on or after the date base gross receipts taxes have been calculated and the bonds are approved by the legislature pursuant to Section 5-15-21 NMSA 1978.

B. In regard to a dedication of a gross receipts tax increment attributable to the state gross receipts tax, if the approval required pursuant to Section 5-15-21 NMSA 1978 has not occurred when the notice pursuant to Subsection A of this section is made, the state board of finance shall include in the notice that legislative approval is needed prior to a distribution pursuant to Section 7-1-6.54 NMSA 1978 attributable to the state gross

receipts tax can be made. Upon approval pursuant to Section 5-15-21 NMSA 1978, the state board of finance shall notify the department of the approval.

History: Laws 2006, ch. 75, § 27; 2019, ch. 275, § 7; 2025, ch. 130, § 9.

ANNOTATIONS

The 2025 amendment, effective July 1, 2025, adjusted the date by when the state board of finance or the taxing entity must notify the taxation and revenue department of an approval or dedication of a gross receipts tax increment to a district; in Subsection A, after "twenty days before the" deleted "effective date of the dedication or increase in the dedication" and added "date on which the taxation and revenue department tis requested to designate a reporting location code pursuant to Section 7-1-14 NMSA 1978 for the district in order to calculate the district's base gross receipts taxes", and after "on or after the date" added "base gross receipts taxes have been calculated and".

The 2019 amendment, effective July 1, 2019, clarified that the effective date of a dedication of gross receipts tax made by the state board of finance or taxing entity cannot be before the date of legislative approval pursuant to Section 5-15-21 NMSA 1978, and required the state board of finance or a taxing entity to indicate in its notice that before any distribution attributable to the state gross receipts tax increment is made to a tax increment development district, legislative approval of the gross receipts tax increment bonds is required; in Subsection A, after "increase in the dedication", added "provided that the effective date of the dedication by the state board of finance is on or after the date the bonds are approved by the legislature pursuant to Section 5-15-21 NMSA 1978"; and added Subsection B.

Applicability. — Laws 2019, ch. 275, § 10 provided that the provisions of this act shall not apply to dedications of gross receipts tax increments by the state board of finance made prior to July 1, 2019.

5-15-28. Bond term expiration.

The terms of bonds issued pursuant to the Tax Increment for Development Act for a district, including refunding bonds, shall expire not more than twenty-five years after the date that the first bonds are issued for that district.

History: Laws 2006, ch. 75, § 28.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contained an emergency clause and was approved March 6, 2006.

5-15-29. Report required.

On September 1 of each year, the district board of a district that receives a distribution of a gross receipts tax increment attributable to the state gross receipts tax shall submit a report to the state board of finance and the legislative finance committee that includes the estimated capital investment in the district, the estimated total net new jobs and new full-time economic base jobs created in the district and the total revenues distributed to the district in each previous fiscal year.

History: Laws 2019, ch. 275, § 8.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 275, § 11 made Laws 2019, ch. 275, § 8 effective July 1, 2019.

Applicability. — Laws 2019, ch. 275, § 10 provided that the provisions of Laws 2019, ch. 275 shall not apply to dedications of gross receipts tax increments by the state board of finance made prior to July 1, 2019.

ARTICLE 15A
Mesa del Sol Projects

5-15A-1. Authorization of issuance of bonds.

Pursuant to the provisions of Section 5-15-21 NMSA 1978, the legislature authorizes the issuance of bonds not to exceed five hundred million dollars ($500,000,000) in net proceeds as adjusted for inflation, secured by a gross receipts tax increment attributed to the imposition of the state gross receipts tax for the Mesa del Sol tax increment development project, subject to (1) the determination that has been made by the New Mexico finance authority that the proceeds of the bonds issued pursuant to this authorization will be used for the Mesa del Sol tax increment development project in accordance with the development plan, (2) the review by the New Mexico finance authority of the master indenture prior to issuance of any bonds and (3) the review by the New Mexico finance authority of any proposed amendments to the master indenture prior to the issuance of any bonds subsequent to such amendments.

History: Laws 2007, ch. 310, § 1 and Laws 2007, ch. 313, § 1.

ANNOTATIONS

Emergency clause. — Laws 2007, ch. 310, § 4 and Laws 2007, ch. 313, § 4 contained an emergency clause and were approved April 2, 2007.

Compiler's notes. — Laws 2007, ch. 310, § 1 and Laws 2007, ch. 313, § 1 enacted identical laws. Both were compiled as 5-15A-1 NMSA 1978.

5-15A-2. Duration of authorization.

The duration of the authorization for issuance of bonds in this act is unlimited, unless and until this act is repealed or modified by the legislature.

History: Laws 2007, ch. 310, § 2 and Laws 2007, ch. 313, § 2.

ANNOTATIONS

Emergency clause. — Laws 2007, ch. 310, § 4 and Laws 2007, ch. 313, § 4 contained an emergency clause and were approved April 2, 2007.

Compiler's notes. — Laws 2007, ch. 310, § 2 and Laws 2007, ch. 313, § 2 enacted identical laws. Both were compiled as 5-15A-2 NMSA 1978.

5-15A-3. Certain capital projects prohibited.

A. The legislature shall not approve or authorize any capital outlay projects within a Mesa del Sol tax increment development district during the period that any bonds issued pursuant to Section 1 [5-15A-1 NMSA 1978] of this act are outstanding for that specific district, except for those buildings or facilities that are owned by the state or one of its agencies, institutions or political subdivisions and that are:

(1) public school buildings or facilities;

(2) higher education buildings or facilities;

(3) cultural buildings or facilities;

(4) buildings or facilities used for public safety; or

(5) buildings used for other public purposes.

B. Nothing in this section prohibits the legislature from authorizing expenditures, pursuant to law, for economic development projects within a specific Mesa del Sol tax increment development district for which any tax increment development bonds are outstanding.

History: Laws 2007, ch. 310, § 3 and Laws 2007, ch. 313, § 3.

ANNOTATIONS

Emergency clause. — Laws 2007, ch. 310, § 4 and Laws 2007, ch. 313, § 4 contained an emergency clause and were approved April 2, 2007.

Compiler's notes. — Laws 2007, ch. 310, § 3 and Laws 2007, ch. 313, § 3 enacted identical laws. Both were compiled as 5-15A-3 NMSA 1978.

ARTICLE 15B
Taos Ski Valley Projects

5-15B-1. Authorization of issuance of bonds.

The legislature authorizes the issuance of bonds not to exceed forty-four million dollars ($44,000,000) in net proceeds as adjusted for inflation, secured by tax increments authorized pursuant to the Tax Increment for Development Act [Chapter 5, Article 15 NMSA 1978] to be pledged to pay the principal of and interest on the bonds, including a gross receipts tax increment attributed to the imposition of the state gross receipts tax within the village of Taos Ski Valley tax increment development district, subject to the review and approval by the New Mexico finance authority of:

A. the master indenture prior to issuance of any bonds; and

B. any amendments to the master indenture prior to issuance of any bonds after any amendments are made.

History: Laws 2015, ch. 83, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2015, ch. 83, § 5, contained an emergency clause and was approved April 8, 2015.

5-15B-2. Duration of authorization.

The duration of the authorization for issuance of bonds in this act shall be twenty-five years from the date of issuance of the first series of tax increment bonds of the district, unless and until this act is repealed or modified by the legislature.

History: Laws 2015, ch. 83, § 2.

ANNOTATIONS

Emergency clauses. — Laws 2015, ch. 83, § 5, contained an emergency clause and was approved April 8, 2015.

5-15B-3. Certain capital projects prohibited.

A. The legislature shall not approve or authorize any capital outlay projects within the village of Taos Ski Valley tax increment development district during the period in

which any bonds issued by the district pursuant to Section 1 [5-15B-1 NMSA 1978] of this act are outstanding, except for buildings, facilities or infrastructure that are owned by the state or one of its agencies, institutions or political subdivisions and that are:

(1) public school buildings or facilities;

(2) higher education buildings or facilities;

(3) cultural buildings or facilities;

(4) buildings, facilities or infrastructure used for public safety; or

(5) buildings, facilities or infrastructure used for other public purposes.

B. Nothing in this section prohibits the legislature from authorizing expenditures pursuant to law for economic development projects within the village of Taos Ski Valley tax increment development district during the period in which tax increment development bonds are outstanding.

History: Laws 2015, ch. 83, § 3.

ANNOTATIONS

Emergency clauses. — Laws 2015, ch. 83, § 5, contained an emergency clause and was approved April 8, 2015.

5-15B-4. Reduction in state gross receipts tax revenue.

Once the developer of the village of Taos Ski Valley tax increment development project has been fully reimbursed, regardless of the source of reimbursement, for the costs of eligible infrastructure, the village of Taos Ski Valley tax increment development district shall provide to the state board of finance the estimated amount of state gross receipts tax increment revenue required to pay the debt service on the district's outstanding bonds and to meet any required debt-service coverage and reserve requirements specified in the master indenture for any bonds payable from the state gross receipts tax increment. The board shall:

A. review that estimate;

B. determine:

(1) the reduced amount of state gross receipts tax increment revenue necessary each year to meet those requirements; and

(2) the reduction to the percentage of dedicated state gross receipts tax increment revenue corresponding to that reduced amount; and

C. notify the taxation and revenue department of the amount of that reduction, which shall take effect as soon as practicable after notification.

History: Laws 2015, ch. 83, § 4.

ANNOTATIONS

Emergency clauses. — Laws 2015, ch. 83, § 5, contained an emergency clause and was approved April 8, 2015.

ARTICLE 15C
South Campus Tax Increment Development Projects

5-15C-1. Authorization of issuance of bonds.

The legislature authorizes the issuance of bonds not to exceed two hundred sixty-seven million dollars ($267,000,000) in net proceeds as adjusted for inflation, secured by tax increments authorized pursuant to the Tax Increment for Development Act [Chapter 5, Article 15 NMSA 1978] to be pledged to pay the principal of and interest on the bonds, including a gross receipts tax increment attributed to the imposition of the state gross receipts tax within the south campus tax increment development district, subject to the review and approval by the New Mexico finance authority of:

A. the master indenture prior to issuance of any bonds; and

B. any amendments to the master indenture prior to issuance of any bonds after any amendments are made.

History: Laws 2023, ch. 157, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2023, ch. 157, § 5, contained an emergency clause and was approved April 5, 2023.

5-15C-2. Duration of authorization.

The duration of the authorization for issuance of bonds in this act shall be twenty-five years from the date of issuance of the first series of tax increment bonds of the district, unless and until this act is repealed or modified by the legislature.

History: Laws 2023, ch. 157, § 2.

ANNOTATIONS

Emergency clauses. — Laws 2023, ch. 157, § 5, contained an emergency clause and was approved April 5, 2023.

5-15C-3. Certain capital projects prohibited.

A. The legislature shall not approve or authorize any capital outlay projects within the south campus tax increment development district during the period in which any bonds issued by the district pursuant to Section 1 [5-15C-1 NMSA 1978] of this act are outstanding, except for buildings, facilities or infrastructure that are owned by the state or one of its agencies, institutions or political subdivisions and that are:

(1) public school buildings or facilities;

(2) higher education buildings or facilities;

(3) cultural buildings or facilities;

(4) buildings, facilities or infrastructure used for public safety; or

(5) buildings, facilities or infrastructure used for other public purposes.

B. Nothing in this section prohibits the legislature from authorizing expenditures pursuant to law for economic development projects within the south campus tax increment development district during the period in which tax increment development bonds are outstanding.

History: Laws 2023, ch. 157, § 3.

ANNOTATIONS

Emergency clauses. — Laws 2023, ch. 157, § 5, contained an emergency clause and was approved April 5, 2023.

5-15C-4. Reduction in state gross receipts tax revenue.

Once the developer of the south campus tax increment development project has been fully reimbursed, regardless of the source of reimbursement, for the costs of eligible infrastructure, the south campus tax increment development district shall provide to the state board of finance the estimated amount of state gross receipts tax increment revenue required to pay the debt service on the district's outstanding bonds and to meet any required debt-service coverage and reserve requirements specified in the master indenture for any bonds payable from the state gross receipts tax increment. The board shall:

A. review that estimate;

B. determine:

(1) the reduced amount of state gross receipts tax increment revenue necessary each year to meet those requirements; and

(2) the reduction to the percentage of dedicated state gross receipts tax increment revenue corresponding to that reduced amount; and

C. notify the taxation and revenue department of the amount of that reduction, which shall take effect as soon as practicable after notification.

History: Laws 2023, ch. 157, § 4.

ANNOTATIONS

Emergency clauses. — Laws 2023, ch. 157, § 5, contained an emergency clause and was approved April 5, 2023.

ARTICLE 16
Regional Spaceport District

5-16-1. Short title.

Sections 1 through 13 [5-16-1 to 5-16-13 NMSA 1978] of this act may be cited as the "Regional Spaceport District Act".

History: Laws 2006, ch. 15, § 1.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 15 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

5-16-2. Purposes.

The purposes of the Regional Spaceport District Act are to:

A. serve the public by providing for the development of a southwest regional spaceport;

B. allow multi-jurisdictional cooperation in the creation of a southwest regional spaceport;

C. provide for the promotion of the southwest regional spaceport; and

D. foster tourism in the cities and counties comprising the district.

History: Laws 2006, ch. 15, § 2.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 15 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

5-16-3. Definitions.

As used in the Regional Spaceport District Act:

A. "authority" means the spaceport authority created pursuant to the Spaceport Development Act [58-31-1 to 58-31-17 NMSA 1978];

B. "board" means the board of directors of a district;

C. "bond" means a revenue bond issued by the authority on behalf of a district;

D. "combination" means two or more governmental units that exercise joint authority;

E. "district" means a regional spaceport district that is a political subdivision of the state created pursuant to the Regional Spaceport District Act;

F. "governmental unit" means the state, a county or a municipality of the state or an Indian nation, tribe or pueblo located within the boundaries of the state;

G. "project" means any land, building or other improvements acquired as part of a spaceport or associated with a spaceport or to aid commerce in connection with a spaceport and all real and personal property deemed necessary in connection with the spaceport;

H. "revenues" means municipal regional spaceport gross receipts tax revenues and county regional spaceport gross receipts tax revenues; and

I. "spaceport" means any facility in New Mexico at which space vehicles may be launched or landed, including all facilities and support infrastructure related to launch, landing or payload processing.

History: Laws 2006, ch. 15, § 3.

ANNOTATIONS

Cross references. — For the municipal regional spaceport gross receipts tax, *see* 7-19D-15 NMSA 1978.

For the county regional spaceport gross receipts tax, *see* 7-20E-25 NMSA 1978.

Effective dates. — Laws 2006, ch. 15 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

5-16-4. Creation of district.

A. A combination may create a regional spaceport district by contract. Upon the issuance by the authority of a certificate stating that the district has been duly organized according to the provisions of the Regional Spaceport District Act, the district may exercise the functions conferred by the provisions of that act. The authority shall issue the certificate within thirty days of the filing with the authority of a copy of a contract that fulfills all the requirements set forth in this section and a copy of the bylaws and operating procedures of the district. The authority shall cause the certificate to be recorded in each county having territory included in the boundaries of the district. Upon issuance of the certificate by the authority, the district shall constitute a separate political subdivision of the state and shall have all of the duties, privileges, immunities, rights, liabilities and disabilities of a political subdivision.

