CHAPTER 3
Municipalities

ARTICLE 1
General Provisions

3-1-1. Municipalities; short title.

Chapter 3 NMSA 1978 [except Article 66] may be cited as the "Municipal Code".

History: 1953 Comp., § 14-1-1, enacted by Laws 1965, ch. 300; 1981, ch. 204, § 1.

ANNOTATIONS

Law reviews. — For note, "Annexation of Unincorporated Territory in New Mexico," see 6 Nat. Resources J. 83 (1966).

For comment, "Regional Planning - Subdivision Control - New Mexico's New Municipal Code," see 6 Nat. Resources J. 135 (1966).

For comment, "Land Use Planning - New Mexico's Green Belt Law," see 8 Nat. Resources J. 190 (1968).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 1 to 3.

62 C.J.S. Municipal Corporations § 1 et seq.

3-1-2. Definitions.

As used in the Municipal Code:

A. "acquire" or "acquisition" means purchase, construct, accept or any combination of purchasing, constructing or accepting;

B. "business" means any person, occupation, profession, trade, pursuit, corporation, institution, establishment, utility, article, commodity or device engaged in making a profit, but does not include an employee;

C. "census" means any enumeration of population of a municipality conducted under the direction of the government of the United States, the state of New Mexico or the municipality;

D. "county" means the county in which the municipality or land is situated;

E. "district court" means the district court of the district in which the municipality or land is situated;

F. "governing body" means the city council or city commission of a city, the board of trustees of a town or village, the council of incorporated counties and the board of county commissioners of H class counties;

G. "municipal" or "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, incorporated counties and H class counties;

H. "municipal utility" means sewer facilities, water facilities, gas facilities, electric facilities, generating facilities or any interest in jointly owned generating facilities owned by a municipality and serving the public. A municipality that owns both electric facilities and any interest in jointly owned generating facilities may, by ordinance, designate such interest in jointly owned generating facilities as part of its electric facilities. Generating facilities shall be considered as part of a municipality's electric facilities unless the municipality designates, by ordinance, the generating facilities as a separate municipal utility, such designation being conclusive subject to any existing property rights or contract rights;

I. "public ground" means any real property owned or leased by a municipality;

J. "publish" or "publication" means printing in a newspaper that maintains an office in the municipality and is of general circulation within the municipality or, if such newspaper is a nondaily paper that will not be circulated to the public in time to meet publication requirements or if there is no newspaper that maintains an office in the municipality and is of general circulation within the municipality, then "publish" or "publication" means posting in six public places within the municipality on the first day that publication is required in a newspaper that maintains an office in the municipality and is of general circulation within the municipality. One of the public places where posting shall be made is the office of the municipal clerk who shall maintain the posting during the length of time necessary to comply with the provisions relating to the number of times publication is required in a newspaper of general circulation within the municipality. The municipal clerk may, in addition to posting, publish one or more times in a newspaper of general circulation in the municipality;

K. "qualified elector" means any person whose affidavit of voter registration has been filed by the county clerk, who is registered to vote in a general election precinct established by the board of county commissioners that is wholly or partly within the municipal boundaries and who is a resident of the municipality. Persons who would otherwise be qualified electors if land on which they reside is annexed to a municipality shall be deemed to be qualified electors:

(1) upon the effective date of the municipal ordinance effectuating the terms of the annexation as certified by the board of arbitration pursuant to Section 3-7-10 NMSA 1978;

(2) upon thirty days after the filing of an order of annexation by the municipal boundary commission pursuant to Sections 3-7-15 and 3-7-16 NMSA 1978, if no appeal is filed or, if an appeal is filed, upon the filing of a nonappealable court order effectuating the annexation; or

(3) upon thirty days after the filing of an ordinance pursuant to Section 3-7-17 NMSA 1978, if no appeal is filed or, if an appeal is filed, upon the filing of a nonappealable court order effectuating the annexation;

L. "revenue producing project" means any municipally owned self-liquidating projects that furnish public services to a municipality and its citizens, including but not necessarily limited to public buildings; facilities and equipment for the collection or disposal of trash, refuse or garbage; swimming pools; golf courses and other recreational facilities; cemeteries or mausoleums or both; airports; off-street parking garages; and transportation centers, which may include but are not limited to office facilities and customary terminal facilities for airlines, trains, monorails, subways, intercity and intracity buses and taxicabs; but "revenue producing facilities" does not mean a municipal utility as defined in Subsection H of this section;

M. "street" means any thoroughfare that can accommodate pedestrian or vehicular traffic, is open to the public and is under the control of the municipality;

N. "warrant" means a warrant, check or other negotiable instrument issued by a municipality in payment for goods or services acquired by the municipality or for the payment of a debt incurred by the municipality;

O. "mayor" means the chief executive officer of municipalities having the mayor-council form of government. In municipalities having other forms of government, the presiding officer of the governing body and the official head of the government, without executive powers, may be designated mayor by the governing body. Wherever the Municipal Code requires an act to be performed by the mayor with the consent of the governing body, in municipalities not having the mayor-council form of government, the act shall be performed by the governing body;

P. "generating facility" means any facility located within or outside the state necessary or incidental to the generation or production of electric power and energy by any means and includes:

(1) any facility necessary or incidental to the acquisition of fuel of any kind for the production of electric power and energy, including the acquisition of fuel deposits, the extraction of fuel from natural deposits, the conversion of fuel for use in another form, the burning of fuel in place and the transportation and storage of such fuel; and

(2) any facility necessary or incidental to the transfer of the electric power and energy to the municipality, including without limitation step-down substations or other facilities used to reduce the voltage in a transmission line in order that electric power and energy may be distributed by the municipality to its retail customers;

Q. "jointly owned generating facility" means any generating facility in which a municipality owns any undivided or other interest, including without limitation any right to entitlement or capacity; and

R. "joint participant" means any municipality in New Mexico or any other state; any public entity incorporated under the laws of any other state having the power to enter into the type of transaction contemplated by the Municipal Electric Generation Act [3-24-11 to 3-24-18 NMSA 1978]; the state of New Mexico; the United States; Indian tribes; and any public electric utility, investor-owned electric utility or electric cooperative subject to general or limited regulation by the New Mexico public utility commission or a similar commission of any other state.

History: 1953 Comp., § 14-1-2, enacted by Laws 1965, ch. 300; 1967, ch. 223, § 1; 1969, ch. 251, § 1; 1972, ch. 81, § 1; 1973, ch. 272, § 1; 1979, ch. 260, § 1; 1985, ch. 208, § 1; 1987, ch. 323, § 1; 1993, ch. 282, § 1.

ANNOTATIONS

Cross references. — For requirements and procedure for incorporation of a municipality, *see* 3-2-1 NMSA 1978 et seq.

For incorporation of municipalities under special act, *see* 3-3-1 NMSA 1978 et seq.

For changing name of municipality, *see* 3-6-1 and 3-6-2 NMSA 1978.

For restrictions on municipal indebtedness, *see* N.M. Const., art IX, § 12.

For voting "precinct", *see* 3-8-2 NMSA 1978.

For commission-manager form of government applied to municipalities over 1,000 population, *see* 3-14-1 NMSA 1978 et seq.

For municipal charters, *see* 3-15-1 NMSA 1978 et seq.

For taking a census, *see* 3-18-9 NMSA 1978.

For public utilities, *see* 3-23-1 NMSA 1978 et seq.

For establishment of H class counties, *see* 4-44-3 NMSA 1978.

For requirement for publication of legal notice or advertisement, *see* 14-11-2 NMSA 1978.

For publication of proceedings of municipal boards, *see* 14-11-11 NMSA 1978.

The 1993 amendment, effective June 18, 1993, substituted "public utility commission" for "public service commission" in Subsection R and made minor stylistic changes throughout the section.

The 1987 amendment, effective June 19, 1987, in Subsection J inserted "if such newspaper is a nondaily paper which will not be circulated to the public in time to meet publication requirements" following "and is of general circulation within the municipality or"; in Subsection L substituted "as defined in Subsection H of this section" for "as herein defined"; and made minor changes in language and punctuation throughout the section.

"Publish" construed. — The general notice requirements of Subsection J do not apply to govern proceedings of the municipal boundary commission. Cox v. Mun. Boundary Comm'n, 1998-NMCA-025, 124 N.M. 709, 954 P.2d 1186, cert. denied, 125 N.M. 145, 958 P.2d 103 (1998).

"Village" construed. — In construing the word "village", as used in former section governing municipal liquor sales, the court was not justified in giving it a meaning which will impair the legislative intent. State ex rel. Lorenzino v. County Comm'rs, 20 N.M. 67, 145 P. 1083 (1915).

Governing body of a municipality having a mayor-council form of government is either the council or board of trustees. 1969 Op. Att'y Gen. No. 69-148.

Newspaper "office" defined. — In the case of a newspaper, "office" means a place where classified ads may be placed, where subscriptions may be placed and where general information relative to the newspaper may be obtained. 1965 Op. Att'y Gen. No. 65-85.

Requirements and qualifications for voting at municipal elections are the same as those for general elections. 1964 Op. Att'y Gen. No. 64-33.

Residence outside municipality disqualifies one from voting. — A person whose residence is actually outside the exterior limits or boundaries of a municipality is not qualified to vote in municipal elections. 1957-58 Op. Att'y Gen. No. 58-60.

3-1-3. Municipalities; name; prohibiting the use of name of another municipality.

Any municipality may be known as the:

A. "city of .....";

B. "town of ....."; or

C. "village of ....."; but no municipality which changes its name or incorporates shall adopt the name of an existing municipality.

History: 1953 Comp., § 14-1-3, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For changing name of municipality, *see* 3-6-1 and 3-6-2 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 29.

Use of abbreviations of name of municipal body or private corporation in designating party to judicial proceedings, 167 A.L.R. 1217.

62 C.J.S. Municipal Corporations § 34.

3-1-4. Municipalities; change of status; continuation of ordinances; judicial notice.

A. Whenever a municipality changes its name as authorized in Sections 3-6-1 and 3-6-2 NMSA 1978 or reorganizes its government as provided in Sections 3-3-1 through 3-3-4, 3-14-1 through 3-14-19 and 3-15-1 through 3-15-16 NMSA 1978, the municipal clerk shall file certified copies of the election certificates indicating approval of the change of name or reorganization of the municipality in the office of the county clerk and the office of the secretary of state. The municipal clerk shall also transmit, if the municipal boundaries are to be changed, certified copies of a map or plat of the revised municipal boundaries to the secretary of finance and administration and the secretary of taxation and revenue.

B. All acts performed in the name of the municipality previous to the change in name or the reorganization of the municipality shall continue in effect except as they are amended or modified by the change in name or reorganization of the municipality; provided, that the change of name or reorganization of the municipality shall not in any manner affect the rights or liabilities of the municipality or any other right, liability or right of action, civil or criminal, for or against the municipality.

C. When certified copies of the election certificates are filed in the office of the county clerk and the office of the secretary of state, as required in this section, the change of name or reorganization of the municipality shall be deemed complete and

shall be judicially recognized in all subsequent proceedings in which the municipality is interested.

History: 1953 Comp., § 14-1-4, enacted by Laws 1965, ch. 300; 1981, ch. 204, § 2.

3-1-5. Petitions; examinations of signatures; purging; judicial review.

A. All petitions, filing of petitions, verification of petitions and all other acts to be performed by petitioners, public officers or employees, regarding only those petitions that trigger a municipal special or regular election as authorized in the Municipal Code or otherwise authorized by law, shall comply with the terms of this section, except as otherwise expressly provided by law.

B. Each page or group of pages of a petition shall be accepted for filing by a municipal clerk, a county clerk, a governing body or a board of county commissioners only if:

(1) the municipal clerk has approved the form of petitions to be filed with the municipality prior to circulation of the petition; or

(2) the county clerk has approved the form of petitions to be filed with the county prior to circulation of the petition; and

(3) each page of the petition to be filed contains the approval or facsimile approval of the municipal or county clerk and the petition heading and penalty statement are legible when submitted for filing.

C. The municipal or county clerk shall approve a petition as to form if the proposed petition form contains:

(1) a heading that complies with a particular form of heading required by law; or

(2) a heading that clearly conveys the purpose for signing the petition if no particular form of heading is required by law;

(3) a place for the person signing the petition to write the date and the person's name (printed), address and signature, unless other requirements are mandated by law and then the petition shall comply with those requirements; and

(4) a statement that any person knowingly providing or causing to be provided any false information on a petition, forging a signature or signing a petition when that person knows that person is not a qualified elector in the municipality is guilty of a fourth degree felony.

D. The requirements of Subsection B of this section shall be deemed complied with if an original form of petition is submitted to a municipal or county clerk for approval prior to circulation and after approval by the clerk that original form is reproduced by photocopying or other similar means so that the form and clerk's approval are unchanged from the original and are legible on each page of the petition to be filed.

E. A petition filed with a municipal clerk, a county clerk, a governing body or a board of county commissioners shall include all individual pages of a petition complying with the provisions of this section, regardless of whether the pages are filed singly or in a group. Pages complying with the provisions of this section may be filed at different times so long as filing is within the time period allowed by law for the filing of the particular petition to be filed. If no time period is established by law, petition signatures may not span a period of time greater than sixty days from the date of the earliest signature on the petition, and the petition shall be filed within sixty-five days from the date of the earliest signature on the petition.

F. Upon approval of a proposed petition as to form, the municipal clerk shall notify the county clerk of the approval, and the county clerk shall furnish a current voter registration list of qualified electors entitled to vote in municipal elections to the municipal clerk within fourteen days of the notification.

G. When a petition is filed with a municipal clerk, a county clerk, a governing body or a board of county commissioners, the governing body or board of county commissioners shall either certify the petition as valid or order an examination of the petition and the names, addresses and signatures on the petition.

H. When an examination of the petition and the names, addresses and signatures on the petition is ordered, the municipal clerk, county clerk, governing body or board of county commissioners shall:

(1) resolve issues of residency and major infractions in accordance with the rules set forth in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978];

(2) determine the minimum number of valid names, addresses and signatures, as mandated by law, that must be contained in the particular petition filed in order for it to be declared a valid petition;

(3) examine the petition and the names, addresses and signatures on the petition, purge from the petition the signature of any person who is not shown as a qualified elector of the municipality on the list of registered voters provided by the county clerk, purge any signature that is a forgery or that is illegible, purge any signature that appears more than once or that cannot be matched to the name, address and signature as shown on the voter registration lists and the original affidavit of registration, purge the signature of any person who has not signed within the time limits set by law and purge the signature of any person who does not meet the qualifications for signing the petition as prescribed by law; and

(4) certify, no later than ten days after the petition is filed or after the expiration of the period within which the petition can be filed as prescribed by law, whichever occurs last, whether the petition contains the minimum number of valid names, addresses and signatures as mandated by law.

I. Nothing in this section shall preclude a person with a disability or an illiterate person from causing another person to sign a petition on a person with a disability's or an illiterate person's behalf, so long as the person signing for the person with a disability or illiterate person executes an affidavit acknowledged before a notary public that the person is authorized to sign the petition for the person with a disability or illiterate person. In order for the signature on behalf of the person with a disability or illiterate person to be counted and not purged, the original affidavit shall be submitted along with the petition containing the signature on behalf of the illiterate person or person with a disability.

J. If the petition is certified as valid pursuant to Subsection G of this section or is certified as containing in excess of the minimum number of valid names, addresses and signatures mandated by law, then such certification shall be recorded as part of the minutes at the next meeting of the governing body or the board of county commissioners.

K. If the petition is certified as containing less than the minimum number of valid names, addresses and signatures mandated by law, then the municipal clerk, county clerk, governing body or board of county commissioners shall:

(1) cause the names, addresses and signatures that were purged from the petition to be posted in the municipal or county clerk's office no later than on the day the petition is certified;

(2) determine the total number of people signing the petition, the number purged, the number that were not purged and the minimum number of valid names, addresses and signatures required by law for such a petition and post this information along with and at the same time as the posting required in Paragraph (1) of this subsection;

(3) publish once, pursuant to the provisions of Subsection J of Section 3-1-2 NMSA 1978, within one week of the certification, the information compiled pursuant to Paragraphs (1) and (2) of this subsection; and

(4) cause the information compiled pursuant to Paragraphs (1) and (2) of this subsection and the date and place of publication pursuant to Paragraph (3) of this subsection to be recorded as part of the minutes at the next meeting of the governing body or the board of county commissioners after publication has occurred.

L. The following rules shall govern reinstatement of purged signatures:

(1) within ten days after the petition is certified as containing less than the minimum number of valid names, addresses and signatures mandated by law, any person whose signature has been purged from a petition may present evidence to the clerk to show that the person's signature has been wrongfully purged;

(2) if the clerk fails to reinstate that person's signature within three days of demand, then that person may, within ten days of the clerk's refusal to reinstate, petition the district court for an order to reinstate the person's signature on the petition. Upon a prima facie showing by the petitioner of the right to have that person's signature included upon the petition, the district court shall issue an order to the municipal clerk, county clerk, governing body or board of county commissioners to require reinstatement of the signature of the petitioner;

(3) within ten days after receiving the order of the district court, the municipal clerk, county clerk, governing body or board of county commissioners shall reinstate the signature of the petitioner on the petition or show cause why the signature of the petitioner has not been reinstated. Upon hearing, if the district court finds that the person whose signature has been purged meets the qualifications for signing the petition, the district court shall make final its order of reinstatement to the municipal clerk, county clerk, governing body or board of county commissioners; and

(4) if a sufficient number of signatures are reinstated by the clerk, the district court or both to make the petition valid, then the reinstatement by the clerk or the district court, whichever occurs last, shall be deemed the date of certification of the validity of the petition for the purposes of adopting election resolutions, calling elections or for other matters as provided in the Municipal Code or otherwise provided by law.

M. Any petition that contains an insufficient number of signatures after all signatures have been reinstated pursuant to Subsection L of this section is invalid.

N. When a petition governed by this section is filed with the municipal clerk or the governing body of a municipality, the governing body or municipal clerk shall perform or cause to be performed the duties required under this section, except as otherwise prohibited by law. When a petition governed by this section is required to be filed with the county clerk or board of county commissioners, the board of county commissioners or county clerk shall perform or cause to be performed the duties required under this section, except as otherwise prohibited by law.

O. Any person or any municipal or county official knowingly violating the provisions of this section, knowingly providing or causing to be provided any false information on a petition or forging a signature or otherwise signing a petition when that person knows the person is not a qualified elector in the municipality is guilty of a fourth degree felony.

P. The provisions of this section shall not be binding upon a municipality to the extent such provisions are inconsistent with or superseded by the terms and provisions of:

(1) the charter of a municipality incorporated by a special act;

(2) the charter of a municipality adopted pursuant to Article 10, Section 6 of the constitution of New Mexico;

(3) the charter of a municipality adopted pursuant to the Municipal Charter Act [3-15-1 through 3-15-16 NMSA 1978]; or

(4) the charter of a combined municipal organization.

Q. Once a petition has been filed with a municipal clerk, a county clerk, a governing body or a board of county commissioners, no name on the petition may be withdrawn except those names purged pursuant to Subsection H of this section.

History: 1978 Comp., § 3-1-5, enacted by Laws 1985, ch. 208, § 2; 1987, ch. 323, § 2; 1991, ch. 109, § 1; 2007, ch. 46, § 1.

ANNOTATIONS

Cross references. — For sentencing for felonies, *see* 31-18-15 NMSA 1978.

Repeals and reenactments. — Laws 1985, ch. 208, § 2 repealed former 3-1-5 NMSA 1978, as enacted by Laws 1967, ch. 146, § 1, and enacted a new 3-1-5 NMSA 1978. For provisions of former section, see 1981 Replacement Pamphlet.

The 2007 amendment, effective June 15, 2007, Subsection I, changed "handicapped person" to "person with a disability".

The 1991 amendment, effective June 14, 1991, added Subsection Q and made stylistic changes in Subsections C, G and M.

The 1987 amendment, effective June 19, 1987, in Subsection H, in Paragraph (3) inserted "any signature that appears more than once" following "any signature which is a forgery, is illegible"; in Subsection M substituted "Subsection L" for "Subsection K"; and made minor changes in language and punctuation throughout the section.

Compliance with section required. — Section 3-2-1 NMSA 1978 provides for additional requirements for petitions for incorporation and does not supersede those of this section. Citizens for Incorporation, Inc. v. Bd. of County Comm'rs, 115 N.M. 710, 858 P.2d 86 (Ct. App.), cert. denied, 115 N.M. 602, 856 P.2d 250 (1993).

3-1-6. Final day to act.

Whenever the last day for performing an administrative duty, filing a petition or declaration in a county or municipal office, or other similar act falls on a Saturday, Sunday or holiday, the next succeeding day on which the county or municipal office is

open during regular business hours shall be the final day for performing the administrative duty, filing a petition or declaration with a county or municipal clerk or other similar act.

History: 1953 Comp., § 14-1-6, enacted by Laws 1967, ch. 146, § 2.

ARTICLE 2
Incorporation of Municipality

3-2-1. Petition to incorporate area as a municipality; map and money for census.

A. The residents of territory proposed to be incorporated as a municipality may petition the board of county commissioners of the county in which the greatest portion of the territory proposed to be incorporated lies to incorporate the territory as a municipality. The petition shall:

(1) be in writing;

(2) state the name of the proposed municipality;

(3) describe the territory proposed to be incorporated as a municipality; and

(4) be signed by either:

(a) not less than two hundred qualified electors, each of whom shall, on the petition: 1) swear or affirm that the qualified elector has resided within the territory proposed to be incorporated for a period of six months immediately prior to the signing of the petition; and 2) list the street address of the qualified elector's residence; or

(b) the owners of not less than sixty percent of the real estate within the territory proposed to be incorporated who are not delinquent in their payment of real property taxes.

B. The petition shall be accompanied by:

(1) an accurate map or plat that shows the boundary of the territory proposed to be incorporated;

(2) a municipal services and revenue plan that describes the municipal services the proposed municipality will provide and the details of how the municipality will generate sufficient revenue to cover the costs of providing those services; and

(3) money in an amount determined by the board of county commissioners to be sufficient to conduct a census in the territory proposed to be incorporated. The

money shall be deposited with the county treasurer for payment of the census required in Section 3-2-5 NMSA 1978.

C. The municipal services and revenue plan shall demonstrate that the proposed municipality will provide at least three of the following services and that it will have a tax base sufficient to pay the costs of those services:

(1) law enforcement;

(2) fire protection and fire safety;

(3) road and street construction and maintenance;

(4) solid waste management;

(5) water supply or distribution or both;

(6) wastewater treatment;

(7) storm water collection and disposal;

(8) electric or gas utility services;

(9) enforcement of building, housing, plumbing and electrical codes and other similar codes;

(10) planning and zoning; and

(11) recreational facilities.

D. The county shall forward the petition to the local government division of the department of finance and administration, which shall convene a municipal incorporation review team consisting of:

(1) the director of the local government division or the director's designee;

(2) the secretary of taxation and revenue or the secretary's designee;

(3) one representative of the county in which the proposed municipality would be located chosen by the board of county commissioners; and

(4) a representative of the New Mexico municipal league who shall be an advisory member of the review team.

E. The review team shall consider the petition and the required census results, evaluate the municipal services and revenue plan and determine whether the proposed

municipality meets the requirements of Chapter 3, Article 2 NMSA 1978. If the review team finds that the proposed municipality meets the requirements of that article, it shall report its findings and recommendations to the board of county commissioners. If the review team finds that the proposed municipality does not meet the requirements of that article, the review team shall notify the board of county commissioners and the petitioners of deficiencies in the petition. The review team's notification of deficiencies in the municipal services and revenue plan suspends the attempt to incorporate. Petitioners have three months from the date of notification of deficiencies to submit an amended plan to the review team. If the amended plan is rejected by the review team for deficiencies, petitioners may not submit another petition to incorporate an area until at least one year after the date of that rejection.

History: 1953 Comp., § 14-2-1, enacted by Laws 1965, ch. 300.; 2013, ch. 120, § 1

ANNOTATIONS

Cross references. — For definition of "census", *see* 3-1-2 NMSA 1978.

For name of municipality, *see* 3-1-3 NMSA 1978.

For examination of signatures, purging and judicial review of petitions, *see* 3-1-5 NMSA 1978.

For execution and registration of warrants, *see* 3-37-5 NMSA 1978.

The 2013 amendment, effective June 14, 2013, required that petitioners present a municipal services and revenue plan that demonstrates that the services will be provided and how the services will be paid for; required the local government division to convene a review team to review petitions for incorporation; added Paragraph (2) of Subsection B; and added Subsections C, D and E.

Legislative intent. — The legislature has declared the public policy to be that the growth of municipalities and of their contiguous and urbanized areas shall take place in a planned and orderly manner; and to discourage splinter communities or a proliferation of neighboring, independent municipal bodies whose competing needs would divide tax revenues, multiply services, create confusion and factionalism among our citizens, and destroy the harmony that should exist between peoples of diverse backgrounds and socioeconomic strata within the state. City of Sunland Park v. Santa Teresa Concerned Citizens Ass'n, 110 N.M. 95, 792 P.2d 1138 (1990).

The law does not contemplate incorporation of community land grant. Bd. of Trustees v. Sedillo, 28 N.M. 53, 210 P. 102 (1922).

Effect of deficient petition. — The filing of a proper petition for incorporation is jurisdictional and objections to the petition's sufficiency may be raised at any time. An incorporation attempted under a petition that does not comply with the statutory

prerequisites is null and void. Strict compliance with the statutory prerequisites to incorporation is required. Thus, the board was not estopped from denying the petition or litigating its deficiencies by the board's failure to point out the defects at an earlier stage of the proceedings. Citizens for Incorporation, Inc. v. Bd. of County Comm'rs, 115 N.M. 710, 858 P.2d 86 (Ct. App. 1993), cert. denied, 115 N.M. 602, 856 P.2nd 250 (1993).

Effect of failure to sign petition as required. — Action of board in incorporating a village may be shown to have been without jurisdiction and void by establishing that the petition was not signed as required. State ex rel. Clancy v. Porter, 23 N.M. 508, 169 P. 471 (1917).

Failure to "swear or affirm". — A sworn statement is one made under penalty of perjury. An affirmation substitutes for a sworn statement when the person has conscientious scruples against taking an oath; however, it too is made under penalty of perjury. Here, the petition does not contain any language indicating that persons who provide false information on the petition might be subject to the penalty of perjury. The petition also fails to include the statement that any perons knowingly giving false information on the petition is guilty of a fourth degree felony, as required by 3-1-5(C)(4) NMSA 1978. Citizens for Incorporation, Inc. v. Bd. of County Comm'rs, 115 N.M. 710, 858 P.2d 86 (Ct. App. 1993), cert. denied, 115 N.M. 602, 856 P.2nd 250 (1993).

This section provides for additional requirements for petitions for incorporation and does not supersede those of 3-1-5 NMSA 1978. Citizens for Incorporation, Inc. v. Bd. of County Comm'rs, 115 N.M. 710, 858 P.2d 86 (Ct. App. 1993), cert. denied, 115 N.M. 602, 856 P.2nd 250 (1993).

Requirement for description and map separate. — The statutory requirements that the petition contain a written description and an accurate map are separate and distinct. The legislature intended both requirements to be complied with. Additionally, the requirement that the map itself be accurate and fairly apprise the public of the property to be included in the proposed municipality is reasonable because not all members of the public will necessarily understand the legal description of the proposed municipality. Citizens for Incorporation, Inc. v. Bd. of County Comm'rs, 115 N.M. 710, 858 P.2d 86 (Ct. App. 1993), cert. denied, 115 N.M. 602, 856 P.2nd 250 (1993).

When map insufficient. — A map is insufficient for incorporation purposes if people are misled or cannot determine whether their property is included in the area proposed to be incorporated. Citizens for Incorporation, Inc. v. Bd. of County Comm'rs, 115 N.M. 710, 858 P.2d 86 (Ct. App. 1993), cert. denied, 115 N.M. 602, 856 P.2nd 250 (1993).

No refund of census expenses. — There is no provision allowing a refund of or reimbursement for census expenses if the petition is not granted. Citizens for Incorporation, Inc. v. Bd. of County Comm'rs, 115 N.M. 710, 858 P.2d 86 (Ct. App.), cert. denied, 115 N.M. 602, 856 P.2d 250 (1993).

Requirement of domicile. — In using the word "reside" in this section, the legislature intended that the persons signing the petition for incorporation should be domiciled in the community involved and not claim some other state as their residence. Summer residents, although they may own real estate and pay real estate property taxes, who claim some other state as their domicile or legal residence, would not be eligible to sign such petition. 1953-54 Op. Att'y Gen. No. 54-6018.

Law reviews. — For comment, "Deannexation: A proposed statute," see 20 N.M.L. Rev. 713 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 28 to 33.

Constitutionality of statutes for formation of municipal corporations as affected by objection that they impose nonjudicial functions on courts, 69 A.L.R. 290.

Capacity to attack the fixing or extension of municipal limits or boundary, 13 A.L.R.2d 1279, 17 A.L.R.5th 195.

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

62 C.J.S. Municipal Corporations § 10 et seq.

3-2-2. Characteristics of territory proposed to be incorporated as a municipality.

A. A territory proposed to be incorporated as a municipality shall:

(1) not be within the boundary of another municipality;

(2) have a population density of not less than one person per acre, except for a class B county with a net taxable value of property for property tax purposes in 1990 of over ninety-five million dollars ($95,000,000) and a population of less than ten thousand according to the 1990 federal decennial census and where the population density of the territory proposed to be incorporated is not less than one person per four acres;

(3) contain not less than one hundred fifty persons; and

(4) contain a sufficient assessed value of real property and a sufficient number of businesses so that the proposed municipality will contain a sufficient tax base to enable it to provide a clerk-treasurer, a police officer and office space for the municipal government within one year of incorporation.

B. In the alternative to the requirements of Paragraph (2) of Subsection A of this section, a territory proposed to be incorporated as a municipality shall:

(1) contain within its boundaries a resort area having more than fifty thousand visitors a year; and

(2) have more than one hundred fifty single-family residences, as shown by the property tax rolls.

History: 1953 Comp., § 14-2-2, enacted by Laws 1965, ch. 300; 1991, ch. 56, § 1; 1995, ch. 108, § 1; 1999, ch. 136, § 1; 2013, ch. 120, § 2.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, made grammatical changes in the introductory sentences in in Subsections A and B.

The 1999 amendment, effective June 18, 1999, added Subsection A(4).

The 1995 amendment, effective June 16, 1995, designated the introductory provisions as Subsection A, redesignated former Subsections A through C as Paragraphs (1) through (3) of Subsection A, added Subsection B, and made a minor stylistic change in Paragraph (2) of Subsection A.

The 1991 amendment, effective June 14, 1991, in Subsection B, added the language beginning with "except for a class B county".

Applicability. — This section merely sets out the characteristics required of any territory proposed to be incorporated; it does not address the incorporation proceedings themselves. Citizens for Incorporation, Inc. v. Bd. of County Comm'rs, 115 N.M. 710, 858 P.2d 86 (Ct. App. 1993), cert. denied, 115 N.M. 602, 856 P.2d 250 (1993).

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 39 to 43.

3-2-3. Urbanized territory; incorporation limited within urbanized territory.

A. Urbanized territory is that territory within the same county and within five miles of the boundary of any municipality having a population of five thousand or more persons and that territory within the same county and within three miles of a municipality having a population of less than five thousand persons, except that territory in a class B county with a population between ninety-five thousand and ninety-nine thousand five hundred,

based on the 1990 federal decennial census, declared by an ordinance of the board of county commissioners to be a traditional historic community shall not be considered urbanized territory and shall not be annexed by a municipality unless it is considered for annexation pursuant to a petition requesting annexation signed by a majority of the registered qualified electors within the traditional historic community.

B. No territory within an urbanized territory shall be incorporated as a municipality unless the:

(1) municipality or municipalities causing the urbanized territory approve, by resolution, the incorporation of the territory as a municipality;

(2) residents of the territory proposed to be incorporated have filed with the municipality a valid petition to annex the territory proposed to be incorporated and the municipality fails, within one hundred twenty days after the filing of the annexation petition, to annex the territory proposed to be incorporated; or

(3) residents of the territory proposed to be annexed conclusively prove that the municipality is unable to provide municipal services within the territory proposed to be incorporated within the same period of time that the proposed municipality could provide municipal service.

C. A traditional historic community may become incorporated even though it is located within what is defined as urbanized territory pursuant to Subsection A of this section, by following the procedures set forth in Sections 3-2-5 through 3-2-9 NMSA 1978.

History: 1953 Comp., § 14-2-3, enacted by Laws 1965, ch. 300; Laws 1967, ch. 198, § 1; 1995, ch. 170, § 1.

ANNOTATIONS

The 1995 amendment, effective April 5, 1995, added the language in Subsection A beginning "except that territory in a class B county" and ending "qualified electors within the traditional historic community", deleted "shall" preceding "approve" in Paragraph B(1), and added Subsection C.

"Conclusively prove" construed. — Without deciding the necessity of following the procedures set forth in Subsections B(1) and (2), the district court properly found that an association of landowners had not proved conclusively, as required by Subsection B(3), that it could provide services to an urbanized territory proposed to be incorporated sooner than could the city. City of Sunland Park v. Santa Teresa Concerned Citizens Ass'n, 110 N.M. 95, 792 P.2d 1138 (1990).

3-2-4. Special provisions for incorporation of municipalities under certain circumstances.

Notwithstanding any provisions of Sections 3-2-3, 3-2-5 and 3-57-9 NMSA 1978 to the contrary, the residents of a contiguous, undivided territory within a class A county may incorporate that territory into a new municipality with boundaries closer than five miles to or coterminous with the boundary of an existing municipality by following all other provisions of the law governing incorporation, if the territory proposed to be incorporated has a population, as shown by the last decennial census, of fifteen thousand or more.

History: 1953 Comp., § 14-2-3.1, enacted by Laws 1976, ch. 53, § 1.

ANNOTATIONS

Section does not relieve census requirement. — This section is an exception and allows residents of an area within five miles of or coterminous with an existing municipality in a class A county to incorporate without complying with 3-2-3B NMSA 1978 if the area proposed for incorporation has a population of 15,000 or more and the provision for the federal census is included merely so that the incorporators can determine if they must comply with 3-2-3(B) NMSA 1978. Additionally, this section states that it is an exception only to "contrary" provisions and further explicitly states that residents of such an area must comply with "all other provisions of the law governing incorporation." That would include payment for a new census as required by 3-2-1B(2) NMSA 1978 and 3-2-5B(2) NMSA 1978. The requirement that a new census be conducted before an incorporation election is not "contrary" to this section. Citizens for Incorporation, Inc. v. Bd. of County Comm'rs, 115 N.M. 710, 858 P.2d 86 (Ct. App. 1993), cert. denied, 115 N.M. 602, 856 P.2d 250 (1993).

3-2-5. Incorporation; duties of county commissioners after filing of petition to act; census required; election; right of appeal to district court.

A. After the petition for incorporation, together with the accompanying map or plat, the municipal services and revenue plan and the amount of money sufficient to pay the cost of a census have been filed with the board of county commissioners, the board of county commissioners, in lieu of complying with the requirements of Section 3-1-5 NMSA 1978, shall determine within thirty days after the filing of the petition:

(1) from the voter registration list in the office of the county clerk if the signers of the petition are qualified electors residing in the territory proposed to be incorporated; or

(2) from the tax schedules of the county if any of the owners of the real estate who signed the petition are delinquent in the payment of property taxes; and

(3) if the territory proposed to be incorporated is within an existing municipality or within the urbanized area of a municipality.

B. If the board of county commissioners determines that the territory proposed to be incorporated is:

(1) not within the boundary of an existing municipality and not within the urbanized area of a municipality; or

(2) within the urbanized area of another municipality and in compliance with Section 3-2-3 NMSA 1978, the board of county commissioners shall cause a census to be taken of the persons residing within the territory proposed to be incorporated.

C. The census shall be completed and filed with the board of county commissioners within thirty days after the board of county commissioners authorizes the taking of the census.

D. Within fifteen days after the date the results of the census and the municipal incorporation review team's report have been filed with the board of county commissioners, the board of county commissioners shall determine if the conditions for incorporation of the territory as a municipality have been met as required in Sections 3-2-1 through 3-2-3 NMSA 1978 and shall have its determination recorded in the minutes of its meeting.

E. Based on the census results and the municipal incorporation review team's report, if the board of county commissioners determines that the conditions for incorporation have not been met, the board of county commissioners shall notify the petitioners of its determination by publishing in a newspaper of general circulation in the territory proposed to be incorporated, once, not more than ten days after its determination, a notice of its determination that the conditions for incorporation have not been met. If there is no newspaper of general circulation in the territory proposed to be incorporated, notice of the determination shall be posted in eight public places within the territory proposed to be incorporated.

F. After the board of county commissioners has determined that all of the conditions for incorporation of the territory as a municipality have been met, the board of county commissioners shall hold an election on the question of incorporating the territory as a municipality. Elections for the incorporation of municipalities shall only be held in odd-numbered years on the first Tuesday in July or in any year on the first Tuesday in January, unless that Tuesday is a holiday, in which case the election shall be held on the second Tuesday in July or the second Tuesday in January. The county clerk shall notify the secretary of finance and administration and the secretary of taxation and revenue of the date of the incorporation election within ten days after the adoption of the resolution calling the election.

G. The signers of the petition or a municipality within whose urbanized area the territory proposed to be incorporated is located may appeal any determination of the board of county commissioners to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-2-4, enacted by Laws 1965, ch. 300; 1981, ch. 205, § 1; 1985, ch. 208, § 3; 1998, ch. 55, § 3; 1999, ch. 265, § 3; 2013, ch. 120, § 3.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 2013 amendment, effective June 14, 2013, required that petitioners present a municipal services and revenue plan that demonstrates that the services will be provided and how the services will be paid for; required the board of county commissioners to consider the municipal incorporation review team's report; in Subsection A, in the introductory sentence, after "accompanying map or plat", added "the municipal services and revenue plan", after "Section 3-1-5 NMSA 1978" added "shall determine", and after "filing of the petition", deleted "determine"; in Subsection D, after "the results of the census", added "and the municipal incorporation review team's report"; and in Subsection E, at the beginning of the sentence, added "Based on the census results and the municipal incorporation review team's report".

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection F.

The 1998 amendment, effective September 1, 1998, in Subsection A, substituted "has" for "have" and inserted "Section"; in Paragraph A(1), deleted "registered" preceding "qualified"; in Paragraph A(2), substituted "schedules" for "rolls" and "are" for "is"; in Paragraph B(2), deleted "that the conditions for incorporation of a municipality", substituted "and in compliance with" for "as established in", and deleted "have been met" following "1978"; deleted "the board of county commissioners" in Subsection C; substituted "determination" for "determinations" in Subsection D; substituted "municipalities" for "municipalties" in Subsection E; in Subsection F, substituted "a" for "any" and inserted "pursuant to the provisions of Section 12-8A-1 NMSA 1978"; and made minor stylistic changes.

Common-law dedication permitted. — A common-law dedication may still be effectively made, as the prescribed statutory method of doing so is not exclusive, so that an oral acceptance by the county commissioners plus public enjoyment of the property for 10 years or more satisfies the requirements of a common-law dedication. 1947-48 Op. Att'y Gen. No. 47-5024.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 62 C.J.S. Municipal Corporations § 25.

3-2-6. Incorporation; notice of the election; registered voters to vote; appointment of election officials; conduct of election; question to be submitted; location of voting places.

A. The notice of election shall contain:

(1) a description of the territory proposed to be incorporated as a municipality;

(2) a statement that a plat or map of the territory, the municipal services and revenue plan and the findings of the municipal incorporation review team are on file in the office of the county clerk;

(3) the date and time the election will be held on incorporation; and

(4) a list of the polling places within the territory proposed to be incorporated wherein registered voters may vote.

B. The notice of election shall be published in a newspaper of general circulation within the territory proposed to be incorporated once each week for three successive weeks. The last publication shall not be more than fourteen nor less than seven days before the day of the election. If there is no newspaper of general circulation within the territory proposed to be incorporated, notice of the election shall be posted in eight public places within the territory proposed to be incorporated. The posting shall be made at least three weeks before the day of the election.

C. The board of county commissioners shall appoint the judges and clerks of the election in the manner judges and clerks of election are appointed for general elections. The election shall be conducted in the manner provided for the conduct of general elections.

D. The question on the ballot shall read substantially as follows:

"Shall the territory described as (herein insert a description of the territory proposed to be incorporated) and to be known as (herein insert the name of the proposed municipality) become an incorporated municipality?

For incorporation ----------[ ]

Against incorporation ----------[ ]".

E. Any registered voter who is a resident of the territory proposed to be incorporated may vote on the question of incorporating the territory as a municipality.

F. The board of county commissioners shall canvass the votes and declare the results of the election in the manner provided for the canvassing and declaring of votes in a general election.

History: 1953 Comp., § 14-2-5, enacted by Laws 1965, ch. 300; 2013, ch. 120, § 4.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, required that the election notice include the municipal services and revenue plan and the findings of the municipal incorporation review team; and in Paragraph (2) of Subsection A, after "map of the territory", deleted "is" and added "the municipal services and revenue plan and the findings of the municipal incorporation review team are".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 62 C.J.S. Municipal Corporations § 25 et seq.

3-2-7. Incorporation; notice of the election results; publication or posting; filing of results; limitation on resubmission.

A. The board of county commissioners shall file a copy of the election results in the office of the county clerk.

B. If a majority of the votes cast favor the incorporation of the territory as a municipality, the county clerk shall publish a notice containing the results of the election in a newspaper of general circulation within the territory proposed to be incorporated. If there is no newspaper of general circulation within the territory proposed to be incorporated, notice of the results of the election shall be posted in five public places within the territory proposed to be incorporated.

C. If a majority of the votes cast favor the incorporation of the territory as a municipality, the county clerk shall file in the office of the county clerk and in the office of the secretary of state certified copies of the:

(1) map or plat of the territory being incorporated;

(2) papers and records relating to the determinations made by the board of county commissioners; and

(3) notice of the election results, together with the:

(a) publisher's affidavit of publication; or

(b) county clerk's affidavit of posting.

D. If a majority of the votes cast favor the incorporation of the territory as a municipality, the county clerk shall transmit within fifteen days to the secretary of finance and administration and the secretary of taxation and revenue certified copies of the map or plat of the territory being incorporated.

E. In the event the question of incorporation of the territory fails, it shall not be resubmitted to the electors of the territory or any portion thereof for a period of two years after the date of the election at which the question failed.

History: 1953 Comp., § 14-2-6, enacted by Laws 1965, ch. 300; 1979, ch. 318, § 1; 1981, ch. 204, § 3.

3-2-8. Incorporation; election of first officers; duties of board of county commissioners and county clerk; selection of terms of first officers.

A. If a majority of the votes cast favor the incorporation of the territory as a municipality, the board of county commissioners shall, within fifteen days after declaring the results of the election, call an election for the purpose of electing municipal officers. Except for the fact that the election need not be held on the date specified in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] for the regular municipal election, the election shall be called and conducted in the manner provided in the Municipal Election Code for regular municipal elections. The board of county commissioners shall perform the duties imposed by the Municipal Election Code upon the governing body of the municipality and the county clerk shall perform the duties imposed by the Municipal Election Code upon the municipal clerk. The county clerk also shall notify the secretary of finance and administration and the secretary of taxation and revenue of the date of the first election of municipal officers within ten days after the county commissioners have called the election.

B. At the first election for municipal officers following a vote in favor of incorporating territory as a municipality, the term of office for the mayor and the municipal judge shall be until the next regular municipal election. The terms of office for one-half of the members of the governing body shall be until the next regular municipal election and for the remaining one-half of the members of the governing body until the second regular municipal election is held. The elected municipal officers shall continue in office until their successors are elected and qualified. The length of the terms of the first members shall be determined by lot.

History: 1953 Comp., § 14-2-7, enacted by Laws 1965, ch. 300; 1981, ch. 204, § 4; 1987, ch. 323, § 3.

ANNOTATIONS

The 1987 amendment, effective June 19, 1987, in Subsection A, inserted at the beginning of the second sentence "Except for the fact that the election need not be held on the date specified in the Municipal Election Code for the regular municipal election," and substituted "the Municipal Election Code for regular municipal elections" for "Sections 3-8-1 through 3-8-19 NMSA 1978, except that" at the end, and in the third sentence inserted "by the Municipal Election Code" both places it appears.

3-2-9. Incorporation complete; judicial notice; defects in incorporation; appeal.

A. After certified copies of the papers relating to the incorporation of a municipality have been filed in the offices of the county clerk and the secretary of state and after the municipal officers have been elected and qualified, the incorporation of the municipality shall be complete and effective on the following January 1 if the election was held in July or on the following July 1 if the election was held in January, and notice of the incorporation shall be taken in all judicial proceedings.

B. An action by a protestant against the incorporation of a municipality shall be taken to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-2-8, enacted by Laws 1965, ch. 300; 1981, ch. 205, § 2; 1998, ch. 55, § 4; 1999, ch. 265, § 4.

ANNOTATIONS

Cross references. — For franchises granted by county commissioners for use of streets by public utility before incorporation being valid after incorporation, *see* 3-42-2 NMSA 1978.

For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection B.

The 1998 amendment, effective September 1, 1998, substituted "appeal" for "contest" in the section heading, and in Subsection B, substituted "pursuant to the provisions of Section 12-8A-1 NMSA 1978" for "within sixty days after the filing of the certified copies of the papers relating to the incorporation of a municipality in the offices of the county clerk and secretary of state." in the second sentence and deleted the former third sentence.

Validity of acts of de facto city council. — Because for 10 years the only governing body a city had was a council of four members, one from each ward, and the acts of such governing body were acquiesced in by the inhabitants of the city, contracts were made and enforced, relations had with county and state governments, bonds issued in good faith and its contracts relied on by private citizens, its acts were considered valid. Ackerman v. Baird, 42 N.M. 233, 76 P.2d 947 (1938).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Effect on rule as to de jure office as condition of a de facto officer of doctrine as to collateral attack on existence of municipal corporation, 99 A.L.R. 314.

ARTICLE 3
Incorporation of Municipality Under Special Act

3-3-1. Municipalities incorporated under special act; laws applicable.

Any municipality, incorporated by special act previous to April 1, 1884, which chooses to retain such organization and charter, shall, in the enforcement of the powers or the exercise of the duties conferred by the special act or charter, proceed in all respects as provided by the special act or charter.

History: 1953 Comp., § 14-3-1, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Laws applicable. — Cities and towns incorporated prior to act and choosing to retain their original organization would operate pursuant to the special charter or general law under which they incorporated. Territory ex rel. Parker v. Mayor of Socorro, 12 N.M. 177, 76 P. 283 (1904).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 62 C.J.S. Municipal Corporations § 18.

3-3-2. Municipalities incorporated under special act; petition for reorganization; election.

Any municipality incorporated under a special act may abandon its organization and organize itself under the provisions of the general law relating to municipalities.

A. If a petition, signed by qualified electors of the municipality equal in number to not less than one-eighth of the total number of votes at the last preceding regular municipal election, requests the governing body to submit to the qualified municipal electors the question of reorganizing the municipality under the provisions of the Municipal Code, the governing body shall, within fourteen days after the petition is certified as valid, adopt an election resolution calling for a special election in the manner provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] on the question of reorganizing the municipality under the provisions of general law. The election shall be held within sixty days after the date the election resolution is adopted.

B. The petition may further propose that the boundary of the municipality incorporated by special act be extended by including any or all territory which is:

(1) laid off or platted;

(2) adjoining or contiguous to the municipality or any addition or subdivision of the municipality; and

(3) not within the boundary of another municipality.

C. The petition shall describe the boundary of the municipality as it would exist if the municipality incorporated by special act is reorganized under general law. The registered voters, residing within the boundary of the municipality as it would exist if the municipality incorporated by special act is reorganized, may vote in the election authorized in this section.

History: 1953 Comp., § 14-3-2, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 4.

ANNOTATIONS

Cross references. — For annexation of territory, *see* 3-7-1 NMSA 1978 et seq.

For planning and platting subdivisions, *see* 3-20-1 NMSA 1978 et seq.

Reorganization law held ineffective. — Law relating to reorganization of special charter or other incorporated cities and towns had no effect on the corporate existence of a town incorporated under the act of February 11, 1880. Bd. of County Comm'rs v. Leavitt, 4 N.M. (Gild.) 37, 12 P. 759 (1887).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 62 C.J.S. Municipal Corporations § 89.

3-3-3. Municipalities incorporated under special act; special election; ballot.

At the special election on the question of reorganizing a municipality incorporated under a special act under general law, the ballot shall read substantially as follows:

"For municipal organization under general law ..... [ ]

Against municipal organization under general law ..... [ ]. "

History: 1953 Comp., § 14-3-3, enacted by Laws 1965, ch. 300.

3-3-4. Municipalities incorporated under special act; reorganization approved; election for new officers; term of office.

A. If a majority of the votes cast on the question of reorganizing a municipality incorporated by a special act favor reorganizing the municipality under general law, the governing body shall, within fourteen days after the results of the election reorganizing the municipality under general law have been canvassed and certified, adopt an election resolution calling for an election of officers. The election shall be called, conducted and canvassed in the manner provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] for the election of officers at a regular municipal election, except that the provisions of Section 3-8-25 NMSA 1978 shall not

apply and the election shall be held not later than one hundred and twelve days from the adoption of the election resolution.

B. The terms of office for the mayor, municipal judge and one-half of the members of the governing body shall be until the next regular municipal election. The terms of office for the remaining one-half of the governing body shall be until the second regular municipal election is held. The elected municipal officers shall continue in office until their successors are elected and qualified. The length of terms of the first members shall be determined by lot.

History: 1953 Comp., § 14-3-4, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 5.

ARTICLE 4
Disincorporation of Municipality

3-4-1. Disincorporation; petition; notice of election.

A. If one-fourth of the registered voters of a municipality petition the board of county commissioners of the county wherein the municipality is situated to disincorporate the municipality, the board of county commissioners shall, within fourteen days after the petition has been certified as valid, adopt an election resolution calling for a special election to be held within the municipality on the question of disincorporating the municipality. At the top of each page of a disincorporation petition, the following heading shall be printed in substantially the following form:

"PETITION TO DISINCORPORATE THE MUNICIPALITY OF .....

We, the undersigned registered voters of the municipality of ....., pursuant to Section 3-4-1 NMSA 1978, petition the board of county commissioners of ..... county to conduct a special election on the question of disincorporating the municipality of .....

Date	Name - Printed As Registered	Address As Registered	Usual Signature."

The day for holding the election shall not be less than fifty days nor more than sixty days after the board of county commissioners adopts the election resolution.

B. Notice of the election shall be published as required for special elections as set forth in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

History: 1953 Comp., § 14-4-1, enacted by Laws 1965, ch. 300; 1983, ch. 154, § 1; 1985, ch. 208, § 6.

ANNOTATIONS

Cross references. — For examination of signatures, purging and judicial review of petitions, *see* 3-1-5 NMSA 1978.

Costs of disincorporation. — There was no indication that the legislature intended to tax the costs of disincorporation of a village upon those who proposed or happened to sign the petition. 1964 Op. Att'y Gen. No. 64-80.

Law reviews. — For comment, "Deannexation: A proposed statute," see 20 N.M.L. Rev. 713 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 89 to 91.

Rights and remedies of creditor of municipal corporation which is dissolved or combined with another municipal body, 47 A.L.R. 128.

62 C.J.S. Municipal Corporations § 99 et seq.

3-4-2. Disincorporation; ballots.

The form of the ballot shall be:

"For the disincorporation of ..... (insert name of municipality) [ ] and

Against the disincorporation of ..... (insert name of municipality) [ ]."

History: 1953 Comp., § 14-4-2, enacted by Laws 1965, ch. 300.

3-4-3. Disincorporation; conduct of election.

The election shall be conducted in the same manner as a special municipal election except that the election officials shall be appointed by the board of county commissioners, and the county clerk shall perform the duties of the municipal clerk and the board of county commissioners shall perform the duties of the governing body. The election returns shall be made to the board of county commissioners and canvassed in the same manner as are special election returns.

History: 1953 Comp., § 14-4-3, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 7.

3-4-4. Disincorporation; vote required; effect on debts and contracts.

If a majority of the votes cast are in favor of disincorporation, the municipality shall be disincorporated after provision has been made for payment of its current indebtedness, contracts and obligations, and for levying the requisite tax to do so. The

current indebtedness, contracts and obligations do not include funded or bonded indebtedness nor any contract whose termination date is more than one year beyond the date the election was held.

History: 1953 Comp., § 14-4-4, enacted by Laws 1965, ch. 300.

3-4-5. Disposition of records after disincorporation; pending business.

All public records and the corporate seal of the disincorporated municipality shall be deposited with the county clerk.

History: 1953 Comp., § 14-4-5, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Compiler's notes. — The words "pending business," contained in the section heading as enacted, do not appear to reflect any content of this section.

3-4-6. Notice of disincorporation; publication.

Whenever a municipality is disincorporated, the county clerk shall publish a notice once a week for four consecutive weeks that the municipality is disincorporated. A certified copy of the notice shall be sent to the secretary of state, the secretary of finance and administration and the secretary of taxation and revenue.

History: 1953 Comp., § 14-4-6, enacted by Laws 1965, ch. 300; 1981, ch. 204, § 5.

3-4-7. Disincorporation; care of property; manager; disposition of funds.

If a municipality is disincorporated, the board of county commissioners shall assume control of all property belonging to the disincorporated municipality and shall employ a qualified person to manage and operate the property and to collect all charges due from the operation of such property. He shall execute a bond to the county in an amount determined by the board of county commissioners, conditioned that he will faithfully perform his duties and will promptly pay all money he receives to the county treasurer monthly on the first day of each month. The bond shall be executed by him and a surety company authorized to do business in the state. The premium on the bond shall be paid by the board of county commissioners from municipal funds if any; if none, from county funds.

History: 1953 Comp., § 14-4-7, enacted by Laws 1965, ch. 300.

3-4-8. Income from property of a disincorporated municipality.

Money received from the operation of property of a disincorporated municipality shall be used in the following priority:

A. to pay employees engaged in the operation, maintenance and protection of the property;

B. to pay the interest on the bonded indebtedness of the municipality;

C. to purchase or redeem bonded indebtedness of the municipality; and

D. after all bonded indebtedness has been paid, to support the public schools that existed within the boundary of the municipality at the time of its disincorporation.

History: 1953 Comp., § 14-4-8, enacted by Laws 1965, ch. 300.

3-4-9. Disincorporation; insufficient income to pay obligations; levy of tax; duty vested in board of county commissioners.

If insufficient money is received from the operation of the property of the disincorporated municipality to pay the obligations in the order designated in Section 3-4-8 NMSA 1978, the board of county commissioners shall levy a tax on all taxable property within the boundary of the municipality at the time of its disincorporation. This tax shall be sufficient to pay the obligations incurred in the operation of the property of the municipality and to comply with the terms and conditions of the evidences of the bonded indebtedness. The board of county commissioners shall, without charge, perform the duties of the governing body of the disincorporated municipality to satisfy the terms of the bonds, obligations or contracts of the disincorporated municipality.

History: 1953 Comp., § 14-4-9, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Law reviews. — For article, "Indian Sovereignty and the Tribal Right to Charter a Municipality for Non-Indians: A New Perspective for Jurisdiction on Indian Land," see 7 N.M.L. Rev. 153 (1977).

ARTICLE 5
Consolidation of Municipalities

3-5-1. Municipal consolidation; commissioners; ordinances; special election; declaration of consolidation; payment of bonded indebtedness or judgment levy.

A. Whenever any two or more contiguous municipalities wish to consolidate as one municipality, the governing body of each municipality shall appoint three commissioners who shall prepare the terms for consolidation and submit the terms for consolidation to the respective governing bodies. If each governing body approves the terms for consolidation, it shall adopt an ordinance declaring its approval of the terms for consolidation and shall provide for an election on the question of consolidation.

B. If a majority of the votes cast in each municipality favor consolidation, the governing body of each municipality shall declare, by ordinance, that consolidation has been approved between the municipalities and proceed to consolidate under the terms for consolidation. The municipal clerk of each municipality shall notify the secretary of finance and administration and the secretary of taxation and revenue that the consolidation has been approved by the electorate. If the question of consolidating the municipalities fails to receive a majority vote favoring consolidation in any one of the municipalities, the consolidation shall fail.

C. If on the day of the election on consolidation, any municipality proposing to consolidate has outstanding indebtedness or a judgment payable from a tax on property and the consolidation is approved, a tax sufficient to pay the interest and principal on such indebtedness or judgment shall continue to be levied on the property within the boundary of the municipality as it existed on the day of the election on the question of consolidation. Indebtedness created by the issuance of revenue bonds and the current obligations of each municipality shall be assumed by the consolidated municipality. The consolidated municipality may refund the indebtedness of the municipalities which are consolidated.

D. Certified copies of the entire proceedings for consolidation shall be filed with the clerk of the municipality so consolidated, with the county clerk and the secretary of state. When certified copies of the consolidation have been filed as required in this section, the consolidation is complete.

History: 1953 Comp., § 14-5-1, enacted by Laws 1965, ch. 300; 1981, ch. 204, § 6.

ANNOTATIONS

Consolidation procedure applicable to counties. — Two or more counties possess the authority to consolidate in accordance with this section, but they must be contiguous. 1987 Op. Att'y Gen. No. 87-55.

Property of annexed village not subject to taxation to retire indebtedness of town. — In the event of annexation of the village of Milan to the town of Grants, the property presently within the village of Milan would not be subject to ad valorem taxes to retire the present general obligation bonded indebtedness of the town of Grants. 1959-60 Op. Att'y Gen. No. 60-55.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 81, 82.

62 C.J.S. Municipal Corporations § 47.

ARTICLE 6
Changing Name of Municipality

3-6-1. Change of name; election.

Whenever the governing body of a municipality wishes to change the name of the municipality, the governing body may submit the question of changing the name to a vote of the qualified electors of the municipality at the next regular municipal election or at a special election called for that purpose.

History: 1953 Comp., § 14-6-1, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For adoption of name of existing municipality being prohibited, *see* 3-1-3 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 29, 865.

62 C.J.S. Municipal Corporations § 34.

3-6-2. Change of name; ballots; certificate; recording.

The form of the ballot shall be:

"For change of name of ..... to ..... [ ]

Against change of name of ..... to ..... [ ]."

If a majority of the votes cast favor changing the name of the municipality, the name shall be changed and the municipal clerk shall certify the results of the election and the new name which was adopted. One copy of the certification shall be retained by the municipal clerk, one copy shall be filed with the county clerk and one copy shall be filed with the secretary of state.

History: 1953 Comp., § 14-6-2, enacted by Laws 1965, ch. 300.

ARTICLE 7
Annexation of Territory

3-7-1. Methods of annexation.

A. There shall be three methods of annexing territory to a municipality:

(1) the arbitration method as provided in Sections 3-7-5 through 3-7-10 NMSA 1978;

(2) the boundary commission method as provided in Sections 3-7-11 through 3-7-16 NMSA 1978; and

(3) the petition method as provided in Section 3-7-17 NMSA 1978.

B. Territory may be annexed to a municipality by any one of the three methods of annexation provided for in Sections 3-7-5 through 3-7-18 NMSA 1978 except where limitations of annexation are provided by law. The provisions of this section apply to annexations of all municipalities except those that are otherwise specifically provided by law. The arbitration method of annexation may be used for municipal annexation of a traditional historic community only upon petition of a majority of the registered qualified electors of the territory within the traditional historic community.

History: 1953 Comp., § 14-7-1, enacted by Laws 1965, ch. 300; 1979, ch. 159, § 1; 1995, ch. 170, § 2; 1995, ch. 211, § 1.

ANNOTATIONS

1995 amendments. — Virtually identical amendments were enacted by Laws 1995, ch. 170, § 2, effective April 5, 1995, inserting "except where limitations of annexation are provided by law" in the first sentence of Subsection B, and adding the sentence of Subsection B beginning "The arbitration method of annexation", approved April 5, 1995, and by Laws 1995, ch. 211, § 1, effective April 6, 1995, also amending this section in Subsection B by adding the exception at the end of the first sentence and adding the last sentence of the subsection, but also making a minor stylistic change, approved April 6, 1995. The section is set out as amended by Laws 1995, ch. 211, § 1. See 12-1-8 NMSA 1978.

Nature of annexation statutes. — The power to create and to destroy municipal corporations, and to enlarge or diminish their boundaries, is solely and exclusively the exercise of legislative power. Such statutes are to be liberally construed in favor of the municipality and every reasonable presumption is given to the validity of the municipality's action. Leavell v. Town of Texico, 63 N.M. 233, 316 P.2d 247 (1957).

Annexation methods. — The boundary commission and the arbitration methods are administrative proceedings and the petition method is a legislative proceeding. Drugger v. City of Santa Fe, 114 N.M. 47, 834 P.2d 424 (Ct. App. 1992), cert. quashed, 113 N.M. 744, 832 P.2d 1223 (1992).

Annexation of Indian Pueblo. — To allow the exercise of jurisdiction by a municipality to annex a portion of the Indian Pueblo and make it subject to jurisdiction of the municipality would affect the authority of the tribal council over reservation affairs and, hence, would infringe on the right of the Indians to govern themselves and would therefore be void. Your Food Stores, Inc. v. Vill. of Espanola, 68 N.M. 327, 361 P.2d 950, cert. denied, 368 U.S. 915, 82 S. Ct. 194, 7 L. Ed. 2d 131 (1961).

Annexation of class A county land excepted. — A specific exception to this section is defined by the Metropolitan Boundary Act for Class A Counties (3-57-1 to 3-57-9 NMSA 1978), which provides for the annexation of territory to a municipality within a class A county. 1981 Op. Att'y Gen. No. 81-28.

Law reviews. — For note, "Annexation of Unincorporated Territory in New Mexico," see 6 Nat. Resources J. 83 (1966).

For comment, "Deannexation: A proposed statute," see 20 N.M.L. Rev. 713 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 55 et seq.

Rights and remedies of creditor of municipal corporation which is dissolved or combined with another municipal body, 47 A.L.R. 128.

Facts warranting extension or reduction of municipal boundaries, 62 A.L.R. 1011.

Power to extend boundaries of municipal corporations, 64 A.L.R. 1335.

Estoppel to question validity of proceedings extending boundaries of municipality, 101 A.L.R. 581.

Power to detach land from municipal corporations, towns, or villages, 117 A.L.R. 267.

Tax exemption of property as affecting its inclusion in determining requisite consent of property owners to annexation of territory, local improvement, bond issue and other public activity, 146 A.L.R. 1260.

Municipal bond issue, validity as against owners of property annexation of which to municipality became effective after date of election at which issue was approved by voters, 10 A.L.R.2d 559.

Capacity to attack the fixing or extension of municipal limits or boundary, 13 A.L.R.2d 1279, 17 A.L.R.5th 195.

Proper remedy or procedure for attacking legality of proceedings annexing territory to municipal corporation, 18 A.L.R.2d 1255.

What zoning regulations are applicable to territory annexed to a municipality, 41 A.L.R.2d 1463.

Subject to annexation, what land is contiguous or adjacent to municipality so as to be, 49 A.L.R.3d 589.

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

62 C.J.S. Municipal Corporations § 42 et seq.

3-7-1.1. Traditional historic community; qualifications; annexation restrictions.

A. To qualify as a traditional historic community, an area shall:

(1) be an unincorporated area of a class B county with a population between ninety-five thousand and ninety-nine thousand five hundred, based on the 1990 federal decennial census;

(2) be an identifiable village, community, neighborhood or district that can be documented as having existed for more than one hundred years;

(3) include structures or landmarks that are associated with the identity of the specific village, community, neighborhood or district seeking designation as a traditional historic community;

(4) have a distinctive character or traditional quality that can be distinguished from surrounding areas or new developments in the vicinity; and

(5) be declared a traditional historic community by an ordinance of the board of county commissioners of the county in which the petitioning village, community, neighborhood or district is located.

B. A traditional historic community may be annexed by a municipality only by petition of a majority of the registered qualified electors of the territory within the traditional historic community proposed to be annexed by the municipality or by the arbitration method of annexation only upon petition of a majority of the registered qualified electors of the territory within the traditional historic community.

History: Laws 1995, ch. 170, § 5 and Laws 1995, ch. 211, § 4.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 170, § 5 and Laws 1995, ch. 211, § 4 enacted identical versions of this section.

3-7-2. Extension of utility service by municipality or other utility.

A municipal utility or a utility under the jurisdiction of the New Mexico public utility commission and having a franchise from the municipality may extend service to territory annexed by the municipality. If the territory annexed to the municipality is being served by a utility under the jurisdiction of the New Mexico public utility commission and the municipality is being served by another utility under the jurisdiction of the New Mexico public utility commission, the New Mexico public utility commission shall determine which utility under its jurisdiction shall serve the territory annexed to the municipality. The municipality shall grant a franchise to the utility that is to serve the territory annexed to provide utility service in the territory annexed upon such terms as are fair, just and equitable to all parties concerned.

History: 1953 Comp., § 14-7-2, enacted by Laws 1965, ch. 300; 1993, ch. 282, § 2.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "New Mexico public utility commission" for "New Mexico public service commission" throughout this section and substituted "that" for "which" in the last sentence.

3-7-3. Limitation on annexation.

No municipality may annex territory within the boundary of another municipality or territory within a class A county with a population of more than three hundred thousand persons unless approved by the board of county commissioners for that county.

History: 1953 Comp., § 14-7-3, enacted by Laws 1965, ch. 300; 2003, ch. 438, § 1.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, added the language beginning with "or" to the section.

A municipal corporation may annex a state registration station. 1961-62 Op. Att'y Gen. No. 62-124.

3-7-4. Annexation; territory owned by the United States, state of New Mexico or a political subdivision; interposition not to prohibit annexation.

A. Territory owned by the government of the United States, its instrumentalities, the state of New Mexico or a political subdivision of New Mexico, may be annexed to a municipality upon the consent of the authorized agent of the government of the United States, its instrumentalities, the state of New Mexico or a political subdivision of New Mexico.

B. Territory may be annexed to a municipality which would otherwise be eligible for annexation except for the interposition of territory owned by the government of the United States, its instrumentalities, the state of New Mexico or a political subdivision of New Mexico.

History: 1953 Comp., § 14-7-4, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For provisions relating to elections required for changing the zoning or use of areas acquired from U.S. forest service, *see* 3-21-2.1 NMSA 1978.

City of Las Cruces has authority to annex New Mexico state university campus and territory upon the consent of the university. 1969 Op. Att'y Gen. No. 69-143.

Law reviews. — For note, "Annexation of Unincorporated Territory in New Mexico," see 6 Nat. Resources J. 83 (1966).

3-7-5. Annexation; arbitration; resolution of intent.

If the governing body of a municipality desires to annex contiguous territory, the governing body may, by resolution, declare that the benefits of municipal government are or can be made available within a reasonable time to the territory proposed to be annexed and that it desires to annex such territory. A copy of the resolution with a copy of a plat of the territory proposed to be annexed shall be filed with the county clerk.

History: 1953 Comp., § 14-7-5, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Law reviews. — For note, "Annexation of Unincorporated Territory in New Mexico," see 6 Nat. Resources J. 83 (1966).

3-7-6. Annexation; arbitration; creation of board.

After the adoption and filing of a plat as required in Section 3-7-5 NMSA 1978, a board of arbitration shall be created which shall have seven members. Three of the members shall be selected as provided in Section 3-7-7 NMSA 1978; three of the members shall be selected as provided in Section 3-7-8 NMSA 1978; and one member shall be selected as provided in Section 3-7-9 NMSA 1978.

History: 1953 Comp., § 14-7-6, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Standards for judicial review. — Applying administrative standards of review to annexation decisions made pursuant to either arbitration or commission procedures are proper. Cox v. Mun. Boundary Comm'n, 120 N.M. 703, 905 P.2d 741 (Ct. App. 1995), cert. denied, 120 N.M. 636, 904 P.2d 1061 (1995).

3-7-7. Annexation; election of three members from territory proposed to be annexed; notice; polling places; election officials; ballots; canvass of votes.

A. Within ten days after the filing of the resolution and plat of the territory proposed to be annexed, the county clerk shall publish a notice stating that an election will be held for the purpose of electing three members to a board of arbitration that shall determine if the territory is to be annexed to the municipality. The notice shall include a description of the boundary of the territory proposed to be annexed. The date of election shall not be less than fifty days nor more than sixty days after the date of first publication of the notice.

B. These three members shall be qualified electors and owners of real property within the territory proposed to be annexed. If there are less than three qualified electors and owners of real property residing within the territory proposed to be annexed, the district court shall appoint three members of the board to represent the territory proposed to be annexed and they need not be residents of this territory.

C. Petitions of nomination for the three members on the board of arbitration may be filed with the county clerk from the date of first publication of the notice of election until thirty-five days before the day of election. The petition shall be signed either by not less than ten percent of the qualified electors residing in the territory desired to be annexed or by not less than twenty-five qualified electors residing in the territory desired to be annexed. No elector may sign more than three petitions of nomination.

D. The board of county commissioners of the county in which the territory proposed to be annexed lies shall designate the polling places which shall not be less in number than the polling places existing in the area at the last general election. At the election all qualified electors who reside in the territory proposed to be annexed may vote.

E. The board of county commissioners shall appoint one judge and not less than two clerks of election for each polling place, or not less than two clerks of election for each voting machine. The board of county commissioners shall furnish the election supplies and ballots. Each ballot shall contain the names of all candidates who have filed petitions of nomination. The ballot shall also have printed on it the words "Vote for any three".

F. The ballots cast shall be counted by the election officials and the results certified by the county clerk. Within three days after the election, the board of county commissioners shall canvass the votes cast and shall issue certificates of election as members of the board of arbitration to the three candidates receiving the greatest number of votes.

G. If within three days after the day of the election the board of county commissioners is unable to determine who has been elected to the board of arbitration, the board of county commissioners shall certify such determination to the district court or if there is a vacancy in such membership, the district court wherein the municipality lies shall appoint within three days the member of the board of arbitration. The member so appointed shall have the same qualifications as required as if he had been elected a member of the board of arbitration.

H. The actual expense of the election shall be paid by the municipality proposing to annex the territory.

History: 1953 Comp., § 14-7-7, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 8.

ANNOTATIONS

Law reviews. — For note, "Annexation of Unincorporated Territory in New Mexico," see 6 Nat. Resources J. 83 (1966).

3-7-8. Annexation; arbitration; appointment of three members by municipality.

Before the day of election required in the territory proposed to be annexed, the governing body of the municipality proposing to annex the territory shall appoint three members of the board of arbitration who shall be qualified electors and owners of real property within the municipality.

History: 1953 Comp., § 14-7-8, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Law reviews. — For note, "Annexation of Unincorporated Territory in New Mexico," see 6 Nat. Resources J. 83 (1966).

3-7-9. Annexation; arbitration; selection of seventh member; procedure; qualifications.

A. Within five days after the board of county commissioners has canvassed the results of the election required in Section 3-7-7 NMSA 1978, the members of the board of arbitration shall meet and select a seventh or neutral member of the board of arbitration. He shall be a qualified elector of the county and the owner of real property in the county but shall reside outside the boundary of the municipality and the territory proposed to be annexed.

B. If within five days after the board of county commissioners has canvassed the results of the election required in Section 3-7-7 NMSA 1978, the six members of the board of arbitration fail to select by a two-thirds vote the seventh or neutral member, the board of arbitration shall certify to the district court its failure to select the seventh member. Within ten days after the certification by the board of arbitration of its failure to select a seventh member, the district court in which the county lies shall appoint the seventh member who shall possess the qualifications required in this section.

History: 1953 Comp., § 14-7-9, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Law reviews. — For note, "Annexation of Unincorporated Territory in New Mexico," see 6 Nat. Resources J. 83 (1966).

3-7-10. Annexation; arbitration; chairman; meetings; power of board; final determination.

A. After the seven members of the board of arbitration have been selected, they shall elect a chairman and hold meetings upon call of the chairman. The board of arbitration shall determine if the benefits of the government of the municipality are or can be available within a reasonable time to the territory proposed to be annexed and may make such investigation as it may deem advisable in order to obtain information and data as to the availability of the benefits of the municipal government and may require the governing body of the municipality to furnish to it any records of the municipality pertaining thereto. The cost of such investigation shall be paid by the municipality.

B. Determination by a majority of the seven members of the board of arbitration shall be final. If a majority of the members of the board of arbitration determine that the territory should not be annexed, the governing body of the municipality shall not proceed further nor shall it pass any other resolution seeking to annex the territory for a period of two years. If a majority of the members of the board of arbitration determine that the territory or a part thereof should be annexed to the municipality, it shall certify over the signatures of the members of the board of arbitration who have made the

determination to the clerk of the municipality, the clerk of the county, the secretary of finance and administration and the secretary of taxation and revenue.

C. Thereafter, the annexation shall be deemed complete as to the territory certified as proper to be annexed. The municipality to which the annexation is made shall pass an ordinance, not inconsistent with law, which will effectuate the terms of the annexation. The territory so annexed shall be governed as part of the municipality and the governing body of the municipality shall promptly proceed to make the benefits of the government of the municipality available to the territory so annexed within a reasonable time.

D. The final determination of the board of arbitration shall be certified not more than sixty days after the selection of the seventh member.

History: 1953 Comp., § 14-7-10, enacted by Laws 1965, ch. 300; 1981, ch. 204, § 7.

ANNOTATIONS

Finding that benefits could be made available required annexation order. — Legislative intent was to require board to order annexation upon finding that benefits of the municipality could be made available to area to be annexed within a reasonable time; the legislature intended no arbitrary power in the board to grant or deny annexation. Cox v. City of Albuquerque, 53 N.M. 334, 207 P.2d 1017 (1949).

Fact that board limited its findings of benefits to less than the whole of the area described in the plat, as an incident to which the area subject to annexation became reduced, does not constitute an unlawful delegation of legislative power within contemplation of the separation of powers clause in the constitution. Cox v. City of Albuquerque, 53 N.M. 334, 207 P.2d 1017 (1949).

Law reviews. — For note, "Annexation of Unincorporated Territory in New Mexico," see 6 Nat. Resources J. 83 (1966).

3-7-11. Municipal boundary commission; purpose.

A. The purpose of Sections 3-7-11 through 3-7-16 NMSA 1978 is to establish an independent commission known as the "municipal boundary commission" to determine the annexation of territory to a municipality whenever:

(1) the municipality petitions the municipal boundary commission to annex territory to the municipality; or

(2) a majority of the landowners of the territory proposed to be annexed petition the municipal boundary commission to annex the territory to the municipality.

B. The municipal boundary commission shall hear a request for municipal annexation of a traditional historic community only upon petition of a majority of the qualified electors of the territory within the traditional historic community.

History: 1953 Comp., § 14-7-11, enacted by Laws 1965, ch. 300; 1995, ch. 170, § 3; 1995, ch. 211, § 2.

ANNOTATIONS

1995 amendments. — Identical amendments to this section were enacted by Laws 1995, ch. 170, § 3 and Laws 1995, ch. 211, § 2, both effective April 6, 1995, and approved April 16, 1995, which designated the former introductory paragraph as Subsection A and redesignated former Subsections A and B as Paragraphs (1) and (2) thereof; substituted "Sections 3-7-11 through 3-7-16 NMSA 1978" for "Sections 14-7-11 through 14-7-16 New Mexico Statutes Annotated, 1953 Compilation" in Subsection A; and added Subsection B. The section was set out as amended by Laws 1995, ch. 211, § 2. *See* 12-1-8 NMSA 1978.

Standards for judicial review. — Applying administrative standards of review to annexation decisions made pursuant to either arbitration or commission procedures are proper. Cox v. Mun. Boundary Comm'n, 120 N.M. 703, 905 P.2d 741 (Ct. App. 1995), cert. denied, 120 N.M. 636, 904 P.2d 1061 (1995).

Law reviews. — For note, "Annexation of Unincorporated Territory in New Mexico," see 6 Nat. Resources J. 83 (1966).

3-7-12. Municipal boundary commission; appointment; qualifications of members; payment of members; secretary of finance and administration to provide staff.

A. The municipal boundary commission shall consist of three members who shall be appointed by the governor. One of the members shall be an attorney licensed to practice in New Mexico and no more than two of the members shall be members of the same political party. Each of the members shall be residents of a separate county of New Mexico.

B. The members of the municipal boundary commission shall be paid as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978]:

(1) by the municipality if:

(a) the municipality petitions the municipal boundary commission to annex territory to the municipality; or

(b) a majority of the landowners petition the municipal boundary commission to annex territory to the municipality and the municipal boundary commission orders the territory annexed to the municipality; or

(2) by the landowners who petition the municipal boundary commission to annex the territory to the municipality, if the municipal boundary commission does not order the territory annexed to the municipality.

C. The secretary of the department of finance and administration shall provide staff to the municipal boundary commission.

History: 1953 Comp., § 14-7-12, enacted by Laws 1965, ch. 300; 1977, ch. 247, § 137; 1983, ch. 296, § 8.

ANNOTATIONS

Quorum. — The commission had the necessary quorum to hear a city's annexation petition without the presence of its attorney commissioner. Cox v. Mun. Boundary Comm'n, 1998-NMCA-025, 124 N.M. 709, 954 P.2d 1186, cert. denied, 125 N.M. 145, 958 P.2d 103 (1998).

Law reviews. — For note, "Annexation of Unincorporated Territory in New Mexico," see 6 Nat. Resources J. 83 (1966).

3-7-13. Contents of petition; submission to department of finance and administration.

A. The petition shall:

(1) describe the territory proposed to be annexed;

(2) be signed by:

(a) the mayor and clerk of the municipality; or

(b) a majority of the landowners of the territory proposed to be annexed; and

(3) be accompanied by a map of the territory proposed to be annexed which shall show:

(a) the external boundary of the territory proposed to be annexed;

(b) any federal, state or county highways which may exist in the territory proposed to be annexed; and

(c) the relationship of the territory proposed to be annexed to the existing boundary of the municipality.

B. The petition shall be filed with the department of finance and administration.

History: 1953 Comp., § 14-7-13, enacted by Laws 1965, ch. 300; 1977, ch. 247, § 138; 1983, ch. 296, § 9.

ANNOTATIONS

Commission may determine the sufficiency of petitions. — In addition to considering the issues of contiguity and the provision of municipal services, the boundary commission has the power to determine the statutory sufficiency of a petition and may make that determination at any time in the proceedings. Town of Edgewood v. N.M. Mun. Boundary Comm'n, 2013-NMCA-047, 299 P.3d 451, cert. quashed, 2013-NMCERT-009.

Where petitioner's petition failed to establish ownership of roads contained in and bordering the territory petitioner sought to annex and failed to account for the ownership and consequences of ownership of roads owned by government entities in and bordering the territory, the boundary commission properly denied the annexation because the commission had the power to evaluate the petition's compliance with statutory requirements for ownership and documentation of roads. Town of Edgewood v. N.M. Mun. Boundary Comm'n, 2013-NMCA-047, 299 P.3d 451, cert. quashed, 2013-NMCERT-009.

Minor errors in description of territory immaterial. — That some of the area to be annexed was described in the petition as "lots" instead of "blocks" is immaterial since the descriptions, in context, were substantially and sufficiently correct to put all interested parties on notice of the area sought to be annexed. Mutz v. Mun. Boundary Comm'n, 101 N.M. 694, 688 P.2d 12 (1984).

3-7-14. Meetings of the municipal boundary commission; election of a chairman; to meet in municipality to which annexation is proposed; public notice of meeting.

A. At its first meeting, and at any subsequent meeting when a change in the membership of the commission has occurred, the municipal boundary commission, by a majority vote, shall elect one member to serve as chairman of the commission and one member to serve as vice chairman who shall act whenever the chairman is not present. A majority of the commission shall constitute a quorum and the commission shall not transact business without a quorum being present.

B. After receipt of a petition, as authorized in Section 3-7-11 NMSA 1978, the secretary to the municipal boundary commission shall call a meeting of the municipal boundary commission which shall meet within sixty days of the receipt of the petition to

consider the petition for annexation. The secretary to the municipal boundary commission shall publish a notice, of a public hearing on the petition, once each week for four consecutive weeks and the last publication shall be at least twenty days before the day of the hearing. The notice shall contain the date when the meeting of the municipal boundary commission will be held, the place of the meeting and a general description of the boundary of the territory petitioned to be annexed to the municipality.

C. The municipal boundary commission shall meet in the municipality to which the territory is proposed to be annexed and shall hold a public hearing on the question of annexing to the municipality the territory petitioned to be annexed.

History: 1953 Comp., § 14-7-14, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Quorum. — The commission had the necessary quorum to hear a city's annexation petition without the presence of its attorney commissioner. Cox v. Mun. Boundary Comm'n, 1998-NMCA-025, 124 N.M. 709, 954 P.2d 1186, cert. denied, 125 N.M. 145, 958 P.2d 103 (1998).

General notice requirements. — The general notice requirements of Subsection J of 3-1-2 NMSA 1978 do not apply to govern proceedings of the municipal boundary commission. Cox v. Mun. Boundary Comm'n, 1998-NMCA-025, 124 N.M. 709, 954 P.2d 1186, cert. denied, 125 N.M. 145, 958 P.2d 103 (1998).

Law reviews. — For note, "Annexation of Unincorporated Territory in New Mexico," see 6 Nat. Resources J. 83 (1966).

3-7-15. Duties of the municipal boundary commission; authority of commission to annex; order is final; review by certiorari.

A. At the public hearing held for the purpose of determining if the territory proposed to be annexed to the municipality shall be annexed to the municipality, the municipal boundary commission shall determine if the territory proposed to be annexed:

(1) is contiguous to the municipality; and

(2) may be provided with municipal services by the municipality to which the territory is proposed to be annexed.

B. If the municipal boundary commission determines that the conditions set forth in this section are met, the commission shall order annexed to the municipality the territory petitioned to be annexed to the municipality.

C. If the municipal boundary commission determines that only a portion of the territory petitioned to be annexed meets the conditions set forth in this section, the

commission may order annexed to the municipality that portion of [the] territory which meets the conditions set forth in this section.

D. If the municipal boundary commission determines that the conditions set forth in this section are not met, the commission shall not order the annexation to the municipality of the territory petitioned to be annexed.

E. Any order of the municipal boundary commission shall be final unless any owner of land within the territory proposed to be annexed, within thirty days after the filing of the final order in the office of the county clerk and the office of the municipal clerk, obtains review of the order by the district court.

History: 1953 Comp., § 14-7-15, enacted by Laws 1965, ch. 300.

ANNOTATIONS

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

Doctrine of prior jurisdiction. — The doctrine of prior jurisdiction, which provides that the court first obtaining jurisdiction retains it as against a court of concurrent jurisdiction in which a similar action is subsequently instituted, is applicable in administrative proceedings, including annexation disputes. Therefore, the commission's decision-making process was entitled to priority as against annexation ordinances adopted by municipalities after an annexation petition had already been filed with the commission. AMREP Southwest, Inc. v. Town of Bernalillo, 113 N.M. 19, 821 P.2d 357 (Ct. App. 1991), cert. denied sub. nom., Town of Bernalillo v. Amrep S.W., 113 N.M. 16, 820 P.2d 1330 (1991).

Commission's stay of annexation of a disputed area pending a judicial determination of the commission's jurisdiction over that matter did not deprive the commission of its priority. AMREP Southwest, Inc. v. Town of Bernalillo, 113 N.M. 19, 821 P.2d 357 (Ct. App. 1991), cert. denied sub. nom., Town of Bernalillo v. Amrep S.W., 113 N.M. 16, 820 P.2d 1330 (1991).

Authority of commission. — The boundary commission has the authority to annex property over the objections of the municipality involved. City of Albuquerque v. State Mun. Boundary Comm'n, 131 N.M. 665, 41 P.3d 933 (Ct. App. 2002), cert. denied, 131 N.M. 737, 42 P.3d 842 (2002).

Commission to act reasonably. — Although Subsection A does not specifically direct the commission to act reasonably, it is an implicit requirement, because the element of reason in its decision, or its absence, is a basis for court review. Mutz v. Mun. Boundary Comm'n, 101 N.M. 694, 688 P.2d 12 (1984).

Reasonableness of objections. — The municipal boundary commission should only exercise its authority to annex property over a municipality's objections based on a finding that those objections were unreasonable under the circumstances. City of Albuquerque v. State Mun. Boundary Comm'n, 2002-NMCA-024, 131 N.M. 665, 41 P.3d 933, cert. denied, 131 N.M. 737, 42 P.3d 842 (2002).

Contiguity required. — Each unit, block or lot of land to be annexed need not have a common boundary with the municipality to satisfy requirement of contiguity in Subsection A(1). Mutz v. Mun. Boundary Comm'n, 101 N.M. 694, 688 P.2d 12 (1984).

The term "contiguous" in the annexation context requires a touching or close physical proximity of the property. Cox v. Mun. Boundary Comm'n, 120 N.M. 703, 905 P.2d 741 (Ct. App. 1995), cert. denied, 120 NM. 636, 904 P.2d 1061 (1995).

Satisfaction of requirements of Subsection A(2) within reasonable time. — The requirement of Subsection A(2) that the annexed territory "may be provided with municipal services" is satisfied if the municipality demonstrates the ability to provide services to the territory to be annexed within a reasonable period of time. Mutz v. Mun. Boundary Comm'n, 101 N.M. 694, 688 P.2d 12 (1984).

"To file" a paper is to place it in the official custody of the clerk. Town of Hurley v. New Mexico Mun. Boundary Comm'n, 94 N.M. 606, 614 P.2d 18 (1980).

It is not necessary that officer endorse document upon its receipt in order to effect the filing. Town of Hurley v. New Mexico Mun. Boundary Comm'n, 94 N.M. 606, 614 P.2d 18 (1980).

Three purposes of the filing requirements contained in Subsection E of this section and 3-7-16A NMSA 1978 are: (1) to provide public and accessible repositories in the offices of county and municipal clerks of accurate copies of the official orders of the commission; (2) to give constructive notice to the world of such orders; and (3) to fix the commencement of the time within which an appeal to the district court from such orders may be taken, namely 30 days, by the instrumentality of constructive notice to a party desiring to appeal. Town of Hurley v. New Mexico Mun. Boundary Comm'n, 94 N.M. 606, 614 P.2d 18 (1980).

District court review of commission's decision is limited to questions of law - whether the administrative agency acted fraudulently, arbitrarily or capriciously; whether the commission's order was supported by substantial evidence; and whether the agency acted within the scope of its authority. Mutz v. Mun. Boundary Comm'n, 101 N.M. 694, 688 P.2d 12 (1984).

When the commission followed its statutory mandate and determined that the area proposed for annexation was contiguous and could be provided with municipal services by the city, the district court was then limited to determine whether, based on the record, this decision was fraudulent, arbitrary or capricious, supported by substantial evidence,

and within the scope of the commission's authority. Cox v. Mun. Boundary Comm'n, 120 N.M. 703, 905 P.2d 741 (Ct. App. 1995), cert. denied, 120 N.M. 636, 904 P.2d 1061 (1995).

Law reviews. — For note, "Annexation of Unincorporated Territory in New Mexico," see 6 Nat. Resources J. 83 (1966).

3-7-16. Filing the order of the municipal boundary commission; annexation complete.

A. Within ten days after the municipal boundary commission makes its determination, the secretary of the department of finance and administration shall file certified copies of the order of the municipal boundary commission in the office of the municipal clerk of the municipality to which the territory has been petitioned to be annexed and in the office of the county clerk. The secretary shall also transmit a copy of the order to the secretary of taxation and revenue.

B. If the municipal boundary commission orders the annexation of territory to a municipality, the annexation shall be complete after the filing of certified copies of the order as required in this section.

History: 1953 Comp., § 14-7-16, enacted by Laws 1965, ch. 300; 1977, ch. 247, § 139; 1981, ch. 204, § 8; 1983, ch. 296, § 10.

ANNOTATIONS

"To file" a paper is to place it in the official custody of the clerk. Town of Hurley v. New Mexico Mun. Boundary Comm'n, 94 N.M. 606, 614 P.2d 18 (1980).

It is not necessary that officer endorse document upon its receipt in order to effect the filing. Town of Hurley v. New Mexico Mun. Boundary Comm'n, 94 N.M. 606, 614 P.2d 18 (1980).

Three purposes of the filing requirements contained in 3-7-15E NMSA 1978 and Subsection A of this section are: (1) to provide public and accessible repositories in the offices of county and municipal clerks of accurate copies of the official orders of the commission; (2) to give constructive notice to the world of such orders; and (3) to fix the commencement of the time within which an appeal to the district court from such orders may be taken, namely 30 days, by the instrumentality of constructive notice to a party desiring to appeal. Town of Hurley v. New Mexico Mun. Boundary Comm'n, 94 N.M. 606, 614 P.2d 18 (1980).

Law reviews. — For note, "Annexation of Unincorporated Territory in New Mexico," see 6 Nat. Resources J. 83 (1966).

3-7-17. Annexation; petition by owners of contiguous territory; duty of governing body; ordinance; appeal.

A. Except as provided in Sections 3-7-17.1 and 3-57-4 NMSA 1978, whenever a petition:

(1) seeks the annexation of territory contiguous to a municipality;

(2) is signed by the owners of a majority of the number of acres in the contiguous territory;

(3) is accompanied by a map that shows the external boundary of the territory proposed to be annexed and the relationship of the territory proposed to be annexed to the existing boundary of the municipality; and

(4) is presented to the governing body, the governing body shall by ordinance express its consent or rejection to the annexation of such contiguous territory.

B. If the ordinance consents to the annexation of the contiguous territory, a copy of the ordinance, with a copy of the plat of the territory so annexed, shall be filed in the office of the county clerk. After the filing, the contiguous territory is part of the municipality. The clerk of the municipality shall also send copies of the ordinance annexing the territory and of the plat of the territory so annexed to the secretary of finance and administration and to the secretary of taxation and revenue.

C. Within thirty days after the filing of the copy of the ordinance in the office of the county clerk, any person owning land within the territory annexed to the municipality may appeal to the district court questioning the validity of the annexation proceedings. If no appeal to the district court is filed within thirty days after the filing of the ordinance in the office of the county clerk or if the court renders judgment in favor of the municipality, the annexation shall be deemed complete.

History: 1953 Comp., § 14-7-17, enacted by Laws 1965, ch. 300; 1981, ch. 204, § 9; 1998, ch. 42, § 1.

ANNOTATIONS

Cross references. — For examination of signatures, purging and judicial review of petitions, *see* 3-1-5 NMSA 1978.

The 1998 amendment, effective May 20, 1998, substituted "of" for "or" in the section heading; in Subsection A, inserted "Except as provided in Sections 3-7-17.1 and 3-57-4 NMSA 1978" at the beginning, and substituted "that shows" for "which shall show" near the beginning of Paragraph A(3); and substituted "or if" for "of it" in Subsection C.

Section does not violate "one man-one vote" principle of the equal protection clause of the United States constitution, even though it does not provide for annexation by a petition of a majority of the landowners in the area without regard to the number of acres each owns. Torres v. Vill. of Capitan, 92 N.M. 64, 582 P.2d 1277 (1978).

Plain meaning of "owning land" in Subsection C of this section is to have equitable or legal fee title ownership of real estate within the annexed territory. Santa Fe County Bd. of County Comm'rs v. Town of Edgewood, 2004-NMCA-111, 136 N.M. 301, 97 P.3d 633.

Purpose in affixing plat or survey to annexation petition is to notify interested persons of land which is included, as well as to make definite what the corporate limits are and to permit officials to ascertain who are residents within the municipality and to help determine if a sufficient number of signatures of property owners from within the area appear on the petition. Hughes v. City of Carlsbad, 53 N.M. 150, 203 P.2d 995 (1949).

Consideration of unplatted land. — Unplatted land, which was held for sale as urban property to accommodate reasonably expected development within eight years, could properly be considered in determining whether annexation petition was adequate. Hughes v. City of Carlsbad, 53 N.M. 150, 203 P.2d 995 (1949).

Appeal from denial of petition. — The petition method of annexation provided by this section is a legislative procedure and although the statute provides no express right of appeal when a petition is denied, only a direct appeal lies to the district court, as opposed to a writ of certiorari proceeding. Dugger v. City of Santa Fe, 114 N.M. 47, 834 P.2d 424 (Ct. App. 1992), cert. denied, 113 N.M. 744, 832 P.2d 1223 (1992).

Standard of review. — The scope of judicial review of an annexation completed under the petition process is limited to determining whether the municipality has acted illegally or unconstitutionally. Daugherty v. City of Carlsbad, 120 N.M. 716, 905 P.2d 1120 (Ct. App. 1995), cert. denied, 120 N.M. 636. 904 P.2d 1061 (1995).

When landowners challenged annexation on the ground that the property was not contiguous and presented arguments that were essentially political and economic, such arguments were not within the scope of review, and the district court, finding that the property was contiguous as a matter of law, properly refused to analyze the economic or political benefits or burdens bestowed upon the landowners' property. Daugherty v. City of Carlsbad, 120 N.M. 716, 905 P.2d 1120 (Ct. App. 1995), cert. denied, 120 N.M. 636. 904 P.2d 1061 (1995).

Standing under Subsection C of this section requires an equitable or fee title interest. Santa Fe County Bd. of County Comm'rs v. Town of Edgewood, 2004-NMCA-111, 136 N.M. 301, 97 P.3d 633.

Standing to appeal. — Where it was determined that a partnership did not own property in the annexed territory, it had no standing to challenge the annexation. State ex rel. State Highway & Transp. Dep't v. City of Sunland Park, 1999-NMCA-143, 128 N.M. 371, 993 P.2d 85, cert. quashed, 133 N.M. 31, 59 P.3d 1263 (2002).

The state's interest in highway property granted by 67-2-5 NMSA 1978 satisfies the requirement for standing of the State Highway and Transportation Department [department of transportation] to appeal an annexation proceeding under Subsection C of this section. State ex rel. State Highway & Transp. Dep't v. City of Sunland Park, 1999-NMCA-143, 128 N.M. 371, 993 P.2d 85, cert. quashed, 133 N.M. 31, 59 P.3d 1263 (2002).

Counties that do not own roads in equitable or fee title may participate in the process leading to an ordinance consenting to an annexation petition in order to ensure an orderly transition in services, but does not have standing to appeal from the adoption of the ordinance. Santa Fe County Board of County Comm'rs v. Town of Edgewood, 2004-NMCA-111, 136 N.M. 301, 97 P.3d 633.

Annexation of special zoning district. — When all or a portion of a special zoning district is annexed by an incorporated municipality, the special zoning district loses all of its zoning jurisdiction over the annexed territory to the municipality. 1983 Op. Att'y Gen. No. 83-06.

Law reviews. — For note, "Annexation of Unincorporated Territory in New Mexico," see 6 Nat. Resources J. 83 (1966).

3-7-17.1. Annexation; certain municipalities in class A counties; procedures; limitations.

A. A petition seeking the annexation of territory contiguous to a municipality located in a class A county with a population of less than three hundred thousand persons shall be presented to the city council and be accompanied by a map that shows the external boundary of the territory proposed to be annexed and the relationship of the territory proposed to be annexed to the existing boundary of the municipality.

B. If the petition is signed by the owners of a majority of the number of acres in the contiguous territory:

(1) the city council shall submit the petition to the board of county commissioners of the county in which the municipality is located for its review and comment. Any comments shall be submitted by the board of county commissioners to the city council within thirty days of receipt; and

(2) not less than thirty days nor more than sixty days after receiving the petition, the city council shall by ordinance approve or disapprove the annexation after considering any comments submitted by the board of county commissioners.

C. Except as provided in Subsection D of this section, if the petition is not signed by the owners of a majority of the number of acres in the contiguous territory, the extraterritorial land use commission shall consider the matter and make a recommendation to the extraterritorial land use authority. The extraterritorial land use authority shall approve or disapprove the petition. If approved by the extraterritorial land use authority, the city council may by ordinance approve the annexation.

D. When the nonconsenting property owners' properties are entirely surrounded by consenting property owners, the city council may approve the annexation without approval or disapproval of the extraterritorial land use authority.

E. In considering an annexation pursuant to this section, the city council shall consider the impact of the annexation on existing county contracts and provisions of services, including fire protection, solid waste collection or water and sewer service, and may make agreements with the county to continue such services if it is in the interest of the county, the residents of the proposed annexed area or the municipality.

F. A municipality with a population over two hundred thousand persons and located in a class A county shall not force a resident or business located in the unincorporated area of the county to agree to annexation as a condition of extending sewer and water service to that person or business, if that sewer or water service extension is paid for all or in part by federal, state or county money. The municipality may make agreement to annexation a condition of extending sewer and water service if the extension of the service is paid for entirely with municipal money.

History: 1978 Comp., § 3-7-17.1, enacted by Laws 1998, ch. 42, § 2; 2003, ch. 438, § 2.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, in Subsection A, deleted "with a population over two hundred thousand persons and" following "municipality" and inserted "with a population of less than three hundred thousand persons" following "class A county".

Meaning of the phrase "after receiving the petition". — The phrase "after receiving the petition" in Paragraph 2 of Subsection B of Section 3-7-17.1 NMSA 1978 refers to the date a city council first receives a petition for annexation. Waggoner v. Town of Mesilla, 2011-NMCA-041, 149 N.M. 596, 252 P.3d 820.

The doctrine of substantial compliance does not apply. — The doctrine of substantial compliance does not apply to the time limits within which a city council must approve or disapprove a petition for annexation. Waggoner v. Town of Mesilla, 2011-NMCA-041, 149 N.M. 596, 252 P.3d 820.

Municipality failed to comply with the time limits for approving or disapproving a petition for annexation. — Where the petitioners for annexation submitted their petition to the municipal board of trustees on October 9, 2007; the municipality mailed the petition to the county commission on October 10, 2007; the municipality received comments from the county commission on November 1, 2007; and the municipality passed an annexation ordinance on December 26, 2007, the annexation was invalid because the annexation ordinance was not approved within sixty days after the municipality first received the petition on October 9, 2007. Waggoner v. Town of Mesilla, 2011-NMCA-041, 149 N.M. 596, 252 P.3d 820.

3-7-18. Annexation to include streets.

Any municipality annexing any territory shall include in the annexation any streets located along the boundary of the territory being annexed. As used in this section, "street" means any thoroughfare that is open to the public and has been accepted by the board of county commissioners as a public right-of-way.

History: 1953 Comp., § 14-6-22, enacted by Laws 1965, ch. 75, § 1, and recompiled as 1953 Comp., § 14-7-18.

ANNOTATIONS

Cross references. — For powers of municipalities regarding streets, sidewalks, and public grounds, *see* 3-49-1 NMSA 1978 et seq.

Application of this section not automatic. — This section does not provide for the automatic annexation of adjacent streets and an annexation was invalid where it did not include streets bordering the territory to be annexed. State ex rel. State Highway & Transp. Dep't v. City of Sunland Park, 1999-NMCA-143, 128 N.M. 371, 993 P.2d 85, cert. quashed, 133 N.M. 31, 59 P.3d 1263 (2002).

"Street". — The word "street" in this section encompasses the entire right-of-way, not simply the roadway itself. The word "street" also includes state roads. State ex rel. State Highway & Transp. Dep't v. City of Sunland Park, 1999-NMCA-143, 128 N.M. 371, 993 P.2d 85, cert. quashed, 133 N.M. 31, 59 P.3d 1263 (2002).

Law reviews. — For note, "Annexation of Unincorporated Territory in New Mexico," see 6 Nat. Resources J. 83 (1966).

ARTICLE 8
Municipal Elections

3-8-1. Election code; short title; purpose; "shall" and "may"; headings; construction; counting days.

A. Chapter 3, Articles 8 and 9 NMSA 1978 may be cited as the "Municipal Election Code".

B. It is the purpose of the Municipal Election Code to:

(1) secure the secrecy of the ballot;

(2) secure the purity and integrity of elections;

(3) guard against the abuse of the elective franchise; and

(4) provide for the efficient administration and conduct of elections.

C. As used in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978], "shall" is mandatory and "may" is permissive.

D. Article and section headings do not in any manner affect the scope, meaning or intent of the provisions of the Municipal Election Code.

E. The Municipal Election Code shall govern the conduct of all aspects of all municipal elections except when the Municipal Election Code is silent or is in conflict with the state Election Code [Chapter 1 NMSA 1978] with respect to any procedures or protections required of the state by federal law, then the state Election Code shall govern, as appropriate. The provisions of the Municipal Election Code shall not apply to home rule municipalities or municipalities incorporated under special act unless the Municipal Election Code is adopted by reference by such municipality.

F. When computing time, the first day shall be excluded and the last included unless the last falls on a Sunday or legal holiday, in which case, the time prescribed shall be extended to include the whole of the following business day.

G. In the event that a municipality is required by law or ordinance to elect any or all members of the governing body from districts, then that municipality shall adopt an ordinance setting forth rules and regulations necessary to implement elections by district, and such municipal ordinance may conflict with and supersede the Municipal Election Code to the extent such ordinance must do so to legally implement elections by district.

History: 1978 Comp., § 3-8-1, enacted by Laws 1985, ch. 208, § 9; 1991, ch. 123, § 1; 1995, ch. 200, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1985, ch. 208, § 9 repealed former 3-8-1 NMSA 1978, as amended by Laws 1971, ch. 306, § 1, relating to voting precincts, and enacted the above section.

The 1995 amendment, effective June 16, 1995, substituted "Chapter 3, Articles 8 and 9" for "Articles 8 and 9 of Chapter 3" in Subsection A, and inserted "is silent or" preceding "is in conflict" in Subsection E.

The 1991 amendment, effective April 3, 1991, substituted "in conflict with the state Election Code with respect to any procedures or protections required of the state by federal law" for "silent on a matter" in the first sentence in Subsection E.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections §§ 3, 4, 7(1), 7(4).

3-8-2. Definitions.

A. The definitions in Section 3-1-2 NMSA 1978 shall apply to the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] in addition to those definitions set forth in the Municipal Election Code.

B. As used in the Municipal Election Code:

(1) "absentee voter list" means the list prepared by the municipal and county clerks of those persons who have been issued an absentee ballot;

(2) "ballot" means a system for arranging and designating for the voter the names of candidates and questions to be voted on and for the marking, casting or otherwise recording of such votes. "Ballot" includes paper ballots, absentee ballots, ballot sheets and paper ballots used in lieu of voting machines;

(3) "ballot sheet" means the material placed on the front of the voting machine containing the names of the candidates, the offices the candidates are seeking and a statement of the proposed questions to be voted upon;

(4) "consolidated precinct" means the combination of two or more precincts pursuant to the Municipal Election Code;

(5) "county clerk" means the clerk of the county or the county clerk's designee within which the municipality is located;

(6) "election returns" means all certificates of the precinct board, including the certificate showing the total number of votes cast for each candidate, if any, and for or against each question, if any, and shall include statements of canvass, signature rosters, registered voter lists, machine-printed returns, paper ballots used in lieu of voting machines, absentee ballots, absentee ballot registers and absentee voter lists or absent voter machine-printed returns;

(7) "municipal clerk" means the municipal clerk or any deputy or assistant municipal clerk;

(8) "municipal clerk's office" means the office of the municipal clerk or any other room used in the process of absentee voting, counting and tallying of absentee ballots or canvassing the election results within the confines of the building where the municipal clerk's office is located;

(9) "paper ballot" means a ballot manually marked by the voter and counted by hand without the assistance of a machine or optical-scan vote tabulating device;

(10) "precinct" means a portion of a county situated entirely in or partly in a municipality that has been designated by the county as a precinct for election purposes and that is entitled to a polling place and a precinct board. If a precinct includes territory both inside and outside the boundaries of a municipality, "precinct", for municipal elections, shall mean only that portion of the precinct lying within the boundaries of the municipality;

(11) "precinct board" means the appointed election officials serving a single or consolidated precinct;

(12) "qualified elector" means any person whose affidavit of voter registration has been filed by the county clerk, who is registered to vote in a general election precinct established by the board of county commissioners that is wholly or partly within the municipal boundaries and who is a resident of the municipality. Persons who would otherwise be qualified electors if land on which they reside is annexed to a municipality shall be deemed to be qualified electors:

(a) upon the effective date of the municipal ordinance effectuating the terms of the annexation as certified by the board of arbitration pursuant to Section 3-7-10 NMSA 1978;

(b) upon thirty days after the filing of an order of annexation by the municipal boundary commission pursuant to Sections 3-7-15 and 3-7-16 NMSA 1978, if no appeal is filed or, if an appeal is filed, upon the filing of a nonappealable court order effectuating the annexation; or

(c) upon thirty days after the filing of an ordinance pursuant to Section 3-7-17 NMSA 1978, if no appeal is filed or, if an appeal is filed, upon the filing of a nonappealable court order effectuating the annexation;

(13) "recheck" pertains to voting machines and means a verification procedure where the counter compartment of the voting machine is opened and the results of the balloting as shown on the counters of the machine are compared with the results shown on the official returns;

(14) "recount" pertains to ballots and absentee ballots and means a retabulation and retallying of individual ballots;

(15) "voter" means a qualified elector of the municipality; and

(16) "voting machine" means any electronic recording and tabulating voting system as tested and approved by the secretary of state.

History: 1978 Comp., § 3-8-2, enacted by Laws 1985, ch. 208, § 10; 1997, ch. 266, § 3; 1999, ch. 278, § 1; 2003, ch. 244, § 1; 2009, ch. 278, § 1.

ANNOTATIONS

Recompilations. — Former 3-8-2 NMSA 1978, relating to giving notice of a special election, was recompiled as 3-8-35 NMSA 1978 by Laws 1985, ch. 208, § 43.

The 2009 amendment, effective June 19, 2009, in Subsection B(2), in the second sentence, after "includes", deleted "marksense" and added "paper" and after the last occurrence of "ballot", deleted "faces, emergency paper ballots" and added "sheets"; in Subsection B(4), deleted the language that defined "'clerk' or 'municipal clerk'" and added new language; in Subsection B(6), after "machine-printed returns", deleted "emergency paper ballots"; deleted former Subsection B(7), which defined "emergency paper ballot"; deleted former Subsection B(8), which defined "marksense ballot"; added a new Subsection B(7); deleted former Subsection B(12), which defined "consolidated precinct"; added a new Subsection B(12); in Subsection B(14), after "pertains to", deleted "emergency paper ballots, paper ballots used in lieu of voting machines" and added "ballots"; and added Subsections B(15) and (16).

The 2003 amendment, effective June 20, 2003, deleted "early voting ballots" following " 'Ballot' includes" in the second sentence of Paragraph B(2) and following "tallying of" in Paragraph B(9); deleted "early voting" following "process of"; and in Paragraph B(15), deleted "early voting ballots" following "voting machines".

The 1999 amendment, effective June 18, 1999, in Subsection B, included early voting ballots and marksense ballots in the definition of "ballot" in Paragraph (2); substituted " 'ballot face' means the material" for " 'ballot label' means that portion of cardboard, paper or other material" in Paragraph (3); deleted "but not limited to" preceding "the certificate showing" in Paragraph (6); added Paragraphs (8) to (10); redesignated former Paragraphs (8) to (12) as Paragraphs (11) to (15); and inserted "early voting ballots" in Paragraph (15).

The 1997 amendment, effective June 20, 1997, inserted "or his designee" in Paragraph B(5) and made stylistic changes in Subsection A and Paragraph B(7).

3-8-3. Residency.

For the purpose of determining the residence of a person desiring to be a candidate for a municipal elected office, or the residence of a person who has signed a petition to cause a special or regular municipal election, or for determining residency for any other

purpose pursuant to the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978], the following rules shall govern:

A. residence shall be presumed to be at the address or location shown on the original affidavit of voter registration on file with the county clerk; and

B. the presumption established in Subsection A of this section may be overcome if residence is shown to be elsewhere pursuant to the rules set forth in Section 1-1-7 NMSA 1978.

History: 1978 Comp., § 3-8-3, enacted by Laws 1985, ch. 208, § 11.

ANNOTATIONS

Recompilations. — Former 3-8-3 NMSA 1978, relating to the time of holding regular municipal elections, was recompiled as 3-8-25 NMSA 1978 by Laws 1985, ch. 208, § 33.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections §§ 19 to 25.

3-8-4. Oaths.

A. A person authorized to administer oaths, as the term is used in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978], means any person empowered by the laws of any state, the federal government, or of any foreign country to administer oaths.

B. The words "swear" and "oath" include affirmation in all cases where an affirmation can be substituted for swearing or an oath.

History: 1978 Comp., § 3-8-4, enacted by Laws 1985, ch. 208, § 12.

ANNOTATIONS

Recompilations. — Former 3-8-4 NMSA 1978, relating to notice of a regular municipal election, was recompiled as 3-8-26 NMSA 1978 by Laws 1985, ch. 208, § 34.

3-8-5. Major fractions.

In any section in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] requiring counting or computation of numbers, any fraction greater than one half of a whole number shall be counted as a whole number.

History: 1978 Comp., § 3-8-5, enacted by Laws 1985, ch. 208, § 13.

ANNOTATIONS

Recompilations. — Former 3-8-5 NMSA 1978, relating to the election duties of the municipal clerk, was recompiled as 3-8-7 NMSA 1978 by Laws 1985, ch. 208, § 15.

3-8-6. County clerk; election duties.

The county clerk shall maintain accurate voter registration information for each municipality located in the county. The county clerk shall provide to the municipal clerk, in advance of a municipal regular or special election, the names of only those registered voters entitled to vote in the municipal election as required in Subsection B of Section 3-8-7 NMSA 1978.

History: 1978 Comp., § 3-8-6, enacted by Laws 1985, ch. 208, § 14; 1987, ch. 323, § 4.

ANNOTATIONS

Recompilations. — Former 3-8-6 NMSA 1978, relating to candidacy for office in a municipal election, was recompiled as 3-8-28 NMSA 1978 by Laws 1985, ch. 208, § 36.

The 1987 amendment, effective June 19, 1987, added to the end of the second sentence "as required in Subsection B of Section 3-8-7 NMSA 1978" and made minor changes in language.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections §§ 157, 158, 180, 181, 278, 280, 284.

29 C.J.S. Elections §§ 41, 43, 55.

3-8-6.1. Secretary of state; duties.

The secretary of state shall investigate complaints concerning conduct of elections held pursuant to the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] and issue the findings to the appropriate enforcement authority.

History: 1978 Comp., § 3-8-6.1, enacted by Laws 1991, ch. 123, § 2.

3-8-7. Municipal clerk; county clerk; election duties.

A. The municipal clerk shall:

(1) administer the municipal election;

(2) with the consent of the governing body, secure the necessary polling places;

(3) see that all necessary supplies and equipment are present at each polling place prior to the opening of the polls on the day of the election;

(4) certify voting machines;

(5) conduct an election school for precinct board members as required in Section 3-8-21 NMSA 1978;

(6) keep the office of the municipal clerk open on election day for the purpose of receiving ballot boxes, election returns and materials until all election returns and materials are received; and

(7) within fifteen days of the holding of any municipal election, forward to the county clerk a listing of all individuals voting in the municipal election.

B. Within fifteen days of the adoption of the election resolution, the municipal clerk shall request in writing from the county clerk the registered voter lists and signature rosters containing only the qualified electors eligible to vote in the municipal election. The county clerk shall provide to the municipal clerk a printed registered voter list and the voter registration information in compatible electronic format containing only the qualified electors eligible to vote in the municipal election twenty days prior to the election. At least seven days prior to every municipal election, the county clerk shall furnish to the municipal clerk the registered voter list and signature roster containing only the qualified electors eligible to vote in the municipal election. A municipal clerk shall not amend, add or delete any information to or from the registered voter list except as otherwise provided by law. The registered voter list shall constitute the registration list for the municipal election. The registered voter list does not have to be returned to the county clerk. The municipality shall bear the reasonable cost of preparation of the voter lists, signature rosters and voter registration in electronic format but in no case in an amount that exceeds the actual cost to the county.

History: 1953 Comp., § 14-8-5, enacted by Laws 1965, ch. 300; 1969, ch. 246, § 1; 1971, ch. 306, § 4; 1975, ch. 255, § 125; 1978 Comp., § 3-8-5, recompiled as 1978 Comp., § 3-8-7 by Laws 1985, ch. 208, § 15; 1987, ch. 323, § 5; 1991, ch. 123, § 3; 1995, ch. 198, § 16; 1997, ch. 266, § 4; 1999, ch. 278, § 2.

ANNOTATIONS

Repeals. — Laws 1985, ch. 208, § 125 repealed former 3-8-7 NMSA 1978, as amended by Laws 1973, ch. 208, § 1, relating to the terms of office for the governing body of a municipality. For present comparable provisions, *see* 3-10-1 NMSA 1978.

The 1999 amendment, effective June 18, 1999, in Subsection B, inserted the second sentence and added the language at the end of the subsection beginning with "and voter registration in electronic format".

The 1997 amendment, effective June 20, 1997, deleted "and" at the end of Paragraph A(5) and added "except as otherwise provided by law" at the end of the third sentence in Subsection B.

The 1995 amendment, effective April 6, 1995, rewrote Paragraph (7) of Subsection A, and inserted "to or" following "information" in the third sentence of Subsection B.

The 1991 amendment, effective April 3, 1991, added the third sentence in Subsection B.

The 1987 amendment, effective June 19, 1987, in Subsection A, in Paragraph (5) substituted "as required in Section 3-8-21 NMSA 1978" for "not less than three days prior to the municipal election," in Paragraph (7) substituted "Subsection C of Section 1-4-40" for "Section 1-4-40C"; and in Subsection B inserted the present first sentence and near the beginning of the second sentence substituted "seven days" for "four days" near the beginning.

The 1985 amendment recompiled former 3-8-5 NMSA 1978 as present 3-8-7 NMSA 1978, inserted "county clerk" in the catchline, added Subsections A(4), A(5), A(6), and A(7), deleted former Subsection B, relating to the affidavits of registration, and designated the previously undesignated last paragraph of the section as present Subsection B, substituting "At least four days prior to every municipal election" for "In any county in which the automated voter records system act has been implemented, the municipal clerk shall obtain from", inserting "shall furnish to the municipal clerk", and substituting "containing only the qualified electors eligible to vote in the municipal election" for "for all precincts located wholly or partially within the boundaries of the municipality" in the first sentence and inserting "reasonable" preceding "cost of preparation" in the second sentence.

Municipal clerk not municipal officer. — The duties of a municipal clerk are essentially ministerial and do not involve the delegation of any of the sovereign power of the municipality; this necessary element to establish the position of municipal clerk as an officer of the municipality is not present. 1979 Op. Att'y Gen. No. 79-28.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Elections §§ 157, 158, 180, 181, 278, 280, 284.

29 C.J.S. Elections §§ 41, 43, 55.

3-8-8. Time to register to vote.

Voter registration, for purposes of all municipal elections, shall occur during the times allowed pursuant to Section 1-4-8 NMSA 1978.

History: 1978 Comp., § 3-8-8, enacted by Laws 1985, ch. 208, § 16.

ANNOTATIONS

Recompilations. — Former 3-8-8 NMSA 1978, relating to a declaration of candidacy for a municipal election, was recompiled as 3-8-27 NMSA 1978 by Laws 1985, ch. 208, § 35.

3-8-9. Election scheduling; conflicts; notice.

A. Except as otherwise provided by law, a municipal election may be held concurrently with, but shall not be held within forty-two days prior to or within thirty days after, any statewide special, general or primary election or any regular school district election. Whenever a municipal election would be or has been scheduled within the prohibited time, the governing body shall adopt an election resolution scheduling or rescheduling the election on a date as soon as is practicable outside the prohibited period and in compliance with the requirements of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] and any other statute specifically related to such election. If an election resolution has already been adopted, the new election resolution shall supersede the existing election resolution and the new election resolution shall be published as required by the Municipal Election Code.

B. Except as otherwise provided by law, one or more municipal special elections, including but not limited to bond elections, may be held in conjunction with a regular municipal election or one or more special municipal elections.

C. When concurrent elections are called for, publications, notices, selection of precinct boards, election schools, ordering election supplies, conduct of the election, canvassing, record keeping and all other election matters shall be conducted to comply with all election requirements for each such election as if it were held separately. However, any requirement may be satisfied by a combined action if such action would satisfy the requirements set by law for each individual election. Allowable combined actions include but are not limited to, combined:

(1) publications;

(2) notices;

(3) appointment of precinct boards;

(4) ordering of election supplies;

(5) conduct of election;

(6) canvassing; and

(7) record keeping.

History: 1978 Comp., § 3-8-9, enacted by Laws 1985, ch. 208, § 17; 1987, ch. 323, § 6; 2003, ch. 154, § 2.

ANNOTATIONS

Recompilations. — Former 3-8-9 NMSA 1978, relating to the publication of names of candidates for a municipal election, was recompiled as 3-8-30 NMSA 1978 by Laws 1985, ch. 208, § 38.

Compiler's notes. — For proposed constitutional amendments related to the Laws 2003, ch. 154 amendment to this section, *see* N.M. Const., art. XII, §§ 6 and 7 and notes thereto.

The 2003 amendment, effective June 20, 2003, substituted "a municipal election may be held concurrently with, but shall not" for "no municipal election shall" following "provided by law" in Subsection A.

The 1987 amendment, effective June 19, 1987, in Subsection A, in the fourth sentence substituted "shall supersede the existing election resolution" for "has been superseded."

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 375, 383.

29 C.J.S. Elections §§ 70 to 72, 76, 77.

3-8-10. Consolidation of precincts.

A. Any precinct may be combined with one or more adjacent and contiguous precincts by the governing body when the municipal clerk determines that consolidation is in the best interest of those precincts and will not compromise the orderly and efficient conduct of the election.

B. Precincts may be consolidated in any regular or special municipal election, including bond elections, except when prohibited by law.

History: 1978 Comp., § 3-8-10, enacted by Laws 1985, ch. 208, § 18; 1997, ch. 266, § 5.

ANNOTATIONS

Repeals. — Laws 1985, ch. 208, § 125 repealed former 3-8-10 NMSA 1978, as amended by Laws 1977, ch. 222, § 102, relating to nonpartisan ticket designation.

The 1997 amendment, effective June 20, 1997, rewrote Subsection A.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections § 54.

3-8-11. Polling places.

A. The governing body shall designate within the municipal boundaries a polling place, in each precinct or consolidated precinct, that is the most convenient and suitable public building or public school building in the precinct that can be obtained and that provides suitable access for handicapped persons as required by law.

B. If no public building or public school building is available, the governing body shall provide some other suitable place, which shall be the most convenient and appropriate place obtainable within the municipal boundaries and in the precinct, considering the purpose for which it is to be used.

C. If no public building or public school building is available in the precinct and if there is no other suitable place obtainable in the precinct, the governing body may designate as a polling place for the precinct the most convenient and suitable building or public school building nearest to that precinct that can be obtained; provided, no polling place shall be designated outside the boundaries of the municipality and of the precinct as provided in this subsection until such designated polling place is approved by written order of the district court of the county in which the precinct is located.

D. Upon application of the governing body or municipal clerk, the governing board of any school district shall permit the use of any school buildings or a part thereof for the conduct of any municipal election.

E. If only one candidate files a declaration of candidacy for each position to be filled at an election and no declared write-in candidate files for a position and there are no questions or bond issues on the ballot, the municipal clerk may designate a single polling place for the election.

History: 1978 Comp., § 3-8-11, enacted by Laws 1985, ch. 208, § 19; 2009, ch. 278, § 2.

ANNOTATIONS

Recompilations. — Former 3-8-11 NMSA 1978, relating to appointment to precinct boards, was recompiled as 3-8-19 NMSA 1978 by Laws 1985, ch. 208, § 27.

The 2009 amendment, effective June 19, 2009, added Subsection E.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 430, 431.

29 C.J.S. Elections §§ 193, 199.

3-8-12. Election resolutions; notices; correction of errors and omissions.

The election resolution, publication of the election resolution, or any notice regarding municipal election matters may be amended by the municipal clerk to correct any

ministerial errors or omissions. The corrected resolution or notice shall be published, in the manner that the original is required to be published as required by law. However, if publication as required by law cannot be made, then such notice shall be given as is practicable under the circumstances in order to best reach those people to whom notice was intended under the law.

History: 1978 Comp., § 3-8-12, enacted by Laws 1985, ch. 208, § 20.

ANNOTATIONS

Recompilations. — Former 3-8-12 NMSA 1978, relating to the duties of the precinct boards, was recompiled as 3-8-20 NMSA 1978 by Laws 1985, ch. 208, § 28.

3-8-13. Voting machines; paper ballots.

Voting machines shall be used in all municipal elections, except paper ballots may be used in lieu of voting machines for the recording of votes cast in a municipal special or regular election in municipalities of less than one thousand five hundred population. A decision to use paper ballots shall be made by the governing body at the time the election resolution is adopted. Nothing in this section shall prevent the use of absentee ballots as allowed by law.

History: 1978 Comp., § 3-8-13, enacted by Laws 1985, ch. 208, § 21; 2009, ch. 278, § 3.

ANNOTATIONS

Recompilations. — Former 3-8-13 NMSA 1978, relating to challengers and watchers at a municipal election, was recompiled as 3-8-31 NMSA 1978 by Laws 1985, ch. 208, § 39.

The 2009 amendment, effective June 19, 2009, in the last sentence, after "the use of", deleted "emergency paper ballot or".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 429, 461.

29 C.J.S. Elections §§ 203, 204.

3-8-14. Voting machines; ordering; preparation; certification; delivery.

A. If voting machines are to be used, the municipal clerk shall order the machines from the county clerk within fifteen days of the adoption of the election resolution, and the county clerk shall supply such voting machines pursuant to Section 1-9-6 NMSA 1978. The county shall provide voting machine technicians, voting machine programming and voting machine transportation. The municipality shall pay the

reasonable fee charged by the county for such services and the use of the voting machines, but in no case in an amount that exceeds the actual cost to the county pursuant to Section 1-9-12 NMSA 1978.

B. If voting machines are to be used, the municipal clerk shall order at least one voting machine for every polling place; provided that the municipal clerk shall order a sufficient number of voting machines to ensure that the eligible voters in that polling place shall be able to vote in a timely manner.

C. Programming of electronic machines shall be performed under the supervision of the municipal clerk and the county clerk. The machines shall be programmed so that votes will be counted in accordance with specifications for electronic voting machines adopted by the secretary of state.

D. Immediately upon receipt of the notice of date, time and place of inspection and certification, the municipal clerk shall post such notice in the office of the municipal clerk and attempt to contact the candidates using the information listed on the declaration of candidacy to give each candidate notice of the date, time and place of inspection and certification.

E. Inspection and certification shall occur not later than seven days prior to the election and shall be open to the public. If voting machines are to be used for absentee voting, inspection and certification shall occur not later than seven days prior to the beginning of absentee voting and shall be open to the public.

F. At the date, time and place for inspection and certification, in the presence of the county clerk and those municipal candidates present, if any, the municipal clerk shall:

(1) ensure that the correct ballot sheet has been installed on each voting machine, if ballot sheets are to be installed;

(2) test each counter for accuracy by casting votes upon it until it correctly registers each vote cast;

(3) test each voting machine to ensure that it has been correctly programmed; and

(4) inform the county clerk when each machine is satisfactory and ready to be certified.

G. If the municipal clerk informs the county clerk that a machine is satisfactory and ready to be certified:

(1) the county clerk shall reset each counter at zero;

(2) the voting machine shall be immediately sealed with a numbered seal so as to prevent operation of the machine or its registering counters without breaking the seal;

(3) the municipal clerk shall prepare a certificate in triplicate for each machine that shall:

(a) show the serial number of the voting machine;

(b) state that the voting machine has all of its resettable registering counters set at zero;

(c) state that the voting machine has been tested by voting on each registered counter to prove the counter is in perfect condition;

(d) state that the correct ballot sheet has been installed on the voting machine, if ballot sheets are to be installed;

(e) show the number of the seal that has sealed the machine; and

(f) show the number registered on the protective counter;

(4) a copy of the certificate shall be delivered to the county clerk, the original certificate shall be filed in the office of the municipal clerk and one copy shall be posted on the voting machine; and

(5) if the voting machine requires keys, the keys to the voting machine shall be enclosed in a sealed envelope on which shall be written:

(a) the number of the precinct and polling place to which the machine is assigned;

(b) the serial number of the voting machine;

(c) the number of the seal that has sealed the voting machine;

(d) the number registered on the protective counter; and

(e) the signatures of the county clerk, the municipal clerk and all candidates present, if any, at the inspection and certification.

H. After certification of the voting machines, if the voting machines require keys, the county clerk shall keep the keys to the voting machines in the county clerk's custody and shall deliver the keys to the municipal clerk when the voting machines are delivered for election. The municipal clerk shall secure in the office of the municipal clerk all the

envelopes containing the keys to the voting machines until delivered to the presiding judge of the election.

I. An objection to the use of a particular voting machine shall be filed in the district court within two days after the machine has been certified. Any objection so filed shall specify the number of the voting machine objected to and the reason for the objection. Each voting machine shall be conclusively presumed to be properly prepared for the election if it has been certified unless a timely objection has been filed.

J. Voting machines certified in accordance with this section shall be delivered to the assigned precinct polling place no earlier than five days prior to the election and no later than noon on the day prior to the election, provided that any voting machines to be used for absentee voting shall be delivered to the municipal clerk no earlier than five days prior to the beginning of absentee voting and no later than noon on the day prior to the beginning of absentee voting in person in the office of the municipal clerk.

K. The municipal clerk shall refuse to certify any voting machine that the municipal clerk determines is not programmed properly, is not working properly or will not fairly or accurately record votes. Only voting machines that have been certified by the municipal clerk shall be used in the election.

History: 1978 Comp., § 3-8-14, enacted by Laws 1985, ch. 208, § 22; 1987, ch. 323, § 7; 1993, ch. 22, § 1; 1997, ch. 266, § 6; 2001, ch. 197, § 1; 2003, ch. 244, § 2; 2009, ch. 278, § 4.

ANNOTATIONS

Repeals. — Laws 1985, ch. 208, § 125 repealed former 3-8-14 NMSA 1978, as amended by Laws 1981, ch. 206, § 1, relating to ballots, effective July 1, 1985.

The 2009 amendment, effective June 19, 2009, in Subsection D, after "attempt to", deleted "telephone" and added "contact", and after "the candidates", deleted "at the phone number" and added "using the information"; in Subsection E, in the last sentence, after "If", deleted "electronic"; in Subsection F(1), in two places after "ballot", deleted "faces" and added "sheets"; in Subsection G(2), after "numbered", deleted "metal"; in Subsection G(3)(d), in two places after "ballot", deleted "face" and added “sheet; in Subsection G(3)(e), in two places after "number of the", deleted "metal"; and in Subsection G(5)(e), at the beginning of the sentence, deleted "across the seal of the envelope".

The 2003 amendment, effective June 20, 2003, inserted the last sentence of Subsection E; and inserted the language beginning "provided that" and ending "municipal clerk" at end of Subsection J.

The 2001 amendment, effective July 1, 2001, added present Paragraph F(1); deleted former Paragraph G(2), which read "the county clerk shall insert the printer pack into the

machine", added Paragraph G(3)(d) and redesignated the remaining paragraphs accordingly.

The 1997 amendment, effective June 20, 1997, rewrote Subsection C and inserted "if the voting machine requires keys" and "if the voting machines require keys" in Paragraph G(6) and H, respectively.

The 1993 amendment, effective June 18, 1993, substituted the language beginning "eligible voters" for "total number of machines ordered for the election is not less than one machine for every six hundred people who voted at the last municipal regular election" at the end of Subsection B and made minor stylistic changes.

The 1987 amendment, effective June 19, 1987, in Subsection A, inserted at the beginning of the second sentence "The county shall provide voting machine technicians, voting machine programming and voting machine transportation" and inserted near the end "for such services and the use of the voting machines, but in no case in an amount which exceeds the actual cost to the county"; in Subsection J substituted "five days" for "four days"; and made minor changes in language in Subsections G and I.

3-8-15. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 278, § 40 repealed 3-8-15 NMSA 1978, as enacted by Laws 1985, ch. 208, § 23, relating to emergency paper ballots, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM.*

3-8-16. Paper ballots in lieu of voting machines; form; general requirements.

As used in this section, "paper ballots" means paper ballots used in lieu of voting machines. Paper ballots shall be in the form prescribed by the municipal clerk, which shall conform to the following rules:

A. paper ballots shall:

(1) be numbered consecutively beginning with number one. The number shall be printed with a perforated line appropriately placed so that the portion of the ballot bearing the number may be readily and easily detached from the ballot;

(2) be uniform in size;

(3) be printed on good quality paper;

(4) be printed in plain black type;

(5) have all words and phrases printed correctly and in their proper places; and

(6) have district and precinct, if applicable;

B. the following heading shall be printed on each paper ballot used in all municipal elections:

"OFFICIAL ELECTION BALLOT

Election held . . . . . (insert date)";

C. if the election is a regular municipal election, the paper ballot shall be prepared consistent with the requirements of Section 3-8-29 NMSA 1978. In addition, next to each candidate's name shall appear an empty box to be used when voting for that candidate. Where space is allowed on a paper ballot for entering the name of a declared write-in candidate, that space shall be clearly designated by the use of the heading "Write-in Candidate". Below the heading shall appear one line, with a box to the right of the line, for each individual office holder to be elected. Below the last candidate's name shall appear any question presented, in the order designated by the governing body;

D. if the election is a special municipal election, questions presented shall be placed on the paper ballot in the order designated by the governing body;

E. next to each question presented on a paper ballot shall appear two empty boxes, one labeled "FOR" and the other labeled "AGAINST"; and

F. at the bottom of all paper ballots shall be printed: "OFFICIAL ELECTION BALLOT", followed by a facsimile signature of the municipal clerk.

History: 1978 Comp., § 3-8-16, enacted by Laws 1985, ch. 208, § 24; 1997, ch. 266, § 7; 2009, ch. 278, § 5.

ANNOTATIONS

Recompilations. — Former 3-8-16 NMSA 1978, relating to a canvass of returns and a certificate of election, was recompiled as 3-8-53 NMSA 1978 by Laws 1985, ch. 208, § 61.

The 2009 amendment, effective June 19, 2009, in the first paragraph, after "voting machines", deleted "and emergency paper ballots"; and in Subsection A(1), after "shall be printed", deleted "in the upper right-hand corner of the ballot", after "with a" deleted "diagonal"; and after "bearing the number", deleted "in the upper right-hand corner".

The 1997 amendment, effective June 20, 1997, added Paragraph A(6) and, in Subsection C, deleted "Subsections A through E of" preceding "Section 3-8-29" in the first sentence and rewrote the third sentence which read "Below the candidates' names for each office shall appear the heading 'Write-in Candidate'."

3-8-17. Sample ballots.

A. At the same time official ballots are printed for voting with machines or paper ballots, the municipal clerk shall cause sample ballots to be printed, which shall:

(1) be printed in both English and Spanish;

(2) be printed in a total number equal to at least five percent of the number of qualified electors in each precinct or consolidated precinct;

(3) be the same in all respects as the official ballots, except that they shall be printed on colored paper and shall not contain the facsimile signature of the municipal clerk or any endorsement on the sample ballot or the back thereof;

(4) be marked in large black capital letters, "SAMPLE BALLOT"; and

(5) be made available in reasonable quantities to all interested persons for distribution to the voters.

B. Nothing in this section shall prevent any person from having printed at his expense sample ballots, of a different color than the official sample ballot, which comply with the provisions of this subsection, so long as no marks, notations, words or other material are added to, taken from or deface, change or hide the information on or the appearance of the sample ballot as authorized by the municipal clerk.

History: 1978 Comp., § 3-8-17, enacted by Laws 1985, ch. 208, § 25; 1993, ch. 22, § 2; 2003, ch. 244, § 3.

ANNOTATIONS

Repeals. — Laws 1985, ch. 208, § 125 repealed former 3-8-17 NMSA 1978, as enacted by Laws 1965, ch. 300, relating to the qualification of officials and the organizational meeting of the governing body.

The 2003 amendment, effective June 20, 2003, substituted "five percent" for "ten percent" in Subsection A(2).

The 1993 amendment, effective June 18, 1993, substituted "at least ten percent" for "thirty percent" in Subsection A(2); inserted the subsection designation "B"; and substituted "section" for "subsection" near the beginning of Subsection B.

3-8-17.1, 3-8-17.2. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 278, § 53 repealed 3-8-17.1 and 3-8-17.2 NMSA 1978, as enacted by Laws 1997, ch. 266, §§ 1 and 2, relating to procedures for absentee ballots and emergency procedures for voting and counting absentee ballots, effective June 18, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMONESOURCE.COM.* For present comparable provisions, *see* 1-6-16.1 and 1-6-16.2 NMSA 1978.

3-8-18. Election supplies.

A. No later than 5:00 p.m. on the fifty-third day preceding the day of the election, the municipal clerk shall:

(1) order absentee ballots;

(2) order ballots and sample voting machine ballots; and

(3) order all other election supplies necessary for the conduct of the election.

B. Ballots and sample voting machine ballots shall be delivered to the municipal clerk not less than thirty-five days prior to the day of the election.

History: 1978 Comp., § 3-8-18, enacted by Laws 1985, ch. 208, § 26; 1987, ch. 323, § 8; 1999, ch. 278, § 4; 2003, ch. 244, § 4; 2009, ch. 278, § 6.

ANNOTATIONS

Recompilations. — Former 3-8-18 NMSA 1978, relating to contest of elections, was recompiled as 3-8-62 NMSA 1978 by Laws 1985, ch. 208, § 70.

The 2009 amendment, effective June 19, 2009, deleted former Subsection A, which provided the use of paper ballots in lieu of voting machines; in Subsection A(2), after "order", deleted "ballot faces" and added "ballots and" and after "machine ballots", deleted "and emergency paper ballots, if voting machine are to be used"; and in Subsection B, deleted "absentee ballots, emergency paper ballots, ballot faces for the machines" and added "Ballots".

The 2003 amendment, effective June 20, 2003, deleted "and early voting material" at the end of Subsection B(1) and deleted "early voting materials" following "paper ballots" in Subsection C.

The 1999 amendment, effective June 18, 1999, inserted "and early voting materials" in Subsection B(1), substituted "order ballot faces" for "order printer packs, voting machine

strips" in Subsection B(2), and substituted "early voting materials, ballot faces for the machines" for "printer packs, voting machine strips" in Subsection C.

The 1987 amendment, effective June 19, 1987, in Subsections A and B substituted "fifty-third day" for "forty-eighth day" and in Subsection C substituted "thirty-five days" for "twenty-nine days."

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections §§ 155.

3-8-19. Precinct boards; appointments; compensation.

A. In order to qualify as a member of a precinct board, a person shall:

(1) be a resident qualified elector of the municipality and a resident of the precinct or consolidated precinct within the jurisdiction of the precinct board. However, if there is a shortage or absence of precinct board members in certain precincts or consolidated precincts, a person who is a resident qualified elector of the municipality and a nonresident of the precinct or consolidated precinct may be appointed;

(2) be able to read and write;

(3) have the necessary capacity to carry out the functions of the office with acceptable skill and dispatch; and

(4) execute the precinct board member's oath of office.

B. No person shall be qualified for appointment or service on a precinct board if that person is a:

(1) candidate for any municipal office;

(2) spouse, parent, child, brother or sister of any candidate to be voted for at the election;

(3) sheriff, deputy sheriff, marshal, deputy marshal or state or municipal policeman;

(4) spouse, parent, child, brother or sister of the municipal clerk or any deputy or assistant municipal clerk; or

(5) municipal clerk or deputy or assistant municipal clerk.

C. Not less than thirty-five days before the day of the municipal election, the governing body shall appoint a precinct board for each polling place. The precinct board shall consist of no fewer than three members. Each board shall have no fewer than three election judges and no fewer than two election clerks. Election judges may also be

appointed as election clerks. Not less than two alternates shall be appointed who shall become either election judges or election clerks or both as the need arises. On the thirty-fifth day before the day of the election, the municipal clerk shall post and maintain in the clerk's office until the day of the election the names of the election judges, election clerks and alternates for each polling place. The posting of the names of the election judges, election clerks and alternates for each polling place may be proved by an affidavit signed by the municipal clerk. The municipal clerk shall, by mail, notify each person appointed, request a written acceptance and keep a record of all notifications and acceptances. The notice shall state the date by which the person must accept the appointment. If any person appointed to a precinct board, or as an alternate, fails to accept an appointment within seven days after the notice is sent, the position shall be deemed vacant and the position shall be filled as provided in this section.

D. The county clerk shall furnish upon request of the municipal clerk the names and addresses of qualified precinct board members for general elections, and such precinct board members may be appointed as precinct board members for municipal elections.

E. The municipal clerk shall appoint a qualified elector as a precinct board member to fill any vacancy that may occur between the day when the list of precinct board members is posted and the day of the election. If a vacancy occurs on the day of the election, the precinct board members present at the polling place may appoint by a majority vote a qualified elector to fill the vacancy. If the vacancy was filled after the date of the election school, that person need not attend an election school in order to validly serve on the precinct board.

F. Members of a precinct board shall be compensated for their services at the rate provided in Section 1-2-16 NMSA 1978 for the day of the election. The governing body may authorize payment to alternates who are required by the precinct board or municipal clerk to stand by on election day at the rate of not more than twenty dollars ($20.00) for the day of the election.

G. Compensation shall be paid within thirty days following the date of election.

History: 1953 Comp., § 14-8-10, enacted by Laws 1971, ch. 306, § 8; 1978 Comp., § 3-8-11, recompiled as 1978 Comp., § 3-8-19 by Laws 1985, ch. 208, § 27; 1987, ch. 323, § 9; 1997, ch. 266, § 8; 1999, ch. 278, § 5.

ANNOTATIONS

Cross references. — For definition of "qualified elector", *see* 3-1-2 NMSA 1978.

Repeals. — Laws 1985, ch. 208, § 125 repealed former 3-8-19 NMSA 1978, as enacted by Laws 1965, ch. 300, relating to uniform procedure in the Municipal Code. For present comparable provisions, *see* 3-8-80 NMSA 1978.

Repeals and reenactments. — Laws 1971, ch. 306, § 8, repealed former 14-8-10, 1953 Comp., relating to the appointment and duties of election officials, and enacted a new 14-8-10, 1953 Comp.

The 1999 amendment, effective June 18, 1999, deleted "and no more than five" preceding "members" in the second sentence of Subsection C.

The 1997 amendment, effective June 20, 1997, in Subsection C, substituted the language beginning "no fewer than" for "three election judges, two of whom may also be appointed as election clerks; two election clerks; and" at the end of the second sentence, added the third and fourth sentences, and inserted "shall be appointed" in the fourth sentence.

The 1987 amendment, effective June 19, 1987, in Subsection A, in Paragraph (1) inserted "qualified elector" in each of the first and second sentences; in Subsection B inserted Paragraphs (4) and (5); in Subsection C substituted the present first sentence for the first sentence as set out in the main pamphlet, inserted the present second sentence and in the seventh sentence substituted "seven days" for "two weeks"; in Subsection F substituted "provided in Section 1-2-16 NMSA 1978" for "of not less than forty dollars ($40.00) nor more than sixty dollars ($60.00)" in the first sentence; and made minor changes in language throughout the section.

The 1985 amendment recompiled former 3-8-11 NMSA 1978 as present 3-8-19 NMSA 1978; added "compensation" to the section heading; added Subsections A, B, F, and G; redesignated former Subsections A, B, and C as present Subsections C, D, and E; in present Subsection C, substituted "thirty-five days" for "ten days" and "three election judges, two of whom may also serve as election clerks, but if the election judges are not appointed as election clerks, then two election clerks, and in all cases not less than two alternates" for "one election judge and not less than two election clerks" in the first sentence, substituted "thirty-fifth day" for "tenth day", and "judges, election clerks, and alternates" for "judges and election clerks" in the second sentence and in the third sentence, and added the fourth, fifth, and sixth sentences; and in present Subsection E, substituted "The municipal clerk" for "The mayor, in the case of a mayor-council municipality, and the city manager in the case of the commission-manager municipality" in the first sentence and the last sentence.

Number of judges and clerks at each polling place. — There must be at least one election judge and at least two election clerks (now 3 election judges) at each polling place; there may be as many more as the governing body of the municipality deems necessary and advisable in order to conduct the election as properly and expeditiously as possible. 1966 Op. Att'y Gen. No. 66-03.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 157, 158.

29 C.J.S. Elections § 55 et seq.

3-8-20. Precinct board; duties.

A. The precinct board shall:

(1) conduct the municipal election in the manner provided for the conduct of elections in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]; and

(2) at the close of the polls, count the votes cast on each question, if any, and for each candidate, if any, and perform all duties as required by the Municipal Election Code.

B. A member of the precinct board shall not disclose the name of any candidate for whom any voter has voted.

C. No person shall serve on a precinct board unless that person has attended election training conducted by the municipal clerk in the previous four years.

History: 1953 Comp., § 14-8-10.1, enacted by Laws 1971, ch. 306, § 9; 1978 Comp., § 3-8-12, recompiled as 1978 Comp., § 3-8-20 by Laws 1985, ch. 208, § 28; 2009, ch. 278, § 7.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection C, after "election", deleted "school" and added "training".

The 1985 amendment recompiled former 3-8-12 NMSA 1978 as 3-8-20 NMSA 1978, designated the previously undesignated introductory paragraph as the introductory paragraph in Subsection A and redesignated former Subsections A and B as present Paragraphs (1) and (2) in Subsection A, deleting "On the day of the election" from the beginning of the introductory paragraph, substituting "elections in the Municipal Election Code" for "general elections in the Election Code" in Paragraph (1) and inserting "if any" twice and substituting "perform all duties as required by the Municipal Election Code" for "return all election supplies to the municipal clerk who shall preserve the poll-books and tally books until after the next regular municipal election" in Paragraph (2), and added Subsections B and C.

3-8-21. Municipal clerk; precinct board; election training.

A. The municipal clerk shall conduct or cause to be conducted election training not less than five days prior to the election. All major details of the conduct of elections shall be covered at the training, with special emphasis given to recent changes in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. The training session shall be open to the public, with notice published not less than four days prior to the training.

B. Notice of the training shall be mailed to each precinct board member and alternate not less than seven days prior to the training.

C. Two or more municipalities may jointly conduct election training.

D. The governing body may authorize payment of mileage to precinct board members who attend election training.

History: 1978 Comp., § 3-8-21, enacted by Laws 1985, ch. 208, § 29; 1987, ch. 323, § 10; 2009, ch. 278, § 8.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, changed "school" to "training"; in Subsection A, in the last sentence, after "The", deleted "school of instruction" and added "training session".

The 1987 amendment, effective June 19, 1987, added present Subsections C and D.

3-8-22. Conduct of election; eligibility for assistance; oral assistance for language minority voters; aid or assistance to voter marking ballot; who may assist voter; type of assistance.

A. A voter may request assistance in voting only if the voter is:

(1) visually impaired;

(2) a person with a physical disability;

(3) unable to read or write;

(4) a member of a language minority who is unable to read well enough to exercise the elective franchise; or

(5) not able to operate a voting machine or mark a ballot without assistance.

B. When a voter who is eligible for assistance requires assistance in marking a ballot or recording a vote on a voting machine, the voter shall announce this fact before receiving the ballot or before entering the voting machine.

C. The voter's request for assistance shall be noted next to the voter's name in the signature roster and shall be initialed by the presiding judge.

D. After noting the voter's request for assistance in the signature roster, the voter shall be allowed to receive assistance in marking a ballot or recording a vote on a voting

machine. The name of the person providing assistance to a voter pursuant to this section shall be recorded on the signature roster.

E. A person who swears falsely in order to secure assistance with voting is guilty of perjury.

F. If a voter who has requested assistance in marking a ballot has a visual impairment or physical disability, is unable to read or write or is a member of a language minority who has requested assistance, the voter may be accompanied into the voting machine by a person of the voter's own choice; provided that the person shall not be the voter's employer, an agent of that employer, an officer or agent of the voter's union or a candidate whose name appears on the ballot in the election. A member of the precinct board may assist a voter, if requested to do so by that voter.

G. A person who accompanies the voter into the voting booth or voting machine may assist the voter in marking a ballot or recording a vote on the voting machine. A member of the precinct board who assists a voter shall not disclose the name of any candidate or questions for whom any voter voted.

H. Oral assistance shall be made available to assist language minority voters who cannot read sufficiently well to exercise the elective franchise. As used in this subsection, "language minority" means a person who is Native American or of Spanish heritage, and "inability to read well enough to exercise the elective franchise" means inability to read the languages in which the ballot is printed or the inability to understand instructions for operating the voting machine.

I. The position of election translator is created. The election translator shall be an additional member of the regular precinct board, unless oral assistance to language minorities can otherwise be rendered by a member of the regular precinct board. The election translator shall be appointed by the municipal clerk in the same manner as other precinct board members are appointed, except that the municipal clerk in appointing Native American election translators shall seek the advice of the pueblo or tribal officials residing in that municipality. The election translator shall take the oath required of precinct board members and shall meet the same qualifications as other precinct board members.

J. Each municipal clerk shall compile and maintain a list of standby election translators to serve in those precincts on election day when the appointed election translator is unavailable for such service.

History: 1978 Comp., § 3-8-22, enacted by Laws 1985, ch. 208, § 30; 2001, ch. 197, § 2; 2007, ch. 46, § 2; 2009, ch. 278, § 9.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, added Subsection A(5), in Subsection B, in two places before "ballot", deleted "paper" and after "announce this fact", deleted "in an audible tone"; in Subsection D, added the last sentence; in Subsection G, after "assist the voter in marking", changed "and folding a paper ballot" to "a ballot"; and in Subsection H, at the beginning of the last sentence, added "As used in this subsection".

The 2007 amendment, effective June 15, 2007, amended Subsections A and F to change "blind" to "visual impairment".

The 2001 amendment, effective July 1, 2001, rewrote the section heading which read "Oral assistance for language minority voters" and added present Subsections A to G, redesignating former Subsections A to C as present Subsections H to J.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 424 et seq.

29 C.J.S. Elections § 208.

3-8-23. Messengers; compensation.

A. The municipal clerk may appoint messengers to deliver ballot boxes, signature rosters, keys, election supplies and other materials pertaining to the election.

B. Messengers shall be paid mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] each way over the usually traveled route. The mileage shall be paid within thirty days following the date of election.

History: 1978 Comp., § 3-8-23, enacted by Laws 1985, ch. 208, § 31.

3-8-24. Uniform procedure.

The provisions of 3-8-1 NMSA 1978 through 3-8-23 NMSA 1978 relate to overall election matters and pre-election day matters, and shall apply to all municipal elections except as otherwise specified.

History: 1978 Comp., § 3-8-24, enacted by Laws 1985, ch. 208, § 32.

3-8-25. Regular municipal elections; time of holding election.

Regular municipal elections for the purpose of electing municipal officers and considering any other question placed on the ballot by the governing body shall be held on the first Tuesday in March of each even-numbered year; provided, that any municipality which has adopted a charter shall elect its municipal officers at the time provided for in the charter.

History: 1953 Comp., § 14-8-3, enacted by Laws 1965, ch. 300; 1978 Comp., § 3-8-3, recompiled as 1978 Comp., § 3-8-25 by Laws 1985, ch. 208, § 33.

ANNOTATIONS

The 1985 amendment recompiled former 3-8-3 NMSA 1978 as present 3-8-25 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 414.

Violation of law as regards time for keeping polls open as affecting election results, 66 A.L.R. 1159.

Validity of public election as affected by fact that it was held at time other than that fixed by law, 121 A.L.R. 987.

29 C.J.S. Elections §§ 76, 77; 62 C.J.S. Municipal Corporations §§ 468 to 475.

3-8-26. Regular municipal election; publication of resolution; choice of ballots or voting machines.

A. Not earlier than one hundred twelve days or later than eighty-four days prior to the date of a regular municipal election, the governing body shall adopt an election resolution calling for the regular municipal election. The election resolution shall be published in both English and Spanish and once within fifteen days of adoption and again not less than sixty days prior to the election or more than seventy-five days prior to the election, as provided in Subsection J of Section 3-1-2 NMSA 1978. In addition, the election resolution shall be posted in the office of the municipal clerk within twenty-four hours from the date of adoption until the date of the election. For information purposes and coordination, one copy of the election resolution shall be mailed within fifteen days of adoption to the secretary of state and the county clerk of the county in which the municipality is located.

B. The election resolution shall state the date when the election will be held, the offices to be filled, the questions to be submitted to the voters, the date and time of the closing of the registration books by the county clerk as required by law, the date and time for filing the declaration of candidacy, the location of polling places, the date and time for absentee voting and the consolidation of precincts, if any, notwithstanding any conflicting provisions of Section 1-3-5 NMSA 1978. Any question to be submitted to the voters in addition to the election of municipal officers may be included in the election resolution, but such inclusion shall not substitute for any additional or separate resolution or publication thereof as required by law.

C. In those municipalities allowed by law to use paper ballots, the election resolution shall also state whether paper ballots or voting machines will be used in the election.

History: 1953 Comp., § 14-8-4, enacted by Laws 1965, ch. 300; 1967, ch. 146, § 3; 1971, ch. 306, § 3; 1977, ch. 29, § 1; 1978 Comp., § 3-8-4, recompiled as 1978 Comp.,

§ 3-8-26 by Laws 1985, ch. 208, § 34; 1997, ch. 266, § 9; 2001, ch. 197, § 3; 2003, ch. 244, § 5.

ANNOTATIONS

Cross references. — For definition of "publish" or "publication," *see* 3-1-2 NMSA 1978.

The 2003 amendment, effective June 20, 2003, deleted "the date and time for early voting" following "time for absentee voting" in Subsection B.

The 2001 amendment, effective July 1, 2001, inserted "the date and time for absentee voting, the date and time for early voting" following "the location of polling places" in Subsection B.

The 1997 amendment, effective June 20, 1997, substituted "publication of resolution" for "notice" in the section heading and, in Subsection A, substituted "or" for "nor" in two places, inserted "in both English and Spanish" in the second sentence, inserted "within twenty-four hours" in the third sentence, and made a stylistic change.

The 1985 amendment recompiled former 3-8-4 NMSA 1978 as present 3-8-26 NMSA 1978, added "choice of ballots or voting machines" to the section heading, deleted the former first sentence which read, "Not more than sixty days nor less than forty-five days before the date of a regular municipal election, the governing body of a municipality shall give notice of the election by publishing the resolution", added Subsection A, designated the former second sentence as Subsection B, deleting "except a question of creating a debt of the municipality, which questions shall be published as provided in Section 3-30-6 NMSA 1978" following "to the voters", substituting "law, the date" for "law and the final date", and adding "the location of polling places, and the consolidation of precincts, if any notwithstanding any conflicting provisions of Section 1-3-5 NMSA 1978" in the first sentence and adding the second sentence, deleted the former third sentence which read, "The resolution shall be published twice, not less than seven days apart", and added Subsection C.

Municipal questions. — A municipality has no legal authority to submit questions to voters of the municipality on a general election ballot. A municipality may submit a question to voters of the municipality on a municipal ballot in a municipal election held on the same day as a general election. 2012 Op. Att'y Gen. No. 12-05.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections §§ 383, 384.

29 C.J.S. Elections §§ 66, 67, 71 to 75.

3-8-27. Regular municipal election; declaration of candidacy; withdrawing name from ballot; penalty for false statement.

A. Candidate filing day shall be between the hours of 8:00 a.m. and 5:00 p.m. on the fifty-sixth day preceding the day of election. On candidate filing day, a candidate for municipal office shall personally appear at the office of the municipal clerk to file all documents required by law in order to cause a person to be certified as a candidate. Alternatively, on candidate filing day, a person acting solely on the candidate's behalf, by virtue of a written affidavit of authorization signed by the candidate, notarized and presented to the municipal clerk by such person, shall file in the office of the municipal clerk all documents required by law in order to cause a person to be certified as a candidate.

B. On candidate filing day, each candidate shall cause to be filed in the office of the municipal clerk a declaration of candidacy; a certified copy of the candidate's current affidavit of voter registration that is on file with the county clerk and that has been certified by the office of the county clerk on a date not earlier than the adoption of the election resolution; and, in a home rule or charter municipality that requires a nominating petition to be submitted by a candidate for municipal office, a nominating petition that has the required number of signatures.

C. All candidates shall cause their affidavits of voter registration to show their address as a street address or rural route number and not as a post office box.

D. The municipal clerk shall provide a form for the declaration of candidacy and shall accept only those declarations of candidacy that contain:

(1) the identical name and the identical resident street address as shown on the affidavit of registration of the candidate submitted with the declaration of candidacy;

(2) the office and term to which the candidate seeks election and district designation, if appropriate;

(3) a statement that the candidate is eligible and legally qualified to hold the office for which the candidate is filing;

(4) a statement that the candidate has not been convicted of a felony or, if the candidate has been convicted of a felony, a statement that the candidate's elective franchise has been restored and that the candidate has been granted a pardon or a certificate by the governor restoring the candidate's full rights of citizenship;

(5) a statement that the candidate or the candidate's authorized representative shall contact the office of the municipal clerk during normal business hours on the fifty-fourth day before the election to ascertain whether the municipal clerk has certified the declaration of candidacy as valid;

(6) the contact information for how the candidate or the candidate's authorized representative can be reached for purposes of giving notice;

(7) a statement to the effect that the declaration of candidacy is an affidavit under oath and that any false statement knowingly made in the declaration of candidacy constitutes a fourth degree felony under the laws of New Mexico; and

(8) the notarized signature of the candidate on the declaration of candidacy.

E. The municipal clerk shall not accept a declaration of candidacy for more than one municipal elected office per candidate, so that each candidate declares for only one municipal elected office.

F. Once filed, the declaration of candidacy is a public record.

G. Not later than the fifty-fifth day preceding the day of the election, the municipal clerk shall determine whether the declaration of candidacy shall be certified. In order to be certified as a candidate, the documents submitted to the municipal clerk shall prove that the individual is a qualified elector as defined in Subsection K of Section 3-1-2 NMSA 1978 and, if appropriate, that the individual resides in and is registered to vote in the municipal election district from which the individual seeks election. In the event that an individual fails to submit to the municipal clerk on candidate filing day the documents listed in Subsection B of this section in the form and with the contents as required by this section, the municipal clerk shall not certify that individual as a candidate for municipal office.

H. The municipal clerk shall post in the clerk's office a list of the names of those individuals who have been certified as candidates. The municipal clerk shall also post in the clerk's office the names of those individuals who have not been certified as candidates, along with the reasons therefor. The posting shall occur no later than 9:00 a.m. on the fifty-fourth day preceding the election.

I. Not later than 5:00 p.m. on the forty-ninth day before the day of the election, a candidate for municipal office may file an affidavit on the form provided by the municipal clerk in the office of the municipal clerk stating that the candidate is no longer a candidate for municipal office. A municipal clerk shall not place on the ballot the name of any person who has filed an affidavit as provided in this subsection.

J. Not later than 10:00 a.m. on the forty-eighth day preceding the election, the municipal clerk shall confirm with the printer on contract with the municipality and the county clerk the names of the candidates and their position on the ballot.

K. Any person knowingly making a false statement in the declaration of candidacy is guilty of a fourth degree felony.

L. No person shall be elected to municipal office as a write-in candidate unless that person has been certified as a declared write-in candidate by the municipal clerk, as follows:

(1) write-in candidates filing day shall be on the forty-ninth day preceding the election between the hours of 8:00 a.m. and 5:00 p.m.;

(2) write-in candidates shall file a declaration of write-in candidacy with the same documents and satisfy the same requirements as established in this section for candidates;

(3) the municipal clerk shall, on the forty-eighth day preceding the election, certify those individuals who have satisfied the requirements of this section as declared write-in candidates;

(4) not later than 9:00 a.m. on the forty-seventh day preceding the election, the municipal clerk shall, in the office of the municipal clerk:

(a) post the names of those individuals who have been certified as declared write-in candidates; and

(b) post the names of those individuals who have not been certified as declared write-in candidates along with the reasons; and

(5) not later than 5:00 p.m. on the thirty-fifth day preceding the election, a declared write-in candidate may file an affidavit that the candidate is no longer a write-in candidate for municipal office. In the event that a declared write-in candidate files an affidavit of withdrawal, votes for that candidate shall not be counted and canvassed.

History: 1953 Comp., § 14-8-8, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 6; 1978 Comp., § 3-8-8, recompiled as 1978 Comp., § 3-8-27 by Laws 1985, ch. 208, § 35; 1987, ch. 323, § 11; 1997, ch. 266, § 10; 2001, ch. 197, § 4; 2009, ch. 278, § 10.

ANNOTATIONS

Cross references. — For sentencing for felonies, *see* 31-18-15 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in Subsection D(4), after "has been restored", added the remainder of the sentence; in Subsection D(5), after "authorized representative shall", deleted "personally appear at" and added "contact"; in Subsection D(6), at the beginning of the sentence, deleted "a telephone number at which" and added "the contact information for how"; and after "purposes of giving", deleted "telephone"; and in Subsection L(1), after "shall be on the", deleted "forty-second" and added "forty-ninth"; in Subsection L(3), after "shall, on the", deleted "forty-first" and added "forty-eighth"; in Subsection L(4), after "on the", deleted "fortieth" and added "forty-seventh"; and in Subsection L(5), after "on the", deleted "twenty-eighth" and added "thirty-fifth".

The 2001 amendment, effective July 1, 2001, at the end of Subsection B, inserted language beginning "and, in a home rule or charter municipality"; and in Paragraph D(7) substituted "in the declaration of candidacy" for "therein".

The 1997 amendment, effective June 20, 1997, deleted item designations "(1)" and "(2)" and deleted item (3), relating to filing of the triplicate copy of the candidates current affidavit of registration in Subsection B and substituted "shall prove" for "must prove" in the second sentence of Subsection G.

The 1987 amendment, effective June 19, 1987, in Subsection A, rewrote the former first sentence into the present first and second sentences, inserted at the beginning of the first sentence "Candidate filing day shall be," inserted "on candidate filing day" in the second and in the third sentences, at the end of both the second and third sentences substituted "all documents required by law in order to cause a person to be certified as a candidate" for "their duly executed declaration of candidacy," and designated the former third sentence as set out in the main pamphlet as the present Subsection D; inserted Subsections B and C; in Subsection D, rewrote Paragraph (1) and in Paragraph (2) added at the end "and district designation, if appropriate," in Paragraph (8) substituted "on the declaration of candidacy" for "seeking that particular office"; designated the former Subsection B as Subsection E; inserted Subsection F; designated the former Subsections C through E as Subsections G through I; in Subsection G, substituted the first sentence for the first sentence as set out in the main pamphlet and added the present second and third sentences; in Subsection H, substituted "individuals who have been certified as candidates" for "candidates whose declarations of candidacy are determined to be valid" in both the first and second sentences; in Subsection I, substituted "forty-ninth day" for "thirty-fifth day" near the beginning; inserted Subsection J; designated the former Subsection F as Subsection K; added Subsection L; and made minor changes in language and punctuation throughout the section.

The 1985 amendment recompiled former 3-8-8 NMSA 1978 as present 3-8-27 NMSA 1978, and rewrote the section to the extent that a detailed comparison is impracticable.

Filing fee in nonhomerule municipality. — Without legislative authorization, a nonhomerule municipality may not adopt an ordinance requiring candidates to pay a filing fee. 1980 Op. Att'y Gen. No. 80-28.

Filing fees for indigent candidates. — In the absence of reasonable alternative means of ballot access, a state may not, consistent with constitutional standards, require from an indigent candidate filing fees he cannot pay. 1980 Op. Att'y Gen. No. 80-28.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Mandatory or directory character of statutory provision as to time of filing candidate's application or certification of nomination before primary or election, 72 A.L.R. 290.

Right to seek nomination, or to become candidate, for more than one office in the same election, 94 A.L.R.2d 557.

Elections: validity of state or local legislative ban on write-in votes, 69 A.L.R.4th 948.

3-8-28. Regular municipal election; candidate for office.

Any qualified elector who complies with Section 3-8-27 NMSA 1978 may be a candidate or write-in candidate for municipal office in the municipality in which he resides.

History: 1953 Comp., § 14-8-6, enacted by Laws 1965, ch. 300; 1978 Comp., § 3-8-6, recompiled as 1978 Comp., § 3-8-28 by Laws 1985, ch. 208, § 36; 1987, ch. 323, § 12.

ANNOTATIONS

Cross references. — For definition of "qualified elector", *see* 3-1-2 NMSA 1978.

For residence of public officers, *see* N.M. Const., art. V, § 13.

For qualifications for holding office, *see* N.M. Const., art. VII, § 2.

The 1987 amendment, effective June 19, 1987, substituted "may be a candidate or write-in candidate" for "or is a write-in candidate may be a candidate" and made a minor word change.

The 1985 amendment recompiled former 3-8-6 NMSA 1978 as present 3-8-28 NMSA 1978, added "Regular municipal" at the beginning of the catchline and inserted "who complies with 3-8-27 NMSA 1978 or is a write-in candidate."

Qualified elector. — An individual who lives outside the municipality but operates a business within the municipal limits and uses the address of said business as his voting address is not a qualified elector within the meaning of this section. 1972 Op. Att'y Gen. No. 72-06.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 336 et seq.; 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 247.

Validity of requirement that candidate or public officer have been resident of governmental unit for specified period, 65 A.L.R.3d 1048.

29 C.J.S. Elections §§ 130 to 134; 62 C.J.S. Municipal Corporations § 479.

3-8-29. Regular municipal election; ballots.

A. At 5:01 p.m. on the fifty-fourth day preceding the election, in the presence of the certified candidates or their authorized representatives who desire to be present, the municipal clerk shall administer an impartial and fair drawing by lot to determine the order in which the candidates for each office shall be listed on the ballot. If a candidate or an authorized representative fails to appear, then the municipal clerk shall draw a lot for the absent candidate.

B. The ballot shall first set forth candidates running for executive office (mayor), if any; then candidates running for legislative office (councilors, trustees, commissioners), if any; and finally candidates running for judicial office (municipal judge), if any. For each office to be filled, the ballot shall contain:

(1) the office to be filled and its term;

(2) the names of the candidates running for office exactly as shown on the candidate's declaration of candidacy and in the order determined by the drawing by lot;

(3) a space for a qualified elector to write in the name of one declared write-in candidate, if any, per position to be filled; and

(4) any necessary reference to districts, positions or other similar official designations for office.

C. The only reference to a candidate for office to be placed on a ballot is the candidate's name as it appears on the candidate's declaration of candidacy. No ticket designations or party affiliations shall be shown on the ballot. Municipal elections shall be nonpartisan.

D. If it appears to the municipal clerk that the name of two or more candidates for any office are the same or so similar as to tend to confuse the voter as to the candidates' identities, the occupation and address of each such candidate shall be printed immediately under the candidate's name on the ballot.

E. The municipal clerk shall place on the ballot any question in the order designated by the governing body.

History: 1978 Comp., § 3-8-29, enacted by Laws 1985, ch. 208, § 37; 1987, ch. 323, § 13; 1999, ch. 278, § 6.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, substituted "one declared write-in candidate, if any" for "one candidate" in Subsection B(3).

The 1987 amendment, effective June 19, 1987, in Subsection A, near the beginning of the first sentence substituted "fifty-fourth day" for "forty-ninth day," "certified candidates"

for "candidates" and "municipal clerk" for "city clerk"; in Subsection B, in Paragraph (2) inserted "exactly as shown on the candidate's declaration of candidacy and" following "names of the candidates running for office"; in Subsection C, deleted "affidavit of registration and" preceding "declaration of candidacy" at the end of the first sentence and added the second sentence; and, near the beginning of Subsection D, substituted "municipal clerk" for "clerk".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 394 et seq.

29 C.J.S. Elections §§ 153 to 173(4).

3-8-30. Regular municipal election; publication of names of candidates and other election data.

The municipal clerk shall publish the names of the candidates for each office to be filled, the order their names will appear on the ballot, the location and address of the polling place for each precinct and the names of all precinct board members and alternates and the precincts to which they are appointed. If districted, the municipal clerk shall also publish the precincts or portion of precincts in each election district. Publication shall be once each week for two successive weeks with the first publication not more than twenty-eight days prior to the day of the election and the last publication not less than two days before the day of election. This material shall also be posted in the office of the municipal clerk from the day it is first published until the day of the election.

History: 1953 Comp., § 14-8-9, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 7; 1978 Comp., § 3-8-9, recompiled as 1978 Comp., § 3-8-30 by Laws 1985, ch. 208, § 38; 1987, ch. 323, § 14.

ANNOTATIONS

Cross references. — For definition of "publish" or "publication," *see* 3-1-2 NMSA 1978.

The 1987 amendment, effective June 19, 1987, inserted the present second sentence and in the third sentence substituted "twenty-eight days" for "twenty-one days" and made a minor language change in the first sentence.

The 1985 amendment recompiled former 3-8-9 NMSA 1978 as present 3-8-30 NMSA 1978, deleted "with any ticket designation" following "the order their names" near the beginning of the first sentence, substituted "for each precinct, the names of all precinct board members and alternates" for "in each precinct, the names of all precinct board members" near the end of the first sentence, deleted "and" following "two successive weeks" and inserted "with the first publication not more than twenty-one days prior to the day of the election and the last publication" in the second sentence, and added the last sentence.

3-8-31. Regular municipal election; challengers; watchers; observers.

A. Upon petition filed with the municipal clerk by an unopposed candidate or by both candidates for a municipal office, if only two candidates are running for the office, or by a majority of the candidates for a municipal office, if more than two candidates are running for the office, those candidates may:

(1) appoint one person as a challenger and one alternate for each polling place in the municipal election; and

(2) appoint one person as a watcher and one alternate for each polling place in the municipal election.

B. The petition appointing a challenger and watcher and alternates shall be filed not later than 5:00 p.m. on the fourth day preceding the election.

C. Upon receipt of the petition, the municipal clerk shall verify whether the challengers, watchers and alternates are properly qualified pursuant to Subsection D of this section. Not later than 3:00 p.m. on the day prior to the election, the municipal clerk shall prepare official identification badges for those challengers, watchers and alternates who are properly qualified. Such identification badges shall be signed by the municipal clerk and contain the name of the challenger, watcher or alternate and state that person's title and the polling place where such person serves. Challengers, watchers and alternates shall be responsible to obtain their identification badges from the office of the municipal clerk prior to the opening of the polls on election day.

D. A challenger, watcher or alternate shall function only at a polling place that serves the precinct within which such challenger, watcher or alternate resides. No sheriff, deputy sheriff, marshal, deputy marshal, municipal or state police officer, candidate or any person who is a spouse, parent, child, brother or sister of a candidate to be voted for at the election or any municipal clerk, deputy clerk or assistant shall serve as a challenger, watcher or alternate. No person shall serve as a challenger or watcher unless that person is a qualified elector of the municipality.

E. Upon presentation of their official identification badges to the precinct board, challengers, watchers and alternates shall be permitted to be present at the polling place from the time the precinct board convenes at the polling place until the completion of the counting and tallying of the ballots after the polls close.

F. Challengers, watchers and alternates shall wear their official identification badges at all times while they are present in the polling place. They shall not wear any other form of identification or any pins or other identification associated with any candidate, group of candidates or any question presented at the election.

G. Challengers, watchers and alternates shall not:

(1) be permitted to perform any duty of a precinct board member;

(2) handle the ballots, signature rosters, absentee voter lists or voting machines;

(3) take any part in the tallying or counting of the ballots; or

(4) interfere with the orderly conduct of the election.

H. If a challenger, watcher or alternate is wearing his official identification badge, it is a petty misdemeanor to:

(1) deny him the right to be present at the polling place;

(2) deny him the right to examine voting machines as authorized by law;

(3) deny a challenger or alternate challenger the right to challenge voters pursuant to Section 3-8-43 NMSA 1978 and inspect the signature rosters; or

(4) deny him the right to witness the counting and tallying of ballots.

I. A challenger or alternate challenger, for the purposes of interposing challenges pursuant to Section 3-8-43 NMSA 1978, shall be permitted to:

(1) inspect the voter registration list;

(2) inspect the signature rosters or absentee voter lists to determine whether entries are being made in accordance with law;

(3) examine each voting machine before the polls are opened to compare the number on the metal seal and the numbers on the counters with the numbers on the key envelope, to see that all ballot labels are in their proper places and to see that the voting machine is ready for voting at the opening of the polls;

(4) make written memoranda of any action or omission on the part of any member of the precinct board and preserve such memoranda for future use; and

(5) witness the counting and tallying of the ballots.

J. A watcher or alternate watcher shall be permitted to:

(1) observe the election to assure that it is conducted in accordance with law;

(2) examine any voting machine used at the polling place in the same manner that challengers may examine voting machines;

(3) make written memoranda of any action or omission on the part of any member of the precinct board and preserve such memoranda for future use; and

(4) witness the counting and tallying of ballots.

K. The governing body of a municipality may, at its discretion, appoint one qualified elector for each polling place to serve as an observer of the election. The governing body shall make such appointment not later than 3:00 p.m. on the day before the election and shall notify the municipal clerk of such appointment. The municipal clerk shall issue identification badges to all observers. An observer shall have no powers other than to observe the conduct of the election and observe the counting and tallying and report to the governing body.

History: 1953 Comp., § 14-8-11, enacted by Laws 1971, ch. 306, § 10; 1978 Comp., § 3-8-13, recompiled as 1978 Comp., § 3-8-31 by Laws 1985, ch. 208, § 39; 1987, ch. 323, § 15; 1999, ch. 278, § 7.

ANNOTATIONS

Repeals and reenactments. — Laws 1971, ch. 306, § 10 repealed former 14-8-11, 1953 Comp., relating to appointment of election watchers, and enacted a new 14-8-11, 1953 Comp.

Cross references. — For sentencing for misdemeanors, *see* 31-19-1 NMSA 1978.

The 1999 amendment, effective June 18, 1999, inserted "observers" in the section heading.

The 1987 amendment, effective June 19, 1987, in Subsection A, inserted "by an unopposed candidate or" following "filed with the municipal clerk" near the beginning of the opening clause, in Paragraph (1) substituted "one person as a challenger" for "two persons as challengers," in Paragraph (2) substituted "one person as a watcher" for "two persons as watchers"; in Subsection B, substituted "a challenger and watcher and alternates" for "challengers and watchers"; in Subsection D, near the end of the second sentence inserted "or any municipal clerk, deputy clerk or assistant" following "to be voted for at the election" and added the last sentence; added Subsection K; and made minor changes in language and punctuation throughout the section.

The 1985 amendment recompiled former 3-8-13 NMSA 1978 as present 3-8-31 NMSA 1978, added "Regular municipal election" at the beginning of the catchline, designated and rewrote the formerly undesignated provisions of the former section as present Subsection A and added Subsections B through J.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 419.

29 C.J.S. Elections § 200.

3-8-32. Regular municipal election; plurality of votes cast required for election.

A. The candidate who receives a plurality of the votes cast for a designated office and term and who is qualified to hold office shall be elected to the office for the term designated.

B. If more than one candidate is to be elected to an office and term or the candidates are not running for a designated term, the candidates, in the number to be elected, receiving the largest pluralities shall be elected.

C. No candidate shall take office if the candidate has not remained legally qualified to hold office from the time the candidate was certified by the municipal clerk as a candidate or declared write-in candidate through the time at which the candidate is to take office.

History: 1953 Comp., § 14-8-13, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 13; 1978 Comp., § 3-8-15, recompiled as 1978 Comp., § 3-8-32 by Laws 1985, ch. 208, § 40; 1987, ch. 323, § 16.

ANNOTATIONS

The 1987 amendment, effective June 19, 1987, in Subsection C, substituted "candidate was certified by the municipal clerk as a candidate or declared write-in candidate" for "declaration of candidacy is accepted" in the middle and deleted the former last sentence which read "No write-in candidate shall take office unless the write-in candidate is legally qualified to hold office at the time at which the candidate is to take office."

The 1985 amendment recompiled former 3-8-15 NMSA 1978 as present 3-8-32 NMSA 1978, added "Regular municipal election" and deleted "or majority" following "plurality" in the catchline, substituted "a designated office and term and who is qualified to hold office shall be elected" for "a designated office or term shall be elected" in Subsection A, substituted "an office and term, or the candidates" for "an office and the candidates" in Subsection B, deleted former Subsection C which read, "All other questions submitted to the voters shall be decided by a majority of the voters voting on the question", and added present Subsection C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29 C.J.S. Elections §§ 241 to 244.

3-8-33. Regular municipal election; certificates of election; qualification of official; taking office.

A. After canvass and not later than 5:00 p.m. on the sixth day following the election, the municipal clerk shall prepare a certificate of election for each candidate elected and

shall post, in the office of the municipal clerk, the election results and the date, time and place where the oath of office will be administered.

B. Each candidate elected shall personally appear before the municipal clerk after canvass and after the municipal clerk has prepared the certificate of election and not later than 7:00 p.m. on the sixth day following the election. When the candidate appears, the municipal clerk shall deliver the certificate of election to the candidate and the candidate shall sign a written statement acknowledging receipt of the certificate of election and acknowledging that the candidate is legally qualified to hold office. The municipal clerk shall file a copy of the certificate of election and the written receipt and qualification statement in the official minute book of the municipality. Not later than 7:00 p.m. on the sixth day following the election, the municipal clerk or any other person allowed by law to administer oaths shall administer the oath of office to each candidate who has provided the written receipt and qualification statement to the municipal clerk. Upon taking the oath of office, the candidate shall be deemed to have taken office.

C. If a candidate fails to appear as required in Subsection B of this section, then the candidate or the candidate's authorized personal representative shall file an affidavit with the municipal clerk, not later than 5:00 p.m. on the tenth day following the election, stating that the candidate was unable to personally appear before the municipal clerk as required by law and the reasons therefor. If such an affidavit is timely filed, the candidate shall appear before the municipal clerk not later than 5:00 p.m. on the thirtieth day after the election to receive the election certificate, file the receipt and qualification statement and take the oath of office.

D. If a candidate fails to comply with Subsection B of this section, then the municipal clerk shall administer an impartial drawing by lot to determine which person shall remain in office until the candidate takes office or the office is declared vacant.

E. If a candidate fails to comply with Subsection B and Subsection C of this section, then the governing body shall declare by resolution that the office is vacant.

F. After each elected candidate has taken the oath of office, the municipal clerk shall mail, within five days thereof, a copy of the certificate of election to the county clerk and the secretary of state for information purposes.

G. An elected official shall remain in office as provided in this section until the official's successor has taken office as provided in this section.

H. The newly elected officials of the governing body who have taken office, the elected officials of the governing body whose terms have not expired and the elected officials of the governing body whose successors have not taken office shall meet not earlier than the sixth day after the election or later than the twenty-first day after the election for an organizational meeting. Such a meeting may be a special meeting or a regular meeting of the governing body.

History: 1978 Comp., § 3-8-33, enacted by Laws 1985, ch. 208, § 41; 1987, ch. 323, § 17; 1995, ch. 200, § 2.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, substituted "Not later than" for "At" in Subsection B, and substituted "qualification" for "qualifications" in Subsections B and C.

The 1987 amendment, effective June 19, 1987, in Subsection B, in the first sentence substituted "after canvass and after the clerk has prepared the certificate of election and not later than 7:00 p.m. on the sixth day following the election" for "at 7:00 p.m. on the sixth day following the election at the location specified in the posted notice" at the end, in the second sentence substituted "When the candidate appears" for "At that time" at the beginning, substituted "written statement" for "written receipt" preceding "acknowledging receipt" near the middle and deleted "the candidate shall sign a written statement" preceding "acknowledging that the candidate," in the third sentence substituted "and the written receipt and qualification statement" for "the receipt and the statement" following "the certificate of election," divided the former fourth sentence as set out in the main pamphlet into the present fourth and fifth sentences and rewrote the present fourth sentence; in Subsection C, in the first sentence, substituted "tenth day" for "eleventh day" and in the second sentence substituted "not later than 5:00 p.m. on the thirtieth day after the election" for "within ten days after the filing of the affidavit"; in Subsection E, deleted the former second and third sentences as set out in the main pamphlet; in Subsection F, deleted "received the certificate of election and" following "after each elected candidate has" at the beginning; and made minor language changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63C Am. Jur. 2d Public Officers and Employees § 124.

29 C.J.S. Elections § 240; 62 C.J.S. Municipal Corporations §§ 357, 358.

3-8-34. Uniform procedure.

The provisions of Section 3-8-25 NMSA 1978 through 3-8-33 NMSA 1978 shall apply to all regular municipal elections.

History: 1978 Comp., § 3-8-34, enacted by Laws 1985, ch. 208, § 42.

3-8-35. Special election; giving notice.

A. When a special election is called or required by law, an election resolution shall be adopted by the governing body calling for the election, and the election resolution shall be published once each week for four consecutive weeks. The first publication of the election resolution shall be between fifty and sixty days before the day of the election. The election resolution shall be posted in the office of the municipal clerk within

twenty-four hours from the date of adoption until the date of the election. For information purposes and coordination, one copy of the election resolution shall be mailed to the secretary of state and the county clerk of the county in which the municipality is located.

B. The election resolution shall state the purpose for calling the election, the date of the election, the date and time of the closing of the registration books by the county clerk as required by law, the questions to be submitted to the voters, the location of polling places, the consolidation of precincts, if any, and, regarding those municipalities authorized by law to use paper ballots in lieu of voting machines, if paper ballots or voting machines will be used in the election.

History: 1953 Comp., § 14-8-2, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 2; 1978 Comp., § 3-8-2, recompiled as 1978 Comp., § 3-8-35 by Laws 1985, ch. 208, § 43; 1999, ch. 278, § 8.

ANNOTATIONS

Cross references. — For definition of "publish" or "publication," *see* 3-1-2 NMSA 1978.

The 1999 amendment, effective June 18, 1999, inserted "within twenty-four hours" in the third sentence of Subsection A.

The 1985 amendment recompiled former 3-8-2 NMSA 1978 as present 3-8-35 NMSA 1978; in Subsection A, inserted "by law, an election resolution shall be adopted by the governing body calling for the election, and" following "required", deleted "notice of" following "governing body calling for the election, and", and inserted "resolution" preceding "shall be published" in the first sentence, substituted "The first publication of the election resolution shall be between fifty and sixty days" for "The first notice of the election shall be published between forty-five and sixty days" in the second sentence, and added the third and fourth sentences; and, in Subsection B, substituted "The election resolution" for "The notice", deleted "and" following "the date of the election" and added "the questions to be submitted to the voters, the location of polling places, the consolidation of precincts, if any, and regarding those municipalities authorized by law to use paper ballots in lieu of voting machines, if paper ballots or voting machines will be used in the election".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 385.

Statutory provision as to manner and time of notice of special election as mandatory or directory, 119 A.L.R. 661.

Validity of special election as affected by publication or dissemination of matter or information, extrinsic to the question as submitted, regarding nature or effect of the proposal, 122 A.L.R. 1142.

3-8-36. Special elections; publication of election data.

The municipal clerk shall publish the location or address of the polling place for each precinct or consolidated precinct and the names of all precinct board members and alternates and the precincts to which they are appointed. Publication shall be once each week for two successive weeks. The first publication shall be not more than twenty-eight days before the day of election and the last publication shall be not less than two days prior to the election. This material shall also be posted in the office of the municipal clerk from the day it is first published until the day of the election.

History: 1978 Comp., § 3-8-36, enacted by Laws 1985, ch. 208, § 44; 1987, ch. 323, § 18.

ANNOTATIONS

The 1987 amendment, effective June 19, 1987, in the third sentence substituted "twenty-eight" for "twenty-one" and made minor language and punctuation changes in the first and second sentences.

3-8-37. Uniform procedure.

The provisions of 3-8-35 NMSA 1978 through 3-8-36 NMSA 1978 shall apply to all municipal special elections.

History: 1978 Comp., § 3-8-37, enacted by Laws 1985, ch. 208, § 45.

3-8-37.1. Early voting; use of absentee voting procedures.

A. An early voter may vote in person on a voting machine beginning at 8:00 a.m. on the twentieth day before the election at the municipal clerk's office during regular hours and days of business until 5:00 p.m. on the Friday immediately before the date of the election.

B. Upon receipt of a properly completed application for an absentee ballot, the municipal clerk shall contact the county clerk to determine if the applicant is a qualified elector of the municipality.

C. If the application is accepted, the municipal clerk shall:

(1) mark the application accepted; and

(2) enter the required information in the absentee ballot register.

D. Upon acceptance of the application, the voter shall be allowed to vote.

E. The municipal clerk shall notify the county clerk, who shall make an appropriate designation on the signature roster next to the voter's name indicating that the voter has voted early.

History: Laws 2009, ch. 278, § 31.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 278 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

3-8-38. Conduct of election; swearing in; delivery of supplies; opening and closing of polls; precinct board attendance.

A. Not earlier than noon on the day before the election and not later than one hour prior to the opening of the polls, the municipal clerk shall swear in the presiding judge and cause the election supplies, voting machine keys, ballot box, ballot box keys and other election materials to be delivered to the presiding judge.

B. The presiding judge shall cause all materials delivered to him to be delivered to the polling place not later than 6:00 a.m. on election day.

C. The presiding judge shall swear in all precinct board members upon their arrival at the polling place.

D. Polls shall be opened at 7:00 a.m. on the date of the election and shall be closed at 7:00 p.m. on the same day.

E. Precinct board members shall present themselves at the polling place not later than 6:00 a.m. on the day of the election and shall remain at the polling place until all duties of the precinct board are properly completed.

History: 1978 Comp., § 3-8-38, enacted by Laws 1985, ch. 208, § 46; 1993, ch. 22, § 3; 1999, ch. 278, § 9.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, substituted "noon on the day" for "3:00 p.m. on the day" and inserted "ballot box keys" in Subsection A.

The 1993 amendment, effective June 18, 1993, substituted "6:00 a.m." for "7:00 a.m." in Subsections B and E and substituted "7:00 a.m." for "8:00 a.m." in Subsection D.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 394 et seq.

29 C.J.S. Elections § 190 et seq.

3-8-39. Conduct of election; maintenance of order; peace officer; memoranda of actions or omissions.

A. The election judges shall maintain order within the polling place.

B. Crowding or disruption of the voting process shall not be permitted in the polling place.

C. Admittance of voters to the polling place shall be controlled and limited to prevent crowding or rushing the precinct board in the performance of its duties.

D. The election judges may call upon any state or local law enforcement officer to assist in the maintenance of order in the polling place. When so requested, the law enforcement officer shall render assistance.

E. The election judges may request any state or local law enforcement officer to assist in the conduct of the election by standing outside the polling place entrance and controlling the admission of voters to the polling place.

F. Any state or local law enforcement officer may enter a polling place upon request of a precinct board member for the purpose of observing the conduct of the election.

G. No state or local law enforcement officer shall interfere in any way with a member of the precinct board, a person voting or the conduct of the election, except to assist in maintaining order and orderly control of access, when requested by an election judge.

H. Any state or local law enforcement officer violating Subsection G of this section is guilty of a petty misdemeanor and in addition to any other penalty provided by law shall be subject to dismissal and is ineligible for reinstatement.

I. Any member of the precinct board may make written memoranda and preserve them for future reference. The memoranda may concern any action or omission on the part of any person charged with a duty under the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

History: 1978 Comp., § 3-8-39, enacted by Laws 1985, ch. 208, § 47; 1995, ch. 200, § 3.

ANNOTATIONS

Cross references. — For sentencing for misdemeanors, *see* 31-19-1 NMSA 1978.

The 1995 amendment, effective June 16, 1995, substituted "violating Subsection G" for "violating Subsection B" in Subsection H.

Mandatory nature of statute. — This section does not require that law enforcement officers called to assist in establishing order in a polling place conduct an independent investigation of the premises or personally witness the polling place in disorder. The statute merely states that when called, an officer "shall render assistance". It is reasonably related to New Mexico's interests in protecting voters from intimidation at the polls and from preventing disruptions that might undermine the integrity of state elections. The statute is viewpoint neutral and does not depend on the nature of or the reason for the disruption a particular citizen's presence at the polling place might cause. Ramos v. Carbajal, 508 F. Supp.2nd 905 (10th Cir. 2007).

3-8-40. Conduct of election; persons not permitted to vote; certificate voting; fraudulent and double voting.

A. No person shall vote in a municipal special or regular election unless that person is a qualified elector and he has appeared to vote at the polling place in the precinct or consolidated precinct that encompasses his place of residence as shown on the signature roster.

B. Notwithstanding the provisions of Subsection A of this section, a person shall be permitted to vote even though that person's name cannot be found in the signature roster, provided:

(1) his residence is within the boundaries of the municipality and within the boundaries of the precinct and the district, if applicable, in which he offers to vote;

(2) his name is not listed as having been issued an absentee ballot;

(3) he presents a certificate bearing the seal and signature of the county clerk stating that his affidavit of registration is on file at the county clerk's office, that he has not been purged from the voter rolls and that he shall be permitted to vote in the precinct and election specified therein; provided that such authorization shall not be given orally by the county clerk; and

(4) he executes a statement swearing or affirming to the best of his knowledge that he is a qualified elector resident of the municipality, currently registered and eligible to vote in that precinct and has not cast a ballot or voted in the election.

C. Upon compliance with the requirements of Subsection B of this section, the election judge shall cause the election clerks to:

(1) write the person's name and address, as shown on the certificate, in the signature roster under the heading for name and address in the first blank space immediately below the last name and address appearing in the signature roster;

(2) insert the person's ballot number or voter number as shown on the public counter of the voting machine on the certificate and on his executed sworn statement;

(3) retain the completed certificate and the executed sworn statement, which shall be returned to the municipal clerk with the election returns; and

(4) comply with all relevant requirements of Section 3-8-41 NMSA 1978.

D. After canvass, the municipal clerk shall in writing notify the county clerk of the names of all individuals voting on certificates.

E. A person who knowingly executes a false statement required by Paragraph (4) of Subsection B of this section is guilty of perjury as provided in the Criminal Code [Chapter 30 NMSA 1978], and voting on the basis of such falsely executed statement constitutes fraudulent voting.

F. A person not entitled to vote who fraudulently votes or a person who votes or offers to vote more than once at any election is guilty of a fourth degree felony.

History: 1978 Comp., § 3-8-40, enacted by Laws 1985, ch. 208, § 48; 1987, ch. 323, § 19; 1997, ch. 266, § 11; 1999, ch. 278, § 10; 2003, ch. 244, § 6.

ANNOTATIONS

Cross references. — For perjury, *see* 30-25-1 NMSA 1978.

For sentencing for felonies, *see* 31-18-15 NMSA 1978.

The 2003 amendment, effective June 20, 2003, deleted former Subsection B(3), concerning early voting, and redesignated the remaining paragraphs accordingly.

The 1999 amendment, effective June 18, 1999, deleted former Subsection B, which read "No person shall vote whose name and affidavit of registration number appears on the list of voters purged from the rolls unless that person has again completed an affidavit of registration and his name also appears on the signature roster"; redesignated former Subsections C to G as Subsections B to F; in Subsection B, inserted "and the district, if applicable" in Paragraph (1), deleted former Paragraph (2), which read "his name is not on the purged list or his name has been incorrectly placed on the purged list", redesignated former Paragraph (3) as Paragraph (2), added Paragraph (3), and deleted "duplicate" preceding "affidavit of registration" and inserted "from the voter rolls" in Paragraph (4); deleted "triplicate affidavits of registration or" preceding "certificates" at the end of Subsection D; and deleted "of this state" following "Criminal Code" in Subsection E.

The 1997 amendment, effective June 20, 1997, deleted "triplicate or" preceding "certificate" in the section heading; deleted "he presents a triplicate affidavit of registration which appears on its face to be valid or" at the beginning of Paragraph C(4); deleted "or the triplicate affidavit of voter registration" following "certificate" in Paragraph D(1); deleted "the triplicate affidavit of voter registration or" following "machine on" and

"completed" in Paragraphs D(2) and D(3), respectively; deleted former Subsection G which read "To be valid, a triplicate affidavit of registration dated after June 30, 1995 shall bear the signature stamp of the county clerk"; and redesignated former Subsection H as Subsection G.

The 1987 amendment, effective June 19, 1987, in Subsection D, in Paragraph (4) substituted "comply with all relevant requirements of Section 3-8-41 NMSA 1978" for "cause the person to sign his name in the signature roster"; inserted Subsection E and redesignated the subsequent subsections; in Subsection F, substituted "Subsection C" for "Subsection A"; and made a minor language change in Subsection G.

Failure to obtain certificate of eligibility. — Where voter was a registered voter; voter's name was not on the signature roster, because the county clerk issued a registration card to voter with the wrong address; and voter did not obtain an eligibility certificate, voter's vote by challenge ballot could not be counted. Calkins v. Stearley, 2006-NMCA-153, 140 N.M. 802, 149 P.3d 118.

3-8-40.1. Repealed.

ANNOTATIONS

Repeals. — Laws 2009, ch. 278, § 40 repealed 3-8-40.1 NMSA 1978, as enacted by Laws 1999, ch. 278, § 45, relating to certificate voting, effective June 19, 2009. For provisions of former section, *see* the 2008 NMSA 1978 on *NMONESOURCE.COM.*

3-8-41. Conduct of election; voter's name, address, signature; entries by precinct board.

A. When a person goes to the polls to vote, the person shall announce the person's name and address in an audible tone of voice and locate the person's name and number in the registered voter list posted for such purpose. An election clerk shall locate the person's name and number in the signature roster. The person shall then sign the person's name in the signature roster or, if the person is unable to write, the election clerk shall sign the person's name in the signature roster, which shall be initialed by an election judge in the signature roster. Thereupon, a challenge may be interposed as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

B. If no challenge is interposed, an election clerk shall issue a voting machine permit to the person, upon which shall be written the person's voter registration list number. The person shall present the voting machine permit to the precinct board member monitoring the machine or issuing ballots, and the person shall be allowed to vote. The precinct board member shall enter the public counter number onto the voting machine permit as shown on the voting machine after the person has voted. All voting machine permits shall be retained in consecutive order and made part of the election returns.

History: 1978 Comp., § 3-8-41, enacted by Laws 1985, ch. 208, § 49; 2009, ch. 278, § 11.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, after the "When a person", deleted "presents himself at" and added "goes to" and in Subsection B, in the second sentence, after "precinct board member", deleted "activating" and added "monitoring" and after "the machine", added "or issuing ballots".

3-8-42. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 22, § 7 repealed 3-8-42 NMSA 1978, as enacted by Laws 1985, ch. 208, § 50, relating to assistance to a voter, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMONESOURCE.COM.*

3-8-43. Conduct of election; challenges; required challenges; entries; disposition.

A. A challenge may be interposed by a member of the precinct board or by a challenger for the following reasons, which shall be stated in an audible tone by the person making the challenge:

(1) the person offering to vote is not registered;

(2) the person offering to vote is listed among those persons in the precinct to whom an absentee ballot was issued;

(3) the person offering to vote is not a qualified elector;

(4) the person offering to vote is not listed on the signature roster or voter registration list;

(5) in the case of an absentee ballot, the official mailing envelope containing an absentee ballot has been opened prior to delivery of absentee ballots to the absent voter precinct board; or

(6) the person offering to vote is a qualified elector of the municipality but does not reside in the district where the person is offering to vote.

B. When a person has offered to vote and a challenge is interposed and the person's name appears in the signature roster or the person's name has been entered in the signature roster pursuant to Subsection C of Section 3-8-40 NMSA 1978, the

election clerk shall write the word "challenged" above the person's signature in the signature roster and:

(1) if the challenge is unanimously affirmed by the election judges:

(a) the election clerk shall write the word "affirmed" above the person's signature next to the challenge notation in the signature roster;

(b) the person shall nevertheless be furnished a paper ballot, whether or not voting machines are being used at the polling place, and the election clerk shall write the number of the ballot so furnished next to the person's signature in the signature roster;

(c) the person shall be allowed to mark and prepare the ballot. The person shall return the paper ballot to an election judge who shall announce the person's name in an audible tone and in the person's presence place the challenged ballot in an envelope marked "rejected", which shall be sealed and the person's name shall be written on the envelope; and

(d) the envelope containing the rejected ballot shall then be deposited in the ballot box and shall not be counted; or

(2) if the challenge is not unanimously affirmed by the election judges:

(a) the election clerks shall write the words "not affirmed" above the person's signature next to the challenge notation in the signature roster; and

(b) the person shall be allowed to vote in the manner allowed by law as if the challenge had not been interposed.

C. A required challenge shall be interposed by the precinct board when a person attempts to offer to vote and demands to vote and the person's name does not appear on the signature roster and cannot be entered pursuant to Subsection B of Section 3-8-40 NMSA 1978. A required challenge shall be interposed by the precinct board as follows:

(1) the election judge shall cause the election clerks to enter the person's name and address under the heading "name and address" in the signature roster in the first blank space immediately below the last name and address that appears in the signature roster;

(2) the election clerk shall immediately write the words "required challenge" above the space provided for the person's signature in the signature roster;

(3) the person shall sign the person's name in the signature roster;

(4) the person shall nevertheless be furnished a paper ballot, whether or not voting machines are being used at the polling place, and the election clerk shall write the number of the ballot so furnished next to the person's signature in the signature roster; and

(5) the person shall be allowed to mark and prepare the ballot. The person shall return the paper ballot to an election judge who shall announce the person's name in an audible tone and in the person's presence place the required challenge ballot in an envelope marked "rejected--required challenge" that shall be sealed. The person's name shall be written on the envelope and the envelope containing the rejected ballot shall then be deposited in the ballot box and shall not be counted.

History: 1978 Comp., § 3-8-43, enacted by Laws 1985, ch. 208, § 51; 1987, ch. 323, § 20; 1997, ch. 266, § 12; 1999, ch. 278, § 11; 2003, ch. 244, § 7; 2009, ch. 278, § 12.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, made grammatical changes.

The 2003 amendment, effective June 20, 2003, deleted "or is listed as an early voter" at the end of Subsection A(2).

The 1999 amendment, effective June 18, 1999, deleted "listed on the purge list or is" following "offering to vote" and inserted "or is listed as an early voter" in Subsection A(2), and updated the statutory reference in the introductory language to Subsection B.

The 1997 amendment, effective June 20, 1997, substituted "shall be stated" for "must be stated" near the beginning of Subsection A and "3-8-40" for "30-8-40" in Subsection C.

The 1987 amendment, effective June 19, 1987, in Subsection A, added Paragraph (6); in Subsection B, in the opening clause, substituted "Subsection D of Section 3-8-40" for "Section 3-8-40D"; in Subsection C, substituted "Subsection D of Section 30-8-40" for "Section 3-8-40D"; and made minor language and punctuation changes throughout the section.

3-8-44. Conduct of election; voting machines; instructions; inspection of voting machine face after vote; entry into machine.

A. Before each person votes, a member of the precinct board shall, at the request of the voter and so far as possible, instruct the person on how to operate the voting machine, illustrate its operation on the model and call attention to the posted sample ballot. If any person, before voting, asks for further information regarding the machine's operation, an election judge shall give the person the necessary information prior to the person's casting a vote.

B. The member of the precinct board attending the voting machine shall inspect the face of the machine after each person has voted to see that the ballot labels are in their proper places and have not been defaced.

C. After a person has announced the person's name and address, had voter registration confirmed, signed the signature roster and has had no challenge affirmed against casting a ballot, the person may vote. No more than one voter shall be permitted at the voting machine at one time unless the voter is being assisted.

History: 1978 Comp., § 3-8-44, enacted by Laws 1985, ch. 208, § 52; 1995, ch. 200, § 4; 2009, ch. 278, § 13.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, deleted the former second sentence of Subsection C which read, "Unless an affidavit for assistance has been executed, no more than one person shall be permitted in the voting booth at one time."

The 2009 amendment, effective June 19, 2009, in Subsection C, in the second sentence, after "No", deleted "person shall be permitted to occupy the voting booth longer that three and one half minutes" and added the remainder of the sentence.

3-8-45. Conduct of election; closing polls; arrival of voter after the polls close; election clerk certificate.

