CHAPTER 5
Municipalities and Counties

ARTICLE 1
Ambulance Service

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

A municipality or county may:

A. 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 state corporation commission [public regulation commission];

B. contract with other political subdivisions or with private ambulance services for the operation of its ambulance service;

C. lease ambulances and other equipment necessary to the operation of its ambulance service;

D. 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 their capacity inadequate or insufficient for emergency transportation of the disaster victims;

E. transport sick or injured persons from the subdivision boundaries to any place of treatment; and

F. 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.

ANNOTATIONS

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

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.

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

Bracketed material. — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law. For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

No duty to provide service. — This section does not impose a mandatory duty on the county to provide an ambulance service. Gallegos v. Trujillo, 114 N.M. 435, 839 P.2d 645 (Ct. App. 1992).

"Operation". — "Operation" should not be extended to include funding decisions by a county or the allocation or nonallocation of funds. Gallegos v. Trujillo, 114 N.M. 435, 839 P.2d 645 (Ct. App. 1992).

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, 114 N.M. 435, 839 P.2d 645 (Ct. App. 1992).

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. 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

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, 56 N.M. 214, 242 P.2d 865 (1952).

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, 56 N.M. 214, 242 P.2d 865 (1952).

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, 56 N.M. 214, 242 P.2d 865 (1952).

Population of municipality affects right to construct auditorium. See 1953-54 Op. Att'y Gen. No. 5778.

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

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, 56 N.M. 214, 242 P.2d 865 (1952).

"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, 56 N.M. 214, 242 P.2d 865 (1952).

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) percent per annum, payable annually or semiannually, shall be payable at the option of such municipality at the end of ten years from the date thereof; and due by their terms in not more than twenty years from the 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

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

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

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, 56 N.M. 214, 242 P.2d 865 (1952).

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

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, 56 N.M. 214, 242 P.2d 865 (1952).

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

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 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, 40 N.M. 90, 55 P.2d 40 (1936).

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, 40 N.M. 90, 55 P.2d 40 (1936).

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. 1939-40 Op. Att'y Gen. 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.

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 auditorium 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. 1953-54 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 by 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

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.

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.

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

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

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 appropriations. 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.

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

ANNOTATIONS

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

Compiler's notes. — 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.

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.

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 or 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.

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.

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

ANNOTATIONS

Compiler's notes. — 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. 1957-58 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. 1947-48 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.

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 [7-12-1 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 in Subsection A was inserted by the compiler. It was not enacted by the legislature 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 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 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 in Subsection B was inserted by the compiler. It was not enacted by the legislature, and it is not a part of the law. Section 7-12-14 NMSA 1978 was repealed by Laws 1983, ch. 211, § 42, effective July 1, 1983. Chapter 151 of Laws 1953, referred to in Subsection B, was repealed by Laws 1965, ch. 300, § 595.

Meaning of "this act". — 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 [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978], the following words or phrases shall be defined as follows:

A. "city" means any incorporated city, town or village which 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 aldermen or other 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 but not limited to 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 which 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 but not limited to 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. "elector" of a municipality means a registered and qualified elector thereof;

Q. "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;

R. for the purpose of computing any period of time prescribed in the Joint City-County Building Law, including but not limited to 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

S. 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.

ANNOTATIONS

Bracketed material. — The bracketed comma in Subsection I was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

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 [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978], 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 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

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

Bracketed material. — The bracketed material in the introductory paragraph was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

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 inserted in this section was inserted by the compiler. It was not enacted by the legislature 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 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

registered 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, which shall be irrepealable until the indebtedness therein provided for shall have been fully paid or discharged, and which 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 same shall, at a regular election for councilmen or other officers of such city, have been submitted to a vote of the registered qualified electors thereof, and a majority of those voting on the question shall have voted in favor of creating such debt; and

C. no municipality shall ever become indebted to an amount in the aggregate, including existing indebtedness, exceeding four per centum on the value of the taxable property within such 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 such city; and all bonds or obligations issued in excess of such amount shall be void.

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

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 [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] 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 definitive 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 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

Negotiable Instruments Law repealed. — 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.

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 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 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.

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 bondholders 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 an 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 [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978].

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 by Laws 1993, ch. 181, § 1.)

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

ANNOTATIONS

Repeals. — Laws 1993, ch. 181, § 1 repeals 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* New Mexico One Source of Law DVD.

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 [5-7-1 NMSA 1978]:

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 in Subsection D was inserted by the compiler. It was not enacted by the legislature, and is not a 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 similar 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 [5-7-1 NMSA 1978] 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 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 [5-7-1 NMSA 1978] 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 [6-9-1 NMSA 1978] shall be applicable.

History: Laws 1983, ch. 162, § 7.

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 [5-8-1 NMSA 1978]:

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 [5-8-1 NMSA 1978], 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.

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 reference in Subsection G to Subsection C of 5-8-2 NMSA 1978, appears to actually refer to Subsection D of that section. The bracketed material was inserted by the compiler. It was not enacted by the legislature, and it is not part of the law.