B. A contract establishing a district shall specify the:

(1) name and purpose of the district;

(2) establishment and organization of the board in which all legislative power of the district is vested;

(3) manner of the appointment, term of service and qualifications, if any, of the directors and the procedure for filling vacancies;

(4) officers of the district, the manner of their appointment and their duties;

(5) voting requirements for action by the board;

(6) provisions for the distribution, disposition or division of the assets of the district;

(7) term of the contract and the method by which it may be terminated or rescinded, but the contract shall not be terminated or rescinded so long as the authority has bonds outstanding;

(8) provisions for amendment of the contract;

(9) limitations on the powers granted by the Regional Spaceport District Act that may be exercised by the district; and

(10) conditions required when adding or deleting parties to the contract.

C. A governmental unit shall not enter into a contract establishing a district without holding at least three public hearings in addition to other requirements imposed by law for public notice. The governmental unit shall give notice of the time, place and purpose of the public hearing by publication in a newspaper of general circulation in the governmental unit at least ten days prior to the date of the public hearing.

D. Upon the approval of the governor and the combination, the state may join in a contract creating a district. The number of directors of the board to which the state is entitled shall be established in the contract, but in no case shall the state be entitled to less than one director. The governor shall appoint, with the confirmation of the senate, the director or directors representing the state on the board for a term as established by the contract that created the district.

History: Laws 2006, ch. 15, § 4.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 15 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

5-16-5. Board.

A. All powers, privileges and duties vested in or imposed upon the district shall be exercised and performed by the board. The board may delegate its powers by resolution to an officer or agent of the board, with the exception of the following:

(1) adoption of board policies and procedures;

(2) initiation or continuation of legal action;

(3) establishment of policies regarding the use of revenues; and

(4) request to the authority to issue bonds.

B. Only an elected official may vote on resolutions regarding Paragraph (4) of Subsection A of this section.

C. The board shall adopt rules to govern its conduct and provide meaningful opportunities for public input, which shall include standards and procedures for calling emergency meetings.

D. The board shall be composed of at least one director from each governmental unit that is a member of the district. A director shall be an elected official or the official's designee. A governmental unit shall not have a majority of membership on the board, unless there are three or fewer participating governmental units in the district.

E. A director of the board shall not vote on an issue when the director has a conflict of interest. A director of the board, officer of the board or employee of the board shall not:

(1) acquire a financial interest in a new or existing business venture or business property of any kind when the person believes or has reason to believe that the new financial interest will be directly affected by the official act;

(2) use confidential information acquired by virtue of the person's office or employment for the person's or another's private gain; or

(3) contract with the district without public notice and competitive bidding and full disclosure of the person's financial or other interest in the business that is party to the contract.

F. The attorney general shall investigate and prosecute, when appropriate, a complaint brought to the attorney general's attention involving a violation of Subsection E of this section. Violation of the provisions of Subsection E of this section by a director of the board, officer of the board or employee of the board is grounds for removal or suspension of the director or officer and dismissal, demotion or suspension of the employee.

G. In addition to all other powers conferred by the Regional Spaceport District Act, the board may:

(1) adopt bylaws;

(2) fix the time and place of meetings and the method of providing notice of the meetings;

(3) make and pass orders and resolutions necessary for the government and management of the affairs of the district and the execution of the powers vested in the district;

(4) adopt and use a seal; and

(5) appoint advisory committees and define the duties of the committees.

History: Laws 2006, ch. 15, § 5.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 15 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

5-16-6. Powers of the district.

A. A district is a body politic and corporate. In addition to other powers granted to the district pursuant to the Regional Spaceport District Act, the district may:

(1) have perpetual existence, except as otherwise provided in the contract;

(2) sue and be sued;

(3) enter into contracts and agreements affecting the affairs of the district;

(4) pledge all or a portion of the revenues to the payment of bonds of the authority; and

(5) construct, in connection with the authority, a regional spaceport within the boundaries of the district.

B. After the creation of a district, the board may include property within or exclude property from the boundaries of the district in the manner provided in this section. Property shall not be included within the boundaries of the district unless it is within the boundaries of the members of the combination at the time of the inclusion. Prior to inclusion of property in or exclusion of property from the boundaries of the district, the board shall cause notice of the proposed inclusion or exclusion to be published in a newspaper of general circulation within the boundaries of the district and cause the notice to be mailed to the authority. The notice shall:

(1) describe the property to be included in or excluded from the boundaries of the district;

(2) specify the date, time and place at which the board shall hold a public hearing on the proposed inclusion or exclusion; provided that the date of the public hearing contained in the notice shall be not less than twenty days after publication of the notice; and

(3) state that persons having objections to the inclusion or exclusion may appear at the public hearing to object to the proposed inclusion or exclusion.

C. The board shall hear all objections to the proposed inclusion or exclusion of property at the time and place designated in the notice. The board, upon the affirmative vote of two-thirds of the directors, may adopt a resolution including or excluding all or a portion of the property described in the notice. Upon the adoption of the resolution, the property shall be included within or excluded from the boundaries of the district as set

forth in the resolution. The board may adopt the resolution without amending the district's enabling contract. The board shall file the resolution with the authority, which shall cause the resolution to be recorded in the real estate records of each county having territory included in the boundaries of the district.

History: Laws 2006, ch. 15, § 6.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 15 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

5-16-7. Bonds.

A district may enter into contracts with the authority pursuant to which the authority may issue bonds under the Spaceport Development Act [58-31-1 to 58-31-17 NMSA 1978] for the purpose of financing the planning, designing, engineering and construction of a regional spaceport or spaceport-related project. The district shall request that the authority issue bonds pursuant to resolution of the board, and the bonds shall be payable solely out of all or a specified portion of the revenues as designated by the board.

History: Laws 2006, ch. 15, § 7.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 15 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

5-16-8. Investments.

A board shall invest or deposit funds in accordance with the prudent investor rule set forth in the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978]. The board shall employ the state investment council to invest the funds and may pay reasonable compensation for investment management services from the assets of the applicable funds. The board shall keep accurate and complete records and accounts concerning the investment portfolio.

History: Laws 2006, ch. 15, § 8.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 15 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

5-16-9. Taxation.

A district has no direct taxation authority.

History: Laws 2006, ch. 15, § 9.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 15 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

5-16-10. Cooperative powers.

A district may cooperate with a person to:

A. accept legitimate contributions or liens securing obligations of the district from the person with respect to the financing, planning, designing, engineering and construction of a regional spaceport and, in connection with a loan or advance, enter into contracts establishing the repayment terms;

B. enter into contracts regarding the financing, planning, designing, engineering and construction of a regional spaceport; and

C. enter into joint operating contracts with the authority concerning the financing, planning, designing, engineering and construction of a regional spaceport.

History: Laws 2006, ch. 15, § 10.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 15 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

5-16-11. Notice; opportunity for comment.

At least seven business days prior to a regularly scheduled meeting, the board shall make available to the public written or electronic notice of the time and agenda of the meeting. The board shall designate during each meeting a public comment period and shall offer the public an opportunity to comment.

History: Laws 2006, ch. 15, § 11.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 15 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

5-16-12. Addition or withdrawal of territory by a district.

A. After the creation of a district, a governmental unit adjacent to but not part of that district may join the district and determine the territorial area to become a part of that district. A two-thirds' affirmative vote by the board shall be required before the governmental unit may join the district.

B. A governmental unit that is a member of a district may withdraw from the district by adopting a resolution to withdraw. The governmental unit shall withdraw its representative from the board. Real property owned by the district within the boundaries of the withdrawing governmental unit shall remain the property of the district. The provisions of withdrawal shall be negotiated and agreed to by the board, the governmental unit and the authority.

History: Laws 2006, ch. 15, § 12.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 15 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

5-16-13. Use of revenue by governmental units.

Each governmental unit that is a county or municipality and is a member of a combination shall have enacted a municipal regional spaceport gross receipts tax or a county regional spaceport gross receipts tax prior to December 31, 2008. At least seventy-five percent of the municipal regional spaceport gross receipts tax or county regional spaceport gross receipts tax revenues received by each governmental unit must be used by the district for the financing, planning, designing, engineering and construction of a regional spaceport. No more than twenty-five percent of the municipal regional spaceport gross receipts tax or county regional spaceport gross receipts tax revenues may be used by the governmental unit enacting the tax for spaceport-related projects as approved by resolution of the governmental unit.

History: Laws 2006, ch. 15, § 13.

ANNOTATIONS

Cross references. — For the municipal regional spaceport gross receipts tax, *see* 7-19D-15 NMSA 1978.

For the county regional spaceport gross receipts tax, *see* 7-20E-25 NMSA 1978.

Effective dates. — Laws 2006, ch. 15 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

ARTICLE 17
Infrastructure Development Zone

5-17-1. Short title.

Chapter 5, Article 17 NMSA 1978 may be cited as the "Infrastructure Development Zone Act".

History: Laws 2009, ch. 136, § 1; 2019, ch. 10, § 1.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, changed "This act" to "Chapter 5, Article 17 NMSA 1978".

5-17-2. Definitions.

As used in the Infrastructure Development Zone Act:

A. "approving authority" means the governing body required by Section 5-17-9 or 5-17-13 NMSA 1978 to designate an election official to conduct the organization election and exercise other duties pursuant to the Infrastructure Development Zone Act;

B. "board" means the board of directors of an infrastructure development zone;

C. "director" means a member of a board;

D. "eligible elector" means a person who is registered to vote in New Mexico and who:

(1) has been a resident of the infrastructure development zone or the area to be included in the infrastructure development zone for not less than thirty days; or

(2) is a taxpaying elector;

E. "governing body" means the governing body of a municipality or the board of county commissioners of a county;

F. "infrastructure development zone" means a political subdivision organized or acting pursuant to the provisions of the Infrastructure Development Zone Act;

G. "publication" means printing one time, in one newspaper of general circulation in the infrastructure development zone or proposed infrastructure development zone if there is such a newspaper, and, if not, then in a newspaper in the county in which the infrastructure development zone or proposed infrastructure development zone is located. If an infrastructure development zone has territory within more than one county and if publication cannot be made in one newspaper of general circulation in the infrastructure development zone, then one publication is required in a newspaper in each county in which the infrastructure development zone is located and in which the infrastructure development zone also has fifty or more eligible electors;

H. "regular election" means the election on the Tuesday succeeding the first Monday of May in every even-numbered year, held for the purpose of electing members to the board and for submission of other questions, if any;

I. "secretary" means the secretary of a board;

J. "services" means any improvements and facilities listed in this subsection and provided for in the service plan of an infrastructure development zone as approved by the governing body, including both on-site improvements and off-site improvements that directly or indirectly benefit the infrastructure development zone and necessary or incidental work, whether newly constructed, renovated or existing, and all necessary or desirable appurtenances. "Services" include:

(1) sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;

(2) drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;

(3) water systems for domestic, commercial, office, industrial, irrigation, municipal, fire protection or other purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;

(4) highways, streets, roadways, bridges, crossing structures and parking facilities, including all areas for vehicular use for travel, ingress, egress and parking;

(5) trails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking;

(6) pedestrian malls, parks, recreational facilities and open space areas for the use of members of the public for entertainment, assembly and recreation, including programming events for the community and public;

(7) landscaping, including earthworks, structures, lakes and other water features, plants, trees and related water delivery systems;

(8) public buildings, public safety facilities and fire protection and police facilities, subject to the consent of the approving authority;

(9) electrical and energy generation, transmission and distribution facilities, including solar, wind and geothermal;

(10) natural gas distribution facilities;

(11) lighting systems;

(12) cable or other telecommunications lines and related equipment, including fiber optic transmission facilities designed to carry communication signals such as voice, data and video and any broadband technology infrastructure;

(13) traffic control systems and devices, including signals, controls, markings and signage;

(14) public educational or cultural facilities;

(15) equipment, vehicles, furnishings and other personalty related to the items listed in this subsection;

(16) inspection, construction management and program management costs; and

(17) solid waste and garbage collection and disposal; and

K. "taxpaying elector" means a person:

(1) who, or whose spouse, owns taxable real or personal property within the infrastructure development zone or the area to be included in or excluded from the infrastructure development zone, whether the person resides within the infrastructure development zone or not; or

(2) who is obligated to pay taxes under a contract to purchase taxable property within the infrastructure development zone or the area to be included in or excluded from the infrastructure development zone, whether the person resides within the infrastructure development zone or not.

History: Laws 2009, ch. 136, § 2; 2017, ch. 141, § 1.

ANNOTATIONS

Compiler's notes. — Senate Bill 24, enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed by the governor on March 15, 2017. Pursuant to the First Judicial District Court's decision in State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al., D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, Senate Bill 24 was chaptered into law by the Secretary of State.

The 2017 amendment, effective June 16, 2017, provided for broadband infrastructure development by a local government; in Subsection A, after "required by Section", deleted "9 or 13 of the Infrastructure Development Zone Act" and added "5-17-9 or 5-17-13 NMSA 1978", and after "exercise other duties pursuant to", deleted "that" and added "the Infrastructure Development Zone"; and in Subsection J, Paragraph (12), after "data and video", added "and any broadband technology infrastructure".

5-17-3. Organization of infrastructure development zone; submission of service plan.

A. An infrastructure development zone may be entirely within or entirely without, or partly within and partly without, one or more municipalities or counties, and an infrastructure development zone may consist of noncontiguous tracts or parcels of property within three miles of each other.

B. Persons proposing the organization of an infrastructure development zone shall submit a petition, a service plan and any required processing fee sufficient to defray the costs of the applicable county or municipality to:

(1) the governing body of each municipality within which lies any area within the proposed infrastructure development zone; and

(2) the governing body of each county in which lies any area within the proposed infrastructure development zone that is not within a municipality.

C. The petition shall be signed by not less than thirty percent or four hundred of the taxpaying electors of the proposed infrastructure development zone, whichever number is smaller. The petition shall set forth:

(1) the name of the proposed infrastructure development zone;

(2) a statement as to whether the proposed infrastructure development zone lies wholly or partly within another county, municipality or other infrastructure development zone;

(3) a description of the boundaries of the proposed infrastructure development zone or the territory to be included therein, with such certainty as to enable a property owner to determine whether or not the property owner's property is within the proposed infrastructure development zone;

(4) a request for the organization of the infrastructure development zone; and

(5) a request for the submission to the eligible electors of the proposed infrastructure development zone at the organization election of any questions permitted to be submitted at the organization election pursuant to Section 10 [5-17-10 NMSA 1978] of the Infrastructure Development Zone Act.

D. The service plan shall contain the following:

(1) a description of the proposed services;

(2) a financial plan showing how the proposed services are to be financed, including the proposed operating revenue derived from property taxes for the first budget year of the proposed infrastructure development zone;

(3) a schedule of the proposed indebtedness for the proposed infrastructure development zone indicating the year or years in which the debt is scheduled to be issued;

(4) a preliminary engineering or architectural survey showing how the proposed services are to be provided;

(5) a map of the proposed infrastructure development zone boundaries and an estimate of the population and valuation for assessment of the proposed infrastructure development zone;

(6) a general description of the facilities to be constructed and the standards of the construction, including a statement of how the facility and service standards of the proposed infrastructure development zone are compatible with the facility and service standards of any county or municipality within the zoning jurisdiction of which all or any portion of the proposed infrastructure development zone is to be located;

(7) a general description of the estimated cost of acquiring land, engineering services, legal services, administrative services, initial proposed indebtedness and estimated proposed maximum interest rates and discounts, and other major expenses related to the organization and initial operation of the proposed infrastructure development zone;

(8) a description of any arrangement or proposed agreement with any political subdivision for the performance of any services between the proposed infrastructure development zone and the other political subdivision, including, if the form contract to be used is available, a copy of the contract;

(9) a proposed maximum mill levy that will be assessed by the infrastructure development zone and that, upon approval by the governing body, shall be the limitation on the mill levy that may be assessed for all purposes, including operating expenses and debt service on bonds issued pursuant to Section 28 [5-17-28 NMSA 1978] of the Infrastructure Development Zone Act; and

(10) such additional information as the governing body may require by resolution on which to base its findings pursuant to Section 7 [5-17-7 NMSA 1978] of the Infrastructure Development Zone Act.