A. When the polls are closed, the precinct board shall proclaim that fact aloud at the place of election. After the proclamation no person shall cast a vote. However, if at the hour of closing there are other persons inside the polling place and in line to offer themselves to vote, who are qualified to vote and have not been able to do so since appearing, the polls shall be kept open a sufficient time to enable them to vote. When the polls are proclaimed closed, an election judge shall determine the last person in the polling place and in line who may offer themselves to vote, announce that person's name in an audible tone, and no person arriving at the polling place thereafter may vote.

B. Immediately after the last vote is cast and the polls are closed, the precinct board shall complete and sign a certificate which shall state: "We certify the . . . . . election complete with the voting of voting machine number . . . . . by voter number . . . . . on the signature roster."

History: 1978 Comp., § 3-8-45, enacted by Laws 1985, ch. 208, § 53.

3-8-46. Conduct of elections; closing polls; locking voting machines; opening voting machines; verification of votes; admittance of watchers and candidates; proclamation of results; completion of locking; duration of locking and sealing.

A. When the last person has voted, the precinct board, in the presence of all persons lawfully permitted to be present, shall immediately lock and, if required by the county clerk, seal the voting machine against further voting. The precinct board shall release the machine-printed returns from the machine. The precinct board shall then sign a certificate stating that the machine was locked; giving the exact time; stating the number of voters shown on the public counters, which shall be the total number of votes cast on the machine in that precinct; stating the number on the seal; and stating the number registered on the protective counter.

B. The precinct board shall verify that the counter settings registered on the machine-printed returns are legible. The machine-printed returns shall show the number of votes cast for each candidate and the number of votes cast for and against any other question submitted, and the return shall be signed by each member of the precinct board and the challengers and watchers, if there be such.

C. If the machine-printed returns are not legible, or if the precinct officials are unable to obtain the returns from the voting machine, the precinct officials shall call the municipal clerk, who shall immediately contact the county clerk, who shall dispatch a voting machine technician to that polling place to help the precinct officials obtain the returns from the voting machine.

D. A write-in vote shall be cast by writing in the name of a declared write-in candidate on the ballot or, on voting machines, write-ins shall be written in the slot provided for each designated office. A write-in vote shall be counted and canvassed only if:

(1) the name written in is the name of a declared write-in candidate and shows two initials and last name; first name, middle initial or name and last name; first and last name; or the full name as it appears on the declaration of write-in candidacy of the declared write-in candidate and misspellings of the above combinations that can be reasonably determined by a majority of the members of the precinct board to identify the declared write-in candidate;

(2) the name is written in the proper slot on the voting machine or on the proper line for write-in votes provided on an absentee ballot or paper ballot used in lieu of voting machines;

(3) the name written in is not a vote for a person who is on the ballot for that office; and

(4) the name written in is not imprinted by rubber stamp or similar device or by the use of preprinted stickers or labels.

E. Only the members of the precinct board, candidates or their representatives, representatives of the news media, certified challengers, watchers and observers and the municipal clerk may be present while the votes are being counted and tallied. Only

members of the precinct board shall handle ballots, machine-printed returns and signature rosters or take part in the counting and tallying.

F. The proclamation of the results of the votes cast shall be distinctly announced by an election judge who shall read the name of each candidate and the total number of votes cast for each candidate shown on the printed returns. An election judge shall also read the total number of votes cast for and against each question submitted. During the proclamation, ample opportunity shall be given to any person lawfully present to compare the result so proclaimed with the printed returns. The precinct board may make corrections then and there.

G. When the precinct board is satisfied that the election results have been correctly tallied, an election judge shall complete a separate election return certificate in triplicate on which is recorded the total number of votes cast in that polling place for each candidate and for and against each question. The certificate shall be signed by all the members of the precinct board. One copy shall be posted at the door of the polling place, one copy mailed to the district court in the envelope provided and the original returned to the municipal clerk in the envelope provided.

H. Before adjourning, the precinct board shall complete the locking procedures on the voting machine.

I. On the voting machine, the machine return sheet is the official vote tally for that machine and the separate election return certificate is the official vote tally for that precinct or consolidated precinct.

J. If in the district court's opinion a contest is likely to develop, the court may order a voting machine to remain locked and sealed for such time as it deems necessary.

K. The county clerk shall break the seal for purposes of lawful investigation when ordered to do so by a court of competent jurisdiction. When the investigation is completed, the voting machine shall again be sealed and across the envelope containing the keys shall be written the signature of the county clerk, unless other provisions for the use of the voting machine are ordered by the court.

History: 1978 Comp., § 3-8-46, enacted by Laws 1985, ch. 208, § 54; 1987, ch. 323, § 21; 2001, ch. 197, § 5; 2009, ch. 278, § 14.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, in the first sentence, after "immediately lock and", added "if required by the county clerk"; and in the third sentence, after "machine was locked", deleted "and sealed"; in Paragraph (2) of Subsection D, after "absentee ballot", deleted "emergency paper ballot"; and in Subsection G, in the first sentence, after "return certificate in", deleted "quadruplicate"

and added "triplicate" and in the third sentence, after "in the envelope provided", deleted "one copy returned to the municipal clerk to be used as unofficial returns".

The 2001 amendment, effective July 1, 2001, in Subsection C, inserted "or if the precinct officials are unable to obtain the returns from the voting machine" and substituted language beginning "who shall dispatch a voting machine technician" for "to have the counter compartment opened and shall proceed to count and tally the results from the counters of the machine".

The 1987 amendment, effective June 19, 1987, in Subsection D, in the opening clause inserted "of a declared write-in candidate" following "shall be cast by writing in the name" in the first sentence of the opening clause and in the second sentence inserted "and canvassed only" following "shall be counted," in Paragraph (1) inserted "is the name of a declared write-in candidate and" following "the name written in", near the beginning and in the middle substituted "the declaration of write-in candidacy of the declared write-in candidate" for "voter registration list"; and inserted "declared" preceding "write-in candidate" at the end; in Subsection E, substituted "challengers, watchers and observers" for "challengers and watchers" near the middle of the first sentence; in Subsection G, in the first sentence substituted "a separate election return certificate in quadruplicate on which is recorded the total number of votes cast in that polling place" for "an election return certificate on which is recorded the total number of votes cast," and added the present third sentence; in Subsection I, substituted "the separate election return" for "the election"; and made minor language and punctuation changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Elections: validity of state or local legislative ban on write-in votes, 69 A.L.R.4th 948.

3-8-47. Conduct of elections; disposition of signature roster; machine-printed returns; ballot boxes; election return certificate; affidavits; other election materials.

A. After all certificates have been executed, the precinct board shall place the voter checklist and one copy of the machine-printed returns in the stamped, addressed envelope provided for that purpose by the municipal clerk and immediately mail it to the district court.

B. The following election returns and materials shall not be placed in the ballot box and shall be returned by the precinct board to the municipal clerk in the envelope or other container provided by the municipal clerk for such purpose:

(1) all ballot box keys;

(2) the signature roster;

(3) one voter registration list;

(4) the election returns certificate, if separate from the signature roster;

(5) one copy of the machine-printed returns;

(6) a machine cartridge or memory card for any voting machine, if required by the county clerk;

(7) voting machine permits; and

(8) all unused election supplies.

C. All materials listed in Subsection B of this section, along with the locked ballot box containing any paper ballots cast in the election, including spoiled and challenged ballots, shall be returned by the precinct board to the municipal clerk within twenty-four hours after the polls close.

D. After receipt of ballot boxes and election returns and materials but not later than twenty-four hours after the polls close, the municipal clerk shall ascertain whether the locked ballot box and all the election returns and materials enumerated in Subsection B of this section have been returned to the municipal clerk as provided in Subsection C of this section. If the locked ballot box or all such election returns and materials are not timely returned by each precinct board, the municipal clerk shall immediately issue a summons requiring the delinquent precinct board to appear and produce the missing ballot box or election returns or materials within twenty-four hours. The summons shall be served by a sheriff or state police officer without cost to the municipality, and the members of the precinct board shall not be paid for their service on election day unless the delay was unavoidable. If delivery pursuant to the summons is not timely made, the vote in the precinct shall not be canvassed or made a part of the final election results except upon order of the district court after finding that the delay in the delivery of materials was due to forces beyond the control of the precinct board.

E. Once the ballot box is locked, it shall not be opened prior to canvassing by the municipal clerk.

History: 1978 Comp., § 3-8-47, enacted by Laws 1985, ch. 208, § 55; 1997, ch. 266, § 13; 1999, ch. 278, § 12; 2009, ch. 278, § 15.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, after "precinct board shall place", deleted "one copy of the signature roster" and added "the voter checklist"; in Subsection B(4), after "certificate", added the remainder of the sentence; in Subsection B(6), after "cartridge", added "or memory card"; after "for any", deleted "electronic marksense" and after "voting machine", added the remainder of the sentence; added Subsection B(8); and deleted all of the former language of Subsection

C, which provided for the return of ballots, electronic returns and supplies to the precinct board and added new language.

The 1999 amendment, effective June 18, 1999, in Subsection B, inserted "or other container" in the introductory language, added "marksense voting machine; and" at the end of Paragraph (6), and deleted Paragraph (8), which read "all unused election supplies"; and inserted "all unused election supplies" in Subsection C.

The 1997 amendment, effective June 20, 1997, added Paragraph B(6) and redesignated former Paragraphs B(6) and B(7) as B(7) and B(8).

3-8-48. Conduct of elections; paper ballots; one to a voter; receipt or delivery; occupation of voting machines.

A. Only one paper ballot shall be given to each qualified elector entitled to vote. The ballots shall be delivered to qualified electors entitled to vote in consecutive order, beginning with the lowest numbered ballot.

B. No qualified elector entitled to vote shall receive a ballot from any person other than from an election judge at the polling place where the person is authorized to vote. No person other than an election judge shall deliver a ballot to any qualified elector entitled to vote.

C. Unless otherwise provided by law, when voting machines are used as voting booths to mark paper ballots, they shall not be occupied by more than one person at a time. A person shall not remain in or occupy such voting machine longer than is necessary to mark and prepare the paper ballot.

D. The ballot shall be completed and returned to the presiding judge who shall place it in a locked ballot box to be counted when the machine is repaired or replaced or at the time the polls close.

History: 1978 Comp., § 3-8-48, enacted by Laws 1985, ch. 208, § 56; 1997, ch. 266, § 14; 2009, ch. 278, § 16.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, after "Only one", deleted "emergency paper ballot or"; in Subsection C, after "voting booths to mark", deleted "emergency"; after "mark and prepare", deleted "his emergency"; and after "paper ballot", deleted "which shall not exceed five minutes"; and in Subsection D, after "The ballot shall be", changed "used and completed in the manner prescribed in Section 1-12-25.1 NMSA 1978 and returned" to "completed and returned"; and deleted the last sentence, which provided for counting and handling marksense ballots in emergency situations.

The 1997 amendment, effective June 20, 1997, added Subsection D.

3-8-49. Conduct of election; paper ballots; marking; use of pen or other writing implement; identification marks.

A. In order to vote for a candidate, the person voting shall mark a cross (X) or a check (√) in the box next to the name of that candidate or write in the name of the person for whom the voter desires to vote in the space for write-in candidates and mark a cross (X) or a check (√) in the box next to the line upon which the write-in vote is cast. Such write-in vote shall be cast in accordance with the provisions of Subsection D of Section 3-8-46 NMSA 1978. Notwithstanding the requirements of this subsection, if a different mark, other than a cross or check, is required for proper counting of the ballot, then the person voting shall make such mark on the ballot in the place so designated on the ballot utilizing the required writing implement pursuant to the instructions of the precinct board.

B. If a question is included on the paper ballot, the person voting shall mark the paper ballot by marking a cross (X) or a check (√) in the box for or against the question submitted or otherwise marking the ballot in accordance with Subsection A of this section.

C. All crosses, checks or other proper marks on the ballot shall be made only with pen or other writing implement and in the manner required for the proper counting of the ballot. The cross used in marking ballots shall be two lines intersecting at any angle within the circle or box. The check shall be a "V"-shaped mark with it being permissible for either side of the "V" to be longer than the other side. Any mark discernible either as a cross or a check, whether or not any of the lines extends outside the circle or box, shall be counted as a valid marking of the ballot when crosses or checks are required.

D. A vote shall be counted if:

(1) the ballot is marked in accordance with the instructions for that ballot type;

(2) the preferred candidate's name or answer to a ballot question is circled;

(3) there is a cross or check within the voting response area for the preferred candidate or answer to the ballot question; or

(4) the presiding judge and election judges for the precinct unanimously agree that the voter's intent is clearly discernable.

E. A person voting shall not place any mark on the ballot by which it may be afterwards identified as one voted by that person.

History: 1978 Comp., § 3-8-49, enacted by Laws 1985, ch. 208, § 57; 2009, ch. 278, § 17.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, added Subsection D.

3-8-50. Conduct of election; paper ballots; procedure after marking; delivery of two or more ballots; person authorized to receive ballots; spoiled or defaced ballots.

A. After marking and preparing the paper ballot, the person voting:

(1) shall not show it to any person in such a way as to reveal its contents; and

(2) shall deliver it to an election judge who shall then remove any visible number on the ballot, hand the detached number to the person voting and deposit the paper ballot in the ballot box in the presence of the person voting.

B. Only an election judge shall receive a ballot from a person voting. No person shall examine or solicit a person to reveal or show the contents of the person's paper ballot.

C. The election judge shall not deposit in the ballot box any paper ballot from which the slip containing the number of the paper ballot has not been removed by the election judge and handed to the person voting.

D. A person who accidentally spoils or erroneously prepares the ballot may return the spoiled or erroneously prepared ballot to the election judge and receive a new ballot.

E. The election judge in delivering the new ballot shall announce the name of the person voting in an audible tone and the number of the new ballot.

F. Upon the announcement of the election judge, the election clerks shall cross out the number of the spoiled or erroneously prepared ballot in the signature roster with a single line and shall insert in lieu thereof the number of the new ballot.

G. The election judge shall mark the spoiled or erroneously prepared ballot with the word "SPOILED" and shall place it in a separate envelope marked "SPOILED BALLOTS", which shall be returned to the municipal clerk.

H. Any person who knowingly hands to the election judge two or more ballots folded together is guilty of a fourth degree felony.

History: 1978 Comp., § 3-8-50, enacted by Laws 1985, ch. 208, § 58; 2009, ch. 278, § 18.

ANNOTATIONS

Cross references. — For sentencing for felonies, *see* 31-18-15 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in the catchline, deleted "emergency paper ballots".

3-8-51. Conduct of election; paper ballots; unused ballots; destruction of unused ballots; counting and tallying.

A. Immediately upon closing of the polls, the election judge shall prepare a certificate of destruction, which shall state the number of the last ballot that was used for voting, the numbers of the ballots that were destroyed and the fact that all unused ballots were destroyed.

B. Immediately after preparation of the certificate of destruction and before any ballot box is unlocked, the precinct board shall destroy all unused ballots in the presence of the candidates, if present, the municipal clerk, if present, certified challengers and watchers, if any, and representatives of the news media, if any.

C. On the day of the election, immediately upon the arrival of the hour when the polls are required by law to be closed, the municipal clerk shall publicly, in the clerk's office, proceed to destroy every unused ballot that remains in the clerk's control and make and file an affidavit in writing as to the number of ballots so destroyed.

D. The precinct board shall count and tally the ballots and certify the results of the election on the form provided on the cover of the signature roster by writing opposite the name of each candidate in words and figures the total number of votes cast for the candidate and shall set forth in the spaces provided therefor in words and figures the total number of votes cast for or against each question submitted. Ballots not marked as required by the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] shall not be counted.

E. Only the members of the precinct board, candidates, municipal clerk, representatives of the news media and certified challengers and watchers may be present while the votes are being counted and tallied. Only members of the precinct board shall handle ballots and signature rosters or take part in the counting and tallying.

F. The proclamation of the results of the votes cast shall be distinctly announced by the election judge who shall read the name of each candidate and the total vote cast for each candidate. The election judge shall also read the total vote cast for and against each question submitted. The election judge shall thereupon complete an election return certificate on which is recorded the total number of votes cast for each candidate and for and against each question. The certificate shall be signed by all the members of the precinct board.

History: 1978 Comp., § 3-8-51, enacted by Laws 1985, ch. 208, § 59; 1999, ch. 278, § 13; 2009, ch. 278, § 19.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in the catchline, deleted "emergency paper ballots".

The 1999 amendment, effective June 18, 1999, inserted "if present, the" in Subsection B.

3-8-52. Conduct of election; paper ballots; signature rosters; disposition.

A. After the counting and tallying of ballots is completed and after all certificates have been executed, the precinct board shall place the voter checklist and one copy of all certificates and tally sheets in the stamped, addressed envelope provided for that purpose by the municipal clerk and immediately mail it to the district court.

B. The signature roster, all certificates, tally sheets and all ballot box keys shall be returned to the municipal clerk. The signature roster, certificates, tally sheets and ballot box key shall not be placed in the ballot box.

C. After paper ballots used in lieu of voting machines are counted and tallied, the precinct board shall place the following in the ballot box:

(1) the bundles of counted paper ballots used in lieu of voting machines;

(2) the envelopes containing spoiled ballots; and

(3) the envelopes containing rejected ballots.

D. After the required items have been placed in the ballot box, the ballot box shall be closed and locked.

E. The locked ballot box containing those materials required by law, the election returns and all other election materials shall be delivered to the municipal clerk by the precinct board within twenty-four hours after the polls are closed. If such delivery is not timely made, then the vote in the precinct shall not be canvassed or made a part of the final election results except upon order of the district court after finding that the delay in the delivery of materials was due to forces beyond the control of the precinct board.

F. Once the ballot box is locked, it shall not be opened prior to canvassing.

History: 1978 Comp., § 3-8-52, enacted by Laws 1985, ch. 208, § 60; 1987, ch. 323, § 22; 2009, ch. 278, § 20.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, after "precinct board shall place", deleted "one copy of the signed roster" and added "the voter checklist"; in Subsection B, after "The", deleted "remaining copy of the"; in Subsection C, after "voting machines" deleted "or emergency paper ballots"; and in Paragraph (1) of Subsection C, after "voting machines" deleted "or emergency paper ballots".

The 1987 amendment, effective June 19, 1987, in Subsections A and B, inserted "tally sheets" following "certificates" the three places that term appears and made minor changes in language throughout those subsections.

3-8-53. Post-election duties; canvass of returns; majority vote for questions.

A. After the polls are closed and after the return of the ballot box, election returns and other materials by a precinct board and not later than noon on the third day after the election, the municipal clerk shall call to his assistance to open the returns:

(1) a magistrate within the county, so long as the magistrate is not a candidate for an office of the municipality;

(2) the members of the governing body of the municipality who are not candidates for municipal office; provided that if the members of the governing body who are not candidates for municipal office constitute a quorum, a special meeting shall be called; or

(3) a district court judge from the judicial district in which the municipality is located.

B. The municipal clerk and the persons called to open the returns are the municipal canvassing board, and the municipal clerk shall be the presiding officer of the municipal canvassing board.

C. In the presence of the other members of the municipal canvassing board, the municipal clerk shall publicly:

(1) canvass the returns in the manner set forth in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978];

(2) prepare and execute a certificate of canvass certifying the results of the election. Such certificate shall contain the total number of voters who voted at the election, the total number of votes cast for each candidate, each declared write-in candidate and for and against each question, which candidates were elected to office and whether each question passed or failed;

(3) sign the certificate of canvass with the municipal canvassing board signing the certificate of canvass as witnesses; and

(4) immediately file the certificate of canvass in the official minute book of the municipality.

D. The matters to be performed pursuant to Subsection C of this section shall be completed not later than 5:00 p.m. on the third day following the election, and such matters shall be performed solely at the office of the municipal clerk.

E. All questions submitted to the voters shall be decided by a majority of the voters voting on the question except as otherwise provided by law.

History: 1953 Comp., § 14-8-14, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 14; 1978 Comp., § 3-8-16, recompiled as 1978 Comp., § 3-8-53 by Laws 1985, ch. 208, § 61; 1987, ch. 323, § 23; 1999, ch. 278, § 14; 2001, ch. 197, § 6.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, inserted paragraph designations A(1), A(2) and subsection designation B, redesignated former Subsections B to D as Subsections C to E; substituted the language beginning "who are not candidates" for "at a special meeting" in Paragraph A(2); and added Paragraph A(3).

The 1999 amendment, effective June 18, 1999, inserted "declared" in the second sentence of Subsection B(2).

The 1987 amendment, effective June 19, 1987, in Subsection A, in the second sentence, deleted "person or" preceding "persons"; in Subsection B, in Paragraph (4) corrected the spelling of "official" and in Paragraph (3) made a minor language change.

The 1985 amendment recompiled former 3-8-16 NMSA 1978 as present 3-8-53 NMSA 1978, and rewrote the section to the extent that a detailed comparison is impracticable.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Failure to comply with statutory provisions relating to the form or manner in which election returns from voting districts or precincts are to be made, 106 A.L.R. 398.

Determination of canvassing boards or election officials as regards counting or exclusion of ballots as subject of review by mandamus, 107 A.L.R. 618.

Power of election officers to withdraw or change their returns, 168 A.L.R. 855.

Injunction against canvassing of votes and declaring results of election, 1 A.L.R.2d 588.

Admissibility of parol evidence of election officials to impeach election returns, 46 A.L.R.2d 1385.

29 C.J.S. Elections §§ 221 to 229, 242.

3-8-54. Post-election duties; canvass method.

The municipal clerk in the presence of the other members of the municipal canvassing board shall canvass the election returns by carefully examining such returns of each precinct to ascertain if they contain the properly executed certificates required by the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] and to ascertain whether any discrepancy, omission or error appears on the face of the election returns.

History: 1978 Comp., § 3-8-54, enacted by Laws 1985, ch. 208, § 62.

3-8-55. Post-election duties; canvass; defective returns; correction.

A. The municipal clerk shall immediately order the precinct board to appear and make the necessary corrections or supply omissions or any missing election returns if it appears:

(1) on the face of the election returns that any certificate has not been properly executed;

(2) that there is a discrepancy within the election returns;

(3) that there is a discrepancy between the number of votes set forth in the certificate for all candidates and the number of electors voting as shown by the election returns;

(4) that there is any omission, informality, ambiguity, error or uncertainty on the face of the returns; or

(5) that there are missing election returns.

B. If any members of the precinct board fail to appear as required, the municipal clerk shall immediately issue a summons commanding them to appear. The summons shall be served by a sheriff or state police officer as in the manner of civil cases, and for each service a sheriff or state police officer shall be allowed the same mileage as is paid in civil cases.

C. After issuing the necessary notifications or summonses, the canvass of all correct election returns shall proceed.

History: 1978 Comp., § 3-8-55, enacted by Laws 1985, ch. 208, § 63; 1997, ch. 266, § 15; 1999, ch. 278, § 15.

ANNOTATIONS

The 1999 amendment, effective, June 18, 1999, substituted "order the precinct board" for "issue a summons directed to the precinct board commanding it" in the introductory language of Subsection A.

The 1997 amendment, effective June 20, 1997, added the first sentence in Subsection B and inserted "notifications or" in Subsection C.

3-8-56. Post-election duties; canvass; when recheck is required.

A. If it appears that the defective returns cannot be corrected without a recheck of the voting machine, the municipal clerk shall immediately cause written notice to be hand-delivered to the district court.

B. The district court shall fix a time and place which shall be not more than one week after receipt of notice from the municipal clerk for a recheck of the machines from that precinct.

C. The municipal clerk shall immediately notify all candidates for municipal office, if any, of the time and place of the recheck.

D. At the time and place set by the district court the recheck shall be conducted as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

E. After the recheck, the election returns shall be corrected in duplicate to conform to the facts.

F. After being properly corrected, the election returns shall be retained by the municipal clerk and the municipal clerk shall execute an amended certificate of canvass.

History: 1978 Comp., § 3-8-56, enacted by Laws 1985, ch. 208, § 64.

ANNOTATIONS

Cross references. — For post-election duties of the municipal canvassing board, *see* 3-8-53 NMSA 1978.

3-8-57. Post-election duties; canvass; search for missing returns.

The municipal clerk may open the ballot box during canvass for the purpose of obtaining ballots cast in the election to be counted and tallied, to search for missing election returns and to remove all unused election supplies from the ballot box. The ballot box shall be opened by the municipal clerk only in the presence of the canvassing board.

History: 1978 Comp., § 3-8-57, enacted by Laws 1985, ch. 208, § 65; 1999, ch. 278, § 16.

ANNOTATIONS

Cross references. — For post-election duties of the municipal canvassing board, *see* 3-8-53 NMSA 1978.

The 1999 amendment, effective June 18, 1999, rewrote the section, which formerly read: "During canvass, if it is necessary to open a ballot box to ascertain if missing election returns are enclosed therein, then the ballot box shall be opened by the municipal clerk in the presence of the canvassing board."

3-8-58. Post-election duties; canvass; voting machine recheck.

A. Prior to completion of the official canvass of an election, the municipal clerk, upon written request of any candidate in the election, if any, or upon receipt of a written petition of five percent of the people who voted in the election, shall, in the presence of the district judge, conduct a recheck and comparison of the results shown on the official returns being canvassed with the results of each voting machine used in the election.

B. For the purpose of making the recheck and comparison, the municipal clerk may request the county clerk to:

(1) unlock the voting machine;

(2) check the figures shown by the counter on the voting machine;

(3) insert the cartridge or memory card into the voting machine; and

(4) rerun the printed returns from the voting machine.

C. At the conclusion of the recheck and comparison, the voting machine shall again be secured.

D. The necessary corrections, if any, shall be made on the returns and the results of the election, as shown by the recheck and comparison, shall be declared.

History: 1978 Comp., § 3-8-58, enacted by Laws 1985, ch. 208, § 66; 2001, ch. 197, § 7; 2009, ch. 278, § 21.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection B(1), at the beginning of the sentence, deleted "break the seal and"; in Subsection B(3), after "cartridge", added "or memory card"; and in Subsection C, at the end of the sentence, changed "locked" to "secured".

The 2001 amendment, effective July 1, 2001, in Subsection A, deleted "appearing on the counter" following "results"; in Subsection B, deleted "unlock and raise the cover of the counter compartment and check the figures shown by the counter dials on the voting machine" following "request the county clerk to"; designated the former second sentence in Subsection B as present Subsection C; added Paragraphs B(1) to B(4); and redesignated former Subsection C as Subsection D.

3-8-59. Post-election duties; voting machine recheck cost.

A. Before any recheck and comparison of returns and voting machines is made pursuant to the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978], the candidate making the request or the petitioners shall deposit a sum of money or a surety bond made in favor of the municipality to defray the cost of the recheck. The deposit or the surety bond shall be in the amount of ten dollars ($10.00) for each machine to be rechecked.

B. If the recheck alters the winner of the election, the deposit or surety bond shall be returned and the cost of the recheck shall be paid to the county by the municipality. If the recheck does not alter the winner of the election, the deposit or surety bond shall be forfeited and the money from the deposit or bond shall be remitted to the county.

History: 1978 Comp., § 3-8-59, enacted by Laws 1985, ch. 208, § 67.

3-8-60. Post-election duties; tie vote.

In the event of a tie vote between any candidates in the election for the same office, the determination as to which of the candidates shall be declared to have been elected shall be decided by drawing by impartial lot. The method of determining by lot shall be mutually agreed upon by the candidates who are tied. The municipal clerk shall issue a certificate of election to the candidate chosen by lot.

History: 1978 Comp., § 3-8-60, enacted by Laws 1985, ch. 208, § 68.

3-8-61. Post-election duties; nature of documents; expense of corrections; proceedings for contempt; responsibility for voting machines.

A. Municipal election returns are public records, subject to inspection during customary office hours by candidates and by members of the public, and may be copied upon request of a candidate or member of the public at a reasonable charge.

B. The expense of any proceeding to complete or correct any election returns or certificates shall be paid from the municipal general fund upon voucher signed by the municipal clerk.

C. Failure of any person to obey any summons required to be issued by or issued pursuant to the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978], is contempt and is punishable as provided by law.

D. The municipal clerk shall have custody of all voting machines at all polling places. Within three days after the election, the county clerk shall take physical custody of and secure such machines for thirty days after certificates of election are issued to candidates, or thirty days after canvass is completed, in an election with no candidates for municipal office. The county clerk shall take the proper action to see that the voting machines in custody remain unopened, untampered with, and undamaged during the thirty day period.

History: 1978 Comp., § 3-8-61, enacted by Laws 1985, ch. 208, § 69.

3-8-62. Contest of elections; destruction of ballots.

A. The district court shall entertain contests for any municipal office or on any question placed on the ballot and the procedure shall be as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

B. The ballots only shall be destroyed:

(1) thirty days after the issuance of the certificate of election, or thirty days after completion of canvassing for elections in which there are no candidates for municipal office, for those precincts in which the municipal clerk has received no notice of contest or judicial inquiry; or

(2) upon order of the district court having jurisdiction for those precincts where a contest, recount or judicial inquiry is sought.

History: 1953 Comp., § 14-8-16, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 15; 1978 Comp., § 3-8-18, recompiled as 1978 Comp., § 3-8-62 by Laws 1985, ch. 208, § 70.

ANNOTATIONS

The 1985 amendment recompiled former 3-8-18 NMSA 1978 as present 3-8-62 NMSA 1978, added "destruction of ballots" in the section heading, substituted "shall be as provided in the Municipal Election Code" for "shall be the same as provided by the Election Code for contests of the election of county officers, including the recount of ballots" at the end of Subsection A, and inserted "or thirty days after completion of canvassing for elections in which there are no candidates for municipal office" in Subsection B(1).

Legislative intent. — The legislature, in conferring jurisdiction on the district courts, intended to extend the right of contest to all municipal officers, irrespective of the act

under which they may be operative. Ostic v. Stephens, 55 N.M. 497, 236 P.2d 727 (1951).

Section inapplicable to municipal school boards. — This section does not apply to contests for board of education of a municipal school district. State v. Rodriguez, 65 N.M. 80, 332 P.2d 1005 (1958); Auge v. Owen, 39 N.M. 470, 49 P.2d 1134 (1935).

Recount proceeding is not adversary proceeding. Romenesko v. Barber, 79 N.M. 83, 439 P.2d 919 (1968).

Appeal from order concerning recount. — On appeal from an order directing a recount of ballots in a municipal election, there is no jurisdiction in the supreme court because such an appeal is not from a final judgment nor from an interlocutory judgment, order or decision which practically disposes of the merits of the action. Hampton v. Priddy, 49 N.M. 1, 154 P.2d 839 (1945); Romenesko v. Barber, 79 N.M. 83, 439 P.2d 919 (1968).

Appeal permitted. — The power granted the court under this section is judicial and exercise thereof bespeaks judgment from which an appeal may be taken. Hampton v. Priddy, 49 N.M. 1, 154 P.2d 839 (1945).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Recount, determination of facts regarding custody of ballots since original count as condition of, 71 A.L.R. 435.

29 C.J.S. Elections §§ 245 to 322.

3-8-63. Contest of elections; who may contest; status of person holding certificate; filing of complaint.

A. Any unsuccessful candidate for election to any municipal office may contest the election of the candidate to whom a certificate of election has been issued. Twenty percent of those people who voted at the municipal election may contest the election on a question.

B. In case of a contest of an election, the person holding the certificate of election shall take possession and discharge the duties of the office until the contest is decided. If a contest of a question occurs, the question shall be considered passed or defeated according to the official certificate of canvass of the election filed by the municipal clerk in the official records of the municipality until the contest is decided.

C. Any action to contest an election shall be commenced by the filing of a verified complaint of contest in the district court. Such complaint shall be filed no later than thirty days from issuance of the certificate of election to the successful candidate or thirty days after completion of canvassing for elections in which there are no candidates for municipal office. A copy of the petition shall be served on the municipal clerk, and the municipality shall be afforded an opportunity to intervene in the contest. The one

instituting the action shall be known as the contestant and the one against whom the action is instituted shall be known as the contestee. The rules of civil procedure shall apply to all actions commenced under the provisions of this section.

History: 1978 Comp., § 3-8-63, enacted by Laws 1985, ch. 208, § 71; 1999, ch. 278, § 17.

ANNOTATIONS

Cross references. — For the Rules of Civil Procedure for the District Courts, *see* Rule 1-001 NMRA.

The 1999 amendment, effective June 18, 1999, added the third sentence in Subsection C.

3-8-64. Contest of elections; judgment; effect; costs; disqualification of trial judge; appeal.

A. Judgment shall be rendered in favor of the person legally qualified to take office for whom a plurality of the legal votes shall be proven to have been cast in accordance with 3-8-32 NMSA 1978, and shall be to the effect that the person is entitled to the office in controversy with all the privileges, powers and emoluments belonging thereto and for his costs. If the contestant prevails, then that person shall have judgment placing the contestant in possession of the contested office and for the emoluments thereof from the beginning of the term for which the contestant was elected and for costs.

B. When a contest involves a question, judgment shall be rendered to cause the question to be passed or defeated based upon whether a majority of the legal votes favored passage or defeat of the question. Successful contestants shall recover costs.

C. Any election contest shall be an action or proceeding within the meaning of Section 38-3-9 NMSA 1978. Any affidavit of disqualification shall be filed on or before the date when the answer is required to be filed to the notice of contest.

D. An appeal shall lie from any judgment or decree entered in the contest proceeding within the time and in the manner provided by law for civil appeals from the district court.

History: 1978 Comp., § 3-8-64, enacted by Laws 1985, ch. 208, § 72.

ANNOTATIONS

Timing of challenge. — This section permits a candidate to challenge the legality of voters in district court without challenge prior to or during the election. Calkins v. Stearley, 2006-NMCA-153, 140 N.M 802, 149 P.3d 118.

Rejection of all votes from precinct. — In a municipal election, votes from a precinct can be rejected in their totality only if the contestant can show that violations of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] render it impossible to determine which candidate received a plurality of lawful votes in the precinct. Darr v. Vill. of Tularosa, 1998-NMCA-104, 125 N.M. 394, 962 P.2d 640, cert. denied, 125 N.M. 654, 964 P.2d 818 (1998).

If it is possible to determine the lawful plurality winner of a precinct, then this section must be obeyed and 3-8-67 NMSA 1978 must be disregarded. Darr v. Vill. of Tularosa, 1998-NMCA-104, 125 N.M. 394, 962 P.2d 640, cert. denied, 125 N.M. 654, 964 P.2d 818 (1998).

3-8-65. Contest of elections; preservation of ballots; ballots defined; application for order; deposit.

A. Either the contestant or contestee, within the time provided by the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] for the preservation of ballots, shall give notice by certified mail to the municipal clerk that a contest is pending in a designated court, and it is the duty of the municipal clerk to preserve the ballots of all precincts named in the notice of contest and to notify the county clerk to impound the ballot sheets and voting machines used in all of the precincts named in the notice of contest until the contest has been finally determined.

B. "Ballots", as used in Subsection A of this section, includes signature rosters, registered voter lists, machine-printed returns, voting machine permits, paper ballots, absentee ballots, absentee ballot outer envelopes, statements of canvass, absentee ballot applications, absentee ballot registers and absentee voter lists.

C. Any contestant or contestee may petition the district court for an order impounding ballots in one or more precincts or consolidated precincts. The petition shall state what specific items of ballots are requested to be impounded. Upon receipt of the petition, along with a cash deposit of twenty-five dollars ($25.00) per precinct or consolidated precinct, the court may issue an order of impoundment.

History: 1978 Comp., § 3-8-65, enacted by Laws 1985, ch. 208, § 73; 1995, ch. 200, § 5; 1999, ch. 278, § 18; 2003, ch. 244, § 8; 2009, ch. 278, § 22.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, after "impound the ballot" deleted "faces" and added "sheets"; and in Subsection B, after "paper ballots", deleted "marksense ballots".

The 2003 amendment, effective June 20, 2003, deleted "early voting ballots, early voting applications, early voting lists" following "paper ballots" in Subsection B.

The 1999 amendment, effective June 18, 1999, substituted "shall give notice" for "may give notice" and "ballot faces" for "ballot labels" in Subsection A, and substituted "paper ballots, early voting ballots, early voting applications, early voting lists, marksense ballots" for "registration affidavits, paper ballots" in Subsection B.

The 1995 amendment, effective June 16, 1995, deleted "thereupon" preceding "it is the duty" in Subsection A, and in Subsection B, deleted "affidavits for assistance" following "voting machine permits" and inserted "absentee ballot outer envelopes".

3-8-66. Contest of elections; order of impoundment; subsequent orders; access; termination of order; disposition of deposit.

A. The court order of impoundment shall specify the items of ballots to be impounded and may direct the state police to:

(1) take immediate physical custody of any items ordered impounded and not in use in the precinct in the conduct of the election;

(2) take legal custody of items ordered impounded and being used in the conduct of the election by assigning an officer to be physically present in the polling place until the polling place is closed and the results have been tallied and certified as required by the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978];

(3) take physical custody of items ordered impounded and being used in the conduct of the election as soon as the polling place is closed and the results in the precinct have been tallied and certified as required by the Municipal Election Code; and

(4) deliver all items ordered impounded and taken into physical custody to the district court clerk of the court entering the order for safekeeping subject to further orders of the court.

B. The party petitioning the court for the original order of impoundment may by motion to the court request an order allowing the party or his attorney access to and inspection of any items impounded. The court shall enter its order allowing access and inspection under conditions set by the court that will assure adequate safeguarding of the impounded items. The order shall, if requested by the petitioner, allow for the copying or reproduction of any items by and at the expense of the petitioner.

C. Ten days from the date of the original order of impoundment or, if an order granting access and inspection has been entered, ten days after that order, the order of impoundment shall automatically terminate unless the court extends the time for good cause shown. The court shall in all cases order the impoundment of ballots terminated no later than thirty days after the entry of the original order of impoundment.

D. Upon the termination of an impoundment of ballots the items impounded shall be delivered by the district court clerk to the person that would have been entitled to the

possession of the items under the Municipal Election Code if there had been no impoundment.

E. If the petitioner shall successfully prosecute an election contest or recount proceeding that results in a change in the petitioner's favor the court shall refund to the petitioner the deposit required under Section 3-8-65 NMSA 1978 less any amount expended for guarding and preserving the impounded ballots. In all other cases there shall be no refund. Any amounts not refunded shall be transmitted to the municipal treasurer for credit to the municipal general fund.

History: 1978 Comp., § 3-8-66, enacted by Laws 1985, ch. 208, § 74.

3-8-67. Contest of election; burden of proof.

A. If a contestant makes a prima facie showing that the precinct board or municipal clerk failed to substantially comply with those provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] which protect the secrecy and sanctity of the ballot and prescribe the duties of the precinct board or municipal clerk, then the burden shall be on the contestee to prove that no fraud, intimidation, coercion or undue influence was exerted by such precinct board members or the municipal clerk, and that the secrecy and purity of the ballot was safeguarded and no intentional evasion of the substantial requirements of the law was made.

B. If the contestee fails to make such a showing, the votes of that entire polling place shall be rejected; provided, that no such rejection shall be made where it appears to the court that the members of the precinct board or municipal clerk ignored the requirements of the Municipal Election Code with the probable intent of procuring the rejection of the entire vote in the precinct.

History: 1978 Comp., § 3-8-67, enacted by Laws 1985, ch. 208, § 75.

ANNOTATIONS

Rejection of all votes from precinct. — In a municipal election, votes from a precinct can be rejected in their totality only if the contestant can show that violations of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] render it impossible to determine which candidate received a plurality of lawful votes in the precinct. Darr v. Vill. of Tularosa, 1998-NMCA-104, 125 N.M. 394, 962 P.2d 640, cert. denied, 125 N.M. 654, 964 P.2d 818 (1998).

If it is possible to determine the lawful plurality winner of a precinct, then 3-8-64 NMSA 1978 must be obeyed and this section must be disregarded. Darr v. Vill. of Tularosa, 1998-NMCA-104, 125 N.M. 394, 962 P.2d 640, cert. denied, 125 N.M. 654, 964 P.2d 818 (1998).

Law reviews. — For note, "Why Gunaji v. Macias Matters to Candidates and Voters: Its Impact on New Mexico Election Law", see 33 N.M.L. Rev. 431 (2003).

3-8-68. Recount; recheck; application; costs.

A. Whenever any candidate for any office for which the municipal clerk issues a certificate of election believes that any error or fraud has been committed by any precinct board in counting or tallying the ballots or absentee ballots, in the verification of the votes cast on the voting machines or in the certifying of the results of any election whereby the results of the election in the precinct have not been correctly determined, declared or certified, the candidate, within six days after completion of the canvass by the municipal canvassing board, may have a recount of the ballots or absentee ballots, or a recheck of the voting machine and the voting machine cartridge or memory card that contains the number of total votes that were cast in the precinct.

B. In the case of any office for which the municipal clerk issues a certificate of election, application for recount or recheck shall be filed with the municipal clerk.

C. Any applicant for a recount shall deposit with the municipal clerk fifty dollars ($50.00) in cash or a sufficient surety bond in an amount equal to fifty dollars ($50.00) for each precinct or consolidated precinct for which a recount is demanded. Any applicant for a recheck shall deposit with the municipal clerk ten dollars ($10.00) in cash or a sufficient surety bond in an amount equal to ten dollars ($10.00) for each voting machine to be rechecked.

D. The deposit or surety bond shall be security for the payment of the costs and expenses of the recount or recheck in case the results of the recount or recheck are not sufficient to change the results of the election.

E. If it appears that error or fraud sufficient to change the winner of the election has been committed, the costs and expenses of the recount or recheck shall be paid by the municipality upon warrant of the municipal clerk from the general fund of the municipality.

F. If no error or fraud appears to be sufficient to change the winner, the costs and expenses for the recount or recheck shall be paid by the applicant. Costs shall consist of any docket fees, mileage of a sheriff or state police officer in serving summons and fees and mileage of precinct board members, at the same rates allowed witnesses in civil actions. If fraud has been committed by a precinct board, it shall not be entitled to such mileage or fees.

History: 1978 Comp., § 3-8-68, enacted by Laws 1985, ch. 208, § 76; 1999, ch. 278, § 19; 2001, ch. 197, § 8; 2009, ch. 278, § 23.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, after "counting or tallying the", deleted "paper ballots used in lieu of voting machines, emergency paper"; after "may have a recount of the", deleted "paper ballots used in lieu of voting machines, emergency paper"; and after "voting machine cartridge", added "or memory card".

The 2001 amendment, effective July 1, 2001, in Subsection A, substituted "voting machine and the voting machine cartridge that contains the number of total votes" for "votes shown on the voting machines".

The 1999 amendment, effective June 18, 1999, inserted "early voting ballots" twice in Subsection A.

3-8-69. Recount; recheck; proceedings.

A. Immediately after filing of the application for recount or recheck, the municipal clerk shall issue a summons directed to the precinct board of each precinct or consolidated precinct specified in the application commanding it to appear at the office of the municipal clerk on a day fixed in the summons, which date shall not be more than ten days after the filing of the application for recount or recheck. A copy of the summons shall be forwarded to the county clerk of the concerned county.

B. The municipal clerk shall deliver the summons to a sheriff or state police officer who shall forthwith personally serve it upon each of the precinct board members. The municipal clerk shall send notices by registered mail of the date, time and place fixed for recount or recheck to the district judge and county clerk.

C. The precinct board, district judge or the district court judge's designee, county clerk and the municipal clerk shall meet on the date, time and place fixed for the recount or recheck, and the ballot boxes or voting machines of the precinct or consolidated precinct involved in the recount or recheck shall be opened. The precinct boards shall recount and retally the ballots or recheck the votes cast on the voting machine, as the case may be, and recount and retally the absentee ballots for the office in question in the presence of the municipal clerk, the county clerk, district judge or person designated to act for the judge and any other person who may desire to be present.

D. During the recount or recheck, the precinct board of a precinct or consolidated precinct where paper ballots used in lieu of voting machines or absentee ballots were used shall recount and retally only the ballots that the election judge accepted and placed in the ballot box at the time they were cast or received, as the case may be.

E. After completion of the recount or recheck, the precinct board shall replace the ballots or absentee ballots in the ballot box and lock it, or the voting machines shall be locked and resealed, and the precinct board shall certify to the municipal clerk the results of the recount or recheck. The district judge or the person designated to act for the judge, the county clerk and the municipal clerk shall also certify that the recount or recheck was made in their presence.

History: 1978 Comp., § 3-8-69, enacted by Laws 1985, ch. 208, § 77; 1999, ch. 278, § 20; 2003, ch. 244, § 9; 2009, ch. 278, § 24.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection C, in the second sentence, after "recount and retally the", deleted "paper ballots used in lieu of voting machines or emergency paper"; in Subsection D, after "consolidated precinct where", deleted "emergency paper ballots"; and in Subsection E, in the first sentence, after "shall replace the", changed "emergency paper ballots, paper ballots used in lieu of voting machines or absentee" to "ballots or absentee".

The 2003 amendment, effective June 20, 2003, deleted "early voting ballots" following "retally" in Subsection C; and deleted "early voting ballots" preceding "or absentee ballots" in Subsections D and E.

The 1999 amendment, effective June 18, 1999, inserted "early voting ballots" throughout the section.

3-8-70. Recount; recheck; recanvass.

A. Immediately upon receipt of the certificate of recount or recheck from all the precinct boards making a recount or recheck, the municipal canvassing board shall meet and recanvass the returns for the office in question.

B. In making the recanvass, the municipal canvassing board shall be bound by the certificates of recount or recheck from the precinct boards instead of the original returns from those precinct boards.

C. After the recanvass, if it appears that fraud or error has been committed sufficient to change the winner of the election, then the municipal clerk shall revoke the certificate of election already issued to any person for that office and shall issue a certificate of election in favor of the person receiving a plurality of the votes cast at the election as shown by the recount or recheck, and such certificate shall supersede all others and entitle the holder to all of the rights and privileges of the office. The person shall take office after complying with Section 3-8-33 NMSA 1978 with the time to take office running from the date that the new certificate is issued.

History: 1978 Comp., § 3-8-70, enacted by Laws 1985, ch. 208, § 78.

ANNOTATIONS

Cross references. — For post-election duties of the municipal canvassing board, *see* 3-8-53 NMSA 1978.

3-8-71. Preservation of election information.

A. The municipal clerk shall retain for two years after each municipal election:

(1) the absentee ballot register, application for absentee ballots, absentee voter lists and affidavits of destruction;

(2) signature roster and registered voter list;

(3) the machine-printed returns;

(4) oaths of office of the precinct board;

(5) declarations of candidacy and withdrawals;

(6) copies of all election material required to be published or posted;

(7) a copy of all sample ballots and ballot sheets;

(8) voting machine permits;

(9) certificates submitted by voters;

(10) copies of all affidavits and certificates prepared in connection with the election;

(11) all results of recounts, rechecks, contests and recanvass; and

(12) all other significant election materials.

B. The district court shall retain for forty-five days after each municipal election all election materials sent by the precinct board. Thereafter, the material may be destroyed unless needed by the court in connection with a contest or other case or controversy.

C. The municipal clerk shall destroy election records two years after the election by shredding, burning or otherwise destroying.

History: 1978 Comp., § 3-8-71, enacted by Laws 1985, ch. 208, § 79; 1995, ch. 200, § 6; 1997, ch. 266, § 16; 1999, ch. 278, § 21; 2003, ch. 244, § 10; 2009, ch. 278, § 25.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A(7), after the second occurrence of "ballot", deleted "faces" and added "sheets".

The 2003 amendment, effective June 20, 2003, deleted Subsections A(2) and A(3), concerning early voting, and redesignated the remaining paragraphs accordingly.

The 1999 amendment, effective June 18, 1999, in Subsection A, deleted "and ballots" following "ballot register" in Paragraph (1), added Paragraphs (2) and (3), redesignating former Paragraphs (2) to (5) as Paragraphs (4) to (7), deleted former Paragraph (6), which read "election resolution", and former Paragraph (7), which read "proof of all publications", substituted "ballot faces" for "ballot labels" in Paragraph (9), deleted "affidavits of triplicate voter registration or" at the beginning of Paragraph (11), deleted former Paragraph (13), which read "certificates of canvass and amended certificates of canvass, if any", and redesignated former Paragraphs (14) and (15) as Paragraphs (13) and (14).

The 1997 amendment, effective June 20, 1997, deleted "paper ballots" following "all" in Subsection A(9).

The 1995 amendment, effective June 16, 1995, in Subsection A, deleted former Paragraph (10) relating to affidavits of assistance, and redesignated former Paragraphs (11) to (16) as Paragraphs (10) to (15).

3-8-72. Penalties; applicability.

The penalties imposed by Sections 3-8-73 NMSA 1978 through 3-8-79 NMSA 1978 do not apply to offenses for which penalties are otherwise provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

History: 1978 Comp., § 3-8-72, enacted by Laws 1985, ch. 208, § 80.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 467 et seq.

29 C.J.S. Elections §§ 215 to 220, 323 et seq.

3-8-73. Unlawful opening of ballot box or voting machine; penalty.

A. Unlawful opening of a ballot box consists of opening any ballot box or inspecting or removing the contents thereof without lawful authority, or conspiring with others to have the same done.

B. A person who commits unlawful opening of a ballot box is guilty of a fourth degree felony.

C. Unlawful opening of a voting machine consists of, without lawful authority, opening, unlocking, inspecting, tampering, resetting or adjusting a voting machine which has been certified by the municipal clerk, or conspiring with others to have the same done.

D. A person who commits unlawful opening of a voting machine is guilty of a fourth degree felony.

History: 1978 Comp., § 3-8-73, enacted by Laws 1985, ch. 208, § 81.

ANNOTATIONS

Cross references. — For sentencing for felonies, *see* 31-18-15 NMSA 1978.

3-8-74. Unlawful possession of keys; absentee ballot; penalty.

A. Unlawful possession of keys consists of the possession at any time by any person of any key to a voting machine or ballot box or possession of an imitation or duplicate thereof or making or causing to be made any imitation or duplicate thereof unless authorized by the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

B. A person who commits unlawful possession of keys is guilty of a fourth degree felony.

C. Unlawful possession of an absentee ballot consists of the possession by any person at any time of absentee ballot materials when not authorized by the Municipal Election Code to be in the possession of such materials or when such materials were obtained in an unlawful manner. As used in this section, "absentee ballot materials" means an absentee ballot, absentee ballot envelopes, the absentee ballot register or absentee ballot return.

D. A person who commits unlawful possession of an absentee ballot is guilty of a fourth degree felony.

History: 1978 Comp., § 3-8-74, enacted by Laws 1985, ch. 208, § 82; 1999, ch. 278, § 22; 2003, ch. 244, § 11.

ANNOTATIONS

Cross references. — For sentencing for felonies, *see* 31-18-15 NMSA 1978.

The 2003 amendment, effective June 20, 2003, deleted "early voting ballot or" preceding "absentee ballot" from the section heading; and deleted Subsections E and F, concerning unlawful possession of an early voting ballot.

The 1999 amendment, effective June 18, 1999, inserted "early voting ballot" in the section heading, and added Subsections E and F.

3-8-75. False voting; falsifying election documents; false swearing; penalty.

A. False voting consists of:

(1) voting or offering to vote with the knowledge of not being a qualified elector;

(2) voting or offering to vote in the name of any other person;

(3) knowingly voting or offering to vote in any precinct except that in which one is registered;

(4) voting or offering to vote more than once in the same election;

(5) inducing, abetting or procuring or attempting to induce, abet or procure a person known not to be a qualified elector to vote; or

(6) inducing, abetting or procuring or attempting to induce, abet or procure a person who has voted once in any election to vote or attempt to vote again at the same election.

B. A person who commits false voting is guilty of a fourth degree felony.

C. Falsifying election documents consists of performing any of the following acts willfully and with knowledge and intent to deceive or mislead any voter, precinct board, municipal clerk or other election official:

(1) printing, causing to be printed, distributing or displaying false or misleading instructions pertaining to voting or the conduct of the election;

(2) printing, causing to be printed, distributing or displaying any official ballot, absentee ballot, sample ballot, facsimile diagram, ballot sheet or pretended ballot that includes the name of any person not entitled by law to be on the ballot or omits or defaces the name of any person entitled by law to be on the ballot or otherwise contains false or misleading information or headings;

(3) defacing, altering, forging, making false entries in or changing any election document, including election returns, a certificate of election registration record or signature rosters, affidavits, certificates or any other election document except as authorized in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978];

(4) withholding any certificate of election, registered voter list, signature roster, election return or any other election document required by or prepared and issued pursuant to the Municipal Election Code; or

(5) preparing or submitting any false certificate of election, signature roster, registered voter list, election return or any other election document.

D. A person who falsifies election documents is guilty of a fourth degree felony.

E. False swearing consists of knowingly taking or giving any oath required by the Municipal Election Code with the knowledge that the thing or matter sworn to is not a true and correct statement.

F. A person who falsely swears is guilty of a fourth degree felony.

History: 1978 Comp., § 3-8-75, enacted by Laws 1985, ch. 208, § 83; 1999, ch. 278, § 23; 2003, ch. 244, § 12; 2009, ch. 278, § 26.

ANNOTATIONS

Cross references. — For sentencing for felonies, *see* 31-18-15 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in Subsection C(2), after "absentee ballot", deleted "marksense ballot" and after "facsimile diagram, ballot", deleted "faces" and added "sheet".

The 2003 amendment, effective June 20, 2003, in Subsection C(2), deleted "early voting ballot" preceding "marksense ballot"; and deleted "but not limited to" following "including" in Subsection C(3).

The 1999 amendment, effective June 18, 1999, inserted "early voting ballot, marksense ballot" and substituted "ballot face" for "ballot label" in Subsection C(2).

3-8-76. Offering a bribe; accepting a bribe; intimidation; penalty.

A. Offering a bribe consists of willfully offering, advancing, paying or causing to be paid or promising, directly or indirectly, any money, other valuable consideration, office or employment to any person for any of the following purposes connected with or incidental to any election:

(1) to induce such person to vote or refrain from voting for or against any candidate or question;

(2) to induce such person, if a precinct board member, municipal clerk or other election official, to mark, alter, withhold or otherwise change or falsify any ballot or vote that has been cast, any election return, any certificate of election or any other election document; or

(3) to induce such person to use such payment or promise to bribe others for the purposes specified in this section.

B. A person who offers a bribe is guilty of a fourth degree felony.

C. Accepting a bribe consists of knowingly accepting any payment or promise of payment, directly or indirectly, of money, other valuable consideration, office or employment for the unlawful purposes specified in Subsection A of this section.

D. A person who accepts a bribe is guilty of a fourth degree felony.

E. Intimidation consists of any person, including but not limited to any elected or appointed municipal official or employee, inducing or attempting to induce fear by use of or threatened use of force, violence, infliction of damage, harm or loss to any person or property or any form of economic retaliation upon any person voting or intending to vote, precinct board member, challenger, watcher or municipal clerk to impede or prevent the free, fair and secret exercise of the elective franchise or the impartial and legally correct administration of the election pursuant to the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

F. A person who commits intimidation is guilty of a fourth degree felony.

History: 1978 Comp., § 3-8-76, enacted by Laws 1985, ch. 208, § 84; 1987, ch. 323, § 24.

ANNOTATIONS

Cross references. — For sentencing for felonies, *see* 31-18-15 NMSA 1978.

The 1987 amendment, effective June 19, 1987, in Subsection E, inserted "any person, including but not limited to any elected or appointed municipal official or employee" following "Intimidation consists of" at the beginning.

3-8-77. Electioneering too close to polling place; obstructing polling place; disturbing polling place; penalty.

A. Electioneering too close to the polling place consists of any form of campaigning on election day within one hundred feet of the building in which the polling place is located and includes but is not limited to the display of signs, bumper stickers or distribution of campaign literature.

B. A person who commits electioneering too close to the polling place is guilty of a petty misdemeanor.

C. Obstructing the polling place consists of:

(1) approaching nearer than fifty feet from any polling place during the conduct of the election with the intention of knowingly interfering with the legal conduct of the election; or

(2) willfully blocking an entrance to the polling place so as to prevent free ingress and egress.

D. A person who obstructs the polling place is guilty of a petty misdemeanor.

E. Disturbing the polling place consists of doing one or more of the following acts in the building in which the polling place is located or outside the building in which the polling place is located on election day:

(1) any act which knowingly interferes with or impedes the legal conduct of the election or the legal performance of any election official's duties or any act which unintentionally causes such result if such act is continued after an election judge orders a person to cease and desist such activity; or

(2) any act which knowingly interferes with or impedes a person's right to cast a vote in quiet, secret and orderly surroundings or any act which unintentionally causes such result if such act is continued after an election judge orders a person to cease and desist such activity.

F. A person who disturbs the polling place is guilty of a petty misdemeanor.

History: 1978 Comp., § 3-8-77, enacted by Laws 1985, ch. 208, § 85; 1997, ch. 266, § 17.

ANNOTATIONS

Cross references. — For sentencing for misdemeanors, *see* 31-19-1 NMSA 1978.

The 1997 amendment, effective June 20, 1997, substituted "close to" for "near" in the section heading and deleted "entrances being utilized for access into the" preceding "building" in Subsection A.

Intent is to protect integrity of voting. — This section is reasonably related to New Mexico's interests in protecting voters from intimidation at the polls and from preventing disruptions that might undermine the integrity of state elections. It is reasonably targeted to ensure that each voter is given the opportunity to vote the voter's conscience free from coercion and that the election is conducted with the integrity necessary to accommodate voting's central place in the republican system. Ramos v. Carbajal, 508 F. Supp.2d 905 (10th Cir. 2007).

3-8-78. Coercion of employees; permitting prisoners to vote; malfeasance by messengers; unlawful use or possession of liquor or illegal drugs; penalty.

A. Coercion of employees consists of any officer or agent of any corporation, company or association or any person having supervision over or employing persons

entitled to vote at any election directly or indirectly discharging or penalizing or threatening to discharge or penalize such employee because of the employee's opinions or beliefs or because of such employee's intention to vote or to refrain from voting for any candidate or for or against any question.

B. A person who commits coercion of employees is guilty of a fourth degree felony.

C. Permitting prisoners to vote consists of any person who has custody of convicts or prisoners taking such convicts or prisoners or permitting them to be taken to any polling place for the purpose of voting in any election.

D. A person who permits prisoners to vote is guilty of a petty misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500), or by imprisonment for not less than thirty days nor more than ninety days, or both.

E. Subsection C and Subsection D of this section do not prohibit permitting prisoners who are legally qualified to vote to cast an absentee ballot pursuant to the provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

F. Malfeasance by messengers consists of the willful delay or failure of any official messenger to convey or deliver election supplies to the precinct board or municipal clerk, the willful delay or failure of any official messenger to convey or deliver the ballot box, key, election returns or other election materials, documents or supplies to the municipal clerk or precinct board or the willful delay or failure of any official messenger to perform as required by any precinct board member or the municipal clerk who makes a legal demand.

G. Any messenger committing such malfeasance is guilty of a petty misdemeanor.

H. Unlawful use or possession of alcoholic liquor or illegal drugs consists of the use or possession of any alcoholic liquor or illegal drug by any member of the precinct board, challengers, watchers or the municipal clerk prior to or while performing official duties on election day. Unlawful use or possession also consists of the use, possession or carrying of alcoholic liquor or illegal drugs within two hundred feet of the polling place during any election.

I. A person who commits unlawful possession of alcoholic liquor or illegal drugs is guilty of a petty misdemeanor.

History: 1978 Comp., § 3-8-78, enacted by Laws 1985, ch. 208, § 86; 1997, ch. 266, § 18.

ANNOTATIONS

Cross references. — For sentencing for felonies, *see* 31-18-15 NMSA 1978.

For sentencing for misdemeanors, *see* 31-19-1 NMSA 1978.

The 1997 amendment, effective June 20, 1997, substituted "malfeasance" for "offenses" and inserted "use or" in the section heading; inserted "petty" preceding "misdemeanor" and added the language beginning "and shall be punished" at the end of Subsection D; and substituted "drugs" for "drug" in Subsections H and I.

3-8-79. Conspiracy; general penalty; violation by municipal clerk; penalty.

A. Conspiracy to violate the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] consists of two or more persons knowingly combining, uniting or agreeing to cause or attempt to cause the omission or commission of any duty or act that violates the provisions of the Municipal Election Code.

B. A person who commits conspiracy to violate the Municipal Election Code is guilty of a fourth degree felony.

C. If the Municipal Election Code does not impose a specific penalty for the violation of a provision prohibiting a specific act, a person who knowingly commits such violation is guilty of a misdemeanor.

D. Violation of the Municipal Election Code consists of the willful violation of the Municipal Election Code or the willful failure or refusal to perform any act or duty required by the Municipal Election Code.

E. A member of the municipal governing body, a municipal official or employee, or municipal clerk, deputy or assistant who willfully violates the Municipal Election Code is guilty of a fourth degree felony and, in addition, such violation is sufficient cause for removal from office in a proceeding instituted for that purpose as provided by law.

History: 1978 Comp., § 3-8-79, enacted by Laws 1985, ch. 208, § 87; 1999, ch. 278, § 24.

ANNOTATIONS

Cross references. — For sentencing for felonies, *see* 31-18-15 NMSA 1978.

For sentencing for misdemeanors, *see* 31-19-1 NMSA 1978.

The 1999 amendment, effective June 18, 1999, deleted references to the municipal clerk and deputy or assistant municipal clerk in Subsection D, and substituted "A member of the municipal governing body, a municipal official or employee, or municipal clerk, deputy or assistant who willfully violates" for "Any municipal clerk, deputy or assistant who commits such willful violation of" in Subsection E.

3-8-80. Uniform procedure.

The provisions of Sections 3-8-38 through 3-8-79 NMSA 1978 concerning election day matters, post election duties, election challenges and penalties shall apply to all municipal elections, except as otherwise specified.

History: 1978 Comp., § 3-8-80, enacted by Laws 1985, ch. 208, § 88; 1999, ch. 278, § 25.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, made stylistic changes.

3-8-81 to 3-8-95. Repealed.

ANNOTATIONS

Repeals. — Laws 2003, ch. 244, § 20, effective June 20, 2003, repealed Sections 3-8-81 to 3-8-95 NMSA 1978, relating to early voting. For provisions of former sections, *see* the 2002 NMSA 1978 on the *NMONESOURCE.COM.*

ARTICLE 9
Absentee Voting

3-9-1. Definitions.

As used in Chapter 3, Article 9 NMSA 1978:

A. "absent uniformed services voter" means:

(1) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(2) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(3) a spouse or dependent of a member described in Paragraph (1) or (2) of this subsection who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

B. "absentee voting" means the casting of a vote by a qualified elector for any candidate or question prior to election day;

C. "early voter" means a voter who votes in person before election day, and not by mail;

D. "election" means a regular or special municipal election;

E. "federal qualified elector" means:

(1) an absent uniformed services voter; or

(2) an absent uniformed services voter who, by reason of active duty or service, is absent from the United States on the date of the election involved;

F. "immediate family" means a person's spouse, children, parents, brothers and sisters;

G. "member of the merchant marine" means an individual other than a member of a uniformed service or an individual employed, enrolled or maintained on the great lakes or the inland waterways who:

(1) is employed as an officer or crew member of a vessel documented under the laws of the United States, a vessel owned by the United States or a vessel of a foreign-flag registry under charter to or control of the United States; or

(2) is enrolled with the United States for employment or training for employment or is maintained by the United States for emergency relief service as an officer or crew member of a vessel described in Paragraph (1) of this subsection;

H. "overseas voter" means:

(1) an absent uniformed services voter who, by reason of active duty or service, is absent from the United States on the date of the election involved;

(2) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(3) a person who resides outside the United States and, but for such residence, would be qualified to vote in the last place in which the person was domiciled before leaving the United States;

I. "uniformed services" means the army, navy, air force, marine corps and coast guard and the commissioned corps of the national oceanic and atmospheric administration; and

J. "voter" means a qualified elector of the municipality.

History: 1953 Comp., § 14-8A-2, enacted by Laws 1973, ch. 375, § 2; 1978 Comp., § 3-9-2, recompiled as 1978 Comp., § 3-9-1 by Laws 1985, ch. 208, § 89; 2003, ch. 244, § 13; 2009, ch. 278, § 27.

ANNOTATIONS

Recompilations. — Former 3-9-1 NMSA 1978, relating to the right of absentee voting in municipal elections, was recompiled as 3-9-3 NMSA 1978 by Laws 1985, ch. 208, § 91.

The 2009 amendment, effective June 19, 2009, added Subsection A; in Subsection B, at the end of the sentence, deleted "by mail on an absentee ballot, in person on an absentee ballot or in person on a voting machine"; deleted former Subsection B, which defined "federal qualified elector"; deleted former Subsection C, which defined "federal voter"; deleted former Subsection D, which defined "covered under the provisions of the Federal Voting Assistance Act of 1955"; deleted former Subsection E, which defined "armed forces"; deleted former Subsection F, which defined "members of the merchant marine"; added new Subsections C through I; and deleted former Subsection H, which defined "election".

The 2003 amendment, effective June 20, 2003, inserted present Subsection A and redesignated the remaining subsections accordingly.

The 1985 amendment recompiled former 3-9-2 NMSA 1978 as present 3-9-1 NMSA 1978, substituted "article" for "act" in the introductory paragraph, deleted "registered" preceding "qualified elector" in Subsection F, and inserted "or special" preceding "municipal election" in Subsection G.

3-9-2. Certain applications constitute registration.

An application from a federal qualified elector or overseas voter shall, when received by the municipal clerk, constitute a registration for purposes of that election.

History: 1953 Comp., § 14-8A-4, enacted by Laws 1973, ch. 375, § 4; 1978 Comp., § 3-9-4, recompiled as 1978 Comp., § 3-9-2 by Laws 1985, ch. 208, § 90; 2009, ch. 278, § 28.

ANNOTATIONS

Recompilations. — Former 3-9-2 NMSA 1978, containing definitions pertaining to absentee voting, was recompiled as 3-9-1 NMSA 1978 by Laws 1985, ch. 208, § 89.

The 2009 amendment, effective June 19, 2009, after "qualified elector or", deleted "federal" and added "overseas".

The 1985 amendment recompiled former 3-9-4 NMSA 1978 as present 3-9-2 NMSA 1978.

3-9-3. Absentee voting; regular or special municipal elections; right to vote.

A. Any voter or any overseas voter or federal qualified elector entitled to vote in the municipal election may vote by absentee ballot for all candidates and on all questions appearing on the ballot at such regular or special election at the voter's assigned polling place, as if the voter were able to cast a ballot in person at such polling place.

B. The provisions of this section shall also apply to a regular or special municipal election held in conjunction with any other political subdivision.

History: 1953 Comp., § 14-8A-1 enacted by Laws 1973, ch. 375, § 1; 1975, ch. 75, § 1; 1978 Comp., § 3-9-1, recompiled as 1978 Comp., § 3-9-3 by Laws 1985, ch. 208, § 91; 1993, ch. 22, § 4; 1999, ch. 278, § 26; 2009, ch. 278, § 29.

ANNOTATIONS

Recompilations. — Former 3-9-3 NMSA 1978, relating to applications for absentee ballots, was recompiled as 3-9-4 NMSA 1978 by Laws 1985, ch. 208, § 92.

Cross references. — For constitutional provision authorizing absentee voting laws, *see* N.M. Const., art. VII, § 1.

For absentee voting in general elections, *see* 1-6-1 NMSA 1978 et seq.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "Any voter or any" deleted "federal" and added "overseas".

The 1999 amendment, effective June 18, 1999, purported to amend this section but made no change.

The 1993 amendment, effective June 18, 1993, in Subsection A, deleted former Paragraphs (1) through (7) describing persons eligible to vote by absentee ballot.

The 1985 amendment recompiled former 3-9-1 NMSA 1978 as present 3-9-3 NMSA 1978 and rewrote Subsection A, adding the paragraph designations and the provisions of Paragraphs (4), (5), (6), and (7).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Elections § 389 et seq.

Validity of absentee voters' laws, 97 A.L.R.2d 218.

Construction and effect of absentee voters' laws, 97 A.L.R.2d 257.

29 C.J.S. Elections §§ 210(1) to 210(7).

3-9-4. Absentee ballot application; rejection; acceptance; issuance of absentee ballot.

A. Application by a federal qualified elector or overseas voter shall be made on the federal postcard application form to the municipal clerk.

B. The municipal clerk shall prescribe the form of the absentee ballot application.

C. An application for an absentee ballot may be obtained from the municipal clerk.

D. Upon receipt of a properly completed and delivered application for an absentee ballot, the municipal clerk shall contact the county clerk to determine if the applicant is a qualified elector of the municipality.

E. The municipal clerk shall reject an absentee ballot application for any of the following reasons:

(1) the application is not made on the form provided by the municipal clerk;

(2) the application does not set forth the applicant's full name and address;

(3) the application does not set forth the applicant's date of birth;

(4) the application is not signed by the applicant; or

(5) the applicant:

(a) has no valid affidavit of registration on file with the county clerk and is not a federal qualified elector or overseas voter;

(b) has a valid affidavit of registration on file with the county clerk, but is not a resident of the municipality; or

(c) is a federal qualified elector or overseas voter, but is not entitled to vote in the municipal election; and

(d) cannot comply with Subparagraph (a), (b) or (c) of this paragraph pursuant to Subsection B of Section 3-8-40 NMSA 1978.

F. If the municipal clerk rejects an absentee ballot application pursuant to Subsection E of this section, the municipal clerk shall mark the application "rejected", enter "rejected" in the absentee ballot register and file the application in a separate file. The municipal clerk shall, within twenty-four hours of rejection of the application, notify the applicant in writing of the reasons for rejection of the application. If the application is

incomplete, the municipal clerk shall immediately mail a new application for an absentee ballot.

G. If the application for absentee ballot is accepted, the municipal clerk shall:

(1) mark the application "accepted";

(2) enter the required information in the absentee ballot register; and

(3) issue to the applicant an absentee ballot.

H. The municipal clerk shall deliver the absentee ballot to the applicant in the office of the municipal clerk if the application for absentee ballot has been accepted and if the application is submitted in person by the applicant or mail an absentee ballot to any qualified elector, federal qualified elector or overseas voter whose application for an absentee ballot was received by mail and has been accepted. The municipal clerk shall notify the county clerk who shall write "absentee ballot" on the signature line of the signature roster next to the name of the person who has been sent an absentee ballot. Names of individuals that have been labeled "absentee ballot" shall appear on a separate list called the "absentee voter list". This list shall be submitted to the municipal clerk by the county clerk in the same manner as provided in Subsection B of Section 3-8-7 NMSA 1978.

I. It is the duty of the municipal clerk to verify the signature roster and absentee voter list to ensure that all names of individuals who have been issued absentee ballots have been labeled "absentee ballot" on the signature roster and their names listed on the absentee voter list. If not, the municipal clerk shall write "absentee ballot" on the signature line of the signature roster next to the name of the person who has been sent an absentee ballot. The municipal clerk shall then enter the name and all required information on the absentee voter list.

J. If the application for an absentee ballot is delivered in person to the municipal clerk during regular hours and days of business and is accepted, the municipal clerk shall issue the voter the absentee ballot and it shall be marked by the applicant in a voting booth in the municipal clerk's office, sealed in the proper envelopes and otherwise properly executed and returned to the municipal clerk or the clerk's authorized representative before the applicant leaves the office of the municipal clerk.

K. The act of marking the absentee ballot in the office of the municipal clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the municipal clerk a polling place subject to the requirements of a polling place in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] other than as provided in this subsection. During the period of time between the date a person may first apply in person for an absentee ballot and the final date for such application and marking of the ballot in the office of the municipal clerk, it is unlawful to solicit votes or

display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office.

L. Absentee ballots shall be mailed to federal qualified electors and overseas voters whose applications have been accepted not earlier than thirty-five days prior to the election and not later than 5:00 p.m. on the Friday immediately prior to the date of the election.

M. Absentee ballots shall be issued to voters whose applications have been approved not earlier than thirty-five days prior to the election and not later than 5:00 p.m. on the Friday immediately prior to the date of the election.

N. No absentee ballot shall be delivered or mailed by the municipal clerk to any person other than the applicant for such ballot.

History: 1953 Comp., § 14-8A-3, enacted by Laws 1973, ch. 375, § 3; 1978 Comp., § 3-9-3, recompiled as 1978 Comp., § 3-9-4 by Laws 1985, ch. 208, § 92; 1987, ch. 323, § 25; 1993, ch. 22, § 5; 1999, ch. 278, § 27; 2001, ch. 197, § 10; 2003, ch. 244, § 14; 2009, ch. 278, § 30.

ANNOTATIONS

Recompilations. — Former 3-9-4 NMSA 1978, relating to the treatment of certain absentee ballot applications as registration for an election, was recompiled as 3-9-2 NMSA 1978 by Laws 1985, ch. 208, § 90.

The 2009 amendment, effective June 19, 2009, in Subsection C, deleted the second sentence, which provided for the application for an absentee ballot and deleted the third sentence, which defined "immediate family"; and deleted former Subsection D, which required that list be kept of the names and addresses of voters requesting absentee ballot applications; in Subsection E(3), after "set forth the applicant's", deleted "social security number or"; in Subsection E(5)(a) and E(5)(c), after "qualified elector or", deleted "federal" and added "overseas"; deleted former Subsection G, which provided for the rejection of an absentee ballot application and appeal of the rejection by the applicant; added Subsection F; in Subsection H, in the first sentence, after "qualified elector or", deleted "federal" and added "overseas"; in Subsection J, at the end of the former first sentence, deleted "or allow the voter to cast a vote on the voting machine" and deleted the former second and third sentences, which provided for the times for marking of absentee ballots by in person; in Subsection L, before "mailed", deleted "air"; and after "qualified electors and", deleted "federal" and added "overseas"; in Subsection M, after "ballot shall be" deleted "mailed" and added "issued", and in Subsection N, after "mailed" added "by the municipal clerk".

The 2003 amendment, effective June 20, 2003, rewrote Subsection C; deleted former Subsection F(4), concerning early voting, and redesignated the remaining paragraphs

accordingly; rewrote Subsection K; substituted "Friday" for "Thursday" in Subsection M; and substituted "the Friday" for "Thursday" in Subsection N.

The 2001 amendment, effective July 1, 2001, added Subsection F(3) and redesignated the remaining paragraphs accordingly.

The 1999 amendment, effective June 18, 1999, added "issuance of absentee ballot" to the section heading; added Subsections C and D, redesignating former Subsections C to M as Subsections E to N; in Subsection F, added Paragraphs (1) and (3), redesignating former Paragraphs (1) to (3) as Paragraphs (2), (4), and (5), respectively; rewrote Subsection G; in the first sentence of Subsection I, deleted "hand" preceding "deliver" near the beginning, inserted the language beginning "the absentee ballot to the applicant" and ending "in person by the applicant" and inserted "was received by mail and" preceding "has been accepted"; and substituted "shall issue the voter" for "shall deliver" and inserted "beginning on the twenty-seventh day before the election" in Subsection K.

The 1993 amendment, effective June 18, 1993, rewrote Subsections A and D; added "in the clerk's office" at the end of the final sentence of Subsection J; deleted former Subsection K, pertaining to assistance in marking absentee ballots; redesignated former Subsections L through N as current Subsections K through M; and made minor stylistic changes.

The 1987 amendment, effective June 20, 1987, in Subsection B, in the second sentence inserted "desiring to cast his ballot by absentee ballot" following "Any person" at the beginning and added the present third and fourth sentences; in Subsection D, Paragraph (2)(a) substituted "Subsection A of Section 3-9-3" for "Section 3-9-3A" and in Paragraph (3)(d) substituted "Subsection D of Section 3-8-40 NMSA 1978" for "Section 3-8-40D of the Municipal Election Code"; in Subsection E, in the second sentence inserted "by telephone" preceding "or in person" and added the present third and fourth sentences; in Subsection G, in the last sentence, substituted "Subsection B of Section 3-8-7" for "Section 3-8-7B"; in Subsections L and M, inserted "not earlier than thirty-five days prior to the election and"; and made minor changes in language throughout the section.

The 1985 amendment recompiled former 3-9-3 NMSA 1978 as present 3-9-4 NMSA 1978, added "rejection; acceptance" in the section heading, deleted former Subsections B and C, relating to the application for an absentee ballot, and added Subsections B through N.

3-9-5. Absentee ballot register.

A. For each election, the municipal clerk shall keep an "absentee ballot register" in which the clerk shall enter:

(1) in numerical sequence, the name and municipal address of each absentee ballot applicant;

(2) the date and time of receipt of the application;

(3) whether the application was accepted or rejected;

(4) the date of delivery to the voter in person in the office of the municipal clerk, or mailing of an absentee ballot to the applicant, the method of delivery and, if mailed, the address to which the ballot was mailed;

(5) the applicant's precinct and district number, if applicable;

(6) whether the applicant is a voter, an overseas voter or a federal qualified elector;

(7) affidavits of voters who did not receive absentee ballots; and

(8) the date and time the completed ballot was received from the applicant by the municipal clerk.

B. The absentee ballot register is a public record open to public inspection in the municipal clerk's office during regular office hours and shall be preserved for two years after the date of the election. The municipal clerk shall have an updated absentee ballot register available for public inspection Monday through Friday during regular office hours.

History: 1953 Comp., § 14-8A-6, enacted by Laws 1973, ch. 375, § 6; 1978 Comp., § 3-9-6, recompiled as 1978 Comp., § 3-9-5 by Laws 1985, ch. 208, § 93; 1999, ch. 278, § 28; 2001, ch. 105, § 2; 2009, ch. 278, § 32.

ANNOTATIONS

Repeals. — Laws 1985, ch. 208, § 125 repealed former 3-9-5 NMSA 1978, as enacted by Laws 1973, ch. 375, § 5, relating to processing the absentee ballot and casting the ballot in person. For present comparable provisions, see 3-9-4 and 3-9-13 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in Subsection A(6), after "applicant is a voter" deleted "a federal" and added "an overseas" and deleted former Subsection C, which provided for combining the absentee register with the early voting register.

The 2001 amendment, effective June 15, 2001, inserted the second sentence of Subsection B, which discusses absentee ballot register availability to the public.

The 1999 amendment, effective June 18, 1999, substituted "delivery to the voter in person in the office of the municipal clerk" for "hand delivery" in Subsection A(4), added

"and district number, if applicable" at the end of Subsection A(5), and added Subsection C.

The 1985 amendment recompiled former 3-9-6 NMSA 1978 as present 3-9-5 NMSA 1978, and, in Subsection A, added "in numerical sequence" at the beginning of Paragraph (1), inserted "hand" and "the method of delivery, and if mailed, the address to which the ballot was mailed" in the end of Paragraph (4), and substituted "affidavits of voters who did not receive absentee ballots; and" for "whether the applicant surrendered his absentee ballot and requested its cancellation so that he could vote in person; and" in Paragraph (7).

3-9-6. Form of absentee ballot; form of absentee ballot envelopes.

A. The form of the absentee ballot shall be, as nearly as practicable, in the same form as prescribed by the municipal clerk for other ballots. However, to reduce weight and bulk for transport of absentee ballots, the size and weight of the paper for envelopes, ballots and instructions shall be reduced as much as is practicable. The ballots shall provide for sequential numbering.

B. Absentee ballots and envelopes shall be delivered by the printer to the municipal clerk not later than thirty-five days prior to the date of the election to be held.

C. The municipal clerk shall prescribe the form of:

(1) official inner envelopes for use in sealing the completed absentee ballot;

(2) official mailing envelopes for use in returning the official inner envelope to the municipal clerk;

(3) absentee ballot instructions, describing proper methods for completion of the ballot and returning it; and

(4) official transmittal envelopes for use by the municipal clerk in mailing absentee ballot materials.

D. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the municipal clerk and overseas voters and federal qualified electors shall be printed in black in the form prescribed by postal regulations and the federal Uniformed and Overseas Citizens Absentee Voting Act. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the municipal clerk shall be printed in green in substantially similar form. All official inner envelopes shall be printed in green.

E. The reverse of each official mailing envelope shall contain a form to be signed by the person completing the absentee ballot. The form shall identify the person and shall contain the following statement: "I will not vote in this election other than by the

enclosed ballot. I will not receive or offer any compensation or reward for giving or withholding any vote.".

History: 1953 Comp., § 14-8A-7, enacted by Laws 1973, ch. 375, § 7; 1978 Comp., § 3-9-7, recompiled as 1978 Comp., § 3-9-6 by Laws 1985, ch. 208, § 94; 1993, ch. 22, § 6; 1995, ch. 98, § 1; 1997, ch. 266, § 19; 1999, ch. 278, § 29; 2009, ch. 278, § 33.

ANNOTATIONS

Recompilations. — Former 3-9-6 NMSA 1978, relating to the absentee ballot register, was recompiled as 3-9-5 NMSA 1978 by Laws 1985, ch. 208, § 93.

The 2009 amendment, effective June 19, 2009, in Subsection A, in the first sentence, after "municipal clerk for", deleted "emergency paper" and added "other" and after "ballots", deleted "or paper ballots used in lieu of voting machines"; and in Subsection D, in the first sentence, after "municipal clerk and" deleted "federal" and added "overseas"; after "shall be printed in" deleted "blue" and added "black"; and at the end of the sentence, deleted "Voting Assistance Act of 1955" and added "Uniformed and Overseas Citizens Absentee Voting Act".

The 1999 amendment, effective June 18, 1999, substituted "printed in blue" for "printed in red" in the first sentence of Subsection D.

The 1997 amendment, June 20, 1997, substituted "red" for "blue" in the first sentence of Subsection D.

The 1995 amendment, effective June 16, 1995, substituted "signed" for "executed under oath" in the first sentence of Subsection E.

The 1993 amendment, effective June 18, 1993, substituted "thirty-five days" for "twenty-nine days" in Subsection B.

The 1985 amendment recompiled former 3-9-7 NMSA 1978 as present 3-9-6 NMSA 1978, rewrote and designated the formerly undesignated paragraph as present Subsection A, and added Subsections B, C, D, and E.

3-9-7. Manner of voting; use of an electronic voting device.

A. Any person voting an absentee ballot under the provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] shall secretly mark the ballot as instructed on the ballot, place the marked ballot in the official inner envelope and securely seal the envelope. The voter shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope.

B. Overseas voters and federal qualified electors shall either deliver their ballots in person or mail the official mailing envelope to the municipal clerk of their municipality of residence or deliver it to a person designated by federal authority to receive executed ballots for transmission to the municipal clerk of the municipality of residence. A voter, caregiver to that voter or member of that voter's immediate family may deliver that voter's absentee ballot to the municipal clerk in person or by mail, provided that the voter has subscribed the outer envelope of the absentee ballot.

C. When an electronic voting device is used by the voter to cast an absentee vote, the municipal clerk shall ensure that each absentee voting machine is located within the office of the municipal clerk. The area shall be secured by lock and key. Each day during the time the absentee voting machine is used for absentee voting, the municipal clerk shall, in the presence of one other employee of the municipality, unlock the office where the voting machine is located. Each day, at the close of regular office hours, the municipal clerk shall, in the presence of one other municipal employee, secure the office where the voting machine is located. Each day immediately after unlocking or locking the office where the voting machine is located, the municipal clerk and the employee present shall sign or initial the absentee voting daily report. The municipal clerk shall prescribe the form of the absentee voting daily report, which shall include the following information:

(1) the voting machine serial number;

(2) the beginning and ending public counter number for the day;

(3) the beginning and ending protective counter number for the day;

(4) the closing seal number, if any;

(5) the total number of voters for the day; and

(6) a place for the date and signature of the municipal clerk and the municipal employee.

D. Voting shall be conducted substantially in the manner provided in the Municipal Election Code. The absentee voting daily report shall be submitted to the absent voter precinct on election day, along with any voting machines used.

History: 1953 Comp., § 14-8A-8, enacted by Laws 1973, ch. 375, § 8; 1978 Comp., § 3-9-8, recompiled as 1978 Comp., § 3-9-7 by Laws 1985, ch. 208, § 95; 1995, ch. 98, § 2; 1995, ch. 200, § 7; 1997, ch. 266, § 20; 1999, ch. 278, § 30; 2003, ch. 244, § 15; 2009, ch. 278, § 34.

ANNOTATIONS

Recompilations. — Former 3-9-7 NMSA 1978, relating to the form of absentee ballots, was recompiled as 3-9-6 NMSA 1978 by Laws 1985, ch. 208, § 94.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "shall secretly mark the ballot" deleted "in the manner provided in the Municipal Election Code for marking emergency paper ballots, remove any visible number on the ballot" and added "as instructed on the ballot"; in Subsection B, at the beginning of the first sentence, deleted "Federal" and added "Overseas"; deleted the former second sentence, which provided for the delivery or mailing of the official mailing envelope to the municipal clerk; and in Subsection C, deleted the former language of the subsection, which provided for voting on a marksense ballot and added new language.

The 2003 amendment, effective June 20, 2003, inserted "use of an electronic voting device" in the section heading and added Subsection D.

The 1999 amendment, effective June 18, 1999, inserted "their ballots in person" in the first sentence and added the last sentence of Subsection B.

The 1997 amendment, effective June 20, 1997, added Subsection C.

1995 amendments. — Identical amendments to this section were enacted by Laws 1995, ch. 98, § 2, effective June 16, 1995, approved April 5, 1995, and Laws 1995, ch. 200, § 7 effective June 16, 1995, and approved April 6, 1995 which deleted "and subscribe and swear to it before a person authorized to administer oaths" at the end of Subsection A. The section is set out as amended by Laws 1995, ch. 200, § 7. See 12-1-8 NMSA 1978.

The 1985 amendment recompiled former 3-9-8 NMSA 1978 as present 3-9-7 NMSA 1978 and then deleted the former provisions of the section which read, "The manner of voting absentee ballots shall be prescribed by the municipal clerk but shall be substantially the same as provided in Section 1-6-9 NMSA 1978", substituting the provisions of present Subsections A and B.

3-9-8. Care of absentee ballots; destruction of unused ballots by municipal clerk.

A. The municipal clerk shall mark on each completed official outer envelope the date and time of receipt in the municipal clerk's office, record this information in the absentee ballot register and safely and securely keep the official outer envelope unopened until it is delivered on election day to the proper precinct board or until it is canceled and destroyed in accordance with law. Once a ballot is officially accepted by the municipal clerk and recorded in the absentee ballot register, it cannot be returned to the voter for any reason.

B. The municipal clerk shall accept completed official outer envelopes received by mail or delivered in person to the municipal clerk's office by the voter signing the official

outer envelope, by a member of the voter's immediate family or by the caregiver to the voter until 7:00 p.m. on election day. Any completed outer envelope received after that time and date shall be marked as to the time and date received, shall not be delivered to the precinct board and shall be preserved until the time for election contests has expired. In the absence of a court order, after the expiration of the time for election contests, the municipal clerk shall destroy all late official mailing envelopes without opening or permitting the contents to be examined, cast, counted or canvassed. Before their destruction, the municipal clerk shall count the numbers of late ballots from voters, overseas voters and federal qualified electors and record the number from each category in the absentee ballot register.

C. After 5:00 p.m. and not later than 8:00 p.m. on the Friday immediately preceding the date of the election, the municipal clerk shall record the numbers of the unused absentee ballots and shall publicly destroy in the municipal clerk's office all unused ballots. The municipal clerk shall execute a certificate of such destruction, which shall include the numbers on the ballots destroyed, and the certificate shall be placed within the absentee ballot register.

D. At 7:00 p.m. on the day of the election, the municipal clerk shall determine the number of ballots that were mailed and have not been received and execute a "certificate of unreceived absentee ballots". The certificate shall be placed in the absentee ballot register and shall become an official part of the register. The municipal clerk shall determine the form of the certificate of unreceived absentee ballots.

History: 1953 Comp., § 14-8A-9, enacted by Laws 1973, ch. 375, § 9; 1978 Comp., § 3-9-9, recompiled as 1978 Comp., § 3-9-8 by Laws 1985, ch. 208, § 96; 1999, ch. 278, § 31; 2003, ch. 244, § 16; 2009, ch. 278, § 35.

ANNOTATIONS

Recompilations. — Former 3-9-8 NMSA 1978, relating to the manner of absentee voting, was recompiled as 3-9-7 NMSA 1978 by Laws 1985, ch. 208, § 95.

The 2009 amendment, effective June 19, 2009, in Subsection B, in the first sentence, after "official outer envelope", deleted "or by members" and added "by a member", and after "voter's immediate family", added "or by a caregiver to the voter"; deleted the former second sentence, which defined "immediate family"; and in the last sentence, after "ballots from voters", deleted "federal" and added "overseas"; and in Subsection C, after "8:00 p.m. on the", deleted "Thursday" and added "Friday".

The 2003 amendment, effective June 20, 2003, in Subsection B, inserted "or by members of the voter's immediate family" near the end of the first sentence, and inserted the present second sentence.

The 1999 amendment, effective June 18, 1999, substituted "absentee ballot register" for "absent ballot register" in Subsection A; inserted "received by mail or delivered in

person to the municipal clerk's office by the voter signing the official outer envelope" in the first sentence of Subsection B; and substituted "After 5:00 p.m. and not later than 8:00 p.m." for "At 5:00 p.m." in Subsection C.

The 1985 amendment recompiled former 3-9-9 NMSA 1978 as present 3-9-8 NMSA 1978, substituted "Care" for "Receipt" and inserted "destruction of unused ballots" in the catchline, inserted "and securely" near the middle of the first sentence and added the second sentence in Subsection A, substituted "7:00 p.m." for "the time for the closing of the polls" near the end of the first sentence, inserted "shall not be delivered to the precinct board" in the second sentence, and substituted "official mailing" for "official outer" in the third sentence in Subsection B, substituted "Thursday" for "Friday" near the beginning of Subsection C, and added Subsection D.

3-9-9. Absent voter precinct.

For the purposes of absentee voting, the governing body shall create a special absent voter precinct, cause an absent voter precinct board to be appointed consisting of election judges and election clerks as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] and shall designate a polling place for the counting and tallying of absentee ballots in the election on election day. The municipal clerk shall administer the oath to the election judges. A regular precinct board may be designated to serve as the absent voter precinct board. Members of the absent voter precinct board shall receive the same compensation as other precinct board members, but in no case shall a precinct board member who also serves as a member of the absent voter precinct board be entitled to extra compensation for serving on the absent voter precinct board.

History: 1953 Comp., § 14-8A-10, enacted by Laws 1973, ch. 375, § 10; 1978 Comp., § 3-9-10, recompiled as 1978 Comp., § 3-9-9 by Laws 1985, ch. 208, § 97; 1995, ch. 200, § 8; 1999, ch. 278, § 32.

ANNOTATIONS

Recompilations. — Former 3-9-9 NMSA 1978, relating to the receipt of absentee ballots by the municipal clerk, was recompiled as 3-9-8 NMSA 1978 by Laws 1985, ch. 208, § 96.

The 1999 amendment, effective June 18, 1999, substituted "an absent voter precinct board" for "a precinct board" and inserted "on election day" in the first sentence of the section.

The 1995 amendment, effective June 16, 1995, substituted "shall designate a polling place" for "designate the municipal clerk's office as the polling place".

The 1985 amendment recompiled former 3-9-10 NMSA 1978 as present 3-9-9 NMSA 1978, substituted "governing body" for "municipal clerk", substituted "cause" for

"appoint", and inserted "to be appointed consisting of election judges and election clerks as provided in the Municipal Election Code" in the first sentence, added the second, third, and fourth sentences, and deleted the former second and third sentences, relating to absentee ballots received by the municipal clerk or at the absent voter precinct.

3-9-10. Delivery of absentee ballots to absent voter precinct.

After 7:00 a.m. on election day, the municipal clerk shall deliver to the absent voter precinct board the absentee ballot register and the absent voter ballots received by the clerk, any electronic voting machines used and all absentee voting daily reports. Prior to 7:00 p.m. on election day, the municipal clerk shall deliver any ballots received on election day to the absent voter precinct board and the precinct board shall note the receipt of ballots in the absentee ballot register and on the absentee voter list. On delivery of the ballots, the municipal clerk or his designee shall remain in the presence of the absent voter precinct board until the clerk has observed the opening of all official mailing envelopes, the deposit of all ballots in the locked ballot box and the listing of the names on all of the official mailing envelopes in the absentee voter list. All functions of the absent voter precinct board shall be conducted in the place designated as the absent voter precinct.

History: 1978 Comp., § 3-9-10, enacted by Laws 1985, ch. 208, § 98; 1995, ch. 200, § 9; 1999, ch. 278, § 33; 2003, ch. 244, § 17.

ANNOTATIONS

Recompilations. — Former 3-9-10 NMSA 1978, relating to an absent voter precinct, was recompiled as 3-9-9 NMSA 1978 by Laws 1985, ch. 208, § 97.

The 2003 amendment, effective June 20, 2003, inserted "any electronic voting machines used and all absentee voting daily reports" to the end of the first sentence.

The 1999 amendment, effective June 18, 1999, inserted "or his designee" in the third sentence.

The 1995 amendment, effective June 16, 1995, substituted "7:00 a.m." for "8:00 a.m." in the first sentence, substituted "absentee ballot" for "absent ballot" in the second sentence, substituted "the" for "said" near the beginning of the third sentence, and substituted "place designated as the absent voter precinct" for "office of the municipal clerk, which is the absent voter precinct".

3-9-11. Handling absentee ballots by absent voter precinct boards.

A. Before opening any official mailing envelope, an election judge shall determine that the required signature has been executed on the reverse side of the official mailing envelope.

B. If the signature is missing, an election judge shall write "rejected" on the front of the official mailing envelope. The election clerks shall write the notation "rejected - missing signature" in the "notations" column on the absentee voter list. An election judge shall place the official mailing envelope unopened in an envelope provided for rejected ballots, seal the envelope, write the voter's name on the front of the envelope and deposit it in the locked ballot box.

C. Declared challengers certified by the municipal clerk may examine the official mailing envelope and may challenge the ballot of any absent voter for the following reasons:

(1) the official mailing envelope has been opened prior to being received by the absent voter precinct board; or

(2) the person offering to vote is not an overseas voter, federal qualified elector or voter as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

Upon the challenge of an absentee ballot, an election judge shall generally follow the same procedure as when ballots are challenged when a person offers to vote in person. If a challenged ballot is not to be counted, it shall not be opened and shall be placed in an envelope provided for challenged ballots.

D. If the official mailing envelopes have properly executed signatures and the voters have not been challenged:

(1) an election judge shall open the official mailing envelopes and deposit the ballots in their still sealed official inner envelopes in the locked ballot box; and

(2) the election clerks shall mark the notation "AB" opposite the voter's name in the "notations" column of the absentee voter list.

E. Prior to the closing of the polls, an election judge may remove the absentee ballots from the official inner envelopes and either count and tally the results of absentee balloting by hand or register the results of each absentee ballot on a voting machine the same as if the absent voter had been present and voted in person. It shall be unlawful for any person to disclose the results of such count and tally or such registration on a voting machine of absentee ballots prior to the closing of the polls.

F. The municipal clerk shall, prior to the opening of the polls on election day, notify the absent voter precinct board in writing whether absentee ballots are to be counted and tallied or registered on a voting machine. The procedures shall be such as to ensure the secrecy of the ballot.

G. Absent voter precinct polls shall be closed at 7:00 p.m. on the day of the election by the absent voter precinct board.

History: 1978 Comp., § 3-9-11, enacted by Laws 1985, ch. 208, § 99; 1995, ch. 200, § 10; 2009, ch. 278, § 36.

ANNOTATIONS

Repeals. — Laws 2009, ch. 278, § 40 repealed Laws 1995, ch. 98, §3, effective June 19, 2009.

Recompilations. — Former 3-9-11 NMSA 1978, relating to a prohibition on in-person balloting after issue of an absentee ballot, was recompiled as 3-9-13 NMSA 1978 by Laws 1985, ch. 208, § 101.

The 2009 amendment, effective June 19, 2009, in Subsection C(1), after "being received by the" added "absent voter"; and in Subsection C(2), after "offering to vote is not", deleted "federal" added "overseas".

1995 amendments. — Laws 1995, ch. 98, § 3, effective June 16, 1995, substituting "signature has been placed" for "oath has been executed" in Subsection A; in Subsection B, substituting "the voter's signature is" for "one or both signatures are" in the first sentence and making a minor stylistic change; substituting "proper signatures" for "properly executed oaths" in the introductory paragraph of Subsection D; and substituting "be closed" for "close" in Subsection G, was approved April 5, 1995. However, Laws 1995, ch. 200, § 10, effective June 16, 1995, substituting "signature" for "oath" in Subsection A, substituting "the signature is" for "one or both signatures are" in Subsection B, substituting "signatures" for "oaths" in Subsection D, substituting "ensure" for "insure" in Subsection F, and substituting "shall be closed" for "shall close" in Subsection G, but not giving effect to the changes made by the first 1995 amendment, was approved April 6, 1995. The section is set out as amended by Laws 1995, ch. 200, § 10. See 12-1-8 NMSA 1978.

3-9-12. Canvass; recount or recheck; disposition.

Where no voting machines are used to register absentee ballots, such ballots shall be canvassed, recounted and disposed of in the manner provided by the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] for the canvassing, recounting and disposition of paper ballots. Where voting machines are used to register absentee ballots, such ballots shall be canvassed and rechecked in the manner provided by the Municipal Election Code for the canvassing and recheck of ballots cast on a voting machine; provided, in the event of a contest, voting machines used to register absentee ballots shall not be rechecked, but the absentee ballots shall be recounted in the manner provided by the Municipal Election Code.

History: 1978 Comp., § 3-9-12, enacted by Laws 1985, ch. 208, § 100; 2009, ch. 278, § 37.

ANNOTATIONS

Recompilations. — Former 3-9-12 NMSA 1978, relating to cancellation of an absentee ballot at death, was recompiled as 3-9-14 NMSA 1978 by Laws 1985, ch. 208, § 102 and was repealed by Laws 1999, ch. 278, § 53, effective June 18, 1999.

The 2009 amendment, effective June 19, 2009, in the first sentence, after "recounting and disposition of", deleted "emergency" and in the last sentence, after "Municipal Election Code", deleted "for the recounting of emergency paper ballots".

3-9-13. Voting in person prohibited.

A. No person who has been issued an absentee ballot shall vote in person at that person's regular precinct polling place on election day except as otherwise provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

B. At any time prior to 5:00 p.m. on the Friday immediately preceding the date of the election, any person whose absentee ballot application has been accepted and who was mailed an absentee ballot but who has not received the absentee ballot may execute, in the office of the municipal clerk of the municipality where that person is registered to vote, a sworn affidavit stating that the person did not receive or vote his absentee ballot. Upon receipt of the sworn affidavit, the municipal clerk shall issue the voter a replacement absentee ballot.

C. The municipal clerk shall prescribe the form of the affidavit and the manner in which the municipal clerk shall void the first ballot mailed to the applicant.

History: 1953 Comp., § 14-8A-11, enacted by Laws 1973, ch. 375, § 11; 1978 Comp., § 3-9-11, recompiled as 1978 Comp., § 3-9-13 by Laws 1985, ch. 208, § 101; 1999, ch. 278, § 34; 2003, ch. 244, § 18.

ANNOTATIONS

Recompilations. — Former 3-9-13 NMSA 1978, relating to watchers and challengers for absent voter precinct, was recompiled as 3-9-15 by Laws 1985, ch. 208, § 103.

The 2003 amendment, effective June 20, 2003, deleted "by early ballot or" following "shall vote" and added "except as otherwise provided in the Municipal Election Code" in Subsection A; and substituted "Friday" for "Thursday" in Subsection B.

The 1999 amendment, effective June 18, 1999, substituted "by early ballot or in person at that person's regular precinct polling place on election day" for "in person at that person's polling place" in Subsection A.

The 1985 amendment recompiled former 3-9-11 NMSA 1978 as present 3-9-13 NMSA 1978, designated the formerly undesignated paragraph as present Subsection A, substituted "that person's polling place" for "his precinct poll" at the end of Subsection A, and added Subsections B and C.

3-9-13.1. Absentee ballot; conduct of election; when not timely received; emergency procedure for voting and counting.

A. A voter who has submitted an application for an absentee ballot that was accepted by the municipal clerk but who has not received the absentee ballot by mail as of the date of the election may go to the assigned polling place and, after executing an affidavit of nonreceipt of absentee ballot, shall be issued a ballot in lieu of an absentee ballot by the presiding judge, and shall be allowed to mark the ballot.

B. The voter shall place the completed ballot issued in lieu of an absentee ballot in an official inner envelope, substantially in the form prescribed pursuant to Section 3-9-6 NMSA 1978, which shall be sealed by the voter. The official inner envelope shall then be placed by the voter, in the presence of the presiding judge, in an official outer envelope substantially as prescribed for a transmittal envelope or mailing envelope pursuant to Section 3-9-6 NMSA 1978. The presiding judge shall fill in the information on the back of the envelope that identifies the voter by name and signature roster number and contains the printed affidavit that the voter made application for an absentee ballot, which the voter believes to have been accepted by the municipal clerk, that the voter swears an absentee ballot had not been received as of the date of the election and that the voter was issued a ballot in lieu of an absentee ballot, and that the ballot was marked by the voter and submitted to the presiding judge.

C. The presiding judge shall place all ballots issued in lieu of absentee ballots in a special envelope provided for that purpose by the municipal clerk, seal the envelope and return it to the municipal clerk along with the machine tally sheets after the closing of the polls. The sealed envelope shall not be placed in the locked ballot box.

D. The municipal clerk shall, upon receipt of the envelope containing ballots in lieu of absentee ballots, and no later than forty-eight hours after the close of the polls for the election, remove the transmittal envelopes and without removing or opening the inner envelopes, determine:

(1) if the voter did in fact make application for an absentee ballot that was accepted by the municipal clerk;

(2) if an absentee ballot was mailed by the municipal clerk to the voter; and

(3) whether an absentee ballot was received by the municipal clerk from the voter by 7:00 p.m. on election day.

E. If the municipal clerk determines that the ballot in lieu of absentee ballot is valid, that an absentee ballot was mailed to the voter and that no absentee ballot was received from the voter by the municipal clerk, the municipal clerk shall remove the inner envelope without opening it, retain the transmittal envelope with the other election returns and place the inner envelope, unopened, in a secure and locked container to be

transmitted to the canvassing board to be tallied and included in the canvass of the election returns for the municipality.

F. If the municipal clerk determines that the ballot in lieu of absentee ballot is not valid because the application for absentee ballot was rejected and no ballot was mailed to the voter, or that a ballot was received from the voter by the municipal clerk not later than 7:00 p.m. on election day, the municipal clerk shall write "rejected invalid ballot" on the front of the transmittal envelope and the transmittal envelope shall not be sent to the canvassing board for counting and tallying. The municipal clerk shall retain the unopened transmittal envelope in a safe and secure manner and shall notify the district attorney in writing of the alleged violation of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. A copy of the notification to the district attorney shall be sent by first class mail to the voter and to the secretary of state.

G. The municipal clerk shall furnish and shall prescribe the form of the necessary envelopes to be used in accordance with the purposes of this section, and shall take steps to preserve the secrecy of any ballots cast pursuant to this section.

History: Laws 2003, ch. 244, § 19; 2009, ch. 278, § 38.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, after "date of the election may", deleted "present himself at his" and added "go to the"; and after "shall be issued", deleted "an emergency paper"; in Subsection B, in the first sentence, after "place the completed", deleted "emergency paper"; in Subsection C, after "shall place all", deleted "emergency paper"; in Subsection D, after "envelope containing", deleted "emergency paper"; in Subsection E, after "determines that the", deleted "emergency paper"; and in Subsection F, in the first sentence, after "determines that the", deleted "emergency paper".

3-9-14. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 278, § 53 repealed 3-9-14 NMSA 1978, enacted by Laws 1973, ch. 375, § 12, as amended by Laws 1985, ch. 208, § 102, relating to the cancellation of absentee ballots at death, effective June 18, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMONESOURCE.COM.*

3-9-15. Watchers, challengers, and observers for absent voter precinct.

Watchers, challengers and observers may be appointed to serve on election day for the absent voter precinct in the manner specified for the appointment of watchers, challengers and observers for other precincts used in municipal elections.

History: 1953 Comp., § 14-8A-13, enacted by Laws 1973, ch. 375, § 13; 1978 Comp., § 3-9-13, recompiled as 1978 Comp., § 3-9-15 by Laws 1985, ch. 208, § 103; 1999, ch. 278, § 35.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, inserted "and observers" in the section heading and twice in the section, and inserted "to serve on election day".

The 1985 amendment recompiled former 3-9-13 NMSA 1978 as present 3-9-15 NMSA 1978.

3-9-16. Penalties.

A. A person who knowingly votes or offers to vote an absentee ballot to which the person is not lawfully entitled to vote or offer to vote is guilty of a fourth degree felony.

B. A municipal official or employee or any other person who knowingly furnishes absentee ballots to persons who are not entitled to such ballots under the provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] is guilty of a fourth degree felony.

C. A municipal official or employee, precinct board member or any other person who knowingly destroys or otherwise disposes of an absentee ballot other than in the manner provided by the Municipal Election Code is guilty of a fourth degree felony.

D. A person who knowingly or willfully makes any false statement in any application for an absentee ballot or in the absentee ballot register or in any certificate required by the Municipal Election Code is guilty of a fourth degree felony.

E. A person who knowingly possesses an executed or unexecuted absentee ballot outside the physical confines of the municipal clerk's office when the ballot is not the personal ballot of that person or who otherwise knowingly authorizes, aids or abets the unlawful removal of an executed or unexecuted absentee ballot from the physical confines of the municipal clerk's office is guilty of a fourth degree felony.

F. A municipal clerk who knowingly possesses an executed or unexecuted absentee ballot outside the physical confines of the municipal clerk's office when that ballot is not the personal ballot of the municipal clerk, or who otherwise knowingly authorizes, aids or abets the unlawful removal of an executed or unexecuted absentee ballot that is not the personal ballot of the municipal clerk from the physical confines of the municipal clerk's office, is guilty of a fourth degree felony.

History: 1953 Comp., § 14-8A-14, enacted by Laws 1973, ch. 375, § 14; 1978 Comp., § 3-9-14, recompiled as 1978 Comp., § 3-9-16 by Laws 1985, ch. 208, § 104; 1999, ch. 278, § 36; 2009, ch. 278, § 39.

ANNOTATIONS

Cross references. — For sentencing for felonies, *see* 31-18-15 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in Subsection B, after "other person who", added "knowingly".

The 1999 amendment, effective June 18, 1999, substituted "the Municipal Election Code" for "this act" in Subsection C; in Subsection E, deleted "municipal clerk or any other person" following "A" at the beginning of the subsection, and substituted "the ballot is not the personal ballot of that person" for "not legally entitled to possession thereof"; and added Subsection F.

The 1985 amendment recompiled former 3-9-14 NMSA 1978 as present 3-9-16 NMSA 1978, inserted "municipal" preceding "official" and substituted "or any other person" for "of the municipality" near the beginning, and "the Municipal Election Code" for "this act" near the end of Subsection B; inserted "municipal" preceding "official", deleted "or" preceding "precinct board", and inserted "or any other person" preceding "who knowingly destroys" near the beginning of Subsection C; substituted "the Municipal Election Code" for "this act" near the end of Subsection D; and added Subsection E.

ARTICLE 10
Municipal Officers; Qualifications; Compensation; Removal from Office

3-10-1. Officers; elective; term of office.

A. The elective officers of a municipality having a mayor-council form of government are:

(1) one mayor;

(2) the members of the governing body; and

(3) a municipal judge.

B. The elective officers of a municipality having a commission-manager form of government are:

(1) five commissioners; and

(2) a municipal judge.

C. Notwithstanding the provisions of Subsection A of this section, a municipality with a population of five hundred persons or less in the last federal decennial census shall

not have a municipal judge if it adopts an effective ordinance in accordance with the provisions of Subsection B of Section 35-14-1 NMSA 1978.

D. In every noncharter municipality, except those noncharter municipalities having a commission-manager form of government or electing members of the governing body from districts, the terms of office for the mayor and members of the governing body shall be four years. The term of office for members of the governing body shall be staggered so that the terms of office for one-half of the members of the governing body will expire every two years.

E. Any elected municipal official whose term of office has expired shall continue in that office until his successor is elected and has taken office pursuant to the provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

History: 1953 Comp., § 14-9-1, enacted by Laws 1965, ch. 300; 1984, ch. 30, § 1; 1985, ch. 208, § 105.

ANNOTATIONS

Cross references. — For definition of "mayor", *see* 3-1-2 NMSA 1978.

For Tort Claims Act, *see* 41-4-1 NMSA 1978.

The 1985 amendment added "term of office" in the section heading and added Subsections C, D, and E.

The 1984 amendment added Subsection C.

Section inapplicable to home rule municipality. — This section is not applicable to a home rule municipality to deny it the power to provide for a different number of city commissioners than otherwise proscribed because the composition of a municipal government is a matter of local, not statewide concern, and to construe otherwise would frustrate the purpose of the home rule amendment, N.M. Const., art. X, § 6. State ex rel. Haynes v. Bonem, 114 N.M. 627, 845 P.2d 150 (1992).

Law reviews. — For survey, "Torts: Sovereign and Governmental Immunity in New Mexico," see 6 N.M.L. Rev. 249 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 231 to 268.

62 C.J.S. Municipal Corporations § 330.

3-10-2. Officers; oath and bond; failure to qualify.

A. Any officer elected or appointed to any municipal office shall take an oath or affirmation to support the constitution of the United States, the constitution and laws of New Mexico and to faithfully perform the duties of his office.

B. For the care and disposition of municipal funds in the employee's custody and for the faithful discharge of the employee's duties, the governing body of the municipality shall require a corporate surety bond from the treasurer, the police officer and any other employee it designates. In lieu of individual corporate surety bonds, the governing body may secure a blanket corporate surety bond. The municipality shall pay for the surety bond.

C. The governing body of any municipality may declare vacated the office of any person who fails, within ten days after he has been notified of his election or appointment to office, to take the oath of office, or to give bond when required.

History: 1953 Comp., § 14-9-2, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For oath of office, *see* N.M. Const., art. XX, § 1.

For bonds of municipal treasurers, *see* 6-10-38 NMSA 1978 et seq.

There is no bond required for an elective city council. 1961-62 Op. Att'y Gen. No. 61-125.

Amount of treasurer's bond. — Except in cases involving personal sureties, the bond of the municipal treasurer should be in a sum equal to 20% of the public moneys received by such treasurer during the preceding fiscal year, with a maximum of $50,000. 1961-62 Op. Att'y Gen. No. 61-125.

Bond of city clerk where jobs of clerk and treasurer are combined. — Since the council may require a bond from a city clerk where the jobs of clerk and treasurer are combined, the council may require a bond from that individual over and above the amount required by statute for his duties as treasurer. In absence of an ordinance requiring a bond for the clerk, however, no additional bonding is required. 1961-62 Op. Att'y Gen. No. 61-125.

Responsibility of city clerk for office property. — The city clerk would not be responsible, on the bond, for office property, unless, by stated condition or ordinance provided, the duties and responsibilities of the clerk were made specific. In the absence of such delegation of responsibility, the local governing body or the city council must be looked to for accountability. 1957-58 Op. Att'y Gen. No. 57-315.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 291 to 293.

Validity of governmental requirement of oath of allegiance or loyalty, 18 A.L.R.2d 268.

62 C.J.S. Municipal Corporations §§ 357 to 359.

3-10-3. Noncharter municipalities; governing bodies; compensation.

A noncharter municipality may provide by ordinance for the compensation of the mayor and other individual members of the governing body.

History: 1953 Comp., § 14-9-3, enacted by Laws 1971, ch. 194, § 1; 1995, ch. 119, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1971, ch. 194, § 1, repealed former 14-9-3, 1953 Comp., relating to compensation of municipal officers, and enacted the above section.

The 1995 amendment, effective June 16, 1995, deleted the former second sentence which read: "Annual compensation paid to the mayor or another member of the governing body shall not exceed the annual compensation paid to a member of the board of county commissioners of the county in which the noncharter municipality is located."

Compensation of city officials could be fixed only by ordinance, and not by motion. Ward v. City of Roswell, 34 N.M. 326, 281 P. 28 (1929).

Application of salary-fixing provisions of municipal code. — The salary-fixing provisions of the municipal code has reference only to municipalities organized directly under a code-established plan. 1970 Op. Att'y Gen. No. 70-41.

Officials not to realize salary increase during term. — Subject to its applicable laws, the governing body of a municipality may enact an ordinance to increase the salary of its members, but members serving during the term in which such an ordinance is enacted cannot benefit from the increase during that term. 1981 Op. Att'y Gen. No. 81-17.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 258 to 268.

62 C.J.S. Municipal Corporations §§ 372 to 390.

3-10-4. Repealed.

ANNOTATIONS

Repeals. — Laws 2011, ch. 138, § 14 repealed 3-10-4 NMSA 1978, as enacted by Laws 1977, ch. 78, § 1, relating to financial interests of municipal officers and employees, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMONESOURCE.COM.*

3-10-5. Repealed.

ANNOTATIONS

Repeals. — Laws 2011, ch. 138, § 14 repealed 3-10-5 NMSA 1978, as enacted by Laws 1965, ch. 300, relating to officers disclosure of interest and disqualified from voting, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMONESOURCE.COM.*

3-10-6. Officers; extra compensation; penalty.

Any mayor or member of the governing body of a municipality who receives payment for services rendered by him, contrary to law, is guilty of a misdemeanor. The fine shall be paid into the general fund of the municipality.

History: 1953 Comp., § 14-9-6, enacted by Laws 1965, ch. 300.

3-10-7. Officers; removal for malfeasance in office; complaint; jurisdiction of district court; hearing; serving notice.

Any person elected or appointed to an elective office of a municipality may be removed for malfeasance in office by the district court upon complaint of the mayor or governing body of the municipality. Any such officer is entitled to a hearing at a time fixed by the court after not less than ten days' notice of such proceedings by service, as in the case of summons in civil actions, with a copy of the complaint filed in the proceedings.

History: 1953 Comp., § 14-9-8, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For removal of local officers, *see* 10-4-1 NMSA 1978 et seq.

"Malfeasance" defined. — The term "malfeasance" has been variously defined as a comprehensive term which includes any wrongful conduct affecting performance of official duties, or as a wrongful act which the actor had no legal right to do, or any wrongful conduct which affects, interrupts or interferes with performance of official duties, or an act for which there is no authority or warrant of law or which a person ought not to do at all, or the unjust performance of some act, which party performing it has no right, or doing an act which is wholly wrongful and unlawful and which an officer

has no authority to do, and if the act is discretionary it must have been done with an improper or corrupt motive. Arellano v. Lopez, 81 N.M. 389, 467 P.2d 715 (1970).

Proof required of malfeasance. — Malfeasance should never be inferred or elected officials removed from the office to which the public has elected them without strong proof of willful and knowing wrongdoing. Arellano v. Lopez, 81 N.M. 389, 467 P.2d 715 (1970).

When the people of any municipality, in a duly constituted election, select certain individuals to conduct their local government, those representatives of the people may be removed from office only upon showing of a perverseness which amounts to criminality or culpable indifference to their official duties. Arellano v. Lopez, 81 N.M. 389, 467 P.2d 715 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 304 to 326.

Power to remove public officer without notice and hearing, 99 A.L.R. 336.

Power of courts or judges in respect of removal of officers, 118 A.L.R. 170.

Validity of removal or discharge of governmental officer or employee as affected by absence of member of board or commission from hearing, 171 A.L.R. 175.

Conviction of offense under federal law or law of another state or country as vacating accused's holding of state or local office or as ground of removal, 20 A.L.R.2d 732.

Injunction as remedy against removal of public officer, 34 A.L.R.2d 554.

Assertion of immunity as ground for removing or discharging public officer or employee, 44 A.L.R.2d 789.

Infamous crime or one involving moral turpitude constituting disqualification to hold public office, 52 A.L.R.2d 1314.

Conviction under federal law or law of another state or county, effect on right to vote or hold public office, 39 A.L.R.3d 303.

Misconduct during previous term, removal of public officer for, 42 A.L.R.3d 691.

62 C.J.S. Municipal Corporations §§ 419 to 441.

3-10-8. Officers; delivery of records.

Any officer who vacates his office shall forthwith deliver to his successor all money, records, property or other things in his charge and belonging to the municipality.

History: 1953 Comp., § 14-9-9, enacted by Laws 1965, ch. 300.

ARTICLE 11
Mayor-Council Municipality; Mayor

3-11-1. Powers of mayor; applicability.

The provisions of Sections 3-11-1 through 3-11-7 NMSA 1978 are applicable only to those municipalities governed under the mayor-council form of government, and which have not elected to be governed under the commission-manager form of government.

History: 1953 Comp., § 14-10-1, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For definition of "mayor", *see* 3-1-2 NMSA 1978.

For municipal officers, *see* 3-10-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 281.

62 C.J.S. Municipal Corporations § 370.

3-11-2. Mayor; vacated office; appointment by governing body.

In case of the death, disability, resignation or change of residence, from the municipality, of the mayor, the governing body shall appoint by majority vote a qualified elector to fill the vacancy for the unexpired term of office.

History: 1953 Comp., § 14-10-2, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For election of mayor pro tem by governing body in the absence of the mayor, *see* 3-12-3 NMSA 1978.

Office of mayor is not vacant so long as present mayor retains authority to conduct the affairs of that office. 1969 Op. Att'y Gen. No. 69-106.

The fact that a mayor may have tendered to the city council a prospective resignation effective at a future date does not compromise or defeat his legal authority to act as mayor until that date. 1969 Op. Att'y Gen. No. 69-106.

When successor to resigning mayor acquires authority. — Although the city council may choose the successor to a resigning mayor before the effective date of the present mayor's resignation, the successor does not acquire any authority or power by way of that selection and may not assume such power or authority until the office becomes vacant. 1969 Op. Att'y Gen. No. 69-106.

A resigning mayor may not appoint his successor. 1969 Op. Att'y Gen. No. 69-106.

Members of the city council possess the authority to select a resigning mayor's successor. 1969 Op. Att'y Gen. No. 69-106.

Resigning mayor authorized to cast tie-breaking vote. — Since it is contemplated that the city council's action in selecting a resigning mayor's successor would be taken before the effective date of the former's resignation, the resigning mayor would be authorized to cast a deciding vote in the event of a tie on the choice of a successor. 1969 Op. Att'y Gen. No. 69-106.

3-11-3. Mayor; presiding officer of governing body; limitation on vote.

The mayor of a municipality is the presiding officer of the governing body. In all municipalities the mayor shall vote only when there is a tie vote.

History: 1953 Comp., § 14-10-3, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Discharge of municipal employee. — In a mayor-council form of municipal government which has four councilmen and a mayor, who votes only to break a tie vote, where one councilman voted against the discharge of a municipal employee, while two councilmen and the mayor voted in favor of his termination, and one councilman was absent, the vote did not result in a valid discharge, which could only result from three councilmen voting in favor thereof, or a tie vote, broken by the mayor in favor of termination. However, it was not error for the trial court to concede that the vote was improper but nonetheless refuse to grant the equitable relief requested because even if the absent councilman had voted against termination there would have been a tie, which the mayor's vote would have broken. Abeyta v. Town of Taos, 499 F.2d 323 (10th Cir. 1974).

A mayor is counted for purposes of a quorum, but his vote is counted only if there is a tie vote of the councilmen present at a meeting. 1969 Op. Att'y Gen. No. 69-148.

Mayor's voting rights.. — A mayor always has the right to break a tie vote even when a supermajority vote is required. This opinion letter overrules 1990 Op. Att'y Gen No. 90-02. 2003 Op. Att'y Gen. No. 03-02.

Three-fourths vote requirement. — If a municipal ordinance requires the vote of three-fourths of the entire membership of the municipal board of trustees to decide a question, the mayor's vote is not counted in the event of tie. 1990 Op. Att'y Gen. No. 90-02, overruled by 2003 Op. Atty' Gen. No. 03-02.

In the case of a municipal zoning ordinance requiring the approval of three of the four trustees on the board of trustees, if only two of the trustees were to vote for a particular action, the mayor does not vote and the action is defeated. 1990 Op. Att'y Gen. No. 90-02, overruled by 2003 Op. Atty' Gen. No. 03-02.

Councilman presiding as mayor pro tem. — A councilman who is elected to preside over a meeting as mayor pro tem may vote, not as the mayor, who can only vote to break ties, but pursuant to his right to vote as a councilman. 1989 Op. Att'y Gen. No. 89-13.

Tie-breaking vote on choice of resigning mayor's successor. — A resigning mayor would be authorized to cast a deciding vote in the event of a tie on the choice of a successor. 1969 Op. Att'y Gen. No. 69-106.

3-11-4. Mayor; chief executive officer; powers.

The mayor is the chief executive officer and shall:

A. cause the ordinances and regulations of the municipality to be obeyed;

B. exercise, within the municipality, powers conferred upon sheriffs of counties to suppress disorders and keep the peace; and

C. perform other duties, compatible with his office, which the governing body may require.

History: 1953 Comp., § 14-10-4, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Immunity. — Because a mayor's duties are not principally those of a direct law enforcement nature, a mayor is immune from suit under the Tort Claims Act. Montes v. Gallegos, 812 F. Supp. 1165 (D.N.M. 1992).

Warrantless arrest. — If the conduct of the plaintiff at the time appeared reasonably to the mayor and police chief to amount to a disturbance of the peace, or to be otherwise unlawful in its nature, committed as it was in the presence of the mayor and chief of police, then they were authorized to arrest the plaintiff without a warrant. Cherry v. Williams, 63 N.M. 244, 316 P.2d 880 (1957).

Dual office holding. — The duties imposed upon the mayor by this section are not incompatible with those of a district attorney, and both offices may be filled by the same person contemporaneously. State ex rel. Chapman v. Truder, 35 N.M. 49, 289 P. 594 (1930).

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 281.

Prohibition as means of controlling action of mayor, 115 A.L.R. 14, 159 A.L.R. 627.

62 C.J.S. Municipal Corporations § 370.

3-11-5. Mayor; appointment of officers after election.

A. At the organizational meeting of the governing body, which shall be scheduled pursuant to Section 3-8-33 NMSA 1978 of the Municipal Election Code, the mayor shall submit, for confirmation by the governing body, the names of persons who shall fill the appointive offices of the municipality and the names of persons who shall be employed by the municipality. If the governing body fails to confirm any person as an appointive official or employee of the municipality, the mayor at the next regular meeting of the governing body shall submit the name of another person to fill the appointed office or to be employed by the municipality.

B. Any person holding an appointed office at the time of the municipal election shall continue in that office until his successor has been appointed and is qualified.

History: 1953 Comp., § 14-10-5, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 106.

ANNOTATIONS

The 1985 amendment substituted "which shall be scheduled pursuant to Section 3-8-33 NMSA 1978 of the Municipal Election Code" for "which shall be held on the second Monday following the election" near the beginning of Subsection A.

Confirmation required. — The power to appoint being in the mayor, subject to "confirmation by the governing body," there can be no appointment until the confirmation has been obtained. Arellano v. Lopez, 81 N.M. 389, 467 P.2d 715 (1970).

Failure to submit name at organizational meeting. — Subsection A of this section and Subsection A of 3-11-6 NMSA 1978 should be read in conjunction with one another; therefore, the failure of a mayor to submit a name to the governing body for appointment to office at the organizational meeting does not preclude him or her from doing so at subsequent meetings. 1988 Op. Att'y Gen. No. 88-74.

Employment of officers requires affirmation by absolute majority. — The employment of municipal officers and employees requires affirmation by an absolute majority of the city council regardless of how many members are present and voting. 1982 Op. Att'y Gen. No. 82-08.

This section specifically prohibits the naming of the same person for the same position where the governing body has failed to confirm the name when first submitted. 1966 Op. Att'y Gen. No. 66-147.

Words "confirmation," "confirm" and "approved" have the same meaning and can be used interchangeably. 1966 Op. Att'y Gen. No. 66-147.

There is no restriction whatever placed on the mayor's discretion as to the names he submits. 1966 Op. Att'y Gen. No. 66-61.

3-11-6. Mayor; authority to appoint, supervise and discharge employees.

A. Subject to the approval of a majority of all members of the governing body, the mayor shall:

(1) appoint all officers and employees except those holding elective office; and

(2) designate an employee to perform any service authorized by the governing body.

B. The mayor may appoint temporary employees as required for the proper administration of municipal affairs. The employee shall serve only until the next regular meeting of the governing body at which a quorum is present. The temporary employment shall cease and the employee shall not be reappointed unless his appointment is confirmed by the governing body. A temporary employee is entitled to the usual, ordinary and reasonable compensation for services rendered to the municipality.

C. The mayor shall:

(1) supervise the employees of the municipality;

(2) examine the grounds of reasonable complaint made against any employee; and

(3) cause any violations or neglect of the employees' duties to be corrected promptly or reported to the proper authority for correction and punishment.

D. Subject to the limitation of a merit system ordinance adopted as authorized in Section 3-13-4 NMSA 1978:

(1) the governing body may discharge an appointed official or employee by a majority of all the members of the governing body;

(2) the mayor may discharge an appointed official or employee upon the approval of a majority of all the members of the governing body; or

(3) the mayor may suspend an appointed official or employee until the next regular meeting of the governing body at which time the suspension shall be approved or disapproved by a majority of all the members of the governing body. If the suspension of the appointed official or employee is disapproved by the governing body, the suspended appointed official or employee shall be paid the compensation he was entitled to receive during the time of his suspension.

E. Any appointed official or employee who is discharged shall:

(1) upon his request, be given, by the mayor in writing, a list of reasons for his discharge; and

(2) be paid any vacation pay which he may have accrued.

History: 1953 Comp., § 14-10-6, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Mayoral control of judicial branch unconstitutional. — Any statutory scheme under which the executive and legislative branches of a municipal government can control or exercise the inherent powers of the judiciary would be violative of N.M. Const., art. III and art. VI, § 1. Mowrer v. Rusk, 95 N.M. 48, 618 P.2d 886 (1980).

Approval required. — The power to appoint being in the mayor, "subject to the approval of a majority of all members of the governing body," there can be no appointment until the approval has been obtained. Arellano v. Lopez, 81 N.M. 389, 467 P.2d 715 (1970).

Authority to discharge not superseded by city manager's authority. — There is nothing in 3-14-14A(2) NMSA 1978 to indicate that the mayor's and/or city council's authority to discharge and employ under Subsection D of this section is superseded by the city manager's authority to discharge persons in administrative service. Sanchez v. City of Belen, 98 N.M. 57, 644 P.2d 1046 (Ct. App. 1982), cert. denied, 98 N.M. 336, 648 P.2d 794 (1982).

Village clerk-treasurer not subject to merit system. — A village clerk-treasurer was an appointed official under 3-12-4 NMSA 1978 to whom the village had no authority to

apply its merit system ordinance adopted under 3-13-4 NMSA 1978. Construing the word "employees" in 3-13-4 NMSA 1978 as not including appointed officers conforms to common usage. Webb v. Vill. of Ruidoso Downs, 117 N.M. 253, 871 P.2d 17 (Ct. App. 1994), cert. denied, 117 N.M. 524, 873 P.2d 270 (1994).

Court personnel excluded from general merit system. — Personnel directly employed by the courts cannot constitutionally be included in a general merit system or ordinance. Mowrer v. Rusk, 95 N.M. 48, 618 P.2d 886 (1980).

Discharge of municipal employee held invalid but requested relief refused. — In a mayor-council form of municipal government which has four councilmen and a mayor, who votes only to break a tie vote, where one councilman voted against the discharge of a municipal employee, while two councilmen and the mayor voted in favor of his termination, and one councilman was absent, the vote did not result in a valid discharge, which could only result from three councilmen voting in favor thereof, or a tie vote, broken by the mayor in favor of termination. However, it was not error for the trial court to concede that the vote was improper but nonetheless refuse to grant the equitable relief requested because even if the absent councilman had voted against termination there would have been a tie, which the mayor's vote would have broken. Abeyta v. Town of Taos, 499 F.2d 323 (10th Cir. 1974).

Failure to submit name at organizational meeting. — Subsection A of Section 3-11-5 NMSA 1978 and Subsection A of this section should be read in conjunction with one another; therefore, the failure of a mayor to submit a name to the governing body for appointment to office at the organizational meeting does not preclude him or her from doing so at subsequent meetings. 1988 Op. Att'y Gen. No. 88-74.

Absolute majority of council required to affirm employment of municipal employees. — The employment of municipal officers and employees requires affirmation by an absolute majority of the city council regardless of how many members are present and voting. 1982 Op. Att'y Gen. No. 82-08.

A "majority" of the governing body is one more than half of the councilmen present at the vote. 1969 Op. Att'y Gen. No. 69-148.

Words "confirmation," "confirm" and "approved" have the same meaning and can be used interchangeably. 1966 Op. Att'y Gen. No. 66-147.

Mayor's firing power stems from statutory hiring power. In the absence of legal restraint, the power to appoint simply carries with it as an incident thereto the power to remove. 1963-64 Op. Att'y Gen. No. 63-74 (rendered under former law).

Actual hiring requires the concurrence of a majority of the city council. 1961-62 Op. Att'y Gen. No. 62-103.

Temporary employees. — The mayor is precluded from again temporarily appointing or employing individuals to the same position after the holding of the next regular meeting of the town board, at which a quorum is present, and where there has been a failure or refusal of the town board to confirm such employee. In the event such employee's name is not submitted to the next regular town board, where there is a quorum present, or where the appointment fails to obtain approval from the board, the employee may not thereafter be continued in the same position or reappointed by the mayor for such temporary, extra or emergency employment without his name first being submitted to the town board and approved by them. 1961-62 Op. Att'y Gen. No. 62-68.

Appointment and discharge of city manager. — The mayor is responsible for appointing the city manager and is empowered to remove him, although his appointment or removal is subject to the city council's approval. 1987 Op. Att'y Gen. No. 87-69.

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 249, 251, 309 et seq.

62 C.J.S. Municipal Corporations §§ 355, 418 to 441.

3-11-7. Additional powers of mayor.

The mayor shall sign all commissions, licenses and permits granted by the governing body, and other acts that the law or ordinances may require, or the commissions, licenses and permits may be authenticated as authorized under the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978].

History: 1953 Comp., § 14-10-7, enacted by Laws 1965, ch. 300.

ARTICLE 12
Governing Body of Municipality

3-12-1. Vacancy on governing body.

A. Except as provided in Subsection B of this section, any vacancy on the governing body of a mayor-council municipality shall be filled by appointment of a qualified elector by the mayor of the municipality, with the advice and consent of the governing body. Any qualified elector appointed to fill a vacancy on the governing body shall serve until the next regular municipal election, or any special election called in accordance with Subsection B of this section, at which time a qualified elector shall be elected to fill the remaining unexpired term, if any.

B. A special election, for the purpose of filling a vacancy on the governing body, may be called by the mayor, with the consent of the governing body or by the governing body. Except for the fact that the election need not be held on the date specified in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] for the regular municipal election, the special election to fill a vacancy shall be conducted in the manner set forth in the Municipal Election Code for regular municipal elections. However, this subsection shall not apply to those municipalities which have adopted a charter under the provisions of Article 10, Section 6 of the constitution of New Mexico or to those counties which have incorporated under the provisions of Article 10, Section 5 of the constitution of New Mexico.

History: 1953 Comp., § 14-11-1, enacted by Laws 1965, ch. 300; 1973, ch. 129, § 1; 1985, ch. 208, § 107.

ANNOTATIONS

The 1985 amendment added the second sentence in Subsection B.

Advice and consent required. — The power to appoint being in the mayor, "with the advice and consent of the governing body," there can be no appointment until the advice and consent has been obtained. Arellano v. Lopez, 81 N.M. 389, 467 P.2d 715 (1970).

Nature of governing body. — A governing body is a continuous body although, by expiration of terms and vacancies, there may be changes in the membership. Ackerman v. Baird, 42 N.M. 233, 76 P.2d 947 (1938).

"Next regular municipal election". — The phrase "next regular municipal election" in Subsection A refers to the next regular election immediately following the appointment. 1989 Op. Att'y Gen. No. 89-11.

Special election not held. — Under Subsection A, if no special election is held, an appointee's term lasts until the next regular municipal election in point of time after his appointment. The person elected at such election serves out the remainder of the unexpired term of the vacated office, if any. 1989 Op. Att'y Gen. No. 89-11.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 254.

62 C.J.S. Municipal Corporations § 213 to 217.

3-12-1.1. Election of members of governing bodies; requiring residency.

Except as provided in Section 3-12-2 NMSA 1978, members of governing bodies, excluding mayors, of municipalities having a population in excess of ten thousand shall

reside in and be elected from single-member districts. If any member of the governing body permanently removes his residence from or maintains no residence in the district from which he was elected, he shall be deemed to have resigned. Once, following every federal decennial census, the governing body of the municipality shall divide the municipality into a number of districts equal to the number of members on the governing body. Such districts shall be compact and contiguous and composed of populations as nearly equal as practicable; provided that the governing body of H class counties and of any municipality having a population of ten thousand or less may provide for single-member districts as provided in this section.

History: 1978 Comp., § 3-12-1.1, enacted by Laws 1985, ch. 203, § 1; 1987, ch. 287, § 1; 1992, ch. 6, § 1.

ANNOTATIONS

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

The 1992 amendment, effective May 20, 1992, substituted "Except as provided in Section 3-12-2 NMSA 1978" for "Notwithstanding any other provision of the Municipal Code" in the first sentence and substituted "H class" for "class H" in the last sentence.

The 1987 amendment, effective June 19, 1987, added the second sentence.

Constitutionality. — Although this section applies only to municipalities of over 10,000 population, it is not unconstitutional as written. Casuse v. City of Gallup, 106 N.M. 571, 746 P.2d 1103 (1987).

Equal protection. — This section does not violate equal protection rights of the residents of Los Alamos County by exempting the county from the requirement of single-member districts. Montano v. Los Alamos County, 1996-NMCA-108, 122 N.M. 454, 926 P.2d 307.

Exemption from requirement for single-member districts. — The proviso of this section stating that H class counties may provide for single-member districts unambiguously exempted Los Alamos County from the requirement that members of the governing body be elected from single-member districts. Montano v. Los Alamos County, 1996-NMCA-108, 122 N.M. 454, 926 P.2d 307.

This section invalidates Gallup's home rule election charter that allows at-large elections for city councilors. Casuse v. City of Gallup, 106 N.M. 571, 746 P.2d 1103 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 147.

"At-large" elections as violation of § 2 of Voting Rights Act of 1965 (42 USCS § 1973), 92 A.L.R. Fed. 824.

62 C.J.S. Municipal Corporations §§ 213 to 217.

3-12-2. Governing body; corporate authority; legislative body; members of council and boards of trustees; quorum.

A. The corporate authority of a municipality is vested in the governing body that shall constitute the legislative branch of the municipality and shall not perform any executive functions except those functions assigned to it by law.

B. A majority of the members of the governing body is a quorum for the purpose of transacting business.

C. Unless otherwise provided by law, a question before the governing body shall be decided by a majority vote of the members present.

D. The governing body of a municipality having a mayor-council form of government is the council or board of trustees whose members are the mayor and not less than four or more than ten councilmen or trustees. Any governing body of more than six councilmen or trustees may provide by ordinance for the election of two councilmen or trustees for each ward or district or create or abolish wards or districts or alter the boundary of existing wards or districts; provided that only one councilman or trustee shall be elected from a ward or district at any one election.

E. In those municipalities with a mayor-council form of government, when there is a requirement that a certain fraction or percentage of the members of the entire governing body or of all the members of the governing body or of the entire membership of the governing body or other similar language other than the requirement of a simple majority vote for the measure, the mayor shall not be counted in determining the actual number of votes needed but he shall vote to break a tie vote as provided in Section 3-11-3 NMSA 1978 unless he has declared a conflict of interest.

F. The governing body of a municipality may redistrict the municipality whenever redistricting is warranted. Upon petition signed by qualified electors equal in number to the votes cast for the councilman or trustee receiving the greatest number of votes at the last regular municipal election, the governing body of the municipality shall redistrict the municipality.

History: 1953 Comp., § 14-11-2, enacted by Laws 1965, ch. 300; 1985, ch. 203, § 2; 1992, ch. 6, § 2; 2003, ch. 208, § 1.

ANNOTATIONS

Cross references. — For mayor as presiding officer of governing body, *see* 3-11-3 NMSA 1978.

For mayor as chief executive officer, *see* 3-11-4 NMSA 1978.

For sale or lease of property, *see* 3-54-1 NMSA 1978 et seq.

For public meetings of policy-making bodies, *see* 10-15-1 to 10-15-4 NMSA 1978.

For monthly summary of minutes, *see* 10-17-1 to 10-17-3 NMSA 1978.

For publication of proceedings, *see* 14-11-11 NMSA 1978.

The 1985 amendment substituted "Any governing body of more than six councilmen or trustees" for "The governing body" and deleted "one or" following "for the election of" near the beginning of the second sentence in Subsection D, substituted "provided that only one councilman or trustee shall be elected from a ward at any one election" for "or provide for the election of councilmen or trustees on an at-large basis" at the end of the second sentence in Subsection D, and added Subsection F.

The 1992 amendment, effective May 20, 1992, in Subsection D, substituted "or" for "nor" preceding "more" in the first sentence and inserted "or district" and "or districts" several times in the second sentence; and, in Subsection F, substituted "councilman or trustee" for "commissioner" in the second sentence.

The 2003 amendment, effective June 20, 2003, in Subsection E, substituted "with a mayor-council form of government, when" for "where a mayor has no vote except in case of a tie vote and" near the beginning, added "but he shall vote to break a tie vote as provided in Section 3-11-3 NMSA 1978 unless he has declared a conflict of interest" at the end.

Validity of acts of de facto city council. — Where for 10 years the only governing body a city has had has been a council of four members, one from each ward, and the acts of such governing body have been acquiesced in by the inhabitants of the city, contracts have been made and enforced, relations had with county and state governments, bonds issued in good faith and its contracts relied on by private citizens, its acts would be considered valid. Ackerman v. Baird, 42 N.M. 233, 76 P.2d 947 (1938).

A mayor is counted for purposes of a quorum. 1969 Op. Att'y Gen. No. 69-148.

Quorum where temporary vacancy of council position exists. — In a mayor-board of trustees municipality where there is a temporary vacancy of a councilman's position, a quorum is decided on the basis of the original full membership, even though the local governing body is at less than full strength. 1971 Op. Att'y Gen. No. 71-46.

A "majority" of the governing body is one more than half of the councilmen present at the vote. 1969 Op Att'y Gen. No. 69-148.

Mayor's power to cast tie-breaking vote. — Where the mayor has no vote except in case of a tie vote of the councilmen and where the councilmen's vote is a tie, the mayor's vote is counted in determining the simple majority required in favor of the issue. 1969 Op. Att'y Gen. No. 69-148.

The mayor of a town is entitled to vote on the question of confirming one of his own appointments when the other trustees have registered a tie vote. 1959-60 Op. Att'y Gen. No. 60-98.

Subsection E of this section contemplates the possibility that the mayor's voting might be further limited by a local ordinance or by rules of the governing body itself. 1969 Op. Att'y Gen. No. 69-148.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 139, 155 to 180.

Libel and slander: statements or utterances by member of municipal council, or of governing body of other political subdivision, in course of official proceedings, as privileged, 40 A.L.R.2d 941.

Majority of members of municipal council voting on issue, what constitutes, 43 A.L.R.2d 698.

Abstention from voting of member of municipal council present at session as affecting requisite voting majority, 63 A.L.R.3d 1072.

62 C.J.S. Municipal Corporations §§ 208 to 246.

3-12-2.1. Governing body; mayor-council; change in number of members.

A. The number of members on the council or board of trustees of a municipality having a mayor-council form of government may be changed as set forth in this section provided such number shall not be less than or more than that number specified in Subsection D of Section 3-12-2 NMSA 1978.

B. A majority of the members elected to the governing body may adopt an ordinance increasing or decreasing the number of councilmen or trustees of that body and calling a special election on the question of approving or disapproving the change.

C. The governing body of the municipality shall adopt an election resolution calling a special election on the question of approving or disapproving a change in the number of councilmen or trustees if there is filed with the municipal clerk a petition requesting an

election on such a change and the petition is signed by at least five percent of the number of registered voters of the municipality. The petition shall specify the number of councilmen in addition to the mayor which shall constitute the governing body of the municipality. The petition shall be validated by the municipal clerk by verification that it contains the required number of signatures of registered voters. The election resolution shall be adopted within ten days after the petition is verified by the municipal clerk.

D. A special election to approve or disapprove a change in the number of councilmen or trustees shall be held within ninety days after the adoption of the ordinance as provided in Subsection B of this section or within ninety days after the date the petition is verified as provided in Subsection C of this section, as the case may be, or the election may be held in conjunction with a regular municipal election if such election occurs within ninety days after the adoption of the ordinance or verification of the petition. The municipality shall pay for the cost of the election.

E. If at an election called pursuant to this section a majority of the registered voters voting on the question of changing the number of councilmen or trustees vote in favor of such change, all councilmen or trustees shall serve until their current term of office expires. At each of the subsequent two regular municipal elections, one-half of the newly required number of councilmen or trustees shall be elected.

F. If a majority of the registered voters voting on the question of changing the number of councilmen or trustees disapproves or approves of such change, then such change in the number of members shall not be considered again for a period of four years from the date of the election.

History: 1978 Comp., § 3-12-2.1, enacted by Laws 1981, ch. 198, § 1; 1985, ch. 208, § 108; 1991, ch. 130, § 1.

ANNOTATIONS

The 1985 amendment substituted "a special election" for "an election" near the end of Subsection B, near the beginning of Subsection C, and at the beginning of Subsection D, substituted "shall adopt an election resolution" for "shall adopt a resolution" near the beginning of Subsection C and near the middle of Subsection E, added the last sentence in Subsection C, substituted "ninety days" for "sixty days" three times in Subsection D, inserted "after filing of the certificate of canvass in the minute book" following "within one hundred twenty days" near the middle of Subsection E, and added the last sentence in Subsection E.

The 1991 amendment, effective June 14, 1991, substituted "ordinance" for "resolution" in two places in the first sentence in Subsection D and rewrote Subsection E.

3-12-3. Governing body; powers and duties.

A. The governing body of a municipality having a mayor-council form of government shall:

(1) elect one of its members to act as mayor pro tem in the absence of the mayor;

(2) possess all powers granted by law, and other municipal powers not conferred by law or ordinance on another officer of the municipality;

(3) manage and control the finances and all property, real and personal, belonging to the municipality;

(4) determine the time and place of holding its meetings, which shall be open to the public;

(5) determine the rules of its own proceedings;

(6) keep minutes of its proceedings, which shall be open to examination by any citizen;

(7) adopt rules and regulations necessary to effect the powers granted municipalities;

(8) prescribe the compensation and fees to be paid municipal officers and employees; and

(9) prescribe the powers and duties of those officers whose terms of office or powers and duties are not defined by law, and impose additional powers and duties upon those officers whose powers and duties are prescribed by law.

B. The governing body of a municipality having a mayor-council form of government may remit the fine of any person convicted of a violation of a municipal ordinance.

C. The governing body may compel the attendance of absent members in such manner and under such penalties it deems desirable.

D. The mayor or a majority of the members of the governing body may call special meetings by notice to each member of the governing body, personally served or left at his usual place of residence.

History: 1953 Comp., § 14-11-3, enacted by Laws 1965, ch. 300; 1967, ch. 146, § 4.

ANNOTATIONS

Cross references. — For mayor as chief executive officer, *see* 3-11-4 NMSA 1978.

For monthly summary of minutes, *see* 10-17-1 to 10-17-3 NMSA 1978.

For publication of proceedings of municipal boards, *see* 14-11-11 NMSA 1978.

Compensation of city officials can be fixed only by ordinance. Ward v. City of Roswell, 34 N.M. 326, 281 P. 28 (1929).

Mayor's voting rights. — A mayor always has the right to break a tie vote even when a supermajority vote is required. This opinion letter overrules 1990 Op. Att'y Gen No. 90-02. 2003 Op. Att'y Gen. No. 03-02.

Counting mayor's vote. — If a municipal ordinance requires the vote of three-fourths of the entire membership of the municipal board of trustees to decide a question, the mayor's vote is not counted in the event of tie. 1990 Op. Att'y Gen. No. 90-02, overruled by 2003 Op. Att'y Gen. No. 03-02.

In the case of a municipal zoning ordinance requiring the approval of three of the four trustees on the board of trustees, if only two of the trustees were to vote for a particular action, the mayor does not vote and the action is defeated. 1990 Op. Att'y Gen. No. 90-02, overruled by 2003 Op. Att'y Gen. No. 03-02.

Mayor pro tem voting rights. — A councilman who is elected to preside over a meeting as mayor pro tem may vote, not as the mayor, who can only vote to break ties, but pursuant to his right to vote as a councilman. 1989 Op. Att'y Gen. No. 89-13.

Canceling regularly scheduled meeting. — Action by the governing body and not the mayor, acting alone, is necessary to cancel a regularly scheduled meeting. 1971 Op. Att'y Gen. No. 71-46.

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 193 to 209.

Contempt, power of municipal council to punish for, 8 A.L.R. 1586.

Civil responsibility of member of municipal council for his vote therein, 22 A.L.R. 125.

Contempt, power of mayor to punish for, 54 A.L.R. 326, 73 A.L.R. 1185.

Judgment against municipality, power of officers to consent to, 67 A.L.R. 1507.

Invalid public money obligation, personal liability of officers to holders of, 87 A.L.R. 273.

Division of money from one fund to another, liability of municipal officers for, 96 A.L.R. 664.

Compromise of claim, power of city officials as to, 105 A.L.R. 170, 15 A.L.R.2d 1359.

Detachment of land from municipality, power of local boards or officers as to, 117 A.L.R. 274.

Municipal league and organizations of similar character, power of municipal corporation to contribute financially to, 169 A.L.R. 1230.

Validity of zoning ordinance or similar public regulation requiring consent of neighboring property owners to permit or sanction specified uses or construction of buildings, 21 A.L.R.2d 551.

Validity of regulations as to plumbers and plumbing, 22 A.L.R.2d 816.

Statements or utterances by member of municipal council, or of governing body of other political subdivision, in course of official proceedings, as privileged, 40 A.L.R.2d 941.

Requisite majority of members of municipal council voting on issue, 43 A.L.R.2d 698.

Validity, under federal constitution, of regulations, rules, or statutes requiring random or mass drug testing of public employees or persons whose employment is regulated by state, local, or federal government, 86 A.L.R. Fed. 420.

62 C.J.S. Municipal Corporations §§ 138, 151.

3-12-4. Governing body to provide for creation of certain appointive offices.

A. The governing body of each municipality shall provide for the office of clerk, treasurer and police officer. The offices of clerk and treasurer may be combined and one person appointed to perform both functions.

B. The governing body may also provide for the office of an attorney.

C. The governing body may provide for deputy appointed officials who may exercise the powers granted the appointed officials.

History: 1953 Comp., § 14-11-4, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For Public Employees Retirement Act, *see* 10-11-1 NMSA 1978 et seq.

Village clerk-treasurer not subject to merit system. — A village clerk-treasurer was an appointed official under this section to whom the village had no authority to apply its merit system ordinance adopted under 3-13-4 NMSA 1978. Construing the word "employees" in 3-13-4 NMSA 1978 as not including appointed officers conforms to common usage. Webb v. Vill. of Ruidoso Downs, 117 N.M. 253, 871 P.2d 17 (Ct. App. 1994), cert. denied, 117 N.M. 524, 873 P.2d 270 (1994).

Office of a municipal magistrate is not incompatible with that of a city clerk. There is no inconsistency of function, no subordination and no interference as long as the clerk is not charged with enforcing any municipal ordinance. If either office is full time, however, a physical incompatibility exists. 1967 Op. Att'y Gen. No. 67-74.

Municipal clerk not municipal officer. — The duties of a municipal clerk are essentially ministerial and do not involve the delegation of any of the sovereign power of the municipality; this necessary element to establish the position of municipal clerk as an officer of the municipality is not present. 1979 Op. Att'y Gen. No. 79-28.

City manager may also serve as clerk of the municipality, as long as the duties of the two offices are not incompatible. 1987 Op. Att'y Gen. No. 87-69.

Village clerk. — In villages the village clerk should now be appointed and the appointment may be of a clerk-treasurer to be held by one person. 1953-54 Op. Att'y Gen. No. 53-5856.

Status of policeman. — A city or municipal policeman is not a public official in the constitutional sense, but rather a public or civil employee. 1957-58 Op. Att'y Gen. No. 57-23 and 1979 Op. Att'y Gen. No. 79-28.

No indicia of public office attach to position of municipal attorney. 1979 Op. Att'y Gen. No. 79-28.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 237 to 240, 243.

Attorney, power of fire, water or health commissioners, or the like, to employ, 2 A.L.R. 1212.

Office, power to abolish or discontinue, 4 A.L.R. 221, 172 A.L.R. 1366.

Attorney, power of municipal corporation to employ, 83 A.L.R. 135.

Offices or positions, validity and effect of ordinance or resolution purporting to create indefinite number of, and to authorize appointment of, as many persons as shall from time to time be deemed necessary, 110 A.L.R. 241.

62 C.J.S. Municipal Corporations §§ 332 to 334, 336, 355.

ARTICLE 13
Clerk, Police Officer, Manager; Duties

3-13-1. Clerk; duties.

A. The clerk of the municipality shall:

(1) keep in custody all minutes, ordinances and resolutions approved by the governing body;

(2) attend all meetings of the governing body;

(3) record all proceedings, ordinances and resolutions of the governing body; and

(4) upon request, furnish copies of municipal records. The clerk may charge a reasonable fee for the cost of furnishing copies of municipal records.

B. The mayor, with the consent of the governing body may designate other municipal employees to be deputy municipal clerks who shall have the right and duty to perform all of the duties of the municipal clerk, including but not limited to the duties created in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978].

History: 1953 Comp., § 14-12-1, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 109.

ANNOTATIONS

Cross references. — For election duties of municipal clerk, *see* 3-8-7 NMSA 1978.

For monthly summary of minutes, *see* 10-17-1 to 10-17-3 NMSA 1978.

For publication of proceedings of municipal boards, *see* 14-11-11 NMSA 1978.

The 1985 amendment designated the formerly undesignated introductory paragraph as present Subsection A, redesignated former Subsections A, B, C, and D, as present Subsections A(1), A(2), A(3), and A(4), and added Subsection B.

Assistant clerk is "clerk" for purposes of nepotism statute. — An assistant clerk of a municipality serves as a "clerk" to the governing body for purposes of the statutory prohibition against nepotism. 1982 Op. Att'y Gen. No. 82-08.

Municipal clerk not municipal officer. — The duties of a municipal clerk are essentially ministerial and do not involve the delegation of any of the sovereign power of the municipality; this necessary element to establish the position of municipal clerk as an officer of the municipality is not present. 1979 Op. Att'y Gen. No. 79-28.

No incompatibility of office between city clerk and municipal judge. — No incompatibility of office exists because of inconsistency of functions between the offices of city clerk and municipal judge. 1968 Op. Att'y Gen. No. 68-111.

3-13-2. Police officers.

A. The police officer of a municipality shall:

(1) execute and return all writs and process as directed by the municipal judge of the municipality employing the police officer;

(2) execute and return all criminal process as directed by the municipal judge of any incorporated municipality in the state if the criminal process arises out of a charge of violation of a municipal ordinance prohibiting driving while under the influence of intoxicating liquor or drugs;

(3) serve criminal writs and process specified in Paragraphs (1) and (2) of this subsection in any part of the county wherein the municipality is situated; and

(4) within the municipality:

(a) suppress all riots, disturbances and breaches of the peace;

(b) apprehend all disorderly persons;

(c) pursue and arrest any person fleeing from justice; and

(d) apprehend any person in the act of violating the laws of the state or the ordinances of the municipality and bring him before competent authority for examination and trial.

B. In the discharge of his proper duties, a police officer shall have the same powers and be subject to the same responsibilities as sheriffs in similar cases.

History: 1953 Comp., § 14-12-2, enacted by Laws 1965, ch. 300; 1988, ch. 88, § 1.

ANNOTATIONS

Cross references. — For authority of constable or sheriff to serve process and make arrests, *see* 35-15-4 NMSA 1978.

The 1988 amendment, effective May 18, 1988, substituted "process" for "processes", and added "of the municipality employing the police officer" in Subsection A(1); added present Subsection A(2) and redesignated former Subsections A(2) and A(3) as present Subsections A(3) and A(4); substituted "process specified in Paragraphs (1) and (2) of

the subsection" for "processes" in present Subsection A(3); and deleted "or constables" following "sheriffs" in Subsection B.

Authority to intervene. — Police officers may intervene when they have reasonable grounds to believe in good faith that intervention is necessary to prevent further disturbance or physical violence. City of Roswell v. Smith, 139 N.M. 381, 133 P.3d 271, cert denied, 139 N.M. 429, 134 P.3d 120 (2006).

Authority to arrest. — The authority to arrest is not limited to custodial arrest, but includes an investigative detention to issue a citation for a traffic violation. State v. Marquez, 2008-NMSC-055, 145 N.M. 1, 193 P.3d 548.

Police officers and county-wide jurisdiction to serve warrants. — Because a bench warrant is legal "process," municipal police officers clearly have county-wide jurisdiction to execute on warrants authorized by their municipality. State v. Pinela, 113 N.M. 627, 830 P.2d 179 (Ct. App. 1992).

Traffic stop outside city limits. — A deputy town marshal, who observes erratic driving behavior, may initiate a traffic stop outside his jurisdictional territory, even though he is neither cross-commissioned nor in fresh pursuit. State v. Arroyos, 2005-NMCA-086, 137 N.M. 769, 115 P.3d 232, overruled, State v. Slayton, 2009-NMSC-054, 147 N.M. 340, 223 P.3d 337.

Same authority to arrest as private citizen. — A law enforcement officer acting outside of his or her territorial jurisdiction has the same authority to arrest as does a private citizen. State v. Arroyos, 2005-NMCA-086, 137 N.M. 769, 115 P.3d 232, overruled, State v. Slayton, 2009-NMSC-054, 147 N.M. 340, 223 P.3d 337.

Prevention of breach of peace. — The power and duty to suppress breaches of the peace includes the right to take any reasonable steps to prevent a breach of the peace from occurring when the officers have good reason to believe that a disturbance may take place. State v. Hilliard, 107 N.M. 506, 760 P.2d 799 (Ct. App. 1988).

Warrantless arrest. — If an offense is committed in the immediate presence of the arresting officers, no warrant is required. City of Clovis v. Archie, 60 N.M. 239, 290 P.2d 1075 (1955).

Offense committed in presence of officer. — Where the arrest was made for violation of an ordinance in the presence of the officer, if the ordinance is valid, the arrest was lawful and no claim for false arrest can arise out of it. Miller v. Stinnett, 257 F.2d 910 (10th Cir. 1958).

Liability under 41-4-12 NMSA 1978. — The statutory obligations that officers cooperate with prosecutors and bring defendants before the courts are primarily designed to protect the public by ensuring that dangerous criminals are removed from society and brought to justice; accordingly, as with the duty to investigate crimes under

29-1-1 NMSA 1978, the duties of cooperating with prosecutors, diligently filing complaints, and bringing defendants before the courts inure to the benefit of private individuals, and the violation of these statutory duties may give rise to a cognizable claim under the Tort Claims Act, Chapter 41, Article 4 NMSA 1978. Weinstein v. City of Santa Fe ex rel. Santa Fe Police Dep't, 1996-NMSC-021, 121 N.M. 646, 916 P.2d 1313.

Police officers are employees, not public officers, of municipality. 1979 Op. Att'y Gen. No. 79-28.

Scope of investigations. — This section must be interpreted to mean that investigations must be related to crimes which occurred within the city limits. 1976 Op. Att'y Gen. No. 76-04.

Jurisdiction of the city of Albuquerque over the university of New Mexico campus is limited to the enforcement of state laws on the campus. 1969 Op. Att'y Gen. No. 69-48.

Resolution passed by board of commissioners of Los Alamos county giving municipal police like powers as sheriffs or state officers in no way conflicted with or diminished the powers of the state sheriff, and only restated what had already been passed by the legislature under this section. 1968 Op. Att'y Gen. No. 68-117.

Municipal prisoners. — Persons arrested and held by municipal police officers for violation of a state law or a municipal ordinance are municipal prisoners. When such prisoners are held in the municipal jail the municipality is liable for their upkeep. 1968 Op. Att'y Gen. No. 68-21.

Village marshals. — This statute clearly grants village marshals the power to execute warrants of arrest anywhere within the county in which the village is located. 1961-62 Op. Att'y Gen. No. 61-03.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion or removal or suspension from duty, 9 A.L.R.4th 614.

First amendment protection for law enforcement employees subject to discharge, transfer, or discipline because of speech, 109 A.L.R. Fed. 9

62 C.J.S. Municipal Corporations §§ 474, 486, 487.

3-13-3. Appointment of manager; duties and qualifications.

The governing body of any municipality having a population of one thousand or more persons may provide for a manager either by ordinance or by an election to be called by the governing body upon the filing of a petition containing the signatures of at least ten percent of the registered voters in the municipality. The office of manager shall carry the

same qualifications, duties and responsibilities as provided for a manager under Sections 3-14-13 through 3-14-15 NMSA 1978.

History: 1953 Comp., § 14-12-3, enacted by Laws 1965, ch. 300; 1991, ch. 20, § 1.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, substituted "one thousand" for "three thousand" in the first sentence and "3-14-13 through 3-14-15 NMSA 1978" for "14-13-13 through 14-13-15 New Mexico Statutes Annotated, 1953 Compilation" in the second sentence.

Mayor is responsible for appointing the city manager, although his appointment is subject to the city council's approval. 1987 Op. Att'y Gen. No. 87-69.

City manager may also serve as the clerk of the municipality, as long as the duties of the two offices are not incompatible. 1987 Op. Att'y Gen. No. 87-69.

3-13-4. Municipality may establish a merit system; provisions constitute part of an employment contract.

A. Any municipality may establish by ordinance a merit system for the hiring, promotion, discharge and general regulation of municipal employees. The ordinance may contain reasonable restrictions or prohibitions on political activities which are deemed detrimental to the merit system thereby established. The ordinance may provide for a personnel board or personnel officer to:

(1) administer the ordinance; and

(2) establish rules and regulations pursuant to the ordinance, which may include:

(a) rules governing classification of employees;

(b) service rating of employees;

(c) establishment of pay scales and ranges;

(d) establishment of the number of hours of work per week; and

(e) methods of employment, promotion, demotion, suspension and discharge of the municipal employees.

B. If a personnel board is created, the method of appointment, the number of members and terms of office shall be set forth in the ordinance. The board shall serve without compensation for its service.

C. Following the adoption of a merit system, the contract of employment between the municipality and an employee in a position covered by the merit system shall be subject to the provisions of the ordinance and rules and regulations issued pursuant to the ordinance.

D. Within ten days following the adoption of a merit system, an employee in a position covered by the merit system may file with the clerk a declaration stating that the employee does not desire to have his employment subject to the ordinance together with the rules and regulations issued pursuant to the ordinance. The contract of employment of all other employees employed at the time of the adoption of the merit system, and in positions covered by the merit system, shall be subject to the provisions of the ordinance and all rules and regulations issued pursuant to the ordinance.

History: 1953 Comp., § 14-12-4, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Supervisor's action changed employee's probationary status. — Where, eleven days prior to the expiration date of the employee's probationary period, the director of the employee's department approved the satisfactory completion of the employee's probationary period and a change from probationary to non-probationary status effective as of the end of the employee's probationary period and personally congratulated the employee; later on the same day, the employee received a memorandum approved by the director extending the employee's probation; the employee was terminated twenty six days later, before the end of the extended probationary period; and the municipality's merit ordinance required positive action by the director for an employee to become a non-probationary employee, the director's approval of the completion of the employee's probationary period and change to non-probationary status and congratulation of the employee probation was the positive action required by the merit ordinance to convert the employee from probationary to non-probationary status. City of Albuquerque v. AFSCME Council 18, 2011-NMCA-021, 149 N.M. 379, 249 P.3d 510.

When personnel board findings and conclusions are required. — Where a hearing officer determined that an employee was a non-probationary employee and proposed findings of fact and conclusions of law to the municipality's personnel board; the board rejected the hearing officer's recommendations but did not make independent findings of fact and conclusions of law; the employee appealed the decision to the district court; the municipality's merit ordinance provided that if the board reversed the hearing officer's recommendation, the board was required to make its own findings of fact and conclusions of law; and the facts of the case were not disputed, the district court was required to make legal determinations to determine whether the employee was a non-probationary employee and the district court did not err by not remanding the case to the board for findings of fact and conclusions of law. City of Albuquerque v. AFSCME Council 18, 2011-NMCA-021, 149 N.M. 379, 249 P.3d 510.

Property interest in employment. — Merit system ordinance provisions governing probationary employees were designed to offer a lesser expectation of continued employment than that offered to permanent employees, and did not create a property interest in probationary employees so as to trigger the due process protections asserted by a dismissed police cadet. Richardson v. City of Albuquerque, 857 F.2d 727 (10th Cir. 1988).

Village clerk-treasurer not subject to merit system. — A village clerk-treasurer was an appointed official under 3-12-4 NMSA 1978 to whom the village had no authority to apply its merit system ordinance adopted under this section. Construing the word "employees" in this section as not including appointed officers conforms to common usage. Webb v. Vill. of Ruidoso Downs, 117 N.M. 253, 871 P.2d 17 (Ct. App. 1994), cert. denied, 117 N.M. 524, 873 P.2d 270 (1994).

Court personnel excluded from general merit system. — Personnel directly employed by the courts cannot constitutionally be included in a general merit system or ordinance. Mowrer v. Rusk, 95 N.M. 48, 618 P.2d 886 (1980).

Merit system. — If a merit system provides for those matters usually contained in a collective bargaining agreement, both could not exist concurrently, and the inconsistency must be resolved in favor of the statute or municipal ordinance establishing the merit system. Int'l Bhd. of Elec. Workers Local 611 v. Town of Farmington, 75 N.M. 393, 405 P.2d 233 (1965).

Grievance procedure. — A city ordinance, which provided a grievance procedure through which an employee could obtain an order of reinstatement and back pay, had the force of law. Mandamus was appropriate to compel the city to comply with an order entered pursuant to that ordinance. City of Albuquerque v. Ryon, 106 N.M. 600, 747 P.2d 246 (1987).

Employee must comply with internal grievance procedures. — An employee must substantially comply with mandatory internal grievance procedures contained in an employee manual or handbook before filing suit for breach of contract claims based on an alleged failure of an employer to follow its employment policies. Lucero v. Bd. of Regents of UNM, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

Where a university manager was terminated by the university; the manager did not follow the grievance process contained in the university's employee handbook by filing a grievance; the handbook governed the manager's employment with the university; and the manager filed an action in district court for breach of contract and wrongful termination alleging that the employee handbook created a contract and that the university breached the contract by failing to abide by the handbook's policies and procedures governing workplace performance, disciplinary action, a harassment-free workplace, employer-employee relations, progressive discipline and by disciplining the manager without just cause, the manager's claims were barred because the manager failed to exhaust the handbook's internal grievance procedures before filing the breach

of contract action based on an alleged failure of the university to follow policies in the handbook. Lucero v. Bd. of Regents of UNM, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

Impartiality of hearing officer. — Where a reasonable person would have serious doubts about whether a hearing officer could be fair, it is inappropriate for the hearing officer to hear the case. City of Albuquerque v. Chavez, 1997-NMCA-054, 123 N.M. 428, 941 P.2d 509.

Limited jurisdiction of board. — Because of the personnel board's limited statutory authority to adopt regulations and to administer the merit system ordinance, it did not have jurisdiction in an administrative grievance proceeding over employee's Open Meetings Act and constitutional claims, and these claims were not barred by res judicata in a separate district court action. Chavez v. City of Albuquerque, 1998-NMCA-004, 124 N.M. 479, 952 P.2d 474.

Personnel board decision. — Where plaintiff was represented by counsel before the personnel board; plaintiff had a strong incentive to litigate plaintiff's claim that defendant breached plaintiff's employment by terminating plaintiff without just cause; plaintiff was able to call witnesses, cross-examine witnesses and present other evidence, plaintiff had a fair and full opportunity to litigate plaintiff's breach of contract claim and the finding of the personnel board that plaintiff was terminated for just cause and collaterally estopped plaintiff from litigating the breach of contract claim in federal court. Salquero v. City of Clovis, 366 F.3d 1168 (10th Cir. 2004).

Appeal of personnel board's administrative decision. — Absent a statute providing otherwise, a municipal personnel board's determinations are reviewable at the district court only by writ of certiorari for arbitrariness, capriciousness, fraud, or lack of substantial evidence. Zamora v. Vill. of Ruidoso Downs, 120 N.M. 778, 907 P.2d 182 (1995).

Supervision of employees of elected officials. — A county commission, its personnel director or other agents may exercise supervision over the employees of other elected officials and require those employees to work hours contrary to those established by the officials, to the extent permitted by statute, provided the board's supervision over elected officials' employees does not interfere with the duties of those officials. 1990 Op. Att'y Gen. No. 90-05.

Although a county commission has the authority to control staff of elected officials to some extent through the budget, it must act reasonably in light of other demands on the budget and the needs of the officials. 1990 Op. Att'y Gen. No. 90-05.

Increasing work hours without additional compensation. — A county commission may increase the hours worked by county employees without additional compensation. 1990 Op. Att'y Gen. No. 90-05.

Merit system supersedes collective bargaining agreement. — If a merit system is established there can be no collective bargaining agreement between a municipality and its employees on those matters covered within the scope of the merit system. 1969 Op. Att'y Gen. No. 69-73.

Law reviews. — For note, "Public Labor Disputes - A Suggested Approach for New Mexico," see 1 N.M.L. Rev. 281 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Workmen's Compensation Law as covering injury to municipal employee while entering or leaving place of employment, 49 A.L.R. 436, 82 A.L.R. 1043.

Workmen's Compensation Law, liability of municipal corporation under provisions of, for additional compensation because of failure to comply with specific requirements of statute for protection of workmen, 106 A.L.R. 79.

Collective bargaining agreements with union employees and municipal employees, 31 A.L.R.2d 1142, 37 A.L.R.3d 1147, 95 A.L.R.3d 1102.

62 C.J.S. Municipal Corporations § 611.

ARTICLE 14
Commission-Manager Form of Government; Municipalities Over 1,000

3-14-1. Commission-manager; application to municipalities over three thousand.

Any municipality having a population of three thousand or more persons according to the last federal census or any other official census may be organized and governed as a commission-manager municipality if the qualified electors of the municipality elect to be governed under the commission-manager form of government. If the qualified electors of the municipality do not elect to be governed under the commission-manager form of government, the municipality shall be governed under the form of government in existence on the day the election rejecting the commission-manager form was held.

History: 1953 Comp., § 14-13-1, enacted by Laws 1965, ch. 300; 1989, ch. 61, § 1; 1991, ch. 20, § 2.

ANNOTATIONS

Cross references. — For appointment of manager by governing body of municipality, *see* 3-13-3 NMSA 1978.

The 1991 amendment, effective June 14, 1991, substituted "three thousand" for "one thousand" in the catchline and in the first sentence.

The 1989 amendment, effective June 16, 1989, substituted "one thousand" for "3,000" in the catchline and near the beginning of the first sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 51, 183.

62 C.J.S. Municipal Corporations §§ 81 to 84.

3-14-2. Commission-manager; special election for adoption.

A. Upon petition signed by qualified electors, not less in number than fifteen percent of the votes cast for the office of mayor at the last regular municipal election, filed with the municipal clerk and verified by the municipal clerk to contain a sufficient number of legal signatures, the governing body shall within ten days of verification adopt an election resolution calling for the holding of a special election, within ninety days after the verification of the petition, on the question of organizing the municipality under the commission-manager form of government, or the governing body may submit to the qualified electors of the municipality the question of organizing the municipality under the commission-manager form of government.

B. The question to be placed shall read substantially as follows:

"For the commission-manager form of government and providing for the election of five commissioners _____; and
Against the commission-manager form of government and providing for the election of five commissioners _____."

History: 1953 Comp., § 14-13-2, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 110.

ANNOTATIONS

Cross references. — For examinations of signatures, purging and judicial review of petitions, *see* 3-1-5 NMSA 1978.

The 1985 amendment, in Subsection A, inserted "and verified by the municipal clerk to contain a sufficient number of legal signatures" and "within ten days of verification adopt an election resolution calling" and substituted "for the holding of a special election, within ninety days after the verification of the petition" for "provide for the holding of an election, not less than thirty days nor more than sixty days after the filing of the petition".

3-14-3. Commission-manager; certifying results of election; recording; affirmative vote; organization.

After the results of the election have been canvassed, the governing body shall certify the results to the municipal clerk and they shall be recorded in the minutes book of the municipality. If a majority of the votes cast on the question favor organizing under a commission-manager form of government, the governing body shall proceed to organize the municipality under the commission-manager form of government.

History: 1953 Comp., § 14-13-3, enacted by Laws 1965, ch. 300.

3-14-4. Commission-manager; charter.

Municipalities electing to be governed under the commission-manager form of government shall be governed as provided in Sections 3-14-1 through 3-14-19 NMSA 1978.

History: 1953 Comp., § 14-13-4, enacted by Laws 1965, ch. 300.

3-14-5. Commission-manager; boundaries; retention of general powers.

Any municipality electing to be governed under the commission-manager form of government shall retain its present boundary except as it may be altered as authorized by statute and shall possess all powers granted by the constitution and statutes of New Mexico to other municipalities, not inconsistent with the provisions of Sections 3-14-1 through 3-14-19 NMSA 1978.

History: 1953 Comp., § 14-13-5, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 62 C.J.S. Municipal Corporations § 94.

3-14-6. Commission-manager; districts for selection of commissioners; redistricting.

A. The governing body of a municipality organizing under the commission-manager form of government shall district the municipality into five commissioner districts. Each district shall be compact in area and equal in population, as nearly as possible. For all municipalities having a population in excess of ten thousand, a commissioner shall reside in and be elected from each district; provided that the governing body of a municipality having a population of ten thousand or less may provide for single-member districts as provided in this section.

B. The governing body of the municipality may redistrict the municipality whenever redistricting is warranted. Upon petition signed by qualified electors equal in number to the votes cast for the commissioner receiving the greatest number of votes at the last

regular municipal election, the governing body of the municipality shall redistrict the municipality.

History: 1953 Comp., § 14-13-6, enacted by Laws 1965, ch. 300; 1985, ch. 203, § 3.

ANNOTATIONS

The 1985 amendment substituted the last sentence in Subsection A for the former last sentence which read, "A commissioner shall be elected for each district but shall be voted on at large".

Section inapplicable to home rule municipality. — This section is not applicable to a home rule municipality to deny it the power to provide for a different number of city commissioners than otherwise proscribed because the composition of a municipal government is a matter of local, not statewide concern, and to construe otherwise would frustrate the purpose of the home rule amendment, N.M. Const., art. X, § 6. State ex rel. Haynes v. Bonem, 114 N.M. 627, 845 P.2d 150 (1992).

3-14-7. Commission-manager; candidates for office; write-in ballots.

If no more candidates qualify for office than there are vacancies to be filled, they shall be declared elected without a vote, upon certification by the municipal clerk. If there is no candidate for office, the ballot shall be printed without names and a voter may write in the name of a qualified elector upon the ballot.

History: 1953 Comp., § 14-13-7, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Right to "write in" is restricted to where no candidate for the office qualifies by having his name appear on the ballot, i.e., the statute means just what it says. 1957-58 Op. Att'y Gen. No. 57-126.

3-14-8. Commissioners; special election; terms.

A. Within ten days after the adoption of the commission-manager form of government, the governing body shall adopt an election resolution calling for the holding of a special election within one hundred twenty days after the adoption of the commission-manager form of government, for the purpose of electing five commissioners. The election shall be conducted in the same manner as are regular municipal elections pursuant to the terms of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. The commissioners so elected shall determine their terms of office by lot, so that three commissioners shall serve until the next regular municipal election and two commissioners shall serve until the succeeding regular municipal election.

B. Their respective successors shall hold office for staggered periods of four years and until their successors are elected and take office as provided in the Municipal Election Code.

History: 1953 Comp., § 14-13-8, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 111.

ANNOTATIONS

Cross references. — For giving notice of special election, *see* 3-8-35 NMSA 1978.

The 1985 amendment, in Subsection A, substituted "ten days" for "ninety days" near the beginning of the first sentence, substituted "shall adopt an election resolution calling for the holding of a special election within one hundred twenty days after the adoption of the commission-manager form of government" for "shall call a special election" near the middle of the first sentence, and added "pursuant to the terms of the Municipal Election Code" at the end of the second sentence and substituted "take office as provided in the Municipal Election Code" for "qualified" at the end of Subsection B.

3-14-9. Vacancies in commission.

A. Except as provided in Subsection B of this section, if a vacancy occurs in the commission, the remaining elected and appointed commissioners shall, by a majority vote, appoint a qualified elector to fill the vacancy until the next regular municipal election, or any special election called in accordance with Subsection B of this section, at which time a qualified elector shall be elected to fill the remaining unexpired term, if any.

B. A special election, for the purpose of filling a vacancy on the governing body, may be called by the chairman, with the consent of the governing body or by the governing body. Except for the fact that the election need not be held on the date specified in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] for the regular municipal election, the special election to fill a vacancy shall be conducted in the manner set forth in the Municipal Election Code for regular municipal elections. However, this subsection shall not apply to those municipalities which have adopted a charter under the provisions of Article 10, Section 6 of the constitution of New Mexico or to those counties which have incorporated under the provisions of Article 10, Section 5 of the constitution of New Mexico.

History: 1953 Comp., § 14-13-9, enacted by Laws 1965, ch. 300; 1973, ch. 129, § 2; 1985, ch. 208, § 112.

ANNOTATIONS

The 1985 amendment added the second sentence of Subsection B.

3-14-10. Commission-manager; selection of mayor; duties.

At the first meeting of the new commission after each election, or as soon thereafter as practical, the commissioners shall select one of their number as mayor to act for two years, or until a successor is selected and qualified, unless sooner removed by death, resignation or removal from office. The mayor shall preside at all meetings of the commission and perform other duties, consistent with his office, as imposed by the commission. The mayor has all powers and duties of a commissioner, including the right to vote upon all questions considered by the commission. He is the official head of the municipality for all ceremonial purposes, for the purpose of civil process and for military purposes. During his absence or disability, his duties shall be performed by another member of the commission, appointed by a majority of the commission and designated as mayor pro tem.

History: 1953 Comp., § 14-13-10, enacted by Laws 1965, ch. 300.

3-14-11. Commission meetings; disclosure.

The commission shall meet at least twice each month. Meetings shall be open to the public and the official records of the meetings shall be open to inspection at all times.

History: 1953 Comp., § 14-13-11, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For meeting of public bodies to be open to public, *see* 10-15-1 to 10-15-4 NMSA 1978.

3-14-12. Powers vested in commission; duties of commission.

A. All powers of the municipality are vested in the commission. The commission shall:

(1) pass all ordinances and other measures conducive to the welfare of the municipality;

(2) perform all acts required for the general welfare of the municipality; and

(3) in addition to the office of manager, create all offices necessary for the proper carrying on of the work of the municipality.

B. The commission shall appoint a manager and shall hold him responsible for the proper and efficient administration of the municipal government.

History: 1953 Comp., § 14-13-12, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Minimum wage for city employees. — If the commission desires to enact a minimum wage ordinance for city employees, or perhaps delegate the authority to establish wage rates to its manager, keeping in mind its budget and revenue, it would be acting within its powers, but it may not lawfully delegate this authority to some outsider over whom it has no supervision or control. Adams v. City of Albuquerque, 62 N.M. 208, 307 P.2d 792 (1957).

New administrative departments may be created by either ordinance or resolution. 1957-58 Op. Att'y Gen. No. 57-126.

Cooperative agreements. — The city and county may enter into an agreement to cooperate in sponsoring a watershed protection and flood prevention program. 1955-56 Op. Att'y Gen. No. 56-6522.

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 181, 185, 186.

62 C.J.S. Municipal Corporations §§ 150, 151, 208, 355.

3-14-13. Manager; employment; qualifications; salary.

The manager shall be the chief administrative officer. He shall be employed for an indefinite term and until a vacancy is created by death, resignation or removal by the commission. The manager shall be appointed solely on the basis of administrative qualifications and his selection shall not be limited by reason of former residence. The manager shall receive a salary to be fixed by the commission.

History: 1953 Comp., § 14-13-13, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For appointment of manager, *see* 3-13-3 NMSA 1978.

Mayor is empowered to discharge a city manager but only with the city council's approval. 1987 Op. Att'y Gen. No. 87-69.

Municipal manager is not public officer of municipality for purposes of N.M. Const., art. V, § 13. 1979 Op. Att'y Gen. No. 79-28.

Procedure governing removal. — This section, in providing that the manager shall be employed for an indefinite term and shall hold office until, among other things, he is removed by the commission, is tantamount to saying that the manager holds office at the pleasure of the commission and so is not entitled as a matter of law to notice and

hearing prior to removal. However, if the commission so desires, nothing prohibits the commission from establishing some sort of procedure governing removal. 1957-58 Op. Att'y Gen. No. 57-126.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 186.

Liability for acts or omissions of city manager, 38 A.L.R. 1412.

Constitutionality of city manager form of government, 67 A.L.R. 737.

Prohibition to control administrative officers in matters relating to contracts, 115 A.L.R. 22, 159 A.L.R. 627.

3-14-14. Manager; duties; attendance at meetings; budget.

A. The manager shall:

(1) enforce and carry out all ordinances, rules and regulations enacted by the commission;

(2) employ and discharge all persons engaged in the administrative service of the municipality;

(3) prepare and submit an annual budget; and

(4) make recommendations to the commission on all matters concerning the welfare of the municipality.

B. The manager shall have a seat, but no vote, at every meeting of the commission. Except when clearly undesirable or unnecessary, the commission shall request the opinion of the manager on any proposed measure.

History: 1953 Comp., § 14-13-14, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Manager's authority to discharge does not supersede mayor's and council's. — There is nothing in this section to indicate that the mayor's and/or city council's authority to discharge and employ under 3-11-6D NMSA 1978 is superseded by the city manager's authority to discharge persons in administrative service. Sanchez v. City of Belen, 98 N.M. 57, 644 P.2d 1046 (Ct. App. 1982), cert. denied, 98 N.M. 336, 648 P.2d 794 (1982).

Power to hire or fire. — Subsection (A)(2) of this section does not supersede the mayor's or city council's power to hire or discharge an employee. 1987 Op. Att'y Gen. No. 87-69.

Employees in "administrative service" may be properly defined to include all city employees in nonexempt status, and to specifically exclude all appointed officers of the city. 1987 Op. Att'y Gen. No. 87-69.

Municipal manager is not public officer of municipality for purposes of N.M. Const., art. V, § 13. 1979 Op. Att'y Gen. No. 79-28.

Sole authority to hire and fire personnel. — This section recognizes the manager as the chief administrative officer of a city under the commission-manager form of government, responsible only to the commission who may discharge him at will. Sole authority to hire and fire the personnel of the city is vested in the manager, without concurrence of the commission. 1957-58 Op. Att'y Gen. No. 57-126.

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 185.

62 C.J.S. Municipal Corporations §§ 370, 391, 392, 394 to 405.

3-14-15. Commissioner-manager; departments; directors.

The administration of the affairs of the municipality shall be divided into as many departments as may be deemed desirable by the commission. Each department shall be under the charge of a person employed by the manager.

History: 1953 Comp., § 14-13-15, enacted by Laws 1965, ch. 300.

3-14-16. Commission-manager; recall; election; ballot; effect; filling vacancies.

A. In any commission-manager municipality, any elective officer is subject to a recall election. Upon petition seeking the recall of an elective officer, signed by the qualified electors in a number more than twenty percent of the average number of voters who voted at the previous four regular municipal elections or more than twenty percent of the number of voters who voted at the previous regular municipal election, whichever is the greater, the commission shall call a special election unless the regular municipal election occurs within sixty days, in which case the qualified electors shall vote on the recall at the regular election.

B. In either case, there shall be a special ballot containing the name of the officer, the office he holds and the dates of the beginning and termination of his official term. Below the name of the officer shall be two phrases:

"For the recall" and

"Against the recall,"

one below the other with a space after each for placing a cross where desired. If a majority of the votes cast favor recall and the number of votes cast favoring a recall are equal to or more than the number the officer received when he was a candidate for office, the office in question is declared vacant.

C. If an officer is recalled, he shall not be eligible for reelection until the term for which he was originally elected has expired.

D. If the recall election results in a failure to secure the votes necessary to recall, the officer in question shall not be subject again to recall until six months have elapsed from the date the previous recall election was held.

E. A vacancy created by a recall election shall be filled in the same manner as other vacancies on the commission are filled. If all commissioners are recalled at the same election, the municipal clerk, or if there is no municipal clerk, the district court shall within three days call an election as provided in Section 3-14-8 NMSA 1978, for the election of five commissioners.

History: 1953 Comp., § 14-13-16, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Section contrary to constitution as to removal of municipal judges. — Since N.M. Const., art. VI, § 32, created a judicial standards commission and explicitly provided for grounds for and general procedures to be followed in removing judges from office, no legislatively created means of removing judicial officers was contemplated. Therefore, this section, which provided for recall of elective officers in commission-manager municipalities, was contrary to that section insofar as it pertained to removal of municipal judges. Cooper v. Albuquerque City Comm'n, 85 N.M. 786, 518 P.2d 275 (1974).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 187.

62 C.J.S. Municipal Corporations §§ 437 to 441.

3-14-17. Commission-manager; referendum; subjects petition; election; effect; repeal of emergency measure.

A. If within thirty days following the adoption of an ordinance or resolution, a petition, signed by the qualified electors in a number more than twenty percent of the average number of voters who voted at the previous four regular municipal elections or more than twenty percent of the number of voters who voted at the previous regular municipal election, whichever is the greater, is presented to the commission asking that the ordinance or resolution in question be submitted to a special election for its adoption or rejection, the ordinance or resolution shall become ineffective upon verification of the petition and the commission shall within ten days of verification adopt a resolution calling for the holding of a special election on the measure within ninety days of the verification of the petition.

B. The ballot shall contain the text of the ordinance or resolution in question. Below the text shall be the phrases:

"For the above measure", and

"Against the above measure",

followed by spaces for marking the ballot with a cross or check or other mark necessary for proper counting of the ballot, in order to cast a vote for the phrase desired. If a majority of the votes cast favor the measure, it shall take effect immediately. If a majority of the votes cast are against the measure, it shall not take effect.

C. If an ordinance or resolution is an emergency measure, it shall go into effect immediately, but it may be repealed by an adverse majority at a referendum election.

History: 1953 Comp., § 14-13-17, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 113.

ANNOTATIONS

Cross references. — For examinations of signatures, purging and judicial review of petitions, *see* 3-1-5 NMSA 1978.

The 1985 amendment inserted "upon verification of the petition" following "resolution shall become ineffective", substituted "within ten days of verification adopt a resolution calling for the holding of a special election" for "provide for an election", "ninety days" for "sixty days", and "verification of the petition" for "filing of the petition" near the end of Subsection A, and inserted "the ballot" following "spaces for marking" and "or check or other mark necessary for proper counting of the ballot, in order to cast a vote for" preceding "the phrase desired" near the middle of Subsection B.

Liberal construction. — Provisions reserving to the people the power of referendum are to be given a liberal construction to effectuate the policy thereby adopted. City Comm'n v. State ex rel. Nichols, 75 N.M. 438, 405 P.2d 924 (1965).

No time limit is set out for the filing of referendum petitions on emergency measures. City Comm'n v. State ex rel. Nichols, 75 N.M. 438, 405 P.2d 924 (1965).

Exception to referendum power. — The referendum power of voters under Subsection A of this section and the city charter was subject to an implied exception for administrative and executive matters, and an ordinance that changed the rate charged by a city-owned utility was an administrative matter within the scope of the exception. Johnson v. City of Alamogordo, 1996-NMSC-004, 121 N.M. 232, 910 P.2d 308.

Summary of ordinance only required. — Where Subsection B of this section states "the ballot shall contain the text," the statutory language can be construed as requiring only a summary of the ordinance to be decided upon. Turner v. Barnhart, 83 N.M. 759, 497 P.2d 970 (1972).

Failure to print entire ordinance does not void election. — Where Subsection B of this section provides "the ballot shall contain the text of the ordinance or resolution in question," failure to print the entire ordinance on the ballot does not amount to an irregularity in the election that is substantial enough to void the election and circumvent the will of the voters involved. Turner v. Barnhart, 83 N.M. 759, 497 P.2d 970 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Initiative and Referendum §§ 7, 9 et seq.

Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal in time therefor, 27 A.L.R.2d 604.

62 C.J.S. Municipal Corporations §§ 311 to 327.

3-14-18. Commission-manager; initiative; failure of commission to adopt; election.

A. In any commission-manager municipality, upon petition, signed by the qualified electors in a number more than twenty percent of the average number of voters who voted at the previous four regular municipal elections or more than twenty percent of the number of voters who voted at the previous regular municipal election, whichever is the greater, any measure may be proposed to the commission for enactment within thirty days of the date of verification of the petition. If the commission:

(1) fails to act;

(2) acts adversely; or

(3) amends the proposed measure, the commission shall, within ten days of the expiration of the thirty day period, adopt an election resolution calling for the holding of a special election within ninety days of the expiration of the thirty day period for the purpose of submitting the measure to the electorate.

B. The ballot shall contain the proposed measure and the measure as amended, if the commission amends the proposed measure. After each measure there shall be printed the words:

"For", and

"Against",

followed by spaces for marking the ballot with a cross or check or other mark necessary for proper counting of the ballot, in order to cast a vote for the phrase desired.

C. The measure receiving a majority of the votes cast on that measure in its favor is adopted. If each measure receives a majority of votes cast on that measure in its favor, the measure receiving the greatest number of votes cast in its favor is adopted.

History: 1953 Comp., § 14-13-18, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 114.

ANNOTATIONS

The 1985 amendment substituted "verification of the petition" for "filing of the petition" at the end of the first sentence in the introductory paragraph of Subsection A, substituted "the commission shall, within ten days of the expiration of the thirty-day period, adopt an election resolution calling for the holding of a special election within ninety days of the expiration of the thirty-day period for the purpose of submitting" for "the commission shall call a special election in not less than thirty days nor more than sixty days for the purpose of submitting" in Subsection A(3), and substituted "followed by spaces for marking the ballot with a cross or check or other mark necessary for proper counting of the ballot, in order to cast the vote for the phrase desired" for "with spaces for crosses after each word" near the end of Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Initiative and Referendum §§ 7, 9 et seq.

62 C.J.S. Municipal Corporations §§ 311 to 327.

3-14-19. Abandonment of commission-manager government.

A. Within ten days of the verification of a petition submitted to the municipal clerk and signed by thirty percent of the qualified electors of the municipality, the commission shall adopt an election resolution calling for the holding of a special election within ninety days of verification to vote on the question of abandoning the commission-manager form of government.

B. If a majority of the votes cast at the special election favor abandonment of the commission-manager form of government, the form of government reverts to that form of government existing immediately preceding the adoption of the commission-manager form of government after the election and taking office of the new officers, and the commission shall within ten days after the filing of the certificate of canvass in the minute book adopt an election resolution calling for the holding of a special election within one hundred twenty days of such filing to elect new officers.

C. The election shall be held in the same manner as regular municipal elections are held as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. The mayor and one-half of the members of the governing body shall hold office until the next regular municipal election and the remaining one-half of the members of the governing body shall hold office until the succeeding regular municipal election. The terms of the members of the governing body shall be determined by lot after their election.

D. No election shall be held upon the question of abandoning the commission-manager form of government within two years after an election has been held adopting the commission-manager form of government or confirming its continued existence.

History: 1953 Comp., § 14-13-19, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 115.

ANNOTATIONS

The 1985 amendment substituted "Within ten days of the verification of a petition submitted to the municipal clerk and" for "Upon petition" at the beginning and substituted "shall adopt an election resolution calling for the holding of a special election within ninety days of verification" for "shall call for a special election" near the end of Subsection A, substituted "and taking office" for "and qualifications" and "within ten days after the filing of the certificate of canvass in the minute book adopt an election resolution calling" for "immediately provide" and inserted "within one hundred twenty days of such filing" preceding "to elect new officers" near the end of Subsection B, and inserted "as provided in the Municipal Election Code" at the end of the first sentence in Subsection C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 184.

ARTICLE 15
Municipal Charters

3-15-1. Short title.

Sections 3-15-1 through 3-15-16 NMSA 1978 may be cited as the "Municipal Charter Act."

History: 1953 Comp., § 14-14-1, enacted by Laws 1971, ch. 118, § 1.

ANNOTATIONS

Repeals. — Laws 1971, ch. 118, § 1, repealed former 14-14-1, 1953 Comp., relating to permission for any incorporated municipality to adopt a charter, and enacts the above section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 51 to 53.

Mistake in reference in statute to municipal charter, 5 A.L.R. 1010, 14 A.L.R. 274.

Power of city under freeholders' charter over taxes, 35 A.L.R. 883.

Injunctive relief against submission of constitutional amendment, statute, municipal charter or municipal ordinance, on ground that proposed action would be unconstitutional, 19 A.L.R.2d 519.

62 C.J.S. Municipal Corporations §§ 81 to 97.

3-15-2. Qualified electors may adopt charter.

The qualified electors of a municipality who wish to be governed pursuant to Article 10, Section 6 of the constitution of New Mexico may adopt, amend or repeal a charter pursuant to the Municipal Charter Act [3-15-1 to 3-15-16 NMSA 1978].

History: 1953 Comp., § 14-14-1.1, enacted by Laws 1971, ch. 118, § 2.

ANNOTATIONS

Necessary condition for submission of charter to electorate. — Approval of a proposed charter by the governing body of the municipality is a necessary condition to submitting the proposed charter to the electorate for adoption. 1979 Op. Att'y Gen. No. 79-24.

3-15-3. Definitions.

As used in the Municipal Charter Act [3-15-1 to 3-15-16 NMSA 1978], "municipality" means any incorporated city, town, village or county, whether incorporated under general act, special act or constitutional provision.

History: 1953 Comp., § 14-14-1.2, enacted by Laws 1971, ch. 118, § 3.

3-15-4. Petition; submission to voters; frequency of elections; withdrawal of signatures.

Upon petition signed by five percent of the qualified electors of the municipality, the presiding officer of the governing body of the municipality shall by proclamation submit to the qualified electors of the municipality the question of adopting a charter for the municipality under the Municipal Charter Act [3-15-1 to 3-15-16 NMSA 1978], at a special election to be held at a specified time, and within sixty days after the charter provided for in Section 3-15-5 NMSA 1978 has been prepared and filed with the clerk of the municipality. If the charter is not adopted at the special election, the question of adopting a charter under the Municipal Charter Act shall not be resubmitted to the voters of the municipality for two years thereafter. No elector who has signed the petition shall be permitted to withdraw his name after the petition has been filed with the clerk of the municipality except where his signature has been procured by fraud.

History: 1953 Comp., § 14-14-2, enacted by Laws 1965, ch. 300; 1971, ch. 118, § 4.

ANNOTATIONS

Cross references. — For examinations of signatures, purging and judicial review of petitions, *see* 3-1-5 NMSA 1978.

Necessary condition for submission of charter to electorate. — Approval of a proposed charter by the governing body of the municipality is a necessary condition to submitting the proposed charter to the electorate for adoption. 1979 Op. Att'y Gen. No. 79-24.

3-15-5. Charter commission; appointment; number; qualifications; duties.

Within five days after the filing of the petition, the presiding officer of the governing body shall appoint a charter commission or the governing body of a municipality may appoint a charter commission upon its own initiative at any time. The charter commission shall consist of not less than seven members, no more than a simple majority shall belong to the same political party. The charter commission shall prepare a charter providing for the government of the municipality and shall complete the proposed charter and file it with the clerk of the municipality within one hundred eighty days from the date of its appointment. The commission shall select its own chairman.

History: 1953 Comp., § 14-14-3, enacted by Laws 1965, ch. 300; 1971, ch. 118, § 5.

3-15-6. Gratuitous service by committee; expenses.

The electors shall serve without pay and may expend money for such items as clerical help and stationery in the amount allowed by the municipality.

History: 1953 Comp., § 14-14-4, enacted by Laws 1965, ch. 300.

3-15-7. Charter; provisions; restrictions; prior legislation.

The charter may provide for any system or form of government that may be deemed expedient and beneficial to the people of the municipality, including the manner of appointment or election of its officers, the recall of the officers and the petition and referendum of any ordinance, resolution or action of the municipality; provided, that the charter shall not be inconsistent with the constitution of New Mexico, shall not authorize the levy of any tax not specifically authorized by the laws of the state and shall not authorize the expenditure of public funds for other than public purposes. All bylaws, ordinances and resolutions lawfully passed and in force in the municipality before the adoption of the charter shall remain in force until amended or repealed.

History: 1953 Comp., § 14-14-5, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Municipal wage ordinance upheld. — In passing the Minimum Wage Act, the legislature allowed any existing local minimum wage ordinances that were more favorable to employees to stay in effect. New Mexicans for Free Enterprise v. City of Santa Fe, 2006-NMCA-007, 138 N.M. 785, 126 P.3d 1149.

Term limits not authorized. — The language in this section authorizing a provision for the "manner of appointment or election of its officers" does not give home rule municipalities the power to set term limits for its elected officials; the phrase refers merely to the time, place, and manner of conducting elections and does not grant the power to adopt additional qualifications for elective office. Cottrell v. Santillanes, 120 N.M. 367, 901 P.2d 785 (Ct. App. 1995), cert. denied, 120 N.M. 213, 900 P.2d 962 (1995).

Application of state law when authorizations omitted from charter. — Where a city adopts a charter, but omits from such charter authorization to the city commissioners to pave city streets and meet the cost by special assessment and to enforce the liens created therefor by foreclosures, the state law on municipalities governs. Ellis v. New Mexico Constr. Co., 27 N.M. 312, 201 P. 487 (1921).

Municipal corporation created under an unconstitutional charter is a de facto corporation, and its officers are de facto officers. City of Albuquerque v. Water Supply Co., 24 N.M. 368, 174 P. 217 (1918).

Voter approval of capital projects. — A home rule municipality may require voter approval of capital projects before the municipality proceeds with a capital project. 2011 Op. Att'y Gen. No. 11-04.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Constitutionality of charter provision making actual knowledge or notice of defect in street or public place a condition of municipal liability for personal injury or damage to property caused thereby, 83 A.L.R. 288.

Persons upon whom notice of injury or claim against municipal corporation may or must be served, 23 A.L.R.2d 969.

Validity, construction, and operation of constitutional and statutory "term limits" provisions, 112 A.L.R. 5th 1, § 7.

3-15-8. Boundaries; prior rights and property; saving clause.

The territorial limits of the municipality shall remain the same as under its former organization until changed in accordance with law, and all rights and property of every description which were vested in any municipality under its former organization shall remain vested in the municipality under the organization herein contemplated and provided for, and no contract or franchise, and no right or liability, either in favor of or against the municipality, and no suit or prosecution of any kind shall be affected by any such reorganization.

History: 1953 Comp., § 14-14-6, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 62 C.J.S. Municipal Corporations § 95.

3-15-9. Special election on adoption of charter.

Within five days after the filing with the clerk of the municipality of the charter provided for by Sections 3-15-1 through 3-15-16 NMSA 1978, and the charter being approved by a majority of the members elected to the governing body of the municipality at a regular or special meeting, the presiding officer of the governing body of the municipality shall by proclamation call a special election for the purpose of submitting to the electors of the municipality the question of whether or not the municipality shall adopt the charter prepared by the charter committee. The special election may be called and held at the same time and in conjunction with the regular election for municipal officers. Should the charter filed with the clerk of the municipality fail to be approved by the governing body of the municipality, the charter shall be returned to the chairman of the charter committee together with a letter of transmittal stating the reason why the charter has been rejected by the governing body. The charter committee shall revise the charter in accordance with their instructions in the letter of transmittal and shall refile the same with the clerk of the municipality within sixty days after the chairman of the charter committee shall have had returned to him the rejected charter. If the charter is then approved, the election proclamation shall be issued, or if not approved, the charter shall be returned by the governing body to the

charter committee. This procedure shall continue until a charter is presented and approved by the governing body of the municipality.