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 [5-8-1 NMSA 1978].

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 [5-8-1 NMSA 1978].

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 [5-8-1 NMSA 1978].

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 [5-8-1 NMSA 1978].

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 [5-8-1 NMSA 1978] 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 [5-8-1 NMSA 1978], 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 [5-8-1 NMSA 1978].

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 [5-8-1 to 5-8-42 NMSA 1978].

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 [5-8-1 NMSA 1978].

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 [5-8-1 NMSA 1978].

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 [5-8-1 NMSA 1978].

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 [5-8-1 NMSA 1978] 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 [5-8-1 NMSA 1978]. 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 [5-8-1 NMSA 1978] 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 [5-8-1 NMSA 1978] 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.

ANNOTATIONS

Temporary provisions. — Laws 2003, ch. 375, § 1, effective June 20, 2003, creates the task force for financial independence composed of at least 15 members, to address the following issues: (1) New Mexico has one of the highest rates of poverty in the country; (2) New Mexico households with low and very low annual income levels have a difficult time obtaining assets; (3) over twenty-four percent of New Mexico children live at or below the poverty level; and (4) New Mexico's poverty rate is eighteen percent, compared to the national average of twelve and one-half percent. The task force shall cease to function on December 1, 2004.

Laws 2003, ch. 375, § 2, effective June 20, 2003, provides that there is created the "task force for financial independence", which shall function from the date of its appointment until December 1, 2004. The task force shall be composed of at least

fifteen members and be chaired by the lieutenant governor. Members shall be appointed by the governor.

5-9-2. Purpose.

It is the purpose of the Enterprise Zone Act [5-9-1 NMSA 1978] 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 [5-9-1 NMSA 1978]:

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 [5-9-1 NMSA 1978], 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 [5-9-1 NMSA 1978] 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, referred to in Subsections B(3)(b), C(3)(b), and D(3)(b), *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 [5-9-1 NMSA 1978] 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 of the Enterprise Zone Act [5-9-8 NMSA 1978].

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 [5-9-1 NMSA 1978] to local governments.

History: Laws 1993, ch. 33, § 9.

ANNOTATIONS

Cross references. — For the federal Job Training Partnership Act, referred to Subsection A, *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 [7-35-1 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 [5-9-1 NMSA 1978].

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 through 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.

This act [5-10-1 to 5-10-13 NMSA 1978] may be cited as the "Local Economic Development Act".

History: Laws 1993, ch. 297, § 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.

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 [5-10-1 NMSA 1978] 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.

History: Laws 1993, ch. 297, § 2.

ANNOTATIONS

Compiler's notes. — See notes at 5-10-1 NMSA 1978 concerning the 1994 constitutional amendment referred to in Subsection B.

5-10-3. Definitions.

As used in the Local Economic Development Act [5-10-1 NMSA 1978]:

A. "department" means the economic development department;

B. "economic development project" or "project" means the provision of direct or indirect assistance to a qualifying business by a local or regional government and includes the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure; public works improvements essential to the location or expansion of a qualifying business; payments for professional services contracts necessary for local or regional governments to implement a plan or project; the provision of direct loans or grants for land, buildings or infrastructure; loan guarantees securing the cost of land, buildings or infrastructure in an amount not to exceed the revenue that may be derived from the municipal infrastructure gross receipts tax or the county infrastructure gross receipts tax; grants for public works infrastructure improvements essential to the location or expansion of a qualifying business; purchase of land for a publicly held industrial park; and the construction of a building for use by a qualifying business;

C. "governing body" means the city council or city commission of a city, the board of trustees of a town or village or the board of county commissioners of a county;

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

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

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

G. "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) or (6) 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 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) 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; or

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

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

History: Laws 1993, ch. 297, § 3; 1998, ch. 90, § 3; 1999, ch. 245, § 1; 2000, ch. 103, § 5.

ANNOTATIONS

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.

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

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

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 [5-10-1 NMSA 1978] 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 five percent of the annual general fund expenditures of the local government in that fiscal year. The limits of this subsection shall not apply to:

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

(2) revenue generated through the imposition of the municipal infrastructure gross receipts tax pursuant to the Municipal Local Option Gross Receipts Taxes Act [7-19D-1 NMSA 1978] for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act [6-25-1 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 a county infrastructure gross receipts tax pursuant to the County Local Option Gross Receipts Taxes Act [7-20E-1 NMSA 1978] for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act [6-25-1 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;

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

(5) the proceeds of a revenue bond issue to which county infrastructure gross receipts tax revenue is pledged; or

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

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

History: Laws 1993, ch. 297, § 4; 1998, ch. 90, § 4; 2003, ch. 349, § 17.

ANNOTATIONS

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 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.

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.

History: Laws 1993, ch. 297, § 5.