History: Laws 2009, ch. 136, § 3.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-4. Public hearing required.

A. After receiving a petition and a service plan, the governing body shall set a date within ninety days for a public hearing on the petition and service plan of the proposed infrastructure development zone. The governing body, at the petitioners' expense, shall provide written notice of the date, time and location of the hearing to the petitioners, each resident or property owner of record within the boundaries of the proposed infrastructure development zone and the governing body of any existing county, municipality, school district or other political subdivision that has levied an ad valorem tax within the next preceding tax year and that has boundaries within a radius of three miles of the proposed infrastructure development zone boundaries, which governmental units shall be interested parties for the purposes of Subsection C of this section. Notice shall also be given to any person who has requested that notice be given for any petition filed pursuant to the Infrastructure Development Zone Act. The governing body shall make publication of the date, time, location and purpose of the hearing, the first of which shall be at least twenty days prior to the hearing date. The notice shall also include:

(1) a general description of the land contained within the boundaries of the proposed infrastructure development zone;

(2) information outlining methods and procedures for excluding territory from the proposed infrastructure development zone; and

(3) places, including websites, where interested persons may obtain a copy of the petition and the service plan.

B. Not more than thirty days nor less than twenty days prior to the hearing held pursuant to this section, the petitioners for the organization of the proposed infrastructure development zone shall send notification by first class mail of the hearing to the property owners within the proposed infrastructure development zone as listed on the records of the county clerk on the date requested unless the petitioners represent one hundred percent of the property owners. Notification of the hearing may also be sent by electronic mail to property owners that have an electronic mail address. The notification shall indicate that it is a notice of a hearing for the organization of an infrastructure development zone and shall indicate the date, time, location and purpose of the hearing, a general description of the type of services that are included in the service plan, the maximum mill levy, if any, or stating that there is no maximum that may be imposed by the proposed infrastructure development zone, and procedures for the filing of a request for exclusion pursuant to Section 5-17-6 NMSA 1978. The mailing of the notification by first class mail to all addresses within the proposed infrastructure development zone shall constitute a good-faith effort to comply with this subsection. Failure to notify all property owners by first class mail shall not provide grounds for a challenge to the hearing being held.

C. The hearing held by the governing body shall be open to the public, and a record of the proceedings shall be made at the expense of the petitioners. All interested parties shall be afforded an opportunity to be heard under such rules of procedure as may be established by the governing body. Any testimony or evidence that in the discretion of the governing body is relevant to the organization of the proposed infrastructure development zone shall be considered.

History: Laws 2009, ch. 136, § 4; 2019, ch. 10, § 2.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, required notifications for public hearings mandated by the Infrastructure Development Zone Act be sent by first class mail, and allowed notifications to be sent by electronic mail; in Subsection B, after "shall send notification by", deleted "certified" and added "first class", after "one hundred percent of the property owners.", added "Notification of the hearing may also be sent by electronic mail to property owners that have an electronic mail address."; after "exclusion pursuant to Section", deleted "6 of the Infrastructure Development Zone Act" and added "5-17-6 NMSA 1978", after "mailing of the notification by", deleted "certified" and added "first class", and after "all property owners by", deleted "certified" and added "first class".

5-17-5. Objecting petition; plan to be disapproved.

No service plan shall be approved if a petition objects to the service plan and is signed by the owners of taxable real and personal property, consisting of more than fifty percent of the total assessed value of all taxable real and personal property to be included in the proposed infrastructure development zone, is filed with the governing body no later than ten days prior to the hearing pursuant to Section 4 [5-17-4 NMSA 1978] of the Infrastructure Development Zone Act, unless the property has been excluded by the governing body under Section 6 [5-17-6 NMSA 1978] of that act.

History: Laws 2009, ch. 136, § 5.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-6. Request for exclusion.

A. The governing body may exclude territory from a proposed infrastructure development zone prior to approval of the service plan. Any person owning property in the proposed infrastructure development zone who requests that the person's property be excluded from the infrastructure development zone prior to approval of the service plan shall submit the request to the governing body no later than ten days prior to the hearing held pursuant to Section 4 [5-17-4 NMSA 1978] of the Infrastructure Development Zone Act. The petitioners who submitted the service plan shall have the burden of proving that the exclusion of the property is not in the best interests of the proposed infrastructure development zone. Any request for exclusion shall be acted upon before final action of the governing body pursuant to Section 7 [5-17-7 NMSA 1978] of the Infrastructure Development Zone Act.

B. The governing board shall exclude property located within any home rule municipality in respect to which a request for exclusion has been filed by the municipality.

History: Laws 2009, ch. 136, § 6.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-7. Action on petition and service plan; criteria.

A. Within sixty days of a hearing held pursuant to Section 4 [5-17-4 NMSA 1978] of the Infrastructure Development Zone Act, the governing body shall disapprove the

service plan, approve the service plan as submitted or conditionally approve the service plan subject to the submission of additional information relating to or modifying the proposed service plan.

B. The governing body shall disapprove the service plan unless evidence, satisfactory to the governing body, is presented that:

(1) the required number of taxpaying electors of the proposed infrastructure development zone have signed the petition;

(2) there is sufficient existing or projected need for organized service in the area to be serviced by the proposed infrastructure development zone;

(3) the existing service in the area to be served by the proposed infrastructure development zone is inadequate for present or projected needs;

(4) the proposed infrastructure development zone will be capable of providing economical and sufficient service to the area within its proposed boundaries;

(5) the area to be included in the proposed infrastructure development zone has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis; and

(6) the proposed infrastructure development within the infrastructure development zone is in compliance with any applicable comprehensive master plan adopted pursuant to Section 3-19-9 NMSA 1978.

C. The governing body may disapprove the service plan if evidence, satisfactory to the governing body, and at the discretion of the governing body, is not presented that:

(1) adequate service is not, or will not be, available to the area through the municipality, county or other existing political subdivisions, including existing infrastructure development zones, within a reasonable time and on a comparable basis;

(2) the facility and service standards of the proposed infrastructure development zone are compatible with the facility and service standards of each county or municipality within which the proposed infrastructure development zone is to be located;

(3) the proposal is in compliance with any existing municipal, county, regional or state long-range water quality management plan for the area; or

(4) the creation of the proposed infrastructure development zone will be in the best interests of the area proposed to be served.

D. The governing body may conditionally approve the service plan of a proposed infrastructure development zone upon satisfactory evidence that it does not comply with one or more of the criteria enumerated in Subsection C of this section. Final approval shall be contingent upon modification of the service plan to include such changes or additional information as shall be specifically stated in the findings of the governing body.

E. The findings of the governing body shall be based solely upon the service plan and evidence presented at the hearing by the petitioners and any interested party.

History: Laws 2009, ch. 136, § 7.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-8. Approval of service plan; petition granted; election scheduled.

A. If the service plan is approved as submitted, the governing body shall issue a resolution of approval to the petitioners. If the service plan is disapproved, the specific detailed reasons for the disapproval shall be set forth in writing. If the service plan is conditionally approved, the changes or modifications to be made in, or additional information relating to, the service plan, together with the reasons for the changes, modifications or additional information, shall also be set forth in writing, and the proceeding shall be continued until the changes, modifications or additional information are incorporated in the service plan. Upon the incorporation of the changes, modifications or additional information in the service plan of the proposed infrastructure development zone, the governing body shall issue a resolution of approval to the petitioners.

B. Upon the approval of the service plan by each governing body to which the service plan and petition were submitted, the petition shall be granted and the approving authority shall designate an election official to take the oath required of precinct board members and conduct an organization election pursuant to Sections 10 and 20 [5-17-10 and 5-17-20 NMSA 1978] of the Infrastructure Development Zone Act, provided that no organization election shall be held if all of the eligible electors were petitioners and if there are no competing candidates for director positions.

C. Any interested party aggrieved by the decision of the governing body may appeal to the district court pursuant to Section 39-3-1.1 NMSA 1978.

History: Laws 2009, ch. 136, § 8.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-9. Designation of approving authority.

A. The approving authority shall be:

(1) for an infrastructure development zone located entirely within one county and outside a municipality, the governing body of that county;

(2) for an infrastructure development zone located entirely within a municipality, the governing body of that municipality;

(3) except as provided in Subsection B of this section, for an infrastructure development zone that is not described in Paragraph (1) or (2) of this subsection and of which the majority of its acreage lies outside a municipality, the governing body of the county containing the most acreage outside of a municipality; or

(4) except as provided in Subsection B of this section, for an infrastructure development zone that is not described in Paragraph (1) or (2) of this subsection and of which the majority of its acreage lies within a municipality, the governing body of that municipality.

B. For an infrastructure development zone that is not described in Paragraph (1) or (2) of Subsection A of this section, in lieu of the approving authority designated pursuant to Paragraph (3) or (4) of that subsection, all of the governing bodies that approved the petition and service plan of the infrastructure development zone may jointly designate a governing body, in the zoning jurisdiction of which lies any portion of the infrastructure development zone, as the approving authority.

History: Laws 2009, ch. 136, § 9.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-10. Organization election.

A. The election official designated by the approving authority shall conduct the organization election pursuant to this section and Section 20 [5-17-20 NMSA 1978] of the Infrastructure Development Zone Act.

B. At the election, the eligible electors shall vote for or against the organization of the proposed infrastructure development zone, shall vote for five eligible electors of the infrastructure development zone who shall be the initial directors of the board of the infrastructure development zone, if organized and shall vote for or against general obligation bonds or other general obligations if the petition filed pursuant to Section 3 [5-17-3 NMSA 1978] of the Infrastructure Development Zone Act requests that the questions be submitted at the organization election.

C. If the majority of the votes cast at the election are in favor of the organization, the approving authority shall, by resolution, declare the infrastructure development zone organized and give the infrastructure development zone the corporate name designated in the petition, by which it shall thereafter be known in all proceedings, and designate the first board elected. Thereupon the infrastructure development zone shall be a quasi-municipal corporation and a political subdivision of the state with all the powers thereof.

D. The resolution declaring the infrastructure development zone organized shall be deemed final and shall finally and conclusively establish the regular organization of the infrastructure development zone against all persons. No appeal or other remedy shall challenge the resolution except in an action by the attorney general within thirty days after the resolution is passed, and the organization of the infrastructure development zone shall not be directly or collaterally questioned in any suit, action or proceeding except as expressly authorized in this subsection.

History: Laws 2009, ch. 136, § 10.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-11. Filing resolution and service plan.

Within thirty days after the effective date of the resolution declaring that an infrastructure development zone has been organized, the original petitioners shall file the resolution, the approved service plan and a map of the infrastructure development zone with the county clerk in each of the counties in which the infrastructure development zone is located and with the local government division of the department of finance and administration. Thereafter, the infrastructure development zone shall maintain a current, accurate map of its boundaries and shall file the map with each county clerk on or before January 1 of each year.

History: Laws 2009, ch. 136, § 11.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-12. Service area of infrastructure development zones; overlapping districts.

A. Except as provided in Subsection B of this section, no infrastructure development zone may be organized wholly or partly within an existing special district or infrastructure development zone that provides the same service; provided that nothing in this subsection shall prevent an infrastructure development zone that provides different services from organizing wholly or partly within an existing special district or infrastructure development zone.

B. An overlapping district may be authorized to provide the same service as the existing special district or infrastructure development zone that the overlapping district overlaps or will overlap if:

(1) where the service plan of the overlapping district is subject to approval by a governing body, the governing body having jurisdiction over the overlapping territory approves by resolution the inclusion of the service as part of the service plan of the overlapping district;

(2) the improvements or facilities to be financed, established or operated by the overlapping district for the provision of the same service as the existing special district or infrastructure development zone do not duplicate or interfere with any other improvements or facilities already constructed or planned to be constructed within the portion of the existing special district or infrastructure development zone that the overlapping district overlaps or will overlap; and

(3) the board of directors of any special district or infrastructure development zone authorized to provide a service within the boundaries of the overlapping area consents to the overlapping district providing the same service.

C. As used in this section:

(1) "overlapping district" means a new or existing special district or infrastructure development zone located wholly or partly within an existing special district or infrastructure development zone; and

(2) "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 that another political subdivision of the state is authorized to perform.

History: Laws 2009, ch. 136, § 12.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-13. Approval by an annexing municipality.

A. If an infrastructure development zone that was not originally approved by the governing body of a municipality becomes wholly contained within the boundaries of a municipality by annexation, the board may petition the governing body of the municipality to accept a designation as the approving authority for the infrastructure development zone. The municipality may accept the designation through the adoption of a resolution of approval by the governing body of the municipality.

B. Upon the adoption of the resolution by the governing body of a municipality pursuant to Subsection A of this section, all powers and authorities vested in the approving authority pursuant to the Infrastructure Development Zone Act shall be transferred to the governing body of the municipality, which shall constitute the approving authority for the infrastructure development zone for all purposes under that act.

History: Laws 2009, ch. 136, § 13.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-14. Service plan; compliance; modification; enforcement.

A. Upon the organization of an infrastructure development zone, the facilities, services and financial arrangements of the infrastructure development zone shall conform so far as practicable to the approved service plan.

B. After the organization of an infrastructure development zone, material modifications of the service plan as originally approved may be made by the board only by petition to and approval by each governing body that approved the original service plan or that became an approving authority under Section 13 [5-17-13 NMSA 1978] of the Infrastructure Development Zone Act in substantially the same manner as is provided for the approval of an original service plan; but the processing fee for the modification procedure shall not exceed the reasonable and actual cost incurred by the governing body. The approval of modifications shall be required only with regard to changes of a basic or essential nature, including:

(1) an addition to the types of services provided by the infrastructure development zone;

(2) a decrease in the level of services;

(3) a decrease in the financial ability of the infrastructure development zone to discharge the existing or proposed indebtedness; or

(4) a decrease in the existing or projected need for organized service in the area.

C. Approval for a modification is not required for changes necessary only for the execution of the original service plan or for changes in the boundary of the infrastructure development zone; except that the inclusion of property that is located in a county or a municipality with no other territory within the infrastructure development zone may constitute a material modification of the service plan or the statement of purposes of the infrastructure development zone. In the event that an infrastructure development zone changes its boundaries to include territory located in a county or a municipality with no other territory within the infrastructure development zone, the board shall notify the governing body of the county or municipality of the inclusion. The governing body may review the inclusion and, if it determines that the inclusion constitutes a material modification, may require the board to file a modification of its service plan in accordance with the provisions of this section.

D. No action may be brought to enjoin the construction of any facility, the issuance of bonds or other financial obligations, the levy of taxes, the imposition of rates, fees, tolls and charges or any other proposed activity of the infrastructure development zone unless the action is commenced within forty-five days after the board has published notice of its intention to undertake the activity. The notice shall describe the activity proposed to be undertaken by the infrastructure development zone and shall provide that any action to enjoin the activity as a material departure from the service plan shall be brought within forty-five days from publication of the notice. The notice shall be published one time in a newspaper of general circulation in the infrastructure development zone. On or before the date of publication of the notice, the board shall also mail the notice to each approving authority.

History: Laws 2009, ch. 136, § 14.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-15. Inclusion of territory; procedure.