History: 1953 Comp., § 14-14-7, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Necessary condition for submission of charter to electorate. — Approval of a proposed charter by the governing body of the municipality is a necessary condition to submitting the proposed charter to the electorate for adoption. 1979 Op. Att'y Gen. No. 79-24.

3-15-10. Qualifications of voters; ballots; conduct of election; effect of adoption.

All qualified electors residing within the municipality shall be qualified to vote at the special election held under Sections 3-15-1 through 3-15-16 NMSA 1978, and the vote shall be by separate ballots, one of which shall be:

"In favor of adoption of charter [ ]" and the other:

"Against adoption of charter [ ]."

The special election shall be conducted in accordance with Sections 3-8-1 through 3-8-19 NMSA 1978 [Chapter 3, Article 8 NMSA 1978], and if a majority of all the votes cast shall favor the adoption of the charter, the same shall take effect immediately insofar as necessary to authorize the election of officers thereunder, but shall not take effect otherwise until such date as may be specified in the charter, which date shall not be less than sixty days after the special election. After the date fixed by the charter, the municipality shall be deemed reorganized under the provisions of the charter, and the powers and duties of all officers elected or appointed under the former laws shall cease.

History: 1953 Comp., § 14-14-8, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Bracketed material. — The bracketed material near the beginning of the last paragraph was added by the compiler and is not part of the law. Sections 3-8-1 to 3-18-19 NMSA 1978 were amended and recompiled throughout Chapter 3, Article 8 NMSA 1978 by Laws 1985, ch. 208.

Voters are given no alternatives except approval or disapproval of the charter as proposed. They may not, under the statute, be given any options other than approval or disapproval. 1971 Op. Att'y Gen. No. 71-50.

3-15-11. First election of officers; time; law governing.

In case the charter is adopted, it shall be the duty of the presiding officer of the governing body of the municipality to issue a proclamation calling a special election for the election of such elective officers as may be provided for in the charter. The election shall be at least ten days before the date specified in the charter for it to go into effect, and the election shall be held in accordance with the provisions of the charter.

History: 1953 Comp., § 14-14-9, enacted by Laws 1965, ch. 300.

3-15-12. Filing and recording certified copies of charter.

In case of adoption of a charter under the provisions of Sections 3-15-1 through 3-15-16 NMSA 1978, the presiding officer of the governing body of the municipality shall transmit to the secretary of state a duly enrolled and engrossed copy of the charter, which shall be authenticated by the signature of the presiding officer of the governing body of the municipality, and the certificate of the clerk of the municipality and the corporate seal of the municipality, and thereupon the secretary of state shall cause the charter to be filed and recorded in his office. A like copy of the charter, authenticated and certified as specified in this section, shall be recorded in the office of the county clerk.

History: 1953 Comp., § 14-14-10, enacted by Laws 1965, ch. 300.

3-15-13. Charter controls when statute is inconsistent; statutory interpretation.

A. A municipality organized under the provisions of the Municipal Charter Act [3-15-1 to 3-15-16 NMSA 1978] shall be governed by the provisions of the charter adopted pursuant to that act, and no law relating to municipalities inconsistent with the provisions of the charter shall apply to any such municipality.

B. A municipality which adopts a charter may exercise all legislative powers and perform all functions not expressly denied charter municipalities by general law or charter. A liberal construction shall be given to the powers of municipalities to provide for maximum local self-government.

History: 1953 Comp., § 14-14-11, enacted by Laws 1965, ch. 300; 1984, ch. 65, § 173.

ANNOTATIONS

Referendum provision dealing specially with popular referenda on franchise ordinances prevails over referendum provisions of the city charter applying to ordinances generally and not to franchise ordinances alone. Albuquerque Bus Co. v. Everly, 53 N.M. 460, 211 P.2d 127 (1949).

Application of state law where authorizations omitted from charter. — Where a city adopts a charter, but omits from such charter authorization to the city commissioners to

pave city streets and meet the cost by special assessment and to enforce the liens created therefor by foreclosure, the state law on municipalities governs. Ellis v. New Mexico Constr. Co., 27 N.M. 312, 201 P. 487 (1921).

3-15-14. Petitions; qualifications of signers; contents.

Petitions provided for in Sections 3-15-1 through 3-15-16 NMSA 1978, shall be signed only by qualified electors of the municipality, and each petition shall contain in addition to the names of the petitioners, the street and house number or place in which the petitioner resides.

History: 1953 Comp., § 14-14-12, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For examinations of signatures, purging and judicial review of petitions, *see* 3-1-5 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal in time therefor, 27 A.L.R.2d 604.

3-15-15. Publication of proposed charter.

Whenever a proclamation calling for a special election as provided for by Section 3-15-9 NMSA 1978, shall be issued, a copy of the proposed charter shall be published once each week for four consecutive weeks, and the presiding officer of the governing body of the municipality shall cause to be printed for distribution not less than one thousand copies of the proposed charter, the distribution to be not less than three weeks before the date set for the election.

History: 1953 Comp., § 14-14-13, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For definition of "publish" or "publication," *see* 3-1-2 NMSA 1978.

3-15-16. Amendment or repeal of charter; alternate methods.

The charter of any municipality adopted under the provisions of Article 10, Section 6 of the constitution of New Mexico, by law of the territorial legislature of New Mexico or under the provisions of the Municipal Charter Act [3-15-1 to 3-15-16 NMSA 1978] may be amended or repealed either by a proposal submitted by the governing body of the municipality to the qualified electors or by petition as provided for in Section 3-15-4 NMSA 1978 for the adoption of an original charter at a general or special election and ratified by a majority of the qualified electors voting on the amendment or repeal.

History: 1953 Comp., § 14-14-14, enacted by Laws 1965, ch. 300; 1971, ch 118, § 6; 1990, ch. 63, § 1.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, inserted "by law of the territorial legislature of New Mexico" and "under the provisions of," substituted "Section 3-15-4 NMSA 1978" for "Section 14-14-2 NMSA 1953" and made a minor stylistic change.

A municipality's charter may be amended only as authorized by the legislature. 1987 Op. Att'y Gen. No. 87-81.

There is no legislative grant of authority for Silver City, which is not a home-rule municipality, to amend its charter. It must adopt a new charter. 1987 Op. Att'y Gen. No. 87-81.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Extension of boundaries of municipality by amendment to charter, 64 A.L.R. 1371.

Detachment of territory from municipality under power to amend charter, 117 A.L.R. 296.

Doctrine of de facto existence or powers of municipal corporation as applicable to amendment or revision of charter, 7 A.L.R.2d 1407.

ARTICLE 16
Combined Municipal Organizations

3-16-1. Combined city-county municipal corporations; definitions.

As used in Sections 3-16-1 through 3-16-18 NMSA 1978:

A. "combined municipal organization" means the combined city and county municipal corporation, whether prior to or subsequent to the completed consolidation, including the area within the exterior boundaries of the municipality and county;

B. "city" means the municipality involved in the city and county consolidation, including the area within the boundary of the city;

C. "county" means the county government including the area within the exterior boundaries of the county involved in the city and county consolidation, and outside the boundary of the city; and

D. "election units" includes the area of the city and county, respectively.

History: 1953 Comp., § 14-15-1, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Home rule municipalities. — Home rule municipality may set minimum wage higher than that required by the state Minimum Wage Act because of the independent powers possessed by municipalities in New Mexico and the absence of any conflict with state law. New Mexicans for Free Enterprise v. City of Santa Fe, 2006-NMCA-007, 138 N.M. 785, 126 P.3d 1149.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 81, 82.

62 C.J.S. Municipal Corporations § 79.

3-16-2. Combined organization; charter committee; proposed charter; election; ballots.

When the total population of any combined municipal organization shall be at least fifty thousand inhabitants, a city-county government may be organized as hereinafter provided. The legislative authority of any city within a combined municipal organization by ordinance, and the county commissioners of a county within the same combined municipal organization, by resolution, may express their desire that the question of the formation of a combined city and county municipal corporation shall be submitted to the voters of the city and the county outside the city, in accordance with Article 10, Section 4 of the constitution of New Mexico, at a special election called and held as hereinafter provided. In the event approval is obtained by ordinance in the city and by resolution of the county commissioners, then the governing body of any city may appoint seven members who are residents of the city, and the county commissioners may appoint seven members who are residents of the county, making a total of fourteen members, which will form a city and county charter committee. Said charter committee shall meet to draft a charter not inconsistent with the constitution and laws of New Mexico pertaining to city charters. The proposed charter must be approved by a majority of the fourteen appointed members of the charter committee. In the event said proposed charter is approved by the committee, it shall be submitted separately to the county commissioners and governing body of the city, and must be approved by a majority vote of each of these bodies. In the event said bodies approve the proposed charter, then, within sixty days, the county commissioners shall call a special election to be held in the combined municipal organization for the purpose of voting upon the question of city-county consolidation and upon the proposed charter therefor. The special election shall be called, conducted and canvassed in the same manner as general elections for the election of county officers are called, conducted and canvassed; provided, that the vote of electors in voting divisions in each election unit upon each proposition shall be separately counted, canvassed and kept. The ballot for such special election shall be substantially as follows:

"City and County Consolidation: Shall the city of _____ (here insert name of city) be consolidated with the remainder of the county of _____ (here insert name of county in which the city is located) as a political subdivision and become a combined city and county government? YES ___ NO ___

Shall the City and County of _____ (here insert name of city and county) adopt the proposed city and county charter? YES ___ NO ___."

A copy of the proposed charter shall be posted at or near the front entrance of each voting division in plain view of the electors desiring to vote thereon. Each registered voter of the city and county shall be entitled to vote in the precinct or election district in which he is registered, and the propositions shall be submitted in such manner that the voters may vote for or against them. If a majority of the voters voting on the propositions in the city and a majority of the voters voting on the propositions in the county outside the city vote in favor of the propositions submitted, a city and county government for the combined municipal organization shall be established in accordance with Sections 3-16-1 through 3-16-18 NMSA 1978. If a majority vote of either election unit is against the proposition of consolidation, the proposition shall not again be submitted to the voters of the combined municipal organization within two years of the date of such election. The cost of the election and preparing the proposed city and county charter shall be apportioned between, and paid by, the city and county in proportion to the number of votes cast on the proposition inside the city and the number of votes cast in the county outside the city.

History: 1953 Comp., § 14-15-2, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Los Alamos county may not adopt a charter providing for a combined city-county government until the population within the proposed territorial limits is 50,000 or more. 1961-62 Op. Att'y Gen. No. 62-96.

3-16-3. Approval of charter at election; legislative body for combined organization.

If the propositions submitted to the electors shall carry in both election units, and if the charter shall be approved by the majority of electors voting on the question, it may become the organic law of the combined city and county government and shall be effective as hereinafter provided. If the charter is rejected, in the event approval is given for the consolidation, the governing body of the city and county shall, within sixty days thereafter, provide for a new charter committee as hereinbefore set forth for the purpose of framing a new proposed charter which shall be done and submitted to the voters in like manner, and this procedure shall be followed until a proposed charter for such combined city and county government is approved by the electors. The charter, when adopted, may be revised or amended as provided in the charter or bylaw for such charters. The governing body of the city and the board of county commissioners shall

be the first legislative authority of the combined municipal organization and they shall continue in office until the terms for which each was elected expires, and no successor shall be elected or appointed under the combined municipal organization charter until the number of said body falls below the number provided in the city and county charter.

History: 1953 Comp., § 14-15-3, enacted by Laws 1965, ch. 300.

3-16-4. Charter; contents.

The charter shall designate the number and terms of members of the legislative authority and the name of the combined municipal corporation; the elective officers, the terms of such officers, manner of election and their powers and duties, and may provide for any form of local government for the city and county not inconsistent with the constitution and laws of New Mexico.

History: 1953 Comp., § 14-15-4, enacted by Laws 1965, ch. 300.

3-16-5. Date for commencing operation of new organization; disapproval of charter; effect.

In the event a combined municipal organization is approved by a majority of the electors in each election unit and a proposed charter therefor has likewise been approved by a majority of the electors in each election unit, the city government and the county government and all offices thereof, except as provided herein, shall terminate, and the new combined municipal organization government shall begin operation in lieu thereof on the first day of July following the adoption of a charter for the combined municipal organization by the governing authority of the combined municipal organization. If approval of the proposed charter is given by a vote of the majority of the electors voting thereon, the governing authority of the combined municipal organization may adopt the same by a majority vote. In the event the electors of either election unit shall disapprove the proposed charter submitted to them for approval for two consecutive elections upon such proposition, subsequent to the first election, then the consolidation, although previously approved, shall not become effective but shall be void, and the proposition for consolidation shall not be again submitted to a vote of the electors in the combined municipal organization for a period of two years after the last election on the question of approval of the charter.

History: 1953 Comp., § 14-15-5, enacted by Laws 1965, ch. 300.

3-16-6. Powers of combined organization.

Upon the date the new combined municipal organization begins operation as provided herein, and thereafter, the organization shall be a municipal corporation of New Mexico and thereupon and thereafter shall exercise all the powers vested in it by the charter adopted for its government and all powers and duties vested in cities by the

constitution and laws of New Mexico, and also all powers vested by law in counties, except as provided in the charter adopted and in Article 10, Section 4 of the constitution of New Mexico.

History: 1953 Comp., § 14-15-6, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 62 C.J.S. Municipal Corporations § 94.

3-16-7. County officers at time of city and county consolidation; duties.

In the event of a city and county consolidation, any county officer holding office at the time the charter becomes effective shall continue in office for his unexpired term and may exercise such functions or duties for the combined municipal organization as the legislative authority thereof determines, and after expiration of his term the county office shall terminate, except as provided herein.

History: 1953 Comp., § 14-15-7, enacted by Laws 1965, ch. 300.

3-16-8. Justices of the peace [magistrates] at time of city and county consolidation; duties; vacancies.

Unless otherwise provided for in the combined municipal organization charter, justices of the peace [magistrates] who have been elected and are holding office within the boundaries of the combined municipal organization at the time such government becomes operative, shall continue to hold office as justices of the peace [magistrates] for such combined municipal organization within their respective precincts for the term for which they have been elected, and their successors shall be elected at the time and in the manner and for the term provided by law for justices of the peace [magistrates]. Vacancies in office shall be filled by the governing body of the combined municipal organization for the term as provided for justices of the peace [magistrates] appointed to fill vacancies. Justices of the peace [magistrates] in the combined municipal organization shall exercise the same powers and jurisdiction as is provided by law for justices of the peace [magistrates].

History: 1953 Comp., § 14-15-8, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Bracketed material. — The bracketed material was not enacted by the legislature and is not a part of the law. Pursuant to Laws 1968, ch. 62, § 40, "magistrates" was inserted in brackets throughout this section.

3-16-9. Municipal judges to be provided for in charter.

If there is a city and county consolidation, there shall be municipal judges who shall exercise the powers and jurisdiction vested by the combined municipal organization charter in municipal courts. They shall be elected and their vacancies filled in the manner provided for in the charter.

History: 1953 Comp., § 14-15-9, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For municipal courts, *see* 35-14-1 NMSA 1978 et seq.

3-16-10. Pending cases in courts not to be affected by consolidation.

If there is a city and county consolidation, any civil or criminal case filed or pending, in any proper court at the time the combined municipal organization becomes effective, shall not be affected by the consolidation but shall continue and may be tried, dismissed or disposed of in the same manner as if the consolidation had not been made.

History: 1953 Comp., § 14-15-10, enacted by Laws 1965, ch. 300.

3-16-11. Probate judges and district judges at time of consolidation; effect.

A. The probate judge of the county when the consolidation becomes effective shall become the probate judge of the combined municipal organization and shall have the same powers, jurisdiction and duties as provided by law for probate judges of a county, and shall hold office for the remainder of the term for which he was elected. His successor shall be elected at the time and in the manner and for the term provided by law for such office.

B. The district judge or judges acting within and for the county, after the consolidation is complete and operative, shall be district judges within and for the combined municipal organization with the same jurisdiction, powers and duties as if no consolidation had been made.

History: 1953 Comp., § 14-15-11, enacted by Laws 1965, ch. 300.

3-16-12. Real and personal property taxes; assessment, levy and collection.

If there is a city and county consolidation all real and personal property within the combined municipal organization shall be assessed, taxed and taxes levied and collected at the time and in the manner provided by law.

History: 1953 Comp., § 14-15-12, enacted by Laws 1965, ch. 300.

3-16-13. Books and records of combined organization; filing of instruments.

A. If there is a city and county consolidation, and on and after the date the combined municipal organization government becomes operative, adequate books and records shall be provided in the municipal corporation for recording or filing instruments in the municipal corporation, as will be more specifically provided in the combined municipal organization charter. All books and records provided and kept by a county officer prior to the consolidation of the city and county shall continue to be made available to the public by the combined municipal organization and copies thereof furnished as now provided by law by the combined municipal organization official who, under the charter, is required to keep and maintain the records, with the same force and effect as if the consolidation had not occurred.

B. Instruments required or authorized by law to be filed or recorded with county clerks in order to constitute public notice, shall be filed with the clerk of the combined municipal organization or officer designated in the charter for such purposes, and when so filed or recorded shall have the same force and effect and constitute public notice in the same manner and to the same extent as if filed with county clerks of a county.

History: 1953 Comp., § 14-15-13, enacted by Laws 1965, ch. 300.

3-16-14. Assets and liabilities of city and county vest in combined organization; exceptions.

If there is a city and county consolidation all property, assets, credits, causes of action or other rights or interests belonging to the city or county at the time the combined municipal organization government becomes operative shall belong to the combined municipal organization, and, if necessary, the combined municipal organization may demand, sue for, recover and enforce the rights in appropriate courts in the name of the combined municipal organization, and all debts and obligations of the city or county existing at the time the combined municipal organization government becomes operative shall become the debt and obligation of the combined municipal organization and shall be assumed and paid by it as and when due; provided, that all bonded indebtedness of the city or county shall remain the separate debt of the city or county, respectively, and the city or county shall respectively retain its separate identity for debt service purposes until the debts of each legal entity have been fully paid. Tax levies shall continue to be made in the city and county for the required debt service. Special assessments and revenue bonds of the city or county shall likewise continue to be paid only as provided originally for the payment thereof and the city or county shall

maintain its separate identity for the purpose of the debt service. All budget and cash balances in all funds of the city and county, except interest and sinking funds for debt service, shall likewise vest in and belong to the combined municipal organization and become available for its use in paying current operating expenses.

History: 1953 Comp., § 14-15-14, enacted by Laws 1965, ch. 300.

3-16-15. Continuation of prosecutions, ordinances, rights, privileges and franchises.

If there is a city and county consolidation all rights, franchises and privileges granted by the city or county and all ordinances of the city effective at the date the combined municipal organization government becomes operative shall continue in full force and effect throughout the combined municipal organization until expiration, repeal, termination, amendment or modification, as authorized by law, and all prosecutions not already commenced for offenses committed before or after the county-city government becomes operative may be made in the name of the combined municipal organization in the proper court.

History: 1953 Comp., § 14-15-15, enacted by Laws 1965, ch. 300.

3-16-16. City and county property vests in combined organization.

If there is a city and county consolidation, all property, real, personal or mixed, belonging to the city or county shall vest in and become the property of the combined municipal organization government immediately when the combined municipal organization government becomes operative.

History: 1953 Comp., § 14-15-16, enacted by Laws 1965, ch. 300.

3-16-17. Substitution of combined organization in pending court proceedings.

If any action, suit or proceeding is pending in any court for or against the city or county at the time the combined municipal organization becomes operative, the combined municipal organization shall be substituted as plaintiff or defendant, as the case may be, in such action, suit or proceeding, and the same shall proceed as if the claim, right, debt or demand upon which the action, suit or proceeding was founded, had originally existed in favor of or against the combined municipal organization.

History: 1953 Comp., § 14-15-17, enacted by Laws 1965, ch. 300.

3-16-18. Collection of taxes; budgets; powers and duties of officers of combined organization.

A. The county treasurer shall proceed to collect all taxes assessed against persons or property within the combined municipal organization prior to the effective date of the consolidation, in the same manner as if no consolidation had occurred. When the combined municipal organization becomes operative, all county officers shall deliver to the proper officer of the combined municipal organization designated in the charter to receive the same, all money, property, books and records of the respective offices.

B. After the combined municipal organization becomes operative, budgets for its government and operation shall be made in the same manner, subject to the same limitations as provided by law for budgets of cities and counties. From said date property shall be assessed for taxes and taxes levied and collected thereon by the combined municipal organization in the same manner and subject to the same limitations as provided by law for assessment, levy and collection of taxes in cities and counties including the procedure for collection of delinquent taxes.

C. After the combined municipal organization becomes operative, each officer of the organization designated by the charter to assume the powers and duties in whole or in part of the county officer or city officer whom he supersedes, shall have all of the rights, powers and duties respectively imposed by law upon the superseded county officer or city officer, and the exercise and performance of the functions when done shall be valid and of the same force and effect as if done by the officer superseded.

History: 1953 Comp., § 14-15-18, enacted by Laws 1965, ch. 300.

ARTICLE 17
Ordinances

3-17-1. Ordinances; purposes.

The governing body of a municipality may adopt ordinances or resolutions not inconsistent with the laws of New Mexico for the purpose of:

A. effecting or discharging the powers and duties conferred by law upon the municipality;

B. providing for the safety, preserving the health, promoting the prosperity and improving the morals, order, comfort and convenience of the municipality and its inhabitants; and

C. enforcing obedience to the ordinances by prosecution in the municipal court and metropolitan courts and upon conviction the imposition of:

(1) except for those violations of ordinances described in Paragraphs (2) and (3) of this subsection, a fine of not more than five hundred dollars ($500) or imprisonment for not more than ninety days or both;

(2) for a violation of an ordinance prohibiting driving a motor vehicle while under the influence of intoxicating liquor or drugs, a fine of not more than one thousand dollars ($1,000) or imprisonment for not more than three hundred sixty-four days or both; and

(3) for violations of an industrial user wastewater pretreatment ordinance as required by the United States environmental protection agency, a fine of not more than one thousand dollars ($1,000) a day for each violation.

History: 1953 Comp., § 14-16-1, enacted by Laws 1965, ch. 300; 1967, ch. 146, § 5; 1987, ch. 92, § 1; 1989, ch. 234, § 1; 1990, ch. 100, § 1; 1990, ch. 113, § 1; 1993, ch. 66, § 1.

ANNOTATIONS

Cross references. — For zoning authority of county or municipality, *see* 3-21-1 NMSA 1978 et seq.

For jurisdiction of municipal courts, *see* 35-14-2 NMSA 1978.

For proceedings to enforce violations of ordinances, *see* 35-15-1 NMSA 1978 et seq.

The 1993 amendment, effective January 1, 1994, deleted "third and every subsequent conviction of" preceding "violation" and substituted "three hundred sixty-four days" for "six months" in Paragraph (2) of Subsection C.

1990 amendments. — Laws 1990, ch. 100, § 1, effective July 1, 1990, in Subsection C, substituting "for a second" for "for a third" at the beginning of Paragraph (2), inserting the subparagraph designation "(a)" in Paragraph (2) and adding a Subparagraph (b) thereof, relating to impoundment or immobilization for not more than 60 days of the motor vehicle the convicted person was driving at the time of the offense, was approved March 5, 1990. However, Laws 1990, ch. 113, § 1, effective May 16, 1990, in Subsection C, inserting "and metropolitan courts" in the introductory clause, substituting "Paragraphs (2) and (3)" for "Paragraph (2)" in Paragraph (1), adding Paragraph (3) and making a minor stylistic change, was approved later on March 5, 1990. The section is set out as amended by Laws 1990, ch. 113, § 1. *See* 12-1-8 NMSA 1978.

The 1989 amendment, effective July 1, 1989, substituted "five hundred dollars ($500)" for "three hundred dollars ($300)" in Subsection C(1).

The 1987 amendment, effective June 19, 1987, in Subsection C, in the opening clause, substituted "prosecution in municipal court and upon conviction the imposition of" for all the material following "enforcing obedience to the ordinances by" as set out in the main pamphlet and added Paragraphs (1) and (2).

I. GENERAL CONSIDERATION.

No standing to challenge civil forfeiture ordinance. — Where the plaintiffs failed to demonstrate that they or their members have suffered an injury in fact or experienced the imminent threat of injury by the enforcement of a municipal ordinance that provided for the civil forfeiture of vehicles operated by persons arrested for DWI, the plaintiffs did not have standing to challenge the ordinance under the requirements for traditional standing, organizational standing, facial constitutional challenge of the ordinance, or the doctrine of great public importance. ACLU v. City of Albuquerque, 2007-NMCA-092, 142 N.M. 259, 164 P.3d 958, affirmed, 2008-NMSC-045, 144 N.M. 471, 188 P.3d 1222.

Police officer may make warrantless arrest for misdemeanor if he has probable cause to believe the offense occurred in his presence. Tanberg v. Shlotis, 401 F.3d 1151 (10th Cir. 2005).

Home rule municipalities. — Powers set forth in this section and 3-18-1 NMSA 1978 are independent municipal powers within the meaning of the home rule amendment because they are powers delegated to municipalities completely independent from the home rule amendment. New Mexicans for Free Enterprise v. City of Santa Fe, 2006-NMCA-007, 138 N.M. 785, 126 P.3d 1149.

Delegation of authority by municipal officers improper. — There is no authority that municipal officers may delegate their authority regarding the conduct of municipal affairs to a state official in whose appointment they have no voice and over whom they have no control. Adams v. City of Albuquerque, 62 N.M. 208, 307 P.2d 792 (1957).

While courts are not bound by declarations of a legislative body that its enactment is in the interest of the public safety and welfare, they are not to be ignored; indeed, they are entitled to great weight and will ordinarily be respected, unless obviously untrue or absurd. Farnsworth v. City of Roswell, 63 N.M. 195, 315 P.2d 839 (1957).

Authority of Subsection A. — A municipality may adopt ordinances for the purpose of protecting its inhabitants and preserving peace and order under authority of Subsection A of this section. City of Hobbs v. Biswell, 81 N.M. 778, 473 P.2d 917 (Ct. App.), cert. denied, 81 N.M. 772, 473 P.2d 911 (1970).

Authority of Subsection B. — The ordinance adopting authority of Subsection B of this section, often referred to as a general welfare clause, is independent of and in addition to ordinance adopting authority conferred by specific statutes. City of Hobbs v. Biswell, 81 N.M. 778, 473 P.2d 917 (Ct. App.), cert. denied, 81 N.M. 772, 473 P.2d 911 (1970).

Power to regulate use of the streets is a delegation of the police power of the state government and whatever reasonably tends to make regulation effective is a proper exercise of that power. City of Roswell v. Mitchell, 56 N.M. 201, 242 P.2d 493 (1952).

Extra-territorial public works. — When public rights and needs come in conflict with other interests, the municipality can exercise its discretionary authority to adopt a public policy whose objective is the greatest public good. Thus, the city's decision to build the bridge across the river, even though involving land outside the city's limits, was legal and presumed valid. State ex rel. Village of Los Ranchos de Albuquerque v. City of Albuquerque, 119 N.M. 150, 889 P.2d 185 (1994).

Municipalities are not authorized to withhold utility service from a subsequent owner. Bettini v. City of Las Cruces, 82 N.M. 633, 485 P.2d 967 (1971).

Presumption of validity. — If there is a relationship between an ordinance and its purpose, then unless its determination of the best method for preserving public health and safety is so arbitrary and unreasonable as to be equivalent to fraud, it will not be set aside. City of Hobbs v. Chesport, Ltd., 76 N.M. 609, 417 P.2d 210 (1966); Fowler v. City of Santa Fe, 72 N.M. 60, 380 P.2d 511(1963); Martinez v. Cook, 56 N.M. 343, 244 P.2d 134 (1952).

Franchise without referendum. — A franchise to maintain and operate an existing water plant, and to make additions, extensions and betterments thereto, may be granted by ordinance by a city without a referendum to the people. Asplund v. City of Santa Fe, 31 N.M. 291, 244 P. 1067 (1926).

Prosecution for violation of a municipal ordinance is a quasi-criminal proceeding. City of Roswell v. Gallegos, 77 N.M. 170, 420 P.2d 438 (1966); City of Santa Fe v. Baker, 95 N.M. 238, 620 P.2d 892 (Ct. App. 1980).

Board members required to take final action. — Where municipal ordinance, which created a personnel board of five members, provides that a majority of all board members shall constitute a quorum and that final action may be taken by the majority of members present at a meeting, the ordinance does not require that final action be taken by all five members of the board. Smyers v. City of Albuquerque, 2006-NMCA-095, 140 N.M. 198, 141 P.3d 542.

Validity of action where board members' terms have expired. — Where municipal ordinance provides that a board member remains in office until a successor has been duly qualified, the validity of a board's action was not affected by the fact that the term of two members of the board had expired. Smyers v. City of Albuquerque, 2006-NMCA-095, 140 N.M. 198, 141 P.3d 542.

II. VALIDITY.

Business license. — An ordinance which required businesses to retain a license and pay a license fee of 1% of annual gross business was invalid as a revenue measure. Town of Mesilla v. Mesilla Design Center & Book Store, Inc., 71 N.M. 124, 376 P.2d 183 (1962).

Door to door soliciting. — A municipality has the power to enforce reasonable door to door soliciting and canvassing regulations to protect its citizens from crime and undue annoyances. However, an ordinance which conditions the solicitation of aid upon the determination by state authority as to what is a religious cause lays a forbidden burden upon the exercise of First Amendment liberties. Weissman v. City of Alamogordo, 472 F. Supp. 425 (D. N.M. 1979).

Vagueness. — City ordinance which specifically prohibited maintaining solid waste and inoperable vehicles on property was not void for vagueness in that a reasonable person would be on notice as to what conduct would constitute violation of ordinance. City of Roswell v. Hancock, 1998-NMCA-130, 126 N.M. 109, 967 P.2d 447 (1998).

Recital in ordinance not prerequisite to validity. — No New Mexico statute requires a recital in city ordinance as a prerequisite to the validity of ordinances adopted under this section, and absent a showing of such a prerequisite, an ordinance with the enacting clause required by 3-17-2 NMSA 1978 is validly adopted. City of Hobbs v. Biswell, 81 N.M. 778, 473 P.2d 917 (Ct. App.), cert. denied, 81 N.M. 772, 473 P.2d 911 (1970).

Drug paraphernalia ordinance. — A drug paraphernalia ordinance is neither vague nor overbroad which requires proof of subjective intent to engage in proscribed conduct. Weiler v. Carpenter, 695 F. 2d 1348 (10th Cir. 1982).

Forfeiture hearing. — An ordinance which failed to provide for hearing in connection with forfeiture of drug paraphernalia violates due process. Weiler v. Carpenter, 695 F.2d 1348 (10th Cir. 1982).

Noise ordinance. — A noise ordinance which made it unlawful to create any unreasonably loud, disturbing or unnecessary noise or noise of such character, intensity or duration as to be detrimental to the repose, life or health of others and listed certain specific acts that were prohibited was not unconstitutionally vague for failing to specify permissible decibel levels. City of Farmington v. Wilkins, 106 N.M. 188, 740 P.2d 1172 (Ct. App. 1987), cert. denied, 106 N.M. 174, 740 P.2d 1158 (1987).

Parking meter ordinance. — Where parking meter ordinance was enacted primarily as a traffic regulation and not for the revenue incidental thereto, the ordinance is not unconstitutional or otherwise invalid because, incidentally, the city's receipts of money are increased. City of Roswell v. Mitchell, 56 N.M. 201, 242 P.2d 493 (1952).

Location of adult bookstore. — An ordinance which prohibited the location of an adult bookstore within 1,000 feet of certain specified facilities, including a residential area was unconstitutionally vague. Harris Books, Inc. v. City of Santa Fe, 98 N.M. 235, 647 P.2d 868 (1982).

Loitering. — Portions of an ordinance which prohibited loitering in public streets, places and gatherings, businesses or private property without lawful business, and which

prohibited loitering about a public, private or parochial school, college or buildings, on foot or in a vehicle, without lawful business were unconstitutional because they condemned acts to which no reasonable person would attribute wrong doing or misconduct. Balizer v. Shaver, 82 N.M. 347, 481 P.2d 709 (Ct. App. 1971).

Inoperable automobiles. — An ordinance which made it unlawful to keep solid waste and inoperable vehicles on private property was not void for vagueness. City of Roswell v. Hancock, 126 N.M. 109, 967 P.2d 449 (Ct. App.), cert. denied, 126 N.M. 107, 967 P.2d 447 (1998).

Pit bull dogs. — An ordinance banning the ownership or possession of a dog of the breed known as the American Pit Bull Terrier, was not void for vagueness, did not violate substantive or procedural due process, and did not take private property without just compensation in view of the fact that prior to the enactment of the ordinance residents had repeatedly been attacked in their persons and animals by pit bulls and a child had been severely mauled by a pit bull while walking home from school. Garcia v. Vill. of Tijeras, 108 N.M. 116, 767 P.2d 355 (Ct. App.), cert. denied, 107 N.M 785, 765 P.2d 758 (1988).

Disorderly house. — In an ordinance which made it unlawful to keep any "common, ill-governed disorderly house", the words "common" and "ill-governed" were unconstitutionally vague, but the word "disorderly" was not unconstitutionally vague and the constitutional words would be severed from the ordinance. City of Farmington v. Phillips, 92 N.M. 304, 587 P.2d 451 (Ct. App. 1978).

Loitering on school grounds. — To interpret a city ordinance prohibiting loitering on school grounds without lawful business there as saying that no one had the right to be on school property without permission would raise serious constitutional questions, where the ordinance did not state that permission to be on school grounds was required. Anderson v. Shaver, 290 F. Supp. 920 (D.N.M. 1968).

III. PREEMPTION.

Preemption test. — The test for state preemption of a municipal ordinance is not whether the municipality misstates the law in findings stated in the ordinance or whether some overlap exists between an ordinance and a statute. The test is whether the ordinance permits an act the statute prohibits, or vice versa. Rio Grande Kennel Club v. City of Albuquerque, 2008-NMCA-093, 144 N.M. 636, 190 P.3d 1131.

State law preemption. — Both the state law regarding DWI and Section 3-17-1C(2) NMSA 1978 demonstrate by their plain language that the legislature did not intend to preempt the field of DWI legislation and preclude municipalities from enacting DWI ordiances. New Mexico's DWI statutes clearly contemplate the existence of municipal DWI ordinances in that the statutes discuss the proper interaction between such ordinances and the statutes. City of Rio Rancho v. Mazzi, 2010-NMCA-054, 148 N.M. 553, 239 P.3d 149, cert. denied, 2010-NMCERT-005, 148 N.M. 574, 240 P.3d 1048.

IV. ORDINANCE AND STATUTE.

Lesser penalties. — The city did not exceed its authority by enacting an ordinance providing a lesser penalty than state DWI statutes thereby limiting the right to a jury trial. Such an ordinance is not inconsistent with the laws of New Mexico because it does not permit an act prohibited by the general law or vice versa. City of Rio Rancho v. Mazzei, 2010-NMCA-054, 148 N.M. 553, 239 P.3d 149, cert. denied, 2010-NMCERT-005, 148 N.M. 574, 240 P.3d 1048.

Petty misdemeanor penalty for DWI. — Where a municipal ordinance prohibited exactly the same acts as those acts prohibited by state DWI statutes, and the only substantive difference between the ordinance and state law was that the ordinance imposed a petty misdemeanor penalty and state law imposed a misdemeanor penalty, the ordinance was not inconsistent with state law. City of Rio Rancho v. Mazzei, 2010-NMCA-054, 148 N.M. 553, 239 P.3d 149, cert. denied, 2010-NMCERT-005, 148 N.M. 574, 240 P.3d 1048.

A home rule municipality is free to impose any penalty for DWI that complies with Article X, Section 6 of the New Mexico Constitution and Section 3-17-1(C)(2) NMSA 1978. City of Rio Rancho v. Mazzei, 2010-NMCA-054, 148 N.M. 553, 239 P.3d 149, cert. denied, 2010-NMCERT-005, 148 N.M. 574, 240 P.3d 1048.

The legislature has not preempted the field of DWI legislation. City of Rio Rancho v. Mazzei, 2010-NMCA-054, 148 N.M. 553, 239 P.3d 149, cert. denied, 2010-NMCERT-005, 148 N.M. 574, 240 P.3d 1048.

More restrictive ordinances. — An ordinance can be more restrictive than a state law, as long as it supplements, compliments or duplicates the state statute, but does not conflict with it. ACLU of New Mexico v. City of Albuquerque, 2006-NMCA-078, 139 N.M. 761, 137 P.3d 1215.

Regulation of water wells. — An ordinance which prohibited drilling of water wells within 200 feet of a water distribution line did not conflict with a statute which prohibited the drilling of a water well within 300 feet of a water distribution line because the ordinance was less restrictive. Stennis v. City of Santa Fe, 2008-NMSC-008, 143 N.M. 320, 176 P.3d 309.

Ordinance may duplicate or complement statutory regulation. — The fact of double regulation does not result in the withdrawal of the municipality's authority to regulate. An ordinance may duplicate or complement statutory regulations. City of Hobbs v. Biswell, 81 N.M. 778, 473 P.2d 917 (Ct. App.), cert. denied, 81 N.M. 772, 473 P.2d 911 (1970).

Exclusive garbage contract. — A municipal ordinance providing for the letting of an exclusive garbage contract and the contract awarded under the ordinance was a reasonable exercise of the municipality's police power to protect the health and welfare of the community. Gomez v. City of Las Vegas, 61 N.M. 27, 293 P.2d 984 (1956).

Ordinance more strict than state statute was not inconsistent with state law on the same subject because it provided for greater restrictions or prescribed higher standards than the law. City of Hobbs v. Biswell, 81 N.M. 778, 473 P.2d 917 (Ct. App.), cert. denied, 81 N.M. 772, 473 P.2d 911 (1970).

Exclusive garbage contract. — The burning, removal and disposal of garbage involve public health and safety and an ordinance granting an exclusive contract to collect, remove and dispose of garbage, and making it unlawful to burn garbage related to public health and safety, was not arbitrary, capricious or unreasonable. Barber's Supermarkets, Inc. v. City of Grants, 80 N.M. 583, 458 P.2d 785 (1969).

Motor vehicle ordinances. — Under statute municipality may enact motor vehicle ordinances notwithstanding that state statute likewise covers same subject matter and provides penalty for violations. Mares v. Kool, 51 N.M. 36, 177 P.2d 532 (1946).

Inspections permitted. — Where city ordinance is broader than the state statute in that it permits inspection by persons not necessarily police officers, but nothing in the state statute prohibits inspection by other than police officers, there was no conflict between city and state regulations. City of Hobbs v. Biswell, 81 N.M. 778, 473 P.2d 917 (Ct. App.), cert. denied, 81 N.M. 772, 473 P.2d 911 (1970).

V. SPECIFIC ORDINANCES.

Minimum wage. — Minimum wage ordinance enacted by City of Santa Fe is within the power of the city to enact and is constitutional. New Mexicans for Free Enterprise v. City of Santa Fe, 2006-NMCA-007, 138 N.M. 785, 126 P.3d 1149.

Home rule municipality may set minimum wage higher than that required by the state Minimum Wage Act because of the independent powers possessed by municipalities in New Mexico and the absence of any conflict with state law. New Mexicans for Free Enterprise v. City of Santa Fe, 2006-NMCA-007, 138 N.M. 785, 126 P.3d 1149.

Sale of intoxicating liquor. — A municipality has sufficient charter power to enact ordinance prohibiting sale of intoxicating liquor. City of Clovis v. Dendy, 35 N.M. 347, 297 P. 141 (1931)(decided under prior law).

Garbage collection and disposal. — The authority to establish health measures is authority for the municipality to place garbage collection and disposal exclusively with itself. City of Hobbs v. Chesport, Ltd., 76 N.M. 609, 417 P.2d 210 (1966).

Keeping of livestock. — In action attacking validity of ordinance prohibiting the keeping of livestock within restricted district of city, plaintiffs must prove specific facts showing ordinance unreasonable to overcome finding of city board, stated in preamble, that such keeping was a nuisance and endangered public health, and fact that plaintiffs' stables were kept clean and sanitary was no ground for holding ordinance invalid.

Mitchell v. City of Roswell, 45 N.M. 92, 111 P.2d 41 (1941), explained in Green v. Town of Gallup, 46 N.M. 71, 120 P.2d 619 (1941).

Regulation of pawnbrokers. — City had authority to enact ordinances under its general welfare power and its police power to regulate pawnbrokers. City of Hobbs v. Biswell, 81 N.M. 778, 473 P.2d 917 (Ct. App.), cert. denied, 81 N.M. 772, 473 P.2d 911 (1970)(decided under prior law).

Regulation of warehousemen. — Under this section, municipal corporations are authorized to regulate the business of warehousemen, such business being affected with a public interest. Daniel v. City of Clovis, 34 N.M. 239, 280 P. 260 (1929)(decided under prior law).

City may require a druggist to give bond as security that he will obey the law in dispensing liquor, but where the bond is made collectible only upon conviction for violation of the ordinance, it becomes a penalty limited to $300. City of Roswell v. Jacoby, 21 N.M. 702, 158 P. 419 (1916)(decided under prior law).

State misdemeanor statute does not preempt municipal ordinance. — The state statute providing a full misdemeanor penalty for certain acts of domestic violence does not preclude prosecution of an offense under a municipal ordinance that only provides a petty misdemeanor penalty. 2008 Op. Att'y Gen. No. 08-06.

While an ordinance cannot conflict with a state statute, it is proper for an ordinance to cover the same subject matter as a state law. Local ordinances and state statutes may complement, support, implement and strengthen one another. 1963-64 Op. Att'y Gen. No. 63-40 (rendered under former law).

Ordinance may not punish criminal act less severely. — Where an offense is identified as a felony under state law, a municipality may not enact an ordinance which purports to punish the same offense and set a lesser penalty therefor. 1981 Op. Att'y Gen. No. 81-24.

Traffic ordinances. — The city of Roswell has authority to enact a traffic ordinance and prescribe a penalty for a violation of same by including payment of fine or imprisonment, or both, as long as the penalties and the imprisonment do not exceed the sum of $300 or 90 days in jail, or both. 1953-54 Op. Att'y Gen. No. 53-5828.

Wearing of crash helmets by motorcycle riders. — A municipality may not require by ordinance the wearing of crash helmets by riders of motor-driven cycles having not more than five horsepower. The adoption of such an ordinance would be an unconstitutional restriction upon a person's civil liberty, for the ordinance would seek to restrict his liberty when such restriction would not result in a benefit to the public at large or tend to preserve the safety of the community. The municipality might constitutionally require all motorcycle riders under a certain age to wear safety helmets, so long as the grouping does not include adults. 1966 Op. Att'y Gen. No. 66-15.

Restrictions on political activities. — A county personnel ordinance can contain prohibitions against a covered employee holding a political position which is incompatible with his county employment, or provide that if the holding of a political office interfered with the full-time performance of his county employment, it would be grounds for termination of his employment. 1964 Op. Att'y Gen. No. 64-144.

A county ordinance which precludes any person from soliciting contributions for any political party or for any partisan political purpose from covered county employees if he knows that they are covered employees would be valid only if limited to working hours. 1964 Op. Att'y Gen. No. 64-144.

Regulation of fireworks. — The Fireworks Licensing and Safety Act (60-2C-1 et seq. NMSA 1978) expressly removed for municipalities their general authority to regulate fireworks and replaced it with limited authority to regulate the use of aerial and ground audible devices. To the extent that municipalities have regulatory authority over specified devices, those devices are subject to double regulation as long as municipal regulations do not conflict with the act's requirements. 1990 Op. Att'y Gen. No. 90-11.

The Fireworks Licensing and Safety Act (60-2C-1 et seq. NMSA 1978) denies all municipalities, including those with home rule charters, from regulating fireworks other than as provided by the statute. 1990 Op. Att'y Gen. No. 90-11.

Section limits enforcement. — This section is clearly a limitation on the powers of cities and towns to provide for enforcement of municipal ordinances. 1959-60 Op. Att'y Gen. No. 60-199.

The town of Grants may impose a jail sentence alone, or a fine and a jail sentence, for the violation of one of its ordinances, subject to the limitations imposed in this section. 1957-58 Op. Att'y Gen. No. 58-217.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

For article, "Rights of New Mexico Municipalities Regarding the Siting and Operation of Privately Owned Landfills," see 21 N.M.L. Rev. 149 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 343 to 345.

"Radius," meaning of the term employed in ordinance as descriptive of area, location or distance, 10 A.L.R.2d 605.

Emergency: conclusiveness of declaration of emergency in ordinance, 35 A.L.R.2d 586.

Simultaneous repeal and reenactment of all, or part, of legislative act, effect of, 77 A.L.R.2d 336.

Validity and construction of statute or ordinance requiring or prohibiting posting or other publication of price of commodity or services, 89 A.L.R.2d 901, 80 A.L.R.3d 740.

Validity of regulations as to contraceptives or the dissemination of birth control information, 96 A.L.R.2d 955.

Mining or quarrying operations or oil production within municipal limits, ordinance prohibiting or regulating, 10 A.L.R.3d 1226.

Curfew: validity and construction of curfew statute, ordinance or proclamation, 59 A.L.R.3d 321, 83 A.L.R.4th 1056.

Initiative process: adoption of zoning ordinance or amendment thereto through initiative process, 72 A.L.R.3d 991.

Referendum: adoption of zoning ordinance or amendment thereto as subject of referendum, 72 A.L.R.3d 1030.

Validity, construction, and effect of "Sunday closing" or "blue" laws - modern status, 10 A.L.R.4th 246.

Right of municipal corporation to review of unfavorable decision in action or prosecution for violation of ordinance - modern status, 11 A.L.R.4th 399.

62 C.J.S. Municipal Corporations §§ 160, 248.

3-17-2. Ordinances; style.

The enacting clause of a municipal ordinance shall be:

"Be it ordained by the governing body of the ..... (here insert name of municipality)."

History: 1953 Comp., § 14-16-2, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Ordinance with enacting clause required by this section is validly adopted. City of Hobbs v. Biswell, 81 N.M. 778, 473 P.2d 917 (Ct. App.), cert. denied, 81 N.M. 772, 473 P.2d 911 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 347.

62 C.J.S. Municipal Corporations §§ 249 to 251.

3-17-3. Notice by publication of certain proposed ordinances.

A. Notice by publication of the title and subject matter of any ordinance proposed for adoption by the governing body of any municipality must take place at least two weeks prior to consideration of final action upon the ordinance in open session of the governing body, except that this section shall not apply to ordinances dealing with an emergency declared by the chairman of the governing body or the mayor, as the case may be, to be an immediate danger to the public health, safety and welfare of the municipality, or to ordinances the subject matter of which is amending a city zoning map, provided the amendment to such zoning map has been considered by, and recommended to, the commission by a planning commission with jurisdiction in the matter. It is sufficient defense to any suit or prosecution to show that no notice by publication was made.

B. Notice of the proposed ordinance shall be published one time as a legal advertisement in a newspaper of general circulation in the municipality.

C. Copies of a proposed ordinance shall be available to interested persons during normal and regular business hours of the municipal clerk upon request and payment of a reasonable charge beginning with the date of publication and continuing to the date of consideration by the municipality's elected commission.

History: 1953 Comp., § 14-16-2.1, enacted by Laws 1973, ch. 85, § 1.

ANNOTATIONS

Inapplicable to resolutions. — This section applies only to ordinances and not to resolutions. Hotels of Distinction W., Inc. v. City of Albuquerque, 107 N.M. 257, 755 P.2d 595 (1988).

3-17-4. Ordinances; roll call vote; adoption.

A. If a majority of all the members of the governing body vote in favor of adopting the ordinance or resolution, it is adopted. The municipal clerk shall record in the minutes book the vote of each member of the governing body on each ordinance or resolution.

B. Within three days after the adoption of an ordinance or resolution, the mayor shall validate the ordinance or resolution by endorsing "Approved" upon the ordinance or resolution and signing the ordinance or resolution.

History: 1953 Comp., § 14-16-3, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Plaintiff's action insufficient to invoke estoppel against defendant from raising invalidity of ordinance. — Plaintiff's entering into preliminary negotiations with prospective clients after the day the ordinance would have become effective had the statutory prerequisites been complied with, by itself, was an insufficient change in position to invoke equitable estoppel against defendant city council from raising the invalidity of the ordinance, which had not been properly enacted under this section. Dale J. Bellamah Corp. v. City of Santa Fe, 88 N.M. 288, 540 P.2d 218 (1975).

Sufficiency of approval. — The word "Approved" in a resolution, followed by a blank line for the purpose of writing the date, and signed by the mayor, was sufficient. City of Albuquerque v. Water Supply Co., 24 N.M. 368, 174 P. 217 (1918).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 357 to 360.

At what stage does an ordinance pass beyond the power of the legislative body to reconsider or recall, 96 A.L.R. 1309.

62 C.J.S. Municipal Corporations §§ 255 to 258, 265 to 267.

3-17-5. Proof of ordinance; authentication; publication; effective date; codification.

A. An ordinance shall be recorded in a book kept for that purpose, shall be authenticated by the signature of the presiding officer of the governing body and the municipal clerk and shall bear the seal of the municipality. The ordinance shall be published one time either in its entirety or by title and a general summary of the subject matter contained in the ordinance, whichever the governing body elects to do.

B. An ordinance shall not become effective until five days after it has been published, unless otherwise provided by law.

C. If the ordinances of the municipality are codified or codified and revised, it is not necessary to publish the entire codification or codification and revision. An ordinance, referring to the codification or codification and revision by title only and specifying one place in the municipality where the codification or codification and revision may be inspected during the normal and regular business hours of the municipal clerk, may be published instead of the codification or codification and revision.

D. Any court shall accept the following as prima facie evidence that an ordinance has been published:

(1) the book in which the ordinances of the municipality are recorded;

(2) any copy of an ordinance certified by the municipal clerk or his duly authorized deputy;

(3) any ordinance published in book or pamphlet form under the authority of the municipality; or

(4) any codification of ordinances prepared under the authority of the municipality. It is sufficient defense to any suit or prosecution to show that no publication was made.

History: 1953 Comp., § 14-16-4, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For definition of "publish" or "publication", *see* 3-1-2 NMSA 1978.

For continuation of ordinances in combined municipal organizations, *see* 3-16-15 NMSA 1978.

Municipal ordinances are law, not adjudicative facts, and may be judicially noticed as law. City of Aztec v. Gurule, 2010-NMSC-006, 147 N.M. 693, 226 P.3d 477, overruling Muller v. City of Albuquerque, 92 N.M. 264, 587 P.2d 42 (1978); Coe v. City of Albuquerque, 81 N.M. 361, 467 P.2d 27 (1970); and Gen. Servs. Corp. v. Bd. of Comm'rs of Bernalillo Cnty., 75 N.M. 550, 408 P.2d 51 (1965).

Judicial notice of municipal ordinance as law. — Where defendant was convicted in municipal court of aggravated DWI contrary to a municipal ordinance; defendant appealed to district court; at the trial de novo in district court, the municipality failed to introduce the municipal ordinance into evidence; and the district court properly denied defendant’s motion to dismiss on the grounds that the municipality did not prove its case because it failed to introduce the municipal ordinance into evidence. City of Aztec v. Gurule, 2010-NMSC-006, 147 N.M. 693, 226 P.3d 477, overruling Muller v. City of Albuquerque, 92 N.M. 264, 587 P.2d 42 (1978); Coe v. City of Albuquerque, 81 N.M. 361, 467 P.2d 27 (1970); and Gen. Servs. Corp. v. Bd. of Comm'rs of Bernalillo County, 75 N.M. 550, 408 P.2d 51 (1965).

It is better practice to prove an ordinance in accordance with the terms of this section and avoid the necessity of proving authenticity of signatures of the officers required to authenticate ordinance. Territory v. Lynch, 18 N.M. 15, 133 P. 405 (1913), overruled, State v. Chamberlain, 112 N.M. 723, 819 P.2d 673 (1991).

In the final publication an ordinance must be so identified as to give general notice to all concerned of the character of the enactment. City of Clovis v. North, 64 N.M. 229, 327 P.2d 305 (1958).

"Title" is a "descriptive name" or "the heading forming the name of an act or statute, by which it is distinguished from others." City of Clovis v. North, 64 N.M. 229, 327 P.2d 305 (1958).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 350, 351, 355.

Conclusiveness of declaration of emergency in ordinance, 35 A.L.R.2d 586.

62 C.J.S. Municipal Corporations §§ 274 to 284.

3-17-6. Codes adopted and enforced by reference; availability.

A. A municipality may adopt by ordinance the conditions, provisions, limitations and terms of:

(1) an administrative code;

(2) an air pollution code;

(3) a building code that includes provisions for plan review, permitting and inspections for general, electrical, mechanical and plumbing construction;

(4) an elevator code;

(5) a fire prevention code;

(6) a health code;

(7) [a] housing code;

(8) a traffic code; or

(9) any other code not in conflict with the laws of New Mexico or valid regulations issued by any board or agency of New Mexico authorized to issue regulations.

Any code so adopted shall provide for minimum requirements at least equal to the state requirements on the same subject.

B. An ordinance adopting any such code need only refer to the proper title and date of the code, without setting forth the code's conditions, provisions, limitations and terms, and may include any exception or deletion to the code by setting forth the exception or deletion to the code. The ordinance shall further specify at least one place within the municipality where the code, so adopted, is available for inspection during the normal and regular business hours of the municipal clerk. A copy of the code shall be available upon request and payment of a reasonable charge.

C. Any amendment to such a code may be adopted in the same manner as other ordinances are adopted.

History: 1953 Comp., § 14-16-5, enacted by Laws 1965, ch. 300; 2007, ch. 132, § 1.

ANNOTATIONS

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

The 2007 amendment, effective July 1, 2009, permitted a municipality to adopt a building code that includes provisions for plan review, permitting and inspections for general, electrical, mechanical and plumbing construction.

Restrictions on municipal permitting or inspection. — The construction industries division of the regulation and licensing department does not have the authority to place special requirements on a local jurisdiction's approval of construction permits or inspection of construction projects. 2011 Op. Att'y Gen. No. 11-06.

Failure to adopt temporary or permanent CID program requirements. — The construction industries division of the regulation and licensing department does not have the authority to refuse inspection services to a local jurisdiction because the local jurisdiction failed to adopt temporary or permanent CID program requirements for the approval of construction permits or inspection of construction projects. 2011 Op. Att'y Gen. No. 11-06.

Enforcement of state building code. — The construction industries division of the regulation and licensing department has the authority to refuse to provide inspection services or certify local inspectors in municipalities that fail to adopt a building code that provides for minimum requirements of the state Uniform Building Code. The construction industries division has the authority to issue a stop work or similar order on a construction project authorized by a local jurisdiction that has adopted a building code that, while the code meets minimum standards set by the CID, differs from the building code adopted by the CID. 2011 Op. Att'y Gen. 11-06.

Jurisdiction of municipal judge regarding traffic offenses. — Unless the town has specifically enacted an ordinance inclusive of the motor vehicle offenses contained in the state traffic code, a municipal judge does not have jurisdiction to hear and try those traffic offenses contained in the state motor vehicle code which are not actually covered by the particular town ordinance. 1961-62 Op. Att'y Gen. No. 62-141.

Incorporated municipalities are given express power to adopt traffic codes merely by reference to the proper title and date of the code on the same subject, provided that the entire code so adopted is made available for inspection in at least one place within the municipality, and provided that a copy of the code is made available upon request. 1959-60 Op. Att'y Gen. No. 60-218.

Meaning of "code". — In the context in which the word "code" is used, the legislature intended the word to mean a regulation or a group of regulations relating to a specific subject. 1959-60 Op. Att'y Gen. No. 60-110.

It is necessary to publish the information that such code has been adopted with an appropriate reference to title and date of such code. 1959-60 Op. Att'y Gen. No. 60-110.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity, construction, and application of the uniform fire code, 46 A.L.R.5th 479.

3-17-7. Water conservation and drought management plans.

A municipality shall consider ordinances and codes to encourage water conservation and drought management planning pursuant to the provisions of Section 3 [72-14-3.2 NMSA 1978] of this act.

History: Laws 2003, ch. 138, § 1.

ANNOTATIONS

Cross references. — For municipal regulation of watercourses, ponds, wells and cisterns, *see* 3-53-1 NMSA 1978.

Effective date. — Laws 2003, ch. 138 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

ARTICLE 18
Powers of Municipalities

3-18-1. General powers; body politic and corporate powers.

A municipality is a body politic and corporate under the name and form of government selected by its qualified electors. A municipality may:

A. sue or be sued;

B. enter into contracts or leases;

C. acquire and hold property, both real and personal;

D. have a common seal which may be altered at pleasure;

E. exercise such other privileges that are incident to corporations of like character or degree that are not inconsistent with the laws of New Mexico;

F. protect generally the property of its municipality and its inhabitants;

G. preserve peace and order within the municipality; and

H. establish rates for services provided by municipal utilities and revenue-producing projects, including amounts which the governing body determines to be reasonable and consistent with amounts received by private enterprise in the operation of similar facilities.

History: 1953 Comp., § 14-17-1, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 2; 1972, ch. 81, § 2.

ANNOTATIONS

Cross references. — For prohibition of nuisances, *see* 3-18-17 NMSA 1978.

For sale or lease of property, *see* 3-54-1 NMSA 1978 et seq.

For tax exemption of property, *see* N.M. Const., art. VIII, § 3.

For sale of county buildings or lands to municipalities, *see* 4-47-2 NMSA 1978.

For lease of state lands, *see* 19-7-54 NMSA 1978.

For unclaimed property, *see* 29-1-13 to 29-1-15 NMSA 1978.

For limitation of actions in suits against cities, towns and villages, *see* 37-1-24 NMSA 1978.

For limitation of actions on bonds of municipalities, *see* 37-1-25 NMSA 1978.

For venue of actions against municipalities, *see* 38-3-2 NMSA 1978.

For Tort Claims Act, *see* 41-4-1 to 41-4-29 NMSA 1978.

For donated real property, *see* 47-1-47, 47-1-48 NMSA 1978.

I. GENERAL CONSIDERATION.

Home rule municipalities. — Powers set forth in this section and 3-17-1 NMSA 1978 are independent municipal powers within the meaning of the home rule amendment

because they are powers delegated to municipalities completely independent from the home rule amendment. New Mexicans for Free Enterprise v. City of Santa Fe, 2006-NMCA-007, 138 N.M. 785, 126 P.3d 1149.

This section confers a "police power" upon municipalities to protect their inhabitants and preserve peace and order within the municipal limits. A municipality may adopt ordinances for this purpose under authority of 3-17-1A NMSA 1978. City of Hobbs v. Biswell, 81 N.M. 778, 473 P.2d 917 (Ct. App.), cert. denied, 81 N.M. 772, 473 P.2d 911 (1970).

Authority of city. — The city is the sole judge as to what is best for the public health and safety of its inhabitants. Barber's Super Markets, Inc., v. City of Grants, 80 N.M. 533, 458 P.2d 785 (1969); Gomez v. City of Las Vegas, 61 N.M. 27, 293 P.2d 984 (1956).

Statute prescribing procedure. — The rule is well established that where the statute directs in definite terms the manner in which municipal acts are to be exercised, such statutory method must be substantially followed. City of Clovis v. Crain, 68 N.M. 10, 357 P.2d 667 (1960).

II. CAPACITY FOR SUIT.

Municipality is liable for its negligence when engaged in a proprietary function as distinguished from a governmental function. Murphy v. City of Carlsbad, 66 N.M. 376, 348 P.2d 492 (1960).

Municipality acts in a governmental capacity: (a) when it performs a duty imposed by the legislature of the state, (b) only when such imposed duty is one the state may perform and which pertains to the administration of government, (c) when the municipality acts for the public benefit generally, as distinguished from acting for its immediate benefit and its private good, and (d) when the act performed is legislative or discretionary as distinguished from ministerial. Murphy v. City of Carlsbad, 66 N.M. 376, 348 P.2d 492 (1960); Barker v. City of Santa Fe, 47 N.M. 85, 136 P.2d 480 (1943).

Establishment and maintenance of a municipal park is a proprietary function and a city is not immune to a suit for negligence connected therewith. Murphy v. City of Carlsbad, 66 N.M. 376, 348 P.2d 492 (1960).

Liability for condition of streets or sidewalks. — The liability of a town or city to damages for injuries which result proximately from the dangerous condition in which, with knowledge actual or constructive, it permits its streets or sidewalks to remain cannot be successfully challenged. Murphy v. City of Carlsbad, 66 N.M. 376, 348 P.2d 492 (1960)(decided under prior law).

Capacity for suit. — A municipal corporation, having capacity to sue and be sued, may be sued both at law and in equity whenever a cause of action exists against it. The fact

that a creditor may not be able to obtain satisfaction of his judgment against a municipal corporation does not affect his right to sue and obtain a judgment. Roswell Drainage Dist. v. Parker, 53 F.2d 793 (10th Cir. 1931).

III. CONTRACTS.

Implied contract. — Where a municipality enacted an ordinance that adopted a comprehensive personnel policy manual that required the municipality to offer to its retiring employees the option of continuing their health care coverage under the municipality's group plan at the active employee premium reimbursement rate; the petitioners, who retired from municipal service, accepted the municipality's offer at the time they retired and before the municipal council enacted an ordinance deleting the retirement insurance provision from the manual; municipal employees were required to be provided with a copy of and acknowledge receipt of the manual; employees were bound by the terms of the manual; the municipality felt bound to comply with the manual; municipal officials made admissions by their statements and conduct that the municipality was obligated to continue paying health insurance premiums for retirees who had accepted the municipality's offer to do so after the retirees had met the requirements of the ordinance existing at the time of retirement; and municipal officials made admissions that provisions of the manual became terms of an employment contract and the retirees had a vested interest in continued health insurance benefits, there was sufficient evidence to show the existence of genuine issues of material fact regarding whether an implied contract was formed and the scope of its terms. Beggs v. City of Portales, 2009-NMSC-023, 146 N.M. 372, 210 P.3d 798.

Ratification of mayoral act. — City council ratified the mayor's termination of a joint powers agreement for the operation of a detention center where the mayor sent a copy of the letter that terminated the agreement to the president of the city council and the city council adopted a resolution in which the city council stated that it supported the termination of the agreement and resolved that the city proceed to transfer the operation and administration of the detention center to the county. Bernalillo BBC v. Chavez, 2008-NMCA-028, 143 N.M. 543, 178 P.3d 828, cert. denied, 2008-NMCERT-002, 143 N.M. 665, 180 P.3d 674.

Contractual or vested rights not implied. — Retired municipal employees did not have a contractual or vested right to the lifetime reimbursement of health insurance premiums where the municipal ordinance that permitted retired employees to elect to continue their insurance coverage under the municipality's group plan after retirement did not contain express language creating contractual rights private and stated that the ordinance could be altered or modified. Beggs v. City of Portales, 2007-NMCA-125, 142 N.M. 505, 167 P.3d 953, rev'd by 2009-NMSC-023, 146 N.M. 372, 210 P.3d 798..

Municipality has authority to enter into collective bargaining agreement with electrical union respecting its employees engaged in the operation of its electrical utility, when the municipality is operating an electric utility in its corporate or proprietary

capacity. Int'l Bhd. of Elec. Workers Local 611 v. Town of Farmington, 75 N.M. 393, 405 P.2d 233 (1965).

IV. UTILITIES.

Rates charged by municipally owned utilities. — Where the municipality owns and operates a water and sewer system, the rates charged by it must be fair, reasonable and just, uniform and nondiscriminatory. The city has the power to set reasonable rates in excess of actual expenditures in furnishing municipally owned utility services, if such rates compare favorably with those received by private utility companies. Apodaca v. Wilson, 86 N.M. 516, 525 P.2d 876 (1974).

Determination of reasonableness. — When read in conjunction with the Public Utilities Act (62-1-1 NMSA 1978 et seq.), Subsection H clearly does not require a municipality to utilize any particular study or methodology to satisfy the standard of reasonableness. Fleming v. Town of Silver City, 1999-NMCA-149, 128 N.M. 295, 992 P.2d 308, cert. denied, 128 N.M. 148, 990 P.2d 822 (1999).

V. PREEMPTION.

Local ordinance preempted by federal law. — An ordinance establishing procedures for telecommunications providers seeking access to city-owned rights-of-way caused substantial increase in costs imposed by excess conduit requirements, appraisal-based rent, cost-based application and registration fees and which gave the city free ranging discretion in determining whether or not to accept a registration or lease application was preempted by 47 U.S.C. 353. Qwest Corp. v. City of Santa Fe, 380 F.3d 1258 (10th Cir. 2004).

Local ordinance not preempted by state law. — Reading the New Mexico Telecommunications Act, 63-9A-1 NMSA 1978 et seq., and N.M. Const., art. XI, § 2 in *pari materia* with New Mexico's Municipal Code, Chapter 3 NMSA 1978, and N.M. Const., art. X, § 6, the provisions of a Santa Fe telecommunications ordinance, regulating the power to contract with a service provider and to enforce provisions related to land use and rights of way held by the city, were not preempted by state law, inasmuch as they did not purport to usurp New Mexico public regulation commission's power to issue certificates of public convenience and necessity to providers of public telecommunications services or to regulate rates and quality of service for intrastate telecommunications services. Qwest Corp. v. City of Santa Fe, 224 F. Supp. 2d 1305 (D.N.M. 2002) affirmed in part, remanded in part, 380 F.3d 1258 (10th Cir. 2004).

Contracts for rates with public utilities. — Cities and towns have power to contract with public service companies for rates to their inhabitants for electrical current for power purposes. City of Albuquerque v. N.M. Public Serv. Com'n, 115 N.M. 521, 854 P.2d 348 (1993); Town of Gallup v. Gallup Elec. Light & Power Co., 29 N.M. 610, 225 P. 724 (1924).

Leases permitted. — A city or county government has the legal power to enter into a lease agreement for property, with or without improvements, which will be used as a fire station. 1964 Op. Att'y Gen. No. 64-30.

Municipalities or counties may lease equipment or other personal property on a long-term basis. 1966 Op. Att'y Gen. No. 66-20.

A municipality may enter into a long-term lease with the New Mexico boys' school for land and buildings for the purpose of setting up a recreation center for the community and the surrounding area, and which will be under the control and supervision of the municipality. 1968 Op. Att'y Gen. No. 68-33.

Power to make gift not included in section. — Municipal corporations are creatures of statute; they have only the powers with which they are invested by the statutes creating them. Powers of cities and towns are set out in this section. No power to make a gift of any kind is mentioned. 1959-60 Op. Att'y Gen. No. 60-160.

Regulating construction of state building. — In the absence of a statute specifically authorizing municipalities to regulate construction of buildings of the state, or state institutions, located within the municipalities, such power does not exist in the municipality. 1953-54 Op. Att'y Gen. No. 53-5847.

Law reviews. — For article, "Rights of New Mexico Municipalities Regarding the Siting and Operation of Privately Owned Landfills", see 21 N.M. L. Rev. 149 (1990).

For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 193 to 230, 423 to 489.

Trust, power of municipal corporation to accept and administer, 10 A.L.R. 1368.

Estimates prepared by officers or employees, liability of municipal corporation to contractor for mistake, 16 A.L.R. 1131.

"Emergency," what is within exception to limitation of tax levy, 17 A.L.R. 586.

Torts of independent contractors, liability of municipal corporations and their licensees, 25 A.L.R. 426, 52 A.L.R. 1012.

Injunction against enforcement of illegal municipal tax upon joinder of several affected thereby, 32 A.L.R. 1270, 156 A.L.R. 319.

Insurance, power of municipal corporation to take out liability insurance, 33 A.L.R. 717.

Freeholder's charter as affecting power of city over taxes, 35 A.L.R. 883.

Golf course, power of municipal corporation to establish and maintain, 36 A.L.R. 1301.

Claim barred by limitation, legislative power to revive, 36 A.L.R. 1324, 133 A.L.R. 384.

Sunday observance, power to legislate as to, 37 A.L.R. 575.

Boat or barge, power of municipality to purchase or charter, 39 A.L.R. 1332.

Arbitration, power to submit to, 40 A.L.R. 1370.

Contract exempting municipality from liability for negligence, validity of, 41 A.L.R. 1358.

Detective, power of municipal corporation or authorities to employ, 45 A.L.R. 737.

Ice plant, power of municipality to acquire and operate, 46 A.L.R. 836, 68 A.L.R. 872.

Improvement district organized within its own limits, power of municipality to extend aid to, 50 A.L.R. 1208.

Bathhouses and bathing beaches, liability of municipality in respect of, 51 A.L.R. 370, 57 A.L.R. 406.

Immunity from liability for torts pertaining to governmental functions as affected by constitutional guaranty of remedy for all injuries and wrongs, 57 A.L.R. 419.

Immunity from liability for torts pertaining to exercise of governmental functions, availability to lessee or concessioner, 57 A.L.R. 560.

Judgment, municipality's power to consent or confess, 67 A.L.R. 1503.

Contract extending beyond its own term, power of board to make, 70 A.L.R. 794, 149 A.L.R. 336.

Immunity from liability for acts in performance of governmental functions as applicable in case of personal injury or death as result of a nuisance, 75 A.L.R. 1196, 56 A.L.R.2d 1415.

Extension of service beyond corporate limits, power of municipal corporation, 98 A.L.R. 1001.

Insurance on public property, right to carry, 100 A.L.R. 600.

Extraterritorial activities: municipal corporation as subject to conditions or regulations in force within the territory in which it acts, 101 A.L.R. 430.

Tax illegally exacted, judgment in favor of taxpayer for recovery of, as subject to provisions of statute regarding substance and form, manner of collection or enforcement of judgment against municipality, 101 A.L.R. 800.

Revenue-producing enterprise owned by municipality, legislative control of disposition of revenue from operation of, 103 A.L.R. 581, 165 A.L.R. 854.

Malicious prosecution, liability of municipality or other political unit, 103 A.L.R. 1512.

Quarry operation, implied power of municipality for production of materials needed for carrying out powers expressly conferred upon it, 104 A.L.R. 1342.

Compromise of claim, power of city or its officials as to, 105 A.L.R. 170, 15 A.L.R.2d 1359.

Automobile, use of as a corporate or governmental function, 110 A.L.R. 1117, 156 A.L.R. 714.

"Safe place" statutes as applicable to municipalities when engaged in performing a governmental function, 114 A.L.R. 428.

Loans of money, constitutionality of statute authorizing subdivisions of state to make, 115 A.L.R. 1456.

Notice of injury, continuing character of municipality's negligence and injury or damage therefrom as affecting requirement of, 116 A.L.R. 975.

Immunity from liability for tort, 120 A.L.R. 1376, 60 A.L.R.2d 1198.

Right of municipality to enforce against other party contract which was in excess of former's power or which did not comply with conditions of its power in that regard, 122 A.L.R. 1370.

Joint project or enterprise, power of municipalities to engage in, 123 A.L.R. 997.

Automobile, liability of municipality under statute making owner responsible for injury or damage inflicted by another operating automobile, 147 A.L.R. 875, 159 A.L.R. 1309, 74 A.L.R.3d 739.

Use tax, municipality's power to impose, 153 A.L.R. 619.

Military service of veterans, constitutionality of state statutes providing for use of public funds or other public property of municipality for benefit of persons engaged in, 162 A.L.R. 938.

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

Assignment of contract with municipal corporation, validity of and construction of statute forbidding, 175 A.L.R. 119.

Lease by municipality, granting or taking of as within authorization of purchase or acquisition thereof, 11 A.L.R.2d 168.

Garage for maintenance and repair of municipal vehicles, operation as governmental function, 26 A.L.R.2d 944.

Gift for maintenance or care of private cemetery or burial lot, or of tomb or of monument, including the erection thereof, as valid trust, 47 A.L.R.2d 596.

Water system, right to compel municipality to extend, 48 A.L.R.2d 1222.

Cemetery: municipal power to condemn land for, 54 A.L.R.2d 1322.

Exchange of real property, power of municipal corporation as to, 60 A.L.R.2d 220.

Pledging parking-meter revenues as unlawful relinquishment of governmental power, 83 A.L.R.2d 649.

Immunities from liability, contractor with municipality as entitled to, 9 A.L.R.3d 382.

Oil, minerals, soil or other natural products within municipal limits, validity of municipal prohibition or regulation of removal or exploitation of as affected by state regulations on the same subject, 10 A.L.R.3d 1226.

Arbitration, power of municipal corporation to submit to, 20 A.L.R.3d 569.

Water pollution: validity and construction of anti-water pollution statutes or ordinances, 32 A.L.R.3d 215.

Eminent domain power as between state and subdivision or agency thereof, or as between different subdivisions or agencies themselves, 35 A.L.R.3d 1293.

Aircraft flight paths or altitudes, validity of municipal regulation of, 36 A.L.R.3d 1314.

CATV: validity and construction of municipal ordinances regulating community antenna television service (CATV), 41 A.L.R.3d 384.

Diversion of water by municipal corporation or public utility, propriety of injunctive relief against, 42 A.L.R.3d 426.

Lobbying, validity and construction of state and municipal enactments regulating, 42 A.L.R.3d 1046.

Residential building: validity and construction of statute or ordinance providing for repair or destruction of residential building by public authorities at owner's expense, 43 A.L.R.3d 916.

Power of municipal corporation to limit exclusive use of designated lanes or streets to buses and taxicabs, 43 A.L.R.3d 1394.

Streets, estoppel of municipality as to encroachments upon public, 44 A.L.R.3d 257.

Lease or sublet property owned or leased by it, power of municipal corporation to, 47 A.L.R.3d 19.

Annexation, what land is contiguous or adjacent to municipalities so as to be subject to, 49 A.L.R.3d 589.

Standing of municipal corporation or other governmental body to attack zoning of land lying outside its borders, 49 A.L.R.3d 1126.

Intoxicating liquor, validity of municipal regulation more restrictive than state regulation as to time for selling or serving, 51 A.L.R.3d 1061.

Kosher food, validity and construction of regulations dealing with misrepresentation in the sale of, 52 A.L.R.3d 959.

Facilities: power of municipality to charge nonresidents higher fees than residents for use of municipal facilities, 57 A.L.R.3d 998.

Curfew: validity and construction of curfew statute, ordinance or proclamation, 59 A.L.R.3d 321, 83 A.L.R.4th 1056.

Nonpayment: right of municipality to refuse services provided by it to resident for failure of resident to pay for other unrelated services, 60 A.L.R.3d 714.

Automotive inspection: liability for negligence in carrying out governmentally required inspection of motor vehicle, 70 A.L.R.3d 1239.

Containers: validity and construction of statute or ordinance requiring return deposits on soft drink or similar containers, 73 A.L.R.3d 1105.

Roof signs: validity and construction of ordinance prohibiting roof signs, 76 A.L.R.3d 1162.

Agents: doctrine of apparent authority as applied to agent of municipality, 77 A.L.R.3d 925.

Bathroom facilities: validity of statutes, ordinances and regulations requiring the installation or maintenance of various bathroom facilities in dwelling units, 79 A.L.R.3d 716.

Advertising: validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like, 80 A.L.R.3d 740.

Zoning or licensing regulation prohibiting or restricting location of billiard rooms and bowling alleys, 100 A.L.R.3d 252.

Right of one governmental subdivision to sue another such subdivision for damages, 11 A.L.R.5th 630.

Payment of attorneys' services in defending action brought against officials individually as within power or obligation of public body, 47 A.L.R. 5th 553.

62 C.J.S. Municipal Corporations §§ 104 to 133.

3-18-2. Prohibition on municipal taxing power.

Unless otherwise provided by law, no municipality may impose:

A. an income tax;

B. a tax on property measured on an ad valorem, per unit or other basis; or

C. any excise tax including but not limited to:

(1) sales taxes;

(2) gross receipts; and

(3) excise taxes on any incident relating to:

(a) tobacco;

(b) liquor;

(c) motor fuels; and

(d) motor vehicles.

D. However, any municipality may impose excise taxes of the sales, gross receipts or any other type on specific products and services, other than those enumerated in Paragraph (3) of Subsection C of this section, if the products and services taxed are each named specifically in the ordinance imposing the tax on them and if the ordinance is approved by a majority vote in the municipality.

E. Subsections C and D of this section shall not be construed to apply to or otherwise affect any occupation tax imposed prior to or after the effective date of this act under Sections 3-38-1 through 3-38-12 NMSA 1978 [3-38-1 to 3-38-6 NMSA 1978], as those sections may be amended from time to time; provided, the provisions of this subsection shall not apply to the sale of motor vehicles.

History: 1953 Comp., § 72-4-1.1, enacted by Laws 1972, ch. 26, § 1; recompiled as 1953 Comp., § 14-17-1.1, by Laws 1973, ch. 258, § 154; 1980, ch. 101, § 1.

ANNOTATIONS

Cross references. — For Municipal Local Option Gross Receipts Tax Act, *see* Chapter 7, Article 19D NMSA 1978.

Bracketed material. — The reference to 3-38-1 to 3-38-12 NMSA 1978 in Subsection E seems incorrect, as 3-38-7 to 3-38-12 were either repealed or recompiled in 1981. Sections 3-38-1 to 3-38-6 NMSA 1978 presently deal with municipal licenses and taxes. The bracketed material was inserted by the compiler and is not a part of the law.

This section is an example of specific denial of power, whereby, unless otherwise provided by law, municipalities are prohibited from imposing an income tax or an ad valorem property tax, and then, with some exceptions, are authorized to levy certain excise taxes if the ordinance imposing such a tax is approved by the majority vote in the municipality. Apodaca v. Wilson, 86 N.M. 516, 525 P.2d 876 (1974).

Occupation tax deemed excise tax. — There is no question but that an occupation tax imposed under 3-38-3 NMSA 1978 is an excise tax as that term is used in this section. City of Alamogordo v. Walker Motor Co., 94 N.M. 690, 616 P.2d 403 (1980).

No occupation tax on motor vehicle sales. — Municipal occupation taxes may not be imposed under 3-38-3 NMSA 1978 on any incident relating to motor vehicle sales. City of Alamogordo v. Walker Motor Co., 94 N.M. 690, 616 P.2d 403 (1980).

Local initiative petition altering state tax scheme. — Home rule municipalities do not have the power through initiative petition to alter the tax scheme mandated by the state constitution and statutes. 1990 Op. Att'y Gen. No. 90-20.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liquor sale, state regulation of, as affecting municipal power to impose tax for revenue, 6 A.L.R.2d 737.

Commuter tax: validity of municipal ordinance imposing income tax or license upon nonresidents employed in taxing jurisdiction, 48 A.L.R.3d 343.

College football games or other college sponsored public events, validity of municipal admission tax for, 60 A.L.R.3d 1027.

Sales or use tax upon containers or packaging materials purchased by manufacturer or processor for use with goods he distributes, 4 A.L.R.4th 581.

Tax on hotel-motel room occupancy, 58 A.L.R.4th 274.

3-18-3. Animals.

A. A municipality may:

(1) prohibit cruelty to animals;

(2) regulate, restrain and prohibit the running at large of any animal within the boundary of the municipality; and

(3) provide by ordinance for the impounding and disposition of animals found running at large. Prior to the time set for disposing of the animal as provided in the ordinance, the owner may regain possession of the animal by paying the poundmaster all costs incurred in connection with impounding the animal.

B. Dogs shall be further regulated as provided in Sections 47-1-2 through 47-1-8 New Mexico Statutes Annotated, 1953 Compilation.

C. A municipality may, by ordinance, provide for the animal control services enumerated in this section to be performed by a contractor and may enter into a contract for the services.

History: 1953 Comp., § 14-17-2, enacted by Laws 1965, ch. 300; 1971, ch. 171, § 1.

ANNOTATIONS

Compiler's notes. — Sections 47-1-2 to 47-1-8, 1953 Comp., referred to in Subsection B, are compiled as 28-11-1 and 77-1-2 to 77-1-15 NMSA 1978. However, 28-11-1 NMSA 1978, relating to hearing ear aid dogs, was enacted after this section and the reference were enacted.

Cross references. — For definition of cruelty to animals, *see* 30-18-1 NMSA 1978.

For right to prevent running at large and right to impound animals not affected by provisions relating to taking up strays, *see* 77-13-10 NMSA 1978.

For provisions on trespassing animals inapplicable to incorporated cities and towns, *see* 77-14-24 NMSA 1978.

For hogs, swine or goats not to run at large, *see* 77-14-35 NMSA 1978.

For impoundment of trespass livestock, *see* 77-14-36 NMSA 1978.

Establishing reasonableness. — Findings of city governing board, stated in preamble to ordinance, that keeping of certain animals within restricted district in city was a nuisance and endangered the public health, and enactment of ordinance prohibiting keeping of certain animals within the restricted district established prima facie that the ordinance was reasonable. Mitchell v. City of Roswell, 45 N.M. 92, 111 P.2d 41 (1941).

Pit bull ordinance. — A village ordinance banning ownership or possession of a breed of dog known as American Pit Bull Terrier within village limits was rationally related to the village's legitimate purpose of protecting the health and safety of village residents. Garcia v. Vill. of Tijeras, 108 N.M. 116, 767 P.2d 355 (Ct. App.), cert. denied, 107 N.M. 785, 765 P.2d 758 (1998).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 4 Am. Jur. 2d Animals § 31 et seq.

Constitutionality of "dog laws," 49 A.L.R. 847.

Indefiniteness of penal statute or ordinance relating to cruelty, or similar offenses, against animals, 144 A.L.R. 1041.

Construction and application of ordinances relating to unrestrained dogs, cats, or other domesticated animals, 1 A.L.R.4th 994.

What constitutes offense of cruelty to animals - modern cases, 6 A.L.R.5th 733.

3-18-4. Buildings; construct, purchase, rehabilitate, care for.

A municipality may construct, purchase, rehabilitate, care for and adopt rules and regulations for the management of public buildings.

History: 1953 Comp., § 14-17-3, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For authority to issue general obligation bonds, *see* 3-30-5 NMSA 1978.

For Joint City-County Building Law, *see* 5-5-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Buildings used for both governmental and proprietary functions, liability for tortious injury in or about, 64 A.L.R. 1545.

Public utility plant or interest therein, power of municipality to sell, lease or mortgage, 61 A.L.R.2d 595.

Liability of governmental entity to builder or developer for negligent issuance of building permit subsequently suspended or revoked, 41 A.L.R.4th 99.

3-18-5. Dangerous buildings or debris; removal; notice; right of municipality to remove; lien.

A. Whenever any building or structure is ruined, damaged and dilapidated, or any premise is covered with ruins, rubbish, wreckage or debris, the governing body of a municipality may by resolution find that the ruined, damaged and dilapidated building, structure or premise is a menace to the public comfort, health, peace or safety and require the removal from the municipality of the building, structure, ruins, rubbish, wreckage or debris.

B. A copy of the resolution shall be served on the owner, occupant or agent in charge of the building, structure or premise. If the owner, as shown by the real estate records of the county clerk, occupant or agent in charge of the building, structure or premise cannot be served within the municipality, a copy of the resolution shall be posted on the building, structure or premise and a copy of the resolution shall be published one time.

C. Within ten days of the receipt of a copy of the resolution or of the posting and publishing of a copy of the resolution, the owner, occupant or agent in charge of the building, structure or premise shall commence removing the building, structure, ruin, rubbish, wreckage or debris, or file a written objection with the municipal clerk asking for a hearing before the governing body of the municipality.

D. If a written objection is filed as required in this section, the governing body shall:

(1) fix a date for a hearing on its resolution and the objection;

(2) consider all evidence for and against the removal resolution at the hearing; and

(3) determine if its resolution should be enforced or rescinded.

E. Any person aggrieved by the determination of the governing body may appeal to the district court by:

(1) giving notice of appeal to the governing body within five days after the determination made by the governing body; and

(2) filing a petition in the district court within twenty days after the determination made by the governing body. The district court shall hear the matter de novo and enter judgment in accordance with its findings.

F. If the owner, occupant or agent in charge of the building, structure or premise fails to commence removing the building, structure, ruins, rubbish, wreckage or debris:

(1) within ten days of being served a copy of the resolution or of the posting and publishing of the resolution; or

(2) within five days of the determination by the governing body that the resolution shall be enforced; or

(3) after the district court enters judgment sustaining the determination of the governing body, the municipality may remove the building, structure, ruins, rubbish, wreckage or debris at the cost and expense of the owner. The reasonable cost of the removal shall constitute a lien against the building, structure, ruin, rubbish, wreckage or debris so removed and against the lot or parcel of land from which it was removed. The lien shall be foreclosed in the manner provided in Sections 3-36-1 through 3-36-6 NMSA 1978.

G. The municipality may pay for the costs of removal of any condemned building, structure, wreckage, rubbish or debris by granting to the person removing such materials, the legal title to all salvageable materials in lieu of all other compensation.

H. Any person or firm removing any condemned building, structure, wreckage, rubbish or debris shall leave the premises from which the material has been removed in a clean, level and safe condition, suitable for further occupancy or construction and with all excavations filled.

History: 1953 Comp., § 14-17-4, enacted by Laws 1965, ch. 300; 1967, ch. 123, § 1; 1977, ch. 126, § 1.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

For scope of review of the district court, *see* Zamora v. Vill. of Ruidoso Downs, 120 N.M. 778, 907 P.2d 182 (1995).

Purpose of section. — Section 3-18-5 NMSA 1978 deals with blighted or hazardous property and gives the owner the first opportunity to address any problems. Henderson

v. City of Tucumcari, 2005-NMCA-077, 137 N.M. 709, 114 P.3d 389, cert. denied, 2005-NMCERT-006, 137 N.M. 766, 115 P.3d 229.

Application of time limits. — Where plaintiff's lawsuit is one of negligence, which is not the subject of this section, the time deadlines in this section are inapplicable. Henderson v. City of Tucumcari, 2005-NMCA-077, 137 N.M. 709, 114 P.3d 389, cert. denied, 2005-NMCERT-006, 137 N.M. 766, 115 P.3d 229.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Residential building: validity and construction of statute or ordinance providing for repair or destruction of residential building by public authorities at owner's expense, 43 A.L.R.3d 916.

3-18-6. Building construction and restrictions; establishing fire zones.

A. Within its planning and platting jurisdiction, a municipality may by ordinance:

(1) prescribe standards for constructing and altering buildings;

(2) prescribe the distance a building may be built from the street line;

(3) regulate the construction of partition fences and party walls; and

(4) have exclusive enforcement over permits issued by the municipality when enforced by an approved inspector.

B. A municipality may establish fire zones and prohibit within these zones the construction or addition of structures which do not meet the fire resistance ratings or standards established for each zone.

C. The provisions of Subsection A of this section shall not apply:

(1) to construction specifically exempted by the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978] or regulations adopted pursuant thereto; or

(2) to territory outside the boundary of a municipality if a county by ordinance prescribes standards for constructing and altering buildings.

History: 1953 Comp., § 14-17-5, enacted by Laws 1965, ch. 300; 1971, ch. 256, § 1.

ANNOTATIONS

Cross references. — For adoption of building code by reference in ordinance, *see* 3-17-6 NMSA 1978.

For adoption of fire prevention code by reference in ordinance, *see* 3-17-6 NMSA 1978.

For planning and platting generally, *see* 3-19-1 NMSA 1978 et seq.

For planning and platting of subdivisions, *see* 3-20-1 NMSA 1978 et seq.

For zoning regulations, *see* 3-21-1 NMSA 1978 et seq.

Fire limit ordinance was not unreasonable merely because it permitted the abatement of something which otherwise might not be considered a nuisance per se. Town of Gallup v. Constant, 36 N.M. 211, 11 P.2d 962 (1932).

Restrictions on municipal permitting or inspection. — The construction industries division of the regulation and licensing department does not have the authority to place special requirements on a local jurisdiction's approval of construction permits or inspection of construction projects. 2011 Op. Att'y Gen. No. 11-06.

Failure to adopt temporary or permanent CID program requirements. — The construction industries division of the regulation and licensing department does not have the authority to refuse inspection services to a local jurisdiction because the local jurisdiction failed to adopt temporary or permanent CID program requirements for the approval of construction permits or inspection of construction projects. 2011 Op. Att'y Gen. No. 11-06.

Employment of inspectors by local jurisdictions. — The construction industries division of the regulation and licensing department does not have control over the localities in which an otherwise qualified and certified inspector may conduct inspections. The CID does not have the authority to require employment with a local jurisdiction as a condition for certification of a local inspector, approve or deny certification of a certified inspector solely because that inspector relocates to a different local jurisdiction, restrict the activities of a certified inspector to a specified local jurisdiction, prohibit one local jurisdiction from using the inspection services of a certified inspector who is employed by another local jurisdiction, or prohibit or restrict a local jurisdiction from using the inspection services of a certified inspector who is an independent contractor. 2011 Op. Att'y Gen. No. 11-06.

CID authority over local inspectors. — The construction industries division of the regulation and licensing department has the authority to inspect the activities of certified inspectors employed by local jurisdictions, revoke or suspend the certification of local inspectors, and require certified local inspectors to renew their certification. 2011 Op. Att'y Gen. No. 11-06.

CID authority to create categories of certification of inspectors. — The construction industries division of the regulation and licensing department has the authority to create different categories of certification with different certification standards based on an inspector's status as a state or local inspector. 2011 Op. Att'y Gen. No. 11-06.

Exemption of state institution. — A state institution is not subject to the building regulations of the municipality in which the state building may be located. 1953-54 Op. Att'y Gen. No. 53-5847.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 13 Am. Jur. 2d Buildings §§ 19, 43.

Power to forbid or restrict repair of wooden building within fire limits, 56 A.L.R. 878.

General duty regarding safety of building, construction and application of statutes imposing upon employer or owner, 101 A.L.R. 408.

Violation of statute or ordinance regarding safety of building or premises as creating or affecting liability for injuries or death, 132 A.L.R. 863.

3-18-7. Additional county and municipal powers; flood and mudslide hazard areas; flood plain permits; land use control; jurisdiction; agreement.

A. For the purpose of minimizing or eliminating damage from floods or mudslides in federal emergency management agency and locally designated flood-prone areas and for the purpose of promoting health, safety and the general welfare, a county or municipality with identified flood or mudslide hazard areas shall by ordinance:

(1) designate and regulate flood plain areas having special flood or mudslide hazards;

(2) prescribe standards for constructing, altering, installing or repairing buildings and other improvements under a permit system within a designated flood or mudslide hazard area;

(3) require review by the local flood plain manager for development within a designated flood or mudslide hazard area; provided that final decisions are approved by the local governing body;

(4) review subdivision proposals and other new developments within a designated flood or mudslide hazard area to ensure that:

(a) all such proposals are consistent with the need to minimize flood damage;

(b) all public utilities and facilities such as sewer, gas, electrical and water systems are designed to minimize or eliminate flood damage; and

(c) adequate drainage is provided so as to reduce exposure to flood hazards;

(5) require new or replacement water supply systems or sanitary sewage systems within a designated flood or mudslide hazard area to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding; and

(6) designate and regulate floodways for the passage of flood waters.

B. A flood plain ordinance adopted pursuant to this section shall substantially conform to the minimum standards prescribed by the federal insurance administration, regulation 1910 issued pursuant to Subsection 7(d), 79 Stat. 670, Section 1361, 82 Stat. 587 and 82 Stat. 575, all as amended.

C. A county or municipality that enacts a flood plain ordinance shall designate a person, certified pursuant to the state-certified flood plain manager program, as the flood plain manager to administer the flood plain ordinance.

D. A county or municipality that has areas designated by the federal emergency management agency and the county or municipality as flood-prone shall participate in the national flood insurance program.

E. A county or municipality shall have exclusive jurisdiction over flood plain permits issued under its respective flood plain ordinance in accordance with this section and so long as all structures built in flood plains are subject to inspection and approval pursuant to the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978]. Notwithstanding Section 3-18-6 NMSA 1978, when a municipality adopts a flood plain ordinance pursuant to Paragraph (2) of Subsection A of this section, the municipality's jurisdiction under the flood plain ordinance may take precedence over a respective county flood plain ordinance within the municipality's boundary and within the municipality's subdividing and platting jurisdiction.

F. A county or municipality shall designate flood plain areas having special flood or mudslide hazards in substantial conformity with areas identified as flood- or mudslide-prone by the federal insurance administration pursuant to the national flood insurance program and may designate areas as flood- or mudslide-prone that may not be so identified by the federal insurance administration.

G. A municipality or county adopting a flood plain ordinance pursuant to this section may enter into reciprocal agreements with any agency of the state, other political subdivisions or the federal government in order to effectively carry out the provisions of this section.

H. The homeland security and emergency management department is designated as the state coordinating agency for the national flood insurance program and may assist counties or municipalities when requested by a county or municipality to provide technical advice and assistance.

History: 1953 Comp., § 14-17-5.1, enacted by Laws 1975, ch. 14, § 1; 2001, ch. 11, § 1; 2003, ch. 310, § 1; 2009, ch. 250, § 1.

ANNOTATIONS

Cross references. — For municipal powers regarding flood control, *see* 3-41-1 NMSA 1978 et seq.

For county powers regarding flood control, *see* 4-50-1 NMSA 1978 et seq.

The 2009 amendment, effective April 7, 2009, in Subsection H, after "The", added "homeland security and emergency management" and after "department", deleted "of public safety".

The 2003 amendment, effective June 20, 2003, deleted "building and" following "mudslide hazard areas" in section heading; substituted "with identified flood or mudslide hazard areas shall" for "may" following "county or municipality" near the end of Subsection A; added present Subsection D and redesignated the subsequent subsections accordingly; substituted "all structures built in flood plains are subject to inspection and approval" for "it is enforced by an approved inspector" preceding "pursuant to the Construction Industries" near the end of the first sentence of present Subsection E; added "and may designate areas as flood- or mudslide-prone that may not be so identified by the federal insurance administration" at the end of Subsection F; and rewrote Subsection H.

The 2001 amendment, effective June 15, 2001, inserted "and flood plain" preceding "permits" in the section heading; in Subsection A inserted "federal emergency management agency and locally" preceding "designated flood-prone areas"; added present Paragraph A(3) and renumbered the remaining paragraphs accordingly; inserted "flood plain" preceding "ordinance" in Subsections B, D and F; added present Subsection C and renumbered the remaining subsections accordingly; in present Subsection D, inserted "flood plain" preceding "permits issued" near the beginning of the subsection and updated the internal reference; and in Subsection G, substituted "the department of public safety, the department of environment" for "the environmental improvement agency" and "division of the regulation and licensing department" for "commission".

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of governmental entity for issuance of permit for construction which caused or accelerated flooding, 62 A.L.R.3d 514.

3-18-8. Cemeteries.

A municipality may:

A. cause any cemetery to be removed;

B. prohibit the establishment of a cemetery within one mile of the municipal boundary; and

C. regulate cemeteries within the planning and platting jurisdiction of the municipality.

History: 1953 Comp., § 14-17-6, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For municipal cemeteries, *see* 3-40-1 NMSA 1978 et seq.

For tax exemption of nonprofit cemeteries, *see* N.M. Const., art. VIII, § 3.

For school sections used for cemetery purposes, *see* 19-7-23, 19-7-24 NMSA 1978.

For Endowed Care Cemetery Act, *see* Chapter 58, Article 17 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 14 Am. Jur. 2d Cemeteries § 6.

Validity and reasonableness of rules and regulations of cemetery company or association as to improvement or care of lots, 32 A.L.R. 1406, 47 A.L.R. 70.

Continued use of property for burial purposes as a condition subsequent of a conveyance or dedication of land for that purpose, 47 A.L.R. 1174.

Injunction against closing or obstructing street or highway, right of one whose access to cemetery is thereby impaired to maintain suit for, 68 A.L.R. 1293.

Constitutionality of statute or ordinance requiring or permitting removal of bodies from cemeteries, 71 A.L.R. 1040.

Lien on cemetery property, rights and remedies of holders, 90 A.L.R. 444.

Right to exclude from privilege of burial, 110 A.L.R. 388.

Crematories, municipal regulation of, 113 A.L.R. 1132.

Zoning regulations, variations or exceptions from, 168 A.L.R. 90.

Monuments, vaults and the like, validity and construction of regulations as to, by cemetery company, 174 A.L.R. 977.

Gift for maintenance or care of private cemetery or burial lot, or of tomb or of monument, including the erection thereof, as valid trust, 47 A.L.R.2d 596.

Location of cemetery, validity of public prohibition or regulation of, 50 A.L.R.2d 905.

Nuisance, cemetery or burial ground as, 50 A.L.R.2d 1324.

Condemnation: municipal power to condemn land for cemetery, 54 A.L.R.2d 1322.

Zoning regulations in relation to cemeteries, 96 A.L.R.3d 921.

3-18-9. Census.

A. A municipality may provide for the taking of a census within the municipal boundary but no census shall be taken by the municipality more than once between the years prescribed by law for the census to be taken by the United States of America.

B. Any census taken under the authority of the municipality shall be verified by oath of the person taking the census. The census shall be approved by resolution of the governing body. One copy of the census shall be filed with the clerk of the municipality and one copy shall be filed with the county clerk.

History: 1953 Comp., § 14-17-7, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For definition of "census", *see* 3-1-2 NMSA 1978.

Incorporated villages having a population of 500 or more are granted all the powers and privileges of incorporated towns. 1959-60 Op. Att'y Gen. No. 60-177.

3-18-10. Power of eminent domain; purposes; proceedings.

A. Both within the municipal boundary and for a distance not extending beyond the planning and platting jurisdiction of the municipal boundary, a municipality has the power and right of condemnation of private property for public use for the purpose of:

(1) laying out, opening and widening streets, alleys and highways or their approaches; or

(2) constructing, maintaining and operating:

(a) storm drains; or

(b) garbage and refuse disposal areas and plants.

B. A municipality may acquire by eminent domain any property within the municipality:

(1) for park purposes;

(2) to establish cemeteries or mausoleums or to acquire existing cemeteries or mausoleums; or

(3) for the purpose of correcting obsolete or impractical planning and platting of subdivisions. For the purpose of this paragraph, "obsolete or impractical planning and platting" applies only to property that:

(a) was platted prior to 1971;

(b) has remained vacant and unimproved; and

(c) threatens the health, safety and welfare of persons or property due to erosion, flooding and inadequate drainage.

C. Condemnation proceedings pursuant to this section shall be in the manner provided by law.

History: 1953 Comp., § 14-17-8, enacted by Laws 1973, ch. 395, § 1; 2007, ch. 329, § 1; 2007, ch. 330, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1973, ch. 395, § 1, repealed former 14-17-8, 1953 Comp., relating to eminent domain, and enacted the above section.

Cross references. — For eminent domain power regarding electric utility, *see* 3-24-5 NMSA 1978.

For eminent domain power regarding gas utility, *see* 3-25-5 NMSA 1978.

For condemnation of private property for sanitary sewers, *see* 3-26-1 NMSA 1978.

For eminent domain power regarding municipal housing, *see* 3-45-4, 3-45-8 NMSA 1978.

The 2007 amendments, effective June 15, 2007, add Paragraph (3) of Subsection B and add Subsection C.

Compiler's notes. — Laws 2007, ch. 329, § 1 and Laws 2007, ch. 330, § 1 enacted identical amendments to this section.

Discretion of public authority. — The matters relating to the design and location of municipal road projects, if carried out in conformity with applicable law, generally involve policy questions entrusted to the discretion of municipal or public authorities. City of

Albuquerque v. State ex rel. Vill. of Los Ranchos de Albuquerque, 111 N.M. 608, 808 P.2d 58 (Ct. App. 1991), cert. denied, 113 N.M. 524, 828 P. 2d 957 (1992).

Park purposes. — The power to condemn property for park purposes could be exercised only by compliance with the statutory procedure. City of Albuquerque v. Huning, 29 N.M. 590, 225 P. 580 (1924).

Construction of waterworks system. — A city has the power of eminent domain for the purpose of constructing a waterworks system, situated more than two miles from the city limits. City of Raton v. Raton Ice Co., 26 N.M. 300, 191 P. 516 (1920)(decided under prior law).

City had no power to condemn an acequia in actual use of irrigation in order to widen a street. City of Albuquerque v. Garcia, 17 N.M. 445, 130 P. 118 (1913).

State property devoted to public purpose. — Where the property the city desires to condemn is state property and is already devoted to a public purpose, it cannot be condemned by the city for another public purpose. 1953-54 Op. Att'y Gen. No. 53-5848.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Eminent Domain §§ 2, 3, 13, 23.

Public benefit or convenience as distinguished from use by the public as ground for the exercise of the power of eminent domain, 54 A.L.R. 7

Power of eminent domain conferred upon municipality as authorizing taking fee or merely easement, 79 A.L.R. 515.

Injunction against exercise of power of eminent domain, 133 A.L.R. 11, 93 A.L.R.2d 465.

Hunting and fishing, condemnation of land by public authority as affected by question of necessity, 172 A.L.R. 174.

Housing or slum clearance, taking of property for purposes of, 172 A.L.R. 970.

Damage to private property caused by negligence of governmental agents as "taking," "damage" or "use" for public purposes in constitutional sense, 2 A.L.R.2d 677.

Cemetery, municipal power to condemn land for, 54 A.L.R.2d 1322.

Right to condemn property in excess of needs for a particular public purpose, 6 A.L.R.3d 297.

Substitute condemnation: power to condemn property or interest therein to replace other property taken for public use, 20 A.L.R.3d 862.

Power of eminent domain as between state and subdivision or agency thereof, or as between different subdivisions or agencies themselves, 35 A.L.R.3d 1293.

Eminent domain: industrial park or similar development as public use justifying condemnation of private property, 62 A.L.R.4th 1183.

29A C.J.S. Eminent Domain § 24.

3-18-11. Fire prevention and protection; insurance for volunteer firemen.

A. A municipality may by ordinance:

(1) adopt regulations for the prevention of fire;

(2) regulate and prevent the carrying on of manufactories dangerous in causing and promoting fires;

(3) prohibit the deposit of ashes in unsafe places;

(4) cause any building or enclosure which is in a flammable state to be placed in a safe condition;

(5) regulate and prevent the storage and transportation of any combustible or explosive material; and

(6) regulate and prevent the use of illuminating flames and the building of bonfires.

B. A municipality may:

(1) provide proper means for protection from fire;

(2) erect fire stations and provide facilities and implements for the extinguishment of fires; and

(3) provide for the use and management of fire stations, facilities and implements for extinguishing fires by a volunteer fire department, paid fire department or partially paid and volunteer fire department.

C. A municipality having an organized volunteer fire department may purchase with money from the fire fund an accident policy from any insurance company authorized to do business in New Mexico. The accident policy shall provide for the payment to any volunteer fireman a suitable sum for injuries and a gross sum of not less than two thousand dollars ($2,000) for death caused in the course of his duties as a volunteer fireman.

History: 1953 Comp., § 14-17-9, enacted by Laws 1965, ch. 300; 1989, ch. 346, § 12.

ANNOTATIONS

Cross references. — For adoption of fire prevention code by reference in ordinance, *see* 3-17-6 NMSA 1978.

For removal of dangerous buildings or debris, *see* 3-18-5 NMSA 1978.

For fire zones, *see* 3-18-6 NMSA 1978.

For adoption of flammable liquids regulations by state fire board, *see* 59A-52-16 NMSA 1978 et seq.

For use of fire protection fund in operation of local fire departments, *see* 59A-53-1 to 59A-53-17 NMSA 1978.

The 1989 amendment, effective February 1, 1990, deleted former Subsection A(7), which read "regulate and prohibit the use of fireworks, firecrackers, torpedoes, roman candles, skyrockets and other pyrotechnic displays" and made related stylistic changes.

Extent of insurance. — City or town has discretion of determining the injuries and hazards for which insurance is carried as well as the amount of the coverage, when insurance is taken out under this section. Boyd v. Vill. of Wagon Mound, 46 N.M. 262, 127 P.2d 242 (1942).

This provision is permissive rather than mandatory. Boyd v. Vill. of Wagon Mound, 46 N.M. 262, 127 P.2d 242 (1942).

Fire limit ordinance will not be deemed unreasonable merely because its effect is to permit the restraint or abatement as a public nuisance of something which would not be a nuisance per se. Town of Gallup v. Constant, 36 N.M. 211, 11 P.2d 962 (1932).

Privately owned vehicles, used by members of a volunteer fire department in carrying out their duties in connection with such a fire department, may properly be defined as "fire department vehicles." 1969 Op. Att'y Gen. No. 69-71.

Medical bills not covered by insurance. — Where a volunteer fireman is injured in the line of duty, the town of Grants may not pay medical bills not fully covered by provided insurance. 1957-58 Op. Att'y Gen. No. 57-213.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 452.

Automatic sprinklers, validity and construction of requirement of, 6 A.L.R. 1591.

Fire department as pertaining to governmental or proprietary branch of municipality, 9 A.L.R. 143, 33 A.L.R. 688, 84 A.L.R. 514.

Regulation of removal of ashes or other rubbish, 15 A.L.R. 309.

Right of water district or company to charge for fire service, 37 A.L.R. 1511.

Validity and construction of statute or ordinance requiring installation of automatic sprinklers, 63 A.L.R.5th 517.

Lease of property as affecting owner's liability for failure to provide fire escapes as required by law, 77 A.L.R. 1273.

Hydrant, liability of municipality for damage to person or property due to, 113 A.L.R. 661.

Contract for pension as insurance, 119 A.L.R. 1243.

Fires, use beyond municipal limits of municipal equipment for extinguishment, 122 A.L.R. 1158.

Use beyond municipal limits, of municipal equipment for extinguishment of fire, liability for injury to fireman, 122 A.L.R. 1159.

Closing of place of amusement or other place of public assembly because of fire hazard, power to require, 140 A.L.R. 1048.

Rubbish, liability of municipality for injury by fire in disposal of, as affected by governmental or private nature of function, 156 A.L.R. 734.

Fire loss due to failure of municipality to provide or maintain adequate water supply or pressure, liability of municipality for, 163 A.L.R. 348.

Hotels involved in statutes respecting fire escapes or other provisions for safety, comfort or convenience of guests, validity of classification of, 172 A.L.R. 203.

Municipality's liability for injury or damage from explosion or burning of substance stored by third person under municipal permit, 17 A.L.R.2d 683.

Liability for property damage by concussion from blasting, 20 A.L.R.2d 1372.

Oil and gas tanks, pipes and pipelines, and apparatus and accessories thereof as constituting attractive nuisance, 23 A.L.R.2d 1157.

Validity and application of statutes imposing on owner or occupant liability for expense of fighting fire starting on his land or property, 90 A.L.R.2d 873.

Municipal liability for negligent fire inspection and subsequent enforcement, 69 A.L.R.4th 739.

Validity under federal constitution of regulations, rules, or statutes requiring random or mass drug testing of public employees or persons whose employment is regulated by state, local, or federal government, 86 A.L.R. Fed. 420.

62 C.J.S. Municipal Corporations §§ 573 to 590, 592, 593.

3-18-11.1. Fingerprinting of fireman applicants required; authorization for municipality to communicate such information to the federal bureau of investigation.

After July 1, 1985, anyone applying for the position of fireman in any municipality with a population of more than one hundred thousand shall provide the municipality with copies of his fingerprints. The municipality is authorized by this section to transmit copies of all fingerprints of applicant firemen to the federal bureau of investigation.

History: Laws 1985, ch. 121, § 1.

3-18-12. Food and merchandise; regulation and inspection.

A. A municipality may regulate the sale of food and drink, and may provide for the place and manner of selling food.

B. A municipality may provide for the:

(1) inspection and regulation of food;

(2) regulation, inspection, weighing and measuring of any article of merchandise;

(3) inspection and sealing of weights and measures; and

(4) enforcement and use of proper weights and measures by vendors.

History: 1953 Comp., § 14-17-10, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For standards of weights and measures, *see* 57-17-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35 Am. Jur. 2d Food §§ 2 et seq., 33, 34; 79 Am. Jur. 2d Weights and Measures § 5.

Validity of statute or ordinance interfering with privacy in restaurants, 5 A.L.R. 965.

Validity of statute or ordinance requiring commodities to be sold in a specified quantity or weight, 6 A.L.R. 429, 90 A.L.R. 1290.

"Food," within meaning of statute, 17 A.L.R. 1282.

Place of sale, validity of statute or ordinance relating to place of sale of food, 52 A.L.R. 669.

Milk, construction and application of regulations as to, 122 A.L.R. 1062.

Food sold at retail, validity, construction and application of statutes or ordinances relating to inspection of, 127 A.L.R. 322.

Ignorance or mistake of fact, lack of criminal intent or presence of good faith, penal offense predicated on violation of food law as affected by, 152 A.L.R. 755.

Discrimination as regards closing hours as between restaurants or eating places in ordinances respecting them, 169 A.L.R. 976.

Authorization, prohibition or regulation by municipality of the sale of merchandise on streets or highways or their use for such purpose, 14 A.L.R.3d 896.

Kosher food, validity and construction of regulations dealing with misrepresentation in the sale of, 52 A.L.R.3d 959.

36A C.J.S. Food § 3; 94 C.J.S. Weights and Measures §§ 2 to 10.

3-18-13. Industrial nuisances and nauseous locations; regulation and prohibition.

A municipality may within one mile of its boundary direct the location, regulate and prohibit any offensive and unwholesome business or establishment.

History: 1953 Comp., § 14-17-11, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For public nuisance generally, *see* 30-8-1 NMSA 1978.

For erection of carbon black plant near municipality, *see* 30-8-12 NMSA 1978.

For permitting privy or cesspool within municipality to become menace to public health, *see* 30-8-12 NMSA 1978.

For erection of slaughterhouses near municipality without consent of governing body, *see* 30-8-12 NMSA 1978.

Law reviews. — For survey, "Torts: Sovereign and Governmental Immunity in New Mexico," see 6 N.M.L. Rev. 249 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 447 to 451.

Slaughterhouse as nuisance, 27 A.L.R. 329.

Slaughterhouse, power to prescribe manner or conditions of serving public, 46 A.L.R. 1486.

Animal rendering or bone boiling plant or business as nuisance, 17 A.L.R.2d 1269.

3-18-14. Municipal libraries; establishment; contract services; state publications; gifts and bequests.

A. A municipality may establish and maintain a free public library under proper regulation and may receive, hold and dispose of a gift, donation, devise or bequest that is made to the municipality for the purpose of establishing, increasing or improving the library. The governing body may apply the use, profit, proceeds, interests and rents accruing from such property in any manner that will best improve the library and its use.

B. After a public library is established, the secretary of state shall furnish to the public library a copy of any work subsequently published under his authority.

C. A municipality establishing a public library may enter into contracts and joint powers agreements with other municipalities, counties, local school boards, post-secondary educational institutions and the library division of the office of cultural affairs for the furnishing of library services. In the interest of establishing a county or regional library, a municipality may convey its library facilities to the county as part of a contract for furnishing library services to the inhabitants of the municipality by the county or regional library.

History: 1953 Comp., § 14-17-12, enacted by Laws 1965, ch. 300; 1977, ch. 246, § 45; 1980, ch. 151, § 1; 1999, ch. 20, § 1.

ANNOTATIONS

Cross references. — For tax exemption of public library property, *see* N.M. Const., art. VIII, § 3.

For county library services, *see* 4-36-1, 4-36-2 NMSA 1978.

For joint city-county building, *see* 5-5-1 NMSA 1978 et seq.

For distribution of session laws, *see* 8-4-6 NMSA 1978.

The 1999 amendment, effective June 18, 1999, inserted "Municipal" in the catchline, substituted the language beginning "enter into" and ending "institutions and" for "contract with the county, adjoining counties or" in the first sentence of Subsection C, and made minor stylistic changes.

Cities may issue bonds for erection of public library buildings. Bachechi v. City of Albuquerque, 29 N.M. 572, 224 P. 400 (1924).

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

Municipality's power to accept and administer trust for library, 10 A.L.R. 1377.

Erection of library in park, 18 A.L.R. 1255, 63 A.L.R. 484, 144 A.L.R. 486.

Exemption of library from taxation, 62 A.L.R. 333, 108 A.L.R. 284.

Exercise of eminent domain for purpose of library, 66 A.L.R. 1496.

Garage, validity of regulations prohibiting erection within certain distance of library, 84 A.L.R. 1152.

3-18-15. Works of art; other works; acquisition and maintenance.

A municipality may acquire works of art and other works of historical, classical or general interest and establish museums or other suitable facilities for their care and preservation. It may, through its appropriate administrative authority, trade, barter and exchange items of value with other museums or persons for items of equal or similar value for such times and on such terms as appear suitable to carry out the public purposes of the museums. It may accept and reject gifts through its appropriate administrative authority subject to the terms and conditions of the gifts.

History: 1953 Comp., § 14-17-12.1, enacted by Laws 1967, ch. 149, § 1; 1973, ch. 192, § 1.

3-18-16. Markets and market places.

A municipality may establish and regulate municipal markets and market places.

History: 1953 Comp., § 14-17-13, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 C.J.S. Municipal Corporations § 1562.

3-18-17. Nuisances and offenses; regulation or prohibition.

A municipality, including a home rule municipality that has adopted a charter pursuant to Article 10, Section 6 of the constitution of New Mexico, may by ordinance:

A. define a nuisance, abate a nuisance and impose penalties upon a person who creates or allows a nuisance to exist; provided that:

(1) the total amount of assessed penalties, fines, fees and costs imposed by an ordinance for failure to obey a traffic sign or signal, including a red light offense or violation, or for a speeding offense or violation shall not exceed one hundred dollars ($100), provided that the total for unlawful parking in a space or for blocking an access intended for persons with significant mobility limitation shall not be less than or exceed the fines provided in Section 66-7-352.5 NMSA 1978;

(2) in a municipality with a population of two hundred thousand or greater as of the last federal decennial census, the penalties, fines, fees, costs and procedure imposed for failure to obey a traffic sign or signal, including a red light offense or violation, or for a speeding offense or violation shall be subject to the following:

(a) each month, or other period set by contract, the municipality shall retain from the gross total amount of penalties, fines, fees and costs assessed and collected that month or period an amount subject to audit that is equal to the sum of the setup, maintenance, support and processing services fees charged for that month or period pursuant to contractual terms by a vendor providing systems and services that assist the municipality in imposing penalties or fines and costs or fees as provided in Paragraph (1) of this subsection;

(b) less the retention authorized in Subparagraph (a) of this paragraph: 1) one-half of the net total amount assessed in penalties, fines, fees and costs by the municipality shall be remitted to the state treasurer and distributed to the administrative office of the courts, of which ten percent shall be credited to DWI drug court programs and ninety percent shall be transferred to the New Mexico finance authority for deposit into the metropolitan court bond guarantee fund; and 2) one-half shall be retained by the municipality for municipal traffic safety programs and to offset the municipality's reasonable costs directly related to administering a program imposing penalties or fines and costs or fees as provided in Paragraph (1) of this subsection;

(c) in fiscal year 2009, and annually thereafter, the municipality shall cause an audit of the program and contract described in Subparagraph (a) of this paragraph to be conducted by the state auditor or an independent auditor selected by the state auditor;

(d) if in the audit conducted pursuant to Subparagraph (c) of this paragraph it is determined that any amount retained by the municipality pursuant to this paragraph is in excess of the amount the municipality is authorized to retain, the municipality shall remit, when the audit is finalized, the amount in excess to the state treasurer to be distributed and transferred as provided in Item 1) of Subparagraph (b) of this paragraph; and

(e) a hearing provided for a contested nuisance ordinance offense or violation shall be held by a hearing officer appointed by the presiding judge of the civil division of the district court with jurisdiction over the municipality, and the hearing itself shall be conducted following the rules of evidence and civil procedure for the district courts. The burden of proof for violations and defenses is a preponderance of the evidence. A determination by the hearing officer shall not impose a total amount of penalties, fines, fees and costs in excess of that provided in the nuisance ordinance; and

(3) in a municipality other than a municipality with a population of two hundred thousand or greater as of the last federal decennial census, the penalties, fines, fees, costs and procedure imposed for failure to obey a traffic sign or signal, including a red light offense or violation, or for a speeding offense or violation shall be subject to the following:

(a) each month, or other period set by contract, the municipality shall retain from the gross total amount of penalties, fines, fees and costs assessed and collected that month or period an amount subject to audit that is equal to the sum of the setup, maintenance, support and processing services fees charged for that month or period pursuant to contractual terms by a vendor providing systems and services that assist the municipality in imposing penalties or fines and costs or fees as provided in Paragraph (1) of this subsection;

(b) less the retention authorized in Subparagraph (a) of this paragraph: 1) one-half of the net total amount assessed in penalties, fines, fees and costs by the municipality shall be remitted to the state treasurer, of which sixty-five percent shall be credited to the court automation fund, twenty percent to the traffic safety education and enforcement fund and fifteen percent to the judicial education fund; and 2) one-half of the net total amount assessed in penalties, fines, fees and costs shall be retained by the municipality for municipal traffic safety programs and to offset the municipality's reasonable costs directly related to administering a program imposing penalties or fines and costs or fees as provided in Paragraph (1) of this subsection;

(c) in fiscal year 2009, and annually thereafter, the municipality shall cause an audit of the program and contract described in Subparagraph (a) of this paragraph and the money collected and distributed pursuant to this paragraph to be conducted by the state auditor or an independent auditor selected by the state auditor;

(d) if in the audit conducted pursuant to Subparagraph (c) of this paragraph it is determined that any amount retained by the municipality pursuant to this paragraph is

in excess of the amount the municipality is authorized to retain, the municipality shall remit, when the audit is finalized, the amount in excess to the state treasurer to be distributed and transferred as provided in Item 1) of Subparagraph (b) of this paragraph; and

(e) a hearing provided for a contested nuisance ordinance offense or violation shall be held by a hearing officer appointed by the presiding judge of the civil division of the district court with jurisdiction over the municipality, and the hearing itself shall be conducted following the rules of evidence and civil procedure for the district courts. The burden of proof for offenses or violations and defenses is a preponderance of the evidence. A determination by the hearing officer shall not impose a total amount of penalties, fines, fees and costs in excess of that provided in the nuisance ordinance;

B. regulate or prohibit any amusement or practice that tends to annoy persons on a street or public ground; and

C. prohibit and suppress:

(1) gambling and the use of fraudulent devices or practices for the purpose of obtaining money or property;

(2) the sale, possession or exhibition of obscene or immoral publications, prints, pictures or illustrations;

(3) public intoxication;

(4) disorderly conduct; and

(5) riots, noises, disturbances or disorderly assemblies in any public or private place.

History: 1953 Comp., § 14-17-14, enacted by Laws 1965, ch. 300; 2008, ch. 91, § 1; 2009, ch. 121, § 1.

ANNOTATIONS

Cross references. — For abatement of a public nuisance, *see* 30-8-8 NMSA 1978.

For sexually oriented material harmful to minors, *see* 30-37-2 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in Subsection A, deleted the former provision, which limited the penalties and fines that could be imposed by a municipality with a population of 200,000 or greater; in Subsection A(1), deleted "for each offense or violation" and added the new language; and after "shall not exceed", added the remainder of the sentence; added Subsection A(2); in Subsection (2)(b), after "Subparagraph (a) of this paragraph", added "1) one-half of"; added "penalties" and

after "municipality shall be", added "remitted to the state treasurer and"; after "ten percent", deleted "the net total amount assessed"; and after "ninety percent", deleted "of the net total amount assessed"; added Item 2) in Subsection A(2)(b); added Subsections A(2)(d) and A(2)(e); and added Subsection A(3).

The 2008 amendment, effective July 1, 2008, included within a municipality, a home rule municipality that has adopted a charter pursuant to Article 10, Section 6 of the constitution of New Mexico and in Subsection A, added the provision that for a municipality with a population of 200,000 or greater the fines and costs or fees imposed for failure to obey a traffic signal shall be subject to Paragraphs (1) and (4) of Subsection A.

Red light camera ordinance did not deny procedural due process. — Where a municipal red light camera ordinance provided that vehicle owners charged with a violation of a red light camera ordinance were entitled to receive notice of the violation along with detailed information about the basis for the charge; that vehicle owners were entitled to a hearing before an impartial hearing officer at no cost; that the municipality had the burden to prove the violation; that the vehicle owner was entitled to hear and challenge the evidence; that the hearing officer was required to render a decision in writing; and that the vehicle owner was entitled to appeal the hearing officer's decision to district court and to recover costs if the appeal was successful, the ordinance did not violate the vehicle owner's right to procedural due process. Titus v. City of Albuquerque, 2011-NMCA-038, 149 N.M. 556, 252 P.3d 780, cert. granted, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

Imposition of red light camera ordinance penalties. — Section 3-18-17 NMSA 1978 does not restrict a municipality's authority to impose penalties only upon the driver of a vehicle observed violating a red light camera ordinance. A municipality may hold registered owners of vehicles strictly and vicariously liable for violations of the ordinance for which the owner is unable or unwilling to nominate the actual driver or to prove a defense or where the owner is unsuccessful in asserting a defense. Titus v. City of Albuquerque, 2011-NMCA-038, 149 N.M. 556, 252 P.3d 780, cert. granted, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

Motor Vehicle Code does not preempt the authority to enact a red light camera ordinance. — Where a municipal red light camera ordinance did not impose an affirmative disability or restraint on violators; the civil penalties for violations were purely monetary and were not criminally punitive; scienter was not necessary to a find a violation; the ordinance was a nuisance abatement ordinance; the civil penalties were rationally connected with abating a nuisance; the imposition of the civil penalties was not excessive in relation to the purpose of the ordinance to abate a nuisance; and the civil penalties imposed for violations of the ordinance were not sufficiently punitive to outweigh the civil remedial effect of the ordinance, the ordinance is not a criminal statute that is preempted by the Motor Vehicle Code. Titus v. City of Albuquerque, 2011-NMCA-038, 149 N.M. 556, 252 P.3d 780, cert. granted, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

Red light camera ordinance did not deny procedural due process. — Where the owner of a motor vehicle received notice of two speeding violations and fines pursuant to a municipality's red light camera ordinance; the violations were observed by video detection equipment; at an administrative hearing, the owner did not contest the fact that the video equipment had observed vehicles registered in the owner's name speeding on the dates in question; the owner claimed that the owner was not the driver of the vehicle and presented evidence that the owner was not in the municipality on the dates of the violations; the owner did not nominate the actual driver of the vehicle on the dates of the violations as permitted by the ordinance or claim any of the defense provided for in the ordinance; and the ordinance provided that the registered owner of a vehicle observed violating the ordinance was strictly and vicariously liable for the violation, the imposition of penalties on the owner for violation of the ordinance was legal and constitutional. Titus v. City of Albuquerque, 2011-NMCA-038, 149 N.M. 556, 252 P.3d 780, cert. granted, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

Municipality had authority to enact a red light camera ordinance. — Where a municipality's determination that red light violations and speeding are public nuisances was premised on findings that there was a significant risk to health and safety of the community from drivers who run red lights and exceed posted speed limits; that red light violations are a matter of unique local concern to the municipality, because of high traffic volume and crowded intersections; that the municipality had one of the highest fatality and serious injury rates in the nation from red light violations and disregard by drivers for existing state red light laws; that red light violations are connected to death and serious injury to a degree not evident with regard to other traffic violations; that drivers in the municipality repeatedly violate posted speed limits; that state law against speeding was inadequate to preserve public safety in the municipality; and that nationally, red light cameras had decreased red light violations, the municipality's findings proved that speeding and red light violations are nuisances per se and the municipality acted within the scope of its authority under Section 3-18-17 NMSA 1978 in enacting the red light camera ordinance and designating speeding and red light violations nuisances. Titus v. City of Albuquerque, 2011-NMCA-038, 149 N.M. 556, 252 P.3d 780, cert. granted, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

Residential picketing. — An ordinance declaring residential picketing a nuisance even though such acts violate only private rights and produce damages to but one or a few persons constitutes a valid exercise of governmental power. Garcia v. Gray, 507 F. 2d 539 (10th Cir. 1974), cert. denied, 421 U.S. 971, 95 S. Ct. 1967, 44 L.Ed. 2d 462 (1975).

Loitering on school grounds. — To interpret a city ordinance prohibiting loitering on school grounds without lawful business there as saying that no one had the right to be on school property without permission would raise serious constitutional questions, where the ordinance did not state that permission to be on school grounds was required. Anderson v. Shaver, 290 F. Supp. 920 (D.N.M. 1968).

Solicitors. — The frequent ringing of doorbells of private residences by itinerant vendors and solicitors may be in fact a nuisance to the occupants of homes, or may be so considered by the municipality in one locality. Green v. Town of Gallup, 46 N.M. 71, 120 P.2d 619 (1941).

Sunday dances. — The intention of the legislature is clear in that cities and towns have the authority to license, regulate and prohibit the giving or holding of dances on Sunday. 1953-54 Op. Att'y Gen. No. 54-5937 (issued under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gambling §§ 13 to 22; 53A Am. Jur. 2d Mobs and Riots §§ 1 to 3, 6, 7, 16, 17; 58 Am. Jur. 2d Nuisances §§ 1, 50 to 53, 425.

Liability of municipality for damages or compensation for abating as a nuisance what is not in fact such, 46 A.L.R. 362.

Presentation of claim for injury to property by nuisance, necessity of, 52 A.L.R. 639.

Extension of police power of municipal corporation beyond territorial limits, 55 A.L.R. 1182, 14 A.L.R.2d 103.

Venue of suit to enjoin nuisance, 7 A.L.R.2d 481.

Public regulation and prohibition of sound amplifiers or loudspeaker broadcasts in streets or other public places, 10 A.L.R.2d 627.

Phonograph, loudspeaker or other mechanical or electrical device for broadcasting music, advertising or sales talk from business premises, as nuisance, 23 A.L.R.2d 1289.

Disorderly conduct, failure or refusal to obey police officer's order to move on as, 65 A.L.R.2d 1152.

Coin-operated pinball machines or similar devices, police powers authorizing antigambling laws applicable to, 89 A.L.R.2d 815.

Obscenity, modern concept of, 5 A.L.R.3d 1158.

Obscenity, validity of procedures designed to protect the public against, 5 A.L.R.3d 1214, 93 A.L.R.3d 297.

Gambling devices, constitutionality of statutes providing for destruction of, 14 A.L.R.3d 366.

Validity and construction of statutes or ordinances prohibiting profanity or profane swearing or cursing, 5 A.L.R.4th 956.

Validity of statutes or ordinances requiring sex-oriented businesses to obtain operating licenses, 8 A.L.R.4th 130.

Validity, construction, and application of statutes or ordinances involved in prosecutions for transmission of wagers or wagering information related to bookmaking, 53 A.L.R.4th 801.

Validity of statute or ordinance prohibiting or regulating bookmaking or pool selling, 80 A.L.R.4th 1079.

Validity of ordinances restricting location of "adult entertainment" or sex-oriented businesses, 10 A.L.R.5th 538.

Obscenity prosecutions: statutory exemption based on dissemination to persons or entities having scientific, educational, or similar justification for possession of such materials, 13 A.L.R.5th 567.

Validity, construction, and application of loitering statutes and ordinances, 72 A.L.R.5th 1.

3-18-18. Parks.

Within or without the municipal boundary, a municipality may build, beautify and improve public parks and acquire any property for park purposes. The acquisition of property for park purposes which is outside the municipal zoning boundaries, and outside the boundaries of the county in which the municipality is located, shall be subject to the prior approval of the governing body of the local government within whose boundary the property is situated. Any property acquired for park purposes is under the immediate control of the governing body. The governing body may pay any expenses of transfer or conveyance and examination of title for any property given to the municipality for park purposes.

History: 1953 Comp., § 14-17-15, enacted by Laws 1965, ch. 300; 1973, ch. 368, § 2.

ANNOTATIONS

Cross references. — For park commission, *see* 3-47-1, 3-47-2 NMSA 1978.

For county acquisition of property within boundaries of another local governmental subdivision for park purposes, *see* 4-36-6 NMSA 1978.

For playgrounds and recreational equipment, *see* 5-4-1 NMSA 1978 et seq.

For lease of state lands, *see* 19-7-54 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 542.

To what uses park property may be devoted, 18 A.L.R. 1246, 63 A.L.R. 484, 144 A.L.R. 486.

Parks, liability of municipal corporations for injuries due to conditions in, 29 A.L.R. 863, 42 A.L.R. 263, 99 A.L.R. 686, 142 A.L.R. 1340.

Power of municipal corporation to establish and maintain golf course, 36 A.L.R. 1301.

Liability of municipality in respect of municipal bathhouses, bathing beaches and swimming pools, 51 A.L.R. 370, 57 A.L.R. 406.

Park property, power to sell or lease, 63 A.L.R. 489, 144 A.L.R. 486.

Res ipsa loquitur as applicable in action against municipality for injuries from dangerous condition in parks, streets or highways, 74 A.L.R. 1226.

Statutes relating to establishment or administration of parks, as encroachment on right of local self-government, 88 A.L.R. 228.

Liability of owner of park or other premises on which baseball or other game is played, for injuries by ball to person on nearby street or sidewalk, 16 A.L.R.2d 1458.

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

Liability to one struck by golf ball, 53 A.L.R.4th 282.

64 C.J.S. Municipal Corporations §§ 1557 to 1561.

3-18-19. Park and recreation construction authorized.

A municipality may create an improvement district as authorized in Sections 3-33-1 through 3-33-43 NMSA 1978 of the new Municipal Code, for the purpose of acquiring and constructing parks and recreation facilities.

History: 1953 Comp., § 14-17-15.1, enacted by Laws 1965, ch. 311, § 1.

ANNOTATIONS

Eminent domain. — The power to condemn property for park purposes could be exercised only by compliance with statutory procedure. City of Albuquerque v. Huning, 29 N.M. 590, 225 P. 580 (1924).

Cities could not issue bonds for park improvements. Bachechi v. City of Albuquerque, 29 N.M. 572, 224 P. 400 (1924).

Golf course. — This section does not prohibit the use of public funds of a city in maintaining and improving a municipal golf course which is a part of the park system, leased from a country club outside the city limits, when such funds are budgeted and collected for that purpose. 1953-54 Op. Att'y Gen. No. 53-5813.

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

3-18-20. Police ordinances; county jails.

A municipality may use the county jail for the confinement or punishment of offenders subject to the requirements imposed by law and the board of county commissioners.

History: 1953 Comp., § 14-17-16, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For jails, *see* 33-3-1 NMSA 1978 et seq.

For local government corrections fund, *see* 33-3-25 NMSA 1978.

For custody of prisoners, *see* 35-15-6 NMSA 1978.

Board of county commissioners may impose fee for each municipal prisoner incarcerated in a county jail. 1979 Op. Att'y Gen. No. 79-41.

Law reviews. — For article, "Prisoners Are People," see 10 Nat. Resources J. 869 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 C.J.S. Prisons § 5.

3-18-21. Railroads; street railroads; crossings.

A. A municipality may, within its boundary:

(1) regulate the speed of diesel electric locomotives;

(2) license and regulate the laying of railroad tracks;

(3) provide for and change the location, grade and crossing of any railroad;

(4) regulate and prohibit the use of steam engines and diesel electric locomotives; and

(5) require a railroad company to:

(a) fence its railroad or any portion of it;

(b) construct cattleguards at crossings of streets and public roads;

(c) keep its fences and cattleguards in repair;

(d) keep a flagman at railroad crossings of streets;

(e) provide protection against injury to persons and property by the railroad in the use of its property; and

(f) construct and keep in repair ditches, drains, sewers and culverts along and under railroad tracks so that 1) filthy or stagnant pools of water cannot stand on its ground or right-of-way and 2) natural drainage of adjacent property is not impeded.

B. A municipality may, within its boundary, by condemnation or otherwise, extend any street, or municipal utility over, across, under or through any railroad track, right-of-way or land of any railroad company or street railroad company. If no compensation is made to the railroad company, the municipality shall restore the railroad track, right-of-way or land to its former state or in a sufficient manner so that its usefulness is not impaired.

History: 1953 Comp., § 14-17-17, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For municipal transit law, *see* 3-52-1 NMSA 1978 et seq.

For authorization to grant use of streets to railroads, *see* 63-2-8 NMSA 1978.

For the Public Mass Transportation Act, *see* 67-3-67 to 67-3-70 NMSA 1978.

Unconstitutional ordinance. — An ordinance which provides, in essence, that all trains, which includes unattached locomotives, must have a crew of at least two when passing within 50 feet of a public street or crossing a public way, and is a criminal ordinance since a penalty of up to $100 is provided for violation, is not permitted and is unconstitutional. 1959-60 Op. Att'y Gen. No. 60-36.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 65 Am. Jur. 2d Railroads § 28.

Railroad crossings, power to assume the duty of providing and maintaining, 1 A.L.R. 316.

Construction of provision of statute, ordinance, or franchise relating to "repair" of street railway zone, 10 A.L.R. 928.

Municipally owned railroad or street railway, liability of municipality for tort in construction or operation, 31 A.L.R. 1306.

Change in traffic conditions as affecting duty of street railway to keep street in repair, 33 A.L.R. 131.

Railroad company, power to permit construction of piers, pillars or abutments within street at crossing, 62 A.L.R. 1524.

Street railways, ordinance prohibiting one-man streetcars, 69 A.L.R. 344.

Construction of statutes requiring railroads to provide for the drainage or flow of waters, 19 A.L.R.2d 967.

Duty of railroad company to maintain flagman at crossing, 24 A.L.R.2d 1161.

74 C.J.S. Railroads §§ 394 to 399.

3-18-22. Requirement for sanitary facilities; notice to owners; failure to comply; municipality to perform work; lien; interest.

A. By general ordinance, a municipality may require the owner, agent or occupant of a building on an isolated tract having facilities available or on land adjoining a street:

(1) where sewer pipe is laid, to install proper plumbing and connect with the sewer;

(2) where no sewer pipe is laid but water pipe is laid, to construct and install proper plumbing and sewage disposal devices; or

(3) where neither sewer nor water pipe is installed within one hundred fifty feet of the isolated tract of land, to construct pit toilets in compliance with plans and specifications approved by the municipality and filed with the municipal clerk.

B. If the owner, agent or occupant of a building on an isolated tract having facilities available, or on land adjoining a street, fails to comply with the ordinance, the governing body may by resolution order the owner, agent or occupant of a building on an isolated tract having facilities available, or on land adjoining a street, to comply with the ordinance. The owner, agent or occupant of the building shall be personally served with written notice of the resolution and shall be given thirty days to commence work. If the

owner, as shown by the assessment roll, or agent is not a resident of the municipality, the notice shall be sent to him at his last known address by certified mail, return receipt requested, and a copy of the notice shall be posted on the property.

C. If the owner, agent or occupant fails or refuses to perform the required improvements after being given notice, the municipality may perform the improvements. The cost of the improvements shall be assessed against the owner, agent or occupant of the property and shall be a first and prior lien on the property subject only to the lien of general state and county taxes. The amount so expended for the improvements shall bear interest at the rate of six percent per year from completion of the improvements until paid.

D. After the expiration of one year from the date of completing the improvement, the lien may be enforced in the manner provided in Sections 3-36-1 through 3-36-5 NMSA 1978. Notice of the lien shall be filed in the manner provided in Section 3-36-1 NMSA 1978 and the effect of such filing shall be governed by Section 3-36-2 NMSA 1978.

History: 1953 Comp., § 14-17-18, enacted by Laws 1965, ch. 300; 1981, ch. 213, § 1.

ANNOTATIONS

Cross references. — For acquisition and maintenance of sanitary sewers by municipality, *see* 3-26-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 439, 569 to 574.

64 C.J.S. Municipal Corporations §§ 1535 to 1538.

3-18-23. Steam boiler inspection.

A municipality may provide for the inspection and regulation of steam boilers.

History: 1953 Comp., § 14-17-19, enacted by Laws 1965, ch. 300.

3-18-24. Licensing and regulating secondhand and junk stores.

A municipality may:

A. regulate, tax or license secondhand dealers and junk store dealers or any person who accepts used merchandise for value;

B. prohibit their purchasing any article from a minor without the written consent of the parent or guardian; and

C. require that a record of purchases be kept and be subject at all times to inspection by the police.

History: 1953 Comp., § 14-17-20, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For junk dealers, *see* 57-7-1 NMSA 1978 et seq.

Regulation of pawnbrokers. — City had authority to enact ordinances under its general welfare power and its police power and it had authority to regulate pawnbrokers under those powers. City of Hobbs v. Biswell, 81 N.M. 778, 473 P.2d 917 (Ct. App.), cert. denied, 81 N.M. 772, 473 P.2d 911 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Junk dealers, regulation of, 30 A.L.R. 1427, 45 A.L.R.2d 1391.

3-18-25. Water systems; sewers; assessments.

A. For the purpose of Sections 3-27-1 and 3-49-1 NMSA 1978, a municipality may:

(1) open, construct, repair, keep in order and maintain water mains, laterals, reservoirs, standpipes, sewers and drains; and

(2) assess and collect as other assessments and collections are made the amount necessary to cover the cost of the work.

B. The assessment against the lot or land along or through which the street runs shall be made in such portion as is just and equitable according to the benefits accruing to the lot or land and to its value.

History: 1953 Comp., § 14-17-21, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For acquisition and maintenance of sanitary sewers by municipality, *see* 3-26-1 NMSA 1978 et seq.

For water facilities, *see* 3-27-1 NMSA 1978 et seq.

For improvement districts, *see* 3-33-1 NMSA 1978 et seq.

For power of municipality to open, construct, repair, keep in order and maintain water mains, laterals, reservoirs, standpipes, sewers and drains, *see* 3-49-5 NMSA 1978.

For regulation of use of waters, *see* 3-53-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 439, 569 to 574.

Right to compel municipality to extend its water system, 48 A.L.R.2d 1222.

Validity and construction of regulation by municipal corporation fixing sewer-use rates, 61 A.L.R.3d 1236.

64 C.J.S. Municipal Corporations §§ 1535 to 1538.

3-18-26. Toll bridges.

A municipality may establish, license, regulate and fix the tolls of all toll bridges and ferries.

History: 1953 Comp., § 14-17-22, enacted by Laws 1965, ch. 300.

3-18-27. Trees and shrubs.

A municipality may, by ordinance, regulate the planting, transplanting, growing, trimming, pruning, preservation and protection of trees, shrubs and vines or create a commission for the purpose of such regulation.

History: 1953 Comp., § 14-17-23, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For defacing tree within 400 yards of highway a petty misdemeanor, *see* 30-15-2 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of municipality for damage caused by fall of tree or limb, 14 A.L.R.2d 186.

3-18-28. Municipal employees' retirement system.

A municipality may enter into contracts with private insurance companies to establish a retirement system for its employees.

History: 1953 Comp., § 14-17-24, enacted by Laws 1971, ch. 71, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 60A Am. Jur. 2d Pensions and Retirement Funds §§ 1604, 1606.

62 C.J.S. Municipal Corporations §§ 649 to 660.

3-18-29. [Foreign-trade zones.]

The governing body of any municipality, pursuant to the federal Foreign-Trade Zones Act, as may be amended from time to time, and regulations adopted pursuant thereto, may:

A. with the prior written approval of the board of economic development, apply for and accept a grant of authority to establish, operate and maintain a foreign-trade zone;

B. provide such facilities and services as may be necessary or desirable in establishing a foreign-trade zone; and

C. exercise such other powers as may be necessary or desirable to establish, operate and maintain a foreign-trade zone.

History: 1953 Comp., § 14-17-25, enacted by Laws 1973, ch. 48, § 1.

ANNOTATIONS

Cross references. — For county foreign-trade zone regulations, *see* 4-36-7 NMSA 1978.

For the federal Foreign-Trade Zones Act, *see* 19 U.S.C. § 81a et seq.

3-18-30. Parking citations; certain municipalities; administrative cost assessment.

A. Each municipality with a population over one hundred thousand which is located in a metropolitan court district may impose by ordinance an administrative cost assessment of one dollar ($1.00) for each parking citation issued pursuant to municipal ordinance.

B. The administrative cost assessment collected pursuant to Subsection A of this section shall be remitted within ninety days by the metropolitan court to the municipality which issued the citation. Administrative cost assessment receipts shall be used solely to provide for enforcement of municipal parking ordinances and administration of a municipal traffic control program.

History: Laws 1986, ch. 31, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 414.

3-18-31. Sale of gasoline; authority of the municipality.

The governing body of the municipality may provide, by ordinance, for the monitoring and inspection of gasoline sales through pumps of service stations located within the territorial boundaries of the municipality in order to monitor the sale of gasoline within its municipality.

History: Laws 1989, ch. 153, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Garages, and Filling and Parking Stations §§ 24.

61A C.J.S. Motor Vehicles §§ 770, 775.

3-18-32. Limitation of county and municipal restrictions on solar collectors.

A. A county or municipality shall not restrict the installation of a solar collector as defined pursuant to the Solar Rights Act [47-3-1 through 47-3-5 NMSA 1978], except that placement of solar collectors in historic districts may be regulated or restricted by a county or municipality.

B. A covenant, restriction or condition contained in a deed, contract, security agreement or other instrument, effective after July 1, 1978, affecting the transfer, sale or use of, or an interest in, real property that effectively prohibits the installation or use of a solar collector is void and unenforceable.

History: Laws 2007, ch. 232, § 1.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 232 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

Regulation by homeowners' association. — Subsection B of Section 3-18-32 NMSA 1978 allows a homeowners' association to regulate the installation or use of solar panels so long as the regulations do not "effectively prohibit" their installation or use. The phrase "effectively prohibit" includes restrictions on the installation or use of solar panels that make such installation or use unreasonably difficult or costly. 2011 Op. Att'y Gen. No. 11-02.

ARTICLE 19
Planning and Platting

3-19-1. Creation of planning commission.

A municipality is a planning authority and may, by ordinance:

A. establish a planning commission;

B. delegate to the planning commission:

(1) the power, authority, jurisdiction and duty to enforce and carry out the provisions of law relating to planning, platting and zoning; and

(2) other power, authority, jurisdiction and duty incidental and necessary to carry out the purpose of Sections 3-19-1 through 3-19-12 NMSA 1978;

C. retain to the governing body as much of this power, authority, jurisdiction and duty as it desires; and

D. adopt, amend, extend and carry out a general municipal or master plan which may be referred to as the general or master plan.

History: 1953 Comp., § 14-18-1, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For annexation of territory, *see* 3-7-1 NMSA 1978 et seq.

For building construction and restrictions, *see* 3-18-6 NMSA 1978.

For Planning District Act, *see* 4-58-1 NMSA 1978.

For Executive Planning Act, *see* 9-14-1 NMSA 1978.

Ultimate planning decisions within city rest with city council. Mitchell v. Hedden, 94 N.M. 348, 610 P.2d 752 (1980); Hyde Park Co. v. Santa Fe City Council, 226 F.3d 1207 (10th Cir. 2000).

Advisory nature of municipal master plans. — The New Mexico legislature intended any master plan adopted by a municipality to be advisory in nature. Dugger v. City of Santa Fe, 114 N.M. 47, 834 P.2d 424 (Ct. App.), cert. denied, 113 N.M. 744, 832 P.2d 1223 (1992).

The master plan, being only a resolution, does not bind the city that adopts the plan to any specific procedures as would an ordinance. Dugger v. City of Santa Fe, 114 N.M. 47, 834 P.2d 424 (Ct. App.), cert. denied, 113 N.M. 744, 832 P.2d 1223 (1992).

The legislature has assigned to the master plan the role of guide, enabling municipal planning commissions to use reasonable discretion in applying its provisions to the actual decision-making processes involved in municipal development; the plan does not carry the weight of law, as do ordinances, and has no regulatory effect. West Bluff Neighborhood Ass'n v. City of Albuquerque, 2002-NMCA-075, 132 N.M. 433, 50 P.3d 182, cert. denied, 132 N.M. 484, 51 P.3d 527 (2002), overruled by Rio Grande Chapter of Sierra Club v. N.M. Mining Comm'n, 2003-NMSC-005, 133 N.M. 97, 61 P.3d 806.

Power of vacation included among laws relating to planning, platting and zoning. — A delegation of the power to carry out the provisions of law relating to planning, platting and zoning includes the power of vacation. Sprague v. City of Las Vegas, 101 N.M. 185, 679 P.2d 1283 (1984).

Law reviews. — For comment, "Land Use Planning - New Mexico's Green Belt Law," see 8 Nat. Resources J. 190 (1968).

For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

For note, "Subdivision Planning Through Water Regulation in New Mexico," see 12 Nat. Resources J. 286 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 83 Am. Jur. 2d Zoning and Planning §§ 4, 10 to 16.

62 C.J.S. Municipal Corporations § 76; 101A C.J.S. Zoning and Land Planning §§ 8 to 10, 29.

Motives, inquiry, upon review of zoning regulation, into motive of members of municipal authority approving or adopting it, 71 A.L.R.2d 568.

3-19-2. Appointment, term, removal of commission.

A. A planning commission shall consist of not less than five members who shall be appointed by the mayor with the consent of the governing body of the municipality. Administrative officials of the municipality may be appointed as ex-officio, nonvoting members of the planning commission.

B. On the first planning commission a majority of the members shall be appointed for one-year terms and the balance of the members shall be appointed for two-year terms. Each subsequent term of a member on a planning commission shall be for two years or less in order to maintain the original staggering of terms of membership. A vacancy in the membership of the planning commission shall be filled for the remainder of the unexpired term.

C. After a public hearing and for cause stated in writing and made part of the public record, a mayor with the approval of the governing body may remove a member of the planning commission.

History: 1953 Comp., § 14-18-2, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Residency required. — Members of a municipality's planning commission must be residents of the municipality which they are serving and one city or town could not designate the planning commission of another city or town to serve as its planning commission. 1959-60 Op. Att'y Gen. No. 59-201.

3-19-3. Chairman; regular meetings; records.

A planning commission shall:

A. elect one of its members chairman for a one-year term;

B. create and fill other offices;

C. hold at least one regular meeting each month;

D. adopt rules for the transaction of business; and

E. keep a public record of its transactions, findings, resolutions and determinations.

History: 1953 Comp., § 14-18-3, enacted by Laws 1965, ch. 300.

3-19-4. Powers of commission.

A. A planning commission shall have such powers as are necessary to:

(1) fulfill and perform its functions;

(2) promote municipal planning; and

(3) carry out the purposes of Sections 3-19-1 through 3-19-12 NMSA 1978.

B. A planning commission may:

(1) make reports and recommendations for the planning and development of the municipality to:

(a) public officials and agencies;

(b) public utility companies;

(c) civic, educational, professional and other organizations; and

(d) citizens; and

(2) recommend to the administrative and governing officials of the municipality programs for public improvements and their financing.

C. Members and employees of the planning commission, in the performance of its function, may:

(1) enter upon any land;

(2) make examinations and surveys; and

(3) place and maintain necessary monuments and markers upon the land.

D. Upon request, a public official shall furnish within a reasonable time available information which the planning commission requires for its work.

History: 1953 Comp., § 14-18-4, enacted by Laws 1965, ch. 300.

3-19-5. Planning and platting jurisdiction.

A. Each municipality shall have planning and platting jurisdiction within its municipal boundary. Except as provided in Subsection B of this section, the planning and platting jurisdiction of a municipality:

(1) having a population of twenty-five thousand or more persons includes all territory within five miles of its boundary and not within the boundary of another municipality; or

(2) having a population of fewer than twenty-five thousand persons includes all territory within three miles of its boundary and not within the boundary of another municipality.

B. A municipality located in a class A county with a population of more than three hundred thousand persons shall not have planning and platting jurisdiction in the unincorporated area of the county.

C. If territory not lying within the boundary of a municipality is within the planning and platting jurisdiction of more than one municipality, the planning and platting jurisdiction of each municipality shall terminate equidistant from the boundary of each municipality unless one municipality has a population of fewer than two thousand five hundred persons and another municipality has a population of more than two thousand five hundred persons according to the most recent census. Then the planning and platting jurisdiction of the municipality having the greatest population extends to such territory.

History: 1953 Comp., § 14-18-5, enacted by Laws 1965, ch. 300; 1966, ch. 64, § 5; 1998, ch. 42, § 3; 2003, ch. 438, § 3.

ANNOTATIONS

Cross references. — For Regional Planning Act, *see* 3-56-1 NMSA 1978.

The 2003 amendment, effective July 1, 2003, rewrote Subsection B.

The 1998 amendment, effective May 20, 1998, inserted "Except as provided in Subsection B of this section" at the beginning of the second sentence in Subsection A, added Subsection B, and redesignated former Subsection B as C.

Failure to obtain approval of mobile home park development. — Since the developers of a mobile home park did not apply for permission from both the county and the village before commencing construction, they failed to satisfy the requirements for establishing the legality of the property's use. Sandoval County Bd. of Comm'rs v. Ruiz, 119 N.M. 586, 893 P.2d 482 (Ct. App. 1995).

A city has no zoning authority beyond its corporate limits. City of Carlsbad v. Caviness, 66 N.M. 230, 346 P.2d 310 (1959).

Approval required prior to filing. — No map, plat or plan of any territory within five miles of the corporate limits can be filed until it is approved by the city's planning commission. The obvious purpose of such a rule is to provide for the orderly development of suburban property surrounding the city which in the future might be annexed by the city of Albuquerque. 1957-58 Op. Att'y Gen. No. 58-245.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Outside municipal limits, validity, construction and application of statutes, and regulations adopted thereunder, regarding county planning or zoning, or planning or zoning in territory outside municipal limits, 131 A.L.R. 1055.

62 C.J.S. Municipal Corporations § 76.

3-19-6. Subdivision regulations.

A. The planning authority of a municipality shall adopt regulations governing the subdivision of land within the planning and platting jurisdiction of the municipality. The subdivision regulations shall be approved by the governing body before they become effective. The subdivision regulations may provide for:

(1) the harmonious development of the municipality and its environs;

(2) the coordination of streets within the subdivision with existing or planned streets or other features of the master plan or official map of the municipality;

(3) adequate open space for traffic, recreation, drainage, light and air; and

(4) the distribution of population and traffic which tend to create conditions favorable to the health, safety, convenience, prosperity or general welfare of the residents of the municipality.

B. Subdivision regulations may govern:

(1) the width of streets;

(2) the width, depth and arrangement of lots;

(3) land use, including natural drainage;

(4) other matters necessary to carry out the purposes of the Municipal Code; and

(5) the extent and manner in which:

(a) streets are graded and improved; and

(b) water, sewer and other utility facilities are installed as a condition precedent to the approval of a plat.

C. The subdivision regulations or the practice of the planning commission may allow tentative approval of the plat previous to the completion of improvements and the installation of utility facilities but such tentative approval shall not be entered on a plat.

In lieu of the completion of improvements and the installation of utility facilities previous to the final approval of a plat, the subdivision regulations may provide for:

(1) assessment or other methods whereby the municipality makes the improvements and installations at the cost of the owner of property within the subdivision; or

(2) acceptance of a bond, in an amount and with surety and conditions satisfactory to the planning commission, securing to the municipality the actual construction and installation of improvements and utility facilities within a period of time specified by the planning commission and expressed in the bond. A municipality may enforce such a bond by all appropriate and legal remedies; or

(3) in lieu of a bond, the municipality may enter into an agreement with a person seeking approval of a subdivision whereby the person seeking approval shall, within two years following final approval of the plat, complete the improvements and the installation of utility facilities provided for in the person's application for subdivision approval, except that the agreement set forth herein may provide that the person seeking approval shall be permitted by the municipality to sell or otherwise dispose of, or improve any lot within the subdivision, to which improvements and utility facilities have been provided by the person seeking approval at any time within the two-year period; any such agreement shall be recorded with the county clerk at the time of filing said plat.

D. The governing body or planning commission of the municipality shall hold a public hearing on the adoption of a subdivision regulation or an amendment to it. Notice of the time and place of the public hearing shall be published once at least fifteen days prior to the date of the public hearing.

E. If the requirement or restriction does not violate the zoning ordinance, the governing body or planning commission of the municipality may agree with a person seeking approval of a subdivision upon the use, height, area or bulk requirement or restriction governing buildings and premises within the subdivision. The requirement or restriction shall:

(1) accompany the plat before it is approved and recorded;

(2) have the force of law;

(3) be enforced; and

(4) be subject to amendment or repeal as the provisions of the zoning ordinance and map are enforced, amended or repealed.

History: 1953 Comp., § 14-18-6, enacted by Laws 1965, ch. 300; 1975, ch. 309, § 1.

ANNOTATIONS

No vested development rights under impact fee ordinance. — Where the municipal impact fee ordinance exempted developers who possessed development rights that vested prior to the ordinance's date of enactment from paying the impact fee; prior to the date the ordinance was enacted, the municipal planning commission approved a site plan for subdivision of land owned by plaintiff; the approved plan established zoning, tract boundaries, vehicle access, bicycle and trail access, public transit access, internal circulation requirements, building heights, setbacks, and common landscape standards; none of the tracts were platted; and the regulations that were promulgated pursuant to the ordinance defined vested rights as development rights acquired and resulting from building permit approval, final plat approval, preliminary plat approval, or site plan for subdivision or site plan for building permit approval and defined site plan for subdivision as a plat, which covers at least one lot and specifies access and building criteria, under the ordinance, a developer receives development rights at the time it receives approval of a reliable platting pattern, the developer's original site plan for subdivision did not confer the development rights necessary to establish vested rights under the ordinance, because it did not provide a reliable platting pattern, and the developer was not exempt from paying impact fees. Andalucia Dev. Corp., Inc. v. City of Albuquerque, 2010-NMCA-052, 148 N.M. 277, 234 P.3d 929.

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

This section did not give municipality the right to exact from subdivider a $50.00 fee per lot subdivided to be used generally for improvements to the subdivision, where no specific directions were given for the use of money so accumulated. Sanchez v. City of Santa Fe, 82 N.M. 322, 481 P.2d 401 (1971).

A planning authority has standing to enforce reasonable restrictions imposed as a condition of subdivision approval. Vill. of Los Ranchos De Albuquerque v. Shiveley, 110 N.M. 15, 791 P.2d 466 (Ct. App. 1989), cert. denied, 109 N.M. 704, 789 P.2d 1271 (1990).

Restrictions imposed upon the use and control of the common area of a cluster housing development were within the power of the planning authority. Vill. of Los Ranchos De Albuquerque v. Shiveley, 110 N.M. 15, 791 P.2d 466 (Ct. App. 1989), cert. denied, 109 N.M. 704, 789 P.2d 1271 (1990).

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

3-19-7. Platting of street lines by planning commission.

A. A planning commission which has adopted a master plan or a major street plan may:

(1) survey for the exact location of the lines of new, extended, widened or narrowed streets within the municipality or its planning and platting jurisdiction; and

(2) certify to the governing body of the municipality a plat of the area surveyed which indicates the location of lines recommended for future streets, street extension, street widening or narrowing.

B. The certification of a plat by the planning commission does not constitute the opening of a street or the taking or accepting of land for street purposes.

History: 1953 Comp., § 14-18-7, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For Land Subdivision Act, *see* 47-5-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Construction of regulations as to subdivision maps or plats, 11 A.L.R.2d 524.

3-19-8. Appeal.

Any person in interest dissatisfied with an order or determination of the planning commission, after review of the order or determination by the governing body of the municipality, may commence an appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-18-8, enacted by Laws 1965, ch. 300; 1998, ch. 55, § 5; 1999, ch. 265, § 5.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison would be impracticable.

Standard of review. — This section does not contemplate pure *de novo* review by the district court, but provides the court more discretion in deciding issues than is inherent under the arbitrary and capricious standard. The court is not required to indulge every inference in favor of an agency action but, on the contrary, is required to exercise its own judgment in light of the agency decision and the evidence presented to it at trial. At the conclusion, the court has the power to order the approval of a request, rather than merely vacating the agency decision and remanding for further proceedings. Clayton v. Farmington City Council, 120 N.M. 448, 902 P.2d 1051 (Ct. App. 1995)(decided under prior law).

Review of appeal, not mandamus. — Developer who alleged that city council failed to approve his plat within the statutory time limit of 35 days and that, therefore, the plat was approved by operation of law had adequate remedies at law through this section, which he had not exhausted; the administrative procedures of this section, not the extraordinary writ of mandamus, provided developer with his proper avenue to challenge the council's actions. State ex rel. Hyde Park Co. v. Planning Comm'n of the City of Santa Fe, 1998-NMCA-146, 125 N.M. 832, 965 P.2d 951.

Appeal not a collateral attack. — Appeal should not be regarded as impermissible collateral attack on the order of the district court by which lawsuit against the city was dismissed because the order specifically references the settlement between the parties and because the settlement contains the terms of the very development agreement that petitioner seeks to overturn. Lewis v. City of Santa Fe, 2005-NMCA-032, 137 N.M. 152, 108 P.3d 558, cert. denied, 2005-NMCERT-005, 137 N.M. 522, 113 P.3d 345.

3-19-9. Master plan; purposes.

A. The planning commission shall prepare and adopt a master plan for the physical development of the municipality and the area within the planning and platting jurisdiction of the municipality which in the planning commission's judgment bears a relationship to the planning of the municipality. The planning commission may amend, extend or add to the plan or carry any part or subject matter into greater detail. In preparing the master plan, the planning commission shall make careful and comprehensive surveys and studies of existing conditions and probable future growth of the municipality and its environs. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the municipality which will, in accordance with existing and future needs, best promote health, safety, morals, order, convenience, prosperity or the general welfare as well as efficiency and economy in the process of development.

B. Among other things, the master plan with accompanying maps, plats and charts; descriptive and explanatory matter; and recommendations of the planning commission for the physical development of the municipality, and for its planning jurisdiction, may include:

(1) the general location, character and extent of streets, bridges, viaducts and parkways; parks and playgrounds, floodways, waterways and waterfront development, airports and other ways, grounds, places and spaces;

(2) the general location of public schools, public buildings and other public property;

(3) the general location and extent of public utilities and terminals, whether publicly or privately owned;

(4) the general location, character, layout and extent of community centers and neighborhood units and the replanning of blighted districts and slum areas; and

(5) the acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment or change of use of any of the foregoing public ways, grounds, places, spaces, buildings, properties, utilities or terminals.

C. Copies of the master plan shall be available at the office of the municipal clerk and may be purchased at a reasonable price.

History: 1953 Comp., § 14-18-9, enacted by Laws 1965, ch. 300; 1970, ch. 52, § 1.

ANNOTATIONS

Comprehensive planning. — A county zoning ordinance was valid where the county had a comprehensive plan in substance if not form at the time the ordinance was enacted. Bogan v. Sandoval County Planning and Zoning Comm'n, 119 N.M. 334, 890 P.2d 395 (Ct. App.), cert. denied, 119 N.M. 168, 889 P.2d 203 (1994).

A comprehensive plan need not be contained in one document. It may be comprised of several or no documents. It may be found within the ordinance itself where the zoning authority has not enacted a prior comprehensive plan and that absence of a formally adopted comprehensive plan does substantially weaken the presumption of regularity of any zoning ordinance enacted without it. Watson v. Town Council of Town of Bernalillo, 111 N.M. 374, 805 P.2d 641 (Ct. App. 1991).

Advisory nature of master plan. — The New Mexico legislature intended any master plan adopted by a municipality to be advisory in nature. Dugger v. City of Santa Fe, 114 N.M. 47, 834 P.2d 424 (Ct. App.), cert. denied, 113 N.M. 744, 832 P.2d 1223 (1992).

The master plan, being only a resolution, does not bind the city that adopts the plan to any specific procedures as would an ordinance. Dugger v. City of Santa Fe, 114 N.M. 47, 834 P.2d 424 (Ct. App.), cert. denied, 113 N.M. 744, 832 P.2d 1223 (1992).

The legislature has assigned to the master plan the role of guide, enabling municipal planning commissions to use reasonable discretion in applying its provisions to the actual decision-making processes involved in municipal development; the plan does not carry the weight of law, as do ordinances, and has not regulatory effect. West Bluff Neighborhood Ass'n v. City of Albuquerque, 2002-NMCA-075, 132 N.M. 433, 50 P.3d 182, cert. denied, 132 N.M. 484, 51 P.3d 527 (2002), overruled, Rio Grande Chapter of Sierra Club v. N.M. Mining Comm'n, 2003-NMSC-005, 133 N.M. 97, 61 P.3d 806.

A city has no zoning authority beyond its corporate limits. City of Carlsbad v. Caviness, 66 N.M. 230, 346 P.2d 310 (1959).

Law reviews. — For article, "Creating Effective Land Use Regulations Through Concurrency", see 43 Nat. Resouces J. 753 (2003).

For comment, "Land Use Planning - New Mexico's Green Belt Law," see 8 Nat. Resources J. 190 (1968).

For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

3-19-10. Adoption of a master plan.

A. The planning commission may adopt:

(1) the master plan by a single resolution; or

(2) part of the master plan as work progresses on the master plan; provided the part corresponds with one of the functional subdivisions of the subject matter of the plan. Before adoption of the master plan or any part thereof, the planning commission shall hold at least one public hearing. Notice of the time and place of the hearing shall be published one time at least fifteen days before the day of the hearing. Prior to the publication of the notice, copies of the master plan shall be made available to any citizen in the office of the municipal clerk.

B. Adoption of the master plan or any part, amendment or addition to the master plan shall be by a resolution approved by a majority of the members of the planning commission. The resolution shall refer expressly to the maps, descriptive matter and other matters which the planning commission intends to form part or the whole of the master plan. The action taken by the planning commission shall be recorded on the

master plan or the part of the plan and shall be endorsed by the chairman and the secretary of the planning commission. A certified copy of the master plan or any part thereof approved by the planning commission shall be given to the governing body of the municipality.

History: 1953 Comp., § 14-18-10, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

3-19-11. Legal status of master plan.

A. After a master plan or any part thereof has been approved and within the area of the master plan or any part thereof so approved, the approval of the planning commission is necessary to construct, authorize, accept, widen, narrow, remove, extend, relocate, vacate, abandon, acquire or change the use of any:

(1) park, street or other public way, ground, place or space;

(2) public building or structure; or

(3) utility, whether publicly or privately owned.

B. The failure of the planning commission to act within sixty-five days after the submission of a proposal to it constitutes approval of the proposal unless the proponent agrees to an extension of time. If the planning commission disapproves a proposal, it must state its reasons to the governing body. The governing body may overrule the planning commission and approve the proposal by a two-thirds vote of all its members.

C. None of the provisions of Chapter 3, Article 19 NMSA 1978 shall apply to any existing building, structure, plant or other equipment owned or used by any public utility or the right to its continued use or its reasonable repair or alteration for the purpose for which it was used at the time the master plan or any part thereof affecting the property takes effect. After the adoption of the master plan or any part thereof affecting the property, all extensions, betterments or additions to buildings, structures, plants or other equipment of any public utility shall be made in conformity with the master plan or any part thereof affecting the property and upon the approval of the planning commission. After a public hearing, the state corporation commission [public regulation commission] or the New Mexico public utility commission or the regulatory agency having jurisdiction or their successors having jurisdiction, as the case may be, may order that the extensions, betterments or additions to buildings, structures, plants or other equipment are reasonable and that the extensions, betterments or additions may be made even though they conflict with the adopted master plan or any part thereof affecting the property.

D. Any public agency or official, not under the jurisdiction of the governing body of the municipality, authorizing or financing a public way, ground, place, space, building, structure or utility shall submit the proposal to the planning commission. If the planning commission disapproves the proposal, the board of the public agency by a two-thirds vote of all its members or the official may overrule the planning commission and proceed with the proposal subject to the provisions of Subsection C of this section.

History: 1953 Comp., § 14-18-11, enacted by Laws 1965, ch. 300; 1993, ch. 282, § 3.

ANNOTATIONS

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

Cross references. — For references to state corporation commission being construed as references to the public regulation commission, *see* 8-8-21 NMSA 1978.

The 1993 amendment, effective June 18, 1993, in Subsection C, substituted "Chapter 3, Article 19 NMSA 1978" for "Sections 14-18-1 through 14-18-12 New Mexico Statutes Annotated, 1953 Compilation" in the first sentence, and in the last sentence, substituted "the state corporation commission" for "the New Mexico corporation commission" and substituted "New Mexico public utility commission" for "New Mexico public service commission"; and substituted "provisions of Subsection C of this section" for "provisions of the preceding Subsection C" in Subsection D.

A city has no zoning authority beyond its corporate limits. City of Carlsbad v. Caviness, 66 N.M. 230, 346 P.2d 310 (1959).

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

3-19-12. Approval constitutes amendment to master plan.

Every plat approved by the planning authority is an amendment, addition or a detail of the master plan or any part thereof adopted by the planning commission.

History: 1953 Comp., § 14-18-12, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Conditioning approval of master plan upon dedication of easement. — Where a village approved nine subdivisions along a canal conditioned upon dedication of an easement to the village for a potential north-south road, the master plan was effectively amended to include the easement, even though it was not expressly incorporated into the master plan, and therefore, the potential north-south road was a planned street. Colborne v. Vill. of Corrales, 106 N.M. 103, 739 P.2d 972 (1987).

ARTICLE 20
Subdivisions; Planning and Platting

3-20-1. Definitions.

A. "Subdivide" or "subdivision" for the purpose of approval by a municipal planning authority means:

(1) for the area of land within the corporate boundaries of the municipality, the division of land into two or more parts by platting or by metes and bounds description into tracts for the purposes set forth in Subsection B of this section; and

(2) for the area of land within the municipal extraterritorial subdivision and platting jurisdiction, the division of land into two or more parts by platting or by metes and bounds description into tracts of less than five acres in any one calendar year for the purposes set forth in Subsection B of this section.

B. The division of land pursuant to Paragraph (1) or (2) of Subsection A of this section shall be for the purpose of:

(1) sale for building purposes;

(2) laying out a municipality or any part thereof;

(3) adding to a municipality;

(4) laying out suburban lots; or

(5) resubdivision.

C. "Plat" means a map, chart, survey, plan or replat certified by a licensed land surveyor containing a description of the subdivided land with ties to permanent monuments.

History: 1978 Comp., § 3-20-1, enacted by Laws 1979, ch. 331, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1979, ch. 331, § 1, repealed former 3-20-1 NMSA 1978, relating to meaning of "subdivision" and "plat," and enacted the above section.

Cross references. — For annexation of territory, *see* 3-7-1 NMSA 1978 et seq.

For establishment, powers and authority of planning commission, *see* 3-19-1 NMSA 1978 et seq.

For Land Subdivision Act, *see* 47-5-1 NMSA 1978 et seq.

For New Mexico Subdivision Act, *see* 47-6-1 NMSA 1978 et seq.

Rules for construing restrictive covenants. — In construing restrictive covenants, words in a restrictive covenant will be given their ordinary and intended meaning, the language will be construed strictly in favor of the free enjoyment of the property and against restrictions, but not so strictly as to create an illogical, unnatural, or strained construction, and restrictions will not be read into covenants by implication. Sabatini v. Roybal, 2011-NMCA-086, 150 N.M. 478, 261 P.3d 1110.

Meaning of the term "private garage" was ambiguous. — Where restrictive covenants allowed a "private garage" to be built on a subdivision lot and the covenants did not define the term or include an explicit limitation on the size of a garage, the term was ambiguous with respect to size. Sabatini v. Roybal, 2011-NMCA-086, 150 N.M. 478, 261 P.3d 1110.

Meaning of the term "private garage". — The term "private garage" means a structure or area whose essential purpose is the storage of motor vehicles by the owners and not by the general public. Sabatini v. Roybal, 2011-NMCA-086, 150 N.M. 478, 261 P.3d 1110.

Structure was a "private garage". — Where restrictive covenants allowed a "private garage" to be built on a subdivision lot; the covenants did not define the term or include an explicit limitation on the size of a garage; the owner of the lot, who was a car collector, built a 50 x 10 garage to store the owner's car collection; and the garage had three doors capable of admitting two cars side-by-side and a taller, more narrow door allowing entrance into a bay containing a hydraulic lift and a small room for an office, the garage was a "private garage" within the meaning of the covenants. Sabatini v. Roybal, 2011-NMCA-086, 150 N.M. 478, 261 P.3d 1110.

Interpretation of covenants. — The courts are not obligated to apply the rule of strict construction in determining whether the language of a restrictive covenant is ambiguous or in resolving a factual dispute regarding the restrictive covenant. The intent of the parties controls the interpretation of restrictive covenants. Agua Fria Save the Open Space Ass'n v. Rowe, 2011-NMCA-054, 149 N.M. 812, 255 P.3d 390.

Covenants were ambiguous. — Where defendant acquired a seven acre parcel in a subdivision that was subject to restrictive covenants; the covenants provided that the covenants could be extinguished as to any "block or tract" by three-fourths of the owners of the "block or tract" "voting according to front foot holding, each front foot counting as one vote"; the extinguishment provision was ambiguous as applied to defendant's parcel, because although the parcel was a "block or tract", the parcel was

unsubdivided and the extinguishment provision appeared to contemplate a subdivided block or tract, with multiple separate-owner lots voting according to front foot holding, the district court was required to determine the intent of the original developers of the subdivision to determine whether the extinguishment provision applied to defendant's parcel. Agua Fria Save the Open Space Ass'n v. Rowe, 2011-NMCA-054, 149 N.M. 812, 255 P.3d 390.

Reasonableness of subdivision covenant amendments is a question of fact. — Where the original covenants of a subdivision in which plaintiffs owned a remote lot provided that the homeowner's association was responsible for maintaining all roads in the subdivision, including the road that served plaintiffs' lot; the homeowner's association amended the covenants to limit the homeowner's association's maintenance responsibility to specific roads that led to common recreation areas; the amendment excluded the road to plaintiffs' lot, but included roads that led to the majority of lots in the subdivision; and plaintiffs were still required to pay common assessments to fund maintenance costs of roads to the common recreation areas and to privately maintain the road to their lot, the issue of whether the amendment was reasonable was a question of fact and the district court erred in awarding summary judgment for the homeowner's association. Nettles v. Ticonderoga Owner's Ass'n, Inc., 2013-NMSC-030.

Amendment procedures of restrictive covenants were ambiguous. — Where plaintiffs attempted to enforce a subdivision's restrictive covenants that prohibited trees in the subdivision from interfering with homeowners' views; the majority of owners amended the restrictive covenants to eliminate the foliage restriction that plaintiffs sought to enforce; the duration clause of the restrictive covenants required that seventy-five percent of the owners approve revisions of the covenants during the term of the covenants; and the amendment clause required that fifty-one percent of the owners approve amendments, the covenants were ambiguous as to the majority required to amend the covenants so that the validity of the amendment of the foliage restriction could not be determined as a matter of law. Lawton v. Schwartz, 2013-NMCA-086.

Amendment of restrictive covenants. — Where restrictive covenants that were recorded in 1936 provided that the covenants would remain in force until July 1, 1960, and thereafter until such time as the covenants were modified or abrogated by a vote of two-thirds of the owners of lots within the subdivision; the unanimous agreement in 1940 of all the then-owners of the property in the subdivision was effective to amend the 1936 covenants and replaced them with the 1940 covenants. Heltman v. Catanach, 2010-NMCA-016, 148 N.M. 67, 229 P.3d 1239, cert. denied, 2010-NMCERT-001, 147 N.M. 673, 227 P.3d 1055.

Amendment of restrictive covenants. — Where restrictive covenants provided that the covenants would be binding until January 1, 1965, at which time the covenants would be automatically extended for successive periods of ten years unless by a vote of the majority of the then-owners of lots it was agreed to change the covenants, and in May 2005, a majority of the owners of lots in the subdivision recorded an agreement to modify the covenants, the amendments would not go into effect until January 1, 2015.

Heltman v. Catanach, 2010-NMCA-016, 148 N.M. 67, 229 P.3d 1239, cert. denied, 2010-NMCERT-001, 147 N.M. 673, 227 P.3d 1055.

Clear language of restrictive covenants prohibited subdivision of lot. — Where the landowner's lot was .511 acres; the landowner proposed to subdivide the lot into a .215-acre lot and a .294-acre lot, each with a single-family home on it; and the restrictive covenants of the subdivision provided that "no residential structure shall be erected or placed on any building plot, which plot has an area of less than one-half acre", the landowner was prohibited from dividing the landowner's lot into two lots that are less than one-half acre and maintaining a residential structure on each lot. Heltman v. Catanach, 2010-NMCA-016, 148 N.M. 67, 229 P.3d 1239, cert. denied, 2010-NMCERT-001, 147 N.M. 673, 227 P.3d 1055.

Relevant evidence of changed conditions and acquiescence. — Where defendant proposed to subdivide a lot into two lots with a single-family home on each lot; each of the proposed lots was less than one-half acre; the restrictive covenants of the subdivision prohibited defendant from dividing the lot into lots that were less than one-half acre and maintaining a residential structure on each lot; and defendant raised equitable defenses to enforcement of the restrictive covenants, evidence that a significant number of lots in the subdivision contained multifamily residences, that guest houses associated with primary single-family residences were being used as additional single-family residences, and that non-residential structures had been built on residential lots in violation of the covenants was relevant to the question of whether changed conditions and plaintiff's acquiescence in covenant violations prevented enforcement of the restrictive covenants. Heltman v. Catanach, 2010-NMCA-016, 148 N.M. 67, 229 P.3d 1239, cert. denied, 2010-NMCERT-001, 147 N.M. 673, 227 P.3d 1055.

Short term rental did not violate restrictive covenant limiting use to single-family residential purposes. — Where the restrictive covenants of the subdivision provided that lots could be used only for single-family purposes; defendant rented defendant's home to families for a minimum rental term of three nights; defendant did not rent individual rooms or rent to more than eight people; and defendant charged renters a lodger's tax but did not have a business license for defendant's rental activity, an economic benefit accruing to defendant from the rental of defendant's home, whether long-or-short term, did not by itself constitute an impermissible business or commercial activity under the "single-family residential purposes" restrictive covenant. Estates at Desert Ridge Trails v. Vasquez, 2013-NMCA-051, 300 P.3d 736.

Scope of homeowners' association's rule-making authority. — Under a general grant of rule-making authority, a homeowners' association's authority to impose restrictions on individually owned property pursuant to the homeowners' association's rules is limited to protecting common property and individually owned lots from any unreasonable interference by another lot owner's use of that owner's property. Estates at Desert Ridge Trails v. Vasquez, 2013-NMCA-051, 300 P.3d 736.

Homeowners' association exceeded its rule-making authority in adopting rules prohibiting short term rentals. — Where the restrict covenants of a subdivision did not prohibit short-term rental of property in the subdivision; the initial rules for the subdivision contained design principles for the subdivision and granted the homeowners' association authority to adopt further rules to govern the conduct of all persons occupying any part of the subdivision; the homeowners' association promulgated a rule that prohibited owners from renting their homes for less than a thirty day term; and defendant rented defendant's home to families for a minimum rental term of three nights, the homeowners' association had no authority under the general grant of authority to promulgate rules to restrict rental activity in the subdivision and the rule was an unreasonable and invalid restriction on defendant's use of defendant's property. Estates at Desert Ridge Trails v. Vasquez, 2013-NMCA-051, 300 P.3d 736.

Amendment of restrictive covenants was invalid. — Where the duration clause of the declaration of covenants of a subdivision provided that the declaration would run for twenty-five years, after which the declaration would be extended for additional successive periods of ten years unless owners of two-thirds of the lots in the subdivision approved amendments to the declaration and during the initial twenty-five year term of the declaration, more than two-thirds, but not all, of the owners of lots approved an amendment of the declaration that prohibited rentals of property in the subdivision for less than ninety days, the amendment was void because the unanimous approval of the homeowner's association's members was required to amend the declaration during the initial twenty-five-year term. Estates at Desert Ridge Trails v. Vasquez, 2013-NMCA-051, 300 P.3d 736.

Family transfer. — Where a partnership of two families divided eighty acres into four twenty-acre parcels and deeded two twenty-acre parcels to each family; each husband then deeded to his wife one twenty-acre tract; the parties then filed a family transfer application pursuant to the Santa Fe County Land Development Code to allow each landowner to deed his or her spouse one-half of each twenty-acre parcel which, if approved, would have resulted in eight ten-acre lots with each lot separately owned by one of the landowners; the Code provided for minimum lot size family transfers and for small lot family transfers; the minimum lot size family transfer provisions had no intent or purpose requirements; the small lot family transfer provisions provided that the purpose of the small lot family transfer was to maintain local cultural values by perpetuating and protecting a traditional method of land transfer within families and imposed requirements to achieve that purpose; and the County Development Review Board denied the landowners' minimum size lot family transfer application on the ground that the transfer did not meet the intent and purpose of the small lot family transfer provisions of the Code, the Board's decision was unreasonable and unlawful. Kirkpatrick v. Bd. of County Comm'rs of Santa Fe County, 2009-NMCA-110, 147 N.M. 127, 217 P.3d 613.

Elements of proving "subdivision". — Where a municipality seeks to prove that transfers by owners of land within its extraterritorial zoning jurisdiction created a "subdivision", the municipality has the burden of proof and if it does not show that the

transfers were for "building purposes" it fails to carry that burden. Gallegos v. City of Las Vegas, 1998-NMCA-054, 125 N.M. 125, 957 P.2d 1159.

Division of lot held to be "subdivision". — The division of a lot, located within the five-mile extraterritorial subdivision and platting jurisdiction of a city, into four parcels by a purchaser is a "subdivision" under city jurisdiction. 1982 Op. Att'y Gen. No. 82-04.

Standards governing approval of plats. — A city may, in connection with reasonable exercise of the police power, adopt standards governing the approval of subdivision plats. Such standards may include requirements for placement of utilities, for the location of streets, for minimum lot sizes, for securing safety from fire, flood, pollution or other dangers or other requirements necessary to the orderly, safe, healthy development of the city. 1959-60 Op. Att'y Gen. No. 60-70.

Law reviews. — For article, "Rural Development Considerations for Growth Management", see 43 Nat. Resources J. 781 (2003).

For comment, "Regional Planning - Subdivision Control - New Mexico's New Municipal Code," see 6 Nat. Resources J. 135 (1966).

For comment, "Land Use Planning - New Mexico's Green Belt Law," see 8 Nat. Resources J. 190 (1968).

For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For note, "Definitional Loopholes Limit New Mexico Counties' Authority to Regulate Subdivisions," see 24 Nat. Resources J. 1083 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 83 Am. Jur. 2d Zoning and Planning §§ 518 to 561.

Construction of regulations as to subdivision maps or plats, 11 A.L.R.2d 524.

3-20-2. Subdivision; description.

Every person who desires to subdivide land shall furnish a plat of the proposed subdivision, prepared by a registered, licensed surveyor of New Mexico; except that the resubdivision of platted tracts, which are less than one acre and which are contiguous with each other, for the purpose of increasing or reducing the size of such contiguous tracts, but not less than the minimum standard size required by the political subdivision, shall not require the furnishing of a plat of the proposed resubdivision, provided that a certificate of survey setting forth the legal description of tracts resulting from such resubdivision shall be filed with the municipal planning commission, the county clerk and the county assessor of that county in which the resubdivision is situated, and such filing shall be considered as a rededication of said described lots in all respects. The

plat shall refer to permanent monuments and shall accurately describe each lot, number each lot in progression, give its dimensions and the dimensions of all land dedicated for public use or for the use of the owners of lots fronting or adjacent to the land. Descriptions of the lots by number and plat designation are valid in conveyances and for the purpose of taxation.

History: 1953 Comp., § 14-19-2, enacted by Laws 1965, ch. 300; 1969, ch. 141, § 1.

ANNOTATIONS

Cross references. — For record of survey requirements, *see* 61-23-28.2 NMSA 1978.

Resubdivision limited. — This section does not authorize a resubdivision, without municipal approval, that results in an increased number of lots within the subdivision. The section's scope is limited to resubdivisions that only adjust lot lines within the subdivision without increasing the number of lots. 1988 Op. Att'y Gen. No. 88-08.

Law reviews. — For comment, "Regional Planning - Subdivision Control - New Mexico's New Municipal Code," see 6 Nat. Resources J. 135 (1966).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 62 C.J.S. Municipal Corporations § 76.

3-20-3. Contents of plat; acknowledgment.

Every plat shall contain a statement that the subdivision of, [(]insert a correct description of the land being subdivided[)], appearing on the plat is with the free consent and in accordance with the desire of the undersigned owner and proprietor of the land and shall be acknowledged by the owner and proprietor or his authorized agent in the manner required for the acknowledgment of deeds. If the plat is filed by a corporation, the acknowledgment shall be made by its president and secretary.

History: 1953 Comp., § 14-19-3, enacted by Laws 1965, ch. 300.

ANNOTATIONS

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

3-20-4. Streets and alleys.

Streets and alleys in any subdivision adjoining a municipality shall be continuous with and correspond in direction and width to the streets and alleys of the municipality.

History: 1953 Comp., § 14-19-4, enacted by Laws 1965, ch. 300.

3-20-5. County and municipal jurisdiction over subdivision; concurrent jurisdiction; acceptance of unapproved streets; exercise of jurisdiction.

A. For the purpose of approving the subdivision and platting of land:

(1) the jurisdiction of a county includes all territory not within the boundary of a municipality;

(2) except as provided in Paragraph (4) of this subsection, the jurisdiction of a municipality having a population of twenty-five thousand or more persons according to the most recent census includes all territory within five miles of the boundary of the municipality and not within the boundary of another municipality;

(3) the jurisdiction of a municipality having a population of less than twenty-five thousand persons according to the most recent census includes all territory within three miles of the municipal boundary and not within the boundary of another municipality; and

(4) a municipality having a population over two hundred thousand persons according to the most recent census located in a class A county shall share approval authority with the county of subdivisions and platting of land within five miles of the municipal boundary. Approval shall be through the actions of the extraterritorial land use commission and extraterritorial land use authority.

B. Each municipality shall have jurisdiction over the territory within its boundary.

C. If territory not lying within the boundary of a municipality is within the platting jurisdiction of more than one municipality, the platting jurisdiction of each municipality shall terminate equidistant from the boundary of each municipality unless one municipality has a population according to the most recent census of less than two thousand five hundred persons and another municipality has a population according to the most recent census of more than two thousand five hundred persons. Then the platting jurisdiction of the municipality having the greatest population extends to such territory.

D. Except as provided in Paragraph (4) of Subsection A of this section, the county and a municipality shall exercise concurrent jurisdiction over territory within the platting jurisdiction of both the county and the municipality.

E. The governing body of a municipality or the board of county commissioners may not locate, construct or accept any street dedication until the street dedication is first submitted to the planning authority for approval or disapproval. If disapproved by the planning authority, the street dedication may be approved by a two-thirds vote of all the members of the governing body of the municipality having jurisdiction or of the board of county commissioners having jurisdiction. A street dedication accepted by the planning

authority or by a two-thirds vote of all the members of the governing body of the municipality having jurisdiction or of the board of county commissioners having jurisdiction shall have the same status as any other public street.

History: 1953 Comp., § 14-19-5, enacted by Laws 1965, ch. 300; 1966, ch. 64, § 3; 1998, ch. 42, § 4.

ANNOTATIONS

Cross references. — For Regional Planning Act, *see* 3-56-1 to 3-56-9 NMSA 1978.

The 1998 amendment, effective May 20, 1998, in Paragraph A(2), inserted "except as provided in Paragraph (4) of this subsection" at the beginning and made a minor stylistic change; made a minor stylistic change in Paragraph A(3); added Paragraph A(4); redesignated the second sentence of Paragraph A(3) as Subsection B and redesignated the remaining Subsections accordingly; and, inserted "Except as provided in Paragraph (4) of Subsection A of this section" in Subsection D.

Failure to obtain approval of mobile home park development. — Since the developers of a mobile home park did not apply for permission from both the county and the village before commencing construction, they failed to satisfy the requirements for establishing the legality of the property's use. Sandoval County Bd. of Comm'rs v. Ruiz, 119 N.M. 586, 893 P.2d 482 (Ct. App. 1995).

Concurrent jurisdiction regarding city of Albuquerque. — The county commission as well as municipal authorities must approve maps and plats of land to be subdivided which lie partially in and partially outside the corporate limits of the city of Albuquerque. 1957-58 Op. Att'y Gen. No. 58-245.

Division of lot held "subdivision" under city jurisdiction. — The division of a lot, located within the five-mile extraterritorial subdivision and platting jurisdiction of a city, into four parcels by a purchaser is a "subdivision" under city jurisdiction. 1982 Op. Att'y Gen. No. 82-04.

Law reviews. — For comment, "Regional Planning - Subdivision Control - New Mexico's New Municipal Code," see 6 Nat. Resources J. 135 (1966).

For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

3-20-6. Subdivision in unincorporated area; approval of county commission.

Before a plat of any subdivision within the jurisdiction of a county is filed in the office of the county clerk, the plat shall be approved by the board of county commissioners of the county wherein the proposed subdivision lies. The board of county commissioners shall not approve and sign a plat unless the:

A. proposed streets conform to adjoining streets;

B. streets are defined by permanent monuments to the satisfaction of the board of county commissioners; and

C. boundary of the subdivision is defined by permanent monuments.

History: 1953 Comp., § 14-19-6, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Duty to approve plat meeting requirements exists by implication. — While the statutes did not expressly impose a duty to approve a plat for a rural subdivision when the requirements of this section were met, the duty existed by necessary implication, since no other requirements were laid down as a prerequisite for approval. El Dorado at Santa Fe, Inc. v. Board of County Comm'rs, 89 N.M. 313, 551 P.2d 1360 (1976).

Effect of continued compliance with requirements. — As long as a subdivision originally approved continues to comply with all of the statutory requirements, the approval of the subdivision cannot be revoked or suspended, or additional requirements imposed by the county for maintaining such approval. 1977 Op. Att'y Gen. No. 77-24.

Vested rights in proposed subdivision. — Where there is issuance of written approval for a proposed subdivision or building permit, together with a substantial change in reliance thereon, vested rights arise. In re Sundance Mountain Ranches, Inc., 107 N.M. 192, 754 P.2d 1211 (Ct. App. 1988).

"Permanent monument" means substantial objects which can be seen by the eye and made the basis for a survey. 1969 Op. Att'y Gen. No. 69-29.

Natural objects which have been termed as monuments include streams, rivers, ponds, lakes, shores, beaches, rocks, highways, streets, trees and hills. 1969 Op. Att'y Gen. No. 69-29.

Survey reference marks not preferred over natural objects. — Although survey reference marks may be sufficient permanent monuments, they are not to be preferred over natural objects, which are deemed to be more permanent and more readily ascertained. 1969 Op. Att'y Gen. No. 69-29.

Law reviews. — For comment, "Regional Planning - Subdivision Control - New Mexico's New Municipal Code," see 6 Nat. Resources J. 135 (1966).

For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For note, "Subdivision Planning Through Water Regulation in New Mexico," see 12 Nat. Resources J. 286 (1972).

3-20-7. Subdivision within the platting jurisdiction of a municipality; approval of the planning authority; procedure; filing fee; notice of hearing.

A. Before a plat of any subdivision within the jurisdiction of a municipality is filed in the office of the county clerk, the plat shall be submitted to the planning authority of the municipality having jurisdiction for approval.

B. The rules and regulations of the planning authority shall state:

(1) the scale and manner in which the plat is to be prepared;

(2) the number of copies of the plat which shall accompany the original plat;

(3) what other information shall accompany the plat; and

(4) the standards and regulations for subdivisions to which the planning authority may require the subdivider to conform.

C. The person submitting the plat shall pay the necessary filing fee to the municipality, and the planning authority, after approval and endorsement, shall file the plat with the county clerk. If the plat is not approved, the planning authority shall return the filing fee and the plat to the person submitting the plat.

D. A plat submitted for approval by the planning authority shall contain the name and address of the person to whom a notice of hearing shall be sent. Notice of the time and place of a hearing on a plat shall be sent by mail to the address on the plat not less than five days before the day of the hearing. No plat shall be acted upon without a public hearing unless the requirement that a public hearing be held is waived by the person seeking approval of the plat.

E. The planning authority of a municipality shall approve or disapprove a plat within thirty-five days of the day of final submission of the plat. If the planning authority does not act within thirty-five days, the plat is deemed to be approved, and upon demand, the planning authority shall issue a certificate approving the plat. The person seeking approval of the plat may waive this requirement and agree to an extension of this time period. The reason for disapproval of a plat shall be entered upon the recordings of the planning authority.

F. No plat of territory within the planning and platting jurisdiction of a municipality shall be filed and recorded unless it has been approved by the planning commission or the governing body of the municipality pursuant to regulations and procedures adopted by ordinance of the governing body.

History: 1953 Comp., § 14-19-7, enacted by Laws 1965, ch. 300; 1999, ch. 137, § 1.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, in Subsection F, deleted the Paragraph (1) and (2) designations, deleted "and endorsed by the chairman and secretary of the planning commission" following "planning commission", and substituted "of the municipality pursuant to regulations and procedures adopted by ordinance of the governing body" for "and endorsed by the mayor and clerk of the municipality if the governing body has reserved this power in creating the planning commission or if there is no planning commission".

Section does not create equal protection right. — Any equal protection right to approval of a plat under Subsection E was not well enough established to maintain the defendants had knowledge of it; the defendants had qualified immunity on the claim of equal protection violation. Norton v. Vill. of Corrales, 103 F.3d 928 (10th Cir. 1996).

No violation of substantive due process rights. — The plaintiffs failed to state a claim for violation of substantive due process rights under Subsection E of this section; the defendants had a reasonable basis for delaying further subdivision application and approval of pending plats based on the plaintiff's failure to procure a business registration and on the fact that plaintiff corporation was not in good standing with the State Corporation Commission (now public regulation commission). Norton v. Vill. of Corrales, 103 F.3d 928 (10th Cir. 1996).

Review by appeal, not mandamus. — Developer who alleged that city council failed to approve his plat within the statutory time limit of 35 days and that, therefore, the plat was approved by operation of law had adequate remedies at law through 3-19-8 NMSA 1978, which he had not exhausted; the administrative procedures of that section, not the extraordinary writ of mandamus, provided developer with his proper avenue to challenge the council's actions. State ex rel. Hyde Park Co. v. Planning Comm'n of the City of Santa Fe, 1998-NMCA-146, 125 N.M. 832, 965 P.2d 951.

Law reviews. — For comment, "Regional Planning - Subdivision Control - New Mexico's New Municipal Code," see 6 Nat. Resources J. 135 (1966).

For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

3-20-8. Alternate summary procedure.

A. The filing of a survey certified by any licensed, registered surveyor which contains a description of the subdivided land with ties to permanent monuments satisfies the requirements of Section 3-20-7 NMSA 1978.

B. In lieu of the requirements of Section 3-20-7 NMSA 1978, the following procedure may be followed:

(1) the planning authority shall establish a summary procedure for approving:

(a) subdivisions of not more than two parcels of land;

(b) resubdivisions, where the combination or recombination of portions of previously platted lots does not increase the total number of lots; or

(c) subdivisions of two or more parcels of land in areas zoned for industrial use;

(2) any subdivision approved as authorized in this section shall be in substantial conformity with the subdivision regulations of the planning authority;

(3) any administrative officer or planning commission member may be delegated the authority to approve a subdivision by this section;

(4) approval by this summary procedure shall be endorsed on the plat or on the instrument of conveyance in lieu of a plat and such approval shall be conclusive evidence of the approval of the planning authority. The county clerk shall accept the instrument of conveyance for filing or recording.

History: 1953 Comp., § 14-19-7.1, enacted by Laws 1966, ch. 64, § 6; 1973, ch. 348, § 32.

ANNOTATIONS

Planning authority, referred to in Subsection B, is city council. Mitchell v. Hedden, 94 N.M. 348, 610 P.2d 752 (1980).

3-20-9. Subdivision within platting jurisdiction of a county and municipality; dual approval.

Any person seeking the approval of a plat of a subdivision within the platting jurisdiction of both a county and municipality shall secure an endorsement of approval from both the board of county commissioners and the planning authority of the municipality before the plat is filed in the office of the county clerk.

History: 1953 Comp., § 14-19-8, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For Regional Planning Act, *see* 3-56-1 to 3-56-9 NMSA 1978.

Law reviews. — For comment, "Regional Planning - Subdivision Control - New Mexico's New Municipal Code," see 6 Nat. Resources J. 135 (1966).

For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

3-20-9.1. Plat approval; proof of adequate water supply on lands from which irrigation water rights have been severed.

A. Before approving the final plat for a subdivision of land from which irrigation water rights appurtenant to the land have been severed, the appropriate approval authority shall require that the subdivider provide proof of a service commitment from a water provider and an opinion from the state engineer that the subdivider can fulfill the requirements of Paragraph (1) of Subsection F of Section 47-6-11 NMSA 1978 or acquire sufficient water rights through a permit issued pursuant to Section 72-5-1, 72-5-23, 72-5-24, 72-12-3 or 72-12-7 NMSA 1978 for subdivision water use. In acting on the permit application, the state engineer shall determine whether the amount of water permitted is sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses. A final plat shall not be approved unless the state engineer has so issued a permit for the subdivision water use or the subdivider has provided proof of a service commitment from a water provider and the state engineer has provided an opinion that the subdivider can fulfill the requirements of Paragraph (1) of Subsection F of Section 47-6-11 NMSA 1978. The appropriate approval authority shall not approve the final plat based on the use of water from any permit issued pursuant to Section 72-12-1.1 NMSA 1978.

B. The provisions of this section shall only apply to land from which irrigation water rights that are appurtenant to that land are severed after the effective date of this section.

History: Laws 2013, ch. 173, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2013, ch. 173, § 3, contained an emergency clause and was approved April 4, 2013.

3-20-10. Filing in office of county clerk; duties of county clerk.

When a plat is submitted for filing in the office of the county clerk, the county clerk shall determine if the proposed subdivision is subject to the provisions of Sections 3-20-1 through 3-20-15 NMSA 1978 and if the required endorsements are on the plat. A

county clerk shall not accept for filing any plat which is subject to the provisions of the Municipal Code and which has not been approved by the planning authority of the municipality within whose jurisdiction the proposed subdivision lies. The plat shall contain an affidavit stating that the proposed subdivision does or does not lie within the planning or platting jurisdiction of any municipality.

History: 1953 Comp., § 14-19-9, enacted by Laws 1965, ch. 300; 1973, ch. 348, § 33.

ANNOTATIONS

Law reviews. — For comment, "Regional Planning - Subdivision Control - New Mexico's New Municipal Code," see 6 Nat. Resources J. 135 (1966).

3-20-11. Dedication for public use.

The endorsement and filing of a plat is a dedication of the land designated on the plat for public use. Such land is public property. Fee vests in the municipality if the dedicated land lies within the boundaries of a municipality.

History: 1953 Comp., § 14-19-10, enacted by Laws 1965, ch. 300; 1973, ch. 348, § 34.

ANNOTATIONS

Designation of a subdivided parcel for public use. — Section 3-20-11 NMSA 1978 only operates to vest fee title to a specific property in a municipality where a plat expressly dedicates the property "for public use". City of Rio Rancho v. Amrep Sw., Inc., 2011-NMSC-037, 260 P.3d 414, aff'g in part and rev'g in part 2010-NMCA-075, 148 N.M. 542, 238 P.3d 911.

Failure to designate a subdivided parcel for public use. — Where a final subdivision plat labeled a ten-acre parcel as a drainage easement, dedicated all public thoroughfares shown on the plat to the municipality and granted the easements shown on the plat, and the plat did not designate the parcel labeled as a drainage easement for "public use", the municipality did not acquire the parcel in fee title by operation of Section 3-20-11 NMSA 1978. City of Rio Rancho v. Amrep Sw., Inc., 2011-NMSC-037, 260 P.3d 414, aff'g in part and rev'g in part 2010-NMCA-075, 148 N.M. 542, 238 P.3d 911.

Elements of dedication. — There must be both an offer of dedication by the owner and an acceptance by the city to constitute a complete dedication. An owner of property cannot, simply by making a plat, impose the burden of dedication upon a municipality. The offer of dedication cannot bind the city until it has been accepted. The city's liability by acceptance arises only when it has done some act which unequivocally shows an intent to assume jurisdiction over the property dedicated. Watson v. City of Albuquerque, 76 N.M. 566, 417 P.2d 54 (1966).

Acceptance required. — Though dedication of land by the owner to public use might bind the dedicator, the county was not bound until there had been an acceptance by the board of county commissioners. State ex rel. Shelton v. Bd. of Comm'rs, 49 N.M. 218, 161 P.2d 212 (1945).