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. The plan may be specific to a single economic development goal or strategy or may include several goals or strategies. 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 and assign priority to and strategies for achieving those goals;

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

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

(4) describe the manner in which a qualifying entity may submit an economic development project application, including the type of information required from the qualifying entity sufficient to ensure its solvency and ability to perform its contractual

obligations, its commitment to remain in the community and its commitment to the stated economic development goals of the local or regional government;

(5) describe the process the local or regional government will use to verify the information submitted on an economic development project application;

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

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

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

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

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

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

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

History: Laws 1993, ch. 297, § 6; 1998, ch. 90, § 5.

ANNOTATIONS

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 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 [5-10-1 NMSA 1978].

B. The joint powers agreement shall require that the governing body of each local government approve each economic development project. The agreement may also provide for appointment of a project manager who shall be responsible for the management of projects and project funds. The agreement may provide for a regional body consisting of representatives from the governing bodies of each local government that is a party to the agreement and may determine the powers and duties of that body in implementing the regional government's plan and projects.

History: Laws 1993, ch. 297, § 7.

5-10-8. Economic development project applications.

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

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

History: Laws 1993, ch. 297, § 8.

5-10-9. Project evaluation; department.

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

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

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

History: Laws 1993, ch. 297, § 9.

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

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

B. The local or regional government shall require a substantive contribution from the qualifying entity for each economic development project. 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 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 the local or regional government 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.

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

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

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

C. The local or regional government shall provide for an annual independent audit in accordance with the Audit Act [12-6-1 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.

5-10-12. Plan and project termination.

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

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

History: Laws 1993, ch. 297, § 12.

5-10-13. Limitations.

Nothing in the Local Economic Development Act [5-10-1 NMSA 1978] 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 clauses. — Laws 1993, ch. 297, § 14 provides for the severability of the act if any part or application thereof is held invalid.

ARTICLE 11
Public Improvement District

5-11-1. Short title.

Sections 1 through 27 [5-11-1 to 5-11-27 NMSA 1978] of this act may be cited as the "Public Improvement District Act".

History: Laws 2001, ch. 305, § 1.

5-11-2. Definitions.

As used in the Public Improvement District Act [5-11-1 NMSA 1978]:

A. "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 6 [5-11-6 NMSA 1978] of the Public Improvement District Act;

B. "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;

C. "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 registrars, trustees, paying agents or other agents necessary to handle the bonds and the costs of credit enhancement or liquidity support;

D. "development agreement" means an agreement between a property owner or developer, the county or 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;

E. "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;

F. "district board" means the board of directors of the district, which shall be comprised 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 9 [5-11-9 NMSA 1978] of the Public Improvement District Act;

G. "election" means an election held in compliance with the provisions of Sections 6 and 7 [5-11-6 and 5-11-7 NMSA 1978] of the Public Improvement District Act;

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. "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 [5-11-1 NMSA 1978];

I. "general plan" means the general plan described in Section 3 [5-11-3 NMSA 1978] of the Public Improvement District Act, as the plan may be amended from time to time;

J. "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;

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

L. "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 his 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; and

(6) the trustee of a trust holding record title to land within the district;

M. "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;

N. "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 [5-11-1 NMSA 1978], including, but not limited to, 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;

O. "resident qualified elector" means a person who resides within the boundaries of a district or proposed district and who is qualified to vote in the general elections held in the state pursuant to Section 1-1-4 NMSA 1978;

P. "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

Q. "treasurer" means the treasurer of the governing body or the person appointed by the district board as the district treasurer pursuant to Section 6 of the Public Improvement District Act.

History: Laws 2001, ch. 305, § 2.

5-11-3. Resolution declaring intention to form district.

A. If the public convenience and necessity require, and on presentation of 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 [5-11-1 NMSA 1978]; 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 may direct that, prior to holding a hearing on formation of the district, a study of the feasibility and estimated costs of the improvements, services, enhanced services and other benefits proposed to be provided pursuant to the Public Improvement District Act be prepared by the petitioners for consideration by the governing body at its hearing on formation of the district. The study shall substantially comply with the requirements of Section 5-11-16 NMSA 1978. The district may require that the persons petitioning for formation of the district deposit with the treasurer an amount equal to the estimated costs of conducting the feasibility study and other estimated formation costs, to be reimbursed if the district is formed and public improvements are financed pursuant to the Public Improvement District Act.

C. 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.

D. 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.

ANNOTATIONS

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 [5-11-1 to 5-11-27 NMSA 1978] 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.

ANNOTATIONS

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; 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 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. A formation election shall include the owners unless a petition is presented to the governing body pursuant to Subsection I of Section 7 [5-11-7 NMSA 1978] of the Public Improvement District Act. 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. The question shall also be submitted to a vote of the resident qualified electors. The conduct of a formation election shall meet the requirements of Section 7 of the Public Improvement District Act.

History: Laws 2001, ch. 305, § 6.

ANNOTATIONS

5-11-7. Notice and conduct of election; waiver.