A. Additional territory may be added to an infrastructure development zone without an election pursuant to the following provisions:

(1) the boundaries of an infrastructure development zone may be altered by the inclusion of additional real property by the fee owners of one hundred percent of any real property capable of being served with facilities of the infrastructure development zone filing with the board a petition in writing requesting that the property be included in the infrastructure development zone. The petition shall include a legal description of the property, shall state that assent to the inclusion of the property in the infrastructure development zone is given by the fee owners thereof and shall be acknowledged by the fee owners in the same manner as required for conveyance of land;

(2) the board shall hear the petition at a public meeting after publication of notice of the filing of the petition, the place, time and date of the meeting, the names and addresses of the petitioners and notice that all persons interested shall appear at the time and place and show cause in writing why the petition should not be granted. There shall be no withdrawal from a petition after publication of notice by the board without the consent of the board. The failure of any municipality or county that may be able to provide service to the real property described in the petition, or of any person in the existing infrastructure development zone to file a written objection, shall be taken as an assent to the inclusion of the area described in the notice;

(3) the board shall grant or deny the petition, in whole or in part, with or without conditions, and the action of the board shall be final and conclusive, except as provided in Paragraph (4) of this subsection. If a municipality or county has filed a written objection to the inclusion, the board shall not grant the petition as to any of the real property to which adequate service is, or will be, available from the municipality or county within a reasonable time and on a comparable basis. If a petition is granted as to all or any of the real property, the board shall make an order to that effect and file the order with the county clerk of each county in which any part of the infrastructure development zone is located, and the property shall thereafter be included in the infrastructure development zone; and

(4) a municipality or county that has filed a written objection to the inclusion and that can provide adequate service to the real property described in the petition within a reasonable time and on a comparable basis may bring an action in the district court for the county in which the land proposed to be included is located, commenced within thirty days after entry of the order of the board, to determine whether the action of the board granting the inclusion was arbitrary, capricious or unreasonable.

B. In addition to the procedures specified in Subsection A of this section, additional territory may also be added to an infrastructure development zone pursuant to the following provisions:

(1) either:

(a) not less than twenty percent or two hundred, whichever number is smaller, of the taxpaying electors of an area that contains twenty-five thousand or more square feet of land may file a petition with the board in writing requesting that the area be included within the infrastructure development zone; except that no single tract of property constituting more than fifty percent of the total area to be included may be included in any infrastructure development zone without the consent of the owner thereof. The petition shall set forth a legal and a general description of the area to be included and shall be acknowledged in the same manner as required for conveyance of land; or

(b) the board may adopt a resolution proposing the inclusion of a specifically described area; but no single tract or parcel of property constituting more than fifty percent of the total area to be included may be included in an infrastructure development zone without the consent of the owner thereof;

(2) nothing in this subsection shall permit the inclusion in an infrastructure development zone of any property if a petition that objects to the inclusion and that is signed by the owners of taxable real and personal property, which property equals more than fifty percent of the total assessed value of all taxable real and personal property to be included, is filed with the board no later than ten days prior to the public meeting held under Paragraph (3) of this subsection;

(3) upon the filing of a petition or the adoption of a resolution pursuant to Paragraph (1) of this subsection, the board shall hear the petition or resolution at a public meeting after publication of notice of the filing of the petition or adoption of the resolution, the place, time and date of the meeting, the names and addresses of the petitioners, if applicable, the description of the area proposed for inclusion and notice that all persons interested and any municipality or county that may be able to provide service to the real property therein described shall appear at the time and place stated and show cause in writing why the petition should not be granted or the resolution not finally adopted. There shall be no withdrawal from a petition after publication of notice by the board without the consent of the board. The failure of any person in the existing infrastructure development zone to file a written objection shall be taken as an assent on that person's part to the inclusion of the area described in the notice;

(4) after a hearing pursuant to Paragraph (3) of this subsection, the board shall grant or deny the petition or finally adopt the resolution, in whole or in part, with or without conditions, and, subject to an election conducted pursuant to Paragraph (6) of this subsection, the action of the board shall be final and conclusive, except as provided in Paragraph (5) of this subsection. If a municipality or county has filed a written objection to the inclusion, the board shall not grant the petition or finally adopt the resolution as to any of the real property to which adequate service is, or will be, available from the municipality or county within a reasonable time and on a comparable basis;

(5) a municipality or county that has filed a written objection to the inclusion and that can provide adequate service to the real property described in the petition within a reasonable time and on a comparable basis may bring an action in the district court for the county in which the area proposed to be included is located, commenced within thirty days after entry of the order of the board, to determine whether the action of the board granting the inclusion was arbitrary, capricious or unreasonable;

(6) upon final action by a board pursuant to Paragraph (4) of this subsection or affirmation by a district court pursuant to Paragraph (5) of this subsection, an election shall be held within the area sought to be included. The secretary shall give published notice of the time and place of the election and of the question to be submitted, together with a summary of any conditions attached to the proposed inclusion. The ballot shall be prepared by the board and shall substantially contain the following words:

"Shall the following described area become a part of the ..... infrastructure development zone upon the following conditions, if any?

(Insert description of area)

(Insert accurate summary of conditions)

For inclusion .....

Against inclusion .....";

(7) if the majority of the votes cast at the election are in favor of inclusion, the election official shall enter an order including any conditions so prescribed and making the area a part of the infrastructure development zone. The validity of the inclusion shall not be questioned directly or indirectly in any suit, action or proceeding; and

(8) nothing in this subsection shall permit the inclusion in an infrastructure development zone of any property that could not be included in the infrastructure development zone at the time of its organization without the written consent of the owners thereof, unless the owners of the property consent in writing to the inclusion of the property in the infrastructure development zone in a petition filed pursuant to this section or unless the property is no longer excludable pursuant to the provisions of Paragraph (4) of this subsection.

C. Nothing in this section shall be construed to permit the inclusion in an infrastructure development zone of any real property located in a municipality or a county outside a municipality unless the governing body of the municipality or county has adopted a resolution authorizing the inclusion or waives its right to require the resolution in its sole discretion. Any resolution of approval so adopted or waiver so given shall be appended to any petition filed pursuant to Paragraph (1) of Subsection A of this section or Subparagraph (a) of Paragraph (1) of Subsection B of this section.

D. Not more than thirty days nor less than twenty days prior to a meeting of the board held pursuant to Paragraph (2) of Subsection A of this section or Paragraph (3) of Subsection B of this section, the secretary shall send notification by first class mail of the meeting to the property owners within the area proposed to be included within the infrastructure development zone as listed on the records of the county clerk on the date requested. Notification of the hearing may also be sent by electronic mail to property owners that have an electronic mail address. The notification shall indicate that it is a notice of a meeting for consideration of the inclusion of real property within an infrastructure development zone and shall indicate the date, time, location and purpose of the meeting, a reference to the services of the infrastructure development zone as described in the service plan, the maximum mill levy, if any, or stating that there is no maximum that may be imposed if the proposed area is included within the infrastructure development zone, and procedures for the filing of a petition for exclusion pursuant to Paragraph (4) of Subsection B of this section. Except as provided in this subsection, the mailing of the notification by first class mail to all addresses within the area proposed to be included within the infrastructure development zone shall constitute a good-faith effort to comply with this section. Failure to notify all electors by first class mail shall not provide grounds for a challenge to the meeting being held.

History: Laws 2009, ch. 136, § 15; 2019, ch. 10, § 3.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, required notifications for public meetings mandated by the Infrastructure Development Zone Act be sent by first class mail, and allowed notifications to be sent by electronic mail; in Subsection D, after "the secretary shall send notification by", deleted "certified" and added "first class", after "records of the county clerk on the date requested.", added "Notification of the hearing may also be sent by electronic mail to property owners that have an electronic mail address.", after "mailing of the notification by", deleted "certified" and added "first class", and after "Failure to notify all electors by", deleted "certified" and added "first class".

5-17-16. Effect of inclusion order.

The following shall be applicable to any proceeding for inclusion accomplished pursuant to Section 15 [5-17-15 NMSA 1978] of the Infrastructure Development Zone Act:

A. nothing in Section 15 of the Infrastructure Development Zone Act shall affect the validity of any area or property included or excluded from an infrastructure development zone by virtue of prior laws;

B. after the date of its inclusion in an infrastructure development zone, the property shall be subject to all of the taxes and charges imposed by the infrastructure development zone and shall be liable for its proportionate share of existing bonded indebtedness of the infrastructure development zone; but it shall not be liable for any

taxes or charges levied or assessed prior to its inclusion in the infrastructure development zone nor shall its entry into the infrastructure development zone be made subject to or contingent upon the payment or assumption of any tax, rate, fee, toll or charge other than the taxes, rates, fees, tolls and charges that are uniformly made, assessed or levied for the entire infrastructure development zone, without the prior consent of the fee owners or approval of the electors of the area to be included;

C. in the infrastructure development zone, the included property shall be liable for its proportionate share of annual operation and maintenance charges and the cost of services of the infrastructure development zone and taxes, rates, fees, tolls or charges shall be certified and levied or assessed therefor; provided that nothing in this section shall prevent an agreement between a board and the owners of property sought to be included in an infrastructure development zone with respect to the fees, charges, terms and conditions on which the property may be included;

D. the change of boundaries of the infrastructure development zone shall not impair nor affect its organization nor shall it affect, impair or discharge any contract, obligation, lien or charge on which it might be liable or chargeable had the change of boundaries not been made;

E. the order of any inclusion of territory accomplished pursuant to Section 15 of the Infrastructure Development Zone Act shall be filed in accordance with the provisions of Section 11 [5-17-11 NMSA 1978] of that act; and

F. the infrastructure development zone's facility and service standards that are applied within the included area shall be compatible with the facility and service standards of adjacent municipalities.

History: Laws 2009, ch. 136, § 16.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-17. Exclusion of territory.

A. The boundaries of an infrastructure development zone may be altered by the exclusion of real property by the fee owners of one hundred percent of any real property situate in the infrastructure development zone filing with the board a petition requesting that the real property of the fee owners be excluded and taken from the infrastructure development zone. The petition shall set forth a legal description of the property, shall state that assent to the exclusion of the property from the infrastructure development zone is given by the fee owners thereof and shall be acknowledged by the fee owners in the same manner as required for conveyance of land.

B. The board shall hear the petition at a public meeting after publication of notice of the filing of the petition, the place, time and date of the meeting, the names and addresses of the petitioners, a general description of the area proposed for exclusion and notice that all persons interested shall appear at the designated time and place and show cause in writing why the petition should not be granted. There shall be no withdrawal from a petition after publication of notice by the board without the consent of the board. The failure of any person in the existing infrastructure development zone to file a written objection shall be taken as an assent on that person's part to the exclusion of the area described in the notice.

C. The board shall take into consideration and make a finding regarding all of the following factors when determining whether to grant or deny the petition or any portion thereof:

(1) the best interests of all of the following:

(a) the property to be excluded;

(b) the infrastructure development zone from which the exclusion is proposed; and

(c) the municipalities and counties in which the infrastructure development zone is located;

(2) the relative cost and benefit to the property to be excluded from the provision of the infrastructure development zone's services;

(3) the ability of the infrastructure development zone to provide economical and sufficient services to both the property to be excluded and all of the properties within the infrastructure development zone's boundaries;

(4) the effect of denying the petition on employment and other economic conditions in the infrastructure development zone and surrounding area;

(5) the economic impact on the region and on the infrastructure development zone, surrounding area and state as a whole if the petition is denied or the resolution is finally adopted;

(6) whether an economically feasible alternative service may be available; and

(7) the additional cost to be levied on other property within the infrastructure development zone if the exclusion is granted.

D. If the board, after considering all of the factors set forth in Subsection C of this section, determines that the property described in the petition or some portion thereof

should be excluded from the infrastructure development zone, it shall order that the petition be granted, in whole or in part; provided that:

(1) if the property to be excluded from the infrastructure development zone will be served by a proposed infrastructure development zone that is not yet organized, the board shall not order that the petition be granted until the proposed infrastructure development zone has been organized pursuant to the Infrastructure Development Zone Act, and notwithstanding any other provision of that act to the contrary, the property to be excluded may be included within the boundaries of the proposed infrastructure development zone; and

(2) the order of exclusion shall recite in the findings a description of any bonded indebtedness in existence immediately preceding the effective date of the order for which the excluded property is liable and the date that the bonded indebtedness is then scheduled to be retired; provided that a failure of the order for exclusion to recite the existence and scheduled retirement date of the indebtedness, when due to error or omission by the infrastructure development zone, shall not constitute grounds for correction of the omission of a levy on the excluded property from the assessment roll.

E. If the board, after considering all of the factors set forth in Subsection C of this section, determines that the property described in the petition should not be excluded from the infrastructure development zone, it shall order that the petition be denied, provided that:

(1) any petition that is denied may be appealed to the approving authority for review of the board's decision. The appeal shall be taken no later than thirty days after the decision;

(2) upon appeal, the approving authority shall consider the factors set forth in Subsection C of this section and shall make a determination as to whether to exclude the properties mentioned in the petition or resolution based on the record developed at the hearing before the board;

(3) the decision of the approving authority may be appealed, within thirty days of the approving authority's decision, to the district court for the county in which the proposed excluded area is located; and

(4) upon appeal, the court shall review the record developed at the hearing before the board and, after considering all of the factors set forth in Subsection C of this section, shall make a determination whether to exclude the properties mentioned in the petition or resolution.

History: Laws 2009, ch. 136, § 17.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-18. Effect of exclusion order.

A. Territory excluded from an infrastructure development zone pursuant to the provisions of Section 17 [5-17-17 NMSA 1978] of the Infrastructure Development Zone Act shall not be subject to any property tax levied by the board for the operating costs of the infrastructure development zone. For the purpose of retiring the infrastructure development zone's outstanding indebtedness and the interest thereon existing at the effective date of the exclusion order, the infrastructure development zone shall remain intact, and the excluded territory shall be obligated to the same extent as all other property within the infrastructure development zone but only for that proportion of the outstanding indebtedness and the interest thereon existing immediately prior to the effective date of the exclusion order. The board shall levy annually a property tax on all the excluded and remaining property sufficient, together with other funds and revenues of the infrastructure development zone, to pay the outstanding indebtedness and the interest thereon. The board may also establish, maintain, enforce and, from time to time, modify the service charges, tap fees and other rates, fees, tolls and charges, upon residents or users in the area of the infrastructure development zone as it existed prior to the exclusion as may in the discretion of the board be necessary to supplement the proceeds of the tax assessments in the payment of the outstanding indebtedness and the interest thereon. In no event shall excluded territory of an infrastructure development zone become obligated for the payment of any bonded indebtedness created after the date of the court's exclusion order.

B. The change of boundaries of the infrastructure development zone shall not impair nor affect its organization, nor shall it affect, impair or discharge any contract, obligation, lien or charge on which it might be liable or chargeable had the change of boundaries not been made.

History: Laws 2009, ch. 136, § 18.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-19. Dissolution.

A. The infrastructure development zone shall be dissolved by a resolution of the board upon a determination that each of the following conditions exist:

(1) all improvements owned by the infrastructure development zone have been, or provision has been made for all improvements to be, conveyed to the municipality or county in which the infrastructure development zone, or the applicable part thereof, is located;

(2) either the infrastructure development zone has no outstanding bond obligations or the municipality or county has assumed all of the outstanding bond obligations of the infrastructure development zone; and

(3) all obligations of the infrastructure development zone pursuant to any development agreement with the municipality or county have been satisfied.