Completion of dedication. — Mere filing of a plat of a subdivision in the office of the county clerk did not operate as a complete dedication of the streets shown thereon, acceptance of the offer of the dedication also being required. City of Carlsbad v. Neal, 56 N.M. 465, 245 P.2d 384 (1952).

Burden of proof to prove acceptance. — The burden to prove acceptance by the city is met by proof which must be "clear, satisfactory and unequivocal." Watson v. City of Albuquerque, 76 N.M. 566, 417 P.2d 54 (1966).

Acts by city insufficient to establish acceptance. — The fact that a city has, on an irregular basis, plowed or repaired a street does not, by itself, establish an acceptance by the city. Nor does the use of the right-of-way by the city for collection of garbage or installation of a street sign, or the giving of permission to a utility company to erect poles in the right-of-way under a general franchise or the omission by the city to assess the right-of-way for taxes, by themselves, establish an acceptance by the city. Watson v. City of Albuquerque, 76 N.M. 566, 417 P.2d 54 (1966).

Effect of conditional language in dedication. — After dedication and acceptance, the land becomes the property of the municipality in fee simple, unless the dedication contains conditional language or a reservation in the grantor of a present or future interest. In other words, there is an absolute gift from the donors to the city unless there is conditional language in the dedication. Wheeler v. Monroe, 86 N.M. 296, 523 P.2d 540, appeal dismissed, 419 U.S. 1014, 95 S. Ct. 487, 42 L. Ed. 2d 288 (1974).

Modification by dedicator. — A dedication once effectively made by the owner bound him and neither he nor his successors in title could thereafter impair it by filing an amended plat. State ex rel. Shelton v. Bd. of Comm'rs, 49 N.M. 218, 161 P.2d 212 (1945).

Parking area not dedicated. — When a recorded plat designated a particular area as a "parking area," but failed to dedicate this area to the public use as per statute, there was no dedication of the parking area. State ex rel. State Hwy. Comm'n v. Briggs, 73 N.M. 170, 386 P.2d 258 (1963).

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 C.J.S. Dedication § 22.

3-20-12. Vacation or partial vacation of plat; approval of government having jurisdiction; duties of county clerk.

A. Any plat filed in the office of the county clerk may be vacated or a portion of the plat may be vacated provided:

(1) the owners of the land in the territory proposed to be vacated sign a statement, duly acknowledged, declaring the plat or a portion of the plat to be vacated; and

(2) the statement is endorsed "Approved" by the planning authority of the municipality within whose platting jurisdiction the subdivision lies.

B. In approving the vacation or partial vacation of a plat, the planning authority of the municipality shall consider if the vacation or partial vacation of a plat will adversely affect the interests or rights of persons in contiguous territory or within the subdivision being vacated. In approving the vacation or partial vacation of a plat, the planning authority of the municipality may require that streets dedicated to the municipality in the original plat shall continue to be dedicated to the municipality. The owners of lots on the vacated plat or on the portion of the plat being vacated may enclose in equal proportions the adjoining streets and alleys which are authorized to be abandoned by the planning authority of the municipality.

C. The statement declaring the vacation or partial vacation of a plat and having the proper endorsements shall be filed in the office of the county clerk wherein the original plat is filed. The county clerk shall mark the applicable words "Vacated" or "Partially Vacated" across the plat and shall refer on the plat to the volume and page on which the statement of vacation or partial vacation is recorded.

History: 1953 Comp., § 14-19-11, enacted by Laws 1965, ch. 300; 1973, ch. 348, § 35.

ANNOTATIONS

"Planning authority" synonymous with planning commission. — Where a city has created a planning commission pursuant to 3-19-1 NMSA 1978 and delegated to it the powers necessary to carry out the laws relating to planning and platting, the planning commission and not the city itself is the "planning authority" referred to in Subsection B and that commission must approve any statement declaring certain property to be vacated before the requirements of this section are met. Sprague v. City of Las Vegas, 101 N.M. 185, 679 P.2d 1283 (1984).

Modification by dedicator. — A dedication once effectively made by the owner bound him and neither he nor his successors in title could thereafter impair it by filing an amended plat. Statute prescribed the only manner in which a dedication might be vacated. State ex rel. Shelton v. Bd. of Comm'rs, 49 N.M. 218, 161 P.2d 212 (1945).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity and construction of regulations as to subdivision maps or plats, 11 A.L.R.2d 524.

62 C.J.S. Municipal Corporations § 77.

3-20-13. Vacation; rights of utility.

The rights of any utility already existing shall not be affected by any vacation or partial vacation of a plat.

History: 1953 Comp., § 14-19-12, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Law reviews. — For note, "Public Labor Disputes - A Suggested Approach for New Mexico," see 1 N.M.L. Rev. 281 (1971).

3-20-14. Penalties for transferring lots in unapproved subdivisions.

Any owner, or agent of the owner, of any land located within the platting jurisdiction of the planning commission of any municipality who transfers, sells, agrees to sell, or negotiates to sell the land by reference to or exhibition of or by other use of a plat or subdivision of the land before the plat has been approved as provided in the Municipal Code and recorded in the office of the appropriate county recorder, shall be guilty of a misdemeanor. Upon conviction, the owner or his agent shall pay a penalty of one hundred dollars ($100) for each lot transferred or sold, or agreed or negotiated to be sold. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. Any municipality, through its attorney or other official designated by its governing body may enjoin the transfer or sale or agreement by action for injunction or may recover the penalty by civil action.

History: 1953 Comp., § 14-19-13, enacted by Laws 1966, ch. 64, § 4; 1973, ch. 348, § 36.

ANNOTATIONS

Repeals. — Laws 1966, ch. 64, § 4, repealed former 14-19-13, 1953 Comp., relating to voiding of plat and voiding sale of land without approval of plat, and enacted a new 14-19-13, 1953 Comp.

Law reviews. — For comment, "Regional Planning - Subdivision Control - New Mexico's New Municipal Code," see 6 Nat. Resources J. 135 (1966).

For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For note, "Public Labor Disputes - A Suggested Approach for New Mexico," see 1 N.M.L. Rev. 281 (1971).

3-20-15. Approval necessary for utility protection.

Until a plat has been approved by the planning authority, any official of a municipality or public utility company who shall serve or connect the land within the subdivision and within the planning and platting jurisdiction of a municipality with any public utility such as water, sewer, electric or gas is guilty of a misdemeanor. A municipality may require any utility connected in violation of this section to be disconnected.

History: 1953 Comp., § 14-19-14, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Law reviews. — For comment, "Regional Planning - Subdivision Control - New Mexico's New Municipal Code," see 6 Nat. Resources J. 135 (1966).

For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

3-20-16. Validation of deeds.

All instruments conveying real property which were voided solely under the provisions of Laws 1965, Chapter 300, Section 14-19-13 [3-20-14 NMSA 1978], are validated. After the effective date of this section, no court of this state has jurisdiction to entertain any question based upon the provisions of Laws 1965, Chapter 300, Section 14-19-13.

History: 1953 Comp., § 14-19-14.1, enacted by Laws 1966, ch. 64, § 8.

ANNOTATIONS

Law reviews. — For comment, "Land Use Planning - New Mexico's Green Belt Law," see 8 Nat. Resources J. 190 (1968).

ARTICLE 21
Zoning Regulations

3-21-1. Zoning; authority of county or municipality.

A. For the purpose of promoting health, safety, morals or the general welfare, a county or municipality is a zoning authority and may regulate and restrict within its jurisdiction the:

(1) height, number of stories and size of buildings and other structures;

(2) percentage of a lot that may be occupied;

(3) size of yards, courts and other open space;

(4) density of population; and

(5) location and use of buildings, structures and land for trade, industry, residence or other purposes.

B. The county or municipal zoning authority may:

(1) divide the territory under its jurisdiction into districts of such number, shape, area and form as is necessary to carry out the purposes of Sections 3-21-1 through 3-21-14 NMSA 1978; and

(2) regulate or restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land in each district. All such regulations shall be uniform for each class or kind of buildings within each district, but regulation in one district may differ from regulation in another district.

C. All state-licensed or state-operated community residences for the mentally ill or developmentally disabled serving ten or fewer persons may be considered a residential use of property for purposes of zoning and may be permitted use in all districts in which residential uses are permitted generally, including particularly residential zones for single-family dwellings.

D. A board of county commissioners of the county in which the greatest portion of the territory of the petitioning village, community, neighborhood or district lies may declare by ordinance that a village, community, neighborhood or district is a "traditional historic community" upon petition by twenty-five percent or more of the registered qualified electors of the territory within the village, community, neighborhood or district requesting the designation. The number of registered qualified electors shall be based on county records as of the date of the last general election.

E. Any village, community, neighborhood or district that is declared a traditional historic community shall be excluded from the extraterritorial zone and extraterritorial zoning authority of any municipality whose extraterritorial zoning authority extends to include all or a portion of the traditional historic community and shall be subject to the zoning jurisdiction of the county in which the greatest portion of the traditional historic community lies.

F. Zoning authorities, including zoning authorities of home rule municipalities, shall accommodate multigenerational housing by creating a mechanism to allow up to two kitchens within a single-family zoning district, such as conditional use permits.

G. For the purpose of this section, "multigenerational" means any number of persons related by blood, common ancestry, marriage, guardianship or adoption.

History: 1953 Comp., § 14-20-1, enacted by Laws 1965, ch. 300; 1977, ch. 279, § 20; 1995, ch. 170, § 4; 1995, ch. 211, § 3; 2007, ch. 46, § 3; 2007, ch. 270, § 1.

ANNOTATIONS

Cross references. — For building construction and restrictions, *see* 3-18-6 NMSA 1978.

For Special Zoning District Act, *see* 3-21-15 NMSA 1978 et seq.

For Historic District Act, *see* 3-22-1 NMSA 1978 et seq.

For Municipal Airport Zoning Law, *see* 3-39-16 NMSA 1978 et seq.

For powers and duties of joint airport zoning board, *see* 64-2-1, 64-2-2 NMSA 1978.

For Scenic Highway Zoning Act, *see* 67-13-1 NMSA 1978 et seq.

The 2007 amendment, effective June 15, 2007, added Subsections F and G, which provided for multigenerational housing.

This section was also amended by Laws 2007, ch. 46, § 3. The section was set out as amended by Laws 2007, ch. 270, § 1. *See* 12-1-8 NMSA 1978. Laws 2007, ch. 46, § 3, effective June 15, 2007, provided:

"3-21-1. Zoning; authority of county or municipality.

A. For the purpose of promoting health, safety, morals or the general welfare, a county or municipality is a zoning authority and may regulate and restrict within its jurisdiction the:

(1) height, number of stories and size of buildings and other structures;

(2) percentage of a lot that may be occupied;

(3) size of yards, courts and other open space;

(4) density of population; and

(5) location and use of buildings, structures and land for trade, industry, residence or other purposes.

B. The county or municipal zoning authority may:

(1) divide the territory under its jurisdiction into districts of such number, shape, area and form as is necessary to carry out the purposes of Sections 3-21-1 through 3-21-14 NMSA 1978; and

(2) regulate or restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land in each district. All such regulations shall be uniform for each class or kind of buildings within each district, but regulation in one district may differ from regulation in another district.

C. All state-licensed or state-operated community residences for persons with a mental or developmental disability and serving ten or fewer persons may be considered a residential use of property for purposes of zoning and may be permitted use in all districts in which residential uses are permitted generally, including particularly residential zones for single-family dwellings.

D. A board of county commissioners of the county in which the greatest amount of the territory of the petitioning village, community, neighborhood or district lies may declare by ordinance that a village, community, neighborhood or district is a "traditional historic community" upon petition by twenty-five percent or more of the registered qualified electors of the territory within the village, community, neighborhood or district requesting the designation. The number of registered qualified electors shall be based on county records as of the date of the last general election.

E. Any village, community, neighborhood or district that is declared a traditional historic community shall be excluded from the extraterritorial zone and extraterritorial zoning authority of any municipality whose extraterritorial zoning authority extends to include all or a portion of the traditional historic community and shall be subject to the zoning jurisdiction of the county in which the greatest portion of the traditional historic community lies."

1995 amendments. — Laws 1995, ch. 170, § 4, effective April 5, 1995, making minor stylistic changes in Paragraphs (1) and (2) of Subsection B, and adding Subsections D and E relating to the same subject matter as the subsections added by the later act, was approved April 5, 1995. However, Laws 1995, ch. 211, § 3, effective April 6, 1995, also amending this section by substituting "Sections 3-21-1 through 3-21-14 NMSA 1978" for "Sections 14-20-1 through 14-20-12 NMSA 1953" in Paragraph (b)(1), adding Subsections D and E, and making minor stylistic changes, was approved April 6, 1995. The section is set out as amended by Laws 1995, ch. 211, § 3. *See* 12-1-8 NMSA 1978.

I. GENERAL CONSIDERATION.

Occasional showing of adult film did not violate zoning ordinance applicable to adult amusement establishments. — Where a municipal zoning ordinance defined an adult amusement establishment as a theater that provided motion pictures characterized by an emphasis on specified anatomical areas or sexual activities; the ordinance did not specify how many pornographic films a theater must show to qualify

as an adult amusement establishment; defendant was an art-house theater that usually featured non-pornographic independent films and only occasionally showed adult films; on one weekend defendant hosted an erotic film festival called "Pornotopia" that featured a film characterized by an emphasis on specified anatomical areas or sexual activities; and defendant was not an adult theater either in function or appearance, defendant was not an adult amusement establishment as defined in the zoning ordinance. State v. Pangaea Cinema. L.L.C., 2013-NMSC-044, rev'g 2012-NMCA-075, 284 P.3d 1090.

A movie theater was an adult amusement establishment for showing one adult movie. — Where defendant, who operated an art-house movie theater, was prosecuted under the municipality's zoning ordinance covering adult amusement establishments for showing one pornographic film during a weekend festival of X-rated fare; and the ordinance defined an adult amusement establishment as an establishment, such as a theater, that provides entertainment featuring films of specified anatomical areas or the conduct of specified sexual activities, defendant was an adult amusement establishment as defined in the ordinance and was subject to the terms of the ordinance when defendant showed only one adult movie. City of Albuquerque v. Pangaea Cinema, LLC, 2012-NMCA-075, 284 P.3d 1090, cert. granted, 2012-NMCERT-007.

Zoning ordinance regulating adult amusement establishments was not unconstitutionally vague. — Where defendant, who operated an art-house movie theater, was prosecuted under the municipality's zoning ordinance covering adult amusement establishments for showing one pornographic film during a weekend festival of X-rated fare; the ordinance defined an adult amusement establishment as an establishment, such as a theater, that provides entertainment featuring films of specified anatomical areas or the conduct of specified sexual activities; a reasonable theater owner would have been on notice that the film screened by defendant was an adult film as defined by the ordinance and would have been on notice that its conduct was prohibited the ordinance; and there was no evidence that the municipality selectively enforced by the ordinance or singled out defendant or that the municipality improperly trained its officers in identifying adult films and citing violators; and the ordinance was not susceptible to arbitrary or discriminatory enforcement because it did not have a threshold standard for movie theaters exhibiting adult movies, the ordinance was not unconstitutionally vague as applied. City of Albuquerque v. Pangaea Cinema, LLC, 2012-NMCA-075, 284 P.3d 1090, cert. granted, 2012-NMCERT-007.

Zoning ordinance regulating adult amusement establishments did not abridge freedom of speech. — Where defendant, who operated an art-house movie theater, was prosecuted under the municipality's zoning ordinance covering adult amusement establishments for showing one pornographic film during a weekend festival of X-rated fare; the ordinance allowed adult films to be shown only in specified zones and prohibited the public screening of such films in other areas, including the area where the theater was located; about five percent of the municipality's area was zoned to allow the exhibition of adult films; the municipality enacted the ordinance not to regulate the content of films, but to combat the negative secondary effects produced by showing

adult films; and defendant could show adult movies in areas of the municipality that were zoned for the exhibition of adult films, the ordinance was a constitutionally valid regulation of the time, place, and manner of the exhibition of adult films as applied to defendant and did not abridge defendant's freedom of speech. City of Albuquerque v. Pangaea Cinema, LLC, 2012-NMCA-075, 284 P.3d 1090, cert. granted, 2012-NMCERT-007.

"Mining" defined. — Where a county zoning ordinance prohibited mining of any type, but did not define "mining", and where a landowner mined sand and gravel from federal BLM land, the stockpiling of the mined sand and gravel on the landowner's adjacent land did not constitute "mining" as it is commonly defined. San Pedro Neighborhood Ass'n. v. Bd. of County Comm'rs of Santa Fe County, 2009-NMCA-045, 146 N.M. 106, 206 P.3d 1011.

"Commercial use" defined. — Where a county zoning ordinance prohibited commercial uses, but did not define "commercial use", and where a landowner mined sand and gravel from federal BLM land, the stockpiling of the mined sand and gravel on the landowner's adjacent land pending removal for sale constituted a "commercial" use under its ordinary meaning. San Pedro Neighborhood Ass'n. v. Bd. of County Comm'rs of Santa Fe County, 2009-NMCA-045, 146 N.M. 106, 206 P.3d 1011.

Commercial impracticability. — Where a county zoning ordinance prohibited the stockpiling of the mined sand and gravel on a landowner's land which the landowner mined from adjacent BLM land under a lease from the BLM and where the evidence showed that the landowner experienced difficulty in limiting the mining and stockpiling of sand and gravel to the BLM land, the evidence was not sufficient to show that the application of the zoning ordinance to the landowner's land conflicted with federal law by rendering the mining operation on federal land commercially impracticable. San Pedro Neighborhood Ass'n. v. Bd. of County Comm'rs of Santa Fe County, 2009-NMCA-045, 146 N.M. 106, 206 P.3d 1011.

Preexisting lawful uses. — The grandfather clause of a zoning ordinance which provided that wireless telecommunications facilities that existed on or before the effective date of the new ordinance "shall be allowed to continue as they presently exist, as legally permitted non-conforming uses" applied only to existing communications towers that were lawful under preexisting ordinances and did not immunize unlawful facilities. City of Rio Rancho v. Logan, 2008-NMCA-011, 143 N.M. 281, 175 P.3d 949.

Legislative action. — If a zoning decision has general application and was drawn to apply in the same way concurrently and in the future to all similarly situated properties, it is legislative. The fact that the vacant property remaining to be developed in a district belongs to a limited number of parties does not mean that the zoning action is necessarily quasi-judicial in nature. The fact that a particular party's proposed development or a particular parcel is in the mind of the zoning authority when it takes action does not change the nature of the zoning authority's decision from legislative to

quasi-judicial. Albuquerque Commons P'ship v. Albuquerque City Council, 2006-NMCA-143, 140 N.M. 751, 149 P.3d 67, rev'd, 2008-NMSC-025, 144 N.M. 99, 184 P.3d 411.

The uniformity requirement does not prohibit different classifications within a district so long as they are reasonable and based on the public policy to be served. Albuquerque Commons P'ship v. Albuquerque City Council, 2006-NMCA-143, 140 N.M. 751, 149 P.3d 67, rev'd, 2008-NMSC-025, 144 N.M. 99, 184 P.3d 411.

When a zoning resolution is in substance an ordinance or a permanent regulation, the name given to the resolution is immaterial, and if it is passed with all the formality of an ordinance, the resolution thereby becomes a legislative act. Albuquerque Commons P'ship v. Albuquerque City Council, 2006-NMCA-143, 140 N.M. 751, 149 P.3d 67, rev'd, 2008-NMSC-025, 144 N.M. 99, 184 P.3d 411.

Comprehensive scheme to regulate land. — The Zoning Act affords counties a comprehensive scheme to regulate land use as a way to protect public health, safety and welfare. Cerrillos Gravel Products, Inc. v. Santa Fe Bd. of County Comm'rs, 2005-NMSC-023, 138 N.M. 126, 117 P.3d 932.

Definition of zoning. — Zoning is defined as governmental regulation of the uses of land and buildings according to districts or zones. When used to promote the public interest, it is justified and has been upheld as a legitimate exercise of the police power. New Mexico has specifically approved its use to protect and promote the safety, health, morals and general welfare. Miller v. City of Albuquerque, 89 N.M. 503, 554 P.2d 665 (1976).

County's authority to promulgate zoning ordinances must come from enabling legislation from the state legislature, and therefore, any exercise of power under a zoning ordinance must be authorized by statute. Burroughs v. Bd. of County Comm'rs, 88 N.M. 303, 540 P.2d 233 (1975).

As municipality has no zoning authority beyond that provided by this article. Mechem v. City of Santa Fe, 96 N.M. 668, 634 P.2d 690 (1981); City of Santa Fe v. Armijo, 96 N.M. 663, 634 P.2d 685 (1981).

Jurisdiction to determine interest in property. — Extraterritorial zoning association did not have the authority to question whether a zoning petitioner's interest in the subject property was sufficient to support its proposed activities. Western PCS II Corp. v. Extraterritorial Zoning Auth., 957 F. Supp. 1230 (D.N.M. 1997).

Zoning ordinance is attached with a presumption of validity. — The burden is on a sign owner to overcome this presumption by proving that an ordinance is not reasonably related to its stated purpose. Temple Baptist Church, Inc. v. City of Albuquerque, 98 N.M. 138, 646 P.2d 565 (1982).

Aesthetics justifies exercise of police power. — Aesthetic considerations alone justify the exercise of the police power. Ordinances must still, however, be construed for their reasonableness in relation to aesthetic purposes. Moreover, if the ordinance in question impinges on a fundamental right, then the ordinance must "directly advance" the interests of aesthetics. Temple Baptist Church, Inc. v. City of Albuquerque, 98 N.M. 138, 646 P.2d 565 (1982).

Zoning restriction must relate to use of property. — Zoning concerns the regulation of the uses of land and buildings; a restriction upon ownership which amounts to a mere license or privilege to an individual, and which is not related to the use of property is ultra vires and invalid. Mechem v. City of Santa Fe, 96 N.M. 668, 634 P.2d 690 (1981).

Counties have statutory authority to enact general police power and zoning ordinances; however, enactment procedures and regulatory powers differ between the two. Board of County Comm'rs v. City of Las Vegas, 95 N.M. 387, 622 P.2d 695 (1980).

"Amortization" is constitutional means to terminate nonconforming use. — If an amortization period is reasonable, it is a constitutional means for municipalities to terminate nonconforming uses and, as such, is a constitutional alternative to just compensation. Temple Baptist Church, Inc. v. City of Albuquerque, 98 N.M. 138, 646 P.2d 565 (1982).

"Amortization" does not connote a requirement of compensation, but merely suggests that a sign owner or user is put on notice that he has a certain period of time in which to make necessary adjustments to bring his nonconforming structure into conformity with a sign ordinance. Temple Baptist Church, Inc. v. City of Albuquerque, 98 N.M. 138, 646 P.2d 565 (1982).

Effect of private restrictions. — Zoning ordinances if less stringent do not diminish the legal effect of more restrictive private building restrictions. Ridge Park Home Owners v. Pena, 88 N.M. 563, 544 P.2d 278 (1975).

Purpose of a municipal historical zoning ordinance was within the term "general welfare," as used in municipal zoning enabling legislation. City of Santa Fe v. Gamble-Skogmo, Inc., 73 N.M. 410, 389 P.2d 13 (1964).

II. SPOT ZONING.

Spot zoning. — The term "spot zoning" refers to the rezoning of a small parcel of land to permit a use that fails to comply with a comprehensive plan or is inconsistent with the surrounding area, grants a discriminatory benefit to the parcel owner, and/or harms neighboring properties or the community welfare. Spot zoning is determined on an ad hoc basis, depending on the facts and circumstances of each case. Watson v. Town Council of Town of Bernalillo, 111 N.M. 374, 805 P.2d 641 (Ct. App. 1991).

Scope of inquiry. — When examining a charge of spot zoning, courts look not only at the zoning of the immediately adjoining properties, but also to the surrounding area. Bennett v. City Council for City of Las Cruces, 126 N.M. 619, 973 P.2d 871 (Ct. App. 1998).

No spot zoning. — Where the zoning of a 4.2 acre tract was changed from residential to commercial, while the immediately adjacent properties were zoned single-family and high-density residential; the surrounding area consisted of mixed commercial and residential uses; the rezoning was consistent with the municipality comprehensive plan; and the commercial use of the property would create jobs for the benefit of the community; the rezoning of the tract did not constitute impermissible spot zoning. Bennett v. City Council for City of Las Cruces, 126 N.M. 619, 973 P.2d 871 (Ct. App. 1998).

Quasi-judicial action. — When a zoning action is specifically designed to affect a relatively small number of properties and does not apply to similarly situated properties in the surrounding area or city-wide, that action is quasi-judicial, not legislative. Albuquerque Commons v. Albuquerque City Council, 2008-NMSC-025, 144 N.M. 99, 184 P.3d 411, rev'g, 2006-NMCA-143, 140 N.M. 751, 149 P.3d 67.

The criteria for approval of zone map changes does not apply to special use permits. — The criteria established in Albuquerque Commons Partnership v. City Council of Albuquerque, 2008-NMSC-025, 144 N.M. 99, 184 P.3d 411, for the approval of a zoning map change, which requires proof that there is a public need for a change of the kind in question and that need will be best served by changing the classification of the particular piece of property in question as compared with other available property, does not apply to the issuance of temporary special-use permits. Ricci v. Bernalillo Cnty. Bd. of Cnty. Commissioners, 2011-NMCA-114, 150 N.M. 777, 266 P.3d 646.

Where the developer of a subdivision within a residential area discovered a deposit of sand and gravel in the process of grading the property; the developer applied for a special use permit to remove the sand and gravel; the county commission applied the "more advantageous to the community" standard; and the county commission granted the special-use permit for two years, the county commission's refusal to apply the criteria established in Albuquerque Commons Partnership v. City Council of Albuquerque, 2008-NMSC-025, 144 N.M. 99, 184 P.3d 411, for a proposed zone map change, which requires proof that there is a public need for a change of the kind in question and that need will be best served by changing the classification of the particular piece of property in question as compared with other available property, was in accordance with law. Ricci v. Bernalillo Cnty. Bd. of Cnty. Commissioners, 2011-NMCA-114, 150 N.M. 777, 266 P.3d 646.

III. CHANGE OF ZONING.

No discretion to change zoning without considering substantive criteria for zoning changes. — Where state case law and a municipal resolution required the

municipality to establish the substantive criteria of change, mistake or a more advantageous use category before changing the zoning classification of property, the municipality had no discretion to proceed to downzone the landowner's property without providing evidence to justify the change in accordance with the substantive criteria. Albuquerque Commons P'ship v. Albuquerque City Council, 2009-NMCA-065, 146 N.M. 568, 212 P.3d 1122, cert. granted, 2009-NMCERT-007, 147 N.M. 363, 223 P.3d 360 and cert. denied, 1305 S.Ct. 1501, 176 L.Ed. 2d 110 (2010).

Zoning text amendments and zoning map amendments. — New Mexico law recognizes that a zoning text amendment is different from a zone reclassification by map amendment. Zoning text amendments specify the allowed or permitted uses within a particular existing zoning district classification. Zoning map amendments involve the zoning district reclassification of a particular tract of land by alteration of the official zoning map. Albuquerque Commons P'ship v. Albuquerque City Council, 2006-NMCA-143, 140 N.M. 751, 149 P.3d 67, rev'd, 2008-NMSC-025, 144 N.M. 99, 184 P.3d 411.

The change or mistake rule does not apply to rezoning by text amendment. Albuquerque Commons P'ship v. Albuquerque City Council, 2006-NMCA-143, 140 N.M. 751, 149 P.3d 67, rev'd, 2008-NMSC-025, 144 N.M. 99, 184 P.3d 411.

IV. DOWN ZONING.

Downzoning defined. — The characteristic common to all downzoning actions is that they focus on specific properties or small groups of properties within an otherwise similarly situated class, restricting or allowing uses in ways that do not apply to the surrounding area or similar areas within a municipality. Albuquerque Commons v. Albuquerque City Council, 2008-NMSC-025, 144 N.M. 99, 184 P.3d 411, rev'g, 2006-NMCA-143, 140 N.M. 751, 149 P.3d 67.

Common characteristic of downzoning. — Where the city council adopted a text amendment to a sector plan as a legislative action to create a new sub-zone within the sector plan area, which consisted of three parcels comprising six percent of the sector plan area and to impose additional, significantly more restrictive regulations that were applicable only to the new sub-zone, the amendment was a downzoing of property in the new sub-zone and a quasi-judicial action that denied the property owners in the sub-zone due process of law. Albuquerque Commons v. Albuquerque City Council, 2008-NMSC-025, 144 N.M. 99, 184 P.3d 411, rev'g, 2006-NMCA-143, 140 N.M. 751, 149 P.3d 67.

No down-zoning. — Where zoning text amendments were consistent with city's master plan, quantified and made more specific the city's policy vision to assure development of an urban center as stated in its comprehensive plan and in the prior zoning provisions and delineated how that vision would specifically come to pass in future development, and the changes applied to all property owners within the district, the zoning text amendments did not constitute a down-zoning and were legislative in nature.

Albuquerque Commons P'ship v. Albuquerque City Council, 2006-NMCA-143, 140 N.M. 751, 149 P.3d 67, rev'd, 2008-NMSC-025, 144 N.M. 99, 184 P.3d 411.

V. STATE AND FEDERAL IMMUNITY.

Immunity of state. — The state is immune from any municipal zoning regulations. City of Albuquerque v. Jackson Bros. Inc., 113 N.M. 149, 823 P.2d 949 (Ct. App. 1991).

State governmental body is not subject to local zoning regulations or restrictions. City of Santa Fe v. Armijo, 96 N.M. 663, 634 P.2d 685 (1981).

County may not regulate a private entity on state land operating with the state's approval. County of Santa Fe v. Milagro Wireless, LLC, 2001-NMCA-070, 130 N.M. 771, 32 P.3d 214.

VI. DUE PROCESS AND TAKING ISSUES.

State-created substantive property right. — Where a municipality downzoned the landowner's property by map amendment; state case law required the municipality to establish a mistake in the original zoning or subsequent changed conditions in the neighborhood before the zoning could be legally changed; and a municipal resolution required the municipality to demonstrate that a mistake had occurred in the original zoning, that changed neighborhood or community conditions justify the change, or that a different use category is more advantageous to the community before a zoning classification could be changed by map amendment, the property owner had a state-created property right to continued zoning classification of the landowner's property unless the municipality justified the zoning change in accordance with the criteria of state case law and the municipal resolution. Albuquerque Commons P'ship v. Albuquerque City Council, 2009-NMCA-065, 146 N.M. 568, 212 P.3d 1122, cert. granted, 2009-NMCERT-007, 147 N.M. 363, 223 P.3d 360 and cert. denied, 1305 S.Ct. 1501, 176 L.Ed. 2d 110 (2010).

Property deprivation or due process violation. — Where state case law and a municipal resolution required the municipality to establish the substantive criteria of change, mistake or a more advantageous use category before changing the zoning classification of property, the failure of the municipality to actually establish one of the substantive criteria does not lead to a property deprivation or due process violation, the deprivation or violation only arises in the event the landowner is denied notice or a meaningful opportunity to be heard before the landowner's property is downzoned. Albuquerque Commons P'ship v. Albuquerque City Council, 2009-NMCA-065, 146 N.M. 568, 212 P.3d 1122, cert. granted, 2009-NMCERT-007, 147 N.M. 363, 223 P.3d 360 and cert. denied, 1305 S.Ct. 1501, 176 L.Ed. 2d 110 (2010).

Due process. — The failure of a municipality to hold a particular type of hearing, such as a legislative or a quasi-judicial hearing, when it contemplates downzoning a landowner's property is not by itself a failure of due process. Albuquerque Commons

P'ship v. Albuquerque City Council, 2009-NMCA-065, 146 N.M. 568, 212 P.3d 1122, cert. granted, 2009-NMCERT-007, 147 N.M. 363, 223 P.3d 360 and cert. denied, 1305 S.Ct. 1501, 176 L.Ed. 2d 110 (2010).

Where the city council determined that the adoption of a sector plan, which downzoned the landowner's property, was a legislative matter to be decided at a legislative hearing; the landowner participated in seven hearings before the city council; the municipality did not limit *ex parte* contact on the part of the council members; one city councilor, who had been contacted by a non-counselor outside of the hearing and who had been encouraged not to propose amendments to the sector plan that would allow the landowner to retain the existing zoning of the landowner's property, withdrew all of the counselor's proposed amendments, the landowner was not provided with an impartial tribunal and the process violated the landowner's constitutionally protected property right and procedural due process. Albuquerque Commons P'ship v. Albuquerque City Council, 2009-NMCA-065, 146 N.M. 568, 212 P.3d 1122, cert. granted, 2009-NMCERT-007, 147 N.M. 363, 223 P.3d 360 and cert. denied, 1305 S.Ct. 1501, 176 L.Ed. 2d 110 (2010).

Due process and takings claims are not coextensive. — Where a municipality downzoned the landowner's property; the landowner sued the municipality to recover damages for violation of the landowner's due process rights and for the taking of the landowner's property by condemnation, the landowner was under no obligation to seek takings damages before recovering for the due process violation, because the claims are not coextensive. The due process claim is based on the right to continuation of a certain zoning classification until the municipality establishes specific circumstances to justify a change of zoning and the loss resulting from the due process violation is a loss of opportunity to meaningfully participate in a hearing related to the change of zoning. The takings claim is based on the taking of property without a legitimate public interest and the loss resulting from the taking is loss of the economically viable use of the property. Albuquerque Commons P'ship v. Albuquerque City Council, 2009-NMCA-065, 146 N.M. 568, 212 P.3d 1122, cert. granted, 2009-NMCERT-007, 147 N.M. 363, 223 P.3d 360 and cert. denied, 1305 S.Ct. 1501, 176 L.Ed. 2d 110 (2010).

Due process. — The extraterritorial zoning administration lacks the authority to adjudicate questions of property rights, rather than mere use, and thus its decision in this case violates due process requirements. Western PCS II Corp. v. Extraterritorial Zoning Auth., 957 F. Supp. 1230 (D.N.M. 1997).

Zoning is not compensable taking. — As a valid exercise of the police power, zoning is not a compensable taking, even when it results in substantial reduction in the value of property. Only if the governmental regulation deprives the owner of all beneficial use of his property will the action be unconstitutional. Miller v. City of Albuquerque, 89 N.M. 503, 554 P.2d 665 (1976).

In regard to inverse condemnation, an administrative body has no authority to adjudicate all of the essential facts of the claim or to award damages. Takhar v. Town of

Taos, 2004-NMCA-072, 135 N.M. 741, 93 P.3d 762, cert. denied, 2004-NMCERT-006, 135 N.M. 789, 93 P.3d 1292.

VII. SIGNS.

Municipal regulation of outdoor advertising for aesthetic and safety purposes constitutes a valid exercise of the police power, as that power is derived from authority granted by the state. Battaglini v. Town of Red River, 100 N.M. 287, 669 P.2d 1082 (1983).

Criteria to determine whether sign ordinance violates free speech. — Where a sign ordinance does not prohibit speech altogether, the precise issue is whether the sign ordinance is a legitimate time, place and manner restriction on speech. The criteria to be analyzed are threefold: (1) does the restriction serve a significant government interest? (2) is the restriction justifiable without reference to the content of the regulated speech? and, (3) does the restriction leave open ample alternative channels of communication? Temple Baptist Church, Inc. v. City of Albuquerque, 98 N.M. 138, 646 P.2d 565 (1982).

Sign ordinance not violative of free exercise of religious beliefs. — Where a sign ordinance does not limit what a religious organization may maintain on its signs, the ordinance does not abridge the free exercise of religious beliefs in violation of N.M. Const., art. II, § 11. Temple Baptist Church, Inc. v. City of Albuquerque, 98 N.M. 138, 646 P.2d 565 (1982).

Sign ordinance held reasonably related to proper governmental goals. — A sign ordinance regulating the size, height and number of signs is reasonably related to the proper governmental goals of aesthetics and traffic safety. Temple Baptist Church, Inc. v. City of Albuquerque, 98 N.M. 138, 646 P.2d 565 (1982).

Where the only restriction on political signs is that campaign signs be a certain size, be erected earlier than 60 days prior to a primary or general election and that the campaign signs be removed within 10 days after the election to which the sign pertains, clearly such a limited restriction on these types of political signs furthers a significant government interest in aesthetics. Temple Baptist Church, Inc. v. City of Albuquerque, 98 N.M. 138, 646 P.2d 565 (1982).

Authority of county to zone school property. — Lands owned by a public school district and used for school purposes, directly and indirectly, and land used for commercial purposes are subject to county zoning and development ordinances. 2005 Op. Att'y Gen. No. 05-03.

Land use ordinances validity depend on ownership of property. — Although counties are designated zoning authorities for the purposes of promoting health, safety, morals and the general welfare, the validity of county land use ordinances attempting to restrict traditional federal and state regulatory authority varies. To the extent the

ordinances affect federal lands, they are preempted by the Supremacy Clause of the United States Constitution; to the extent the ordinances affect state lands, they are nullified by the state's immunity from local zoning ordinances; and finally, to the extent the ordinances affect private lands, they are preempted by federal law, state law, or both. 1994 Op. Att'y Gen. No. 94-01.

Annexation of zoning district by municipality. — When all or a portion of a special zoning district is annexed by an incorporated municipality, the special zoning district loses all of its zoning jurisdiction over the annexed territory to the municipality. 1983 Op. Att'y Gen. No. 83-06.

Law reviews. — For comment, "Land Use Planning - New Mexico's Green Belt Law," see 8 Nat. Resources J. 190 (1968).

For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

For note, "Subdivision Planning Through Water Regulation in New Mexico," see 12 Nat. Resources J. 286 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 83 Am. Jur. 2d Zoning and Planning §§ 4, 10 to 16.

Light and air space, validity of building regulation requiring areas or open spaces for, 9 A.L.R. 1040, 59 A.L.R. 518.

Relative area of parcel that may be covered by building, validity of regulations as to, 27 A.L.R. 443.

Delegation by municipality of its powers as to building regulations, 43 A.L.R. 834, 46 A.L.R. 88.

Restrictions on use of real property, or remedies in respect of them as affected by zoning law, 48 A.L.R. 1437, 54 A.L.R. 843.

Creation by statute or ordinance of restricted residence districts within municipality from which business buildings or multiple residences are excluded, 54 A.L.R. 1030, 86 A.L.R. 659, 117 A.L.R. 1117.

Power to forbid or restrict repair of wooden building within fire limits, 56 A.L.R. 878.

Auxiliary buildings, constitutionality of statutes or validity of municipal regulations as to location within lot lines, 57 A.L.R. 958.

Flats or apartments as within term "dwelling" or "dwelling-house" in zoning statute or ordinance, 61 A.L.R. 565.

Validity and construction of zoning or building ordinance prohibiting or regulating subsequent alteration, addition, extension or substitution of existing buildings, 64 A.L.R. 920.

Gasoline filling stations, zoning regulations as to, 96 A.L.R. 1337, 75 A.L.R.2d 168.

Estoppel, right of municipality or other public authority to enforce zoning or fire limit regulations as affected by its previous conduct in permitting or encouraging violation thereof, 119 A.L.R. 1509.

Enterprise or activity, what is permissible in business zone, 128 A.L.R. 1214.

Indefiniteness, validity of building regulations as against objection of, 140 A.L.R. 1210.

Minimum dimensions or floor area of buildings, validity of zoning regulations which prescribe, 149 A.L.R. 1440.

Validity of zoning law as affected by limitation of area zoning (partial or piecemeal zoning), 165 A.L.R. 823.

Construction and application of provision authorizing variations in application of and special exceptions to zoning regulations, 168 A.L.R. 13.

Variations or exceptions, multiple dwellings as subject of, 168 A.L.R. 64.

Zoning requirements prescribing conditions of business or manufacturing designed to avoid nuisance or annoyance, 173 A.L.R. 271.

Garage as part of house with which it is physically connected, within zoning regulations, 7 A.L.R.2d 593.

Constitutionality of zoning based on size of commercial or industrial enterprises or units, 7 A.L.R.2d 1007.

Height, validity of building regulations, 8 A.L.R.2d 963.

Exclusion from municipality of industrial activities inconsistent with residential character, 9 A.L.R.2d 683.

Zoning regulations in respect of intoxicating liquors, 9 A.L.R.2d 877, 65 A.L.R.4th 555.

Change in ownership of nonconforming business or use as affecting right to continuance thereof, 9 A.L.R.2d 1039.

Validity of zoning ordinance or similar public regulation requiring consent of neighboring property owners to permit or sanction specified uses or construction of buildings, 21 A.L.R.2d 551.

Tourist or trailer camps, motor courts and motels, maintenance and regulation by public authorities, 22 A.L.R.2d 774.

Regulation and licensing of privately owned parking places, 29 A.L.R.2d 856.

Injuries or death, violation of zoning ordinance or regulation as affecting or creating liability for, 31 A.L.R.2d 1469.

Residential use in industrial district, validity of zoning regulations prohibiting, 38 A.L.R.2d 1141.

Boundaries, validity of zoning regulations with respect to uncertainty and indefiniteness of district boundary lines, 39 A.L.R.2d 766.

Nurseries and greenhouses: permissible activities under zoning laws permitting, 40 A.L.R.2d 1459.

Territory annexed to a municipality, what zoning regulations are applicable to, 41 A.L.R.2d 1463.

Cemetery, validity of public prohibition or regulation of location of, 50 A.L.R.2d 905.

Spot zoning, 51 A.L.R.2d 263.

"Club" or "clubhouse" within provisions of zoning regulations, what is, 52 A.L.R.2d 1098.

Zoning statute, ordinance or regulation, attack on validity on ground of improper delegation of authority to board or officer, 58 A.L.R.2d 1083.

Applicability of zoning regulations to governmental projects or activities, 61 A.L.R.2d 970.

Access to industrial, commercial or business premises over premises differently zoned, 63 A.L.R.2d 1446.

Lodging house or boardinghouse within provision of zoning ordinance or regulation, what is, 64 A.L.R.2d 1167.

"Home occupation" or the like within accessory use provision of zoning regulation, what constitutes, 73 A.L.R.2d 439.

Power to directly regulate or prohibit abutter's access to street or highway, 73 A.L.R.2d 652.

Zoning regulations as affecting churches, 74 A.L.R.2d 377, 62 A.L.R.3d 197.

Garage or parking space, validity and construction of zoning regulation requiring, 74 A.L.R.2d 418.

Shopping centers, zoning regulations as to, 76 A.L.R.2d 1172.

Restaurants, diners, "drive-ins," or the like, zoning regulations as forbidding or restricting, 82 A.L.R.2d 989.

"Racing" or "race track" within zoning regulation forbidding such activity, what constitutes, 83 A.L.R.2d 877.

Dancing schools, zoning regulations as applied to, 85 A.L.R.2d 1150.

License, regulation, and taxation of self-service laundries, 87 A.L.R.2d 1007.

Front setback, validity of provision in zoning ordinance or regulation, 93 A.L.R.2d 1223.

Open side or rear yards, validity of zoning regulations requiring, 94 A.L.R.2d 398.

Yards: construction of zoning regulations requiring side or rear yards, 94 A.L.R.2d 419.

Trailer or similar structure, use for residence purposes as within zoning provision, 96 A.L.R.2d 232, 17 A.L.R.4th 106.

Notice requirements prerequisite to adoption of zoning ordinance, validity of, 96 A.L.R.2d 449.

Width or frontage for residence lots, 96 A.L.R.2d 1367.

Maximum percentage of residential lot area which may be occupied by buildings, 96 A.L.R.2d 1396.

Research and laboratory facilities, application of zoning requirements to, 98 A.L.R.2d 225.

Apartments, validity, construction and effect of zoning regulations as regards "garden-type apartments" and "row housing," 99 A.L.R.2d 873.

Intoxicating liquors, construction of provisions precluding sale within specified distance from another establishment selling such liquors, 7 A.L.R.3d 809.

Civil defense: construction and application of zoning regulations in connection with bomb or fallout shelters, 7 A.L.R.3d 1443.

Validity of zoning measure prohibiting or regulating removal or exploitation of oil, minerals, soil, sand, gravel, stone or other natural products within municipal limits, 10 A.L.R.3d 1226.

Vending machines, application of zoning regulations to automatic, 11 A.L.R.3d 1004.

Garages: meaning of term "garage" as used in zoning regulation, 11 A.L.R.3d 1187.

Aesthetic objectives or considerations as affecting validity of zoning ordinance, 21 A.L.R.3d 1222.

Motels or motor courts, application of zoning regulations to, 23 A.L.R.3d 1210.

"Professional office," construction and effect of zoning provision permitting accessory use for, 24 A.L.R.3d 1128.

College fraternities or sororities, application of zoning regulations to, 25 A.L.R.3d 921.

Hospitals, sanitariums and nursing homes, validity and construction of zoning regulations expressly referring to, 27 A.L.R.3d 1022.

Hotels: meaning of term "hotel" as used in zoning ordinances, 28 A.L.R.3d 1240.

"Interim" zoning ordinance, validity and effect of, 30 A.L.R.3d 1196.

Golf courses, swimming pools, tennis courts, and the like, application of zoning regulations to, 32 A.L.R.3d 424.

Architectural style or design of structure, validity and construction of zoning ordinance regulating, 41 A.L.R.3d 1397.

Mobile home or trailer parks, validity and application of zoning regulations relating to, 42 A.L.R.3d 598.

Planned-unit, cluster or greenbelt zoning, 43 A.L.R.3d 888.

Exclusionary zoning, 48 A.L.R.3d 1210.

Buffer provision in zoning ordinance as applicable to abutting land in adjoining municipality, 48 A.L.R.3d 1303.

Junkyard or scrap metal processing plant, validity, construction and application of zoning ordinance relating to operation of, 50 A.L.R.3d 837.

Residential use, validity of ordinance zoning the entire municipality for, 54 A.L.R.3d 1282.

Zoning: right to resume nonconforming use of premises after involuntary break in the continuity of nonconforming use caused by difficulties unrelated to governmental activity, 56 A.L.R.3d 14.

Zoning: right to resume nonconforming use of premises after involuntary break in the continuity of nonconforming use caused by governmental activity, 56 A.L.R.3d 138.

Signs: validity of regulations restricting height of free standing advertising signs, 56 A.L.R.3d 1207.

Zoning: right to resume nonconforming use of premises after voluntary or unexplained break in the continuity of nonconforming use, 57 A.L.R.3d 279.

Waste disposal facilities of state or local governmental entities, applicability of zoning regulations to, 59 A.L.R.3d 1244.

Religious societies: what constitutes "church," "religious use," or the like, within zoning ordinance, 62 A.L.R.3d 197.

Low income housing: validity and construction of zoning ordinance requiring developer to devote specified part of development to low and moderate income housing, 62 A.L.R.3d 880.

What constitutes "school," "educational use," or the like within zoning ordinance, 64 A.L.R.3d 1087.

Zoning regulations as applied to colleges, universities, or similar institutions for higher education, 64 A.L.R.3d 1138.

"Family," what constitutes, within meaning of zoning regulation, 71 A.L.R.3d 693.

Initiative and referendum provisions, zoning ordinances as within operation of, 72 A.L.R.3d 1030.

Zoning regulations as applied to private and parochial schools below the college level, 74 A.L.R.3d 14.

Zoning regulations as applied to public elementary and high schools, 74 A.L.R.3d 136.

Applicability of zoning regulations to projects of nongovernmental public utility as affected by utility's having power of eminent domain, 87 A.L.R.3d 1265.

Construction and application of zoning regulations in connection with funeral homes, 92 A.L.R.3d 328.

Validity of municipality's ban on construction until public facilities comply with specific standards, 92 A.L.R.3d 1073.

Validity of statutory classifications based on population - zoning, building, and land use statutes, 98 A.L.R.3d 679.

Zoning or licensing regulation prohibiting or restricting location of billiard rooms and bowling alleys, 100 A.L.R.3d 252.

Housing facilities for former patients of mental hospital as violating zoning restrictions, 100 A.L.R.3d 876.

Zoning regulations prohibiting or limiting fences, hedges, or walls, 1 A.L.R.4th 373.

Restrictive covenants as to height of structures or buildings, 1 A.L.R.4th 1021.

Enforcement of zoning regulation as affected by other violations, 4 A.L.R.4th 462.

Zoning: validity and construction of provisions of zoning statute or ordinance regarding protest by neighboring property owners, 7 A.L.R.4th 732.

Construction of new building or structure on premises devoted to nonconforming use as violation of zoning ordinance, 10 A.L.R.4th 1122.

What constitutes accessory or incidental use of religious or educational property within zoning ordinance, 11 A.L.R.4th 1084.

Validity of ordinance restricting number of unrelated persons who can live together in residential zone, 12 A.L.R.4th 238.

Validity of zoning or building regulations restricting mobile homes or trailers to established mobile home or trailer parks, 17 A.L.R.4th 106.

Zoning regulations limiting use of property near airport as taking of property, 18 A.L.R.4th 542.

Validity of local beachfront zoning regulations designed to exclude recreational uses by persons other than beachfront residents, 18 A.L.R.4th 568.

Validity of statute, ordinance, or regulation requiring compliance with housing standards before rent increase or possession by new tenant, 20 A.L.R.4th 1246.

Airport operations or flight of aircraft as constituting taking or damaging of property, 22 A.L.R.4th 863.

Applicability and application of zoning regulations to single residences employed for group living of mentally retarded persons, 32 A.L.R.4th 1018.

Zoning: occupation of less than all dwelling units as discontinuance or abandonment of multifamily dwelling nonconforming use, 40 A.L.R.4th 1012.

Zoning: what constitutes "incidental" or "accessory" use of property zoned, and primarily used, for residential purposes, 54 A.L.R.4th 1034.

Change in area or location of nonconforming use as violation of zoning ordinance, 56 A.L.R.4th 769.

Zoning: what constitutes "incidental" or "accessory" use of property zoned and primarily used for business or commercial purposes, 60 A.L.R.4th 907.

Addition of another activity to existing nonconforming use as violation of zoning ordinance, 61 A.L.R.4th 724.

Change in volume, intensity, or means of performing nonconforming use as violation of zoning ordinance, 61 A.L.R.4th 806.

Change in type of activity of nonconforming use as violation of zoning ordinance, 61 A.L.R.4th 902.

Alteration, extension, reconstruction, or repair of nonconforming structure or structure devoted to nonconforming use as violation of zoning ordinance, 63 A.L.R.4th 275.

Zoning regulation of intoxicating liquor as pre-empted by state law, 65 A.L.R.4th 555.

Construction and effect of statute requiring that zoning application be treated as approved if not acted on within specified period of time, 66 A.L.R.4th 1012.

Zoning: residential off-street parking requirements, 71 A.L.R.4th 529.

Laches as defense in suit by governmental entity to enjoin zoning violation, 73 A.L.R.4th 870.

Validity and construction of zoning laws setting minimum requirements for floorspace or cubic footage inside residence, 87 A.L.R.4th 294.

Validity of zoning laws setting minimum lot size requirements, 1 A.L.R.5th 622.

Construction and application of zoning laws setting minimum lot size requirements, 2 A.L.R.5th 553.

Validity of provisions for amortization of nonconforming uses, 8 A.L.R.5th 391.

Construction and application of terms "agricultural," "farm," "farming," or the like, in zoning regulations, 38 A.L.R.5th 357.

Activities in preparation for building as establishing valid nonconforming use or vested right to engage in construction for intended use, 38 A.L.R.5th 737.

Applicability of zoning regulations to governmental projects or activities, 53 A.L.R.5th 1.

Application of zoning regulations to golf courses, swimming pools, tennis courts, or the like, 63 A.L.R.5th 607.

Determination whether zoning or rezoning of particular parcel constitutes illegal spot zoning, 73 A.L.R.5th 223.

What is "mobile home", "house trailer", "trailer house", or "trailer" within meaning of restrictive covenant, 83 A.L.R.5th 651.

101A C.J.S. Zoning and Land Planning §§ 10, 29.

Validity, construction, and application of zoning ordinances regulating displays of noncommercial flags or banners, 103 A.L.R.5th 445.

3-21-2. Jurisdiction of a county or municipal zoning authority.

To carry out the purposes of Sections 3-21-1 through 3-21-14 NMSA 1978:

A. a county zoning authority may adopt a zoning ordinance applicable to all or any portion of the territory within the county that is not within the zoning jurisdiction of a municipality;

B. a municipal zoning authority may adopt a zoning ordinance applicable to the territory within the municipal boundaries and, if not within a class A county with a population of more than three hundred thousand persons according to the last federal decennial census, shall have concurrent authority with the county to zone all or any portion of the territory within its extraterritorial zoning jurisdiction that is within:

(1) two miles of the boundary of any municipality having a population of twenty thousand or more persons, provided such territory is not within the boundary of another municipality;

(2) one mile of the boundary of any municipality having a population of one thousand five hundred or more but less than twenty thousand persons, provided such territory is not within the boundaries of another municipality;

(3) the limits of the boundaries of a municipality having a population of one thousand five hundred persons or less; or

(4) territory not lying within the boundary of a municipality but within the extraterritorial jurisdiction of more than one municipality; provided that the extraterritorial zoning jurisdiction of each municipality shall terminate equidistant from the boundary of each municipality unless one municipality has a population according to the most recent federal decennial census of less than two thousand five hundred and another municipality has a population according to the most recent federal decennial census of more than two thousand five hundred, in which case the extraterritorial zoning jurisdiction of the municipality having the greatest population extends to such territory; and

(5) territory in addition to the extraterritorial zoning jurisdiction provided by Paragraphs (1), (2), (3) and (4) of this subsection that the governing bodies of a county and a municipality agree to place within the extraterritorial zoning jurisdiction of the municipality by agreement entered into pursuant to the provisions of the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978], provided such additional territory is not within the boundary of another municipality and is contiguous to the exterior boundaries of the territory within the extraterritorial zoning jurisdiction of the municipality;

C. concurrent authority shall be exercised pursuant to an extraterritorial zoning authority or joint powers agreement; provided, however, this authority may be exercised regardless of whether a county has enacted a comprehensive zoning ordinance; and

D. in the absence of a county zoning ordinance, a qualified elector may file a petition, signed by the qualified electors of the county equal in number to not less than twenty-five percent of the votes cast for the office of governor at the last preceding general election, seeking the adoption of a zoning ordinance by the county zoning authority. Within one year of the filing of the petition seeking the adoption of a county zoning ordinance, the board of county commissioners shall adopt a county zoning ordinance.

History: 1953 Comp., § 14-20-2, enacted by Laws 1965, ch. 300; 1966, ch. 64, § 7; 1977, ch. 80, § 1; 1991, ch. 32, § 1; 2003, ch. 438, § 4.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, in Subsection B, inserted "if not within a class A county with a population of more then three hundred thousand persons according to the last federal decennial census", deleted former Subsection B(1), concerning municipality having a population over two hundred thousand, and

renumbered the remaining paragraphs; in present Subsection B(1), deleted "but less than two hundred thousand" preceding "persons", and inserted "provided that" in present Subsection B(4).

The 1991 amendment, effective July 1, 1991, in the introductory paragraph, substituted the present statutory citation for "14-20-1 through 14-20-12 NMSA 1953"; in Subsection B, in the introductory paragraph, substituted "shall have concurrent authority with the county to zone" for "may adopt and submit a zoning ordinance to an extraterritorial zoning commission appointed as provided in Section 14-20-2.2 NMSA 1953, which ordinance is applicable to", added Paragraph (5), and redesignated former Paragraph (5) as Paragraph (6); added Subsection C; redesignated former Subsection C as Subsection D; and made minor stylistic changes throughout the section.

Legislature delegated to counties statutory authority to zone. Cerrillos Gravel Products, Inc. v. Santa Fe Bd. of County Comm'rs, 2005-NMSC-023, 138 N.M. 126, 117 P.3d 932.

Power to revoke permit is necessarily implied from the power to approve a permit. Cerrillos Gravel Products, Inc. v. Santa Fe Bd. of County Comm'rs, 2005-NMSC-023, 138 N.M. 126, 117 P.3d 932.

Zoning of private land that was previously federally held. — A county may not adopt a comprehensive zoning ordinance that specifically excludes federally owned land, then later apply the ordinance to private land that was federally owned at the time the ordinance was passed; to zone such land, the county must comply with the notice requirements of 3-21-6 NMSA 1978. Bonito Land & Livestock v. Valencia County Bd. of Comm'rs, 1998-NMCA-127, 125 N.M. 638, 964 P.2d 199.

County having proper zoning ordinances may pass ordinances requiring building permits in areas outside of municipalities. 1969 Op. Att'y Gen. No. 69-74.

Annexation of special zoning district. — When all or a portion of a special zoning district is annexed by an incorporated municipality, the special zoning district loses all of its zoning jurisdiction over the annexed territory to the municipality. 1983 Op. Att'y Gen. No. 83-06.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — Standing of municipal corporation or other governmental body to attack zoning of land lying outside its borders, 49 A.L.R.3d 1126.

Validity of zoning ordinances prohibiting or regulating outside storage of house trailers, motor homes, campers, vans and the like in residential neighborhoods, 95 A.L.R.3d 378.

Enforcement of zoning regulation as affected by other violations, 4 A.L.R.4th 462.

3-21-2.1. Certain municipalities; changing the zoning or use of certain areas; election allowed.

A municipality that has a population of one thousand five hundred or less at the last federal decennial census and that is partially bordered, at the time of that census, by federal land managed by the United States forest service, may change the zoning or use of any land acquired by first submitting the question to the voters at a general election or at a special election called for that purpose if the acquired land:

A. was acquired by the municipality from or with the permission of the United States forest service;

B. lies adjacent to the municipality's geographical boundary; and

C. is zoned or used at the time of acquisition for recreation, school sites, greenbelt or buffer land.

History: Laws 1997, ch. 142, § 1.

3-21-3. Procedure for extraterritorial zoning.

A. Upon the initiative of any municipal governing body or of the board of county commissioners of any county wherein any portion of the extraterritorial zoning area of the municipality lies, the municipality and the county may enter into an agreement providing for the zoning of that portion of the extraterritorial zoning area lying within the county joining in the agreement. In the absence of such agreement, a petition requesting the zoning of the extraterritorial zoning area and signed by twenty-five percent of the qualified electors residing in the extraterritorial zoning area and within the same county may be filed with the county clerk of the county of the petitioners' residence. Upon the filing of such petition, the governing body of the municipality and the board of county commissioners shall enter into an agreement providing for the zoning of that portion of the extraterritorial zoning area lying within the county joining in the agreement. Any agreement entered into pursuant to the provisions of this subsection may be subsequently amended by agreement of both parties.

B. The agreement entered into pursuant to Subsection A of this section shall provide for an extraterritorial zoning commission consisting of equal numbers of members appointed by the municipal zoning authority and the county commission; provided that at least one-half of these members shall reside in the extraterritorial zone. Additionally, one member from an area of the county not within the zoning jurisdiction of the municipality or within the area of the county affected by the proposed extraterritorial zoning ordinance shall be appointed by a majority of the members appointed by the board of county commissioners and by the municipal zoning authority. The agreement shall also provide for a joint municipal-county zoning authority consisting of one or more members of the municipal governing body and one or more members of the board of county commissioners, provided such authority membership shall contain one more county commission member than municipal governing body member.

C. No zoning ordinance shall be adopted by the joint municipal-county zoning authority unless the ordinance has been recommended by the extraterritorial zoning commission.

D. Within three hundred sixty days of the appointment of the last member to be appointed, the extraterritorial zoning commission shall recommend to the joint municipal-county zoning authority a zoning ordinance applicable to all or any portion of the extraterritorial zoning area lying within the county joining in the agreement pursuant to Subsection A of this section. The ordinance shall also provide, subject to the restrictions of Section 3-21-6 NMSA 1978, for the manner in which zoning regulations, restrictions and the boundaries of districts are:

(1) determined, established and enforced; and

(2) amended, supplemented or repealed.

History: 1953 Comp., § 14-20-2.2, enacted by Laws 1977, ch. 80, § 2; 2001, ch. 78, § 1.

ANNOTATIONS

Cross references. — For county and municipal jurisdiction over subdivisions, *see* 3-20-5 NMSA 1978.

For special zoning districts, *see* 3-21-15 NMSA 1978 et seq.

The 2001 amendment, effective July 1, 2001, inserted "provided that at least one-half of these members shall reside in the extraterritorial zone" in Subsection B; substituted "unless the ordinance" for "unless the same" in Subsection C; and updated the internal reference in Subsection D.

Limitation on county of San Miguel's zoning authority. — The county of San Miguel does not have authority to zone within one mile of the city limits of Las Vegas. Bd. of County Comm'rs v. City of Las Vegas, 95 N.M. 387, 622 P.2d 695 (1980).

Land use ordinances validity depend on ownership of property. — Although counties are designated zoning authorities for the purposes of promoting health, safety, morals and the general welfare, the validity of county land use ordinances attempting to restrict traditional federal and state regulatory authority varies. To the extent the ordinances affect federal lands, they are preempted by the Supremacy Clause of the United States Constitution; to the extent the ordinances affect state lands, they are nullified by the state's immunity from local zoning ordinances; and finally, to the extent the ordinances affect private lands, they are preempted by federal law, state law, or both. 1994 Op. Att'y Gen. No. 94-01.

3-21-3.1. Additional procedures for extraterritorial zoning and subdivision regulation.

In addition to the powers authorized in Sections 3-21-2, 3-21-3 and 3-21-4 NMSA 1978, any county and any municipality may agree to authorize a joint municipal-county zoning authority to enact ordinances, regulations, or both, relating to approval and regulation of subdivisions within the extraterritorial zoning area as defined by the agreement creating the joint municipal-county zoning authority. Such subdivision ordinances and regulations shall be adopted, amended and enforced pursuant to Sections 3-21-3 and 3-21-4 NMSA 1978, as appropriate. Such subdivision ordinances and regulations may define "subdivision" in a manner which differs from the definitions set forth in Subsection A of Section 3-20-1 NMSA 1978 and in Subsection I of Section 47-6-2 NMSA 1978. The joint municipal-county zoning authority may also modify portions of the comprehensive plan, provided that such modifications leave unchanged those portions in the comprehensive plan that are not in the extraterritorial area.

History: 1978 Comp., § 3-21-3.1, enacted by Laws 1988, ch. 91, § 1; 1989, ch. 238, § 1.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "any county and any municipality" for "any class B county with a population in excess of ninety-five thousand persons and any municipality with a population in excess of fifty thousand persons located in such class B county" in the first sentence.

3-21-3.2. Extraterritorial zoning in class A counties; procedures.

A. In a class A county in which a municipality is located that has a population of:

(1) more than three hundred thousand persons according to the last federal decennial census, there shall be no extraterritorial zoning; or

(2) three hundred thousand or fewer people, concurrent extraterritorial zoning jurisdiction between that municipality and the county may be determined by an "extraterritorial land use authority" pursuant to ordinances adopted by the municipal and county governing bodies stating that the county or municipality will create an extraterritorial land use authority. The extraterritorial land use authority shall have the jurisdiction and powers of an extraterritorial zoning authority and shall carry out its duties related to planning and platting jurisdiction, extraterritorial zoning, subdivision approval and annexation approval or disapproval as provided in the Municipal Code. The extraterritorial land use authority shall consist of four county commissioners appointed by the board of county commissioners and three city councilors or two city councilors and the mayor appointed by the municipality. Alternates to the extraterritorial land use authority shall be appointed by the board of county commissioners from among the remaining county commissioners and by the municipality from among the remaining city councilors. The alternates shall be notified prior to a meeting of the extraterritorial land use authority if an appointed member cannot attend. When replacing a member, an alternate shall have the same duties, privileges and powers as other appointed members.

B. The extraterritorial zoning commission in a class A county shall be known as the "extraterritorial land use commission" if it is formed by a municipality and a class A county that have adopted ordinances pursuant to Paragraph (2) of Subsection A of this section stating that the county and municipality will create an extraterritorial land use authority.

C. The extraterritorial zoning commission shall be composed of five members of the county planning commission appointed by the board of county commissioners and five members of the environmental planning commission of the municipality appointed by the city council. Alternates to the extraterritorial land use commission shall be appointed by the board of county commissioners from the remaining members of the county planning commission and by the municipality from the remaining members of the environmental planning commission, who shall be notified prior to a meeting of the extraterritorial land use commission if an appointed member cannot attend. When replacing a member, the alternate shall have the same duties, privileges and powers as other appointed members.

D. The composition of the extraterritorial land use commission shall not affect the composition of any other extraterritorial zoning commission that may be established in that county with any other municipality.

E. The extraterritorial land use commission shall have the authority to carry out duties related to planning and platting jurisdiction, subdivision and extraterritorial zoning.

History: Laws 1998, ch. 42, § 5; 1999, ch. 115, § 1; 2003, ch. 438, § 5.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, rewrote Subsection A and deleted former Subsection B(1), concerning a municipality having a population over two hundred thousand.

The 1999 amendment, effective June 18, 1999, in the section heading substituted "counties" for "county"; rewrote former Subsection A to divide it into Subsections A and A(1); in Subsection A(1), substituted "three hundred thousand persons" for "two hundred thousand persons" and inserted the fourth, fifth and sixth sentences; inserted Subsection A(2); rewrote former Subsection B and divided it into Subsections B(1), B(2) and C; redesignated former Subsections C and D as Subsections D and E; and made stylistic changes throughout the section.

3-21-3.3. Extraterritorial zoning jurisdiction; concurrent authority for certain counties.

A class A county with a population, as shown by the most recent federal decennial census, of greater than one hundred fifty thousand and less than four hundred thousand and a municipality within that county may exercise concurrent authority pursuant to an extraterritorial zoning authority created under Section 3-21-3 or 3-21-3.2 NMSA 1978 or pursuant to the terms of a joint powers agreement.

History: Laws 2009, ch. 34, § 1.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 34 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

3-21-4. Extraterritorial zoning ordinance; enforcement and administration; appeals.

A. A zoning ordinance adopted by a joint municipal-county zoning authority shall be an ordinance of the municipality and an ordinance of the county joining in the agreement pursuant to Subsection A of Section 3-21-3 NMSA 1978 and may be enforced by appropriate procedures of either the municipality or the county. The agreement entered into pursuant to Subsection A of Section 3-21-3 NMSA 1978 may specify whether the municipality or the county shall assume primary enforcement responsibility.

B. The extraterritorial zoning commission shall administer the zoning ordinance adopted by the joint municipal-county zoning authority in the manner provided in Subsection C of Section 3-21-7 NMSA 1978.

C. Appeals from the decisions of the extraterritorial zoning commission shall be taken to the joint municipal-county zoning authority in the manner provided in Section 3-21-8 NMSA 1978, and appeals from the decisions of the joint municipal-county zoning authority shall be taken to the district court in the manner provided in Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-20-2.3, enacted by Laws 1977, ch. 80, § 3; 1998, ch. 55, § 6; 1999, ch. 265, § 6.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 1998 amendment, effective September 1, 1998, in Subsection C substituted "12-8A-1 NMSA 1978" for "3-21-9 NMSA 1978".

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection C.

Applicability of chapter. — This chapter does not effectively repeal all prior laws and ordinances governing the extraterritorial area; the county still had authority to enforce its ordinances throughout its territory except within the limits of a municipality. Edwards v. Bd. of County Comm'rs, 119 N.M. 114, 888 P.2d 996 (Ct. App. 1994).

3-21-4.1. Extraterritorial zoning ordinances adopted under former law.

Notwithstanding any other provision of law to the contrary, all zoning ordinances adopted by class A counties pursuant to Section 15-36-26 NMSA 1953 (being Laws 1961, Chapter 21, Section 1, as amended) are valid and enforceable as of their effective dates and as they may have been amended from time to time. Such ordinances may be amended according to their provisions and may be enforced with respect to areas of the county not within the boundaries of a municipality; provided that such ordinances must be in effect as of the effective date of this 1996 act and shall not have been superseded by any municipal ordinance or by any joint ordinance of a county and a municipality adopted pursuant to the provisions of Sections 3-21-2 through 3-21-4 NMSA 1978.

History: 1978 Comp., § 3-21-4.1, enacted by Laws 1996, ch. 21, § 1.

3-21-5. Zoning; conformance to comprehensive plan.

A. The regulations and restrictions of the county or municipal zoning authority are to be in accordance with a comprehensive plan and be designed to:

(1) lessen congestion in the streets and public ways;

(2) secure safety from fire, flood waters, panic and other dangers;

(3) promote health and the general welfare;

(4) provide adequate light and air;

(5) prevent the overcrowding of land;

(6) avoid undue concentration of population;

(7) facilitate adequate provision for transportation, water, sewerage, schools, parks and other public requirements; and

(8) control and abate the unsightly use of buildings or land.

B. The zoning authority in adopting regulations and restrictions shall give reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and to conserving the value of buildings and land and encouraging the most appropriate use of land throughout its jurisdiction.

History: 1953 Comp., § 14-20-3, enacted by Laws 1965, ch. 300; 1970, ch. 52, § 2.

ANNOTATIONS

Comprehensive planning. — A comprehensive plan need not be contained in one document. It may be comprised of several or no documents. It may be found within the ordinance itself where the zoning authority has not enacted a prior comprehensive plan and that absence of a formally adopted comprehensive plan does substantially weaken the presumption of regularity of any zoning ordinance enacted without it. Watson v. Town Council of Town of Bernalillo, 111 N.M. 374, 805 P.2d 641 (Ct. App. 1991).

Comprehensive plan may be found within zoning ordinance itself where the zoning authority has not enacted a prior comprehensive plan. Bd. of County Comm'rs v. City of Las Vegas, 95 N.M. 387, 622 P.2d 695 (1980).

Major reason for requiring comprehensive plan is to ensure that there will not be loose determinations of land utilization of comparatively small sections of the community. Bd. of County Comm'rs v. City of Las Vegas, 95 N.M. 387, 622 P.2d 695 (1980).

Advisory nature of master plan. — The phrase "in accordance with", in Subsection A, requires land use planning regulations to be guided by, and consistent with, a master plan, but it does not mean that the legislature intended city master plans to be strictly adhered to in the same manner as a statute, ordinance, or agency regulation. West

Bluff Neighborhood Ass'n v. City of Albuquerque, 2002-NMCA-075, 132 N.M. 433, 50 P.3d 182, overruled, Rio Grande Chapter of Sierra Club v. N.M. Mining Comm'n, 2003-NMSC-005, 133 N.M. 97, 61 P.3d 806.

Absence of adopted plan weakens presumption of zoning regularity. — Absence of a formally adopted comprehensive plan does substantially weaken the presumption of regularity of any zoning ordinance enacted without it. Bd. of County Comm'rs v. City of Las Vegas, 95 N.M. 387, 622 P.2d 695 (1980).

Ordinance invalid absent evidence of plan. — Where there was no evidence before the trial court demonstrating that a county land fill ordinance included a comprehensive plan, but, to the contrary, both the express statements in the ordinance and the evidence before the trial court show that the disputed ordinance was not enacted in accordance with such a plan, the ordinance was struck down as invalid. Board of County Comm'rs v. City of Las Vegas, 95 N.M. 387, 622 P.2d 695 (1980).

Comprehensive planning. — A county zoning ordinance was valid where the county had a comprehensive plan in substance if not form at the time the ordinance was enacted. Bogan v. Sandoval County Planning and Zoning Comm'n, 119 N.M. 334, 890 P.2d 395 (Ct. App.), cert. denied, 119 N.M. 168, 889 P.2d 203 (1994).

Presumption of validity. — A zoning ordinance is attached with a presumption of validity. The burden is on a sign owner to overcome this presumption by proving that an ordinance is not reasonably related to its stated purpose. Temple Baptist Church, Inc. v. City of Albuquerque, 98 N.M. 138, 646 P.2d 565 (1982).

Presumption of correctness regarding initial zoning. — There is a presumption that the initial determination of the type of zoning for a given property is the correct one. Miller v. City of Albuquerque, 89 N.M. 503, 554 P.2d 665 (1976).

There is a substantial distinction between amendments to a zoning ordinance as contrasted to ordinances enacting comprehensive zoning; the fundamental justification for an amendatory or repealing zoning ordinance is a change of conditions making the amendment or repeal reasonably necessary to protect the public interest, with another function being the covering and perfecting of previous defective ordinances or correcting mistakes or injustices therein. Miller v. City of Albuquerque, 89 N.M. 503, 554 P.2d 665 (1976).

Ordinance establishing exceptions. — A county ordinance which among other things establishes certain limited special exceptions is an integral part of the plan required under this section, and the main objectives of requiring that a special permit be obtained before a use of land is commenced are to protect adjoining property and to insure the orderly and efficient development of the community. Burroughs v. Board of County Comm'rs, 88 N.M. 303, 540 P.2d 233 (1975).

Aesthetics justify exercise of police power. — Aesthetic considerations alone justify the exercise of the police power. Ordinances must still, however, be construed for their reasonableness in relation to aesthetic purposes. Moreover, if the ordinance in question impinges on a fundamental right, then the ordinance must "directly advance" the interests of aesthetics. Temple Baptist Church, Inc. v. City of Albuquerque, 98 N.M. 138, 646 P.2d 565 (1982).

Sign ordinance held reasonably related to proper governmental goals. — A sign ordinance regulating the size, height and number of signs is reasonably related to the proper governmental goals of aesthetics and traffic safety. Temple Baptist Church, Inc. v. City of Albuquerque, 98 N.M. 138, 646 P.2d 565 (1982).

Purpose of a municipal historical zoning ordinance was within the term "general welfare," as used in municipal zoning enabling legislation. City of Santa Fe v. Gamble-Skogmo, Inc., 73 N.M. 410, 389 P.2d 13 (1964).

Judicial review. — The district court may not substitute its judgment for that of the board of commissioners, but when it was made to appear by the affidavits and other matters in the record that the board may have improperly failed to consider the matters which it was required to consider in making the zoning change, then a question of fact was presented on the issue of the arbitrariness of the board in granting the special use permit, and it was improper for the court to grant summary judgment and thereby resolve this issue as a matter of law. Cinelli v. Whitfield Transp., Inc., 83 N.M. 205, 490 P.2d 463 (1971).

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

For note, "Subdivision Planning Through Water Regulation in New Mexico," see 12 Nat. Resources J. 286 (1972).

For article, "Solar Rights and Their Effect on Solar Heating and Cooling," see 16 Nat. Resources J. 363 (1976).

For article, "Survey of New Mexico Law, 1982-83: Land Use Planning/Zoning," see 14 N.M.L. Rev. 183 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Requirement that zoning variances or exceptions be made in accordance with comprehensive plan, 40 A.L.R.3d 372.

3-21-6. Zoning; mode of determining regulations, restrictions and boundaries of district; public hearing required; notice.

A. The zoning authority within its jurisdiction shall provide by ordinance for the manner in which zoning regulations, restrictions and the boundaries of districts are:

(1) determined, established and enforced; and

(2) amended, supplemented or repealed.

B. No zoning regulation, restriction or boundary shall become effective, amended, supplemented or repealed until after a public hearing at which all parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of the public hearing shall be published, at least fifteen days prior to the date of the hearing, within its respective jurisdiction. Whenever a change in zoning is proposed for an area of one block or less, notice of the public hearing shall be mailed by certified mail, return receipt requested, to the owners, as shown by the records of the county treasurer, of lots of land within the area proposed to be changed by a zoning regulation and within one hundred feet, excluding public right-of-way, of the area proposed to be changed by zoning regulation. Whenever a change in zoning is proposed for an area of more than one block, notice of the public hearing shall be mailed by first class mail to the owners, as shown by the records of the county treasurer, of lots or [of] land within the area proposed to be changed by a zoning regulation and within one hundred feet, excluding public right-of-way, of the area proposed to be changed by zoning regulation. If the notice by first class mail to the owner is returned undelivered, the zoning authority shall attempt to discover the owner's most recent address and shall remit the notice by certified mail, return receipt requested, to that address.

C. If the owners of twenty percent or more of the area of the lots and [of] land included in the area proposed to be changed by a zoning regulation or within one hundred feet, excluding public right-of-way, of the area proposed to be changed by a zoning regulation, protest in writing the proposed change in the zoning regulation, the proposed change in zoning shall not become effective unless the change is approved by a majority vote of all the members of the governing body of the municipality or by a two-thirds vote of all the members of the board of county commissioners.

History: 1953 Comp., § 14-20-4, enacted by Laws 1965, ch. 300; 1979, ch. 319, § 1; 1981, ch. 91, § 1.

ANNOTATIONS

Cross references. — For definition of "publish" or "publication," *see* 3-1-2 NMSA 1978.

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

1979 amendment unconstitutional. — Laws 1979, ch. 319, § 1, which purported to amend this section, is unconstitutional because it violated N.M. Const., art. IV, § 16,

which requires that the subject of any act be embraced in the title of the act. City of Albuquerque v. State, 102 N.M. 38, 690 P.2d 1032 (1984).

I. GENERAL CONSIDERATION.

Zoning ordinances strictly construed. — Since zoning ordinances are in derogation of the common law, they are to be strictly construed. Nesbit v. City of Albuquerque, 91 N.M. 455, 575 P.2d 1340 (1977).

Municipal legislative body is bound to follow the zoning regulations it has adopted, in the exercise of its delegated legislative power. Miller v. City of Albuquerque, 89 N.M. 503, 554 P.2d 665 (1976).

Intent of enabling statute. — Allowing the legislature to paint with a broad brush, and to leave the details to local governmental entities, is reflected in an enabling statute, which grants counties the authority to pass ordinances defining how their land use ordinances may be enforced. Cerrillos Gravel Products, Inc. v. Bd. of County Comm'rs of Santa Fe, 2004-NMCA-096, 136 N.M. 247, 96 P.3d 1167, cert. granted, 2004-NMCERT-008, 136 N.M. 493, 100 P.3d 198.

State law does not require that ordinance precisely track enabling statute to be authorized. Cerrillos Gravel Products, Inc. v. Bd. of County Comm'rs, 2004-NMCA-096, 136 N.M. 247, 96 P.3d 1167, cert. granted, 2004-NMCERT-008, 136 N.M. 493, 100 P.3d 198.

Creation of buffer zone nullifies demand for vote in Subsection C. — Petitioner, who owned 20% or more of the land within 100 feet of tract proposed to be rezoned, could no longer demand a three-fourths vote of all members of the governing body of the city, as required by Subsection C of this section, where applicant for a zoning change created a buffer zone of 100 feet between that portion of his property sought to be rezoned and the lands of adjacent property owners, including petitioner. St. Bede's Episcopal Church v. City of Santa Fe, 85 N.M. 109, 509 P.2d 876 (1973).

Ordinance held not uncertain. — A city code provision prohibiting the operation of an adult theatre "within 500 feet of a residential zone" is not so uncertain that the court is unable, by use of accepted rules of construction, to determine the intent of the city council. Texas Nat'l Theatres, Inc. v. City of Albuquerque, 97 N.M. 282, 639 P.2d 569 (1982).

Zoning of private land that was previously federally held. — A county may not adopt a comprehensive zoning ordinance that specifically excludes federally owned land, then later apply the ordinance to private land that was federally owned at the time the ordinance was passed; to zone such land, the county must comply with the notice requirements of this section. Bonito Land & Livestock v. Valencia County Bd. of Comm'rs, 1998-NMCA-127, 125 N.M. 638, 964 P.2d 199.

Municipal agreement to rezone illegal. — A contract in which a municipality promised to zone property in a specified manner in exchange for a party's conveyancing of property that it needed for a highway right of way was illegal because such a promise preempted the power of the zoning authority to zone the property according to prescribed legislative procedures. Dacy v. Vill. of Ruidoso, 114 N.M. 699, 845 P.2d 793 (1992).

II. SCOPE OF AUTHORITY.

Suspension or revocation of permit. — Santa Fe County's ordinance providing for suspension or revocation of mining permit is consistent with the statutory authority granted by the legislature to pass ordinances defining how land use ordinances will be enforced. Cerrillos Gravel Products, Inc. v. Santa Fe Bd. of County Comm'rs, 2005-NMSC-023, 138 N.M. 126, 117 P.3d 932.

Express authority to enact ordinances for enforcement. — Section 3-12-6 NMSA 1978 grants counties the authority to enact ordinances to provide for enforcement of zoning regulations and restrictions. Cerrillos Gravel Products, Inc. v. Santa Fe Bd. of County Comm'rs, 2005-NMSC-023, 138 N.M. 126, 117 P.3d 932.

Absence of language including "revocation of any permit" in enabling statute does not require a court to hold that such authority is not authorized. Cerrillos Gravel Products, Inc. v. Bd. of County Comm'rs of Santa Fe, 2004-NMCA-096, 136 N.M. 247, 96 P.3d 1167, affirmed, 2005-NMSC-023, 138 N.M. 126, 117 P.3d 932.

Authority of air quality control board to issue special use permits. — There can be no doubt of a county air quality control board's authority to entertain applications for special use permits, and to issue or withhold them after consideration. McCabe v. Hawk, 97 N.M. 622, 642 P.2d 608 (Ct. App. 1982).

Santa Fe County's ordinance, specifically providing for revocation or suspension of mining permit, is consonant with the legislature's grant of power to pass ordinances defining how land use ordinances may be enforced, and within the legislature's grant of authority to institute “any appropriate action or proceedings” to confront violations of land use ordinances. Cerrillos Gravel Products, Inc. v. Board of County Comm'rs of Santa Fe, 2004-NMCA-096, 136 N.M. 247, 96 P.3d 1167, affirmed, 2005-NMSC-023, 138 N.M. 126, 117 P.3d 932.

III. HEARING.

Failure to comply denies procedural due process. — By failing to comply with its own published procedures, specifically by failing to give reasons for the proposed change, the environmental planning commission deprived petitioner of notice and the opportunity to prepare an adequate defense to the proposed down zoning, and this was a denial of procedural due process. Miller v. City of Albuquerque, 89 N.M. 503, 554 P.2d 665 (1976).

Conduct of hearing. — It is within a city council's authority to restrict testimony fairly on both sides in a zoning dispute, provided that each party has an opportunity to be heard in accordance with this section and any local rules. Bennett v. City Council, 1999-NMCA-015, 126 N.M. 619, 973 P.2d 871.

Presumption regarding hearing and notice. — In view of the presumption of validity attending the ordinance, and the due performance of duty by public officials, absent any proof to the contrary, it will be presumed the prepassage requirements as to public hearings and notice thereof were had and given. City of Alamogordo v. McGee, 64 N.M. 253, 327 P.2d 321 (1958).

Postponement of hearing. — Where proper notice was originally provided, an announcement at the hearing of the postponement of consideration of an issue to a later date substantially complied with notice requirements because actual notice of the original hearing and, at that meeting, of the postponed-to hearing was given to affected property owners. Bennett v. City Council, 1999-NMCA-015, 126 N.M. 619, 973 P.2d 871.

New notice and hearing not required where rezoning affected lesser amount of land than originally requested. — Where proper notice was given of the requested change in zoning of a tract and of the public hearing thereon, and the rezoning change ultimately effected varied from that request only to the extent that a lesser amount of land was rezoned than was originally requested, this did not amount to a change in fundamental character as would require new notice and another hearing. St. Bede's Episcopal Church v. City of Santa Fe, 85 N.M. 109, 509 P.2d 876 (1973).

IV. NOTICE.

Lack of statutory notice is generally held to be jurisdictional defect which renders the action taken by the zoning authority void. Nesbit v. City of Albuquerque, 91 N.M. 455, 575 P.2d 1340 (1977).

Substantial compliance with statutory notice provisions required. — Although some courts have held that even a minor defect in notice, e.g., 19-day notice instead of 20-day, will invalidate an action taken by the zoning authority, New Mexico does not take such a strict view. Nesbit v. City of Albuquerque, 91 N.M. 455, 575 P.2d 1340 (1977).

Purpose of section. — In New Mexico, substantial compliance with the statutory notice provisions would satisfy the purpose of this section, but where substantial compliance with mandatory publication requirements is not met, the action of the zoning authority is invalid. Nesbit v. City of Albuquerque, 91 N.M. 455, 575 P.2d 1340 (1977).

Determination of adequate notice. — In order to meet the statutory requirement of adequate notice, it must be determined whether notice, as published, fairly apprised the average citizen reading it with the general purpose of what was contemplated. If the

notice is insufficient, ambiguous, misleading or unintelligible to the average citizen, it is inadequate to fulfill the statutory purpose of informing interested persons of the hearing so that they may attend and state their views. Bogan v. Sandoval County Planning and Zoning Comm'n, 119 N.M. 334, 890 P.2d 395 (Ct. App. 1994), cert. denied, 119 N.M. 168, 889 P.2d 203 (1995); Nesbit v. City of Albuquerque, 91 N.M. 455, 575 P.2d 1340 (1977).

Actual notice constituted substantial compliance. — Where property owner within 100 feet of property to be rezoned did not receive notice of public hearing by mail, as required by this section, but had actual notice of the hearing, property owner was properly notified and this constituted substantial compliance with the statute. Hawthorne v. City of Santa Fe, 88 N.M. 123, 537 P.2d 1385 (1975).

Applicability of notice provisions. — The appropriate notice for a new, comprehensive zoning ordinance that distributes its impact over an entire community is notice by publication, as set forth in 3-21-14 NMSA 1978, rather than the individualized notice set forth in this section for zoning changes directly affecting relatively small numbers of people. Miles v. Bd. of County Comm'rs, 1998-NMCA-118, 125 N.M. 608, 964 P.2d 169, cert. denied, 126 N.M. 107, 967 P.2d 447 (1998).

Law reviews. — For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

For comment, "Statutory Notice in Zoning Actions: Nesbit v. City of Albuquerque," see 10 N.M.L. Rev. 177 (1979-80).

For annual survey of New Mexico law relating to property, see 13 N.M.L. Rev. 435 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity and construction of statutory notice requirements prerequisite to adoption or amendment of zoning ordinance or regulation, 96 A.L.R.2d 449.

Disqualification for bias or interest of administrative officer sitting in zoning proceeding, 10 A.L.R.3d 694.

Enforcement of zoning regulation as affected by other violations, 4 A.L.R.4th 462.

Zoning: validity and construction of provisions of zoning statute or ordinance regarding protest by neighboring property owners, 7 A.L.R.4th 732.

3-21-7. Appointment of a zoning commission; duties; preliminary report and hearing.

The zoning authority, within its jurisdiction, may:

A. act as a zoning commission;

B. designate the planning commission to act as a zoning commission; or

C. appoint a zoning commission, which shall recommend the boundaries of the various original districts and the regulations necessary to enforce the zoning restrictions. The zoning commission shall make a preliminary report and hold a hearing on the preliminary report before the report is submitted to the zoning authority for action.

History: 1953 Comp., § 14-20-5, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

3-21-8. Appeals to zoning authority; grounds; stay of proceedings.

A. The zoning authority shall provide by resolution the procedure to be followed in considering appeals allowed by this section.

B. Any aggrieved person or any officer, department, board or bureau of the zoning authority affected by a decision of an administrative officer, commission or committee in the enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or ordinance, resolution, rule or regulation adopted pursuant to these sections may appeal to the zoning authority. An appeal shall stay all proceedings in furtherance of the action appealed unless the officer, commission or committee from whom the appeal is taken certifies that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property. Upon certification, the proceedings shall not be stayed except by order of district court after notice to the official, commission or committee from whom the appeal is taken and on due cause shown.

C. When an appeal alleges that there is error in any order, requirement, decision or determination by an administrative official, commission or committee in the enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or any ordinance, resolution, rule or regulation adopted pursuant to these sections, the zoning authority by a majority vote of all its members may:

(1) authorize, in appropriate cases and subject to appropriate conditions and safeguards, variances or special exceptions from the terms of the zoning ordinance or resolution:

(a) that are not contrary to the public interest;

(b) where, owing to special conditions, a literal enforcement of the zoning ordinance will result in unnecessary hardship;

(c) so that the spirit of the zoning ordinance is observed and substantial justice done; and

(d) so that the goals and policies of the comprehensive plan are implemented; or

(2) in conformity with Sections 3-21-1 through 3-21-14 NMSA 1978:

(a) reverse any order, requirement, decision or determination of an administrative official, commission or committee;

(b) decide in favor of the appellant; or

(c) make any change in any order, requirement, decision or determination of an administrative official, commission or committee.

History: 1953 Comp., § 14-20-6, enacted by Laws 1965, ch. 300; 1979, ch. 256, § 1; 1983, ch. 160, § 1; 2008, ch. 64, § 1.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

For scope of review of the district court, *see* Zamora v. Vill. of Ruidoso Downs, 120 N.M. 778, 907 P.2d 182 (1995).

The 2008 amendment, effective May 14, 2008, in Subsection C(1), authorized special exceptions during appeals and added Subsection C(1)(d).

Due process. — Administrative hearings in zoning cases are quasi judicial hearings in which the administrative body must adhere to such requisite procedural protections as the particular situation demands. At a minimum, witnesses must be sworn and subject to cross-examination. State ex rel. Battershell v. City of Albuquerque, 108 N.M. 658, 777 P.2d 386 (Ct. App. 1989).

"Aggrieved person" defined. — To be aggrieved, a party must have a personal or pecuniary interest or property right adversely affected by the judgment. The party's interest must be an immediate, pecuniary and substantial consequence of the judgment, not merely nominal or remote. Webb v. Fox, 105 N.M. 723, 737 P.2d 82 (Ct. App. 1987).

A zoning applicant who possesses a recognizable right or interest in the property is an aggrieved person with standing to appeal. Webb v. Fox, 105 N.M. 723, 737 P.2d 82 (Ct. App. 1987).

Zoning commission's denial of rezoning petition constituted a "decision" for purposes of appeal to the city commission. Corondoni v. City of Albuquerque, 72 N.M. 422, 384 P.2d 691 (1963).

Availability of injunctive relief. — Injunctive relief is not available to appeal a zoning decision when there is an adequate remedy at law, such as the method provided for appealing a zoning decision under Subsection B of this section and 3-21-9A NMSA 1978. State ex rel. Baxter v. Egolf, 107 N.M. 315, 757 P.2d 371 (Ct. App. 1988).

Special exceptions are part of comprehensive plan. — A county ordinance which among other things establishes certain limited special exceptions is an integral part of the plan required under 3-21-5 NMSA 1978, and the main objectives of requiring that a special permit be obtained before a use of land is commenced are to protect adjoining property and to insure the orderly and efficient development of the community. Burroughs v. Bd. of County Comm'rs, 88 N.M. 303, 540 P.2d 233 (1975).

"Special exception," "special permit" and "use permitted subject to administrative approval" are qualitatively the same, each involving the use which is permitted rather than proscribed by the zoning regulations. Burroughs v. Bd. of County Comm'rs, 88 N.M. 303, 540 P.2d 233 (1975).

Exceptions and variances distinguished. — Exceptions may be treated as a legislative process or the exercise of a legislative function, the conditions for which must be found in the zoning ordinance and may not be varied, while variances may be treated as an exercise of the judicial function, whereby literal enforcement of ordinances may be disregarded. A variance is authority extended to the owner to use his property in a manner forbidden by the zoning enactment, while an exception allows him to put his property to a use which the enactment expressly permits. While exceptions are allowable to serve the general good and welfare rather than individual interests merely, a variance is a relaxation of an ordinance to alleviate conditions peculiar to particular property. Burroughs v. Bd. of County Comm'rs, 88 N.M. 303, 540 P.2d 233 (1975).

A city council has broad statutory authority to grant a variance. Downtown Neighborhoods Ass'n v. City of Albuquerque, 109 N.M. 186, 783 P.2d 962 (Ct. App. 1989).

"Unnecessary hardship", which has been given special meaning by courts considering a zoning authority's power to grant a variance, ordinarily refers to circumstances in which no reasonable use can otherwise be made of the land. The exact showing necessary to prove unnecessary hardship varies from case to case, and a city council must make the initial determination by considering all of the relevant circumstances. However, it is clear that a showing that the owner might receive a greater profit if the variance is granted is not sufficient justification in itself for a variance. Downtown Neighborhoods Ass'n v. City of Albuquerque, 109 N.M. 186, 783 P.2d 962 (Ct. App. 1989).

Historical designation does not create unnecessary hardship. — Designation of a house as historically significant does not in and of itself answer the ultimate question of unnecessary hardship. Downtown Neighborhoods Ass'n v. City of Albuquerque, 109 N.M. 186, 783 P.2d 962 (Ct. App. 1989).

Cities have power to impose reasonable conditions on variances. Singleterry v. City of Albuquerque, 96 N.M. 468, 632 P.2d 345 (1981).

Ordinance may be more restrictive. — Although the statutory requirements for authorizing variances listed in Subsection C are less restrictive than those under the ordinance, no preemption occurs unless the ordinance requirements conflict with the statute. Gould v. Santa Fe County, 2001-NMCA-107, 131 N.M. 405, 37 P.3d 122.

Cities may require violation of restrictive covenant. — In its power to attach reasonable conditions to grants of variances, a zoning authority may require a landowner to fulfill a condition which would violate a restrictive covenant. Singleterry v. City of Albuquerque, 96 N.M. 468, 632 P.2d 345 (1981).

Authority of air quality control board to issue special use permits. — There can be no doubt of a county air quality control board's authority to entertain applications for special use permits, and to issue or withhold them after consideration. McCabe v. Hawk, 97 N.M. 622, 642 P.2d 608 (Ct. App.), cert. denied, 98 N.M. 50, 644 P.2d 1039 (1982).

Authorizing overnight campground in agricultural zone held improper. — The granting of a special use permit to landowner by the county commissioners, authorizing the construction and maintenance of an overnight campground in an A-2 rural agricultural zone, was an improper exercise of power, since such a use was not permitted under the ordinance passed pursuant to this section, and the commissioners had no authority under the specific provisions of the ordinance to issue this special use permit. Burroughs v. Bd. of County Comm'rs, 88 N.M. 303, 540 P.2d 233 (1975).

Overnight campgrounds not included in trailer court. — Where a county ordinance passed pursuant to this section authorizes special use permits for trailer courts, the supreme court could not discern an intention in the ordinance to include overnight campgrounds in the category of "trailer court." Burroughs v. Bd. of County Comm'rs, 88 N.M. 303, 540 P.2d 233 (1975).

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For annual survey of New Mexico law relating to administrative law, see 13 N.M.L. Rev. 235 (1983).

For annual survey of New Mexico law relating to property, see 13 N.M.L. Rev. 435 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Cross-examination: right to cross-examination of witnesses in hearings before administrative zoning authorities, 27 A.L.R.3d 1304.

Zoning: validity and construction of provisions of zoning statute or ordinance regarding protest by neighboring property owners, 7 A.L.R.4th 732.

Standing of civic or property owners' association to challenge zoning board decision (as aggrieved party), 8 A.L.R.4th 1087.

3-21-9. Zoning; appeal.

A person aggrieved by a decision of the zoning authority or any officer, department, board or bureau of the zoning authority may appeal the decision pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-20-7, enacted by Laws 1965, ch. 300; 1998, ch. 55, § 7; 1999, ch. 265, § 7.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

Appealable decision. — A county land use authority's decision granting an application for a special use permit, subject to certain specified conditions, and the district court's affirmance of the decision were final orders for purposes of appeal. West Gun Club Neighborhood Ass'n v. Extraterritorial Land Use Authority, 2001-NMCA-013, 130 N.M. 195, 22 P.3d 220, cert. denied, 130 N.M. 558, 28 P.3d 1099 (2001).

Zoning commission's denial of rezoning petition constituted a "decision" for purposes of appeal to the city commission; consequently, the district court had jurisdiction to review by certiorari the denial of rezoning petition by city commission sitting for the purpose of hearing and deciding appeals. Corondoni v. City of Albuquerque, 72 N.M. 422, 384 P.2d 691 (1963).

Challenge of decision of neighboring city. — A town had standing as a "person aggrieved" to challenge the zoning decision of a neighboring city. Town of Mesilla v. City of Las Cruces, 120 N.M. 69, 898 P.2d 121 (Ct. App. 1995).

Citizens group not organized when decision rendered not "person aggrieved". — A citizens group which was not duly organized at the time a decision granting a special use permit was rendered was not a "person aggrieved" by the decision. Citizens for Los Alamos, Inc. v. Incorporated County of Los Alamos, 104 N.M. 571, 725 P.2d 250 (1986).

Applicant for variance indispensable party. — Under this section and Rule 1-065 D(2), where the party bringing the appeal seeks to overturn a decision authorizing a zoning variance, the applicant for the variance is an indispensable or necessary party. State ex rel. Sweet v. Village of Jemez Springs, Inc., 114 N.M. 297, 837 P.2d 1380 (Ct. App. 1992).

Indispensable party added after expiration of filing deadline. — Where an indispensable or necessary party is subject to service of process and is otherwise capable of being joined as a party to a proceeding under this section challenging the issuance of a zoning variance, the district court has jurisdiction to add such party to the proceeding after the time to file the petition has expired. State ex rel. Sweet v. Village of Jemez Springs, Inc., 114 N.M. 297, 837 P.2d 1380 (Ct. App. 1992).

"Present" defined. — The term "present," as used in Subsection A only requires filing with the clerk of the court. Butcher v. City of Albuquerque, 95 N.M. 242, 620 P.2d 1267 (1980)(decided under prior law).

Petition need not be personally presented to district judge within the 30-day period to comply with this section. Butcher v. City of Albuquerque, 95 N.M. 242, 620 P.2d 1267 (1980).

Once petition filed, district court must either dismiss or issue certiorari. — Once a petition is filed with the district court, it becomes incumbent upon that court to either dismiss the matter or to issue a writ of certiorari. Mitchell v. City of Santa Fe, 99 N.M. 505, 660 P.2d 595 (1983).

Judicial review may be obtained by both petitions for review and certiorari. — This section does not restrict an appellant to seeking a writ of certiorari as the only appropriate procedure for obtaining judicial review, but gives the district court jurisdiction to hear both petitions for review and writs of certiorari. Mitchell v. City of Santa Fe, 99 N.M. 505, 660 P.2d 595 (1983)(decided under prior law).

Availability of injunctive relief. — Injunctive relief is not available to appeal a zoning decision when there is an adequate remedy at law, such as the method provided for appealing a zoning decision under Subsection A of this section and 3-21-8B NMSA 1978. State ex rel. Baxter v. Egolf, 107 N.M. 315, 757 P.2d 371 (Ct. App. 1988)(decided under prior law).

Standard for judicial review. — After the enactment of 39-3-1.1 NMSA 1978, the standard of review for the court of appeals upon the review of a district court decision of

an appeal from an administrative agency is based upon the criteria for a writ of certiorari as outlined in Rule 12-505 NMRA, and no longer may the court of appeals review the district court decision under the administrative standard. C.F.T. Dev., LLC v. Board of County Comm'rs, 2001-NMCA-069, 130 N.M. 775, 32 P.3d 784.

The questions to be answered by a district court in reviewing the decisions of a zoning authority are questions of law, restricted to whether the administrative body acted fraudulently, arbitrarily or capriciously, whether the order was supported by substantial evidence and, generally, whether the action of the administrative body was within the scope of its authority; the district court may not substitute its judgment for that of the administrative body. Singleterry v. City of Albuquerque, 96 N.M. 468, 632 P.2d 345 (1981).

Judicial review of a zoning authority's decision is limited to questions of law. By statute, the district court must determine initially whether the decision is illegal, in whole or in part, and an appellate court conducts the same review as the district court. That determination depends upon whether the zoning authority acts fraudulently, arbitrarily, or capriciously; whether the decision is supported by substantial evidence; and whether the zoning authority acted within the scope of its authority. Downtown Neighborhoods Ass'n v. City of Albuquerque, 109 N.M. 186, 783 P.2d 962 (Ct. App. 1989).

In New Mexico, zoning decisions involving the application of a general rule to a specific property are not legislative acts; rather, they are deemed to be quasi-judicial in nature. Because the zoning actions are quasi-judicial, the administrative standard of review is applied. The decision is affirmed if it is supported by the applicable law and by substantial evidence in the record as a whole. West Old Town Neighborhood Ass'n v. City of Albuquerque, 1996-NMCA-107, 122 N.M. 495, 927 P.2d 529, overruled on other grounds, C.F.T. Dev., LLC v. Bd. of County Comm'rs, 2001-NMCA-069, 130 N.M.775, 32 P.3d 784(decided under prior law).

Constitutionality of section. — To the extent that this section purports to allow the district court to zone land, it is void as an unconstitutional delegation of power to the judiciary, contravening N.M. Const., art. III, § 1. Coe v. City of Albuquerque, 76 N.M. 771, 418 P.2d 545 (1966)(decided under prior law).

Court order for rezoning unconstitutional. — The district court is not permitted to overturn a rejection of a petition for a zoning change and then order the city to rezone; such an order violates constitutional separation of powers, since zoning is a legislative activity. Hart v. City of Albuquerque, 1999-NMCA-043, 126 N.M. 366, 975 P.2d 366.

Collateral attack held permissible. — Since this section does not present the exclusive method for attacking invalid ordinances, the supreme court held that a collateral attack upon an ordinance which was void in the sense that the legislative body had no constitutional or statutory power to pass it or because the ordinance was never legally enacted was permissible. Dale J. Bellamah Corp. v. City of Santa Fe, 88 N.M.

288, 540 P.2d 218 (1975); Mechem v. City of Santa Fe, 96 N.M. 668, 634 P.2d 690 (1981).

Presumption of correctness of original zoning. — Absent a showing that the original zoning was mistakenly listed as a different zone than that intended due to clerical error, oversight or misapprehension of the facts, the original zoning is deemed to be correct. Davis v. City of Albuquerque, 98 N.M. 319, 648 P.2d 777 (1982).

Zoning authority's decision upheld. — Zoning authority's decision was within the scope of its authority, supported by substantial evidence, and reasonable. Hyde v. Taos Municipal-County Zoning Auth., 113 N.M. 29, 822 P.2d 126 (Ct. App. 1991).

Thirty-days' requirement of Subsection A will be strictly interpreted. Bolin v. City of Portales, 89 N.M. 192, 548 P.2d 1210 (1976)(decided under prior law).

Tolling of time to appeal. — Where the developer sought review in federal court of the municipality's denial of the developer's preliminary plat within twenty-eight days after the municipality issued its final decision; while the developer's federal action was pending, the municipality filed an action in state district court to quiet title to the land; and after the federal court dismissed the federal action, the developer timely filed a counterclaim against the municipality in the state district court action to review the municipality's action denying the preliminary plat, the federal action tolled the limitations period to appeal and the developer's appeal for review in state district court was timely. City of Rio Rancho v. Amrep Sw., Inc., 2011-NMSC-037, 260 P.3d 414, aff'g in part and rev'g in part 2010-NMCA-075, 148 N.M. 542, 238 P.3d 911.

Thirty-day time limit to appeal not extended by civil rules. — Rule 1-015C, governing the relation back of amended pleadings, cannot be construed to extend the 30-day time limit of this section for appeal from a decision of the zoning authority. Citizens for Los Alamos, Inc. v. Incorporated County of Los Alamos, 104 N.M. 571, 725 P.2d 250 (1986)(decided under prior law).

Triggering date for 30-day period. — The date from which a city council's decision triggers the 30-day period under this section is the date of the council's final decision, the date the zoning ordinance or plan is passed. Ramirez v. City of Santa Fe, 115 N.M. 417, 852 P.2d 690 (Ct. App. 1993)(decided under prior law).

Petition filed too late. — An ordinance of the board of county commissioners changing the zoning of a certain tract from A-1 to M-1 became final on the date it was passed, adopted, approved and signed by the board, as reflected in the unchallenged return to petitioner's petition for a writ of certiorari, and not on the date some six weeks later when the board approved the minutes of the former meeting; the minutes were only a record of the actions taken. Therefore, petitioners who filed their petition for a writ of certiorari under this section on June 4 filed too late where according to the copy of the ordinance filed with the return to the writ the board of county commissioner's zoning decision was made on April 16, despite the fact that the board did not approve until May

21 the minutes of the meeting of April 16. Serna v. Bd. of County Comm'rs, 88 N.M. 282, 540 P.2d 212 (1975)(decided under prior law).

Review is limited to the record presented. Peace Found., Inc. v. City of Albuquerque, 76 N.M. 757, 418 P.2d 535 (1966).

Since portions of the record were not available to be certified to the court, the court accordingly took proof in connection with such omissions as per the procedure for review as set forth in this section. Krutzner Corp. v. City of Las Vegas, 81 N.M. 359, 467 P.2d 25 (1970)(decided under prior law).

Rules for construing zoning ordinances. — In construing municipal or county zoning ordinances, the same rules of construction are used as when construing statutes of the legislature. One of these rules of construction is to interpret the statute or ordinance to mean what the legislature intended it to mean, and to accomplish the ends sought to be accomplished by it. Another rule of construction is that the entire act or ordinance is to be read as a whole and each part construed in connection with every other part so as to produce a harmonious whole. Still another rule is that the court will not read into a statute or ordinance language which is not there, particularly if it makes sense as written. Burroughs v. Bd. of County Comm'rs, 88 N.M. 303, 540 P.2d 233 (1975).

Showing required to rezone to more restrictive zoning. — In comprehensive rezonings, where the zoning of extensive geographic areas is changed by zoning authorities after full public consideration, anyone seeking to rezone property to a more restrictive zoning must show that either there was a mistake in the original zoning or that a substantial change has occurred in the character of the neighborhood since the original zoning to such an extent that the reclassification or change ought to be made. Davis v. City of Albuquerque, 98 N.M. 319, 648 P.2d 777 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Standing of lot owner to challenge validity or regularity of zoning changes dealing with neighboring property, 37 A.L.R.2d 1143.

Right to intervene in court review of zoning proceeding, 46 A.L.R.2d 1059.

Motive of members of municipal authority approving or adopting zoning regulation, inquiry, upon review, into, 71 A.L.R.2d 568.

New application: zoning board's grant of new application for zoning change, variance or special exception after denial of previous application covering same property or part thereof, 52 A.L.R.3d 494.

Standing of civic or property owners' association to challenge zoning board decision (as aggrieved party), 8 A.L.R.4th 1087.

Standing of zoning board of appeals or similar board to appeal reversal of its decision, 13 A.L.R.4th 1130.

3-21-10. Zoning enforcement.

A. Sections 3-21-1 through 3-21-14 NMSA 1978, and any ordinance adopted pursuant to these sections, shall be enforced, by the zoning authority having jurisdiction, as municipal ordinances are enforced.

B. In addition, if any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of Sections 3-21-1 through 3-21-14 NMSA 1978, or any ordinance adopted pursuant to these sections, the zoning authority may institute any appropriate action or proceedings to:

(1) prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use;

(2) restrain, correct or abate the violation;

(3) prevent the occupancy of such building, structure or land; or

(4) prevent any illegal act, conduct, business or use in or about such premises.

C. The ordinances, rules and regulations together with the officially adopted or district zoning map of the county or municipal zoning authority shall be filed in the respective offices of the county clerk or municipal clerk and shall be available for examination by any citizen.

History: 1953 Comp., § 14-20-8, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Enforcement not limited. — Section 31-21-10 NMSA 1978 does not support a narrow construction that the legislature only intended Subsection B of this section to provide for injunction or abatement actions in court, as opposed to administrative action. Cerrillos Gravel Products, Inc. v. Santa Fe Bd. of County Comm'rs, 2005-NMSC-023, 138 N.M. 126, 117 P.3d 932.

No authority under zoning ordinance to revoke permit. — The board of county commissioners had no authority under a local zoning ordinance to revoke a special use permit granted to petitioner for the life of the use even though petitioner had violated local zoning ordinances in his use of the property. State ex rel. Vaughn v. Bernalillo County Bd. of County Comm'rs, 113 N.M. 347, 825 P.2d 1257 (Ct. App. 1991).

Village had standing to enforce reasonable restrictions imposed as a condition of subdivision approval for a cluster housing development. Vill. of Los Ranchos de Albuquerque v. Shiveley, 110 N.M. 15, 791 P.2d 466 (Ct. App. 1989), cert. denied, 109 N.M. 704, 789 P.2d 1271 (1990).

This section gives authority for enforcement of zoning ordinances only to zoning authority, and therefore, is an exception to the right of citizens to file complaints for violations of city ordinances. City of Santa Fe v. Baker, 95 N.M. 238, 620 P.2d 892 (Ct. App. 1980).

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Violation of zoning ordinance or regulation as affecting or creating liability for injuries or death, 31 A.L.R.2d 1469.

Remedies to compel municipal officials to enforce zoning regulations, 35 A.L.R.2d 1135.

Enforcement of zoning regulation as affected by other violations, 4 A.L.R.4th 462.

Construction of new building or structure on premises devoted to nonconforming use as violation of zoning ordinance, 10 A.L.R.4th 1122.

3-21-11. Conflicts between zoning regulations and other statutes and ordinances.

If any other statute or regulation or other local ordinance, resolution or regulation adopted under authority of Sections 3-21-1 through 3-21-14 NMSA 1978 is applicable to the same premises, the provision shall govern which requires:

A. the greater width or size of yards, courts or other open spaces;

B. the lower height of building or a less number of stories;

C. the greater percentage of lot or land to be left unoccupied;

D. or imposes, other higher standards.

History: 1953 Comp., § 14-20-9, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For conflicts with Scenic Highway Zoning Act, *see* 67-13-14 NMSA 1978.

Master plan. — A master plan is not a zoning document within the meaning of Section 3-21-11 NMSA 1978 and does not supercede less restrictive provisions in a zoning ordinance. West Bluff Neighborhood Ass'n v. City of Albuquerque, 2002-NMCA-075, 132 N.M. 433, 50 P.3d 182, rev'd on other grounds, Rio Grande Chapter of Sierra Club v. N.M. Mining Comm'n, 2003-NMSC-005, 133 N.M. 97, 61 P.3d 806.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

This section does not provide counties with express authority to zone on state land. County of Santa Fe v. Milagro Wireless, LLC, 2001-NMCA-070, 130 N.M. 771, 32 P.3d 214.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity of zoning ordinances prohibiting or regulating outside storage of house trailers, motor homes, campers, vans and the like in residential neighborhoods, 95 A.L.R.3d 378.

Enforcement of zoning regulation as affected by other violations, 4 A.L.R.4th 462.

Zoning regulation of intoxicating liquor as pre-empted by state law, 65 A.L.R.4th 555.

3-21-12. County zoning authority; authority to contract.

A county zoning authority may contract for staff assistance and the service of another body if the other body is a:

A. state agency;

B. federal agency;

C. private planning agency; or

D. planning or zoning commission of a municipality within the county.

History: 1953 Comp., § 14-20-10, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Enforcement of zoning regulation as affected by other violations, 4 A.L.R.4th 462.

3-21-13. Zoning enforcement by counties.

A. Counties having authority to regulate building and zoning under Sections 3-21-1 through 3-21-14 NMSA 1978, may enact ordinances to carry out that authority the same as a municipality, except where inconsistent with statutory or constitutional limitations placed on counties. The ordinances are effective only within the zoning jurisdiction of the county.

B. County ordinances enacted under this section may be enforced by prosecution in the district court of the county. Penalties for violations of these ordinances shall not exceed a fine of three hundred dollars ($300) or imprisonment for ninety days, or both.

C. The district attorney and sheriff shall enforce these ordinances.

History: 1953 Comp., § 14-20-11, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Enforcement not limited. — By using "may" instead of "shall" in Subsection B of Section 3-21-13 NMSA 1978, the legislature indicated that it was being permissive, granting a county discretionary authority to enforce violations of ordinances by quasi-criminal prosecution subject to fines and imprisonment. Cerrillos Gravel Products, Inc. v. Santa Fe Bd. of County Comm'rs, 2005-NMSC-023, 138 N.M. 126, 117 P.3d 932.

This section does not provide sole remedy for violations of county ordinances. Cerrillos Gravel Products, Inc. v. Santa Fe Bd. of County Comm'rs, 2005-NMSC-023, 138 N.M. 126, 117 P.3d 932.

County having proper zoning ordinances may pass ordinances requiring building permits in areas outside of municipalities. 1969 Op. Att'y Gen. No. 69-74.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Enforcement of zoning regulation as affected by other violations, 4 A.L.R.4th 462.

3-21-14. Adoption of county zoning ordinances.

A. Ordinances authorized under Section 3-21-13 NMSA 1978 may be proposed by any member of the board of county commissioners but shall not be submitted to the board for final passage until after publication.

B. A majority of the board members may order publication of the title and a general summary of a proposed ordinance in a newspaper of general circulation in the county at

least once a week for two consecutive weeks prior to the date of the meeting of the board at which the ordinance is to be submitted for final passage. The date of the meeting shall be included in the published notice. The style and form of the ordinance shall be determined by the board.

C. A proposed ordinance shall be passed only by a majority vote of all the members of the board of county commissioners, and an existing ordinance shall be repealed by the same vote.

D. The original copy of the ordinance together with the proof of publication and supporting maps shall be filed in a book kept for that purpose and authenticated by the signature of the county clerk. The county clerk shall keep the book together with supporting maps in his office. The title and a general summary of the ordinance shall be published in a newspaper of general circulation in the county once each week for two consecutive weeks, the last date of publication being not less than fifteen nor more than thirty days prior to the effective date of the ordinance. No ordinance shall take effect until at least fifteen days after the last date of publication. It is a sufficient defense to any prosecution for violation of an ordinance to show that no publication was made. Copies of the proposed ordinance shall be made available to interested persons during normal and regular business hours of the county clerk upon request and payment of a reasonable charge, beginning with the date of publication and continuing to the date of consideration by the board of county commissioners.

E. Whenever the book of ordinances is introduced as evidence, the Rules of Civil Procedure shall govern.

History: 1953 Comp., § 14-20-12, enacted by Laws 1965, ch. 300; 1981, ch. 218, § 1.

ANNOTATIONS

Failure to publish as required invalidated ordinance. — Since provisions respecting the publication of ordinances were mandatory, county failed to adopt a valid zoning ordinance because it did not publish a proposed ordinance as required by Subsections A and B of this section and did not publish the text of the ordinance as required by Subsection D of this section. Hopper v. Bd. of County Comm'rs, 84 N.M. 604, 506 P.2d 348 (Ct. App.), cert. denied, 84 N.M. 592, 506 P.2d 336 (1973).

"General summary" requirements. — The "general summary" required by Subsection B need only inform the public generally, without specific conditions or any particular detail; it is incumbent upon the public to exercise diligence to apprehend what might be included in the ordinance and to take appropriate action to educate itself. Miles v. Bd. of County Comm'rs, 1998-NMCA-118, 125 N.M. 608, 964 P.2d 169, cert. denied, 126 N.M. 107, 967 P.2d 447 (1998).

Applicability of notice provisions. — The appropriate notice for a new, comprehensive zoning ordinance that distributes its impact over an entire community is

notice by publication, as set forth in this section, rather than the individualized notice set forth in 3-21-6 NMSA 1978. Miles v. Bd. of County Comm'rs, 1998-NMCA-118, 125 N.M. 608, 964 P.2d 169, cert. denied, 126 N.M. 107, 967 P.2d 447 (1998).

Subsection C expressly denies exercise of zoning power by referendum; a county is precluded from claiming the power to zone by referendum because Subsection C expressly provides for zoning by representative bodies. Westgate Families v. County Clerk, 100 N.M. 146, 667 P.2d 453 (1983).

Zoning of private land previously federally held. — A county may not adopt a comprehensive zoning ordinance that specifically excludes federally owned land, then later apply the ordinance to private land that was federally owned at the time the ordinance was passed; to zone such land, the county must comply with the notice requirements of 3-21-6 NMSA 1978. Bonito Land & Livestock v. Valencia County Bd. of Comm'rs, 1998-NMCA-127, 125 N.M. 638, 964 P.2d 199.

3-21-15. [Special zoning districts;] short title.

This act [3-21-15 to 3-21-26 NMSA 1978] may be cited as the "Special Zoning District Act."

History: 1953 Comp., § 14-20-13, enacted by Laws 1965, ch. 206, § 1.

ANNOTATIONS

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

Cross references. — For Municipal Airport Zoning Law, *see* 3-39-16 to 3-39-26 NMSA 1978.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For article, "Rural Development Considerations for Growth Management," see 43 Nat. Resources J. 781 (2003).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Zoning: what constitutes "incidental" or "accessory" use of property zoned and primarily used for business or commercial purposes, 60 A.L.R.4th 907.

Validity and construction of zoning laws setting minimum requirements for floorspace or cubic footage inside residence, 87 A.L.R.4th 294.

3-21-16. Purpose of act.

The purpose of the Special Zoning District Act [3-21-15 to 3-21-26 NMSA 1978] is to promote the health, safety, morals and general welfare of persons residing in areas outside the boundary limits of incorporated municipalities.

History: 1953 Comp., § 14-20-14, enacted by Laws 1965, ch. 206, § 2.

ANNOTATIONS

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

3-21-17. Definitions.

As used in the Special Zoning District Act [3-21-15 to 3-21-26 NMSA 1978]:

A. "person" includes one or more individuals, partnerships, associations, corporations, the state, any political subdivisions of the state and its agencies;

B. "district" means special zoning district;

C. "commission" means zoning commission;

D. "single family dwelling" means a house which is occupied, as a rule, for permanent residence purposes by a person maintaining a household, or two or more persons maintaining a common household.

History: 1953 Comp., § 14-20-15, enacted by Laws 1965, ch. 206, § 3.

3-21-18. Special zoning district.

A special zoning district is created in an area consisting of no more than twenty thousand contiguous acres that is outside the boundary limits of an incorporated municipality when:

A. there are at least one hundred fifty single family dwellings within the area;

B. at least fifty-one percent of the registered electors residing in the area sign a petition requesting a special zoning district;

C. the signed petition, along with a plat of the area included within the district, is filed in the office of the county clerk of the county or counties in which the area is situate; and

D. no general zoning ordinance applying to all areas in the county outside of incorporated municipalities has been adopted by the county or counties in which the area is situate; provided that any special zoning district in existence upon the effective

date of this 1979 act may continue to exist without cost to any county, and any special zoning district created pursuant to this section may continue to exist after adoption of a general zoning ordinance applying to all areas in the county outside of incorporated municipalities by the county or counties in which the district is situate without cost to any county; but no new special zoning districts shall be created in any county after the adoption of such general zoning ordinance by such county.

History: 1953 Comp., § 14-20-16, enacted by Laws 1965, ch. 206, § 4; 1979, ch. 334, § 1; 1993, ch. 264, § 1.

ANNOTATIONS

Compiler's notes. — The phrase "this 1979 act" apparently refers to Laws 1979, ch. 334, § 1.

Cross references. — For county and municipal jurisdiction over subdivisions, *see* 3-20-5 NMSA 1978.

For extraterritorial zoning, *see* 3-21-3 and 3-21-4 NMSA 1978.

The 1993 amendment, effective June 18, 1993, inserted "consisting of no more than twenty thousand contiguous acres that is" in the introductory language and inserted "1979" near the middle of Subsection D.

This section is void as unconstitutional delegation of legislative power because there is no standard to guide private individuals in determining the size or location of the district. Deer Mesa Corp. v. Los Tres Valles Special Zoning Dist. Comm'n, 103 N.M. 675, 712 P.2d 21 (Ct. App. 1985)(decided under prior law).

Responsibility of determining the validity of the signatures on the petition and the number of registered electors in the area rests upon the trial court and the appellate court, based upon the evidence presented in the trial court. State ex rel. Huning v. Los Chavez Zoning Comm'n, 97 N.M. 472, 641 P.2d 503 (1982).

Annexation by incorporated municipality. — When all or a portion of a special zoning district is annexed by an incorporated municipality, the special zoning district loses all of its zoning jurisdiction over the annexed territory to the municipality. 1983 Op. Att'y Gen. No. 83-06.

By creating a special zoning district, county zoning is not thereby nullified. Compliance must be had with the regulations of both the county zoning authority and the special zoning commission. 1971 Op. Att'y Gen. No. 71-39.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

For article, "Rural Development Considerations for Growth Management," see 43 Nat. Resources J. 781 (2003).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 83 Am. Jur. 2d Zoning and Planning §§ 4, 10 to 16.

Zoning and Land Planning §§ 7, 8, 10.

3-21-19. Zoning commission.

A zoning commission, consisting of five members, shall be elected by the registered electors residing within the district. Members of the commission shall be residents of the district and each shall be elected for a term of two years. Any vacancy on the commission shall be filled by the remaining members appointing a new member to fill the unexpired term. Members of the commission shall serve without compensation.

History: 1953 Comp., § 14-20-17, enacted by Laws 1965, ch. 206, § 5.

3-21-20. Election of members to the commission.

Within sixty days after the creation of a district, the county commissioners of the county in which the district is situate shall hold an election for members to the commission. When the district is situate in more than one county, the county commissioners of the counties shall cooperate in conducting an election for members to the commission. The election shall be conducted in the same manner as elections for municipal school board members. The cost of conducting elections for members to the commission shall be borne by the county or counties in which the district is situate. Each county shall pay its prorata share, which is determined by the number of registered electors of the district residing within the county.

History: 1953 Comp., § 14-20-18, enacted by Laws 1965, ch. 206, § 6.

ANNOTATIONS

Quo warranto. — There being no special statutory method for attacking the validity of the office of a zoning district commissioner or the creation of a special zoning district, quo warranto is appropriate and is dispositive as to who is a proper party plaintiff and when such party may institute an action in quo warranto, as a private relator. State ex rel. Huning v. Los Chavez Zoning Comm'n, 93 N.M. 655, 604 P.2d 121 (1979).

3-21-21. Powers of the commission.

A. The commission shall have power within the district as part of the building and zoning ordinances, regulations and restrictions adopted by it in the manner otherwise provided by law, to regulate and restrict:

(1) the height, number of stories and size of buildings and other structures;

(2) the percentage of a lot that may be occupied;

(3) the size of yards, courts and other open spaces;

(4) the density of populations;

(5) the location and use of buildings and structures; and

(6) the use of lands for trade, industry, residence or other purposes.

B. The commission shall adopt a comprehensive zoning plan or ordinance for the district that includes a master land use plan.

History: 1953 Comp., § 14-20-19, enacted by Laws 1965, ch. 206, § 7; 1993, ch. 264, § 2.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, added the present subsection designation A; substituted the paragraph designations (1) through (6) for the former designations A through F; in Subsection A, added the language beginning "as part" and ending "by law"; and added Subsection B.

Change of zoning. — Zoning amendments adopted by a special zoning district commission which changed the zoning of two tracts of land from commercial neighborhood and apartment to commercial did not conflict with the county and adjoining municipal master plan or exceed the commission's zoning authority and did not constitute spot zoning. City of Albuqueque v. Paradise Hills Special Zoning Dist. Comm'n, 99 N.M. 630, P.2d 1329 (Ct. App. 1983).

Law reviews. — For article, "Rural Development Considerations for Growth Management," see 43 Nat. Resources J. 781 (2003).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Zoning: residential off-street parking requirements, 71 A.L.R.4th 529.

Validity and construction of zoning laws setting minimum requirements for floorspace or cubic footage inside residence, 87 A.L.R.4th 294.

3-21-22. Procedures for regulations or restrictions.

The procedure for the commission in establishing, amending or repealing the ordinances, regulations or restrictions provided in the Special Zoning District Act [3-21-15 to 3-21-26 NMSA 1978] shall be the same as for the governing body of counties in Sections 3-21-5 through 3-21-8 NMSA 1978.

History: 1953 Comp., § 14-20-20, enacted by Laws 1965, ch. 206, § 8; 1993, ch. 264, § 3.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, inserted "ordinances" and substituted "3-21-5 through 3-21-8 NMSA 1978" for "14-28-10 through 14-28-15 New Mexico Statutes Annotated, 1953 Compilation".

Am. Jur. 2d, A.L.R. and C.J.S. references. — Enforcement of zoning regulation as affected by other violations, 4 A.L.R.4th 462.

3-21-23. Ordinance; penalty; remedies.

The commission may provide by ordinance for the enforcement of the Special Zoning District Act [3-21-15 to 3-21-26 NMSA 1978]. A violation of the Special Zoning District Act, or any ordinance made thereunder, is a misdemeanor. If the Special Zoning District Act or any ordinance made thereunder is violated, the commission, in addition to other remedies, may institute any appropriate action or proceeding to prevent, abate or restrain the violation.

History: 1953 Comp., § 14-20-21, enacted by Laws 1965, ch. 206, § 9.

ANNOTATIONS

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity of zoning ordinances prohibiting or regulating outside storage of house trailers, motor homes, campers, vans and the like in residential neighborhoods, 95 A.L.R.3d 378.

Enforcement of zoning regulation as affected by other violations, 4 A.L.R.4th 462.

3-21-24. Enforcement.

The ordinances enacted under the authority of the Special Zoning District Act [3-21-15 to 3-21-26 NMSA 1978] shall be enforced by the district attorney and the sheriff of the county or counties in which the district is situate.

History: 1953 Comp., § 14-20-22, enacted by Laws 1965, ch. 206, § 10.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Enforcement of zoning regulation as affected by other violations, 4 A.L.R.4th 462.

3-21-25. Judicial review.

Any person aggrieved by any regulation, restriction, or ordinance made by the commission may file a claim for relief in the district court.

History: 1953 Comp., § 14-20-23, enacted by Laws 1965, ch. 206, § 11.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Standing of zoning board of appeals or similar board to appeal reversal of its decision, 13 A.L.R.4th 1130.

3-21-26. Costs incurred by zoning commission of special zoning district; fees.

All necessary costs incurred by the zoning commission of a special zoning district in connection with official acts performed pursuant to the Special Zoning District Act [3-21-15 to 3-21-26 NMSA 1978] shall be borne by the parties in interest. Provided, that the commission may by ordinance impose reasonable fees upon parties in interest and such fees shall be used to defray the costs incurred by the commission.

For purposes of this section, the term "party in interest" means the person who requests a variance or a change in zoning or who requests the amendment or repeal of any regulation, restriction or ordinance adopted pursuant to the Special Zoning District Act.

History: 1978 Comp., § 3-21-26, enacted by Laws 1981, ch. 201, § 1.

ANNOTATIONS

Repeals. — Laws 1979, ch. 334, § 2, repealed former 3-21-26 NMSA 1978, relating to costs incurred by the zoning commission.

ARTICLE 21A
Manufactured Housing and Zoning

3-21A-1. Short title.

This act [3-21A-1 to 3-21A-8 NMSA 1978] may be cited as the "Manufactured Housing and Zoning Act".

History: Laws 1987, ch. 196, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53A Am. Jur. 2d Mobile Homes, Trailer Parks, and Tourist Camps §§ 9 et seq., 21, 25; 83 Am. Jur. 2d Zoning and Planning §§ 175, 204 to 213, 215, 220.

101A C.J.S. Zoning and Land Planning §§ 48, 53, 62, 115, 142.

3-21A-2. Definitions.

As used in the Manufactured Housing and Zoning Act :

A. "multi-section manufactured home" means a manufactured home or modular home that is a single-family dwelling with a heated area of at least thirty-six by twenty-four feet and at least eight hundred sixty-four square feet and constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or the Uniform Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act and with the rules made pursuant thereto relating to permanent foundations;

B. "mobile home" means a movable or portable housing structure larger than forty feet in body length, eight feet in width or eleven feet in overall height, designed for and occupied by no more than one family for living and sleeping purposes that is not constructed to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or Uniform Building Code, as amended to the date of the unit's construction or built to the standards of any municipal building code; and

C. "excavated site" means a site that results in the upper plane of the concrete slab, or similar component of any other authorized permanent foundation system, being below ground level or grade.

History: Laws 1987, ch. 196, § 2; 1999, ch. 125, § 1; 2001, ch. 22, § 1.

ANNOTATIONS

Cross references. — For the National Manufactured Housing Construction and Safety Standards Act of 1974, *see* 42 USCS § 5401 et seq.

The 2001 amendment, effective June 15, 2001, in Subsection A, substituted "home" for "housing" in the defined term and substituted "rules" for "regulations" near the end of the subsection; and added Subsection C.

The 1999 amendment, effective June 18, 1999, in Subsection A, inserted "multi-section" preceding "manufactured housing", deleted "(42 U.S.C. 5401 et seq.)" following "1974", substituted "2" for "II", deleted "(Chapter 60, Article 14 NMSA 1978)" following "Manufactured Housing Act", and substituted "permanent foundations" for "ground level installation and ground anchors and"; and in Subsection B, substituted "that is not constructed to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or Uniform Building Code, as amended to the date of the unit's construction" for "but does not include structures", and deleted "and other technical codes" from the end of the subsection.

3-21A-3. Manufactured housing; permissible regulations.

In the exercise of any of the powers and duties conferred by law, no governing body of a political subdivision of the state or any planning and zoning agency thereunder shall exclude multi-section manufactured homes from a specific-use district in which site-built, single-family housing is allowed or place more severe restrictions upon a multi-section manufactured home than are placed upon single-family, site-built housing within that specific-use district so long as the manufactured housing is built or constructed according to the Housing and Urban Development Zone Code II or the Uniform Building Code. The governing body of any political subdivision of the state or any planning and zoning agency thereunder is authorized to regulate manufactured housing to require that it meets all requirements other than original construction requirements of other single-family dwellings that are site-built homes in the same specific-use district and to further require by ordinance that such manufactured housing be consistent with applicable historic or aesthetic standards.

History: Laws 1987, ch. 196, § 3; 1999, ch. 125, § 2.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, in the first sentence, inserted "multi-section" preceding "manufactured home" twice.

3-21A-4. Mobile homes; permissible regulations.

In the exercise of any of the powers and duties conferred by law, a governing body of a political subdivision of the state, or any planning or zoning agency thereunder, may regulate the occupancy or location of dwelling units in such a way as to effect the reasonable regulation of mobile homes. Such regulation may exclude mobile homes from residential-use districts and restrict them to mobile home parks or mobile home subdivisions.

History: Laws 1987, ch. 196, § 4.

3-21A-5. Impermissible regulations.

A. No ordinance or regulation authorized by the Manufactured Housing and Zoning Act shall regulate the original construction of the manufactured home or mobile home.

B. No ordinance or regulation otherwise authorized or permitted by the Manufactured Housing and Zoning Act shall be permissible or enforceable if it would have the direct or indirect effect of requiring that a multi-section manufactured home be installed in an excavated site in order to be included in a specific-use district in which site-built, single-family housing is allowed.

History: Laws 1987, ch. 196, § 5; 1999, ch. 125, § 3; 2001, ch. 22, § 2.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, designated original section as Subsection A and added Subsection B.

The 1999 amendment, effective June 18, 1999, purported to amend this section but made no change.

3-21A-6. Private covenants and deed restrictions; local government restrictions.

A. Nothing in the Manufactured Housing and Zoning Act or any ordinance or regulation adopted pursuant thereto shall be construed as abrogating or limiting a recorded restrictive covenant or deed restriction.

B. The provisions of the Manufactured Housing and Zoning Act shall not be construed as abrogating or limiting the powers of political subdivisions regarding the exercise of zoning, planning and subdivision powers except to the extent the exercise of such powers is inconsistent with the provisions of the Manufactured Housing and Zoning Act and the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978].

History: Laws 1987, ch. 196, § 6; 1999, ch. 125, § 4.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, in Subsection B, added "and the Manufactured Housing Act".

Public policy. — Distinguishing between manufactured homes and other homes in a restrictive covenant is not contrary to public policy. Aragon v. Brown, 2003-NMCA-126, 134 N.M. 459, 78 P.3d 913.

Am. Jur. 2d, A.L.R. and C.J.S. references. — What is "mobile home", "house trailer", "trailer house", or "trailer" within meaning of restrictive covenant, 83 A.L.R.5th 651.

3-21A-7. Existing ordinances.

The Manufactured Housing and Zoning Act shall apply to all municipalities and counties except that the Manufactured Housing and Zoning Act shall not apply to any ordinance or regulation adopted by a home rule municipality which was adopted prior to January 1, 1987 or an ordinance or regulation adopted by a home rule municipality after January 1, 1987 which is not inconsistent with the Manufactured Housing and Zoning Act. However, if such ordinance or regulation is repealed then the Manufactured Housing and Zoning Act shall apply thereafter to that home rule municipality.

History: Laws 1987, ch. 196, § 7.

3-21A-8. Municipal inspection program; manufactured housing.

Notwithstanding any other provisions of law for inspection of manufactured housing, a municipality over 100,000 in population located in a class "A" county may establish a manufactured housing inspection program to inspect foundations, tie-downs and utility service hookups and lines including but not limited to sewer, water, electrical and gas service. The municipality may establish and collect a reasonable inspection fee. The inspections may be made in addition to any other inspections authorized by law.

History: Laws 1987, ch. 196, § 8.

ARTICLE 22
Historic Districts and Landmarks

3-22-1. Historic District and Landmark Act; short title.

Chapter 3, Article 22 NMSA 1978 may be cited as the "Historic District and Landmark Act."

History: 1953 Comp., § 14-21-1, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 1.

ANNOTATIONS

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 83 Am. Jur. 2d Zoning and Planning § 77.

Applicability of zoning regulations to governmental projects or activities, 53 A.L.R.5th 1.

101A C.J.S. Zoning and Land Planning § 48.

3-22-1.1. Definition.

As used in the Historic District and Landmark Act, "landmark" means a structure or site of historical interest.

History: 1978 Comp., § 3-22-1.1, enacted by Laws 1983, ch. 178, § 2.

3-22-2. Purpose.

The legislature of the state of New Mexico hereby declares that the historical heritage of this state is among its most valued and important assets and that it is the intention of the Historic District and Landmark Act to empower the counties and municipalities of this state with as full and complete powers to preserve, protect and enhance the historic areas and landmarks lying within their respective jurisdictions as it is possible for this legislature to permit under the constitution of the United States and the constitution of New Mexico and subject to the specific duties and responsibilities respecting historical matters already granted or to be granted under other statutes of this state.

History: 1953 Comp., § 14-21-2, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 3.

ANNOTATIONS

City's power to zone state property must be delegated to the city by a state statute; and, as statutes granting power to cities are strictly construed, any fair or reasonable doubt concerning the existence of an asserted power is resolved against the city. City of Santa Fe v. Armijo, 96 N.M. 663, 634 P.2d 685 (1981).

State governmental body is not subject to local zoning regulations or restrictions. City of Santa Fe v. Armijo, 96 N.M. 663, 634 P.2d 685 (1981).

3-22-3. Establishment of historic districts and landmarks by zoning.

Any county or municipality otherwise empowered by law to adopt and enforce zoning ordinances, rules and regulations is hereby empowered to create, as part of the building and zoning regulations and restrictions adopted by it in the manner otherwise provided

by law and in accordance with a comprehensive zoning plan, a zoning district designating certain areas as historical areas and landmarks and may, for the purpose of preserving, protecting and enhancing such historical areas and landmarks, adopt and enforce regulations and restrictions within such district relating to the erection, alteration and destruction of those exterior features of buildings and other structures subject to public view from any public street, way or other public place.

History: 1953 Comp., § 14-21-3, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 4.

ANNOTATIONS

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity and construction of statute or ordinance protecting historical landmarks, 18 A.L.R.4th 990.

3-22-4. Historic areas and landmarks; authorization to expend funds, to enter [into] agreements and, where necessary, exercise power of eminent domain.

Any county or municipality is hereby empowered to expend public funds for any purposes connected with the preservation, protection or enhancement of historical areas and landmarks, areas related to historical areas or areas otherwise of special architectural or visual interest, including but not limited to the purchase of any or all of such areas and landmarks, if necessary, through the use of eminent domain in the manner provided by law for the acquisition of property for a public purpose, which acquisition is hereby declared to be:

A. the leasing or acquisition of any other title or interest in the same by negotiation or, if necessary, through the use of eminent domain in the manner provided by law, including the acquisition of easements in and related to such areas and landmarks which will permit the county or municipality to control development of the same in a manner consistent with the purposes of the Historic District and Landmark Act [this article];

B. the entering into any reasonable agreement with private persons to promote the objectives of this section; or

C. the enactment of appropriate ordinances or resolutions under which the county or municipality, as the case may be, may be given prior right to acquire any interest in property in such areas and landmarks as over any private person offering an equal price for the same interest or any other similar measures as may be consistent with the purposes of the Historic District and Landmark Act.

History: 1953 Comp., § 14-21-4, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 5.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity and construction of statute or ordinance protecting historical landmarks, 18 A.L.R.4th 990.

Application and construction of § 106 of the National Historic Preservation Act of 1966 (16 USCS § 470f), dealing with federally sponsored projects which affect historic properties, 68 A.L.R. Fed. 578.

3-22-5. Historic areas and landmarks; construction of this act.

Nothing in the Historic District and Landmark Act shall be construed to limit any existing inherent, statutory or other powers under which any county or municipality has enacted appropriate measures regarding historic areas and landmarks.

History: 1953 Comp., § 14-21-5, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 6.

3-22-6. Applicability to state capital outlay projects; limitation.

A. Recognizing the fragility of the state's historic heritage, the purpose of this section is to establish a procedure under which the state and its municipalities and counties will commit to collaborate in good faith and work jointly to preserve and protect the historic districts of New Mexico.

B. Ordinances enacted by a municipality or county pursuant to the Historic District and Landmark Act shall apply to a state capital outlay project only as provided in this section and only if the ordinances contain special provisions and standards applicable to state buildings, including provisions concerning the design, construction, alteration or demolition of the exterior features of state buildings. If requested by a resolution of the governing body of a municipality or county, the staff of the capitol buildings planning commission shall work jointly with the staff of the municipality or county in developing the provisions and standards required by this subsection.

C. The applicable state agency shall carry out a capital outlay project in a manner that is harmonious and generally compatible with the municipal or county ordinances.

D. Before commencing the design phase of a capital outlay project, the applicable state agency shall consult with the municipality or county as to the design standards in the ordinances and how those design standards would impact costs and the operation or manner in which the capital outlay project will ultimately be expected to function, provided that, if the municipality or county has an agency or other entity review projects within the area zoned as an historic district or landmark, then the consultation shall be with that review agency or other entity. The state agency shall work collaboratively with

the municipality or county or its review agency or other entity to arrive at compatibility with the design standards, considering reasonable costs and preserving essential functionality. If the municipality or county has identifiable community groups involved in historic preservation, the agency shall also make every reasonable effort to obtain input from members of those identified groups before commencing the design phase.

E. After the design phase and before soliciting a bid or a proposal for design-build or lease-purchase for a capital outlay project, the applicable state agency shall transmit its plans for review and comment to the municipality or county or its review agency or other entity and shall also conduct a public meeting to receive public input. Notice of the public meeting shall also be given to any identifiable community groups involved in historic preservation in the municipality or county.

F. Within sixty days after the public meeting, the municipality or county or its review agency or other entity, any identifiable historic preservation community group and any other interested party shall communicate recommendations and comments in writing to the state agency. The state agency shall consult with the municipality or county or its review agency or other entity to resolve any issues raised. If, at the end of the sixty-day period, unresolved issues remain, the municipality or county may, within five days after the end of the period, notify the applicable state agency that the issues remain unresolved and should be finally determined pursuant to Subsection G of this section; provided that, if notice is not timely given, the applicable state agency may, after incorporating those provisions to which the state agency and the municipality or county have agreed, proceed with the capital outlay project.

G. If notice is timely given by a municipality or county, pursuant to Subsection F of this section, that issues remain unresolved, those issues shall be decided pursuant to the following provisions:

(1) within five days after the notice, a state-local government historic review board shall be formed, consisting of eight members as follows:

(a) one member appointed by the capitol buildings planning commission, who shall chair the board and who shall vote only if there is a tie among the other board members present;

(b) one member appointed by the cultural properties review committee;

(c) the state historic preservation officer or a designee of the officer;

(d) one member appointed by the agency or other entity that reviews projects within the area zoned as an historic district or landmark, provided that, if the municipality or county has no such agency or other entity, the member shall be appointed by the governing body of the municipality or county;

(e) one member appointed by the agency or entity of the municipality or county that is concerned with historic preservation, provided that, if the municipality or county has no such agency or other entity, the member shall be appointed by the governing body of the municipality or county; and

(f) three public members who have a demonstrated interest in historic preservation appointed as follows: one member appointed by the secretary of general services, one member appointed by the governing body of the municipality or county and one public member appointed by the other two public members;

(2) the staff of the capitol buildings planning commission shall serve as the staff of the state-local government historic review board; and

(3) the state-local government historic review board shall, at a public meeting, consider each of the unresolved issues and, within twenty days of its formation shall, for each issue, make a final decision that is harmonious and generally compatible with the municipal or county ordinance.

H. Appeals from the decisions of the state-local government historic review board shall be taken to the district court in the manner provided in Section 39-3-1.1 NMSA 1978.

I. The state agency shall not take any irrevocable action on the capital project in reliance on the plans until the procedures set forth in Subsections F and G of this section have been followed.

History: Laws 2009, ch. 23, § 1.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

ARTICLE 23
Public Utilities

3-23-1. Municipal utility; service charges; deposits; discontinuance of water service for nonpayment of charges; supplemental method.

A. A municipality, including an entity established pursuant to Section 72-1-10 NMSA 1978, may require a reasonable payment in advance or a reasonable deposit for water, electricity, gas, sewer service, geothermal energy, refuse collection service or street maintenance.

B. If payment of any price, rent, fee or other charge for water, sewer service, refuse collection or street maintenance is not made within thirty days from the date the payment is due, the water service may be discontinued and shall not be again supplied to the person liable for the payment until the arrears with interest and penalties have been fully paid.

C. The provisions of this section are intended to afford an additional method of enforcing payment of charges for water, sewer service, refuse collection or street maintenance furnished by the municipality.

History: 1953 Comp., § 14-22-1, enacted by Laws 1965, ch. 300; 1985, ch. 81, § 1; 2011, ch. 117, § 1.

ANNOTATIONS

Cross references. — For definition of "municipal utility", *see* 3-1-2 NMSA 1978.

For vacation or partial vacation of plat affecting rights of utility, *see* 3-20-13 NMSA 1978.

For franchises to public utilities, *see* 3-42-1, 3-42-2 NMSA 1978.

For Low Income Utility Assistance Act, *see* 27-6-11 NMSA 1978 et seq.

For Tort Claims Act, *see* 41-4-1 NMSA 1978 et seq.

For no power or jurisdiction of public service commission to regulate or supervise rates or service of municipal utilities, *see* 62-6-4 NMSA 1978.

For local option election to make municipality subject to Public Utility Act, *see* 62-6-5 NMSA 1978.

For approval of public service commission regarding contract rate between municipality and utility, *see* 62-6-15 NMSA 1978.

The 2011 amendment, effective June 17, 2011, authorized the Albuquerque-Bernalillo county water utility authority to require deposits for water and sewer service.

Legislative intent. — The legislature, by the enactment of this section, and by failing thereby to authorize municipalities to withhold service from subsequent owners, intended to modify the result of State ex rel. Scotillo v. Water Supply Co., 19 N.M. 27, 140 P. 1056, in such fashion that so far as subsequent owners are concerned, service cannot be withheld. Bettini v. City of Las Cruces, 82 N.M. 633, 485 P.2d 967 (1971).

Person liable for payment. — "Person liable" in Subsection B of this section does not apply to subsequent purchaser, and city may not refuse purchaser services until debt of predecessor in title is paid. Bettini v. City of Las Cruces, 82 N.M. 633, 485 P.2d 967

(1971), distinguishing State ex rel. Scotillo v. Water Supply Co., 19 N.M. 27, 140 P. 1056 (1914).

In determining whether charge made is one of fee or assessment in municipal water assessment, the name given the charge is not controlling. Leigh v. Hertzmark, 77 N.M. 789, 427 P.2d 668 (1967).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 567 to 578.

Proposition submitted to people with reference to erection or purchase of plant or other public utility as single or double proposition, 5 A.L.R. 538.

"Public utilities" within constitutional or statutory provisions relating to purchase, construction, or repair of same by municipal corporation, 9 A.L.R. 1033, 35 A.L.R. 592.

Public utility acts, applicability of to municipal corporations owning or operating a public utility, 10 A.L.R. 1432, 18 A.L.R. 946.

Repair or restoration of privately owned public utility, 13 A.L.R. 313.

Discrimination in the operation of a municipal utility, 50 A.L.R. 126.

Power of municipality to mortgage or pledge public utility, 71 A.L.R. 828.

Equipment necessary or convenient for use of public utility service furnished, power of municipal corporation to sell to consumers, 108 A.L.R. 1454.

Acquisition, right of municipality or other governmental body seeking to acquire public utility to proceed in the manner prescribed generally for the exercise of eminent domain, 109 A.L.R. 384.

Conditions or regulations, power of municipality to agree to abide by conditions or regulations imposed by federal authority in respect of construction, maintenance, or operation of a municipal public utility plant or enterprise, 128 A.L.R. 620.

Discrimination between property within and that outside governmental districts as to public service or utility rates, 4 A.L.R.2d 595.

Variations of utility rates based on flat and meter rates, 40 A.L.R.2d 1331.

Deposit required by public utility, 43 A.L.R.2d 1262.

Power of municipality to sell, lease, or mortgage public utility plant or interest therein, 61 A.L.R.2d 595.

Nonpayment: right of municipality to refuse services provided by it to resident for failure of resident to pay for other unrelated services, 60 A.L.R.3d 714.

Construction and application of 7 USCA § 1926(b), prohibiting curtailment or conditioning of water or sewer service based on inclusion within municipal borders, 146 A.L.R. Fed. 387.

63 C.J.S. Municipal Corporations §§ 1049 to 1061.

3-23-2. Election on question of acquiring utility.

A. No municipality shall acquire a municipal utility from funds acquired from the issuance of revenue bonds until the question of acquiring the utility is submitted, at a regular municipal election or special election, to a vote of the qualified electors of the municipality, and a majority of the votes cast on the question favor the acquisition of the utility. No special election shall be set for a date ninety days prior to the day of a regular municipal election. The acquisition by a municipality, which owns municipal electric facilities on July 1, 1979, of a generating facility or any interest in a jointly owned generating facility from funds acquired from the issuance of revenue bonds shall not be subject to the election requirement of this section.

B. Each question shall be listed separately on the ballot. The ballot shall:

(1) contain a general description of the property to be acquired; and

(2) allow each voter to indicate whether he favors or opposes the acquisition. The election shall be called and conducted as provided in Sections 3-8-1 through 3-8-19 NMSA 1978 [Chapter 3, Article 8 NMSA 1978].

C. If a majority of the votes cast on the question favor the acquisition of the utility, the governing body may acquire the utility.

D. If, pursuant to Article 9, Section 12 of the New Mexico constitution and Sections 3-30-1 through 3-30-9 NMSA 1978, the qualified electors of the municipality and nonresident municipal electors have voted in favor of creating a debt for the acquisition of a municipal utility and the municipality has incurred the debt, the municipality need not hold the election required in this section and it shall be presumed that the acquisition of a municipal utility has been approved, or, if the municipality has owned and operated a municipal utility for a period of more than one year, it shall be presumed that the acquisition of the municipal utility has been approved.

History: 1953 Comp., § 14-22-2, enacted by Laws 1965, ch. 300; 1979, ch. 260, § 2.

ANNOTATIONS

Cross references. — For time of holding regular municipal election, see 3-8-25 NMSA 1978.

Bracketed material. — The bracketed material was added by the compiler and is not part of the law. Sections 3-8-1 to 3-8-19 NMSA 1978 were amended and recompiled throughout Chapter 3, Article 8 NMSA 1978 by Laws 1985, ch. 208.

Approval of indebtedness required by election. — The town of Hagerman may borrow money from the farmers home administration to acquire a water system; however, the note or certificate of indebtedness given to the farmers home administration must provide that it will be paid solely from the revenues produced by the water system without incurring any liability to pay the indebtedness out of the general funds of the municipality unless the voters of the municipality have approved of the indebtedness in a general or special election. 1967 Op. Att'y Gen. No. 67-84.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63 C.J.S. Municipal Corporations §§ 1051, 1052; 64 C.J.S. Municipal Corporations § 1907.

3-23-3. Municipal utility; approval of New Mexico public utility commission.

A. If the acquisition of a utility is to be financed from funds received from the issuance and sale of revenue bonds, the price of the acquisition of the utility shall be approved by the New Mexico public utility commission and the commission shall require:

(1) a determination by appraisal or otherwise of the true value of the utility to be purchased; or

(2) an engineer's estimate of the cost of the utility to be constructed.

B. No revenue bonds shall be issued for the acquisition of such a utility until the New Mexico public utility commission has approved the issue and its amount, date of issuance, maturity, rate of interest and general provisions.

C. The provisions of Subsections A and B of this section shall not apply to the condemnation by a municipality having a population of twenty-five thousand or more persons according to the 1990 federal decennial census of electricity facilities as authorized by Chapter 3, Article 24 NMSA 1978, sewer facilities as authorized by Chapter 3, Article 26 NMSA 1978 or water facilities as authorized by Chapter 3, Article 27 NMSA 1978.

History: 1953 Comp., § 14-22-3, enacted by Laws 1965, ch. 300; 1993, ch. 282, § 4; 1995, ch. 67, § 1; 1997, ch. 228, § 1.

ANNOTATIONS

Cross references. — For revenue bonds, *see* 3-31-1 NMSA 1978 et seq.

For references to the public utility commission being construed as references to the public regulation commission, *see* 8-8-21 NMSA 1978.

The 1997 amendment, effective April 11, 1997, substituted "electricity facilities as authorized by Chapter 3, Article 24 NMSA 1978" for "either" near the end of Subsection C.

The 1995 amendment, effective April 5, 1995, added Subsection C.

The 1993 amendment, effective June 18, 1993, substituted "New Mexico public utility commission" for "New Mexico public service commission" in the section heading and throughout the section, and inserted "and" following "issue" in Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Records, right to examine records or documents of municipality relating to public utility conducted by it. 102 A.L.R. 756.

3-23-4. Municipal utility; use of revenue.

A. Income derived from the operation of a municipal utility that has funds received from a revenue bond issue shall be used in the following priority:

(1) to maintain the municipal utility in good repair and to pay legitimate expenses of operation;

(2) to pay interest on revenue bonds issued for the purpose of acquiring, repairing, improving or enlarging the municipal utility;

(3) to create a sinking fund and a reasonable reserve fund as required by the ordinance authorizing the revenue bonds and the law governing their issue; and

(4) to pay the cost of improving and extending the municipal utility and the redemption of revenue bonds prior to their maturity if permitted by the ordinance authorizing their issuance.

B. If the municipal utility annually transfers to an interest and sinking fund for the retirement of outstanding revenue bonds an amount equal to one hundred twenty-five percent of the interest and sinking fund requirements for that year, any income in excess of this amount may then be transferred to the general fund of the municipality and expended as the governing body of the municipality directs. When the balance in the interest and sinking fund is equal to the total amount of interest and sinking fund requirements necessary to retire all such outstanding revenue bonds, the annual transfer of income to the sinking fund is not required.

History: 1953 Comp., § 14-22-4, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For use of proceeds of revenue bonds, *see* 3-31-2 NMSA 1978.

This section by its terms is permissive; a city not having legislated on the subject can take advantage of its permissive authority. Apodaca v. Wilson, 86 N.M. 516, 525 P.2d 876 (1974).

Transfer to general fund authorized. — This section authorizes revenues derived from municipally owned and operated public utilities to be transferred to the city's general fund when all the conditions precedent have been met. 1964 Op. Att'y Gen. No. 64-153.

First condition precedent to the transfer of any revenues derived from the operation of the utility to the general fund is that the utility has met the requirement of the annual transfer into the interest and sinking fund. 1964 Op. Att'y Gen. No. 64-153.

Public Purchases Act. — If the expenditures encountered in maintaining and operating a public water utility are of such an extent as to come within the provisions of the Public Purchases Act, such provision must be followed. 1964 Op. Att'y Gen. No. 64-60.

3-23-5. Municipal utility; duty to maintain and improve.

A. After the qualified electors at a regular or special municipal election have approved the acquisition of a municipal utility, the municipality shall maintain a municipal utility in good repair and improve and enlarge the municipal utility to accomplish the objectives and purposes for which it was designed.

B. A municipality may use other funds to defray the cost of operating or repairing a municipal utility, other than an electric or gas utility, generating facility or its interest in a jointly owned generating facility.

History: 1953 Comp., § 14-22-5, enacted by Laws 1965, ch. 300; 1979, ch. 260, § 3.

ANNOTATIONS

Cross references. — For municipal power to maintain electric utilities, *see* 3-24-1 and 3-24-14 NMSA 1978.

3-23-5.1. Municipal utility permanent fund.

A. The governing body of a municipality may by ordinance establish a municipal utility permanent fund for each utility owned and operated by the municipality.

B. The municipal utility permanent fund shall be a fund in the municipal treasury into which may be deposited money from the sale of municipal utility assets or any portion of

the unappropriated utility fund cash surplus that is in excess of fifty percent of the prior fiscal year's municipal utility budget. Money in the fund may be invested by the municipal board of finance as provided in Sections 6-10-10, 6-10-36 and 6-10-44 NMSA 1978.

C. Earnings from investment of a municipal utility permanent fund may be budgeted and appropriated by the governing body of the municipality for expenditure for any purpose related to the operation, maintenance and improvement of the municipal utility or deposited in the municipal utility permanent fund.

D. Money in the municipal utility permanent fund may be appropriated or expended only pursuant to approval of the voters of the municipality. The municipality may adopt a resolution calling for an election on the question of the expenditure of a specified amount of the municipal utility permanent fund for a specified purpose. The election shall be held within sixty days after the adoption of the resolution by the governing body. The election shall be called, conducted, counted and canvassed substantially in the manner provided by law for special municipal elections pursuant to the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. If a majority of the voters of the municipality voting on the question vote to approve the expenditure, that amount of money shall be available for appropriation from the municipal utility permanent fund for expenditure by the municipality for the specified purpose. If a majority of the voters of the municipality voting on the question vote against the expenditure, no money in the municipal utility permanent fund may be appropriated or expended for that purpose. Following an election at which the question was not approved, that question shall not again be submitted to the voters of the municipality for at least one year from the date of that election.

History: Laws 2001, ch. 179, § 1.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 179 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

3-23-6. Charge for service of municipal utility becomes a lien against the property served; exception.

A. Any charge imposed by ordinance for service rendered by a municipal utility, including an entity established pursuant to Section 72-1-10 NMSA 1978, except as indicated in Subsection C of this section, shall be:

(1) payable by the owner, personally, at the time the charge accrues and becomes due; and

(2) a lien upon the tract or parcel of land being served from such time.

B. The lien shall be enforced in the manner provided in Sections 3-36-1 through 3-36-5 NMSA 1978. In any proceedings where pleadings are required, it shall be sufficient to declare generally for the municipal utility service. Notice of the lien shall be filed in the manner provided in Section 3-36-1 NMSA 1978, and the effect of such filing shall be governed by Section 3-36-2 NMSA 1978.

C. Subsection A of this section shall not apply if an owner notifies the municipality that utility charges that may be incurred by a renter will not be the responsibility of the owner. Such notification shall be given in writing prior to the initiation of the debt and shall include the location of the rental property.

History: 1953 Comp., § 14-22-6, enacted by Laws 1965, ch. 300; 1971, ch. 225, § 1; 1981, ch. 213, § 2; 2011, ch. 117, § 2.

ANNOTATIONS

Cross references. — For determination of uncollectible utility account and removal from accounts receivable, *see* 3-37-7 NMSA 1978.

The 2011 amendment, effective June 17, 2011, created a lien for charges imposed by the Albuquerque-Bernalillo county water utility authority for water and sewer service.

Ordinary and usual meaning attributable to the words "payable by owner" is not such that they may be expanded to include subsequent owners. Bettini v. City of Las Cruces, 82 N.M. 633, 485 P.2d 967 (1971).

This section and 3-24-2 NMSA 1978 compared. — This section and 3-24-2 NMSA 1978 are not irreconcilable; this section is a general section to be controlled by the specific provisions of 3-24-2 NMSA 1978. 1968 Op. Att'y Gen. No. 68-18.

Statutory authorization for lien required. — Unless expressly authorized by statute, a municipal utility cannot make delinquent water and electric bills a lien on the property. A statute giving a lien for such delinquent charges must necessarily be limited to its terms. 1961-62 Op. Att'y Gen. No. 62-108.

Lessee liable. — The utility does have a claim for relief for delinquent charges against a lessee who put up the deposit and secured the service for his tenant in the lessee's name. 1961-62 Op. Att'y Gen. No. 62-108.

Subsequent tenant. — The utility has no right to refuse to supply water or electricity to a subsequent tenant who himself is not in default and did not incur the delinquent charges. 1961-62 Op. Att'y Gen. No. 62-108.

There is no specific statute of limitations for the payment of utility bills. 1959-60 Op. Att'y Gen. No. 59-128, overruled to the extent it conflicts with 1961-62 Op. Att'y Gen. No. 62-108.

3-23-7. Appointment of receiver; qualifications; powers.

A. Upon the failure of any municipality coming within the provisions of Sections 3-23-4, 3-23-7, 3-23-8 and 3-23-9 NMSA 1978, to comply with the provisions of these sections, the district court may at the suit of any resident taxpayer of the municipality appoint a receiver for the municipal utility. Under the court's direction, the receiver shall operate the municipal utility to accomplish the objectives and purposes of Sections 3-23-4, 3-23-7, 3-23-8 and 3-23-9 NMSA 1978.

B. No person shall be appointed a receiver unless he:

(1) has been an actual resident in good faith of the municipality for not less than one year prior to the date of his appointment; and

(2) is a taxpayer and owner of real estate of the value of at least five hundred dollars ($500) within the municipality. Upon petition to remove the receiver signed by not less than fifty-one percent of the qualified electors who are taxpayers resident within the municipality, the district court shall remove the receiver. A receiver shall act until discharged by the district court.

History: 1953 Comp., § 14-22-7, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For management and operation of property of municipality upon disincorporation of municipality, *see* 3-4-7 NMSA 1978.

3-23-8. Municipal utility; receiver's certificates.

A. Upon the order of the district court, the receiver may issue receiver's certificates for the purpose of providing funds to operate, repair, improve or enlarge the municipal utility. Unless otherwise provided by the district court, payment of the receiver's certificates shall be pledged from the net income of the municipal utility and the receiver's certificates are a first lien upon the real and personal property of the municipal utility. The district court shall prescribe the certificates':

(1) form;

(2) term; and

(3) rate of interest.

B. Receiver's certificates are exempt from the operation of any law which regulates the issuance or sale of securities of public utilities.

History: 1953 Comp., § 14-22-8, enacted by Laws 1965, ch. 300.

3-23-9. Municipal utility; levy and collection of taxes not terminated by receivership.

The appointment of a receiver as authorized in Section 3-23-7 NMSA 1978, does not release the municipality from its obligation to levy and collect the taxes provided by the terms of bonds or the law governing their issue.

History: 1953 Comp., § 14-22-9, enacted by Laws 1965, ch. 300.

3-23-10. Municipal utility; board of utility commissioners.

A. A municipality may establish a municipal board of utility commissioners to manage and operate a municipal utility. The board of utility commissioners is responsible for the administration of the affairs of the utility. Members of the board of utility commissioners shall be appointed by the mayor with the consent of the governing body, and, except in the case of a class H county, each shall represent a commissioner district within the area served by the utility.

B. The ordinance establishing the board of utility commissioners:

(1) shall fix the number of commissioners;

(2) except in the case of a class H county, shall establish commissioner districts within the municipal utility's service area, with each district representing approximately the same number of consumers of the municipal utility;

(3) shall set the term of office for commissioners, which shall not exceed six years;

(4) may provide for staggered terms of office;

(5) shall establish the duties and jurisdiction of the board with respect to the management and administration of the affairs of the utility; and

(6) may contain such terms and provisions, consistent with law, that are reasonably necessary or desirable to accomplish the purposes assigned to the board.

C. Any municipality establishing a board of utility commissioners shall retain and possess all powers with respect to the utility for which the board is established as are consistent with the laws and constitution of New Mexico.

History: 1953 Comp., § 14-22-10, enacted by Laws 1965, ch. 300; 1967, ch. 223, § 2; 1999, ch. 135, § 1.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, deleted "authority to establish" preceding "board of utility" in the section heading; in the second sentence of Subsection A, deleted "to the governing body" following "responsible" and in the third sentence substituted "except in the case of a class H county, each shall represent a commissioner district within" for "shall be residents of"; added Paragraph B(2) and redesignated the remaining paragraphs accordingly; substituted "for commissioners" for "of each commissioner" in Paragraph B(3); and made minor stylistic changes.

ARTICLE 23A
Municipal Cable Television

3-23A-1. Short title.

This act [3-23A-1 to 3-23A-6 NMSA 1978] may be cited as the "Municipal Cable Television Act".

History: Laws 1993, ch. 208, § 1.

ANNOTATIONS

Cross references. — For television translator stations, *see* 5-2-1 NMSA 1978.

3-23A-2. Purpose.

The purpose of the Municipal Cable Television Act is to authorize municipalities to acquire, construct, own or operate cable television systems within the state.

History: Laws 1993, ch. 208, § 2.

3-23A-3. Definition.

As used in the Municipal Cable Television Act, "municipality" means a municipality with a population of more than thirty-three thousand people but less than thirty-five thousand people.

History: Laws 1993, ch. 208, § 3.

3-23A-4. Delegation of authority.

Municipalities may acquire, construct, own, operate or manage cable television systems or related equipment or facilities.

History: Laws 1993, ch. 208, § 4.

3-23A-5. Service area.

A municipally owned or operated cable television system may operate anywhere within the municipal boundaries of the municipality or within an area not to exceed five miles from its boundaries. A municipally owned or operated cable television system may not operate within the municipal boundaries of another municipality without the consent of the other municipality.

History: Laws 1993, ch. 208, § 5.

3-23A-6. Service charges.

A municipality owning or operating a cable television system may charge reasonable, nondiscriminatory usage fees to its cable system customers. A municipality may not charge fees based on whether the customer is located inside or outside the municipal boundaries of the municipality owning or operating the system.

History: Laws 1993, ch. 208, § 6.

ARTICLE 24
Electric Utility

3-24-1. Electric utility; municipality may acquire and operate; certain municipalities may acquire by contract or condemnation.

A. Any municipality may, by ordinance, acquire, operate and maintain an electric utility for the generation and distribution of electricity to persons residing within its service area. The service area of a municipality includes:

(1) territory within the municipality;

(2) territory within five miles of the boundary of the municipality in the case of any municipality heretofore acquiring or operating any municipal electric utility or part thereof in the territory within five miles of the boundary of the municipality;

(3) the sale of electricity to the United States government, the state of New Mexico or any department or agency of these governments; and

(4) as further provided in Section 3-24-8 NMSA 1978.

B. No municipality may sell electric power and energy on a retail basis except as provided in Subsection A of this section.

C. The acquisition of any electric utility facility beyond the municipal boundary shall be financed only by the sale of revenue bonds.

D. Any municipality that owns a generating facility or an interest in a jointly owned generating facility may sell surplus electric power and energy on a wholesale basis either within or outside its service area. Any contract or agreement to sell surplus electric power and energy may be entered into on a public bid basis, a competitive basis or a negotiated basis, as the municipality may determine; provided, however, that subject to the sale or other interchange of power and energy with a joint participant or a co-member of a power pool necessary or convenient to the economical operation of a generating facility or a jointly owned generating facility or contractual requirements of a power pool in which the municipality is a member, such surplus electric power and energy shall be subject to a preference right to purchase by:

(1) first, municipalities that own electric facilities on July 1, 1979;

(2) second, public electric utilities, investor-owned utilities and electric cooperatives subject to general or limited regulation by the New Mexico public utility commission and the United States of America or any of its departments or agencies; and

(3) any other person or entity.

E. Municipalities located within a class A county and having a population of more than sixty thousand, but less than one hundred thousand according to the 1990 federal decennial census, may acquire, maintain, contract for and condemn for use as a municipal utility privately owned electric facilities used or to be used for the furnishing and supply of electricity to the municipality or inhabitants within its service area. The service area of a municipality authorized to acquire, maintain, contract for or condemn private facilities pursuant to this subsection includes customers located in:

(1) territory within the municipality;

(2) territory within five miles of the boundary of the municipality in the case of any municipality heretofore acquiring or operating any municipal electric utility or part thereof in the territory within five miles of the boundary of the municipality;

(3) United States government-owned installations, the state or any department or agency of these governments; and

(4) as further provided in Section 3-24-8 NMSA 1978.

F. A municipality that acquires, maintains, contracts for or condemns privately owned electric facilities for use as a municipal utility pursuant to the provisions of Subsection E of this section shall:

(1) not use revenues earned from the electric facilities for any purposes other than those directly related to the furnishing and supply of electricity to the municipality or inhabitants within the service area;

(2) not restrict use of the electric facilities or distribution system to any person authorized to use the facilities or distribution system pursuant to state law; and

(3) adopt a shared payment policy for line extensions, with public input, that is fair and equitable, requiring reasonable contributions from the persons who will directly benefit from the line extension and not imposing an unreasonable burden on the municipality or inhabitants within the service area that do not directly benefit from the line extension.

G. Condemnation authorized in this section shall be conducted in the manner of proceedings provided by the Eminent Domain Code [42A-1-1 through 42A-1-33 NMSA 1978].

History: 1953 Comp., § 14-23-1, enacted by Laws 1965, ch. 300; 1979, ch. 260, § 4; 1993, ch. 282, § 5; 1997, ch. 228, § 2.

ANNOTATIONS

Cross references. — For revenue bonds, *see* 3-31-1 NMSA 1978 et seq.

For Tort Claims Act, *see* 41-4-1 NMSA 1978 et seq.

For excavation damage to pipelines and underground utility lines, *see* 62-14-1 NMSA 1978 et seq.

The 1997 amendment, effective April 11, 1997, added "certain municipalities may acquire by contract or condemnation" at the end of the section heading, and added Subsections E, F and G.

The 1993 amendment, effective June 18, 1993, deleted "in conformity with the provisions of Chapter 132, New Mexico Laws, 1845, or as subsequently amended" at the end of Paragraph A(2); in Subsection D, made a stylistic change in Paragraph (1) and substituted "New Mexico public utility commission" for "New Mexico public service commission" in Paragraph (2).

Constitutionality of limiting municipal electric system's right to serve area. — Where the legislature limits a municipal electric system's right to serve in an area, that legislative limitation does not constitute an unconstitutional exclusive franchise in violation of N.M. Const., art. IV, § 26. Springer Elec. Coop. v. City of Raton, 99 N.M. 625, 661 P.2d 1324 (1983).

Municipality to yield to rural cooperative's project outside municipal boundary. — This section and 3-24-7 NMSA 1978 require that a municipality shall yield to a rural cooperative's project which rightfully extends lines or service to an area referred to in Subsection A(2). Springer Elec. Coop. v. City of Raton, 99 N.M. 625, 661 P.2d 1324 (1983).

Prior condemnation law superseded by 1997 amendment. — A question certified to the Supreme Court as to the authority of a municipality to condemn a portion of the property of an electric utility, when the property was already devoted to public use, was rendered moot by the 1997 amendment of this section. City of Las Cruces v. El Paso Elec. Co., 1998-NMSC-006, 124 N.M. 640, 954 P.2d 72.

Section not authority for condemnation. — The language of this section, specifically the word "acquire" in Subsection A, does not provide statutory authority to permit a municipality to condemn an existing public electric utility system. City of Las Cruces v. El Paso Elec. Co., 904 F. Supp. 1238 (D.N.M. 1995).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 567 to 578.

Electric light plant as public utility which city may purchase or construct, 9 A.L.R. 1034, 35 A.L.R. 592.

Liability of municipal corporation for injury or death occurring from defects in, or negligence in construction, operation or maintenance of its electric street-lighting equipment, apparatus and the like, 19 A.L.R.2d 344.

Liability of electric power or light company to patron for interruption, failure or inadequacy of power, 4 A.L.R.3d 594.

Liability of electric utility to nonpatron for interruption or failure of power, 54 A.L.R.4th 667.

Debtor's protection under 11 USCS § 366 against utility service cutoff, 83 A.L.R. Fed. 207.

63 C.J.S. Municipal Corporations § 1052.

3-24-2. Electric utility; charges.

A municipality owning and operating an electric utility shall charge only the person receiving the electric service. Charges shall not be limited to measurement by kilowatt or the kilowatt hour. The provisions of this section shall not apply to the sale by a municipality of surplus electric power and energy derived from its generating facility or its interest in a jointly owned generating facility.

History: 1953 Comp., § 14-23-2, enacted by Laws 1965, ch. 300; 1979, ch. 260, § 5; 1999, ch. 70, § 1.

ANNOTATIONS

Cross references. — For charge for service becomes a lien against property served, *see* 3-23-6 NMSA 1978.

For municipal liens, *see* 3-36-1 NMSA 1978 et seq.

The 1999 amendment, effective June 18, 1999, deleted "which shall be measured by the kilowatt or the kilowatt-hour" from the end of the first sentence and added the second sentence.

This section controls the general provisions of 3-23-6 NMSA 1978 and is not irreconcilable with it. 1968 Op. Att'y Gen. No. 68-18.

3-24-3. Electric utility; municipality serving a governmental agency.

Any municipality maintaining electric transmission lines more than five miles beyond the municipal boundary for the purpose of supplying electricity to the United States government, the state of New Mexico or any department or agency of these governments may:

A. acquire, by purchase, gift or other conveyance, any public utility system using such transmission line in providing service; and

B. acquire, construct, operate and maintain any electric utility system served by and contiguous to such transmission line, in conformity with:

(1) any franchise possessed by the public utility; or

(2) the consent and franchise from the governmental authority controlling the area to be served by the electric utility.

History: 1953 Comp., § 14-23-3, enacted by Laws 1965, ch. 300.

3-24-4. Jurisdiction over land of electric utility.

A. For the purpose of constructing, operating, maintaining and protecting an electric utility, a municipality has jurisdiction over:

(1) territory, occupied by an electric utility;

(2) all poles, lines, mains, pipes and other facilities of the electric utility; and

(3) that portion of any land upon which is located the electric utility and its facilities, or over which they extend, to the extent reasonably necessary to properly operate, maintain, and protect the facilities.

B. Any municipality is granted:

(1) easements not to exceed twenty feet in width along, upon, and across any land over which an existing distribution line, main, and pipe extends, and parallel to such lines, mains, and pipes, and on any street, road and highway abutting such land;

(2) authority to cut down and trim trees and shrubbery, to the extent necessary to keep them clear of the lines, means, pipes or systems; and

(3) authority to cut down and trim trees which are dead, weak, leaning or dangerous, and tall enough to strike the wire in falling.

History: 1953 Comp., § 14-23-4, enacted by Laws 1965, ch. 300.

3-24-5. Electric utility; eminent domain power.

Any municipality owning, operating or proposing to construct an electric utility has the power of eminent domain for the purpose of acquiring property for the use of the electric utility according to the procedure for condemnation as provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978].

History: 1953 Comp., § 14-23-5, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 4; 1981, ch. 125, § 37.

ANNOTATIONS

Cross references. — For eminent domain power of municipality, *see* 3-18-10 NMSA 1978.

Section not authority for condemning existing utility. — Condemning an existing public utility and then using the condemned property in the exact same fashion does not encompass construction of an electric utility; thus, the language of this section is insufficient to allow a municipality to condemn an existing public electric utility. City of Las Cruces v. El Paso Elec. Co., 904 F. Supp. 1238 (D.N.M. 1995).

3-24-6. Electric utility; power to issue revenue bonds.

A. A municipality may issue electric utility revenue bonds as provided in Sections 3-31-1 through 3-31-12 NMSA 1978. The proceeds from the sale of the electric utility revenue bonds are to be used solely for the purpose of purchasing, acquiring, constructing and making necessary improvements, extensions, repairs and betterments of the electric utility.

B. The electric utility revenue bonds are to be paid solely from the net income derived from the operation of the electric utility.

History: 1953 Comp., § 14-23-6, enacted by Laws 1965, ch. 300.

3-24-7. Limitations on electric utility of municipality.

A. No municipality in the operation of its electric utility may exercise dominion over territory outside its boundary in which rights have been granted to an electric cooperative under the provisions of Section 62-15-3 NMSA 1978.

B. All acts and parts of acts in conflict with Sections 3-24-1 through 3-24-10 NMSA 1978, are repealed, except that these sections shall not be construed as amending or repealing Section 62-9-1 NMSA 1978.

History: 1953 Comp., § 14-23-7, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Constitutionality of limiting municipal electric system's right to serve area. — Where the legislature limits a municipal electric system's right to serve in an area, that legislative limitation does not constitute an unconstitutional exclusive franchise in violation of N.M. Const., art. IV, § 26. Springer Elec. Coop. v. City of Raton, 99 N.M. 625, 661 P.2d 1324 (1983).

Municipality to yield to rural cooperative's project outside municipal boundary. — This section and 3-24-1 NMSA 1978 require that a municipality shall yield to rural cooperative's project which rightfully extends lines or service to an area referred to in 3-24-1A(2) NMSA 1978. Springer Elec. Coop. v. City of Raton, 99 N.M. 625, 661 P.2d 1324 (1983).

Injunctive relief held premature. — An electric cooperative which had not yet acquired a plant nor transmission lines acted prematurely in bringing suit in equity to enjoin town from acquiring electric transmission and distribution lines outside corporate limits where plaintiff held a previously acquired franchise. Sierra Elec. Coop. v. Town of Hot Springs, 51 N.M. 150, 180 P.2d 244 (1947).

3-24-8. Electric utility; limitation on right to acquire system beyond five-mile limit.

A. The acquisition of any public utility system by a municipality furnishing electric service more than five miles beyond its boundary is subject to the rights and liabilities of the public utility, and the obligations assumed by the municipality shall be paid from the gross revenue ascribable to the electric system so acquired.

B. No municipality shall acquire any public utility system for furnishing electricity more than five miles beyond its boundary in territory receiving similar utility service:

(1) from a public utility subject to the jurisdiction of the New Mexico public utility commission and the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978] without the consent of the public utility or as otherwise provided by law;

(2) within any municipality that already owns or operates its electric utility without the consent of the municipality or as otherwise provided by law; or

(3) within territory receiving similar utility service from a rural electric cooperative without the consent of the rural electric cooperative or as otherwise provided by law.

C. The provisions of this section shall not apply to either the acquisition by a municipality of a generating facility or any interest in a jointly owned generating facility or the sale of electric power and energy derived from any such facility as authorized by Section 3-24-1 NMSA 1978.

History: 1953 Comp., § 14-23-8, enacted by Laws 1965, ch. 300; 1979, ch. 260, § 6; 1993, ch. 282, § 6.

ANNOTATIONS

Cross references. — For rural electric cooperatives, *see* 62-15-1 NMSA 1978 et seq.

The 1993 amendment, effective June 18, 1993, in Subsection B, substituted "New Mexico public utility commission" for "New Mexico public service commission" in Paragraph (1), and made a stylistic change in Paragraph (2).

3-24-9. Electric utility; rates, charges and service conditions beyond five-mile limit; rate, charge and service standards; fees paid by municipality.

A. Any municipality acquiring, operating or maintaining an electric utility system in that area more than five miles beyond its boundary shall:

(1) establish, maintain and collect rates or charges for service in that area that are just and reasonable; and

(2) furnish adequate, efficient and reasonable service in that area.

B. No municipality acquiring, operating or maintaining an electric utility system in that area more than five miles beyond its boundary shall, as to rates or services:

(1) make or grant any unreasonable preference or advantage to any customer or group of customers;

(2) subject any customer or group of customers to any unreasonable prejudice or disadvantage; or

(3) establish and maintain any unreasonable differences either as between or among areas being served or as between or among customer groups.

C. Prior to implementing general retail rate increases for customers of its electric utility system in that area more than five miles beyond its boundaries, a municipality shall, after reasonable notice by publication in one or more newspapers of general circulation in such area and to the board of county commissioners of each county in which such customers are situated and to the New Mexico public utility commission, provide an opportunity at one or more public forums for affected customers and the board of county commissioners to present their views, comments and data. The New Mexico public utility commission may also appear and present matters within its rate-making expertise. The municipality and board of county commissioners may agree to alternative or additional rate-making procedures for such rate increases.

D. No later than June 1 of each year, the property tax division of the taxation and revenue department shall determine the actual value of all property belonging to the municipality in any electric utility system in that area five miles beyond its boundary and certify to the local assessor in the county in which any property is located the value of such property. The municipality shall pay to the treasurer of that county a fee for extraterritorial operation in that area five miles beyond its boundary, payable in installments and at the dates when taxes levied for ad valorem purposes are payable, equal to the taxes for ad valorem purposes and assessments that would be paid upon the property if privately owned, to be distributed by the county treasurer in the manner provided by law for the distribution of taxes for ad valorem purposes and assessments upon real and personal property.

History: 1953 Comp., § 14-23-9, enacted by Laws 1965, ch. 300; 1977, ch. 249, § 18; 1987, ch. 170, § 1; 1993, ch. 282, § 7.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, made a stylistic change in Paragraph A(1); in Subsection C, in the first sentence, substituted "in that area more than five" for "in the area of more than five" and "situated" for "situate", and substituted "New Mexico public utility commission" for "New Mexico public service commission" in the first two sentences; and made a stylistic change in Subsection D.

Obligation to pay fee regardless of commission's expenses. — That the public service commission (now public utility commission) did not in fact incur any expenses in

the exercise of its jurisdiction is immaterial to a municipality's obligation to pay the fee. 1969 Op. Att'y Gen. No. 69-146.

If a municipality does not allow for the fee called for by this section when rates and charges are established, then the municipality must pay the fee out of its general financial resources within the statutory provisions relating to municipal expenditures. 1969 Op. Att'y Gen. No. 69-146.

3-24-10. Contracts with electric utilities for the operation of facilities.

A. Any municipality owning and operating facilities for the furnishing of electricity may contract with any electric utility:

(1) to operate and manage all or part of the electric system of the electric utility; or

(2) for the operation and management of the municipal electric facilities by the electric utility upon such terms and conditions as are mutually agreeable to the contracting parties. No utility, by virtue of the contract or the operation and management of the municipal electric facilities, shall acquire any rights, interest or equity in the municipal system nor shall the municipality surrender any of its rights, interest or equity in the municipal system.

B. No municipal funds shall be expended for the operation and management of such system except such funds as are contracted to be reimbursed by the contracting electric utility. Any municipality entering into a contract and operating and managing such electric system shall not acquire any right, interest or equity in such electric utility.

C. No contract entered into by a municipality pursuant to this section shall run for more than ten years.

D. Nothing contained in this section shall operate to prevent a municipality from entering into contracts pursuant to Section 3-24-15 NMSA 1978 for the operation, maintenance and management of a jointly owned generating facility in which such municipality has any interest, nor from entering into a lease agreement or lease-purchase agreement with respect to any of such municipality's electric facilities.

History: 1953 Comp., § 14-23-10, enacted by Laws 1965, ch. 300; 1979, ch. 260, § 7.

3-24-11. Short title.

Sections 3-24-11 through 3-24-18 NMSA 1978 may be cited as the "Municipal Electric Generation Act".

History: 1978 Comp., § 3-24-11, enacted by Laws 1979, ch. 260, § 8.

3-24-12. Legislative intent.

It is the intent of the legislature by the passage of the Municipal Electric Generation Act to authorize municipalities which own municipal electric distribution systems on July 1, 1979 to acquire, own and dispose of any generating facility and any undivided or other interest, including without limitation any right to entitlement or capacity, in a jointly owned generating facility and to participate in the operation, maintenance and management of any such facility or contract with respect to the operation, maintenance and management of any such facility for the purpose of meeting present or future electric power and energy necessities.

History: 1978 Comp., § 3-24-12, enacted by Laws 1979, ch. 260, § 9.

ANNOTATIONS

Cross references. — For power of municipality to acquire and operate electric distribution systems, *see* 3-24-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 575 to 578.

63 C.J.S. Municipal Corporations §§ 959, 960, 1052.

3-24-13. Limitation on applicability of the Municipal Electric Generation Act.

The powers and rights granted pursuant to the Municipal Electric Generation Act may only be exercised by municipalities which own municipal electric distribution systems on July 1, 1979.

History: 1978 Comp., § 3-24-13, enacted by Laws 1979, ch. 260, § 10.

3-24-14. Additional powers conferred on municipalities.

In addition to any other powers which it may now have, a municipality which owns a municipal electric distribution system on July 1, 1979:

A. shall have the power to acquire, own, lease, encumber and dispose of a generating facility and shall have the power to contract with respect to the operation, maintenance and management of such facility;

B. shall have the power to acquire, own, lease, encumber and dispose of any undivided or other interest, including without limitation any right to entitlement or capacity, in a jointly owned generating facility with one or more joint participants and shall have the power to participate in the operation, maintenance and management of

such facility or contract with respect to the operation, maintenance and management of such facility;

C. may issue revenue bonds in the manner provided in Sections 3-31-1 through 3-31-6 and 3-31-8 through 3-31-12 NMSA 1978, as amended from time to time, either as generating facility revenue bonds, jointly owned generating facility revenue bonds, electric utility revenue bonds or joint utility revenue bonds for the purpose of:

(1) financing the cost of acquiring, extending, enlarging, bettering, repairing or otherwise improving any generating facility or facilities, or any combination of the foregoing purposes;

(2) financing its share of the cost of acquiring, extending, enlarging, bettering, repairing or otherwise improving any jointly owned generating facility or facilities either individually or jointly, or any combination of the foregoing purposes; and

(3) refinancing, paying and discharging all or any part of any revenue bonds previously issued pursuant to Paragraphs (1) or (2) of Subsection C of this section;

D. may issue such revenue bonds as special obligations and may pledge irrevocably:

(1) any or all of the net revenues derived from one or more of its generating facilities in the case of generating facility revenue bonds;

(2) any or all of the net revenues derived from its interest in one or more jointly owned generating facilities in the case of jointly owned generating facility revenue bonds;

(3) any or all of the net revenues of its electric utility, which utility shall include the municipality's generating facility or facilities or its interest in the jointly owned generating facility or facilities being financed by such bonds, in the case of electric utility revenue bonds; and

(4) any or all of the net revenues of its joint utility, which utility shall include the municipality's generating facility or facilities or its interest in the jointly owned generating facility or facilities being financed by such bonds, in the case of joint utility revenue bonds;

E. may impose rates and charges, including a special generating charge, with respect to each of its generating facilities and each of the jointly owned generating facilities in which it has an interest or with respect to all such facilities;

F. shall, upon issuance of revenue bonds secured in whole or in part by the net revenues of its generating facility or its interest in a jointly owned generating facility, establish rates or charges for services rendered by such facility to provide revenues

which when added to any revenues to be received with respect to such facility from the sale of surplus power pursuant to Section 3-24-1 NMSA 1978 will be sufficient to meet the following requirements:

(1) pay all costs and expenses of service, operation and maintenance including funding reasonable reserves and reasonable renewal and replacement funds; and

(2) pay all principal and interest payments on the revenue bonds as they become due, including payments into one or more sinking funds for the retirement of principal of the revenue bonds. Such rates or charges shall remain in effect until the revenue bonds are liquidated;

G. shall have the power of eminent domain necessary to acquire, operate and maintain a generating facility and an interest in a jointly owned generating facility, exercisable in the same manner provided by the laws of this state for the exercise of that power by corporations organized for the generation, production, transmission, distribution, sale or utilization of electricity for lighting, heating, power, manufacturing or other purposes;

H. shall, where it may be necessary to cross the right-of-way of another corporation, person or governmental or private entity, have the power to effect such crossing by mutual agreement or in the manner now provided by law for the crossing of one railroad by another railroad;

I. shall have all rights and powers necessary or incidental to or implied from the specific powers granted in the Municipal Electric Generation Act, subject to constitutional or express legislative restrictions imposed upon such municipality; and

J. may exercise the powers granted by the Municipal Electric Generation Act in the manner provided in the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978]. Provided, however, in carrying out the powers granted by the Municipal Electric Generation Act, a municipality shall not issue revenue bonds to finance a generating facility or an interest in a jointly-owned generating facility if the electric power and energy to be derived by the municipality from such facility will be sold to one or more investor-owned utilities under a contract or contracts which have the effect of transferring to such investor-owned utility or utilities benefits of ownership of such facility and the burden of paying the debt service on the revenue bonds issued to finance such facility, so that such bonds would constitute nonexempt industrial development bonds within the meaning of Subsection C of Section 103 of the Internal Revenue Code of 1954 and the regulations promulgated thereunder. The validity of any such revenue bond issue shall not be questioned if, prior to or upon issuance, there has been an internal revenue service revenue ruling that such bonds shall not be industrial development bonds under Subsection C of Section 103 of the Internal Revenue Code of 1954 and the regulations promulgated thereunder.

History: 1978 Comp., § 3-24-14, enacted by Laws 1979, ch. 260, § 11.

ANNOTATIONS

Compiler's notes. — Subsection J of this section refers to Subsection C of § 103 of the Internal Revenue Code of 1954 (codified at 26 U.S.C. § 103(c)), but § 103(b), relating to industrial development bonds, is the apparent intended reference. *See* 26 U.S.C. § 103(b).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 623, 653 to 655.

Right of municipality or other governmental body seeking to acquire public utility to proceed in the manner prescribed generally for exercise of eminent domain, 109 A.L.R. 384.

64 C.J.S. Municipal Corporations §§ 1907, 1908.

3-24-15. Contract for participation in and operation and management of jointly owned generating facility; sharing of costs of [on] proportional basis.

Any municipality which intends to acquire any interest in [a] jointly owned generating facility shall enter into a contract with the other joint participants which contract shall set forth the respective rights, duties, obligations and responsibilities of each joint participant for the operation, maintenance and management of the jointly owned generating facility and shall further provide that any municipality shall own a percentage of the jointly owned generating facility equal to at least the percentage of the money furnished or the value of the property supplied by it for the acquisition of such jointly owned generating facility and shall own or control, in the case of a generating facility, at least an identical percentage of the electric power and energy output of the jointly owned generating facility. Such contract may include, without limitation, the designation of one joint participant as the agent for other joint participants with respect to the construction, operation, maintenance and management of a jointly owned generating facility and may provide, without limitation, for the sharing of costs, including but not limited to third-party claims, insurance premiums and insurance deductibles, on a proportional basis reflective of ownership. Notwithstanding the provisions of Section 3-24-10 NMSA 1978, any contract entered into pursuant to this section may be for such term as the joint participants deem necessary or convenient.

History: 1978 Comp., § 3-24-15, enacted by Laws 1979, ch. 260, § 12; 1981, ch. 124, § 1.

ANNOTATIONS

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

3-24-16. Municipal liability.

In carrying out the powers granted by the Municipal Electric Generation Act [3-24-11 to 3-24-18 NMSA 1978], a municipality shall be liable only for its own acts with regard to the acquisition, operation, maintenance or management of a jointly owned generating facility in which it has any interest and shall not be liable for the acts, omissions or obligations of any other joint participant. The term "joint participant" as used in this section does not include an agent designated pursuant to Section 3-24-15 NMSA 1978 acting in its capacity as such. The provisions of this section shall not affect the liabilities, immunities, duties, limitations or other provisions affecting a municipality or public employee granted, permitted, required or provided for in the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978], as amended from time to time, nor the liabilities and duties assumed by the municipality under a contract pursuant to Section 3-24-15 NMSA 1978.

History: 1978 Comp., § 3-24-16, enacted by Laws 1979, ch. 260, § 13; 1981, ch. 124, § 2.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability for injury or death resulting when object is manually brought into contact with, or close proximity to, electric line, 33 A.L.R.4th 809.

Liability of electric utility to nonpatron for interruption or failure of power, 54 A.L.R.4th 667.

Liability for injury or death from collision with guy wire, 8 A.L.R.5th 177.

3-24-17. Application of municipal money or property.

No money or other property supplied by a municipality for the acquisition, operation, maintenance or management of a jointly owned generating facility in which the municipality has any interest shall be credited or otherwise applied to the account of any other joint participant.

History: 1978 Comp., § 3-24-17, enacted by Laws 1979, ch. 260, § 14.

3-24-18. Exemption from certain acts.

The provisions of Sections 6-6-11, 6-6-13 through 6-6-18 and 13-4-1 through 13-4-24 NMSA 1978 and of the Public Purchases Act shall not apply to the acquisition, construction, disposal and operation by a municipality of any generating facility and any undivided or other interest in a jointly owned generating facility, or to any contract,

indebtedness or agreement for the operation, maintenance and management of such facility or the sale or other disposal of power or energy therefrom.

History: 1978 Comp., § 3-24-18, enacted by Laws 1979, ch. 260, § 15.

ANNOTATIONS

Compiler's notes. — Most of the provisions of the Public Purchases Act, 13-1-1 to 13-1-27 NMSA 1978, have been repealed. The present comparable provisions are in the Procurement Code. *See* 13-1-28 NMSA 1978 and notes thereto for the scope of that act.

ARTICLE 25
Gas Utility

3-25-1. Gas or geothermal utility; acquisition by municipality; intent of legislature; self-liquidating project; liberal construction.

A. It is the intent of the legislature to authorize municipalities to:

(1) obtain the benefits of a natural gas supply, additional supply or supply of geothermal energy for their inhabitants and others within five miles of the municipal boundary;

(2) take proper steps and actions necessary to that end by the acquisition of a natural gas or geothermal system;

(3) finance the acquisition of the natural gas or geothermal system through the issuance of bonds; and

(4) operate and manage a natural gas association, in which it was an organizer, organized by two or more municipalities pursuant to Sections 3-28-1 through 3-28-19 NMSA 1978 if the operating municipality finds that the association can no longer maintain adequate service. The terms and conditions of the operation and management by the municipality shall be set forth in a joint powers agreement between the municipality and the association.

B. Chapter 3, Article 25 NMSA 1978 shall be liberally construed in conformity with the intent of this section.

History: 1953 Comp., § 14-24-1, enacted by Laws 1965, ch. 300; 1983, ch. 123, § 1; 1985, ch. 81, § 2.

ANNOTATIONS

Cross references. — For water or natural gas associations, *see* 3-28-1 NMSA 1978 et seq.

For authority to issue general obligation bonds, *see* 3-30-5 NMSA 1978.

For revenue bonds, *see* 3-31-1 NMSA 1978 et seq.

For Low Income Utility Assistance Act, *see* 27-6-11 NMSA 1978 et seq.

For Tort Claims Act, *see* 41-4-1 NMSA 1978 et seq.

For excavation damage to pipelines and underground utility lines, *see* 62-14-1 NMSA 1978 et seq.

Municipality's authority limited to five miles. — Whatever the meaning of "not limited to" in 3-25-3 NMSA 1978, these words did not extend the municipality's authority to distribute natural gas to customers more than five miles beyond the municipal limits. City of Las Cruces v. Rio Grande Gas Co., 78 N.M. 350, 431 P.2d 492 (1967).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Electricity, Gas, and Steam §§ 58, 59, 71, 154 et seq.; 56 Municipal Corporations, Counties, and Other Political Subdivisions §§ 575, 576.

63 C.J.S. Municipal Corporations § 1052.

3-25-2. Gas or geothermal utility; authorization to acquire; charges.

A. A municipality may, if a satisfactory supply is not otherwise obtainable as determined, by ordinance, acquire and operate natural gas or geothermal energy facilities for the distribution of natural gas or heat.

B. A municipality owning and operating a gas utility shall measure the gas used by the person receiving the service by volume or energy content.

C. A municipality owning and operating a geothermal utility shall measure the heat used by the person receiving the service by fluid volume and temperature or energy content.

History: 1953 Comp., § 14-24-2, enacted by Laws 1965, ch. 300; 1985, ch. 81, § 3.

ANNOTATIONS

Cross references. — For charge for service becomes a lien against property served, *see* 3-23-6 NMSA 1978.

For municipal liens, *see* 3-36-1 NMSA 1978 et seq.

Customer credits permitted. — A city as owner of a natural gas system, in order to promote the use of natural gas and compete with other utilities, could give credits of $12.50 to $50.00 to customers if they installed a new gas water heater, changed to a gas water heater from another type of water heater or replaced the existing gas water heater with a new gas water heater. 1964 Op. Att'y Gen. No. 64-53.

3-25-3. Natural gas or geothermal utility; extent of facilities; distribution to consumers beyond the municipal boundary; within the boundary of another municipality; approval of other municipality and public regulation commission.

A. The natural gas or geothermal utility may include but is not limited to:

(1) in the municipality and within one hundred miles of the municipal boundary, facilities appropriate to the transportation, pumping, storage or purification of natural gas or geothermal waters; and

(2) in the municipality and within five miles of the municipal boundary, facilities for the distribution of natural gas or geothermal heat.

The natural gas or geothermal utility shall include any land or real estate needed for the location of the facilities.

B. A municipality shall not acquire and operate natural gas or geothermal distribution facilities in whole or in part within the boundary of another municipality, as then existing, until the:

(1) public regulation commission issues an order authorizing the acquisition and operation of the natural gas or geothermal distribution facilities; and

(2) other municipality authorizes, by ordinance, the acquisition and operation of the natural gas or geothermal distribution facilities.

C. No formal franchise need be granted by the other municipality, and the ordinance granting the consent of the other municipality:

(1) shall be sufficient;

(2) may be adopted on a single reading;

(3) may become immediately effective;

(4) shall not be subject to a referendum; and

(5) shall be valid for such period of years as may be specified in the ordinance.

History: 1953 Comp., § 14-24-3, enacted by Laws 1965, ch. 300; 1985, ch. 81, § 4; 1993, ch. 282, § 8; 2003, ch. 347, § 1.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, inserted "natural" preceding "gas" throughout the section; in Subsection A(1), substituted "one hundred miles" for "fifty miles"; in Subsection B(1), substituted "public regulation commission" for "New Mexico public utility commission".

The 1993 amendment, effective June 18, 1993, substituted "New Mexico public utility commission" for "New Mexico public service commission" in the section catchline and in Subsection B(1).

City's authority to operate a natural gas utility is derived from the state. Cole v. City of Las Cruces, 99 N.M. 302, 657 P.2d 629 (1983).

Municipality's authority limited to five miles. — Whatever the meaning of "not limited to" in the introductory clause of Subsection A, these words did not extend the municipality's authority to distribute natural gas to customers more than five miles beyond the municipal limits. City of Las Cruces v. Rio Grande Gas Co., 78 N.M. 350, 431 P.2d 492 (1967).

Applicability of Tort Claims Act. — The operation of a natural gas system, even though beyond the statutory limitations imposed by Subsection (A)(2), does not deprive a city of the exclusive right, remedy and obligation provision of the Torts Claim Act. Cole v. City of Las Cruces, 99 N.M. 302, 657 P.2d 629 (1983).

If a city negligently maintains a gas service provided by it beyond the statutorily prescribed five-mile limit, that negligence is actionable and there exists no sovereign immunity to shield it from its liability under the Tort Claims Act. Cole v. City of Las Cruces, 99 N.M. 302, 657 P.2d 629 (1983).

3-25-4. Financing acquisition of gas or geothermal utility.

The acquisition of facilities of a municipal gas or geothermal utility shall only be financed from funds received from the issuance and sale of bonds as authorized in Sections 3-30-5 through 3-30-8 and 3-31-1 through 3-31-12 NMSA 1978 except as provided in Section 3-23-4 NMSA 1978.

History: 1953 Comp., § 14-24-4, enacted by Laws 1965, ch. 300; 1985, ch. 81, § 5.

ANNOTATIONS

Law reviews. — For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

3-25-5. Gas or geothermal utility; eminent domain power; procedure.

Any municipality acquiring a natural gas or geothermal utility may exercise the power of eminent domain within or without the municipality boundary for the purpose of acquiring property or interest in property for the location of or for the extension of the facilities of a natural gas or geothermal utility. Proceedings to obtain such condemnation shall be in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978].

History: 1953 Comp., § 14-24-5, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 5; 1981, ch. 125, § 38; 1985, ch. 81, § 6.

ANNOTATIONS

Cross references. — For constitutional provision on eminent domain, *see* N.M. Const., art. II, § 20.

3-25-6. Gas or geothermal utility; lease agreement; operating agreement; option to purchase; election on question of acquisition, issuance of bonds and lease agreement.

A. A municipality acquiring a municipal gas or geothermal utility may, by ordinance, contract to lease the gas or geothermal utility to a lessee. The term of the lease shall not exceed twenty-five years, and, consistent with the provisions of this section, the ordinance may contain such provisions and be in such form as the governing body determines.