A. Any election pursuant to the Public Improvement District Act [5-11-1 NMSA 1978] shall be a nonpartisan election called 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. The notice shall state:

(1) the place of holding the election and provisions for voting by mail, if any;

(2) the hours during the day, not less than six, in which the polls will be open;

(3) if the election is a formation election, the boundaries of the proposed district;

(4) 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;

(5) if the election is a property tax levy election pursuant to Section 19 [5-11-19 NMSA 1978] of the Public Improvement District Act, 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;

(6) that a general plan is on file with the clerk;

(7) 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

(8) 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 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.

C. Voter lists shall be used to determine the resident qualified electors. If the district includes land lying partly in and partly out of any county election precinct, the voter lists may contain the names of all registered voters in the precinct, and the precinct boards

at those precincts shall require that a prospective elector execute an affidavit stating that the elector is also a resident qualified elector.

D. For all elections held pursuant to the Public Improvement District Act, a prospective elector who is not a resident qualified elector shall execute an affidavit stating that the elector is the owner of land in the proposed district and stating the area of land in acres owned by the prospective elector. Precinct board members may administer oaths or take all affirmations for these purposes.

E. Except as otherwise provided by this section, the election shall comply with the general election laws of this state. The ballot material provided to each voter 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 resident 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.

F. The governing body or, if after formation, the district board, may provide for the returns of the election to be made in person or by mail.

G. Within thirty days after an election, the governing body, or if after formation, the district board, shall meet and canvass the returns, determining the number of votes properly cast by owners and resident qualified electors. At least a three-fourths majority of the votes cast at the election shall be required for formation, issuing the bonds, imposing the tax or special levy or changing the tax or special levy. 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 purpose of completing the canvass. 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.

H. 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 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.

I. 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 election. On receipt of such a petition, and after approval by an election of resident 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 election.

J. If no person has registered to vote within the district within fifty days immediately preceding any scheduled election date, any election required to be held pursuant to the Public Improvement District Act shall be 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.

K. In any election held pursuant to the Public Improvement District Act, an owner who is also a resident qualified elector shall have the number of votes or portion of votes to which he is entitled as an owner and shall not be entitled to an additional vote as a result of residing within the district.

History: Laws 2001, ch. 305, § 7.

ANNOTATIONS

Bracketed material. — The bracketed material in Paragraph E(3) and Subsection I was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

Effective dates. — Laws 2001, ch. 305 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2001, 90 days after adjournment of the legislature.

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 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 19 [5-11-19 NMSA 1978] of the Public Improvement District Act, special levy bonds issued pursuant to Section 20 [5-11-20 NMSA 1978] of that act and revenue bonds issued pursuant to Section 21 [5-11-21 NMSA 1978] of that act 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.

ANNOTATIONS

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 of six years. Two of the appointed directors shall serve an initial term of four years. The resolution forming the district shall state which directors shall serve four-year terms and which shall serve six-year 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 his successor is appointed or elected.

B. A director may be a director of more than one district.

C. At the end of the appointed directors' initial term, the governing body shall resume governance of the district as its board or, at its option, shall hold an election of new directors by majority vote of the residents of the district.

History: Laws 2001, ch. 305, § 9.

ANNOTATIONS

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 [5-11-1 NMSA 1978], 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 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 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. After the formation election, 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 and voter approval by the owners and resident qualified electors as provided in Sections 6 and 7 [5-11-6 and 5-11-7 NMSA 1978] of 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 [5-11-1 NMSA 1978] shall not be deleted from the district while there are bonds outstanding that are payable by such taxes, special levies or charges.

B. At any time after adoption of a resolution creating a district, an area may be added to the district upon the approval of the owners of land in the proposed addition area and the resident qualified electors residing therein, as well as the owners of land in

the district and the resident qualified electors, in the same manner as required for the formation of a district.

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.

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 [5-11-1 NMSA 1978] 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.

Before constructing or acquiring any public infrastructure, the district board shall cause a study of the feasibility and benefits of the public infrastructure improvement project to be prepared, which shall include 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, a map showing, in general, the location of the project within the district, an estimate of the cost to construct, acquire, operate and maintain the project, 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. 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.

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.

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.

History: Laws 2001, ch. 305, § 18.

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 and call a general obligation bond election to submit to the owners and resident qualified electors 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. The election may be held in conjunction with the formation election.

B. If general obligation bonds are approved at an election, the district board may issue and sell general obligation bonds of the district.

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 17 [5-11-17 NMSA 1978] of the Public Improvement District 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 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 election requirements 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 [5-11-1 NMSA 1978]. 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 2001, ch. 305, § 19.

ANNOTATIONS

Cross references. — For property tax liens, *see* 7-38-48 NMSA 1978.

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. Special levy 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 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.

E. The district board shall specify conditions under which the obligation to pay special levies may be prepaid and permanently satisfied.

F. Special levies against privately owned residential property shall be subject to the following provisions:

(1) the maximum 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;

(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.

G. 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.

H. No holder of special levy bonds issued pursuant to the Public Improvement District Act [5-11-1 NMSA 1978] 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.

I. 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.

J. 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.

ANNOTATIONS

Cross references. — For property tax enforcement provisions, *see* 7-38-48 NMSA 1978 et seq.