B. All property in the infrastructure development zone that is subject to the lien of taxes or special assessments shall remain subject to the lien for the payment of general obligation bonds and special assessment bonds, notwithstanding dissolution of the infrastructure development zone. The infrastructure development zone shall not be dissolved if any revenue bonds of the infrastructure development zone remain outstanding unless an amount of money sufficient, together with investment income thereon, to make all payments due on the revenue bonds either at maturity or prior redemption has been deposited with a trustee or escrow agent and pledged to the payment and redemption of the bonds. The infrastructure development zone may continue to operate after dissolution only as needed to collect money and make payments on any outstanding bonds.

History: Laws 2009, ch. 136, § 19.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-20. Elections.

A. Except as provided otherwise in the Infrastructure Development Zone Act, the provisions of the Election Code [Chapter 1 NMSA 1978] shall govern all elections conducted pursuant to the Infrastructure Development Zone Act.

B. At an election for the organization of a new infrastructure development zone, the approving authority shall also order the submission of the proposition of issuing general obligation bonds or creating other general obligation indebtedness if the petition filed pursuant to Section 3 [5-17-3 NMSA 1978] of the Infrastructure Development Zone Act requests that the questions be submitted at the organization election.

C. After an infrastructure development zone is organized and the first board is elected, the board shall govern the conduct of all subsequent regular and special

elections of the infrastructure development zone and shall render all interpretations and make all decisions as to controversies or other matters arising in the conduct of the elections.

D. Special elections may be conducted by the board after publication and notice no less than thirty days prior to the date of the election. The notice shall be mailed to all eligible electors and shall state:

(1) the date, time and place of the special election;

(2) a summary of the question or questions to be voted upon; and

(3) how an eligible elector may obtain a copy of the resolution of the board in which the special election was approved.

E. All powers and authority granted to the board by this section for the conduct of regular or special elections may be exercised in the absence of the board by the secretary or by an assistant secretary appointed by the board. The person named by the board who is responsible for the conducting of the election shall be the designated election official.

F. Not less than seventy-five days nor more than ninety days before a regular infrastructure development zone election, the designated election official shall provide notice by publication of a call for nominations for the election. The call shall state the director offices to be voted upon at the election, where a self-nomination and acceptance form may be obtained, the deadline for submitting the self-nomination and acceptance form to the designated election official and information on obtaining an absentee ballot.

G. Not less than sixty-seven days before the date of the regular infrastructure development zone election, any person who desires to be a candidate for the office of a director shall file a self-nomination and acceptance form or letter signed by the candidate and by an eligible elector as a witness to the signature of the candidate.

H. On the date of signing the self-nomination and acceptance form or letter, a candidate for director shall be an eligible elector of the infrastructure development zone.

I. The self-nomination and acceptance form or letter shall state the name of the infrastructure development zone in which the election will be held, the director office sought by the candidate, the term of office sought if more than one length of a director's term is to be voted upon at the election, the date of the election and the full name of the candidate as it is to appear on the ballot. Unless physically unable, all candidates and witnesses shall sign their own signature and shall print their names, their respective residence addresses, including the street number and name, the city or town, the county, telephone number and the date of signature on the self-nomination and acceptance form or letter.

J. The self-nomination and acceptance form or letter shall be filed with the designated election official or, if none has been designated, the presiding officer or the secretary of the board.

K. No person shall be permitted to vote in any election unless that person is an eligible elector.

History: Laws 2009, ch. 136, § 20.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-21. Directors; terms; organization of board.

A. Of the initial board members, two directors shall serve until they or their successors are elected and qualified at the next regular election occurring in any year following that in which the infrastructure development zone was organized, and three shall serve until they or their successors are elected and qualified at the second regular election after organization. At its first meeting, the directors shall draw lots to determine the initial terms.

B. The basic term of office for directors, after the original terms provided in Subsection A of this section, shall be four years.

C. At its first meeting, the board shall elect one of its members as chair of the board and president of the infrastructure development zone, one of its members as a treasurer of the board and of the infrastructure development zone and a secretary who may be a member of the board. The secretary and the treasurer may be one person, but, if that is the case, the position shall be filled by a member of the board.

D. The secretary shall keep a record of all the board's proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts, which shall be open to inspection of all eligible electors, as well as to all other interested parties.

E. The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the infrastructure development zone in permanent records. The provisions of the Audit Act [12-6-1 to 12-6-14 NMSA 1978] shall apply to all financial affairs of the infrastructure development zone.

F. Each director may receive as compensation for the director's service a sum not to exceed one hundred dollars ($100) per meeting attended or one thousand six hundred dollars ($1,600) per year.

G. The board shall meet regularly at a time and in a place to be designated by the board. Special meetings may be held as often as the needs of the infrastructure development zone require, upon notice to each director. All official business of the board shall be conducted only during regular or special meetings at which a quorum is present, and all meetings shall be open to the public and comply with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

H. The office of the infrastructure development zone shall be at some fixed place to be determined by the board. All public records of the infrastructure development zone shall be subject to the Inspection of Public Records Act [14-2-1 to 14-2-12 NMSA 1978].

I. Any vacancy on the board shall be filled by appointment by the remaining directors, the appointee to serve until the next regular election, at which time the vacancy shall be filled by election for any remaining unexpired portion of the term. If, within sixty days of the occurrence of any vacancy, the board fails, neglects or refuses to appoint a director from the pool of any duly qualified, willing candidates, the approving authority shall appoint a director to fill the vacancy; provided that, if there are no duly elected directors and if the failure to appoint a new board will result in the interruption of services that are being provided by the infrastructure development zone, then the approving authority shall appoint all directors from the pool of duly qualified, willing candidates.

J. Any director elected to the board of an infrastructure development zone who has actually held office for at least six months may be recalled from office by the eligible electors of the infrastructure development zone. A petition signed by the lesser of three hundred eligible electors or forty percent of the eligible electors demanding the recall of any director named in the petition shall be filed with the board and the election shall be governed by the provisions of Section 20 [5-17-20 NMSA 1978] of the Infrastructure Development Zone Act.

History: Laws 2009, ch. 136, § 21.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-22. General powers.

Except as limited by the service plan of the infrastructure development zone, the board has the following powers:

A. to have perpetual existence;

B. to have and use a corporate seal;

C. to sue and be sued and to be a party to suits, actions and proceedings;

D. pursuant to the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], to enter into contracts and agreements affecting the affairs of the infrastructure development zone, except as otherwise provided in the Infrastructure Development Zone Act;

E. to borrow money and incur indebtedness and evidence the same by certificates, notes or debentures, and to issue bonds, including revenue bonds, in accordance with the provisions of Sections 28, 29 and 30 [5-17-28, 5-17-29, 5-17-30 NMSA 1978] of the Infrastructure Development Zone Act, and to invest money of the infrastructure development zone in accordance with law;

F. to acquire, dispose of and encumber real and personal property, including rights and interests in property, leases and easements necessary to the functions or the operation of the infrastructure development zone; provided that the board shall not pay more than fair market value and reasonable settlement costs for any interest in real property and shall not pay for any interest in real property that must otherwise be dedicated for public use or the infrastructure development zone's use in accordance with any governmental ordinance, rule or law;

G. to refund any bonded indebtedness as provided in the Infrastructure Development Zone Act;

H. to have the management, control and supervision of all the business and affairs of the infrastructure development zone and all construction, installation, operation and maintenance of infrastructure development zone improvements;

I. to appoint, hire and retain agents, employees, engineers, managers, attorneys and consultants;

J. to fix and from time to time to increase or decrease fees, rates, tolls, penalties or charges for services, programs or facilities furnished by the infrastructure development zone. The board may pledge the revenue for the payment of any indebtedness of the infrastructure development zone. Until paid, all the fees, rates, tolls, penalties or charges shall constitute a perpetual lien on and against the property served, and any lien may be foreclosed in the same manner as provided by the laws for the foreclosure of mechanics' liens. Notwithstanding any other provision to the contrary, the board may waive or amortize all or part of the tap fees and connection fees or extend the time period for paying all or part of the fees for property within the infrastructure development zone in order to facilitate the construction, ownership and operation of affordable housing on the property. However, the board shall have the authority to condition the waiver, amortization or extension upon the recordation against the property of a deed restriction, lien or other lawful instrument requiring the payment of the fees in the event that the property's use as affordable housing is discontinued;

K. to furnish services and facilities without the boundaries of the infrastructure development zone and to establish fees, rates, tolls, penalties or charges for the services and facilities;

L. to accept, on behalf of the infrastructure development zone, real or personal property for the use of the infrastructure development zone and to accept gifts and conveyances made to the infrastructure development zone upon the terms or conditions as the board may approve;

M. to adopt, amend and enforce bylaws and rules not in conflict with the constitution and laws of this state for carrying on the business, objects and affairs of the board and of the infrastructure development zone;

N. to have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted to infrastructure development zones by the Infrastructure Development Zone Act. The specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of the Infrastructure Development Zone Act;

O. to authorize the use of electronic records or signatures and adopt rules, standards, policies and procedures for use of electronic records or signatures;

P. to enter into contracts with public utilities, cooperative electric associations and municipalities for the purpose of furnishing street-lighting service;

Q. to erect and maintain, in providing safety protection services, traffic and safety controls and devices on streets and highways and at railroad crossings, and to enter into agreements with each county in which an infrastructure development zone is located or with adjoining counties, the department of transportation or railroad companies for the erection of the safety controls and devices and for the construction of underpasses or overpasses at railroad crossings;

R. to finance line extension charges for new telephone construction for the purpose of furnishing telephone service exclusively in infrastructure development zones that have no property zoned or valued for assessment as residential;

S. to establish, maintain and operate a system to transport the public by bus, rail or any other means of conveyance, or any combination thereof;

T. to furnish security services for any area within the infrastructure development zone. This power may be exercised only after the infrastructure development zone has provided written notification to, consulted with and obtained the written consent of all local law enforcement agencies having jurisdiction within the area. Any local law enforcement agency having jurisdiction within the area may subsequently withdraw its consent after consultation with and providing written notice of the withdrawal to the board;

U. to furnish covenant enforcement and design review services within the infrastructure development zone only if the revenues used to furnish the services are derived from the area in which the service is furnished; and

V. to provide activities in support of business recruitment, management and development within the infrastructure development zone.

History: Laws 2009, ch. 136, § 22.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-23. Park and recreational services; additional powers; limitations.

In addition to the powers specified in Section 22 [5-17-22 NMSA 1978] of the Infrastructure Development Zone Act, if within the scope of the service plan, the board has the following powers for and on behalf of the infrastructure development zone:

A. to operate a system of television relay and translator facilities and to use, acquire, equip and maintain land, buildings and other recreational facilities therefor; and

B. to use the power granted in Section 22 of the Infrastructure Development Zone Act for the establishment of recreational facilities, including leases, easements and other interests in land for the preservation or conservation of sites, scenes, open space and vistas of recreational, scientific, historic, aesthetic or other public interest. As used in this subsection, "interests in land" means any rights and interests in land less than the full fee interest, including future interests, easements, covenants and contractual rights. Every interest in land, held pursuant to this subsection, when recorded shall be deemed to run with the land to which it pertains for the benefit of the park and recreation services of the infrastructure development zone and may be protected and enforced by the infrastructure development zone in any court of general jurisdiction by any proceeding known at law or in equity.

History: Laws 2009, ch. 136, § 23.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-24. Sanitation, water and sanitation or water services; additional powers.

In addition to the powers specified in Section 22 [5-17-22 NMSA 1978] of the Infrastructure Development Zone Act, the board, if within the scope of the service plan, has the following powers relating to sanitation, water and sanitation and water services for and on behalf of the infrastructure development zone:

A. with the consent of the approving authority, to compel the owner of premises located within the boundaries of the infrastructure development zone, whenever necessary for the protection of public health, to connect the owner's premises, in accordance with the state codes, to the sewer, water and sewer, or water lines, as applicable, of the infrastructure development zone within twenty days after written notice is sent by registered mail, if the sewer or water line is within four hundred feet of the premises. If the connection is not begun within twenty days, the board may thereafter connect the premises to the sewer, water and sewer, or water system, as applicable, of the infrastructure development zone and shall have a perpetual lien on and against the premises for the cost of making the connection. The lien may be foreclosed in the same manner as provided by the laws of this state for the foreclosure of mechanics' liens; provided that nothing in this subsection shall be construed as authorizing the board of an infrastructure development zone to compel any connection with the sewer, water and sewer, or water lines, as applicable, of the infrastructure development zone, by any owner of premises located outside of the infrastructure development zone who utilizes private or nongovernmental persons, services, systems or facilities;

B. to divide the infrastructure development zone into areas according to the water or sanitation services furnished or to be furnished therein. The board has the power to fix different rates, fees, tolls or charges and different rates of levy for tax purposes against all of the taxable property within the several areas of the infrastructure development zone according to the services and facilities furnished or to be furnished therein within a reasonable time;

C. if the board divides an infrastructure development zone into areas according to the facilities and services furnished or to be furnished, to determine the amount of money necessary to be raised by taxation within each area, taking into consideration other sources of revenue within the area, and to fix a levy that, when levied upon every dollar of the valuation for assessment of taxable property within the area of the infrastructure development zone, will supply funds for the payments of the costs of acquiring, operating and maintaining the services or facilities furnished in the area and will pay promptly, when due, the principal or interest on bonds or other obligations issued and its pro rata share of the general operating expenses of the infrastructure development zone;

D. to establish, construct, operate and maintain works and facilities across or along any public street or highway, and in, upon or over any vacant public lands and across any stream of water or watercourse. The governing body of a county in which any public

streets or highways are situated, which are to be cut into or excavated in the construction or maintenance of any of the facilities, has authority to adopt by resolution the rules as it deems necessary in regard to the excavations and may require the payment of reasonable fees by the infrastructure development zone as may be fixed by the governing body to ensure proper restoration of the streets or highways;

E. to assess reasonable penalties for delinquency in the payment of rates, fees, tolls or charges or for any violations of the rules of the infrastructure development zone together with interest on delinquencies from any date due at not more than one percent per month or fraction thereof; to shut off or discontinue water or sanitation service for the delinquencies and delinquencies in the payment of taxes or for any violation of the rules of the infrastructure development zone; and to provide for the connection with and the disconnection from the facilities of the infrastructure development zone;

F. to acquire water rights and construct and operate lines and facilities within and without the infrastructure development zone;

G. to fix and from time to time to increase or decrease tap fees. The board may pledge the revenue for the payment of any indebtedness of the infrastructure development zone; and

H. to assess availability of service or facilities charges subject to the following provisions:

(1) no fee, rate, toll or charge for connection to or use of services or facilities of the infrastructure development zone shall be considered an availability of service or facilities charge;

(2) any availability of service or facilities charges shall be made only when a notice, stating that the availability of service or facilities charges are being considered and stating the date, time and place of the meeting at which they are to be considered, has been mailed by first-class United States mail, postage prepaid, to each taxpaying elector of the infrastructure development zone at the taxpaying elector's last-known address, as disclosed by the tax records of the county within which the infrastructure development zone is located;

(3) availability of service or facilities charges shall be assessed solely for the purpose of paying principal of and interest on any outstanding indebtedness or bonds of the infrastructure development zone and shall not be used to pay any operation or maintenance expenses of, nor capital improvements within or for, the infrastructure development zone;

(4) availability of service or facilities charges shall be assessed only where water, sewer or both water and sewer lines are installed and ready for connection within one hundred feet of any property line of the residential lot or residential lot equivalent to

be assessed, but to one or both of which line or lines the particular lot or lot equivalent to be assessed is not connected; and

(5) availability of service or facilities charges shall be a percentage, not to exceed fifty percent, of the fees, rates, tolls or charges for use of services or facilities of the infrastructure development zone, said percentage to be determined by the board. If the fees, rates, tolls or charges for the use of services or facilities vary dependent upon quantities of usage, the availability of service or facilities charges shall be a percentage, determined by the board, not to exceed fifty percent, of the average usage derived by dividing the total usage quantity for the infrastructure development zone for the last preceding fiscal year by the total number of users in the infrastructure development zone. In addition, the aggregate amount of revenue budgeted and expected to be derived from availability of service or facilities charges shall not exceed the total amount of principal of and interest on the outstanding indebtedness or bonds of the infrastructure development zone for the service currently budgeted for and to mature or accrue during the annual period within which the availability of service or facilities charges are payable, less the amount budgeted and expected to be produced during the period by the mill levy allocable to the service then being budgeted for and levied and assessed by the infrastructure development zone.