B. The governing body shall set forth in the ordinance or in the proceedings under which the revenue bonds are proposed to be issued provisions requiring payments to the municipality by the lessee adequate to meet and discharge when due:

(1) all amounts found by the governing body to be necessary in connection with the transaction;

(2) the amount necessary in each year to pay the principal and interest on the revenue bonds proposed to be issued;

(3) the amount necessary to be paid each year into any reserve fund which the governing body deems advisable to establish in connection with the retirement of the proposed bonds or the maintenance of the natural gas or geothermal utility or both; and

(4) the estimated cost to the municipality of maintaining the utility in good repair and keeping it properly insured unless the terms under which the utility is to be leased provide that the lessee shall maintain the utility and carry all proper insurance relating to the utility.

C. The lease agreement shall also:

(1) require the lessee to complete and connect the natural gas or geothermal utility;

(2) require the lessee to place the utility in operation; and

(3) obligate the lessee through the utility to provide the supply and service of natural gas or geothermal energy.

The original lessee and any succeeding holder of the lease shall be subject to regulation as a public utility under the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978].

D. The lease may contain an option to purchase the natural gas or geothermal utility at the election of the lessee upon compliance by the lessee with the terms of the lease. Any option to purchase the natural gas or geothermal utility shall provide for a purchase price not less than the amount:

(1) necessary to discharge in full the principal and interest of any outstanding revenue bonds issued by the municipality to finance the acquisition of the natural gas or geothermal utility; and

(2) of all expenses incurred or to be incurred in completing the transaction.

E. No ordinance providing for the acquisition of a natural gas or geothermal utility, the issuance of revenue bonds and the leasing of the natural gas or geothermal utility to a lessee shall become effective until the question of acquiring the natural gas or geothermal utility, issuing the revenue bonds and leasing the natural gas or geothermal utility, as proposed, has, as a single question, been submitted to the qualified electors at a regular or special municipal election, which election shall be substituted for the election required in Section 3-23-2 NMSA 1978. A special election may be called for the purpose of voting on the question, but no special election shall be called for a date less than ninety days prior to the date of the regular municipal election. The ordinance authorizing the acquisition of the natural gas or geothermal utility, the issuance of revenue bonds for the acquisition of the utility and the leasing of the natural gas or geothermal utility shall be published in full once a week for two successive weeks, and the last publication shall be at least seven days before the date of the election.

F. The ballot provided for the election shall set forth in general terms the question to be voted upon substantially as follows:

"Shall the (city, town or village - choose the applicable term) of ....., New Mexico proceed with the program for acquisition of natural gas or geothermal facilities, the issuance and sale of not to exceed $ ..... principal amount of revenue bonds for the cost thereof and incidental purposes and the leasing of such facilities to ....., a public utility, all according to Ordinance No. ..... adopted on the .. day of ....., 19 ...?"

The ballot shall provide for each voter to indicate whether he favors or opposes such proposition.

G. If a majority of the qualified electors voting on the question approve the proposition, the ordinance shall become effective.

H. No municipality shall pay from its general fund or otherwise contribute any property or asset to pay any part of the cost of acquiring a natural gas or geothermal system which is to be leased as provided in this section; provided that nothing herein shall be construed to prevent a municipality from accepting private donations of property or other assets to be used for defraying any part of the cost of the natural gas or geothermal system.

History: 1953 Comp., § 14-24-6, enacted by Laws 1965, ch. 300; 1985, ch. 81, § 7.

ARTICLE 26
Sewage Facilities

3-26-1. Sanitary sewers; authority to acquire; condemnation; jurisdiction over system.

A. In the manner provided in Section 3-23-2 NMSA 1978, a municipality may, within and without the municipality:

(1) acquire and maintain facilities for the collection, treatment and disposal of sewage;

(2) condemn private property for the construction, maintenance and operation of sewer facilities; and

(3) acquire, maintain, contract for or condemn for use as a municipal utility privately owned sewer facilities used or to be used for the collection, treatment and disposal of sewage of the municipality or its inhabitants.

B. For the purpose of acquiring, maintaining, contracting for, condemning or protecting the sewer facilities, the jurisdiction of the municipality extends to the territory occupied by the sewer facilities; in exercising its jurisdiction to acquire, maintain, contract for or condemn, the municipality shall not act so as to physically isolate and make nonviable any portion of the sewer facilities, within or without the municipality.

C. Proceedings to obtain any condemnation authorized in this section shall be in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978].

History: 1953 Comp., § 14-25-1, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 6; 1994, ch. 99, § 1.

ANNOTATIONS

Cross references. — For eminent domain power of municipality, *see* 3-18-10 NMSA 1978.

For power of municipality relating to requirement for sanitary facilities, *see* 3-18-22 NMSA 1978.

For powers of municipalities relating to opening and maintenance of sewers and drains, *see* 3-18-25 NMSA 1978.

For Sanitary Projects Act, *see* Chapter 3, Article 29 NMSA 1978.

For excess indebtedness permitted for sewer system, *see* N.M. Const., art. IX, § 13.

For Tort Claims Act, *see* 41-4-1 NMSA 1978 et seq.

For Eminent Domain Code, *see* 42A-1-1 to 42A-1-33 NMSA 1978.

The 1994 amendment, effective May 18, 1994, added Subsection A(3) and Subsection C relating to the acquisition of a municipal sewer facility, and made minor stylistic changes throughout the section.

Jurisdiction of municipal condemnation of public utility. — The public utilities commission does not have jurisdiction over municipal condemnations of regulated water and sewer utilities. United Water N.M., Inc. v. New Mexico Pub. Util. Comm'n, 1996-NMSC-007, 121 N.M. 272, 910 P.2d 906.

Scope of city's authority. — An ordinance adopting a radionuclide water disposal standard fifty times more stringent than the standard adopted by the state and federal governments is invalid as beyond the city's delegated authority. Interstate Nuclear Services Corp., v. City of Santa Fe, 179 F. Supp.2d 1253 (D.N.M. 2000).

Statute not limited to domestic wastes. — Sections 3-26-1 NMSA 1978 et seq., dealing with municipal sewage facilities, are not limited to domestic wastes but speak in terms of waste in general. 1978 Op. Att'y Gen. No. 78-15.

County authority over sewage facilities meets federal regulatory standard. — Pursuant to 4-37-1 NMSA 1978 and this section, counties have the authority to acquire and maintain sewage facilities and thereby meet the requirements of 40 C.F.R. §

131.11(o)(2)(ii) (since removed), which requires an agency to have the authority to effectively manage waste treatment works, etc. 1978 Op. Att'y Gen. No. 78-15.

Law reviews. — For note, "United Water New Mexico v. New Mexico Public Utility Commission: Why Rules Governing the Condemnation and Municipalization of Water Utilities May Not Apply to Electric Utilities," see 38 Nat. Resources J. 667 (1998).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 569 to 574.

Establishment or extension of sewer as a public use or purpose for which power of eminent domain may be exercised, 169 A.L.R. 576.

Validity and construction of regulation by municipal corporation fixing sewer-use rates, 61 A.L.R.3d 1236.

Validity of zoning ordinance deferring residential development until establishment of public services in area, 63 A.L.R.3d 1184.

63 C.J.S. Municipal Corporations § 1049.

3-26-2. Sanitary sewers; charges and assessments for maintenance and extension; lien.

A. A municipality, for the purpose of maintaining, enlarging, extending, constructing and repairing sewer facilities and for paying the interest and principal on revenue bonds issued for the acquisition, condemnation or construction of sewer facilities, may levy by general ordinance a just and reasonable service charge upon a front-foot, volume-of-sewage, number-of-outlets or other equitable basis on:

(1) an improved or unimproved lot or land that adjoins a street in which a sewage collection system exists or that is accessible to such a sewage collection system; and

(2) premises and improvements otherwise situated but connected to the sewage collection system.

B. Any charge authorized in Subsection A of this section is a lien co-equal with a similar water lien and superior to all other liens except general property taxes upon the property so charged and is a personal liability of the owner of the property so charged. The lien shall be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978.

History: 1953 Comp., § 14-25-2, enacted by Laws 1965, ch. 300; 1967, ch. 146, § 6; 1977, ch. 324, § 1; 1994, ch. 99, § 2.

ANNOTATIONS

Cross references. — For Eminent Domain Code, *see* 42A-1-1 to 42A-1-33 NMSA 1978.

The 1994 amendment, effective May 18, 1994, in Subsection A, substituted "sewer" for "sewage" twice, inserted "acquisition, condemnation or" near the beginning of the subsection, and made stylistic changes; and, in Subsection B, substituted "3-36-1 through 3-36-7 NMSA" for "14-35-1 through 14-35-6 NMSA 1953" and made stylistic changes.

Standards for setting rates. — Where the municipality owns and operates a water and sewer system, the rates charged by it must be fair, reasonable and just, uniform and nondiscriminatory. The city has the power to set reasonable rates in excess of actual expenditures in furnishing municipally owned utility services, if such rates compare favorably with those received by private utility companies. Apodaca v. Wilson, 86 N.M. 516, 525 P.2d 876 (1974).

Application of revenues. — This section and 3-27-4 NMSA 1978 do not limit or prohibit the application of the revenues from the sewer or water system operated by a home-rule city to other municipal purposes. The only limitation, as in the case of any legislative action or function by the city, is that it exercise its authority in a reasonable manner and act pursuant to constitutional authority. Apodaca v. Wilson, 86 N.M. 516, 525 P.2d 876 (1974).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 574.

63 C.J.S. Municipal Corporations § 1356.

3-26-3. Authority to require sewer connections; adoption of rules and regulations; penalties.

A municipality may, by general ordinance:

A. require the owner, agent or occupant of a building on a lot or land adjoining a street in which a sewage collection system exists to connect the building to the sewage collection system; and

B. adopt necessary rules and regulations relating to the connection, use, injury, maintenance, supervision and inspection of the sewage facilities.

History: 1953 Comp., § 14-25-3, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 573.

64 C.J.S. Municipal Corporations § 1805.

ARTICLE 27
Water Facilities

3-27-1. Potable; authority to acquire and operate water facilities.

A. A municipality, within and without the municipal boundary, may:

(1) acquire water facilities that may include but are not limited to:

(a) wells, cisterns and reservoirs;

(b) distribution pipes and ditches;

(c) pumps;

(d) rights of way;

(e) water treatment plants; and

(f) their necessary appurtenances; and

(2) use and supply water for:

(a) sewer purposes;

(b) private use; and

(c) public use.

B. In acquiring private property pursuant to this section, a municipality may exercise the power of eminent domain pursuant to procedures of the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978] and subject to any applicable provisions of Section 3-27-2 NMSA 1978.

History: 1953 Comp., § 14-26-1, enacted by Laws 1965, ch. 300; 2009, ch. 269, § 1.

ANNOTATIONS

Cross references. — For powers of municipalities relating to water facilities, *see* 3-18-25 NMSA 1978.

For water or natural gas associations, *see* 3-28-1 NMSA 1978 et seq.

For Sanitary Projects Act, *see* Chapter 3, Article 29 NMSA 1978.

For regulation of use of water supply, *see* 3-53-1 NMSA 1978 et seq.

For metropolitan water boards, *see* 3-61-1 NMSA 1978 et seq.

For excess indebtedness permitted for water system, *see* N.M. Const., art. IX, § 13.

For Tort Claims Act, *see* 41-4-1 NMSA 1978 et seq.

For waterworks companies, *see* 62-2-1 NMSA 1978 et seq.

For excavation damage to pipelines and underground utility lines, *see* 62-14-1 NMSA 1978 et seq.

For application for permit to appropriate water, *see* 72-5-1 NMSA 1978.

For transfer of water rights, *see* 72-5-23 NMSA 1978.

For community uses of water, *see* 72-10-1 NMSA 1978 et seq.

For community acequias or ditches, *see* 73-2-1 NMSA 1978 et seq.

For water and sanitation districts, *see* 73-21-1 NMSA 1978 et seq.

The 2009 amendment, effective June 19, 2009, added Subsection B.

Water franchise without referendum. — A franchise to maintain and operate an existing water plant, and to make additions, extensions and betterments thereto, may be granted by city ordinance without a referendum to the people. Asplund v. City of Santa Fe, 31 N.M. 291, 244 P. 1067 (1926).

Eminent domain. — This section confers the power of eminent domain to a city to construct waterworks system. City of Raton v. Raton Ice Co., 26 N.M. 300, 191 P. 516 (1920).

Approval of indebtedness required by election. — The town of Hagerman may borrow money from the farmers home administration to acquire a water system; however, the note or certificate of indebtedness given to the farmers home administration must provide that it will be paid solely from the revenues produced by the water system without incurring any liability to pay the indebtedness out of the general funds of the municipality unless the voters of the municipality have approved of the indebtedness in a general or special election. 1967 Op. Att'y Gen. No. 67-84.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Water Companies and Waterworks §§ 3 to 12.

Liability for tort of officer or employee of water department, 24 A.L.R. 545, 28 A.L.R. 822, 54 A.L.R. 1497.

Mandamus against municipality to compel repair or improvement of sewer or drain, 46 A.L.R. 271.

Liability of municipality where sewer originally of ample size has become inadequate by growth or development of territory, 70 A.L.R. 1347.

Municipality as riparian owner, right to use of water for public supply, 141 A.L.R. 639.

Liability of municipal corporation for damage to property resulting from inadequacy of drains and sewers due to defect in plan, 173 A.L.R. 1031.

Right to cut off water supply, because of failure to pay sewer service charge, 26 A.L.R.2d 1359.

Extension of water system, right to compel municipality, 48 A.L.R.2d 1222.

Dedication or acceptance, construction or maintenance of sewers, water pipes, or the like by public authorities in roadway, street, or alley as indicating, 52 A.L.R.2d 263.

Drains or sewers, duty of municipality to prevent obstruction of, 59 A.L.R.2d 281.

Injunctive relief against diversion of water by municipal corporation or public utility, propriety of, 42 A.L.R.3d 426.

Validity of ordinance deferring residential development until establishment of public services in area, 63 A.L.R.3d 1184.

Construction and application of 7 USCA § 1926(b), prohibiting curtailment or conditioning of water or sewer service based on inclusion within municipal borders, 146 A.L.R. Fed. 387.

63 C.J.S. Municipal Corporations § 1051; 94 C.J.S. Waters § 226 et seq.

3-27-2. Potable; methods of acquisition; condemnation conveyances authorized; land for appurtenances; public and private use; compensation.

A. Subject to the provisions of this section, municipalities within and without the municipal boundary may:

(1) acquire, contract for or condemn:

(a) springs;

(b) wells;

(c) water rights;

(d) other water supplies; and

(e) rights of way or other necessary ownership for the acquisition of water facilities;

(2) acquire, maintain, contract for or condemn for use as a municipal utility privately owned water facilities used or to be used for the furnishing and supply of water to the municipality or its inhabitants; and

(3) change the place of diversion of any water to any place selected by the municipality in order to make the water available to the municipality.

B. Municipalities shall not condemn water sources used by, water stored for use by or water rights owned or served by an acequia, community ditch, irrigation district, conservancy district or political subdivision of the state. The provisions of this subsection apply only to an acequia or community ditch formed before July 1, 2009.

C. For the purposes stated in Section 3-27-3 NMSA 1978, a municipality may take water from any stream, gulch or spring. If the taking of the water materially interferes with or impairs the vested right of any person to the creek, gulch or stream or to any milling or manufacturing on the creek, gulch or stream, the municipality shall obtain the consent of the person with the vested right or acquire the vested right by condemnation and make full compensation or satisfaction for all damages occasioned to the person, subject to the provisions set forth in Subsection B of this section.

D. Any person may lawfully convey to any municipality any water, water right and ditch right or any interest in any water, water right and ditch right held or claimed by the grantor. No change or use of the:

(1) water;

(2) water right;

(3) place of diversion; or

(4) purpose for which the water or water right was originally acquired by the grantor, shall invalidate the right of the municipality to use the water or water right.

E. Proceedings to obtain any condemnation authorized in this section shall be in the manner provided by law.

F. At any time before or after commencement of a condemnation action authorized by Chapter 3, Article 27 NMSA 1978 to condemn any well, cistern, reservoir, distribution pipe or ditch, spring, stream, water or water right, the parties may agree to and carry out a compromise or settlement as to any matter. Within twenty days following the filing of the petition, the condemnee may elect to proceed through an arbitration process pursuant to the Uniform Arbitration Act by filing a written notice with the condemnor. The arbitrators may award an amount they find to be just compensation for the condemnation of the water or water rights. The arbitrators may decide that the interests of justice are not served by permitting the taking of the condemnee's water or water rights and may order that the arbitration be dismissed and that the property not be taken by the municipality. If the award of the arbitrators exceeds the amount offered by the condemnor pursuant to this subsection by more than one hundred fifteen percent, or if the arbitrators decide that no taking shall occur as permitted in this subsection, or if the arbitration is abandoned by the condemnor, then the arbitrators shall award reasonable and necessary arbitration expenses, including attorney fees, to the condemnee.

G. In any condemnation proceeding pursuant to this section, the entity shall have reasonably satisfied the following criteria prior to commencing any such proceeding:

(1) the entity has a requirement for water or water rights for public health or safety purposes; or

(2) the entity has a requirement for water or water rights for other purposes and:

(a) suitable water rights are unavailable for voluntary sale at up to one hundred twenty-five percent of appraised value;

(b) suitable water rights in the public domain are unavailable for purchase at up to one hundred twenty-five percent of appraised value;

(c) the entity has implemented a water conservation plan; and

(d) the acquisition and purpose is consistent with the regional water plan.

History: 1953 Comp., § 14-26-2, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 7; 1994, ch. 99, § 3; 2009, ch. 269, § 2.

ANNOTATIONS

Cross references. — For Eminent Domain Code, *see* 42A-1-1 to 42A-1-33 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in Subsection A, at the beginning of the sentence, added "Subject to the provisions of this section"; added Subsection B; in

Subsection C, after "occasioned to the person", added the remainder of the sentence; and added Subsections F and G.

The 1994 amendment, effective May 18, 1994, added Paragraph A(2), and made minor stylistic changes throughout the section.

Jurisdiction of municipal condemnation of public utility. — The public utilities commission does not have jurisdiction over municipal condemnations of regulated water and sewer utilities. United Water N.M., Inc. v. N. M. Pub. Util. Comm'n, 1996-NMSC-007, 121 N.M. 272, 910 P.2d 906.

Law reviews. — For note, "United Water New Mexico v. New Mexico Public Utility Commission: Why Rules Governing the Condemnation and Municipalization of Water Utilities May Not Apply to Electric Utilities," see 38 Nat. Resources J. 667 (1998).

3-27-3. Potable; jurisdiction over water facilities and source.

A. For the purpose of acquiring, maintaining, contracting for, condemning or protecting its water facilities and water from pollution, the jurisdiction of the municipality extends within and without its boundary to:

(1) all territory occupied by the water facilities;

(2) all reservoirs, streams and other sources supplying the reservoirs and streams; and

(3) five miles above the point from which the water is taken.

B. In exercising its jurisdiction to acquire, maintain, contract for or condemn and protect the water facilities, the municipality shall not act so as to physically isolate and make nonviable any portion of the water facilities, within or without the municipality. The municipality may adopt any ordinance and regulation necessary to carry out the power conferred by this section.

History: 1953 Comp., § 14-26-3, enacted by Laws 1965, ch. 300; 1994, ch. 99, § 4; 2009, ch. 269, § 3.

ANNOTATIONS

Cross references. — For Eminent Domain Code, *see* 42A-1-1 to 42A-1-33 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in Subsection B, after "contract for or condemn", added "and protect the water facilities".

The 1994 amendment, effective May 18, 1994, inserted "acquiring" and "contracting for, condemning or" in the introductory language, added the next to last paragraph, and made stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63 C.J.S. Municipal Corporations § 1051.

3-27-4. Potable; charges and assessments for maintenance and extension; lien; frontage tax for water service.

A. A municipality owning and operating a water utility may, for the purpose of maintaining, enlarging, extending, constructing and repairing water facilities and for paying the interest and principal on revenue bonds issued for the acquisition, condemnation or construction of water facilities, levy by general ordinance a just and reasonable service charge upon a front-foot, volume-of-water or other reasonable basis on:

(1) an improved or unimproved lot or land that adjoins a street in which a water supply system exists or which is otherwise accessible to such water supply system; and

(2) premises and improvements otherwise situated but connected to the water supply system.

B. The charges authorized in this section shall in no way limit the authority of a municipality to collect an assessment levied for the payment of a special improvement as authorized in Chapter 3, Article 33 NMSA 1978.

C. Any charge authorized in Subsection A of this section is a lien co-equal with a similar sanitary sewer lien and superior to all other liens except general property taxes upon the property so charged and is a personal liability of the owner of the property so charged. The lien shall be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978.

History: 1953 Comp., § 14-26-4, enacted by Laws 1965, ch. 300; 1977, ch. 324, § 2; 1994, ch. 99, § 5.

ANNOTATIONS

Cross references. — For charge for service becomes a lien against property served, *see* 3-23-6 NMSA 1978.

For municipal liens, *see* 3-36-1 NMSA 1978 et seq.

For the Eminent Domain Code, *see* 42A-1-1 to 42A-1-33 NMSA 1978.

The 1994 amendment, effective May 18, 1994, inserted "acquisition, condemnation or" in Subsection A, substituted "Chapter 3, Article 33 NMSA 1978" for "Sections 14-32-1 through 14-32-38 NMSA 1953" in Subsection B, substituted "3-36-1 through 3-36-7 NMSA 1978" for "14-35-1 through 14-35-6 NMSA 1953" in Subsection C, and made stylistic changes throughout the section.

Standards for setting rates. — Where the municipality owns and operates a water and sewer system, the rates charged by it must be fair, reasonable and just, uniform and nondiscriminatory. The city has the power to set reasonable rates in excess of actual expenditures in furnishing municipally owned utility services, if such rates compare favorably with those received by private utility companies. Apodaca v. Wilson, 86 N.M. 516, 525 P.2d 876 (1974).

In determining whether charge made is one of fee or assessment in municipal water assessment, the name given the charge is not controlling. Leigh v. Hertzmark, 77 N.M. 789, 427 P.2d 668 (1967).

Application of revenues. — This section and 3-26-2 NMSA 1978 do not limit or prohibit the application of the revenues from the sewer or water system operated by a home-rule city to other municipal purposes. The only limitation, as in the case of any legislative action or function by the city, is that it exercise its authority in a reasonable manner and act pursuant to constitutional authority. Apodaca v. Wilson, 86 N.M. 516, 525 P.2d 876 (1974).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 C.J.S. Municipal Corporations § 1992.

3-27-5. Potable; contracts for acquiring and supplementing supply; storage; payments from water charges; joint water supply contracts between two or more municipalities.

A. For the purpose of obtaining, securing or supplementing its water supply and providing for the storage, treatment, distribution and transportation of water, a municipality may by ordinance:

(1) contract over a period of years with:

(a) the United States government or any of its agencies;

(b) the state of New Mexico or any of its agencies, boards or instrumentalities; or

(c) any person or association;

(2) agree to accept any pay for a specified amount of water per annum during the term of the contract; and

(3) adopt and enforce water charges sufficient to meet the payments required by the contract.

B. Payments required by a contract authorized by this section shall be made from any funds of the municipality other than the proceeds from an ad valorem tax and shall be considered an expense of the operation and maintenance of the water utility. In no event shall the obligation to make such payments be considered a general obligation or indebtedness of the municipality within the meaning of any constitutional or statutory provision.

C. Two or more municipalities may become parties to any contract authorized by this section.

History: 1953 Comp., § 14-26-5, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Appropriation of underground water. — Where a municipality files applications with the state engineer to appropriate underground water, only if they are approved will any type of purchase financing be required and only subsequent to such approval could the amount of the obligation be ascertainable, in which event such financing might be accomplished by means which would satisfy the requisites of either this section or 6-6-11 NMSA 1978. City of Hobbs v. State ex rel. Reynolds, 82 N.M. 102, 476 P.2d 500 (1970).

Contract for lease amounted to invalid contract of sale. — An ordinance creating a contract termed a lease for water supply for a town, the town to become owner in 10 years, amounted to a contract of sale and was invalid because not submitted to the voters. Hagerman v. Town of Hagerman, 19 N.M. 118, 141 P. 613 (1914).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Special requirements of consumer as giving rise to implied contract by public utility to furnish particular amount of electricity, gas, or water, 13 A.L.R.2d 1233.

3-27-6. Judicial examination, approval and confirmation.

In their discretion, municipalities through their respective governing bodies, may file a petition at any time in the district court in and for the county in which such municipality is located, praying a judicial examination, approval and confirmation of contracts authorized by Section 3-27-5 NMSA 1978. The petition shall set forth the facts whereon the validity of the contract is founded and shall be verified by an appropriate official of the governing body. The action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication and posting. The court shall fix the time for the hearing of the petition and shall order the clerk of the court, under the seal thereof, to give notice of the filing of the petition, stating in brief outline the contents of the petition and showing where a full copy of any contract therein

mentioned may be examined. The notice shall also state the time and place fixed for the hearing of the petition, and that any owner of property, or any resident, within the limits of the municipality, or any person interested in the contract or in the premises, may at any time, prior to the date fixed for the hearing or within such further time as may be allowed by the court, appear and move to dismiss or answer the petition. The notice shall be served by publication once each week for four consecutive weeks in a newspaper of general circulation published in the county wherein the case is pending, and by posting the notice in the office of the clerk of the municipality, at least thirty days prior to the date fixed in the notice for the hearing of the petition. Jurisdiction shall be complete after the publication and posting. Any owner of property, or any resident, within the limits of the municipality, or any person interested in the contract or in the premises, may appear and move to dismiss or answer the petition at any time prior to the date fixed for the hearing or within any additional time as may be allowed by the court, and the petition shall be taken as confessed by all persons who fail so to appear.

History: 1953 Comp., § 14-26-6, enacted by Laws 1965, ch. 310, § 1.

3-27-7. Hearing; costs; review.

At the hearing the court shall have power and jurisdiction to examine into and determine all matters and things affecting the question submitted, and shall make findings with reference thereto, and render judgment and decree thereon as the case warrants. Costs may be divided or apportioned among any contesting parties in the discretion of the trial court. Review of the judgment of the court may be had as in other civil action. The Rules of Civil Procedure shall govern in matters of pleading and practice where not otherwise specified. The court shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties. The provisions of Section [Sections] 3-27-6 and 3-27-7 NMSA 1978, shall apply to contracts entered into pursuant to the provisions of Section 3-27-5 NMSA 1978.

History: 1953 Comp., § 14-26-7, enacted by Laws 1965, ch. 310, § 2.

ANNOTATIONS

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

3-27-8. [Furnishing or selling water outside of corporate limits.]

A. Any municipality owning or operating a municipal water utility may furnish or sell, and may contract to furnish or sell, water to any person, association or legal entity, including governmental agencies and political subdivisions, situate without the corporate limits of the municipality.

B. Contracts for the sale of municipal water may be for a term, and upon conditions, acceptable to the municipality, but the contracts shall be entered in the name of the municipality following approval of its governing body.

History: 1953 Comp., § 14-26-8, enacted by Laws 1965, ch. 38, § 1.

ANNOTATIONS

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

ANNOTATIONS

Right of municipality to provide service in the certified area of a public utility. — Where the public regulation commission issued the public utility a certificate of public convenience and necessity authorizing the public utility to provide water in an area outside the limits of the municipality; the municipality subsequently annexed three undeveloped tracts of land within the public utility's certified area, subdivided the land and committed itself to provide water to the subdivision; and the municipality had not elected to become subject to the Public Utilities Act, Section 62-1-1 NMSA 1978 et seq., and did not have a population of more than 200,000, the public utility's certificate of public convenience and necessity did not prevent the municipality from competing with the public utility in the certified area, because the municipality was not subject to the Public Utilities Act. Moongate Water Co., Inc. v. City of Las Cruces, 2013-NMSC-018, 302 P.3d 405, aff'g 2012-NMCA-003, 269 P.3d 1.

A taking may occur by a municipality providing service in the certified area of a public utility. — A taking may occur, even if a public utility does not have the exclusive right to furnish utilities in a certified area under a certificate of public convenience and necessity, if the public utility proves that it had established infrastructure and was already serving customers in the certified area that is interfered with by a municipality. In the absence of any proof of tangible loss, that is, physical taking or stranded costs, a public utility is not entitled to just compensation when a municipality lawfully exercises its right to provide utilities in the in the public utility's certified area. Moongate Water Co., Inc. v. City of Las Cruces, 2013-NMSC-018, 302 P.3d 405.

Municipality providing service in the certified area of a public utility was not a taking. — Where the public regulation commission issued the public utility a certificate of public convenience and necessity authorizing the public utility to provide water in an area outside the limits of the municipality; the municipality later annexed three undeveloped tracts of land within the public utility's certified area, subdivided the land and committed itself to provide water to the subdivision; because the municipality had not elected to become subject to the Public Utilities Act, Section 62-1-1 NMSA 1978 et seq., and did not have a population of more than 200,000, the municipality was not subject to the act and the public utility's certificate of public convenience and necessity did not prevent the municipality from competing with the public utility in the certified

area; the public utility did not have any infrastructure, customers or physical assets in the subdivision, had not incurred any costs to serve the subdivision, and could not serve the subdivision without making significant infrastructure improvements; and the municipality did not take any of the public utility's physical assets, the municipality did not engage in an unlawful taking of the public utility's property. Moongate Water Co., Inc. v. City of Las Cruces, 2013-NMSC-018, 302 P.3d 405.

3-27-9. Emergency water supply fund created; expenditure.

The "emergency water supply fund" is created in the state treasury. Expenditures from this fund shall be made upon order of the state board of finance when the board determines that an emergency exists requiring the expenditure in order to provide an adequate and safe drinking water supply for residents of any community of less than 5,000 population in New Mexico using a drinking water supply system in common. Disbursements from the fund shall be upon vouchers signed by the secretary of finance and administration or his authorized representative.

History: 1953 Comp., § 14-26-9, enacted by Laws 1972, ch. 25, § 1; 1983, ch. 301, § 8.

ARTICLE 28
Water or Natural Gas Associations

3-28-1. Water or natural gas associations; powers.

Any combination of two or more municipalities and the board of county commissioners of the county in which the municipalities are located shall have the power by joint or concurring resolution of the governing bodies to appoint three or more commissioners to organize an association for the purpose of acquiring a water or natural gas supply system. The board of county commissioners of any county in which any unincorporated rural community is located that is situate five miles or more from the nearest municipality in which natural gas utility service is available shall have the power by resolution to appoint three or more commissioners from the rural community to organize an association for the purpose of acquiring a natural gas supply system to provide natural gas utility service as provided in Chapter 3, Article 28 NMSA 1978. If commissioners are appointed by the board of county commissioners from two or more rural communities in the county, the commissioners who have been appointed may jointly organize an association for the purpose of acquiring a natural gas supply system to provide natural gas utility service as provided in Chapter 3, Article 28 NMSA 1978. The association may, by resolution of its board of directors, purchase or otherwise acquire any water or natural gas supply system, as the case may be, including distribution and transmission pipelines or other water or natural gas works, as the case may be, whether already constructed or that may be constructed, and to further acquire all the rights, privileges and franchises of any person, persons or corporation owning the same or having any interest or right therein and to hold and operate the same in the same manner as the persons or corporation from whom the same may be acquired and

distribute the water or natural gas, as the case may be, in the same manner or as may otherwise be determined by the board of directors from time to time. No association or corporation formed by commissioners appointed by the board of county commissioners shall distribute natural gas in any municipality unless the municipality is incorporated in an area served by the association or corporation after the association or corporation has been formed, nor shall it distribute natural gas outside the county. An association or corporation formed by commissioners appointed by the board of county commissioners may distribute natural gas for domestic or residential, commercial and irrigation purposes but shall not distribute natural gas for industrial purposes except with the consent of any public utility holding a certificate of public convenience and necessity from the New Mexico public utility commission authorizing the same kind of utility service at any location in the county. Any association formed pursuant to this section shall not provide gas service to any customers of a gas utility regulated by the New Mexico public utility commission within any area described in the utility's jurisdictional certificate; provided that an association may serve an area not served in fact, although in the certificated area, but in the case of any dispute, the burden of persuasion shall be upon the association. The corporation is empowered to enter into joint or several agreements for the acquisition of water supply or natural gas transmission and distribution systems, as the case may be, whether existing or to be constructed in the future, with any existing consumer or any other person, firm or corporation, either private or municipal, upon such terms as may be agreed. As used in this section, the term "rural community" means an area that contains not less than fifty inhabitants and has a population density of not less than one person per acre.

History: 1953 Comp., § 14-27-1, enacted by Laws 1969, ch. 186, § 1; 1981, ch. 203, § 1; 1990, ch. 60, § 1; 1993, ch. 282, § 9.

ANNOTATIONS

Repeals and reenactments. — Laws 1969, ch. 186, § 1, repealed former 14-27-1, 1953 Comp., relating to water or natural gas supply associations, and enacted a new 14-27-1, 1953 Comp.

Cross references. — For excavation damage to pipelines and underground utility lines, *see* 62-14-1 NMSA 1978 et seq.

The 1993 amendment, effective June 18, 1993, deleted "who are hereby given authority" following "three or more commissioners" in the first sentence; deleted "who are hereby given authority" following "rural community" in the second sentence; deleted "hereby" preceding "empowered" in the next-to-last sentence; and substituted "New Mexico public utility commission" for "New Mexico public service commission" in the sixth and seventh sentences.

The 1990 amendment, effective March 2, 1990, substituted "in Chapter 3, Article 28 NMSA 1978" for "herein" at the end of the second and third sentences and made minor stylistic changes throughout the section.

Subject to the Open Meetings Act. — An intercommunity water supply association composed solely of two incorporated villages for purposes of securing an adequate and economic supply of water for the residents of the villages was a public body subject to the Open Meetings Act, particularly in light of the considerable public authority the association had over the creation, maintenance and distribution of the water to the two villages. 1991 Op. Att'y Gen. No. 91-07.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 17.

3-28-2. Intercommunity water or natural gas supply association; directors.

Any association formed under Chapter 3, Article 28 NMSA 1978 shall be designated an intercommunity water or natural gas supply association. The directors of the association shall be composed of the commissioners appointed by and shall serve at the pleasure of the governing body of the municipalities who appoint the commissioners.

History: 1953 Comp., § 14-27-2, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 2.

ANNOTATIONS

The 1990 amendment, effective March 2, 1990, rewrote the first sentence which read "Any such association formed under Sections 14-27-1 through 14-27-18 New Mexico Statutes Annotated, 1953 Compilation shall be designated an intercommunity water or natural gas supply association" and made minor stylistic changes in the second sentence.

Jurisdiction of public service commission. — Insofar as the utility operation of an intercommunity gas association is concerned, the New Mexico public service commission is the major agency exercising jurisdiction over such association. 1966 Op. Att'y Gen. No. 66-07.

3-28-3. Certificate of association.

The incorporators of an association formed under Chapter 3, Article 28 NMSA 1978 shall execute a certificate setting forth:

A. the name of the association. No name shall be assumed that is in use by another association or corporation in this state or so nearly similar as to lead to uncertainty or confusion;

B. the names of the incorporators;

C. the location of its principal office in this state;

D. the objects and purposes of the association, the county or counties in which its operations are to be carried on and the general description of the lands, reservoir, pipelines and water or natural gas supply systems to be used under the management of the association;

E. the amount of capital stock and number and denomination of the shares or, if the incorporators do not desire to issue shares of stock, the plan and manner of acquiring membership and of providing funds or means for the acquisition, construction, improvement and maintenance of its works and for its necessary expenses;

F. the period, if any, limited for the duration of the association; and

G. the number of members to serve upon the board of directors of the association and the duration of their offices, and it may name the persons who shall serve as the board of directors for the first three months or until their successors are duly appointed and qualified.

The certificate or any amendment thereof may also contain any provision not inconsistent with the law of this state that the incorporators may choose to insert for the regulation and conduct of the affairs of the association extending its membership, enlarging or changing the scope of its operations, creating and enforcing a lien upon the reservoirs, works, water rights and pipelines of the association or its members for the cost of the acquisition, construction, repair, improvement and maintenance of same, collecting the necessary funds for expenses and purposes of the association, defining or limiting its powers and for its dissolution and the distribution or other disposition of its property.

History: 1953 Comp., § 14-27-3, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 3.

ANNOTATIONS

The 1990 amendment, effective March 2, 1990, deleted the "and" at the end of Subsection G, deleted the subsection designation "H" at the beginning of the final paragraph of the section, and made minor stylistic changes throughout.

3-28-4. Acknowledgment and filing of original certificate; recording of copy.

The certificate of association shall be acknowledged as required for deeds of real estate and shall be filed in the office of the secretary of state, and a copy of the certificate, duly certified by the secretary of state, shall be recorded in the office of the county clerk of the county or counties where the lands or works are located. The certificate or a copy thereof duly certified by the secretary of state or county clerk shall be evidence in all courts and places.

History: 1953 Comp., § 14-27-4, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 4; 2013, ch. 75, § 1.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required that certificates of association be filed with the secretary of state; after the "filed in the office of the" deleted "state corporation commission" and added "secretary of state"; after "a copy of the certificate, duly certified by the", deleted "state corporation commission" and added "secretary of state"; and after "a copy thereof duly certified by the", deleted "commission" and added "secretary of state".

The 1990 amendment, effective March 2, 1990, substituted "The certificate of association" for "Said certificate" at the beginning of the section and made minor stylistic changes.

3-28-5. Powers of association as body corporate.

Upon the filing of the certificate and copy thereof as provided in Section 3-28-4 NMSA 1978, the persons so associating, their successors and those who may thereafter become members of the association shall constitute a body corporate by the name set forth in the certificate and by such name may sue and be sued and shall have capacity to make contracts, acquire, hold, enjoy, dispose of and convey property, real and personal, and to do any other act or thing necessary or proper for carrying out the purposes of their organization.

History: 1953 Comp., § 14-27-5, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 5.

ANNOTATIONS

The 1990 amendment, effective March 2, 1990, substituted "Section 3-28-4 NMSA 1978" for "Section 14-27-4 New Mexico Statutes Annotated, 1953 Compilation" and made minor stylistic changes.

3-28-6. Amendment of certificate of incorporation.

Every association formed under Chapter 3, Article 28 NMSA 1978 may change its name, increase or decrease its capital stock or membership, change the location of its principal office in this state, extend the period of its existence and make such other amendment, change or alteration as may be desired, not inconsistent with Chapter 3, Article 28 NMSA 1978 or other law of this state, by a resolution duly adopted by a two-thirds' vote of the entire membership of the board of directors. A certified copy of such resolution with the affidavit of the president and secretary that the resolution was duly adopted by a two-thirds' vote of the entire membership of the board of directors at a meeting held in accordance with the provisions of its bylaws shall be filed and recorded as provided for filing the original certificate of incorporation, and, thereupon, the

certificate of incorporation shall be deemed to be amended accordingly, and a copy of the certificate of amendment certified by the secretary of state and the county clerk shall be accepted as evidence of such change or amendment in all courts and places.

History: 1953 Comp., § 14-27-6, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 6; 2013, ch. 75, § 2.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required that the secretary of state certify certificates of amendment of articles of incorporation; and in the second sentence, after "certificate of amendment certified by the", deleted "state corporation commission" and added "secretary of state".

The 1990 amendment, effective March 2, 1990, inserted "formed under Chapter 3, Article 28 NMSA 1978" and substituted "Chapter 3, Article 28 NMSA 1978" for "Sections 14-27-1 through 14-27-18 New Mexico Statutes Annotated, 1953 Compilation" in the first sentence and made minor stylistic changes.

3-28-7. Notice of first meeting.

The first meeting of every association formed under Chapter 3, Article 28 NMSA 1978 shall be called by a notice signed by a majority of the incorporators named in the certificate of incorporation, which notice shall be served personally or by mail at least ten days prior to the date of the meeting.

History: 1953 Comp., § 14-27-7, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 7.

ANNOTATIONS

The 1990 amendment, effective March 2, 1990, inserted "formed under Chapter 3, Article 28 NMSA 1978" and made minor stylistic changes.

3-28-8. Board of directors; powers.

The power to make and alter bylaws or rules and regulations for the management and operation of the works of the association, and the control and conduct of its business and affairs, shall be in the board of directors.

History: 1953 Comp., § 14-27-8, enacted by Laws 1965, ch. 300.

3-28-9. Officers or agents; manner of appointment.

Associations formed under Chapter 3, Article 28 NMSA 1978 may have such officers or agents chosen or appointed in such manner and for such terms as may be provided by the bylaws except as is otherwise provided in Chapter 3, Article 28 NMSA 1978.

History: 1953 Comp., § 14-27-9, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 8.

ANNOTATIONS

The 1990 amendment, effective March 2, 1990, inserted "formed under Chapter 3, Article 28 NMSA 1978", substituted "Chapter 3, Article 28 NMSA 1978" for "Sections 14-27-1 through 14-27-18 New Mexico Statutes Annotated, 1953 Compilation" and made a minor stylistic change.

3-28-10. Revenue bond issues.

Whenever the board of directors for any intercommunity water or natural gas supply association determines, by resolution, that interest or necessity demands the acquisition, construction, repair, extension, improvement or betterment of any water system or natural gas transmission and distribution system, the association is hereby authorized to make and issue revenue bonds, payable solely out of the net income to be derived from the operation of such system, and to pledge irrevocably such income to the payment of the bonds, the proceeds of the bonds to be used solely for the purchasing, acquiring, constructing and making of necessary improvements, extension, repairs and betterments of the systems or for the purchase and acquiring of wells, cisterns, reservoirs or other sources of supply, rights-of-way, pipelines and pumping plants or other machinery necessary for the operation thereof and the land and real estate upon which the same are situated or to be situated.

History: 1953 Comp., § 14-27-10, enacted by Laws 1965, ch. 300; 1981, ch. 203, § 2; 1990, ch. 60, § 9.

ANNOTATIONS

The 1990 amendment, effective March 2, 1990, made minor stylistic changes throughout the section.

3-28-11. Terms and provisions of revenue bond issues.

A. Revenue bonds issued as provided in Chapter 3, Article 28 NMSA 1978:

(1) shall bear interest at such rates as the association may determine payable annually or semiannually except for the first interest payment which may be for any period not to exceed one year from the date of the bonds;

(2) may be subject to prior redemption at the association's option at such time and upon such terms and conditions with or without payment of a premium as may be provided by the resolution, indenture or other authorizing instrument;

(3) shall be numbered from one upward consecutively;

(4) shall be in such form as may be determined by the association;

(5) shall mature at any time or times not exceeding thirty-five years from the date of such bonds;

(6) may be secured by a bond reserve fund that may be funded by proceeds of the bonds or net revenues of the system or both;

(7) may be secured by municipal bond insurance or other credit facilities;

(8) may be issued pursuant to an indenture of trust or similar instrument with a corporate or other trustee; and

(9) may have such other terms and conditions as the association may provide.

B. Such revenue bonds may be sold at either public or private sale, at, above or below par and at any net effective interest rate as the association may determine; provided that such revenue bonds shall not be sold at any net effective interest rate in excess of twelve percent a year unless the state board of finance at any time prior to delivery of the revenue bonds approves such higher net effective interest rate in writing, based upon the determination of the board that the higher rate is reasonable under existing or anticipated bond market conditions. Any approval of any net effective interest rate in excess of twelve percent shall constitute conclusive authority for the association to issue its revenue bonds at the higher net effective interest rate. As used in this subsection "net effective interest rate" means the interest rate based on the actual price to such association, calculated to maturity according to standard tables of bond values.

History: 1978 Comp., § 3-28-11, enacted by Laws 1990, ch. 60, § 10.

ANNOTATIONS

Repeals and reenactments. — Laws 1990, ch. 60, § 10 repealed former Section 3-28-11 NMSA 1978, as enacted by Laws 1965, ch. 300 and enacted the above section, effective March 2, 1990.

3-28-12. Resolution for issuance of bond; execution.

A. The board of directors of any intercommunity water or natural gas supply association issuing revenue bonds under the provisions of Chapter 3, Article 28 NMSA 1978 may authorize the issuance of revenue bonds by resolution adopted by the affirmative vote of two-thirds of the entire membership of the board of directors at a regular or special meeting called for that purpose wherein the necessity of the revenue bond issue shall be declared, and, when issued, the bonds shall be signed by the president of the board of directors and attested by the secretary, with the seal of the corporation affixed thereto.

B. The bonds may be issued in book entry form, any registered form or bearer form, with or without interest coupons, or any combination thereof, with or without right of conversion to another form and in any denomination with or without right of conversion to any other denomination, subject to such conditions for transfer, as may be provided in the resolution, indenture or other authorizing instrument. The bonds may be made registrable, transferable and payable by the registrar under such terms and conditions as may be provided in the resolution, indenture or other authorizing instrument. Payment at designated due dates or in installments may be by check, draft, warrant or other order for payment or medium of payment and need not be conditioned upon presentation of any security or coupon. The resolution, indenture or other authorizing instrument may require that the public securities be authenticated with the manual or facsimile signature of an officer or other authorized person of the registrar or of any other officer or officers of the public body whose manual or facsimile signature is not otherwise required by law, or by any combination thereof. Any registrar may hold in custody any partially or fully executed public securities if provided by, and to the extent permitted by, the authorizing instrument. As used in this section, "registrar" means any officer of the association, any corporate or other trustee, paying agent or transfer agent within the United States, as may be appointed or designated by the bond resolution, indenture or other authorizing instrument.

C. Any officer of the association or of the registrar, if any, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

(1) any bond, provided that at least one signature required or permitted to be placed thereon by statute, resolution, indenture or other instrument shall be manually subscribed; and

(2) any check, draft, warrant or order for the payment, delivery or transfer of funds.

Upon compliance with this provision by the authorizing officer, his facsimile signature has the same legal effect as his manual signature. As used in this section, "facsimile signature" means a reproduction by engraving, imprinting, stamping or other means of the manual signature of an authorized officer. The seal of the authority may also be printed, engraved, stamped or placed in facsimile on any bond and shall have the same legal effect as a manual impression of the seal thereon.

History: 1953 Comp., § 14-27-12, enacted by Laws 1965, ch. 300; 1981, ch. 203, § 3; 1990, ch. 60, § 11.

ANNOTATIONS

Cross references. — For election on municipal revenue bonds for gas utilities, *see* 3-25-6 NMSA 1978.

The 1990 amendment, effective March 2, 1990, added "execution" in the catchline, designated the former section as Subsection A, substituting therein "natural gas supply association" for "natural gas association" and "Chapter 3, Article 28 NMSA 1978" for "Sections 3-28-1 through 3-28-20 NMSA 1978" and making minor stylistic changes, and added Subsections B and C.

3-28-13. Payment of bonds.

Revenue bonds issued under Chapter 3, Article 28 NMSA 1978 shall not be considered or held to be general obligations of the intercommunity water or natural gas supply association issuing them and shall be collectible only out of the net revenues derived from the operation of the water or natural gas system whose income is so pledged. Each of the bonds of any issue of revenue bonds so issued shall recite on its face that it is payable and collectible solely from the revenues derived from the operations of the water or natural gas system, the income of which is so pledged, and that the holders of the bonds may not look to any general or other fund for the payment of principal or interest of such obligations; provided, further, that such revenue bonds may additionally be secured by a mortgage on the properties of the association and that the properties may be conveyed to a trustee for the benefit and security of the holders of the bonds. To the extent provided in the bond resolution or the trust indenture securing such bonds, additional bonds may be issued on a parity basis with bonds issued previously, and bonds constituting a junior lien on the net revenues or properties may be issued unless prohibited by any such bond resolution or trust indenture.

History: 1953 Comp., § 14-27-13, enacted by Laws 1965, ch. 300; 1967, ch. 40, § 1; 1990, ch. 60, § 12.

ANNOTATIONS

The 1990 amendment, effective March 2, 1990, substituted "Revenue bonds issued under Chapter 3, Article 28 NMSA 1978" for "It is hereby declared that revenue bonds issued hereunder" at the beginning, made a spelling correction, and made minor stylistic changes throughout the section.

3-28-14. Refunding authorization; terms.

A. Whenever the board of directors for any intercommunity water or natural gas supply association determines, by resolution adopted by an affirmative vote of two-thirds of the entire membership of the board of directors of the association at a regular or special meeting called for that purpose, that it is in the best interest of the association to issue revenue bonds for the purpose of refinancing, refunding and payment of outstanding revenue bonds of the association, the board of directors may issue and sell or issue and exchange refunding revenue bonds for the purpose of refinancing, refunding and paying all or any part of the outstanding revenue bonds of the association.

B. The association may pledge irrevocably, for the payment of interest and principal on refunding bonds, the appropriate pledged revenues which may be pledged to an original issue of bonds as provided in Section 3-28-10 NMSA 1978.

C. In addition to pledging net income derived from the operations of the association for the payment of the refunding bonds, the association may grant by resolution a mortgage on the properties of the association to the bondholder or a trustee for the benefit and security of the holders of the refunding bonds.

D. The terms of refunding bonds issued by the association shall be in accordance with the provisions of Section 3-28-11 NMSA 1978 to the extent not inconsistent with the provisions of this section.

E. The valid adoption, issuance and sale of refunding bonds by any intercommunity water or natural gas supply association shall in no way be adversely or otherwise legally affected by the area of the state in which the association is presently rendering utility service.

F. The proceeds derived from the issuance of any refunding bonds shall be either immediately applied to the payment or redemption and retirement of the bonds to be refunded and the costs and expenses incident to issuance of the refunding bonds, redemption and payment of the bonds refunded and procedures relating thereto, including but not necessarily limited to establishment of a bond reserve fund, or shall immediately be placed in escrow to be applied to the payment of said bonds upon their presentation therefor and to the aforesaid costs and expenses. Any money remaining after providing for the payment of the refunded bonds and any expenses and costs incident therewith shall be used to pay maturing principal and interest on the refunding bonds. Any such escrowed proceeds and any other funds contributed to the refunding by the association, pending such use, may be invested or, if necessary, reinvested only in direct obligations of the United States, or obligations guaranteed by the United States, maturing at such time or times as to ensure the prompt payment of the bonds refunded, the interest accruing thereon and any prior redemption premium in connection therewith. Such escrowed proceeds and investments, together with any interest or other income to be derived from such investments, shall be in an amount that shall be sufficient to pay the bonds refunded as they become due at their respective maturities or as they are called for redemption and payment on prior redemption dates, as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom. The board of directors of the association shall have the power to enter into escrow agreements and to establish escrow accounts with any commercial bank or trust company within or without the state that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation.

History: 1953 Comp., § 14-27-13.1, enacted by Laws 1968, ch. 27, § 1; 1981, ch. 203, § 4; 1990, ch. 60, § 13.

ANNOTATIONS

Cross references. — For municipal revenue bonds, *see* 3-25-6 NMSA 1978.

The 1990 amendment, effective March 2, 1990, substituted "it is in the best interest of the association to issue revenue bonds" for "the interest rate or necessity demands the issuance of refunding revenue bonds" in Subsection A, substituted "Section 3-28-10 NMSA 1978" for "Section 3-38-10 NMSA 1978" at the end of Subsection B, added Subsection F, and made minor stylistic changes in Subsections A and E.

3-28-14.1. Publication of notice after adoption of resolutions; limitation of action.

The association, after its board of directors has adopted a resolution authorizing the issuance of the bonds, shall publish notice of the adoption of such resolution once in a newspaper of general circulation within the area served by the association. After the passage of thirty days from such publication, any action attacking the validity of the bonds, the resolution, indenture or other instrument or any proceedings had or taken by the board of directors or association preliminary to and in the authorization and issuance of the bonds described in the notice, including but not necessarily limited to any attack on the power to issue such bonds, is perpetually barred.

History: 1978 Comp., § 3-28-14.1, enacted by Laws 1990, ch. 60, § 14.

3-28-15. Financial assistance.

Any association formed under Section 3-28-1 NMSA 1978 to provide natural gas service in an unincorporated rural community or to purchase, acquire, hold and operate a water supply system is authorized to apply for and accept grants, contributions and any other form of financial assistance from the federal government, the state, the county or other public body or from any sources, public or private, for the purposes for which it is organized.

History: 1953 Comp., § 14-27-13.2, enacted by Laws 1969, ch. 186, § 2; 1990, ch. 60, § 15; 1991, ch. 62, § 1.

ANNOTATIONS

The 1991 amendment, effective April 1, 1991, inserted "or to purchase, acquire, hold and operate a water supply system".

The 1990 amendment, effective March 2, 1990, substituted "Section 3-28-1 NMSA 1978" for "Section 14-27-1 NMSA 1953" and made a minor stylistic change.

3-28-16. Establishment of rates or contracts for service; lien against property served.

A. Boards of directors of intercommunity water or natural gas supply associations, while any revenue bonds are outstanding, shall establish rates and charges for services rendered by the water or natural gas supply system to a user of those services other than a city, town, village or other political subdivision or shall enter into such leases or other agreements or any combination of such rates and charges, leases and other agreements as shall be sufficient to provide revenues that are sufficient to meet at least the following requirements:

(1) pay all reasonable expenses of operation and maintenance of such system;

(2) pay all interest on the revenue bonds as it comes due; and

(3) pay the principal of the revenue bonds as it comes due.

Such rates, charges, leases and agreements shall remain in effect until the revenue bonds have been paid or sufficient provision has been fully made for their payment.

B. In the event the board of directors of the intercommunity water or natural gas supply association fails or refuses to establish rates and charges for the system or alternatively to enter into a lease or other agreement where applicable to such system, or both, as required in this section, any bondholder may apply to the district court for a mandatory order requiring the board to establish rates or, if applicable, to enter into such applicable leases or agreements, or both, that will provide revenues adequate to meet the requirements of this section. Any city, town, village or other political subdivision entering into any such lease or agreement with the association is authorized to use and pledge revenues of its water, gas or utility system to such payments pursuant to any such lease or agreement as a part of the operation and maintenance costs of its water, gas or utility system, and its obligations under the lease or agreement shall not constitute an indebtedness of such city, town, village or other political subdivision for purposes of Article 9, Sections 9 through 13 of the constitution of New Mexico.

C. Any rates or charges imposed upon a user other than a city, town, village or other political subdivision for service rendered by a water or natural gas supply system, except as otherwise indicated in this subsection, shall be:

(1) payable by the owner of the tract or parcel of land being served at the time the rate or charge accrues and becomes due; and

(2) a lien upon the tract or parcel of land being served from such time which lien shall be a first and prior lien on the property coequal with municipal liens pursuant to Section 3-36-2 NMSA 1978, but subject only to the lien of general state and county taxes.

D. The lien provided for in Subsection C of this section shall be enforced in the manner prescribed in Sections 3-36-1 through 3-36-5 NMSA 1978; provided, however, that any action to be taken by the municipal clerk or any successor under Sections 3-36-1 through 3-36-5 NMSA 1978 shall, for purposes of this section, be taken by the secretary of the board of directors of the association. In any proceedings where pleadings are required, it shall be sufficient to declare generally for the service supplied by the system. Notice of the lien shall be filed in the manner provided in Section 3-36-1 NMSA 1978, and the effect of such filing shall be governed by Section 3-36-2 NMSA 1978. Paragraphs (1) and (2) of Subsection C of this section shall not apply if an owner notifies the intercommunity water or natural gas supply system that charges that may be incurred by a renter shall not be the responsibility of the owner. Such notification shall be given in writing prior to the initiation of the debt and shall include the location of the rental property.

E. Any law that authorizes the pledge of any or all of the net revenues of a system pledged to the payment of any revenue bonds issued pursuant to Chapter 3, Article 28 NMSA 1978 or any law supplemental thereto or otherwise appertaining thereto shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

History: 1978 Comp., § 3-28-16, enacted by Laws 1990, ch. 60, § 16.

ANNOTATIONS

Repeals and reenactments. — Laws 1990, ch. 60, § 16 repealed former 3-28-16 NMSA 1978, as enacted by Laws 1965, ch. 300 and enacted the above section, effective March 2, 1990.

Cross references. — For the establishment of utility rates by contract, *see* 62-6-15 NMSA 1978.

For public utility rate schedules, *see* 62-8-1 NMSA 1978 et seq.

3-28-17. Proceeds from bond issues not to be diverted from purpose.

Whenever, under the provisions of the laws of this state, any intercommunity water or natural gas supply association obtains or has obtained any money or credits by means of the issue of its bonds or other evidences of indebtedness for the purpose of the purchase, construction or extension or repair of any particular system, it shall be unlawful to divert, use or expend any of the money or credits in the purchase, construction or extension or repair of any other system or for any purpose other than that for which the money or credits were or shall be obtained.

History: 1953 Comp., § 14-27-15, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 17.

ANNOTATIONS

The 1990 amendment, effective March 2, 1990, made minor stylistic changes throughout the section.

3-28-18. Violations of act; penalty.

The members of any board of directors and any officer or agent of any intercommunity water or natural gas supply association violating the provisions of Chapter 3, Article 28 NMSA 1978 shall be deemed guilty of a misdemeanor and, upon conviction thereof in the district court, shall be subject to a fine not to exceed five hundred dollars ($500) or to imprisonment in the county jail not to exceed six months or both in the discretion of the court trying the case.

History: 1953 Comp., § 14-27-16, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 18.

ANNOTATIONS

The 1990 amendment, effective March 2, 1990, substituted "Chapter 3, Article 28 NMSA 1978" for "Sections 14-27-1 through 14-27-18 New Mexico Statutes Annotated, 1953 Compilation" and made a minor stylistic change.

3-28-19. Eminent domain.

Associations organized under Chapter 3, Article 28 NMSA 1978 shall have the power of eminent domain as provided by law, except the power of eminent domain shall not be used to acquire any plant or system or extension thereof described in a certificate of public convenience and necessity, or any interest therein, owned or operated by an entity that is regulated by the New Mexico public utility commission or the federal energy regulatory commission or their successors.

History: 1953 Comp., § 14-27-17, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 8; 1981, ch. 203, § 6; 1990, ch. 60, § 19; 1993, ch. 282, § 10.

ANNOTATIONS

Cross references. — For constitutional provision on eminent domain, *see* N.M. Const., art. II, § 20.

The 1993 amendment, effective June 18, 1993, substituted "New Mexico public utility commission" for "New Mexico public service commission".

The 1990 amendment, effective March 2, 1990, substituted "Chapter 3, Article 28 NMSA 1978" for "Sections 3-28-1 through 3-28-20 NMSA 1978", substituted "New Mexico public service commission" for "public service commission", and made a minor stylistic change.

3-28-20. Associations not subject to utility laws.

No association organized under the provisions of Chapter 3, Article 28 NMSA 1978 is subject to the jurisdiction of the New Mexico public utility commission [public regulation commission] or the terms and provisions of the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978], as amended.

History: 1978 Comp., § 3-28-20, enacted by Laws 1981, ch. 203, § 7; 1990, ch. 60, § 20; 1993, ch. 282, § 11.

ANNOTATIONS

Repeals and reenactments. — Laws 1981, ch. 203, § 7, repealed former 3-28-20 NMSA 1978, relating to the jurisdiction of the New Mexico public service commission and the applicability of the Public Utility Act, and enacted the above section.

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

The 1993 amendment, effective June 18, 1993, substituted "New Mexico public utility commission" for "New Mexico public service commission".

The 1990 amendment, effective March 2, 1990, substituted "Chapter 3, Article 28 NMSA 1978" for "Sections 3-28-1 through 3-28-20 NMSA 1978."

3-28-21. New Mexico public utility commission [public regulation commission] jurisdiction.

Any association organized under the provisions of Chapter 3, Article 28 NMSA 1978 may elect by resolution adopted by its board of directors to become subject to the jurisdiction of the New Mexico public utility commission [public regulation commission] in matters of rates, security issues, jurisdictional area and industrial service and to all of the terms and provisions of the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978], as amended. Provided, any association that so elects shall not be subject to any limits on its power of eminent domain as provided in Section 3-28-19 NMSA 1978 nor shall it be prohibited from providing gas service within an area described in any other gas utility's jurisdictional certificate as provided in Section 3-28-1 NMSA 1978.

History: Laws 1981, ch. 203, § 8; 1990, ch. 60, § 21; 1993, ch. 282, § 12.

ANNOTATIONS

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

Cross references. — For utilities subject to Public Utility Act, *see* 62-3-3 NMSA 1978.

For general jurisdiction of public regulation commission, *see* 62-6-4 NMSA 1978.

The 1993 amendment, effective June 18, 1993, substituted "New Mexico public utility commission" for "New Mexico public service commission" in the section catchline and in the first sentence.

The 1990 amendment, effective March 2, 1990, substituted "Chapter 3, Article 28 NMSA 1978" for "Sections 3-28-1 through 3-28-20 NMSA 1978."

3-28-22. Validation; existing association and outstanding bonds.

All intercommunity water and natural gas associations established or purportedly established pursuant to Chapter 3, Article 28 NMSA 1978 or any predecessor or similar statute, all prior bonds issued by such associations and all action taken by boards of directors of such associations preliminary to and in the issuance of bonds of such associations pursuant to Chapter 3, Article 28 NMSA 1978 or any predecessor or similar statute, are hereby validated, ratified, approved and confirmed.

History: 1978 Comp., § 3-28-22, enacted by Laws 1990, ch. 60, § 22.

ANNOTATIONS

Severability clauses. — Laws 1990, ch. 60, § 23 provided for the severability of the act if any part or application thereof is held invalid.

ARTICLE 29
Sanitary Projects

3-29-1. Sanitary Projects Act; short title.

Chapter 3, Article 29 NMSA 1978 may be cited as the "Sanitary Projects Act".

History: 1953 Comp., § 14-28-1, enacted by Laws 1965, ch. 300; 2001, ch. 200, § 1.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, updated the internal reference.

Immunity from liability for antitrust damages. — An association that is organized under the Sanitary Projects Act, 3-29-1 NMSA 1978, is a special function governmental unit, established by state law, and is immune from damages for liability under the New Mexico Antitrust Act, 57-1-1 NMSA 1978. Moongate Water Co., Inc. v. Dona Ana Mut. Domestic Water Consumers Ass'n, 2008-NMCA-143, 145 N.M. 140, 194 P.3d 755.

Sanitary Projects Act association was not transformed into public utility by selling water to a limited number of nonmember water haulers and was not, therefore, subject to the public service commission's regulatory jurisdiction. El Vadito De Los Cerrillos Water Ass'n v. New Mexico Pub. Serv. Comm'n, 115 N.M. 784, 858 P.2d 1263 (1993).

Water association is a public body. — A mutual domestic water association is not a state agency, but it qualifies as a public body/political subdivision and thus has statutory responsibilities to abide by the Open Meetings Act, the Inspection of Public Records Act, the Procurement Code and the Per Diem and Mileage Act. 2006 Op. Att'y Gen. No. 06-02.

Nonprofit corporation organized to provide community water system, under this section, is not another municipal corporation under N.M. Const., art. VIII, § 1, and is subject to ad valorem taxation under N.M. Const., art. VIII, § 3. 1968 Op. Att'y Gen. No. 68-38.

Audit of associations. — Associations created pursuant to this article are subject to audit under the Audit Act (12-6-1 NMSA 1978 et seq.). 1990 Op. Att'y Gen. No. 90-30.

Mutual domestic water consumers association project can be transferred or given to a newly created village. 1961-62 Op. Att'y Gen. No. 62-99.

3-29-2. Definitions.

As used in the Sanitary Projects Act:

A. "community" means a rural unincorporated community and includes a combination of two or more rural unincorporated communities when they have been combined for the purposes set forth in the Sanitary Projects Act;

B. "association" includes an association or mutual domestic water consumers association organized under Laws 1947, Chapter 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52, as well as any association organized under the provisions of the Sanitary Projects Act;

C. "department" means the department of environment;

D. "member" or "membership" means a person who has paid the appropriate fees and has been issued a certificate as required by association bylaws;

E. "person" means a single residence or property owner, as determined by the rules adopted by the association's board of directors; and

F. "project" means a water supply or reuse, storm drainage or wastewater facility owned, constructed or operated by an association.

History: 1953 Comp., § 14-28-2, enacted by Laws 1965, ch. 300; 1971, ch. 277, § 26; 1977, ch. 253, § 44; 2000, ch. 56, § 1; 2006, ch. 60, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1947, ch. 206, referred to in Subsection B, was repealed by Laws 1949, ch. 79, § 19. Laws 1949, ch. 79, referred to in Subsection B, was repealed by Laws 1951, ch. 52, § 19. Laws 1951, ch. 52, referred to in Subsection B, was repealed by Laws 1957, ch. 122, § 22.

The 2006 amendment, effective March 6, 2006, added mutual domestic water consumers association as an "association" in Subsection B; deleted the definition of "fund" in former Subsection D; added a new Subsection D to define "member" and "membership"; added Subsection E to define "person"; and added Subsection F to define "project".

The 2000 amendment, effective March 6, 2000, substituted "the department of environment" for "the environmental improvement division of the health and environment" in Subsection C.

3-29-3. Purpose of act.

The purpose of the Sanitary Projects Act is to improve the public health of rural communities in New Mexico by providing for the establishment and maintenance of a political subdivision of the state that is empowered by the state to receive public funds for acquisition, construction and improvement of water supply, reuse, storm drainage and wastewater facilities in communities, and to operate and maintain such facilities for the public good.

History: 1953 Comp., § 14-28-3, enacted by Laws 1965, ch. 300; 2004, ch. 121, § 1; 2006, ch. 60, § 2.

ANNOTATIONS

The 2006 amendment, effective March 6, 2006, rewrote the former section to delete the former declaration of policy that the legislature will assist in providing sanitary facilities and added that the purpose of the act is to improve public health of rural communities by providing a political subdivision that is empowered to receive public funds for sanitary projects.

The 2004 amendment, effective May 19, 2004, amended the last sentence to delete "domestic" preceding "water supplies".

3-29-4. Projects.

Plans, specifications and contracts for each project, as appropriate, shall be prepared by a practicing professional engineer licensed under the Engineering and Surveying Practice Act [Chapter 61, Article 23 NMSA 1978] and selected by the association in accordance with the provisions of the Procurement Code [13-1-28 through 13-1-199 NMSA 1978].

History: 1953 Comp., § 14-28-4, enacted by Laws 1965, ch. 300; 1969, ch. 192, § 1; 1971, ch. 277, § 27; 2006, ch. 60, § 3.

ANNOTATIONS

The 2006 amendment, effective March 6, 2006, deleted most of the former section that provided for financial assistance, the location of projects, engineering supervision of the construction of projects, payment for engineering services, bidding and payment of contractors; and added a provision that plans, specifications and contracts shall be prepared by an engineer licensed under the Engineering and Surveying Practice Act and selected in accordance with the Procurement Code.

Burden of working out legal details of acquisition of water system will fall upon the shoulders of the attorney for the village. 1961-62 Op. Att'y Gen. No. 62-99.

3-29-5. Restrictions on forming an association.

A. A new association shall not be formed under the Sanitary Projects Act by original incorporation after January 1, 2000, and a new association shall not be formed by reorganization after January 1, 2000, unless the preceding entity was in existence on January 1, 2000, if the service area of either association includes property contiguous to an incorporated municipality or an unincorporated area currently served by a municipality or by a water and sanitation district. The restrictions on forming an association set forth in this subsection shall not apply if the contiguous incorporated municipality or water and sanitation district does not provide the services or cannot provide the services to be provided by the association at or below the cost proposed by the association.

B. An association shall not construct with state funds a project required in order to allow creation of a subdivision under the provisions of the Land Subdivision Act [47-5-1 to 47-5-8 NMSA 1978], the New Mexico Subdivision Act [Chapter 47, Article 6 NMSA 1978] or Section 47-5-9 NMSA 1978; however, an association may construct a project serving a previously approved subdivision in the service area of the association.

C. After July 1, 2006, a new association shall not be formed as a capital stock corporation.

History: 1953 Comp., § 14-28-5, enacted by Laws 1965, ch. 300; 1969, ch. 192, § 2; 1983, ch. 296, § 27; 2000, ch. 56, § 2; 2006, ch. 60, § 4.

ANNOTATIONS

The 2006 amendment, effective March 6, 2006, deleted former Subsection A, which required proposals as a prerequisite for initiating a project and the content of proposals; provided in Subsection A (former Subsection B) that a new association shall not be formed unless it existed on January 1, 2000 if the association includes property contiguous to an unincorporated area served by a municipality or a water and sanitation district; provided in Subsection B that an association shall not construct with state funds a project required to allow creation of a subdivision; deleted former Subsection D, which required an estimation of the costs of a project and contributions by the association; deleted former Subsection E, which provided for eligibility for grant-in-aid upon approval of the prerequisites; deleted former Subsection F, which required approval of plans and specifications by the local government division of the department of finance and administration; and added a new Subsection C to provide that after July 1, 2006, a new association shall not be formed as a capital stock corporation.

The 2000 amendment, effective March 6, 2000, deleted former Subsection B, concerning the requisite age of a community in order to apply for benefits under the Sanitary Projects Act, added new Subsections B and C and redesignated the remaining subsections accordingly.

3-29-6. Board of directors; powers and duties.

A. The board of directors of each association shall be responsible for the acquisition or purchase of all property, rights of way, equipment and materials as may be necessary for the completion of a project. The directors shall act on behalf of the association and as its agents. The association, acting through its board of directors, may exercise the right of eminent domain to take and acquire the necessary property or rights of way for the construction, maintenance and operation of water and sewer lines and related facilities, but such property and rights of way shall in all cases be so located as to do the least damage to private and public property consistent with proper use and economical construction. Such property or rights of way shall be acquired in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978]. In accordance with Sections 42A-1-8 through 42A-1-12 NMSA 1978, engineers, surveyors and other persons under contract with the board for the purposes of the project shall have the right to enter upon property of the state, its political subdivisions, private persons and private and public corporations for the purpose of making necessary surveys and examinations for selecting and locating suitable routes for water and sewer lines and facilities.

B. The board of directors of the association may set and, from time to time, increase or adjust assessments, water and sewer rates, tolls or charges for services or facilities furnished or made available by the association. The assessments, tolls and charges may include:

(1) membership fees;

(2) a base monthly service fee for each active connection delivering water;

(3) a base monthly service fee for each inactive connection;

(4) a standby charge for the privilege of connecting into the association's water service at some date in the future;

(5) assessments based on the volume of water delivered;

(6) a connection charge; and

(7) an assessment necessary to cover the cost of extending either water or sewer service.

C. The board of directors of the association may place a lien on property to which services have been extended in the amount of all outstanding assessments, charges and fees associated with the services. The board of directors may enforce the lien in a manner provided by the laws of the state. In the event the board of directors is forced to enforce the lien in a court of competent jurisdiction in New Mexico, the board of directors shall be entitled to recover all costs and attorney fees.

D. After notice is given, the board of directors of the association shall shut off unauthorized connections, illegal connections or a connection for which charges are delinquent in payment. The board of directors may file suit in a court of competent jurisdiction to recover costs associated with an unauthorized or illegal connection or delinquent connection, including the cost of water delivered, charges for facility connection and disconnection, damages and attorney fees.

E. The board of directors of the association shall prescribe and enforce rules for the connection to and disconnection from properties of facilities of the association.

F. Each member of the board of directors of the association shall complete training, as determined by rules of the department.

History: 1953 Comp., § 14-28-6, enacted by Laws 1965, ch. 300; 1969, ch. 192, § 3; 1981, ch. 125, § 39; 2006, ch. 60, § 5.

ANNOTATIONS

Cross references. — For constitutional provision on eminent domain, *see* N.M. Const., art. II, § 20.

The 2006 amendment, effective March 6, 2006, deleted in Subsection A the requirement that the environmental improvement division approve actions of the association and the requirements for approvals of payments from the fund; added Subsection B to authorize the board of directors to impose and change assessments, rates, tolls or charges for services or facilities; added Paragraphs (1) through (7) of Subsection B to list examples of such charges; added Subsection C to provide for liens to secure payment of charges; added Subsection D to provide for termination of service; added Subsection E to provide for rules of connections and disconnections; and added Subsection F to provide for training.

3-29-7. Department powers.

A. Insofar as the department deems it necessary for the purpose of the Sanitary Projects Act, the department may recommend agreements, covenants or rules in regard to operation, maintenance and permanent use of water supply, reclamation, storm drainage and wastewater facilities.

B. The department may:

(1) conduct periodic reviews of the operation of the association;

(2) require the association to submit information to the department;

(3) require submittal of financial reports required pursuant to the Audit Act [12-6-1 through 12-6-14 NMSA 1978];

(4) review and require changes to the rate-setting analysis described in Section 3-29-12 NMSA 1978;

(5) after a hearing, intervene in the operation and management with full powers, including the power to set and collect assessments from members of the association, to set and collect service charges and use the same for the proper operation and management of the association; and

(6) appoint and delegate authority to a representative to oversee operation of the association for a specified period.

C. The department may in its discretion or shall, upon a petition of twenty-five percent of the members of the association, conduct investigations as it deems necessary to determine if the association is being operated and managed in the best interests of all the members of the association.

D. Whenever the department determines that an association violated or is violating the Sanitary Projects Act or a rule adopted pursuant to that act, the department may:

(1) issue a compliance order requiring compliance immediately or within a specified time period, or both; or

(2) commence a civil action in district court for appropriate relief, including injunctive relief.

E. A compliance order shall state with reasonable specificity the nature of the violation.

F. If an association fails to take corrective actions within the time specified in a compliance order, the department may assess a civil penalty of not more than two hundred fifty dollars ($250) for each day of continued noncompliance with the compliance order.

G. Any compliance order issued by the department pursuant to this section shall become final unless, no later than thirty days after the compliance order is served, any association named in the compliance order submits a written request to the department for a public hearing. The department shall conduct a public hearing within ninety days after receipt of a request.

H. The department may appoint an independent hearing officer to preside over any public hearing held pursuant to Subsection G of this section. The hearing officer shall:

(1) make and preserve a complete record of the proceedings; and

(2) forward to the department a report that includes recommendations, if recommendations are requested by the department.

I. The department shall consider the findings of the independent hearing officer and, based on the evidence presented at the hearing, the department shall make a final decision regarding the compliance order.

J. In connection with any proceeding under this section, the department may:

(1) adopt rules for discovery and hearing procedures; and

(2) issue subpoenas for the attendance and testimony of witnesses and for relevant papers, books and documents.

K. Penalties collected pursuant to this section shall be deposited in the general fund.

History: 1953 Comp., § 14-28-7, enacted by Laws 1965, ch. 300; 1969, ch. 192, § 4; 2004, ch. 121, § 2; 2006, ch. 60, § 6.

ANNOTATIONS

Cross references. — For municipal requirement for sanitation facilities, *see* 3-18-22 NMSA 1978.

The 2006 amendment, effective March 6, 2006, deleted most of Subsection A and added new Subsections B through K.

The 2004 amendment, effective May 19, 2004, amended Subsection A, Paragraph (1) to delete after "commercial crops" "or for stock watering of animals being raised for commercial purposes", inserted in Subparagraph (a) of Paragraph (3) after "twenty-eight" "or fewer" and deleted after "units" "or less", deleted the citation to the Federal Water Pollution Control Act at the end of Subsection B and changed "or twenty-five percent" to "of twenty-five percent".

3-29-8. Repealed.

ANNOTATIONS

Repeals. — Laws 2006, ch. 60, § 20 repealed 3-29-8 NMSA 1978, as enacted by Laws 1965, ch. 300, relating to suit for recovery of state funds, effective March 6, 2006. For provisions of former section, *see* the 2005 NMSA 1978 on the *NMONESOURCE.COM.*

3-29-9. Rules.

For the purposes of the Sanitary Projects Act, the department may perform such acts and prescribe such rules as are deemed necessary to carry out its provisions. Rules shall be drafted in consultation with representatives of the associations.

History: 1953 Comp., § 14-28-9, enacted by Laws 1965, ch. 300; 2006, ch. 60, § 7.

ANNOTATIONS

The 2006 amendment, effective March 6, 2006, deleted the provision that the department may obtain cooperation and technical assistance of federal or state agencies and request geological surveys by the state engineer and added the provision that rules shall be drafted in consultation with representatives of the associations.

3-29-10. Repealed.

ANNOTATIONS

Repeals. — Laws 2006, ch. 60, § 20 repealed 3-29-10 NMSA 1978, as enacted by Laws 1965, ch. 300, relating to the sanitary projects fund, effective March 6, 2006. For provisions of former section, *see* the 2005 NMSA 1978 on the *NMONESOURCE.COM.*

3-29-11. Membership.

All persons within a community who participate or desire to participate in any project may become members of an association upon complying with the rules and regulations prescribed by the board of directors of the association, such rules and regulations to meet with the approval of the department. Any person or persons who did not participate in an original project shall be admitted to membership in an association upon payment to the association of a reasonable fee as determined by the board of directors and the department.

History: 1953 Comp., § 14-28-11, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Rural water haulers entitled to membership. — Water haulers who reside in the rural areas surrounding a village served by a Sanitary Projects Act (SPA) association and depend exclusively upon the association's water system for water have a right under the SPA to become members of the association. El Vadito De Los Cerrillos Water Ass'n v. New Mexico Pub. Serv. Comm'n, 115 N.M. 784, 858 P.2d 1263 (1993).

All residents of the village should be given equal opportunity to join the new or reorganized association. This is the intent of the Sanitary Projects Act (Chapter 3, Article 29 NMSA 1978), particularly by virtue of this section. 1961-62 Op. Att'y Gen. No. 61-44.

3-29-12. Local administration of association; board of directors.

A. The local administration of the association and the operation and maintenance of the project shall be carried out in each community by a board of directors composed of an odd number of at least three members. Members of the board of directors shall:

(1) be elected annually or as specified in the bylaws of the association;

(2) be members in good standing of the association; and

(3) serve staggered terms of up to four years to ensure that terms will end in different election years.

B. The board of directors shall choose among its members a president, a vice president and a secretary-treasurer or a secretary and a treasurer.

C. Funds sufficient to provide for proper operation and maintenance of the association shall be identified through a rate-setting analysis that will ensure enough revenue to cover yearly expenses and emergencies, a reserve fund for non-major capital items and equitable pay for staff. The rate-setting analysis may be reviewed and changed if necessary on a yearly basis, and the funds shall be obtained by the association by a monthly assessment against the users of the facilities, the assessment to be determined by the board of directors.

D. The board of directors of the association shall have power to do all things necessary in the local administration of any project subject to the provisions of the Sanitary Projects Act.

History: 1953 Comp., § 14-28-12, enacted by Laws 1965, ch. 300; 1969, ch. 192, § 6; 2006, ch. 60, § 8.

ANNOTATIONS

The 2006 amendment, effective March 6, 2006, in Subsection A, changed the number of members of the board of directors from five to an odd number of at least three members; deleted the provision of Subsection A that provided for the election and terms of office of members of the board of directors; added Paragraphs (1) through (3) of Subsection A to provide for the election, qualifications and terms of office of members of the board of directors; provided in Subsection B for a secretary and a treasurer; in Subsection C, deleted the requirement that a foreman be appointed for projects and added the provision that funds be identified through a rate-setting analysis; and deleted former Subsection E, which provided that an association must be formed and a board of directors chosen before any community may participate in any benefits.

In seeking a new election, mandamus would seem to be a proper remedy since it appears that a domestic water consumers association is a local public body for the purposes of regulation under the Sanitary Projects Act (Chapter 3, Article 29 NMSA 1978), primarily because the act itself provides for the establishment of such associations, provides for board of directors elections and provides for the contribution of state funds to be used as a portion of the initial cost of building water and sewer facilities. 1961-62 Op. Att'y Gen. No. 61-37.

3-29-13. Existing associations.

Associations organized under the provisions of Laws 1947, Chapter 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52 shall have the same powers and duties as associations organized under the provisions of the Sanitary Projects Act; provided that the articles of incorporation shall be amended in accordance with the provisions of Section 3-29-19 NMSA 1978.

History: 1953 Comp., § 14-28-13, enacted by Laws 1965, ch. 300; 2006, ch. 60, § 9.

ANNOTATIONS

Repeals. — Laws 1947, ch. 206, referred to in this section, was repealed by Laws 1949, ch. 79, § 19. Laws 1949, ch. 79, referred to in this section, was repealed by Laws 1951, ch. 52, § 19. Laws 1951, ch. 52, referred to in this section, was repealed by Laws 1957, ch. 122, § 22.

The 2006 amendment, effective March 6, 2006, deleted the provision that associations shall be eligible for benefits for construction of sewers and treatment plants without organizing a new association.

3-29-14. Existing water systems or water rights unaffected.

The provisions of the Sanitary Projects Act shall not in any way affect any water systems or water rights under existing law.

History: 1953 Comp., § 14-28-14, enacted by Laws 1965, ch. 300.

3-29-15. Association constitutes a public body corporate.

Upon the filing of each certificate and copy thereof as provided in Section 3-29-17 NMSA 1978, the persons so associating, their successors and those who may thereafter become members of the association constitute a public body corporate by the name set forth in the certificate and by such name may sue and be sued, have capacity to make contracts, acquire, hold, enjoy, dispose of and convey property real and personal, accept grants and donations, borrow money, incur indebtedness, impose fees and assessments and do any other act or thing necessary or proper for carrying out the purposes of their organization.

History: 1953 Comp., § 14-28-15, enacted by Laws 1965, ch. 300; 1967, ch. 45, § 1; 2000, ch. 56, § 3; 2006, ch. 60, § 10.

ANNOTATIONS

The 2006 amendment, effective March 6, 2006, provided that an association constitutes a public body corporate and may accept grants and donations, borrow money, incur indebtedness, and impose fees and assessments and deleted former Subsection B, which provided for the issuance of bonds by associations.

The 2000 amendment, effective March 6, 2000, in Subsection B, deleted "of public health" preceding "and the department of finance", inserted "refinancing, refunding", and substituted "warrant" for "warrants" in the second sentence.

Legislative intent is clear that financing or refinancing could be effected with the joint approval of the department of public health (now department of health) and the department of finance and administration. The new association can assume the bonded

indebtedness of the previous corporation subject to the approval of the departments just mentioned. 1961-62 Op. Att'y Gen. No. 61-44.

Language of section spells out and circumscribes money borrowing powers of associations either to become indebted or to issue bonds. 1961-62 Op. Att'y Gen. No. 61-44.

3-29-16. Certificate of association.

A. The members of an association shall execute a certificate setting forth:

(1) the name of the association;

(2) the name of the individuals organizing the association;

(3) the location of the principal office of the association in this state;

(4) the objects and purposes of the association;

(5) the address of the initial registered office of the association and the name of the initial registered agent at that address;

(6) the plan and manner of acquiring membership and of providing funds or means for the acquisition, construction, improvement and maintenance of its work and for its necessary expenses;

(7) the duration of existence of the association, which may be perpetual;

(8) the number and manner of electing the board of directors of the association and the length of the terms that the directors will serve;

(9) the definition of a member of the association and the voting rights associated with the membership; and

(10) the manner of dissolution of the association as a public body.

B. Pursuant to the registered agent requirement of Paragraph (5) of Subsection A of this section, there shall be attached to the certificate a statement executed by the registered agent in which the agent acknowledges acceptance of the appointment by the filing association, if the agent is an individual, or a statement executed by an authorized officer of a corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent, if the agent is a corporation.

C. The certificate or any amendment thereof made as provided in Section 3-29-19 NMSA 1978 may also contain provisions not inconsistent with the Sanitary Projects Act

or other law of this state that the organizers may choose to insert for the regulation and conduct of the business and affairs of the association. There shall accompany each certificate a list to show the total number of members of the association and the total number of dwelling units served by the association at the time of filing.

History: 1953 Comp., § 14-28-16, enacted by Laws 1965, ch. 300; 2001, ch. 200, § 2; 2003, ch. 318, § 1; 2006, ch. 60, § 11.

ANNOTATIONS

The 2006 amendment, effective March 6, 2006, deleted part of Subsection A(6) relating to capital stock, and added Subsections A(9) and A(10).

The 2003 amendment, effective July 1, 2003, reorganized the section into Subsections A and C and redesignated former Subsections A to H as Paragraphs A(1) to (8); and added present Subsection B.

The 2001 amendment, effective July 1, 2001, substituted "the principal office of the association" for "its principal office" in Subsection C; inserted Subsection E, redesignated the remaining subsections accordingly; deleted the designation from the final paragraph; and updated the internal reference in the last paragraph.

3-29-17. Filing of certificate and bylaws.

The certificate of association and bylaws shall be acknowledged as required for deeds of real estate and shall be filed in the office of the secretary of state. A copy of the certificate, duly certified by the secretary of state or county clerk, shall be evidence in all courts and places.

History: 1953 Comp., § 14-28-17, enacted by Laws 1965, ch. 300; 2001, ch. 200, § 3; 2006, ch. 60, § 12; 2013, ch. 75, § 3.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required that certificates of association and bylaws be filed with the secretary of state; in the first sentence, after "filed in the office of the" deleted "public regulation commission" and added "secretary of state"; and in the second sentence, after "duly certified by the", deleted "commission" and added "secretary of state".

The 2006 amendment, effective March 6, 2006, required the bylaws to be acknowledged.

The 2001 amendment, effective July 1, 2001, inserted "of association" following "The certificate"; and substituted "public regulation commission" for "state corporation commission".

3-29-17.1. Registered office and registered agent.

An association shall have and continuously maintain in the state:

A. a registered office, which may be the same as its principal office; and

B. a registered agent that may be:

(1) an individual resident in the state whose business office is identical with the registered office of the association;

(2) a for-profit or not-for-profit domestic corporation having an office identical with the registered office of the association; or

(3) a for-profit or not-for-profit foreign corporation authorized to transact business or conduct affairs in New Mexico and having an office identical with the registered office of the corporation.

History: Laws 2001, ch. 200, § 4.

ANNOTATIONS

Cross references. — For corporations generally, *see* Chapter 53 NMSA 1978.

Effective dates. — Laws 2001, ch. 200, § 101 made the act effective July 1, 2001.

3-29-17.2. Change of registered office or registered agent.

A. An association may change its registered office or its registered agent, or both, by filing in the office of the secretary of state a statement that includes:

(1) the name of the association;

(2) the address of its registered office;

(3) if the address of the association's registered office is changed, the address to which the registered office is changed;

(4) the name of its registered agent;

(5) if the association's registered agent is changed:

(a) the name of its successor registered agent; and

(b) if the successor registered agent is an individual, a statement executed by the successor registered agent acknowledging acceptance of the appointment by the filing association as its registered agent; or

(c) if the successor registered agent is a corporation, an affidavit executed by the president or vice president of the corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent;

(6) a statement that the address of the association's registered office and the address of the office of its registered agent, as changed, will be identical; and

(7) a statement that the change was authorized by resolution duly adopted by its board of directors.

B. The statement made pursuant to the provisions of Subsection A of this section shall be executed by the association by any two members and delivered to the secretary of state. If the secretary of state finds that the statement conforms to the provisions of the Sanitary Projects Act, it shall file the statement in the office of the secretary of state. The change of address of the registered office, or the appointment of a new registered agent, or both, shall become effective upon filing of the statement required by this section.

C. A registered agent of an association may resign as agent upon filing a written notice thereof, executed in duplicate, with the secretary of state. The secretary of state shall mail a copy immediately to the association in care of an officer, who is not the resigning registered agent, at the address of the officer as shown by the most recent annual report of the association. The appointment of the agent shall terminate upon the expiration of thirty days after receipt of the notice by the secretary of state.

History: Laws 2001, ch. 200, § 5; 2013, ch. 75, § 4.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required that changes of registered office be filed with the secretary of state; in Subsection A, in the introductory sentence, after "by filing in the office of the", deleted "public regulation commission" and added "secretary of state"; in Subsection B, in the first sentence, after "delivered to the", deleted "public regulation commission" and added "secretary of state", in the second sentence, at the beginning of the sentence, after "If the", deleted "commission" and added "secretary of state", and after "in the office of the", deleted "commission" and added "secretary of state"; in Subsection C, in the first sentence, after "executed in duplicate, with the", deleted "public regulation commission" and added "secretary of state", in the second sentence, at the beginning of the sentence, after "The", deleted "commission" and added "secretary of state", and in the third sentence, after "notice by the", deleted "commission" and added "secretary of state".

3-29-17.3. Service of process on association.

The registered agent appointed by an association shall be an agent of the association upon whom any process, notice or demand required or permitted by law to be served upon the association may be served. Nothing in this section limits or affects the right for process, notice or demand to be served upon an association in any other manner permitted by law.

History: Laws 2001, ch. 200, § 6.

ANNOTATIONS

Cross references. — For civil process, *see* Rule 1-004 NMRA.

Effective dates. — Laws 2001, ch. 200, § 101 made the act effective July 1, 2001.

3-29-17.4. Annual report.

A. An association shall file, within the time prescribed by the Sanitary Projects Act, on forms prescribed and furnished by the secretary of state to the association not less than thirty days prior to the date the report is due, an annual report setting forth:

(1) the name of the association;

(2) the address of the registered office of the association in the state and the name of its registered agent in this state at that address;

(3) a brief statement of the character of the affairs that the association is actually conducting; and

(4) the names and respective addresses of the directors and officers of the association.

B. The report shall be signed and sworn to by two of the members of the association. If the association is in the hands of a receiver or trustee, the report shall be executed on behalf of the association by the receiver or trustee. A copy of the report shall be maintained at the association's principal place of business as contained in the report and shall be made available to the general public for inspection during regular business hours.

History: Laws 2001, ch. 200, § 7; 2006, ch. 60, § 13; 2013, ch. 75, § 5.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required that the secretary of state prescribe and furnish annual report forms for associations; and in Subsection A, in the

introductory sentence, after "prescribed and furnished by the", deleted "public regulation commission" and added "secretary of state".

The 2006 amendment, effective March 6, 2006, deleted the requirement that the report state the state or country under the laws of which the association is incorporated in Paragraph (1) of Subsection A.

3-29-17.5. Filing of annual report; supplemental report; extension of time; penalty.

A. The annual report of the association shall be delivered to the public regulation commission on or before the fifteenth day of the fifth month following the end of its fiscal year.

B. A supplemental report shall be filed by the association with the public regulation commission, if, within thirty days after the filing of the annual report required under the Sanitary Projects Act, a change is made in:

(1) the name of the association;

(2) the mailing address, street address or the geographical location of the association's registered office in this state and the name of the agent upon whom process against the association may be served; or

(3) the character of the association's business and its principal place of business within the state.

C. Proof to the satisfaction of the public regulation commission that, prior to the due date of a report required by this section, the report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed compliance with the requirements of this section. If the commission finds that the report conforms to the requirements of the Sanitary Projects Act, it shall file the report. If the commission finds that it does not conform, it shall promptly return the report to the association for necessary corrections. The penalties prescribed for failure to file the report within the time provided shall not apply if the report is corrected to conform to the requirements of the Sanitary Projects Act and returned to the commission within thirty days from the date on which it was mailed to the association by the commission.

D. The public regulation commission may, upon application by the association and for good cause shown, extend, for no more than a total of twelve months, the date on which an annual report required by the provisions of the Sanitary Projects Act must be filed or the date on which the payment of a fee is required. The commission shall, when an extension of time has been granted an association under the federal Internal Revenue Code of 1986 for the time in which to file a return, grant the association the same extension of time to file the required annual report and to pay the required fees, provided that a copy of the approved federal extension of time is attached to the

association's report, and provided further that no such extension shall prevent the accrual of interest as otherwise provided by law.

E. Nothing contained in this section prevents the collection of a fee or penalty due upon the failure of an association to submit the required report.

F. An annual or supplemental report required to be filed under this section shall not be deemed to have been filed if the fees accompanying the report have been paid by check and the check is dishonored upon presentation.

G. An association that fails or refuses to file a report for a year within the time prescribed by the Sanitary Projects Act is subject to a penalty of ten dollars ($10.00) to be assessed by the public regulation commission.

H. An association shall file with the department a member accountability report that shall include:

(1) a financial statement prepared in accordance with generally accepted accounting principles; and

(2) a copy of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] resolution stating what notice for a public meeting is reasonable. The report shall be signed and sworn to as to accuracy and completeness by all members of the board of directors of the association. A statement shall be included in the consumer confidence report required for water systems that the member accountability report is available to the public upon request. The member accountability report shall be filed with the department with the consumer confidence report no later than July 1 of each year.

History: Laws 2001, ch. 200, § 8; 2006, ch. 60, § 14.

ANNOTATIONS

Cross references. — For the Internal Revenue Code of 1986, *see* Title 26 of the United States Code.

The 2006 amendment, effective March 6, 2006, changed the filing date of the report from the fifteenth day of the fifth month following the end of the taxable year to the fiscal year of the association in Subsection A; changed "return" to "annual report" in Subsection D; and added Subsection H to require an association to file a membership accountability report.

3-29-18. Repealed.

ANNOTATIONS

Repeals. — Laws 2006, ch. 60, § 20 repealed 3-29-18 NMSA 1978, as enacted by Laws 1965, ch. 300, relating to the submission of documents for complying with the Sanitary Projects Act to the department of environment, effective March 6, 2006. For provisions of former section, *see* the 2005 NMSA 1978 on the *NMONESOURCE.COM.*

3-29-19. Amendment of certificate of association and bylaws; method.

Every association may make such amendment, change or alteration to its certificate of association or bylaws as may be desired not inconsistent with the Sanitary Projects Act or other law of this state by a resolution adopted by a vote of a majority of the members present at any regular or special meeting duly held upon such notice as the bylaws provide. A certified copy of such resolution with the affidavit of the president and secretary that the resolution was duly adopted by a majority vote of the members at a meeting held in accordance with the provisions of this section shall be filed and recorded as provided for filing and recording the original certificate of association and bylaws, and thereupon the certificate of association and bylaws shall be deemed to be amended accordingly, and a copy of such certificate of amendment certified by the secretary of state or the county clerk shall be accepted as evidence of each change or amendment in all courts and places.

History: 1953 Comp., § 14-28-19, enacted by Laws 1965, ch. 300; 2006, ch. 60, § 15; 2013, ch. 75, § 6.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required that the secretary of state certify amended certificates of association; and in second sentence, after "certified by the", deleted "public regulation commission" and added "secretary of state".

The 2006 amendment, effective March 6, 2006, deleted the provision that an association may change its name, capital stock or membership, location of its principle office and period of existence and authorized an association to amend, change or alter its certificate of association or bylaws.

3-29-19.1. Bylaws.

A. Members shall adopt bylaws by no less than a majority vote of a quorum of the membership of the association setting forth:

(1) the name of the association;

(2) the requirement of an association seal;

(3) the fiscal year of the association;

(4) guidelines for membership, which shall include the sentence "Membership shall not be denied because of the applicant's race, color, creed, national origin or sex.";

(5) guidelines for meetings of the membership, which shall include the date or time period of a membership meeting, required notice of a meeting, establishment of a quorum and the order of business to be conducted at a meeting of the membership;

(6) the functions of the board of directors, including a conflict of interest policy for the board;

(7) the duties of officers of the board of directors; and

(8) provisions for the board of directors to establish rules to govern the day-to-day operations of the project, including a code of conduct for staff and provisions to establish an annual budget, rate structure, assessments and reserve funds.

B. The bylaws, or any amendment thereof made as provided in Section 3-29-19 NMSA 1978, may also contain provisions not inconsistent with the Sanitary Projects Act or other law of this state that the organizers may choose to insert for the regulation and conduct of the business and affairs of the association.

C. The department may prescribe by rule guidelines for bylaws and rules of an association.

History: Laws 2006, ch. 60, § 17.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 60, § 21 contained an emergency clause and was approved March 6, 2006.

3-29-20. Reorganization of cooperative associations and nonprofit corporations pursuant to the Sanitary Projects Act.

A. Cooperative associations formed pursuant to Sections 53-4-1 through 53-4-45 NMSA 1978 and nonprofit corporations formed under the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] may reorganize under the Sanitary Projects Act upon approval of the reorganization by a majority vote of a quorum of the members of a cooperative association or nonprofit corporation. Notice of the meeting to consider the reorganization and a copy of the proposed certificate of association shall be sent at least fifteen days prior to such meeting by the cooperative association to each member at the member's last known address and by the nonprofit corporation to each member, if any, at the member's last known address. Upon approval of the reorganization by the majority vote of a quorum of the members, the cooperative association or the nonprofit corporation shall execute a certificate of association pursuant to Sections 3-29-16 and 3-29-17 NMSA 1978. The certificate of association shall state that it supersedes the

articles of incorporation and all amendments to the articles of incorporation of the cooperative association or the nonprofit corporation.

B. Duplicate originals of the certificate of association shall be filed with the secretary of state. One duplicate original of the certificate of association shall be returned to the association.

C. The certificate of association is effective upon filing and supersedes the articles of incorporation and all amendments to the articles of incorporation of the prior cooperative association or nonprofit corporation. The association shall:

(1) be the surviving entity, and the separate existence of the prior cooperative association or nonprofit corporation shall cease;

(2) have all of the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of an association organized pursuant to the Sanitary Projects Act;

(3) possess all the rights, privileges, immunities and franchises of the prior cooperative association or nonprofit corporation. All property, real, personal and mixed; all debts due on whatever account; all other choses in action; and all and every other interest of or belonging to or due to the prior cooperative association or nonprofit corporation shall be taken and deemed to be transferred to and vested in the association without further act or deed. The title to any real estate, or any interest therein, vested in the prior cooperative association or nonprofit corporation shall not revert or be in any way impaired by reason of the reorganization; and

(4) be liable for all the liabilities and obligations of the prior cooperative association or nonprofit corporation, and any claim existing or action or proceeding pending by or against the cooperative association or nonprofit corporation may be prosecuted as if the reorganization had not taken place or the new association may be substituted in its place. Neither the rights of creditors nor any liens upon the property of the cooperative association or nonprofit corporation shall be impaired by the reorganization.

D. A cooperative association formed pursuant to the Cooperative Association Act [Chapter 53, Article 4 NMSA 1978] or nonprofit corporation formed pursuant to the Nonprofit Corporation Act that reorganized under Subsection A of this section prior to June 30, 2006 may, within three years of the effective date of this 2006 act, reorganize pursuant to the act under which it had previously been organized upon approval of the reorganization by a two-thirds' vote of the directors of the association or corporation. Notice of the meeting to consider the reorganization and a copy of the proposed articles of incorporation shall be sent by the association or the corporation at least fifteen days prior to the meeting to each member at the member's last known address. Upon approval of the reorganization, the association or corporation shall execute articles of incorporation pursuant to Sections 53-4-5 and 53-4-6 or 53-8-31 and 53-8-32 NMSA

1978. The articles of incorporation shall state that they supersede the certificate of association or incorporation and all amendments thereto of the association or corporation and shall follow the filing procedures of Subsections B and C of this section.

History: Laws 2000, ch. 56, § 4; 2006, ch. 60, § 16; 2013, ch. 75, § 7.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required that certificates of association be filed with the secretary of state; and in Subsection B, after "filed with the", deleted "public regulation commission" and added "secretary of state".

The 2006 amendment, effective March 6, 2006, changed "two-third's" vote to "majority" and "directors" to "a quorum of the members" in Subsection A and added Subsection D to provide for reorganization of corporations formed under the Cooperative Association Act or Nonprofit Corporation Act.

3-29-20.1. Merger of two or more associations into one association.

Upon approval by vote of a majority of a quorum of each membership, two or more associations may merge into one association pursuant to a plan of merger approved in the manner provided by this section. The board of directors of each association shall, by resolution adopted by each board, approve a plan of merger setting forth:

A. the names of the associations proposing to merge, and the association into which they propose to merge, which is hereinafter designated as the "surviving association";

B. the terms and conditions of the proposed merger, including transfer of assets and liabilities;

C. the manner and basis of converting each association's obligations or other securities into the surviving association;

D. a statement of any changes in the certificate of association of the surviving association to be affected by the merger; and

E. other provisions with respect to the proposed merger as deemed necessary or desirable.

History: Laws 2006, ch. 60, § 19.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 60, § 21 contained an emergency clause and was approved March 6, 2006.

3-29-21. Exemptions from Special District Procedures Act provisions.

An association formed pursuant to the provisions of the Sanitary Projects Act may be formed exclusively as provided in that act, and formation of the association shall be exempt from all review and requirements set forth in the Special District Procedures Act [4-53-1 to 4-53-11 NMSA 1978].

History: Laws 2006, ch. 60, § 18.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 60, § 21 contained an emergency clause and was approved March 6, 2006.

ARTICLE 30
Municipal Debt; Voting on Question

3-30-1. County constitutes a precinct for purpose of voting on municipal debt; single voting division outside municipality.

A. For the purpose of voting only on the question of creating a debt of the municipality, all territory within a county in which is situated a municipality holding an election on the question of creating a debt pursuant to Article 9, Section 12 of the constitution of New Mexico is a municipal precinct. All territory in the municipal precinct and not within the boundary of the municipality holding an election on the question of creating a debt shall constitute one voting division to be known as the nonresident voting division.

B. If two or more municipalities situated in the same county hold an election on the same day on the question of creating a debt, the nonresident voting division of each municipality holding an election on the question of creating a debt constitutes a separate and different nonresident voting division for each municipality holding an election on the question of creating a debt and includes the territory within the boundary of any other municipality within the county.

History: 1953 Comp., § 14-29-1, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For election on question of acquiring utility, *see* 3-23-2 NMSA 1978.

For use of borrowed funds, *see* N.M. Const., art. IX, § 9.

For restrictions on municipal indebtedness, *see* N.M. Const., art. IX, § 12.

For excess indebtedness permitted for water or sewer system, *see* N.M. Const., art. IX, § 13.

For refunding bonds authorized without election, *see* N.M. Const., art. IX, § 15.

For limitation on municipal expenditures during year officials' terms expire, *see* 6-6-9 NMSA 1978.

For Bateman Act, *see* 6-6-11 NMSA 1978 et seq.

For notice of issuance of bonds, *see* 6-15-1, 6-15-2 NMSA 1978.

For refunding bonds of municipality, *see* 6-15-11 NMSA 1978 et seq.

Constitutional voter qualifications not affected. — That additional electors may now vote in municipal bond elections cannot be held to apply to or affect the general voter qualifications set forth in N.M. Const., art. VII, § 1. The voter qualifications expressly recited in that constitutional provision remain exactly the same. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

Constitutionality. — This section does not fall within constitutional prohibition against special or local laws regulating precinct affairs. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

Precincts need not be geographically identical for all elections. — There is nothing in the directive of N.M. Const., art. VII, § 1, which says that voting precincts must be geographically identical for all elections. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

Waterworks revenue bonds did not create debt. — Waterworks revenue bonds, payable exclusively from net revenues thereof, did not create a "debt" within constitutional provision requiring vote and tax levy. Seward v. Bowers, 37 N.M. 385, 24 P.2d 253 (1933).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 579 to 582, 592, 593.

"Emergency" within exception to limitation of municipal indebtedness, 17 A.L.R. 586.

Obligation for local improvements as within municipal debt limits, 33 A.L.R. 1415.

Local improvements, liability of municipality for failure to collect cost of, from property primarily liable, as affected by limitation of indebtedness, 38 A.L.R. 1277, 51 A.L.R. 973, 172 A.L.R. 1030.

Application to permanent improvements of constitutional or statutory provision against municipality exceeding current revenue, 41 A.L.R. 790.

Power of municipality to incur indebtedness for relief of distress due to general unemployment or other unusual condition, 73 A.L.R. 699, 87 A.L.R. 371.

Limitation of municipal indebtedness as affected by combination or merger of two or more municipalities, 103 A.L.R. 154.

Installments payable under continuing service contract as present indebtedness within organic limitation of municipal indebtedness, 103 A.L.R. 1160.

Municipal debt limit as affected by obligations due municipality, 105 A.L.R. 687.

Legislature's power to add to or make more onerous conditions prescribed by Constitution upon incurring of public debt, 106 A.L.R. 231.

Undelivered bonds or other obligations authorized but not delivered prior to adoption or effective date of debt-limit provision as affected by such provision, 109 A.L.R. 961.

School purposes, debts incurred for, as part of municipal indebtedness, for purposes of debt limitation, 111 A.L.R. 544.

"Emergency" or "urgency," exception regarding in statute or charter forbidding municipal corporations to expend money or incur indebtedness in absence, or in excess, of appropriation, 111 A.L.R. 703.

Aggregate of rent for entire period of lease of property to municipality as present indebtedness, payment for which must be provided, 112 A.L.R. 278.

"Necessary expenses" within exception in constitutional or statutory provision requiring vote of people to authorize contracting of debt by municipality, 113 A.L.R. 1202.

Actual or permissible maximum of indebtedness of municipality under statute or constitutional provision limiting indebtedness with reference to income or revenue, 122 A.L.R. 330.

Assessment or assessed valuation, meeting of, when used as basis of debt limit, 156 A.L.R. 594.

Subsequent exhaustion of funds as affecting contract validly entered into by the municipality under constitutional provision limiting indebtedness to revenues for current year, 159 A.L.R. 1261.

Airport, construction of, as loan of credit, 161 A.L.R. 733.

Separate independent political units within rule permitting separate computation of constitutional debt limit notwithstanding overlapping or identical boundaries, 171 A.L.R. 729.

Housing and slum clearance laws, validity as affected by debt limitations, 172 A.L.R. 973.

Bond issue in excess of amount permitted by law, validity of, within authorized debt, tax, or voted limit, 175 A.L.R. 823.

Inclusion of tax exempt property in determining value of taxable property for debt limit purposes, 30 A.L.R.2d 903.

Rescission of vote authorizing school district or other municipal bond issue, expenditure or tax, 68 A.L.R.2d 1041.

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331.

64 C.J.S. Municipal Corporations §§ 1858 to 1864.

3-30-2. Nonresident municipal elector; qualifications.

A "nonresident municipal elector" means any qualified elector who:

A. is registered to vote in the county in which the municipality holding an election on the question of creating a debt is situated;

B. has paid a property tax on property located within the municipality holding an election on the question of creating a debt during the year preceding the election; and

C. has registered with the municipal clerk his intention to vote at the municipal election on the question of creating a municipal debt in the manner provided in Section 3-30-3 NMSA 1978.

History: 1953, Comp., § 14-29-2, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For definition of "qualified elector", *see* 3-1-2 NMSA 1978.

For constitutional provision on qualifications of electors, *see* N.M. Const., art. IX, § 12.

Persons held to be qualified electors. — Property owner whose mortgagee paid assessed tax as agent for him, and property owner exempt from payment of tax under

soldier exemption provided in N.M. Const., art. VIII, § 5, were persons who had paid a property tax during the preceding year within constitutional and statutory requirements, and therefore were qualified electors in voting on general obligation bond for municipal improvements. Hair v. Motto, 82 N.M. 226, 478 P.2d 554 (1971).

Constitutionality. — This section does not fall within constitutional prohibition against special or local laws regulating precinct affairs. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

The operable provisions of N.M. Const., art. IX, § 12, as interpreted by the New Mexico Supreme Court and the classifications and requirements of the enabling statutes for creation of municipal indebtedness, this section and 3-30-3 and 3-30-6 NMSA 1978, rationally promote legitimate state interests and are constitutionally justified. Snead v. City of Albuquerque, 663 F. Supp. 1084 (D.N.M.), aff'd, 841 F.2d 1131 (10th Cir. 1987), cert. denied, 485 U.S. 1009, 108 S. Ct. 1475, 99 L. Ed. 2d 704 (1988).

Power of state to impose restrictions on right to vote. — The state of New Mexico has the power to impose reasonable residence and other restrictions on the right to vote, so long as the restrictions are not discriminatory and are based on a reasonable classification. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

Constitutional voter qualifications not affected. — That additional electors may now vote in municipal bond elections cannot be held to apply to or affect the general voter qualifications set forth in N.M. Const., art. VII, § 1. The voter qualifications expressly recited in that constitutional provision remain exactly the same. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

Limitation of electors to those property owners who are otherwise qualified to vote in the county is based upon the practical and reasonable consideration that in New Mexico the voter registration records are kept and maintained by the county clerk, are readily available for use in checking qualifications of electors and are used by the municipalities in the county in the conduct of municipal elections. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

Law reviews. — For comment, "The Last Bastion Crumbles: All Property Restrictions on Franchise Are Unconstitutional," see 1 N.M.L. Rev. 403 (1971).

3-30-3. Nonresident municipal elector; manner of registering to vote on question of creating a municipal debt; certificate of eligibility.

Not more than sixty nor less than fifteen days before the day of a municipal election on the question of creating a debt, any nonresident municipal elector desiring to vote on the question of creating a municipal debt shall file with the municipal clerk a certificate of eligibility which shall be the registration required of the nonresident municipal elector for voting at a municipal election on the question of creating a debt. The certificate of eligibility shall be in substantially the following form:

"I, _____, (Last Name, First Name, Middle Name), desire to vote at the municipal election to be held on _____ (Insert date of election) and request the county clerk and county treasurer of _____ (Insert name of county) to certify that I am a nonresident municipal elector of the _____ (Insert name of the municipality).

Signed: _____

(Signature of nonresident municipal elector)

I hereby certify that the above named nonresident municipal elector is registered to vote in this county.

Signed: _____

(County Clerk)

I hereby certify that the above named nonresident municipal elector has paid a tax on property within the _____ (Insert name of the municipality) during the preceding year to wit on the _____ day of _____, 19 _____.

Signed: _____"

(County Treasurer)

History: 1953 Comp., § 14-29-3, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Constitutionality. — This section does not fall within constitutional prohibition against special or local laws regulating precinct affairs. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

The operable provisions of N.M. Const., art. IX, § 12, as interpreted by the New Mexico Supreme Court and the classifications and requirements of the enabling statutes for creation of municipal indebtedness, 3-30-2 NMSA 1978, this section, and 3-30-6 NMSA 1978, rationally promote legitimate state interests and are constitutionally justified. Snead v. City of Albuquerque, 663 F. Supp. 1084 (D.N.M. 1987), aff'd, 841 F.2d 1131 (10th Cir. 1987), cert. denied, 485 U.S. 1009, 108 S. Ct. 1475, 99 L. Ed. 2d 704 (1988).

Constitutional voter qualifications not affected. — That additional electors may now vote in municipal bond elections cannot be held to apply to or affect the general voter qualifications set forth in N.M. Const., art. VII, § 1. The voter qualifications expressly recited in that constitutional provision remain exactly the same. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

Limitation of electors to those property owners who are otherwise qualified to vote in the county is based upon the practical and reasonable consideration that in New Mexico the voter registration records are kept and maintained by the county clerk, are readily available for use in checking qualifications of electors and are used by the municipalities in the county in the conduct of municipal elections. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

Law reviews. — For comment, "The Last Bastion Crumbles: All Property Restrictions on Franchise Are Unconstitutional," see 1 N.M.L. Rev. 403 (1971).

3-30-4. Nonresident polling place; duties of the municipal clerk to register nonresident municipal electors.

A. In the same manner that polling places are secured for the conduct of a municipal election, the municipal clerk shall provide a polling place within the municipality for nonresident municipal electors desiring to vote on the question of creating a municipal debt. The polling place shall be separate from any other polling place located within the municipality.

B. Not less than five days before the date of an election on the question of creating a municipal debt, the municipal clerk shall place, by name in alphabetical order, all certificates of eligibility filed by nonresident municipal electors in a registration book kept for that purpose. The registration book for nonresident municipal electors shall be delivered to the judge and clerks of the election at the polling place for nonresident municipal electors in the same manner other registration books are delivered to the judges and clerks of the election in the remaining polling places and the certificates of eligibility shall serve as the registration forms for the nonresident municipal elector desiring to vote on the question of creating a debt.

History: 1953, Comp., § 14-29-4, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Constitutionality. — This section does not fall within constitutional prohibition against special or local laws regulating precinct affairs. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

Constitutional voter qualifications not affected. — That additional electors may now vote in municipal bond elections cannot be held to apply to or affect the general voter qualifications set forth in N.M. Const., art. VII, § 1. The voter qualifications expressly recited in that constitutional provision remain exactly the same. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

Elector not entitled to cast vote at same polling place in all elections. — There is nothing in the directive of N.M. Const., art. VII, § 1, which says that an elector is entitled to cast his vote at the same place in all elections. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

3-30-5. General obligation bonds; authority to issue.

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 municipality may issue and dispose of negotiable bonds for the purpose of securing funds for:

A. erecting and operating natural or artificial gas works;

B. erecting and operating electric works;

C. constructing, purchasing, rehabilitating or remodeling, or any combination thereof, public buildings, including additions and improvements thereto;

D. building, beautifying and improving public parks within or without the municipal boundary, but not beyond the planning and platting jurisdiction of the municipality;

E. acquiring land or buildings for playgrounds, recreation centers, zoos and other recreational purposes, and the equipment thereof, or any combination thereof;

F. providing proper means for protecting from fire including but not necessarily limited to purchasing apparatus for fire protection and providing, enlarging and improving fire equipment and facilities;

G. laying off, opening, constructing, repairing, and otherwise improving municipal alleys, streets, public roads and bridges, or any combination thereof;

H. providing apparatus for the collection and disposal of garbage and refuse;

I. acquiring, constructing and maintaining garbage and refuse disposal areas and plants within or without the municipal boundary;

J. constructing or purchasing a system for supplying water or constructing and purchasing such a system, for the municipality, including without limiting the generality of the foregoing, the enlargement, improvement, extension or acquisition of the system, and acquisition of water or water rights, necessary real estate or rights-of-way, bridges and easements, and necessary apparatus for a water system, or any combination of the foregoing;

K. constructing or purchasing a sewer system or the construction and purchase of a sewer system, including without limiting the generality of the foregoing, acquiring, enlarging, improving or extending, or any combination of the foregoing, said system;

L. flood control purposes as provided in Section 3-41-1 NMSA 1978;

M. constructing, purchasing, rehabilitating or remodeling, or any combination thereof, hospitals, including additions and improvements thereto;

N. purchasing, improving or erecting public auditoriums or public buildings of a similar nature for general civic purposes, or for authorizing 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

O. acquiring, purchasing, constructing, improving, rehabilitating, or remodeling, or any combination thereof, of cemeteries or mausoleums.

History: 1953 Comp., § 14-29-5, enacted by Laws 1973, ch. 395, § 2.

ANNOTATIONS

Repeals and reenactments. — Laws 1973, ch. 395, § 2, repealed 14-29-5, 1953 Comp., relating to authority to issue general obligation bonds, and enacted the above section.

Cross references. — For power of municipality to construct, purchase, rehabilitate and care for buildings, *see* 3-18-4 NMSA 1978.

For authority of improvement district to issue negotiable coupon bonds or assignable certificates, *see* 3-33-24 NMSA 1978.

For refunding improvement bonds, *see* 3-33-39 to 3-33-43 NMSA 1978.

For Pollution Control Revenue Bond Act, *see* 3-59-1 NMSA 1978 et seq.

For contracting of debts by municipalities, *see* N.M. Const., art. IX, §§ 9, 12, 13 and 15.

For right to construct and maintain auditoriums, *see* 5-3-1 NMSA 1978 et seq.

For notice of issuance of bonds, *see* 6-15-1, 6-15-2 NMSA 1978.

Constitutionality. — This section does not fall within constitutional prohibition against special or local laws regulating precinct affairs. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

If the primary object of a building to be constructed was a municipal purpose, the fact that it might be incidentally used for theatrical purposes would not render the action in erecting it invalid. Smith v. City of Raton, 18 N.M. 613, 140 P. 109 (1914).

Purchase of existing building not permitted under bond voted for purpose of erection. — A town does not have authority to purchase for municipal purposes a building already erected from the proceeds of a bond issue voted for the purpose of erecting such a building. 1953-54 Op. Att'y Gen. No. 54-5957.

Law reviews. — For comment, "The Last Bastion Crumbles: All Property Restrictions on Franchise Are Unconstitutional," see 1 N.M.L. Rev. 403 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 75 to 90, 94 to 123.

Change in law as to municipal bonds as affecting bonds previously authorized or voted, but not issued, 19 A.L.R. 1055.

Estoppel to deny validity of municipal bonds issued under an unconstitutional statute, 37 A.L.R. 1310.

Power of municipality or other governmental body to issue refunding bonds to retire obligation in respect of which the creation and maintenance of a sinking fund by taxation is required, 157 A.L.R. 794.

Estoppel by recitals in bonds to set up violation of provision limiting indebtedness, 158 A.L.R. 943.

Estoppel as to purpose of bonds by recital therein, 158 A.L.R. 949.

Power of governmental unit to issue bonds as implying power to refund them, 1 A.L.R.2d 134.

Validity of municipal bond issue as against owners of property, annexation of which to municipality became effective after date of election at which issue was approved by voters, 10 A.L.R.2d 559.

64 C.J.S. Municipal Corporations § 1902 et seq.

3-30-6. Bond election; qualifications of voters; separation of items; time; publication or posting; ballots.

A. Before bonds are issued, the governing body of the municipality shall submit to a vote of the registered qualified electors of the municipality and the nonresident municipal electors the question of issuing the bonds. The election may be held at the same time as the regular municipal election or at any special election held pursuant to Article 9, Section 12 of the constitution of New Mexico.

B. The governing body of the municipality shall give notice of the time and place of holding the election and the purpose for which the bonds are to be issued. Notice of a bond election shall be given as required in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] for special elections. A change in the location of a polling place after notice has been given shall not invalidate a bond election.

C. The question shall state the purpose for which the bonds are to be issued and the amount of the issue. If bonds are to be issued for more than one purpose, a separate question shall be submitted to the voter for each purpose to be voted upon. The ballots shall contain words indicating the purpose of the bond issue and a place for a vote "For . . . (designate type) bonds" and "Against . . . (designate type) bonds" for each bond issue. The ballots shall be deposited in a separate ballot box unless voting machines are used.

History: 1953 Comp., § 14-29-6, enacted by Laws 1965, ch. 300; 1977, ch. 28, § 5; 1985, ch. 208, § 116.

ANNOTATIONS

Cross references. — For definitions of "publish" or "publication," *see* 3-1-2 NMSA 1978.

Constitutionality. — This section does not fall within constitutional prohibition against special or local laws regulating precinct affairs. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

The operable provisions of N.M. Const., art. IX, § 12, as interpreted by the New Mexico Supreme Court and the classifications and requirements of the enabling statutes for creation of municipal indebtedness, 3-30-2 and 3-30-3 NMSA 1978 and this section, rationally promote legitimate state interests and are constitutionally justified. Snead v. City of Albuquerque, 663 F. Supp. 1084 (D.N.M. 1987), aff'd, 841 F.2d 1131 (10th Cir. 1987), cert. denied, 485 U.S. 1009, 108 S. Ct. 1475, 99 L. Ed. 2d 704 (1988).

Power of state to impose restrictions on right to vote. — The state of New Mexico has the power to impose reasonable residence and other restrictions on the right to vote, so long as the restrictions are not discriminatory and are based on a reasonable classification. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

Limitation of electors to those property owners who are otherwise qualified to vote in the county is based upon the practical and reasonable consideration that in New Mexico the voter registration records are kept and maintained by the county clerk, are readily available for use in checking qualifications of electors and are used by the municipalities in the county in the conduct of municipal elections. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

Persons held to be qualified electors. — Property owner whose mortgagee paid assessed tax as agent for him, and property owner exempt from payment of tax under soldier exemption provided in N.M. Const., art. VIII, § 5, were persons who had paid a property tax during the preceding year within constitutional and statutory requirements, and therefore were qualified electors in voting on general obligation bond for municipal improvements. Hair v. Motto, 82 N.M. 226, 478 P.2d 554 (1971).

Notice of election substantially complied with statute. — A notice of election published once a week for four consecutive weeks, the last insertion being 13 days prior to the election, substantially complied with statute. City of Albuquerque v. Water Supply Co., 24 N.M. 368, 174 P. 217 (1918).

Ballots should present the question to the electors of for or against bonds, and not for or against the object of the issuance of the bonds. Mann v. City of Artesia, 42 N.M. 224, 76 P.2d 941 (1938).

Question not double proposition. — The submission to the voters of a proposition to issue bonds in a stated amount for the purchase or erection of a system of waterworks is not a double proposition. City of Albuquerque v. Water Supply Co., 24 N.M. 368, 174 P. 217, 5 A.L.R. 519 (1918), distinguishing Lanigan v. Town of Gallup, 17 N.M. 627, 131 P. 997 (1913).

Law reviews. — For comment, "The Last Bastion Crumbles: All Property Restrictions on Franchise Are Unconstitutional," see 1 N.M.L. Rev. 403 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 131 to 140, 164.

Payment or retirement, effect of inclusion in call for election, or in proposal for bond issue submitted to people, of unauthorized method of, 93 A.L.R. 362.

Mistake, ambiguity, or omission in statement as to indebtedness in call for election or proposal for bond issue, as affecting validity of election or bonds issued pursuant thereto, 116 A.L.R. 1258.

Delay after authorization by voters as affecting power of governmental unit to issue bonds, 135 A.L.R. 768.

Several structures or units, inclusion of as affecting validity of submission of proposition to voters at bond election, 4 A.L.R.2d 617.

Validity of municipal bond issue as against owners of property, annexation of which to municipality became effective after date of election at which issue was approved by voters, 10 A.L.R.2d 559.

Construction and effect of absentee voters' laws, 97 A.L.R.2d 257.

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331.

64 C.J.S. Municipal Corporations § 1927.

3-30-7. Canvass of bond election; certification of results; effect.

A. The vote upon each question proposing to issue negotiable bonds shall be canvassed as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978], and the municipal clerk shall certify the results of the election and file the certificate of canvass in the official minute book of the municipality.

B. If a majority of those voting on the question favor the creation of the debt, the governing body of the municipality may proceed to issue the negotiable bonds.

History: 1953 Comp., § 14-29-7, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 117.

ANNOTATIONS

Constitutionality. — This section does not fall within constitutional prohibition against special or local laws regulating precinct affairs. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 170 to 175.

64 C.J.S. Municipal Corporations § 1928.

3-30-8. General obligation bonds; issuance; sale; payable.

A. The bonds shall be issued and sold in the manner authorized under Sections 6-15-3 through 6-15-10 NMSA 1978.

B. The bonds shall be of such denomination or denominations and shall be payable at such place or places within or without the state or both, shall be in such form, and otherwise shall bear such terms and conditions, as the governing body may determine, except as otherwise provided by law.

C. Said bonds shall be signed by the mayor and by the clerk, and the coupons appertaining thereto shall be signed by the treasurer.

D. The facsimile signature of the treasurer may be engraved, imprinted, stamped or otherwise reproduced on the coupons.

E. The bonds may be executed in the manner provided by the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978].

History: 1953 Comp., § 14-29-8, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For destruction of documentary evidence of extinguished public debt, *see* 6-10-62 NMSA 1978.

Constitutionality. — This section does not fall within constitutional prohibition against special or local laws regulating precinct affairs. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

Bonds invalid where statutory election procedure not followed. — Because the board of trustees, in holding an election to determine the issuance of bonds, did not

follow the procedure prescribed by statute, the bonds authorized at such election were invalid. Lanigan v. Town of Gallup, 17 N.M. 627, 131 P. 997 (1913).

Sale of general obligation bonds below par and accrued interest was illegal. Stone v. City of Hobbs, 54 N.M. 237, 220 P.2d 704 (1950).

Bonds not invalidated by sale by successor officers. — Bonds signed by the proper officers in office at the date of execution of the same were not invalidated by fact that the sale of the bonds was not concluded by such officers, but by their successors. City of Albuquerque v. Water Supply Co., 24 N.M. 368, 174 P. 217 (1918).

Refunding. — A municipality in refunding part of a single issue of water bonds, redeemable before maturity, may exercise its discretion in selecting bonds to be refunded. Town of Alamogordo v. Beall, 41 N.M. 93, 64 P.2d 384 (1937).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 182 to 217.

Bid for municipal bond issue, rights and obligations arising out of, 139 A.L.R. 1047.

Sale of municipal or other public bonds at less than par or face value, 162 A.L.R. 396.

64 C.J.S. Municipal Corporations §§ 1930, 1935, 1941.

3-30-9. Pledge of full faith and credit.

The full faith and credit of the municipality shall be pledged to the payment of the negotiable bonds. The governing body shall levy and collect, upon all the taxable property within the municipality subject to taxation, such taxes as are necessary to pay the interest on and the principal of the negotiable bonds as the interest and principal become due, without limitation as to rate or amount. The municipality may pay the principal of and interest on any general obligation bonds from any available revenues, and the levy or levies of taxes may be diminished to the extent such other revenues are available for the payment of such principal and interest.

History: 1953 Comp., § 14-29-9, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Constitutionality. — This section does not fall within constitutional prohibition against special or local laws regulating precinct affairs. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

Mandamus to compel tax levy. — In an action of mandamus to compel levy and collection of tax to pay bonds, where the only denial of validity of the bonds was based upon a misunderstanding of the requirements in regard to their issue, mandamus would

lie to compel a tax levy without first reducing the bonds to judgment. Territory ex rel. Parker v. Mayor of Socorro, 12 N.M. 177, 76 P. 283 (1904).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 399 to 412.

Injunction against enforcement of illegal municipal tax, upon joinder of several affected thereby, 156 A.L.R. 319.

Right of holder of bond to full or pro rata payment when fund out of which obligation is payable is insufficient to pay all obligations of equal value, 171 A.L.R. 1033.

64 C.J.S. Municipal Corporations § 1997.

ARTICLE 31
Revenue Bonds

3-31-1. Revenue bonds; authority to issue; pledge of revenues; limitation on time of issuance.

In addition to any other law and constitutional home rule powers authorizing a municipality to issue revenue bonds, a municipality may issue revenue bonds pursuant to Chapter 3, Article 31 NMSA 1978 for the purposes specified in this section. The term "pledged revenues", as used in Chapter 3, Article 31 NMSA 1978, means the revenues, net income or net revenues authorized to be pledged to the payment of particular revenue bonds as specifically provided in Subsections A through J of this section.

A. Utility revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing or otherwise improving a municipal utility or for any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the net revenues from the operation of the municipal utility or of any one or more of other such municipal utilities for payment of the interest on and principal of the revenue bonds. These bonds are sometimes referred to in Chapter 3, Article 31 NMSA 1978 as "utility revenue bonds" or "utility bonds".

B. Joint utility revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing or otherwise improving joint water facilities, sewer facilities, gas facilities or electric facilities or for any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the net revenues from the operation of these municipal utilities for the payment of the interest on and principal of the bonds. These bonds are sometimes referred to in Chapter 3, Article 31 NMSA 1978 as "joint utility revenue bonds" or "joint utility bonds".

C. For the purposes of this subsection, "gross receipts tax revenue bonds" means gross receipts tax revenue bonds or sales tax revenue bonds. Gross receipts tax revenue bonds may be issued for any one or more of the following purposes:

(1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to one or more public buildings or purchasing or improving any ground relating thereto, including but not necessarily limited to acquiring and improving parking lots, or any combination of the foregoing;

(2) acquiring or improving municipal or public parking lots, structures or facilities or any combination of the foregoing;

(3) purchasing, acquiring or rehabilitating firefighting equipment or any combination of the foregoing;

(4) acquiring, extending, enlarging, bettering, repairing, otherwise improving or maintaining storm sewers and other drainage improvements, sanitary sewers, sewage treatment plants or water utilities, including but not necessarily limited to the acquisition of rights of way and water and water rights, or any combination of the foregoing;

(5) reconstructing, resurfacing, maintaining, repairing or otherwise improving existing alleys, streets, roads or bridges or any combination of the foregoing or laying off, opening, constructing or otherwise acquiring new alleys, streets, roads or bridges or any combination of the foregoing; provided that any of the foregoing improvements may include but are not limited to the acquisition of rights of way;

(6) purchasing, acquiring, constructing, making additions to, enlarging, bettering, extending or equipping airport facilities or any combination of the foregoing, including without limitation the acquisition of land, easements or rights of way therefor;

(7) purchasing or otherwise acquiring or clearing land or for purchasing, otherwise acquiring and beautifying land for open space;

(8) acquiring, constructing, purchasing, equipping, furnishing, making additions to, renovating, rehabilitating, beautifying or otherwise improving public parks, public recreational buildings or other public recreational facilities or any combination of the foregoing;

(9) acquiring, constructing, extending, enlarging, bettering, repairing, otherwise improving or maintaining solid waste disposal equipment, equipment for operation and maintenance of sanitary landfills, sanitary landfills, solid waste facilities or any combination of the foregoing; and

(10) acquiring, constructing, extending, bettering, repairing or otherwise improving a public transit system or regional transit systems or facilities.

The municipality may pledge irrevocably any or all of the gross receipts tax revenue received by the municipality pursuant to Section 7-1-6.4 or 7-1-6.12 NMSA 1978 to the payment of the interest on and principal of the gross receipts tax revenue bonds for any of the purposes authorized in this section or for specific purposes or for any area of municipal government services, including but not limited to those specified in Subsection C of Section 7-19D-9 NMSA 1978, or for public purposes authorized by municipalities having constitutional home rule charters. A law that imposes or authorizes the imposition of a municipal gross receipts tax or that affects the municipal gross receipts tax, or a law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding revenue bonds that may be secured by a pledge of such municipal gross receipts tax unless the outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

Revenues in excess of the annual principal and interest due on gross receipts tax revenue bonds secured by a pledge of gross receipts tax revenue may be accumulated in a debt service reserve account. The governing body of the municipality may appoint a commercial bank trust department to act as trustee of the gross receipts tax revenue and to administer the payment of principal of and interest on the bonds.

D. As used in this section, the term "public building" includes but is not limited to fire stations, police buildings, municipal jails, regional jails or juvenile detention facilities, libraries, museums, auditoriums, convention halls, hospitals, buildings for administrative offices, city halls and garages for housing, repairing and maintaining city vehicles and equipment. As used in Chapter 3, Article 31 NMSA 1978, the term "gross receipts tax revenue bonds" means the bonds authorized in Subsection C of this section, and the term "gross receipts tax revenue" means the amount of money distributed to the municipality as authorized by Section 7-1-6.4 NMSA 1978 or the amount of money transferred to the municipality as authorized by Section 7-1-6.12 NMSA 1978 for any municipal gross receipts tax imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act [Chapter 7, Article 19D NMSA 1978]. As used in Chapter 3, Article 31 NMSA 1978, the term "bond" means any obligation of a municipality issued under Chapter 3, Article 31 NMSA 1978, whether designated as a bond, note, loan, warrant, debenture, lease-purchase agreement or other instrument evidencing an obligation of a municipality to make payments.

E. Gasoline tax revenue bonds may be issued for laying off, opening, constructing, reconstructing, resurfacing, maintaining, acquiring rights of way, repairing and otherwise improving municipal buildings, alleys, streets, public roads and bridges or any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the gasoline tax revenue received by the municipality to the payment of the interest on and principal of the gasoline tax revenue bonds. As used in Chapter 3, Article 31 NMSA 1978, "gasoline tax revenue bonds" means the bonds authorized in this subsection, and "gasoline tax revenue" means all or portions of the amounts of tax revenues distributed to municipalities pursuant to Sections 7-1-6.9 and 7-1-6.27 NMSA 1978, as from time to time amended and supplemented.

F. Project revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping and rehabilitating any revenue-producing project, including, where applicable, purchasing, otherwise acquiring or improving the ground therefor, including but not necessarily limited to acquiring and improving parking lots, or for any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the net revenues from the operation of the revenue-producing project for which the particular project revenue bonds are issued to the payment of the interest on and principal of the project revenue bonds. The net revenues of any revenue-producing project may not be pledged to the project revenue bonds issued for a revenue-producing project that clearly is unrelated in nature; but nothing in this subsection shall prevent the pledge to such project revenue bonds of any revenues received from existing, future or disconnected facilities and equipment that are related to and that may constitute a part of the particular revenue-producing project. A general determination by the governing body that any facilities or equipment is reasonably related to and constitutes a part of a specified revenue-producing project shall be conclusive if set forth in the proceedings authorizing the project revenue bonds. As used in Chapter 3, Article 31 NMSA 1978:

(1) "project revenue bonds" means the bonds authorized in this subsection; and

(2) "project revenues" means the net revenues of revenue-producing projects that may be pledged to project revenue bonds pursuant to this subsection.

G. Fire district revenue 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 municipality may pledge irrevocably any or all of the revenues received by the fire district from the fire protection fund as provided in the Fire Protection Fund Law [Chapter 59A, Article 53 NMSA 1978] and any or all of the revenues provided for the operation of the fire district project for which the particular bonds are issued to the payment of the interest on and principal of the bonds. The revenues of any fire district project shall not be pledged to the bonds issued for a fire district project that clearly is unrelated in its purpose; but nothing in this section prevents the pledge to such bonds of any revenues received from existing, future or disconnected facilities and equipment that are related to and that may constitute a part of the particular fire district project. A general determination by the governing body of the municipality that any facilities or equipment is reasonably related to and constitutes a part of a specified fire district project shall be conclusive if set forth in the proceedings authorizing the fire district bonds.

H. Law enforcement protection revenue bonds may be issued for the repair and purchase of law enforcement apparatus and equipment that meet nationally recognized standards. The municipality may pledge irrevocably any or all of the revenues received by the municipality from the law enforcement protection fund distributions pursuant to

the Law Enforcement Protection Fund Act [Chapter 29, Article 13 NMSA 1978] to the payment of the interest on and principal of the law enforcement protection revenue bonds.

I. Economic development gross receipts tax revenue bonds may be issued for the purpose of furthering economic development projects as defined in the Local Economic Development Act [5-10-1 to 5-10-13 NMSA 1978]. The municipality may pledge irrevocably any or all of the revenue received from the municipal infrastructure gross receipts tax to the payment of the interest on and principal of the economic development gross receipts tax revenue bonds for any of the purposes authorized in this subsection. A law that imposes or authorizes the imposition of a municipal infrastructure gross receipts tax or that affects the municipal infrastructure gross receipts tax, or a law supplemental to or otherwise pertaining to the tax, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding revenue bonds that may be secured by a pledge of the municipal infrastructure gross receipts tax unless the outstanding revenue bonds have been discharged in full or provision has been fully made for their discharge. As used in Chapter 3, Article 31 NMSA 1978, "economic development gross receipts tax revenue bonds" means the bonds authorized in this subsection, and "municipal infrastructure gross receipts tax revenue" means any or all of the revenue from the municipal infrastructure gross receipts tax transferred to the municipality pursuant to Section 7-1-6.12 NMSA 1978.

J. Municipal higher education facilities gross receipts tax revenue bonds may be issued for the purpose of acquisition, construction, renovation or improvement of facilities of a four-year post-secondary public educational institution located in the municipality and acquisition of or improvements to land for those facilities. The municipality may pledge irrevocably any or all of the revenue received from the municipal higher education facilities gross receipts tax to the payment of the interest on and principal of the municipal higher education facilities gross receipts tax revenue bonds. A law that imposes or authorizes the imposition of a municipal higher education facilities gross receipts tax or that affects the municipal higher education facilities gross receipts tax, or a law supplemental to or otherwise pertaining to the tax, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding revenue bonds that may be secured by a pledge of the municipal higher education facilities gross receipts tax unless the outstanding revenue bonds have been discharged in full or provision has been fully made for their discharge. As used in Chapter 3, Article 31 NMSA 1978, "municipal higher education facilities gross receipts tax revenue bonds" means the bonds authorized in this subsection and "municipal higher education facilities gross receipts tax revenue" means any or all of the revenue from the municipal higher education facilities gross receipts tax transferred to the municipality pursuant to Section 7-1-6.12 NMSA 1978.

K. Except for the purpose of refunding previous revenue bond issues, no municipality may sell revenue bonds payable from pledged revenues after the expiration of two years from the date of the ordinance authorizing the issuance of the bonds or, for

bonds to be issued and sold to the New Mexico finance authority as authorized in Subsection C of Section 3-31-4 NMSA 1978, after the expiration of two years from the date of the resolution authorizing the issuance of the bonds. However, any period of time during which a particular revenue bond issue is in litigation shall not be counted in determining the expiration date of that issue.

History: 1953 Comp., § 14-30-1, enacted by Laws 1973, ch. 395, § 3; 1979, ch. 311, § 1; 1981, ch. 6, § 1; 1982, ch. 38, § 1; 1983, ch. 57, § 1; 1985, ch. 81, § 8; 1985, ch. 86, § 1; 1989, ch. 356, § 1; 1990, ch. 99, § 43; 1991, ch. 9, § 8; 1995, ch. 141, § 1; 1998, ch. 90, § 1; 1999, ch. 199, § 1; 2007, ch. 148, § 2.

ANNOTATIONS

Repeals and reenactments. — Laws 1973, ch. 395, § 3, repealed former 14-30-1, 1953 Comp., relating to issuance of revenue bonds, and enacted a new 14-30-1, 1953 Comp.

Cross references. — For revenue bond issues of water or natural gas associations, *see* 3-28-10 NMSA 1978 et seq.

For the Pollution Control Revenue Bond Act, *see* 3-59-1 NMSA 1978 et seq.

For destruction of documentary evidence of extinguished public debt, *see* 6-10-62 NMSA 1978.

For the Municipal Local Option Gross Receipts Taxes Act, *see* 7-19D-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, added Subsection J providing for municipal higher education facilities gross receipts tax revenue bonds.

The 1999 amendment, effective April 6, 1999, rewrote the second undesignated paragraph following Subsection C(10), relating to accumulation of revenues in excess of the annual principal and interest due on gross receipts tax revenue bonds secured by a pledge of gross receipts tax revenue into debt service reserve accounts, substituted "the Fire Protection Fund Law" for "Sections 59A-53-1 through 59A-53-17 NMSA 1978" in Subsection G, and substituted "the Law Enforcement Protection Fund Act" for "Sections 29-13-1 through 29-13-9 NMSA 1978" in Subsection H, and made minor stylistic changes.

The 1998 amendment, effective May 20, 1998, added Paragraph C(10); in the undesignated paragraph following Paragraph C(10), substituted "7-1-6.4 or 7-1-6.12 NMSA 1978" for "7-1-6.4, 7-1-6.12 or 7-19A-6 NMSA 1978 or pursuant to Municipal Infrastructure Gross Receipts Tax Act" and "Subsection C" for "Subsection B" in the first sentence; added the undesignated paragraph immediately preceding Subsection D; in Subsection D, in the first sentence, inserted "municipal" preceding "jails" and "regional jails or juvenile detention facilities" preceding ", libraries", at the end of the second

sentence, substituted "the Municipal Local Option Gross Receipts Taxes Act" for "Section 7-19-4 NMSA 1978"; in Subsection E, deleted "7-1-6.14" following "7-1-6.9"; added Subsection I and redesignated former Subsection I as Subsection J; and made minor stylistic changes throughout the section.

The 1995 amendment, effective April 5, 1995, substituted "Subsections A through I" for "Subsections A through F" in the introductory paragraph, deleted "making additions to" in Paragraph (6) of Subsection C, substituted "Section 7-19D-9" for Section 7-19-4" in the first sentence of the second paragraph in Subsection C, substituted "includes but is not" for "shall include but shall not be" and substituted "Subsection C of this section" for "this Subsection" in Subsection D, added the last sentence in Subsection D, added Subsections G and H, redesignated former Subsection G as Subsection I, inserted "or, for bonds to be issued and sold to the New Mexico finance authority as authorized in Subsection C of Section 3-31-4 NMSA 1978, after the expiration of two years from the date of the resolution authorizing the issuance of the bonds" in the first sentence of Subsection I, and made a minor stylistic change in the second paragraph of Subsection C.

The 1991 amendment, effective July 1, 1991, in the first sentence of the final paragraph of Subsection C, inserted "or pursuant to the Municipal Infrastructure Gross Receipts Tax Act" and made related stylistic changes, and made minor stylistic changes in Paragraph (5) of Subsection C and in Subsection F.

The 1990 amendment, effective March 5, 1990, in Paragraph (9) of Subsection C, inserted "constructing" and "solid waste facilities" in the first paragraph and made minor stylistic changes in the third paragraph thereof.

Obligations payable from special funds. — Revenues derived from the county's share of the gross receipts and gasoline taxes are within the special fund doctrine, since the legislature has expressly authorized the use of such funds for the issuance of revenue bonds. Bolton v. Bd. of County Comm'rs, 119 N.M. 355, 890 P.2d 808 (Ct. App. 1994), cert. denied, 119 N.M. 311, 889 P.2d 1233 (1995).

Waterworks revenue bonds did not create debt. — Waterworks revenue bonds, payable exclusively from net revenues thereof, did not create a "debt" within the constitutional provision requiring a vote and tax levy. Seward v. Bowers, 37 N.M. 385, 24 P.2d 253 (1933).

Municipal swimming pools are held to constitute "public utilities." The statute unquestionably gives municipalities the right to pledge the net income from public utilities by means of revenue bonds. A municipality may issue revenue bonds against the income from a municipal swimming pool, inasmuch as a swimming pool is a public utility. 1955-56 Op. Att'y Gen. No. 56-6458.

Law reviews. — For comment, "The Last Bastion Crumbles: All Property Restrictions on Franchise Are Unconstitutional," see 1 N.M.L. Rev. 403 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 85.

Negotiability of municipal bonds as affected by reference to fund from which they are to be paid, 42 A.L.R. 1027.

64 C.J.S. Municipal Corporations § 1957.

3-31-2. Use of proceeds of bond issue.

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

History: 1953 Comp., § 14-30-2, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For use of municipal utility revenue, *see* 3-23-4 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 C.J.S. Municipal Corporations § 1934.

3-31-3. Revenue bonds; terms.

Municipal revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the governing body;

B. may be subject to a prior redemption at the 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 determined by the governing body;

C. may mature at any time or times not exceeding fifty years after the date of issuance, except municipal revenue bonds issued for reconstructing, resurfacing or repairing existing streets, which 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 or may be in such other form as may be determined by the governing body;

E. shall be sold for cash at above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; and

F. may be sold at public or negotiated sale.

History: 1953 Comp., § 14-30-3, enacted by Laws 1965, ch. 300; 1969, ch. 217, § 2; 1972, ch. 81, § 4; 1979, ch. 311, § 2; 1983, ch. 108, § 1; 1985, ch. 86, § 2; 1989, ch. 355, § 1; 1995, ch. 141, § 2.

ANNOTATIONS

The 1995 amendment, effective April 5, 1995, deleted "in the ordinance" at the end of Subsection A, substituted "determined by the governing body" for "provided by ordinance" in Subsection B, and made minor stylistic changes in Subsection E.

3-31-3.1. Exemption from taxation.

The bonds authorized by Chapter 3, Article 31 NMSA 1978 and the income from the bonds or any mortgages or other instruments executed as security for the bonds shall be exempt from all taxation by the state or any political subdivision of the state.

History: Laws 2001, ch. 126, § 1.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 126 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

3-31-4. Ordinance authorizing revenue bonds; three-fourths majority required; resolution authorizing revenue bonds to be issued and sold to the New Mexico finance authority.

A. At a regular or special meeting called for the purpose of issuing revenue bonds as authorized in Section 3-31-1 NMSA 1978, the governing body may adopt an ordinance that:

(1) declares the necessity for issuing revenue bonds;

(2) authorizes the issuance of revenue bonds by an affirmative vote of three-fourths of all the members of the governing body; and

(3) designates the source of the pledged revenues.

B. If a majority of the governing body, but less than three-fourths of all the members, votes in favor of adopting the ordinance authorizing the issuance of revenue bonds, the ordinance is adopted but shall not become effective until the question of issuing the revenue bonds is submitted to a vote of the qualified electors for their

approval at a special or regular municipal election. If an election is necessary, the election shall be conducted in the manner provided in Sections 3-8-1 through 3-8-19 NMSA 1978. Notice of the election shall be given as provided in Section 3-8-2 NMSA 1978 [3-8-35 NMSA 1978].

C. In addition and as an alternative to adopting an ordinance as required by the provisions of Subsections A and B of this section, at a regular or special meeting called for the purpose of issuing revenue bonds as authorized in Section 3-31-1 NMSA 1978, the governing body may authorize the issuance and sale, from time to time, of revenue bonds in amounts not to exceed one million dollars ($1,000,000) at any one time to the New Mexico finance authority by adoption of a resolution that:

(1) declares the necessity for issuing and selling revenue bonds to the New Mexico finance authority;

(2) authorizes the issuance and sale of revenue bonds to the New Mexico finance authority by an affirmative vote of a majority of all the members of the governing body; and

(3) designates the source of the pledged revenues.

At the option of the governing body, revenue bonds in an amount in excess of one million dollars ($1,000,000) may be authorized by an ordinance adopted in accordance with Subsections A and B of this section and issued and sold to the New Mexico finance authority.

D. No ordinance or resolution may be adopted under the provisions of this section that uses as pledged revenues the municipal gross receipts tax authorized by Section 7-19D-9 NMSA 1978 for a purpose that would be inconsistent with the purpose for which that municipal gross receipts tax revenue was dedicated. Any revenue in excess of the amount necessary to meet all principal and interest payments and other requirements incident to repayment of the bonds must be used for the purposes to which the revenue was dedicated.

History: 1953 Comp., § 14-30-4, enacted by Laws 1965, ch. 300; 1979, ch. 311, § 3; 1995, ch. 141, § 3.

ANNOTATIONS

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

Compiler's notes. — The references in Subsection B to Sections 3-8-1 to 3-8-19 NMSA 1978 and to 3-8-2 NMSA 1978 are apparently erroneous. Former sections 3-8-1 to 3-8-19 NMSA 1978 were either repealed or recompiled as other sections in Chapter 3, Article 8 NMSA 1978 by Laws 1985, ch. 208. *See* the compiler's notes following each

section for its particular disposition. Section 3-8-2 NMSA 1978 was recompiled as 3-8-35 NMSA 1978.

The 1995 amendment, effective April 5, 1995, added "resolution authorizing revenue bonds to be issued and sold to the New Mexico finance authority" in the section heading; substituted "votes" for "vote" in the first sentence in Subsection B; added Subsection C; redesignated former Subsection C as Subsection D; in Subsection D, in the first sentence, inserted "or resolution", substituted "Section 7-19D-9" for "Section 7-19-4", and made a minor stylistic change.

Elections not authorized. — The legislature saw no necessity and provided no machinery for an election on the issuance of revenue bonds when the necessary three-fourths vote of the governing body had been obtained. Nor did the legislature provide any authorization for an election prior to action by the governing body. 1966 Op. Att'y Gen. No. 66-26.

Law reviews. — For comment, "The Last Bastion Crumbles: All Property Restrictions on Franchise Are Unconstitutional," see 1 N.M.L. Rev. 403 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Delay after election, effect of delay after authorization by voters on power of governmental unit to issue bonds, 135 A.L.R. 768.

Voter approval, constitutional or statutory requirement of prior approval by electors of issuance of bonds or incurring of indebtedness, by municipality, county, or state, as applicable to bonds or other instruments not creating indebtedness, 146 A.L.R. 604.

3-31-5. Revenue bonds not general municipal obligations; authentication.

A. Revenue bonds or refunding revenue bonds issued as authorized in Chapter 3, Article 31 NMSA 1978 are:

(1) not general obligations of the 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 municipal fund for the payment of the interest and principal of the bond.

B. The bonds shall be executed by the mayor and treasurer or the clerk and may be authenticated by any public or private transfer agent or registrar, or its successor, named or otherwise designated by the governing body. The bonds may be executed as provided under the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978], and the coupons, if any, shall bear the facsimile signature of the treasurer of the municipality.

History: 1953 Comp., § 14-30-5, enacted by Laws 1965, ch. 300; 1967, ch. 244, § 2; 1985, ch. 86, § 3.

3-31-6. Revenue bonds; mandatory rates for utility, joint utility or revenue-producing project; mandamus; impairment of payment.

A. The governing body of any municipality issuing utility revenue bonds, joint utility revenue bonds or project revenue bonds as authorized in Sections 3-31-1 through 3-31-7 NMSA 1978 shall establish rates for services rendered by the municipal utility, joint utility or the applicable revenue-producing project to provide revenue sufficient to meet the following requirements or, where applicable to a revenue-producing project, to enter into such leases or other agreements sufficient to provide revenues which are sufficient to meet the following requirements:

(1) pay all reasonable expenses of operation;

(2) pay all interest on the revenue bonds as it comes due; and

(3) provide a sinking fund adequate to discharge the revenue bonds as they mature. Such rates shall remain in effect until the bond issue is liquidated.

B. In the event the governing body fails or refuses to establish rates for the utility, joint utility or the applicable revenue-producing project, or to enter into a lease or other agreement where applicable to a revenue-producing project, as required in this section, any bondholder may apply to the district court for a mandatory order requiring the governing body to establish rates or to enter into such applicable leases or agreements which will provide revenues adequate to meet the requirements of this section. The provisions of Section 3-23-6 NMSA 1978 shall apply to any rates or charges which may be imposed for services rendered by any applicable revenue-producing project.

C. Any law which authorizes the pledge of any or all of the pledged revenues to the payment of any revenue bonds issued pursuant to Sections 3-31-1 through 3-31-12 NMSA 1978 or which affects the pledged revenues, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

History: 1953 Comp., § 14-30-6, enacted by Laws 1965, ch. 300; 1967, ch. 244, § 3; 1972, ch. 81, § 5.

3-31-7. Revenue bonds; mortgaging water utility property.

If revenue bonds are issued for the acquisition or improvement, betterment or extension of a municipal water utility, the municipality may further assure payment of the

revenue bonds by mortgaging and conveying the water utility to a trustee for the benefit and security of the bondholders.

History: 1953 Comp., § 14-30-7, enacted by Laws 1965, ch. 300.

3-31-8. Revenue bonds; refunding authorization; authority to mortgage municipal utility.

A. Any municipality having issued revenue bonds as authorized in Sections 3-31-1 through 3-31-7 NMSA 1978 or pursuant to any other laws enabling the governing body of any municipality having issued such revenue bonds payable only out of the pledged revenue may issue refunding revenue bonds for the purpose of refinancing, paying and discharging all or any part of such outstanding bonds of any one or more or 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, otherwise concerning the outstanding bonds or to any facilities relating thereto; or

(4) for any combination of such purposes.

B. The municipality may pledge irrevocably for the payment of interest and principal on refunding bonds the appropriate pledged revenues, which may be pledged to an original issue of bonds as provided in Section 3-31-1 NMSA 1978. Nothing in this section shall permit the pledge of the gross receipts tax revenue to the payment of bonds that refund utility bonds, joint utility bonds or gasoline tax revenue bonds or the pledge of gasoline tax revenue to the payment of bonds that refund utility bonds, joint utility bonds or gross receipts tax revenue bonds or the pledge of any revenues of any utility or joint utility to the payment of bonds that refund gross receipts tax revenue bonds or gasoline tax revenue bonds.

C. Bonds for refunding and bonds for any purpose permitted by Section 3-31-1 NMSA 1978 may be issued separately or issued in combination in one series or more.

D. In addition to pledging of utility revenues to the payment of the refunding revenue bonds that refund utility bonds or joint utility bonds as provided in Section 3-23-4 NMSA 1978, the municipality may grant by ordinance, or by resolution if the refunding revenue bonds are issued and sold to the New Mexico finance authority pursuant to Subsection C of Section 3-31-4 NMSA 1978, a mortgage of the municipal utility that has been solely

financed by revenue bonds to the bondholder or a trustee for the benefit and security of the holders of the refunding revenue bonds.

History: 1953 Comp., § 14-30-8, enacted by Laws 1965, ch. 300; 1967, ch. 244, § 4; 1969, ch. 179, § 1; 1985, ch. 86, § 4; 1987, ch. 170, § 2; 1995, ch. 141, § 4.

ANNOTATIONS

Cross references. — For refunding bonds authorized without election, *see* N.M. Const., art. IX, § 15.

For no power or jurisdiction of public service commission to regulate or supervise rates or service of municipal utility, *see* 62-6-4 NMSA 1978.

For local option election to make municipality subject to the Public Utility Act, *see* 62-6-5 NMSA 1978.

The 1995 amendment, effective April 5, 1995, inserted "or by resolution if the refunding revenue bonds are issued and sold to the New Mexico finance authority pursuant to Subsection C of Section 3-31-4 NMSA 1978," in the first sentence in Subsection D, and made minor stylistic changes in Subsections B and D.

Applicability to use of proceeds. — This section was intended to govern the procedure for refunding prior bond issues; it imposes no restriction upon the use of proceeds from an original bond issue. Bolton v. Bd. of County Comm'rs, 119 N.M. 355, 890 P.2d 808 (Ct. App. 1994), cert. denied, 119 N.M. 311, 889 P.2d 1233 (1995).

This section does not preclude a county from utilizing a portion of revenue bond proceeds to refinance road building equipment, which the county had previously contracted to acquire under lease-purchase agreements. Bolton v. Bd. of County Comm'rs, 119 N.M. 355, 890 P.2d 808 (Ct. App. 1994), cert. denied, 119 N.M. 311, 889 P.2d 1233 (1995).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval by voters, 97 A.L.R. 442.

Power of municipality to issue refunding bonds to retire obligation in respect of which the creation and maintenance of a sinking fund by taxation is required by constitutional or statutory provision, 157 A.L.R. 794.

Governmental unit's power to issue bonds as implying power to refund them, 1 A.L.R.2d 134.

3-31-9. Refunding bonds; escrow; detail.

A. Refunding bonds issued pursuant to Sections 3-31-1 through 3-31-12 NMSA 1978 shall be authorized by ordinance or by resolution if the refunding bonds are to be issued and sold to the New Mexico finance authority pursuant to Subsection C of Section 3-31-4 NMSA 1978. Any bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provision shall be made for paying the bonds refunded at the time or times provided in Subsection A of this section. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds and may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

C. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company, which possesses and is exercising trust powers and which is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that such refunding bond proceeds, including any accrued interest and any premium appertaining to a sale of refunding bonds, may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest thereon and the principal thereof or both interest and principal as the municipality may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available for its purpose. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of or the principal and interest of which obligations are unconditionally guaranteed by the United States of America or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of or the payment of which is unconditionally guaranteed by the United States of America, the par value of which obligations is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date 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 any of its officers, agents or employees.

D. Refunding bonds may bear such additional terms and provisions as may be determined by the municipality subject to the limitations in this section and Section 3-31-10 NMSA 1978 and, to the extent applicable, Sections 3-31-1 through 3-31-12 NMSA 1978 relating to original bond issues, and the refunding bonds are not subject to the provisions of any other statute except as may be incorporated by reference in Sections 3-31-1 through 3-31-12 NMSA 1978.

E. The municipality shall receive from the department of finance and administration written approval of any gross receipts tax refunding revenue bonds, gasoline tax refunding revenue bonds or project refunding revenue bonds issued pursuant to the provisions of Sections 3-31-8 through 3-31-12 NMSA 1978.

History: 1953 Comp., § 14-30-8.1, enacted by Laws 1973, ch. 399, § 1; 1974, ch. 2, § 1; 1983, ch. 108, § 2; 1985, ch. 86, § 5; 1995, ch. 141, § 5.

ANNOTATIONS

The 1995 amendment, effective April 5, 1995, inserted the language beginning "or by resolution" at the end of the first sentence in Subsection A, and made minor stylistic changes in Subsections A and C.

3-31-10. Refunding revenue bonds; terms.

Municipal refunding revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the governing body;

B. may be subject to prior redemption at the municipality's option at such time or times and upon such terms and conditions with or without the payment of premium or premiums as may be determined by the governing body;

C. may be serial in form and maturity or may consist of a single bond payable in one or more installments or may be in such other form as may be determined by the governing body; and

D. shall be exchanged for the bonds and any matured unpaid interest being refunded at not less than par or sold at public or negotiated sale at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978].

History: 1953 Comp., § 14-30-9, enacted by Laws 1965, ch. 300; 1969, ch. 179, § 2; 1972, ch. 81, § 6; 1974, ch. 2, § 2; 1983, ch. 108, § 3; 1984, ch. 42, § 1; 1985, ch. 86, § 6; 1989, ch. 355, § 2; 1995, ch. 141, § 6.

ANNOTATIONS

The 1995 amendment, effective April 5, 1995, deleted "in the ordinance" at the end of Subsection A, substituted "determined by the governing body" for "provided by ordinance" in Subsection B, and made minor stylistic changes in Subsection D.

3-31-11. Refunding revenue bonds; ordinance; resolution.

A. At any regular or special meeting called for the purpose of issuing refunding revenue bonds, the governing body by a majority vote of all the members of the governing body may adopt an ordinance authorizing the issuance of the refunding revenue bonds.

B. At any regular or special meeting called for the purpose of issuing and selling refunding revenue bonds to the New Mexico finance authority, the governing body by an affirmative vote of a majority of all members of the governing body may adopt a resolution authorizing issuance and sale of the refunding revenue bonds to the New Mexico finance authority pursuant to Subsection C of Section 3-31-4 NMSA 1978.

History: 1953 Comp., § 14-30-10, enacted by Laws 1965, ch. 300; 1995, ch. 141, § 7.

ANNOTATIONS

The 1995 amendment, effective April 5, 1995, designated the existing language as Subsection A and added Subsection B.

3-31-12. Refunding revenue bonds; foreclosure of mortgage.

A. If any municipality which has granted a mortgage of the municipal utility to a trustee or the holder of the refunding bonds as further assurance of paying the refunding revenue bonds, defaults in payment of the interest or serial maturity of the refunding revenue bonds, the holder of the refunding revenue bonds or trustee to whom the municipal utility has been conveyed by mortgage may foreclose the mortgage against the municipality in the same manner a real estate mortgage is foreclosed. The district court may appoint a receiver to operate the municipal utility during the default period.

B. In the event the mortgage is foreclosed, the governing body shall grant a franchise to the receiver or to the subsequent purchaser upon sale by foreclosure. The franchise shall:

(1) be upon reasonable terms and conditions under which the public utility shall be privately operated;

(2) be for a period of twenty-five years or a less number of years if satisfactory to the trustee or holder of the revenue bonds; and

(3) be subject to the approval of the district court or any other state agency which has jurisdiction.

History: 1953 Comp., § 14-30-11, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For foreclosure of mortgages, *see* 39-5-1 NMSA 1978 et seq.

ARTICLE 32
Industrial Revenue Bonds

3-32-1. Industrial Revenue Bond Act; definitions.

Wherever used in the Industrial Revenue Bond Act [Chapter 3, Article 32 NMSA 1978] unless a different meaning clearly appears in the context, the following terms whether used in the singular or plural shall be given the following respective interpretations:

A. "municipality" means any city, town or village in the state of New Mexico;

B. "project" means any land and building or other improvements thereon, the acquisition by or for a New Mexico corporation of the assets or stock of an existing business or corporation located outside the state of New Mexico to be relocated within or near the municipality in the state of New Mexico and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use by the following or by any combination of two or more thereof:

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

(2) any commercial enterprise in storing, warehousing, distributing or selling products of agriculture, mining or industry but does not include facilities designed for the sale of goods or commodities at retail or distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;

(3) any business in which all or part of the activities of the business involve the supplying of services to the general public or to governmental agencies or to a

specific industry or customer but does not include establishments primarily engaged in the sale of goods or commodities at retail;

(4) any water distribution or irrigation system, including without limitation, pumps, distribution lines, transmission lines, towers, dams and similar facilities and equipment, designed to provide water to any vineyard or winery;

(5) any electric generation facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978] and Electric Utility Industry Restructuring Act of 1999 [repealed]; and

(6) any 501(c)(3) corporation;

C. "governing body" means the board or body in which the legislative powers of the municipality are vested;

D. "property" means any land, improvements thereon, buildings and any improvements thereto, machinery and equipment of any and all kinds necessary to the project, operating capital and any other personal properties deemed necessary in connection with the project;

E. "mortgage" means a mortgage or a mortgage and deed of trust or the pledge and hypothecation of any assets as collateral security;

F. "health care services" means the diagnosis or treatment of sick or injured persons or medical research and includes the ownership, operation, maintenance, leasing and disposition of health care facilities such as hospitals, clinics, laboratories, x-ray centers and pharmacies and, for any small municipality only, office facilities for physicians;

G. "refinance a hospital or 501(c)(3) corporation project" means the issuance of bonds by a municipality and the use of all or substantially all of the proceeds to liquidate any obligations previously incurred to finance or aid in financing a project of any nonprofit corporation engaged in health care services, including nursing homes, or of any 501(c)(3) corporation, which would constitute a project under the Industrial Revenue Bond Act had it been originally undertaken and financed by a municipality pursuant to the Industrial Revenue Bond Act; and

H. "501(c)(3) corporation" means a corporation that demonstrates to the taxation and revenue department that it has been granted exemption from the federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered.

History: 1953 Comp., § 14-31-1, enacted by Laws 1965, ch. 300; 1969, ch. 201, § 1; 1974, ch. 50, § 1; 1977, ch. 267, § 1; 1977, ch. 335, § 1; 1981, ch. 45, § 1; 1983, ch. 282, § 1; 2002, ch. 25, § 1; 2002, ch. 37, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. The Electric Utility Industry Restructuring Act of 1999 was repealed by Laws 2003, ch. 336, § 9, effective June 20, 2003.

Cross references. — For public aid to private enterprises prohibited, *see* N.M. Const., art. IX, § 14.

For the County Industrial Revenue Bond Act, *see* 4-59-1 NMSA 1978 et seq.

For Section 501(c)(3) of the Internal Revenue Code of 1986, *see* 26 U.S.C. § 501(c)(3).

2002 Multiple Amendments. — Laws 2002, ch. 25, § 1 and Laws 2002, ch. 37, § 1 both enacted amendments to this section. Pursuant to 12-1-8 NMSA 1978, Laws 2002, ch. 37, § 1, as the last act signed by the governor, has been compiled into the NMSA as set out above, and Laws 2002, ch. 25, § 1, while not compiled pursuant to 12-1-8 NMSA 1978, is set out below.

Laws 2002, ch. 37, § 1 [set out above], effective May 15, 2002, added Paragraphs B(5) and (6), inserted "or 501(c)(3) corporation" and "or of any 501(c)(3) corporation" in Subsection G, and added Subsection H.

Laws 2002, ch. 25, § 1 [set out below], effective May 15, 2002, provided:

"3-32-1. Industrial Revenue Bond Act; definitions.

Wherever used in the Industrial Revenue Bond Act unless a different meaning clearly appears in the context, the following terms whether used in the singular or plural shall be given the following respective interpretations:

A. 'municipality' means any city, town or village in the state of New Mexico;

B. 'project' means any land and building or other improvements thereon, the acquisition by or for a New Mexico corporation of the assets or stock of an existing business or corporation located outside the state of New Mexico to be relocated within or near the municipality in the state of New Mexico and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use by the following or by any combination of two or more thereof:

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

(2) any commercial enterprise in storing, warehousing, distributing or selling products of agriculture, mining or industry but does not include facilities designed for the sale of goods or commodities at retail or distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;

(3) any business in which all or part of the activities of the business involve the supplying of services to the general public or to governmental agencies or to a specific industry or customer but does not include establishments primarily engaged in the sale of goods or commodities at retail;

(4) any water distribution or irrigation system, including without limitation, pumps, distribution lines, transmission lines, towers, dams and similar facilities and equipment, designed to provide water to any vineyard or winery; and

(5) any 501(c)(3) corporation;

C. 'governing body' means the board or body in which the legislative powers of the municipality are vested;

D. 'property' means any land, improvements thereon, buildings and any improvements thereto, machinery and equipment of any and all kinds necessary to the project, operating capital and any other personal properties deemed necessary in connection with the project;

E. 'mortgage' means a mortgage or a mortgage and deed of trust or the pledge and hypothecation of any assets as collateral security;

G. 'refinance a hospital or 501(c)(3) corporation project' means the issuance of bonds by a municipality and the use of all or substantially all of the proceeds to liquidate any obligations previously incurred to finance or aid in financing a project of any nonprofit corporation engaged in health care services, including nursing homes, or of any 501(c)(3) corporation, which would constitute a project under the Industrial Revenue Bond Act had it been originally undertaken and financed by a municipality pursuant to the Industrial Revenue Bond Act; and

H. '501(c)(3) corporation' means a corporation that demonstrates to the taxation and revenue department that it has been granted exemption from the federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered."

Pollution control facilities are "project". — Pollution control facilities which do not provide any substantial employment fall within the definition of the term "project" as contained in this section, because this section does not require that a "project" increase employment. Kennecott Copper Corp. v. Town of Hurley, 84 N.M. 743, 507 P.2d 1074 (1973).

Issuance of bonds for pollution control facilities was constitutional. — The issuance of revenue bonds pursuant to the Industrial Revenue Bond Act to finance the cost of pollution control facilities was a proper "public purpose" for which such revenue bonds could be constitutionally issued. Kennecott Copper Corp. v. Town of Hurley, 84 N.M. 743, 507 P.2d 1074 (1973).

Constitutionality of revenue bonds. — Revenue bonds which do not engage the general taxing power of the state, or a political subdivision thereof, are not within the prohibition of N.M. Const., art. IX, §§ 12 and 13, either as to the requirement for approval of a popular referendum, or as exceeding constitutional limitation on indebtedness. Vill. of Deming v. Hosdreg Co., 62 N.M. 18, 303 P.2d 920 (1956).

Indebtedness created by revenue bonds are not the kind of "debt" the framers of the constitution had in mind and were talking about in N.M. Const., art. IX, §§ 12 and 13. Vill. of Deming v. Hosdreg Co., 62 N.M. 18, 303 P.2d 920 (1956).

Constitutionality of bonds issued for purpose of promoting industry and trade. — Statute authorizing the issuance of bonds by municipalities to finance projects for the purpose of promoting industry and trade did not violate N.M. Const., art. IX, § 12 or 14. Vill. of Deming v. Hosdreg Co., 62 N.M. 18, 303 P.2d 920 (1956).

Bonds issued to promote industry and trade did not violate public policy. — Statute authorizing the issuance of bonds by municipalities to finance projects for the purpose of promoting industry and trade did not present a program in violation of public policy. Vill. of Deming v. Hosdreg Co., 62 N.M. 18, 303 P.2d 920 (1956).

Exclusion of businesses from act. — A business should be specifically excluded from the Industrial Revenue Bond Act before it may be deprived of the act's benefits. 1967 Op. Att'y Gen. No. 67-120.

In order for a business to qualify as a "project" it must be an existing business. 1959-60 Op. Att'y Gen. No. 60-114.

Unless an existing business is acquired, there is no valid "project" under this section. 1959-60 Op. Att'y Gen. No. 60-114, overruled to the extent it conflicts with 1959-60 Op. Att'y Gen. No. 60-172

"Primarily engaged in the sale of goods or commodities at retail," in Subsection B(3), means a facility which is "principally" or "chiefly" devoted to retail sales. 1981 Op. Att'y Gen. No. 81-32.

When office building qualifies as "project". — An office building available for general commercial leasing qualifies as a "project" if less than half the available space is leased to retail trade. 1981 Op. Att'y Gen. No. 81-32.

Issuance of bonds for financing machinery and equipment. — The word "project" as used in this section allows a municipality to issue revenue bonds for financing machinery and equipment to be used in an industry, the land and building of which are financed through other means. 1971 Op. Att'y Gen. No. 71-51.

Cemetery is not "project". — A cemetery cannot be purchased by a municipality under the Industrial Revenue Bond Act because a cemetery would not appear to fall within the definition of "project" as that term is used in this section. 1970 Op. Att'y Gen. No. 70-102.

Municipally owned portions of a project are tax exempt. If a municipality acquires land, and leases that land for the construction and operation of a project, the land owned by the municipality is not subject to an ad valorem tax. But the leasehold interest of the corporation operating the project, and all its raw materials, stock, equipment and buildings may be so taxed, and all of the privilege, excise and income taxes are still applicable. 1959-60 Op. Att'y Gen. No. 60-190.

Using bond proceeds. — Bond proceeds may be used to acquire land, buildings and improvements for sale or lease to a commercial airline already located in New Mexico. 1967 Op. Att'y Gen. No. 67-120.

Bond proceeds may be used to acquire a facility consisting of land, building and equipment, but not the assets and stock of a business. 1959-60 Op. Att'y Gen. No. 60-172.

Law reviews. — For article, "New Mexico Taxes: Taking Another Look", *see* 32 N.M.L. Rev. 351 (2002).

For article, "Ad Valorem Tax Status of a Private Lessee's Interest in Publicly Owned Property: Taxability of Possessory Interests in Industrial Projects under the New Mexico Industrial Revenue Bond Act," *see* 3 N.M.L. Rev. 136 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 85.

Eminent domain: industrial park or similar development as public use justifying condemnation of private property, 62 A.L.R.4th 1183.

64 C.J.S. Municipal Corporations § 1957.

3-32-2. Short title.

Chapter 3, Article 32 NMSA 1978 may be cited as the "Industrial Revenue Bond Act".

History: 1953 Comp., § 14-31-1.1, enacted by Laws 1967, ch. 84, § 1; 1997, ch. 216, § 1; 1997, ch. 226, § 1.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, made stylistic changes to the compilation reference at the beginning of the section. Laws 1997, ch. 216, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 1997, ch. 226, § 1. *See* 12-1-8 NMSA 1978.

3-32-3. Addition to definitions.

As used in the Industrial Revenue Bond Act, “project” also means:

A. any land and buildings or other improvements thereon and all real and personal property deemed necessary in connection therewith whether or not now in existence which shall be suitable for use by any private institution of higher education or any nonprofit corporation engaged in health care services, including nursing homes, and, for any small municipality only, office facilities for physicians, any mass transit or other transportation activity involving the movement of passengers, any industrial park, any office headquarters and any research and development facility; or

B. urban transit buses, whether or not already in existence, that are:

(1) manufactured or assembled in New Mexico;

(2) equipped to hold at least thirty passengers; and

(3) suitable for use by a commercial enterprise for leasing.

History: 1953 Comp., § 14-31-1.2, enacted by Laws 1967, ch. 84, § 2; 1974, ch. 50, § 2; 1975, ch. 222, § 1; 1981, ch. 45, § 2; 2005, ch. 9, § 1.

ANNOTATIONS

The 2005 amendment, effective March 11, 2005, added urban transit buses that are made in New Mexico, hold at least thirty passengers and are suitable for use by a commercial enterprise for leasing to the definition of a project.

3-32-4. Legislative intent.

It is the intent of the legislature by the passage of Sections 3-32-1 through 3-32-16 NMSA 1978 to authorize municipalities to acquire, own, lease or sell projects for the purpose of promoting industry and trade other than retail trade, by inducing manufacturing, industrial and commercial enterprises to locate or expand in this state, promoting the use of the agricultural products and natural resources of this state, and

promoting a sound and proper balance in this state between agriculture, commerce and industry. It is intended that each project be self-liquidating. It is not intended hereby to authorize any municipality itself to operate any manufacturing, industrial or commercial enterprise. Sections 3-32-1 through 3-32-16 NMSA 1978 shall be liberally construed in conformity with the said intent.

History: 1953 Comp., § 14-31-2, enacted by Laws 1965, ch. 300; 1977, ch. 267, § 2.

ANNOTATIONS

Acquiring assets, stock, etc., of state agency or commission. — The section does not authorize the issuance of industrial revenue bonds for the purpose of acquiring any assets, stock, etc., of a state agency or commission. 1968 Op. Att'y Gen. No. 68-11.

Relocation of the inter-tribal Indian ceremonial association property or creation of an Indian memorial park cannot be accomplished by the issuance of industrial revenue bonds. 1968 Op. Att'y Gen. No. 68-11.

Law reviews. — For article, "Ad Valorem Tax Status of a Private Lessee's Interest in Publicly Owned Property: Taxability of Possessory Interests in Industrial Projects under the New Mexico Industrial Revenue Bond Act," *see* 3 N.M.L. Rev. 136 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 C.J.S. Municipal Corporations § 1909.

3-32-5. Additional legislative intent.

It is further the legislative intent that the Industrial Revenue Bond Act authorize municipalities to refinance hospital or 501(c)(3) corporation projects and projects of any independent, nonprofit, nonsectarian four-year college or university accredited by the north central association of colleges and schools, to acquire, own, lease or sell projects for the purpose of promoting the local economy and improving local health and the general welfare by inducing private institutions of higher education, nonprofit corporations engaged in health care services, including nursing homes, 501(c)(3) corporations and, for any small municipality only, office facilities for physicians, to provide more adequate facilities of higher education and to provide more adequate health care services in this state and by inducing mass transit or other transportation activities, industrial parks, office headquarters and research and development activities to locate or expand in this state. It is not intended to authorize any municipality to own or lease projects for retail business or by itself to operate any private institution of higher education; nonprofit corporation engaged in health care services, including nursing homes; 501(c)(3) corporation; industrial parks; office headquarters; or research and development facilities.

History: 1953 Comp., § 14-31-2.1, enacted by Laws 1967, ch. 84, § 3; 1974, ch. 50, § 3; 1975, ch. 222, § 2; 1977, ch. 267, § 3; 1977, ch. 335, § 2; 1981, ch. 45, § 3; 1994, ch. 134, § 1; 2002, ch. 25, § 2; 2002, ch. 37, § 2.

ANNOTATIONS

Cross references. — For definition of 501(c)(3) corporation, *see* 3-32-1 NMSA 1978.

The 2002 amendment, effective May 15, 2002, inserted "or 501(c)(3) corporation" and "501(c)(3) corporations" in the first sentence and inserted "501(c)(3) corporation" in the last sentence. Laws 2002, ch. 25, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 2002, ch. 37, § 2. *See* 12-1-8 NMSA 1978.

The 1994 amendment, effective May 18, 1994, substituted "projects and projects of any independent, nonprofit, nonsectarian four-year college or university accredited by the north central association of colleges and schools" for "project" and made stylistic changes throughout the section.

Law reviews. — For article, "Ad Valorem Tax Status of a Private Lessee's Interest in Publicly Owned Property: Taxability of Possessory Interests in Industrial Projects under the New Mexico Industrial Revenue Bond Act," *see* 3 N.M.L. Rev. 136 (1973).

3-32-5.1. Small communities; definition; attracting physicians.

It is the legislative intent that small communities have the power to issue municipal revenue bonds for the purpose of constructing office facilities for physicians as a method of attracting physicians. Therefore, for the purposes of Sections 3-32-3, 3-32-5 and Subsection F of Section 3-32-1 NMSA 1978, "small municipality" means an incorporated municipality having a population of less than fifteen thousand as shown by the last preceding official United States census. For limited purposes stated in this section, physicians offices are allowed even though the physicians operate as a profit-making enterprise.

History: 1978 Comp., § 3-32-5.1, enacted by Laws 1981, ch. 45, § 4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 588.

64 C.J.S. Municipal Corporations § 1909.

3-32-6. Additional powers conferred on municipalities.

In addition to any other powers that it may now have, a municipality shall have the following powers:

A. to acquire, whether by construction, purchase, gift or lease, one or more projects that shall be located within this state and may be located within or without the municipality or partially within or partially without the municipality, but which shall not be located more than fifteen miles outside of the corporate limits of the municipality; provided that:

(1) urban transit buses qualifying as a project pursuant to Subsection B of Section 3-32-3 NMSA 1978 need not be continuously located within this state but the commercial enterprise using the urban transit buses for leasing shall meet the location requirement of this subsection; and

(2) a municipality shall not acquire any electricity generation facility project unless the acquisition is approved by the local school board of the school district in which a project is located and the governing body, the local school board and the person proposing the project negotiate and determine the amount of an annual in-lieu tax payment to be made to the school district by the person proposing the project, for the period that the municipality owns and leases the project, and provided such approval shall not be unreasonably withheld;

B. to sell or lease or otherwise dispose of any or all of its projects upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of the Industrial Revenue Bond Act;

C. to issue revenue bonds for the purpose of defraying the cost of acquiring by construction and purchase or either any project and to secure the payment of such bonds, all as provided in the Industrial Revenue Bond Act. No municipality shall have the power to operate any project as a business or in any manner except as lessor;

D. to refinance one or more hospital or 501(c)(3) corporation projects and to acquire any such hospital or 501 (c)(3) corporation project whether by construction, purchase, gift or lease, which hospital or 501(c)(3) corporation project shall be located within this state and may be located within or without the municipality or partially within or partially without the municipality, but which shall not be located more than fifteen miles outside of the corporate limits of the municipality, and to issue revenue bonds to refinance and acquire a hospital or 501(c)(3) corporation project and to secure the payment of such bonds, all as provided in the Industrial Revenue Bond Act. A municipality shall not have the power to operate a hospital or 501(c)(3) corporation project as a business or in any manner except as lessor; and

E. to refinance one or more projects of any private institution of higher education and to acquire any such project, whether by construction, purchase, gift or lease; provided that the project shall be located within this state and may be located within or without the municipality or partially within or partially without the municipality, but the

project shall not be located more than fifteen miles outside of the corporate limits of the municipality, and to issue revenue bonds to refinance and acquire any project of any private institution of higher education and to secure the payment of such bonds. A municipality shall not have the power to operate a project of a private institution of higher education as a business or in any manner except as lessor.

History: 1953 Comp., § 14-31-3, enacted by Laws 1965, ch. 300; 1977, ch. 335, § 3; 1994, ch. 134, § 2; 2002, ch. 25, § 3; 2002, ch. 37, § 3; 2005, ch. 9, § 2.

ANNOTATIONS

Cross references. — For definition of 501(c)(3) corporation, *see* 3-32-1 NMSA 1978.

The 2005 amendment, effective March 11, 2005, provided that a qualified urban transit buses project need not be continuously located in New Mexico, but the commercial enterprise using the buses for leasing must meet the location requirements of Subsection A.

The 2002 amendment, effective May 15, 2002, added the provisos in Subsection A and inserted "or 501(c)(3) corporation" in five places in Subsection D.

The 1994 amendment, effective May 18, 1994, substituted "the Industrial Revenue Bond Act" for "Sections 14-31-1 through 14-31-13 NMSA 1953" in Subsection B, inserted "in the Industrial Revenue Bond Act" and made related stylistic changes in Subsections C and D, and added Subsection E.

Location of "project". — A municipality has no power to acquire a "project" that is located, and is to remain located, either outside of the state or more than 15 miles outside the corporate limits of the municipality. Therefore, a municipality may not acquire a "project" that includes a business that is located outside the state, unless that out-of-state business is to be relocated within New Mexico, and within 15 miles of the corporate limits of the acquiring municipality. 1959-60 Op. Att'y Gen. No. 60-190.

Law reviews. — For article, "Ad Valorem Tax Status of a Private Lessee's Interest in Publicly Owned Property: Taxability of Possessory Interests in Industrial Projects under the New Mexico Industrial Revenue Bond Act," *see* 3 N.M.L. Rev. 136 (1973).

3-32-6.1. Notice to county.

A. Prior to adopting an ordinance issuing industrial revenue bonds, the municipality shall give notice to the board of county commissioners and the county assessor of its intent to consider the matter. The board and the county assessor shall be notified at least thirty days prior to the meeting at which final action is to be taken so that comments can be transmitted to the municipality.

B. The board of county commissioners and the county assessor shall be able to forward their comments and any concerns to the city council, but there is no approval required from the board or the county assessor and they do not have veto over the proposed industrial revenue bond issuance.

C. The municipality and county shall jointly develop criteria for issuance of industrial revenue bonds by either government; provided, however, that industrial revenue bonds may be authorized and issued before development of the criteria is completed.

D. The municipality shall notify the board of county commissioners and the county assessor when an industrial revenue bond has matured, expired or been replaced by a refunding bond.

History: Laws 1997, ch. 216, § 2 and Laws 1997, ch. 226, § 2; 2003, ch. 221, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, rewrote this section.

3-32-7. Bonds issued to finance projects.

A. Bonds issued by a municipality under authority of the Industrial Revenue Bond Act shall not be the general obligation of the municipality within the meaning of Article 9, Sections 12 and 13 of the constitution of New Mexico. The bonds shall be payable solely out of the revenue derived from the projects for which the bonds are issued. Bonds and interest coupons, if any, issued under authority of the Industrial Revenue Bond Act shall never constitute an indebtedness of the municipality within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers, and such fact shall be plainly stated on the face of each bond.

B. The bonds may be executed and delivered at any time, and from time to time, may be in such form and denominations, may be of such tenor, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding thirty years from their date, may be payable at such place or places, may bear interest at such rate or rates payable at such place or places and evidenced in such manner and may contain such provisions not inconsistent with the Industrial Revenue Bond Act, all as shall be provided in the ordinance and proceedings of the governing body under which the bonds are authorized to be issued.

C. Bonds issued under the authority of the Industrial Revenue Bond Act may be sold at public or private sale in such manner and from time to time as may be determined by the governing body to be most advantageous, and the municipality may pay all expenses, attorney, engineering and architects' fees, premiums and

commissions that the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance of the bonds.

D. Bonds issued under the authority of the Industrial Revenue Bond Act and all interest coupons applicable thereto, if any, shall be construed to be negotiable.

E. A bond shall not be issued by a municipality having a population of more than forty thousand according to the most recent decennial census to finance a project that is valued at eight million dollars ($8,000,000) or more unless an employer of the project:

(1) offers to its employees and their dependents health insurance coverage that is in compliance with the New Mexico Insurance Code [Chapter 59A, except for Articles 30A and 42A NMSA 1978] or a comparable health benefits plan pursuant to the federal Employee Retirement Income Security Act of 1974; and

(2) contributes not less than fifty percent of the premium for the health care coverage for those employees who choose to enroll; provided that the fifty percent employer contribution shall not be a requirement for the dependent coverage that is offered.

History: 1953 Comp., § 14-31-4, enacted by Laws 1965, ch. 300; 1983, ch. 265, § 7; 2003, ch. 360, § 1.

ANNOTATIONS

Cross references. — For destruction of documentary evidence of extinguished public debt, *see* 6-10-62 NMSA 1978.

For the federal Employee Retirement Income Security Act of 1974, *see* 29 U.S.C.S. § 1001 et seq.

The 2003 amendment, effective January 1, 2004, added Subsection E.

Payment of fees permitted. — There is no merit in the claim that provision for payment of attorneys', architects' and engineers' fees from proceeds of the revenue bonds invalidated a statute authorizing the issuance of bonds by municipalities to finance projects for the purpose of promoting industry and trade. Vill. of Deming v. Hosdreg Co., 62 N.M. 18, 303 P.2d 920 (1956).

Guaranteed bonds. — Industrial revenue bonds guaranteed by a corporation, where the guarantee is inserted into the body of the bonds, cannot exist under the Industrial Revenue Bond Act, and municipalities have no power to issue such bonds. 1959-60 Op. Att'y Gen. No. 60-219.

Law reviews. — For article, "Ad Valorem Tax Status of a Private Lessee's Interest in Publicly Owned Property: Taxability of Possessory Interests in Industrial Projects under the New Mexico Industrial Revenue Bond Act," *see* 3 N.M.L. Rev. 136 (1973).

3-32-8. Security for bonds.

The principal of and interest on any bonds issued under the authority of Sections 3-32-1 through 3-32-16 NMSA 1978, shall be secured by a pledge of the revenues out of which such bonds shall be made payable, may be secured by a mortgage covering all or any part of the project from which the revenues so pledged may be derived, and may be secured by a pledge of the lease of such project. The ordinance and proceedings under which such bonds are authorized to be issued or any such mortgage may contain any agreement and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of all revenues from any project covered by such proceedings or mortgage, the terms to be incorporated in the lease of such project, the maintenance and insurance of such project, the creation and maintenance of special funds from the revenues from such project, and the rights and remedies available in event of default to the bondholders or to the trustee under a mortgage, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of Sections 3-32-1 through 3-32-16 NMSA 1978; provided, however, that in making any such agreements or provisions a municipality shall not have the power to obligate itself except with respect to the project and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers. The proceedings authorizing any bonds hereunder and any mortgage securing such bonds may provide the procedure and remedies in the event of default in payment of the principal of or the interest on such bonds or in the performance of any agreement. No breach of any such agreement shall impose any pecuniary liability upon a municipality or any charge upon its general credit or against its taxing powers.

History: 1953 Comp., § 14-31-5, enacted by Laws 1965, ch. 300.

3-32-9. Requirements respecting lease.

Prior to the leasing of any project, the governing body must determine and find the following:

A. the amount necessary in each year to pay the principal of and the interest on the bonds proposed to be issued to finance such project; and

B. the amount necessary to be paid each year into any reserve funds which the governing body may deem it advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project; and unless the terms under which the project is to be leased provide that the lessee shall maintain the project and carry all proper insurance with respect thereto, the estimated cost of maintaining the project in good repair and keeping it properly insured. The determinations and findings

of the governing body required to be made in the preceding sentence shall be set forth in the proceedings under which the proposed bonds are to be issued; and prior to the issuance of such bonds, the municipality shall lease or sell the project to a lessee or purchaser under an agreement conditioned upon completion of the project and providing for payment to the municipality of such rentals or payments as, upon the basis of such determinations and findings, will be sufficient:

(1) to pay the principal of and interest on the bonds issued to finance the project;

(2) to build up and maintain any reserve deemed by the governing body to be advisable in connection therewith; and

(3) to pay the costs of maintaining the project in good repair and keeping it properly insured, unless the agreement of lease obligates the lessee to pay for the maintenance and insurance of the project.

History: 1953 Comp., § 14-31-6, enacted by Laws 1965, ch. 300.

3-32-10. Refunding bonds.

A. Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by a municipality by the issuance of its refunding bonds in such amount as the governing body may determine to refund the principal of the bonds so to be refunded, all unpaid accrued and unaccrued interest thereon to the normal maturity date of such bonds or to selected prior redemption dates thereof, any redemption premiums, any commission and all estimated costs incidental to the issuance of such bonds and to such refunding as may be determined by the governing body. The principal amount of any such refunding bonds may be equal to, less than or greater than the principal amount of the bonds to be so refunded. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby; provided, that the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of Sections 3-32-1 through 3-32-16 NMSA 1978 shall be payable solely from the revenues out of which other bonds issued under Sections 3-32-1 through 3-32-16 NMSA 1978 may be payable or solely from those amounts derived from an escrow as herein provided, including amounts derived from the investment of refunding bond proceeds and other legally available amounts also as herein provided, or from any combination of the foregoing sources, and shall be subject to the provisions contained in Section 3-32-7 NMSA 1978 and may be secured in accordance with the provisions of Section 3-32-8 NMSA 1978.

B. Proceeds of refunding bonds shall either be applied immediately to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company which possesses and is exercising trust powers. Notwithstanding any provision to the contrary in Section 3-32-11 NMSA 1978 or in any other statute, such escrowed proceeds may be invested in short-term securities, long-term securities or both. Except to the extent inconsistent with the express terms of Sections 3-32-1 through 3-32-16 NMSA 1978, the ordinance and other proceedings under which the bonds to be so refunded were issued, including any mortgage or trust indenture given to secure the same, shall govern the establishment of any escrow in connection therewith and the investment or reinvestment of any escrowed proceeds.

History: 1953 Comp., § 14-31-7, enacted by Laws 1965, ch. 300; 1977, ch. 335, § 4.

ANNOTATIONS

Severability clauses. — Laws 1977, ch. 335, § 5, provided for the severability of the act if any part or application thereof is held invalid.

3-32-11. Use of proceeds from sale of bonds.

The proceeds from the sale of any bonds issued under authority of Sections 3-32-1 through 3-32-16 NMSA 1978, shall be applied only for the purpose for which the bonds were issued; provided, however, that any accrued interest and premiums received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided, further, that if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such balance of said proceeds shall be applied to the payment of the principal of or the interest on said bonds, and provided, further, that any portion of the proceeds from the sale of said bonds or any accrued interest and premium received in any such sale, may, in the event the money will not be needed, or cannot be effectively used to the advantage of the municipality for the purposes herein provided, be invested in short term, interest-bearing securities if such investment will not interfere with the use of such funds for the primary purpose as herein provided. The cost of acquiring any project shall be deemed to include the following:

A. the actual cost of the construction of any part of a project which may be constructed, including architect's, attorney's and engineer's fee;

B. the purchase price of any part of a project that may be acquired by purchase;

C. the actual cost of the extension of any utility to the project site, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition; and

D. the interest on such bonds for a reasonable time prior to construction, during construction and for not exceeding six months after completion of construction.

History: 1953 Comp., § 14-31-8, enacted by Laws 1965, ch. 300.

3-32-12. No contribution by municipality.

No municipality shall have the power to pay out of its general funds or otherwise contribute any part of the costs of acquiring a project, and shall not have the power to use land already owned by the municipality, or in which the municipality has an equity, for construction thereon of a project or any part thereof, unless the municipality is fully reimbursed for the value of the land as may be determined by a current appraisal, or unless the city leases the land at an annual rental fee of not less than five percent of the appraised value. The entire cost of acquiring any project must be paid out of the proceeds from the sale of bonds issued under the authority of Sections 3-32-1 through 3-32-16 NMSA 1978; provided, however, that this provision shall not be construed to prevent a municipality from accepting donations of property to be used as a part of any project or money to be used for defraying any part of the cost of any project.

History: 1953 Comp., § 14-31-9, enacted by Laws 1965, ch. 300; 1968, ch. 21, § 1.

3-32-13. Bonds made legal investments.

Bonds issued under the provisions of Sections 3-32-1 through 3-32-16 NMSA 1978, shall be legal investments for savings banks and insurance companies organized under the laws of this state.

History: 1953 Comp., § 14-31-10, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Purchase by state investment council. — There is no authority for the state investment council to purchase municipal industrial revenue bonds as such. 1959-60 Op. Att'y Gen. No. 60-219.

3-32-14. Exemption from taxation.

The bonds authorized by Sections 3-32-1 through 3-32-16 NMSA 1978, and the income from said bonds, all mortgages or other security instrument executed as security for said bonds, all lease agreements made pursuant to the provisions hereof, and revenue derived from any lease or sale by the municipality thereof shall be exempt from all taxation by the state of New Mexico, or any subdivision thereof.

History: 1953 Comp., § 14-31-11, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For property tax exemption, *see* 7-36-3 NMSA 1978.

Constitutionality of exemption. — Statute authorizing issuance of revenue bonds by municipality for industrial development and providing that bonds so authorized, the income therefrom, etc., shall be exempt from all taxation by state or any subdivision, was not violation of constitutional provision requiring that taxes be equal and uniform insofar as the exemption was confined to municipal property. Vill. of Deming v. Hosdreg Co., 62 N.M. 18, 303 P.2d 920 (1956).

Insertion of a corporate guarantee into the bonds is inconsistent with the provisions of the Industrial Revenue Bond Act that allow a tax exemption for the bonds. 1959-60 Op. Att'y Gen. No. 60-219.

3-32-15. Construction of act.

Neither Sections 3-32-1 through 3-32-16 NMSA 1978, nor anything herein contained shall be construed as a restriction or limitation upon any powers which a municipality might otherwise have under any laws of this state, but shall be construed as cumulative; and Sections 3-32-1 through 3-32-16 NMSA 1978, shall not be construed as requiring an election by the voters of a municipality prior to the issuance of bonds hereunder by such municipality.

History: 1953 Comp., § 14-31-12, enacted by Laws 1965, ch. 300.

3-32-16. No notice or publication required.

No notice, consent or approval by any governmental body or public officer shall be required as a prerequisite to the sale or issuance of any bonds or the making of a mortgage under the authority of Sections 3-32-1 through 3-32-16 NMSA 1978, except as provided in these sections.

History: 1953 Comp., § 14-31-13, enacted by Laws 1965, ch. 300.

ARTICLE 33
Improvement Districts

3-33-1. Improvement district; authorization.

A. Whenever a governing body determines that the creation of an improvement district is necessary for the public safety, health or welfare, the governing body may create an improvement district for any one or any combination of projects authorized in Chapter 3, Article 33 NMSA 1978 by the:

(1) provisional order method; or

(2) petition method.

B. The governing body may adopt any ordinance or resolution necessary or proper to accomplish the purposes of Chapter 3, Article 33 NMSA 1978.

C. The improvement district shall include, for the purpose of assessment or imposition of an improvement district property tax, all the property that the governing body determines is benefitted by the improvement, including property lying without the municipality creating the improvement district if such property abuts or is served by improvements authorized by Chapter 3, Article 33 NMSA 1978 and including property utilized for public, governmental, charitable or religious purposes, except that of the United States or any agency, instrumentality or corporation thereof, in the absence of a consent of congress.

History: 1953 Comp., § 14-32-1, enacted by Laws 1965, ch. 300; 1977, ch. 325, § 1; 1991, ch. 199, § 1; 2001, ch. 312, § 1.

ANNOTATIONS

Cross references. — For excavation damage to pipelines and underground utility lines, *see* 62-14-1 NMSA 1978 et seq.

The 2001 amendment, effective June 15, 2001, inserted "or imposition of an improvement district property tax" in Subsection C.

The 1991 amendment, effective April 4, 1991, substituted "Chapter 3, Article 33 NMSA 1978" for "Section 14-32-3 NMSA 1953" in Subsection A and for "Sections 14-32-1 through 14-32-38 NMSA 1953" in Subsection B and, in Subsection C, substituted "property abuts or is served by improvements authorized by Chapter 3, Article 33 NMSA 1978" for "property abuts any right-of-way or street on which or through which benefits from construction of improvements authorized by Sections 14-32-1 through 14-32-28 NMSA 1953 are being constructed".

Nature of special assessments. — Municipal special assessments are quasi-taxes laid to enable the discharge of some of the functions of government, and the power to impose them is related to the taxing power. Waltom v. City of Portales, 42 N.M. 433, 81 P.2d 58 (1938).

Only limitations on the exercise of the power of special assessment are that the improvements must be public and must confer special benefits on the property assessed, and the cost to be borne by each tract must not exceed the estimated benefits thereto. Bowdich v. City of Albuquerque, 76 N.M. 511, 416 P.2d 523 (1966).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 226.

63 C.J.S. Municipal Corporations §§ 1067, 1092, 1103.

3-33-2. Improvement district; definitions.

As used in Chapter 3, Article 33 NMSA 1978:

A. "adjustment of assessment" means the adjustment in the estimated maximum benefit or assessment resulting from the division of the property to be assessed or assessed into smaller tracts or parcels or the combining of smaller parcels into one or more larger parcels or the changing of the configuration or legal description of such parcels. "Adjustment of assessment" may also include the reallocation of the assessment lien, without loss of priority, among parcels under single ownership that are subject to the assessment lien in order to permit the removal of the lien from one or more parcels where adequate security for the lien is demonstrated by the assessed parcels under such single ownership or provided by the owner;

B. "construct" or "construction" means to plan, design, engineer, construct, reconstruct, install, extend, better, alter, build, rebuild, improve, purchase or otherwise acquire any project authorized in Sections 3-33-3, 3-33-4, 3-33-4.1 and 3-33-6 NMSA 1978, except that it shall not include "to acquire" for the purposes of projects authorized in Section 3-33-6 NMSA 1978;

C. "engineer" means any person who is a professional engineer licensed to practice in New Mexico and who is a permanent employee of the municipality or employed in connection with an improvement by the municipality or by a property owner subject to the improvement district property tax imposed by Section 3-33-14.1 NMSA 1978;

D. "improvement" means any one or any combination of projects in one or more locations authorized in Sections 3-33-3, 3-33-4, 3-33-4.1 and 3-33-6 NMSA 1978;

E. "improvement district" means one or more streets or one or more public grounds or one or more locations wherein the improvement is to be constructed and one or more tracts or parcels of land to be assessed or upon which an improvement district property tax will be imposed to pay for the cost of the improvement; and

F. "premature subdivision" means a subdivision that has been platted and sold into multiple private ownership prior to installation or financial guarantee of all required improvements for land development. Such subdivisions contain one or more developmental inadequacies under current local government standards and requirements, such as, but not limited to:

(1) inadequate street right of way or street access control;

(2) a lack of drainage easements of right of way;

(3) a lack of adequate park, recreation or open space area;

(4) a lack of an overall grading and drainage plan; or

(5) a lack of adequate subdivision grading both on and off the public right of way.

History: 1953 Comp., § 14-32-2, enacted by Laws 1965, ch. 300; 1967, ch. 217, § 1; 1975, ch. 81, § 1; 1987, ch. 47, § 1; 1991, ch. 17, § 1; 1991, ch. 199, § 2; 2001, ch. 312, § 2.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, substituted "3-33-4.1" for "3-33-4A" in Subsection B; deleted "by the municipality" preceding "in connection with an improvement" and added the remaining language after the latter phrase in Subsection C; inserted "or upon which an improvement district property tax will be imposed to pay" and the final "and" in Subsection E; in Subsection F, deleted "of the following" preceding "developmental inadequacies", added "such as, but not limited to" and substituted "or" for "and" at the end of Paragraph (4).