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 [5-11-1 NMSA 1978] 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, 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 [5-11-1 NMSA 1978]. 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.

ANNOTATIONS

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 resident qualified electors and owners, voting at an election 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 resident qualified electors, or by the owners of twenty-five percent of the land area of the district, shall call an election 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 [5-11-1 NMSA 1978].

D. If a maximum special levy is in effect, the district board, on petition of twenty-five percent of the resident 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.

ANNOTATIONS

Cross references. — For property taxes in general, *see* Chapter 7, Article 38 NMSA 1978.

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 [5-11-1 NMSA 1978] 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.

History: Laws 2001, ch. 305, § 26.

ANNOTATIONS

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 [5-11-1 NMSA 1978], 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 clauses. — Laws 2001, ch. 305, § 29 provides 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.

This act [5-13-1 to 5-13-15 NMSA 1978] may be cited as the "Convention Center Financing Act".

History: Laws 2003, ch. 87, § 1.

ANNOTATIONS

Cross references. — For the Civic and Convention Center Funding Act, *see* Chapter 5, Article 14 NMSA 1978.

5-13-2. Definitions.

As used in the Convention Center Financing Act [5-13-1 NMSA 1978]:

A. "additional municipality" means an incorporated municipality, not a qualified municipality, that is authorized to impose convention center fees pursuant to the Convention Center Financing Act;

B. "convention center fee" means the fee imposed by a local government entity pursuant the Convention Center Financing Act on vendees for the use of lodging facilities;

C. "local governmental entity" means a qualified municipality, a county or an additional municipality 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 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;

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. 87, § 2.

5-13-3. Authorized local governmental entities.

The following local governmental entities are authorized to impose convention center fees:

A. a qualified municipality if the governing body of the qualified municipality has enacted an ordinance to impose a convention center fee;

B. a county in which a qualified municipality is located, provided that:

(1) a qualified municipality within the county has enacted an ordinance to impose a convention center fee;

(2) the board of county commissioners of the county has enacted an ordinance to impose a convention center fee;

(3) the qualified municipality and the county have entered into a joint powers agreement pursuant to the Joint Powers Agreements Act [11-1-1 NMSA 1978] to collect the revenue from the convention center fee and to expend the revenue as required in the Convention Center Financing Act [5-13-1 NMSA 1978]; and

(4) the fee shall only apply to lodging facilities located within twenty miles of the corporate limits of the qualified municipality; and

C. an additional municipality located within twenty miles of the corporate limits of a qualified municipality in the same county in which that qualified municipality is located, provided that:

(1) the qualified municipality has enacted an ordinance imposing a convention center fee;

(2) the additional municipality has enacted an ordinance imposing a convention center fee; and

(3) the qualified municipality and the additional municipality have entered into a joint powers agreement pursuant to the Joint Powers Agreements Act to collect the revenue from the convention center fee and to expend the revenue as required by the Convention Center Financing Act.

History: Laws 2003, ch. 87, § 3.

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 [5-13-1 NMSA 1978]; 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 [5-13-1 NMSA 1978] 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 [5-13-1 NMSA 1978].

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 [5-13-1 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 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 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 [5-13-1 NMSA 1978] 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 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 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* Chapter 5, Article 13 NMSA 1978.

5-14-2. Definitions.

As used in the Civic and Convention Center Funding Act [5-14-1 NMSA 1978]:

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 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 [5-14-1 NMSA 1978].

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 [5-14-1 NMSA 1978], 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 [5-14-1 NMSA 1978] 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 [5-14-1 NMSA 1978].

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 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 [5-14-1 NMSA 1978], 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 [5-14-1 NMSA 1978] 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 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.

Sections 1 through 27 of this act may be cited as the "Tax Increment for Development Act".

History: Laws 2006, ch. 75, § 1.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contains an emergency clause and was signed into law on March 6, 2006.

5-15-2. Findings and purpose.

A. The purpose of the Tax Increment for Development Act [5-15-1 NMSA 1978] 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 contains an emergency clause and was signed into law on March 6, 2006.

5-15-3. Definitions.

As used in the Tax Increment for Development Act [5-15-1 NMSA 1978]:

A. "base gross receipts taxes" means:

(1) the total amount of gross receipts taxes collected within a tax increment development district, as estimated by the governing body that adopted a resolution to form that district, in consultation with the taxation and revenue department, in the 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 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 such year if any applicable additional gross receipts taxes imposed after that year had been imposed in that year;

B. "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;

C. "county option gross receipts taxes" means gross receipts taxes imposed by counties pursuant to the County Local Option Gross Receipts Taxes Act [7-20E-1 NMSA 1978] and designated by the governing body of the county to be available as part of the gross receipts tax increment;

D. "district" means a tax increment development district;

E. "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;

F. "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;

G. "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;

H. "gross receipts tax increment" means the gross receipts taxes collected within a tax increment development district in excess of the base gross receipts taxes collected 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 [7-1-1 NMSA 1978];