History: Laws 2009, ch. 136, § 24.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-25. Subdistricts.

A. The board may divide the infrastructure development zone into one or more areas consistent with the services to be furnished therein. However, any facility operated by the infrastructure development zone within the area may be used by any resident of the infrastructure development zone for the same fee charged to persons residing within the area. Whenever the board divides the infrastructure development zone into one or more areas pursuant to this section, the board shall provide notification of the action to each governing body with zoning jurisdiction over territory included in the infrastructure development zone. Each governing body that is entitled to the notification may elect, within thirty days after the notification, to treat the action as a material modification of the infrastructure development zone service plan in accordance with Section 14 [5-17-14 NMSA 1978] of the Infrastructure Development Zone Act.

B. Any area created pursuant to this section shall be a subdistrict of the infrastructure development zone. A subdistrict shall be an independent political subdivision, shall act pursuant to the provisions of the Infrastructure Development Zone Act and shall possess all of the rights, privileges and immunities of the infrastructure

development zone. The subdistrict shall be subject to the service plan of the infrastructure development zone.

C. The board of the infrastructure development zone shall constitute ex officio the board of directors of the subdistrict. The presiding officer of the board shall be ex officio the presiding officer of the subdistrict, the secretary of the board shall be ex officio the secretary of the subdistrict and the treasurer of the board shall be ex officio the treasurer of the subdistrict. The debt of the subdistrict shall be treated separately from the debt of the infrastructure development zone and shall not be treated as debt of the infrastructure development zone; provided that the total debt of the infrastructure development zone and all subdistricts shall not exceed any debt limits specified in the service plan of the infrastructure development zone.

D. The board shall make any determination specified in Subsection A of this section by resolution adopted at a regular or special meeting of the board after publication of notice of the purpose of the public meeting and the place, time and date of the meeting.

E. No resolution dividing the infrastructure development zone into one or more subdistricts shall be adopted by the board if a petition objecting to the division is signed by the owners of taxable real and personal property, consisting of more than fifty percent of the total valuation for assessment of all taxable real and personal property within the proposed subdistrict boundaries, and is filed with the board no later than five days prior to the public meeting; provided, however, that the board may change the geographical boundaries of the subdistrict at the public meeting.

F. If taxes are to be levied or debt is to be created within a subdistrict of the infrastructure development zone, the board shall submit a ballot issue approving the taxes or debt to the eligible electors within the subdistrict at a regular infrastructure development zone election or at a special election.

History: Laws 2009, ch. 136, § 25.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-26. Revenues.

The projects to be constructed or acquired as shown in the service plan may be financed from the following sources of revenue:

A. proceeds received from the sale of bonds of the infrastructure development zone;

B. money of the municipality or county contributed to the infrastructure development zone;

C. annual property taxes or special assessments;

D. state or federal grants or contributions;

E. private contributions;

F. user, landowner and other fees, tolls and charges;

G. proceeds of loans or advances; and

H. any other money available to the infrastructure development zone by law.

History: Laws 2009, ch. 136, § 26.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-27. State capital outlay projects prohibited.

An infrastructure development zone shall not request nor receive state funding for a capital outlay project; provided that this prohibition does not apply to buildings or facilities that may be located within an infrastructure development zone but that are owned by the state or one of its agencies, institutions or other political subdivisions or that are financed through the Statewide Economic Development Finance Act [Chapter 6, Article 25 NMSA 1978].

History: Laws 2009, ch. 136, § 27.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-28. General obligation bonds; tax levy; exception.

A. At any time after the organization of the infrastructure development zone, the board may order and call a general obligation bond election to submit to the eligible electors the question of authorizing the infrastructure development zone to issue general obligation bonds of the infrastructure development zone to provide money for

any services consistent with the service plan. If included in the petition filed pursuant to Section 3 [5-17-3 NMSA 1978] of the Infrastructure Development Zone Act, the question of authorizing general obligations bonds may also be held in conjunction with the organization election.

B. If general obligation bonds are approved at an election, the board may issue and sell general obligation bonds of the infrastructure development zone.

C. Bonds may be sold in a public offering or in a negotiated sale.

D. After the bonds are issued, the board shall enter in its minutes a record of the bonds sold and their numbers and dates and shall annually levy and cause a property tax to be collected, at the same time and in the same manner as other property taxes are levied and collected on all taxable property in the infrastructure development zone, sufficient, together with any money from the sources described in Section 26 [5-17-26 NMSA 1978] of the Infrastructure Development Zone Act to pay debt service on the bonds when due. Money derived from the levy of property taxes that are pledged to pay the debt service on the bonds shall be kept separately from other funds of the infrastructure development zone. Property tax revenues not pledged to pay debt service on bonds may be used to pay other costs of the infrastructure development zone, including costs of organization, administration, operation and maintenance, services or enhanced services. An infrastructure development zone's levy of property taxes shall constitute a lien on all taxable property within the infrastructure development zone, including all leased property or improvements to leased land, which shall be subject to foreclosure in the same manner as other property tax liens under the laws of this state. The lien shall include delinquencies and interest thereon at a rate not to exceed ten percent per year, the actual costs of foreclosure and any other costs of the infrastructure development zone resulting from the delinquency. The proceeds of any foreclosure sale shall be deposited in the special bond fund for payment of any obligations secured thereby.

E. Subject to the election requirements of this section, an infrastructure development zone may issue general obligation bonds at such times and in such amounts as the infrastructure development zone deems appropriate to carry out a project or projects in phases.

F. Pursuant to this section, the infrastructure development zone may issue and sell refunding bonds to refund general obligation bonds of the infrastructure development zone authorized by the Infrastructure Development Zone Act. No election is required in connection with the issuance and sale of refunding bonds. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

History: Laws 2009, ch. 136, § 28.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-29. Special assessment; bonds; imposition.

A. At any time after the organization of the infrastructure development zone, the board may from time to time order that a hearing be held to determine whether a special assessment should be imposed and special assessment bonds issued to provide money for any services consistent with the service plan. The question of imposing a special assessment may be considered at the hearing on infrastructure development zone organization upon notice that both issues will be heard at that time, which notice shall include the information required in Subsection B of this section.

B. Notice of hearing shall be provided by publication of a notice at least thirty days in advance of the hearing itself. The notice shall include the following:

(1) a description of the method by which the amount of the proposed special assessment will be determined for each class of property to which the levy is proposed to apply, in sufficient detail to enable the owner of the affected parcel to determine the amount of the special assessment;

(2) a description of the project to be financed with special assessment bonds or revenues; and

(3) a statement that any person affected by the proposed special assessment may object in writing or in person at the hearing.

C. After a hearing on the proposed special assessment and the issuance of special assessment bonds, the board shall, based upon the evidence presented at the hearing, issue a decision as to whether to impose a special assessment and, if so, the method of assessment for each class of property and the project to be financed thereby. The decision shall also respond to each objection to the assessment raised at the hearing.

D. Special assessment bonds may be sold in a public offering or in a negotiated sale.

E. After the bonds are issued, the board shall enter in its minutes a record of the bonds sold and their numbers and dates, and shall annually impose and cause a special assessment to be collected, at the same time and in the same manner as property taxes are levied and collected on all property within the infrastructure development zone that may be subject to the assessment, including all leased property or improvements to leased land, sufficient, together with any other money lawfully available to pay debt service on the bonds when due, except to the extent that the board has provided for other imposition, collection and foreclosure procedures in connection with special assessments. Money derived from the imposition of the special

assessment when collected that is pledged to pay the debt service on the bonds shall be kept separately from other funds of the infrastructure development zone. Special assessment revenues not pledged to pay debt service on bonds may be used to pay other costs of the infrastructure development zone, including costs of organization, administration, operation and maintenance, service or enhanced services.

F. The board shall specify conditions under which the obligation to pay special assessments may be prepaid and permanently satisfied.

G. Special assessments against privately owned residential property shall be subject to the following provisions:

(1) the maximum amount of special assessment that may be imposed shall not be increased over time by an amount exceeding two percent per year, except that the amount of special assessment actually imposed may be increased by up to ten percent as a result of the delinquency or default by the owner of any other parcel within the infrastructure development zone;

(2) the special assessment shall be imposed for a specified time period, after which no further special assessment shall be imposed and collected, except that special assessments imposed solely to finance the cost of ongoing infrastructure development zone services, maintenance or operations or enhanced services may be levied while such services, maintenance or operations or enhanced services are continuing; and

(3) nothing in this subsection shall preclude the establishment of different categories of residential property or changing the amount of the special assessments for a parcel whose size or use is changed. A change in the amount of a special assessment imposed upon a parcel due to a change in its size or use shall not require voter approval if the method for changing the amount of special assessment was approved in the election approving the special assessment in sufficient detail to enable the owner of the affected parcel to determine how the change in size or use of the parcel would affect the amount of the special assessment.

H. An infrastructure development zone's imposition of a special assessment shall constitute a lien on the property within the infrastructure development zone subject to the special assessment, including property acquired by the state or its political subdivisions after imposition of the special assessment, which shall be effective during the period in which the special assessment is imposed and shall have priority co-equal to the lien of property taxes. A special assessment shall be subject to foreclosure by the infrastructure development zone at any time after six months following written notice of delinquency to the owner of the real property to which the delinquency applies. The lien shall include delinquencies, penalties and interest thereon at a rate not to exceed the maximum legal rate of interest per year and penalties otherwise applicable for delinquent property taxes, the infrastructure development zone's actual costs of foreclosure and any other costs of the infrastructure development zone resulting from the delinquency. All rights of redemption applicable to property sold in connection with

property tax foreclosures pursuant to the laws of this state shall apply to property sold following foreclosure of a special assessment lien. The portion of proceeds of any foreclosure sale necessary to discharge the lien for the special assessment shall be deposited in the special bond fund for payment of any obligations secured thereby.

I. No holder of special assessment bonds issued pursuant to the Infrastructure Development Zone Act may compel any exercise of the taxing power of the infrastructure development zone, municipality or county to pay the bonds or the interest on the bonds. Special assessment bonds issued pursuant to that act are not a debt of the infrastructure development zone, municipality or county, nor is the payment of special assessment bonds enforceable out of any money other than the revenue pledged to the payment of the bonds.

J. Subject to the requirements of this section, an infrastructure development zone may issue special assessment bonds at such times and in such amounts as the board deems appropriate to carry out a project or projects in phases.

K. Pursuant to this section, the board may issue and sell refunding bonds to refund any special assessment bonds of the infrastructure development zone authorized by the Infrastructure Development Zone Act. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

History: Laws 2009, ch. 136, § 29.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-30. Revenue bonds; fees and charges.

A. At any time after the organization of the infrastructure development zone, the board may hold a hearing on the question of authorizing the board to issue one or more series of revenue bonds of the infrastructure development zone to provide money for any public infrastructure purposes consistent with the service plan.

B. If revenue bonds are approved by resolution, the board may issue and sell revenue bonds of the infrastructure development zone.

C. The revenue bonds may be sold in a public offering or in a negotiated sale; however, if the bonds are to be sold in a public offering, no revenue bonds may be issued by the infrastructure development zone unless the revenue bonds receive one of the four highest investment grade ratings by a nationally recognized bond rating agency.

D. The board may pledge to the payment of its revenue bonds any revenues of the infrastructure development zone or revenues to be collected by the municipality or county in trust for the infrastructure development zone and returned to the infrastructure development zone.

E. The infrastructure development zone shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient, together with any money from the sources described in Section 26 [5-17-26 NMSA 1978] of the Infrastructure Development Zone Act, to pay when due the principal and interest of all revenue bonds for the payment of which revenue has been pledged. The establishment or revision of any rates, fees and charges shall be identified and noticed concurrently with the annual budget process of the infrastructure development zone pursuant to Section 32 [5-17-32 NMSA 1978] of the Infrastructure Development Zone Act.

F. If, in the resolution of the board, the revenues to be pledged are limited to certain types of revenues, only those types of revenues may be pledged and only those revenues shall be maintained.

G. No holder of revenue bonds issued pursuant to the Infrastructure Development Zone Act may compel any exercise of the taxing power of the infrastructure development zone, municipality or county to pay the bonds or the interest on the bonds. Revenue bonds issued pursuant to that act are not a debt of the infrastructure development zone, municipality or county, nor is the payment of revenue bonds enforceable out of any money other than the revenue pledged to the payment of the bonds.

H. Subject to the requirements of this section, an infrastructure development zone may issue revenue bonds at such times and in such amounts as the board deems appropriate to carry out a project in phases.

I. Pursuant to this section, the infrastructure development zone may issue and sell refunding bonds to refund revenue bonds of the infrastructure development zone authorized by the Infrastructure Development Zone Act. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

History: Laws 2009, ch. 136, § 30.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-31. Term of bonds.

For any bonds issued in connection with Section 28, 29 or 30 [5-17-28, 5-17-29, 5-17-30 NMSA 1978] of the Infrastructure Development Zone Act, the board shall prescribe the denominations of the bonds, the principal amount of each issue and the form of the bonds and shall establish the maturities, which shall not exceed thirty years, interest payment dates and interest rates, whether fixed or variable, not exceeding the maximum rate stated in the notice of the election or the resolution of the board. The bonds may be sold by competitive bid or negotiated sale for public or private offering at, below or above par. The proceeds of the bonds shall be deposited with the treasurer, or with a trustee or agent designated by the board, to the credit of the infrastructure development zone to be withdrawn for the purposes provided by the Infrastructure Development Zone Act. Pending that use, the proceeds may be invested as determined by the board. The bonds shall be made payable as to both principal and interest solely from revenues of the infrastructure development zone, and shall specify the revenues pledged for such purposes, and shall contain such other terms, conditions, covenants and agreements as the board deems proper. The bonds may be payable from any combination of taxes, assessments or other revenues collected or received pursuant to the Infrastructure Development Zone Act.

History: Laws 2009, ch. 136, § 31.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-32. Petition for tax reduction; annual financial estimate; budget; certification to local government division.

A. Upon presentation to the board of a petition signed by the owners of a majority of the property in the infrastructure development zone, the board shall adopt a resolution to reduce or eliminate the portion of a tax or special assessment, beginning the next fiscal year, required for one or more services specified in the petition. Signatures on a petition to reduce or eliminate a tax or special assessment shall be valid for a period of sixty days.