The 1991 amendment, effective April 4, 1991, added Subsection A and Subsection F; redesignated former Subsections A to D as Subsections B to E; inserted an additional section reference in Subsections B and D; inserted "or one or more locations" in Subsection E; and made a related stylistic change

3-33-3. Improvement district; purpose.

An improvement district may be created as authorized in Chapter 3, Article 33 NMSA 1978 in order to construct, acquire, repair or maintain in one or more locations any one or any combination of the following projects, including without limitation land served by any project and any right of way, easement or privilege appurtenant or related thereto:

A. a street, road, bridge, walkway, overpass, underpass, pathway, alley, curb, gutter or sidewalk project, including without limitation median and divider strips, parkways and boulevards, ramps and stairways, interchanges, alleys and intersections, arches, support structures and pilings and the grading, regrading, oiling, surfacing, graveling, excavating, macadamizing, paving, repairing, laying, backfilling, leveling, lighting, landscaping, beautifying or in any manner improving of all or any part of one or more streets, roads, bridges, walkways, pathways, curbs, gutters or sidewalks or any combination of the foregoing;

B. a storm sewer project, sanitary sewer project or water project, including without limitation investigating, planning, constructing, acquiring, excavating, laying, leveling, backfilling or in any manner improving all or any part of one or more storm sewers, drains, sanitary sewers, water lines, trunk lines, mains, laterals or property connections and acquiring or improving hydrants, meters, valves, catch basins, inlets, outlets, lift or pumping stations and machinery and equipment incidental thereto or any combination of the foregoing;

C. a flood control or storm drainage project, including without limitation the investigation, planning, construction, improvement, replacement, repair or acquisition of dams, dikes, levees, ditches, canals, basins and appurtenances such as spillways, outlets, syphons and drop structures, channel construction, diversions, rectification and protection with appurtenant structures such as concrete lining, banks, revetments, culverts, inlets, bridges, transitions and drop structures, rundowns and retaining walls, storm sewers and related appurtenances such as inlets, outlets, manholes, catch basins, syphons and pumping stations, appliances, machinery and equipment and property rights connected therewith or incidental thereto convenient and necessary to control floods or provide drainage and lessen their danger and damages;

D. a utility project providing gas, water, electricity or telephone service;

E. railroad spurs, railroad tracks, railyards, rail switches and any necessary real property; or

F. on-site or off-site improvements required as a condition to obtaining required approvals of a development to be served by a project, including the payment of any fees or charges levied as a means of paying for all or part of such on-site or off-site improvements.

History: 1953 Comp., § 14-32-3, enacted by Laws 1965, ch. 300; 1967, ch. 90, § 1; 1981, ch. 211, § 1; 1987, ch. 47, § 2; 1991, ch. 199, § 3; 2001, ch. 312, § 3.

ANNOTATIONS

Cross references. — For park and recreation construction authorized, *see* 3-18-19 NMSA 1978.

The 2001 amendment, effective June 15, 2001, inserted "land served by any project" in the preliminary language and substituted "or" for "and" preceding "property connections" in Subsection B; and added Subsections E and F.

The 1991 amendment, effective April 4, 1991, in the introductory paragraph, inserted "acquire, repair or maintain" and added "including without limitation any right of way, easement or privilege appurtenant or related thereto"; rewrote Subsection A; inserted "investigating, planning, constructing" near the beginning of Subsection B; and inserted "water" in Subsection D.

Statutory grant of power to municipalities to improve streets vests only when the proper method to implement that power is adopted. Bowdich v. City of Albuquerque, 76 N.M. 511, 416 P.2d 523 (1966).

"Paved". — The term "paved," when used in a municipal resolution, includes the construction of curbs and gutters as a necessary part of the project. Bowdich v. City of Albuquerque, 76 N.M. 511, 416 P.2d 523 (1966).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Street improvements as public utility within constitutional or statutory provision relating to purchase, construction, or repair of same, 9 A.L.R. 1034, 35 A.L.R. 592.

Power of municipality to extend aid to improvement district organized within its own limits, 50 A.L.R. 1208.

Underground conduits for electric wires as local improvements supporting special assessments, 66 A.L.R. 1389.

Levee and flood control acts, constitutionality of, 70 A.L.R. 1289.

"Surfacing" or "resurfacing" of highway, character of improvement contemplated by statute, ordinance, or contract relating to, 84 A.L.R. 1158.

3-33-4. Improvement district; additional purpose.

An improvement district may also be created as authorized in Chapter 3, Article 33 NMSA 1978 in order to construct, repair and maintain in one or more locations facilities for the parking of motor vehicles off the public streets or to construct or acquire, repair, operate and maintain one or more of the following inadequacies necessary to bring a premature subdivision into compliance within an improvement district within a municipality:

A. street right-of-way or street access control;

B. drainage easements or right-of-way;

C. park, recreation or open space areas;

D. overall grading and drainage plan; and

E. adequate subdivision grading both on or off the public right-of-way.

History: 1953 Comp., § 14-32-3.1, enacted by Laws 1967, ch. 217, § 2; 1991, ch. 199, § 4.

ANNOTATIONS

Cross references. — For the Municipal Parking Law, *see* 3-50-1 NMSA 1978 et seq.

For the Greater Municipality Parking Law, *see* 3-51-1 NMSA 1978 et seq.

The 1991 amendment, effective April 4, 1991, substituted "Chapter 3, Article 33 NMSA 1978" for "Sections 14-32-1 through 14-32-28 New Mexico Statutes Annotated, 1953

Compilation" and added the language beginning "or to construct" and Subsections A to E at the end of the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Municipal off-street public parking facilities, 8 A.L.R.2d 373.

3-33-4.1. Improvement district; additional purpose.

An improvement district may also be created as authorized in Chapter 3, Article 33 NMSA 1978:

A. in order to construct, repair or maintain improvements in one or more locations as a means to stimulate manufacturing, industrial, commercial or business development; or

B. by any municipality with a boundary contiguous to an international boundary to construct, repair or maintain international port of entry facilities in one or more locations as a means to stimulate manufacturing, industrial, commercial or business development.

History: 1978 Comp., § 3-33-4.1, enacted by Laws 1991, ch. 199, § 5; 1992, ch. 98, § 1.

ANNOTATIONS

The 1992 amendment, effective July 1, 1992, added the Subsection A designation, added Subsection B, and made a related stylistic change.

3-33-5. Improvement district; powers of municipality.

In addition to other powers granted by Sections 3-33-1 through 3-33-43 NMSA 1978, every municipality shall have all powers necessary or convenient to carry out the purposes of Section 3-33-4 NMSA 1978, including the following:

A. to construct, repair, maintain and operate facilities for the parking of motor vehicles off the public streets, together with public rights of way necessary or convenient therefor;

B. to purchase or acquire by gift, bequest, devise or otherwise, any real or personal property or any interest therein, together with the improvement thereon, to be used as parking facilities or incidental thereto;

C. to insure [and] to provide for the insurance of any parking facility established by the municipality against risks and hazards as the municipality deems desirable; and

D. to receive, control, invest and order the expenditure of all money pertaining to parking facilities.

E. The provisions of this act shall not authorize any municipality to exercise the power of eminent domain for the purposes enumerated in Section 3-33-4 or 3-33-5 NMSA 1978.

History: 1953 Comp., § 14-32-3.2, enacted by Laws 1967, ch. 217, § 3.

ANNOTATIONS

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

3-33-6. Improvement district; additional purpose.

An improvement district may also be created as authorized in Sections 3-33-1 through 3-33-43 NMSA 1978 in order to construct or acquire, operate and maintain a municipally owned electric or gas utility in an H class county or an incorporated county.

History: 1953 Comp., § 14-32-3.3, enacted by Laws 1975, ch. 81, § 2.

3-33-6.1. Improvement district; additional purpose.

An improvement district may also be created as authorized in Section 3-33-1 NMSA 1978 in order to construct or acquire, repair, operate and maintain one or more of the following inadequacies necessary to bring a premature subdivision into compliance within an improvement district within a municipality:

A. street right-of-way or street access control;

B. drainage easements or right-of-way;

C. park, recreation, or open space areas;

D. overall grading and drainage plan; or

E. adequate subdivision grading both on or off the public right-of-way.

History: Laws 1991, ch. 17, § 2.

3-33-7. Improvement district; powers of and restrictions upon a county.

A. An H class county or incorporated county which constructs, acquires, operates or maintains a utility pursuant to Section 3-33-6 NMSA 1978 may exercise all of the powers exercised by a municipality which constructs, acquires, operates or maintains a utility pursuant to Section 3-24-1 or 3-25-2 NMSA 1978.

B. An H class county or incorporated county which constructs, acquires, operates or maintains a utility pursuant to Section 3-33-6 NMSA 1978 shall be subject to all of the restrictions and limitations as a municipality which constructs, acquires, operates or maintains a utility pursuant to Section 3-24-1 or 3-25-2 NMSA 1978 except:

(1) the H class county or incorporated county need not hold an election prior to the construction of the utility; and

(2) the H class county or incorporated county need not finance the utility by revenue bonds.

C. If an H class county or incorporated county seeks to acquire an existing utility through the creation of indebtedness, the question shall be submitted to a vote pursuant to the procedures established in Section 3-23-2 NMSA 1978.

History: 1953 Comp., § 14-32-3.4, enacted by Laws 1975, ch. 81, § 3.

3-33-8. Improvement district; powers of a municipality outside its boundaries.

Every municipality shall have the power to construct improvements authorized by Chapter 3, Article 33 NMSA 1978 on any location within the boundaries of the county in which the municipality is located.

History: 1953 Comp., § 14-32-3.5, enacted by Laws 1977, ch. 325, § 2; 1991, ch. 199, § 6.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, rewrote this section which read "Every municipality shall have the power to construct improvements authorized by Section 14-32-3 NMSA 1953 on or through any street or right-of-way, one side of which lies within the boundaries of the municipality and one side of which lies outside the boundaries of such municipalities".

3-33-9. Improvement district; limitations on powers of a municipality outside its boundaries.

Improvements shall be constructed pursuant to the powers granted in Section 3-33-8 NMSA 1978 and assessments shall be levied against property lying without the

municipality only if the board of county commissioners of the county in which such improvements are to be made has, by resolution, submitted to the governing body of the municipality, determined:

A. that the construction of such improvements is in the best interests of the county;

B. that the maximum amount of benefit estimated to be conferred on the tracts or parcels of land lying within the county but without the municipality constructing the improvements is determined in the same manner as the maximum amount of benefit estimated to be conferred on the tracts or parcels of land lying within the municipality; and

C. that the owners of real property representing at least fifty-one percent of the total assessed valuation of the property benefited which lies within the county but outside the municipal boundary have not objected in writing to the construction of such improvements within thirty days after having received written notice of the adoption of the provisional order described in Subsection E of Section 3-33-11 NMSA 1978 by the governing body of the municipality. The governing body of the municipality may enter into a joint powers agreement with the board of county commissioners to provide for joint administration of any such improvement district.

History: 1953 Comp., § 14-32-3.6, enacted by Laws 1977, ch. 325, § 3; 1991, ch. 199, § 7.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, deleted the former first sentence which read "Assessments shall be levied against property lying without the municipality only where the improvements conferring the benefit are located on or through a street or right-of-way which is described in Section 14-32-3.5 NMSA 1953"; substituted "3-33-8 NMSA 1978 and assessments shall be levied against property lying without the municipality" for "14-32-3.5 NMSA 1953" in the second sentence; in Subsection C substituted "adoption of the provisional order described in Subsection E of Section 3-33-11 NMSA 1978" for "passage of the approving resolution adopted" and added the final sentence.

3-33-10. Improvement district; limitations on powers of municipality with respect to street or right of way under jurisdiction of state transportation commission.

The municipality shall not construct improvements authorized by Section 3-33-3 NMSA 1978 on or through any street or right of way under the jurisdiction of the state transportation commission unless it receives prior written approval from the state transportation commission to undertake such improvements.

History: 1953 Comp., § 14-32-3.7, enacted by Laws 1977, ch. 325, § 4; 2003, ch. 142, § 1.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, substituted "transportation commission" for "highway commission" in the section heading and throughout the section, and substituted "Section 3-33-3 NMSA 1978" for "Section 14-32-3 NMSA 1953".

3-33-11. Improvement district; provisional order method; procedure; preliminary lien; notice of pendency of district; effect.

A. Whenever the governing body determines that the creation of an improvement district is necessary by the provisional order method, the governing body shall by resolution direct the engineer to prepare preliminary plans and an estimate of cost for the proposed improvement district.

B. The resolution shall:

(1) describe in general terms the property to be included in the improvement district;

(2) require the engineer to prepare:

(a) an assessment plat showing the area to be included in the improvement district; and

(b) an addendum to the assessment plat showing the amount of maximum benefit estimated to be assessed against each tract or parcel in the improvement district on a front-foot, zone, area or other equitable basis, which shall be set forth in the resolution and, if the benefit to a tract or parcel is derived from a combination of improvements, the amount of maximum benefit estimated to be assessed against such tract or parcel may be based upon an appraisal or determination of the value of the improvements as a whole; and

(3) require the engineer to prepare preliminary plans for one or more types of construction showing:

(a) for each type of road, curb, gutter, sidewalk and street, a typical section of the contemplated improvement, the type of material to be used and the approximate thickness and width of the material;

(b) for each type of storm sewer or drain, sanitary sewer or water line, the type of material and approximate diameter of any trunk lines, mains, laterals or house connections; or

(c) for each other type of project or other major component of the foregoing types of projects, a general description.

C. The engineer shall include in the total cost estimate for the improvement district all expenses, including but not limited to advertising, appraising, tax reimbursement, capital improvement, expansion, construction period interest, reserve fund, financing, engineering and printing expenses that the engineer deems necessary to pay the complete cost of the improvement.

D. The engineer shall submit to the municipal clerk the:

(1) assessment plat;

(2) preliminary plans of the type of construction; and

(3) estimate of costs for the improvement.

E. After the governing body examines the assessment plat, preliminary plans and estimates of cost for the improvement district, the governing body may adopt a provisional order which:

(1) orders the improvement to be constructed;

(2) instructs the municipal clerk or engineer to give notice of a hearing on the provisional order; and

(3) orders, if deemed necessary by the governing body and with the consent of the owners of the tracts or parcels to be encumbered with a preliminary assessment lien, the immediate placement of a preliminary assessment lien on tracts or parcels in the improvement district based on the estimated maximum benefit to be assessed against such tracts or parcels in order to facilitate interim financing of the improvement and provides for times and terms of paying the preliminary assessment lien, for the adjustment of the preliminary assessment lien and for the placement of a final assessment lien upon each such tract or parcel pursuant to the provisions of Sections 3-33-22 and 3-33-23 NMSA 1978. Both the preliminary and the final assessment liens shall be coequal with the lien for general ad valorem taxes and the lien of other improvement districts and are superior to all other liens, claims and titles. The consent of any owner in an improvement district to the placement of a preliminary assessment lien on the owner's property shall not alter the assessment on any other tracts or parcels in the improvement district.

F. Upon the adoption of the provisional order by the governing body, the estimated maximum benefit roll showing the legal description of the property to be included in the district and the owners thereof may be recorded with the clerk of the county in which the property is located, which recording shall constitute notice of the pendency of the special assessment district and shall be constructive notice to the owner, purchaser or

encumbrancer of the property concerned; and any person whose conveyance is subsequently recorded shall be considered a subsequent purchaser or encumbrancer and shall be subject to and bound by all the proceedings taken after the recording of the notice to the same extent as if he were made a party to such special assessment proceedings.

G. This notice need not be acknowledged to entitle it to be recorded.

H. Nothing herein shall be construed to affect the priority of special assessment liens.

History: 1953 Comp., § 14-32-4, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 8.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, added "preliminary lien; notice of pendency of district; effect" to the section heading; in Subsection B, added the language beginning "and, if the benefit" at the end of Subparagraph (b) in Paragraph (2) and inserted "road" in Subparagraph (a) in Paragraph (3); inserted "tax reimbursement, capital improvement, expansion, construction period interest, reserve fund, financing" in Subsection C; added Paragraph (3) in Subsection E and Subsections F to H; and made related and other stylistic changes throughout the section.

Statutory grant of power to municipalities to improve streets vests only when the proper method to implement that power is adopted. Bowdich v. City of Albuquerque, 76 N.M. 511, 416 P.2d 523 (1966).

Section outlines steps. — The steps which a municipality shall take, when the governing body of the city feels that the interest of their municipality requires that any streets, alleys or any part thereof be graded, graveled, paved, macadamized, sidewalked, lighted or in any manner improved are outlined in part in this section. Bowdich v. City of Albuquerque, 76 N.M. 511, 416 P.2d 523 (1966).

Conclusiveness in establishing district. — A city council in establishing a municipal improvement district is acting in its legislative capacity, and its action, in the absence of proof of fraud or such arbitrary conduct as amounts to fraud, is conclusive. Feldhake v. City of Santa Fe, 61 N.M. 348, 300 P.2d 934 (1956).

Burden of proof in attacking establishment of district. — The burden of proof as to fraud or arbitrary conduct equivalent to fraud necessarily rests upon him who makes an attack upon the action of the city in determining that a municipal improvement district shall be established. Feldhake v. City of Santa Fe, 61 N.M. 348, 300 P.2d 934 (1956).

Constitutionality of provisional order paving law. — "Provisional order" paving law does not violate the state and federal constitutions. Hodges v. City of Roswell, 31 N.M.

384, 247 P. 310 (1926); Ellis v. New Mexico Constr. Co., 27 N.M. 312, 201 P. 487 (1921).

Legislature intended when it adopted provisional order method of street improvement that repaving be a continuation of the paving power and the benefited owners be liable for the cost. Bowdich v. City of Albuquerque, 76 N.M. 511, 416 P.2d 523 (1966).

Constitutionality of front-foot rule. — Laws authorizing the assessment of benefits by the front-foot rule are not in violation of either the federal or state constitutions as taking property without due process, in the absence of a showing that the assessment is arbitrary, capricious or confiscatory. Fowler v. City of Santa Fe, 72 N.M. 60, 380 P.2d 511 (1963).

More than a mere division of costs on a front-foot basis among the lots affected is required to determine estimated benefits. Teutsch v. City of Santa Fe, 75 N.M. 717, 410 P.2d 742 (1966).

Presumption that estimated benefit was basis for assessment. — It may fairly be presumed that officials charged with the duty of improvement district assessments made them on the basis of estimated benefit to the property assessed. Hedges v. City Comm'n, 62 N.M. 421, 311 P.2d 649 (1957).

Reasonable future uses considered as benefit to assessed property. — Benefits to assessed property in an improvement district can be determined by considering reasonable future uses to which the property can be put. Clayton v. City of Farmington, 102 N.M. 340, 695 P.2d 490 (Ct. App. 1985).

Fees included in assessment. — Engineers' and attorneys' fees are properly chargeable as a part of the costs of a paving improvement, and, as such, are properly included in a local assessment against owners. Massengill v. City of Clovis, 33 N.M. 519, 270 P. 886 (1928).

Paving includes curbing and guttering. — When it is declared that a street should be paved, the word "paved" includes not only the paving but also curbing and guttering as a necessary part of the project. Feldhake v. City of Santa Fe, 61 N.M. 348, 300 P.2d 934 (1956).

Recitation of alternative kinds of paving satisfied statute. — Determination that streets were to be paved with a permanent pavement, reciting in the alternative several kinds of permanent paving, was sufficient to satisfy the statutory requirements. Hodges v. City of Roswell, 31 N.M. 384, 247 P. 310 (1926).

Scope of judicial review regarding special assessments. — Because the basis and method of apportioning special assessments is committed to the judgment and sound discretion of the legislative tribunal having charge of such improvement, the decision of

such tribunal will not be disturbed by the courts in the absence of a clear showing that such decision was wholly arbitrary, capricious or actuated by fraud or bad faith. Hedges v. City Comm'n, 62 N.M. 421, 311 P.2d 649 (1957).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70A Am. Jur. 2d Special or Local Assessment § 134 et seq.

3-33-12. Improvement district; notice of assessment; protests.

A. The notice of the provisional order creating an improvement district shall:

(1) contain the time and place when the governing body shall hold a hearing on the provisional order creating the improvement district;

(2) describe the improvement to be constructed and the general location thereof; and

(3) state that any interested person may ascertain in the office of the municipal clerk:

(a) a description of the property to be assessed; and

(b) the maximum amount of benefit estimated to be conferred on each tract or parcel of land.

B. Not more than thirty days nor less than ten days before the day of the hearing, the municipal clerk, his deputy or the engineer shall mail the notice of the hearing on the provisional order to the owner of the tract or parcel of land being assessed the cost of the improvement at his last-known address. The name and address of the owner of each tract of land shall be obtained from the records of the county assessor or any other source the municipal clerk or engineer deems reliable. Proof of the mailing is to be made by affidavit of the municipal clerk, his deputy or the engineer, which shall be filed in the office of the municipal clerk. Failure to mail any notice shall not invalidate any of the proceedings authorized in Sections 3-33-1 through 3-33-43 NMSA 1978.

C. Notice of the hearing shall also be published once each week for three consecutive weeks and the last publication shall be at least one week prior to the day of the hearing. Such service by publication shall be verified by an affidavit of the publisher which is to be filed in the office of the municipal clerk.

History: 1953 Comp., § 14-32-5, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For definition of "publish" or "publication," *see* 3-1-2 NMSA 1978.

Purpose of the notice is to afford property owner opportunity to urge objections, but this is a right merely to be heard. Ellis v. New Mexico Constr. Co., 27 N.M. 312, 201 P. 487 (1921).

Notice held sufficient. — Where publication was made in each of three consecutive weeks, though not on the same day of the week, and the last insertion of the notice was more than a week before the date set for the hearing, notice was sufficient. Feldhake v. City of Santa Fe, 61 N.M. 348, 300 P.2d 934 (1956).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Power of city under freeholder's charter as to special assessments, 35 A.L.R. 888.

63 C.J.S. Municipal Corporations § 1094.

3-33-13. Improvement district; provisional order; protest; appeal to district court.

A. At the hearing of the governing body on the provisional order creating an improvement district, an interested person or owner of property to be assessed for the improvement may file a written protest or objection questioning the:

(1) propriety and advisability of constructing the improvement;

(2) estimated cost of the improvement;

(3) manner of paying for the improvement; or

(4) estimated maximum benefit to each individual tract or parcel of land.

B. The governing body may recess the hearing from time to time so that all protestants may be heard.

C. Within thirty days after the governing body has, by adoption of a resolution:

(1) concluded the hearing;

(2) determined:

(a) the advisability of constructing the improvement; and

(b) the type and character of the improvement; and

(3) created the improvement district, a person who during the hearing filed a written protest with the governing body protesting the construction of the improvement may appeal the determination of the governing body pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

D. Where no person has filed a written protest during the hearing and all owners of property to be assessed, upon conclusion of the hearing, submit to the governing body written statements in favor of the creation of the improvement district for the types and character of improvements indicated in the provisional order, those owners shall be deemed to have waived their right to bring any action challenging the validity of the proceedings or the amount of benefit to be derived from the improvements.

History: 1953 Comp., § 14-32-6, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 9; 1998, ch. 55, § 8; 1999, ch. 265, § 8.

ANNOTATIONS

Cross references. — For appeal of final decisions by agencies to district court, *see* 39-3-1.1 NMSA 1978.

For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Paragraph C(3).

The 1998 amendment, effective September 1, 1998, in the section heading, substituted "appeal to" for "action in"; in Subsection A, substituted "an interested person" for "any interested person"; rewrote Paragraph A(3); and added the Subsection designation D, and in that Subsection, substituted "those" for "such".

The 1991 amendment, effective April 4, 1991, in Subsection A, substituted "or" for "and" at the end of Paragraph (3) and "estimated maximum benefit to each" for "amount to be assessed against the" in Paragraph (4); inserted "by adoption of a resolution" in the introductory phrase in Subsection C; substituted "adoption of the resolution by" for "the determination of" in the next to last sentence; and added the final sentence.

Nature of statute. — Statute prescribing time to set aside municipal determination on improvement program was a statute of limitations rather than an appeal statute granting a right of review. Oliver v. Bd. of Trustees, 35 N.M. 477, 1 P.2d 116 (1931) (decided under prior law).

Review of city's determination of benefit. — District court review under Subsection C is limited to a review of the record made before the governing body. It lacks jurisdiction to conduct a de novo hearing. Rowley v. Murray, 106 N.M. 676, 748 P.2d 973 (Ct. App.), cert. denied, 106 N.M. 627, 747 P.2d 922 (1987) (decided under prior law).

A city's determination of benefit should be affirmed by the district court, unless it determines that the absence of any benefit is clear or unless there is evidence of fraud, mistake, or discrimination that amounts to arbitrary conduct. Rowley v. Murray, 106

N.M. 676, 748 P.2d 973 (Ct. App.), cert. denied, 106 N.M. 627, 747 P.2d 922 (1987) (decided under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63 C.J.S. Municipal Corporations § 1097.

3-33-14. Improvement district; petition method; requirements; distribution of costs; notice of hearing.

A. Whenever the owners of sixty-six and two-thirds percent or more of the total assessed valuation of the property to be benefited, exclusive of any land owned by the United States or the state of New Mexico, petition in writing the governing body to create an improvement district and construct the improvement described in the petition, the governing body may:

(1) create the improvement district;

(2) select the type of material and method of construction to be used; and

(3) proceed with the construction of the improvement as authorized in Section 3-33-18 NMSA 1978 after complying with the requirements for a preliminary hearing required in this section. A governing body, board of county commissioners or local board of education may sign a petition seeking the improvement for any land under its control. The submission of separate petitions for any one improvement district within a six-month period shall be considered as a single petition.

B. The governing body may:

(1) pay the cost of the improvement;

(2) assess the cost of the improvement against the benefiting tracts or parcels of land;

(3) pay part of the cost of the improvement and assess part of the cost of the improvement against the benefiting tracts or parcels of land; or

(4) impose an improvement district property tax pursuant to Section 3-33-14.1 NMSA 1978.

C. If any part or all of the cost of the improvement sought to be constructed as authorized in this section is to be assessed against the benefiting tracts or parcels of land or paid for by the imposition of an improvement district property tax, the governing body shall hold a preliminary hearing on the proposed improvement district and give notice of the preliminary hearing.

History: 1953 Comp., § 14-32-7, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 10; 2001, ch. 312, § 4.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, added Paragraph B(4); and inserted "or paid for by the imposition of an improvement district property tax" in Subsection C.

The 1991 amendment, effective April 4, 1991, in Subsection A, substituted "total assessed valuation of the property to be benefited" for "front-feet of any tracts or parcels of land" and deleted "which abuts on a street" following "New Mexico" in the introductory paragraph and, in Paragraph (3), substituted "3-33-18 NMSA 1978" for "14-32-11 New Mexico Statutes Annotated, 1953 Compilation" near the beginning and "for any one improvement district" for "on any one street" in the final sentence; substituted "benefiting tracts or parcels" for "abutting tract or parcel" in Paragraphs (2) and (3) in Subsection B; and substituted "tracts or parcels" for "tract or parcel" in Subsection C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70A Am. Jur. 2d Special or Local Assessments § 128 et seq.

"Owner," scope and import of term in statutes relating to petition for public improvements, 2 A.L.R. 789, 95 A.L.R. 1085.

Qualification of owner of property affected by public improvement to act in making assessment, 2 A.L.R. 1207.

Property interest as disqualifying one to participate in proceeding to establish public improvement, 11 A.L.R. 193.

Validity or enforcement of assessment as affected by lack of or defects in petition of property owners, 95 A.L.R. 116.

Property unit for purposes of assessment for street or other local improvement as affected by owner's disregard of original lot lines or creation of new ones, 104 A.L.R. 1049.

Cotenancy as factor in determining representation of property owners in petition for public improvement, 3 A.L.R.2d 127.

63 C.J.S. Municipal Corporations §§ 1094, 1102.

3-33-14.1. Imposition of improvement district property tax; limitations.

A. If in connection with the creation of the improvement district the governing body determines that it is in the best interest of the municipality to finance the district

improvements by the imposition of an improvement district property tax and the issuance of improvement district general obligation bonds, the governing body shall enact an ordinance making the determination and provide in the ordinance the improvement district property tax rate to be imposed; the date, which may be a predetermined date or a date to be established in the future after completion of the improvements, of commencement of the tax; the amount of the bonds to be issued to finance the improvements; and any other matters the governing body deems necessary or appropriate. The governing body shall call an election within the improvement district for the purpose of authorizing the governing body to issue general obligation bonds, the proceeds of the sale of which shall be used for constructing the improvements for which the district was created and to impose improvement district property taxes on all taxable property within the district for the purpose of paying the principal, debt service and other expenses incidental to the issuance and sale of the bonds. The ordinance shall also include procedures for the conduct of the election based upon the size of the improvement district and the number of voters entitled to vote.

B. If at the election described in Subsection A of this section the property tax imposition and the issuance of improvement district general obligation bonds are approved by a majority of the voters voting on the issues, the governing body shall impose the tax at a rate sufficient to pay the debt service on the bonds and retire them at maturity.

C. Imposition and collection of the improvement district property tax authorized in this section shall be made at the same time and in the same manner as impositions and collections of property taxes for use by municipalities and counties are made.

D. Bonds issued by the governing body for payment of the specified improvement district improvements shall be sold at a price that does not result in a net effective interest rate exceeding the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978]. The bonds may be sold at public or private sale and may be in denominations that the governing body determines.

E. The form and terms of the bonds, including a final maturity of thirty years and provisions for their payment and redemption, shall be as determined by the governing body. The bonds shall be executed in the name of and on behalf of the improvement district by the mayor and clerk of the municipality. The bonds may be executed and sealed in accordance with the provisions of the Uniform Facsimile Signature of Public Officials Act [6-9-1 through 6-9-6 NMSA 1978].

F. To provide for the payment of the interest and principal of the bonds issued and sold pursuant to this section, the governing body shall annually impose a property tax on all taxable property in the district in an amount sufficient to produce a sum equal to the principal and interest on all bonds as they mature.

G. The bonds authorized in this section are general obligation bonds of the district, and the full faith and credit of the district are pledged to the payment of the bonds. The

proceeds obtained from the issuance of the bonds shall not be diverted or expended for any purposes other than those provided in Chapter 3, Article 33 NMSA 1978.

H. All bonds issued by an improvement district shall be fully negotiable and constitute negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code [Chapter 55 NMSA 1978]. If lost or completely destroyed, any bond may be reissued in the form and tenor of the lost or destroyed bond upon the owner furnishing to the satisfaction of the governing body:

(1) proof of ownership;

(2) proof of loss or destruction;

(3) a surety bond in twice the face amount of the bond and coupons; and

(4) payment of the cost of preparing and issuing the new bond and coupons.

I. The governing body may in any proceeding authorizing improvement district bonds provide for the initial issuance of one or more bonds aggregating the amount of the entire issue or may make provision for installment payments of the principal amount of any bond as it may consider desirable.

J. The governing body may issue bonds to be denominated refunding bonds, for the purpose of refunding any of the general obligation bonded indebtedness of the improvement district. Whenever the governing body deems it expedient to issue refunding bonds, it shall adopt an ordinance setting out the facts making the issuance of the refunding bonds necessary or advisable, the determination of the necessity or advisability by the governing body and the amount of refunding bonds that the governing body deems necessary and advisable to issue. The ordinance shall fix the form of the bonds; the rate or rates of interest of the bonds, but the net effective interest rate of the bonds shall not exceed the maximum net effective interest rate permitted by the Public Securities Act; the date of the refunding bonds; the denominations of the refunding bonds; the maturity dates; and the place or places of payment within or without the state of both principal and interest. Refunding bonds when issued, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be negotiable in form and shall bear the signature or the facsimile signature of the mayor and clerk of the municipality. All refunding bonds may be exchanged dollar for dollar for the bonds to be refunded or they may be sold as directed by the governing body, and the proceeds of the sale shall be applied only to the purpose for which the bonds were issued and the payment of any incidental expenses.

K. The principal amount of improvement district general obligation bonds that may be issued by the governing body for any improvement district shall not exceed twenty-five percent of the final estimated value of properties in the district after completion of the projects to be financed with the improvement district general obligation bonds and after development of the properties in the improvement district in accordance with their

planned use, as determined by the governing body with the assistance of the engineer and other qualified professionals.

L. In connection with an improvement district project to be financed with the proceeds of improvement district general obligation bonds issued pursuant to this section, a property owner subject to the improvement district property tax or the governing body may enter into contracts to design, engineer, finance, construct or acquire a project with contractors and professionals, on such terms and with such persons as a property owner subject to the improvement district property tax or the governing body determines to be appropriate, without following the procedures or meeting the requirements of the Procurement Code [13-1-28 through 13-1-199 NMSA 1978] or the requirements of Sections 6-15-1 through 6-15-22 NMSA 1978.

History: Laws 2001, ch. 312, § 5.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 312 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

3-33-15. Improvement district; notice of preliminary hearing.

A. The notice of the preliminary hearing required in Section 3-33-14 NMSA 1978 shall contain:

(1) the time and place when the governing body will hold a preliminary hearing on the proposed improvement;

(2) the estimated cost of the improvement;

(3) the boundary of the improvement district;

(4) the route of the improvement by streets or location of the improvements;

(5) the location of the proposed improvement;

(6) a description of each property to be assessed or against which an improvement district property tax is to be imposed;

(7) the estimated amount of the assessment against or improvement district property tax to be imposed upon each tract or parcel of land; and

(8) the amount of the cost to be assumed by the municipality, if any.

B. If the owners are found within the county, the notices shall be personally served on them at least thirty days prior to the day of the hearing. The notice shall also be published in a newspaper published in the municipality once each week for four successive weeks. The last publication shall be at least three days before the day of the preliminary hearing.

History: 1953 Comp., § 14-32-8, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 11; 2001, ch. 312, § 6.

ANNOTATIONS

Cross references. — For definition of "publish" or "publication," *see* 3-1-2 NMSA 1978.

The 2001 amendment, effective June 15, 2001, substituted "estimated cost" for "estimate-cost" in Subsection A(2); added the language following "assessed" in Subsection A(6); and inserted "or improvement district property tax to be imposed upon" in Subsection A(7).

The 1991 amendment, effective April 4, 1991, in Subsection A, substituted "3-33-14 NMSA 1978" for "14-32-7 New Mexico Statutes Annotated, 1953 Compilation" in the introductory phrase, added "or location of the improvements" at the end of Paragraph (4), and substituted "location" for "places of commencement and end" in Paragraph (5).

3-33-16. Improvement district; preliminary hearing; protest; action of the governing body; appeal to district court.

A. At the preliminary hearing of the governing body on the question of creating an improvement district as authorized in Section 3-33-14 NMSA 1978, an owner of a tract or parcel of land to be assessed or upon which it is proposed to impose an improvement district property tax may contest:

(1) the proposed assessment or improvement district property tax;

(2) the regularity of the proceedings relating to the improvement;

(3) the benefits of the improvement; or

(4) any other matter relating to the improvement district.

B. The governing body shall not assess the tract or parcel of land an amount greater than the actual benefit to the tract or parcel of land by reason of the enhanced value of the tract or parcel of land as a result of the improvement as ascertained at the hearing. The governing body may allow a fair price, based on its current value, as a set-off against any assessment against a tract or parcel of land if the owner has improved the tract or parcel of land in such a manner that the improvement may be made part of the proposed improvement.

C. At the hearing, the governing body may:

(1) correct a mistake or irregularity in any proceeding relating to the improvement;

(2) correct an assessment made against or an improvement district property tax imposed upon any tract or parcel of land;

(3) in case of any invalidity, reassess the cost of the improvement against a benefiting tract or parcel of land; or

(4) recess the hearing.

D. An owner of a tract or parcel of land assessed or upon which it is proposed to impose an improvement district property tax, whether he appeared at the hearing or not, may commence an appeal in district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-32-9, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 12; 1998, ch. 55, § 9; 1999, ch. 265, § 9; 2001, ch. 312, § 7.

ANNOTATIONS

Cross references. — For appeal of final decisions by agencies to district court, *see* 39-3-1.1 NMSA 1978.

For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 2001 amendment, effective June 15, 2001, inserted "or upon which it is proposed to impose an improvement district property tax" in Subsections A and D; added "or improvement district property tax" to Subsection A(1); and inserted "or an improvement district property tax imposed upon" in Subsection C(2).

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection D.

The 1998 amendment, effective September 1, 1998, in the section heading, substituted "appeal to" for "action in"; in Subsection A, substituted "an owner" for "any owner"; in Subsection B, substituted "current" for "present"; in Paragraph C(1), substituted "a" for "any"; in Paragraph C(3), substituted "or" for "and"; in Paragraph C(4), deleted "from time to time" following "hearing"; and rewrote Subsection D.

The 1991 amendment, effective April 4, 1991, in Subsection A, substituted "3-33-14 NMSA 1978" for "14-32-7 of the New Mexico Statutes Annotated, 1953 Compilation" in the introductory paragraph and "or" for "and" at the end Paragraph (3); substituted "a

benefiting" for "an abutting" in Paragraph (3) in Subsection C; in Subsection D, substituted "are perpetually barred" for "is barred" in the second sentence and added the final sentence.

3-33-17. Improvement district; municipalities under 25,000; levy and collection of assessments prior to commencing improvement; special fund; misuse; penalty.

A. Whenever the governing body of a municipality having a population of less than twenty-five thousand persons:

(1) elects to order the construction of a street as authorized in Sections 3-33-1 through 3-33-43 NMSA 1978;

(2) uses municipally owned or leased equipment to construct the street; and

(3) determines what portion of the estimated cost of the construction shall be paid by tract or parcel of land benefited or to be benefited by the construction, the assessment may be levied and the installments collected prior to the commencement of work and as work progresses according to the terms of payment fixed by the governing body.

B. The construction shall commence within sixty days after the payment of the first installment of the assessment and be diligently prosecuted so that the construction is completed within one year from the date of commencement. At the end of the one year period, any tract or parcel of land that has not received the benefits provided by this section shall be released of any lien assessed against the tract or parcel of land by reason of this section and all assessment money collected from each owner of a tract or parcel of land so assessed and not benefited shall be returned.

C. All assessment money collected under this section shall be held by the municipal treasurer in a special account as a separate fund and used only for constructing the improvement, including the purchasing or leasing of necessary equipment. The use of the special fund for any purpose other than that required under this section by any public official, treasurer or member of the governing body is prohibited and is a felony punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the penitentiary for not more than two years or by both fine and imprisonment in the discretion of the court.

History: 1953 Comp., § 14-32-10, enacted by Laws 1965, ch. 300; 1971, ch. 56, § 1.

3-33-18. Improvement district; advertising for bids; municipality may do work; contribution by governmental agency.

A. If a continuous area proposed to be improved on any one street exceeds five hundred feet in length, the governing body, before using municipal equipment and employees to construct the improvement, shall advertise for bids for the construction of the improvement and award the contract for the construction of the improvement to the lowest responsible bidder; provided, however, a municipality may construct the improvement using the same specifications upon which bids were requested if:

(1) the municipality can guarantee to construct the improvement for an amount less than the lowest bid amount and not assess the benefiting tracts or parcels of land an amount in excess of the lowest responsible bid if a bid is received; or

(2) the municipality receives no bids for the construction of the improvement.

B. A municipality using municipally owned or leased equipment and municipal employees in constructing an improvement may cooperate with another governmental agency which contributes money, labor or a portion of the cost of materials towards completion of the improvement.

History: 1953 Comp., § 14-32-11, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Construction and effect of "changed conditions" clause in public works or construction contract with state or its subdivision, 56 A.L.R.4th 1042.

63 C.J.S. Municipal Corporations §§ 1150, 1157.

3-33-19. Notice of bid; acceptance of bid.

A. After the governing body creates an improvement district, the governing body may proceed as authorized in Section 3-33-17 or 3-33-18 NMSA 1978, or call for sealed bids on the proposed improvement. The notice of the call for bids shall be made in accordance with the provisions of Section 13-1-11 NMSA 1978 [repealed].

B. After advertising for bids, the municipality may make minor alterations or changes in the plans and specifications to correct errors or omissions in the original plans and specifications.

C. The governing body shall award the contract to the lowest responsible bidder unless the governing body:

(1) elects to construct the improvement as authorized in Section 3-33-17 or 3-33-18 NMSA 1978; or

(2) rejects all bids submitted for the construction of the improvement. Such bids shall be rejected in the following manner:

(a) if less than three bids are received, the purchase may be made without bids at the best documented obtainable price; or

(b) if three or more bids are received, the municipality may reject any or all bids but shall readvertise and accept new bids; and

(c) if no new bids are received or if all new bids are rejected, the rejection shall be accompanied by a written statement of the governing body declaring the reasons for such rejection and the municipality may then purchase the required items on the open market at the best documented price.

History: 1953 Comp., § 14-32-12, enacted by Laws 1965, ch. 300; 1977, ch. 325, § 5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not a part of the law. Laws 1984, ch. 65, § 175 repealed 13-1-11 NMSA 1978, effective November 1, 1984. For present provisions relating to notice of invitation for sealed bids, *see* 13-1-104 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Extension of time for completion of improvement, municipality's right to exact of contractor additional consideration as condition of, 71 A.L.R. 904.

Construction of paving contractor's contract in respect of contractor's obligation as to repairs, 72 A.L.R. 644.

Invalid or unenforceable contract, right of contractor to return in specie of consideration received by political subdivision, or to declaration of trust in respect of, or right to assert claim upon, property into which consideration has been converted, 93 A.L.R. 441.

Mandatory or permissive character of legislation in relation to payment for services rendered to public by contractor, 103 A.L.R. 818.

Public contracts: authority of state or its subdivision to reject all bids, 52 A.L.R.4th 186.

Low bidder's monetary relief against state or local agency for nonaward of contract, 65 A.L.R.4th 93.

Authority of state, municipality, or other governmental entity to accept late bids for public works contracts, 49 A.L.R.5th 747.

3-33-20. Improvement district; assessment of railroad property.

The governing body may assess the property of any railroad or street railroad which occupies or abuts any street the whole cost of the improvement between or under the rails or tracks and two feet on each side of the rail or track of the railroad or street railroad. The assessment shall be levied as other assessments are levied and shall constitute a lien coequal with the lien of other taxes and prior and superior to all other liens, claims and titles, and which may be enforced by sale of the railroad or street railroad property or by suit against the owner of the railroad or street railroad.

History: 1953 Comp., § 14-32-13, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of street railway which paves or is liable for paving occupied portion of street to assessment for improvement of remainder, 10 A.L.R. 164.

Liability of railroad which paves or is liable for paving occupied portion of street to assessment for improvement of remainder, 29 A.L.R. 679.

Right of way of railroad as liable for local improvements, 37 A.L.R. 219, 82 A.L.R. 425.

Public service commission's power as to paving of street by street railway company, 39 A.L.R. 1538.

Railroad property, excessiveness or unfairness of assessment on, for highway improvement, 48 A.L.R. 497.

Assessment for street or local improvement of right of way other than that of railroad or street railway, 58 A.L.R. 127.

Railroad grade crossing, elimination of, as a local improvement for which property specially benefited may be assessed, 111 A.L.R. 1222.

3-33-21. Improvement district; assessment roll; notice of assessment hearing.

A. After the contract has been awarded and the governing body determines the total cost of the improvement to the municipality, the governing body shall determine what portion of the total cost of the improvement shall be assessed against the benefited tract or parcel of land. The assessment, including the cost of the improvement at an intersection, shall not exceed the estimated benefit to the tract or parcel of land assessed.

B. With the engineer, the governing body shall prepare and cause to be filed in the office of the municipal clerk an assessment roll containing, among other things:

(1) the name of the last-known owner of the tract or parcel of land to be assessed, or if his name is unknown, state "unknown";

(2) a description of the tract or parcel of land to be assessed; and

(3) the amount of the assessment against each tract or parcel of land.

C. After the filing of the assessment roll, the governing body shall, by resolution, set a time and place for the assessment hearing when an owner may object to the amount of the assessment.

D. Not more than thirty days nor less than ten days before the day of the hearing, the municipal clerk, his deputy or the engineer shall mail the notice of the hearing on the assessment roll to the owner of the tract or parcel of land being assessed the cost of the improvement at his last known address. The name and address of the owner of each tract of land shall be obtained from the records of the county assessor or any other source the municipal clerk or engineer deems reliable. Proof of the mailing is to be made by affidavit of the municipal clerk, his deputy, or the engineer, which shall be filed in the office of the municipal clerk. Failure to mail any notice shall not invalidate any of the proceedings authorized in Sections 3-33-1 through 3-33-43 NMSA 1978. The notice of the hearing shall also be published once each week for three consecutive weeks and the last publication shall be at least one week prior to the day of the hearing. Such service by publication shall be verified by an affidavit of the publisher which is to be filed in the office of the municipal clerk.

History: 1953 Comp., § 14-32-14, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Theory upon which municipal special assessments may be levied is that the property charged receives a corresponding physical, material and substantial benefit from the improvements; that the property assessed will be enhanced in value to the extent of the burden imposed. Waltom v. City of Portales, 42 N.M. 433, 81 P.2d 58 (1938).

This section strictly limits any assessment to the "estimated benefit to the tract or parcel of land assessed." Bowdich v. City of Albuquerque, 76 N.M. 511, 416 P.2d 523 (1966).

Use of front-foot rule held valid. — Assessment for street improvement made upon front-foot rule, in conformity with statute, was valid and not subject to objection that it was assessed in excess of benefits. Ellis v. New Mexico Constr. Co., 27 N.M. 312, 201 P. 487 (1921).

Arbitrary use of front-foot rule is prohibited. — Where no effort is made to determine benefits beyond division of the cost on a front-foot basis, without any consideration

being given to whether a given tract is benefitted and how much, the assessment is invalid. Teutsch v. City of Santa Fe, 75 N.M. 717, 410 P.2d 742 (1966).

Fees included in assessment. — Engineers' and attorneys' fees are properly chargeable as a part of the costs of a paving improvement, and, as such are properly included in a local assessment against owners. Massengill v. City of Clovis, 33 N.M. 519, 270 P. 886 (1928).

Property owners may present their own appraisers to ensure that the city does not assess them for more than the amount that their property has been benefited. Bowdich v. City of Albuquerque, 76 N.M. 511, 416 P.2d 523 (1966).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70A Am. Jur. 2d Special or Local Assessments §§ 145 to 168.

Condition of dedication that remaining property shall not be subject to assessment for improvement, 16 A.L.R. 499, 37 A.L.R. 1357.

Contingency upon which the award of a contract for a related improvement is dependent as affecting validity of assessment, 29 A.L.R. 832.

Exemption of charitable organization from special assessments, 34 A.L.R. 687, 62 A.L.R. 328, 108 A.L.R. 284.

Y.M.C.A. or Y.W.C.A. as exempt from special assessments, 34 A.L.R. 1078, 81 A.L.R. 1453.

De minimis non curat lex as applied to special assessments, 44 A.L.R. 187.

Assessments for improvements by front-foot rule, 56 A.L.R. 941.

Assessment of right of way other than that of railroad or street railway, 58 A.L.R. 127.

Necessity that additional assessment in proceeding for local improvement precedes incurring liability in excess of original assessment, 63 A.L.R. 1179.

Waiver of compensation for taking or damaging property in construction of improvements by failure to claim it in special assessment proceedings, 64 A.L.R. 764.

Cemetery property and cemetery lots as subject to assessment for public improvement, in absence of express exemption, 71 A.L.R. 322.

Eligibility of public officer or employee to appointment as member of body to lay assessments for public improvement, 71 A.L.R. 540.

Ad valorem tax for highway purposes without attempt to apportion on basis of benefits, 72 A.L.R. 1103.

Traffic, character and extent of, as affecting liability of abutting property to assessment for street paving, 73 A.L.R. 1295.

Classification as regards counties or other political divisions permissible in statute imposing cost of construction or maintenance of highways upon property specially benefited, 77 A.L.R. 1285.

Homestead as subject to assessment for local improvements, 79 A.L.R. 712.

Acceptance by municipality of street improvement as binding on property-owners as regards contractor's performance of his obligations, 79 A.L.R. 1107.

Establishment of grade as jurisdictional requisite of improvement of street at expense of property benefited, 79 A.L.R. 1317.

Lump sum assessment for public improvements against property owned by cotenants in undivided shares, 80 A.L.R. 862.

Public property as subject to special assessment for improvement, 90 A.L.R. 1137.

Diversion of traffic into business district by opening new route as special benefit, 96 A.L.R. 1380.

Anticipating payment of special improvement assessment or deferred installments thereof, 96 A.L.R. 1475.

Refund of assessment for public improvement, who as between grantor and grantee, immediate or remote, is entitled to, 105 A.L.R. 698.

Undivided tract, enforceability against, of special assessment levied against part of it at one rate and part at another, 112 A.L.R. 73.

Alteration or re-location of street or highway as discontinuance of parts not included, 158 A.L.R. 543.

Unimproved strip or area separating property from improved portion of street as affecting assessability of property for street improvements, 166 A.L.R. 1083.

Agreement by property owners or occupants to pay costs of improvement, validity and effect of, 167 A.L.R. 1030.

Constitutional or statutory exemption of religious body from taxation as exempting it from special assessments, 168 A.L.R. 1222.

Municipality or other governmental unit, power to make contract or covenant exempting or releasing property from special assessment, 47 A.L.R.2d 1185.

Exemption from taxation of property of agricultural fair society or association, 89 A.L.R.2d 1104.

Public school property, exemption from assessments for local improvements, 15 A.L.R.3d 847.

Exemption of parsonage or residence of minister, priest, rabbi or other church personnel, 55 A.L.R.3d 356.

63 C.J.S. Municipal Corporations §§ 1292, 1406.

3-33-22. Improvement district; filing of objections; assessment hearing; action of the governing body; appeal to district court.

A. Not later than three days before the date of the hearing on the assessment roll, an owner of a tract or parcel of land that is listed on the assessment roll may file his specific objections in writing with the municipal clerk. Unless presented as required in this section, an objection to the regularity, validity and correctness of:

(1) the proceedings;

(2) the assessment roll;

(3) each assessment contained on the assessment roll; or

(4) the amount of the assessment levied against each tract or parcel of land, is deemed waived.

B. At the hearing, the governing body shall hear all objections that have been filed as provided in this section and may recess the hearing and, by resolution, revise, correct, confirm or set aside an assessment and order another assessment be made de novo.

C. The governing body by ordinance shall, by reference to the assessment roll as so modified, if modified, and as confirmed by the resolution, levy the assessments contained in the assessment roll. The assessments may be levied in stages if preliminary liens are established pursuant to Section 3-33-11 NMSA 1978. The decision, resolution and ordinance of the governing body is:

(1) a final determination of the regularity, validity and correctness of:

(a) the proceedings;

(b) the assessment roll;

(c) each assessment contained on the assessment roll; and

(d) the amount of the assessment levied against each tract or parcel of land; and

(2) conclusive upon the owners of the tract or parcel of land assessed.

D. An owner who has filed an objection as provided in this section may commence an appeal in district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-32-15, enacted by Laws 1965, ch. 300; 1967, ch. 146, § 7; 1991, ch. 199, § 13; 1998, ch. 55, § 10; 1999, ch. 265, § 10.

ANNOTATIONS

Cross references. — For appeal of final decisions by agencies to district court, *see* 39-3-1.1 NMSA 1978.

For exclusive procedure for appeal of reassessment, *see* 3-33-37 NMSA 1978.

For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection D.

The 1998 amendment, effective September 1, 1998, in Subsection A, substituted "an" for "any" twice, "that" for "which"; in Subsection B, deleted "from time to time" following "hearing", substituted "an" for "any"; in Subsection C, substituted "the" for "such" twice; and rewrote Subsection D.

The 1991 amendment, effective April 4, 1991, substituted "section" for "paragraph" in the second sentence in Subsection A; added the second sentence in Subsection C; in Subsection D, inserted "of the title and general summary of the ordinance" in the first sentence and substituted "or" for "and" at the end of Paragraph (3); and made minor stylistic changes in Subsections B and D.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Loss of right to contest assessment in proceeding for street or sewer improvement by waiver or estoppel, 9 A.L.R. 634.

Constitutionality of statute or ordinance denying right of property owners to defeat proposed street improvement by protest, 52 A.L.R. 883.

Failure of property owner to avail himself of remedy provided by statute or ordinance as precluding attack based on improper inclusion of property in or exclusion of property from assessment, 100 A.L.R. 1292.

Prohibition to prevent levy of assessments, 115 A.L.R. 20, 159 A.L.R. 627.

Appeal, who is "adverse party" entitled to notice of, 148 A.L.R. 196.

Estoppel of state or local government in tax matters, 21 A.L.R.4th 573.

3-33-23. Improvement district; assessments; terms of payment; liens.

A. The governing body may, by ordinance:

(1) establish the time and terms of paying the assessment or installments on the assessment, including but not limited to any provision for differing optional time periods over which installments of assessments for the same district may be paid and, at the discretion of the governing body, differing interest rates on such assessments that are payable over different time periods; provided that in the situation where the governing body provides for such optional time periods for payment of assessment installments, the ordinance shall set a limit on the time during which the affected property owner must select one of the specified options in writing and shall provide that failure to so select one of the options within the time limit conclusively establishes the selection of a specific option designated in the ordinance;

(2) set any rate or rates of interest upon deferred payments of the assessment or provide for setting, by resolution, of the rate or rates of interest upon deferred payments after sale of bonds or assignable certificates as provided in Section 3-33-24 NMSA 1978, which shall commence from the date of publication or posting of the ordinance levying the assessment; provided that the same interest rate shall be set for assessments that are payable over the same time period; and provided further that no rate or rates of interest in excess of twelve percent a year upon such deferred payments of the assessment shall become effective unless the state board of finance or any successor thereof at any time approves a higher interest rate or rates in writing based upon the determination of the state board of finance that the higher rate is reasonable under existing or anticipated bond market conditions, which approval shall be conclusive;

(3) fix penalties to be charged for delinquent payment of an assessment;

(4) establish procedures and standards for an adjustment of assessment in order to allow transfer of a parcel free of an assessment lien, accomodate [accommodate] subdivision of an assessed parcel or accommodate property line corrections and adjustments without changing the original payment schedule, the priority or original amount of the assessment. Such an adjustment of assessment may

allow the owner of the original tract of land to pay off any pro rata share of the assessment lien in advance of the schedule of payments. The procedures and standards may also provide for the method of assessment on the newly created parcels to vary from the method of assessment used on the original tract; and

(5) provide for the payment of any assessments levied pursuant to Chapter 3, Article 33 NMSA 1978 from other funds received by any owner of a tract or parcel in an improvement district in a location also intended by the governing body for the stimulation of manufacturing, industrial, commercial or business development pursuant to Section 3-33-4.1.

B. After the publication or posting of the ordinance levying an assessment as provided in Section 3-33-22 NMSA 1978, the assessment together with any interest or penalty accruing to the assessment is a lien upon the tract or parcel of land so assessed. Such a lien is coequal with the lien for general ad valorem taxes and the lien of other improvement districts and is superior to all other liens, claims and titles. Unmatured installments are not deemed to be within the terms of any general covenant or warranty. All purchasers, mortgagees or encumbrancers of a tract or parcel of land so assessed shall hold the tract or parcel of land subject to the lien so created unless the assessment lien is adjusted pursuant to this section.

C. Within sixty days after the publication or posting of the ordinance ratifying an assessment roll and levying the assessments, the municipal clerk shall prepare, sign, attest with the municipal seal and record in the office of the county clerk a claim of lien for any unpaid amount due and assessed against a tract or parcel of land.

D. Any tract or parcel so assessed shall not be relieved from the assessment or lien by the sale of the tract or parcel of land for general taxes or any other assessment, subject to the provisions of Section 3-33-30 NMSA 1978. The statute of limitations shall not begin to run against an assessment until after the last installment of the assessment becomes due.

E. The fact that an improvement is omitted for any benefited tract or parcel of land does not invalidate a lien or assessment made against any other tract or parcel of land.

History: 1953 Comp., § 14-32-16, enacted by Laws 1965, ch. 300; 1979, ch. 108, § 1; 1981, ch. 44, § 3; 1991, ch. 199, § 14.

ANNOTATIONS

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

Cross references. — For municipal liens, *see* 3-36-1 NMSA 1978 et seq.

For property tax lien, *see* 7-38-48 NMSA 1978.

For proof of publication, *see* 14-11-4 to 14-11-6 NMSA 1978.

For statute of limitations, *see* 37-1-4 NMSA 1978.

The 1991 amendment, effective April 4, 1991, deleted "foreclosure" following "liens" in the catchline; inserted "or posting" following "publication" in two places; in Subsection A, inserted "or provide for setting, by resolution, of the rate or rates of interest upon deferred payments after sale of bonds or assignable certificates as provided in Section 3-33-24 NMSA 1978" and substituted "levying" for "ratifying" near the beginning of Subsection A(2) and added Subsections A(4) and A(5); in Subsection B, substituted "levying an assessment" for "ratifying an assessment levied" in the first sentence and added "unless the assessment lien is adjusted pursuant to this section" at the end of the final sentence; inserted "and levying the assessments" in Subsection C; deleted former Subsection E, pertaining to foreclosure; substituted "for any benefited tract" for "in front of any tract" in Subsection F; designated former Subsection F as Subsection E; and made minor stylistic changes throughout this section.

Theory upon which municipal special assessments may be levied is that the property charged receives a corresponding physical, material and substantial benefit from the improvement, and the property assessed will be enhanced in value to the extent of the burden imposed. Waltom v. City of Portales, 42 N.M. 433, 81 P.2d 58 (1938).

Power of municipality extends to making provision for payment of such assessments and deferred payment interest rates. Munro v. City of Albuquerque, 48 N.M. 306, 150 P.2d 733 (1943).

Nature of assessments. — Municipal special assessments are quasi-taxes laid to enable the discharge of some of the functions of government, and the power to impose them is related to the taxing power. Waltom v. City of Portales, 42 N.M. 433, 81 P.2d 58 (1938).

Liability for payment was in rem. — A legislative intent that the only liability for payment of bonds was in rem and not in personam was indicated. Munro v. City of Albuquerque, 48 N.M. 306, 150 P.2d 733 (1943).

Priority of liens. — The legislature may provide that the lien of taxes obtained by special assessments shall be paramount to all prior liens created by contract, although statute was enacted subsequent to the lien by contract. City of Albuquerque v. City Elec. Co., 32 N.M. 401, 258 P. 574 (1927).

Priority of existing liens. — Prior existing assessment liens which have been duly filed or recorded are superior to future liens for local improvement assessments. City of Albuquerque v. Middle Rio Grande Conservancy Dist., 45 N.M. 313, 115 P.2d 66 (1941).

Security interest. — A security interest in property held by the small business administration was not subordinate to a special assessment which was not a tax due on the property, and which, under New Mexico law was on the same plane as a lien for general taxes. United States v. City of Albuquerque, 465 F.2d 776 (10th Cir. 1972).

Statutes elevating special assessment liens to parity with liens for general taxes did not violate constitutional provision against enactment of special or local laws, nor the constitutional provision against the release, exchange or diminution of any obligation or liability owed by any person or corporation to the state or a municipal corporation, except by payment or by a proper judicial proceeding. Waltom v. City of Portales, 42 N.M. 433, 81 P.2d 58 (1938).

Four-year statute of limitations applies and runs against special assessments for street paving obligations, since such assessments are not levied for governmental purposes and are not "taxes." Altman v. Kilburn, 45 N.M. 453, 116 P.2d 812 (1941).

Voluntary payment of part of assessment, payable in installments, was not of itself sufficient to estop one from defense of confiscation in suit to foreclose lien for unpaid installment. City of Clovis v. Scheurich, 34 N.M. 227, 279 P. 876 (1929).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70A Am. Jur. 2d Special or Local Assessments §§ 178 to 222.

Priority as between tax lien and lien of special assessment, 5 A.L.R. 1301, 65 A.L.R. 1379, 99 A.L.R. 1478.

Validity of promise based on invalid paving assessment, 20 A.L.R. 1326.

Liability of municipality because of its inability, refusal, or failure to collect cost of improvements from property primarily liable, 38 A.L.R. 1271, 51 A.L.R. 973, 172 A.L.R. 1030.

Inclusion in assessment of amount to cover delinquencies as contrary to constitutional guaranties, 40 A.L.R. 1352, 42 A.L.R. 1185.

Constitutionality of statute extinguishing or impairing lien of special assessments on sale of property for taxes, 53 A.L.R. 1140.

Transfer or assignment of municipality's right to enforce assessment or lien for local improvements, 55 A.L.R. 667.

General funds or credit of municipality, statute which provides for use of, in event of default or delay in payment of, or inability to collect, or insufficiency of, special assessments for local improvements, 70 A.L.R. 176, 135 A.L.R. 1287.

Unpaid public improvement assessment as breach of covenant or defect in vendor's title, 72 A.L.R. 302.

Judicial sale, assessment for local improvements as taxes within statute providing for payment of taxes out of proceeds, 73 A.L.R. 1227.

Judgment in action or proceeding involving an installment of an assessment for a public improvement as res judicata as regards other installments of assessment, 74 A.L.R. 880.

Constitutionality of statute giving priority to lien for public improvements over pre-existing contractual lien, 78 A.L.R. 513.

Liquidation of indebtedness incident to abandoned project cost of which, if made, would have been assessed against property benefited, 82 A.L.R. 559.

Validity and effect of agreement by property owner to pay assessment, 86 A.L.R. 779, 127 A.L.R. 551, 167 A.L.R. 1030.

Reimbursement by owner, character of action or proceeding in which purchaser at invalid sale for local improvement assessment may secure, and provisions of decree or judgment as to relief, 86 A.L.R. 1208.

Public property, manner of enforcing special assessments against, 95 A.L.R. 689, 150 A.L.R. 1394.

Power and duty to include in a periodical special assessment the amount of a deficiency for a previous period resulting from delinquent assessments which may eventually be paid, 96 A.L.R. 1275.

Anticipating payment of tax or special improvement assessment or deferred installments thereof, right of taxpayer, 96 A.L.R. 1475.

Constitutionality, construction, and application of statute permitting release of part of property subject to liens or special assessments, 100 A.L.R. 418.

Specific performance of parol contract to convey realty, payment of assessments as part performance entitling vendee to, 101 A.L.R. 1109.

Constitutionality of statute providing for relieving property subject to assessment for improvements from all or part of such assessment, 105 A.L.R. 1169.

Certificate or statement of treasurer or other public official regarding unpaid assessments against specific property, effect of, 107 A.L.R. 568, 21 A.L.R.2d 1273.

Forfeiture or sale of land to state or political subdivision for nonpayment of taxes as suspending right to enforce special assessment or improvement lien, 113 A.L.R. 920.

Installment plan of payment as affecting duration of lien of special assessment, 114 A.L.R. 399.

Right of one governmental unit, or officer thereof, to compensation for collecting or disbursing special assessments levied by or owed to another governmental unit, 114 A.L.R. 1098.

Relation back of title or interest embraced in escrow instrument upon final delivery or performance of condition, as affecting liability for assessments, 117 A.L.R. 89.

Right of holder of bond or other instrument representing or based upon assessment for benefits or improvement to purchase at tax sale or acquire tax title and hold same in his own right as against owner of land, 123 A.L.R. 398.

Failure of property owner to make formal election to avail himself of privilege of paying taxes or special assessment in installments, 140 A.L.R. 1442.

Tax sale as freeing property from possibility of further assessments for benefits to land, 11 A.L.R.2d 1133.

Power to remit, release or compromise assessments for public improvements, 28 A.L.R.2d 1425.

Contract or covenant exempting or releasing property from special assessment, power of municipality, 47 A.L.R.2d 1185.

Interest accruing during the construction of the public improvement and running until special assessments therefor become due, power to include in special assessments, 58 A.L.R.2d 1343.

Election of remedies, exclusiveness of method prescribed by statute or ordinance for enforcement of special assessment for public improvement or service, 88 A.L.R.2d 1250.

Superiority of special or local assessment lien over earlier private lien or mortgage, where statute creating such special lien is silent as to superiority, 91 A.L.R.2d 638.

Duty as between life tenant and remainderman as respects payment of improvement assessments, 10 A.L.R.3d 1309.

63 C.J.S. Municipal Corporations §§ 1452, 1564, 1569, 1570.

3-33-24. Improvement district; authority to issue bonds or assignable certificates.

A. To pay all or any part of the cost of the improvement, including those items set out in Subsection C of Section 3-33-11 NMSA 1978, the governing body may proceed pursuant to the provisions of Section 3-33-14.1 NMSA 1978 or may issue in the name of the municipality bonds in such form as the governing body may determine or assignable certificates in an amount not exceeding the total cost of the improvement and maturing not more than twenty years from the date of issuance. If the bonds or assignable certificates recite that:

(1) the proceedings relating to making the improvement and levying the assessments as provided in Section 3-33-22 NMSA 1978 or placing the preliminary lien as provided in Section 3-33-11 NMSA 1978 to pay for the improvement have been done in compliance with law; and

(2) all prerequisites to the fixing of the assessment lien or placing the preliminary lien against the tract or parcel of land benefited by the improvement have been performed, such recital shall be conclusive evidence of the facts recited.

B. The assignable certificates shall:

(1) declare the liability of the owner of the tract or parcel of land so assessed or the liability of the tract or parcel of land so assessed for payment of the assessment, interest and penalties;

(2) fix the terms and conditions of the certificates; and

(3) accurately describe the tract or parcel of land covered by the certificate.

C. The bonds shall:

(1) recite the terms and conditions for their issuance;

(2) be payable from money collected from the preliminary assessment lien authorized in Section 3-33-11 NMSA 1978 and, if so payable, also payable from the proceeds of bonds payable from the final assessment lien authorized in Section 3-33-22 NMSA 1978; or

(3) be payable from the money collected from the assessments authorized in Section 3-33-22 NMSA 1978; provided that if assessments are made payable over more than one period of time as permitted by Section 3-33-23 NMSA 1978, specified portions of the bonds may be payable from money collected from those assessments payable over that period of time that generally corresponds to the period of time over which such specified portions of the bonds are payable; and

(4) bear a rate or rates of interest that shall not exceed the rate of interest on the deferred installments of the assessments or, if more than one rate of interest is specified for assessments as permitted by Section 3-33-23 NMSA 1978, on that portion of the deferred installments of assessments from which that specified portion of the bonds may be payable. Payment of the bonds issued for the construction of a project described in Subsection A of Section 3-33-3 NMSA 1978 may be supplemented from gasoline tax money in the street improvement fund authorized by Section 3-34-1 NMSA 1978 on or before a date not more than twelve months after the last deferred installment of an assessment is due from the owner of a tract or parcel of land so assessed.

D. The bonds may be issued to the contractor in payment for the construction of the improvement or may be issued and sold:

(1) in payment of the municipality's proportion of the cost of the improvement;

(2) in payment of the proportionate cost if the improvement is done in cooperation with another governmental agency;

(3) in payment of the construction of the improvement done under contract; or

(4) in reimbursement to the municipality if the municipality constructed the improvement with municipally owned or leased equipment and municipal employees.

E. Any municipality creating a street improvement fund as authorized by Section 3-34-1 NMSA 1978 may contract for the issuance and sale of bonds or assignable certificates.

F. Bonds or assignable certificates may be sold at public or private sale at a discount.

History: 1953 Comp., § 14-32-17, enacted by Laws 1965, ch. 300; 1970, ch. 51, § 1; 1979, ch. 108, § 2; 1983, ch. 265, § 8; 1991, ch. 199, § 15; 2001, ch. 312, § 8.

ANNOTATIONS

Cross references. — For refunding improvement bonds, *see* 3-33-39 NMSA 1978 et seq.

For destruction of documentary evidence of extinguished public debt, *see* 6-10-62 NMSA 1978.

The 2001 amendment, effective June 15, 2001, inserted the reference to 3-33-14.1 NMSA 1978, in Subsection A.

The 1991 amendment, effective April 4, 1991, in Subsection A, inserted "including those items set out in Subsection C of Section 3-33-11 NMSA 1978" near the beginning

and added "and maturing not more than twenty years from the date of issuance" at the end of the first sentence, inserted "as provided in Section 3-33-22 NMSA 1978 or placing the preliminary lien as provided in Section 3-33-11 NMSA" in Paragraph (1) and inserted "or placing the preliminary lien" in Paragraph (2); and in Subsection C, added Paragraph (2), designated former Paragraphs (2) and (3) as Paragraphs (3) and (4), substituted "project described in Subsection A of Section 3-33-3 NMSA 1978" for "street, alley, curb, gutter or sidewalk project" in the first full sentence in Paragraph (4), and made minor stylistic changes.

Construction of statute. — Statute was remedial in nature and did not impair the obligation of contract, and had application to bonds issued prior to its enactment. City of Albuquerque v. Middle Rio Grande Conservancy Dist., 45 N.M. 313, 115 P.2d 66 (1941); Gray v. City of Santa Fe, 15 F. Supp. 1074 (D.N.M. 1936), modified and aff'd, 89 F.2d 406 (10th Cir. 1937).

Validation of bonds previously issued. — Legislature specifically authorized "paving bonds" to be issued by municipalities, and ratified, approved and confirmed, as valid obligations, any bonds theretofore issued by any municipalities for the purpose of paying the costs of such improvement as though the same were issued under the provisions of this section. Hodges v. City of Roswell, 31 N.M. 384, 247 P. 310 (1926).

Vote of electors required. — Obligation prescribed by applicable statute and certificates that city guarantee payment of deficiency in special assessment fund from the general revenues of the city was not within the constitutional power of the city without a vote of the qualified electors as required by N.M. Const., art. IX, § 12. Purcell v. City of Carlsbad, 126 F.2d 748 (10th Cir. 1942).

Notice of statutory provisions. — All parties, including holders of municipal bonds, are chargeable with notice of the statutes and ordinances governing the issue. The recitals in the bonds are insufficient to give such notice. State ex rel. Ackerman v. City of Carlsbad, 39 N.M. 352, 47 P.2d 865 (1935).

Certificates were debts. — Town sewer certificates, were debts within provision of constitution. Henning v. Town of Hot Springs, 44 N.M. 321, 102 P.2d 25 (1939).

Debt must be fixed and certain. — Sewer construction debt must be fixed, definite and certain in amount at time it was incurred. Henning v. Town of Hot Springs, 44 N.M. 321, 102 P.2d 25 (1939).

Payment of deficiency held void. — The guaranty of a city to pay to the holders of sewer certificates payable out of assessments any deficiency not met by the assessments was void, in view of N.M. Const., art. IX, § 12. City of Santa Fe v. First Nat'l Bank, 41 N.M. 130, 65 P.2d 857 (1937).

Negotiable coupon bond which provided for interest "from date until payment" authorized payment of interest after maturity. Munro v. City of Albuquerque, 43 N.M. 334, 93 P.2d 993 (1939).

Limitations on interest. — Where a city issued special paving assessment bonds with coupons calling for 6% interest until maturity, and providing that upon default all should at once become due and should draw 1% per month, the provisions could not be enforced, since interest was limited by law to 8%, and the city could not be compelled to pay more than 8%. Munro v. City of Albuquerque, 43 N.M. 334, 93 P.2d 993 (1939).

Bonds should not be surrendered and marked "paid and discharged" until all accumulated interest is paid. Munro v. City of Albuquerque, 43 N.M. 334, 93 P.2d 993 (1939).

Sale of bonds. — Nothing in the provisions of this section would prevent the sale of special improvement bonds below par and interest accrued thereon. Stone v. City of Hobbs, 54 N.M. 237, 220 P.2d 704 (1950).

Discount on bonds. — Discount on special street improvement bonds must be treated as an incidental expense which may be assessed against the property situated in the improvement district. Stone v. City of Hobbs, 54 N.M. 237, 220 P.2d 704 (1950).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations §§ 104, 105; 70A Am. Jur. 2d Special or Local Assessments §§ 223 to 226.

Negotiability of municipal bonds as affected by reference to fund from which they are to be paid, 42 A.L.R. 1027.

64 C.J.S. Municipal Corporations §§ 1893, 1907, 1957.

3-33-25. Improvement district; rights of negotiable bondholders or assignable certificate holders.

A. If the governing body fails or refuses to foreclose and sell a tract or parcel of land for the delinquent assessment or installment of the assessment as required in Section 3-33-26 NMSA 1978, any holder of a bond or assignable certificate secured by the assessment may foreclose the assessment lien on such delinquent property in the manner provided by law for the foreclosure of mortgages on real estate.

B. Any person holding two or more assignable certificates issued as authorized in Section 3-33-24 NMSA 1978 may sue in the same action on all tracts or parcels of land described in the certificate to enforce the lien against the tract or parcel of land described in the certificate unless the assessment lien has been adjusted pursuant to Section 3-33-23 NMSA 1978.

C. Whenever a governing body, board of county commissioners or local board of education is delinquent in the payment of an assessment, the holder of any assignable certificate issued against the tract or parcel of land of the municipality, county or school district has the rights and remedies for the collection of the assessment as are given by law for the collection of judgments against municipalities, counties and school districts.

History: 1953 Comp., § 14-32-18, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 16.

ANNOTATIONS

Cross references. — For municipal liens, *see* 3-36-1 NMSA 1978 et seq.

For foreclosure of mortgages, *see* 39-5-1 NMSA 1978 et seq.

The 1991 amendment, effective April 4, 1991, in Subsection A, substituted "3-33-26 NMSA 1978" for "14-32-19 New Mexico Statutes Annotated, 1953 Compilation" and inserted "or assignable certificate" and, in Subsection B, substituted "3-33-24 NMSA 1978" for "14-32-17 New Mexico Statutes Annotated, 1953 Compilation" and added "unless the assessment lien has been adjusted pursuant to Section 3-33-23 NMSA 1978" at the end.

This statute provides the exclusive remedy for the enforcement of assessments for paving bonds, and the court erred in appointing a receiver to take over and administer the town's assets and perform town's duties to collect assessments. State ex rel. Lynch v. District Court, 41 N.M. 658, 73 P.2d 333 (1937).

Agreement by a city to collect improvement assessments and apply proceeds in payment of the bonds was valid; the city could be compelled by mandamus to perform that duty and agreement. Gray v. City of Santa Fe, 89 F.2d 406 (10th Cir. 1937).

Duty of certificate holder. — Though the city is empowered to foreclose liens against delinquent assessments, a duty is imposed on the certificate holder either to bring mandamus against the city to perform this responsibility, or to bring foreclosure proceedings in his own name within the period of limitations. Munro v. City of Albuquerque, 48 N.M. 306, 150 P.2d 733 (1943).

Exhaustion of remedies by bondholder. — Any liability of the municipality in connection with the breach of its express duty in the collection of special assessments is contingent upon and subject first to the corresponding duty of the bondholder or certificate holder to exhaust all remedies available to him: (1) to mandate the municipality to perform its express or statutory duty, and (2) to enforce in its own name and right the collection of the assessments by foreclosure proceedings when so authorized. Purcell v. City of Carlsbad, 126 F.2d 748 (10th Cir. 1942).

Duty of bondholder. — Whether assessments are delinquent and whether the city has failed or declined to enforce collection by foreclosing the assessment liens must be ascertained by the bondholder at his peril. The bondholder has to show that the city failed or refused to proceed after the assessment became delinquent. Munro v. City of Albuquerque, 48 N.M. 306, 150 P.2d 733 (1943).

The bondholder is under no duty to act in his own behalf until he has notice of the breach of the obligations by the default of the interest or principal on the bond, of which he was the owner or holder, unless it is shown that by some other circumstances, the bondholder was apprised of the breach, in which event it becomes his duty to timely act. Gray v. City of Santa Fe, 135 F.2d 374 (10th Cir. 1941).

Notice of rights of bondholder. — Since this statute has given the bondholder a remedy under appropriate circumstances, it acts as notice of his rights and the limitations thereon, and he is placed on inquiry as to whether such circumstances may have arisen. Munro v. City of Albuquerque, 48 N.M. 306, 150 P.2d 733 (1943).

Alternative remedies for enforcing collection. — Where city attorney failed to perform duties imposed upon him by the ordinances, to enforce collection of the amount due on assessments by foreclosure as provided by the ordinances, the bondholders had the alternative remedies of enforcing the collection by a suit to foreclose in their own behalf, or mandamus to compel the city to perform its trust obligation. Gray v. City of Santa Fe, 135 F.2d 374 (10th Cir. 1943).

Municipality is liable for damages caused by shrinkage in value of assessed property from the date on which it becomes obligated to enforce collection of assessments by foreclosure and the date on which it becomes the duty of the bondholders either to enforce collection of the assessments in their own behalf, or to compel the city by mandamus to perform its trust obligation, together with costs of the proceedings. Gray v. City of Santa Fe, 135 F.2d 374 (10th Cir. 1943).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Impairing contract rights of holders of improvement bonds or liens by statute permitting acceptance of bonds or interest coupons in payment of improvement assessments, 85 A.L.R. 244, 97 A.L.R. 911.

Priority as between successive issues of obligations of permanently organized local improvement district, 99 A.L.R. 1488.

Requirement of prior appropriation by municipal authorities as condition of making a contract or incurring expense as applicable to local improvements, or bond issue payable only out of special funds and not constituting an obligation of the municipality, 124 A.L.R. 1467.

Judgment in action between property owner and public improvement district or its officer as res judicata as against certificate holders who were not parties, 128 A.L.R. 392.

3-33-26. Improvement district; additional duties imposed on municipality.

A. Whenever an improvement district has been created and bonds or assignable certificates have been issued to finance the improvement, a municipality shall:

(1) act as agent for the collection of the assessments;

(2) collect the assessments when due;

(3) act as trustee for the benefit of the holders of the bonds or assignable certificates;

(4) annually prepare a statement that shall:

(a) be available for inspection in the office of the municipal treasurer;

(b) reflect the financial condition of the improvement district; and

(c) list all the delinquencies existing at that time; and

(5) institute proceedings to foreclose the assessment lien against any tract or parcel of land that is delinquent in the payment of the assessment or installment of an assessment for a period of more than one year.

B. If more than one improvement district is created, the money from assessments in each district shall be kept in a separate fund and used for the payment of principal and interest of the bonds or assignable certificates outstanding against that improvement district.

History: 1953 Comp., § 14-32-19, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 17.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, deleted "negotiable coupon" preceding "bonds" in three places and, in Subsection A, substituted "when due" for "annually or semiannually" at the end of Paragraph (2), designated former Subparagraph (d) of Paragraph (4) as Paragraph (5), and made minor stylistic changes.

Ordinance cumulative of statute. — The promise of the city in paving ordinance to enforce collection of assessments is only promising to perform the very services which the statute pursuant to which the ordinances were passed says the municipality should perform and is cumulative only. Munro v. City of Albuquerque, 48 N.M. 306, 150 P.2d 733 (1943).

Absent specific directions in the applicable statutes, ordinances or bonds for the application of collected funds to interest and principal, in the event of insufficiency to pay both at maturity, the city incurs no obligation with respect thereto except to apply the available funds in accordance with the provisions of the ordinances creating the obligation. Gray v. City of Santa Fe, 135 F.2d 374 (10th Cir. 1943).

The city's only obligation to sewer certificate holders is to handle the fund created by sewer assessments according to the contract and its liability under the contract is measured by the statutes which authorized it. Purcell v. City of Carlsbad, 126 F.2d 748 (10th Cir. 1942).

Liability of city. — A city which agrees to collect improvement assessments, and to apply the proceeds in payment of bonds, which are payable exclusively out of such assessments, is not liable primarily for the bonds. Gray v. City of Santa Fe, 89 F.2d 406 (10th Cir. 1937).

3-33-27. Improvement district; acceptance of deed in lieu of foreclosure.

In lieu of the foreclosure of a lien against any tract or parcel of land which is delinquent in the payment of an assessment or installment of an assessment for a period of more than one year, a municipality may accept a deed to the property subject to the lien if the owner of the property tenders the deed to the municipality.

History: 1953 Comp., § 14-32-20, enacted by Laws 1965, ch. 300.

3-33-28. Improvement district; foreclosure; trustee may purchase at foreclosure of liens; contents of bid.

Any delinquent assessment has the effect of a mortgage and shall be foreclosed and sold in the manner provided by law for the foreclosure of mortgages on real estate. In any action seeking the foreclosure of a lien against any tract or parcel of land assessed by a municipality for the construction of any project after either or both assignable certificates or bonds have been issued, if there is no other purchaser for the tract or parcel of land having a delinquent assessment, the municipality, as trustee of the fund from which the assignable certificates or bonds are to be paid, may:

A. purchase the tract or parcel of land sold at the foreclosure sale; and

B. bid, in lieu of cash, the full amount of the assessment, interest, penalties, attorneys' fees and costs found by the court to be due and payable under the ordinance creating the lien and any cost taxed by the court in the foreclosure proceedings against the property ordered sold.

History: 1953 Comp., § 14-32-21, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 18.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, rewrote the section heading which read "Improvement district - Trustee may purchase at foreclosure of street improvement liens where bonds were exchanged for certificates - Contents of bid"; added the first sentence; substituted "or bonds have been issued, if there is no other purchaser for the tract or parcel of land having a delinquent assessment, the municipality, as trustee of the fund from which the assignable certificates or bonds are to be paid" for "and negotiable coupon bonds have been issued, the trustee of the fund from which the bonds are to be paid" at the end of the introductory paragraph; and, in Subsection B, inserted "penalties, attorneys' fees and costs" and made a related stylistic change.

3-33-29. Improvement district; title subject to redemption vests in trustee.

Upon the acceptance or purchase of the tract or parcel of land as provided in Section 3-33-27 or 3-33-28 NMSA 1978, title to the tract or parcel of land, subject to the right of redemption provided by Subsection A of Section 3-33-30 NMSA 1978, vests in the trustee of the fund from which the assignable certificates or bonds are payable.

History: 1953 Comp., § 14-32-22, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 19.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, rewrote this section which read "Upon the acceptance or purchase of the tract or parcel of land as provided in Sections 14-32-20 or 14-32-21 New Mexico Statutes Annotated, 1953 Compilation, title of the tract or parcel of land, subject to the right of redemption as now provided by law vests in the trustee of the fund from which the negotiable coupon bonds are payable".

3-33-30. Improvement district; private or public sale of property; redemption period; disposition of proceeds.

A. No real property shall be sold by the trustee to satisfy a delinquent assessment until at least fifteen days after the date of the order, judgment or decree of the court, within which time the owner of the tract or parcel of land may pay off the decree and avoid the sale. Any real estate sold under any order, judgment or decree of court to satisfy the lien may be redeemed at any time within one year of the date of sale by the owner or mortgage holder or other person having an interest, or their assigns by repaying to the purchaser or his assign the amount paid with interest from the date of purchase at the rate of twelve percent per year.

B. After expiration of the fifteen-day period, the trustee may sell the property at a public or private sale subject to the right of redemption, and, if not paid from the proceeds of the sale, subject to the indebtedness claimed under the lien, ad valorem

taxes and other special assessments having a lien on the property that is coequal with the lien for ad valorem taxes.

C. The proceeds of the sale of the foreclosed tract or parcel of land at either a private sale or a public sale shall be applied as follows:

(1) first, to the payment of costs in giving notice of the sale and conducting the sale;

(2) second, to costs and fees taxed against the tract or parcel of land in the foreclosure proceedings;

(3) third, on a pro rata basis, to indebtedness claimed under the lien and to ad valorem taxes and other special assessments having a lien on the property that are coequal with the ad valorem taxes; and

(4) fourth, after all such costs, liens and assessments are paid to the former owner, mortgage holder or other parties having an interest in the tract or parcel, upon such persons providing satisfactory proof to the court of an interest and upon approval of the court.

D. Receipts for the satisfaction of the indebtedness claimed under the lien shall be paid into the proper improvement district fund for payment of the interest and the bonds or assignable certificates.

E. In case of the sale of any tract or parcel of land subject to more than one delinquent assessment, such remaining proceeds shall be distributed into the proper improvement district funds for such payment pro rata based upon the total unpaid amount due each such district.

History: 1953 Comp., § 14-32-23, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 20.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

3-33-31. Improvement district; assessment funds; expenditures; misuse; penalties.

A. All money received by the municipality from any special assessment or assessment within an improvement district shall be held in a special fund and used to:

(1) pay the cost of the improvement for which the assessment was made;

(2) reimburse the municipality for any work performed by the municipality in constructing the improvement and for administrative costs associated with the improvement district; or

(3) pay the interest and principal due on any outstanding bonds or assignable certificates.

B. Any person who uses money in an improvement district fund other than as provided in this section is guilty of a felony and shall be punished by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the state penitentiary for not more than two years or by both such fine and imprisonment in the discretion of the court.

History: 1953 Comp., § 14-32-24, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 21.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, in Subsection A, added "and for administrative costs associated with the improvement district" at the end of Paragraph (2), deleted "negotiable coupon" preceding "bonds" in Paragraph (3), and made a minor stylistic change.

Municipality must act as fiduciary. — In dealing with the special fund, the municipality must act with all the care of a fiduciary. 1957-58 Op. Att'y Gen. No. 57-289.

Moneys collected may not be transferred for other uses until and unless all bonds have been paid in full. 1955-56 Op. Att'y Gen. No. 55-6232.

Appropriate investment of the proceeds of special assessments, held awaiting the time when they can be applied on account of the obligation of bonds thereby secured, violates neither the letter nor the spirit of this section. 1957-58 Op. Att'y Gen. No. 57-289.

Interest earned by invested proceeds. — In the event that proper investment of the proceeds of special assessments should be made, the interest earned by such funds is to be viewed as belonging to the special fund in question, as an increment thereto, in the absence of a dispositive statutory provision. 1957-58 Op. Att'y Gen. No. 57-289.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Diversion, misappropriation or withholding of funds collected by and paid to municipality, on account of special assessments against property for improvements, liability of municipality because of, 107 A.L.R. 1354.

64 C.J.S. Municipal Corporations § 1884.

3-33-32. Transfer of improvement district funds.

The governing body may transfer to the general fund of the municipality any money obtained from the levy of an assessment for an improvement district if:

A. bonds or assignable certificates were issued to finance the improvement;

B. the proceeds of the bonds or assignable certificates were spent for the improvement;

C. the assessments were levied and collected for the payment of the bonds or assignable certificates; and

D. either the bondholders or assignable certificate holders are barred by the statute of limitations or a court judgment or decree from collecting the indebtedness; or

E. the bonded indebtedness or assignable certificates have been paid.

History: 1953 Comp., § 14-32-25, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 22.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, deleted "and" at the end of Subsections A and B and substituted "proceeds of" for "funds obtained by" in Subsection B.

3-33-33. Improvement district; reassessment after voiding of assessments; procedure.

A. It is the purpose of Sections 3-33-33 through 3-33-37 NMSA 1978 to:

(1) charge the cost of any improvement payable by the tract or parcel of land benefited by the improvement by making a reassessment for the cost of the improvement; and

(2) permit the making of a reassessment when an original assessment is declared void or the enforcement of the original assessment is refused by a court.

B. Whenever any assessment for improvements is declared void or unenforceable, either directly or indirectly, by a decision of any court for any cause whatever, the governing body shall reassess the tracts or parcels of land which are benefited or will be benefited by the improvement to the extent of the proportionate share of the cost of the improvement of each tract or parcel of land together with accrued interest.

C. The reassessment roll shall be prepared, a hearing held on the reassessment roll and a final determination of the reassessment made by the governing body; all to be conducted in the manner provided in Sections 3-33-21 through 3-33-23 NMSA 1978 for the original assessment.

History: 1953 Comp., § 14-32-28, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 23.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, substituted "3-33-33 through 3-33-37 NMSA 1978" for "14-32-28 through 14-32-32 New Mexico Statutes Annotated 1953 Compilation" in the introductory phrase in Subsection A; deleted the former second sentence in Subsection B which read "If the cost of the improvement exceeds the actual value of the improvement, the reassessment shall be based upon the actual value of the improvement at the time of its completion"; substituted "3-33-21 through 3-33-23 NMSA 1978" for "14-32-14 through 14-32-16 New Mexico Statutes Annotated, 1953 Compilation" in Subsection C; and made minor stylistic changes in Subsections B and C.

Unauthorized reassessment purpose. — Reassessment statutes were not enacted for the purpose of establishing an independent method of creating improvement districts in which abutting property owners might be assessed for improvements. In re Paving Dist. No. 5, 65 N.M. 25, 331 P.2d 526 (1958).

As a prerequisite to a reassessment there must have been an original assessment, and it must have been set aside by appropriate action. In re Paving Dist. No. 5, 65 N.M. 25, 331 P.2d 526 (1958).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70A Am. Jur. 2d Special or Local Assessments §§ 141 to 144.

Validity of assessment for local improvement as affected by contingency upon which the award of a contract for a related improvement is dependent, 29 A.L.R. 832.

Liability of municipality in consequence of its inability, refusal, or failure to collect the cost of local improvements from property benefited, 38 A.L.R. 1271, 51 A.L.R. 973, 172 A.L.R. 1030.

Judgment as precluding reassessment, 60 A.L.R. 513.

Lack of jurisdiction of proceedings leading to original assessment as affecting applicability of statute authorizing or requiring reassessment when original assessment is invalid, 83 A.L.R. 1190.

Utilization, under new proceeding for public improvement, of work done under a previous abandoned or invalid proceeding, 110 A.L.R. 278.

63 C.J.S. Municipal Corporations §§ 1545, 1554.

3-33-34. Improvement district; reassessment; defects waived; credit for previous payment.

A. The fact that:

(1) the contract has been let;

(2) an improvement has been wholly or partially constructed;

(3) an omission, failure or neglect of the governing body or municipal officer to comply with the requirements of Sections 3-33-1 through 3-33-23 NMSA 1978; or

(4) any other matter whatsoever connected with the improvement or initial assessment is invalid, shall not invalidate or in any way effect the making of a reassessment as authorized in Section 3-33-33 NMSA 1978, and charging the benefited tract or parcel of land the cost of the improvement.

B. When the reassessment is complete, any money paid on the former attempted assessment against a tract or parcel of land shall be credited to the tract or parcel of land in partial or whole payment of the reassessment.

History: 1953 Comp., § 14-32-29, enacted by Laws 1965, ch. 300.

3-33-35. Improvement district; notice of appeal; appeal to district court.

After an owner has filed a written objection with the municipal clerk to a reassessment as provided in Section 3-33-22 NMSA 1978 and the governing body has determined the reassessment, an owner of a tract or parcel of land that is reassessed may file a notice of appeal to the district court. The appeal shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-32-30, enacted by Laws 1965, ch. 300; 1998, ch. 55, § 11; 1999, ch. 265, § 11.

ANNOTATIONS

Cross references. — For exclusive procedure for appeal of reassessment, *see* 3-33-37 NMSA 1978.

For appeal of final decisions by agencies to district court, *see* 39-3-1.1 NMSA 1978.

For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in the last sentence.

The 1998 amendment, effective September 1, 1998, rewrote this section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63 C.J.S. Municipal Corporations § 1558.

3-33-36. Improvement district; payment of reassessment; continuing proceedings to collect assessment.

A. The governing body shall enforce payment of the reassessment of the tract or parcel of land benefiting from an improvement in the manner provided in Chapter 3, Article 33 NMSA 1978 for the enforcement of the original assessment.

B. If for any reason a reassessment is held to be invalid or uncollectible, the governing body shall continue to reassess the tract or parcel of land as provided in Sections 3-33-33 through 3-33-37 NMSA 1978 until the benefited tract or parcel of land has paid the cost of any improvement chargeable to the benefited tract or parcel of land.

History: 1953 Comp., § 14-32-31, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 24.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, substituted "Chapter 3, Article 33 NMSA 1978" for "Section 14-32-16 New Mexico Statutes Annotated, 1953 Compilation" in Subsection A and "3-33-33 through 3-33-37 NMSA 1978" for "14-32-28 through 14-32-32 New Mexico Statutes Annotated, 1953 Compilation" in Subsection B.

3-33-37. Improvement district; appeal of reassessment; procedure exclusive.

A. The rights and remedies granted in Section 3-33-22 NMSA 1978, to any owner who objects, contests or appeals the amount, correctness, regularity or validity of the reassessment:

(1) are declared to exclude any other right, remedy, suit or action either at law or in equity which might otherwise be available; and

(2) do afford the owner a sufficient day in court for the redressing of all rights and grievances that he may have in connection with the reassessment.

B. Any person who fails to file an objection to a reassessment in the manner provided in Section 3-33-22 NMSA 1978, or fails to appeal to the district court in the manner provided in Section 3-33-35 NMSA 1978, is forever absolutely barred from objecting to or contesting the amount, correctness, regularity or validity of the reassessment.

History: 1953 Comp., § 14-32-32, enacted by Laws 1965, ch. 300.

3-33-38. Improvement district; application of reassessment fund to outstanding indebtedness.

A. Whenever a municipality has:

(1) issued bonds or assignable certificates to obtain money to pay for an improvement that has been constructed; and

(2) reassessed the tract or parcel of land benefiting from the improvement as provided in Sections 3-33-32 through 3-33-35 NMSA 1978, the municipality shall apply all money received from the payment of the reassessment to the payment of the bonds or assignable certificates.

B. Bonds or assignable certificates that have been issued to obtain money to pay for any improvement that has been constructed are:

(1) valid and binding obligations of the municipality; and

(2) payable from the payments received from any reassessment that shall be levied until all obligations of indebtedness of the improvement have been paid in full.

History: 1953 Comp., § 14-32-33, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 25.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, deleted "negotiable coupon" preceding "bonds" in three places; substituted "3-33-32 through 3-33-35 NMSA 1978" for "14-32-25 through 14-32-30 New Mexico Statutes Annotated, 1953 Compilation" in Paragraph (2) of Subsection A; and made minor stylistic changes in Subsection B.

3-33-39. Improvement district; definition of "bonds"; refunding improvement bonds; authority.

A. As used in this section and in Sections 3-33-40 through 3-33-42 NMSA 1978, "bonds", when not modified by the word "refunding", includes assignable certificates.

B. The governing body may issue refunding improvement district bonds to refund all or any part of outstanding improvement district bonds. Refunding bonds may be issued:

(1) to change the payment schedule for the bonds;

(2) to fund principal and interest due on bonds that are in default, or for which there is not and, in the opinion of the governing body, will not be sufficient money available to pay the principal and interest when due;

(3) to reduce interest costs on the bonds or on the assessments providing security for the bonds or to provide other savings;

(4) to modify or eliminate restrictive or burdensome contractural [contractual] limitations concerning the bonds;

(5) to provide enhanced or substitute security for the bonds; or

(6) to provide for any other reasonable and necessary purpose or any combination of the foregoing purposes.

History: 1953 Comp., § 14-32-34, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 26.

ANNOTATIONS

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

The 1991 amendment, effective April 4, 1991, inserted "definition of 'bonds" in the catchline and rewrote the section which read "Whenever there is not, and it is certain there will not be, sufficient money in an improvement district fund to pay the principal and interest due on the improvement district bonds, the governing body may issue refunding improvement district bonds. If there is not sufficient money in an improvement district fund to pay in full the improvement district bonds that have matured, the governing body shall issue refunding improvement district bonds to pay the interest and principal on the improvement district bonds".

Am. Jur. 2d, A.L.R. and C.J.S. references. — Special assessment bonds, power of municipality to refund, 102 A.L.R. 202.

64 C.J.S. Municipal Corporations § 1910.

3-33-40. Refunding bonds; escrow; detail.

A. Refunding bonds issued pursuant to Sections 3-33-39 through 3-33-42 NMSA 1978 shall be authorized by ordinance. Any bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the ordinance authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provision shall be made for paying the refunded bonds at the time or times provided in Subsection A of this section.

C. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the refunded bonds or be placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the refunded bonds; provided that such refunding bond proceeds, including any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest thereon and the principal thereof or both interest and principal as the municipality may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available for its purpose. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of or the principal and interest of which obligations are unconditionally guaranteed by the United States of America or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of or the payment of which is unconditionally guaranteed by the United States of America, the par value of which obligations is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the refunded bonds as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the municipality shall exercise a prior redemption option. Any purchaser of any refunding bond issued under Sections 3-33-39 through 3-33-42 NMSA 1978 is in no manner responsible for the application of the proceeds thereof by the municipality or any of its officers, agents or employees.

History: 1978 Comp., § 3-33-40, enacted by Laws 1991, ch. 199, § 27.

ANNOTATIONS

Repeals and reenactments. — Laws 1991, ch. 199, § 27 repealed 3-33-40 NMSA 1978, as enacted by Laws 1965, ch. 300, relating to improvement district, default, petition of bondholders, exchange, and enacted the above section, effective April 4, 1991.

3-33-41. Improvement district; ordinance for refunding bonds; conditions; sale or exchange.

A. The ordinance authorizing the issuance of refunding bonds for an improvement district shall describe the:

(1) details of the issue;

(2) form of the refunding bonds and interest coupons, if any;

(3) fund from which the principal and interest of the refunding bonds will be paid; and

(4) manner in which the bonds are to be issued.

B. The refunding bonds may:

(1) be issued in an amount less than, equal to or greater than the principal amount of improvement district bonds being refunded;

(2) not bear a rate of interest greater than the rate of interest borne by the assessments providing security for the refunding bonds if secured by assessments;

(3) become due and payable in regular numerical order;

(4) not be issued for a period of more than twenty years from the date of issuance; and

(5) be payable from substitute security or from the same funds that were applicable to the payment of the bonds being refunded.

C. The refunding bonds may be:

(1) sold at a public or private sale at a discount; or

(2) exchanged, dollar for dollar, for the improvement district bonds being refunded.

History: 1953 Comp., § 14-32-36, enacted by Laws 1965, ch. 300; 1983, ch. 265, § 9; 1991, ch. 199, § 28.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, in Subsection B, substituted "may" for "shall" at the end of the introductory phrase, "be issued in an amount less than, equal to or greater than the principal amount of" for "not be issued in an amount greater than the principal and accrued interest due on the" in Paragraph (1), and "assessments providing security for the refunding bonds if secured by assessments" for "bonds being refunded" in Paragraph (2), and inserted "substitute security or from" in Paragraph (5) and, in

Subsection C, substituted "a public or private sale at a discount" for "not less than par" in Paragraph (1) and deleted a sentence at the end of Paragraph (2) which read "If the refunding bonds are exchanged for the bonds being refunded, the lower numbered refunding bonds shall be exchanged for the lower numbered bonds being refunded so that the bondholder shall have relatively the same position in the refunding issue as he had in the outstanding bonds prior to the refunding".

3-33-42. Improvement district; payment of assessment for refunding bond; maximum term; interest; prepayment; liens.

A. In connection with issuance of refunding bonds as provided in Sections 3-33-39 through 3-33-42 NMSA 1978, the governing body may, by ordinance, provide that any unpaid assessment and accrued interest on the assessment shall be paid in not more than twenty years with interest at a rate of interest not less than the rate borne by the refunding bonds and with the penalties as lawfully attached to the original assessment. The owner of a tract or parcel of land that is assessed may at any time pay the assessment in full with interest to the time of payment.

B. The assessment may be collected as provided in Section 3-33-23 NMSA 1978, and the refunding bonds may be secured and enforced as the original lien was established as provided in Section 3-33-23 NMSA 1978.

History: 1953 Comp., § 14-32-37, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 29.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, substituted "may" for "shall" in three places; in the first sentence in Subsection A, substituted "3-33-39 through 3-33-42 NMSA 1978" for 14-32-35 through 14-32-37 New Mexico Statutes Annotated, 1953 Compilation" and "twenty years with interest at a rate of interest not less than the rate borne" for "twenty equal annual or forty semiannual installments with interest at the rate of interest borne"; substituted "3-33-23 NMSA 1978" for "14-32-16 New Mexico Statutes Annotated, 1953 Compilation" in two places in Subsection B; and made minor stylistic changes in Subsection A.

3-33-43. Improvement district; construction of Sections 3-33-39 through 3-33-42 NMSA 1978.

Nothing contained in Sections 3-33-39 through 3-33-42 NMSA 1978 shall be construed as:

A. increasing the burden or liability of any tract or parcel of land or the owner of any tract or parcel of land; or

B. except for issuance of the refunding bonds, creating any additional liability of the municipality.

History: 1953 Comp., § 14-32-38, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 30.

ANNOTATIONS

The 1991 amendment, effective April 4, 1991, substituted "3-33-39 through 3-33-42 NMSA 1978" for "14-32-35 through 14-32-37 New Mexico Statutes Annotated, 1953 Compilation" in the catchline and in the introductory paragraph; redesignated former Paragraphs (1) and (2) of former Subsection A as Subsections A and B; added "except for issuance of the refunding bonds" at the beginning of Subsection B; deleted former Subsection B which read "The issuance of the refunding bonds shall not give any bondholder any greater right than he had prior to the refunding. The owners and holders of refunding bonds shall be subrogated to all the rights and remedies possessed by the owner and holders of the bonds refunded"; and made a related stylistic change.

ARTICLE 34
Street Improvement Fund

3-34-1. Street improvement fund authorization.

The governing body of any municipality may, by ordinance, establish a "street improvement fund" into which may be placed all or any part of the distributions of the amounts of tax revenues distributed to the municipality under the provisions of Section 7-1-6.9 NMSA 1978 as the governing body has, in any ordinance, determined necessary for use as a fund in the financing of street improvement projects within the municipality.

History: 1953 Comp., § 14-33-1, enacted by Laws 1965, ch. 300; 1967, ch. 170, § 1; 1977, ch. 342, § 1; 1983, ch. 211, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63 C.J.S. Municipal Corporations §§ 1042 to 1047.

3-34-2. Street improvement fund; use.

Bonds or assignable certificates authorized in Section 3-33-24 NMSA 1978 for the construction of a street, alley, curb, gutter or sidewalk project may be purchased by the street improvement fund; provided that the bonds or assignable certificates shall be held in trust by the municipal treasurer, and any receipts from the sale of the bonds or assignable certificates or from the payment of the assessment made to pay the interest

and principal of the bonds or assignable certificates shall be credited to the street improvement fund.

History: 1953 Comp., § 14-33-2, enacted by Laws 1965, ch. 300; 1983, ch. 265, § 10.

3-34-3. Street improvement fund; repurchasing bonds or certificates; pledging income.

A. The governing body may, by ordinance approved by three-fourths of all the members of the governing body and irrepealable during the term of the contract and for a period not exceeding twenty-one years, contract:

(1) to repurchase bonds or assignable certificates authorized in Section 3-33-24 NMSA 1978 for the construction of a street, alley, curb, gutter or sidewalk project with the money in the street improvement fund; or

(2) to pledge the income of the street improvement fund to pay the interest and principal of bonds or assignable certificates when default in payment may occur by reason of nonpayment of any assessment levied for the payment of a street, alley, curb, gutter or sidewalk project authorized in Section 3-33-3 NMSA 1978.

B. The municipality may anticipate the annual income to be received by the street improvement fund. The amount contracted or pledged to be expended each year as authorized in this section shall not exceed the amount that is accumulated in the street improvement fund.

C. The ordinance authorized in this section shall state that:

(1) all disbursements made pursuant to the contract shall be paid solely from the street improvement fund and from no other source;

(2) the obligations created by the contract are not general obligations of the municipality; and

(3) the contracting parties may not look to any other fund for the performance of the contractual obligation.

D. In the event of disbursement from the street improvement fund pursuant to the obligations created by the contract, the municipality shall be subrogated for the benefit of the street improvement fund to all the rights and remedies of the holders of the securities upon which payment is made.

History: 1953 Comp., § 14-33-3, enacted by Laws 1965, ch. 300; 1977, ch. 247, § 140; 1979, ch. 108, § 3; 1983, ch. 265, § 11; 1987, ch. 220, § 1.

ANNOTATIONS

Consideration of proposal by state board of finance. — When the state board of finance considers a proposal for pledge of the proceeds of the gasoline tax to secure street improvement bonds, the board is not required to consider the entire proposal to which the pledge relates. 1957-58 Op. Att'y Gen. No. 58-178.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 C.J.S. Municipal Corporations § 1899.

3-34-4. Street improvement fund; diverting proceeds from tax.

After the adoption of the ordinance creating a contract as authorized in Section 3-34-3 NMSA 1978, and so long as the contract is effective, it is unlawful:

A. to, directly or indirectly, divert any such amounts of tax revenue directed to be credited to the street improvement fund; and

B. without the written approval of the secretary of finance and administration, for the governing body or any municipal employee to expend any money from the street improvement fund for any purpose other than the performance of the contract.

History: 1953 Comp., § 14-33-4, enacted by Laws 1978, ch. 51, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1978, ch. 51, § 1, repealed 14-33-4, 1953 Comp. (former 3-34-4 NMSA 1978), relating to diverting proceeds of tax from street improvement fund, and enacted the above section.

3-34-5. Saving clause.

The provisions of Sections 3-34-1 through 3-34-4 NMSA 1978 remain in force and apply to obligations issued pursuant thereto prior to July 1, 1967. Distributions of motor fuel excise tax and special fuels use tax revenues to municipalities under the provisions of Section 7-13-9 NMSA 1978 [repealed] replace all gasoline and motor fuel license taxes formerly authorized to be imposed by Sections 14-38-1 through 14-38-4 NMSA 1953 (being Laws 1965, Chapter 300, Sections 14-38-1 through 14-38-4, repealed by Laws 1967, Chapter 170, Section 13). Any irrevocable pledge of municipal revenues effected prior to July 1, 1967, by any municipality under the provisions of Section 3-34-4 NMSA 1978 or Sections 14-38-1 through 14-38-4 NMSA 1953 (being Laws 1965, Chapter 300, Sections 14-38-1 through 14-38-4, repealed by Laws 1967, Chapter 170, Section 13) apply to the aforesaid distributions of motor fuel excise tax and special fuels use tax revenues to the municipality.

History: 1953 Comp., § 14-33-5, enacted by Laws 1967, ch. 170, § 2; 1977, ch. 342, § 3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not a part of the law. Laws 1983, ch. 211, § 42 repealed 7-13-9 NMSA 1978, effective July 1, 1983. For present comparable provisions, *see* 7-1-6.9 NMSA 1978.

ARTICLE 35
Fire-Fighting Facilities

3-35-1. Fire-fighting facilities; preliminary plans of contemplated improvement; estimate of cost; assessment plat; provisional order.

The governing body of any municipality, when it believes the municipality requires fire stations, fire hydrants or fire-fighting equipment or water, may, by resolution, direct the city engineer or other competent engineer to prepare preliminary plans of the contemplated improvement and a preliminary estimate of the cost. He shall also submit an assessment plat showing the area to be assessed and the amount of maximum benefits estimated to be assessed against each tract or parcel of land in the assessment area, based on a front-foot zone, area or other equitable basis established by the resolution. The resolution may provide for one or more types of construction and the engineer shall separately estimate the cost of each type, either in a lump sum or by unit prices as the engineer thinks more desirable. The total estimate shall also include cost of advertising, appraising, engineering, printing and other necessary expenses. Upon filing with the municipal clerk, the governing body shall examine them and, if satisfactory, make a provisional order that the work of improvement be done.

History: 1953 Comp., § 14-34-1, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For building construction and restrictions, establishing fire zones, *see* 3-18-6 NMSA 1978.

For powers of municipalities regarding fire prevention and protection, *see* 3-18-11 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 Am. Jur. 2d Special or Local Assessments § 31.

3-35-2. Hearing on provisional order; notice; description of property to be assessed.

In any provisional order, the governing body shall set a time and place for it to hear property owners to be assessed and other interested persons wanting to comment on

the order. At least ten days before the hearing, written notice of the hearing shall be mailed to the property owners and proof of mailing made by affidavit of the municipal clerk. Failure to mail the notice does not invalidate the proceedings. Notice of the hearing shall also be given by publication for three consecutive publications, the last to be at least one week prior to the date of the hearing. Each notice shall describe the property to be assessed, and proof of publication made by affidavit of the publisher filed with the municipal clerk.

History: 1953 Comp., § 14-34-2, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For definition of "publish" or "publication," *see* 3-1-2 NMSA 1978.

3-35-3. Hearing on provisional order; protest by property owner or interested person; appeal.

At the hearing on a provisional order, a property owner or interested person may file a written protest and may be heard by the governing body on the order. A person filing a written protest may bring an appeal concerning the governing body's determination on the protest pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-34-3, enacted by Laws 1965, ch. 300; 1998, ch. 55, § 12; 1999, ch. 265, § 12.

ANNOTATIONS

Cross references. — For appeal of final decisions by agencies to district court, *see* 39-3-1.1 NMSA 1978.

For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in the last sentence.

The 1998 amendment, effective September 1, 1998, rewrote this section.

3-35-4. Provisional order; determination of advisability; advertising for bids; contract with lowest bidder.

After the hearing, the governing body shall determine the advisability of the order, the improvements to be made, advertise for bids on the work and equipment, and enter into a contract with the lowest bidder for the work and furnishing of necessary supplies. Where the work is to be done by the municipality, by itself or in cooperation with another

governmental agency contributing money, labor or materials, it is not necessary to advertise for bids or enter into contracts.

History: 1953 Comp., § 14-34-4, enacted by Laws 1965, ch. 300.

3-35-5. Assessment of cost; hearing on assessment roll; notice; objections by property owners.

A. After making the contracts and determining the net cost to the municipality, the governing body shall:

(1) determine what portion of the costs of the work and equipment, including advertising, appraising, engineering, legal, printing and other costs, shall be paid by the property specially benefited;

(2) together with the engineer, make an assessment roll containing, among other things:

(a) the names of the last known owners of the property to be assessed or, if not known, a statement that the name is unknown;

(b) a description of each tract or parcel of land to be assessed; and

(c) the amount of the assessment on each tract or parcel; and

(3) fix a time and place for hearing and file the roll with the municipal clerk.

B. Assessments may be made on a front-foot zone, area or other equitable basis determined by the governing body, but never exceeding the estimated benefits to the property assessed.

C. The municipal clerk shall give notice of the hearing by publication once a week for two consecutive weeks, the last publication at least one week prior to the date of the hearing. The notice shall include a statement that the assessment roll is on file in his office and the time and place of the hearing when the governing body will consider objections to the assessment roll. Any owner of property to be assessed, whether or not named in the roll, may file his specific written objections with the clerk within ten days of the first publication provided in this section. Any objection to the regularity, validity and correctness of the proceedings, the assessment roll, each assessment on the roll and the amount levied on each tract or parcel of land is waived unless presented at the time and in the manner provided in this section.

History: 1953 Comp., § 14-34-5, enacted by Laws 1965, ch. 300.

3-35-6. Hearing and determination of objections; modification, confirmation or setting aside of assessment; levy of assessments on the assessment roll.

A. At the time and place designated for the hearing, the governing body shall:

(1) hear and determine all objections filed in accordance with Section 3-35-5 NMSA 1978, but it may adjourn from time to time; and

(2) in its discretion, by resolution, revise, correct, confirm or set aside any assessment and order it be made de novo.

B. The governing body shall, by ordinance referring to the assessment roll as modified or confirmed by the resolution, levy the assessments on the roll and the ordinance is a final determination of the regularity, validity and correctness of the proceedings of the assessment roll, each assessment on the roll and the amount levied on each tract or parcel of land and it is conclusive on the owners of the property assessed unless, within fifteen days of publication of the ordinance, any person who filed a written objection files an action in the district court to correct or set aside the determination, and thereafter all such actions are barred.

History: 1953 Comp., § 14-34-6, enacted by Laws 1965, ch. 300.

3-35-7. Lien for assessment; terms of payment.

The amount assessed, including all installment and interest and penalties, is a lien upon each tract or parcel from the time of the assessment and the lien is coequal with the lien of other taxes and prior and superior to all other liens, claims and titles. The governing body may provide for the time and terms of payment of the assessments, the rate of interest on deferred payments, not exceeding six percent a year, and it shall fix penalties for delinquent payments. No sale of the property to enforce any general taxes or other lien shall extinguish the perpetual lien of the assessment and the statute of limitations does not begin to run against the assessment until after the last installment becomes due.

History: 1953 Comp., § 14-34-7, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For municipal liens, *see* 3-36-1 NMSA 1978 et seq.

3-35-8. Certificates of liability; description of property covered by assessment; bonds to pay cost of work; foreclosure of assessment lien.

A. The governing body may issue, in the name of the municipality, assignable certificates declaring the liability of the property for payment of the assessments, interest and penalties and fix the terms of the certificates. The certificates shall accurately describe the property covered by the assessment. The governing body may also issue bonds in such form as the governing body may determine in an amount not exceeding the total assessments levied to pay the cost of the work performed and equipment installed.

B. Recitals in the bonds that the proceedings were regular and that all prerequisites to fixing the assessment lien against the property described have been performed are conclusive evidence of the facts recited.

C. Within sixty days after publication of the assessing ordinance, the municipal clerk shall make, sign, seal and file for record with the county clerk a claim for lien for the unpaid amount assessed against each tract and parcel of land. When delinquent, the assessment may be foreclosed in the same manner as provided by law for foreclosure of mortgages on real estate. In the event of sale, the property may be bought by the municipality for the amount of the balance due on the assessment, principal, interest, penalties and costs if there is no other purchaser.

History: 1953 Comp., § 14-34-8, enacted by Laws 1965, ch. 300; 1983, ch. 265, § 12.

3-35-9. Interest on assessments; penalties after delinquency.

Assessments shall bear interest at the rate provided in the ordinance and from the date of the publication of the assessing ordinance until paid. The ordinance shall prescribe when the assessments become due and delinquent, and the penalties payable after delinquency.

History: 1953 Comp., § 14-34-9, enacted by Laws 1965, ch. 300.

ARTICLE 36
Municipal Liens

3-36-1. Municipal lien; filing with county clerk; contents of lien; interest on principal amount of utility [lien].

A. The municipal clerk shall file in the office of the county clerk any notice of lien created by ordinance or under authority of law. The notice of lien shall include:

(1) the number of the ordinance under which the lien is established;

(2) the fact that a lien is established;

(3) the general purpose of the lien;

(4) the name of the owner of the property against which the lien is established as determined from the records of the county assessor;

(5) a description of the property against which the lien is established;

(6) the amount of the lien; and

(7) if the lien is for more than one period of time, the date for which the lien is established.

B. A lien for charges or assessments which are provided for or fixed by any one ordinance or under authority of law may be included in the same notice of lien, and it shall not be necessary to file separate liens against the separate properties. The lien shall be attested in the name of the municipal clerk under the seal of the municipality.

C. The principal amount of any lien imposed for a municipal utility charge or assessment shall bear interest at the rate of twelve percent per year from the date of filing the notice of the lien unless otherwise provided by law.

History: 1953 Comp., § 14-35-1, enacted by Laws 1965, ch. 300; 1981, ch. 213, § 3.

ANNOTATIONS

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

Cross references. — For lien for cost of removal of dangerous buildings or debris, *see* 3-18-5 NMSA 1978.

For lien for improvement by municipality of sanitary facilities, *see* 3-18-22 NMSA 1978.

For charge for service by municipal utility as a lien, *see* 3-23-6 NMSA 1978.

For lien of assessment for refuse collection service, *see* 3-48-7 NMSA 1978.

For lien of assessment for sidewalk repair or construction, *see* 3-49-4 NMSA 1978.

For statute of limitation, *see* 37-1-4 NMSA 1978.

Substantial compliance with section permits recovery. — Recovery may be had under this section if there is substantial compliance with its requirements. Town of Hot Springs v. Able, 46 N.M. 149, 123 P.2d 720 (1941).

Duty of city to foreclose lien for holders of certificates. — Limitations of statute did not prevent municipality from constituting itself as trustee or agent of certificate holders for purpose of making assessments, including the enforcement and collection thereof,

when authorized by statute, subject to constitutional and statutory limitations on the exercise of this power. Conceding that city was authorized to foreclose liens for delinquent assessments, the same right and duty was imposed upon certificate holders. They had duty to mandamus city to perform or to institute foreclosure proceedings. Purcell v. City of Carlsbad, 126 F.2d 748 (10th Cir. 1942).

City has right to lien for unpaid utility bills. 1959-60 Op. Att'y Gen. No. 59-128.

There is no specific statute of limitations for payment of utility bills and therefore such an action would be governed by 37-1-4 NMSA 1978. 1959-60 Op. Att'y Gen. No. 59-128.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70A Am. Jur. 2d Special or Local Assessments §§ 178 to 213.

Priority between tax or assessment lien and mortgage or other nontax lien held by state or municipality, 159 A.L.R. 832.

Respective rights and estates of persons claiming real property through sales by different taxing agencies to enforce taxes or special assessments as between which there is a parity of lien, 167 A.L.R. 1001.

Validity and effect of agreement by property owner to pay assessment, 167 A.L.R. 1030.

Superiority of special or local assessment lien over earlier private lien or mortgage, where statute creating such special lien is silent as to superiority, 75 A.L.R.2d 1121.

63 C.J.S. Municipal Corporations §§ 1446, 1564 to 1571.

3-36-2. Effect of filing notice of lien.

After the filing of the notice of the lien in the office of the county clerk, the municipality shall have a lien upon the property described in the notice of lien. The filing of the notice of the lien shall be notice to all the world of the existence of the lien and of the contents of the notice of lien. No such lien shall affect the title or rights to or in any real estate, of any purchaser, mortgagee in good faith or judgment lien creditor, without knowledge of the existence of such lien, unless the notice of the lien is filed in accordance with Section 3-36-1 NMSA 1978 in the office of the county clerk of the county in which the real estate affected thereby is situated. All municipal liens filed in conformity with Sections 3-36-1 through 3-36-6 NMSA 1978 shall be first and prior liens on the property subject only to the lien of general state and county taxes.

History: 1953 Comp., § 14-35-2, enacted by Laws 1965, ch. 300; 1981, ch. 213, § 4.

ANNOTATIONS

If lien has not been recorded so as to give constructive notice, the question of actual notice is material. 1959-60 Op. Att'y Gen. No. 59-128.

3-36-3. Manner of releasing lien.

The municipal clerk may release a lien against any specific property by:

A. entering and signing a receipt of payment upon the notice of lien filed in the office of the county clerk; or

B. issuing a separate receipt which recites that payment of the lien with any accrued interest and penalty has been made.

History: 1953 Comp., § 14-35-3, enacted by Laws 1965, ch. 300.

3-36-4. Municipal lien; foreclosure; joinder of defendants; contents of complaint; several judgment or decree; lien recitals as prima facie evidence; attorney fee.

A. The municipality or the holder of any lien may, in a single suit, foreclose the liens against all of the persons named in the notice of liens or against the property if the owners are unknown. The complaint filed by the municipality shall:

(1) expressly name each defendant if known;

(2) describe the property against which the lien is established; and

(3) set forth the amount of the lien.

B. The judgment or decree rendered in said cause shall be several against the named defendants and against the several properties for the amounts decreed to be due by each. A lien against real estate may be foreclosed in the same manner that mortgages or other liens against real estate are foreclosed with like rights of redemption. Lien against personal property may be foreclosed in the same manner security interests are foreclosed. At the trial of any case foreclosing any lien, the recitals of the lien or other evidence of indebtedness shall be received in evidence as prima facie true. In the foreclosure of any lien created by municipal ordinance or under authority of law, a reasonable attorney's fee shall be taxed by the court as part of the costs.

History: 1953 Comp., § 14-35-4, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For foreclosure of mortgages, *see* 39-5-1 NMSA 1978 et seq.

For secured transactions, remedies available upon default of debtor, *see* 55-9-501 NMSA 1978.

Duty of city to foreclose lien for holders of certificates. — Limitations of statute did not prevent municipality from constituting itself as trustee or agent of certificate holders for purpose of making assessments, including enforcing and collecting assessments when authorized by statute, subject to constitutional and statutory limitations on exercise of this power. Conceding that city was authorized to foreclose liens for delinquent assessments, the same right and duty was imposed upon certificate holders. They had the duty to mandamus city to perform or to institute foreclosure proceedings. Purcell v. City of Carlsbad, 126 F.2d 748 (10th Cir. 1942).

Dismissal as to some defendants. — A suit to foreclose certificates and paving liens against several defendants individually, as their interest appeared, could be dismissed as to some defendants and continued as to others, and appeal taken from such dismissal. City of Roswell v. Holmes, 43 N.M. 303, 92 P.2d 889 (1939).

Procedure to challenge amount of lien. — The procedures by which a city may attach and foreclose upon a lien do not provide a procedure to challenge the amount of the lien imposed. Henderson v. City of Tucumcari, 2005-NMCA-077, 137 N.M.709, 114 P.3d 389, cert. denied, 2005-NMCERT-006, 137 N.M. 766, 115 P.3d 229.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63 C.J.S. Municipal Corporations § 1615.

3-36-5. Municipal lien; provisions supplementary to other methods of foreclosing liens.

The provisions of Sections 3-36-1 through 3-36-5 NMSA 1978, are intended to afford another and additional method of filing and enforcing municipal liens and are not intended to be construed as repealing any other method provided by law for the filing and foreclosure of liens.

History: 1953 Comp., § 14-35-5, enacted by Laws 1965, ch. 300.

3-36-6. Special alternative procedure for the foreclosure of municipal liens by action in rem.

A. As used in this section:

(1) "lien" means any unpaid assessment for a street, alley, curb, gutter, storm sewer, sanitary sewer, off-street parking or any other type of municipal special assessment, together with interest and penalties on all of the foregoing and cost in connection therewith, which is a lien on real property duly recorded in the land records of the county;

(2) "court" means the district court of the county in which the land is situate; and

(3) "municipal clerk" means the clerk of the municipality, his deputy, if any, or his designated representative.

B. The provisions of this section shall be applicable only to liens owned by a municipality and shall not:

(1) affect existing remedy or procedure for the enforcement or foreclosure of liens provided for in this chapter or any other law, but the procedure provided herein for foreclosure by action in rem shall be in addition to any other remedies now provided by law for the foreclosure of any municipal lien and shall not be construed as repealing or amending any existing procedure by implication; and

(2) affect pending actions or proceedings, provided, however, that any pending action or proceeding for the enforcement or foreclosure of municipal liens may, at the election of the municipality, be discontinued without prejudice, and a new action may be instituted pursuant to the provisions of this section in respect to any such lien which new action, if instituted within sixty days, shall relate back for purposes of the statute of limitations to the date of the filing of the original action.

C. The district courts shall have jurisdiction of actions authorized by this section.

D. Whenever it shall appear that a lien as defined herein, or any installments thereon, has been due and unpaid and is delinquent after the date said assessment or other legal charge became a lien, the municipality may elect to declare the total amount due and payable and such lien may be foreclosed in the manner provided herein notwithstanding the provisions of any other general or special law. An election to declare the total amount due and payable shall not constitute an acceleration of the payment for the purpose of the statute of limitation and the statute of limitation shall not commence to run until the last installment would normally come due.

(1) The director of finance or other municipal officer designated by the governing body to collect and receive payments due on municipal liens shall, from time to time, submit to the municipal clerk a list of tracts or parcels of land against which the municipality holds a lien and a payment or any installments due thereon have been unpaid and are delinquent. Such list shall contain the legal description of the parcels concerned and may include one or more separate parcels or tracts with the name and address of the owners, and other parties of interest, if known.

(2) The municipal clerk shall then prepare and sign a notice of foreclosure, which will also bear the signature and mailing address of an attorney representing the municipality. The notice shall be substantially in the following form:

"STATE OF NEW MEXICO COUNTY OF .....

IN THE DISTRICT COURT

NOTICE OF FORECLOSURE OF LIENS BY THE CITY OF .....,

Plaintiff.

By: Action in rem

To: (List the names and addresses, if known, of all parties having an interest in any of the parcels of land to be described below)

Defendants.

A. List all parcels by legal description with name of the title owner and mortgage holder, and other interested parties if known, with the following information as to each parcel:

1. The date such lien was made of record.

2. The legal basis for the lien, such as assessment district and account number.

3. If lien is imposed by an ordinance, the number and the date of the ordinance.

4. The date of the last payment made on such assessment or charges which constitute the lien.

5. A statement that payments on the assessment or charges or any installment of an assessment are delinquent.

6. The total amount due and payable including penalties and interest to date.

7. A statement that the municipality elects to declare the total unpaid balance now due and payable.

B. A statement to the effect all persons and corporations named above and any and all unknown persons who may have an interest in the lands described are hereby notified that the filing of this notice of foreclosure with the clerk of the district court constitutes the complaint and commencement by the city of ..... of an action in the district court of ..... county to foreclose the liens herein described by foreclosure proceedings in rem, and that the filing of a duplicate original of this notice in the office of the county clerk of the county where the land is situate constitutes notice of pendency of the action against each piece or parcel of land herein described to enforce the payment of such liens. This action is brought against the real property only and is to foreclose the liens described in this notice.

C. All interested parties are hereby notified that a copy of this notice is on file in

the office of the municipal clerk and is open to public inspection during normal business hours for a period of sixty (60) days from the date this notice was filed with the district court.

D. And take further notice that any person having or claiming to have an interest in any such parcel or parcels and the legal right thereto, may, on or before sixty (60) days from the date of the filing of this notice with the clerk of the district court, by paying to the municipality all amounts due, including interest and penalties due thereon, computed to the date of payment, attorneys' fees and costs, or at the option of the municipality, by paying to the municipality the amount of the unpaid installments thereon, plus all interest and penalties due thereon computed to the date of payment, attorneys' fees and costs, move for dismissal of the foreclosure with or without prejudice, as applicable.

.....

Municipal Clerk

ATTEST:

.....

Attorney for the city of .....

(mailing address)."

(3) Upon the filing of the notice of foreclosure as provided herein the clerk of the district court shall forthwith issue a summons substantially in the following form:

"SUMMONS

Defendants: Greeting:

You are hereby commanded to appear before the Honorable ....., Division ....., the ... Judicial District of the state of New Mexico, sitting within and for the county of ... that being the county in which the notice of foreclosure of liens herein is filed, within sixty (60) days after the date hereof and then and there answer the notice of foreclosure of liens and show cause why the foreclosure should not be granted.

You are further notified that in the event of failure to pay the total amount due, including interest, penalties, attorneys' fees and costs or at the option of the municipality to pay the unpaid installments due together with interest and penalties computed to date, attorneys' fees and costs or to answer by any person having the right to redeem or answer within the time provided, a judgment of foreclosure shall be entered and ownership of said property shall in due course pass to the city of ..... unless redeemed as provided by law.

WITNESS the Honorable ....., district judge of the .... judicial district court of the state of New Mexico, and the seal of the district court of ..... county this ... day of ..., 19 ...

.....

Clerk

(SEAL) ..... By: .....

Deputy"

E. The original notice of foreclosure prepared in accordance with Subsection D 1 of this section shall be filed with the clerk of the district court, and such notice shall constitute a complaint, a duplicate original of the notice shall be filed with the county clerk which filing shall constitute constructive notice to all purchasers or encumbrancers of the property concerned, of commencement of the foreclosure action in rem. Upon the filing of the notice of foreclosure the municipal clerk shall forthwith cause a copy thereof to be published once each week for two successive weeks in a newspaper published in or having general circulation within the county in which the property affected is located.

F. Within five days after filing the notice of foreclosure as provided herein, the municipal clerk shall cause a copy of such notice and summons to be mailed by registered or certified mail, return receipt requested, to the last known address of each owner, the mortgage holder, lien holder and all other known persons having an interest in any of the property affected thereby as the same appears upon the records of the county clerk, the county assessor or any other source he deems reliable. An affidavit of such mailing shall be filed with the clerk of the district court. In the event the address of the owner or other persons having an interest, is unknown, the municipal clerk shall so state in his affidavit of mailing which shall be filed with the clerk of the district court, and in such event, a copy of the notice of foreclosure, summons and such affidavit shall be posted in the county courthouse of the county where the land is situated.

G. All affidavits of filing, posting, mailing or other acts required herein shall be filed with the clerk of the district court and together with all other documents required herein, constitute and become part of the court record in such foreclosure action.

H. It shall not be necessary for the municipality to plead or prove the various steps, procedures and notices taken prior to the enactment of an ordinance imposing an assessment, or other lawful charges against the lands described in the notice of foreclosure and all such assessments or other lawful charges shall be presumed to be valid. A defendant alleging any jurisdictional defect or invalidity in the assessment or other lawful charge must particularly specify in his answer such defect or invalidity and must affirmatively establish such defense.

I. If an answer is filed and served upon the municipality within the time provided herein the court shall forthwith hear and determine the issues raised. Upon such trial, proof that such assessment or other charges was [were] paid, together with any penalties and interest costs which may have been due or that the property was not legally subject to the assessment or charges, shall constitute a complete defense. If the court finds for the municipality, it shall issue its judgment foreclosing the liens and transferring title in fee simple to the municipality subject only to unpaid ad valorem taxes, other special assessments having a lien on the property which is coequal with the lien for ad valorem taxes, and the right of redemption as hereinafter provided. A certified copy of the judgment shall be filed for a record with the county clerk.

J. If a defendant fails to answer within the time period provided herein, the court shall find such defendant in default and shall thereupon make a final judgment

foreclosing the liens and transferring title in fee simple to the municipality subject only to unpaid ad valorem taxes and other special assessments having a lien on the property which is coequal with the lien for ad valorem taxes, and the right of redemption as hereinafter provided.

K. The owner or mortgage holder or other person having an interest, or their assigns, of any parcel of land foreclosed upon under this procedure to satisfy municipal liens, may redeem said parcel any time within one year after the date the judgment of foreclosure is entered by paying to the municipality the total amount due to satisfy the lien, including all interest and penalties, attorneys' fees and other costs, if any, computed to the date of payment.

L. The municipality may at any time prior to final judgment, withdraw any parcel from a proceeding under this section where the liens and other charges have been paid up to date or paid in full or in cases where a parcel was listed on the notice of foreclosure in error, or where the municipality has accepted a deed in lieu of foreclosure.

M. Sale of property foreclosed under this procedure. No real property foreclosed under this procedure shall be sold to satisfy a delinquent assessment until at least fifteen days after the date of judgment or decree of the court within which time the owner, mortgage holder or other parties having an interest in the tract or parcel of land may pay off the judgment or decree and avoid the sale. Thereafter, the municipality may sell the property at public or private sale, subject to the right of redemption, ad valorem taxes and other special assessments having a lien on the property which is coequal with the lien for ad valorem taxes.

History: 1953 Comp., § 14-35-6, enacted by Laws 1973, ch. 379, § 1; 1977, ch. 190, § 1.

ANNOTATIONS

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

Severability clauses. — Laws 1977, ch. 190, § 2, provided for the severability of the act if any part or application thereof is held invalid.

3-36-7. Application of proceeds from sale of property.

The proceeds of the sale of the property by the municipality pursuant to a foreclosure sale on a municipal lien under the provisions of Section 3-36-4 or 3-36-6 NMSA 1978 shall be applied as follows:

A. first, to the payment of costs in giving notice of the sale and of conducting the sale;

B. second, to the indebtedness claimed under the lien and thence to ad valorem taxes and other special assessments having a lien of the property which are coequal with the lien for ad valorem taxes; and

C. third, after all such costs, liens, assessments and taxes are paid, to the former owner, mortgage holder or other parties having an interest in the tract or parcel, upon such person providing satisfactory proof to the court of such interest and upon approval of the court.

History: 1978 Comp., § 3-36-7, enacted by Laws 1980, ch. 51, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70A Am. Jur. 2d Special or Local Assessments §§ 183 to 186.

Priority as between lien of taxes and lien of special assessments, 65 A.L.R. 1379.

63 C.J.S. Municipal Corporations §§ 1570, 1580.

ARTICLE 37
Municipal Finances

3-37-1. Governing body is board of finance; duties of clerk and treasurer.

A. The governing body is the board of finance of the municipality and the members of the governing body shall serve without compensation additional to the compensation authorized by law for their services as members of the governing body.

B. The municipal clerk shall:

(1) serve as secretary to the board of finance;

(2) keep a record of the proceedings of the board of finance which shall be a public record; and

(3) convene a meeting of the board of finance whenever necessary or whenever requested to do so by any member of the board of finance.

C. The municipal treasurer shall:

(1) supervise the depositing and safekeeping of all money belonging to the municipality; and

(2) with the advice and consent of the municipal board of finance, designate banks qualified to receive on deposit money entrusted to his care.

History: 1953 Comp., § 14-36-1, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For division of financial control of state department of finance and administration, powers and duties, *see* 6-5-1 NMSA 1978 et seq.

For local government division of state department of finance and administration, duties of local public bodies, *see* 6-6-1 NMSA 1978 et seq.

For fiscal year designated, *see* 6-10-1 NMSA 1978.

For deposit and investment of funds, *see* 6-10-10 NMSA 1978.

For security for deposits, *see* 6-10-16 NMSA 1978 et seq.

For interest rates and powers of state board of finance, *see* 6-10-30 NMSA 1978 et seq.

For officials misusing funds, penalty, *see* 6-10-40 NMSA 1978.

For deposit of funds with state treasurer to match allotments from public or private sources, *see* 6-10-45 NMSA 1978.

For bribery of treasurers and employees, penalty, *see* 6-10-53 NMSA 1978.

For the Warrant Cancellation Act, *see* 6-10-55 to 6-10-57 NMSA 1978.

For loss or destruction of warrant or order for money, issuance of duplicate, *see* 6-10-59 and 6-10-60 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Constitutionality of statute relieving officer or public depository or his surety from liability for loss of public funds, 38 A.L.R. 1512, 96 A.L.R. 295.

Liability on bond for security of public funds deposited in banks as affected by form of transaction, or nature or validity of deposits, 65 A.L.R. 798.

Invalid designation by another than depositing officer of depository for public funds as affecting liability of officer or his bond for loss thereof through failure of depository, 66 A.L.R. 1059.

Liability of public officer or his bond for loss of public funds due to insolvency of bank in which they were deposited, 93 A.L.R. 819, 155 A.L.R. 436.

Termination of interest, or reduction of interest rate, on deposit of public funds, 107 A.L.R. 1210.

Liability of public officer for interest or other earnings received on public money in his possession, 5 A.L.R.2d 257.

3-37-2. Finance; authorization.

The governing body shall:

A. control the finances and property of the municipality;

B. appropriate money for municipal purposes only; and

C. provide for payment of debts and expenses of the municipality.

History: 1953 Comp., § 14-36-2, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Payment of tort judgment. — A city having authority to levy taxes and pay debts may be compelled by mandamus to pay a judgment for tort. Barker v. State ex rel. Napoleon, 39 N.M. 434, 49 P.2d 246 (1935).

Operation of fire department. — Inasmuch as the operation of a fire department is within the corporate purposes of the municipality, a municipality has authority to appropriate and budget necessary sums for that purpose from its general fund. If this were not possible, all municipalities would be relegated to operating volunteer fire departments. 1955-56 Op. Att'y Gen. No. 55-6164.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 579 to 591.

Municipal funds and credits as subject to levy under execution or garnishment on judgment against municipality, 89 A.L.R. 863.

Power of board or officials to depart from literal requirements in respect of deposits or loans of public funds in their control, 104 A.L.R. 623.

62 C.J.S. Municipal Corporations § 153.

3-37-3. Finance officer; duties; records open to inspection.

A. The treasurer shall be the finance officer for the municipality unless another officer is directed by ordinance to be the finance officer. The finance officer shall:

(1) receive all money belonging to the municipality;

(2) keep his accounts and records in the manner prescribed by the governing body;

(3) keep the money of the municipality separate from any other money in his possession;

(4) expend the money only as directed by the governing body;

(5) submit monthly, or oftener if required by the governing body, a report of the receipts and expenditures of the municipality; and

(6) prepare annually, at the close of the fiscal year, a financial report showing the receipts, expenditures and balances for each fund. A copy of the financial report shall be filed in the office of the municipal clerk as a public document.

B. The records of the finance officer shall be open to inspection by any citizen during the regular business hours of the municipality.

History: 1953 Comp., § 14-36-3, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For requirements for cash books for public money, *see* 6-10-2 NMSA 1978.

For bonds of treasurers, *see* 6-10-38 NMSA 1978 et seq.

For failure of local officer to account for money as cause for removal, *see* 10-4-2 NMSA 1978.

Custody of funds. — An ordinance requiring a city treasurer to deposit city funds in his hands in banks qualified as provided by the ordinance, but not restricting payments by him of such moneys on his own checks, would not deprive him of the "custody" of such funds. Territory ex rel. City of Albuquerque v. Matson, 16 N.M. 135, 113 P. 816 (1911).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 283.

62 C.J.S. Municipal Corporations § 545; 64 C.J.S. Municipal Corporations § 1880.

3-37-4. Finance receipts.

A. A municipal official receiving money for the municipality shall make a receipt in not less than duplicate form which shall show the:

(1) amount received;

(2) date of payment; and

(3) account for which payment is made. One copy shall be made available to the person paying money to the municipality.

B. In lieu of a receipt, a municipal official may mark "paid" and the date paid on the portion of a municipal utility bill or statement to be retained by the payer and on the portion retained by the municipality.

History: 1953 Comp., § 14-36-4, enacted by Laws 1965, ch. 300.

3-37-5. Warrants; execution; registration.

A. No payment of funds shall be made except upon a warrant of the municipality. A warrant shall be signed by the mayor or his authorized representative, and countersigned by the municipal treasurer or as prescribed by the Uniform Facsimile Signature of Public Officials Act [6-9-1 through 6-9-6 NMSA 1978]. A warrant shall state the:

(1) account or account number to which the warrant is chargeable; and

(2) name of the person to whom the warrant is payable.

B. The finance officer shall keep a record of all warrants issued. The record shall show the:

(1) number of the warrant;

(2) date it was issued;

(3) amount of the warrant;

(4) account to which the warrant is chargeable; and

(5) name of the person to whom the warrant was issued.

History: 1953 Comp., § 14-36-5, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For definition of "warrant", *see* 3-1-2 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 62 C.J.S. Municipal Corporations § 546; 64 C.J.S. Municipal Corporations § 1894.

3-37-6. Accepting or borrowing funds from the federal government.

Pursuant to any act of congress, a municipality may accept or borrow funds from the United States or any of its agencies or instrumentalities for any purpose authorized by the laws of this state.

History: 1953 Comp., § 14-36-6, enacted by Laws 1965, ch. 300.

ANNOTATIONS

County receipt of wastewater system construction grants. — There are no constitutional or statutory limitations which would prevent counties from being eligible to receive wastewater system construction grants from the environmental protection agency. 1978 Op. Att'y Gen. No. 78-15.

Town borrowing from farmers home administration for water system. — Town of Hagerman may borrow money from the farmers home administration to acquire a water system; however, the note or certificate of indebtedness given to the farmers home administration must provide that it will be paid solely from the revenues produced by the water system without incurring any liability to pay the indebtedness out of the general funds of the municipality unless the voters of the municipality have approved of the indebtedness in a general or special election. 1967 Op. Att'y Gen. No. 67-84.

3-37-7. Determination of uncollectable account; removal from accounts receivable.

If the finance officer of a municipality states:

A. the manner in which a utility account or any unsecured account has been incurred;

B. the efforts made to collect the utility account or unsecured account and to locate the debtor;

C. that the utility account or unsecured account has been uncollectable for a period of more than four years; and

D. that in his opinion the utility account or unsecured account is uncollectable,

the governing body of a municipality may, by resolution, remove the uncollectable utility account or unsecured account from the list of accounts receivable of the municipality.

History: 1953 Comp., § 14-36-7, enacted by Laws 1965, ch. 19, § 1.

ANNOTATIONS

This procedure enables a municipality to adjust its financial books so as to reflect a more favorable financial picture. Presumably, if the uncollectible accounts were later shown to be collectible in some manner, the rights of the municipality would not have been extinguished by the removal procedure and the municipality could proceed to collect from the debtor unless it was barred by the statute of limitations. 1970 Op. Att'y Gen. No. 70-88.

ARTICLE 37A
Small Cities Assistance Fund

3-37A-1. Short title.

Chapter 3, Article 37A NMSA 1978 may be cited as the "Small Cities Assistance Act".

History: Laws 1979, ch. 284, § 1; 2003, ch. 220, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, substituted "Chapter 3, Article 37A NMSA 1978" for "Sections 1 through 3" at the beginning of the section.

3-37A-2. Definitions.

As used in the Small Cities Assistance Act:

A. "municipality" means an incorporated city, town or village, whether incorporated under general act, special act or special charter, and incorporated counties and H-class counties;

B. "municipal share" means one and thirty-five one-hundredths percent of the taxable gross receipts as defined in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] reported annually for each municipality to the taxation and revenue department during a twelve-month period ending June 30;

C. "total municipal share" means the sum of all municipal shares;

D. "statewide per capita average" means the quotient of the total municipal share divided by the total population in all municipalities;

E. "municipal per capita average" means the quotient of the municipal share divided by the municipality's population;

F. "population" means the most recent official census or estimate determined by the bureau of the census, or, if neither is available, "population" means an estimate as

determined by the local government division of the department of finance and administration;

G. "local tax effort" means the amount produced by a one-fourth of one percent municipal gross receipts tax in the previous fiscal year;

H. "qualifying municipality" means a municipality with a population of less than ten thousand that has enacted on or before the last day of the preceding fiscal year an ordinance or ordinances imposing a municipal gross receipts tax pursuant to Section 7-19D-9 NMSA 1978 at a rate of one-fourth of one percent or more;

I. "enacted" means adopted by a majority of the members of the governing body of the municipality pursuant to Section 7-19D-9 NMSA 1978 and:

(1) for which no election has been called in the manner and within the time provided by Section 7-19D-9 NMSA 1978; or

(2) that has been approved by a majority of the registered voters voting on the question pursuant to Section 7-19D-9 NMSA 1978; and

J. "minimum amount" means an amount equal to ninety thousand dollars ($90,000).

History: Laws 1979, ch. 284, § 2; 1981, ch. 37, § 1; 1981, ch. 215, § 1; 1983, ch. 205, § 1; 1983, ch. 214, § 1; 1999, ch. 170, § 1; 2003, ch. 220, § 2; 2012, ch. 5, § 1.

ANNOTATIONS

The 2012 amendment, effective January 1, 2014, increased the minimum amount that is used to determine the distribution of funds to small cities and in Subsection J, after "amount equal to", deleted "thirty-five thousand dollars ($35,000)" and added "ninety thousand dollars ($90,000)".

The 2003 amendment, effective June 20, 2003, in Subsection D deleted "statewide municipal" following "divided by the total" near the end and added "in all municipalities" at the end; and added present Subsection J.

The 1999 amendment, effective July 1, 1999, deleted "the revenue division of the" preceding "taxation and revenue" in Subsection B; in Subsection (H), deleted the Subsection (1) designation and substituted "of" for "which is", substituted "that" for "(2) with a municipal per capita average less than the statewide per capita average; and (3) which" and "Section 7-19D-9 NMSA 1978" for "the Municipal Gross Receipts Tax Act"; and substituted "Section 7-19D-9" for "Section 7-19-4" in three places in Subsection I.

3-37A-3. Small cities assistance fund; distribution.

A. The "small cities assistance fund" is created within the state treasury.

B. On or before January 31, 2004 and on or before January 31 of each subsequent year, the bureau of business and economic research located at the university of New Mexico shall certify to the taxation and revenue department the population of each municipality in the state.

C. On or before the last day of February of 2004 and of each subsequent year, the taxation and revenue department shall compute the amount to be distributed to each qualifying municipality as follows:

(1) the department first shall compute a distribution share for each qualifying municipality. The distribution share shall be an amount equal to the product of the qualifying municipality's population multiplied by the difference between the statewide per capita average and the municipal per capita average less the local tax effort of the qualifying municipality;

(2) in 2004 and subsequent years, the balance in the small cities assistance fund in February immediately after the distribution to the fund pursuant to Section 7-1-6.2 NMSA 1978 for the preceding January will be divided by the number of qualifying municipalities. The quotient will be rounded down to the nearest dollar and may be cited as the "target amount";

(3) if the target amount determined in Paragraph (2) of this subsection is less than or equal to the minimum amount, the target amount is the amount to be distributed to each qualifying municipality; and

(4) if the target amount exceeds the minimum amount, the amount to be distributed to all qualifying municipalities whose distribution share equals or is less than the minimum amount shall equal the minimum amount. The sum to be distributed to such municipalities shall be subtracted from the amount in the fund. The target amount then shall be increased by dividing the balance remaining in the fund by the number of remaining qualifying municipalities. The amount to be distributed to each remaining qualifying municipality shall equal the lesser of the municipality's distribution share or the increased target amount. If the distribution share of one or more of these remaining qualifying municipalities is less than the increased target amount, the balance of the fund is to be further reduced by the amount necessary to provide for a distribution to those municipalities of their distribution shares. The target amount is to be increased again by dividing the recomputed fund balance by the number of qualifying municipalities not yet provided for. Successive iterations of the process to increase the target amount shall occur until no remaining municipality's distribution share is less than the increased target amount.

D. The state treasurer shall distribute from the small cities assistance fund on or before March 1, 2004 and March 1 of each subsequent year to each qualifying municipality the amount certified by the taxation and revenue department for each qualifying municipality for the year.

E. Funds distributed in accordance with this section shall be placed in the general fund of the qualifying municipalities receiving distributions.

History: Laws 1979, ch. 284, § 3; 1981, ch. 215, § 2; 1983, ch. 214, § 2; 1984, ch. 25, § 1; 1986, ch. 20, § 1; 1987, ch. 291, § 1; 1988, ch. 129, § 1; 1999, ch. 170, § 2; 2003, ch. 220, § 3; 2004, ch. 112, § 1; 2009, ch. 144, § 1.

ANNOTATIONS

Cross references. — For distributions from tax administration suspense fund to small cities assistance fund, *see* 7-1-6.2 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in Subsection B, deleted "local government division of the department of finance and administration" and added "bureau of business and economic research located at the university of New Mexico".

The 2004 amendment, effective May 19, 2004, amended Subsection C to delete immediately preceding Paragraph (1) "provided that the maximum amount to be distributed to a qualifying municipality shall not exceed fifty-six thousand dollars ($56,000)" and deleted the portion of Subsection E, which provided for a reversion to the general fund of unexpended and unencumbered balances.

The 2003 amendment, effective June 20, 2003, in Subsection B inserted "or before January 31, 2004 and on or before" preceding "January 31" near the beginning, and inserted "subsequent" preceding "year" near the beginning; rewrote Subsection C; in Subsection D, substituted "March 1, 2004 and March 1" for "June 15" near the middle, inserted "subsequent" following "of each" near the middle and deleted "period ending May 30 of the preceding" following "municipality for the" near the end; and deleted Subsection G concerning the definition of "minimum amount".

The 1999 amendment, effective July 1, 1999, substituted "the minimum amount" for "fifteen thousand dollars ($15,000)" throughout the section; in Subsection C, substituted "fifty thousand dollars ($50,000) if the qualifying municipality has a population of five thousand or less and thirty-five thousand dollars ($35,000) if the qualifying municipality has a population of more than five thousand but less than ten thousand" for "thirty thousand dollars ($30,000)", substituted "the minimum amount, the distribution share shall be the minimum amount" for "fifteen thousand dollars ($15,000) shall receive a distribution of fifteen thousand dollars ($15,000)", added "calculated pursuant to Subsection C of this section" following "sum of the distribution shares"; and added Subsection G.

The 1988 amendment, effective July 1, 1988, in Subsection B substituted "January 31" for "August 31", in Subsection C substituted "June 10" for "January 10" in the first sentence and twice substituted "May 30" for "December 31" in the second sentence, substituted "June 15" for "January 15" and "May 30" for "December 31" in Subsection D, and substituted "June 30" for "January 20" in Subsection E.

The 1987 amendment, effective June 19, 1987, rewrote the second sentence in Subsection C.

ARTICLE 38
Licenses and Taxes

3-38-1. Licensing; business activities.

The governing body may declare, by ordinance, that the licensing or regulation of a business not otherwise exempt by law is conducive to the promotion of the health and general welfare of the municipality and may impose a license fee on and require a separate license for each place of business conducted by the same person, firm, corporation or association. The license fee shall bear a reasonable relation to the regulation of the business.

History: 1953 Comp., § 14-37-1, enacted by Laws 1965, ch. 300; 1981, ch. 37, § 2.

ANNOTATIONS

Cross references. — For the Construction Industries Licensing Act, *see* 60-13-1 NMSA 1978 et seq.

For licenses for jewelry auctions, *see* 61-16-6 NMSA 1978.

Ordinance will not be upheld merely because of its declared purpose. — Even though the declared purpose of an ordinance is for the exercise of the police power, the whole act will be examined to ascertain its characteristics and to determine whether there is actually an exercise of that power. It will not be upheld merely because of its declared purpose. City of Lovington v. Hall, 68 N.M. 143, 359 P.2d 769 (1961).

Declared purpose is to be given consideration in aid of interpreting the purpose, reason or occasion for the ordinance. City of Lovington v. Hall, 68 N.M. 143, 359 P.2d 769 (1961).

City cannot bargain away its police power for license fees, nor divest itself of its duty of preserving public health, by licensing a business which endangers the public health. Mitchell v. City of Roswell, 45 N.M. 92, 111 P.2d 41 (1941).

Businesses subject to licensing. — Cities are authorized to fix and collect a license fee on cleaning, pressing and tailoring shops, welding shops and machine shops within their limits, as a police or regulatory measure. Tharp v. City of Clovis, 34 N.M. 161, 279 P. 69 (1929).

Power to license. — Cities and towns could, under their police power, license and regulate the occupation of dray, transfer, taxicab and storage warehouses. Daniel v. City of Clovis, 34 N.M. 239, 280 P. 260 (1929).

Extent of license fee. — Municipality has power to charge a license fee which does not exceed the probable expense of issuing the license and of regulating the business. City of Lovington v. Hall, 68 N.M. 143, 359 P.2d 769 (1961).

Mere fact that license fees produce some excess revenue does not render the ordinance invalid, but the fees must be "incidental to regulation and not primarily for the purpose of producing revenue." City of Lovington v. Hall, 68 N.M. 143, 359 P.2d 769 (1961).

Declaration of purpose required. — There is expressed a legislative intent to allow municipalities to license and regulate provided the governing body shall by ordinance declare that the licensing and regulation is conducive to the promotion of the health and general welfare of the community. 1955-56 Op. Att'y Gen. No. 55-6096.

Phrase "not otherwise exempt by law" in this section refers both to the exemptions from licensing and regulation created by the Construction Industries Licensing Act, those created by the Private Investigators' Act and possibly to other statutory exemptions. Section 3-38-3 NMSA 1978 covers occupations the municipality does not seek to regulate under this section. 1969 Op. Att'y Gen. No. 69-72.

Contractors exempt. — The right of a municipality to both license and regulate resident and nonresident contractors has been taken away by the comprehensive nature of the Construction Industries Licensing Act except in certain minor respects. 1969 Op. Att'y Gen. No. 69-72.

Effect of revenue production. — The purpose of an ordinance under this section must be to charge license fees to defray the cost of regulation, and any license fee charged primarily to produce revenue would render the ordinance void. 1969 Op. Att'y Gen. No. 69-72.

Some revenue produced by licensing under this section will not, of itself, render the ordinance void. 1969 Op. Att'y Gen. No. 69-72.

Effect of repealing counties' specific statutory authority. — The repeal of the specific statutory authority of counties to impose license fees and occupational taxes (7-22-1 to 7-22-14 NMSA 1978) would not implicitly repeal a county's authority to exercise those powers pursuant to the statutes governing municipalities since repeals by implication are not favored. The 1979 repeal of 7-22-1 to 7-22-14 NMSA 1978, without a clear expression of legislative intent to limit the authority of counties, would not prevent a county from imposing fees and taxes under this section and 3-38-3 NMSA 1978, but a county would have no more authority in this regard than would a municipality, and the

restrictions of this section and 3-38-3 NMSA 1978 would apply. 1979 Op. Att'y Gen. No. 79-09 (decided prior to 1981 repeal and reenactment of 3-38-3 NMSA 1978).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 4 to 38; 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 471 to 492; 58 Am. Jur. 2d Occupations, Trades, and Professions §§ 2, 3, 10, 63 et seq.

Laundries, regulations concerning location of, 6 A.L.R. 1597.

Auctions and auctioneers, municipal power to regulate, 11 A.L.R. 474, 100 A.L.R. 834, 161 A.L.R. 706.

Gasoline filling stations, regulation or authorization of, 18 A.L.R. 101, 29 A.L.R. 450, 34 A.L.R. 507, 42 A.L.R. 978, 49 A.L.R. 767, 55 A.L.R. 256, 79 A.L.R. 918, 96 A.L.R. 1337.

Pool and billiard rooms and bowling alleys, licensing and regulation, 20 A.L.R. 1482, 29 A.L.R. 41, 53 A.L.R. 149, 72 A.L.R. 1339.

Suspected intention, refusal of license because of suspicion of intended violation of its conditions, 27 A.L.R. 325.

Junk dealers, regulation of, 30 A.L.R. 1427, 45 A.L.R.2d 1391.

Heating contractors, validity of municipal regulations, 33 A.L.R. 146.

Plumbers and plumbing, validity of regulations as to, 36 A.L.R. 1342, 22 A.L.R.2d 816.

Liability as affected by license issued by municipal officer, 42 A.L.R. 1208.

Dry cleaning and dyeing establishments, public regulation of, 49 A.L.R. 110, 128 A.L.R. 678.

"Taxicab stands," validity of municipal regulation requiring vehicles for hire to make use of, 55 A.L.R. 132, 76 A.L.R. 885, 109 A.L.R. 1381.

Permit or license, wrongful revocation, liability of municipality in damages for, 55 A.L.R. 434.

Personal liability of public officer for refusing to grant application for license, 85 A.L.R. 298.

Electricians and installation of electrical work, municipal regulation, 96 A.L.R. 1506.

Barbershops, regulating hours of closing, 98 A.L.R. 1093.

Newspapers, ordinance regulating hours of sale of on streets, 107 A.L.R. 1275.

Questioning issuance, right of holder of license from public to question propriety of issuing license to other persons, 109 A.L.R. 1259.

Vending machines, regulation as to sale of cigarettes by, 111 A.L.R. 755, 151 A.L.R. 1195.

Plumbers, reasonableness of license fee, 114 A.L.R. 573.

Building or construction contractors, validity, construction, and application of regulations as to business of, 118 A.L.R. 676.

Plumbing or plumbing work within statute or ordinance requiring license or other regulation, 125 A.L.R. 718.

"Catch-all" law: validity of statute or municipal ordinance which provides generally that occupations or businesses, for which no specific license tax has been imposed, shall be subject to a license tax of a specified amount or rate, 134 A.L.R. 841.

Juke boxes or other mechanical musical devices, validity of municipal regulation of, 151 A.L.R. 1178.

Change in law pending application for permit or license, 169 A.L.R. 584.

"Grandfather clause" of statute or ordinance regulating or licensing business or occupation, 4 A.L.R.2d 667.

Regulation of practice of photography, 7 A.L.R.2d 416.

Magazine subscriptions, validity of municipal regulation of solicitation of, 9 A.L.R.2d 728.

Validity of municipal ordinance imposing requirements on outside producers of milk to be sold in city, 14 A.L.R.2d 103.

Tourist or trailer camps, motor courts, or motels, maintenance or regulation by public authorities of, 22 A.L.R.2d 774.

Right of person wrongfully refused license upon proper application therefor to do act for which license is required, 30 A.L.R.2d 1006.

Watchmaking, watch repairing and the like, 34 A.L.R.2d 1326.

House-to-house canvassing, validity of ordinance prohibiting or restricting, 35 A.L.R.2d 355.

Municipality's liability and damages for its refusal to grant permit, license, or franchise, 37 A.L.R.2d 694.

Collection and commercial agencies or representatives thereof, 54 A.L.R.2d 881.

Validity, right to attack validity of statute, ordinance, regulation relating to occupational or professional license as affected by applying for, or securing, license, 65 A.L.R.2d 660.

Payment of license taxes to prevent closing of, or interference with, business as involuntary so as to permit recovery, 80 A.L.R.2d 1040.

Psychologists, 81 A.L.R.2d 791.

Garbage or rubbish removal services, 83 A.L.R.2d 799.

Self-service laundries, 87 A.L.R.2d 1007.

Undertakers, funeral directors, or embalmers, validity of ordinance relating to, 89 A.L.R.2d 1338.

Correspondence schools or their canvassers or solicitors, 92 A.L.R.2d 522.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Debt adjusting business, 95 A.L.R.2d 1354.

Sale of merchandise on streets and highways, or their use for such purpose, authorization, prohibition, or regulation by municipality of, 14 A.L.R.3d 896.

Intoxicating liquor, validity of municipal regulation more restrictive than state regulation as to time for selling or serving, 51 A.L.R.3d 1061.

Pardon as restoring public office or license or eligibility therefor, 58 A.L.R.3d 1191.

Laundry: applicability of city ordinance requiring license for laundry to supplier of coin-operated laundry machines intended for use in apartment building, 65 A.L.R.3d 1296.

Regulation of the business of tattooing, 81 A.L.R.3d 1212.

53 C.J.S. Licenses §§ 10, 11; 62 C.J.S. Municipal Corporations § 234 et seq.

3-38-2. Denial or revocation of license; hearing.

A. For the purpose of regulation and when deemed in the public interest, the governing body may refuse to grant a license but no license shall be refused until the person seeking the license has been given the opportunity of a hearing by the governing body. After such a hearing, the majority of the governing body at the hearing may still refuse to grant a license.

B. Whenever a person is guilty of violating an ordinance relating to the granting of a license, or in the judgment of the governing body the public welfare requires a license be revoked, the governing body may revoke the license.

History: 1953 Comp., § 14-37-2, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 57 to 62.

53 C.J.S. Licenses §§ 38, 39, 43, 50 to 52.

3-38-3. Authorization for business registration fee.

A. In addition to the licensing authority contained in Section 3-38-1 NMSA 1978, a municipality shall, by ordinance, charge a business registration fee on each place of business conducted within a municipality that is not licensed by the municipality under Section 3-38-1 NMSA 1978. The business registration fee shall not be more than thirty-five dollars ($35.00) a year and may be prorated for businesses conducted for a portion of the year.

B. Notwithstanding the provisions of this section and Section 3-38-1 NMSA 1978:

(1) no license fee or business registration fee shall be imposed on any sanctioned and registered athletic official who officiates for any association or organization which regulates any public school activity and whose rules and regulations are approved by the state board of education; and

(2) a municipality may exempt from the business regulation fee imposed by the municipality any part-time artist whose income from sales of his artwork in the prior taxable year did not exceed one thousand dollars ($1,000).

History: 1978 Comp., § 3-38-3, enacted by Laws 1981, ch. 37, § 3; 1987, ch. 84, § 1; 1988, ch. 36, § 1; 1993, ch. 196, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1981, ch. 37, § 3, repealed former 3-38-3 NMSA 1978, relating to imposition of an occupation tax, and enacted a new 3-38-3 NMSA 1978.

The 1993 amendment, effective June 18, 1993, deleted "not" preceding "be prorated" in the second sentence of Subsection A, designated part of the existing provisions of Subsection B as Paragraph (1) thereof, added Paragraph 2 of Subsection B, and made minor stylistic changes.

The 1988 amendment, effective May 18, 1988, raised the business registration fee maximum amount to $35.00.

The 1987 amendment, effective March 20, 1987, designated the former provisions of this section as Subsection A and added Subsection B.

Imposition of occupation tax. — For construction of this section prior to 1981 repeal and reenactment, *see* 1953-54 Op. Att'y Gen. No. 53-5836; 1957-58 Op. Att'y Gen. No. 58-12; 1959-60 Op. Att'y Gen. No. 59-104; 1961-62 Op. Att'y Gen. No. 62-81; 1967 Op. Att'y Gen. No. 67-143; 1968 Op. Att'y Gen. No. 68-50; 1969 Op. Att'y Gen. No. 69-72; 1970 Op. Att'y Gen. No. 70-19.

Law reviews. — For annual survey of New Mexico law relating to tax, see 13 N.M.L. Rev. 459 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 113 to 118; 58 Am. Jur. 2d Occupations, Trades, and Professions §§ 2, 10.

Validity of statute or municipal ordinance which provides generally that occupations and businesses for which no specific license tax has been imposed shall be subject to a license tax of a specified amount or rate, 134 A.L.R. 841.

53 C.J.S. Licenses §§ 10, 11, 64 to 66.

3-38-4. Business licensing; business registration; application to do business; issuance of license or registration; proration of license fee; renewal of registration; staggered periods for business registration.

A. Prior to engaging in any business, any person proposing to engage in a business shall pay to the municipality any applicable business registration fee or any applicable business license fee. A municipality may provide by ordinance for the prorating of the business license fee and the issuing of a business license for the remainder of the calendar year in which the business is to be operated.

B. Each year, any person engaging in a business within a municipality shall apply for the renewal of any applicable business license as authorized in Section 3-38-1 NMSA 1978 or any applicable business registration as authorized in Section 3-38-3 NMSA 1978 with the municipal clerk. A municipality may provide by ordinance for a staggered system of business registration.

C. Any person filing an application for issuance or renewal of any business license as authorized in Section 3-38-1 NMSA 1978 or any business registration as authorized in Section 3-38-3 NMSA 1978 shall include on the application his current revenue division taxpayer identification number or evidence of application for a current revenue division taxpayer identification number. No municipality shall issue or renew a business license or a business registration authorizing the conduct of a business to any person who has not furnished to the municipality the information required in this section.

History: 1978 Comp., § 3-38-4, enacted by Laws 1981, ch. 37, § 4; 1993, ch. 196, § 2.

ANNOTATIONS

Repeals and reenactments. — Laws 1981, ch. 37, § 4, repealed former 3-38-4 NMSA 1978, relating to proration of license fee or occupation tax, and enacted the above section.

Cross references. — For state business licenses, *see* Chapter 60 NMSA 1978.

The 1993 amendment, effective June 18, 1993, added "renewal of registration; staggered periods for business registration" in the section heading, deleted "Prior to March 16 of" at the beginning of the first sentence in Subsection B and added the second sentence in Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 138, 139.

53 C.J.S. Licenses §§ 31, 37, 41, 43, 47.

3-38-5. Collection; enforcement.

A. Sections 3-38-1 through 3-38-6 NMSA 1978 and any ordinance adopted pursuant to those sections may be enforced by the municipality having jurisdiction as municipal ordinances are enforced.

B. In addition, if any business is conducted in violation of Sections 3-38-1 through 3-38-6 NMSA 1978 or any ordinance adopted pursuant to those sections, the municipality may institute any appropriate action or proceedings to:

(1) prevent the conduct of the business;

(2) restrain, correct or abate the violation;

(3) prevent the occupancy of the building, structure or land on which the business is located; or

(4) charge a late fee of no more than ten dollars ($10.00) per year.

C. In addition to the remedies provided in Subsections A and B of this section, the business license fee and business registration fee may be collected and Sections 3-38-1 through 3-38-6 NMSA 1978 may be enforced by the municipality by suit in district court or under such other regulation as the municipality may provide by ordinance.

D. The municipality may initiate any appropriate action or proceeding as provided in Subsections A and B of this section any time up to four years after the violation.

History: 1978 Comp., § 3-38-5, enacted by Laws 1981, ch. 37, § 5; 1988, ch. 36, § 2.

ANNOTATIONS

Repeals and reenactments. — Laws 1981, ch. 37, § 5, repealed former 3-38-5 NMSA 1978, relating to applications for business licenses and occupation tax permits, and enacted a new 3-38-5 NMSA 1978.

The 1988 amendment, effective May 18, 1988, substituted "Sections 3-38-1 through 3-38-6 NMSA 1978" for "Chapter 3, Article 38" throughout the section; added Subsections B(4) and D; and made minor stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 70, 75, 148 to 150.

Right to injunction to restrain acts or course of conduct without the required permit or license from public, 53 A.L.R. 811.

Right to enjoin practice of profession or conduct of business without a license or permit, 81 A.L.R. 292, 92 A.L.R. 173.

53 C.J.S. Licenses §§ 69, 70.

3-38-6. Lien for license; priority; payment from proceeds of judicial sale; certificate of liens.

A. The business license fee constitutes a lien in favor of the municipality upon the personal property of the business. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978.

B. Under process or order of court, no person shall sell the property of any business without first ascertaining from the clerk or treasurer of the municipality in which the business is located the amount of any business license fee due the municipality. Any business license fee due the municipality shall be paid from the proceeds of the sale before payment is made to the judgment creditor or other person at whose instance such sale is had.

C. The municipal clerk or treasurer shall furnish to any person applying for a certificate, a certificate showing the amount of all liens on record in the records of the municipality against any business coming under the provisions of Chapter 3, Article 38 NMSA 1978.

History: 1953 Comp., § 14-37-11, enacted by Laws 1965, ch. 300; 1978 Comp., § 3-38-11, recompiled as 1978 Comp., § 3-38-6 by Laws 1981, ch. 37, § 6.

ANNOTATIONS

Compiler's notes. — Laws 1981, ch. 37, § 95, repealed former 3-38-6 NMSA 1978, as compiled prior to the enactment of Laws 1981, ch. 37, relating to the collection of business license fee or occupation tax. For present provisions, *see* 3-38-5 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 75.

53 C.J.S. Licenses § 68.

3-38-7 to 3-38-10. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 37, § 95, repealed 3-38-7 to 3-38-10 NMSA 1978, relating to the determination of gross receipts of businesses for the purpose of determining the business license fee or occupation tax assessment, confidentiality of information about taxpayers relating to the gross receipts of any business, the keeping of accurate records of the gross receipts of the business, and the absence of exemption on execution of property for the collection of any business license fee or occupation tax, effective July 1, 1981. For present provisions, *see* 3-38-1 to 3-38-6 and 7-1-8 NMSA 1978.

3-38-11. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1981, ch. 37, § 6, recompiled 3-38-11 NMSA 1978, relating to liens for business license fees or occupation taxes, as 3-38-6 NMSA 1978, effective July 1, 1981.

3-38-12. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 37, § 95, repealed 3-38-12 NMSA 1978, relating to the foreclosure of the lien for business license fee or occupation tax in favor of the municipality, effective July 1, 1981. For present provisions, *see* 3-38-6 NMSA 1978.

3-38-13. Short title.

Sections 3-38-13 through 3-38-24 NMSA 1978 may be cited as the "Lodgers' Tax Act".

History: 1953 Comp., § 14-37-14, enacted by Laws 1969, ch. 199, § 1; 1996, ch. 58, § 1.

ANNOTATIONS

The 1996 amendment, effective July 1, 1996, substituted "Sections 3-38-13 through 3-38-24 NMSA 1978" for "This act".

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

3-38-14. Definitions.

As used in the Lodgers' Tax Act [3-38-13 through 3-38-24 NMSA 1978]:

A. "gross taxable rent" means the total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes;

B. "lodging" means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who for rent uses, possesses or has the right to use or possess the rooms or other units of accommodations in or at a taxable premises;

C. "lodgings" means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings;

D. "occupancy tax" means the tax on lodging authorized by the Lodgers' Tax Act;

E. "person" means a corporation, firm, other body corporate, partnership, association or individual. "Person" includes an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity. "Person" does not include the United States of America, the state of New Mexico, any corporation, department, instrumentality or agency of the federal government or the state government or any political subdivision of the state;

F. "rent" means the consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to an occupancy tax authorized in the Lodgers' Tax Act;

G. "taxable premises" means a hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises used for lodging;

H. "tourist" means a person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax;

I. "tourist-related events" means events that are planned for, promoted to and attended by tourists;

J. "tourist-related facilities and attractions" means facilities and attractions that are intended to be used by or visited by tourists;

K. "tourist-related transportation systems" means transportation systems that provide transportation for tourists to and from tourist-related facilities and attractions and tourist-related events;

L. "vendee" means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging; and

M. "vendor" means a person or his agent furnishing lodgings in the exercise of the taxable service of lodging.

History: 1953 Comp., § 14-37-15, enacted by Laws 1969, ch. 199, § 2; 1996, ch. 58, § 2; 2000, ch. 37, § 1.

ANNOTATIONS

The 2000 amendment, effective July 1, 2000, in Subsection K, inserted "and" preceding "attractions" and "tourist-related" preceding "events"; and inserted "or his agent" in Subsection M.

The 1996 amendment, effective July 1, 1996, divided Subsection E into three sentences and added "'Person'" to the beginning of the second and third sentences, and added Subsections H through K and redesignated former Subsections H and I as Subsections L and M.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

3-38-15. Authorization of tax; limitations on use of proceeds.

A. A municipality may impose by ordinance an occupancy tax for revenues on lodging within the municipality, and the board of county commissioners of a county may impose by ordinance an occupancy tax for revenues on lodging within that part of the county outside of the incorporated limits of a municipality.

B. The occupancy tax shall not exceed five percent of the gross taxable rent.

C. Every vendor who is furnishing any lodgings within a municipality or county is exercising a taxable privilege.

D. The following portions of the proceeds from the occupancy tax shall be used only for advertising, publicizing and promoting tourist-related attractions, facilities and events:

(1) if the municipality or county imposes an occupancy tax of no more than two percent, not less than one-fourth of the proceeds shall be used for those purposes;

(2) if the occupancy tax imposed is more than two percent and the municipality is not located in a class A county or the county is not a class A county, not less than one-half of the proceeds from the first three percent of the tax and not less than one-fourth of the proceeds from the tax in excess of three percent shall be used for those purposes; and

(3) if the occupancy tax imposed is more than two percent and the municipality is located in a class A county or the county is a class A county, not less than one-half of the proceeds from the tax shall be used for those purposes.

E. The proceeds from the occupancy tax in excess of the amount required to be used for advertising, publicizing and promoting tourist-related attractions, facilities and events may be used for any purpose authorized in Section 3-38-21 NMSA 1978.

F. The proceeds from the occupancy tax that are required to be used to advertise, publicize and promote tourist-related attractions, facilities and events shall be used within two years of the close of the fiscal year in which they were collected and shall not be accumulated beyond that date or used for any other purpose.

G. Notwithstanding the provisions of Paragraph (2) of Subsection D of this section, any use by a municipality or county of occupancy tax proceeds on January 1, 1996 may continue to be so used after July 1, 1996 in accordance with the provisions of this section and Section 3-38-21 NMSA 1978 as they were in effect prior to July 1, 1996; provided, any change in the use of those tax proceeds after July 1, 1996 is subject to the limitations of that paragraph.

H. Notwithstanding the provisions of Paragraph (2) of Subsection D of this section, the payment of principal and interest on outstanding bonds issued prior to January 1, 1996 pursuant to Section 3-38-23 or 3-38-24 NMSA 1978 shall be made in accordance

with the retirement schedules of the bonds established at the time of issuance. The amount of expenditures required under Paragraph (2) of Subsection D of this section shall be reduced each year, if necessary, to make the required payments of principal and interest of all outstanding bonds issued prior to January 1, 1996.

History: 1953 Comp., § 14-37-16, enacted by Laws 1969, ch. 199, § 3; 1976 (S.S.), ch. 34, § 1; 1977, ch. 294, § 1; 1983, ch. 207, § 1; 1987, ch. 9, § 1; 1996, ch. 58, § 3.

ANNOTATIONS

Cross references. — For requirements of occupancy tax quarterly reports, *see* 6-6-4.1 NMSA 1978.

The 1996 amendment, effective July 1, 1996, rewrote Subsections D and E, added Subsections F and G, redesignated former Subsection F as Subsection H, and in Subsection H, substituted "Paragraph (2) of Subsection D" for "of Subsection E" near the beginning of the first and second sentences and substituted "January 1, 1996" for "July 1, 1977" near the middle of the first sentence and at the end of the second sentence.

The 1987 amendment, effective June 19, 1987, substituted "five percent" for "three percent" and deleted the exception relating to certain municipalities in Subsection B, inserted "derived from the first three percent" after "proceeds" in the first sentence in Subsection E and added the last sentence in Subsection E.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 1 to 8, 68 to 81, 86 to 91.

64 C.J.S. Municipal Corporations §§ 1978 to 1984.

3-38-16. Exemptions.

The occupancy tax shall not apply:

A. if a vendee:

(1) has been a permanent resident of the taxable premises for a period of at least thirty consecutive days; or

(2) enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least thirty consecutive days;

B. if the rent paid by a vendee is less than two dollars ($2.00) a day;

C. to lodging accommodations at institutions of the federal government, the state or any political subdivision thereof;

D. to lodging accommodations at religious, charitable, educational or philanthropic institutions, including accommodations 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 within or attached to a taxable premises for lodging or at least three other premises for lodging or a combination of these within the taxing jurisdiction.

History: 1953 Comp., § 14-37-17, enacted by Laws 1969, ch. 199, § 4; 2000, ch. 37, § 2.

ANNOTATIONS

The 2000 amendment, effective July 1, 2000, rewrote Subsection G, which formerly read, "if the taxable premises does not have at least three rooms or three other units of accommodations for lodging".

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

3-38-17. Collection of taxes.

A. Every vendor providing lodgings in a municipality or county imposing an occupancy tax shall collect the proceeds thereof on behalf of the municipality or county and shall act as a trustee therefor.

B. The tax shall be collected from vendees in accordance with the ordinance imposing the tax and shall be charged separately from the rent fixed by the vendor for the lodgings.

History: 1953 Comp., § 14-37-18, enacted by Laws 1969, ch. 199, § 5; 1976 (S.S.), ch. 34, § 2.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 866 to 880.

64 C.J.S. Municipal Corporations §§ 2070 to 2121.

3-38-17.1. Audit of vendors.

The governing body of any municipality or county collecting over two hundred fifty thousand dollars ($250,000) in occupancy tax proceeds shall select for annual random audits one or more vendors to verify the amount of gross rent subject to the occupancy tax and to ensure that the full amount of occupancy tax on that rent is collected. The governing body of any municipality or county collecting less than two hundred fifty thousand dollars ($250,000) in receipts, per annum, of occupancy tax proceeds shall conduct random audits to verify full payment of occupancy tax receipts. Copies of audits completed shall be filed annually with the local government division of the department of finance and administration.

History: Laws 1992, ch. 12, § 2; 1996, ch. 58, § 4.

ANNOTATIONS

The 1996 amendment, effective July 1, 1996, substituted "two hundred fifty thousand dollars ($250,000)" for "fifty thousand dollars ($50,000)" near the beginning of the first and second sentences.

3-38-17.2. Financial reporting.

A. The governing body of any municipality or county imposing and collecting an occupancy tax shall furnish to the advisory board that portion of any proposed budget, report or audit filed or received by the governing body pursuant to either Chapter 6, Article 6 NMSA 1978 or the Audit Act [12-6-1 through 12-6-14 NMSA 1978] that relates to the expenditure of occupancy tax funds within ten days of the filing or receipt of such proposed budget, report or audit by the local governing body.

B. The governing body of any municipality or county imposing and collecting an occupancy tax shall report to the local government division of the department of finance and administration on a quarterly basis any expenditure of occupancy tax funds pursuant to Sections 3-38-15 and 3-38-21 NMSA 1978 and shall furnish a copy of this report to the advisory board when it is filed with the division.

History: Laws 1996, ch. 58, § 5.

ANNOTATIONS

Effective dates. — Laws 1996, ch. 58, § 12 made the act effective July 1, 1996.

3-38-17.3. Enforcement.

A. An action to enforce the Lodgers' Tax Act [3-38-13 through 3-38-24 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 an occupancy tax 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 Lodgers' Tax Act.

C. The court shall award costs and reasonable attorneys' fees to the prevailing party in a court action to enforce the provisions of the Lodgers' Tax Act.

History: Laws 1996, ch. 58, § 6.

ANNOTATIONS

Effective dates. — Laws 1996, ch. 58, § 12 made the act effective July 1, 1996.

3-38-18. Collection of delinquencies.

A. The governing body of the municipality or county shall, by ordinance, provide that a vendor is liable for the payment of the proceeds of any occupancy tax that the vendor failed to remit to the municipality or county, due to his failure to collect the tax or otherwise, and shall provide for a civil penalty for any such failure in an amount equal to the greater of ten percent of the amount that was not duly remitted to the municipality or county or one hundred dollars ($100).

B. The municipality or county may bring an action in law or equity in the district court for the collection of any amounts due, including without limitation penalties thereon, interest on the unpaid principal at a rate of not exceeding one percent a month, the costs of collection and reasonable attorneys' fees incurred in connection therewith.

History: 1953 Comp., § 14-37-19, enacted by Laws 1969, ch. 199, § 6; 1976 (S.S.), ch. 34, § 3; 1992, ch. 12, § 3.

ANNOTATIONS

The 1992 amendment, effective July 1, 1992, in Subsection A, substituted all of the present language of the subsection beginning with "amount equal to" for "amount of not exceeding ten percent of the amount which was not duly remitted to the municipality or county but in an amount not less than ten dollars ($10.00)" and made minor stylistic changes.

3-38-18.1. Lien for occupancy tax; payment; certificate of liens.

A. The occupancy tax imposed by a municipality or county constitutes a lien in favor of that municipality or county upon the personal and real property of the vendor providing lodgings in that municipality or county. 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, no person shall sell the property of any vendor without first ascertaining from the clerk or treasurer of the municipality or county in which the vendor is located the amount of any occupancy tax due the municipality or county. Any occupancy tax due the municipality or county 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 municipality or county shall furnish to any person applying for such a certificate a certificate showing the amount of all liens in the records of the municipality or county against any vendor pursuant to Chapter 3, Article 38 NMSA 1978.

History: Laws 1992, ch. 12, § 1.

ANNOTATIONS

Alternative priorities. — The priority language of Subsection A of Section 3-38-18.1 NMSA 1978 applies where a municipality is enforcing its lodgers' tax lien as provided by Sections 3-36-1 through 3-36-6 NMSA 1978. Subsection A does not apply when a municipality chooses to enforce its lien under Subsection B and receive first priority of payment from the proceeds of a foreclosure sale. When named as a defendant in a foreclosure action, a municipality can choose not to proceed by way of enforcement of its lien through foreclosure as provided in Sections 3-36-1 through 3-36-6 NMSA 1978 with the priority of its lien being as specified in Subsection A of Section 3-38-18.1 NMSA 1978, but can rely instead on Subsection B for first priority of payment from the proceeds of a foreclosure sale. Wells Fargo Bank, N.A. v. City of Gallup, 2011-NMCA-106, 150 N.M. 706, 265 P.3d 1279.

Where a municipality was named as a defendant in a foreclose action of plaintiff's deed of trust; throughout the proceedings, the municipality maintained that its lodgers' tax lien was junior and inferior to deed of trust; and the municipality approved the foreclosure judgment, which declared the municipality's lien junior and inferior to the deed of trust, the municipality was entitled, pursuant to Subsection B of Section 3-38-18.1 NMSA 1978, to payment from the sales proceeds before plaintiff received any proceeds. Wells Fargo Bank, N.A. v. City of Gallup, 2011-NMCA-106, 150 N.M. 706, 265 P.3d 1279.

3-38-19. Penalties.

The governing body of the municipality or county 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 occupancy tax ordinance for a failure to pay the tax,

to remit the proceeds thereof to the municipality or county or to account properly for any lodging and the tax proceeds pertaining thereto.

History: 1953 Comp., § 14-37-20, enacted by Laws 1969, ch. 199, § 7; 1976 (S.S.), ch. 34, § 4; 1992, ch. 12, § 4.

ANNOTATIONS

The 1992 amendment, effective July 1, 1992, substituted all of the present language preceding "for a violation" for "The governing body of the municipality or county may, by ordinance, provide for penalties of not exceeding ninety days in jail nor three hundred dollars ($300) fine".

3-38-20. Ordinance requirements.

The ordinance imposing an occupancy tax or any ordinance amendatory thereof or supplemental thereto, except as limited by or otherwise provided in the Lodgers' Tax Act [3-38-13 through 3-38-24 NMSA 1978], shall:

A. provide a procedure for licensing each vendor and for refusing a vendor a license after an opportunity has been given to the vendor of a public hearing thereon by the governing body of the municipality or county, as the case may be;

B. state the rate or other amount of the occupancy tax; the times, place and method for the payment of the occupancy tax proceeds to the municipality or county; the accounts and other records to be maintained in connection with the occupancy tax; a procedure for making refunds and resolving disputes relating to the occupancy tax, including exemptions pertaining thereto; the procedure for preservation and destruction of records and their inspection and investigation; vendor audit requirements; applicable civil and criminal penalties; and a procedure of liens, distraint and sales to satisfy such liens; and

C. provide other rights, privileges, powers, immunities and other details relating to any such vendor licenses, the collection of the occupancy tax and the remittance of the proceeds thereof to the municipality or county.

History: 1953 Comp., § 14-37-21, enacted by Laws 1969, ch. 199, § 8; 1976 (S.S.), ch. 34, § 5; 1992, ch. 12, § 5.

ANNOTATIONS

The 1992 amendment, effective July 1, 1992, substituted the present section heading for "Other details"; substituted "shall" for "may" at the end of the introductory paragraph; and, in Subsection B, inserted "vendor audit requirements; applicable civil and criminal penalties", substituted "occupancy tax" for "tax" several times, and made minor stylistic changes throughout the subsection.

3-38-21. Eligible uses of tax proceeds.

Subject to the limitations contained in Section 3-38-15 NMSA 1978, a municipality or county imposing an occupancy tax may use the proceeds from the tax to defray costs of:

A. collecting and otherwise administering the tax, including the performance of audits required by the Lodgers' Tax Act [3-38-13 through 3-38-24 NMSA 1978] pursuant to guidelines issued by the department of finance and administration;

B. establishing, operating, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving, equipping, furnishing or acquiring real property or any interest in real property for the site or grounds for tourist-related facilities, attractions or transportation systems of the municipality, the county in which the municipality is located or the county;

C. the principal of and interest on any prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by Section 3-38-23 or 3-38-24 NMSA 1978;

D. advertising, publicizing and promoting tourist-related attractions, facilities and events of the municipality or county and tourist facilities or attractions within the area;

E. providing police and fire protection and sanitation service for tourist-related events, facilities and attractions located in the respective municipality or county; or

F. any combination of the foregoing purposes or transactions stated in this section, but for no other municipal or county purpose.

History: 1953 Comp., § 14-37-22, enacted by Laws 1969, ch. 199, § 9; 1976 (S.S.), ch. 34, § 6; 1983, ch. 217, § 1; 1987, ch. 9, § 2; 1989, ch. 203, § 1; 1995, ch. 97, § 1; 1996, ch. 58, § 7.

ANNOTATIONS

Cross references. — For requirements of occupancy tax quarterly reports, *see* 6-6-4.1 NMSA 1978.

The 1996 amendment, effective July 1, 1996, rewrote this section.

The 1995 amendment, effective June 16, 1995, substituted "subsection" for "paragraph" in the second sentence in Subsection F, and added Subsection H and redesignated former Subsections G and H as Subsections I and G.

The 1989 amendment, effective April 4, 1989, in Subsection B, inserted "welcome centers, tourist information centers, museums," and "in operation prior to January 1,

1989"; and, in Subsection F, added all of the language of the first sentence beginning with "except" and added the second sentence.

The 1987 amendment, effective June 19, 1987, inserted "or attractions" after "facilities" in Subsection F and added Subsection H.

Operation of racetrack. — The City of Raton cannot utilize its occupancy tax proceeds to operate the privately owned and operated La Mesa Park racetrack or help defer the expenses at the track. 1988 Op. Att'y Gen. No. 88-38.

Promotion of facilities by toll-free telephone service. — If a toll-free telephone service is used to promote the natural and man-made tourist attractions of the town of Red River, or to promote any facilities authorized by this section within Red River, then the expenses of operating and maintaining such a service would be an authorized expenditure of lodgers' tax revenues; to the extent that such telephone service is used to conduct any other business of the Chamber of Commerce, the Chamber would have to bear those costs. 1987 Op. Att'y Gen. No. 87-49.

3-38-21.1. Contracting for services.

A. The governing body of a municipality or county may contract for the management of programs and activities funded with revenue from the tax authorized in Section 3-38-15 NMSA 1978. The governing body shall require periodic reports to the governing body, at least quarterly, listing the expenditures for those periods. Within ten days of receiving the reports, the governing body shall furnish copies of them to the advisory board. Funds provided to the contracting person or governmental agency shall be maintained in a separate account established for that purpose and shall not be commingled with any other money.

B. A person or governmental agency with whom a municipality contracts under this section to conduct an activity authorized by Section 3-38-21 NMSA 1978 shall maintain complete and accurate financial records of each expenditure of the tax revenue made and upon request of the governing body of the municipality or county shall make such records available for inspection.

C. The occupancy tax revenue spent for a purpose authorized by the Lodgers' Tax Act [3-38-13 through 3-38-24 NMSA 1978] may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses and other administrative costs only if those administrative costs are incurred directly for that purpose.

D. A person or governmental agency with whom a local governmental body contracts under this section may subcontract with the approval of the governing body of the municipality or county. A subcontractor shall be subject to the same terms and conditions as the contractor regarding separate financial accounts, periodic reports and inspection of records.

History: Laws 1996, ch. 58, § 8.

ANNOTATIONS

Effective dates. — Laws 1996, ch. 58, § 12 made the act effective July 1, 1996.

3-38-22. Advisory boards created; duties.

A. The mayor of every municipality that imposes an occupancy tax pursuant to the Lodgers' Tax Act [3-38-13 through 3-38-24 NMSA 1978] shall appoint a five-member advisory board that consists of two members who are owners or operators of lodgings subject to the occupancy tax within the municipality, two members who are owners or operators of industries located within the municipality that primarily provide services or products to tourists and one member who is a resident of the municipality and represents the general public.

B. The chairman of every county commission that imposes an occupancy tax pursuant to the Lodgers' Tax Act shall appoint a five-member advisory board that consists of two members who are owners or operators of lodgings subject to the occupancy tax within the unincorporated area of the county, two members who are owners or operators of industries located within the unincorporated area of the county that primarily provide services or products to tourists and one member who is a resident of the unincorporated area of the county who represents the general public.

C. Members of the boards created under Subsections A and B of this section shall serve at the pleasure of the respective appointing authorities. The boards shall advise the respective governing bodies on the expenditure of funds authorized by Section 3-38-15 NMSA 1978 for advertising, publicizing and promoting tourist attractions and facilities in the respective counties and municipalities.

D. The advisory board shall submit to the mayor and council or county commission recommendations for the expenditures of funds authorized pursuant to the Lodgers' Tax Act for advertising, publicizing and promoting tourist-related attractions, facilities and events in the respective counties and municipalities.

History: 1953 Comp., § 14-37-22.1, enacted by Laws 1977, ch. 294, § 2; 1996, ch. 58, § 9.

ANNOTATIONS

The 1996 amendment, effective July 1, 1996, rewrote this section.

3-38-23. Revenue bonds.

A. Revenue bonds may be issued at any time or from time to time by a municipality or county to defray wholly or in part the costs of any one, all or any combination of purposes authorized in Subsections B through E of Section 3-38-21 NMSA 1978.

B. The revenue bonds may be payable from and such payment may be secured by a pledge of and lien on the revenues derived from:

(1) the proceeds of the occupancy tax of the municipality or county after the deduction of those amounts required to be expended pursuant to Subsections D and E of Section 3-38-15 NMSA 1978 and the administration costs pertaining to the tax in an amount not to exceed ten percent of the occupancy tax receipts collected by the municipality or county in any fiscal year, excluding from the computation of such costs the administration costs ultimately recovered from delinquent vendors by civil action as penalties, costs of collection and attorneys' fees but not as interest on unpaid principal;

(2) the tourist-related facilities, attractions or transportation systems to which the bonds pertain, after provision is made for the payment of the operation and maintenance expenses of such facilities, attractions or transportation systems; or

(3) a combination of such net revenues from both sources designated in Paragraphs (1) and (2) of this subsection.

C. The bonds shall bear interest at a rate or rates as authorized in the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978], and the first interest payment may be for any period authorized in the Public Securities Act.

D. Except as otherwise provided in the Lodgers' Tax Act [3-38-13 through 3-38-24 NMSA 1978], revenue bonds authorized in the Lodgers' Tax Act shall be issued in accordance with the provisions of Sections 3-31-2 through 3-31-6 NMSA 1978.

History: 1953 Comp., § 14-37-23, enacted by Laws 1969, ch. 199, § 10; 1976 (S.S.), ch. 34, § 7; 1987, ch. 9, § 3; 1996, ch. 58, § 10.

ANNOTATIONS

The 1996 amendment, effective July 1, 1996, inserted "those amounts required to be expended pursuant to Subsections D and E of Section 3-38-15 NMSA 1978 and" near the beginning of Paragraph B(1), substituted "occupancy tax receipts" for "gross taxable rent" following "ten percent of the" in Paragraph B(1), substituted "the tourist-related facilities, attractions or transportation systems" for "the recreational facilities" at the beginning of Paragraph B(2), and inserted "attractions or transportation systems" at the end of Paragraph B(2).

The 1987 amendment, effective June 19, 1987, substituted "of Section 3-38-21 NMSA 1978" for "Section 14-37-22 NMSA 1953" in Subsection A; deleted "or" at the end in Subsection B(1); substituted the references to the Public Securities Act for "not

exceeding seven percent a year payable annually or semiannually, but" and "not exceeding one year" in Subsection C; substituted "authorized in the Lodgers' Tax Act" for "therein authorized" in Subsection D; and substituted "3-31-2 through 3-31-6 NMSA 1978" for "14-30-2 through 14-30-6 NMSA 1953" in Subsection D.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 C.J.S. Municipal Corporations § 1957.

3-38-24. Refunding bonds.

A. Any municipality or county having issued revenue bonds as authorized in the Lodgers' Tax Act [3-38-13 through 3-38-24 NMSA 1978] may issue refunding revenue bonds payable from pledged revenues therein 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 municipality or county may determine, notwithstanding 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 any part of such outstanding bonds of any one or more or 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, otherwise concerning the outstanding bonds, or to any facilities relating thereto; or

(4) for any combination of the foregoing purposes.

C. The interest on any bond refunded shall not be increased to any rate in excess of the rate authorized in the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978] and shall be paid as authorized in that act.

D. Bonds for refunding any bonds for any other purpose permitted by the Lodgers' Tax Act may be issued separately or issued in combination in one series or more.

E. Except as otherwise provided in the Lodgers' Tax Act, refunding bonds authorized in the Lodgers' Tax Act shall be issued in accordance with the provisions of Sections 3-31-10 and 3-31-11 NMSA 1978.

History: 1953 Comp., § 14-37-24, enacted by Laws 1969, ch. 199, § 11; 1976 (S.S.), ch. 34, § 8; 1987, ch. 9, § 4.

ANNOTATIONS

The 1987 amendment, effective June 19, 1987, deleted "or" at the end in Subsections B(1) and B(2); substituted "in excess of the rate authorized in the Public Securities Act and shall be paid as authorized in that act" for "exceeding seven percent a year payable annually or semiannually, but the first interest payment may be for any period not exceeding one year" in Subsection C; substituted "authorized in the Lodgers' Tax Act" for "therein authorized" in Subsection E; and substituted "3-31-10 and 3-31-11 NMSA 1978" for "14-30-9 and 14-30-10 NMSA 1953" in Subsection E.

ARTICLE 38A
Hospitality Fee

3-38A-1. Short title. (Repealed effective July 1, 2028.)

This act [3-38A-1 through 3-38A-12 NMSA 1978] may be cited as the "Hospitality Fee Act".

History: Laws 2003, ch. 417, § 1.

ANNOTATIONS

Delayed repeals. — Laws 2007, ch. 233, § 1 amended Laws 2003, ch. 417, § 13, to provide that the Hospitality Fee Act is repealed effective July 1, 2028.

3-38A-2. Definitions. (Repealed effective July 1, 2028.)

As used in the Hospitality Fee Act:

A. "gross rent" means the total amount of rent paid for tourist accommodations, not including the state and local option gross receipts taxes paid on the rent receipts;

B. "municipality" means a municipality located in a class A county with a population greater than two hundred fifty thousand according to the most recent federal decennial census;

C. "person" means a corporation, firm, other body corporate, partnership, association or individual, including an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity. "Person" does not include the United States of America; the state of New Mexico; any corporation, department, instrumentality or agency of the federal government or the state government; or any political subdivision of the state;

D. "proprietor" means a person who furnishes tourist accommodations to a renter;

E. "rent" means the consideration received by a proprietor in money, credits, property or other consideration valued in money from renters for tourist accommodations, other than:

(1) consideration received from a renter who has been a permanent resident of the tourist accommodation for a period of at least thirty consecutive days or a renter who enters into or has entered into a written agreement for rental of the tourist accommodation for a period of at least thirty consecutive days; or

(2) consideration received from a renter for a room or other unit of accommodation for which the renter has paid less than two dollars ($2.00) per day;

F. "renter" means a person to whom tourist accommodations are furnished;

G. "room" means a room or other unit of accommodation furnished by a proprietor to a renter in a tourist accommodation; and

H. "tourist accommodation" means a hotel, apartment, apartment hotel, apartment house, lodge, lodginghouse, rooming house, motor hotel, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises used for accommodation. "Tourist accommodation" does not include:

(1) accommodations at religious, charitable, educational or philanthropic institutions, including summer camps operated by such institutions;

(2) clinics, hospitals or other medical facilities;

(3) privately owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill; or

(4) accommodations that do not have at least three rooms or other units of accommodation.

History: Laws 2003, ch. 417, § 2.

ANNOTATIONS

Delayed repeals. — Laws 2007, ch. 233, § 1 amended Laws 2003, ch. 417, § 13, to provide that the Hospitality Fee Act is repealed effective July 1, 2028.

3-38A-3. Hospitality fee authorized; rate; purpose. (Repealed effective July 1, 2028.)

A. A municipality may impose by ordinance a hospitality fee on the gross rent received by proprietors of tourist accommodations within the municipality in an amount not to exceed one percent of the gross rent. The fee imposed by this subsection may be referred to as the "hospitality fee".

B. Proceeds from the hospitality fee shall be used as follows:

(1) fifty percent of the proceeds shall be used to equip and furnish a municipal convention center; and

(2) fifty percent of the proceeds shall be used by the municipality to contract to purchase advertising that publicizes and promotes tourist-related attractions, facilities and events in the municipality and the county and tourist facilities or attractions within the area.

History: Laws 2003, ch. 417, § 3; 2007, ch. 233, § 2; 2008, ch. 5, § 1.

ANNOTATIONS

Delayed repeals. — Laws 2007, ch. 233, § 1 amended Laws 2003, ch. 417, § 13, to provide that the Hospitality Fee Act is repealed effective July 1, 2028.

The 2008 amendment, effective February 13, 2008, increased the amount of proceeds for advertising from twenty-five percent to fifty percent and deleted the authorization to use proceeds to extinguish debt for a metropolitan court facility.

The 2007 amendment, effective June 15, 2007, changed the percentage that may be used for advertising to twenty-five percent and added Paragraph (3) of Subsection B.

3-38A-4. Collection of hospitality fee; audit. (Repealed effective July 1, 2028.)

A. Every proprietor of a tourist accommodation in a municipality imposing a hospitality fee shall collect the hospitality fee on behalf of the municipality and shall act as a trustee of the fee revenues. The fee shall be collected from proprietors in accordance with the ordinance imposing the fee and shall be charged separately from the rent fixed by the proprietor for the tourist accommodations.

B. The governing body of a municipality imposing a hospitality fee shall select for annual random audits one or more proprietors or tourist accommodations subject to the fee to verify the amount of gross rent subject to the fee and to ensure that the full amount of the fee on that rent is collected. Copies of audits completed shall be filed annually with the local government division of the department of finance and administration.

History: Laws 2003, ch. 417, § 4.

ANNOTATIONS

Delayed repeals. — Laws 2007, ch. 233, § 1 amended Laws 2003, ch. 417, § 13, to provide that the Hospitality Fee Act is repealed effective July 1, 2028.

3-38A-5. Financial reporting. (Repealed effective July 1, 2028.)

The governing body of a municipality imposing a hospitality fee shall:

A. furnish to any municipal advisory board dealing with occupancy, lodging or accommodation taxes or fees information on that portion of a proposed budget report or audit filed or received by the governing body pursuant to either Chapter 6, Article 6 NMSA 1978 or the Audit Act [12-6-1 through 12-6-14 NMSA 1978] that relates to the expenditure of hospitality fee proceeds within ten days of the filing or receipt of that proposed budget, report or audit; and

B. report quarterly to the local government division of the department of finance and administration on the expenditure of hospitality fee proceeds pursuant to Sections 3-38-15 and 3-38-21 NMSA 1978.