I. "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;

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

K. "municipal option gross receipts taxes" means those gross receipts taxes imposed by municipalities pursuant to the Municipal Local Option Gross Receipts Taxes Act [7-19D-1 NMSA 1978] and designated by the governing body of the municipality to be available as part of the gross receipts tax increment;

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

M. "owner" means a person owning real property within the boundaries of a district;

N. "person" means an individual, corporation, association, partnership, limited liability company or other legal entity;

O. "project" means a tax increment development project;

P. "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;

Q. "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;

R. "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" include:

(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;

S. "resident qualified elector" means a person who resides within the boundaries of a tax increment development district or proposed tax increment development district and who is qualified to vote in the general elections held in the state pursuant to Section 1-1-4 NMSA 1978;

T. "state gross receipts tax" means the gross receipts tax imposed pursuant to the Gross Receipts and Compensating Tax Act [7-9-1 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;

U. "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;

V. "tax increment development area" means the land included within the boundaries of a tax increment development district;

W. "tax increment development district" means a district formed for the purposes of carrying out tax increment development projects;

X. "tax increment development plan" means a plan for the undertaking of a tax increment development project;

Y. "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 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;

Z. "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

AA. "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 are 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.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contains an emergency clause and was signed into law on March 6, 2006.

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 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.

History: Laws 2006, ch. 75, § 4.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contains an emergency clause and was signed into law on March 6, 2006.

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 contains an emergency clause and was signed into law on 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, to all owners of real property within the proposed tax increment development area no later than ten days prior to the hearing.

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; and

(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.

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.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contains an emergency clause and was signed into law on March 6, 2006.

5-15-7. Public hearing.

A. At a public hearing conducted pursuant to the Tax Increment for Development Act [5-15-1 NMSA 1978], 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 [14-2-4 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 adopt a resolution ordering that the tax increment development district be formed and shall set the matter for an election or declare that an election is waived, as provided in the Tax Increment for Development Act.

History: Laws 2006, ch. 75, § 7.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contains an emergency clause and was signed into law on March 6, 2006.

5-15-8. Election.

A. The election procedures set forth in this section shall be used for:

(1) formation of a new tax increment development district;

(2) election 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. An election 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 [5-15-1 NMSA 1978] 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 an election.

C. An election pursuant to the Tax Increment for Development Act shall be a nonpartisan election called 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.

D. The notice shall state:

(1) the place of holding the election and provisions for voting by mail, if any;

(2) the hours during the day during which the polls will be open;

(3) if the election is a formation election, the boundaries of the proposed tax increment development district;

(4) if the election is a bond election, the purpose for which the bonds are to be issued and the amount of the issue;

(5) 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;

(6) that an approved tax increment development plan is on file with the clerk of the governing body;

(7) 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

(8) that the imposition of property taxes will result in a lien for the payment on property within the district.

E. The district board, or, in the case of a formation election, the governing body, shall determine the date of the election 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.

F. Voter lists shall be used to determine the resident qualified electors. If a district or proposed district includes land lying partly in and partly out of any county election precinct, the voter lists may contain the names of all registered voters in the precinct, and the precinct boards at these precincts shall require that a prospective elector execute an affidavit stating that the elector is also a resident qualified elector.

G. For an election held pursuant to the Tax Increment for Development Act, a prospective elector who is not a resident qualified elector shall execute an affidavit stating that the elector is the owner of land in the proposed or existing district and stating the area of land in acres owned by the prospective elector. If the prospective elector is not an individual, the affidavit shall provide that the individual casting the vote is the designated representative of the corporation, association, partnership, limited liability company or other legal entity entitled to vote in the election. Precinct board members may administer oaths or accept affirmations for those purposes.

H. Except as otherwise provided by this section, the election shall comply with the general election laws of the state. The ballot material provided to each voter 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 resident 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 resident 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".

I. The governing body or, if after district formation, the district board, may provide for the returns of the election to be made in person or by mail.

J. Within thirty days after an election, the governing body, or if after district formation, the district board, shall meet and canvass the returns, determining the number of votes properly cast by owners and resident qualified electors. A majority of the votes cast at the election shall be required. 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 purpose of completing the canvass. 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.

K. If a person transfers real property located in a district and the name of the successor owner becomes known 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.

L. If there are no persons registered to vote within a district or proposed district within fifty days immediately preceding a scheduled election date, an election required to be held pursuant to the Tax Increment for Development Act shall be held by vote of the owners of property within the district or proposed district. 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.

M. In an election held pursuant to the Tax Increment for Development Act, an owner who is also a resident qualified elector 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 shall not be entitled to an additional vote as a result of residing within the district.

History: Laws 2006, ch. 75, § 8.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contains an emergency clause and was signed into law on March 6, 2006.

5-15-9. Formation of a district.

A. If the formation of the tax increment development district is approved 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, 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 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; and

(5) the local government division of the department of finance and administration.

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.