B. When levying a property tax or imposing a special assessment, the board shall make annual statements and estimates of the operation and maintenance expenses of the infrastructure development zone, the costs of services to be financed by the taxes or special assessment and the amount of all other expenditures for services proposed to be paid from the taxes or special assessment and of the amount to be raised to pay general obligation bonds of the infrastructure development zone or special assessment bonds, all of which shall be provided for by the levy and collection of property taxes on the net taxable value of the real property in the infrastructure development zone or by the imposition and collection of special assessments. The board shall file the annual statements and estimates with the county clerk for each county in the infrastructure

development zone. The board shall publish a notice of the filing of the estimate, shall hold hearings on the portions of the estimate not relating to debt service on general obligation bonds or special assessment bonds and shall adopt a budget. The board, on or before the date set by law for certifying the annual budget of the municipality or county, shall fix, levy and assess the amounts to be raised by property taxes or special assessments of the infrastructure development zone and shall cause certified copies of the order to be delivered to the local government division of the department of finance and administration. All statutes relating to the levy and collection of property taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, apply to infrastructure development zone property taxes and to special assessments, except to the extent that the board has provided for other imposition, collection and foreclosure procedures in connection with special assessments.

History: Laws 2009, ch. 136, § 32.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-33. Bonds not obligation of state.

Except as otherwise provided in the Infrastructure Development Zone Act, all bonds or other obligations issued pursuant to that act are payable solely from the revenues of the infrastructure development zone that may be pledged to the payment of such obligations, and the bonds or other obligations shall not create an obligation, debt or liability of the state or any other of its political subdivisions. No breach of any pledge, obligation or agreement of an infrastructure development zone shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state or any other of its political subdivisions.

History: Laws 2009, ch. 136, § 33.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-34. Exemption from Community Service District Act and Special District Procedures Act.

Infrastructure development zones and the provisions of the Infrastructure Development Zone Act are exempt from the provisions of the Community Service

District Act [Chapter 4, Article 54 NMSA 1978] and the Special District Procedures Act [Chapter 4, Article 53 NMSA 1978].

History: Laws 2009, ch. 136, § 34.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-35. Cumulative authority.

The Infrastructure Development Zone Act shall be deemed to provide an additional and alternative method for the doing of things authorized by that act, and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing; provided that the issuance of bonds under the provisions of the Infrastructure Development Zone Act need not comply with the requirements of any other law applicable to the issuance of bonds.

History: Laws 2009, ch. 136, § 35.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-17-36. Liberal interpretation.

The Infrastructure Development Zone Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes of that act.

History: Laws 2009, ch. 136, § 36.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

ARTICLE 18
Renewable Energy Financing District Act

5-18-1. Short title.

This act [5-18-1 to 5-18-13 NMSA 1978] may be cited as the "Renewable Energy Financing District Act".

History: Laws 2009, ch. 180, § 1.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 180 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-18-2. Legislative findings.

The legislature finds that:

A. the development of renewable energy sources will advance the security, economic well-being and public and environmental health of the state, as well as contributing to the energy independence of the nation and addressing the issue of global climate change;

B. it is in the best interests of the state, municipalities and counties to encourage the development of distributed generation renewable energy sources and the installation by property owners of such energy sources;

C. the high front-end costs of renewable energy installations to real property prevents many property owners from making these improvements, and therefore it is desirable and necessary to authorize alternative financing procedures to promote the installation of the improvements; and

D. the creation and administration of renewable energy financing districts to facilitate the development of renewable energy improvements on property in the district will serve a valid public purpose and is expressly declared to be in the public interest.

History: Laws 2009, ch. 180, § 2.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 180 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-18-3. Definitions.

As used in the Renewable Energy Financing District Act:

A. "county" means any county, including an H class county;

B. "debt service" means the principal of, interest on and premium, if any, on the bonds, when due, whether at maturity or prior redemption and fees and costs of agents necessary to handle the bonds and the costs of credit enhancement or liquidity support;

C. "district" means a renewable energy financing district formed pursuant to the Renewable Energy Financing District Act by a municipality or by a county in an unincorporated area or in an incorporated area with the municipality's consent;

D. "district board" means the board of directors of the district, which shall be composed of the members of the governing body of the municipality or county in which the district is located, or at the option of the governing body, five directors appointed by the governing body, as provided in Section 9 [5-18-9 NMSA 1978] of the Renewable Energy Financing District Act. The board shall serve until replaced by elected directors, which shall occur not later than six years after the date on which the resolution establishing the district is enacted;

E. "election" means an election held in compliance with the provisions of the Renewable Energy Financing District Act;

F. "governing body" means the body or board that by law is constituted as the governing body of the municipality or county in which the district is located;

G. "municipality" means an incorporated city, village or town;

H. "owner" means the person who is listed as the owner of real property in the district on the current property tax assessment roll;

I. "renewable energy improvement" means a photovoltaic, solar thermal, geothermal or wind energy system permanently installed on real property; and

J. "special assessment" means a levy imposed against real property within a district.

History: Laws 2009, ch. 180, § 3.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 180 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-18-4. Renewable energy financing districts authorized.

A. A governing body of a municipality or county may form a district for the purpose of encouraging, accommodating and financing renewable energy improvements on property within the municipality or county. A district shall include only property for which

an owner executes an agreement consenting to the inclusion of the property within the district and to the imposition of a special assessment on the property for the purpose of financing renewable energy improvements.

B. A district formed by a municipality shall be wholly within the boundaries of the municipality. A district formed by a county shall be wholly within the boundaries of the county and shall be in the unincorporated area of the county, or may include an incorporated area with the municipality's consent. A district may include contiguous and noncontiguous property.

C. Except as otherwise provided in this section, a district shall be a political subdivision of the state, separate and apart from the municipality or county.

History: Laws 2009, ch. 180, § 4.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 180 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

The Renewable Energy Financing District Act does not contemplate the use of direct to property owner loans as a financing procedure. — The Renewable Energy Financing District Act (REFD Act), 5-18-1 to 5-18-13 NMSA 1978, enacted by the New Mexico legislature to enable alternative financing for renewable energy improvements, authorizes a governing body of a municipality or county to form a district for the purpose of encouraging, accommodating and financing renewable energy improvements on property within the municipality or county; upon formation of a district, the REFD Act authorizes the district board to impose a special assessment on property within the district to facilitate the financing of renewable energy improvements to the property and to issue one or more series of bonds, payable from the special assessments levied, to provide money for renewable energy improvements to property in the district. Such bonds shall be made payable as to both principal and interest solely from revenues of the district. The REFD Act does not authorize a county to implement or administer direct lending as between property owners and financing institutions for the purpose of financing renewable energy improvements. *Administration of Residential Property Assessed Clean Energy (PACE) financing loans* (10/21/19), Att'y Gen. Adv. Ltr. 2019-04.

The Renewable Energy Financing District Act does not violate the anti-donation clause. — An anti-donation clause violation occurs when there has been an outright gift of money or property to a private entity with no exchange of adequate consideration. Under the program established by the Renewable Energy Financing District Act (REFD Act), neither a county nor a municipality would be lending or pledging the county's credit or making a donation to a property owner or a financing institution; special assessment bonds issued pursuant to the REFD Act are not a debt or general obligation of the

county or the municipality in which the district is located, nor is the payment of special assessment bonds enforceable out of any money other than the revenue pledged to the payment of the bonds. The REFD Act therefore does not violate the anti-donation clause. *Administration of Residential Property Assessed Clean Energy (PACE) financing loans* (10/21/19), Att'y Gen. Adv. Ltr. 2019-04.

The renewable energy special assessment constitutes a lien on the property. — The Renewable Energy Financing District Act (REFD Act) provides that a renewable energy special assessment shall constitute a lien on the property, which lien shall have priority over all other liens except liens for ad valorem property taxes. Thus, under the REFD Act, liens created by the renewable energy special assessments would assume priority over first mortgages, secondary home lines of credit, or other traditional residential financing mechanisms. *Administration of Residential Property Assessed Clean Energy (PACE) financing loans* (10/21/19), Att'y Gen. Adv. Ltr. 2019-04.

5-18-5. Resolution declaring intention to form district.

A. A governing body may adopt a resolution declaring its intention to form a district. The resolution shall state the following:

(1) the purposes for which the district is to be formed;

(2) that the district shall include only property for which the owner has agreed to the inclusion of the property within the district, and that inclusion of property may occur subsequent to the adoption of the resolution forming the district;

(3) the process by which a property owner can execute an agreement to include property in the district;

(4) a description of the specific types of renewable energy improvements that will be eligible for the financing provided pursuant to the Renewable Energy Financing District Act;

(5) that inclusion of property in the district will result in the imposition of special assessments on the property to pay the costs of the approved renewable energy improvements, financing and administrative fees;

(6) the method of calculating the amount of the special assessment and the manner of collection of the special assessment;

(7) that standards and requirements will be set by the district board for renewable energy improvements to be installed on property in the district;

(8) a reference to the Renewable Energy Financing District Act; and

(9) that the district will be governed by a district board composed of the members of the governing body or by five directors to be appointed by the governing body.

B. The resolution shall direct that a hearing on formation of the district be scheduled and notice be published as required for public hearings of the governing body.

History: Laws 2009, ch. 180, § 5.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 180 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-18-6. Hearing; formation of a district.

A. At the hearing on formation of a district, the governing body shall accept and pass on written and oral testimony and evidence presented in support of or in opposition to the formation of the district. After hearing the written and oral testimony, the governing body shall determine whether the district should be formed based on the interests, convenience or necessity of the owners of property in the proposed district and the citizens of the municipality or county in which the proposed district would be located.

B. If the governing body determines that the district should be formed, it shall adopt an ordinance ordering that the district be formed and identifying the method by which property owners can execute agreements to have their property included in the district. The ordinance shall state that the district will be governed by a district board consisting of members of the governing body, or upon determination of the governing body, five directors appointed by the governing body. The ordinance shall state that one or more resolutions shall be adopted by the district board to identify the property to be included in the district and the special assessment to be imposed on that property.

C. The governing body shall cause a copy of the ordinance ordering formation of the district to be delivered to the county assessor and county treasurer of the county in which the district is located, the taxation and revenue department and the local government division of the department of finance and administration.

D. Subsequent to the formation of the district, property may be included in the district by execution of an agreement by the owner of the property and the district board, agreeing to the inclusion of the property and the imposition of a special assessment on the property, and the district board shall adopt a resolution to this effect. The district shall deliver a copy of the resolution to the county assessor and county treasurer of the county in which the district is located. A copy of the resolution and a description of the

property included in the district shall be recorded with the county clerk of the county in which the district is located.

History: Laws 2009, ch. 180, § 6.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 180 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-18-7. Special assessment; lien created.

A. The district board may impose a special assessment on property within the district to facilitate the financing of renewable energy improvements to the property. The special assessment shall be sufficient in the case of each property to pay the costs of the financing of the renewable energy improvements, including the costs of bond issuance, debt service and administrative costs of the district and the municipality or county in which the district is located.

B. The special assessment shall be levied and collected at the same time and in the same manner as property taxes are levied and collected, except to the extent that the district board has provided for other imposition and collection procedures. Money derived from the imposition of the special assessment shall be kept separately from other funds of the governing body.

C. A special assessment shall constitute a lien on the property, which shall be effective during the period in which the assessment is imposed and shall have priority over all other liens except liens for ad valorem property taxes.

D. The obligation to pay the special assessment may be prepaid and permanently satisfied, and the district board shall specify the conditions under which this may be achieved.

History: Laws 2009, ch. 180, § 7.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 180 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

The renewable energy special assessment constitutes a lien on the property. — The Renewable Energy Financing District Act (REFD Act) provides that a renewable energy special assessment shall constitute a lien on the property, which lien shall have priority over all other liens except liens for ad valorem property taxes. Thus, under the

REFD Act, liens created by the renewable energy special assessments would assume priority over first mortgages, secondary home lines of credit, or other traditional residential financing mechanisms. *Administration of Residential Property Assessed Clean Energy (PACE) financing loans* (10/21/19), Att'y Gen. Adv. Ltr. 2019-04.

5-18-8. Special assessment bonds.

A. A district may issue one or more series of bonds to provide money for renewable energy improvements to property in the district, and the bonds may be payable from the special assessments levied pursuant to one or more assessment resolutions.

B. For any bonds issued pursuant to the Renewable Energy Financing District Act, the district board shall prescribe the denominations of the bonds, the principal amount of each issue and the form of the bonds and shall establish the maturities, which shall not exceed twenty years, interest payment dates and interest rates, whether fixed or variable, not exceeding the maximum rate stated in the resolution of the district board. The bonds may be sold by competitive bid or negotiated sale for public or private offering at, below or above par. The proceeds of the bonds shall be deposited with the treasurer, or with a trustee or agent designated by the district board, to the credit of the district to be withdrawn for the purposes provided by the Renewable Energy Financing District Act. Pending that use, the proceeds may be invested as determined by the district. The bonds shall be made payable as to both principal and interest solely from revenues of the district, and shall specify the revenues pledged for such purposes, and shall contain such other terms, conditions, covenants and agreements as the district board deems proper.

C. No holder of special assessment bonds issued pursuant to the Renewable Energy Financing District Act may compel any exercise of the taxing power of the district, municipality or county to pay the bonds or the interest on the bonds. Special assessment bonds issued pursuant to that act are not a debt or general obligation of the county or the municipality in which the district is located, nor is the payment of special assessment bonds enforceable out of any money other than the revenue pledged to the payment of the bonds.

D. Pursuant to this section, the district may issue and sell refunding bonds to refund any special assessment bonds of the district authorized by the Renewable Energy Financing District Act. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

History: Laws 2009, ch. 180, § 8.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 180 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

The Renewable Energy Financing District Act does not contemplate the use of direct to property owner loans as a financing procedure. — The Renewable Energy Financing District Act (REFD Act), 5-18-1 to 5-18-13 NMSA 1978, enacted by the New Mexico legislature to enable alternative financing for renewable energy improvements, authorizes a governing body of a municipality or county to form a district for the purpose of encouraging, accommodating and financing renewable energy improvements on property within the municipality or county; upon formation of a district, the REFD Act authorizes the district board to impose a special assessment on property within the district to facilitate the financing of renewable energy improvements to the property and to issue one or more series of bonds, payable from the special assessments levied, to provide money for renewable energy improvements to property in the district. Such bonds shall be made payable as to both principal and interest solely from revenues of the district. The REFD Act does not authorize a county to implement or administer direct lending as between property owners and financing institutions for the purpose of financing renewable energy improvements. *Administration of Residential Property Assessed Clean Energy (PACE) financing loans* (10/21/19), Att'y Gen. Adv. Ltr. 2019-04.

The Renewable Energy Financing District Act does not violate the anti-donation clause. — An anti-donation clause violation occurs when there has been an outright gift of money or property to a private entity with no exchange of adequate consideration. Under the program established by the Renewable Energy Financing District Act (REFD Act), neither a county nor a municipality would be lending or pledging the county's credit or making a donation to a property owner or a financing institution; special assessment bonds issued pursuant to the REFD Act are not a debt or general obligation of the county or the municipality in which the district is located, nor is the payment of special assessment bonds enforceable out of any money other than the revenue pledged to the payment of the bonds. The REFD Act therefore does not violate the anti-donation clause. *Administration of Residential Property Assessed Clean Energy (PACE) financing loans* (10/21/19), Att'y Gen. Adv. Ltr. 2019-04.

The renewable energy special assessment constitutes a lien on the property. — The Renewable Energy Financing District Act (REFD Act) provides that a renewable energy special assessment shall constitute a lien on the property, which lien shall have priority over all other liens except liens for ad valorem property taxes. Thus, under the REFD Act, liens created by the renewable energy special assessments would assume priority over first mortgages, secondary home lines of credit, or other traditional residential financing mechanisms. *Administration of Residential Property Assessed Clean Energy (PACE) financing loans* (10/21/19), Att'y Gen. Adv. Ltr. 2019-04.

5-18-9. Appointment of directors; qualifications; terms; resumption of governance by governing body.