History: Laws 2003, ch. 417, § 5.

ANNOTATIONS

Delayed repeals. — Laws 2007, ch. 233, § 1 amended Laws 2003, ch. 417, § 13, to provide that the Hospitality Fee Act is repealed effective July 1, 2028.

3-38A-6. Ordinance requirements. (Repealed effective July 1, 2028.)

The ordinance imposing a hospitality fee and, as applicable, any ordinance amending the fee, shall:

A. set out the procedures for licensing a proprietor and for suspending or revoking a license or refusing to license a proprietor after the governing body of the municipality has given the proprietor an opportunity for a public hearing on the suspension, revocation or refusal;

B. state the rate of the hospitality fee; the time, place and method for the payment of the fee to the municipality; the accounts and other records to be maintained in connection with the fee; a procedure for making refunds and resolving disputes relating to the fee; the procedure for preservation and destruction of records pertaining to the fee and their inspection and investigation; audit requirements; applicable civil and criminal penalties; and a procedure for liens, distraint and sales to satisfy such liens; and

C. clearly state any other rights, privileges, powers, immunities and other details relating to proprietor licensure, the collection of the hospitality fee and the remittance of the fee proceeds to the municipality.

History: Laws 2003, ch. 417, § 6.

ANNOTATIONS

Delayed repeals. — Laws 2007, ch. 233, § 1 amended Laws 2003, ch. 417, § 13, to provide that the Hospitality Fee Act is repealed effective July 1, 2028.

3-38A-7. Collection of delinquencies; civil penalty. (Repealed effective July 1, 2028.)

A. A proprietor is liable for the payment of any amount of the hospitality fee proceeds the proprietor has failed to remit to the municipality.

B. A municipality shall provide by ordinance for a civil penalty for failure to remit the hospitality fee due in an amount equal to the greater of ten percent of the amount of the hospitality fee that was not remitted to the municipality or one hundred dollars ($100).

C. The municipality may bring an action in law or equity in the district court for the collection of any amount of hospitality fee due, including without limitation penalties on that amount, interest on the unpaid principal amount at a rate of not exceeding one percent a month, the costs of collection and reasonable attorney fees incurred in connection with such an action.

History: Laws 2003, ch. 417, § 7.

ANNOTATIONS

Delayed repeals. — Laws 2007, ch. 233, § 1 amended Laws 2003, ch. 417, § 13, to provide that the Hospitality Fee Act is repealed effective July 1, 2028.

3-38A-8. Lien for hospitality fee; payment; certificate of liens. (Repealed effective July 1, 2028.)

A. The hospitality fee imposed by a municipality constitutes a lien in favor of that municipality upon the personal and real property of the proprietor providing tourist accommodations in that municipality. 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, no person shall sell the property of any proprietor of a tourist accommodation without first ascertaining from the clerk or

treasurer of the municipality in which the tourist accommodation is located the amount of any hospitality fee due the municipality. The hospitality fee due the municipality shall be paid from the proceeds of the sale before payment is made to the judgment creditor or to any other person with a claim on the sale proceeds.

C. The clerk or treasurer of the municipality shall furnish upon request to any person a certificate showing the amount of all liens in the records of the municipality against a proprietor of a tourist accommodation pursuant to the Hospitality Fee Act.

History: Laws 2003, ch. 417, § 8.

ANNOTATIONS

Delayed repeals. — Laws 2007, ch. 233, § 1 amended Laws 2003, ch. 417, § 13, to provide that the Hospitality Fee Act is repealed effective July 1, 2028.

3-38A-9. Enforcement. (Repealed effective July 1, 2028.)

A. An action to enforce the Hospitality Fee Act may be brought by:

(1) the attorney general or the district attorney in the county of jurisdiction; or

(2) a proprietor of a tourist accommodation who is collecting the proceeds of a hospitality 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 Hospitality Fee 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 Hospitality Fee Act.

History: Laws 2003, ch. 417, § 9.

ANNOTATIONS

Delayed repeals. — Laws 2007, ch. 233, § 1 amended Laws 2003, ch. 417, § 13, to provide that the Hospitality Fee Act is repealed effective July 1, 2028.

3-38A-10. Penalties; criminal. (Repealed effective July 1, 2028.)

A. It is a violation of the municipal ordinance imposing a hospitality fee and providing for collection and administration of the fee pursuant to the Hospitality Fee Act for any proprietor subject to the fee to fail to pay the hospitality fee, to fail to remit the proceeds of the fee to the municipality or to fail to account properly for a tourist accommodation and the proceeds of the fee pertaining to the accommodation.

B. The governing body of the municipality shall provide by ordinance that a violation of an ordinance imposing and providing for collection and enforcement of the hospitality fee pursuant to the Hospitality Fee Act is a misdemeanor subject to a fine of not more than five hundred dollars ($500) or imprisonment for not more than ninety days, or both.

History: Laws 2003, ch. 417, § 10.

ANNOTATIONS

Delayed repeals. — Laws 2007, ch. 233, § 1 amended Laws 2003, ch. 417, § 13, to provide that the Hospitality Fee Act is repealed effective July 1, 2028.

3-38A-11. Revenue bonds. (Repealed effective July 1, 2028.)

A. Revenue bonds may be issued at any time by a municipality to defray wholly or in part the costs of equipping or furnishing a municipal convention center.

B. The revenue bonds may be payable from and payment may be secured by a pledge of and lien on the revenues derived from:

(1) the proceeds of the hospitality fee of the municipality after the deduction of the administrative costs pertaining to the fee in an amount not to exceed ten percent of the gross rent fees collected by the municipality in a fiscal year and excluding from the computation of such costs the administrative costs ultimately recovered from delinquent proprietors by civil action as penalties, costs of collection and attorney fees, but not as interest on unpaid principal;

(2) any convention center facility, after provision is made for the payment of the operation and maintenance expenses of the convention center; and

(3) a combination of such net revenues from both sources in Paragraphs (1) and (2) of this subsection.

C. The bonds shall bear interest at a rate or rates as authorized in the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978], and the first interest payment may be for any period authorized in that act.

D. Except as otherwise provided in the Hospitality Fee Act, revenue bonds authorized in the Hospitality Fee Act shall be issued in accordance with the provisions of Sections 3-31-2 through 3-31-6 NMSA 1978.

History: Laws 2003, ch. 417, § 11.

ANNOTATIONS

Delayed repeals. — Laws 2007, ch. 233, § 1 amended Laws 2003, ch. 417, § 13, to provide that the Hospitality Fee Act is repealed effective July 1, 2028.

3-38A-12. Refunding bonds. (Repealed effective July 1, 2028.)

A. A municipality having issued revenue bonds pursuant to the Hospitality Fee Act may issue refunding bonds payable from pledged revenues therein 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 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 any part of such outstanding bonds of any one or more or 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, otherwise concerning the outstanding bonds, or to any facilities relating thereto; or

(4) for any combination of the foregoing purposes.

C. The interest on any bond refunded shall not be increased to a rate in excess of the rate authorized in the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978] and shall be paid as authorized in that act.

D. Except as otherwise provided in the Hospitality Fee Act, refunding bonds authorized in the Hospitality Fee Act shall be issued in accordance with the provisions of Sections 3-31-10 and 3-31-11 NMSA 1978.

History: Laws 2003, ch. 417, § 12.

ANNOTATIONS

Delayed repeals. — Laws 2007, ch. 233, § 1 amended Laws 2003, ch. 417, § 13, to provide that the Hospitality Fee Act is repealed effective July 1, 2028.

ARTICLE 39
Municipal Airports

3-39-1. Municipal Airport Law.

Sections 3-39-1 through 3-39-15 NMSA 1978 may be cited as the "Municipal Airport Law."

History: 1953 Comp., § 14-40-1, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For the Tort Claims Act, *see* 41-4-1 NMSA 1978 et seq.

For the Aviation Act, *see* 64-1-11 NMSA 1978 et seq.

3-39-2. Purpose of law.

The purpose of the Municipal Airport Law is to enable municipalities to acquire and operate municipal airport facilities for the convenience of the public, to promote aviation facilities of all types and to promote the economy of the area by making air transportation available.

History: 1953 Comp., § 14-40-2, enacted by Laws 1965, ch. 300; 1989, ch. 174, § 1.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "the public, to promote aviation facilities of all types" for "residents".

3-39-3. Definitions.

As used in the Municipal Airport Law:

A. "bond" means any bond, note, temporary bond, interim certificate, negotiable instrument or any other evidence of indebtedness issued under the Municipal Airport Law;

B. "obligee" means any bondholder, trustee for any bondholders or lessor or his assignee of property leased to the municipality for use in connection with an airport facility and the state or federal government when a party to a contract with the municipality by which aid is given to the municipality;

C. "federal government" means the United States or any of its agencies; and

D. "airport facility" includes a runway, taxiway, terminal, real estate, parking facility, hanger [hangar] facility, maintenance facility for repair, construction and modification and any other facility related to aircraft or airports.

History: 1953 Comp., § 14-40-3, enacted by Laws 1965, ch. 300; 1989, ch. 174, § 2.

ANNOTATIONS

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

The 1989 amendment, effective June 16, 1989, substituted the present provisions in Subsection D for "'airport facility' includes a runway, terminal, real estate, parking facility and any other facility used in connection with the operation of an airport".

3-39-4. Municipal airports.

The governing body of any municipality may:

A. acquire by purchase, lease, gift or otherwise, and may establish, construct, improve, maintain and operate an airport or any airport facility either inside or outside the limits of the municipality;

B. insure or provide for insurance of any airport facility of the municipality;

C. provide or arrange for services in connection with any airport facility;

D. acquire by eminent domain either inside or outside the limits of the municipality any property necessary or desirable under the Municipal Airport Law NMSA 1978] in accordance with the procedure set forth by law;

E. sell, lease or otherwise dispose of or allow the use of any real or personal property or any interest acquired or used for the purposes included in the Municipal Airport Law;

F. enact any ordinance, rule or regulation not inconsistent with state or federal law or regulation which provides for the safety, health, prosperity, morals, order, comfort, convenience or welfare of the inhabitants of the municipality and of the general public or for the orderly and efficient management or operation of the airport or any airport facility, and to provide penalties for the violation thereof, all with respect to its airport or any of its airport facilities either inside or outside the limits of the municipality; and

G. perform any other act necessary to carry out the provisions of the Municipal Airport Law.

History: 1953 Comp., § 14-40-4, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 9.

ANNOTATIONS

Cross references. — For lease of state lands, *see* 19-7-54 NMSA 1978.

Delegation of authority from state legislature required. — All the authority of the municipality to enact ordinances in connection with the creation and operation of an airport must be expressly delegated to it by the state legislature. 1967 Op. Att'y Gen. No. 67-139.

Creation of autonomous authority to operate airport would be an unlawful delegation of the power granted to the city council. 1967 Op. Att'y Gen. No. 67-139.

Restaurant and lounge in airport terminal is airport purpose. — This section authorizes municipalities to sell or lease municipal property to be used for airport purposes. A restaurant and lounge in an airport terminal building is certainly an airport purpose within the contemplation of this section, the same as other purposes for the safety and convenience of the traveling passengers and the aviation employees. 1953-54 Op. Att'y Gen. No. 53-5707.

Contract providing car rental services at airport. — A municipality has the power to enter into an exclusive contract providing car rental services at a municipal airport. There is no requirement that such contracts must be let only upon competitive bids. 1970 Op. Att'y Gen. No. 70-53.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 8 Am. Jur. 2d Aviation §§ 60 to 70.

Park property, right to use, for airport, 63 A.L.R. 491, 144 A.L.R. 486.

Airport, municipal power to acquire, maintain and regulate, 83 A.L.R. 345, 99 A.L.R. 173, 134 A.L.R. 927, 155 A.L.R. 1026.

Airport, construction of, as loan of credit, 161 A.L.R. 733.

Certificate of convenience and necessity, franchise, or permit as subject to transfer or encumbrance, 15 A.L.R.2d 883.

Liability of municipality for torts in connection with airport, 66 A.L.R.2d 634.

Aircraft flight paths or altitudes, validity of municipal regulation of, 36 A.L.R.3d 1314.

Injunction as remedy available to airport operator with respect to use of adjoining land interfering with aircraft operation, 65 A.L.R.3d 14.

Airport operations or flight of aircraft as nuisance, 79 A.L.R.3d 253.

63 C.J.S. Municipal Corporations §§ 959, 962, 964.

3-39-5. Planning and zoning laws.

All municipal airport facilities are subject to planning and zoning laws, ordinances and regulations applicable to the area in which the airport facility is located.

History: 1953 Comp., § 14-40-5, enacted by Laws 1965, ch. 300.

3-39-6. Irrepealable bond ordinance.

A. Any municipality may issue bonds for:

(1) the purpose of preparing, acquiring, constructing or improving airport facilities;

(2) the purpose of refinancing, refunding and paying any bonds or obligations payable from any revenues of any municipal airport facility as provided in Section 3-39-7 NMSA 1978; or

(3) any combination of the aforesaid purposes set forth in Paragraphs (1) and (2).

B. The bonds are payable solely from a pledge of:

(1) net income derived by the municipality from the airport facility financed with the proceeds;

(2) net income of all or designated municipal airport facilities whether or not financed in whole or in part with the proceeds;

(3) contributions, grants or other financial assistance from the state or federal governments or any other sources;

(4) the additional special funds authorized by Section 3-39-12 NMSA 1978; or

(5) any combination of these sources.

C. The bonds shall be authorized by ordinance which is irrepealable as long as any obligation on the bonds is unpaid by the municipality.

History: 1953 Comp., § 14-40-6, enacted by Laws 1965, ch. 300; 1971, ch. 206, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 8 Am. Jur. 2d Aviation § 62.

3-39-7. Refunding bonds.

A. Any bonds issued by any municipality and payable from any revenues of any airport facility may be refunded in the name of the municipality issuing the bonds being refunded, by the issuance of bonds to refund, pay and discharge all or any part of the outstanding bonds, including any interest on the bonds in arrears or about to become due within three years from the date of the refunding bonds and for the purpose of avoiding or terminating any default in the payment of interest on and principal of the bonds, of reducing interest costs or effecting other economies, or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any facilities or income appertaining thereto, or for any combination of the foregoing purposes. Refunding bonds shall be authorized by ordinance, shall be payable from a pledge of the net income derived from any or all designated airport facilities, whether or not financed from any bond proceeds, and additionally may be payable from a pledge of any or all of the additional sources permitted by Sections 3-39-6 and 3-39-12 NMSA 1978 and may be issued under the same terms and conditions allowable by the Municipal Airport Law for airport facilities bonds. Any bonds which are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of 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.

B. No bonds may be refunded under the Municipal Airport Law 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 bonds 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.

C. 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 commercial bank or trust company, either a state or national banking institution, which possesses and is exercising trust powers, which is located within New Mexico and 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 directed 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 the Municipal Airport Law, is in no manner responsible for the application of the proceeds thereof by the municipality or any of its officers, agents or employees.

D. Refunding bonds may bear such additional terms and provisions as may be determined by the municipality subject to the limitations in the Municipal Airport Law for original bond issues and are not subject to the provisions of any other statute except as may be incorporated by reference in the Municipal Airport Law.

E. Municipalities may pledge irrevocably for the payment of interest and principal of refunding bonds, any of such net income of airport facilities, and any such additional special funds and additional security which may be pledged to an original issue of bonds authorized pursuant to the Municipal Airport Law, even if any of such additional special fund and additional security was not pledged to the bonds being refunded.

History: 1953 Comp., § 14-40-6.1, enacted by Laws 1971, ch. 206, § 2; 1973, ch. 196, § 1.

3-39-8. Impairment of payment.

Any law which authorizes the pledge of any or all of the net income and revenues to the payment of any bonds issued pursuant to the Municipal Airport Law or which affects any of the net income or revenues pledged to such bonds, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding bonds unless such outstanding bonds have been discharged in full or provision has been fully made therefor.

History: 1953 Comp., § 14-40-6.2, enacted by Laws 1971, ch. 206, § 3.

3-39-9. Terms of bonds.

A. The ordinance authorizing issuance of bonds pursuant to the Municipal Airport Law shall specify:

(1) issuance in any number of series;

(2) any maturity date or dates, but the final maturity date shall not exceed fifty years from the date of the bonds;

(3) the interest rate or rates the bonds shall bear;

(4) denominations;

(5) form, either coupon or registered;

(6) conversion or registration privileges;

(7) rank or priority;

(8) manner of execution; and

(9) the terms, manner and medium of payment and redemption.

B. No member of the governing body or any person executing bonds is personally liable on any bond. All bonds are payable solely from the special funds allowed by the Municipal Airport Law as specified in the authorizing ordinance. No bond is a debt or general obligation of the issuing municipality.

C. The terms prescribed by the authorizing ordinance and by this section shall be carried on the face of each bond.

History: 1953 Comp., § 14-40-7, enacted by Laws 1965, ch. 300; 1971, ch. 206, § 4; 1983, ch. 265, § 13.

3-39-10. Sale, exchange and details of bonds.

A. Bonds may be sold at public or private sale at, above or below par and at a price which results in a net effective interest rate which does not exceed the maximum permitted by the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978] or, in the case of municipalities having a population of one hundred thousand or more persons, may be exchanged for property to be used in connection with an airport facility.

B. If any municipal officer whose signature appears on any bond ceases to be an officer before delivery of the bonds, the signature is valid for all purposes as if the officer had remained in office until delivery.

C. All bonds are fully negotiable as provided by Article 8 [55-8-101 through 55-8-511 NMSA 1978] of the Uniform Commercial Code unless the instrument authorizing the bonds expressly provides to the contrary.

History: 1953 Comp., § 14-40-8, enacted by Laws 1965, ch. 300; 1971, ch. 206, § 5; 1973, ch. 196, § 2.

ANNOTATIONS

Severability clauses. — Laws 1973, ch. 196, § 3, provided for the severability of the act if any part or application thereof is held invalid.

3-39-11. Construction.

The Municipal Airport Law is full authority for authorization and issuance of bonds and no election is necessary. In any proceeding involving the validity and enforceability of any bond or its security, any bond reciting in substance that it was issued by the municipality to aid in financing an airport facility is conclusively presumed to have been issued for an airport facility planned, located and constructed in accordance with the Municipal Airport Law.

History: 1953 Comp., § 14-40-9, enacted by Laws 1965, ch. 300.

3-39-12. Additional security.

To further the marketability of bonds issued pursuant to the Municipal Airport Law, the ordinance authorizing their issue may:

A. secure their payment by deed of trust or mortgage conveying municipally owned land and improvements acquired for the airport facility from the proceeds of the bonds to a trustee for the benefit and security of the bondholders;

B. secure their payment by a pledge of all or any part of the amounts distributed to municipalities pursuant to Section 7-1-6.9 NMSA 1978 as from time to time amended and supplemented; provided any ordinance securing the payment of bonds by a pledge of revenues derived from such distributions may also provide for the creation and terms of a sinking fund into which the municipality shall annually transfer any or all of the revenues obtained from such distributions; and

C. authorize any other security agreement not in conflict with law.

History: 1953 Comp., § 14-40-10, enacted by Laws 1965, ch. 300; 1965, ch. 307, § 1; 1967, ch. 170, § 3; 1977, ch. 342, § 4; 1983, ch. 211, § 2.

3-39-13. Foreclosure.

If the interest or any serial maturity of any bond is in default, any obligee may foreclose against the municipality under the same procedure provided for foreclosure of real estate mortgages. The district court may appoint a receiver to operate the airport facility in default.

History: 1953 Comp., § 14-40-11, enacted by Laws 1965, ch. 300.

3-39-14. Legal investments.

Bonds are legal investments for savings banks and insurance companies under the laws of this state. They are bonds, notes or other obligations of a municipal subdivision of this state, issued pursuant to a law of this state, for the purposes of investment or purchase by the state investment officer.

History: 1953 Comp., § 14-40-12, enacted by Laws 1965, ch. 300.

3-39-15. Tax exemptions.

Bonds and their income and all mortgages or other instruments executed as security for them are exempt from all taxation by this state or any of its political subdivisions.

History: 1953 Comp., § 14-40-13, enacted by Laws 1965, ch. 300.

3-39-16. [Municipal Airport Zoning Law.]

Sections 3-39-16 through 3-39-26 NMSA 1978, may be cited as the "Municipal Airport Zoning Law."

History: 1953 Comp., § 14-40-14, enacted by Laws 1965, ch. 300.

ANNOTATIONS

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

Cross references. — For powers and duties of joint airport zoning board, *see* 64-2-1 and 64-2-2 NMSA 1978.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

3-39-17. Definitions.

As used in the Municipal Airport Zoning Law [3-39-16 through 3-39-26 NMSA 1978], unless the context otherwise requires:

A. "airport" means any area of land or water designated for the landing and taking-off of aircraft and utilized or to be utilized by the public as a point of arrival or departure by air;

B. "airport hazard" means any overhead power line which interferes with radio communication between a publicly owned airport and aircraft approaching or leaving same; or any structure or tree which obstructs the aerial approaches of such an airport or is otherwise hazardous to its use for landing or taking off;

C. an airport is "publicly owned" if the portion thereof used for landing and taking-off of aircraft is owned by a governmental body, political subdivision, public agency or other public corporation;

D. "legislative body" means the legislative or governing body of any county or municipal or political subdivision of the state of New Mexico, having or acquiring a publicly owned airport within its corporate or political limits;

E. "person" means any individual, firm, copartnership, corporation, company, association, joint stock association or body politic, and includes any trustee, receiver, assignee or other similar representative thereof;

F. "structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks and overhead transmission lines; and

G. "tree" means any object of natural growth.

History: 1953 Comp., § 14-40-15, enacted by Laws 1965, ch. 300.

3-39-18. Airport hazards not in public interest.

It is hereby found and declared that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein, and is therefore not in the interest of the public health, public safety or general welfare.

History: 1953 Comp., § 14-40-16, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Airplane, liability for injury by, 69 A.L.R. 316, 83 A.L.R. 350, 99 A.L.R. 183, 155 A.L.R. 1026, 17 A.L.R.2d 1041.

Liability of owner of wires, poles, or structures struck by aircraft for resulting injury or damage, 49 A.L.R.5th 659.

3-39-19. Preparation of airport approach plans.

The legislative body is hereby empowered to formulate and adopt, and from time to time as may be necessary, revise an airport approach plan for any publicly owned airport within its corporate or political limits. Each such plan shall indicate the hazards, the area within which measures for the protection of the airport's aerial approaches should be taken, and what the height limits and other objectives of such measure should be. In adopting or revising any such plan, the legislative body shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, and the possibility of lowering or removing existing obstructions, and the legislative body may obtain and consider the views of the agency of the federal government charged with the fostering of civil aeronautics as to the aerial approaches necessary to safe flying operations at the airport.

History: 1953 Comp., § 14-40-17, enacted by Laws 1965, ch. 300.

3-39-20. Adoption of airport zoning regulations.

A. Every municipality and county or other political subdivision having within its territorial limits an area within which, according to an airport approach plan adopted by the legislative body, measures should be taken for the protection of airport approaches, shall adopt, administer and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations applicable to such area, which regulations shall divide the area into zones and within such zones, specify the land uses permitted, regulate and restrict the height to which structures and trees may be erected or allowed to grow, and impose such other restrictions and requirements as may be necessary to effectuate the legislative body's approach plan for the airport.

B. In the event that a political subdivision has adopted, or hereafter adopts, a general zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations adopted for the same area or portion thereof under the Municipal Airport Zoning Law [3-39-16 through 3-39-26 NMSA 1978] may be incorporated and made a part of such general zoning regulations, and be administered and enforced in connection therewith, but such general zoning regulations shall not limit the effectiveness or scope of the regulations adopted under this act.

C. Any zoning or other regulations applicable to any area within which, according to an airport approach plan adopted by the legislative body, measures should be taken for

the protection of airport approaches, including not only any airport zoning regulations adopted under Sections 3-39-16 through 3-39-26 NMSA 1978, but any zoning or other regulations dealing with the same or similar matters, that have been or may be adopted under authority other than that conferred by Sections 3-39-16 through 3-39-26 NMSA 1978, shall be consistent with, and conform to, the legislative body's approach plan for such area, and shall be amended from time to time as may be necessary to conform to any revision of the plan that may be made by the legislative body.

D. All airport zoning regulations adopted under Sections 3-39-16 through 3-39-26 NMSA 1978, shall be reasonable and none shall require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in Section 3-39-21 NMSA 1978.

History: 1953 Comp., § 14-40-18, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For zoning regulations, *see* 3-21-1 NMSA 1978 et seq.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 8 Am. Jur. 2d Aviation §§ 58, 59.

3-39-21. Permits and variances.

A. When advisable to facilitate the enforcement of the Municipal Airport Zoning Law [3-39-16 through 3-39-26 NMSA 1978], a system may be established for granting permits to establish or construct new structures and other uses. In any event, before any nonconforming structure may be replaced with a taller one or any nonconforming tree allowed to grow higher or be replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement or change. No such permit shall be granted that would allow the structure to become a greater hazard to air navigation than it was when the applicable regulation was adopted; and whenever the administrative agency determines that nonconforming structure or tree has been abandoned or more than eighty percent torn down, destroyed, deteriorated or decayed, no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations. Except as indicated, all applications for permits for replacement, change or repair of nonconforming uses shall be granted.

B. Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property, in violation of airport zoning regulations adopted under the Municipal Airport Zoning Law, may apply to the board of appeals, as provided in Section 3-39-22 NMSA 1978, for a variance from

the zoning regulations in question. Such variance shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations.

C. In granting any permit or variance under this section, the administrative agency or board of appeals may, if it deems such action advisable to effectuate the purposes of the Municipal Airport Zoning Law, and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate and maintain suitable obstruction markers and obstruction lights thereon.

History: 1953 Comp., § 14-40-19, enacted by Laws 1965, ch. 300.

3-39-22. Zoning regulations; procedure.

A. No airport zoning regulations shall be adopted, amended or changed under the Municipal Airport Zoning Law [3-39-16 through 3-39-26 NMSA 1978] except by action of the legislative body of the political subdivision in question, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision.

B. The legislative body of any political subdivision adopting airport zoning regulations under the Municipal Airport Zoning Law may delegate the duty of administering and enforcing such regulations to any administrative agency under its jurisdiction, but such administrative agency shall not be or include any member of the board of appeals. The duties of such administrative agency shall include that of hearing and deciding all permits under Section 3-39-21 NMSA 1978, but such agency shall not have or exercise any of the powers delegated to the board of appeals.

C. Airport zoning regulations adopted under the Municipal Airport Zoning Law shall provide for appointment of a board of appeals to have and exercise the following powers:

(1) to hear and decide appeals from any order, requirement, decision or determination made by the administrative agency in the enforcement of Sections 3-39-16 through 3-39-26 NMSA 1978, or of any ordinance adopted pursuant thereto;

(2) to hear and decide special exceptions to the terms of the ordinance upon which such board may be required to pass under such ordinance; and

(3) to hear and decide specific variances under Section 3-39-21 NMSA 1978.

D. Where a zoning board of appeals or adjustment already exists, it may be appointed as the board of appeals. Otherwise, the board of appeals shall consist of five

members, each to be appointed for a term of three years and to be removable for cause by the appointing authority upon written charges and after public hearing.

E. The board shall adopt rules in accordance with the provisions of any ordinance adopted under Sections 3-39-16 through 3-39-26 NMSA 1978. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the board and shall be a public record.

F. Appeals to the board may be taken by any person aggrieved, or by any other officer, department, board or bureau of the political subdivision affected, by any decision of the administrative agency. An appeal must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

G. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application on notice to the agency from which the appeal is taken and on due cause shown.

H. The board shall fix a reasonable time for the hearing of the appeal, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

I. The board may, in conformity with the provisions of the Municipal Airport Zoning Law, reverse or affirm, wholly or partly, or modify, the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

J. The concurring vote of a majority of the members of the board shall be sufficient to reverse any order, requirement, decision or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

History: 1953 Comp., § 14-40-20, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

3-39-23. Judicial review.

A. Any person aggrieved by a decision of the board of appeals, any taxpayer or any officer, department, board or bureau of the political subdivision may file an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. Costs shall not be allowed against the board of appeals unless it appears to the court that it acted with gross negligence, in bad faith or with malice in making the decision appealed from.

History: 1953 Comp., § 14-40-21, enacted by Laws 1965, ch. 300; 1998, ch. 55, § 13; 1999, ch. 265, § 13.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection A.

The 1998 amendment, effective September 1, 1998, rewrote this section.

3-39-24. Enforcement and remedies.

Each violation of the Municipal Airport Zoning Law [3-39-16 through 3-39-26 NMSA 1978] or of any regulations, order or ruling promulgated or made pursuant to this act, shall constitute a misdemeanor and shall be punishable by a fine of not more than one hundred dollars ($100) or imprisonment for not more than ninety days or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition the legislative body or the political subdivision within which the property is located may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of the Municipal Airport Zoning Law, or of airport zoning regulations adopted under the Municipal Airport Zoning Law, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by the way of injunction, which may be mandatory, or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of the Municipal Airport Zoning Law and of the regulations adopted and orders made pursuant thereto.

History: 1953 Comp., § 14-40-22, enacted by Laws 1965, ch. 300.

3-39-25. Removal of airport obstructions by municipalities.

Any county, municipality or political subdivision which is authorized by law to establish and maintain an airport or landing field, hereby is authorized and empowered whenever, in the judgment of the legislative body of such county, municipality or other political subdivision, any structure or object located adjacent to such airport or landing field constitutes a hazard to the efficient and safe use of such airport or landing field, or whenever notified of the existence of any such hazard to require the removal and elimination or relocation of such structure or such object, and to acquire all necessary lands or rights-of-way and easements over lands incidental to such removal, elimination or relocation of any such structure or object upon payment to the owner of any land that may be affected by such relocation and the damages occasioned by such removal, elimination or relocation.

History: 1953 Comp., § 14-40-23, enacted by Laws 1965, ch. 300.

3-39-26. Acquisition of air rights.

In any case in which:

A. it is desired to remove, lower or otherwise terminate a nonconforming use; or

B. the approach protection necessary according to the legislative body's airport approach plan cannot, because of constitutional limitations, be provided by airport zoning regulations under the Municipal Airport Zoning Law [3-39-16 through 3-39-26 NMSA 1978]; or

C. it appears advisable that the necessary approach protection is provided by acquisition of property rights rather than by airport zoning regulations,

the political subdivision within which the property or nonconforming use is now located, or the political subdivision owning the airport or served by it, may acquire, by purchase, grant or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such an air right, easement or other estate or interest in the property or nonconforming use in question as may be necessary to effectuate the purpose of the Municipal Airport Zoning Law.

History: 1953 Comp., § 14-40-24, enacted by Laws 1965, ch. 300.

3-39-27. Issuance of bonds; purposes.

Subject to the limitation and in accordance with Article 9 of the constitution of New Mexico, any municipality may issue and dispose of negotiable bonds thereof, for the purposes of securing funds for the acquisition or construction of an airport or any part of

an airport and the rights and properties used and connected with the airport in the manner provided for in Sections 3-30-1 through 3-30-9 NMSA 1978.

History: 1953 Comp., § 14-40-25, enacted by Laws 1965, ch. 300.

ARTICLE 40
Municipal Cemeteries

3-40-1. Cemeteries; authorization.

A. Subject to the provisions of law relating to the maintaining of cemeteries, a municipality may establish, maintain and regulate a municipal cemetery and may acquire within the planning and platting jurisdiction of the municipality, or condemn within the municipality in the manner provided by law, any property for cemetery purposes. Any property acquired for cemetery purposes by condemnation shall be acquired at a location that is in compliance with a municipality's master plan.

B. A municipality may abandon any street within a municipal cemetery, provided that ownership is retained by the municipality and the abandoned street is used for a municipal purpose.

History: 1953 Comp., § 14-41-1, enacted by Laws 1973, ch. 395, § 4.

ANNOTATIONS

Repeals and reenactments. — Laws 1973, ch. 395, § 4, repealed 14-41-1, 1953 Comp., relating to authorization for cemeteries, and enacted the above section.

Cross references. — For power of municipality to regulate cemeteries, *see* 3-18-8 NMSA 1978.

For tax exemption of nonprofit cemeteries, *see* N.M. Const., art. VIII, § 3.

For school sections used for cemetery purposes, *see* 19-7-23 and 19-7-24 NMSA 1978.

For Endowed Care Cemetery Act, *see* 58-17-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 14 Am. Jur. 2d Cemeteries § 3.

Succession tax, exemption from, in respect of bequest to cemetery association or cost of burial plot, 83 A.L.R. 931.

Zoning regulations, variance or exceptions from, 168 A.L.R. 90.

Gift for maintenance or care of private cemetery or burial lot, or of tomb or of monument, including the erection thereof, as valid trust, 47 A.L.R.2d 596.

Validity of public prohibition or regulation of location of cemetery, 50 A.L.R.2d 905.

Nuisance, cemetery or burial ground as, 50 A.L.R.2d 1324.

Condemnation: municipal power to condemn land for cemetery, 54 A.L.R.2d 1322.

Liability of cemetery in connection with conducting or supervising burial services, 42 A.L.R.4th 1059.

14 C.J.S. Cemeteries § 4.

3-40-2. Cemetery board; appointment of members; term; qualifications.

A. A municipality may create by ordinance a "cemetery board" to care for, manage and control a municipal cemetery. The cemetery board shall:

(1) be known as the "cemetery board of .....";

(2) consist of five members; and

(3) be appointed by the mayor with the consent of the governing body.

B. A member of the cemetery board shall:

(1) hold office for a term of two years;

(2) serve without compensation; and

(3) qualify by taking an oath of office to faithfully and impartially discharge the duties of the office.

C. Within ten days of their appointment, the members of the cemetery board shall meet and organize by electing one of the members president of the board. The cemetery board shall adopt regulations governing the time and place of its meeting.

History: 1953 Comp., § 14-41-2, enacted by Laws 1973, ch. 395, § 5.

ANNOTATIONS

Repeals and reenactments. — Laws 1973, ch. 395, § 5, repealed 14-41-2, 1953 Comp., relating to cemetery boards, and enacted the above section.

3-40-3. Removal of cemetery board members; filling vacancies.

The governing body of a municipality may remove a member of the cemetery board for cause and shall fill any vacancy on the cemetery board that may occur.

History: 1953 Comp., § 14-41-3, enacted by Laws 1965, ch. 300.

3-40-4. Cemetery board; duties of municipal clerk.

The municipal clerk shall serve as clerk and treasurer of the cemetery board without additional compensation.

History: 1953 Comp., § 14-41-4, enacted by Laws 1965, ch. 300.

3-40-5. Powers and duties of cemetery board.

The cemetery board shall:

A. take charge of the cemetery belonging to the municipality;

B. have the management of the cemetery;

C. recommend rules and regulations for the operation, management, care and custody of the cemetery;

D. employ a sexton and other employees necessary for the care, maintenance and beautification of the cemetery; and

E. prescribe the manner and place of burials.

History: 1953 Comp., § 14-41-5, enacted by Laws 1973, ch. 395, § 6.

ANNOTATIONS

Repeals and reenactments. — Laws 1973, ch. 395, § 6, repealed 14-41-5, 1953 Comp., relating to powers and duties of cemetery board, and enacted the above section.

3-40-6. Cemeteries; ordinance to enforce regulation.

Upon the recommendation of the cemetery board or on its own discretion, the governing body of a municipality may provide, by ordinance, penalties for the violation of the rules and regulations of the cemetery board.

History: 1953 Comp., § 14-41-7, enacted by Laws 1965, ch. 300.

3-40-7. Transfer of other cemeteries to cemetery board.

A. Subject to the approval of the governing body of the municipality, a cemetery board may accept any cemetery within or adjacent to the municipality used as a burial place by the inhabitants of the municipality from any person, corporation or organization owning, controlling or maintaining the cemetery.

B. If the cemetery board accepts a cemetery whose records have been lost or destroyed or are otherwise nonexistent, the cemetery board or the municipality shall not be liable for any liabilities of prior owners.

C. Any cemetery accepted by the cemetery board as provided in this section shall become part of the municipality and shall be governed as any other municipal cemetery is governed.

History: 1953 Comp., § 14-41-8, enacted by Laws 1965, ch. 300; 2001, ch. 301, § 1.

ANNOTATIONS

The 2001 amendment, effective April 5, 2001, added current Subsection B and redesignated former Subsection B as C.

3-40-8. Deeds to burial lots; execution.

The municipality in disposing of a burial lot may execute a deed conveying title to a purchaser. The deed is to be executed by the mayor and attested to by the clerk and bear the seal of the municipality.

History: 1953 Comp., § 14-41-9, enacted by Laws 1973, ch. 395, § 7.

ANNOTATIONS

Repeals and reenactments. — Laws 1973, ch. 395, § 7, repealed 14-41-9, 1953 Comp., relating to execution of deeds to burial lots, and enacted the above section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Personal representative or heir, right to sell burial lot owned by deceased, 76 A.L.R. 1371.

Rights and remedies as between cotenants of cemetery lots respecting burials therein, 10 A.L.R.2d 219.

To whom does title to burial lot pass on testator's death, in absence of specific provision in will, 26 A.L.R.3d 1425.

3-40-9. Acquisition or condemnation of an existing cemetery.

A. Except as provided in Subsection B of Section 3-40-7 NMSA 1978, a municipality shall not acquire or condemn a cemetery or part of a cemetery unless a detailed audit listing all the assets and liabilities of the cemetery is prepared by a certified public accountant and submitted to the governing body. The municipality shall not be held liable for any liabilities not shown in the audit.

B. Any person, estate, trust, receiver or other group acting as a unit shall transfer to the municipality all records, property, trusts and other relevant material pertaining to the cemetery or part of the cemetery acquired or condemned by the municipality. The acquisition or condemnation and transfer of a cemetery or part of a cemetery shall be in compliance with the Endowed Care Cemetery Act of 1961 [Chapter 58, Article 17 NMSA 1978] and other provisions relating to cemeteries.

History: 1953 Comp., § 14-41-10, enacted by Laws 1973, ch. 395, § 8; 2001, ch. 301, § 2.

ANNOTATIONS

Repeals and reenactments. — Laws 1973, ch. 395, § 8, repealed 14-41-10, 1953 Comp., relating to acquisition or condemnation of an existing cemetery, and enacted the above section.

The 2001 amendment, effective April 5, 2001, added the exception at the beginning of Subsection A and made stylistic changes throughout the section.

ARTICLE 41
Flood Control

3-41-1. Flood control; authorization.

A. For the purpose of protecting its inhabitants from damage by flood waters, a municipality may construct and maintain within or without the municipality:

(1) dikes;

(2) dams;

(3) embankments;

(4) ditches;

(5) storm sewers;

(6) structures; or

(7) excavations necessary to prevent flood waters from damaging property or threatening human lives within the municipality.

B. The municipality may change, extend, widen, deepen and raise the natural channel of any stream within or without the municipality or remove any obstruction in any stream within or without the municipality for the purpose of opening a channel and diverting flood waters.

History: 1953 Comp., § 14-42-1, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For municipal powers regarding flood and mudslide hazard areas, *see* 3-18-7 NMSA 1978.

For county flood control, *see* 4-50-1 NMSA 1978 et seq.

Law reviews. — For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," *see* 9 Nat. Resources J. 629 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 50 Am. Jur. 2d Levees and Flood Control §§ 2, 4.

Flood protection measures, 5 A.L.R.2d 57.

Right of riparian owner to construct dikes, embankments, or other structures necessary to maintain or restore bank of stream or to prevent flood, 23 A.L.R.2d 750.

Injunctive relief against diversion of water by municipal corporation or public utility, propriety of, 42 A.L.R.3d 426.

Liability of governmental entity for issuance of permit for construction which caused or accelerated flooding, 62 A.L.R.3d 514.

52A C.J.S. Levees and Flood Control §§ 3, 4.

3-41-2. Flood control; tax levy; limitations; election; result; bond issue may supplement; levy.

A. A municipality may levy a tax upon all property subject to property taxation within the municipality for such length of time as is necessary to accomplish the purpose authorized in Sections 3-41-1 and 3-41-3 NMSA 1978. The rate of the tax authorized by this subsection shall not exceed five dollars ($5.00), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a tax levied under this section, on each one thousand dollars ($1,000) of net

taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978].

B. Before levying the tax, the municipality shall submit to the qualified electors of the municipality the question of levying the tax. The question may be submitted at any regular or special municipal election called for that purpose. Notice of the election shall be given as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] for special elections.

C. The municipality shall print the words "For tax levy for flood protection purposes" and "Against tax levy for flood protection purposes" or words of like import. The vote upon the question shall be separately canvassed as other municipal elections are canvassed.

D. If a majority of the votes cast favor the levy of the tax, the governing body shall levy and certify the levy as any other tax is levied for municipal purposes.

E. Nothing in this section shall be construed as prohibiting the issuance of negotiable bonds as authorized in Section 3-30-5 NMSA 1978 to pay the cost of preventing flood damage.

F. If a county has levied a tax for flood control purposes as authorized in Sections 4-50-1 through 4-50-9 NMSA 1978 or any other law, the municipality is not prohibited from levying a tax as authorized in this section.

History: 1953 Comp., § 14-42-2, enacted by Laws 1965, ch. 300; 1981, ch. 37, § 56; 1985, ch. 208, § 118; 1986, ch. 32, § 1.

ANNOTATIONS

The 1986 amendment, in the catchline, substituted "limitations" for "limitation"; in Subsection A, substituted "upon" for "not exceeding in any one year five mills on the dollar of the net taxable value, as that term is defined in the Property Tax Code, of" in the first sentence and added the last sentence; and in Subsection B, substituted "tax" for "taxes" in the first sentence.

The 1985 amendment substituted "the Municipal Election Code for special elections" for "Section 3-8-2 NMSA 1978" at the end of Subsection B.

County construction within city limits. — Sandoval County could use county flood funds to construct flood control structures located within the county and within the drainage area as set forth in 4-50-2 NMSA 1978, when necessary to prevent flood waters from rivers or streams from damaging life and property, even if the structures lay within the Rio Rancho city limits. 1988 Op. Att'y Gen. No. 88-30.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 Am. Jur. 2d Special or Local Assessments §§ 30, 31.

52A C.J.S. Levees and Flood Control §§ 28 to 40.

3-41-3. Flood control; eminent domain; condemnation.

A. A municipality may acquire by condemnation land, easements and right-of-way within or without the municipality for any construction as authorized in Section 3-41-1 NMSA 1978, or the removal of any obstruction in a stream.

B. The proceedings for condemnation shall be as authorized by law. If the governing body determines that the compensation awarded by the commissioners, as provided in Section 42-1-3 NMSA 1978 [repealed] is more than the municipality should pay or is able to pay, the municipality, before taking possession of the property or removing any obstruction, may dismiss the proceedings for condemnation and is relieved of any obligation to pay compensation.

History: 1953 Comp., § 14-42-3, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 10.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1981, ch. 125, § 62 repealed 42-1-3 NMSA 1978, effective July 1, 1981. For present comparable provisions, *see* 42A-1-1 to 42A-1-34 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 26 Am. Jur. 2d Eminent Domain § 69.

Compensation for diminution in value of the remainder of property resulting from taking or use of adjoining land of others for the same undertaking, 59 A.L.R.3d 488.

29A C.J.S. Eminent Domain § 39.

3-41-4. Flood control; right of entry; obstructing.

A. An employee or representative of a municipality has free and unobstructed ingress and egress on any land or premise if such ingress or egress is necessary to carry out the provisions of Sections 3-41-1 through 3-41-5 NMSA 1978, and is not liable for damages because of such entry except for wanton and malicious injury. Any person obstructing such ingress or egress is guilty of a misdemeanor.

B. If the state engineer files a written objection with the governing body, no dike, embankment, dam, ditch, structure or excavation shall be constructed or maintained in any public stream except in a manner approved by the state engineer.

History: 1953 Comp., § 14-42-4, enacted by Laws 1965, ch. 300.

3-41-5. Flood control; cooperation with other public agencies.

A municipality may cooperate with:

A. any other municipality;

B. any county or any flood control authority;

C. the state of New Mexico; or

D. any agency of the United States, in carrying out the objectives of Sections 3-41-1 through 3-41-5 NMSA 1978.

History: 1953 Comp., § 14-42-5, enacted by Laws 1965, ch. 300.

ARTICLE 42
Franchises to Public Utilities

3-42-1. Franchises; authorization.

A. A municipality may grant, by ordinance, a franchise to any person, firm or corporation for the construction and operation of any public utility.

B. No franchise ordinance shall become effective until at least thirty days after its adoption, during which time the franchise ordinance shall be twice published in full, not less than seven days apart.

C. If, during the thirty-day period, a petition signed by bona fide adult residents of the municipality equal in number to twenty percent of the number of those who voted at the last regular municipal election, and objection to the granting of the franchise is presented to the governing body of the municipality, the governing body of the municipality shall submit the question of granting the franchise to a vote of the qualified electors at a regular or special municipal election. If the date for the next regular municipal election is not more than ninety days after the date the petition is filed, the question shall be submitted at the regular municipal election; otherwise, a special municipal election shall be held.

D. If a majority of the qualified electors voting on the question favor the granting of a franchise, the franchise ordinance becomes effective. If a majority of the qualified electors voting on the question do not favor granting the franchise, the ordinance is repealed and the applicant for the franchise acquires no rights or privileges.

E. The expense of publishing the franchise ordinance and of holding a special election shall be paid by the applicant for the franchise.

F. No franchise ordinance shall be in effect for more than twenty-five years. The municipality may contract with the public utility for such services as are necessary for the health and safety of the municipality and may pay a sum agreed upon by the contracting parties for such services.

History: 1953 Comp., § 14-43-1, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For definition of "publish" or "publication," *see* 3-1-2 NMSA 1978.

For continuation of franchises in combined city-county municipal corporations, *see* 3-16-15 NMSA 1978.

For municipal utilities, *see* 3-23-1 NMSA 1978 et seq.

For power of municipality to regulate opening or repair of streets, *see* 3-49-1 NMSA 1978.

For constitutional restriction on grant of elective franchise, *see* N.M. Const., art. IV, § 26.

For limitation of actions in suit to question franchises, *see* 37-1-26 NMSA 1978.

Expiration of franchise. — After a franchise expires, it is continued by operation of law as an implied contract as long as the public utility continues to provide utility services. Moongate Water Co. Inc. v. City of Las Cruces, 2009-NMCA-117, 147 N.M. 260, 219 P.3d 517, cert. denied, 2009-NMCERT-009, 147 N.M. 421, 224 P.3d 648.

Statute prevails over charter. — Where provisions of statute were inconsistent with provisions in city charter, statute prevailed. Albuquerque Bus Co. v. Everly, 53 N.M. 460, 211 P.2d 127 (1949).

Public utility franchise may be viewed as a contract between the utility and the county. Such contracts may provide for the payment of expenses incident to the granting of the franchise and charges may be imposed on utilities which constitute reasonable expenses incurred in the granting and exercise of the franchise. 1978 Op. Att'y Gen. No. 78-03.

Franchise ordinance in municipality not having newspaper published therein must be published in a newspaper of general circulation in said municipality which may be printed elsewhere. 1955-56 Op. Att'y Gen. No. 55-6322 (issued under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 36 Am. Jur. 2d Franchises § 10; 64 Am. Jur. 2d Public Utilities § 233.

Duration of franchise granted to public service corporation, 2 A.L.R. 1105.

Estoppel of municipality to deny that it gave its consent to street franchise, 7 A.L.R. 1248, 89 A.L.R. 619.

Franchise provisions for free or reduced rates of public service corporations as within constitutional or statutory provisions prohibiting discrimination, 10 A.L.R. 504, 15 A.L.R. 1200.

Voluntary character of payment of tax or assessment made to secure, or to avoid loss of, franchise, 64 A.L.R. 123, 84 A.L.R. 294.

Duration of street franchise without fixed term, beyond the life of the grantee, 71 A.L.R. 121.

Tax on franchise as a property or an excise tax, 103 A.L.R. 61.

Expiration by limitation of street franchise, right and duty of city and public utility upon, 112 A.L.R. 625.

Competition by grantor of nonexclusive franchise as violation of constitutional rights of franchise holder, 114 A.L.R. 192.

Ordinances, inclusion of different franchise rights or purposes in same ordinance, 127 A.L.R. 1049.

Cooperative utility, use of streets and highways by, 172 A.L.R. 1020.

Discrimination between property within and that outside governmental districts as to public service or utility rates, 4 A.L.R.2d 595.

Municipality's liability in damages for refusal to grant franchise, 37 A.L.R.2d 694.

Initiative and referendum provisions, ordinance granting franchise as within operation of, 72 A.L.R.3d 1030.

Factors affecting award of operating certificate, franchise, or license under state cable television act, 15 A.L.R.4th 961.

63 C.J.S. Municipal Corporations § 1082; 64 C.J.S. Municipal Corporations § 1713; 73B C.J.S. Public Utilities § 71.

3-42-2. New municipality required to grant franchise when right-of-way granted by county commissioners.

A. If previous to the incorporation of a municipality, the board of county commissioners has granted to any person right-of-way over, upon, in and about the streets of the municipality for the erection, construction, maintenance or operation of a public utility, and such person has erected, constructed, or in good faith commenced the erection or construction of such a utility, the governing body shall, without a vote by the electorate:

(1) authorize the completion of the system;

(2) authorize the continued or subsequent operation and maintenance of the system;

(3) recognize the rights acquired by the person erecting or constructing such a system; and

(4) grant such a person a franchise for the maximum term of years allowed by law upon such terms as are fair, just and equitable to all parties concerned.

B. Pending the granting of the franchise, no person shall interfere with the free exercise and enjoyment of the rights acquired by the person erecting or constructing a public utility by the right-of-way granted by the board of county commissioners.

History: 1953 Comp., § 14-43-2, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Recognition of franchise not required. — A village was not compelled to recognize a franchise granted by the county before incorporation of the village when statutory conditions had not been met. Vill. of Hobbs v. Mann, 39 N.M. 76, 39 P.2d 1025 (1935).

Operation of existing plant. — When a franchise was to be granted to maintain and operate an existing plant, no referendum was required. Asplund v. City of Santa Fe, 31 N.M. 291, 244 P. 1067 (1926).

Extent of construction required. — This section does not require actual digging in the streets of the annexed area. All that is required is that the utility commence construction in good faith so as to provide utility service for the area. City of Las Cruces v. Rio Grande Gas Co., 78 N.M. 350, 431 P.2d 492 (1967).

Telephone companies. — Telephone companies were included in language of laws authorizing municipalities to construct or contract for construction of water, gas and electric works and a franchise granted by a county board before incorporation of a village was adequate authority for occupying streets of the village and doing business until such time as the village itself offered a fair and equitable franchise for a maximum number of years and until a reasonable time had passed in which the proposed

franchise could be considered by the company involved. Vill. of Ruidoso v. Ruidoso Tel. Co., 52 N.M. 415, 200 P.2d 713 (1948).

New conditions imposed on franchisee. — Statute would not require telephone company operating under 99-year franchise granted by county commissioners in 1905 to accept from a subsequently incorporated municipality a new franchise which altered or impaired the former contract or franchise granted in 1905. Mountain States Tel. & Tel. Co. v. Town of Belen, 56 N.M. 415, 244 P.2d 1112 (1952).

Gas companies. — If gas company had erected, constructed or, in good faith, commenced the erection or construction of a natural gas utility system within area annexed by city prior to the annexation, then city was required to recognize gas company's right to use the streets, alleys and public ways of the annexed area in providing natural gas utility service to that area. City of Las Cruces v. Rio Grande Gas Co., 78 N.M. 350, 431 P.2d 492 (1967).

ARTICLE 43
Health; Control of Disease

3-43-1. Board of health; control of disease.

A municipality may:

A. appoint a board of health and prescribe its powers and duties; and

B. perform any act and adopt any regulation necessary or expedient for the promotion of health and the suppression of disease.

History: 1953 Comp., § 14-44-1, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For adoption of health code by reference in ordinance, *see* 3-17-6 NMSA 1978.

For ambulance service provided by municipality, *see* 5-1-1 NMSA 1978.

For the Public Health Act, *see* 24-1-1 NMSA 1978 et seq.

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

Ordinance prohibiting animals in residential areas. — In action attacking validity of ordinance prohibiting keeping of livestock within residential district, specific acts showing the ordinance unreasonable must be shown to overcome finding stated in

preamble that such keeping was a nuisance and endangered public health. Mitchell v. City of Roswell, 45 N.M. 92, 111 P.2d 41 (1941).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 39 Am. Jur. 2d Health § 5; 56 Am. Jur. 2d Municipal Corporations, Counties and Other Political Subdivisions § 439.

Sickness due to condition of street, liability of municipality, 1 A.L.R. 355.

Arrest and detention of person upon false pretense that he or she is afflicted with a contagious disease, 12 A.L.R. 249.

39A C.J.S. Health and Environment §§ 7 to 47; 62 C.J.S. Municipal Corporations §§ 133, 265, 279 to 281, 298, 300, 303, 651 to 657.

3-43-2. Municipal health department; duties of director; jurisdiction of district health officer.

A. The municipality may employ a municipal public health director. The qualifications of the municipal health director shall be established by the governing body but shall not be less than a master of public health degree or an equivalent degree from an institution of higher learning accredited by the American Public Health Association.

B. The municipal public health director shall execute those activities and programs which have been subject to approval by the state board of public health and adopted by ordinance by a municipality having a municipal health department. The jurisdiction and power of the district health officer does not include those activities and programs which have been subject to approval by the state board of health and adopted by ordinance by a municipality having a municipal health department.

C. Providing such jurisdiction does not conflict with state or federal law, the jurisdiction of the municipal public health director includes the municipality and any area providing goods and services affecting health within the municipality.

D. In addition, the municipal public health director shall:

(1) within his jurisdiction and in subordination to the state department of public health [department of health], possess the same powers with respect to the preservation of the public health and the administration and enforcement of the health laws as those conferred upon the state department of public health [department of health];

(2) enforce all rules and regulations promulgated by the state board of public health [department of health];

(3) be under its supervision and control;

(4) make such reports to the state department of public health [department of health] as it directs; and

(5) perform such duties and execute such policies and programs which the municipality has adopted by ordinance.

History: 1953 Comp., § 14-44-2, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1991, ch. 25, § 16 repealed former 9-7-4 NMSA 1978, relating to the health and environment department and enacted a new 9-7-4 NMSA 1978, creating the department of health, and providing that all references to the state department of public health and to the state board of health shall be construed as referring to the department of health.

ARTICLE 44
Hospitals

3-44-1. Hospitals; authority.

A municipality may:

A. control and regulate hospitals;

B. construct hospitals and medical dispensaries;

C. contribute to the support of any county hospital located within the municipality;

D. own, maintain and operate hospitals;

E. charge for hospital services rendered;

F. lease the hospital, sanitarium or other institution upon such terms and conditions as the governing body may determine to any person, corporation or association for the operation and maintenance of the hospital; provided that the lease may be terminated by the governing body of the municipality without cause upon one hundred eighty days' notice after the first three years of the lease; and further provided that a person, association or corporation demonstrating a consistent history of service to sick and indigent persons may include the value of in-kind services provided to the municipality as a portion of consideration due on any lease for the use of hospital facilities owned by the municipality. The lease agreement must set forth the respective value of services being provided to residents and the relative value of the use of property provided by the municipality;

G. contract with the human services department or the board of county commissioners for the care of sick or indigent persons;

H. accept grants for constructing, equipping and maintaining the hospital; and

I. perform any act or adopt any regulation necessary or expedient to carry out the provisions of this section.

History: 1953 Comp., § 14-45-1, enacted by Laws 1965, ch. 300; 1973, ch. 258, § 135; 2001, ch. 291, § 1; 2007, ch. 196, § 1.

ANNOTATIONS

Cross references. — For human services departments, *see* 9-8-1 NMSA 1978 et seq.

For licensing health facilities under the Public Health Act, *see* 24-1-5 NMSA 1978 et seq.

For the Indigent Hospital and County Health Care Act, *see* 27-5-1 NMSA 1978 et seq.

For the Medical Malpractice Act, *see* 41-5-1 NMSA 1978 et seq.

The 2007 amendment, effective June 15, 2007, amended Subsection F to authorize a municipality to consider in-kind service to sick and indigent persons as part of the consideration in the lease of a hospital.

The 2001 amendment, effective June 15, 2001, added the proviso in Subsection F, and substituted "human services" for "health and social services" in Subsection G.

Nurses' home. — Where a benefactor of the Ruidoso hospital has offered to construct a nurses' home on the hospital property and to lease the nurses' home from the hospital board and pay as rental all of the receipts from the home except $100 per month, in view of the fact that the addition of a nurses' home to the hospital would be advantageous and would tend to promote the purposes of the Hospital Act, there is ample statutory authority to carry out the agreement along the lines indicated. 1953-54 Op. Att'y Gen. No. 53-5765.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Hospitals and Asylums § 3.

Trust for hospital, power of municipality to accept and administer, 10 A.L.R. 1376.

Hospitals for insane, restrictions on location, 17 A.L.R. 526.

Power of municipal corporation to provide hospital, 25 A.L.R. 612.

Civil liability of landowner for killing or injuring trespassing dog, 15 A.L.R.2d 859.

Zoning regulations expressly referring to hospitals, sanitariums, nursing homes, validity and construction of, 27 A.L.R.3d 1022.

Exclusion of or discrimination against physician or surgeon by hospital authorities, 37 A.L.R.3d 645.

Validity and construction of statute requiring establishment of "need" as precondition to operation of hospital or other facilities for the care of sick people, 61 A.L.R.3d 278.

Liability for wrongful autopsy, 18 A.L.R.4th 858.

Liability of hospital for injury to person invited or permitted to accompany patient during emergency room treatment, 90 A.L.R.4th 478.

Liability of hospital, physician, or other medical personnel for death or injury from use of drugs to stimulate labor, 1 A.L.R.5th 243.

Liability of hospital, physician, or other medical personnel for death or injury to mother or child caused by improper administration of, or failure to administer, anesthesia or tranquilizers, or similar drugs, during labor and delivery, 1 A.L.R.5th 269.

Hospital's liability for injury resulting from failure to have sufficient number of nurses on duty, 2 A.L.R.5th 286.

Liability of physician, nurse, or hospital for failure to contact physician or to keep physician sufficiently informed concerning status of mother during pregnancy, labor, and childbirth, 3 A.L.R.5th 123.

Liability of hospital, physician, or other medical personnel for death or injury to mother or child caused by inadequate attendance or monitoring of patient during and after pregnancy, labor, and delivery, 3 A.L.R.5th 146.

Closing or relocation of medical facility serving large numbers of minority citizens as violative of Title VI of Civil Rights Act of 1964 (42 USCS § 2000d et seq.), 69 A.L.R. Fed. 588.

41 C.J.S. Hospitals § 6.

3-44-2. Hospitals; joint operation with county; indebtedness authorized.

A. Any municipality may enter into an agreement with the county for the construction, maintenance and operation of a county-municipal hospital.

B. A municipality or county is authorized to issue, separately, general obligation bonds or revenue bonds for the purpose of constructing, maintaining and operating a joint county-municipal hospital. The bonds shall be issued in the manner provided by law for the issuance of bonds for the construction of public buildings or revenue bonds for the construction of a municipal utility.

History: 1953 Comp., § 14-45-2, enacted by Laws 1965, ch. 300; 1983, ch. 265, § 14.

ANNOTATIONS

Cross references. — For the Tort Claims Act, *see* 41-4-1 NMSA 1978 et seq.

Pleading. — Where a hospital seeks a stay of execution on a judgment, without bond, because an appeal has been taken, and the motion relies upon an affidavit by the hospital administrator which states that the movant is a "county-municipal hospital," the affidavit is deficient where it fails to state either that a city-county organization operated the hospital or that it was not leased to some other entity. Robinson v. Memorial Gen. Hosp., 99 N.M. 60, 653 P.2d 891 (Ct. App. 1982).

3-44-3. Joint county-municipal hospitals.

If a county-municipal hospital is authorized, the board of county commissioners and the governing body of the municipality may jointly:

A. lease the hospital upon such terms and conditions as they may determine to a person, firm, corporation, association or the county or municipality for the operation and maintenance of the hospital, provided that the lease may be terminated by the board of county commissioners and the governing body of the municipality without cause upon one hundred eighty days' notice after the first three years of the lease;

B. enter into an agreement with the state human services department for the care of sick or indigent persons;

C. accept gifts, endowments or grants-in-aid for the purpose of constructing, equipping and maintaining the hospital or endowing rooms or wards for sick, needy or indigent persons; or

D. perform any act or adopt any regulation necessary or expedient to carry out the purposes of Sections 3-44-2 through 3-44-4 NMSA 1978.

History: 1953 Comp., § 14-45-3, enacted by Laws 1965, ch. 300; 2001, ch. 291, § 2.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, added the proviso in Subsection A, substituted "human services" for "welfare" in Subsection B, and substituted "3-44-2

through 3-44-4 NMSA 1978" for "14-45-2 through 14-45-4 New Mexico Statutes Annotated, 1953 Compilation" in Subsection D.

Pleading. — Where a hospital seeks a stay of execution on a judgment, without bond, because an appeal has been taken, and the motion relies upon an affidavit by the hospital administrator which states that the movant is a "county-municipal hospital," the affidavit is deficient where it fails to state either that a city-county organization operated the hospital or that it was not leased to some other entity. Robinson v. Memorial Gen. Hosp., 99 N.M. 60, 653 P.2d 891 (Ct. App. 1982).

Purchases made by hospital. — A county-municipal hospital is a local public body. Therefore, purchases made by such a hospital must be made in compliance with the provisions of the Public Purchases Act. 1969 Op. Att'y Gen. No. 69-78.

Funds held by county-municipal hospital are public moneys. 1969 Op. Att'y Gen. No. 69-78.

Boards of trustees are not empowered to accept gifts, endowments or grants-in-aid, but such must be given to the boards of county commissioners or the governing body of the municipality. 1955-56 Op. Att'y Gen. No. 56-6437.

3-44-4. County-municipal hospital; board of trustees; powers.

A. A county-municipal hospital shall be governed by a board of trustees consisting of five members who shall be appointed for two-year terms. Three of the trustees shall be appointed by the board of county commissioners and two of the trustees shall be appointed by the governing body of the municipality.

B. Upon approval by both the board of county commissioners and the governing body of the municipality, the board of trustees shall consist of seven members, appointed for terms of two years. Seven-member boards shall consist of four trustees appointed by the board of county commissioners and three trustees appointed by the governing body of the municipality.

C. The board of trustees has complete control of the management of the hospital. Once each year the board of trustees shall submit to the board of county commissioners and the governing body of the municipality:

(1) a report of its management of the hospital; and

(2) a financial statement showing all money received and expended and the purposes for which the money was expended.

History: 1953 Comp., § 14-45-4, enacted by Laws 1965, ch. 300; 1975, ch. 74, § 1.

ANNOTATIONS

Discharge for policy violation proper. Hospital was properly authorized to discharge nurse for refusing to follow "floating" policy which was promulgated by the nursing administration, pursuant to authority delegated by the administrator, who in turn was acting within the scope of his charge from the board. Francis v. Memorial Gen. Hosp., 104 N.M. 698, 726 P.2d 852 (1986).

Members of county-municipal hospital board are public officers. 1969 Op. Att'y Gen. No. 69-78.

Bonding of personnel. — The board has not only the authority but the duty to see that those personnel responsible for receiving and spending funds of a hospital are bonded in accordance with good administrative practice. 1969 Op. Att'y Gen. No. 69-78.

Rendering accounts. — The respective boards of trustees are required to render accounts to the respective governing boards of the county and the municipality. 1955-56 Op. Att'y Gen. No. 56-6437.

3-44-5. Hospitals; special charter towns; authority.

A. Any town incorporated, organized and operating under a special act of the legislature may, by resolution or ordinance:

(1) own, maintain and operate hospitals, sanitariums and other institutions for the care of sick or indigent persons;

(2) issue negotiable bonds for the construction of a hospital, sanitarium or other institution; or

(3) upon such conditions and terms as the governing body of the town may determine:

(a) delegate the operation and maintenance of the hospital, sanitarium or other institution to any person, corporation or association as it selects; or

(b) lease the hospital, sanitarium or other hospital to any person, corporation or association for the care of sick or indigent persons, provided that the lease may be terminated by the governing body of the town without cause upon one hundred eighty days' notice after the first three years of the lease.

B. The provisions of Sections 3-54-1 through 3-54-3 NMSA 1978 relating to the leasing of municipal property are not applicable to this section.

History: 1953 Comp., § 14-45-5, enacted by Laws 1965, ch. 300; 1973, ch. 258, § 136; 2001, ch. 291, § 3.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, added the proviso in Subparagraph A(3)(b), and substituted "3-54-1 through 3-54-3 NMSA 1978" for "14-55-1 through 14-55-3 NMSA 1953" in Subsection B.

Pleading. — Where a hospital seeks a stay of execution on a judgment, without bond, because an appeal has been taken, and the motion relies upon an affidavit by the hospital administrator which states that the movant is a "county-municipal hospital," the affidavit is deficient where it fails to state either that a city-county organization operated the hospital or that it was not leased to some other entity. Robinson v. Memorial Gen. Hosp., 99 N.M. 60, 653 P.2d 891 (Ct. App. 1982).

3-44-6. Hospitals; expenditure of public funds.

The use of public funds for the operation and maintenance of a hospital pursuant to a lease authorized by Chapter 3, Article 44 NMSA 1978 is deemed to be funding to the hospital as a public institution, and the hospital facility and lessee thereof are subject to the laws of this state regarding the expenditure of public money.

History: Laws 2001, ch. 291, § 4.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 291 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

ARTICLE 45
Municipal Housing

3-45-1. Municipal Housing Law; short title.

Chapter 3, Article 45 NMSA 1978 may be cited as the "Municipal Housing Law".

History: 1953 Comp., § 14-46-1, enacted by Laws 1965, ch. 300; 2009, ch. 226, § 1.

ANNOTATIONS

Cross references. — For adoption of housing code by reference in ordinance, *see* 3-17-6 NMSA 1978.

For the Urban Development Law, *see* 3-46-1 NMSA 1978 et seq.

For the Community Development Law, *see* 3-60-1 NMSA 1978 et seq.

For the Mortgage Finance Authority Act, *see* 58-18-1 NMSA 1978 et seq.

The 2009 amendment, effective April 7, 2009, changed the reference of the act to the chapter and article of NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment §§ 1 to 14.

Constitutionality, construction, and application of statutes or governmental projects for improvement of housing conditions, 130 A.L.R. 1069, 172 A.L.R. 966.

Private enterprise, validity, construction, and effect of statutes providing for urban redevelopment by, 44 A.L.R.2d 1414.

Suability, and liability, for torts, of public housing authority, 61 A.L.R.2d 1246.

Repair or destruction of residential building by public authorities at owner's expense, validity and construction of statute or ordinance providing for, 43 A.L.R.3d 916.

What constitutes "blighted area" within urban renewal and redevelopment statutes, 45 A.L.R.3d 1096.

Validity and construction of zoning ordinance requiring developer to devote specified part of development to low or moderate income housing, 62 A.L.R.3d 880.

Substantive issues relative to rent levels and termination of benefits under United States Housing Act of 1937 (42 USCS § 1437 et seq.), 77 A.L.R. Fed. 884.

62 C.J.S. Municipal Corporations § 699.

3-45-2. Finding and declaration of necessity.

It is hereby declared that:

A. unsanitary or unsafe dwelling accommodations exist in the state;

B. persons of low and moderate income are forced to reside in such unsanitary or unsafe accommodations;

C. within the state, there is a shortage of safe or sanitary dwelling accommodations available at rents that persons of low and moderate income can afford and that such persons are forced to occupy overcrowded, congested dwelling accommodations and that the aforesaid conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety and welfare of the residents of the state and impair economic values;

D. these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection and other public services and facilities;

E. these areas in the state cannot be cleared nor can the shortage of safe and sanitary dwellings for persons of low and moderate income be relieved through the operation of private enterprise and that the construction of housing projects for persons of low and moderate income, as defined in the Municipal Housing Law, would therefore not be competitive with private enterprise;

F. the clearance, replanning and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low and moderate income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state and municipal concern; and

G. it is in the public interest that work on projects for such purposes be commenced as soon as possible in order to relieve a shortage of affordable housing, which now constitutes an emergency; and the necessity in the public interest for the provisions enacted by the Municipal Housing Law is hereby declared as a matter of legislative determination.

History: 1953 Comp., § 14-46-2, enacted by Laws 1965, ch. 300; 2009, ch. 226, § 2.

ANNOTATIONS

The 2009 amendment, effective April 7, 2009, in Subsections A, B and F, changed "insanitary" to "unsanitary"; in Subsections B, C, E and F, after "persons of low", added "and moderate"; in Subsection C, after "health, safety", deleted "morals"; and in Subsection G, after "in order to relieve", deleted "unemployment" and added "a shortage of affordable housing".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63 C.J.S. Municipal Corporations § 1061.

3-45-3. Definitions.

The following terms, wherever used or referred to in the Municipal Housing Law, shall have the following respective meanings:

A. "city" means any municipality and, unless the context otherwise clearly indicates, any county. "The city" means the particular city or county for which a particular housing authority is created. "County" means any county;

B. "governing body" means, in the case of a city, the council or board of commissioners and, in the case of other state public bodies, the council,

commissioners, board or other body having charge of the fiscal affairs of the state public body;

C. "mayor" means the mayor of the city or the officer charged with the duties customarily imposed on the mayor or executive head of a city. In the case of a county, the term "mayor" means the board of county commissioners;

D. "clerk" means the city recorder, the county clerk or the officer charged with the duties customarily imposed on the clerk;

E. "area of operation" includes all of the city or, in the case of a county, includes all of the county, except the area shall not include any area that lies within the boundaries of any city that has an established housing authority or housing agency without the consent of the city. Upon approval by the governing bodies of the cities involved, the area of operation of one city pursuant to the Municipal Housing Law may be enlarged to include the area within the boundaries of any other city. Any subsequent withdrawal of consent of a city for operation within its boundaries by another city shall not prohibit the development and operation of any housing projects initiated in the city by another city prior to the date of withdrawal;

F. "authority" or "housing authority" means any agency or other instrumentality of a city created pursuant to the Municipal Housing Law;

G. "state public body" means any county, municipal corporation, commission, district, authority, other subdivision or public body of the state;

H. "federal government" includes the United States of America, the federal department of housing and urban development or any other agency or instrumentality, corporate or otherwise, of the United States of America;

I. "slum" means any area where dwellings predominate that by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities or any combination of these factors, are detrimental to the safety, health or well-being of the occupants or to surrounding properties;

J. "housing project" means any work or undertaking of the city:

(1) to demolish, clear or remove buildings from any slum area. The work or undertaking may embrace the adaptation of the area to public purposes, including parks or other recreational or community purposes;

(2) to provide decent, safe and sanitary dwellings, apartments, single-family dwellings or other affordable living accommodations for persons of low and moderate income. The work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary convenient or desirable appurtenances,

streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare or other purposes; or

(3) to accomplish a combination of the foregoing.

The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property or existing structures, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith;

K. "low-income person" means any individual, couple or family whose gross income does not exceed eighty percent of that person's particular area median income and who cannot afford to pay more than thirty-five percent of gross annual income for housing rent or mortgage payments or a "low-income person" as defined by the federal government;

L. "bonds" means any bonds, notes, interim certificates, debentures or other obligations issued by a city pursuant to the Municipal Housing Law;

M. "real property" includes all lands, including improvements and fixtures on the lands and property of any nature appurtenant to the lands or used in connection with the lands, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens;

N. "obligee" includes any holder of bonds issued pursuant to the Municipal Housing Law, trustees for any such bondholders, or lessor demising to a city property used in connection with a housing project, or any assignee or assignees of the lessor's interest or any part of the lessor's interest and the federal government when it is a party to any contract with a city in regard to a housing project;

O. "affordable housing" means any housing accommodations that serve the needs of low- and moderate-income persons;

P. "affordable housing program" means an ongoing delivery system of affordable housing services that assists persons of low and moderate income;

Q. "moderate-income person" means any individual, couple or family whose gross annual income is not less than eighty percent of that person's particular area median income and does not exceed one hundred twenty percent of that area median income;

R. "multi-jursidictional housing authority" means two or more housing authorities joined or cooperating for the purposes of consolidating administrative duties and obligations and providing more effective and efficient housing projects and programs within their jurisdictions; and

S. "immediate family member" means:

(1) a spouse, including a former spouse, a de facto spouse or a former de facto spouse;

(2) a child or an adult child, including an adopted child, a step-child or an ex-nuptial child;

(3) a parent or a step-parent;

(4) a grandparent;

(5) a grandchild;

(6) a sibling or a step-sibling;

(7) a first cousin;

(8) an aunt or an uncle;

(9) a father-in-law or a mother-in-law;

(10) a sister-in-law or a brother-in-law; and

(11) any other relative who is financially supported.

History: 1953 Comp., § 14-46-3, enacted by Laws 1965, ch. 300; 1989, ch. 50, § 1; 2009, ch. 226, § 3.

ANNOTATIONS

The 2009 amendment, effective April 7, 2009, in Subsection E, after "boundaries of any city", added "that has an established housing authority or housing agency"; in Subsection E, in the third sentence, after "boundaries by another", deleted "county or" and after "initiated in the city", deleted "by a county or"; in Subsection F, after "instrumentality of a city", deleted "or county"; in Subsection H, after "America, the", deleted "public housing administration" and added "federal department of housing and urban development"; in Subsection I, after "health or", deleted "morals" and added "well-being of the occupants or to surrounding properties"; in Paragraph (2) of Subsection J, after "dwellings or other", added "affordable" and after "persons of low", added "and moderate"; deleted former Subsection K, which defined "persons of low income"; and added Subsections K and O through S.

The 1989 amendment, effective June 16, 1989, substituted "the Municipal Housing Law" for "Sections 14-46-1 through 14-46-25 New Mexico Statutes Annotated, 1953 Compilation" throughout the section; in Subsection E, substituted "other city" for

"adjacent or nearby city" in the second sentence and made minor stylistic changes in the third sentence while deleting at the end of that sentence "where there is a financial assistance contract in existence for such project with the federal government at the date of such withdrawal except upon such terms as may be mutually agreed upon between the governing bodies of such cities or county, as the case may be, and the federal government"; inserted "other instrumentality of a city" in Subsection F; in Subsection J(2) inserted "single-family dwellings" in the first sentence; and in Subsection J(3) inserted "or existing structures" in the second sentence.

3-45-4. Powers.

A. Every city, in addition to other powers conferred by the Municipal Housing Law, may:

(1) within its area of operation, prepare, carry out, acquire, purchase, lease, construct, reconstruct, improve, alter, extend or repair any housing project or any part of a housing project and operate and maintain the housing project, and for any of those purposes, the governing body of the city may appropriate money and authorize the use of any property of the city;

(2) purchase its bonds issued pursuant to the Municipal Housing Law at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be canceled;

(3) lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and, subject to the limitations contained in the Municipal Housing Law, establish and revise the rents or charges therefor; own, hold and improve real or personal property; purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal property or any interest in real or personal property; acquire by the exercise of the power of eminent domain any real property; sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest in real or personal property; and procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts of any bonds issued pursuant to the Municipal Housing Law, including the power to pay premiums on any such insurance;

(4) enter on any lands, buildings or property for the purpose of making surveys, soundings and examinations in connection with the planning or construction or both of any housing project;

(5) insure or provide for the insurance of any housing project of the city against such risks as the city may deem advisable;

(6) 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 a housing

project or the occupants of a housing project; and include in any construction contract let in connection with a housing project stipulations requiring that the contractor and any subcontractors comply with employment requirements, including those in the constitution and laws of this state, as to minimum wages and maximum hours of labor and comply with any conditions that the federal government may have attached to its financial aid of the project;

(7) within its area of operation, investigate the living, dwelling and housing conditions and the means and methods of improving the conditions; determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low and moderate income; make studies and recommendations relating to the problem of clearing, replanning and reconstructing slum areas and the problem of providing dwelling accommodations for persons of low and moderate income and cooperate with the state or any political subdivision of the state in action taken in connection with the problems; and engage in research, studies and experimentation on the subject of housing and affordable housing programs; and

(8) exercise all or any part or combination of powers herein granted.

B. Any two or more cities or authorities may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing, including the issuance of bonds, notes or other obligations and giving security therefor, or contracting with respect to housing projects or affordable housing programs located within the area of operation of any one or more of the cities or authorities. For that purpose, a city or authority may, by resolution, prescribe and authorize any other city or authority so joining or cooperating with it to act on its behalf with respect to any or all powers, as its agent or otherwise, in the name of the city or authority so joining or cooperating or in its own name.

History: 1953 Comp., § 14-46-4, enacted by Laws 1965, ch. 300; 1969, ch. 183, § 1; 2009, ch. 226, § 4.

ANNOTATIONS

The 2009 amendment, effective April 7, 2009, in Subsection A(7), at the end of the paragraph, added "and affordable housing programs; and"; and in Subsection B, in the first sentence, after "housing projects", added "or affordable housing programs".

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity of statute, ordinance, or regulation requiring compliance with housing standards before rent increase or possession by new tenant, 20 A.L.R.4th 1246.

3-45-5. Creation of authority.

A. Every city, in addition to other powers conferred by the Municipal Housing Law, shall have power and is authorized, by proper resolution of its governing body, to

create, as an agent of the city, an authority to be known as the "housing authority" of the city. The housing authority of the city may constitute a public body corporate. The city may delegate to the authority the power to construct, maintain, operate and manage any housing project or affordable housing programs of the city and may delegate to the authority any or all of the powers conferred on the city by the Municipal Housing Law.

B. When the governing body of a city adopts a resolution pursuant to Subsection A of this section, the mayor shall appoint five persons as commissioners of the authority created as agent for the city. The commissioners who are first appointed shall be designated to serve for terms of one, two, three, four and five years, respectively, from the date of their appointment, but thereafter, commissioners shall be appointed for a term of office of five years, except that all vacancies shall be filled for the unexpired term. A commissioner of an authority shall not hold any other office or employment of the city for which the authority is created. A commissioner shall hold office until a successor has been appointed and has qualified, unless sooner removed according to law. A commissioner may serve two or more successive terms of office. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk, and the certificate shall be conclusive evidence of the due and proper appointment of the commissioner. A commissioner shall receive no compensation for services for the authority in any capacity, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of duties.

C. Two or more cities joined together pursuant to Subsection B of Section 3-45-4 NMSA 1978 shall establish their commissioners in accordance with Subsection B of this section, except that each city shall have equitable representation on the commission. The commissioners representing each city shall be appointed by the mayor of the city.

D. Any powers delegated by a city to an authority shall be vested in the commissioners of the authority in office from time to time. Three commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present. The commission shall organize itself at its annual meeting each even-numbered year. Any city creating a housing authority may authorize the authority to employ a secretary, who shall be executive director and who shall be removable only for cause. With the delegated authority from the commission, the executive director may hire or terminate, according to the procurement and personnel policies and procedures of the authority, technical experts and such other officers, attorneys, agents and employees, permanent and temporary, as the authority may require; determine their qualifications, duties and compensation; and delegate to one or more of them such powers or duties as the authority may deem proper.

History: 1953 Comp., § 14-46-5, enacted by Laws 1965, ch. 300; 1989, ch. 50, § 2; 2009, ch. 226, § 5.

ANNOTATIONS

The 2009 amendment, effective April 7, 2009, in Subsection A, in the third sentence, after "housing project", added "or affordable housing programs"; added Subsection C; and in Subsection D, at the beginning of the sixth sentence, replaced the language before "technical experts".

The 1989 amendment, effective June 16, 1989, in Subsection A, added the second sentence and deleted "except the powers to issue bonds and acquire real property" at the end of the third sentence; in Subsection B, added the fifth sentence; in Subsection C, rewrote the fourth sentence, which formerly read: "The mayor shall designate which of the commissioners shall be chairman and vice chairman, respectively", and inserted "and who shall be removable only for cause" in the fifth sentence; and made minor stylistic changes throughout the section.

Nature of authority. — A housing authority is an agent and an instrumentality of the creating municipality. 1969 Op. Att'y Gen. No. 69-138.

Municipal housing authority agency of city. — A municipal housing authority is designated by statute as an agency of a city, and N.M. Const., art. IV, § 28 applies to any interest a legislator may have in a contract with the housing authority authorized by law during his term. 1989 Op. Att'y Gen. No. 89-34.

Power to appoint commissioners. — The power to appoint commissioners is granted to the mayor notwithstanding whether the municipality has a commission, commission-manager or mayor-council form of government. 1963-64 Op. Att'y Gen. No. 63-02.

Residency requirement. — The members of an authority must be residents of the political subdivision for which they are appointed because of the requirement of N.M. Const., art. V, § 13. 1969 Op. Att'y Gen. No. 69-138.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment §§ 10, 11.

Suability, and liability, for torts, of public housing authority, 61 A.L.R.2d 1246.

3-45-6. Prohibited actions.

Neither a housing authority nor any of its contractors or their subcontractors may enter into any contract, subcontract or agreement in connection with a housing project under any contract in which any of the following persons has an interest, direct or indirect, during the person's tenure or for one year thereafter:

A. any present or former member of the commission of the housing authority or any member of the member's immediate family. The prohibition established by this subsection does not apply to any member who has not served on the governing body of a resident management corporation and who otherwise has not occupied a

policymaking position with the resident management corporation or the housing authority;

B. any employee of the housing authority who formulates policy or who influences decisions with respect to a housing project, any member of the employee's immediate family or any partner of the employee; or

C. any public official, member of a governing body or state legislator, or any member of that person's immediate family, who exercises functions or responsibilities with respect to the housing project or the housing authority.

History: 1953 Comp., § 14-46-6, enacted by Laws 1965, ch. 300; 2009, ch. 226, § 6.

ANNOTATIONS

The 2009 amendment, effective April 7, 2009, deleted the entire section which prohibited officers and employees from acquiring any interest in any housing project and added new language.

3-45-7. Removal of commissioners.

A commissioner of an authority may be removed by the mayor, but only for inefficiency, neglect of duty or misconduct in office and only after the commissioner has been given a copy of the charges at least ten days prior to the hearing on the charges and has had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner by the mayor, a record of the proceedings, together with the charges and findings, shall be filed in the office of the clerk. Commissioners may be removed for cause based on noncompliance with housing program regulations.

History: 1953 Comp., § 14-46-7, enacted by Laws 1965, ch. 300; 2009, ch. 226, § 7.

ANNOTATIONS

The 2009 amendment, effective April 7, 2009, added the last sentence.

3-45-8. Eminent domain.

In addition to the other purposes for which a city may appropriate property, a city shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes under the Municipal Housing Law after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. A city may exercise the power of eminent domain hereunder in the manner provided by the laws of the state of New Mexico, and acts amendatory thereof or supplementary thereto; or it may exercise the power of eminent domain hereunder in the manner provided by any other applicable

statutory provisions for the exercise of the power of eminent domain. Title to property so acquired shall be taken in the name of the city.

History: 1953 Comp., § 14-46-8, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For condemnation proceedings, *see* 42A-1-1 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 22.

3-45-9. Operation not for profit.

It is declared to be the policy of this state that each city shall manage and operate its housing projects and affordable housing programs in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations and that no city shall construct or operate any housing project for profit. To this end, a city shall set the rental rates for dwellings in the housing projects it manages and operates at no higher rates than it finds to be necessary in order to produce revenues that, together with any grants or subsidies from the federal government or other sources for housing projects, will be sufficient:

A. to pay, as they become due, the principal and interest on the bonds or other obligations of the city issued under the Municipal Housing Law;

B. to meet the cost of and to provide for maintaining and operating the housing projects and affordable housing programs, including the cost of any insurance, the administrative expenses of the city incurred in connection with the housing projects and affordable housing programs and the funding of any operational reserves as the authority deems appropriate;

C. to fund such reserves to secure the payment of its bonds as the authority deems appropriate or convenient; and

D. to allow private, profit-making entities to enter into agreements with the authority, and such agreements shall not be deemed to affect the nonprofit status of the authority or conflict with the intent of the creation of the authority.

History: 1953 Comp., § 14-46-9, enacted by Laws 1965, ch. 300; 1989, ch. 50, § 3; 2009, ch. 226, § 8.

ANNOTATIONS

The 2009 amendment, effective April 7, 2009, after "housing projects", added "and affordable housing programs".

The 1989 amendment, effective June 16, 1989, in the undesignated introductory paragraph deleted "or as a source of revenue" at the end of the first sentence and inserted "it manages and operates" in the second sentence; inserted "or other obligations" in Subsection A; added all of the language in Subsection B following "connection"; rewrote Subsection C, which formerly read: "to create, during not less than six years immediately succeeding its issuance of any bonds, a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one year thereafter and to maintain such reserve"; added subsection D; and made minor stylistic changes throughout the section.

3-45-10. Sales, rentals and tenant selection.

A. In the operation or management of housing projects and affordable housing programs or the sale of any property pursuant to the Municipal Housing Law, a city shall at all times observe the following duties with respect to rentals, property and tenant selection:

(1) it may rent, lease or sell the dwelling accommodations in the housing project and affordable housing programs only to persons falling within federally established standards;

(2) it may rent, lease or sell to a tenant dwelling accommodations consisting of the number of rooms, but no greater number, that it deems necessary to provide safe and sanitary accommodations to the proposed occupants without overcrowding; and

(3) it shall not accept any person as a tenant in any housing program if the person has an annual net income in excess of federally established standards.

B. Nothing contained in this section or Section 3-45-9 NMSA 1978 shall be construed as limiting the power of a city to vest in an obligee the right, in the event of a default by the city, to take possession and operate housing projects or affordable housing programs or cause the appointment of a receiver thereof, free from all the restrictions imposed by this section or Section 3-45-9 NMSA 1978.

History: 1953 Comp., § 14-46-10, enacted by Laws 1965, ch. 300; 1989, ch. 50, § 4; 2009, ch. 226, § 9.

ANNOTATIONS

The 2009 amendment, effective April 7, 2009, after "housing projects", added "and affordable housing programs"; in Paragraph (1) of Subsection A, after "persons falling within", added "federally established" and after "standards", deleted "adopted by the authority".

The 1989 amendment, effective June 16, 1989, inserted "Sales" in the section heading; inserted "or the sale of any property pursuant to the Municipal Housing Law" in the introductory paragraph in Subsection A and inserted "property" near the end of the paragraph; in Subsection A(1), inserted "or sell" and added "falling within the standards adopted by the authority" at the end of the subsection; inserted "or sell" in Subsection A(2); rewrote Subsection A(3); substituted "3-45-9 NMSA 1978" for "14-46-9 New Mexico Statutes Annotated, 1953 Compilation" in Subsection B; and made minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment §§ 33, 34.

Tenant selection criteria under § 8 of Housing Act of 1937 (42 USCS § 1437f), 80 A.L.R. Fed. 470.

3-45-11. Bonds.

A. A city shall have power to issue bonds from time to time in its discretion to finance in whole or in part the cost of the preparation, acquisition, purchase, lease, construction, reconstruction, improvement, alteration, extension or repair of any project or undertaking hereunder. A city shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it hereunder. In order to carry out the purposes of the Municipal Housing Law, a city may issue, upon proper resolution, bonds on which the principal and interest are payable:

(1) exclusively from the income and revenues of the housing project or projects financed with the proceeds of such bonds; or

(2) exclusively from such income and revenues together with grants and contributions from the federal government or other sources in aid of such project or projects.

B. Neither the governing body of a city nor any person executing the bonds shall be liable personally on any bonds by reason of the issuance thereof hereunder. The bonds issued under the provisions of the Municipal Housing Law shall be payable solely from the sources provided in this section. Such bonds shall not be a general obligation of the city issuing them, and they shall so state on their face. The bonds shall not constitute a debt or indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction.

History: 1953 Comp., § 14-46-11, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 32.

64 C.J.S. Municipal Corporations § 1908.

3-45-12. Form and sale of bonds; interest on certain obligations.

A. Bonds of a city issued under the Municipal Housing Law shall be authorized by its resolution and may be issued in any one or more series and shall bear such date, mature at such time, bear interest at such rate, be in such denomination, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place and be subject to such terms of redemption, with or without premium, as the resolution, its trust indenture or the bond so issued may provide.

B. Obligations issued by a city that are true loan obligations made to the farmers home administration of the United States department of agriculture or the department of housing and urban development may bear interest at a rate of interest not exceeding par.

C. The bonds shall be sold at not less than par at public sale held after notice published once at least five days prior to the sale in a newspaper having a general circulation in the city jurisdiction and in a financial newspaper published in the city of San Francisco, California, or in the city of New York, New York; provided that the bonds may be sold to the federal government at private sale at not less than par, and, in the event less than all of the bonds authorized in connection with any housing project are sold to the federal government, the balance of the bonds may be sold at private sale at not less than par at an interest cost to the city not to exceed the interest cost to the city of the portion of the bonds sold to the federal government.

D. In case any of the officers of the city, the authority or any of its instrumentalities whose signatures appear on any bonds or coupons cease to be officers before the delivery of the bonds, the signatures shall, nevertheless, be valid and sufficient for all purposes the same as if the officers had remained in office until delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to the Municipal Housing Law shall be fully negotiable.

E. In any suit, action or proceedings involving the validity or enforceability of any bond of a city or the security for the bond, any such bond reciting in substance that it has been issued by the city to aid in financing a housing project to provide dwelling accommodations for persons of low and moderate income shall be conclusively deemed to have been issued for a housing project of that character, and the housing project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of the Municipal Housing Law.

History: 1953 Comp., § 14-46-12, enacted by Laws 1965, ch. 300; 1979, ch. 270, § 1; 1989, ch. 50, § 5; 2009, ch. 226, § 10.

ANNOTATIONS

Cross references. — For definition of "publish" or "publication," *see* 3-1-2 NMSA 1978.

The 2009 amendment, effective April 7, 2009, in Subsection C, after "general circulation in the city", added "jurisdiction"; and in Subsection E, after "person of low", added "and moderate".

The 1989 amendment, effective June 16, 1989, deleted "not exceeding five percent per annum" following "rate" in Subsection A; substituted "par" for "nine and one-half percent per annum" at the end in Subsection B; in Subsection D inserted "the authority or any of its instrumentalities" in the first sentence; and made minor stylistic changes throughout the section.

3-45-13. Provisions of bonds and trust indentures.

In connection with the issuance of bonds pursuant to the Municipal Housing Law or the incurring of obligations under leases made pursuant to the Municipal Housing Law and in order to secure the payment of such bonds or obligations, a city in addition to its other powers, shall have power:

A. to pledge all or any part of the gross or net rents, fees or revenues of a housing project, financed with the proceeds of such bonds, to which its rights then exist or may thereafter come into existence;

B. to covenant against pledging all or any part of the rents, fees and revenues, or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it;

C. to covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof;

D. to covenant, subject to the limitations contained in the Municipal Housing Law, as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves or other purposes, and to covenant as to the use and disposition of the moneys held in such funds;

E. to prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

F. to covenant as to the use of any or all of its real or personal property acquired pursuant to the Municipal Housing Law; and to covenant as to the maintenance of such real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys;

G. to covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which such declaration and its consequences may be waived;

H. to vest in a trustee or trustees or the holders of bonds issued pursuant to the Municipal Housing Law, or any specified proportion of them, the right to enforce the payment of such bonds or any covenants securing or relating to such bonds; to vest in a trustee or trustees the right, in the event of a default by said city, to take possession of any housing project or part thereof, and, so long as the city shall continue in default, to retain such possession and use, operate and manage said project, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the city with said trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or the holders of bonds, or any proportion of them, may enforce any covenant or rights securing or relating to such bonds; and

I. to exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, or like or different character; to make such covenants as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

History: 1953 Comp., § 14-46-13, enacted by Laws 1965, ch. 300.

3-45-14. Construction of bond provisions.

The Municipal Housing Law without reference to other statutes of the state shall constitute full authority for the authorization and issuance of bonds hereunder. No other act or law with regard to the authorization or issuance of bonds 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.

History: 1953 Comp., § 14-46-14, enacted by Laws 1965, ch. 300.

3-45-15. Certification of attorney general.

A city may submit to the attorney general of the state any bonds to be issued hereunder after all proceedings for the issuance of such bonds have been taken. Upon the submission of such proceedings to the attorney general, it shall be the duty of the attorney general to examine into and pass upon the validity of such bonds and the regularity of all proceedings in connection therewith. If such bonds and proceedings conform to the provisions of the Municipal Housing Law and are otherwise regular in form and if such bonds when delivered and paid for will constitute binding and legal obligations enforceable according to the terms thereof, the attorney general shall certify in substance upon the back of each of said bonds that it is issued in accordance with the constitution and laws of New Mexico.

History: 1953 Comp., § 14-46-15, enacted by Laws 1965, ch. 300.

3-45-16. Remedies of an obligee.

An obligee of a city shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

A. by mandamus, suit, action or proceeding at law or in equity, to compel said city and the officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said city with or for the benefit of such obligee and to require the carrying out of any or all such covenants and agreements of said city and the fulfillment of all duties imposed upon said city by the Municipal Housing Law; and

B. by suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or in violation of any of the rights of such obligee of said city.

History: 1953 Comp., § 14-46-16, enacted by Laws 1965, ch. 300.

3-45-17. Additional remedies conferrable to an obligee.

A city shall have the power by its resolution, trust indenture, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

A. to cause possession of any housing project or any part hereof to be surrendered to any such obligee, which possession may be retained by such bondholder or trustee so long as the city shall continue in default;

B. to obtain the appointment of a receiver of any housing project of said city or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such housing project or any part thereof and, so long

as the city shall continue in default, operate and maintain the same, and collect and receive all fees, rents, revenues or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said city as the court shall direct; and

C. to require said city and the officers and agents thereof to account for the money actually received as if it and they were the trustees of an express trust.

History: 1953 Comp., § 14-46-17, enacted by Laws 1965, ch. 300.

3-45-18. Exemption of property from execution sale.

All real property owned or held by a city for the purposes of the Municipal Housing Law shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall be issued against the same nor shall any judgment against a city be a charge or lien on such real property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given to them on rents, fees or revenues.

History: 1953 Comp., § 14-46-18, enacted by Laws 1965, ch. 300.

3-45-19. Exemption of property from taxation.

The real property of a housing project, as defined in Section 3-45-3 NMSA 1978, is declared to be public property used for essential public and governmental purposes and is property of a city of this state and is exempt from taxation until a deed conveying that property to a nonexempt entity is executed and delivered by the city.

History: 1953 Comp., § 14-46-19, enacted by Laws 1965, ch. 300; 1979, ch. 258, § 1.

ANNOTATIONS

Cross references. — For constitutional provision on tax-exempt property, *see* N.M. Const., art. VIII, § 3.

Inclusion of exempt property on tax roll. — Exempt property should be properly described on the tax roll, should be valued at its proper value and should be listed as exempt. 1955-56 Op. Att'y Gen. No. 55-6233.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 27.

84 C.J.S. Taxation § 254.

3-45-20. Aid from state or federal government.

In addition to the powers conferred upon a city by other provisions of the Municipal Housing Law, a city is empowered to borrow money or accept contributions, grants or other financial assistance from the state or federal government for, or in aid of, any housing project or affordable housing program within its area of operation and, to these ends, to comply with such conditions, trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of the Municipal Housing Law to authorize every city to do any and all things necessary, convenient or desirable to secure the financial aid or cooperation of the federal government in the undertaking, acquisition, construction, maintenance or operation of any housing project or affordable housing program of the city.

History: 1953 Comp., § 14-46-20, enacted by Laws 1965, ch. 300; 2009, ch. 226, § 11.

ANNOTATIONS

The 2009 amendment, effective April 7, 2009, in the first sentence, after "financial assistance from the", added "state or" and in the first and second sentences, after "any housing project" added "or affordable housing program".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 16.

3-45-21. Cooperation in undertaking housing projects or affordable housing programs.

A. For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects or affordable housing programs located within the area in which it is authorized to act, any state public body may, upon such terms, with or without consideration, as it may determine:

(1) dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or any other rights or privileges therein to any city;

(2) cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities or any other works that it is otherwise empowered to undertake to be furnished adjacent to or in connection with housing projects or affordable housing programs;

(3) furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places that it is otherwise empowered to undertake;

(4) cause services to be furnished for housing projects or affordable housing programs of the character that the state public body is otherwise empowered to furnish;

(5) enter into agreements with respect to the exercise by the state public body of its powers relating to the repair, elimination or closing of unsafe, unsanitary or unfit dwellings;

(6) do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such housing projects;

(7) incur the entire expense of any public improvements made by the state public body in exercising the powers granted in the Municipal Housing Law; and

(8) enter into agreements that may extend over any period, notwithstanding any provision or rule of law to the contrary, with any city or multi-jurisdictional housing authority as agent therefor, respecting action to be taken by the state public body pursuant to any of the powers granted by the Municipal Housing Law.

B. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by a state public body without appraisal, public notice, advertisement or public bidding.

C. In the event an authority is declared by the federal department of housing and urban development to be in default on its annual contributions contract with that department, the authority may, by resolution of its governing body, transfer its assets and operation to another housing authority, including a multi-jurisdictional housing authority or regional housing authority. The multi-jurisdictional housing authority or regional housing authority shall accept, by resolution of its governing board, a transfer of assets and operations of an authority that has been declared by the federal department of housing and urban development to be in default of the annual contributions contract between that department and the authority.

History: 1953 Comp., § 14-46-21, enacted by Laws 1965, ch. 300; 2009, ch. 226, § 12.

ANNOTATIONS

The 2009 amendment, effective April 7, 2009, after "housing projects" added "or affordable housing program"; in Subsection A(8), after "with any city or", added "multi-jurisdictional housing"; and added Subsection C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 12.

3-45-22. Procedure for exercising powers.

The exercise by the city or other state public body of the powers herein granted may be authorized by resolution of the governing body of such state public body adopted by a majority of the members of its governing body present at a meeting of said governing body, which resolution may be adopted at the meeting at which such resolution is

introduced. Such a resolution or resolutions shall take effect immediately and need not be laid over or published or posted.

History: 1953 Comp., § 14-46-22, enacted by Laws 1965, ch. 300.

3-45-23. Supplemental nature of the Municipal Housing Law.

The powers conferred by the Municipal Housing Law shall be in addition and supplemental to the powers conferred by any other law.

History: 1953 Comp., § 14-46-23, enacted by Laws 1965, ch. 300.

3-45-24. Housing bonds; legal investments; security; negotiable.

The state and all public officers, municipal corporations, political subdivisions and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or other obligations issued pursuant to the Municipal Housing Law or issued by any public housing authority or agency in the United States, when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof, and such bonds and other obligations shall be authorized security for all public deposits and shall be fully negotiable in this state; it being the purpose of the Municipal Housing Law to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension and trust funds and funds held on deposit, for the purchase of any such bonds or other obligations and that any such bonds or other obligations shall be authorized security for all public deposits and shall be fully negotiable in this state; provided, however, that nothing contained in the Municipal Housing Law shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities.

History: 1953 Comp., § 14-46-24, enacted by Laws 1965, ch. 300.

3-45-25. Law controlling.

Insofar as the provisions of the Municipal Housing Law are inconsistent with the provisions of any other law, the provisions of the Municipal Housing Law shall be controlling.

History: 1953 Comp., § 14-46-25, enacted by Laws 1965, ch. 300.

ARTICLE 46
Urban Development

3-46-1. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-1 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1965, ch. 300, § 14-47-1, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-2. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-2 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1971, ch. 200, § 2, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-3. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-3 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 1, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-4. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-4 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 2, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-5. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-5 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 3, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-6. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-6 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 4, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-7. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-7 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 5, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-8. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-8 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 6, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-9. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-9 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 7, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-10. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-10 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 8, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-11. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-11 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 9, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-12. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-12 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 10, as amended, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-13. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-13 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 11, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-14. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-14 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 12, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-15. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-15 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 13, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-16. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-16 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 14, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-17. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-17 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 15, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-18. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-18 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 16, as amended, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-19. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-19 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 17, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-20. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-20 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 18, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-21. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-21 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 19, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-22. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-22 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 221, § 20, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-23. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-23 NMSA 1978, relating to the Urban Redevelopment Law, being Laws 1971, ch. 200, § 5, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-24. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-24 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1971, ch. 200, § 6, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-25. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-25 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1971, ch. 200, § 7, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-26. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-26 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1965, ch. 300, § 14-47-3, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-27. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-27 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1965, ch. 300, § 14-47-4, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-28. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-28 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1965, ch. 300, § 14-47-5, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-29. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-29 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1965, ch. 300, § 14-47-6, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-30. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-30 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1965, ch. 300, § 14-47-7, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-31. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-31 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1965, ch. 300, § 14-47-8, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-32. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-32 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1965, ch. 300, § 14-47-9, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-33. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-33 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1969, ch. 279, § 1, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-34. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-34 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1965, ch. 300, § 14-47-10, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-35. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-35 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1965, ch. 300, § 14-47-11, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-36. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-36 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1965, ch. 300, § 14-47-12, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-37. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-37 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1965, ch. 300, § 14-47-13, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-38. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-38 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1965, ch. 300, § 14-47-14, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-39. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-39 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1965, ch. 300, § 14-47-15, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-40. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-40 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1965, ch. 300, § 14-47-16, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-41. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-41 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1965, ch. 300, § 14-47-17, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-42. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-42 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1965, ch. 300, § 14-47-18, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-43. Ordinances relating to repair, closing and demolition of dwellings unfit for human habitation; complaint; service of complaint; appeal.

A. Whenever a municipality finds that there exist dwellings that are unfit for human habitation due to dilapidation; defects increasing the hazards of fire, accidents or other calamities; lack of ventilation, light or sanitary facilities; or other conditions, including those set forth in Subsection C of this section, rendering the dwellings unsafe and unsanitary or dangerous or detrimental to the health, safety or morals or otherwise inimical to the welfare of the residents of the municipality, power is conferred upon the municipality to require or cause the repair, closing or demolition or removal of the dwellings in the manner provided in this section. "Dwelling" means a building or structure or part thereof used and occupied for human habitation or intended to be so used and includes any appurtenances usually enjoyed in the dwelling.

B. Upon the adoption of an ordinance finding that dwelling conditions of the character described in Subsection A of this section exist, the governing body of the municipality may adopt ordinances relating to the dwellings within the municipality that are unfit for human habitation. The ordinances shall include the following provisions:

(1) a public officer shall be designated or appointed to exercise the powers prescribed by the ordinances;

(2) whenever it appears to the public officer, on the officer's own motion, that a dwelling is unfit for human habitation, the officer shall, if the officer's preliminary investigation discloses a basis for the charges, issue and cause to be served on the owner, every mortgagee of record and all parties in interest in the dwelling, including

persons in possession, a complaint stating the charges in that respect. The complaint shall contain a notice that a hearing will be held before the public officer or the officer's designated agent at a place fixed in the complaint not less than ten days nor more than thirty days after the serving of the complaint; that the owner, mortgagee and parties in interest shall be given the right to file an answer to the complaint and to appear in person or otherwise and give testimony at the place and the time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer;

(3) if after the notice and hearing the public officer determines that the dwelling under consideration is unfit for human habitation, the officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner an order in writing that advises the owner of the owner's rights under Subsection E of this section and that:

(a) if the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling, the ordinance of the municipality shall fix a certain percentage of the cost as being reasonable for that purpose and require the owner, within the time specified in the order, to repair, alter or improve the dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or

(b) if the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling, the ordinance of the municipality shall fix a certain percentage of the cost as being reasonable for the purpose, and require the owner, within the time specified in the order, to remove or demolish the dwelling;

(4) if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed;

(5) if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause the dwelling to be removed or demolished; and

(6) the amount of the cost of the repairs, alterations or improvements or the vacating and closing or the removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred. If the dwelling is removed or demolished by the public officer, the officer shall sell the materials of the dwelling and shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining shall be deposited in the district court by the public officer and shall be secured in the manner as may be directed by the court and shall be disbursed by the court to the persons found to be entitled to the balance by final order or decree of the court.

C. An ordinance adopted by a municipality pursuant to this section shall provide that the public officer may determine a dwelling is unfit for human habitation if the officer finds that conditions exist in the dwelling that are dangerous or injurious to the health, safety or morals of the occupants of the dwelling, the occupants of neighboring dwellings or other residents of the municipality or that have a blighting influence on properties in the area. The conditions may include the following without limitations: defects increasing the hazards of fire, accident or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness; overcrowding; inadequate ingress and egress; inadequate drainage; or any violation of health, fire, building or zoning regulations or any other laws or regulations relating to the use of land and the use and occupancy of buildings and improvements. The ordinance may provide additional standards to guide the public officer or the officer's agents or employees in determining the fitness of a dwelling for human habitation.

D. Complaints or orders issued by a public officer pursuant to an ordinance adopted under the provisions of this section shall be served upon persons either personally or by registered mail. If the whereabouts of the persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence and the public officer makes an affidavit to that effect, the serving of the complaint or order upon the persons may be made by publishing the complaint or order once each week for two consecutive weeks in a newspaper printed and published in the municipality or, in the absence of a newspaper, in one printed and published in the county and circulating in the municipality in which the dwellings are located. A copy of the complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of the complaint or order shall also be filed with the clerk of the county in which the dwelling is located. Filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law.

E. A person affected by an order issued by the public officer may file an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

F. An ordinance adopted by the governing body of the municipality may authorize the public officer to exercise powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this section, including the following powers:

(1) to investigate the dwelling conditions in the municipality in order to determine which dwellings are unfit for human habitation;

(2) to administer oaths and affirmations, examine witnesses and receive evidence;

(3) to enter upon premises for the purpose of making examinations, provided that the entries shall be made in a manner as to cause the least possible inconvenience

to the persons in possession, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted;

(4) to appoint and fix the duties of any officers, agents and employees as the officer deems necessary to carry out the purposes of the ordinances; and

(5) to delegate any functions and powers under the ordinance to officers, agents and employees that the public officer may designate.

G. The governing body of a municipality adopting an ordinance under this section shall, as soon as possible thereafter, prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwellings in the municipality for the purpose of determining the fitness of the dwellings for human habitation and for the enforcement and administration of its ordinance or ordinances adopted under this section.

H. Nothing in this section shall be construed to abrogate or impair the powers of the courts or of a department of a municipality to enforce any provisions of its charter or its ordinances or regulations or to prevent or punish violations thereof. The powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law.

I. Nothing in this section shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

History: 1953 Comp., § 14-47-19, enacted by Laws 1965, ch. 300; 1998, ch. 55, § 14; 1999, ch. 265, § 14; 2007, ch. 329, § 2; 2007, ch. 330, § 2.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 2007 amendment, effective June 15, 2007, eliminated references in Subsection F to the Urban Development Law.

Laws 2007, ch. 329, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 330, § 2. *See* 12-1-8 NMSA 1978.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection E.

The 1998 amendment, effective September 1, 1998, inserted "; complaint; service of complaint; appeal" in the section heading; in Subsection A, substituted "of this section" for "hereof", "unsanitary" for "insanitary", deleted "hereby" preceding "conferred",

deleted "herein" following "manner", inserted "in this section" and substituted "in the dwelling" for "therewith"; in Subsection B, inserted "of this section"; in Paragraph B(1), inserted "shall"; in Paragraph B(2), deleted "therein" following "place", and inserted "in the complaint"; in Subparagraphs B(3)(a) and (b), substituted "and require" for "requires"; in Paragraph B(6), deleted "and" following "demolition.", substituted "to the balance" for "thereto"; in Subsection C, deleted "therein" following "defects"; in Subsection D, substituted "Development" for "Renewal", deleted "but" following "mail.", substituted "makes" for "shall make", substituted "complaint or order" for "same", deleted "and" following "located."; rewrote Subsection E; in Subsection F, substituted "Development" for "Renewal", deleted "herein" and inserted "in the Urban Development Law"; in Paragraph F(1), deleted "therein" following "dwellings"; in Paragraph F(2) inserted "and"; in Subsection H, deleted "and" following "thereof"; and made minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of urban redevelopment authority or other state or municipal agency or entity for injuries occurring in vacant or abandoned property owned by governmental entity, 7 A.L.R.4th 1129.

39A C.J.S. Health and Environment §§ 28 to 36.

3-46-44. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-44 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1971, ch. 200, § 22, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

3-46-45. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-46-45 NMSA 1978, relating to the Urban Redevelopment Law, as enacted by Laws 1975, ch. 333, § 2, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ANNOTATIONS

ARTICLE 47
Park Commission

3-47-1. Park commission; appointment; term; qualification; removal; vacancy.

A. The governing body may appoint a park commission. One commissioner shall serve a one-year term, one commissioner shall serve a two-year term and one commissioner shall serve a three-year term so that after the initial appointments, one commissioner shall be appointed each year for a three-year term. The first three commissioners shall determine by lot their respective terms. Each commissioner shall be a resident of the municipality.

B. The governing body may remove any park commissioner for cause and may fill any vacancy on the park commission for the balance of the unexpired term.

History: 1953 Comp., § 14-48-1, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For powers of municipality regarding parks, *see* 3-18-18 NMSA 1978.

For park and recreation construction authorized, *see* 3-18-19 NMSA 1978.

For powers of municipality regarding trees and shrubs, *see* 3-18-27 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 59 Am. Jur. 2d Parks, Squares, and Playgrounds §§ 17, 18.

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

Power to directly regulate or prohibit abutter's access to street or highway, 73 A.L.R.2d 652.

Validity and construction of statute or ordinance requiring land developer to dedicate portion of land for recreational purposes, or make payment in lieu thereof, 43 A.L.R.3d 862.

Fees: power of municipality to charge nonresidents higher fees than residents for use of municipal facilities, 57 A.L.R.3d 998.

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.

62 C.J.S. Municipal Corporations §§ 645 to 650.

3-47-2. Organization of park commission; powers and duties of officers.

A. The park commission shall meet within ten days after the date of the appointment of any new member or members and elect one member president and one member secretary.

B. The park commission shall submit to the governing body for its approval all matters concerning the management, improvement and development of parks.

C. The secretary shall keep a record of activities and meetings of the park commission.

History: 1953 Comp., § 14-48-2, enacted by Laws 1965, ch. 300.

ARTICLE 48
Refuse; Collection and Disposal

3-48-1. Refuse; yard waste; definitions.

As used in Chapter 3, Article 48 NMSA 1978:

A. "refuse" means any garbage, rejected or waste food, offal, swill, carrion, ashes, dirt, slop, waste paper, trash, rubbish, waste or unwholesome material of any kind; and

B. "yard waste" means yard clippings, grass cuttings, yard cleanings, fallen trees, tree limbs, slash and pine needles.

History: 1953 Comp., § 14-49-1, enacted by Laws 1965, ch. 300; 2003, ch. 230, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, substituted "yard waste; definitions" for "definition" in the section heading; substituted "Chapter 3, Article 48 NMSA 1978" for "Sections 14-49-1 through 14-49-7 New Mexico Statutes Annotated, 1953 Compilation" in the introductory paragraph; added the Subsection A designation; and added Subsection B.

Law reviews. — For article, "The New Mexico Solid Waste Act: A Beginning for Control of Municipal Solid Waste in the Land of Enchantment ", *see* 21 N.M.L. Rev. 167 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 455 to 465.

Garbage, validity of municipal regulations as to, 15 A.L.R. 289, 72 A.L.R. 520, 135 A.L.R. 1305, 82 A.L.R.2d 899.

62 C.J.S. Municipal Corporations § 265.

3-48-2. Authority to regulate refuse.

A municipality may, by ordinance:

A. acquire and maintain refuse disposal areas or plants within or without the municipal boundary;

B. enforce a general system of refuse collection and disposal;

C. prohibit the deposit of refuse on either public or private property;

D. compel the taking of refuse to designated places;

E. specify the kind, size and material of a refuse receptacle;

F. provide for the destruction of refuse or its use for a beneficial purpose; and

G. require any person owning or controlling any occupied real property to:

(1) provide and maintain suitable refuse receptacles;

(2) deposit all refuse in the receptacles; and

(3) place a receptacle in a place convenient for removal.

History: 1953 Comp., § 14-49-2, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For powers of removal of municipality regarding dangerous buildings or debris, *see* 3-18-5 NMSA 1978.

For eminent domain power for acquisition of garbage and refuse disposal areas and plants, *see* 3-18-10 NMSA 1978.

For regulation and prohibition of industrial nuisances and nauseous locations, *see* 3-18-13 NMSA 1978 et seq.

For unlawful disposal of refuse, *see* 30-8-4 NMSA 1978.

Authorization for system of garbage collection and disposal. — This section authorizes municipalities to provide for the enforcement of a general system of garbage collection and disposal. City of Hobbs v. Chesport, Ltd., 76 N.M. 609, 417 P.2d 210 (1966).

Ordinance providing for garbage collection and disposal is a health measure. City of Hobbs v. Chesport, Ltd., 76 N.M. 609, 417 P.2d 210 (1966).

Exclusivity of right within municipality's power. — The right of the municipality to the exclusive right of collection and disposal of garbage has been upheld as a proper exercise of the municipality's police or other powers. City of Hobbs v. Chesport, Ltd., 76 N.M. 609, 417 P.2d 210 (1966).

Federal antitrust law. — The city of Albuquerque's monopolization of refuse collection and disposal is valid under state law and protected by the state action exemption to the federal antitrust law. Seay Bros. v. City of Albuquerque, 601 F. Supp. 1518 (D.N.M. 1985).

There is no inconsistency or conflict between 74-1-8A(3) NMSA 1978 and this section. The former gives the board statewide responsibility for environmental management and protection, making the promulgation of regulations and standards by the board in the areas of liquid waste and solid waste sanitation and refuse disposal mandatory. The latter merely gives municipalities the option or discretion to enact ordinances governing the collection and disposal of refuse. New Mexico Mun. League, Inc. v. New Mexico Envtl. Imp. Bd., 88 N.M. 201, 539 P.2d 221 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

Law reviews. — For article, "Rights of New Mexico Municipalities Regarding the Siting and Operation of Privately Owned Landfills", *see* 121 N.M.L. Rev. 149 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Municipal dump, liability of municipality for injury sustained on, 63 A.L.R. 332, 156 A.L.R. 714.

3-48-3. Refuse; authority to collect and dispose; fee.

A. A municipality may, by ordinance, provide for the collection and disposal of refuse by:

(1) the municipality;

(2) contract; or

(3) any other manner deemed suitable by the municipality.

B. A municipality may appoint or contract with a refuse collector and prescribe the duties and compensation of a refuse collector.

C. A municipality may require each person owning or controlling real property to pay a reasonable fee for the collection and disposal of refuse and shall determine if the municipality or the refuse collector shall collect the fee for the collection and disposal of refuse. The refuse collection fee shall only be charged against real property that is occupied or has been previously occupied.

D. A municipality providing for the collection of refuse may require any person owning or controlling real property to pay the refuse collection fee whether or not the refuse collection service is used by the person owning or controlling real property.

E. A municipality providing for the collection and disposal of yard waste may require any person owning or controlling real property to pay a yard waste collection and disposal fee.

History: 1953 Comp., § 14-49-3, enacted by Laws 1965, ch. 300; 2003, ch. 230, § 2.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, deleted "impose a" in the section heading; inserted "refuse collection" preceding "fee shall only" in Subsection C; and added Subsection E.

No deprivation of property without due process. — Property owner was not deprived of his property without due process by being required to pay the assessments. He received benefits in the collection and disposal of garbage from other premises in the community. The problem involved being a health problem, its solution bound defendant as well as other members of the community. City of Hobbs v. Chesport, Ltd., 76 N.M. 609, 417 P.2d 210 (1966).

Collection of fee. — The section does not make collection of the garbage assessment dependent on the actual removal of garbage from the premises. The sum is to be collected from every person. City of Hobbs v. Chesport, Ltd., 76 N.M. 609, 417 P.2d 210 (1966).

Purpose of garbage fee. — The sum to be collected under this section is to "defray the expenses of such garbage collection and disposal." City of Hobbs v. Chesport, Ltd., 76 N.M. 609, 417 P.2d 210 (1966) (decided under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Garbage or rubbish, liability for act of employee engaged in removing, 14 A.L.R. 1473, 32 A.L.R. 988, 52 A.L.R. 187, 60 A.L.R. 101, 156 A.L.R. 692, 714.

3-48-4. Refuse; failure to place in proper container or use refuse collection service; failure to pay charge; assessment.

A. A municipality may remove refuse from real property and make a charge against the real property specially benefited by the removal of the refuse, if:

(1) any person owning or controlling real property allows refuse to be deposited upon his property other than in the proper receptacle and fails to remove the refuse or to place the refuse in the proper receptacle within forty-eight hours after the refuse is deposited on the real property; or

(2) the owner owning or controlling real property refuses to use the refuse collection service provided by the municipality.

B. If any person, owning or controlling the real property, fails or refuses to pay:

(1) the charge imposed for the collection and disposal of refuse; or

(2) the charge made against the real property specially benefited by the removal of refuse, the municipality may make an assessment against the real property.

History: 1953 Comp., § 14-49-4, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Conditions for assessment. — Assessments are permitted in two situations: (1) upon the failure to pay the amount provided by ordinance for the removal of the garbage, and (2) when garbage is not placed in proper receptacles within 48 hours after it is thrown, left or deposited on the premises and the municipality performs a special clean-up or pick-up service. City of Hobbs v. Chesport, Ltd., 76 N.M. 609, 417 P.2d 210 (1966).

Cost of removal. — While this section refers to the cost of removal, this means the expenses of garbage collection and disposal. City of Hobbs v. Chesport, Ltd., 76 N.M. 609, 417 P.2d 210 (1966).

Conditions for assessment against property. — This section provides two circumstances under which an assessment can be made against property: (1) where a person owning or controlling the property shall fail or refuse to pay the amount required to be paid for the removal of garbage, and (2) where garbage is left or deposited on premises, and such person refuses to remove the same within 48 hours after it has been left on the premises. If either of these events occur, an assessment can be made against the property which eventually will mature into a lien against such property. 1955-56 Op. Att'y Gen. No. 56-6421 (issued under prior law).

3-48-5. Refuse; assessment roll; publication of notice of hearing.

A. To collect the assessment authorized in Section 3-48-4 NMSA 1978, the governing body shall have prepared an assessment roll. The assessment roll shall list, in columns:

(1) the name of the owner, if known, of the parcel of real estate being assessed;

(2) a description of the parcel of real estate being assessed;

(3) the amount assessed against each parcel of real estate; and

(4) describe, in general terms, the removal and what was removed from the real estate being assessed.

B. The municipal clerk shall publish a notice stating that the assessment roll for delinquent refuse collection charges due the municipality is on file in the office of the municipal clerk and the time and place when the governing body will hear appeals or protests by any person aggrieved by the assessment. The notice shall be published once not less than ten nor more than twenty days before the day of the protest hearing. If the address of the owner of the real property is known, a copy of the notice shall be mailed by certified mail, return receipt requested, to the known address of the owner of the real property being assessed.

C. The provisions of this section are intended to afford an additional and not an exclusive method for enforcing payment of charges for refuse collection furnished by the municipality.

History: 1953 Comp., § 14-49-5, enacted by Laws 1965, ch. 300; 1967, ch. 146, § 9; 1981, ch. 92, § 1.

ANNOTATIONS

Cross references. — For assessment of fees for county refuse collection, *see* 4-56-3 NMSA 1978.

Severability clauses. — Laws 1981, ch. 92, § 2, provided for the severability of the act if any part or application thereof is held invalid.

3-48-6. Refuse; protest meeting; confirmation; finality.

A. At the protest hearing authorized in Section 3-48-5 NMSA 1978, any interested person may protest to the governing body the:

(1) regularity of the proceedings;

(2) amount assessed against the real estate; or

(3) correctness of the amount of the assessment.

B. The governing body shall:

(1) determine the regularity of the proceedings;

(2) correct any errors found in the assessment; and

(3) by resolution, confirm the proceedings and the assessments. The proceedings and assessments so confirmed shall be deemed to be the final determination as to the regularity, validity and correctness of the assessment.

History: 1953 Comp., § 14-49-6, enacted by Laws 1965, ch. 300.

3-48-7. Refuse; delinquent assessments; penalty; lien; foreclosure.

On or before October 1, of each year, the municipal clerk shall certify to the governing body a list containing any delinquent assessment with penalty added for nonpayment of the assessment at the rate of one percent per month of any assessment confirmed by resolution as provided in Section 3-48-6 NMSA 1978, and describe the parcel of real estate to which the assessment is applicable. After the certified list is accepted by the governing body, the assessment shall be a lien, when processed, against the parcel of real estate and shall be processed as provided in Sections 3-36-1 to 3-36-5 NMSA 1978. Any such lien shall be a lien superior to all other liens except general property taxes upon the property so charged and a personal liability of the owner of the property so charged.

History: 1953 Comp., § 14-49-7, enacted by Laws 1965, ch. 300; 1967, ch. 146, § 10.

ARTICLE 49
Streets, Sidewalks and Public Grounds

3-49-1. Streets; sidewalks; curbs and gutters; public grounds.

A municipality may lay out, establish, open, vacate, alter, repair, widen, extend, grade, pave or otherwise improve streets; including, but not necessarily limited to median and divider strips, parkways and boulevards; alleys, avenues, sidewalks, curbs, gutters and public grounds, and may:

A. regulate their use and use of structures under them;

B. prohibit and remove encroachments or obstructions on them;

C. provide for their lighting, cleaning, beautification, landscaping and maintenance;

D. regulate their opening or repair;

E. require the owner or occupant of any premise to keep the sidewalk, along the premise, free from any snow or other obstruction;

F. regulate and prohibit the throwing or depositing of any offensive matter on them;

G. prohibit injury to them;

H. provide for and regulate crosswalks, curbs and gutters;

I. regulate and prohibit their use for signs, signposts, awnings, awning posts, telegraph poles, horse troughs, posting handbills and advertisements;

J. regulate and prohibit the exhibition or carrying of banners, placards, advertisements or handbills in the streets or upon the sidewalks;

K. regulate and prohibit the flying of banners, flags or signs across the streets or from houses;

L. regulate traffic and sales upon streets, sidewalks and public places;

M. regulate the numbering of lots and houses;

N. name and change the name of any street, alley, avenue or other public place; and

O. with the written consent of the owner, regulate the speed and traffic conditions on private property.

History: 1953 Comp., § 14-50-1, enacted by Laws 1965, ch. 300; 1967, ch. 90, § 2.

ANNOTATIONS

Cross references. — For definition of "public ground", *see* 3-1-2 NMSA 1978.

For definition of "street", *see* 3-1-2 NMSA 1978.

For annexation to include streets, *see* 3-7-18 NMSA 1978.

For adoption of traffic code by reference in ordinance, *see* 3-17-6 NMSA 1978.

For eminent domain power for laying out, opening and widening streets, alleys and highways, *see* 3-18-10 NMSA 1978.

For regulation or prohibition of nuisances, *see* 3-18-17 NMSA 1978.

For regulatory powers of municipality regarding railroads and street railroads, *see* 3-18-21 NMSA 1978.

For platting of street lines by planning commission, *see* 3-19-7 NMSA 1978.

For streets and alleys in subdivisions, *see* 3-20-4 NMSA 1978.

For street improvement fund, *see* 3-34-1 NMSA 1978 et seq.

For the Tort Claims Act, *see* 41-4-1 NMSA 1978 et seq.

For authorization to grant use of streets to railroads, *see* 63-2-8 NMSA 1978.

Traffic regulations on private property. — Although the legislature has enacted legislation specifically authorizing municipalities to regulate the speed and traffic conditions within the municipality, the power of a municipality to control such activities on private property is contingent or subject to the municipality first obtaining the written consent of the property owner. City of Rio Rancho v. Young, 119 N.M. 324, 889 P.2d 1246 (Ct. App.), cert. denied, 119 N.M. 311, 889 P.2d 1233 (1995).

A municipality does not have the authority to enforce a municipal DWI ordinance on private property without the written consent of the property owner. City of Las Cruces v. Rogers, 2009-NMSC-042, 146 N.M. 790, 215 P.3d 728.

Where a police officer followed defendant into the parking lot of a convenience store on the suspicion that defendant was intoxicated; the officer stopped defendant as defendant was preparing to leave the parking lot; defendant was arrested for violating a municipal DWI ordinance; the parking lot was private property; and the owner of the property had not given express written consent to the municipality to enforce the municipality's DWI ordinance within the property, the district court did not err in dismissing the DWI complaint against defendant. City of Las Cruces v. Rogers, 2009-NMSC-042, 146 N.M. 790, 215 P.3d 728.

Delegation of police power. — Power to regulate use of streets is a delegation of the police power of the state government and whatever reasonably tends to make regulation effective is a proper exercise of that power. City of Roswell v. Mitchell, 56 N.M. 201, 242 P.2d 493 (1952).

Regulation by state transportation commission. — Statutory powers given to cities and towns do not give such municipalities absolute control over existing streets and proposed roads to the exclusion of the state highway commission [state transportation commission]. Gallegos v. Conroy, 38 N.M. 154, 29 P.2d 334 (1934).

Control of public highways within municipality. — If exclusive control of all streets within the city limits was given to the city under this section, it was revoked by 67-3-12 NMSA 1978 with respect to public highways located within the limits of the municipality. State ex rel. State Hwy. Comm'n v. Ford, 74 N.M. 18, 389 P.2d 865 (1964).

Widening state highway. — A municipal ordinance, relative to widening a portion of state highway going through city and prohibiting parking on such portion of the highway, which was enacted following the execution of a cooperative agreement between the city

and state highway department was not void as a bartering away of the exercise of city's police power. Farnsworth v. City of Roswell, 63 N.M. 195, 315 P.2d 839 (1957).

Duty of counties. — The duty to maintain and keep public highways in repair is that of the respective counties in which the highways are located, except for highways and streets in municipalities and state highways. Sanchez v. Bd. of Cnty. Comm'rs, 81 N.M. 644, 471 P.2d 678 (Ct. App.), cert. denied, 81 N.M. 668, 472 P.2d 382 (1970).

Liability of municipality regarding regulating use of streets. — Regulating the use of streets by a municipality involves governmental and not corporate functions. There is no liability on the part of the municipality for an omission of duty in this respect, unless such liability is imposed by statute. Hammell v. City of Albuquerque, 63 N.M. 374, 320 P.2d 384 (1958).

Liability of municipality to keep streets and sidewalks in safe condition. — A municipality is under a legal duty to keep its streets and sidewalks in a reasonably safe condition for the use of the public, and for the negligent failure to perform this duty it is liable in tort to a person thereby injured. Hammell v. City of Albuquerque, 63 N.M. 374, 320 P.2d 384 (1958).

Regulation of parking. — A city has the power to regulate parking, even to the extent of prohibiting it in a proper case. Farnsworth v. City of Roswell, 63 N.M. 195, 315 P.2d 839 (1957).

A no parking regulation normally represents an exercise by a municipality of its police power and it is a reasonable regulation. Farnsworth v. City of Roswell, 63 N.M. 195, 315 P.2d 839 (1957).

Parking meter ordinance. — Where parking meter ordinance was enacted primarily as a traffic regulation and not for the revenue incidental thereto, the ordinance was not unconstitutional or otherwise invalid because, incidentally, the city's receipts of money was increased. City of Roswell v. Mitchell, 56 N.M. 201, 242 P.2d 493 (1952).

Improvements. — City council has the power to plant shade trees, sprinkle the streets and erect drinking fountains, or otherwise improve the streets within its limits. Water Supply Co. v. City of Albuquerque, 17 N.M. 326, 128 P. 77 (1912).

Special assessments to pay cost of curbing. — The authority to establish and improve the streets granted city councils and boards of trustees, and to provide for and regulate crosswalks, curbs and gutters, did not grant the right, either expressly or by necessary implication, to levy a special assessment upon abutting owners to pay the cost of curbing a street. Town of Albuquerque v. Zeiger, 5 N.M. 674, 27 P. 315 (1891).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 39 Am. Jur. 2d Highways, Streets, and Bridges §§ 273 to 310, 356.

Sickness due to condition of street, liability for, 1 A.L.R. 355.

"Owner," scope and import of term in statutes relating to change of grade of streets or highways, 2 A.L.R. 788, 95 A.L.R. 1085.

Surface water along natural drainage, right to hasten by improvement of street or highway the flow of, 5 A.L.R. 1530, 36 A.L.R. 1463.

Sale of goods, abutting owner's right to use street, including sidewalk, for, 6 A.L.R. 1314.

Cellar or vault under highway, liability of city permitting abutting owner to maintain, for flooding thereof, 7 A.L.R. 650.

Lateral support, liability of municipality for injury to, in grading street, 7 A.L.R. 806, 38 A.L.R. 19, 44 A.L.R. 1494.

Building materials in street, placed there under a permit authorizing the construction, alteration, repair or demolishing of a building or its appurtenances, liability of municipality for injuries to children, 11 A.L.R. 1362.

Weeds, clearing alley of, nonliability, 14 A.L.R. 1473, 32 A.L.R. 988, 52 A.L.R. 187, 60 A.L.R. 101, 156 A.L.R. 692, 714.

Trespass by independent contractor performing work on highway, 18 A.L.R. 863.

Advertising matter, validity and construction of statute or ordinance relating to distribution of, 22 A.L.R. 1484, 114 A.L.R. 1446.

Tax on automobile or its use for cost of road or street construction improvement or maintenance, 24 A.L.R. 937, 68 A.L.R. 200.

Drowning of child in pond created by failure to provide drainage in constructing highway embankment, 40 A.L.R. 488.

Sign or billboard, liability for injuries due to fall of, as affected by failure to enact or enforce ordinance, 45 A.L.R. 803.

Coasting in street, liability for injury incident to, 46 A.L.R. 1434.

Constitutionality of statute or ordinance imposing upon abutting owners or occupants duty in respect of care or condition of street or highway, 58 A.L.R. 215.

Traffic regulations, failure of municipality to adopt, or to enforce, as ground of its liability for damage to property or person, 92 A.L.R. 1495, 161 A.L.R. 1404.

Nursery, quarry, gravel pit, implied power of municipality to operate for production of materials needed for carrying out powers expressly conferred upon it, 104 A.L.R. 1342.

Coasting, effect of ordinance against on right to recover for injury while coasting in street, 109 A.L.R. 942.

Sound trucks or other forms of advertising by vehicles in streets or highways, 121 A.L.R. 977.

Alteration or relocation of street or highway as discontinuance of part not included, 158 A.L.R. 543.

Vacation or discontinuance of street or highway, necessity for adhering to statutory procedure described for, 175 A.L.R. 760.

Off-street public parking facilities, 8 A.L.R.2d 373.

Taxicab or hack stands, validity of statute, ordinance or regulation abolishing or forbidding granting of exclusive rights or franchise to, 8 A.L.R.2d 574.

Loudspeakers: public regulation and prohibition of sound amplifiers or loudspeaker broadcasts in streets, 10 A.L.R.2d 627.

Validity and construction of regulations as to subdivision maps or plats, 11 A.L.R.2d 524.

Negligence of building or construction contractor as ground of liability upon his part for injury or damage to third person occurring after completion and acceptance of the work, 13 A.L.R.2d 191.

Liability for injury resulting from swinging door, 16 A.L.R.2d 1161.

Explosion or burning of substance stored by third person under municipal permit, municipal duty to keep street safe as basis for liability for injury or damage from, 17 A.L.R.2d 683.

Lighting: liability of municipal corporation for injury or death occurring from defects in or negligence in construction, operation, or maintenance of its electric street-lighting equipment, apparatus, and the like, 19 A.L.R.2d 344.

Cave-in or landslide, liability for injury to or death of child caused by, 28 A.L.R.2d 195.

Detour around obstruction, duty of highway construction contractor to provide, 29 A.L.R.2d 876.

Weeds and the like, tort liability of municipality in connection with destruction of, 34 A.L.R.2d 1210.

Grade of highway, interest on damages for change in, 36 A.L.R.2d 337.

Liability for injury to or death of child caused by burning from hot ashes, cinders, or other hot waste material, 42 A.L.R.2d 930.

Barriers for protection of adult pedestrians who may unintentionally deviate from street or highway into marginal or external hazards, duty and liability of municipality as regards, 44 A.L.R.2d 633.

Construction or improvement work, liability of municipality for failure to erect warnings to traffic against entering or using street which is partially barred or obstructed by, 52 A.L.R.2d 689.

Billboards and outdoor advertising, municipal power as to, 58 A.L.R.2d 1314.

Paint or oil deliberately placed upon surface of street, liability of municipal corporation to person injured in fall because of slippery substance such as, 81 A.L.R.2d 1194.

Snow and ice, statute or ordinance requiring abutting owner or occupant to remove from sidewalk as affecting liability for injuries, 82 A.L.R.2d 998.

Traffic rules, street or highway intersection within, 7 A.L.R.3d 1204.

Sale of merchandise on streets, authorization, prohibition, or regulation by municipality of, 14 A.L.R.3d 896.

Power of municipal corporation to limit exclusive use of designated lanes or streets to buses and taxicabs, 43 A.L.R.3d 1394.

Estoppel of municipality as to encroachments upon public streets, 44 A.L.R.3d 257.

Design: liability of governmental entity or public officer for personal injury or damages arising out of vehicular accident due to negligent or defective design of highway, 45 A.L.R.3d 875, 58 A.L.R.4th 559.

Widening of city street as local improvement justifying special assessment of adjacent property, 46 A.L.R.3d 127.

Advertising structures: validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway, 81 A.L.R.3d 564.

Private improvement of land dedicated but not used as street as estopping public rights, 36 A.L.R.4th 625.

Liability of governmental entity for damage to motor vehicle or injury to person riding therein resulting from collision between vehicle and domestic animal at large in street or highway, 52 A.L.R.4th 1200.

Construction and effect of "changed conditions" clause in public works or construction contract with state or its subdivision, 56 A.L.R.4th 1042.

Governmental tort liability for injury to roller skater allegedly caused by sidewalk or street defects, 58 A.L.R.4th 1197.

Legal aspects of speed bumps, 60 A.L.R.4th 1249.

Highway contractor's liability to highway user for highway surface defects, 62 A.L.R.4th 1067.

Liability for diversion of surface water by raising surface level of land, 88 A.L.R.4th 891.

Governmental tort liability for detour accidents, 1 A.L.R.5th 163.

Applicability, to operation of motor vehicle on private property, of legislation making drunken driving a criminal offense, 52 A.L.R. 5th 655.

Liability of owner, operator, or other parties, for personal injuries allegedly resulting from snow or ice on premises of parking lot, 74 A.L.R.5th 49.

Modern status of rules regarding tort liability of building or construction contractor for injury or damage to third person occurring after completion and acceptance of work; "foreseeability" or "modern" rule, 75 A.L.R.5th 413.

63 C.J.S. Municipal Corporations §§ 1042 to 1048, 1057; 64 C.J.S. Municipal Corporations § 1653 et seq.

3-49-2. Straightening or altering streets; exchange of street land for land on new route; consent of owner; deeds.

Whenever it is necessary to straighten or alter any street to facilitate traffic, the governing body may:

A. with the consent of the owner, exchange the land on which the street lies for any land owned and held in fee simple;

B. convert the land received from the owner in fee simple to a street; and

C. execute a deed to the land on which the street lies to the owner who has exchanged his land with the municipality for the land on which the street lies.

History: 1953 Comp., § 14-50-2, enacted by Laws 1965, ch. 300.

3-49-3. Street sprinkling and maintenance; assessment; lien for assessment.

A. Whenever the governing body determines that the streets shall be watered or maintained in whole or in part at the expense of the owner of any property which abuts upon the streets, the governing body shall determine:

(1) the expense of watering or maintaining the streets;

(2) the proportion of the expense to be borne by the owner of property which abuts upon the streets;

(3) the charge to be assessed against each lineal foot of frontage of the abutting property; and

(4) assess, according to its frontage, each tract or parcel of abutting property its proportionate share of the expense of watering or maintaining the streets.

B. The assessment for the expense of watering or maintaining the streets shall be collected as authorized in Section 3-23-1 NMSA 1978, and shall be a lien against the tract or parcel of property abutting the street and the lien shall be enforced as provided in Sections 3-36-1 through 3-36-5 NMSA 1978.

C. As used in this section the term "streets" shall include both improved and unimproved streets, alleys, parkways, boulevards, thoroughfares, and median and divider strips, or any combination of the foregoing.

History: 1953 Comp., § 14-50-3, enacted by Laws 1965, ch. 300; 1967, ch. 90, § 3.

ANNOTATIONS

Basis for assessment. — Property owner is to be assessed on how much property he owns that abuts on the street; he is not to pay a flat fee. 1967 Op. Att'y Gen. No. 67-10.

Assessment against school district. — There is no authority for the municipality to make an assessment against a school district to pay the cost of watering or maintaining the streets. This does not mean that a school district which has benefited from street sprinkling and maintenance may not budget and pay for such services when they are rendered by a municipality pursuant to this section. 1970 Op. Att'y Gen. No. 70-03.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Highways, Streets and Bridges § 87; 70A Am. Jur. 2d Special or Local Assessments § 43.

Liability for act of employee engaged in sprinkling or cleaning streets, 14 A.L.R. 1473, 32 A.L.R. 988, 52 A.L.R. 187, 60 A.L.R. 101, 156 A.L.R. 692, 714.

Liability for injury or damage due to sprinkling of street, 51 A.L.R. 575, 156 A.L.R. 692.

63 C.J.S. Municipal Corporations § 1307.

3-49-4. Sidewalks; repairing; improving; constructing.

A. If the governing body determines that it is necessary to repair, improve or construct a sidewalk fronting an individual tract or parcel of land, the governing body shall adopt a resolution requiring that a sidewalk be repaired, improved or constructed in conformity with the existing sidewalk standards adopted by the municipality.

B. A copy of the resolution shall be served by certified mail at his last known address on the owner or agent in charge of the tract or parcel of land which is contiguous to the sidewalk. If the owner, as shown by the real estate records of the county clerk or agent in charge of the building, structure or premise cannot be served as provided in this subsection, a copy of the resolution shall be posted on the building, structure or tract or parcel of land which is contiguous to the sidewalk and a copy of the resolution shall be published one time.

C. Within fifteen days of the receipt of a copy of the resolution or of the posting and publishing of a copy of the resolution, the owner or agent in charge of the building, structure or premise shall commence repairing, improving or constructing a sidewalk, or file a written objection with the municipal clerk asking for a hearing before the governing body of the municipality.

D. If a written objection is filed as required in this section, the governing body shall:

(1) fix a date for a hearing on its resolution and the objection;

(2) consider all evidence for and against the sidewalk resolution at the hearing; and

(3) determine if its resolution should be enforced or rescinded.

E. Any person aggrieved by the determination of the governing body may appeal to the district court by:

(1) giving notice of appeal to the governing body within five days after the determination made by the governing body; and

(2) filing a petition in the district court within twenty days after the determination made by the governing body. The district court shall hear the matter de novo and enter judgment in accordance with its findings.

F. If the owner or agent in charge of the tract or parcel of land which is contiguous to the sidewalk fails to commence repairing, improving or constructing the sidewalk:

(1) within fifteen days of being served a copy of the resolution or of the posting and publishing of the resolution if no written objection is filed;

(2) within five days of the determination by the governing body that the resolution shall be enforced if no appeal is taken; or

(3) after the district court enters judgment sustaining the determination of the governing body, the municipality may repair, improve or construct the sidewalk at the cost and expense of the owner. The reasonable cost of the repair, improvement or construction shall constitute a lien against the tract or parcel of land which is contiguous to the sidewalk. The lien shall be foreclosed in the manner provided in Sections 3-36-1 through 3-36-5 NMSA 1978.

G. If, within twenty days of the receipt of the final order, the owner of the tract or parcel of land which is contiguous to the sidewalk fails to repair, improve or reconstruct the sidewalk as required in the notice, the owner of the tract or parcel of land contiguous to the sidewalk is liable for any injury received by any person which injury is proximately caused by the negligence of such owner pertaining to such faulty repair, construction or maintenance of the sidewalk and the municipality is not liable.

History: 1953 Comp., § 14-50-4, enacted by Laws 1967, ch. 240, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1967, ch. 240, § 1, repealed 14-50-4, 1953 Comp., relating to repairing, improving and constructing sidewalks, and enacted the above section.

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

For scope of review of the district court, *see* Zamora v. Vill. of Ruidoso Downs, 120 N.M. 778, 907 P.2d 182 (1995).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Earth or mud: liability of municipal corporation to pedestrian for slippery condition of sidewalk caused by deposits of earth or mud thereon, 16 A.L.R.2d 1290.

Liability for injury on parking or strip between sidewalk and curb, 19 A.L.R.2d 1053, 98 A.L.R.3d 439.

Snow and ice on sidewalk, municipal liability for injuries from, 39 A.L.R.2d 782.

Concurring conditions: liability of municipality for injury resulting from slippery condition of walk concurring with defects therein, 41 A.L.R.2d 739.

Rope or clothesline across sidewalk, municipal liability for injury or death from collision with, 75 A.L.R.2d 565.

Deliberate act: liability of municipal corporation to person injured in fall because of slippery substance such as paint or oil deliberately placed on surface of street or sidewalk, 81 A.L.R.2d 1194.

Bicycle, tricycle, or similar vehicle, liability of municipality for injury or death from defects or obstructions in sidewalk to one riding thereon, 88 A.L.R.2d 1423.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from defect or obstruction on roadside parkway or parking strip, 98 A.L.R.3d 439.

63 C.J.S. Municipal Corporations, § 1048.

3-49-5. Streets; public grounds; water systems; sewers; sidewalks; assessments.

A. For the purpose of Sections 3-49-1 and 3-53-1 NMSA 1978, a municipality may:

(1) open, construct, repair, keep in order and maintain water mains, laterals, reservoirs, standpipes, sewers and drains; and

(2) assess and collect as other assessments and collections are made the amount necessary to cover the cost of such work.

B. The assessment against the lot or land along or through which the street, alley, sidewalk or public ground runs shall be made in such portion as is just and equitable according to the benefits accruing to the lot or land and to its value.

History: 1953 Comp., § 14-50-5, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For power of municipality to open, construct, repair, keep in order and maintain water mains, laterals, reservoirs, standpipes, sewers and drains, *see* 3-18-25 NMSA 1978.

For water facilities, *see* 3-27-1 NMSA 1978 et seq.

ARTICLE 50
Municipal Parking

3-50-1. Municipal Parking Law; short title.

Sections 3-50-1 through 3-50-22 NMSA 1978, may be cited as the "Municipal Parking Law."

History: 1953 Comp., § 14-51-1, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For improvement district for construction of parking facilities, *see* 3-33-4, 3-33-5 NMSA 1978.

For the Greater Municipality Parking Law, *see* 3-51-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 271 to 284; 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 214, 442.

Off-street public parking facilities, municipal establishment or operation of, 8 A.L.R.2d 373.

Regulation and licensing of privately owned parking places, 29 A.L.R.2d 856.

Parking facility proprietor's liability for criminal attack on patron, 49 A.L.R.4th 1257.

60 C.J.S. Motor Vehicles § 28.

3-50-2. Finding and declaration of necessity.

It is hereby declared:

A. that there exists in cities in the state of New Mexico serious conditions of congestion of street traffic, preventing free circulation of traffic, obstructing access to and use of both public and private property, increasing traffic hazards, impeding rapid and effective fighting of fires and the disposition of police forces and endangering the public peace, health and safety;

B. that this condition is caused in substantial part by insufficiency of space or accommodations for the parking of motor vehicles off the public streets;

C. that the installation of parking meters and the establishment of additional parking facilities, together with all undertakings incidental or advantageous thereto for the improvement of traffic control and regulation, are public uses and purposes for which public money may be spent and private property acquired;

D. that it is in the public interest that work on projects for such purposes be commenced as soon as possible in order to relieve traffic congestion; and the necessity in the public interest for the provisions hereinafter enacted, is hereby declared as a matter of legislative determination.

History: 1953 Comp., § 14-51-2, enacted by Laws 1965, ch. 300.

3-50-3. Definitions.

As used in the Municipal Parking Law:

A. "city" means any municipality having a population of five thousand or more. "The city" means the particular city for which a particular authority is created;

B. "authority" or "parking authority" means any agent or agency of a city created pursuant to the Municipal Parking Law;

C. "governing body" means, in the case of a city, that body in which the legislative powers of the city are vested;

D. "bonds" means any obligation issued by a city pursuant to the Municipal Parking Law;

E. "obligee" includes any bondholder, trustee or trustees for any bondholders, or lessor demising to the authority or city property used in connection with a parking facility or any assignee or assignees of such lessor's interest, or any part thereof, and the state or the United States or any agency of either, when a party to any contract with an authority or city by which aid or a loan is given or made to the city;

F. "project" means any acquisition, improvement, construction or undertaking of any kind authorized in the Municipal Parking Law;

G. "ordinance" means ordinance or resolution which may be passed, adopted or entered into by the governing body of a city;

H. "parking facilities" means any space on the streets or off the streets used for the purpose of parking motor vehicles, and includes buildings erected above or below the land when used for the purpose of increasing accommodations for parking motor vehicles;

I. "federal government" includes the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America; and

J. "real property" includes all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years.

History: 1953 Comp., § 14-51-3, enacted by Laws 1965, ch. 300.

3-50-4. Creation of parking authorities.

Every city, in addition to other powers conferred by the Municipal Parking Law, shall have power and may by proper ordinance of its governing body:

A. create as an agent of the city, an authority to be known as the "parking authority" of the city;

B. delegate to said authority any or all of the powers conferred on the city by the Municipal Parking Law, except the power to issue bonds and purchase real property; and

C. prescribe the number of members of said authority, the term of office of said members, their appointment and removal and the powers, rights and duties which they shall have and exercise. Said ordinance shall provide that the authority shall file with the governing body of the city, a detailed report of all its transactions, including a statement of all revenues and expenditures at quarterly, semiannual or annual intervals as the governing body may prescribe.

History: 1953 Comp., § 14-51-4, enacted by Laws 1965, ch. 300.

3-50-5. Powers of city.

Every city, in addition to other powers conferred by the Municipal Parking Law, shall have power, and it is hereby authorized:

A. to purchase and install, maintain, regulate, operate and manage parking meters and parking spaces upon the streets of said city;

B. to purchase, acquire, lease, rent, construct, reconstruct, improve, alter, repair, maintain, operate and manage parking facilities for the parking of motor vehicles off the public streets together with public rights-of-way necessary or convenient therefor, including the leasing of the operation thereof, and including the leasing of a portion of the space at any such parking facility to private operators for commercial purposes, such as gasoline service stations, which are directly related to the operation of such parking facility when in the judgment of the governing body it is convenient or necessary to permit such leasing in order to utilize the balance of the property as a parking facility;

C. to purchase, acquire by gift, grant, bequest or devise or otherwise, any real or personal property or any interest therein, together with the improvements thereon, to be used as parking facilities or incident thereto;

D. to insure or provide for the insurance of any parking facility established by the city against such risks and hazards as the city may deem advisable;

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, a parking facility project;

F. to acquire by the exercise of the power of eminent domain any real property which it deems necessary for its purposes under the Municipal Parking Law after the adoption by it of a resolution declaring that its acquisition is necessary for such purposes. This power shall be exercised in the manner provided by any applicable statutory provisions and laws of the state of New Mexico and acts amendatory thereof or supplementary thereto. Title to property so acquired shall be taken in the name of the city; provided, however, that no existing parking facility shall be acquired by the exercise of the power of eminent domain unless the project to be furnished or constructed by the city will encompass a parking facility not less than three times the area of the existing parking facility and unless the owner or lessor of the existing parking facility shall refuse to furnish or construct a parking facility not less than three times its present area;

G. to sell, lease, exchange, transfer, assign or otherwise dispose of any real or personal property, or any interest therein acquired for the purpose of the Municipal Parking Law;

H. to do any act in order to furnish motor vehicle parking space and to establish parking facilities for motor vehicles parked within the city and to handle and care for any such vehicles parked within any parking space owned, controlled or operated by the city;

I. to receive, control, invest, order the expenditure of, any and all moneys and funds pertaining to parking facilities and parking meters, or related properties;

J. to exercise all or any part or combination of the powers herein granted; and

K. to do and perform any and all other acts and things necessary, convenient, desirable or appropriate to carry out the provisions of the Municipal Parking Law.

History: 1953 Comp., § 14-51-5, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For condemnation proceedings, *see* 42A-1-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7A Am. Jur. 2d Automobiles and Highway Traffic § 281.

Installation or operation of parking meters as within governmental immunity from tort liability, 33 A.L.R.2d 761.

Permissible use of funds from parking meters, 83 A.L.R.2d 625.

Pledging parking-meter revenues as unlawful relinquishment of governmental power, 83 A.L.R.2d 649.

3-50-6. Interested officers and employees.

It is declared to be against public policy for any officer or employee of a city to acquire any interest direct or indirect in any parking facilities or related properties or any commercial enterprise connected or incidental thereto, or to have any interest direct or indirect in any contract or proposed contract related to or affecting parking facilities, unless said officer or employee shall first disclose the same in writing to the governing body of the city. Such disclosures shall be entered upon the minutes of the governing body of the city. Upon such disclosure, such officer or employee shall not participate in any action by the city affecting such property or contract. The failure so to disclose such interest shall constitute misconduct in office, and the governing body may take such action with reference to any such contract or interest as it may deem advisable. Any such contract or interest shall be void at the election of the governing body.

History: 1953 Comp., § 14-51-6, enacted by Laws 1965, ch. 300.

3-50-7. Planning, zoning and building laws.

All parking facilities of the city shall be subject to planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the parking facility is situated.

History: 1953 Comp., § 14-51-7, enacted by Laws 1965, ch. 300.

3-50-8. Lease of parking facilities; bids.

If a city desires to lease any project acquired by it under the provisions of the Municipal Parking Law, it shall do so by publication of notice and award to the highest responsible bidder. The governing body shall by ordinance prescribe the method of giving notice inviting bids. The notice shall distinctly and specifically describe the project and the facilities in connection therewith which are to be leased, the period of time for which the project is to be leased and the minimum rental to be paid under the lease. The governing body may reject any and all bids presented, and readvertise.

History: 1953 Comp., § 14-51-8, enacted by Laws 1965, ch. 300.

3-50-9. Power to issue bonds.

A city shall have power to issue bonds from time to time in its discretion to finance in whole or in part the cost of the preparation, acquisition, purchase, lease, construction, reconstruction, improvement, alteration, extension or repair of any project hereunder and including the acquisition, installation and maintenance of parking meters. A city shall also have the power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it hereunder.

History: 1953 Comp., § 14-51-9, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 C.J.S. Municipal Corporations § 1902 et seq.

3-50-10. Liability on bonds.

Neither the governing body of a city nor any person executing the bonds shall be liable personally on any bonds by reason of the issuance thereof hereunder. The bonds issued under the provisions of the Municipal Parking Law shall be payable solely from the sources provided in Section 3-50-11 NMSA 1978. Such bonds shall not be a debt, liability or general obligation of the city issuing them, and they shall so state on their face. The bonds shall not constitute a debt or indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction.

History: 1953 Comp., § 14-51-10, enacted by Laws 1965, ch. 300.

3-50-11. Types of bonds; sources from which payable.

In order to carry out the purposes of the Municipal Parking Law, a city may issue upon proper resolution, such types of bonds as it may determine, including bonds on which the principal and interest are payable:

A. from the income and revenues of the projects financed with the proceeds of such bonds; or

B. from such income and revenues, together with financial assistance from the state or federal government in aid of such projects; or

C. from the income and revenues of certain designated parking facilities whether or not they were financed in whole or in part with the proceeds of such bonds; or

D. from any contributions, grants or other financial assistance from the state or federal government or from any other source; or

E. from parking meter revenues of the city which may be appropriated by the governing body of the city; or

F. by any combination of these methods. Any such bonds may be additionally secured by a pledge of any parking meter revenues. The governing body of a city may pledge or allocate such parking meter revenues or special taxes for periods of years for the financing or operation of any project authorized by the Municipal Parking Law and the payment of principal and interest on all or any type of bond issued and outstanding pursuant to the Municipal Parking Law, until all of such bonds have been fully paid.

History: 1953 Comp., § 14-51-11, enacted by Laws 1965, ch. 300.

3-50-12. Form and sale of bonds.

Bonds of a city issued hereunder, shall be authorized by its resolution and may be issued in any one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, not exceeding six percent per annum, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution, its trust indenture, or the bonds so issued may provide.

The bonds shall be sold for cash at not less than par at either public or private sale.

In case any of the officers of the city whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes, the same as if such officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding any bonds issued pursuant to the Municipal Parking Law shall be fully negotiable.

In any suit, action or proceedings involving the validity or enforceability of any bond of a city or the security therefor, any such bond reciting in substance that it has been issued by the city to aid in financing a parking facility project to provide additional facilities for parking motor vehicles off the public streets shall be conclusively presumed to have been issued for a parking facility project of such character, and said project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of the Municipal Parking Law.

History: 1953 Comp., § 14-51-12, enacted by Laws 1965, ch. 300.

3-50-13. Provisions of bonds and trust indentures.

In connection with the issuance of bonds pursuant to the Municipal Parking Law or in the incurring of obligations under leases made pursuant to the Municipal Parking Law,

and in order to secure the payment of such bonds or obligations, a city in addition to its other powers, shall have power:

A. to pledge all or any part of the gross or net rents, fees or revenues of a parking facility project, financed with the proceeds of such bonds, to which its rights then exist or may thereafter come into existence;

B. to covenant against pledging all or any part of the rents, fees and revenues, or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any parking facility project or any part thereof; and to covenant as to what other or additional debts or obligations may be incurred by it;

C. to covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof;

D. to covenant as to the rents and fees to be charged in the operation of a parking facility project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves or other purposes, and to covenant as to the use and disposition of the moneys held in such funds;

E. to covenant and agree on its part as it deems necessary and advisable for the better security of the bonds issued thereunder including a pledge of the project;

F. to prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

G. to covenant as to the use of any or all of its real or personal property acquired pursuant to the Municipal Parking Law, and to covenant as to the maintenance of such real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys;

H. to covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which such declaration and its consequences may be waived;

I. to vest in a trustee or trustees or the holders of bonds issued pursuant to the Municipal Parking Law, or any specified proportion of them, the right to enforce the

payment of such bonds or any covenants securing or relating to such bonds; to vest in a trustee or trustees the rights, in the event of a default by said city, to take possession of any parking facility project or part thereof, and, so long as the city shall continue in default, to retain such possession and use, operate and manage said project, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the city with such trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or the holder of bonds, or any proportion of them, may enforce any covenant or rights securing or relating to such bonds; and

J. to exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character; to make such covenants as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

History: 1953 Comp., § 14-51-13, enacted by Laws 1965, ch. 300.

3-50-14. Construction of bond provisions.

The Municipal Parking Law, without reference to other statutes of the state, shall constitute full authority for the authorization and issuance of bonds hereunder. No other act or law with regard to the authorization or issuance of bonds 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.

History: 1953 Comp., § 14-51-14, enacted by Laws 1965, ch. 300.

3-50-15. Examination of bond issue by attorney general.

A city may submit to the attorney general of the state any bonds to be issued hereunder after all proceedings for the issuance of such bonds have been taken. Upon the submission of such proceedings to the attorney general, it shall be the duty of the attorney general to examine into and pass upon the validity of such bonds and the regularity of all proceedings in connection therewith. If such bonds and proceedings conform to the provisions of the Municipal Parking Law, and are otherwise regular in form, and if such bonds when delivered and paid for will constitute binding and legal obligations enforceable according to the terms thereof, the attorney general shall certify in substance that such bonds are issued in accordance with the constitution and laws of the state of New Mexico.

History: 1953 Comp., § 14-51-15, enacted by Laws 1965, ch. 300.

3-50-16. Remedies of an obligee.

An obligee of a city shall have the right in addition to all other rights which may be conferred upon such obligee, subject only to any contractual restrictions binding upon such obligee:

A. by mandamus, suit, action or proceedings at law or in equity to compel said city and the officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said city with or for the benefit of such obligee and to require the carrying out of any or all such covenants and agreements of said city and the fulfillment of all duties imposed under said city by the Municipal Parking Law; and

B. by suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or in violation of any of the rights of such obligee of said city.

History: 1953 Comp., § 14-51-16, enacted by Laws 1965, ch. 300.

3-50-17. Additional remedies conferrable to an obligee.

A city shall have the power by its resolution, trust indenture, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right, in addition to all rights that may be otherwise conferred, upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

A. to cause possession of any parking facility project or any part thereof to be surrendered to any such obligee, which possession may be retained by such bondholder or trustee so long as the city shall continue in default;

B. to obtain the appointment of a receiver of any parking facility project of said city or any part thereof and of the rents and profits therefrom. If such receiver be appointed he may enter and take possession of such parking facility project or any part thereof and so long as the city shall continue in default operate and maintain the same, and collect and receive all fees, rents, revenues or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said city as the court shall direct; and

C. to require said city and the officers and agents thereof to account for the money actually received as if it and they were the trustees of an express trust.

History: 1953 Comp., § 14-51-17, enacted by Laws 1965, ch. 300.

3-50-18. Bonds; exemption from taxation.

Bonds and other evidences of indebtedness issued under the provisions of the Municipal Parking Law shall forever be and remain free and exempt from taxation by this state or any subdivision thereof.

History: 1953 Comp., § 14-51-18, enacted by Laws 1965, ch. 300.

3-50-19. Aid from federal government.

In addition to the powers conferred upon a city by other provisions of the Municipal Parking Law, a city is empowered to borrow money or accept contributions, grants or other financial assistance from the federal government for or in aid of any parking facility project within its area of operation; and, to these ends, to comply with such conditions, trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of the Municipal Parking Law to authorize every city to do any and all things necessary, convenient or desirable to secure the financial aid or cooperation of the federal government in the undertaking, acquisition, construction, maintenance or operation of any parking facility project of such city.

History: 1953 Comp., § 14-51-19, enacted by Laws 1965, ch. 300.

3-50-20. Contracts; leases; increase of revenue.

Every contract entered into by the authority for the use of any project or the services or facilities thereof acquired, constructed or completed from the proceeds of the sale of revenue bonds shall incorporate by reference the provisions of any ordinance pursuant to which the bonds were issued. Every such contract or lease shall also refer to the provisions of the Municipal Parking Law with respect to the obligation of the city to fix fees and charges to meet the payments provided for in the Municipal Parking Law and the proceedings for the issuance of revenue bonds and all payments required to be made to the authority under such contract shall be subject to increase if and when the authority is required to increase rates or charges to meet its obligations hereunder and under any ordinance providing for the issuance of bonds.

History: 1953 Comp., § 14-51-20, enacted by Laws 1965, ch. 300.

3-50-21. Validity of law.

If any provision of the Municipal Parking Law, or the application thereof to any person or circumstance is held invalid, the remainder of the law, or the application of such provision to other persons or circumstances, shall not be affected thereby.

History: 1953 Comp., § 14-51-21, enacted by Laws 1965, ch. 300.

3-50-22. Law controlling.

Insofar as the provisions of the Municipal Parking Law are inconsistent with the provisions of any other law, the provisions of the Municipal Parking Law shall be controlling.

History: 1953 Comp., § 14-51-22, enacted by Laws 1965, ch. 300.

ARTICLE 51
Greater Municipality Parking

3-51-1. Greater Municipality Parking Law; short title.

Sections 3-51-1 through 3-51-45 NMSA 1978, may be cited as the "Greater Municipality Parking Law."

History: 1953 Comp., § 14-52-1, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For improvement district for construction of parking facilities, *see* 3-33-4, 3-33-5 NMSA 1978.

For the Municipal Parking Law, *see* 3-50-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 271 to 284; 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 214, 442.

Off-street public parking facilities, municipal establishment or operation of, 8 A.L.R.2d 373.

Parking meters, installation or operation as within governmental immunity from tort liability, 33 A.L.R.2d 761.

Permissible use of funds from parking meters, 83 A.L.R.2d 625.

Pledging parking-meter revenues as unlawful relinquishment of governmental power, 83 A.L.R.2d 649.

Liability for loss of automobile left at parking lot or garage, 13 A.L.R.4th 362.

Liability for damage to automobile left in parking lot or garage, 13 A.L.R.4th 442.

Parking facility proprietor's liability for criminal attack on patron, 49 A.L.R.4th 1257.

60 C.J.S. Motor Vehicles § 28.

3-51-2. Finding and declaration of necessity.

It is hereby declared that:

A. there exists in cities in the state of New Mexico serious conditions of congestion of street traffic, preventing free circulation of traffic, obstructing access to and use of both public and private property, increasing traffic hazards, impeding rapid and effective fighting of fires and the disposition of police forces and endangering the public peace, health and safety;

B. this condition is caused in substantial part by insufficiency of space or accommodations for the parking of motor vehicles off the public streets;

C. the installation of parking meters and the establishment of additional parking facilities, together with all undertakings incidental or advantageous thereto for the improvement of traffic control and regulation, are public uses and purposes for which public money may be spent and private property acquired;

D. projects for such purposes will, in addition, confer special benefits on property within their environs; and

E. it is in the public interest that work on projects for such purposes be commenced as soon as possible in order to relieve traffic congestion; and the necessity in the public interest for the provisions hereinafter enacted, is hereby declared as a matter of legislative determination.

History: 1953 Comp., § 14-52-2, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Off-street public parking facilities, 8 A.L.R.2d 373.

Regulation and licensing of privately owned parking places, 29 A.L.R.2d 856.

Installation or operation of parking meters as within governmental immunity from tort liability, 33 A.L.R.2d 761.

Permissible use of funds from parking meters, 83 A.L.R.2d 625.

Pledging parking-meter revenues as unlawful relinquishment of governmental power, 83 A.L.R.2d 649.

3-51-3. Definitions.

The following terms, wherever used or referred to in the Greater Municipality Parking Law, shall have the following respective meaning:

A. "city" or "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, and H class counties. "The city" means the particular city in which a particular parking district is created;

B. "authority" or "parking authority" means any agent or agency of a city created pursuant to the Greater Municipality Parking Law;

C. "district" or "parking district" means the area or portion of a city which shall be benefited and assessed for the improvements made pursuant to the Greater Municipality Parking Law;

D. "governing body" means, in the case of a city, that body in which the legislative powers of the city are vested;

E. "bonds" means any obligation issued by a city pursuant to the Greater Municipality Parking Law;

F. "obligee" includes any bondholder, trustee or trustees for any bondholders, or lessor demising to the city property used in connection with a parking facility or any assignee or assignees of such lessor's interest, or any part thereof, and the state or the United States or any agency of either, when a party to any contract with a city by which aid or a loan is given or made to the city;

G. "project" means the acquisition, improvement or construction of parking facilities and also means parking facilities which have been acquired, improved or constructed within the area of a parking district not more than five years preceding the formation of the district, or any combination of any of the foregoing;

H. "parking facilities" means any space on the streets or off the streets used for the purpose of parking motor vehicles, and includes buildings erected above or below the surface of the ground;

I. "federal government" includes the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America; and

J. "real property" or "property" includes all lands, including improvements and fixtures thereon.

History: 1953 Comp., § 14-52-3, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 2.

3-51-4. Creation of parking authorities.

Every city, in addition to other powers conferred by the Greater Municipality Parking Law, shall have power and is hereby authorized by proper ordinance of its governing body:

A. to create as an agent of the city, an authority to be known as the "Parking Authority" of the city; and

B. to prescribe the number of members of said authority, the term of office of said members, their appointment and removal and the powers, rights and duties which they shall have and exercise.

History: 1953 Comp., § 14-52-4, enacted by Laws 1965, ch. 300.

3-51-5. Powers of city.

Every city shall have all the powers necessary, convenient, desirable or appropriate to carry out the purposes and provisions of the Greater Municipality Parking Law including the following powers in addition to other powers conferred by the Greater Municipality Parking Law:

A. to purchase and install, maintain, regulate, operate and manage parking meters and parking spaces upon the streets of the city;

B. to purchase, acquire, lease, rent, construct, reconstruct, improve, alter, repair, maintain, operate and manage parking facilities for the parking of motor vehicles off the public streets together with public rights of way necessary or convenient therefor, including the leasing of the operation thereof, and including the leasing of a portion of the space at any such parking facility to private operators for commercial purposes, when in the judgment of the governing body it is convenient or necessary to permit such leasing in order to utilize the balance of the property as a parking facility;

C. to purchase, acquire by gift, grant, bequest or devise or otherwise, any real or personal property or any interest therein, together with the improvement thereon, to be used as parking facilities or incident thereto;

D. to insure or provide for the insurance of any parking facility established by the city against such risks and hazards as the city may deem advisable;

E. to acquire by the exercise of the power of eminent domain any real property or personal property, or any interest therein which it deems necessary for its purposes under the Greater Municipality Parking Law after the adoption by it of an ordinance declaring that its acquisition is necessary for such purposes. This power shall be exercised in the manner provided by any applicable statutory provisions and laws of the state of New Mexico and acts amendatory thereof or supplementary thereto. Title to property so acquired shall be taken in the name of the city;

F. to sell, lease, exchange, transfer, assign or otherwise dispose of any real or personal property, or any interest therein acquired for the purpose of the Greater Municipality Parking Law; and

G. to receive, control, invest, order the expenditure of, any and all moneys and funds pertaining to parking facilities and parking meters, or related properties, if the same are not otherwise committed.

History: 1953 Comp., § 14-52-5, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For condemnation proceedings, *see* 42A-1-1 NMSA 1978 et seq.

3-51-6. Interested officers and employees.

It is against public policy for any officer or employee of a city to acquire any interest in any parking facilities or related properties or any commercial enterprise connected or incidental thereto, or to have any interest in any contract or proposed contract related to parking facilities, unless the officer or employee shall first disclose the same in writing to the governing body of the city. Such disclosures shall be entered upon the minutes of the governing body of the city. Upon such disclosure, such officer or employee shall not participate in any action by the city affecting such property or contract. The failure so to disclose such interest shall constitute misconduct in office and the governing body may take such action with reference to any such contract or interest as it deems advisable. Any such contract or interest shall be void at the election of the governing body.

History: 1953 Comp., § 14-52-6, enacted by Laws 1965, ch. 300.

3-51-7. Planning, zoning and building laws.

All parking facilities of the city shall be subject to planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the parking facility is situated.

History: 1953 Comp., § 14-52-7, enacted by Laws 1965, ch. 300.

3-51-8. Lease of parking facilities.

If a city desires to lease any project acquired by it under the provisions of the Greater Municipality Parking Law it may do so under such procedures as it shall prescribe. The city may accept such lease proposal as it deems to be in the public interest and in furtherance of the purposes of the Greater Municipality Parking Law.

History: 1953 Comp., § 14-52-8, enacted by Laws 1971, ch. 173, § 3.

ANNOTATIONS

Repeals and reenactments. — Laws 1971, ch. 173, § 3, repealed 14-52-8, 1953 Comp., relating to lease of parking facilities, and enacted the above section.

3-51-9. Formation of district by governing body; provisional order.

A. Whenever the governing body of any city determines that special assessments shall be levied to wholly or partially finance any project, the governing body by resolution shall direct the preparation of:

(1) preliminary plans showing:

(a) a general description of the contemplated project; and

(b) a preliminary estimate of the cost of the project, including incidental costs; and

(2) an assessment plat showing the proposed area to be assessed.

B. The resolution may provide for one or more types of construction and shall separately estimate the cost of each type of construction. The estimate may be made in a lump sum or by unit prices, as may seem most desirable for the project complete in place.

C. The resolution shall describe and locate the project in general terms.

D. The resolution shall state:

(1) what part or portion of the expense thereof is of special benefit and therefore shall be paid by assessments; and

(2) what part, if any, has been or is proposed to be defrayed with moneys derived from other than the levy of assessments.

E. The resolution shall:

(1) by apt description designate the parking district, including the tracts proposed to be assessed; and

(2) state that the assessment is to be made upon all the tracts benefited by the project proportionately to the benefits received.

F. It shall not be necessary in any case to describe minutely in the resolution each particular tract to be assessed, but simply to designate the property, district or the location, so that the various parts to be assessed can be ascertained and determined to be within or without the proposed district.

G. The preliminary plans and assessment plat shall forthwith be prepared and filed with the city clerk.

H. Upon the filing of the plans and plat, the governing body shall examine the same; and if the plans and plat be found to be satisfactory, the governing body by resolution shall make a provisional order to the effect that such parking district shall be formed.

History: 1953 Comp., § 14-52-9, enacted by Laws 1971, ch. 173, § 4.

ANNOTATIONS

Repeals and reenactments. — Laws 1971, ch. 173, § 4 repealed 14-52-9, 1953 Comp., relating to formation of district by governing body, and enacted the above section.

3-51-10. Formation of district by petition.

A. A district for the construction of any improvement authorized by the Greater Municipality Parking Law may be formed by the filing of a petition in the office of the clerk of the city in which the district is to be formed, signed by the owners of not less than one-half of the assessed value of all the real property within the tentative boundaries of the proposed district, as shown by the last preceding assessment roll of the county wherein such district is proposed to be formed.

B. The petition may be signed by any private corporation or, upon being authorized by the proper court, by a trustee, guardian, executor or administrator of an estate who is appointed as such under the laws of this state and who as such trustee, guardian, executor or administrator is entitled to exercise the rights of ownership of the real property belonging to the estate which he represents.

C. In determining whether a requisite number of property owners have signed the petition, the governing body of the city may rely upon the names appearing in the records of the county assessor, which shall be prima facie evidence of ownership.

D. The petition shall set forth:

(1) a general description of the proposed boundaries of the district;

(2) a general description of the contemplated project and its proposed location;

(3) a request that the governing body of the city declare the formation of a parking district; and

(4) a statement that the petition is filed pursuant to this section.

E. Upon filing of a petition satisfying the requirements of this section, in the office of the clerk of the city, the governing body shall proceed as if the formation of the district had been initiated by the governing body pursuant to Section 3-51-9 NMSA 1978.

History: 1953 Comp., § 14-52-10, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 5.

3-51-11. Formation of district; provisional order hearing; notice.

A. In the provisional order the governing body shall set a time at least twenty days thereafter and place at which the owners of the property to be assessed may appear and be heard as to the propriety and advisability of forming the parking district which has been provisionally ordered.

B. Notice shall be given:

(1) by publication in a newspaper of general circulation in the city once each week on the same weekday for two consecutive weeks, the last publication to be at least five days prior to the date of the hearing; and

(2) by mailing a copy of the notice to each of the property owners at his last known address at least ten days before such hearing. The names and addresses of the property owners shall be obtained from the records of the county assessor or from such other sources as the city clerk deems reliable.

C. Proof of publication shall be by affidavit of the publisher.

D. Proof of mailing shall be by affidavit of the person mailing the notice.

E. The notice shall describe:

(1) the project proposed (without mentioning minor details or incidentals);

(2) the estimated cost of the project and the part or portion, if any, to be paid from sources other than assessments;

(3) the fact that assessments shall be in proportion to the special benefits derived to the property comprising the proposed district;

(4) the extent of the proposed district to be assessed (by boundaries or other brief description);

(5) the maximum amount of the preliminary fund assessment, if any, to be levied against the property within the district pursuant to Section 3-51-14 NMSA 1978;

(6) the time and place when and where the governing body will consider the ordering of the proposed project and hear all objections that may be made in writing and filed with the city clerk at least two days prior thereto, or verbally at the hearing, concerning the same, by the owner of any property to be assessed; and

(7) the fact that the description of the property proposed to be assessed and all proceedings in the premises are on file and can be seen and examined at the office of the city clerk during business hours, at any time, by any person so interested.

History: 1953 Comp., § 14-52-10.1, enacted by Laws 1971, ch. 173, § 6.

3-51-12. Formation of district; provisional order hearing; conduct; appeal.

A. The owner of any property within the proposed district may, not less than two days preceding the hearing, file with the clerk his specific objections in writing. Any objection to the regularity, validity and correctness of the proceedings, including the validity and amount of the preliminary fund assessment, shall be deemed waived unless presented at the time and in the manner specified in this subsection.

B. At the time and place designated for hearing the objections, the governing body of the city shall hear and determine all objections that have been filed. The governing body shall have the power to adjourn the hearing and shall have power by resolution, in its discretion, to revise, correct or confirm any proceedings previously taken.

C. Within fifteen days after the publication of the ordinance forming the parking district, a person who has filed an objection, as provided in Subsection A of this section, shall have the right to appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-52-10.2, enacted by Laws 1971, ch. 173, § 7; 1998, ch. 55, § 15; 1999, ch. 265, § 15.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection C.

The 1998 amendment, effective September 1, 1998, in Subsection A, deleted "or owners" following "owner" and "herein" following "manner", and inserted "in this subsection"; in Subsection B, deleted "so" following "place" and "been", substituted "The" for "and said", deleted "from time to time" following "hearing", and substituted "previously" for "theretofore"; and rewrote Subsection C.

3-51-13. Formation of district; ordinance forming district.

A. If the governing body determines to proceed, it shall by ordinance form the parking district.

B. The ordinance shall prescribe:

(1) the extent of the district to be assessed, by boundaries or other brief description;

(2) the general nature and location of the proposed project (without mentioning minor details); and

(3) the amount or proportion of the total cost to be defrayed by assessments.

History: 1953 Comp., § 14-52-10.3, enacted by Laws 1971, ch. 173, § 8.

3-51-14. Preliminary fund assessment; purpose; limit.

Upon formation of a parking district, the governing body of the city shall have power by ordinance to levy a uniform special assessment upon all real property within the boundaries for the purpose of paying the expenses of traffic surveys, construction plans and assessment of benefits and damages to the surrounding real property and other incidental expenses incurred prior to receipt of money from the sale of bonds or otherwise. The rate of the assessment authorized by this section shall not exceed six dollars ($6.00), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon an assessment levied under this section, on each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978].

History: 1953 Comp., § 14-52-11, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 9; 1986, ch. 32, § 2.

ANNOTATIONS

The 1986 amendment, August 19, 1986, deleted "in an amount not to exceed six mills per dollar of assessed valuation to be used" after "real property within the boundaries" in the first sentence and added the last sentence.

3-51-15. Levying, collecting and use of preliminary fund assessment.

The preliminary fund assessment shall be levied by an ordinance of the governing body. Within thirty days after publication of the levying ordinance the clerk of the city shall serve notice in writing of the amount of each assessment on each of the property owners to be assessed by mailing to his last known address, the names and addresses of such property owners to be obtained from the records of the county assessor or from such other sources as the clerk deems reliable. The notice shall state where and on what terms the assessment must be paid, and that it is a lien upon the property assessed. Within thirty days after the publication of the levying ordinance, the clerk of the city shall prepare, sign, attest with seal of the city, and file for record with the county

clerk of the county in which the property is located, a claim of lien for the unpaid amount assessed against each tract or parcel of real property, and penalties or interest which may arise thereon. If the proceeds of such assessments exceed the preliminary expenses, the surplus shall be placed in the general fund of the district and used to pay the cost of the project.

History: 1953 Comp., § 14-52-12, enacted by Laws 1965, ch. 300.

3-51-16. Determination of location, size and nature of project.

Upon formation of a parking district, the governing body of the city shall, by means of traffic surveys, investigations and studies of present and future parking needs and other appropriate means, finally determine the proper location, nature and size of the proposed project.

History: 1953 Comp., § 14-52-13, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 10.

3-51-17. Preparation of plans and estimates.

Upon final determination of the location, nature and size of the proposed project, the governing body of the city shall by resolution direct the city engineer, or some other competent engineer, to prepare detailed plans of the contemplated project and a final cost estimate which shall include the advertising, appraising, engineering, printing and such other expenses as in the judgment of the engineer is necessary or essential to the completion of the project and the payment of the cost thereof. The plans and estimates shall be filed with the clerk of the city upon their completion.

History: 1953 Comp., § 14-52-14, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 11.

3-51-18. Appraisers; appointment; term of office; duties; pay; qualifications and replacement.

Upon completion of the plans and cost estimates for the proposed project, the governing body of the city shall appoint a board of appraisers which shall consist of three appraisers, whose terms of office shall run until the appraisals of benefits and damages are filed in the office of the clerk of the city and rendered final by failure of the property owners to protest or by approval after hearing on the protest.

The duties of the board of appraisers shall be to appraise all benefits and damages accruing to all real property within or without the tentative boundaries of the district by reason of the making of the proposed project.

The governing body of the city by ordinance shall prescribe the qualifications and the compensation of the appraisers, the government of the board and methods for filling vacancies on the board or for the replacement of members of the board.

History: 1953 Comp., § 14-52-15, enacted by Laws 1965, ch. 300.

3-51-19. Appraisal of benefits.

The amount of the special assessment shall be proportional to the benefits conferred upon the property by the project and, in determining a method of apportioning benefits and assessments, the board of appraisers may consider ad valorem valuation, location, size, use, zoning classification, parking requirements, any other basis, or any combination of the foregoing, which it may deem to be equitable.

History: 1953 Comp., § 14-52-16, enacted by Laws 1971, ch. 173, § 12.

ANNOTATIONS

Repeals and reenactments. — Laws 1971, ch. 173, § 12, repealed 14-52-16, 1953 Comp., relating to appraisal of benefits, and enacted the above section.

3-51-20. Preparation of assessment rolls.

Upon the filing in the office of the clerk of the city of detailed plans and final cost estimates for the project, the board of appraisers shall make out a special assessment roll, entering and describing therein all of the lots and parcels of real property to be assessed, with the names of the persons, if known, chargeable with the assessments thereon, the amount of the benefits conferred thereon, and the amount to be assessed thereon.

History: 1953 Comp., § 14-52-17, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 13.

3-51-21. Inclusion of benefited property not within the proposed boundaries.

If the special assessment roll includes real property not located within the proposed boundaries of the parking district as being benefited by the proposed project, the governing body of the city shall, if the parking district has been formed by the governing body of the city pursuant to Section 3-51-9 NMSA 1978, by ordinance declare the boundaries of the parking district changed to include such property. If the parking district has been formed by petition, and the special assessment roll includes real property not located within the proposed boundaries of the parking district as benefited by the proposed project, the governing body shall by ordinance declare the boundaries of the parking district changed to include such property if the signatures on the petition were of owners of not less than one-half of the assessed value of all of the real property within the boundaries of the parking district after such change. If the original petition does not contain the signatures of owners of the required amount of property, a supplemental petition may be filed to add signatures of owners of additional property to the original petition. The additional signatures may be of owners of property located within the

boundaries as they are proposed to be changed, whether the property is within or without the original proposed boundaries of the parking district.

History: 1953 Comp., § 14-52-18, enacted by Laws 1965, ch. 300.

3-51-22. Notice of hearing; revision or confirmation of assessment; levy; court action.

A. Upon completion of the special assessment roll, it shall be filed in the office of the clerk of the city and the governing body of the city shall set a time and place when objections thereto by the owners of the property to be assessed will be heard.

B. Upon receiving the assessment roll, the clerk of the city shall serve notice in writing of the time and place of such hearing on the owners of the property to be assessed by mailing a copy of the notice to each of the property owners at his last known address, the names and addresses of the property owners to be obtained from the records of the county assessor or from such other sources as the city clerk deems reliable. The notice shall be mailed at least ten days before such hearing.

C. The clerk of the city shall also give notice of the time and place of the hearing by publication in a newspaper of general circulation therein once each week on the same day of the week for two consecutive weeks, the last publication to be at least five days prior to the date of the protest hearing. The notice shall state that such assessment roll is on file in his office, the date of filing the same, the time and place when and where the governing body will hear and consider objections to the assessment roll and to the proposed assessments by the owners of property to be assessed.

D. The owner or owners of any property which is listed in the assessment roll, whether therein named or not, may, not less than two days preceding the hearing, file with the clerk his specific objections in writing. Any objection to the regularity, validity and correctness of the proceedings, of the assessment roll, of each appraisal of benefits, and of the amount thereof to be levied on each tract and parcel of land, shall be deemed waived unless presented at the time and in the manner herein specified.

E. At the time and place so designated for hearing the objections, the governing body of the city shall hear and determine all objections which have been so filed by any property owner to the regularity of the proceedings in making the assessment, and the correctness of the appraisal, or of the amount levied on any particular tract or parcel of real property to be assessed, and said governing body shall have the power to adjourn the hearing from time to time, and shall have power by ordinance, in its discretion, to revise, correct, confirm or set aside any assessment, and to order that the assessment be made de novo.

F. The governing body by ordinance shall, by reference to the assessment roll as so modified, and as confirmed by the ordinance, levy the assessments in the roll; and such decision and ordinance shall be a final determination of the regularity, validity and

correctness of the proceedings, of the assessment roll, of each assessment contained herein, and of the amount levied on each tract and parcel of real property. The determination by the governing body shall be conclusive upon the owners of the property assessed.

G. Within fifteen days after the publication of the ordinance, any person who has filed an objection or objections, as hereinbefore provided, shall have the right to appeal to the district court for the county in which the city is located for review of errors of law in the determination; but thereafter all actions or suits attacking the regularity, validity, and correctness of the proceedings, of assessment roll, of each assessment contained therein, and of the amount thereof levied on each tract and parcel of real property, including, without limiting the generality of the foregoing, the defense of confiscation, shall be perpetually barred.

History: 1953 Comp., § 14-52-19, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

For scope of review of the district court, *see* Zamora v. Vill. of Ruidoso Downs, 120 N.M. 778, 907 P.2d 182 (1995).

3-51-23. Alternative assessment procedure; annual levies.

A. As an alternative to the assessment procedure set forth in Section 3-51-20 and 3-51-22 NMSA 1978, the governing body may elect to levy annual assessments.

B. In each year after the formation of a parking district, the governing body shall meet to determine the amount of special assessments which, together with other available funds, will be required to pay the annual interest on outstanding bonds of the district and the principal thereof as the same may mature or be required to be paid. Thereafter, the board of appraisers shall make out an annual special assessment roll, entering and describing therein all of the lots and parcels of real property to be assessed, with the names of the persons, if known, chargeable with the assessments thereon, and the amount to be assessed thereon in the current year. The method of apportioning benefits and assessments shall be as determined by the board pursuant to Section 3-51-19 NMSA 1978, and shall remain unchanged and be applied uniformly from year to year.

C. Upon the completion and filing of the annual assessment roll in the office of the clerk of the city, a hearing shall be called and conducted thereon in all respects as provided by Section 3-51-22 NMSA 1978. The governing body shall have all powers and duties set forth therein and appeals for review of errors of law in the determinations

of the governing body shall be permitted only to the extent and within the times set forth therein.

D. Annual assessments levied as hereinabove provided may be secured and enforced and shall be payable as provided by Sections 3-51-24 through 3-51-28, inclusive, NMSA 1978; provided that annual assessments shall be payable in full within thirty days after publication of the annual assessing ordinance and if not paid by such time shall be delinquent.

History: 1953 Comp., § 14-52-20, enacted by Laws 1971, ch. 173, § 14.

ANNOTATIONS

Repeals and reenactments. — Laws 1971, ch. 173, § 14, repealed 14-52-20, 1953 Comp., relating to determination of costs and benefits, and enacted the above section.

3-51-24. Lien for assessments.

The amounts assessed pursuant to the Greater Municipality Parking Law against each tract or parcel of real property, and the interest and penalties thereon, shall be a lien upon the property from the time of publication of the assessment ordinance coequal with the lien of taxes and prior and superior to all other liens, claims and titles, and no sale of the property to enforce any general taxes or other lien shall extinguish the lien of the assessment, nor shall the statute of limitations begin to run against the lien until after the last installment thereof shall become due.

History: 1953 Comp., § 14-52-21, enacted by Laws 1965, ch. 300.

3-51-25. Payment; interest; penalties.

The governing body of the city shall have the power to provide for the time and terms of payment of the assessments and the rate of interest upon deferred payments thereof, which rate shall not exceed eight percent per annum. The assessments shall bear interest from the date of publication of the assessing ordinance. The maximum time for the payment of the assessments on deferred installment payments shall be thirty years.

History: 1953 Comp., § 14-52-22, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 15.

3-51-26. Personal liability of owners for indebtedness.

The assessments levied under the Greater Municipality Parking Law shall be the personal liability of the owner or owners of the property against which the assessments are levied.

History: 1953 Comp., § 14-52-23, enacted by Laws 1965, ch. 300.

3-51-27. Recording of claim of lien.

The clerk of the city shall, within sixty days after publication of the assessing ordinance, prepare, sign, attest with the seal of the city, and file for record with the county clerk of the county in which the city is located, a claim of lien for the unpaid amount assessed against each tract or parcel of real property, plus penalties and interest which may arise thereon.

History: 1953 Comp., § 14-52-24, enacted by Laws 1965, ch. 300.

3-51-28. Enforcement of lien.

The lien of any assessments levied under the Greater Municipality Parking Law shall be enforced, when delinquent, by the method now or hereafter provided by statute for the foreclosure of mortgages on real estate. In the event of a foreclosure sale, the municipality may buy in the property for the amount of the balance due on the assessment, including principal, interest, penalties and costs, unless there are higher bids.

History: 1953 Comp., § 14-52-25, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For foreclosure of mortgages, *see* 39-5-1 NMSA 1978 et seq.

3-51-29. Real property in more than one district.

The same real property may be included in more than one district and be subject to the provisions of the Greater Municipality Parking Law for each and every district in which it may be included.

History: 1953 Comp., § 14-52-26, enacted by Laws 1965, ch. 300.

3-51-30. Real property in more than one district; maximum assessments.

When real property is included within the boundaries of more than one parking district, the maximum total of the assessments which may be levied upon the property by all of the parking districts in which it is included shall be no greater than the total benefits conferred upon the property by the improvements of all the districts in which it is included.

History: 1953 Comp., § 14-52-27, enacted by Laws 1965, ch. 300.

3-51-31. Real property in more than one district; objections; notice; hearing.

Objections to the organization of a district in whole or in part within the boundaries of a preexisting district shall be heard at the provisional order hearing called pursuant to Section 3-51-11 NMSA 1978. The notice of hearing to be served and published pursuant to that section shall state that part or all of the property included within the proposed boundaries, as the case may be, is included within a preexisting district. If the governing body determines that the purposes of the Greater Municipality Parking Law will best be accomplished by such district including lands of another district, it shall approve the additional district.

History: 1953 Comp., § 14-52-28, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 16.

3-51-32. Power to issue bonds.

A. A city shall have power to issue bonds from time to time, in its discretion for the purpose of financing, in whole or in part, the cost of any project.

B. A city shall also have the power to issue refunding bonds from time to time for the purpose of refunding, paying and retiring:

(1) any bonds issued by it pursuant to the Greater Municipality Parking Law or pursuant to Laws 1963, Chapter 313, as amended and supplemented;

(2) any bonds authorized for parking facilities and payable from the revenues of any parking facilities;

(3) any bonds authorized for parking facilities and payable from any parking meter revenues;

(4) any sales tax revenue bonds authorized for the purpose of any public building to be used for parking facilities and pursuant to Section 3-31-1C NMSA 1978;

(5) any gasoline tax revenue bonds authorized for the purpose of any public building to be used for parking facilities and pursuant to Section 3-31-1D NMSA 1978 [3-31-1E NMSA 1978];

(6) any bonds authorized for parking facilities and payable from any combination of the income and revenue pledged to the bonds described in Paragraphs (1) through (5) of this Subsection B; or

(7) any bonds which have refunded the bonds described in Paragraphs (1) through (6) of this Subsection B.

C. A city shall also have the power to issue bonds for any combination of the purposes described in this section.

History: 1953 Comp., § 14-52-29, enacted by Laws 1971, ch. 173, § 17.

ANNOTATIONS

Repeals and reenactments. — Laws 1971, ch. 173, § 17, repealed 14-52-29, 1953 Comp., relating to power to issue bonds, and enacted a new section.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1963, Chapter 313, referred to in Paragraph (1) of Subsection B, was repealed by Laws 1965, ch. 300, § 595. Section 3-31-1 NMSA 1978 was amended in 1983, redesignating former Subsection D of 3-31-1 NMSA 1978 as Subsection E.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 C.J.S. Municipal Corporations § 1902.

3-51-33. Refunding bonds.

A. Any refunding bonds may be issued to refund, pay, and discharge all or any part of such outstanding bonds which may be refunded pursuant to Section 3-51-32 NMSA 1978, including any interest on such bonds in arrears or about to become due within three years from the date of the refunding bonds and for the purpose of avoiding or terminating any default in the payment of interest on and principal of the bonds, of reducing interest cost or effecting other economies, or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any system appertaining thereto, or for any combination of the foregoing purposes. Refunding bonds shall be authorized by ordinance. Any bonds which are refunded under the provisions of the Greater Municipality Parking Law 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.

B. No bonds may be refunded under the Greater Municipality Parking Law unless said bonds either mature or are callable for prior redemption under their terms within ten 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 bonds or any interest on the bonds refunded in arrears of [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.

C. 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 commercial bank or trust company, either a state or national banking institution, which possesses and is exercising trust powers, which is located within the state of New Mexico and 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; provided, 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 herein shall require the establishment of an escrow if the refunded bonds shall 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 is [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 the Greater Municipality Parking Law, shall in no manner be responsible for the application of the proceeds thereof by the city or any of its officers, agents, or employees.

D. Refunding bonds may bear such additional terms and provisions as may be determined by the city subject to the limitations in the Greater Municipality Parking Law for original bond issues and are not subject to the provisions of any other statute except as may be incorporated by reference in the Greater Municipality Parking Law.

History: 1953 Comp., § 14-52-29.1, enacted by Laws 1971, ch. 173, § 18.

ANNOTATIONS

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

3-51-34. Liability of bonds; prohibition on impairment of payment.

A. Neither the governing body of a city nor any person executing the bonds shall be liable personally on any bonds by reason of the issuance thereof hereunder. The bonds issued under the provisions of the Greater Municipality Parking Law shall be payable solely from the sources provided in Section 3-51-35 NMSA 1978. The bonds shall not be a debt or general obligation of the city issuing them, and they shall so state on their face. The bonds shall not constitute a debt or indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction.

B. Any law which authorizes the pledge of any or all of the special funds described in Section 3-51-35 NMSA 1978 to the payment of any bonds issued pursuant to the Greater Municipality Parking Law or which affects any of such special funds pledged to such bonds, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding bonds unless such outstanding bonds have been discharged in full or provision has been fully made therefor.

History: 1953 Comp., § 14-52-30, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 19.

3-51-35. Bonds; special funds from which payable.

In order to carry out the purposes of the Greater Municipality Parking Law, a city upon enactment of a proper ordinance may issue bonds for any purposes permitted by Section 3-51-32 NMSA 1978 and may pledge irrevocably to the payment of the principal of and interest on such bonds, the following special funds:

A. all or any part of special assessments levied upon real property within a parking district formed for the particular project financed with the proceeds of such bonds; or

B. all or any part of the income and revenues of the particular project financed with the proceeds of the bonds; or

C. all or any part of the income and revenue of certain designated parking facilities whether or not they were financed in whole or in part with the proceeds of the bonds; or

D. all or any part of the parking meter revenues of the city; or

E. all or any part of the amount of money remitted to the city as authorized by Section 7-1-6 NMSA 1978; or

F. all or any part or [of] the proceeds distributed to the city pursuant to Section 64-26-19 NMSA 1953 [repealed]; or

G. all or any part or [of] the proceeds of any tolls, rates, fees, charges, license taxes, other excise taxes, or quasi-excise taxes legally available therefor which the city is empowered to fix, levy and collect; or

H. any combination of these special funds specified in Subsections A through F, even if, in the case of refunding bonds, any of such special funds were not pledged to the payment of the bonds being refunded.

History: 1953 Comp., § 14-52-31, enacted by Laws 1971, ch. 173, § 20.

ANNOTATIONS

Repeals and reenactments. — Laws 1971, ch. 173, § 20, repealed 14-52-31, 1953 Comp., relating to types of bonds and sources from which payable, and enacted the above section.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1971, ch. 207, § 16 repealed 64-26-19, 1953 Comp., cited in Subsection F.

3-51-36. Form and sale of bonds.

A. Bonds of a city issued hereunder, shall be authorized by its ordinance and may be issued in one or more series and shall bear the date or dates, mature at such time or times, not exceeding thirty years from the date of issue, bear interest at any coupon rate or rates, of not exceeding the maximum coupon rate permitted by the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978], be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as such ordinance, its trust indenture, or the bonds so issued may provide.

B. Any bonds issued under the authority of the Greater Municipality Parking Law may be sold at public or private sale at, above or below par in such manner and at a price which shall result in a net effective interest rate of not exceeding that permitted by the Public Securities Act, and from time to time as may be determined by the governing body to be most advantageous.

C. In case any of the officers of the city whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, the signatures shall nevertheless be valid and sufficient for all purposes, the same as if such officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding any bonds issued pursuant to the Greater Municipality Parking Law shall be fully negotiable.

D. In any suit, action or proceedings involving the validity or enforceability of any bond of a city or the security therefor, any such bond reciting in substance that it has been issued by the city to aid in financing a parking facility project to provide additional facilities for parking motor vehicles shall be conclusively presumed to have been issued for a parking facility project of such character, and said project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of the Greater Municipality Parking Law.

History: 1953 Comp., § 14-52-32, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 21.

ANNOTATIONS

Severability clauses. — Laws 1971, ch. 173, § 22, provided for the severability of the act if any part or application thereof is held invalid.

3-51-37. Provisions of bonds and trust indentures.

In connection with the issuance of bonds pursuant to the Greater Municipality Parking Law or in the incurring of obligations under leases made pursuant to the Greater Municipality Parking Law, and to secure the payment of such bonds or obligations, a city, in addition to its other powers, shall have power:

A. to pledge all or any part of the gross or net rents, fees or revenues, of a parking facility project financed with the proceeds of the bonds, to which its rights then exist or may thereafter come into existence;

B. to covenant against pledging all or any part of the rents, fees and revenues, or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any parking facility project or any part thereof; and to covenant as to what other or additional debts or obligations may be incurred by it;

C. to covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof;

D. to covenant as to the rents and fees to be charged in the operation of a parking facility project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves or other purposes, and to covenant as to the use and disposition of the moneys held in such funds;

E. to covenant and agree on its part as it deems necessary and advisable for the better security of the bonds issued thereunder;

F. to prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

G. to covenant as to the use of any or all of its real or personal property acquired pursuant to the Greater Municipality Parking Law, and to covenant as to the maintenance of the real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys;

H. to covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which such declaration and its consequences may be waived;

I. to vest in a trustee or trustees or the holders of bonds issued pursuant to the Greater Municipality Parking Law, or any specified proportion of them the right to enforce the payment of such bonds or any covenants securing or relating to such bonds; to vest in a trustee or trustees the rights, in the event of a default by said city, to take possession of any parking facility project or part thereof, and, so long as the city shall continue in default, to retain such possession and use, operate and manage the project, and to collect the rents and revenues arising therefrom and to dispose of the moneys in accordance with the agreement of the city with the trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or the holder of bonds, or any proportion of them may enforce any covenant or rights securing or relating to the bonds;

J. to exercise all or any part or combination of the power herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character; to make such covenants as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

History: 1953 Comp., § 14-52-33, enacted by Laws 1965, ch. 300.

3-51-38. Construction of bond provisions.

The Greater Municipality Parking Law, without reference to other statutes of the state, shall constitutes [constitute] full authority for the authorization and issuance of bonds hereunder. No other act or law with regard to the authorization or issuance of bonds 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.

History: 1953 Comp., § 14-52-34, enacted by Laws 1965, ch. 300.

ANNOTATIONS

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

3-51-39. Filing proceedings with attorney general.

A city shall file with the attorney general of the state a copy of all proceedings in connection with the issue of bonds pursuant to the Greater Municipality Parking Law.

History: 1953 Comp., § 14-52-35, enacted by Laws 1965, ch. 300.

3-51-40. Remedies of an obligee.