History: Laws 2006, ch. 75, § 9.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contains an emergency clause and was signed into law on March 6, 2006.

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 members appointed by that governing body.

C. Three of the appointed directors shall serve an initial term of six years. Two of the appointed directors shall serve an initial term of four years. The resolution forming

the district shall state which directors shall serve four-year terms and which shall serve six-year 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. A director may be a director of more than one district.

E. 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 owners and qualified resident electors in accordance with the Tax Increment for Development Act [5-15-1 NMSA 1978]. 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, § 10.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contains an emergency clause and was signed into law on March 6, 2006.

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 [10-15-1.1 NMSA 1978].

History: Laws 2006, ch. 75, § 11.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contains an emergency clause and was signed into law on 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 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 [5-15-1 NMSA 1978];

(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 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 contains an emergency clause and was signed into law on 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 [7-35-1 NMSA 1978], which may be used for operation,

maintenance and capital improvements, in furtherance of the purposes of the Tax Increment for Development Act [5-15-1 NMSA 1978];

B. a district may impose a property tax levy only after authorization by a majority of votes cast by the owners of real property and qualified resident electors of a district in an election held in accordance with 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.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contains an emergency clause and was signed into law on March 6, 2006.

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 resident 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 [1-1-1 NMSA 1978] that is called and held within ninety days; or

(2) the next occurring general election if that election is to be held within less than ninety 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.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contains an emergency clause and was signed into law on March 6, 2006.

5-15-15. Tax increment financing; gross receipts tax increment. (Effective January 1, 2007.)

A. Notwithstanding any law to the contrary, but in accordance with the provisions of the Tax Increment for Development Act [5-15-1 NMSA 1978], a tax increment development plan, as originally approved or as later modified, may contain a provision that a portion of certain gross receipts tax increments collected within the tax increment development area after the effective date of approval of the tax increment development plan may be dedicated for the purpose of securing gross receipts tax increment bonds pursuant to the Tax Increment for Development Act.

B. 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 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) municipal gross receipts tax authorized pursuant to the Municipal Local Option Gross Receipts Taxes Act [7-19D-1 NMSA 1978];

(2) municipal environmental services gross receipts tax authorized pursuant to the Municipal Local Option Gross Receipts Taxes Act;

(3) municipal infrastructure gross receipts tax authorized pursuant to the Municipal Local Option Gross Receipts Taxes Act;

(4) municipal capital outlay gross receipts tax authorized pursuant to the Municipal Local Option Gross Receipts Taxes Act;

(5) municipal regional transit gross receipts tax authorized pursuant to the Municipal Local Option Gross Receipts Taxes Act;

(6) an amount distributed to municipalities pursuant to Sections 7-1-6.4 and 7-1-6.46 NMSA 1978; and

(7) the state gross receipts tax.

C. 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 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) county gross receipts tax authorized pursuant to the County Local Option Gross Receipts Taxes Act [7-20E-1 NMSA 1978];

(2) county environmental services gross receipts tax authorized pursuant to the County Local Option Gross Receipts Taxes Act;

(3) county infrastructure gross receipts tax authorized pursuant to the County Local Option Gross Receipts Taxes Act;

(4) county capital outlay gross receipts tax authorized pursuant to the County Local Option Gross Receipts Taxes Act;

(5) county regional transit gross receipts tax authorized pursuant to the County Local Option Gross Receipts Taxes Act; and

(6) the state gross receipts tax.

D. The gross receipts tax increment generated by the imposition of municipal or county local 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 local option gross receipts tax.

E. An imposition of a gross receipts tax increment attributable to the imposition of 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 the imposition of 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 January 1 or July 1 of the calendar year.

F. An imposition of a gross receipts tax increment attributable to the imposition of the state gross receipts tax within a district 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. The state board of finance shall not agree to dedicate more than seventy-five percent of the gross receipts tax increment attributable to the imposition of the state gross receipts tax within the district. The resolution of the state board of finance shall become effective only on January 1 or July 1 of the calendar year 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 attributable to the imposition of the state gross receipts tax 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) 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.

G. 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.

ANNOTATIONS

Effective dates. *— Laws 2006, ch. 75, § 35 makes this section effective on January 1, 2007.*

5-15-16. Bonding authority; gross receipts tax increment. (Effective January 1, 2007.)

A. A district may issue gross receipts tax increment revenue bonds, the pledged revenue for which is a gross receipts tax increment, for any one or more of the purposes authorized by the Tax Increment for Development Act [5-15-1 NMSA 1978].

B. A district may pledge irrevocably any or all of 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 increment bonds that may be secured by a pledge of any municipal or county 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 NMSA 1978] and the [Public Securities] Short-Term Interest Rate Act [6-18-1 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 taxes or portions thereof to be pledged to the repayment of the gross receipts tax increment bonds.

History: Laws 2006, ch. 75, § 16.

ANNOTATIONS

Compiler's note. *— The bracketed language in Subsection D was added by the compiler and is not a part of the law enacted by the legislature.*

Effective dates. *— Laws 2006, ch. 75, § 35 makes this section effective on January 1, 2007.*

5-15-17. Property tax increment bonds.