A. The governing body, at its option, may authorize the appointment of a separate district board. In the case of an appointed district board, the directors shall serve an initial term of six years. If a vacancy occurs on the district board because of death,

resignation or inability of a director to discharge the duties of director, the governing body shall appoint a director to fill the vacancy, who shall hold office for the remainder of the unexpired term until the appointed director's successor is appointed or elected.

B. At the end of the appointed director's initial term, the governing body shall resume governance of the district as its board, or, at its option, shall hold an election of directors by majority vote of the property owners in the district, pursuant to Section 10 [5-18-10 NMSA 1978] of the Renewable Energy Financing District Act.

History: Laws 2009, ch. 180, § 9.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 180 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-18-10. Notice and conduct of election for district board.

A. An election pursuant to the Renewable Energy Financing District Act for the purpose of election of directors of a district board shall be called by mailing notices to the owners of property included in the district not less than twenty days before the election. The property tax assessment rolls shall be used to determine the owners of property included in the district. Notice shall also be published one time in a newspaper of general circulation in the municipality or county. The notice shall state the purpose of the election, the date of the election, the place of holding the election, the hours during the day in which the polls will be open and provisions for voting by mail.

B. Within thirty days after an election, the district board shall meet and canvass the returns, determining the number of votes properly cast. A majority of the votes cast at the election shall be required for election of a member to the district board.

History: Laws 2009, ch. 180, § 10.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 180 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-18-11. Powers and duties of a district.

A. The district board shall:

(1) establish guidelines and standards for renewable energy improvements to be made to property included in the district;

(2) establish guidelines and procedures for a property owner to enter into an agreement with the district board to include property in the district;

(3) establish guidelines for the documentation required from a property owner prior to property being included in the district of the owner's contracts or agreements for purchase and installation of renewable energy improvements;

(4) establish the amount of and impose special assessments for the financing of the renewable energy improvements, including the costs of bond issuance, debt service and administrative costs of the district and the municipality or county in which the district is located; and

(5) enter into contracts, agreements and trust indentures to obtain credit enhancement or liquidity support for its bonds and process the issuance, registration, transfer and payment of its bonds and the disbursement and investment of proceeds of the bonds.

B. The district board may enter into contracts to carry out the purposes of the district on such terms and with such persons as the board determines to be appropriate.

History: Laws 2009, ch. 180, § 11.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 180 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-18-12. Change in district.

A. At any time after adoption of a resolution creating a district, property may be added to the district at the request of the owner of the property, upon adoption of a resolution of the district board.

B. Property may be deleted from the district only upon request of the property owner and adoption of a resolution of intention to do so by the district board. Property within the district that is subject to the lien of special assessments or other charges imposed pursuant to the Renewable Energy Financing District Act shall not be deleted from the district while there are bonds outstanding that are payable by such special assessments or charges.

History: Laws 2009, ch. 180, § 12.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 180 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

5-18-13. Dissolution of district.

The district may be dissolved by the district board by a resolution of the district board upon a determination that the district has no outstanding bond obligations. The district shall not be dissolved if any bonds of the district remain outstanding unless an amount of money sufficient, together with investment income thereon, to make all payments due on the bonds either at maturity or prior redemption has been deposited with a trustee or escrow agent and pledged to the payment and redemption of the bonds. The district may continue to operate after dissolution only as needed to collect money and make payments on any outstanding bonds.

History: Laws 2009, ch. 180, § 13.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 180 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

ARTICLE 19
Franchise and Other Agreements

5-19-1. Validity of current franchise and right-of-way agreements.

Municipal and county franchise and other agreements with public utilities, as "public utility" is defined by Subsection G of Section 62-3-3 NMSA 1978, providing access to public rights of way that are in effect as of January 1, 2010, are valid and enforceable agreements, including those that provide for a payment of fees by the public utility expressed as a percentage of the public utility's revenues or otherwise and including expired agreements that have continued to be honored by both the public utility and the local government according to their terms, regardless of the expiration date of the agreements, if both the public utility and the local government continue to abide by the terms of the expired agreement.

History: Laws 2010, ch. 100, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2010, ch. 100, § 2 contained an emergency clause and was approved March 9, 2010.

ARTICLE 20
Regional Air Center Special Economic District

5-20-1. Short title.

Sections 1 through 10 [5-20-1 to 5-20-10 NMSA 1978] of this 2019 act may be cited as the "Regional Air Center Special Economic District Act".

History: Laws 2019, ch. 13, § 1.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

5-20-2. Definitions.

As used in the Regional Air Center Special Economic District Act:

A. "authority" means the governing body of a district; and

B. "district" means an industrial air center special economic district governed by an authority.

History: Laws 2019, ch. 13, § 2.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

5-20-3. Creation of a district.

A municipality and the county in which the municipality is located may agree to form a district:

A. the initial boundaries of which lie within the jurisdiction of the municipality, the county or both;

B. that includes an industrial air center composed of infrastructure associated with a former United States military base; and

C. that consists of land and real property formerly associated with the former United States military base and other land and real property made part of the district.

History: Laws 2019, ch. 13, § 3.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

5-20-4. Creation of an authority; members; terms; qualifications.

A. A municipality and county that form a district shall create an authority to govern the district that consists of an odd number of members, but not fewer than five or more than nine in number.

B. The terms of the members shall be reasonably staggered. Of the members initially appointed, that number of members closest to, but not more than, one-half of the membership shall serve for two years. The term of all other members shall be four years.

C. A member shall not serve more than two consecutive four-year terms on the authority. A member who has served two consecutive four-year terms on the authority shall not serve another term until after four years following the second term have elapsed.

D. The authority may authorize a county that borders the county that created the district or a municipality or an Indian nation, tribe or pueblo in a county that borders the county that created the district to become part of the authority. The municipality and county that created the district and any subsequently accepted entities, as set forth in this subsection, may change the membership of the authority, up to the maximum allowed by Subsection A of this section, and change the terms of the members to allow the newly accepted entity to appoint one or more members to the authority.

E. An elected official shall not serve on the authority. A member of the authority shall not receive a salary or other compensation from the authority, but the authority may reimburse any reasonable expenses incurred by a member in conducting the business of the authority.

F. Before appointing a person to the authority, an appointing entity shall first determine that the person:

(1) has experience in the field of aviation, business, economic development, finance, commercial real estate investment or accounting; or

(2) possesses other qualifications that the entity determines are necessary or appropriate for carrying out the duties of the authority; and

(3) has no direct substantial conflict of interest in the business or operation of the authority.

G. An authority member shall abstain from an authority vote if the matter voted on poses a conflict of interest for the member. A member or employee of the authority shall not:

(1) acquire a financial interest in a new or existing business venture or business property if the member or employee believes or has reason to believe that the financial interest will be directly affected by an official act conducted in that membership or employment capacity;

(2) use confidential information acquired by virtue of membership on or employment by the authority for the member's or employee's or another person's private gain; or

(3) as a person with a financial or other interest in a business that is party to a contract, enter into a contract with the authority without there being public notice of the contract, a competitive bidding process for entry into the contract and full disclosure of that financial or other interest.

H. The governing body that appoints a member to an authority may remove the member if it determines that the member:

(1) willfully neglected or refused to perform an official duty;

(2) has violated the policies or procedures adopted by the authority; or

(3) has developed a direct, substantial conflict of interest in the business of the authority.

History: Laws 2019, ch. 13, § 4.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

5-20-5. Authority; powers; duties.

A. An authority is a political subdivision of the state that may, in accordance with law and to effectuate the purposes of the district it governs:

(1) have perpetual existence;

(2) sue and be sued;

(3) adopt bylaws, policies and procedures;

(4) employ a director, who may employ staff as necessary to administer the authority;

(5) fix the time and place of meetings and the method of providing notice of the meetings;

(6) make and pass orders and resolutions necessary for governing and managing the authority and executing the powers of the authority;

(7) adopt and use a seal;

(8) create and define the duties of advisory committees;

(9) enter into contracts and agreements;

(10) borrow money and issue bonds;

(11) pledge all or a portion of its revenue to the payment of its bonds;

(12) issue refunding revenue bonds to refinance, pay or discharge all or part of its outstanding revenue bonds;

(13) impose liens;

(14) acquire, dispose of or encumber real or personal property or interests in real or personal property, including leases and easements;

(15) manage the land and property constituting and associated with the district, including by imposing rental charges and fees for the use of that land and property;

(16) sixty days after delivering written notice to the municipality and county that formed the district, exercise the power of eminent domain within the boundaries of the district as provided by law for the condemnation of private property for public use with just compensation;

(17) sell, transfer or convey real or personal property or interests in real or personal property acquired by the authority;

(18) alter the boundaries of the district with the approval of the affected municipality or county;

(19) construct and maintain airport facilities;

(20) establish standards and long-term development plans;

(21) apply to a public or private source for a loan, grant, guarantee or other type of financial assistance;

(22) exercise the rights and powers necessary or incidental to or implied by the specific powers granted by this section; and

(23) by resolution, delegate to a member or agent of the authority any of its powers, except the power to:

(a) adopt authority policies or procedures;

(b) initiate or continue legal action;

(c) establish policies on the use of revenue;

(d) acquire real or personal property or interests in real or personal property;

(e) expand the district; or

(f) issue bonds.

B. An authority shall:

(1) govern the district;

(2) adopt rules to govern its conduct, including standards and procedures for calling emergency meetings and a conflicts-of-interest policy;

(3) provide meaningful opportunities for public input on its policymaking;

(4) accept title to the real and personal property within the area constituting the district's initial boundaries;

(5) use district property to manage airport operations, create jobs and foster economic development in all areas it deems appropriate and in the public welfare; and

(6) comply with all applicable laws, ordinances or rules enacted by the municipality or county having jurisdiction over the district's land or real property.

History: Laws 2019, ch. 13, § 5.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

5-20-6. Revenue bonds; exemption from taxation.

A. To effectuate the purposes of the district it governs, an authority may issue revenue bonds to:

(1) encourage the location of commercial, research or industrial or other enterprises to a district; or

(2) acquire, purchase, lease, construct or improve commercial, research or industrial sites or buildings or make other capital improvements, including the construction or maintenance of energy or pollution abatement or control facilities, as necessary.

B. An authority may issue special facility revenue bonds backed by a long-term lease of the facility to finance a specific tenant facility.

C. The bonds authorized by the Regional Air Center Special Economic District Act, the income from those bonds, mortgages or other security instruments executed as security for those bonds, lease agreements authorized by the Regional Air Center Special Economic District Act and revenue derived from a lease or sale by an authority are exempt from taxation by the state and its subdivisions.

History: Laws 2019, ch. 13, § 6.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

5-20-7. Bonding authority.

A. A district may issue revenue bonds, the pledged revenue for which shall be fees, charges, lease payments, installment sale payments or other revenue sources by a project for any one or more of the purposes authorized by the Regional Air Center Special Economic District Act.

B. A district may pledge irrevocably any or all of the revenue received by the district to the payment of the interest on and principal of revenue bonds for any of the purposes authorized in the Regional Air Center Special Economic District Act.

C. Revenues in excess of the annual principal and interest due on revenue bonds secured by a pledge of revenue may be accumulated in a debt service reserve account. The district may appoint a commercial bank trust department to act as paying agent or trustee of the revenues and to administer the payment of principal of and interest on the bonds.

D. Except as otherwise provided in the Regional Air Center Special Economic District Act, revenue bonds:

(1) may have interest, principal value or any part thereof payable at intervals or at maturity as may be determined by the authority;

(2) may be subject to a prior redemption at the district's option at a time and upon terms and conditions, with or without the payment of a premium, as determined by the authority;

(3) may mature at any time not exceeding thirty years after the date of issuance;

(4) may be serial in form and maturity, may consist of one bond payable at one time or in installments or may be in another form determined by the authority;

(5) shall be sold for cash at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act and the Public Securities Short-Term Interest Rate Act [6-18-1 to 6-18-16 NMSA 1978]; and

(6) may be sold at public or negotiated sale.

E. At a regular or special meeting, the authority may adopt a resolution that:

(1) declares the necessity for issuing revenue bonds;

(2) authorizes the issuance of revenue bonds by an affirmative vote of a majority of all the members of the authority; and

(3) designates the sources of revenues to be pledged to the repayment of the revenue bonds.

History: Laws 2019, ch. 13, § 7.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

5-20-8. Refunding bonds.

A. A district that has issued bonds in accordance with the Regional Air Center Special Economic District Act may issue refunding bonds for the purpose of refinancing, paying and discharging all or any part of outstanding bonds for the:

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

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

(3) purpose of modifying or eliminating restrictive contractual limitations:

(a) pertaining to the issuance of additional bonds; or

(b) concerning the outstanding bonds or facilities relating to the outstanding bonds.

B. A district may pledge irrevocably for the payment of interest, principal and premium, if any, on refunding bonds the appropriate pledged revenues, which may be pledged to an original issue of bonds.

C. Refunding bonds may be issued separately or in combination in one series or more.

D. Refunding bonds shall be authorized by resolution. Bonds that are refunded 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 such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

E. 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 if provision is duly and sufficiently made for the payment of the refunded bonds.

F. The proceeds of refunding bonds, including accrued interest and premiums appertaining to the sale of refunding bonds, shall be immediately applied to the retirement of the bonds being refunded or placed in escrow in a commercial bank or trust company that possesses and exercises trust powers and that is a member of the federal deposit insurance corporation. The proceeds shall be applied to the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that the refunding bond proceeds, including accrued interest and

premiums 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 on those bonds and the principal of those bonds, or both interest and principal as the authority determines. This section does not require the establishment of an escrow if the refunded bonds and 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. 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; provided that the par value of the certificates of deposit is collateralized by a pledge of obligations or by a pledge of payment that is unconditionally guaranteed by the United States; and further provided that the par value of those 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 at any designated prior redemption date or dates in connection with which the municipality shall exercise a prior redemption option. A purchaser of a refunding bond issued is not responsible for the application of the proceeds by the district or any of its officers, agents or employees.

G. Refunding bonds may bear additional terms and provisions as determined by the district subject to the limitations in this section relating to original bond issues. Refunding bonds are not subject to the provisions of any other statute.

H. District refunding bonds:

(1) may have interest, principal value or any part thereof payable at intervals or at maturity, as determined by the authority;

(2) may be subject to prior redemption at the district's option at a time or times and upon terms and conditions with or without payment of premium or premiums, as determined by the authority;

(3) may be serial in form and maturity or may consist of a single bond payable in one or more installments or may be in another form, as determined by the authority; and

(4) 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.

I. At a regular or special meeting, an authority may adopt a resolution by majority vote to authorize the issuance of the refunding bonds.

History: Laws 2019, ch. 13, § 8.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

5-20-9. Bonds not obligation of the state.

Except as otherwise provided in the Regional Air Center Special Economic District Act, all bonds or other obligations issued pursuant to that act are payable solely from the revenues of the district that may be pledged to the payment of such obligations, and the bonds or other obligations shall not create an obligation, debt or liability of the state or any other of its political subdivisions. No breach of any pledge, obligation or agreement or a district shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state or any other of its political subdivisions.

History: Laws 2019, ch. 13, § 9.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

5-20-10. Dissolution.

The municipality and county that formed the district and any counties, municipalities, Indian nations, tribes or pueblos that have become part of the district may, by unanimous vote, agree to unwind and dissolve the district and dismiss the authority members if they find the district is not meeting the needs of the community in managing airport operations, creating jobs or fostering economic development. The assets and all debts and obligations of the district shall be transferred to and assumed by the county or municipality as set forth in the unwinding or dissolution agreement.

History: Laws 2019, ch. 13, § 10.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.