A. Notwithstanding any law to the contrary, but in accordance with the Tax Increment for Development Act [5-15-1 NMSA 1978], 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 contains an emergency clause and was signed into law on 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 [5-15-1 NMSA 1978].

B. Before property tax increment bonds are issued, the district board shall submit to a vote of the registered qualified electors within the tax increment development area and the nonresident electors owning property within the tax increment development area the question of issuing the property tax increment bonds.

C. The district board shall give notice of the time and place of holding the election and the purpose for which the property tax increment bonds are to be issued. Notice of a property tax increment bond election shall be given as required by the Tax Increment for Development Act.

D. The 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 question shall be submitted to the voters for each purpose to be voted upon. The ballots 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. The ballots shall be deposited in a separate ballot box, unless voting machines are used.

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 NMSA 1978] and the [Public Securities] Short-Term Interest Rate Act [6-18-1 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 [6-9-6 NMSA 1978].

History: Laws 2006, ch. 75, § 18.

ANNOTATIONS

Compiler's note. — The bracketed language in Subsection D was added by the compiler and is not a part of the law enacted by the legislature.

Emergency clause. — Laws 2006, ch. 75, § 36 contains an emergency clause and was signed into law on March 6, 2006.

5-15-19. Refunding bonds.

A. A district board that has issued bonds in accordance with the Tax Increment for Development Act [5-15-1 NMSA 1978] 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 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 contains an emergency clause and was signed into law on March 6, 2006.

5-15-20. General bonding authority of a tax increment development district; other limitations.

A. 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.

B. 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 [5-15-1 NMSA 1978], 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 [3-60A-1 NMSA 1978].

C. 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.

D. 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.

E. 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.

F. 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.

ANNOTATIONS

Cross references. — For the classification of counties for salary purposes, *see* 4-44-1 NMSA 1978.

Emergency clause. — Laws 2006, ch. 75, § 36 contains an emergency clause and was signed into law on March 6, 2006.

5-15-21. Approval required for issuance of bonds against state gross receipts tax increments.

In addition to all other requirements of the Tax Increment for Development Act [5-15-1 NMSA 1978], prior to a district board issuing bonds against a gross receipts tax increment attributable to the imposition of the state gross receipts tax within a district:

A. 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; and

B. the issuance of the bonds shall be specifically authorized by law.

History: Laws 2006, ch. 75, § 21.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contains an emergency clause and was signed into law on March 6, 2006.

5-15-22. Exemption from taxation.

The bonds authorized by the Tax Increment for Development Act [5-15-1 NMSA 1978] 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 contains an emergency clause and was signed into law on March 6, 2006.

5-15-23. Protection from impairment.

If the provisions set forth in the Tax Increment for Development Act [5-15-1 NMSA 1978] 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 contains an emergency clause and was signed into law on 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 contains an emergency clause and was signed into law on March 6, 2006.

5-15-25. Modification of tax increment development area boundaries or tax increment development plan.

A. After an election to form 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 and voter approval by the owners and resident qualified electors as provided in the Tax Increment for Development Act [5-15-1 NMSA 1978]. 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. At any time after adoption of a resolution creating a district, an area may be added to the district upon the approval of the owners of real property in the proposed additional area and the resident qualified electors residing therein, as well as the owners of real property in the district and resident qualified electors, in the same manner as required for the formation of a district.

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. An election shall not be required solely for the purposes of this subsection.

History: Laws 2006, ch. 75, § 25.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contains an emergency clause and was signed into law on March 6, 2006.

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 contains an emergency clause and was signed into law on March 6, 2006.

5-15-27. Dedication of gross receipts tax increment; notice to taxation and revenue department.

If the state board of finance or a taxing entity approves a dedication or increase in the dedication of a portion 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 effective date of the dedication or increase in the dedication.

History: Laws 2006, ch. 75, § 27.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 75, § 36 contains an emergency clause and was signed into law on March 6, 2006.

5-15-28. Bond term expiration.

The terms of bonds issued pursuant to the Tax Increment for Development Act [5-15-1 NMSA 1978] 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 contains an emergency clause and was signed into law on March 6, 2006.

ARTICLE 16
Regional Spaceport District

5-16-1. Short title.

Sections 1 through 13 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 17, 2006, 90 days after adjournment of the legislature.

5-16-2. Purposes.

The purposes of the Regional Spaceport District Act [5-15-1 NMSA 1978] 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 17, 2006, 90 days after adjournment of the legislature.

5-16-3. Definitions.

As used in the Regional Spaceport District Act [5-15-1 NMSA 1978]:

A. "authority" means the spaceport authority created pursuant to the Spaceport Development Act [58-31-1 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 [5-15-1 NMSA 1978], 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 [5-15-1 NMSA 1978], 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 [5-15-1 NMSA 1978], 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 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. contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is 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 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 17, 2006, 90 days after adjournment of the legislature.