An obligee shall have the right, in addition to all other rights which may be conferred upon such obligee subject only to any contractual restrictions binding upon such obligee:

A. by mandamus, suit, action or proceedings at law or in equity to compel the city and the officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of the city with or for the benefit of the obligee and to require the carrying out of any or all such covenants and agreements of the city and the fulfillment of all duties imposed upon the city by the Greater Municipality Parking Law; and

B. by suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or in violation of any of the rights of such obligee.

History: 1953 Comp., § 14-52-36, enacted by Laws 1965, ch. 300.

3-51-41. Additional remedies conferrable to an obligee.

A city shall have the power by its ordinance, trust indenture, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right, in addition to all rights that may be otherwise conferred, upon the happening of an event of default as defined in the ordinance or instrument, to do the following by suit, action or proceeding in any court of competent jurisdiction:

A. obtain the appointment of a receiver of any parking facility project of the city or any part thereof and of the rents and profits therefrom. If the receiver be appointed he may enter and take possession of the parking facility project or any part thereof and so long as the city continues in default operate and maintain the same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall

keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the city as the court shall direct;

B. require the city and the officers and agents thereof to account for the money actually received as if it and they were the trustees of an express trust.

History: 1953 Comp., § 14-52-37, enacted by Laws 1965, ch. 300.

3-51-42. Bonds; exemption from taxation.

Bonds and other evidences of indebtedness issued under the provisions of the Greater Municipality Parking Law shall forever be and remain free and exempt from taxation by this state or any subdivision thereof.

History: 1953 Comp., § 14-52-38, enacted by Laws 1965, ch. 300.

3-51-43. Aid from federal government.

In addition to the powers conferred upon a city by other provisions of the Greater Municipality Parking Law, a city is empowered to borrow money or accept contributions, grants or other financial assistance from the federal government for, or in aid of, any parking facility project within its area of operation; and to these ends, to comply with the conditions, trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of the Greater Municipality Parking Law to authorize every city to do any and all things necessary, convenient or desirable to secure the financial aid or cooperation of the federal government in the undertaking, acquisition, construction, maintenance or operation of any parking facility project of the city.

History: 1953 Comp., § 14-52-39, enacted by Laws 1965, ch. 300.

3-51-44. Contracts; leases; increase of revenue.

Every contract entered into by the city for the use of any project or the services or facilities thereof acquired, constructed or completed from the proceeds of the sale of revenue bonds shall incorporate by reference the provisions of any ordinance pursuant to which the bonds were issued. Every such contract or lease shall also refer to the provisions of the Greater Municipality Parking Law with respect to the obligation of the city to fix fees and charges to meet the payments provided for in the Greater Municipality Parking Law and the proceedings for the issuance of revenue bonds and all payments required to be made to the city under such contract shall be subject to increase if and when the city is required to increase rates or charges to meet its obligations hereunder and under any ordinance providing for the issuance of bonds.

History: 1953 Comp., § 14-52-40, enacted by Laws 1965, ch. 300.

3-51-45. Greater Municipality Parking Law controlling.

Insofar as the provisions of the Greater Municipality Parking Law are inconsistent with the provisions of any other law, the provisions of the Greater Municipality Parking Law shall be controlling. No other existing law providing for establishment and maintenance of parking facilities contemplated by the Greater Municipality Parking Law shall be repealed thereby, but such laws shall remain in force to be applied by the governing body of the city to which it applies without reference to the Greater Municipality Parking Law.

History: 1953 Comp., § 14-52-41, enacted by Laws 1965, ch. 300.

3-51-46. Passenger motor vehicle of a person with a disability; parking privilege.

Passenger motor vehicles owned by and carrying a person with a disability and displaying special registration plates, or passenger motor vehicles carrying persons with severe mobility impairment and displaying parking placards, issued pursuant to Section 66-3-16 NMSA 1978, shall be permitted to park for unlimited periods of time in parking zones restricted as to length of time parking is normally permitted and are exempt from payment of any parking fee of the state or its political subdivisions, except that airport parking facilities may charge long-term parking fees for periods of time exceeding twenty-four hours. The provisions of this section shall prevail over any other law, rule or local ordinance but do not apply to zones where stopping, standing or parking is prohibited, zones reserved for special types of vehicles, zones where parking is prohibited during certain hours of the day in order to facilitate traffic during those hours when parking is prohibited and zones subject to similar regulation because parking presents a traffic hazard.

History: 1953 Comp., § 14-52-42, enacted by Laws 1973, ch. 22, § 3; 1999, ch. 297, § 3; 2007, ch. 46, § 4; 2009, ch. 227, § 1.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, at the end of the first sentence, added the exception for airport parking facilities.

The 2007 amendment, effective June 15, 2007, made non-substantive language changes.

The 1999 amendment, effective June 18, 1999, in the first sentence, inserted "and carrying" near the beginning, substituted "displaying special" for "carrying special", inserted the language beginning "or passenger motor vehicles" and ending "parking placards", substituted "66-3-16 NMSA 1978" for "64-3-12.3 NMSA 1953", and deleted "meter" before "fee of the state" near the end; and, in the second sentence, substituted "rule" for "regulation".

ARTICLE 52
Municipal Transit

3-52-1. Municipal Transit Law; short title.

Sections 3-52-1 through 3-52-13 NMSA 1978, may be cited as the "Municipal Transit Law".

History: 1953 Comp., § 14-53-1, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For the Tort Claims Act, *see* 41-4-1 NMSA 1978 et seq.

For excavation damage to pipelines and underground utility lines, *see* 62-14-1 NMSA 1978 et seq.

For the Public Mass Transportation Act, *see* 67-3-67 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 210.

62 C.J.S. Municipal Corporations § 639; 63 C.J.S. Municipal Corporations § 1054; 64 C.J.S. Municipal Corporations § 1810.

3-52-2. Legislative determination.

The legislature finds that privately operated public transportation has declined in patronage and use and become less attractive to investment capital than formerly. Growth of population in relation to area, the development of improved highways and intersecting structures, the wider use of the private automobile and the scattering of shopping and employment centers have diverted users to private transportation, provided intense competition for public transportation facilities, and pyramided operating costs of public transit to a point that increases in rates are being required and municipalities formerly and now depending on public transit are threatened with having inadequate facilities for public transportation publicly or privately owned.

History: 1953 Comp., § 14-53-2, enacted by Laws 1965, ch. 300.

3-52-3. Authorization.

A. A municipality may invoke the authority contained in the Municipal Transit Law on finding all of the following state of facts to exist:

(1) general transportation of persons is necessary and convenient;

(2) privately owned public transportation facilities in operation are inadequate;

(3) it is impossible for existing franchise operators to render necessary service with adequate resulting return on the investment of capital; and

(4) assignment of the existing franchise by the holder or release thereof and granting of a new franchise by the city will not afford adequate service.

Such finding, if made, shall be by resolution adopted by the governing body on the affirmative recorded vote of at least two-thirds of the elected members of the governing body. Such resolution shall be published in full in a daily newspaper of general circulation in the municipality. It shall not take effect until thirty days after the publication. If, within the thirty days of the publication, a petition, signed by qualified voters in number equal to twenty percent of the number of voters at the preceding city election on which members of the governing body were elected, asks that the resolution in question be submitted to a vote of the people for adoption or rejection, the measure shall not take effect until an election is held as petitioned. The city governing body may then rescind the resolution or, in its discretion, call an election within ninety days at which time the proposition shall be submitted to the voters. The governing body shall provide for the election in the same manner as for an election at which members of the governing body are chosen. If a majority of the votes cast at such election are against the measure, it shall be void. If a majority of the votes cast favor the measure, the governing body may proceed to acquire and operate a transit system as provided in the Municipal Transit Law. If a majority of those voting on the proposition disapprove the proposition, the matter may not again be submitted by the governing body until the next election at which city commissioners are chosen.

B. Any transit department so established is declared to be a public utility.

History: 1953 Comp., § 14-53-3, enacted by Laws 1965, ch. 300; 1971, ch. 11, § 1.

ANNOTATIONS

City cannot operate a statewide charter service. 1964 Op. Att'y Gen. No. 64-150.

Finding of inadequacy of statewide charter service not warranted. — The governing body of municipality would not be warranted in making a finding that privately owned transportation facilities are inadequate insofar as statewide charter service is involved, as it is in no position to so determine, and further, such determinations are for the state corporation commission (now public regulation commission) to make. 1964 Op. Att'y Gen. No. 64-150.

3-52-4. Powers of authorized municipality.

A. Any eligible municipal corporation having elected to invoke the powers set forth in the Municipal Transit Law may engage in the business of transportation of

passengers and property within the municipality by whatever means it may decide, and may acquire cars, motor buses and other equipment necessary for carrying on the business. It may acquire land and erect buildings and equip them with all necessary machinery and facilities for operation, maintenance, modification, repair and storage of any buses, cars, trucks or other equipment needed. It may do all things necessary for the acquisition and conduct of the business of transportation.

B. The governing body may provide for the selection of officers, agents, and employees necessary to be employed in connection with the acquisition, construction, maintenance and operation of such system of transportation, define their duties, regulate their compensation, and provide for their removal.

C. The governing body may make, ordain and establish all such ordinances, resolutions, rules and regulations as it may deem necessary and proper for the conduct of the business of transportation and for fixing and collecting all fares, rates and charges for services rendered therein.

D. Any municipality engaging in the business of transportation may extend any system of transportation to points outside the municipality where necessary and incidental to furnishing efficient transportation to points in the municipality.

E. The governing body may lease any system of transportation in whole or in part to any person who will contract to operate it according to rules, time tables and other requirements established by the governing body.

F. Any municipality may furnish transportation service to areas located outside the city limits and within the county in which it is located provided that prior contracts have been made with the county in which the areas are located covering the schedules, rates, service and other pertinent matters before initiation of such service.

G. Power of eminent domain:

(1) is granted to a qualifying municipality for the purpose of acquiring lands and buildings necessary to provide efficient public transit;

(2) is granted to a qualifying municipality for the purpose of acquiring lands, equipment, buses, contracts and other assets of persons holding franchises for public transit therein; and

(3) may be exercised as provided by law.

H. The city, as an operating entity, may enter into contracts for special transportation service, charter buses, advertising and any other function which private enterprise, operating a public transit facility could do or perform for revenue.

I. The governing body may spend public moneys to pay part of the costs of operation of public transit if revenues of the system prove to be insufficient.

J. The municipality is authorized to enter into binding agreements with the United States or any of its officers or agencies, of [or] the state or any of its officers or agencies, or any combination of agencies, departments, or officers of both the United States and the state of New Mexico, for planning, developing, modernizing, studying, improving, financing, operating or otherwise affecting public transit, to accept any loans, grants or payments from such agencies, and to make any commitments or assume any obligations required by such agencies as a condition of receiving the benefits thereof.

History: 1953 Comp., § 14-53-4, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 11.

ANNOTATIONS

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

Cross references. — For condemnation proceedings, *see* 42A-1-1 NMSA 1978 et seq.

More specific law governs municipal transit. — When enforcement of this section and 65-2-1B NMSA 1978 (now repealed) would lead to a contradiction of home rule autonomy as guaranteed by N.M. Const., art. X, § 6, only this section, which is more specific in scope, will be enforced. City of Albuquerque v. N.M. State Corp. Comm'n, 93 N.M. 719, 605 P.2d 227 (1979) (decided under prior law).

City cannot operate a statewide charter service. 1964 Op. Att'y Gen. No. 64-150.

3-52-5. Transportation contracts.

All contracts for work, material or labor in connection with a transportation system shall be let in the manner provided by law for the letting of other contracts by the municipality.

History: 1953 Comp., § 14-53-5, enacted by Laws 1965, ch. 300; 1999, ch. 74, § 1.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, substituted "Transportation contracts" for "Limitations on power" in the section heading; deleted the Subsection A designation, and in that subsection, inserted "system"; deleted Subsection B, which read "Transit service may not be extended to points outside the county in which the city is located unless prior approval is obtained from the state corporation commission and other regulatory bodies having jurisdiction in the matter"; and made minor stylistic changes.

3-52-6. Bond ordinance.

The governing body may adopt an ordinance providing:

A. for issuance of bonds to enable the municipality to acquire land, buildings, buses or other equipment required for public transit or for refunding bonds previously issued for such purpose or both such purposes;

B. the bonds are payable solely from a pledge of:

(1) gross income derived by the municipality from the transit facilities financed with the proceeds and other transit facilities not so financed; provided that when gross revenues are so pledged, the municipality may apply to the payment of the expense of maintaining and operating the transit facilities, the gross revenues of which are so pledged, the city's revenues derived from sources other than the proceeds of ad valorem taxes and may, in the proceedings authorizing such issue of such bonds, covenant and agree to apply to the payment of such maintenance and operation expenses so much of such revenues as may be necessary for such purposes or as may be specified in the proceedings;

(2) income derived from franchises granted by the governing body of the municipality;

(3) contributions, grants or other financial assistance from the state or federal governments or any other source; or

(4) any combination of these sources; and

C. the ordinance is irrepealable as long as any indebtedness on the bonds is unpaid by the municipality.

History: 1953 Comp., § 14-53-6, enacted by Laws 1965, ch. 300; 1965, ch. 309, § 1.

3-52-7. Terms of bonds.

A. The ordinance authorizing issuance of bonds shall specify:

(1) issuance in any number of series;

(2) maturity dates;

(3) interest not exceeding six percent a year;

(4) denominations;

(5) form, either coupon or registered;

(6) conversion or registration privileges;

(7) rank or priority;

(8) manner of execution;

(9) if desirable, features of redemption, prior to maturity with or without premium; and

(10) the terms, manner and medium of payment and redemption.

B. No member of the governing body or any person executing bonds is personally liable on any bond. All bonds are payable solely from the sources allowed by the governing body as specified in the authorizing ordinance. No bond is a debt, liability or general obligation of the issuing municipality.

C. The terms prescribed by the authorizing ordinance and by this section shall be carried on the face of each bond.

History: 1953 Comp., § 14-53-7, enacted by Laws 1965, ch. 300.

3-52-8. Sale of bonds.

A. Bonds may be sold at either public or private sale; provided that no such bonds may be sold at any price which does not result in an actual net interest cost to maturity, computed on the basis of standard tables of bond values, in excess of six percent.

B. If any municipal officer whose signature appears on any bond ceases to be an officer before delivery of the bonds, the signature is valid for all purposes as if the officer had remained in office until delivery.

C. All bonds are fully negotiable.

History: 1953 Comp., § 14-53-8, enacted by Laws 1965, ch. 300.

3-52-9. Construction.

The Municipal Transit Law is full authority for authorization and issuance of bonds and no election is necessary. In any proceeding involving the validity and enforceability of any bond or its security, any bond reciting in substance that it was issued by the municipality to aid in financing public transit facilities is conclusively presumed to have been issued for a public transit facility planned, operated and used in accordance with the Municipal Transit Law.

History: 1953 Comp., § 14-53-9, enacted by Laws 1965, ch. 300.

3-52-10. Additional security.

To further the marketability of bonds, the ordinance authorizing their issue may:

A. secure their payment by deed of trust or mortgage conveying municipally owned land and improvements acquired for the public transit facility from the proceeds of the bonds to a trustee for the benefit and security of the bondholders; and

B. authorize any other security agreement not in conflict with law.

History: 1953 Comp., § 14-53-10, enacted by Laws 1965, ch. 300.

3-52-11. Foreclosure.

If the interest or any serial maturity of any bond is in default, any obligee may foreclose against the municipality under the same procedure provided for foreclosure of real estate mortgages. The district court may appoint a receiver to operate the transit facilities in default.

History: 1953 Comp., § 14-53-11, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For foreclosure of mortgages, *see* 39-5-1 NMSA 1978 et seq.

3-52-12. Legal investments.

Bonds are legal investments for savings banks and insurance companies under the laws of this state. They are bonds, notes or other obligations of a municipal subdivision of this state, issued pursuant to a law of this state, for the purposes of investment or purchase by the state investment officer.

History: 1953 Comp., § 14-53-12, enacted by Laws 1965, ch. 300.

3-52-13. Tax exemptions.

Bonds and their income and all mortgages or other instruments executed as security for them are exempt from all taxation by this state or any of its political subdivisions.

History: 1953 Comp., § 14-53-13, enacted by Laws 1965, ch. 300.

3-52-14. Declaration of legislative intent.

The legislature in recognition of the provisions of Public Law 88-365, 88th Congress, 1964, and realizing the importance of modern, efficient, economical transportation facilities in a municipality as an assurance of the convenience to the citizenry and the promotion of economic progress and development, desires to bring existing New

Mexico laws in accord with the provisions of the Urban Mass Transportation Act of 1964 and to enable a municipality to qualify for a grant under such law through recognition of, and collective bargaining with, an appropriate union as required under the labor standards provision in Section 10, Paragraph (c) of the above federal law.

History: 1953 Comp., § 14-53-14, enacted by Laws 1965, ch. 274, § 1.

ANNOTATIONS

Compiler's notes. — The Urban Mass Transportation Act of 1964 (Public Law 88-365), cited in this section, was formerly codified as 49 U.S.C. § 1601 et seq. It was repealed effective July 5, 1994. For present sections, *see* the Federal Transit Act, 49 U.S.C. § 5301 et seq.

No general right of public sector collective bargaining. — Because the legislature, by 3-52-14 to 3-52-16 NMSA 1978, expressly authorized one public entity, municipalities, to engage in collective bargaining with one type of employee, mass transit workers, it may be inferred that the legislature specifically rejected collective bargaining for all others. 1987 Op. Att'y Gen. No. 87-41.

It would be incorrect to infer that by including a provision allowing closed meetings to discuss strategy preliminary to collective bargaining negotiations, 10-15-1E(3) [10-15-1H(5)] NMSA 1978 in the Open Meetings Act, the legislature recognized the general right of public sector collective bargaining. To the contrary, that provision was enacted only because the legislature specifically had authorized cities to bargain collectively with transit workers in 3-52-14 to 3-52-16 NMSA 1978. 1987 Op. Att'y Gen. No. 87-41 (issued prior to enactment of the Public Employees Bargaining Act, § 10-7E-1 NMSA 1978, et seq.).

3-52-15. Authorization of collective bargaining in municipalities wishing to qualify for grant.

Any municipality desiring to qualify for a grant under the Urban Mass Transportation Act of 1964 (being Public Law 88-365, 88th Congress) may in order to meet the requirements of Section 10, Paragraph (c) of that act, recognize, and enter into collective bargaining with, an appropriate union representing employees of such municipal transit system with regard to the preservation of employee rights, privileges and benefits under any existing collective bargaining agreements or otherwise; the continuation of collective bargaining rights; the protection of individual employees against a worsening of their positions with respect to their employment; assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and paid training or retraining programs.

History: 1953 Comp., § 14-53-15, enacted by Laws 1965, ch. 274, § 2.

ANNOTATIONS

Compiler's notes. — The Urban Mass Transportation Act of 1964 (Public Law 88-365), cited in this section, was formerly codified as 49 U.S.C. § 1601 et seq. It was repealed effective July 5, 1994. For present sections, *see* the Federal Transit Act, 49 U.S.C. § 5301 et seq. Section 10(c) of the act, also cited in this section, appeared as 49 U.S.C. § 1609(c). For present section, *see* 49 U.S.C. § 5333.

Law reviews. — For note, "Public Labor Disputes - A Suggested Approach for New Mexico," *see* 1 N.M.L. Rev. 281 (1971).

3-52-16. Coercive action prohibited.

This act [3-52-14 through 3-52-16 NMSA 1978] shall not be construed as authorizing or permitting such public employees, associations or groups to carry out such collective bargaining by means of strikes, picketing or any other coercive action.

History: 1953 Comp., § 14-53-16, enacted by Laws 1965, ch. 274, § 3.

ANNOTATIONS

Law reviews. — For note, "Public Labor Disputes - A Suggested Approach for New Mexico," *see* 1 N.M.L. Rev. 281 (1971).

ARTICLE 53
Waters; Regulation of Use

3-53-1. Regulation of watercourses, ponds, wells and cisterns.

A municipality may:

A. deepen, widen, dock-cover, wall, alter or change the channel of watercourses;

B. cleanse and purify waters, watercourses and canals;

C. drain or fill ponds on private property to prevent or abate nuisances;

D. construct, repair and regulate the use of vaults, cisterns, hydrants, pumps, bridges, viaducts, tunnels and wells; and

E. regulate and authorize the construction of any ditch carrying water on, through or across any street.

History: 1953 Comp., § 14-54-1, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Cross references. — For power of municipality to open, construct, repair, keep in order and maintain water mains, laterals, reservoirs, standpipes, sewers and drains, *see* 3-18-25, 3-49-5 NMSA 1978.

For powers of municipalities regarding water facilities, *see* 3-27-1 NMSA 1978 et seq.

For metropolitan water boards, *see* 3-61-1 NMSA 1978 et seq.

For waterworks companies, *see* 62-2-1 NMSA 1978 et seq.

For community springs or tanks, *see* 72-10-1 NMSA 1978 et seq.

For public reservoirs, *see* 72-10-4 NMSA 1978 et seq.

Legislative intent. — The legislature did not intend, by implication, to empower cities to condemn, for street purposes, acequias used for irrigation purposes. City of Albuquerque v. Garcia, 17 N.M. 445, 130 P. 118 (1913).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity of rule of assessment for drainage improvement, 2 A.L.R. 625.

Overflow caused by diverting stream into new channel, 12 A.L.R. 187.

Percolation or seepage from ponded water, municipal liability for injury by, 38 A.L.R. 1248.

Constitutionality and construction of statutes and ordinances for protection of municipal water supply, 72 A.L.R. 673.

Validity, construction, and effect of statute, ordinance, or other measure involving chemical treatment of public water supply, 43 A.L.R.2d 453.

Bathing, swimming, boating, fishing, or the like, prohibition or regulation to protect public water supply, 56 A.L.R.2d 790.

Pipeline, municipal liability for damage by water escaping from, 20 A.L.R.3d 1294.

63 C.J.S. Municipal Corporations §§ 1049, 1051, 1053; 64 C.J.S. Municipal Corporations § 1807.

3-53-1.1. New domestic water wells; municipal authority.

A. A municipality may, by ordinance, restrict the drilling of new domestic water wells, except for property zoned agricultural, if the property line of the applicant is within

three hundred feet of the municipal water distribution lines and the property is located within the exterior boundaries of the municipality.

B. No municipality may deny authorization for a new domestic water well permit to an applicant if the total cost to the applicant of extending the municipal water distribution line, meter and hook-up to the applicant's residence exceeds the cost of drilling a new domestic water well.

C. A municipality that fails to authorize the drilling of a new domestic water well shall provide domestic water service within ninety days to the property owner under the municipal water provider's usual and customary charges and rate schedules.

D. A municipality shall file with the state engineer its municipal ordinance restricting the drilling of new domestic water wells.

E. An applicant for a domestic water well located within the exterior boundaries of a municipality with a new domestic water well drilling ordinance shall obtain a permit to drill the well from the municipality subsequent to the state engineer's approval.

F. A municipality with a domestic water well drilling ordinance shall act upon a new domestic water well permit application within thirty days of receipt of the request.

G. A municipality shall notify the state engineer of all municipal permit denials for domestic well authorization.

H. An applicant may appeal the decision of the municipality to the district court in the county of the municipality.

I. Nothing in this section shall limit the authority of the state engineer to administer water rights as provided by law.

J. The state engineer shall not be liable for actions taken in accordance with a municipal ordinance authorizing restriction of domestic well drilling within the exterior boundaries of a qualified municipality.

History: Laws 2001, ch. 207, § 1.

ANNOTATIONS

Cross references. — For state engineer, *see* 72-2-1 NMSA 1978 et seq.

Effective dates. — Laws 2001, ch. 207 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

Strict compliance required. — Municipalities must strictly comply with the requirement that they file ordinances restricting the drilling of domestic water wells with the office of the state engineer. Providing notice of the ordinance and its content and substance to the office of the state engineer is insufficient to satisfy Section 3-53-1.1 NMSA 1978. Stennis v. City of Santa Fe, 2010-NMCA-108, 149 N.M. 92, 244 P.3d 787.

A municipal ordinance regulating domestic wells is not effective until it is filed with the state engineer and does not have to track the language of this section. Stennis v. City of Santa Fe, 2008-NMSC-008, 143 N.M. 320, 176 P.3d 309.

3-53-2. Regulation of water use.

In order to prevent waste and to conserve the supply of water, a municipality which owns and operates a water utility, or has granted a franchise for the operation of a public water system, may by ordinance regulate and restrict the use of water.

History: 1953 Comp., § 14-54-2, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 3; Waterworks and Water Companies §§ 3, 69, 70.

Water supply, ordinance for protection of, 72 A.L.R. 673.

94 C.J.S. Waters § 280.

3-53-2.1. Water resources; county or municipal requirements.

A. For the purpose of preserving and protecting water resources and to provide an assured water supply for the community, a county or municipality may require:

(1) site development standards to conserve water and minimize water loss;

(2) water harvesting and storage;

(3) low water use landscaping and plant materials;

(4) nonagricultural residential and commercial water use limitations; or

(5) recycling and reuse of water.

B. The provisions of this section shall be implemented consistent with state engineer rules.

C. Agricultural water users or agricultural water rights owners are excluded from the provisions of Subsection A of this section.

History: Laws 2007, ch. 120, § 1.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 120, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

3-53-3. Irrigation; regulation of public acequias.

A municipality may regulate the flow and use of water in public acequias for irrigating purposes.

History: 1953 Comp., § 14-54-3, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Legislative intent. — The legislature did not intend, by implication, to empower cities to condemn, for street purposes, acequias used for irrigation purposes. City of Albuquerque v. Garcia, 17 N.M. 445, 130 P. 118 (1913).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 315.

3-53-4. Purchase or lease of canal or ditch; election; assumption of powers and duties when acquired.

A. If a majority of the voters at a regular municipal election approve the purchase or lease of any canal or ditch, the governing body may, for the purpose of supplying water for the use of the people of the municipality:

(1) purchase or lease the canal or ditch;

(2) acquire all the rights, privileges [and] franchises of any person owning or having an interest in the canal or ditch;

(3) hold and operate the canal or ditch in the same manner as the person from whom the canal or ditch was purchased or leased; and

(4) repair, improve or enlarge the canal or ditch or any flume, dam or gate connected with the canal or ditch.

B. The municipality purchasing or leasing a canal or ditch shall assume all obligations and other duties which by law had devolved upon the owner from whom the canal or ditch was purchased or leased.

History: 1953 Comp., § 14-54-4, enacted by Laws 1965, ch. 300; 1973, ch. 258, § 137.

ANNOTATIONS

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

3-53-5. Irrigation of trees and shrubs; assessment of cost against abutting property; manner of making assessment; lien; irrigation of private property; annual charge; payment in advance.

A. If the governing body determines it is necessary to procure water for the benefit of the shade or ornamental trees in the streets and public grounds within the municipality, the governing body may:

(1) procure water from any available source at the lowest price for which the water may be obtained; and

(2) construct irrigation ditches, laterals, headgates and other works for properly and economically conducting the water to the streets and public grounds for the benefit of the shade and ornamental trees.

B. On or before the first Monday in April of each year, the governing body by resolution shall for the ensuing calendar year:

(1) determine what streets, parts of streets and public grounds shall be irrigated;

(2) estimate the expense of irrigating the shade and ornamental trees which shall include the cost of water, constructing ditches and laterals, keeping the ditches and laterals in repair, and delivering the water throughout the irrigation system; and

(3) equitably assess each tract or parcel of land along, by or in front of which a ditch or lateral runs and conducts water, its proportion cost of the total estimated expense according to the length of the row of trees along the streets contiguous to the lots or tracts of lands.

C. The resolution shall further provide for the manner of giving notice of the assessment and when the assessment is due and payable.

D. If the owner or agent of the tract or parcel of land assessed as provided in this section fails to pay the assessment within the time provided by the resolution required in

this section and after notice is given to the owner or agent of the tract or parcel of land assessed, the assessment becomes a lien against the tract or parcel of land so assessed and shall be enforced as provided in Sections 3-36-1 through 3-36-5 NMSA 1978.

E. On or before the first Monday in April of each year, the governing body may establish a charge in addition to the assessment provided for in this section for furnishing water to any tract or parcel of land privately owned within the municipality for irrigation purposes but no water shall be delivered to a tract or parcel of land until the annual charge has been paid in advance.

F. The governing body may by ordinance adopt regulations preventing the waste or excess use of water.

History: 1953 Comp., § 14-54-5, enacted by Laws 1965, ch. 300.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates, 4 A.L.R.2d 595.

63 C.J.S. Municipal Corporations § 1320.

ARTICLE 54
Sale or Lease of Property

3-54-1. Authority to sell or lease municipal utility facilities or real property; notice; referendum.

A. A municipality may lease or sell and exchange any municipal utility facilities or real property having a value of twenty-five thousand dollars ($25,000) or less by public or private sale or lease any municipal facility or real property of any value normally leased in the regular operations of such facility or real property, and such sale or lease shall not be subject to referendum.

B. A municipality may lease or sell and exchange any municipal utility facilities or real property having an appraised value in excess of twenty-five thousand dollars ($25,000) by public or private sale or lease, subject to the referendum provisions set forth in this section. The value of municipal utility facilities or real property to be leased or sold and exchanged shall be determined by the appraised value of the municipal utility facilities or real property and not by the value of the lease. An appraisal shall be made by a qualified appraiser and submitted in writing to the governing body. If the sale price is less than the appraised value, the governing body shall cause a detailed written

explanation of that difference to be prepared, and the written explanation shall be made available to any interested member of the public upon demand.

C. If a public sale is held, the bid of the highest responsible bidder shall be accepted unless the terms of the bid do not meet the published terms and conditions of the proposed sale, in which event the highest bid which does meet the published terms and conditions shall be accepted; provided, however, a municipality may reject all bids. Terms and conditions for a proposed public sale or lease shall be published at least twice, not less than seven days apart, with the last publication no less than fourteen days prior to the bid opening, and in accordance with the provisions of Subsection J of Section 3-1-2 NMSA 1978.

D. Any sale or lease of municipal utility facilities or real property entered into pursuant to Subsection B of this section shall be by ordinance of the municipality. Such an ordinance shall be effective forty-five days after its adoption, unless a referendum election is held pursuant to this section. The ordinance shall be published prior to adoption pursuant to the provisions of Subsection J of Section 3-1-2 NMSA 1978 and Section 3-17-3 NMSA 1978 and shall be published after adoption at least once within one week after adoption pursuant to the provisions of Subsection J of Section 3-1-2 NMSA 1978. Such publications shall concisely set forth at least:

(1) the terms of the sale or lease;

(2) the appraised value of the municipal utility facilities or real property;

(3) the time and manner of payments on the lease or sale;

(4) the amount of the lease or sale;

(5) the identities of the purchasers or lessees; and

(6) the purpose for the municipality making the lease or sale.

E. In order to call for a referendum election on a sale or lease ordinance, a petition shall be filed with the municipal clerk:

(1) no later than thirty days after the adoption of the sale or lease ordinance;

(2) containing the names, addresses and signatures of at least fifteen percent of the qualified electors of the municipality; and

(3) containing the following heading on each page of the petition reprinted as follows:

"PETITION FOR A REFERENDUM

We, the undersigned registered voters of ..... (insert name of municipality) petition the governing body of ..... (insert name of municipality) to conduct a referendum election on ordinance number ..... Ordinance number ..... would cause a ..... (insert "sale" or "lease") of municipal ..... (insert "real property" or "utility facilities").

Date Name (printed) Address Signature."

F. Section 3-1-5 NMSA 1978 shall apply to all petitions filed calling for a referendum election on a sale or lease ordinance.

G. If the municipal clerk certifies to the municipal governing body that the petition does contain the minimum number of valid names, addresses and signatures required to call a referendum election on the sale or lease ordinance, the municipal governing body shall adopt an election resolution within fourteen days after the date the clerk makes such certification, calling for a referendum election on the sale or lease ordinance. The election resolution shall be adopted and published pursuant to the provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] governing special elections and shall also concisely set forth:

(1) the terms of the sale or lease;

(2) the appraised value of the municipal utility facilities or real property;

(3) the time and manner of payments on the lease or sale;

(4) the amount of the lease or sale;

(5) the identities of all purchasers or lessees; and

(6) the purpose for the municipality making the lease or sale.

H. The referendum election on the sale or lease ordinance shall be held not later than ninety days after the election resolution is adopted. Such election shall be held at a special or regular municipal election and shall be conducted as a special election in the manner provided in the Municipal Election Code. Any qualified elector of the municipality may vote in such a referendum election.

I. If a majority of the votes cast are to approve the sale or lease ordinance, the sale or lease ordinance shall be effective after the election results have been canvassed and certified. If a majority of the votes cast are to disapprove the sale or lease ordinance, the ordinance shall not be effective.

History: 1953 Comp., § 3-54-1, enacted by Laws 1983, ch. 115, § 1; 1985, ch. 208, § 119; 1999, ch. 134, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1983, ch. 115, § 1, repealed former 3-54-1 NMSA 1978, relating to authority to sell or lease municipal utility or real property used for municipal purposes, and enacted a new 3-54-1 NMSA 1978.

Cross references. — For lease of parking facilities, *see* 3-50-8 and 3-51-8 NMSA 1978.

The 1999 amendment, effective June 18, 1999, substituted "forty-five days" for "seventy days" in Subsection D; and, in Subsection E, substituted "shall" for "must" in the introductory language and "thirty days" for "sixty days" in Paragraph (1).

"Terms" defined. — The word "terms", as used in Paragraph (1) of Subsection D, refers to the amount, time and manner of payments. City of Clovis v. Southwestern Pub. Serv. Co., 49 N.M. 270, 161 P.2d 878 (1945).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 549 to 559.

Right to lease or convey park, square, or common, 18 A.L.R. 1259, 63 A.L.R. 484, 144 A.L.R. 486.

Sufficiency of compliance with condition of sale or lease by municipality of public utility plants, 52 A.L.R. 1052.

Mortgage or pledge of property or income therefrom, 71 A.L.R. 828.

Lease or sale of municipal plant, or contract therefor, as affecting right of municipality to compete, 118 A.L.R. 1030.

Implied or inherent power of municipal corporation to sell its real property, 141 A.L.R. 1447.

Constitutional prohibition of municipal corporation lending its credit or making donation as applicable to sale or leasing of its property, 161 A.L.R. 518.

Off-street public parking facilities, 8 A.L.R.2d 373.

Granting or taking of lease of property by municipality as within authorization of purchase or acquisition thereof, 11 A.L.R.2d 168.

Maintenance by municipal corporations of tourist or trailer camps, motor courts or motels, 22 A.L.R.2d 774.

Conveyance by municipality as carrying title to center of highway, 49 A.L.R.2d 982.

Power of municipality to sell, lease, or mortgage public utility plant or interest therein, 61 A.L.R.2d 595.

Ordinance as to sale or other disposition of municipal property as within operation of initiative and referendum provisions, 72 A.L.R.3d 1030.

63 C.J.S. Municipal Corporations § 962.

3-54-2. Sale, exchange and gift of property.

A. A municipality may sell personal property for cash at public or private sale without notice where it is shown to the governing body that such property does not exceed the value of two thousand five hundred dollars ($2,500).

B. A municipality may sell personal property having a value of more than two thousand five hundred dollars ($2,500) at public or private sale. If a private sale is held under this subsection, such sale shall be held only after notice is published at least twice, pursuant to the provisions of Subsection J of Section 3-1-2 NMSA 1978, not less than seven days apart, with the last publication not less than fourteen days prior to the sale.

C. If a public sale is held, the bid of the highest responsible bidder shall be accepted unless the terms of the bid do not meet the published terms and conditions of the municipality, in which event the highest bid which does meet the published terms and conditions shall be accepted; provided, however, a municipality may reject all bids. Terms and conditions for a proposed sale or lease shall be published at least twice, not less than seven days apart, with the last publication no less than fourteen days prior to the bid opening, and shall be published according to the provisions of Subsection J of Section 3-1-2 NMSA 1978.

D. A municipality may sell, at a private or public sale, exchange or donate real or personal property to the state, to any of its political subdivisions or to the federal government if such sale, exchange or gift is in the best interests of the public and is approved by the local government division of the department of finance and administration. The provisions of Section 6-6-11 NMSA 1978 shall not apply to such sale, exchange or a donation.

History: 1953 Comp., § 14-55-2, enacted by Laws 1967, ch. 126, § 1; 1981, ch. 52, § 2; 1983, ch. 115, § 2; 1989, ch. 380, § 2.

ANNOTATIONS

Cross references. — For sale of public property by state agencies and local public bodies, *see* 13-6-1 NMSA 1978 et seq.

The 1989 amendment, effective June 16, 1989, in Subsection D substituted "local government division of the department of finance and administration" for "state board of finance" at the end of the first sentence.

Presumption of property's value. — Where city determined to rid itself of building and readily accepted bid of $300 for performance of such service, and where there was published only one notice of contemplated removal, presumption was, absent evidence to the contrary, that property did not exceed value of $500 (now $2500), that city officials complied with Subsection A of this section, and statement attached to city's insurance policy appraising building at $4000 did not overcome that presumption. City of Carlsbad v. Northwestern Nat'l Ins. Co., 81 N.M. 56, 463 P.2d 32 (1970).

This section is general in nature and authorizes the sale of municipal property generally which is not being used strictly in carrying out an essential governmental function. 1953-54 Op. Att'y Gen. No. 53-5707.

Application of section. — Prior to its 1983 amendment, this section only applied to the sale of municipal property not being used for essential governmental functions and did not apply to the situation in which it was necessary to raze an obsolete building in order to construct a new building on the site. This action could have been done under contract as part of the construction of the new building without complying with the requirements of this section. 1953-54 Op. Att'y Gen. No. 53-5823.

Approval not required for sales under Subsections A, B or C. — Since Subsection D expressly requires board of finance (now local government division) approval of sales of property to governmental entities, under the rule of expressio unius est exclusio alterius it would appear that board of finance approval (now local government division) is not required for sales of municipal property under Subsections A, B or C. 1978 Op. Att'y Gen. No. 78-21.

3-54-3. Supplemental method for disposing of municipal property.

Sections 3-54-1 and 3-54-2 NMSA 1978 are intended to afford another and additional method of disposing of municipal real and personal property and are not to be construed as repealing or qualifying any other statutory authorization granted a municipality to dispose of or exchange real or personal municipal property or as affecting in any way the sale, lease, exchange or other disposition of real or personal property pursuant to the Local Economic Development Act [5-10-1 through 5-10-13 NMSA 1978].

History: 1953 Comp., § 14-55-3, enacted by Laws 1965, ch. 300; 1993, ch. 297, § 15.

ANNOTATIONS

The 1993 amendment, effective upon certification by the secretary of state that Article 9, Section 14 of the constitution of New Mexico has been amended as proposed by a

joint resolution of the forty-first legislature, first session (Laws 1993, H.J.R. No. 12), substituted "3-54-1 and 3-54-2 NMSA 1978" for "14-55-1 and 14-55-2 New Mexico Statutes Annotated, 1953 Compilation", inserted "of" following "dispose", and inserted the language beginning "or as affecting". The secretary of state certified the constitutional amendment on November 29, 1994.

ARTICLE 55
Unclaimed Property

(Repealed by Laws 1983, ch. 50, § 4)

3-55-1 to 3-55-3. Repealed.

ANNOTATIONS

Repeals. — Laws 1983, ch. 50, § 4, repealed 3-55-1 to 3-55-3 NMSA 1978, relating to inventory of unclaimed property, authority to sell unclaimed property and notice of sale, and proceeds of sale of unclaimed property and vesting of title to property in the purchaser, respectively, effective March 19, 1983. For present provisions, *see* 29-1-13 to 29-1-15 NMSA 1978.

ARTICLE 56
Regional Planning

3-56-1. Short title.

This act [3-56-1 through 3-56-9 NMSA 1978] may be cited as the "Regional Planning Act."

History: 1953 Comp., § 14-57-1, enacted by Laws 1967, ch. 239, § 1.

ANNOTATIONS

Cross references. — For municipal planning, *see* 3-19-1 NMSA 1978 et seq.

For the Planning District Act, *see* 4-58-1 NMSA 1978 et seq.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 83 Am. Jur. 2d Zoning and Planning §§ 4, 10 to 16, 23, 25, 28.

Outside municipal limits, validity, construction, and application of statutes, and regulations adopted thereunder, regarding county planning or zoning, or planning or zoning in territory outside municipal limits, 131 A.L.R. 1055.

62 C.J.S. Municipal Corporations § 83; 101A C.J.S. Zoning §§ 9, 10, 29, 177 to 179.

3-56-2. Creation of regional planning commission.

A. A regional planning commission may be established as follows:

(1) two or more municipalities, two or more adjacent counties, or one or more counties and a municipality or municipalities within or adjacent to the county or counties may, by agreement among their respective governing bodies, create a regional planning commission, if:

(a) the municipality having the greatest population within the regional planning area is a party to the agreement; and

(b) the number of counties and municipalities party to the agreement equals all of the total number of counties and municipalities within the region. The agreement shall be effected through the adoption by each governing body concerned, acting individually, of an appropriate resolution. A copy of the agreement shall be filed with the local government division and the secretary of the department of finance and administration; or

(2) any municipality or county may, by legislative action of its governing body, delegate any or all of its planning powers and functions to a regional planning commission, or a county and one or more municipalities may merge their respective planning powers and functions into a planning commission in accordance with the provisions of the Regional Planning Act.

B. Any additional county, municipality or school district within the regional planning area may become party to the agreement upon request of the regional planning commission.

History: 1953 Comp., § 14-57-2, enacted by Laws 1967, ch. 239, § 2; 1983, ch. 296, § 11.

ANNOTATIONS

Cross references. — For county planning commissions, *see* 4-57-1 to 4-57-3 NMSA 1978.

Law reviews. — For note, "County Regulation of Land Use and Development," *see* 9 Nat. Resources J. 266 (1969).

3-56-3. Membership and organization.

A. Membership of the regional planning commission shall consist of representatives from each participating government, in number and for terms specified in the agreement. Representatives are not required to be members of the local governing body or district they represent but may be selected from among residents of the area within its jurisdiction. A representative of the state government may be designated by the governor to attend meetings of the commission.

B. Members of the commission shall serve without compensation, but shall be reimbursed for expenses incurred in pursuit of their duties on the commission pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978]. The commission shall elect its own chairman from among its members, and shall establish its own rules and the committees it deems necessary to carry on its work. Committees may have as members persons other than members of the commission and other than elected officials. The commission shall meet as often as necessary but no less than four times a year.

C. The commission shall adopt an annual budget to be submitted to the participating governments which shall each contribute to the financing of the commission according to a formula specified in the agreement. Subject to approval of the secretary of the department of finance and administration, a regional planning commission may apply for, receive and utilize grants or other aid from the federal government or any of its agencies or from any other source.

History: 1953 Comp., § 14-57-3, enacted by Laws 1967, ch. 239, § 3; 1977, ch. 247, § 142; 1983, ch. 296, § 12.

3-56-4. Staff.

The regional planning commission shall appoint a director qualified by training and experience who serves at the pleasure of the commission. The director is the chief administrative and planning officer and regular technical adviser of the commission, and shall appoint and remove the staff of the commission. The director may make agreements with local planning agencies within the jurisdiction of the commission for temporary transfer or joint use of staff employees and may contract for professional or consultant services from other governmental and private agencies.

History: 1953 Comp., § 14-57-4, enacted by Laws 1967, ch. 239, § 4.

3-56-5. Powers and duties [of regional planning commission].

The regional planning commission shall:

A. prepare and from time to time revise, amend, extend or add to a plan or plans for the development of the region. The plans shall be based on studies of physical, social,

economic and governmental conditions and trends, and shall aim at the coordinated development of the region in order to promote the general health, welfare, convenience and prosperity of its people. The plans shall embody the policy recommendations of the commission and shall include, but not be limited to:

(1) a statement of the objectives, standards and principles sought to be expressed in the plan;

(2) recommendations for the most desirable pattern and intensity of general land use within the region in the light of the best available information concerning natural environmental factors, the present and prospective economic and demographic bases of the region, and the relation of land use within the region to land use in adjoining regions;

(3) recommendations for the general circulation pattern for the region, including land, water and air transportation and communication facilities whether used for movement within the region or to and from adjoining areas;

(4) recommendations concerning the need and proposed general location of public and private works and facilities which, by reason of their function, size, extent or for any other cause, are of a regional, as distinguished from purely local, concern;

(5) recommendations for the long-range programming and financing of capital projects and facilities; and

(6) other appropriate recommendations concerning current and impending problems which may affect the region;

B. prepare studies of the region's resources, both natural and human, with respect to existing and emerging problems of industry, commerce, transportation, population, housing, agriculture, public service, local governments and any other matters relevant to regional planning;

C. collect, process and analyze at regular intervals social and economic statistics for the region necessary to planning studies and make the results available to the public;

D. participate with other government agencies, educational institutions and private organizations in the coordination of regional research activities under Subsections B and C of this section;

E. cooperate with, and provide planning assistance to, county, municipal or other local governments, instrumentalities or planning agencies within the region and coordinate regional planning with the planning activities of the state and of the counties, municipalities, special districts or other government units within the regions, as well as neighboring regions, and the programs of federal departments and agencies;

F. provide information to officials of departments, agencies and instrumentalities of federal, state and local governments, and to the public at large, in order to foster public awareness and understanding of the objectives of the regional plan and the functions of regional and local planning, and to stimulate public interest and participation in the orderly, integrated development of the region;

G. receive and review for compatibility with regional plans all proposed comprehensive land use, circulation and public facilities plans and projects, zoning and subdivision regulations, official maps and building codes of local governments in the geographic area and any amendments or revisions thereof, and make recommendations for their modification where necessary to achieve compatibility;

H. review participating local government applications for capital project financial assistance from state and federal governments, and comment upon their consistency with the regional development plan; and review and comment upon state plans for highways and public works within the area to promote coordination of all intergovernmental activities in the region on a continuing basis;

I. exercise all other powers necessary and proper for the discharge of its duties; and

J. when deemed desirable, exercise its powers jointly or in cooperation with agencies or political subdivisions of this state or any other state, with agencies of the United States, or with Indian reservations, tribes or pueblos, subject to statutory provisions applicable to interjurisdictional agreements.

History: 1953 Comp., § 14-57-5, enacted by Laws 1967, ch. 239, § 5.

ANNOTATIONS

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

Law reviews. — For note, "County Regulation of Land Use and Development," *see* 9 Nat. Resources J. 266 (1969).

3-56-6. Implementation of regional plans.

All comprehensive regional plans, as well as subdivisions and platting regulations, shall be approved by the regional planning commission after public hearing and certified by the commission to all local governments and special districts within the region. Notice of the public hearing by the regional planning commission shall be published in a newspaper or newspapers of general circulation within the region, not more than fifteen nor less than ten days before the date set for the public hearing. Parties to the agreement shall be the constituent agencies for implementing the plan.

History: 1953 Comp., § 14-57-6, enacted by Laws 1967, ch. 239, § 6.

ANNOTATIONS

Law reviews. — For note, "County Regulation of Land Use and Development," *see* 9 Nat. Resources J. 266 (1969).

3-56-7. Termination of membership.

Any governmental member of the commission may terminate its membership after giving not less than ninety days' notice in writing of its intention to withdraw. The notice shall be served upon the chairman of the commission personally or by mail. The ninety-day period begins to run from the date the notice is received by the chairman. The withdrawal of a member does not abrogate or impair any contract or commitment previously made by the withdrawing governmental agency for the fiscal year.

History: 1953 Comp., § 14-57-7, enacted by Laws 1967, ch. 239, § 7.

3-56-8. Cooperation.

Any local government or special district within the region may, and all participating local governments and special districts shall, file with the regional planning commission all current and proposed plans, zoning ordinances, official maps, building codes, subdivision regulations and project plans for capital facilities and amendments and revisions of any of them as well as copies of their regular and special reports dealing with planning matters. Each governmental unit within the geographic area over which a regional planning commission has jurisdiction shall give the commission a reasonable opportunity to comment upon any proposed plans, zoning, subdivision and platting ordinances, regulations and capital facilities projects and shall consider any comments prior to adopting the plan, ordinance, regulation or project. By appropriate revision of an agreement, the parties may require that, as a condition precedent to their adoption, any or all proposed plans, zoning, subdivision and platting ordinances, regulations and capital facilities projects of their respective jurisdictions be determined by the regional planning commission to be in conformity with the relevant plan of the commission. The sole power to adopt proposed plans, ordinances, regulations or projects remains with the local governing body or special district proposing them.

History: 1953 Comp., § 14-57-8, enacted by Laws 1967, ch. 239, § 8.

ANNOTATIONS

Law reviews. — For note, "County Regulation of Land Use and Development," *see* 9 Nat. Resources J. 266 (1969).

3-56-9. Annual report [of commission].

The regional planning commission shall submit an annual report to the chief executive officers, legislative bodies and planning agencies of all local governments within the region and to the governor.

History: 1953 Comp., § 14-57-9, enacted by Laws 1967, ch. 239, § 9.

ANNOTATIONS

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

Severability. — Laws 1967, ch. 239, § 10, provided for the severability of the act if any part or application thereof is held invalid.

ARTICLE 57
Metropolitan Boundaries for Class A Counties

3-57-1. Short title.

This act [3-57-1 through 3-57-9 NMSA 1978] may be cited as the "Metropolitan Boundary Act for Class A Counties."

History: 1953 Comp., § 14-58-1, enacted by Laws 1967, ch. 248, § 1.

ANNOTATIONS

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

Law reviews. — For comment, "Deannexation: A proposed statute," *see* 20 N.M.L. Rev. 713 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 55 et seq.

Capacity to attack the fixing or extension of municipal limits or boundary, 13 A.L.R.2d 1279, 17 A.L.R.5th 195.

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

62 C.J.S. Municipal Corporations §§ 42 to 46, 50 to 64, 70 to 79.

3-57-2. Purpose of act.

The purpose of this act [3-57-1 through 3-57-9 NMSA 1978] is to provide for the orderly extension of municipal boundaries, to control the formation of new local public bodies, and to minimize the overlapping of a [sic] local governmental services, within class A counties.

History: 1953 Comp., § 14-58-2, enacted by Laws 1967, ch. 248, § 2.

ANNOTATIONS

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

3-57-3. Definitions.

As used in the Metropolitan Boundary Act for Class A Counties:

A. "county" means the county in which the municipality or land is situated;

B. "district court" means the district court of the district in which the municipality or land is situated;

C. "local public body" means every political subdivision of the state which is empowered to receive or expend public money from whatever source derived;

D. "publish" or "publication" means printing in a newspaper which maintains an office in the county and is of general circulation within the county; and

E. "municipality" means all municipalities having a population over one hundred thousand and located within a class A county, but only as to that land located within a conservancy district.

History: 1953 Comp., § 14-58-3, enacted by Laws 1967, ch. 248, § 3; 1976 (S.S.), ch. 4, § 1; 1979, ch. 159, § 2.

ANNOTATIONS

Law reviews. — For note, "County Regulation of Land Use and Development," *see* 9 Nat. Resources J. 266 (1969).

3-57-4. Methods of annexation.

There shall be two methods of annexing territory to a municipality within class A counties:

A. by petition to a municipality as provided by Section 3-57-5 NMSA 1978 or, if the municipality has over two hundred thousand persons, as provided by Section 3-7-17.1 NMSA 1978; and

B. by petition to the district court as provided by Sections 3-57-6 through 3-57-8 NMSA 1978.

Any other method provided by the Municipal Code or any other act shall have no application within class A counties.

History: 1953 Comp., § 14-58-4, enacted by Laws 1967, ch. 248, § 4; 1976 (S.S.), ch. 4, § 2; 1998, ch. 42, § 6.

ANNOTATIONS

The 1998 amendment, effective May 20, 1998, rewrote Subsection A and substituted "3-57-6 through 3-57-8 NMSA 1978" for "14-58-6 through 14-58-8 NMSA 1953" in Subsection B.

3-57-5. Annexation by petition to municipality.

A. Whenever a petition:

(1) seeks the annexation of territory to a municipality in a class A county;

(2) is signed by the owners of a majority of the number of acres in such territory;

(3) is signed by a majority of the owners of land in such territory;

(4) is accompanied by a map which shall show the external boundary of the territory proposed to be annexed and the relationship of the territory proposed to be annexed to the existing boundary of the municipality; and

(5) is presented to the governing body of such municipality, the governing body shall by ordinance express its consent or rejection to the annexation of such territory.

B. If the ordinance consents to the annexation of the territory, a copy of the ordinance, with a copy of the plat of the territory so annexed, shall be filed in the office of the county clerk.

C. Within thirty days after the filing of a copy of the ordinance in the office of the county clerk, any person owning land within the territory annexed to the municipality may appeal to the district court questioning the validity of the annexation proceedings. If no appeal to the district court is filed within thirty days after the filing of the ordinance in

the office of the county clerk, or if the court renders judgment in favor of the municipality, the annexation shall be deemed complete.

History: 1953 Comp., § 14-58-5, enacted by Laws 1967, ch. 248, § 5.

3-57-6. Petition to district court.

Whenever a petition is filed in the district court which:

A. seeks the annexation of territory to a municipality in a class A county;

B. is signed by an owner of land in such territory or by the authorized agent of any local public body;

C. is accompanied by a map which shall show the external boundary of the territory proposed to be annexed and the relationship of such territory to the existing boundary of the municipality;

D. names as respondents the county and the board of county commissioners of the county;

E. states that there exists in such territory a particular hazard to the health of persons residing within or without such territory; and

F. alleges that such hazard would be removed or materially alleviated by such municipality upon annexation, and that no other adequate and speedy remedy for the removal or material alleviation of such hazard is available, the district court shall set a date for a nonjury trial to consider the merits of such petition.

History: 1953 Comp., § 14-58-6, enacted by Laws 1967, ch. 248, § 6.

3-57-7. [Petition to district court;] service and publication of notice.

A copy of the petition and the order setting the petition down for hearing shall be served upon the county and each county commissioner, upon the clerk of the municipality, and published once a week for three weeks. Service shall be completed, and the first publication made, not more than sixty days nor less than thirty days prior to the date set for hearing.

History: 1953 Comp., § 14-58-7, enacted by Laws 1967, ch. 248, § 7.

ANNOTATIONS

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

3-57-8. Trial and judgment.

The municipality and any owner of real property in such territory may appear in such action and present evidence and argument on all issues involved. During the trial, the district court may take notice of generally recognized technical or scientific facts within the specialized knowledge of physicians and other persons qualified as experts in the field of public health. The judgment of the district court shall state whether all, a part or none of such territory shall be annexed to the municipality. Upon the filing of a copy of a judgment annexing territory in the office of the county clerk, the annexation shall be deemed complete. Except as inconsistent herewith, the Rules of Civil Procedure for the district courts, the court of appeals, and the supreme court shall apply to all actions under Sections 6, 7, and 8 of this act [3-57-6, 3-57-7 and 3-57-8 NMSA 1978].

History: 1953 Comp., § 14-58-8, enacted by Laws 1967, ch. 248, § 8.

3-57-9. Formation of local public bodies.

No local public body shall be organized within a five-mile radius of the corporate limits of the municipality having the greatest number of inhabitants in a class A county, unless the governing body of such municipality consents thereto. No local public body shall be organized beyond such five-mile radius in a class A county, unless the governing body of such county consents thereto. As a condition to granting such consent, such governing body may require such new local public body to comply with all master plans and all design and construction criteria for public improvements adopted by ordinance by such governing body.

History: 1953 Comp., § 14-58-14, enacted by Laws 1967, ch. 248, § 14.

ANNOTATIONS

Severability. — Laws 1967, ch. 248, § 15, provided for the severability of the act if any part or application thereof is held invalid.

Law reviews. — For note, "County Regulation of Land Use and Development," *see* 9 Nat. Resources J. 266 (1969).

ARTICLE 58
Economic Development Promotion

3-58-1. Short title.

This act [3-58-1 and 3-58-2 NMSA 1978] may be cited as the "Economic Development Promotion Act."

History: 1953 Comp., § 14-59-1, enacted by Laws 1968, ch. 68, § 1.

ANNOTATIONS

Cross references. — For aid to private enterprise, *see* N.M. Const., art. IX, § 14.

3-58-2. Authority to utilize revenues.

The governing board of any municipality or county may budget and utilize revenues for economic development promotion only upon approval by a majority of all of the members of the governing board.

History: 1953 Comp., § 14-59-2, enacted by Laws 1968, ch. 68, § 2; 1981, ch. 80, § 1.

ANNOTATIONS

Cross references. — For Community Development Law, *see* 3-60-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 205.

64 C.J.S. Municipal Corporations § 1845.

ARTICLE 59
Pollution Control Revenue Bonds

3-59-1. Short title.

This act [3-59-1 through 3-59-14 NMSA 1978] may be cited as the "Pollution Control Revenue Bond Act."

History: 1953 Comp., § 14-60-1, enacted by Laws 1973, ch. 397, § 1.

ANNOTATIONS

Cross references. — For pollution control, *see* N.M. Const., art. XX, § 21.

Law reviews. — For article, "The New Mexico Solid Waste Act: A Beginning for Control of Municipal Solid Waste in the Land of Enchantment", *see* 21 N.M.L. Rev. 167 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61A Am. Jur. 2d Pollution Control § 1 et seq.; 64 Am. Jur. 2d Public Securities and Obligations §§ 78 to 80, 94 et seq.

39A Health and Environment §§ 115 to 157; 64 C.J.S. Municipal Corporations § 1902 et seq.

3-59-2. Pollution Control Revenue Bond Act; definitions.

Wherever used in the Pollution Control Revenue Bond Act, unless a different meaning clearly appears in the context, the following terms, whether used in the singular or plural, shall be given the following respective interpretations:

A. "municipality" means any incorporated municipality in New Mexico;

B. "project" means any land, interest in land, building, structure, facility, system, fixture, improvement, appurtenance, machinery, equipment or any combination thereof, or any interest in any one or more of the foregoing, whether or not presently in existence or under construction, used by any individual, partnership, firm, company, corporation (including a public utility), association, trust, estate, political subdivision, state agency or any other legal entity, or its legal representative, agent or assigns, substantially for the reduction, abatement or prevention of pollution, including, but not limited to, the removal of pollutants, contaminants or foreign substances from land, air or water, or for the removal or treatment of any substance in a processed material which otherwise would cause pollution when such material is used;

C. "governing body" means the board or body in which the legislative powers of the municipality are vested;

D. "property" means any land, improvements thereon, buildings and any improvements thereto, machinery and equipment of any and all kinds, whether or not presently in existence or under construction, necessary to the project or projects or substantially related to the project or projects, operating capital and any other personal properties deemed necessary or substantially related to the project or projects, in connection with the said project or projects;

E. "mortgage" means a mortgage or a mortgage and deed of trust, or the pledge and hypothecation of any assets as collateral security; and

F. "pollution" means any form of environmental pollution including, but not limited to, water pollution, air pollution, pollution caused by solid waste disposal, thermal pollution, radiation contamination or noise pollution.

History: 1953 Comp., § 14-60-2, enacted by Laws 1973, ch. 397, § 2; 1977, ch. 312, § 1.

3-59-3. Legislative intent.

It is the intent of the legislature by the passage of the Pollution Control Revenue Bond Act to authorize municipalities to acquire, own, lease or sell projects for the purpose of reducing, abating or preventing pollution, including, but not limited to, removing pollutants, contaminants or foreign substances from land, air or water, or removing or treating any substance in a processed material which otherwise would

cause pollution when such material is used, to protect and promote the health, welfare and safety of the citizens of this state and its habitat and wildlife, with the resultant higher level of employment and economic activity and stability. It is not intended hereby to authorize any municipality itself to operate any manufacturing, industrial or commercial enterprise. The provisions of the Pollution Control Revenue Bond Act shall be liberally construed in conformity with this intent.

History: 1953 Comp., § 14-60-3, enacted by Laws 1973, ch. 397, § 3; 1977, ch. 312, § 2.

3-59-4. Additional powers conferred on municipalities.

In addition to any other powers which it may now have, each municipality shall have the following powers:

A. to acquire, whether by construction, purchase, gift or lease, one or more projects which shall be located within this state and which may be located within or without the municipality, or partially within or partially without the municipality, but which shall not be located more than fifteen miles outside of the corporate limits of the municipality, unless there is no municipality within fifteen miles of the project, in which case any municipality in the county in which the project or projects are or may be located shall have the additional powers referred to in this section;

B. to sell or lease or otherwise dispose of any or all of its projects upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of the Pollution Control Revenue Bond Act ; and

C. to issue revenue bonds for the purpose of defraying the cost of acquiring, constructing, reconstructing, improving, maintaining, equipping, or furnishing any project or projects and to secure the payment of such bonds, all as hereinafter provided. No municipality shall have the power to operate any project as a business or in any manner except as lessor thereof or seller thereof under an agreement of sale.

History: 1953 Comp., § 14-60-4, enacted by Laws 1973, ch. 397, § 4; 1977, ch. 312, § 3.

3-59-5. Bonds issued to finance projects.

Bonds issued by a municipality under authority of the Pollution Control Revenue Bond Act shall not be the general obligation of the municipality within the meaning of Article 9, Sections 12 and 13 of the constitution of New Mexico. The bonds shall be payable solely out of the revenue derived from the project or from the sale or lease of the project to finance which the bonds are issued. Bonds and interest coupons issued under authority of the Pollution Control Revenue Bond Act shall never constitute an indebtedness of the municipality within the meaning of any state constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of

the municipality or a charge against its general credit or taxing powers, and such fact shall be plainly stated on the face of each bond. The bonds may be executed and delivered at any time and from time to time, may be in such form and denominations, may be of such tenor, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding thirty years from their date, may be payable at such place or places, may bear interest payable at such place or places and evidenced in such manner and may contain such provisions not inconsistent with the Pollution Control Revenue Bond Act, all as shall be provided in the ordinance and proceedings of the governing body whereunder the bonds shall be authorized to be issued. Said bonds may bear interest at such rate or rates as shall be provided, or determined in the manner provided, in said ordinance and proceedings. Any bonds issued under the authority of the Pollution Control Revenue Bond Act may be sold at public or private sale in such manner and from time to time as may be determined by the governing body to be most advantageous, and the municipality may pay all expenses, attorneys', engineering and architects' fees and premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance of the bonds. All bonds issued under the authority of the Pollution Control Revenue Bond Act and all interest coupons applicable to the bonds shall be construed to be negotiable.

History: 1953 Comp., § 14-60-5, enacted by Laws 1973, ch. 397, § 5; 1977, ch. 312, § 4; 1983, ch. 114, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1983, ch. 114, § 3, provided that any action heretofore taken by any municipality which would have been valid if the act were in full force and effect when such action was taken is hereby valid.

3-59-6. Security for bonds.

The principal of and interest on any bonds issued under the authority of the Pollution Control Revenue Bond Act shall be secured by a pledge of the revenues out of which such bonds shall be made payable, may be secured by a mortgage covering all or any part of the project or projects from which the revenues so pledged may be derived and may be secured by a pledge of the lease or the agreement of sale of such project or projects. The ordinance and proceedings under which such bonds are authorized to be issued or any such mortgage may contain other agreements and provisions including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of all revenues from any project or projects covered by such proceedings or mortgage, the terms to be incorporated in the lease of such project or projects, the maintenance and insurance of such project or projects, the creation and maintenance of special funds from the revenues from such project or projects and the rights and remedies available in event of default to the bondholders or to the trustee under a mortgage, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of the Pollution Control Revenue Bond Act; provided, that in making

any such agreements or provisions, a municipality shall not have the power to obligate itself except with respect to the project or projects and the application of the revenues therefrom and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers. The ordinance and proceedings authorizing any bonds hereunder and any mortgage securing such bonds may provide the procedure and remedies in the event of default in payment of the principal of or the interest on such bonds or in the performance of any agreement. No breach of any such agreement shall impose any pecuniary liability upon a municipality or any charge upon its general credit or against its taxing powers.

History: 1953 Comp., § 14-60-6, enacted by Laws 1973, ch. 397, § 6; 1977, ch. 312, § 5.

3-59-7. Requirements respecting lease, or agreement of sale.

Prior to the leasing, selling or other disposition of any project or projects, the governing body must determine and find the following:

A. the amount necessary in each year to pay the principal of and the interest on the bonds proposed to be issued to finance part or all of the cost of such project or projects; and

B. the amount necessary to be paid each year into any reserve fund which the governing body may deem it advisable to establish in connection with the retirement of the proposed bonds and maintenance of the project or projects; and in the case of an agreement of lease or sale unless the terms under which each such project is to be leased or sold provide that the lessee or the purchaser shall maintain the project or projects and carry all proper insurance with respect thereto, the estimated cost of maintaining the project or projects in good repair and keeping it or them properly insured. The determinations and findings of the governing body required to be made in the preceding sentence shall be made and set forth either in an ordinance or, if authorized by ordinance, in a resolution constituting part of the proceedings under which the proposed bonds are to be issued; and prior to the issuance of such bonds, the municipality shall lease or sell the project or projects to a lessee or purchaser under an agreement conditioned upon completion of the project or projects and providing for payment to the municipality of such rentals or payments, as upon the basis of such determinations and findings, will be sufficient:

(1) to pay the principal of and interest on the bonds issued to finance the project or projects;

(2) to build up and maintain any reserve deemed by the governing body to be advisable in connection therewith; and

(3) to pay the costs of maintaining the project or projects in good repair and keeping it or them properly insured, unless the agreement of lease or sale obligates the lessee or purchaser to pay for the maintenance and insurance of the project or projects.

History: 1953 Comp., § 14-60-7, enacted by Laws 1973, ch. 397, § 7; 1977, ch. 312, § 6.

3-59-8. Refunding bonds.

Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by a municipality by the issuance of its refunding bonds in such amounts as the governing body may deem necessary. The amount of such refunding bonds may be the same as, less than or more than the outstanding principal amount of the bonds being refunded, but shall not exceed an amount which, after including amounts legally available from other sources and income to be received from the investment of such refunding bond proceeds and amounts from other legally available sources, is sufficient to pay promptly as the same become due either at normal maturity dates or at prior redemption dates as the governing body may determine, the principal of the bonds so to be refunded, all unpaid accrued and unaccrued interest thereon to the normal maturity dates of such bonds or to selected prior redemption dates thereof, any redemption premiums and any commissions and all estimated costs incidental to the issuance of such bonds and to such refunding as may be determined by the governing body to be necessary or advisable. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby; provided, that the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of the Pollution Control Revenue Bond Act shall be payable solely from the revenues out of which other bonds issued under the Pollution Control Revenue Bond Act may be payable or solely from those amounts derived from an escrow as herein provided, including amounts derived from the investment of refunding bond proceeds and other legally available amounts also as herein provided, or from any combination of the foregoing sources, and shall be subject to the provisions contained in the Pollution Control Revenue Bond Act and may be secured in accordance with the provisions of the Pollution Control Revenue Bond Act.

Proceeds of refunding bonds shall either be applied immediately to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company which possesses and is exercising trust powers. Notwithstanding any provision to the contrary in Section 3-59-9 NMSA 1978 or in any other statute, such escrowed proceeds may be invested in short-term securities, long-term securities or both. Except to the extent inconsistent with the express terms of Sections 3-59-1 through 3-59-14 NMSA 1978, the ordinance and other proceedings under which the

bonds to be so refunded were issued, including any mortgage or trust indenture given to secure the same, shall govern the establishment of any escrow in connection with such refunding and the investment and reinvestment of any escrowed proceeds.

History: 1953 Comp., § 14-60-8, enacted by Laws 1973, ch. 397, § 8; 1977, ch. 312, § 7.

3-59-9. Use of proceeds from sale of bonds.

The proceeds from the sale of any bonds issued under authority of the Pollution Control Revenue Bond Act shall be applied only for the purpose for which the bonds were issued; provided, that any accrued interest and premiums received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided further, that if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such balance of the proceeds shall be applied to the payment of the principal of or the redemption premium, if any, and interest on the bonds, and provided further, that any portion of the proceeds from the sale of the bonds, including refunding bonds, or any accrued interest and premium, received in any such sale, may, in the event the money currently will not be needed or cannot be effectively used to the advantage of the municipality for the purposes herein provided, be invested, in accordance with the procedures and subject to any restrictions established by the ordinance and other proceedings under which the bonds are issued, in any securities without limitation except as expressly provided to the contrary in Section 3-59-8 NMSA 1978, if such investment will not interfere with the use of such funds for the primary purposes as herein provided. The cost of acquiring any project or projects shall be deemed to include the following:

A. the actual cost of the construction of any part of a project or projects which shall be constructed, including architects', attorneys' and engineers' fees;

B. the purchase price of any part of a project or projects that may be acquired by purchase;

C. the actual cost of the extension of any utility to the project site or sites, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition; and

D. the interest on any bonds issued by the same municipality for the same or any other project or projects for a reasonable time prior to construction, during construction and for not exceeding six months after completion of construction.

History: 1953 Comp., § 14-60-9, enacted by Laws 1973, ch. 397, § 9; 1977, ch. 312, § 8; 1978, ch. 181, § 18.

3-59-10. No contribution by municipality.

No municipality shall have the power to pay out of its general funds or otherwise contribute any part of the costs of acquiring a project and shall not have the power to use land already owned by the municipality, or in which the municipality has an equity, for construction thereon of a project or any part thereof, unless the municipality is fully reimbursed for the value of the land as may be determined by a current appraisal, or unless the city leases the land at an annual rental fee of not less than five percent of the appraised value. The entire cost of acquiring any project must be paid out of the proceeds from the sale of bonds issued under the authority of the Pollution Control Revenue Bond Act; provided, that this provision shall not be construed to prevent a municipality from accepting donations of property to be used as a part of any project or money to be used for defraying any part of the cost of any project.

History: 1953 Comp., § 14-60-10, enacted by Laws 1973, ch. 397, § 10.

3-59-11. Bonds made legal investments.

Bonds issued under the provisions of the Pollution Control Revenue Bond Act shall be legal investments for savings banks and insurance companies organized under the laws of this state and shall be eligible for pledging as collateral for public deposits.

History: 1953 Comp., § 14-60-11, enacted by Laws 1973, ch. 397, § 11.

3-59-12. Exemption from taxation.

The bonds authorized by the Pollution Control Revenue Bond Act and the income from said bonds, all mortgages or other security instrument executed as security for said bonds, all lease agreements made pursuant to the provisions hereof and revenue derived from any lease or sale by the municipality thereof shall be exempt from all taxation by New Mexico or any subdivision thereof.

History: 1953 Comp., § 14-60-12, enacted by Laws 1973, ch. 397, § 12.

ANNOTATIONS

Cross references. — For property tax exemption, *see* 7-36-3 NMSA 1978.

3-59-13. Construction of act.

Neither the Pollution Control Revenue Bond Act nor anything herein contained shall be construed as a restriction or limitation upon any powers which a municipality might otherwise have under any laws of this state, but shall be construed as cumulative; and the Pollution Control Revenue Bond Act shall not be construed as requiring an election by the voters of a municipality prior to the issuance of bonds hereunder by such municipality, and all other laws of the state relative to public contracts and properties shall have no application to projects or bonds issued under this act.

History: 1953 Comp., § 14-60-13, enacted by Laws 1973, ch. 397, § 13.

3-59-14. Proceedings for issuance and sale of bonds; no notice or publication required.

Issuance and sale of bonds pursuant to the Pollution Control Revenue Bond Act shall be authorized by ordinance adopted by the governing body of the municipality issuing the bonds, which ordinance shall determine the maximum aggregate principal amount, maximum maturity and maximum interest rate of the bonds to be issued (which maximum interest rate may be used in the determination required by Section 3-59-7 NMSA 1978) and may provide for determinations to be made by resolution adopted by the governing body with respect to the issuance of a lesser aggregate principal amount of bonds, the designation or substitution of a trustee for bondholders or depositary or escrow agent for bond proceeds, the issuance of bonds in one or more series and, with respect to any series of bonds, the principal amount, maturity or maturities, sinking fund provisions, redemption provisions, price or prices, which may be at, above or below par, and interest rate or rates of the bonds of such series. Such resolution may provide for the determination from time to time of such interest rate or rates by a designated entity in accordance with any standard and by any procedure specified in such resolution. The agreement of lease or sale securing the bonds of any series and the execution and delivery thereof may be authorized by resolution adopted by the governing body.

No notice, consent or approval by any governmental body or public officer shall be required as a prerequisite to the sale or issuance of any bonds or the making of a mortgage under the authority of the Pollution Control Revenue Bond Act except as provided in that act.

History: 1953 Comp., § 14-60-14, enacted by Laws 1973, ch. 397, § 14; 1977, ch. 312, § 9; 1983, ch. 114, § 2.

ANNOTATIONS

Compiler's notes. — Laws 1983, ch. 114, § 3, provided that any action heretofore taken by any municipality which would have been valid if the act were in full force and effect when such action was taken is hereby valid.

Severability. — Laws 1983, ch. 114, § 4, provided for the severability of the act if any part or application thereof is held invalid.

ARTICLE 60
Community Development

3-60-1. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-1 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 1 effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-2. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-2 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 2, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-3. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-3 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 3, as amended, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-4. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-4 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 4, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-5. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-5 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 5 effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-6. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-6 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 6, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM*.

3-60-7. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-7 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 7, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-8. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-8 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 8, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-9. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-9 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 9, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-10. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-10 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 10, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-11. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-11 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 11, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-12. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-12 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 12, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-13. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-13 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 13, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-14. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-14 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 14, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-15. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-15 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 15, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-16. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-16 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 16, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-17. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-17 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 17, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-18. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-18 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 18, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-19. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-19 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 19, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-20. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-20 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 20, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-21. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-21 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 21, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-22. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-22 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 22, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-23. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-23 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 23, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-24. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-24 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 24, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-25. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-25 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 25, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-26. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-26 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 26, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

Compiler's notes. — This section was also amended by Laws 2007, ch. 46, § 5, effective June 15, 2007, which made nonsubstantive language changes. The section was set out as repealed by Laws 2007, ch. 330. *See* 12-1-8 NMSA 1978.

3-60-27. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-27 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 27, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-28. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-28 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 28, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-29. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-29 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 29, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-30. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-30 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 30; effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-31. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-31 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 31, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-32. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-32 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 32, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-33. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-33 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 33, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-34. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-34 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 34, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-35. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-35 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 35, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-36. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-36 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 36, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60-37. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60-37 NMSA 1978, the Community Development Law, as enacted by Laws 1975, ch. 341, § 37, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

ARTICLE 60A
Metropolitan Redevelopment

3-60A-1. Short title.

This act [3-60A-1 through 3-60A-13, 3-60A-14 through 3-60A-48 NMSA 1978] may be cited as the "Metropolitan Redevelopment Code",

History: Laws 1979, ch. 391, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1979, ch. 391, §§ 1 to 48 enacted the Metropolitan Redevelopment Code, which was codified as 3-60A-1 to 3-60A-48 NMSA 1978. However, Laws 1985, ch. 225, § 2 enacted 3-60A-13.1 NMSA 1978 without reference to the Metropolitan Redevelopment Code.

Cross references. — For the Community Development Law, *see* 3-60-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 1 et seq.

Constitutionality, construction, and application of statutes or governmental projects for improvement of housing conditions (slum clearance), 130 A.L.R. 1069, 172 A.L.R. 966.

Substantive issues relative to rent levels and termination of benefits under United States Housing Act of 1937 (42 USCS § 1437 et seq.), 77 A.L.R. Fed. 884.

39A C.J.S. Health and Environment §§ 34 to 36.

3-60A-2. Findings and declarations of necessity.

A. It is found and declared that there exist in municipalities of the state slum areas and blighted areas that constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; that the existence of these areas contributes substantially to the spread of disease and crime, constitutes an economic and social burden, substantially impairs or arrests the sound and orderly development of municipalities and retards the maintenance and expansion of necessary housing accommodations; that economic and commercial activities are lessened in those areas by the slum or blighted conditions, and the effects of these conditions include less employment in the area and municipality, lower property values, less gross receipts tax revenue for the state and municipalities and reduces the use of buildings, residential dwellings and other facilities in the area that the prevention and elimination of slum areas and blighted areas and the prevention and elimination of conditions that impair the sound and orderly development of municipalities is a matter of state policy and concern in order that the state and its municipalities shall not continue to be endangered by these areas that contribute little to the tax income of the state and its municipalities and that consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization or other forms of public protection, services and facilities.

B. Certain slum areas and blighted areas or portions thereof may require land acquisition and clearance by the municipality, since prevailing conditions may make impracticable their reclamation or development; other areas or portions of the slum or blighted area may be suitable for conservation or rehabilitation efforts and the conditions and evils enumerated in Subsection A of this section may be eliminated, remedied or prevented by those efforts; and to the extent feasible, salvageable slum and blighted areas should be conserved and rehabilitated through voluntary action, the regulatory process and, when necessary, by government assistance.

C. The powers conferred by the Metropolitan Redevelopment Code [3-60A-1 to 3-60A-13, 3-60A-14 to 3-60A-48 NMSA 1978] regarding the use of public money are for public uses or purposes for which public money may be expended. The individual benefits accruing to persons as the result of the powers conferred by the Metropolitan Redevelopment Code and projects conducted in accordance with its provisions are found and declared to be incidental to the objectives of that code and are far outweighed by the benefit to the public as a whole. Activities authorized and powers granted by the Metropolitan Redevelopment Code are hereby declared not to result in a donation or aid to any person, association or public or private organization or enterprise. The necessity for these provisions and the power is declared to be in the public interest as a matter of legislative determination.

D. The legislature finds that the problems of the large metropolitan areas are unique in this state because of the size and magnitude of the problems when such large numbers of people are affected. The legislature further finds and declares that the strategies and methods for solving these problems in the large metropolitan areas differ from those in the smaller cities and towns and villages of the state, and it is necessary to authorize those home rule metropolitan areas additional powers and flexibility because of the nature and size of their problems and because the governments of such metropolitan areas have sufficient staff to meet and deal with those problems. Further, these authorizations are merely explanations of the powers of home rule communities in these metropolitan areas that can be exercised under home rule authority notwithstanding any limitations contained in the Metropolitan Redevelopment Code.

History: Laws 1979, ch. 391, § 2; 2007, ch. 329, § 3; 2007, ch. 330, § 3.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, eliminated the provision in Subsection C that the powers conferred are for public purposes for which the power of eminent domain may be exercised.

Laws 2007, ch. 329, § 3 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 330, § 3. *See* 12-1-8 NMSA 1978.

3-60A-3. Legislative intent.

A. It is the intent of the legislature by the passage of the Metropolitan Redevelopment Code [3-60A-1 to 3-60A-13, 3-60A-14 to 3-60A-48 NMSA 1978] to authorize municipalities to acquire, own, lease, improve and dispose of properties in a metropolitan redevelopment area to the end that such municipalities may be able to promote industry and develop trade or other economic activity by inducing profit or nonprofit corporations, federal governmental offices, hospitals and manufacturing, industrial, commercial or business enterprises to locate, expand or remain in such area, to mitigate the serious threat of extensive unemployment in a metropolitan redevelopment area and to secure and maintain a balanced and stable economy in an area declared to be a slum or blighted area.

B. It is the further intent of the legislature to authorize municipalities to acquire, own, lease, improve and dispose of properties so that adequate medical care, residential housing and facilities for the disposal of sewage and solid waste may be provided; and industrial, manufacturing, commercial or business activities may be begun or expanded in these areas; furnishing water, energy and gas may be provided; more adequate facilities for sports events and activities and recreation activities, conventions and trade shows may be provided; more parking facilities or storage or training facilities may be provided; and more adequate research, product-testing and administrative facilities may be provided, all of which promote the public health, welfare, safety, convenience and prosperity.

C. It is, therefore, the intention of the legislature to vest municipalities with all powers, other than the power of eminent domain, that may be necessary to enable them to accomplish such purposes, which powers shall in all respects be exercised for the benefit of the inhabitants of this state and municipalities of the state for the promotion of their health, safety, welfare, convenience and prosperity.

D. It is not intended by the Metropolitan Redevelopment Code to authorize any municipality to operate any manufacturing, industrial, commercial or business enterprise or any research, product-testing or administrative facilities of such enterprise. Nor is it the intent of that code to prohibit the operation by a municipality of residential housing facilities, health care facilities, sewage or solid waste disposal facilities or the furnishing of water, sports or recreation facilities, convention or trade show facilities, airports, public transportation facilities or operations, parking facilities or storage or training facilities by any municipality.

History: Laws 1979, ch. 391, § 3; 2007, ch. 329, § 4; 2007, ch. 330, § 4.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, excluded the power of eminent domain in Subsection C.

Laws 2007, ch. 329, § 4 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 330, § 4. *See* 12-1-8 NMSA 1978.

3-60A-4. Definitions.

As used in the Metropolitan Redevelopment Code [3-60A-1 to 3-60A-13, 3-60A-14 to 3-60A-48 NMSA 1978]:

A. "public body" means a municipality, board, commission, authority, district or any other political subdivision or public body of the state;

B. "local governing body" means the city council or city commission of a city, the board of trustees of a town or village, the council of an incorporated county or the board of county commissioners of an H class county;

C. "mayor" means the mayor or the chairman of the city commission or other officer or body having the duties customarily imposed on the head of a municipality;

D. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, an incorporated county or an H class county;

E. "clerk" means the clerk or other official of the municipality who is the chief custodian of the official records of the municipality;

F. "federal government" includes the United States of America or any agency or instrumentality, corporate or otherwise, of the United States;

G. "state" means the state of New Mexico;

H. "slum area" means an area within the area of operation in which numerous buildings, improvements and structures, whether residential or nonresidential, which, by reason of its dilapidation, deterioration, age, obsolescence or inadequate provision for ventilation, light, air, sanitation or open spaces, high density of population, overcrowding or the existence of conditions that endanger life or property by fire or other causes, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime and is detrimental to the public health, safety, morals or welfare;

I. "blighted area" means an area within the area of operation other than a slum area that, because of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or lack of adequate housing facilities in the area or obsolete or impractical planning and platting or an area where a significant number of commercial or mercantile businesses have closed or significantly reduced their operations due to the economic losses or loss of profit due to operating in the area, low levels of commercial or industrial activity or redevelopment or any combination of such factors, substantially impairs or arrests the sound growth and economic health and well-being of a municipality or locale within a municipality or an area that retards the provisions of housing accommodations or constitutes an economic or social burden and is a menace to the public health, safety, morals or welfare in its present condition and use;

J. "metropolitan redevelopment project" or "project" means an activity, undertaking or series of activities or undertakings designed to eliminate slums or blighted areas in areas designated as metropolitan redevelopment areas and that conforms to an approved plan for the area for slum clearance and redevelopment, rehabilitation and conservation;

K. "slum clearance and redevelopment" means the use of those powers authorized by the Metropolitan Redevelopment Code for the purpose of eliminating slum areas and undertaking activities authorized by the Metropolitan Redevelopment Code to rejuvenate or revitalize those areas so that the conditions that caused those areas to be designated slum areas are eliminated;

L. "rehabilitation" or "conservation" means the restoration and renewal of a slum or blighted area or portion thereof in accordance with any approved plan by use of powers granted by the Metropolitan Redevelopment Code;

M. "metropolitan redevelopment area" means a slum area or a blighted area or a combination thereof that the local governing body so finds and declares and designates as appropriate for a metropolitan redevelopment project;

N. "metropolitan redevelopment plan" means a plan, as it exists from time to time, for one or more metropolitan redevelopment areas or for a metropolitan redevelopment project, which plan shall:

(1) seek to eliminate the problems created by a slum area or blighted area;

(2) conform to the general plan for the municipality as a whole; and

(3) be sufficient to indicate the proposed activities to be carried out in the area, including but not limited to any proposals for land acquisition; proposals for demolition and removal of structures; redevelopment; proposals for improvements, rehabilitation and conservation; zoning and planning changes; land uses, maximum densities, building restrictions and requirements; and the plan's relationship to definite local objectives respecting land uses, improved traffic patterns and controls, public transportation, public utilities, recreational and community facilities, housing facilities, commercial activities or enterprises, industrial or manufacturing use and other public improvements;

O. "real property" includes all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise;

P. "bonds" means any bonds, including refunding bonds, notes, interim certificates, certification of indebtedness, debentures, metropolitan redevelopment bonds or other securities evidencing an obligation and issued under the provisions of the Metropolitan Redevelopment Code or other obligations;

Q. "obligee" includes any bondholder, agent or trustee for any bondholder or lessor demising to the municipality property used in connection with a metropolitan redevelopment project or any assignee or assignees of such lessor's interest or any part thereof;

R. "person" means any individual, firm, partnership, corporation, company, association, joint stock association or body politic or the state or any political subdivision thereof and shall further include any trustee, receiver, assignee or other person acting in a similar representative capacity;

S. "area of operation" means the area within the corporate limits of the municipality and the area outside of the corporate limits but within five miles of such limits or otherwise on municipally owned property wherever located, except that it shall not include any area that lies within the territorial boundaries of another municipality unless

an ordinance has been adopted by the governing body of the other municipality declaring a need therefor;

T. "board" or "commission" means a board, commission, department, division, office, body or other unit of the municipality designated by the local governing body to perform functions authorized by the Metropolitan Redevelopment Code as directed by the local governing body; and

U. "public officer" means any person who is in charge of any department or branch of government of the municipality.

History: Laws 1979, ch. 391, § 4; 1980, ch. 52, § 1; 1983, ch. 32, § 1; 2000, ch. 103, § 1.

ANNOTATIONS

The 2000 amendment, effective May 17, 2000, rewrote Subsections B and D.

Am. Jur. 2d, A.L.R. and C.J.S. references. — What constitutes "blighted area" within urban renewal and redevelopment statutes, 45 A.L.R.3d 1096.

39A C.J.S. Health and Environment § 35.

3-60A-5. Redevelopment Law; short title.

Sections 5 through 18 [3-60A-5 through 3-60A-13, 3-60A-14 through 3-60A-18 NMSA 1978] of the Metropolitan Redevelopment Code may be cited as the "Redevelopment Law."

History: Laws 1979, ch. 391, § 5.

3-60A-6. Use of private enterprise and public powers.

A municipality, to the greatest feasible extent, shall afford maximum opportunity for the rehabilitation or redevelopment of the metropolitan redevelopment areas by private enterprise. A municipality shall give consideration to this objective in exercising its powers provided by the Redevelopment Law [3-60A-5 through 3-60A-13, 3-60A-14 through 3-60A-18 NMSA 1978], including the approval of metropolitan redevelopment plans consistent with the general plan for the municipality; the exercise of its zoning powers; the enforcement of other laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements; to the disposition of any property acquired; and the provision of necessary public improvements.

History: Laws 1979, ch. 391, § 6.

ANNOTATIONS

Cross references. — For encouragement of private enterprise in community development, *see* 3-60-23 NMSA 1978.

For prohibition against aid to private enterprise, *see* N.M. Const., art. IX, § 14.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment §§ 9 to 12.

3-60A-7. Finding of necessity by local government.

No municipality shall exercise any of the powers conferred upon municipalities by the Redevelopment Law [3-60A-5 through 3-60A-13, 3-60A-14 through 3-60A-18 NMSA 1978] until after its local governing body shall have adopted a resolution finding that:

A. one or more slum areas or blighted areas exist in the municipality; and

B. the rehabilitation, conservation, slum clearance, redevelopment or development, or a combination thereof, of and in such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents of the municipality.

History: Laws 1979, ch. 391, § 7.

ANNOTATIONS

Cross references. — For definitions of "slum area" and "blighted area", *see* 3-60A-4 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment §§ 18, 19.

3-60A-8. Designation of a metropolitan redevelopment area.

A. A municipality shall not prepare a metropolitan redevelopment plan for an area unless the governing body has by resolution determined the area to be a slum area or a blighted area, or a combination thereof, and designated the area as appropriate for a metropolitan redevelopment project, which resolution may be adopted only after the governing body shall have caused to be published in a newspaper of general circulation within the area of operation of the municipality a notice which shall contain a general description of the area and the date, time and place where the governing body shall hold a public hearing to consider the resolution and a notice that any interested party may appear and speak to the issue of the adoption of the resolution.

B. Such notice shall be published at least twice and the last publication shall be not less than twenty days before the hearing. The owner of any real property affected by the resolution shall have the right to file in the district court of the county within which the

municipality is located, within twenty days after the adoption of the resolution, an action to set aside the determination made by the governing body of the municipality.

C. A municipality shall not acquire real property for a metropolitan redevelopment project unless the local governing body has approved a metropolitan redevelopment plan relating to the metropolitan redevelopment area in which the real property is located.

History: Laws 1979, ch. 391, § 8.

ANNOTATIONS

Cross references. — For definitions of "slum area" and "blighted area", *see* 3-60A-4 NMSA 1978.

For adoption of resolution, *see* 3-60A-7 NMSA 1978.

3-60A-9. Preparation of a metropolitan redevelopment plan.

A. When a municipality has complied with the provisions of the Redevelopment Law [3-60A-5 through 3-60A-13, 3-60A-14 through 3-60A-18 NMSA 1978] concerning public hearing and designation of an area as a metropolitan redevelopment area, it may prepare or cause to be prepared a metropolitan redevelopment plan; however, prior to final consideration of the plan by the local governing body, the plan shall be the subject of at least one public hearing held by the mayor or his designee, or the municipal planning commission, at which time comments from the public as a whole can be gathered and considered by the municipality in its preparation of the final plan. The local governing body may hold a public hearing for purposes of approval of the proposed plan, as provided in Subsection B of this section, only after the hearing required by this subsection.

B. The local governing body shall hold a public hearing on a metropolitan redevelopment plan or substantial modification of an approved plan after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality. The notice shall describe the time, date, place and purpose of the hearing, shall generally identify the area covered by the plan and shall outline the general scope of the metropolitan redevelopment project under consideration. Prior to the public hearing on this matter, notice of the public hearing shall be mailed by first class mail to the owners of real property in the metropolitan redevelopment area. The mailing shall be to the owner's address as shown on the records of the county treasurer. If the notice by first class mail to the owner is returned undelivered, the municipality shall attempt to discover the owner's most recent address and shall remail the notice by certified mail, return receipt requested, to the address.

C. Following the public hearing, the local governing body may approve a metropolitan redevelopment plan if it finds that:

(1) the proposed activities will aid in the elimination or prevention of slum or blight, or the conditions which lead to the development of slum or blight;

(2) a feasible method is included in the plan to provide individuals and families who occupy residential dwellings in the metropolitan redevelopment area, and who may be displaced by the proposed activities, with decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such individuals and families;

(3) the plan conforms to the general plan for the municipality as a whole; and

(4) the plan affords maximum opportunity consistent with the needs of the community for the rehabilitation or redevelopment of the area by private enterprise or persons, and the objectives of the plan justify the proposed activities as public purposes and needs.

D. A metropolitan redevelopment plan may be modified at any time; however, if the plan is modified after the lease or sale by the municipality of real property in the project area, the modification shall be subject to any rights at law or in equity a lessee or purchaser, or his successors in interest, may be entitled to assert. Any proposed modification which will substantially change the plan as previously approved by the local governing body shall be subject to the requirements of this section, including the requirement of a public hearing, before it may be approved.

History: Laws 1979, ch. 391, § 9.

3-60A-10. Powers of municipality.

A municipality shall have all the powers, other than the power of eminent domain, necessary or convenient to carry out and effectuate the purposes and provisions of the Metropolitan Redevelopment Code [3-60A-1 to 3-60A-13, 3-60A-14 to 3-60A-48 NMSA 1978], including but not necessarily limited to the following powers:

A. to undertake and carry out metropolitan redevelopment projects within its area of operation, including clearance and redevelopment, rehabilitation, conservation and development activities and programs; to make, enter into and execute contracts and other agreements and instruments necessary or convenient to the exercise of its powers under the Redevelopment Law; and to disseminate information regarding slum clearance, prevention of blight and the metropolitan redevelopment projects and areas;

B. to provide, arrange or contract for the furnishing or repair by a public or private person or agency for services, privileges, works, streets, roads, public utilities, public buildings or other facilities for or in connection with a metropolitan redevelopment project; to, within its area of operation, install, acquire, construct, reconstruct, remodel, rehabilitate, maintain and operate streets, utilities, parks, buildings, playgrounds and public buildings, including but not limited to parking facilities, transportation centers,

public safety buildings and other public improvements or facilities or improvements for public purposes, as may be required by the municipality, the state or a political subdivision of the state; to agree to conditions that it may deem reasonable and appropriate that are attached to federal financial assistance and imposed pursuant to federal law, including conditions relating to the determination of prevailing salaries or wages or compliance with federal and state labor standards, compliance with federal property acquisition policy and the provision of relocation assistance in accordance with federal law in the undertaking or carrying out of a metropolitan redevelopment project; and to include in a contract let in connection with the project provisions to fulfill these conditions as it may deem reasonable and appropriate; provided, however, that all purchases of personal property shall be in accordance with the Procurement Code [13-1-28 through 13-1-199 NMSA 1978];

C. within its area of operation, to inspect any building or property in a metropolitan redevelopment area in order to make surveys, appraisals, soundings or test borings and to obtain an order for this purpose from a court of competent jurisdiction in the event inspection is denied by the property owner or occupant; to acquire, by purchase, lease, option, gift, grant, bequest, devise or otherwise, any real property or personal property for its administrative or project purposes, together with any improvements thereon; to hold, improve, clear or prepare for redevelopment any such property; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of real or personal property or operations of the municipality against risks or hazards, including the power to pay premiums on that insurance; and to enter into contracts necessary to effectuate the purposes of the Metropolitan Redevelopment Code;

D. to invest metropolitan redevelopment project funds held in reserve, sinking funds or other project funds that are not required for immediate disbursement in property or securities in which municipalities may legally invest funds subject to their control; to redeem bonds as have been issued pursuant to the Metropolitan Redevelopment Code at the redemption price established in the bonds or to purchase the bonds at less than redemption price. Bonds so redeemed or purchased shall be canceled;

E. to borrow or lend money subject to those procedures and limitations as may be provided in the constitution of New Mexico or the Municipal Code and to apply for and accept advances, loans, grants, contributions and other forms of financial assistance from the federal government, the state, the county or other public body or from sources, public or private, for the purposes of the Metropolitan Redevelopment Code; and to give security as may be required and subject to the provisions and limitations of general law except as may otherwise be provided by the Redevelopment Law and to enter into and carry out contracts in connection with that law. A municipality may include in a contract for financial assistance with the federal government for a metropolitan redevelopment project conditions imposed pursuant to federal law that the municipality may deem reasonable or appropriate and that are not inconsistent with the purposes of the Metropolitan Redevelopment Code;

F. within its area of operation, to make plans necessary for the carrying out of the purposes of the Metropolitan Redevelopment Code and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify and amend the plans. The plans may include without limitation:

(1) a general plan for redevelopment of the metropolitan area as a whole;

(2) redevelopment plans for specific areas;

(3) plans for programs of voluntary or assisted repair and rehabilitation of buildings and improvements;

(4) plans for the enforcement of state and local laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition or removal of buildings and improvements; and

(5) appraisals, title searches, surveys, studies and other preliminary plans and work necessary to prepare for the undertaking of metropolitan redevelopment projects;

G. to develop, test and report methods and techniques and carry out demonstrations and other activities for the prevention and elimination of slums and urban blight and to pay for, accept and use grants of funds from the federal government for those purposes;

H. to prepare plans for the relocation of families displaced from a metropolitan redevelopment area to the extent essential for acquiring possession of and clearing the area or its parts or permit the carrying out of the metropolitan redevelopment project;

I. to appropriate under existing authority the funds and make expenditures necessary to carry out the purposes of the Metropolitan Redevelopment Code and under existing authority to levy taxes and assessments for such purposes; to close, vacate, plan or replan streets, roads, sidewalks, ways or other places; in accordance with applicable law or ordinances, to plan or replan, zone or rezone any part of the municipality or make exceptions from building regulations; and to enter into agreements with a metropolitan redevelopment agency vested with metropolitan redevelopment project powers, which agreements may extend over any period, notwithstanding any provision or rule of law to the contrary, respecting action to be taken by the municipality pursuant to the powers granted by the Redevelopment Law;

J. within its area of operation, to organize, coordinate and direct the administration of the provisions of the Redevelopment Law as they apply to the municipality in order that the objective of remedying slum areas and blighted areas and preventing the causes of those areas within the municipality may be most effectively promoted and

achieved and to establish any new office of the municipality or to reorganize existing offices as necessary;

K. to acquire real property that is appropriate for the preservation or restoration of historic sites; the beautification of urban land; the conservation of open spaces, natural resources and scenic areas; or the provision of recreational opportunities; or that is to be used for public purposes;

L. to engage in the following activities as part of a metropolitan redevelopment project:

(1) acquisition, construction, reconstruction or installation of public works, facilities and site or other improvements, including but not limited to neighborhood facilities, senior citizen centers, historic properties, utilities, streets, street lights, water and sewer facilities, including connections for residential users, foundations and platforms for air-rights sites, pedestrian malls and walkways, parks, playgrounds and other recreation facilities, flood and drainage facilities, parking facilities, solid waste disposal facilities and fire protection or health facilities that serve designated areas;

(2) special projects directed to the removal of materials and architectural barriers that restrict the mobility and accessibility of elderly and disabled persons;

(3) provision of public services in the metropolitan redevelopment area that are not otherwise available in the area, including but not limited to the provisions of public services directed to the employment, economic development, crime prevention, child care, health, drug abuse, welfare or recreation needs of the people who reside in the metropolitan redevelopment area;

(4) payment of the nonfederal share of any federal grant-in-aid program to the municipality that will be a part of a metropolitan redevelopment project;

(5) if federal funds are used in the project to provide for payment of relocation costs and assistance to individuals, families, businesses, organizations and farm operations displaced as a direct result of a metropolitan redevelopment project in accordance with applicable law governing such payment;

(6) payment of reasonable administrative costs and carrying charges related to the planning and execution of plans and projects;

(7) economic and marketing studies to determine the economic condition of an area and to determine the viability of certain economic ventures proposed for the metropolitan redevelopment area;

(8) issuance of bonds, grants or loans as authorized by the Metropolitan Redevelopment Code in accordance with the requirements of that code; and

(9) grants to nonprofit corporations, local development corporations or entities organized under Section 301 (d) of the federal Small Business Investment Act of 1958 for the purposes of carrying out the provisions of the Metropolitan Redevelopment Code;

M. if payments are to be made by the municipality or metropolitan redevelopment agency under the terms of a contract for reconstruction or rehabilitation of private property payments shall be made from a special fund created for that purpose and shall not be paid directly to the property owner but shall instead be paid to the contractor by the municipality or agency from such fund upon proper authorization of the property owner and notification that the terms of the contract have been fulfilled. However, those rehabilitation contracts shall be between the property owner and the contractor after a sealed bidding procedure and award of contract approved by the municipality has taken place;

N. in a metropolitan redevelopment project or rehabilitation or conservation undertaking or activity, to exercise the following powers in one or more metropolitan redevelopment areas to include the elimination and prevention of the development or spread of slums or blight and may involve slum clearance and redevelopment in that area or rehabilitation or conservation in that area or any combination or part of those areas in accordance with a metropolitan redevelopment plan and for undertakings or activities of a municipality in a metropolitan redevelopment area to eliminate the conditions that caused an area to be so designated and may include the following:

(1) acquisition of real property within the metropolitan redevelopment area pursuant to any powers and for purposes enumerated in the Metropolitan Redevelopment Code;

(2) clearing the land, grading the land and replatting the land in accordance with the metropolitan redevelopment plan; installation, construction or reconstruction of roads, streets, gutters, sidewalks, storm drainage facilities, water lines or water supply installations, sewer lines and sewage disposal installations, steam, gas and electric lines and installations, airport facilities and construction of any other needed public facilities or buildings whether on or off the site if deemed necessary by the local governing body to prepare the land in the metropolitan redevelopment area for residential, commercial, industrial and public use in accordance with the metropolitan redevelopment plan; and

(3) making the land available for development by private enterprise or public agencies, including sale, initial leasing, leasing or retention by the municipality itself, at its fair market value for uses in accordance with the metropolitan redevelopment plan for the area;

O. the municipality is empowered in a metropolitan redevelopment area to undertake slum clearance and redevelopment that includes:

(1) acquisition of a slum area or a blighted area or portion thereof;

(2) demolition and removal of buildings and improvements;

(3) installation, construction, reconstruction, maintenance and operation of streets, utilities, storm drainage facilities, curbs and gutters, parks, playgrounds, single- or multi-family dwelling units, buildings, public buildings, including but not limited to parking facilities, transportation centers, safety buildings and other improvements, necessary for carrying out in the area the provisions of an approved plan for the area; and

(4) making the real property available for development or redevelopment by private enterprise or public agencies, including sale, leasing or retention by the municipality itself, at its fair value for uses in accordance with the metropolitan redevelopment area plan; and

P. to engage in rehabilitation or conservation that includes the restoration and renewal of a slum or blighted area or portion thereof in accordance with any approved plan, by:

(1) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements;

(2) acquisition of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, unsanitary or unsafe conditions, lessen or increase density, eliminate obsolete or other uses detrimental to the public welfare or to otherwise remove or prevent the spread of blight or deterioration or to provide land for needed public facilities;

(3) installation, construction or reconstruction of streets, utilities, parks, playgrounds and other improvements necessary for carrying out in the area the provisions of the Metropolitan Redevelopment Code;

(4) the disposition of any property acquired in such an area, including sale, leasing or retention by the municipality itself, for uses in accordance with such an approved plan;

(5) acquisition of real property in the area which, under a plan, is to be repaired or rehabilitated;

(6) repair or rehabilitation of structures within the area;

(7) power to resell repaired or rehabilitated property;

(8) acquisition, without regard to any requirement that the area be a slum or blighted area, of air-rights in an area consisting principally of land on which is located a

highway, railway, bridge or subway tracks or tunnel entrance or other similar facilities that have a blighting influence on the surrounding area and over which air-rights sites are to be developed for the elimination of such blighting influences; and

(9) making loans or grants or authorizing the use of the proceeds of bonds issued pursuant to the Metropolitan Redevelopment Code for the purpose of repairing, remodeling, modifying or otherwise reconstructing a building or buildings located in the metropolitan redevelopment area. Such rehabilitation or conservation with use of funds expended by authority of the Metropolitan Redevelopment Code or by metropolitan revenue bonds authorized by that code shall be authorized only after approval by the local governing body and after it has been determined that such expenditure is in accordance with the metropolitan redevelopment plan for that area.

History: Laws 1979, ch. 391, § 10; 2007, ch. 329, § 5; 2007, ch. 330, § 5.

ANNOTATIONS

Cross references. — For Section 301(d) of the federal Small Business Investment Act of 1958, *see* 15 U.S.C. § 681(d).

The 2007 amendment, effective June 15, 2007, excluded the power of eminent domain.

Laws 2007, ch. 329, § 5 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 330, § 5. *See* 12-1-8 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 62 C.J.S. Municipal Corporations § 699.

3-60A-11. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7 repealed 3-60A-11 NMSA 1978, as enacted by Laws 1979, ch. 391, § 11, relating to eminent domain, effective June 15, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMONESOURCE.COM.*

3-60A-12. Disposal of property.

A. A municipality may sell, lease or otherwise transfer real property or any interest therein acquired by it in a metropolitan redevelopment area, and may enter into contracts with respect thereto for residential, commercial, industrial or other uses, or for public use, or may retain such property or interest for public use, in accordance with the plan, subject to any covenants, conditions and restrictions including covenants running with the land, and including the incorporation by reference therein of the provisions of a plan or any part thereof, as it may deem to be in the public interest or necessary to carry

out the purposes of the metropolitan redevelopment plan. The purchasers or lessees and their successors and assigns shall be obligated to devote the real property only to the uses specified in the metropolitan redevelopment plan for a period of years as set out in the sale or lease agreement and may be obligated to comply with other requirements which the municipality may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on real property required by the plan. The real property or interest shall be sold, leased, otherwise transferred or retained at not less than its fair value for uses in accordance with the Redevelopment Law [3-6A-5 through 3-60A-13, 3-60A-14 through 3-6A-18 NMSA 1978] as determined by the governing body of the municipality or by the metropolitan redevelopment agency, if so authorized. In determining the fair value of real property for uses in accordance with the plan, a municipality shall take into account and give consideration to the uses provided in the plan; the restrictions upon, and the covenants, conditions and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and the objectives of the plan for the prevention of and recurrence of slum or blighted areas. The municipality in any instrument of conveyance to a private purchaser or lessee may provide that the purchaser or lessee shall be without power to sell, lease or otherwise transfer the real property without the prior written consent of the municipality until he has completed the construction of any and all improvements which he has obligated himself to construct thereon. Real property acquired by a municipality which, in accordance with the provisions of the plan, is to be transferred, shall be transferred consistent with the carrying out of the provisions of the plan. The inclusion in any contract or conveyance to a purchaser or lessee of covenants, restrictions or conditions, including the incorporation by reference therein of the provisions of a metropolitan redevelopment plan or any part thereof, shall not prevent the filing of the contract or conveyance in the land records of the county in a manner as to afford actual or constructive notice thereof.

B. A municipality may dispose of real property in a metropolitan redevelopment area to private persons only in accordance with the procedures set out in this subsection. The municipality shall, prior to entering into any agreement to convey title or an interest in real property, publish a public notice once each week for at least two consecutive weeks of the date, time and place it will receive proposals for the purchase, lease or rental, for development or redevelopment purposes, of the real property or interest therein it intends to dispose of. The public notice shall contain sufficient information to describe the location of the real property, the type of development sought or land use requirement, and the selection criteria the municipality will follow during review of proposals and shall state that details may be obtained at the office designated in the notice. The municipality shall consider all proposals submitted in accordance with the public notice and shall only accept proposals it deems in the public interest and meeting the objectives of the metropolitan redevelopment plan after considering the type of development, redevelopment or use proposed and the financial ability of the persons making such proposals to carry them out.

C. If, after following the procedures set out in Subsection B of this section, a municipality receives no proposals or determines the ones received are not in

accordance with the call for proposals or do not meet the objectives of the Metropolitan Redevelopment Code [3-60A-1 through 3-60A-13, 3-60A-14 through 3-60A-48 NMSA 1978], the municipality may reject any proposals received and then dispose of such real property through reasonable negotiating procedures; provided, however, that negotiated sales, leases or transfers must be reported to the local governing body and approved by that body before such sale, lease or transfer may take effect.

D. A municipality may operate and maintain real property acquired in a metropolitan redevelopment area pending the disposition of the property for development or redevelopment without regard to the provisions of Subsection A of this section, for any uses and purposes deemed desirable even though not in conformity with the Redevelopment Law.

History: Laws 1979, ch. 391, § 12.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 22.

3-60A-13. Property exempt from taxes and from levy and sale by virtue of an execution.

A. All property of a municipality, including funds, owned or held in fee simple by it for the purposes of the Metropolitan Redevelopment Code [3-60A-1 to 3-60A-13, 3-60A-14 to 3-60A-48 NMSA 1978] shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the property nor shall judgment against a municipality be a charge or lien upon the property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to the Redevelopment Law [3-60A-5 through 3-60A-13, 3-60A-14 through 3-60A-18 NMSA 1978] by a municipality on its rents, fees, grants, land or revenues from projects.

B. The property of a municipality acquired or held for the purposes of the Metropolitan Redevelopment Code is declared to be public property used for essential public and governmental purposes, and the property shall be exempt from property taxes or assessments of the municipality, the county, the state or any political subdivision thereof; provided that the exemption shall terminate when the municipality transfers its fee simple interest in the property to a purchaser that is not entitled to the exemption with respect to the property. Nothing in this subsection authorizes an exemption or deduction from the imposition of the gross receipts and compensating taxes under the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] on the gross receipts from the sale of property to or the use of property by a municipality or any other person in connection with a metropolitan redevelopment project created under the Metropolitan Redevelopment Code.

History: Laws 1979, ch. 391, § 13; 1985, ch. 225, § 1.

ANNOTATIONS

Cross references. — For the Community Development Incentive Act, *see* Chapter 3, Article 64 NMSA 1978.

3-60A-13.1. Payments in lieu of property taxes and assessments.

A. If interests in project property are exempt from property taxation and assessments under Subsection B of Section 3-60A-13 NMSA 1978 or Section 7-36-3.1 NMSA 1978, then during the period extending from the date of acquisition of the property by the municipality through December 31 of the year in which the seventh anniversary of that acquisition date occurs, any lessee of the project property or owner of a substantial beneficial interest in the project property, in whose ownership the property would not be exempt from property taxation except for the exemption granted under Section 7-36-3.1 NMSA 1978, shall pay to the county treasurer annually, at the same time property tax payments are due under the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978], an amount equal to the sum of:

(1) general property taxes that would have been imposed under Subsection B of Section 7-37-7 NMSA 1978 had it not been exempt and had it been valued at the valuation for property taxation purposes that existed in the year immediately preceding the year of acquisition by the municipality;

(2) amounts that would have been imposed under Subsection C of Section 7-37-7 NMSA 1978 on the project property had it not been exempt and had it been valued at the valuation for property taxation purposes that existed in the year immediately preceding the year of acquisition by the municipality; and

(3) amounts that would have been imposed as benefit assessments on the project property had it not been exempt and had it been valued at the valuation for property taxation purposes that existed in the year immediately preceding the year of acquisition by the municipality if those benefit assessments are authorized by law and are expressed in mills per dollar or dollars per thousand dollars of net taxable value of property, assessed value of property or similar terms.

B. The county treasurer shall distribute all amounts collected under Subsection A of this section in the same manner as the amounts would have been distributed if they had been collected as taxes or assessments on nonexempt property.

C. The provisions of this section shall apply only to project property acquired by a municipality under the provisions of the Metropolitan Redevelopment Code [3-60A-1 to 3-60A-13, 3-60A-14 to 3-60A-48 NMSA 1978] on or after January 1, 1986.

History: 1978 Comp., § 3-60A-13.1, enacted by Laws 1985, ch. 225, § 2.

ANNOTATIONS

Cross references. — For constitutional provision on tax-exempt property, *see* N.M. Const., art. VIII, § 3.

For exemption from property tax of lessee's interests in project property, *see* 7-36-3.1 NMSA 1978.

3-60A-14. Cooperation by public bodies.

A. For the purpose of aiding in the planning, undertaking or carrying out of a metropolitan redevelopment project located within the area in which it is authorized to act, any public body, upon terms, with or without consideration may:

(1) dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or other rights or privileges therein to a municipality;

(2) incur the entire expense of any public improvements made by the public body in exercising the powers granted in this section;

(3) do any and all things necessary to aid or cooperate in the planning or carrying out of a plan;

(4) lend, grant or contribute funds to a municipality;

(5) enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by the Redevelopment Law [3-60A-5 through 3-60A-13, 3-60A-14 through 3-60A-18 NMSA 1978], including the furnishing of funds or other assistance in connection with metropolitan redevelopment; or

(6) cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, transportation, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished to the municipality; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places; plan or replan, zone or rezone any part of the public property or make exceptions from building regulations; and cause administrative and other services to be furnished to the municipality.

If at any time title to or possession of any redevelopment project is held by any public body or governmental agency, other than the municipality, which is authorized by law to engage in the undertaking, carrying out or administration of development projects, including the federal government, the provisions of the agreements referred to in this section shall inure to the benefit of and may be enforced by such public body or governmental agency. As used in this subsection, the term "municipality" includes a

metropolitan redevelopment agency vested with metropolitan redevelopment project powers pursuant to the provisions of the Metropolitan Redevelopment Code [3-60A-1 to 3-60A-13, 3-60A-14 to 3-60A-48 NMSA 1978].

B. For the purpose of aiding in the planning, undertaking or carrying out of the metropolitan redevelopment project by a redevelopment agency hereunder, a municipality may, in addition to its other powers and upon such terms, with or without consideration, perform any or all of the actions or things which, by the provisions of Subsection A of this section, a public body is authorized to do or perform, including the furnishing of financial and other assistance.

C. For the purposes of this section, or for the purpose of aiding in the planning, undertaking or carrying out of a metropolitan redevelopment project of a municipality, the municipality may, in addition to any authority to issue bonds pursuant to the Redevelopment Bonding Law [3-60A-26 through 3-60A-46 NMSA 1978], issue and sell its general obligation or revenue bonds authorized in the Municipal Code. Any bonds issued by a municipality pursuant to this section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality for public purposes generally.

History: Laws 1979, ch. 391, § 14.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 12.

3-60A-15. Exercise of powers in carrying out projects.

A. The local governing body may directly exercise its metropolitan redevelopment project powers or it may, by ordinance if it determines such action to be in the public interest, elect to delegate the exercise of such powers to the metropolitan redevelopment agency created pursuant to the Redevelopment Law. If the local governing body so determines, the agency shall be vested with all of the powers in the same manner as though all the powers were conferred on the agency or authority instead of the municipality.

B. As used in this section, the term "redevelopment project powers" includes any rights, powers, functions and duties of a municipality authorized by the Redevelopment Law except the following, which are reserved to the local governing body; the power to:

(1) declare an area to be a slum or a blighted area or combination thereof and to designate the area as appropriate for a redevelopment project;

(2) approve or amend redevelopment plans;

(3) approve a general plan for the municipality as a whole;

(4) make findings of necessity prior to preparation of a metropolitan redevelopment plan as provided in the Redevelopment Law and the findings and determinations required prior to approval of a metropolitan redevelopment plan or project as provided in the Redevelopment Law;

(5) issue general obligation bonds and revenue bonds authorized in the Municipal Code;

(6) approve loans or grants;

(7) approve leases of more than one year's duration;

(8) issue municipal redevelopment bonds; and

(9) appropriate funds and levy taxes and assessments.

History: Laws 1979, ch. 391, § 15; 2007, ch. 329, § 6; 2007, ch. 330, § 6.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, eliminated the exercise of the power of eminent domain in Subsection B.

Laws 2007, ch. 329, § 6 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 330, § 6. *See* 12-1-8 NMSA 1978.

3-60A-16. Metropolitan redevelopment agency.

A. There may be created in each municipality a public body to be known as the "metropolitan redevelopment agency." The metropolitan redevelopment agency shall not transact any business or exercise any powers until the local governing body has adopted an ordinance creating a metropolitan redevelopment agency and has specified the powers and duties of the agency.

B. When the metropolitan redevelopment agency has been authorized to transact business and exercise powers, the mayor, with the advice and consent of the local governing body, shall appoint a board of commissioners of the redevelopment agency which shall consist of five commissioners. The commissioners shall be initially appointed to serve staggered terms as follows from the date of their appointment:

(1) two members for three-year terms;

(2) two members for two-year terms; and

(3) one member for a one-year term.

Thereafter, commissioners shall be appointed for terms of five years each.

C. A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality and the certificate shall be conclusive evidence of the due and proper appointment of the commissioner. A commissioner may be removed from office at any time by the mayor.

D. The powers of a metropolitan redevelopment agency shall be exercised by the commissioners. A majority of the appointed commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present at a lawful meeting, unless in any case the bylaws shall require a larger number. Any person may be appointed as commissioner if he resides within the area of operation of the agency, which shall be coterminous with the area of operation of the municipality, and is otherwise eligible for such appointment under the Redevelopment Law [3-60A-5 through 3-60A-13, 3-60A-14 through 3-60A-18 NMSA 1978].

E. The mayor shall designate a chairman and vice chairman from among the commissioners. The commission may employ and determine the qualifications, duties and compensation of an executive director, technical experts and such other agents and employees, permanent and temporary, as the metropolitan redevelopment agency may require. For such legal service as the agency may require, the commission may employ or retain for the agency legal counsel and a legal staff. A metropolitan redevelopment agency shall file annually with the local governing body a report of its activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expenses as of the end of such fiscal year.

History: Laws 1979, ch. 391, § 16.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Development §§ 10, 11.

62 C.J.S. Municipal Corporations § 699.

3-60A-17. Conflict of interest; misconduct.

A. No public official or employee of a municipality, or member of any board or commission thereof, and no commissioner or employee of a metropolitan redevelopment agency which has been vested by a municipality with metropolitan redevelopment project powers by the Redevelopment Law [3-60A-5 through 3-60A-13, 3-60A-14 through 3-60A-18 NMSA 1978] shall voluntarily acquire any interest, direct or indirect, in any such project of the municipality or in any contract or proposed contract in connection with such project. Where the acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body and such disclosure shall be entered upon its minutes. If any such official, commissioner or employee currently owns or controls, or owned or controlled within the preceding two years, any interest, direct or indirect, in any property which he knows is included or planned to be included in a metropolitan redevelopment project, he shall immediately disclose this fact in writing to the local governing body, and this disclosure shall be entered upon the minutes of the governing body, and any such official, commissioner or employee shall not participate in any action by the municipality, or board or commission thereof, affecting such property. Any disclosure required to be made by this section to the local governing body shall concurrently be made to a metropolitan redevelopment agency which has been vested with metropolitan redevelopment project powers by the municipality.

History: Laws 1979, ch. 391, § 17.

3-60A-18. Other powers.

A. Except as otherwise specifically set forth in Section 15 [3-60A-15 NMSA 1978] of the Redevelopment Law, the local governing body may delegate its metropolitan redevelopment powers in the manner provided for delegation of powers in the Redevelopment Law [3-60A-5 through 3-60A-13, 3-60A-14 through 3-60A-18 NMSA 1978] to a metropolitan redevelopment agency which shall be vested with such powers in the same manner as though the powers were conferred on the agency instead of the municipality.

B. The local governing body may, in the manner required by state law or municipal charter, provide for such ordinances, rules, regulations or by such other means it deems proper, as are necessary to implement the Redevelopment Law. The municipality and the agency shall be empowered to exercise only those powers authorized by this law or otherwise provided by law. Nothing in this law shall be construed to authorize the municipality to operate an electric or gas utility.

History: Laws 1979, ch. 391, § 18.

3-60A-19. Tax Increment Law; short title.

Sections 19 through 25 [3-60A-19 through NMSA 1978] of the Metropolitan Redevelopment Code may be cited as the "Tax Increment Law."

History: Laws 1979, ch. 391, § 19.

ANNOTATIONS

Compiler's notes. — Laws 1979, ch. 391, §§ 19 to 25 enacted the Tax Increment Law, which was codified as 3-60A-19 to 3-60A-25 NMSA 1978. However, 3-60A-25 NMSA 1978 was repealed by Laws 1987, ch. 316, § 3 and 3-60A-23.1 NMSA 1978 was enacted by Laws 2000, ch. 103, § 4.

Cross references. — For valuation of property generally, *see* 7-36-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 27.

3-60A-20. Alternative method of financing.

A. Effective for tax years beginning on or after January 1, 1980, the local governing body of a municipality may elect by resolution to use the procedures set forth in the Tax Increment Law [3-60A-19 through 3-60A-25 NMSA 1978] for financing metropolitan redevelopment 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, for the purpose of financing metropolitan redevelopment projects, is the dedication for further use in metropolitan redevelopment projects of that increase in property tax revenue directly resulting from the increased net taxable value of a parcel of property attributable to its rehabilitation, redevelopment or other improvement because of its inclusion within an urban renewal, community development or metropolitan redevelopment project.

History: Laws 1979, ch. 391, § 20.

ANNOTATIONS

Cross references. — For the Redevelopment Bonding Law, *see* 3-60A-26 NMSA 1978 et seq.

3-60A-21. Tax increment procedures.

The procedures to be used in the tax increment method are:

A. the local governing body of the municipality shall, at the time after approval of a metropolitan redevelopment project, notify the county assessor and the taxation and revenue department of the taxable parcels of property within the project;

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 property within the metropolitan redevelopment project within their respective jurisdictions and certify to the county treasurer the net taxable value of the property at the time of notification as the base value for the distribution of property tax revenues authorized by the Property Tax Code [Chapter 7, Article 35 through 38 NMSA 1978]. If because of acquisition by the municipality the property becomes tax exempt, 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 a record of the net taxable value at the time of inclusion of the property within the metropolitan redevelopment project as the base value for the purpose of distribution of property tax revenues when the parcel again becomes taxable. The county assessor is not required by this section to preserve the new taxable value at the time of inclusion of the property within the metropolitan redevelopment project as the base value for the purposes of valuation of the property;

C. if because of acquisition by the municipality the property becomes tax exempt, when the parcel again becomes taxable, the local governing body of the municipality shall notify the county assessor and the taxation and revenue department of the parcels of property that because of their rehabilitation or other improvement 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. If no acquisition by the municipality occurs, improvement or rehabilitation of property subject to valuation by the assessor shall be reported to the assessor as required by the Property Tax Code, and the new taxable value shall be determined as of January 1 of the tax year following the year in which the improvement or rehabilitation is completed;

D. current tax rates shall then be applied to the new taxable value. The amount by which the revenue received exceeds that which would have been received by application of the same rates to the base value before inclusion in the metropolitan redevelopment project shall be credited to the municipality and deposited in the metropolitan redevelopment fund. 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 a metropolitan redevelopment area. Unless the entire metropolitan redevelopment area is specifically included by the municipality for purposes of tax increment financing, the payment by the county treasurer to the municipality 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; and

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

History: Laws 1979, ch. 391, § 21; 1987, ch. 316, § 1; 2000, ch. 103, § 2.

ANNOTATIONS

Cross references. — For additional period of tax increment financing, *see* 3-60A-23 NMSA 1978.

The 2000 amendment, effective May 17, 2000, in Subsection E, substituted "twenty years" for "ten years".

The 1987 amendment, effective June 19, 1987, in Subsection B, substituted "notification pursuant to Subsection A of this section" for "this notification"; in Subsection E, substituted "ten years" for "five years"; and made minor stylistic changes throughout the section.

3-60A-22. Metropolitan redevelopment fund; creation; disbursement.

There is created a "metropolitan redevelopment fund" for purposes of the Metropolitan Redevelopment Code [3-60A-1 to 3-60A-13, 3-60A-14 to 3-60A-48 NMSA 1978]. Money in the metropolitan redevelopment fund shall be disbursed to the municipality to be used as other money is authorized to be used in the Metropolitan Redevelopment Code.

History: Laws 1979, ch. 391, § 22.

3-60A-23. Tax increment method approval.

The tax increment method shall be applicable only to the units of government participating in property tax revenue derived from property within a metropolitan redevelopment project and approving the use of the tax increment method for that property and only to the extent of the approval. An approval may be restricted to certain types or sources of tax revenue. The local governing body of each municipality shall request such approval for up to a twenty-year period for property included in the tax increment funding. The governor or his authorized representative shall approve, partially approve or disapprove the use of the method for state government; the governing body of each other participating unit shall approve, partially approve or disapprove by ordinance or resolution the use of the method for their respective units. At the request of a participating unit of government, made within ten days of receipt of the request by the municipality, the municipality shall make a presentation to the governor or his authorized representative and to the governing bodies of all participating units of government, which presentation shall include a description of the metropolitan redevelopment project and the parcels in the project to which the tax increment method will apply, and an estimate of the general effect of the project and the application of the tax increment method on property values and tax revenues. All participating units shall notify the local governing body of the municipality seeking approval within thirty days of receipt of the municipality's request. At the expiration of that time, the alternative

method of financing set forth in this section shall be effective for a period of up to twenty tax years.

History: Laws 1979, ch. 391, § 23; 1987, ch. 316, § 2; 1995, ch. 92, § 1; 2000, ch. 103, § 3.

ANNOTATIONS

The 2000 amendment, effective May 17, 2000, inserted the fifth sentence and inserted "municipality's" in the sixth sentence.

The 1995 amendment, effective June 16, 1995, substituted "up to a twenty-year period" for "a ten-year period" in the third sentence and "up to twenty tax years" for "ten tax years" at the end of the last sentence.

The 1987 amendment, effective June 19, 1987, in the first sentence, near the beginning, substituted "applicable only to" for "used only upon prior approval by a majority of" and added at the end "and approving the use of the tax increment method for that property and only to the extent of the approval", inserted the second sentence, in the third sentence substituted "ten-year period" for "five-year period", in the fourth sentence inserted "partially approve" preceding "or disapprove" both places it appears, and in the sixth sentence, substituted "at the expiration of that time" for "upon approval by a majority of the participating units of" at the beginning and "effective for a period of ten tax years" for "deemed approved for a period of five tax years."

3-60A-23.1. Tax increment bonds.

A. For the purpose of financing metropolitan redevelopment projects, in whole or in part, a municipality may issue tax increment bonds or tax increment bond anticipation notes that are payable from and secured by real property taxes, in whole or in part, allocated to the metropolitan redevelopment fund pursuant to the provisions of Sections 3-60A-21 and 3-60A-23 NMSA 1978. The principal of, premium, if any, and interest on the bonds or notes shall be payable from and secured by a pledge of such revenues, and the municipality shall irrevocably pledge all or part of such revenues to the payment of the bonds or notes. The revenues deposited in the metropolitan redevelopment fund or the designated part thereof may thereafter be used only for the payment of the principal of, premium, if any, and interest on the bonds or notes, and a holder of the bonds or notes shall have a first lien against the revenues deposited in the metropolitan redevelopment fund or the designated part thereof for the payment of principal of, premium, if any, and interest on such bonds or notes. To increase the security and marketability of the tax increment bonds or notes, the municipality may:

(1) create a lien for the benefit of the bondholders on any public improvements or public works used solely by the metropolitan redevelopment project or portion of a project financed by the bonds or notes, or on the revenues of such improvements or works;

(2) provide that the proceeds from the sale of real and personal property acquired with the proceeds from the sale of bonds or notes issued pursuant to the Tax Increment Law [3-60A-19 through 3-60A-25 NMSA 1978] shall be deposited in the metropolitan redevelopment fund and used for the purposes of repayment of principal of, premium, if any, and interest on such bonds or notes; and

(3) make covenants and do any and all acts not inconsistent with law as may be necessary, convenient or desirable in order to additionally secure the bonds or notes or make the bonds or notes more marketable in the exercise of the discretion of the local governing body.

B. Bonds and notes issued pursuant to this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, shall not be general obligations of the municipality, shall be collectible only from the proper pledged revenues and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of tax increment bonds or tax increment bond anticipation notes. Bonds and notes issued pursuant to the Tax Increment Law are declared to be issued for an essential public and governmental purpose and, together with interest thereon, shall be exempted from all taxes by the state.

C. The bonds or notes shall be authorized by an ordinance of the municipality; shall be in such denominations, bear such date and mature, in the case of bonds, at such time not exceeding twenty years from their date, and in the case of notes, not exceeding five years from the date of the original note; bear interest at a rate or have appreciated principal value not exceeding the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978]; and be in such form, carry such registration privileges, be executed in such manner, be payable in such place within or without the state, be payable at intervals or at maturity and be subject to such terms of redemption as the authorizing ordinance or supplemental resolution or resolutions of the municipality may provide.

D. The bonds or notes may be sold in one or more series at, below or above par, at public or private sale, in such manner and for such price as the municipality, in its discretion, shall determine; provided that the price at which the bonds or notes are sold shall not result in a net effective interest rate that exceeds the maximum permitted by the Public Securities Act. As an incidental expense of a metropolitan redevelopment project or portion thereof financed with the bonds or notes, the municipality in its discretion may employ financial and legal consultants with regard to the financing of the project.

E. In case any of the public officials of the municipality whose signatures appear on any bonds or notes issued pursuant to the Tax Increment Law shall cease to be public officials before the delivery of the bonds or notes, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officials had remained in office

until delivery. Any provision of law to the contrary notwithstanding, any bonds or notes issued pursuant to the Tax Increment Law shall be fully negotiable.

F. In any suit, action or proceeding involving the validity or enforceability of any bond or note issued pursuant to the Tax Increment Law or the security therefor, any bond or note reciting in substance that it has been issued by the municipality in connection with a metropolitan redevelopment project shall be conclusively deemed to have been issued for such purpose and the project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of the Metropolitan Redevelopment Code [3-60A-1 to 3-60A-13, 3-60A-14 to 3-60A-48 NMSA 1978].

G. The proceedings under which tax increment bonds or tax increment bond anticipation notes are authorized to be issued and any mortgage, deed of trust, trust indenture or other lien or security device on real and personal property given to secure the same may contain provisions customarily contained in instruments securing bonds and notes and constituting a covenant with the bondholders.

H. A municipality may issue bonds or notes pursuant to this section with the proceeds from the bonds or notes to be used as other money is authorized to be used in the Metropolitan Redevelopment Code.

I. The municipality shall have the power to issue renewal notes, to issue bonds to pay notes and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for other purposes in connection with financing metropolitan redevelopment projects, in whole or in part. Refunding bonds issued pursuant to the Tax Increment Law to refund outstanding tax increment bonds shall be payable from real property tax revenues, out of which the bonds to be refunded thereby are payable or from other lawfully available revenues.

J. The proceeds from the sale of any bonds or notes shall be applied only for the purpose for which the bonds or notes were issued and if, for any reason, any portion of the proceeds are not needed for the purpose for which the bonds or notes were issued, the unneeded portion of the proceeds shall be applied to the payment of the principal of or the interest on the bonds or notes.

K. The cost of financing a metropolitan redevelopment project shall be deemed to include the actual cost of acquiring a site and the cost of the construction of any part of a project, including architects' and engineers' fees, the purchase price of any part of a project that may be acquired by purchase and all expenses in connection with the authorization, sale and issuance of the bonds or notes to finance the acquisition, and any related costs incurred by the municipality.

L. No action shall be brought questioning the legality of any contract, mortgage, deed of trust, trust indenture or other lien or security device, proceeding or bonds or notes executed in connection with any project authorized by the Metropolitan Redevelopment Code on and after thirty days from the effective date of the ordinance authorizing the issuance of such bonds or notes.

History: Laws 2000, ch. 103, § 4.

ANNOTATIONS

Effective dates. — Laws 2000, ch. 103, contained no effective date provision, but, pursuant to the N.M. Const., art. IV, § 23, was effective on May 17, 2000, 90 days after adjournment of the legislature.

3-60A-24. Tax increment method; base value for distribution.

If the tax increment method of financing metropolitan redevelopment projects is used, the base value for distribution of property tax revenues 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 1979, ch. 391, § 24.

ANNOTATIONS

Cross references. — For constitutional restrictions on municipal indebtedness, *see* N.M. Const., art. IX, §§ 12, 13.

3-60A-25. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 316, § 3 repealed 3-60A-25 NMSA 1978, as enacted by Laws 1979, ch. 391, § 25, relating to a method for approval of an additional tax increment period, effective June 19, 1987. For present comparable provisions, *see* 3-60A-23 NMSA 1978.

3-60A-26. Redevelopment Bonding Law; short title.

Sections 26 through 46 [3-60A-26 through 3-60A-46 NMSA 1978] of the Municipal Redevelopment Code may be cited as the "Redevelopment Bonding Law."

History: Laws 1979, ch. 391, § 26.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 32; 64 Am. Jur. 2d Public Securities and Obligations § 98.

64 Am. Jur. 2d Municipal Corporations § 1902 et seq.

3-60A-27. Definitions.

As used in the Redevelopment Bonding Law [3-60A-26 trhough 3-60A-46 NMSA 1978]:

A. "revenue bonds" means bonds, notes or other securities evidencing an obligation and issued pursuant to the powers granted by the Metropolitan Redevelopment Code [3-60A-1 to 3-60A-13, 3-60A-14 to 3-60A-48 NMSA 1978] by a municipality for purposes authorized by that code;

B. "finance" or "financing" means the issuing of bonds by a municipality and the use of substantially all of the proceeds therefrom pursuant to a financing agreement with the user to pay, or to reimburse the user or its designee, for the costs of the acquisition or construction of a project, whether these costs are incurred by the municipality, the user or a designee of the user; provided, that title to or in the project may at all times remain in the user, and in such case, the bonds of the municipality may be secured by mortgage or other lien upon the project or upon any other property of the user, or both, granted by the user or by a pledge of one or more notes, debentures, bonds or other secured or unsecured debt obligations of the user, as the governing body deems advisable, but no municipality shall be authorized hereby to pledge any of its property or to otherwise secure the payment of any bonds with its property, except that the municipality may pledge the property of the project or revenues therefrom;

C. "financing agreement" includes a lease, sublease, installment purchase agreement, rental agreement, option to purchase or any other agreement, or any combination thereof, entered into in connection with the financing of a project pursuant to the Metropolitan Redevelopment Code;

D. "mortgage" means a deed of trust or any other security device for both real and personal property;

E. "ordinance" means an ordinance of a municipality financing or refinancing an activity involving or affecting improvement or improvements;

F. "project" means an activity which can be funded or refinanced by revenue bonds issued pursuant to the Redevelopment Bonding Law for the purpose of acquiring, improving, rehabilitating, conserving, financing, or refinancing, erecting or building new or improved facilities, on land, building or buildings or any other improvement or improvements, site or any other activity authorized by the Metropolitan Redevelopment Code for projects or activities located within the boundaries of a metropolitan redevelopment area. The revenue bonds may be used for the projects hereafter

enumerated, for any purpose or use in such project, except that no funds shall be used for inventories, raw materials or other working capital, whether or not in existence, suitable or used for or in connection with any of the following projects:

(1) manufacturing, industrial, commercial or business enterprises, including without limitation enterprises engaged in storing, warehousing, distributing, selling or transporting any products of industry, commerce, manufacturing or business, or any utility plant;

(2) hospital, health-care or nursing-home facilities, including without limitation clinics and out-patient facilities and facilities for the training of hospital, health-care or nursing-home personnel;

(3) residential facilities intended for use as the place of residence by the owners or intended occupants;

(4) sewage or solid waste disposal facilities;

(5) facilities for the furnishing of water, if available, on reasonable demand to members of the general public;

(6) facilities for the furnishing of energy or gas;

(7) sports and recreational facilities;

(8) convention or trade show facilities; and

(9) research, product-testing and administrative facilities;

G. "state" means the state of New Mexico;

H. "user" means one or more persons who enter into a financing agreement with a municipality relating to a project, except that the user need not be the person actually occupying, operating or maintaining the project; and

I. "utility plant" means any facility used for or in connection with the generation, production, transmission or distribution of electricity; the production, manufacture, storage or distribution of gas; the transportation or conveyance of gas, oil or other fluid substance by pipeline; or the diverting, developing, pumping, impounding, distributing or furnishing of water.

History: Laws 1979, ch. 391, § 27.

ANNOTATIONS

Cross references. — For general definitions, *see* 3-60A-4 NMSA 1978.

3-60A-28. General powers.

A. In addition to any other powers, each municipality has the following powers:

(1) to acquire, whether by construction, purchase, gift, devise, lease or sublease; to improve and equip; and to finance, sell, lease or otherwise dispose of one or more projects or part thereof. If a municipality issues revenue bonds as provided by the Metropolitan Redevelopment Code [3-60A-1 to 3-60A-13, 3-60A-14 to 3-60A-48 NMSA 1978] to finance or acquire projects, such projects shall be located within the municipality and within a metropolitan redevelopment area;

(2) to enter into financing agreements with others for the purpose of providing revenues to pay the bonds authorized by the Redevelopment Bonding Law [3-60A-26 through 3-60A-46 NMSA 1978]; to lease, sell or otherwise dispose of any or all of its projects to others for such revenues and upon such terms and conditions as the local governing body may deem advisable; and to grant options to renew any lease or other agreement with respect to the project and to grant options to buy any project at such price as the local governing body deems desirable;

(3) to issue revenue bonds for the purpose of defraying the cost of financing, acquiring, improving and equipping any project, including the payment of principal and interest on such bonds for a period not to exceed three years and all other incidental expenses incurred in issuing such bonds; and

(4) to secure payment of such bonds as provided in the Redevelopment Bonding Law.

History: Laws 1979, ch. 391, § 28.

3-60A-29. Revenue bonds; issuance.

A. A municipality may issue revenue bonds from time to time in its discretion, to finance the undertaking of any project authorized by the Redevelopment Bonding Law [3-60A-26 through 3-60A-46 NMSA 1978] or the exercise of any power or authority delegated under the Metropolitan Redevelopment Code [3-60A-1 through 3-60A-13, 3-60A-14 through 3-60A-48 NMSA 1978]. These bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues and funds of the project or projects.

B. Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds. Bonds issued under the provisions of the Metropolitan Redevelopment Code are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income thereon and income therefrom, shall be exempted from all taxes by the state of New Mexico.

C. Bonds issued under this section must be authorized by resolution of the local governing body, such bonds may be issued in one or more series and shall bear a date or dates; be payable upon demand or mature at a time or times; bear interest at a rate or rates, not exceeding the legally authorized rate; be in a denomination or denominations; be in a form, either coupon or registered; carry conversion or registration privileges; have rank or priority; be executed in a manner; be payable in a medium of payment; at a place or places; be subject to the terms of redemption, with or without premium; be secured in a manner; and have the other characteristics, as may be provided by the resolution or trust indenture or mortgage issued pursuant thereto.

D. The bonds or any portion thereof may be sold at not less than par at public sales held after notice published prior to the sale in a newspaper having a general circulation in the area of operation and in any other medium of publication as the municipality may determine or may be exchanged for other bonds on the basis of par; provided, that the bonds may be sold to the federal government or to the state at private sale at not less than par, and, in the event less than all of the authorized principal amount of the bonds is sold to the federal government or to the state or to political subdivisions thereof, the balance may be sold at private sale at not less than par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

E. In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under the Redevelopment Law [3-60A-5 through 3-60A-13, 3-60A-14 through 3-60A-18 NMSA 1978] shall cease to be public officials before the delivery of the bonds, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officials had remained in office until delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to the Redevelopment Law shall be fully negotiable.

F. In any suit, action or proceeding involving the validity or enforceability of any bond issued under the Redevelopment Law or the security therefor, any bond reciting in substance that it has been issued by the municipality in connection with a metropolitan redevelopment project shall be conclusively deemed to have been issued for such purpose and the project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of the Redevelopment Law.

History: Laws 1979, ch. 391, § 29.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 C.J.S. Municipal Corporations §§ 1907 to 1909.

3-60A-30. Bonds as legal investments.

All banks, trust companies, bankers, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business; all insurance companies, insurance associations and other persons carrying on an insurance business; and all executors, administrators, curators, trustees and other fiduciaries, may legally invest any sinking funds, money or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality pursuant to the Metropolitan Redevelopment Code [3-60A-1 through 3-60A-13, 3-60A-14 through 3-60A-48 NMSA 1978] or by any agency vested with metropolitan redevelopment project powers under the Redevelopment Law [3-60A-5 through 3-60A-13, 3-60A-14 through 3-60A-18 NMSA 1978]; provided that the bonds and other obligations shall be secured by a pledge of property or revenues or combinations thereof which is of sufficient value to equal the principal and interest of such bonds at maturity. The bonds and other obligations shall be authorized security for all public deposits. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

History: Laws 1979, ch. 391, § 30.

3-60A-31. Revenue bonds; issuance; status.

A. A municipality may issue revenue bonds in connection with a financing agreement for the purposes of financing a project authorized by the provisions of the Redevelopment Bonding Law [3-60A-26 through 3-60A-46 NMSA 1978].

B. A revenue bond shall be a limited obligation of the municipality, the principal and interest of which shall be payable, subject to the mortgage provisions of the Redevelopment Bonding Law, solely out of the revenues derived from the financing, sale or leasing of the project with respect to which the bonds are issued.

C. The revenue bond and interest coupons, if any, appurtenant thereto shall never constitute a debt or indebtedness of the municipality within the meaning of any provision or limitation of the state constitution, statutes of the state or a home rule charter of the municipality, and such bond shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers. Such limitations shall be plainly stated on the face of each such bond.

History: Laws 1979, ch. 391, § 31.

ANNOTATIONS

Cross references. — For constitutional restrictions on municipal indebtedness, *see* N.M. Const., art. IX, §§ 12, 13.

3-60A-32. Revenue bonds; form and terms.

A. Revenue bonds shall be authorized by ordinance of the municipality; shall be subject to such maximum net effective interest rate; and shall be in such denominations, bear such date, mature at such time not exceeding forty years from their respective dates, bear such interest at a rate, be in such form, carry such registration privileges, be executed in such manner, be payable at such place within or without the state, and be subject to such terms of redemption as the authorizing ordinance or supplemental resolution of the municipality may provide.

B. The revenue bonds may be sold in one or more series at par, or below or above par, at public or private sale, in such manner and for such price as the municipality, in its discretion, shall determine; but the municipality shall not sell such bonds at a price such that the net effective interest rate of the issue of bonds exceeds the maximum net effective interest rate authorized. As an incidental expense of the project, the municipality, in its discretion, may employ financial and legal consultants in regard to the financing of the project.

History: Laws 1979, ch. 391, § 32.

3-60A-33. Revenue bonds; bond security.

The principal of, the interest on, and any prior redemption premiums due in connection with the revenue bonds shall be payable from, secure by a pledge of and constitute a lien on the revenues out of which such bonds shall be made payable. In addition, they may be secured by a mortgage covering all or any part of the project or upon any other property of the user, or both, by a pledge of the revenues from or a financing agreement for such project, or both, as the governing body in its discretion may determine, but no municipality shall be authorized hereby to pledge any of its property or to otherwise secure the payment of any bonds with its property; except that the county or municipality may pledge the property of the project or revenues therefrom.

History: Laws 1979, ch. 391, § 33.

3-60A-34. Revenue bonds; terms of proceedings and instruments.

A. The proceedings under which the revenue bonds are authorized to be issued and any mortgage or trust indenture given to secure the same may contain any provisions customarily contained in instruments securing bonds and constituting a covenant with the bondholders, including, but not limited to:

(1) provisions respecting custody of the proceeds from the sale of the bonds, including their investment and reinvestment until used to defray the cost of the project;

(2) provisions respecting the fixing and collection of revenues from the project;

(3) the terms to be incorporated in the financing agreement and any mortgage or trust indenture for the project, including without limitation provision for subleasing;

(4) the maintenance and insurance of the project;

(5) the creation of funds and accounts into which any bond proceeds, revenues and income may be deposited or credited;

(6) limitation on the purpose to which the proceeds of any bonds then or thereafter to be issued may be applied;

(7) limitation on the issuance of additional bonds, the terms upon which additional bonds are issued and secured, the refunding of bonds and the replacement of bonds;

(8) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated;

(9) vesting in a trustee such properties, rights, powers and duties in trust as the municipality determines and limiting the rights, duties and powers of such trustees; and

(10) the rights and remedies available in case of a default to the bondholders or to any trustee under the financing agreement, a mortgage or a trust indenture for the project.

History: Laws 1979, ch. 391, § 34.

3-60A-35. Revenue bonds; investments and bank deposits.

A. The municipality may provide that proceeds from the sale of revenue bonds and special funds from the revenues of the project shall be invested and reinvested in such securities and other investments, whether or not any such investment or reinvestment is authorized under any other law of this state, as may be provided in the proceedings under which the bonds are authorized to be issued, including but not limited to:

(1) bonds or other obligations of the United States;

(2) bonds or other obligations, the payment of the principal and interest of which is unconditionally guaranteed by the United States;

(3) obligations issued or guaranteed as to principal and interest by any agency or person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the congress of the United States;

(4) obligations issued or guaranteed by any state of the United States or any political subdivision of any such state;

(5) prime commercial paper;

(6) prime finance company paper;

(7) bankers acceptances drawn on and accepted by commercial banks;

(8) repurchase agreements fully secured by obligations issued or guaranteed as to principal and interest by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the congress of the United States; and

(9) certificates of deposit issued by commercial banks.

B. The municipality may also provide that the proceeds, funds or investments and the revenues payable under the financing agreement shall be received, held and disbursed by one or more banks or trust companies located within or without this state.

History: Laws 1979, ch. 391, § 35.

3-60A-36. Revenue bonds; acquisition of project.

A. The municipality may also provide that:

(1) the project and improvements to be constructed, if any, shall be constructed by the municipality, the user, the user's designee or any one or more of them on real estate owned by the municipality, the user, or the user's designee, as the case may be; and

(2) the bond proceeds shall be disbursed by the trustee bank or trust company during construction upon the estimate, order or certificate of the user or the user's designee.

B. The project, if and to the extent constructed on real estate not owned by the municipality, may be conveyed or leased or an easement therein granted to the municipality at any time.

History: Laws 1979, ch. 391, § 36.

3-60A-37. Revenue bonds; limited obligation.

In making such agreements or provisions, a municipality shall not obligate itself, except with respect to the project and the application of the revenues therefrom and revenue bond proceeds therefor.

History: Laws 1979, ch. 391, § 37.

3-60A-38. Revenue bonds; rights upon default.

A. The proceedings authorizing any revenue bonds, or any mortgage securing such bonds, may provide that if there is a default in the payment of the principal of, the interest on, or any prior redemption premiums due in connection with the bonds or in the performance of any agreement contained in such proceedings or mortgage, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with the proceedings or the provisions of the mortgage.

B. Any mortgage to secure bonds issued thereunder may also provide that if there is a default in the payment thereof or a violation of any agreement contained in the mortgage it may be foreclosed and there may be a sale under proceedings in equity or in any other manner permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any bonds secured thereby may become the purchaser at any foreclosure sale if he is the highest bidder and may apply toward the purchase price unpaid bonds at the face value thereof.

History: Laws 1979, ch. 391, § 38.

3-60A-39. Revenue bonds; determination of revenue.

A. Prior to entering into a financing agreement for the project and the issuance of revenue bonds in connection therewith, the local governing body shall determine:

(1) the amount necessary in each year to pay the principal of and the interest on the first bonds proposed to be issued to finance such project;

(2) the amount necessary to be paid each year into any reserve funds which the governing body may deem advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project; and

(3) the estimated cost of maintaining the project in good repair and keeping it properly insured, unless the terms under which the project is to be financed provide that the user shall maintain the project and carry all proper insurance with respect thereto.

B. The determination and findings of the local governing body, required to be made by Subsection A of this section, shall be set forth in the proceedings under which the proposed revenue bonds are to be issued; but the foregoing amounts need not be expressed in dollars and cents in the financing agreement and proceedings under which the bonds are authorized to be issued.

History: Laws 1979, ch. 391, § 39.

3-60A-40. Revenue bonds; financing of project.

Prior to the issuance of any revenue bonds authorized by the Redevelopment Bonding Law [3-60A-26 through 3-60A-46 NMSA 1978], the municipality shall enter into a financing agreement with respect to the project with a user providing for payment to the municipality of such revenues as, upon the basis of such determinations and findings, will be sufficient to pay the principal of and interest on the bonds issued to finance the project, to build up and maintain any reserves deemed advisable by the local governing body in connection therewith, and to pay the costs of maintaining the project in good repair and keeping it properly insured, unless the financing agreement obligates the user to pay for the maintenance of and insurance on the project.

History: Laws 1979, ch. 391, § 40.

3-60A-41. Option to purchase.

A. A lease may grant the user of a project an option to purchase all or a part of the project at a stipulated purchase price or at a price to be determined upon appraisal as is provided in the lease.

B. The option may be exercised at such time as the lease may provide.

C. The municipality and the user may agree and provide in the lease that all or a part of the rentals paid by the user prior to and at the time of the exercise of such option shall be applied toward the purchase price and shall be in full or partial satisfaction thereof.

History: Laws 1979, ch. 391, § 41.

3-60A-42. Revenue bonds; refunding.

A. Any revenue bonds issued under the provisions of the Redevelopment Bonding Law [3-60A-26 through 3-60A-46 NMSA 1978] and at any time outstanding may at any time and from time to time be refunded by a municipality by the issuance of its refunding bonds in such amount as the governing body may deem necessary to refund the principal of the bonds to be so refunded, any unpaid interest thereon and any premiums and incidental expenses necessary to be paid in connection therewith.

B. Any such refunding may be effected, whether the bonds to be refunded have matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof, directly or indirectly, to the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby, but the holders of any bonds to be so refunded shall not be compelled, without their consent, to surrender their bonds for payment or exchange prior to the date on which they are payable by maturity date, option to redeem, or

otherwise or if they are called for redemption prior to the date on which they are by their terms subject to redemption by option or otherwise.

C. All refunding bonds issued under authority of the Redevelopment Bonding Law to refund revenue bonds shall be payable solely from revenues out of which bonds to be refunded thereby are payable or from revenues out of which bonds of the same character may be made payable under the Redevelopment Bonding Law or any other law in effect at the time of the refunding.

History: Laws 1979, ch. 391, § 42.

3-60A-43. Revenue bonds; application of proceeds.

A. The proceeds from the sale of any revenue bonds shall be applied only for the purpose for which the bonds were issued and if, for any reason, any portion of such proceeds are not needed for the purpose for which the bonds were issued, such unneeded portion of the proceeds shall be applied to the payment of the principal of or the interest on the bonds.

B. The cost of acquiring any project shall be deemed to include the actual cost of acquiring a site and the cost of the construction of any part of a project which may be constructed (including architects' and engineers' fees), the purchase price of any part of a project that may be acquired by purchase, and all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition, and any costs incurred by the municipality.

History: Laws 1979, ch. 391, § 43.

3-60A-44. No payment by municipality.

A. No municipality or public body shall pay out of its general fund or otherwise contribute any part of the costs of acquiring a project and, unless specifically acquired for uses of the character described in the Redevelopment Bonding Law [3-60A-26 tthrough 3-60A-46 NMSA 1978] or unless the land is determined by the governing body to be no longer necessary for other municipal purposes or purposes of a public body, shall not use land already owned by the municipality or public body, or in which the municipality or public body has an equity, for the construction thereon of a project or any part thereof.

B. The entire cost of acquiring any project shall be paid out of the proceeds from the sale of the revenue bonds, but this provision shall not be construed to prevent a municipality or public body from accepting donations of property to be used as a part of any project or money to be used for defraying any part of the cost of any project.

History: Laws 1979, ch. 391, § 44.

3-60A-45. No municipal operation.

A. When all principal of, interest on and any prior redemption premium due in connection with the revenue bonds issued for a project leased to a user have been paid in full and in the event the option to purchase or option to renew the lease, if any, contained in the lease has not been exercised as to all of the property contained in the project, the lease shall terminate and the municipality shall sell such remaining property or devote the same to municipal purposes other than manufacturing, commercial or industrial.

B. Any such sale which is not made pursuant to the exercise of an option to purchase by the user of a project shall be conducted in the same manner as is then provided by law governing the issuer's sale of surplus property.

History: Laws 1979, ch. 391, § 45.

3-60A-46. Limitation of actions.

No action shall be brought questioning the legality of any contract, financing agreement, mortgage, trust indenture, proceeding or bonds executed in connection with any project or improvements authorized by the Redevelopment Bonding Law [3-60A-26 through 3-60A-46 NMSA 1978] on and after thirty days from the effective date of the resolution or ordinance authorizing the issuance of such bonds.

History: Laws 1979, ch. 391, § 46.

ANNOTATIONS

Cross references. — For general limitation of action on municipal bonds, *see* 37-1-25 NMSA 1978.

3-60A-47. Sufficiency of code.

A. The Metropolitan Redevelopment Code [3-60A-1 through 3-60A-13, 3-60A-14 through 3-60A-48 NMSA 1978], without reference to other statutes of the state, constitutes full authority for the exercise of powers granted herein, including but not limited to the authorization and issuance of bonds under that code.

B. No other act or law with regard to the authorization of issuance of bonds that provides for an election requiring an approval or in any way impeding or restricting the carrying out of the acts authorized in the Metropolitan Redevelopment Code to be done shall be construed as applying to any proceedings taken under or acts done pursuant to that code, except for laws to which reference is expressly made in that code or by necessary implication of that code.

C. The provisions of no other law, either general or local, except as provided in the Metropolitan Redevelopment Code, shall apply to the things authorized to be done pursuant to that code, and no board, agency, bureau, commission or official not designated herein has any authority or jurisdiction over any of the acts authorized in that code to be done, except as otherwise provided by that code.

D. No notice, consent or approval by any public body or officer thereof shall be required as a prerequisite to the sale or issuance of any bonds, the making of any contract or financing agreement or the exercise of any other power under the Metropolitan Redevelopment Code, except as provided herein.

E. The powers conferred by the Metropolitan Redevelopment Code shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by that code shall not affect the powers conferred by any other law.

F. No part of the Metropolitan Redevelopment Code shall repeal or affect any other law or part thereof except to the extent that the provisions of that code are inconsistent with any other law, it being intended that the Metropolitan Redevelopment Code shall provide a separate method of accomplishing its objectives and not an exclusive one; and the Metropolitan Redevelopment Code shall not be construed as repealing, amending or changing any other law except to the extent of such inconsistency.

History: Laws 1979, ch. 391, § 47.

3-60A-48. Liberal interpretation.

The Metropolitan Redevelopment Code [3-60A-1 through 3-60A-13, 3-60A-14 through 3-60A-48 NMSA 1978] shall be liberally construed to carry out its purposes.

History: Laws 1979, ch. 391, § 48.

ANNOTATIONS

Severability. — Laws 1979, ch. 391, § 49, provided for the severability of the act if any part or application thereof is held invalid.

ARTICLE 60B
Main Street

3-60B-1. Short title.

Chapter 3, Article 60B NMSA 1978 may be cited as the "Main Street Act".

History: Laws 1985, ch. 88, § 1; 2013, ch. 60, § 1; 2013, ch. 62, § 1.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, added the NMSA chapter and article for the Main Street Act; and at the beginning of the sentence, deleted "This act" and added "Chapter 3, Article 60B NMSA 1978".

Laws 2013, ch. 60, § 1 and Laws 2013, ch. 62, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 62, § 1. *See* 12-1-8 NMSA 1978.

3-60B-2. Purpose.

The purpose of the Main Street Act is to provide for the revitalization of central business districts in New Mexico communities based on the preservation and rehabilitation of existing structures of unique historical and architectural character and the development of progressive marketing and management techniques as an economic development strategy for local governments.

History: Laws 1985, ch. 88, § 2.

3-60B-3. Definitions.

As used in the Main Street Act:

A. "program" means the state main street program developed in conjunction with the national trust for historic preservation; and

B. "coordinator" means the person responsible for coordinating the program and state and federal activities relevant to the program.

History: Laws 1985, ch. 88, § 3.

3-60B-4. Main street program; created; coordinator; powers and duties.

A. There is created the "main street program" in the economic development department. The secretary of economic development shall employ a coordinator to oversee the program.

B. The coordinator shall:

(1) carry out state responsibilities pursuant to contract with the national main street center of the national trust for historic preservation;

(2) coordinate activities of the program in consultation with the historic preservation division of the cultural affairs department;

(3) advise the New Mexico community development council on the development of criteria for requests for proposals and selection of local government grantees for the program to be funded through community development block grants;

(4) monitor the progress of main street projects;

(5) assist local main street project managers;

(6) assist in the development of the frontier communities program; and

(7) perform other duties necessary to carry out the provisions of the Main Street Act.

History: Laws 1985, ch. 88, § 4; 1989, ch. 163, § 1; 1991, ch. 21, § 8; 2013, ch. 60, § 2; 2013, ch. 62, § 2.

ANNOTATIONS

Cross references. — For New Mexico community development council, *see* 11-6-4 NMSA 1978.

The 2013 amendment, effective June 14, 2013, created the frontier communities program; and added Paragraph (6) of Subsection B.

Laws 2013, ch. 60, § 2 and Laws 2013, ch. 62, § 2, both effective June 14, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 62, § 2. *See* 12-1-8 NMSA 1978.

The 1991 amendment, effective March 27, 1991, in Subsection A, deleted "and tourism" following "development" in the first sentence and substituted "the economic development department" for "economic development and tourism" in the second sentence.

The 1989 amendment, effective July 1, 1989, in Subsection A, substituted "economic development and tourism department" for "office of the lieutenant governor" in the first sentence and substituted "secretary of economic development and tourism" for "lieutenant governor" in the second sentence; and deleted "the economic development and tourism department and" following "with" in Subsection B(2).

ARTICLE 60C
Main Street Revolving Loan

3-60C-1. Short title.

Chapter 3, Article 60C NMSA 1978 may be cited as the "Main Street Revolving Loan Act".

History: Laws 2007, ch. 103, § 1; 2009, ch. 185, § 1.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, changed the reference to the act to the chapter and article of NMSA 1978.

3-60C-2. Purpose.

The purpose of the Main Street Revolving Loan Act is to provide owners of eligible properties with low-cost financial assistance, through the creation of a self-sustaining revolving loan program, in the restoration, rehabilitation and repair of those properties if they meet certain eligibility criteria and would contribute substantially to the state's economic well-being and to a sound and proper balance between preservation and development.

History: Laws 2007, ch. 103, § 2.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 103, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

3-60C-3. Definitions.

As used in the Main Street Revolving Loan Act:

A. "committee" means the main street revolving loan committee;

B. "division" means the historic preservation division of the cultural affairs department;

C. "eligible property" means a site, structure, building or object that is subject to the Main Street Act or otherwise found pursuant to rule of the committee to merit preservation pursuant to the Main Street Revolving Loan Act;

D. "fund" means the main street revolving loan fund;

E. "lending institution" means a bank, savings and loan association, credit union or nonprofit organization with lending programs as part of its bylaws; and

F. "property owner" means the sole owner, joint owner, owner in partnership or an owner of a leasehold interest with a term of five years or longer of an eligible property.

History: Laws 2007, ch. 103, § 3; 2009, ch. 185, § 2.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, added Subsection E.

3-60C-4. Main street revolving loan committee; committee and division duties.

A. The "main street revolving loan committee" is created, consisting of six members as follows:

(1) the director of the division or the director's designee;

(2) the coordinator of the main street program under the Main Street Act [3-60B-1 through 3-60B-4 NMSA 1978] or the coordinator's designee;

(3) the chair of the cultural properties review committee or the chair's designee;

(4) the director of the local government division of the department of finance and administration or the director's designee;

(5) a member appointed by the governor with expertise in small loans; and

(6) the chair of the board of directors of friends of New Mexico mainstreet, inc., or the chair's designee.

B. Public members of the committee shall not be paid but shall be reimbursed for per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978].

C. The committee shall:

(1) elect a chair and such other officers as it deems necessary;

(2) meet at the call of the chair but no less than four times per year;

(3) by rule, establish eligibility criteria for properties and owners, establish procedures to govern the application outreach and marketing of the loan program and promulgate such other rules as are necessary to carry out the provisions of the Main Street Revolving Loan Act;

(4) after considering the recommendations of the division, make awards of loans or loan subsidies; and

(5) approve expenditures by the division for marketing, managing and administering the loan program.

D. A member of the committee may participate in a meeting of the committee by means of a conference telephone or other similar communications equipment as provided in the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]. Participation by conference telephone or other similar communications equipment shall constitute presence in person at a meeting.

E. The division shall:

(1) review applications for loans and loan subsidies and make recommendations to the committee;

(2) administer all loans and loan subsidies;

(3) serve as staff to the committee; and

(4) report annually to the governor, the legislative finance committee and the legislature on loans made, loan payments received and all other activities conducted pursuant to the Main Street Revolving Loan Act.

History: Laws 2007, ch. 103, § 4; 2009, ch. 185, § 3.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, added Paragraph (5) of Subsection C and added Subsection D.

3-60C-5. Main street revolving loan fund.

A. The "main street revolving loan fund" is created in the state treasury. The fund shall consist of appropriations, loan payments, federal funds received for the purpose of making loans, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year. Money in the fund is appropriated to the committee for the purposes of:

(1) making revolving loans, including related fees, to property owners, with the loans processed and serviced by a lending institution; and

(2) paying division expenses to market, manage and administer the loan program; provided that no more than ten percent of the annual appropriation or other

distribution or transfer made to the fund may be used for marketing, managing and administering the loan program.

B. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the director of the division.

History: Laws 2007, ch. 103, § 5; 2009, ch. 185, § 4.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, added Paragraphs (1) and (2) of Subsection A.

3-60C-6. Loan program; applications; awards.

A. The division shall administer a program to make direct loans or loan subsidies and shall contract with one or more lending institutions for deposits to be used for the purpose of making or subsidizing loans to property owners for the restoration, rehabilitation or repair of eligible properties.

B. The committee shall adopt a procedure for the priority ranking of applications and projects, both eligible and ineligible for federal funding assistance, for which loan or loan subsidy applications have been received by the division. The procedure shall be based on factors including geographic distribution of recipient projects, severity of deterioration of the eligible property, degree of architectural and construction detail in the loan application demonstrating the feasibility of the proposed restoration, rehabilitation or repair of the eligible property and availability of other funding for the project. All loans or loan subsidies from the fund shall be granted pursuant to the procedure, and the procedure shall be reviewed annually by the division and the committee.

C. Loans or loan subsidies shall be made by the committee pursuant to the following criteria:

(1) loans or loan subsidies from the fund shall be made only to property owners who:

(a) agree to repay the loan in a time period not to exceed ten years;

(b) agree to maintain the eligible property as restored, rehabilitated or repaired for the period specified in the loan or five years, whichever is greater;

(c) agree to maintain complete and proper financial records regarding the eligible property and to make these available to the division and the committee on request;

(d) agree to complete the proposed restoration, rehabilitation or repair work on the eligible property within twenty-four months from the date of loan approval by the committee;

(e) provide sufficient collateral security interest, as determined by the lending institution, to the state in accordance with rules established by the committee;

(f) submit conceptual design and business plans with respect to the use of the loan proceeds, prepared with the assistance of the local main street project organization, the state main street program or other professionals with experience in architecture, design or business and financial planning;

(g) agree to all financial and other commitments, terms and conditions for the loan established by the division or the committee; and

(h) agree to any restrictions on assignments of loans from the fund required by the committee or the division;

(2) a loan shall be made for a period not to exceed ten years with interest on the unpaid balance at a rate not greater than the yield at the time of loan approval on United States treasury bills with a maturity of three hundred sixty-five days plus one-half of one percent. A loan shall be repaid by the property owner in equal installments not less often than annually with the first installment due within one year of the date the loan is issued. If a property owner transfers ownership of the eligible property with respect to which a loan is made, all amounts outstanding under the loan shall become immediately due and payable and the property owner shall make a final interest payment on the principal amount due at a rate equal to the interest rate on the loan plus an additional one percent;

(3) loans shall be made only for eligible costs. Eligible costs include loan servicing fees, architectural, design, graphic design, construction and engineering documents and planning costs, inspection of work in progress, contracted restoration, rehabilitation and repair costs and costs necessary to meet code requirements. Eligible costs do not include costs of land acquisition, legal costs or certain fiscal agents' fees as determined by the committee; and

(4) loans are not assignable.

D. The division shall deposit in the fund all receipts from the repayment of loans made pursuant to the Main Street Revolving Loan Act.

History: Laws 2007, ch. 103, § 6; 2009, ch. 185, § 5.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection C(1)(a), after "repay the loan", added the remainder of the sentence; in Subsection C(1)(b), at the beginning of the sentence, added "agree" and after "specified in the loan" deleted "but not less than five years" and added "or five years, whichever is greater"; in Subsection C(1)(e), after "security interest", deleted "in the eligible property" and added "as determined by the lending institution"; deleted former Subparagraph (e) of Paragraph (1) of Subsection C, which required property owners to meet the income eligibility criteria of the committee; deleted former Subsection C(1)(f), which required property owners to demonstrate that they had been denied a loan by at least two financial lenders for the same amount, for the same purpose and upon the same conditions as the loan the property owner seeks to borrow from the fund; and in Subsection C(3), in the second sentence, after "Eligible costs include", added "loan servicing fees" and in the third sentence after "agents' fees", added "as determined by the committee".

ARTICLE 61
Metropolitan Water Boards

3-61-1. Power to create metropolitan water board; exercise of power.

In addition to all other powers granted to municipalities and counties, the board of county commissioners of any county and the governing board of any municipality lying totally or partially within the boundaries of that county may, by the passage of identical ordinances that comply with the provisions of Section 3-61-1.1 NMSA 1978, create a metropolitan water board of not more than ten members and grant to that board that portion of the powers of the municipality and the county which pass the identical ordinances necessary to allow the board to:

A. contract for, lease or sublease any supply of water which the municipality and the county in combination with any other entity, public or private, may receive from the United States department of the interior, bureau of reclamation, for municipal, domestic or industrial purposes pursuant to the Reclamation Act of 1902 (32 Stat. 388), the Act of June 13, 1962 (76 Stat. 96) and the Act of April 11, 1956 (70 Stat. 105), all as amended or supplemented;

B. enter into contracts, leases or subleases with other agencies of the United States and the state of New Mexico for purposes related to municipal, industrial and domestic water use, as necessary, pursuant to appropriate federal and state law; and

C. conduct or engage in analysis or studies of the short and long range availability and need of water resources and of ways to accomplish more efficient use of water resources for purposes related to municipal, industrial and domestic water use in order to provide recommendations thereon.

History: 1953 Comp., § 14-63-1, enacted by Laws 1976, ch. 47, § 1; 1977, ch. 304, § 1; 1985, ch. 144, § 1; 1989, ch. 358, § 1.

ANNOTATIONS

Compiler's notes. — The federal Act of June 13, 1962, referred to in Subsection A, appeared as 43 U.S.C. § 615ii et seq., before being omitted.

Cross references. — For the federal Reclamation Act of 1902, *see* 43 U.S.C. § 371 et seq.

For the federal Act of April 11, 1956, *see* 43 U.S.C. § 620 et seq.

The 1989 amendment, effective June 16, 1989, substituted "ten members" for "seven members" in the introductory paragraph.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waterworks and Water Companies §§ 3 to 12, 23 et seq.

93 C.J.S. Waters § 226 et seq.

3-61-1.1. Metropolitan water board.

A. Except as provided in Subsection B of this section, a metropolitan water board shall be composed of the following:

(1) seven elected members as provided in Subsection C of this section;

(2) one member who is a registered voter of the municipality appointed by the governing body of the municipality; and

(3) one member who is a registered voter of the county appointed by the governing body of the county.

B. In addition to the members specified in Subsection A of this section, the members of a metropolitan water board that is located in a class B county and a municipality lying totally or partially within the boundaries of that county shall include one additional member appointed by the primary privately owned water company of that municipality if:

(1) the city has a population of more than fifty thousand but less than one hundred thousand according to the last federal decennial census or any subsequent decennial census; or

(2) the county has a population separate of the city of more than twenty-five thousand but less than sixty thousand according to the last federal decennial census or any subsequent decennial census.

C. Elected members of a metropolitan water board shall be elected at a county-wide special election or at a general election by the registered voters of such county and municipality for such terms as are specified in the respective identical ordinances of the municipality and the county, pursuant to Section 3-61-1 NMSA 1978. Public employees may be elected to and serve on the board.

D. For the purpose of electing members of the metropolitan water board, the governing bodies of the municipality and the county shall, in the identical such ordinances pursuant to Section 3-61-1 NMSA 1978, district the county once after each federal decennial census into a number of single-member districts equal to the number of elected board members; provided that in class B counties the board shall consist of no less than seven elected members. The districts shall be of equal populations as nearly as is practicable, and each member of the board shall reside in and be elected from his respective district.

E. Change of residence to a place outside the district from which a metropolitan board member was elected shall automatically terminate the service of that member on the board, and the office shall be declared vacant. The respective governing bodies shall jointly, by appointment, fill any vacancies on the board until the next succeeding regular or special election, other than a school election, which is applicable to the area over which the board has jurisdiction, at which time the position shall be filled by election for the remainder of the unexpired term of the member creating the vacancy.

History: 1978 Comp., § 3-61-1.1, enacted by Laws 1985, ch. 144, § 2; 1989, ch. 358, § 2.

ANNOTATIONS

Cross references. — For class B counties, *see* 4-44-1 NMSA 1978.

The 1989 amendment, effective June 16, 1989, added Subsections A and B, redesignated former Subsections A to C as Subsections C to E, in Subsection C, inserted "Elected" at the beginning, and, in Subsection D, inserted "once after each federal decennial census" and "elected" preceding "board members" and substituted "no less than seven elected members" for "no less than five nor more than seven members" in the first sentence.

3-61-2. Approval of budget.

A metropolitan water board created by this act [3-61-1 through 3-61-4 NMSA 1978] may incur reasonable costs and expenses in carrying out its power; the budget of the water board shall be included in the budget of the municipality and the county creating

the water board and shall be subject to the approval of the New Mexico department of finance and administration as required by Section 6-6-2 et seq., NMSA 1978, as enacted or amended.

History: 1953 Comp., § 14-63-2, enacted by Laws 1976, ch. 47, § 2.

3-61-3. Reservation of powers.

A metropolitan water board may acquire, construct and operate a water utility and to accomplish this purpose shall be deemed a municipality for the purpose of Chapter 62 NMSA 1978 and for Articles 23 and 27 of Chapter 3 NMSA 1978.

History: 1978 Comp., § 3-61-3, enacted by Laws 1985, ch. 144, § 3.

ANNOTATIONS

Repeals and reenactments. — Laws 1985, ch. 144, § 3 repealed former 3-61-3 NMSA 1978, as enacted by Laws 1976, ch. 47, § 3, and enacted the above section.

3-61-3.1. Eminent domain; restriction.

A metropolitan water board shall not use the power of eminent domain or dominant eminent domain to condemn the private property of the primary privately owned water company serving a municipality in the area in which a metropolitan water board has jurisdiction.

History: 1978 Comp., § 3-61-3.1, enacted by Laws 1989, ch. 358, § 3.

3-61-4. Limitation on powers of water boards.

No water board created under this act [3-61-1 through 3-61-4 NMSA 1978] shall have the power to enter into a contract which by its terms prohibits any governing body or any local subdivision from abolishing the water board by repeal of the ordinance or ordinances by which the water board was created.

History: 1953 Comp., § 14-63-4, enacted by Laws 1976, ch. 47, § 4.

ARTICLE 62
Methods of Insurance

3-62-1. Providers of insurance.

Any insurance authorized by law to be purchased, obtained or provided by a municipality or other political subdivision or local public body or any insurance which a subdivision or body may assist in providing to its employees may be provided by:

A. self-insurance which may be funded by appropriations or contributions to establish or maintain reserves for self-insurance purposes;

B. insurance secured in accordance with any other method provided by law; or

C. any combination of insurance authorized by Sections 3-62-1 and 3-62-2 NMSA 1978.

History: 1978 Comp., § 3-62-1, enacted by Laws 1979, ch. 287, § 1; 1986, ch. 92, § 1.

ANNOTATIONS

Cross references. — For general insurance provisions, *see* Chapter 59A NMSA 1978.

The 1986 amendment, effective May 21, 1986, in the introductory paragraph, inserted "or other political subdivision or local public body", and substituted "subdivision or body" for "municipality"; and, in Subsection A, deleted, "provided, however, the provisions of this subsection shall not apply to public property coverage" from the end.

UM/UIM requirements do not apply to association of counties. — The requirements of Subsection A of Section 66-5-301 NMSA 1978, pertaining to uninsured and underinsured motorist coverage, does not apply to a group of counties that pool their financial resources under Sections 3-62-1 and 3-62-2 NMSA 1978 to satisfy claims against the individual members of the group. Romero v. Bd. of Cnty. Comm'rs of Taos Cnty., 2011-NMCA-066, 150 N.M. 59, 257 P.3d 404, cert. denied, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

Where plaintiff, who was an employee of defendant, was injured in a motor vehicle accident while driving a county vehicle during the course of defendant’s employment with the county; plaintiff received a settlement for the policy limits of the insurance policy of the driver of the other vehicle and made a claim for UM/UIM coverage against the county’s insurance coverage; the county provided liability coverage through a coverage agreement with the New Mexico Association of Counties which maintained a pool of contributions by member counties to fund property and liability losses; and the coverage agreement did not include UM/UIM coverage, the requirements of Subsection A of Section 66-5-301 NMSA 1978 did not apply to the Association of Counties and it was not required to offer UM/UIM coverage. Romero v. Bd. of Cnty. Comm'rs of Taos Cnty., 2011-NMCA-066, 150 N.M. 59, 257 P.3d 404, cert. denied, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

Municipal self-insurers' fund subject to state audit. — The New Mexico municipal self-insurers' fund, formed under the provisions of 11-1-3 NMSA 1978, authorizing

governing bodies to exercise joint powers, and this article, is an "agency," as used in the Audit Act, Article 6 of Chapter 12 NMSA 1978, and is, therefore, subject to audit by the state auditor. 1987 Op. Att'y Gen. No. 87-65.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 206, 548.

63 C.J.S. Municipal Corporations § 980.

3-62-2. Pooling.

A. Two or more municipalities or other political subdivisions or local public bodies may provide insurance for any purpose by any one or more of the methods specified in Chapter 3, Article 62 NMSA 1978. Self-insurance or the pooling of self-insured reserves, claims or losses among subdivisions or bodies as authorized pursuant to Sections 3-62-1 and this section NMSA 1978 shall not be construed to be transacting insurance or otherwise subject to the provisions of the laws of this state regulating insurance or insurance companies. Two or more municipalities or other political subdivisions or local public bodies may also be insured under a master policy or contract of insurance. Premium costs may be set individually for each municipality, political subdivision or local public body or apportioned among participating municipalities as provided in the master policy or contract. Pooling to provide property coverage shall constitute the purchase of insurance for the purpose of Section 13-5-3 NMSA 1978.

B. The pooling of self-insured reserves, claims or losses under this section shall be marketed to municipalities, other political subdivisions and local public bodies only through a licensed insurance agent.

C. An estimated annual standard premium of at least two hundred fifty thousand dollars ($250,000) during first year of operation shall be required for two or more local public bodies to pool for the purposes of this act [3-62-1 and 3-62-2 NMSA 1978].

History: 1978 Comp., § 3-62-2, enacted by Laws 1979, ch. 287, § 2; 1984, ch. 127, § 988.4; 1986, ch. 92, § 2.

ANNOTATIONS

The 1986 amendment, effective May 21, 1986, in Subsection A, in the first and third sentences, inserted "or other political subdivisions or local public bodies" and, in the second sentence, substituted "subdivisions or bodies" for "municipalities"; in Subsection B, inserted "and local public bodies" and deleted "and shall be limited to worker's compensation and public liability risks" at the end of the subsection; and made minor stylistic changes.

UM/UIM requirements do not apply to association of counties. — The requirements of Subsection A of Section 66-5-301 NMSA 1978, pertaining to uninsured and underinsured motorist coverage, does not apply to a group of counties that pool their financial resources under Sections 3-62-1 and 3-62-2 NMSA 1978 to satisfy claims against the individual members of the group. Romero v. Bd. of Cnty. Comm'rs of Taos Cnty., 2011-NMCA-066, 150 N.M. 59, 257 P.3d 404, cert. denied, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

Where plaintiff, who was an employee of defendant, was injured in a motor vehicle accident while driving a county vehicle during the course of defendant's employment with the county; plaintiff received a settlement for the policy limits of the insurance policy of the driver of the other vehicle and made a claim for UM/UIM coverage against the county's insurance coverage; the county provided liability coverage through a coverage agreement with the New Mexico Association of Counties which maintained a pool of contributions by member counties to fund property and liability losses; and the coverage agreement did not include UM/UIM coverage, the requirements of Subsection A of Section 66-5-301 NMSA 1978 did not apply to the Association of Counties and it was not required to offer UM/UIM coverage. Romero v. Bd. of Cnty. Comm'rs of Taos Cnty., 2011-NMCA-066, 150 N.M. 59, 257 P.3d 404, cert. denied, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

ARTICLE 63
Business Improvement Districts

3-63-1. Short title.

This act [3-63-1 through 3-63-16 NMSA 1978] may be cited as the "Business Improvement District Act".

History: Laws 1988, ch. 32, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 94 et seq.; 70A Am. Jur. 2d Special or Local Assessments § 5 et seq.

63 C.J.S. Municipal Corporations § 1290 et seq.; 64 Municipal Corporations §§ 1902, 1905 et seq.

3-63-2. Purpose of act.

The purpose of the Business Improvement District Act is to:

A. promote and restore the economic vitality of areas within municipalities by allowing the establishment of business improvement districts with the powers to provide

for the administration and financing of additional and extended services to businesses within business improvement districts;

B. finance local improvements within those districts; and

C. provide municipalities and entrepreneurs a more flexible and proactive vehicle to collaborate in the revitalization efforts of their downtowns, commercial districts and central business districts.

History: Laws 1988, ch. 32, § 2; 1999, ch. 204, § 1.

ANNOTATIONS

The 1999 amendment, effective April 6, 1999, added the subsection designations and added Subsection C.

3-63-3. Definitions.

As used in the Business Improvement District Act:

A. "business" means a fixed place of business within an incorporated municipality where one or more persons are employed or engaged in the purchase, sale, provision or manufacturing of commodities, products or services, and includes the ownership of unoccupied real property that is held for commercial investment purposes, for sale or for lease;

B. "council" means the governing body of the incorporated municipality within which the district is found;

C. "district" means an entity having a contiguous area of clearly defined boundaries within an incorporated municipality in which at least three-quarters of the area is zoned and used for business or mixed commercial or retail use, that is established pursuant to the Business Improvement District Act in which the improvements are to be constructed and upon which the business improvement benefit fee for the costs of the improvements is to be imposed;

D. "improvement" means any one or any combination of services or projects in one or more locations authorized pursuant to the Business Improvement District Act;

E. "management committee" means the district management committee as established pursuant to the Business Improvement District Act;

F. "planning group" means a group appointed by the council to prepare the proposed district plans as provided in the Business Improvement District Act; and

G. "real property" means real property that is used to engage in the purchase, sale, provision or manufacturing of commodities, products or services and unoccupied real property that is held for commercial investment purposes, for sale or for lease.

History: Laws 1988, ch. 32, § 3.

3-63-4. District creation; purpose; improvement; authority.

A district may be created pursuant to the Business Improvement District Act to provide services that shall attempt to restore or promote the economic vitality of the district and the general welfare of the incorporated municipality.

History: Laws 1988, ch. 32, § 4.

3-63-5. District; authority; creation.

A. A district shall assess a business improvement benefit fee on any real property or business located within the district.

B. A district shall include any real property or business that benefits by the improvements set out in the business improvement district plan and that is located within the district's geographic boundaries.

C. The district benefit fee assessment schedule shall not include:

(1) governmentally owned real property;

(2) residential real property that is not multifamily residential rental property with at least four units or homeowners associations of multifamily ownership properties;

(3) real property owned by a nonprofit corporation; or

(4) residential real property, located within an existing district, that became eligible for a business improvement benefit fee assessment after the district was created, unless the ordinance that created the district is amended to include the new business or property after notice is provided and a hearing is held in accordance with Section 3-63-10 NMSA 1978.

D. A district may be created by petition of real property owners or by petition of business owners in a proposed district after notice and public hearing.

History: Laws 1988, ch. 32, § 5; 1999, ch. 204, § 2; 2009, ch. 172, § 2.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection C(2), after "residential real property", added the remainder of the sentence; and added Subsection C(4).

The 1999 amendment, effective April 6, 1999, deleted former Subsection A, which read "A district shall include, for the purpose of a business improvement benefit fee, all real property which is determined to be benefited by the improvements specified in the business improvement district plan, exclusive of any real property owned by the state or the United States or any of its agencies or instrumentalities"; added present Subsections A to C, and redesignated the subsequent subsection accordingly; and, in Subsection D, inserted "or by petition of business owners".

3-63-6. Creation by petition.

A. Whenever ten or more business owners comprising at least fifty-one percent of the total business owners in the proposed district or whenever five or more real property owners comprising at least fifty-one percent of the total real property owners in the proposed district, exclusive of any real property owned by the United States or the state or any of its political subdivisions, petition the council in writing to create a district, the council shall refer the petition to a planning group to prepare a plan pursuant to the provisions of the Business Improvement District Act to implement the creation of the district. The plans shall:

(1) state the purpose for the creation of the district;

(2) describe in general terms the real property to be included in the district;

(3) provide an assessment plat of the area to be included in the district showing an estimate of the benefits to such real property and an amount estimated to be assessed against each parcel of real property;

(4) provide such other information as the council deems necessary for the proper evaluation of the plan;

(5) in the case of a petition brought by a majority of business owners within a proposed district, describe in general terms both the real property and the businesses included in the district; and

(6) in the case of a petition brought by a majority of business owners within a proposed district, provide a formula to be used to assess businesses in the district for the business improvement benefit fee to be collected along with the municipal property tax.

B. After the completion of the plan, the planning group shall have the municipal clerk give notice of a hearing on the proposed plan.

C. If after the hearing the planning group recommends to the council the creation of the district as proposed or amended, the council may adopt by ordinance the proposed district requested by petition and as described by the plan.

History: Laws 1988, ch. 32, § 6; 1999, ch. 204, § 3.

ANNOTATIONS

The 1999 amendment, effective April 6, 1999, rewrote the introductory paragraph and added Subsections A(5) and A(6).

3-63-7. Ordinance creating the district.

The ordinance to create a district shall include:

A. a list of improvements to be provided by the district;

B. the amount of benefit estimated to be conferred on each tract or parcel of real property;

C. a description of the real property or businesses to be assessed a business improvement benefit fee;

D. the assessment method to be used to finance the improvements of the district;

E. the amount of the assessment to be imposed on each real property owner; and

F. the terms of members, method of appointment and duties of the management committee for the district.

History: Laws 1988, ch. 32, § 7; 1999, ch. 204, § 4.

ANNOTATIONS

The 1999 amendment, effective April 6, 1999, inserted "or businesses" in Subsection C.

3-63-8. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 204, § 8 repealed 3-63-8 NMSA 1978, as enacted by Laws 1988, ch. 32, § 8, relating to petitions to oppose the creation of a business improvement district, effective April 6, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMONESOURCE.COM.*

3-63-9. Planning group.

Upon the initiation of a proposed district, the council shall appoint a planning group consisting of not more than five members, not less than one of which shall be a business owner and not less than two of which shall be real property owners, subject to the assessment, located within the proposed district.

History: Laws 1988, ch. 32, § 9.

3-63-10. Notice and hearing.

A. The notice of public hearing required by the Business Improvement District Act shall contain:

(1) the time and place where the planning committee will hold a hearing on the proposed district and improvements;

(2) the estimated cost of improvements;

(3) the boundary of the district; and

(4) the recommended formula or the preliminary estimate of assessment of a business improvement benefit fee against each tract or parcel of real property or business.

B. The notice of the public hearing shall be mailed to the affected real property owners or business owners 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 in which the proposed district lies. The last publication shall be at least three days before the date of the hearing.

C. Any citizen, business owner or real property owner affected by the proposed district shall be given opportunity to appear at the public hearing and present his views on the creation of the district as outlined in the preliminary plan.

D. Upon completion of the hearing, the planning group shall present its recommendation on the creation of the proposed district. If the recommendation is against the creation of the district, the council may not adopt an ordinance creating the district.

History: Laws 1988, ch. 32, § 10; 1999, ch. 204, § 5.

ANNOTATIONS

The 1999 amendment, effective April 6, 1999, inserted "the recommended formula or" and "or business" in Subsection A(4); in Subsection B, inserted "or business owners" in the first sentence and substituted "two successive weeks" for "four successive weeks" in the second sentence; and, in Subsection C, inserted "business owner".

3-63-11. Management committee; creation; duties.

A. The council, upon adoption of an ordinance creating a district, shall appoint a management committee that shall be responsible for the operation of the district in one of the following manners:

(1) the council shall appoint an existing downtown, community or central business district revitalization nonprofit corporation that operates within the boundaries of the district, to administer and implement the business improvement district plan; or

(2) the council shall appoint a management committee to administer and implement the business improvement district plan from nominees submitted by the owners of businesses and the owners of real property located in the district.

B. The management committee shall prepare and file annually with the council for its review and approval a budget and progress report for the district.

C. The management committee shall administer all improvements within the district.

D. The management committee shall recommend the annual assessment to be made by the council.

E. The management committee shall file annually with the council a report of the district activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expenses as of the end of the fiscal year and the benefits of the district's program to the real property and business owners of the district.

F. The management committee shall be a nonprofit corporation created pursuant to the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978].

History: Laws 1988, ch. 32, § 11; 1999, ch. 204, § 6.

ANNOTATIONS

The 1999 amendment, effective April 6, 1999, rewrote Subsection A, which formerly read "If the council adopts the ordinance creating the district, the council shall appoint a management committee from lists of names submitted by local area owners of businesses and owners of real property located in the district. The management committee shall be responsible for the operation of the district", and deleted "Chapter 53, Article 8 NMSA 1978" preceding "the Nonprofit Corporation Act" in Subsection F.

3-63-12. Issuance and sale of bonds.

A. An incorporated municipality shall have power to issue business improvement district revenue bonds from time to time in its discretion to finance the undertaking of any improvement within a district or the exercise of any power, authorized or delegated under the Business Improvement District Act, including but not limited to the issuance of bonds to pay the costs of installation, acquisition, construction or reconstruction of any public facility within the district's area of operation. An incorporated municipality shall also have power to issue refunding bonds for the payment or retirement of bonds previously issued by it pursuant to the Business Improvement District Act. These bonds shall be made payable as to both principal and interest solely from the income, proceeds, revenues and funds of the incorporated municipality derived from or held in connection with its undertakings and carrying out of authorized improvements within a district or activities under the Business Improvement District Act. Payment of these bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant or contribution from the federal government or other source in aid of any improvements within a district under the Business Improvement District Act and by a mortgage or pledge of any of the real property acquired within a district or otherwise pursuant to the authority granted by the Business Improvement District Act.

B. Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds. Bonds issued under the provisions of the Business Improvement District Act are declared to be issued for an essential public and governmental purpose and the bonds and interest and income from them shall be exempted from all taxes.

C. Bonds issued under this section shall be authorized by ordinance of the council if the authorization and planned issuance of the bonds was included in an improvement approved by the council and may be issued in one or more series and shall bear a date or dates, be payable upon demand or mature at a time or times, bear interest at a rate or rates not exceeding the legally authorized rate, be in a denomination or denominations, be in the form provided by the Supplemental Public Securities Act [6-14-8 through 6-14-11 NMSA 1978] as to registration, have rank or priority, be executed in a manner, be payable in a medium of payment at a place or places, be subject to the terms of redemption, with or without premium, be secured in a manner and have the other characteristics as may be provided by the resolution or trust indenture or mortgage issued pursuant thereto.

D. The bonds or any portion of the bonds may be sold at not less than par at public sales held after notice published prior to the sale in a newspaper having a general circulation in the area of operation and in any other medium of publication as the council may determine. The bonds may be exchanged for other bonds on the basis of par. The bonds may be sold to the federal government or to the state at private sale at not less than par, and, in the event less than all of the authorized principal amount of the bonds

is sold to the federal government or to the state, the balance may be sold at private sale at not less than par at an interest cost to the incorporated municipality of not to exceed the interest cost to the incorporated municipality of the portion of the bonds sold to the federal government.

E. In case any of the public officials of the incorporated municipality whose signatures appear on any bonds or coupons issued under the Business Improvement District Act shall cease to be public officials before the delivery of the bonds, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officials had remained in office until delivery. Any bonds issued pursuant to the Business Improvement District Act shall be fully negotiable.

F. In any suit, action or proceeding involving the validity or enforceability of any bond issued under the Business Improvement District Act or the security therefor, any bond reciting in substance that it has been issued by the incorporated municipality in connection with authorized improvements within a district shall be conclusively deemed to have been issued for that purpose, and the project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of the Business Improvement District Act.

History: Laws 1988, ch. 32, § 12.

3-63-13. Annual assessment; special account.

A. The council, upon recommendation of the management committee, may annually assess a business improvement benefit fee as defined by the ordinance upon all real property owners and business owners, exclusive of:

(1) governmentally owned real property;

(2) residential real property that is not multifamily residential rental property with at least four units or homeowners associations of multifamily ownership properties;

(3) real property owned by a nonprofit corporation; or

(4) residential real property, located within an existing district, that became eligible for a business improvement benefit fee assessment after the district was created, unless the ordinance that created the district is amended to include the new business or property after notice is provided and a hearing is held in accordance with Section 3-63-10 NMSA 1978.

B. The council may make reasonable classifications regarding real property owners located within the district. The annual assessment may be based on the amount of space used for business purposes, street front footage, building or land square footage or such other factors or combination of factors as shall be deemed reasonable. The annual assessment shall be in addition to any other incorporated municipal-imposed

license fees or other taxes, fees or other charges assessed or levied for the general benefit and use of the incorporated municipality.

C. All money received by the municipality from the district assessment shall be held in a special account for the benefit of the district.

D. In the case of a district that was created by a majority of real property owners, the amount owed by a commercial tenant shall be proportional to the square footage of space that the tenant rents but shall not be more than seventy-five percent of the total business improvement benefit fee assessed on the property. The property owner shall pay at least twenty-five percent of the business improvement benefit fee.

E. In the case of a district that was created by a majority of businesses, the business improvement benefit fee shall be collected at the same time that the real property owner's property taxes are collected. Businesses shall be assessed for one hundred percent of the business fee assessed to the property.

History: Laws 1988, ch. 32, § 13; 1999, ch. 204, § 7; 2009, ch. 172, § 3.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, after "exclusive of", deleted "any real property owned by the United States or the state or any of its political subdivisions located within the district"; and added Paragraphs (1) through (4) of Subsection A.

The 1999 amendment, effective April 6, 1999, inserted "and business owners" in the first sentence of Subsection A and added Subsections C and D.

3-63-14. Assessments; terms of payment; liens; foreclosure.

A. The council shall by ordinance:

(1) establish the time and terms of paying the business improvement benefit fee or installments on the fee;

(2) set any rate or rates of interest upon deferred payments of the fee, which shall commence from the last date of publication of the ordinance ratifying the assessment;

(3) fix penalties to be charged for delinquent payment of an assessment;

(4) establish procedures and guidelines for the classification of property for the fee;

(5) set a reasonable charge to recover the municipality's expense for the assessment, collection and administration of the fee; and

(6) provide for the control and investment and order the expenditure of all money pertaining to the district.

B. The same interest rate shall be set for fees which are payable over the same time period. No rate or rates of interest in excess of twelve percent a year upon such deferred payments of the fee shall become effective unless the state board of finance or any successor thereof at any time approves a higher interest rate in writing based upon the determination of the state board of finance that the higher rate is reasonable under existing or anticipated bond market conditions, which approval shall be conclusive.

C. After the publication of the ordinance ratifying the assessment, as provided in the Business Improvement District Act, the assessment together with any interest or penalty accruing to the assessment is a lien upon the tract or parcel of land so assessed. Such a lien is coequal with the lien for general real property taxes and the lien of other improvement districts and all other liens, claims and titles. Unmatured installments are not deemed to be within the terms of any general covenant or warranty. All purchasers, mortgagees or encumbrancers of a tract or parcel of land so assessed shall hold the tract or parcel of land subject to the lien so created.

D. Within sixty days after the publication of the assessment roll for a district, the municipal clerk shall prepare, sign, attest with the municipal seal and record in the office of the county clerk a claim of lien for any unpaid amount due and assessed against a tract or parcel of land.

E. Any tract or parcel so assessed shall not be relieved from the assessment or lien by the sale of the tract or parcel of land for general taxes or any other assessment.

History: Laws 1988, ch. 32, § 14.

3-63-15. District review.

The council shall review each district every five years, and prior to the issuance of business improvement district revenue bonds other than those issued or committed during the first five-year period, to determine whether the district should remain in existence. If a majority of the council decides that the purpose for which the district was created has been served and that it is in the best interest for the district, the council shall terminate the district's status by ordinance or resolution and record this with the municipal clerk. If upon termination of a district's status there is an outstanding revenue bond obligation, the municipality shall continue to assess the business improvement benefit fee for the life of the outstanding bond.

History: Laws 1988, ch. 32, § 15.

3-63-16. Business improvement benefit fee distribution.

The business improvement benefit fee shall be distributed to the management committee on an annual basis pursuant to rules and guidelines established by the council and in accordance with the approved budget of the management committee.

History: Laws 1988, ch. 32, § 16.

ARTICLE 64
Development Incentives

3-64-1. Short title.

Chapter 3, Article 64 NMSA 1978 may be cited as the "Community Development Incentive Act".

History: Laws 1991, ch. 163, § 1; 2003, ch. 293, § 1; 2003, ch. 405, § 1.

ANNOTATIONS

Cross references. — For exemption of municipal property, owned for purposes of the Community Development Law, from taxes and from levy and sale by virtue of an execution, *see* 3-60-32 NMSA 1978.

For exemption of municipal property, owned for purposes of the Metropolitan Redevelopment Code, from taxes and from levy and sale by virtue of an execution, *see* 3-60A-13 NMSA 1978.

For county foreign-trade zone regulations, *see* 4-36-7 NMSA 1978.

For exemption of governmental agencies or instrumentalities from compensating tax, *see* 7-9-14 NMSA 1978.

For tax status of lessee's interests in metropolitan redevelopment property, *see* 7-36-3.1 NMSA 1978.

The 2003 amendment, effective June 20, 2003, substituted "Chapter 3, Article 64 NMSA 1978" for "This act" at the beginning of the section, and inserted "Community" preceding "Development Incentive Act" at the end of the section.

Laws 2003, ch. 293, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 2003, ch. 405, § 1. *See* 12-1-8 NMSA 1978.

3-64-2. Definitions.

A. As used in the Community Development Incentive Act:

(1) "commencement of commercial operations" occurs when the new business facility is first available for use by the taxpayer or first capable of being used by the taxpayer in the revenue-producing enterprise in which the taxpayer intends to use the new business facility;

(2) "facility" means any factory, mill, plant, refinery, warehouse, dairy, feedlot, building or complex of buildings located within the state, including the land on which the facility is located and all machinery, equipment and other real and tangible personal property located at or within the facility and used in connection with the operation of the facility;

(3) "new business facility" means a facility that satisfies the following requirements:

(a) the facility is employed by the taxpayer in the operation of a revenue-producing enterprise; the facility shall not be considered a "new business facility" in the hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person; if the taxpayer employs only a portion of the facility in the operation of a revenue-producing enterprise and leases another portion of the facility to another person or does not otherwise use such other portions in the operation of a revenue-producing enterprise, the portion employed by the taxpayer in the operation of a revenue-producing enterprise shall be considered a "new business facility" if the requirements of Subparagraphs (b), (c) and (d) of this paragraph are satisfied;

(b) the facility is acquired by or leased to the taxpayer on or after July 1, 2003; provided, the facility shall be deemed to have been acquired by or leased to the taxpayer on or after the specified date if the transfer of title to the taxpayer, the transfer of possession pursuant to a binding contract to transfer title to the taxpayer or the commencement of the term of the lease to the taxpayer occurs on or after that date or if the facility is constructed, erected or installed by or on behalf of the taxpayer, the construction, erection or installation is completed on or after that date;

(c) if the facility was acquired by the taxpayer from another person and the facility was employed, immediately prior to the transfer of title to the facility to the taxpayer or to the commencement of the term of the lease of the facility to the taxpayer, by any other person in the operation of a revenue-producing enterprise, the taxpayer does not continue the operation of the same or a substantially identical revenue-producing enterprise at the facility; and

(d) the facility is not a replacement business facility;

(4) "new business facility employee" means a person employed by the taxpayer in the operation of a new business facility during the taxable year for which the exemption authorized by Section 3-64-3 NMSA 1978 is granted; a person shall be

considered to have been so employed if the person performs duties in connection with the operation of the new business facility on:

(a) a regular, full-time basis;

(b) a part-time basis if the person is customarily performing the described duties at least twenty hours per week throughout the taxable year; or

(c) a seasonal basis if the person performs the described duties for substantially all of the season customary for the position in which the person is employed.

The number of new business facility employees during any property tax year shall be determined by dividing by twelve the sum of the number of new business facility employees on the last business day of each month of that year. If the new business facility is in operation for less than the entire property tax year, the number of new business facility employees shall be determined by dividing the sum of the number of new business facility employees on the last business day of each full calendar month during the portion of the property tax year during which the new business facility was in operation by the number of full calendar months during that period;

(5) "new business facility investment" means the value of the real and tangible personal property, except inventory or property held for sale to customers in the ordinary course of the taxpayer's business, that constitutes the new business facility or that is used by the taxpayer in the operation of the new business facility during the property tax year for which the exemption authorized by Section 3-64-3 NMSA 1978 is granted and the value of that property during the year shall be:

(a) its original cost if owned by the taxpayer; or

(b) eight times the net annual rental rate if leased by the taxpayer; the "net annual rental rate" is the annual rental rate paid by the taxpayer, less any annual rental rate received by the taxpayer from subrentals;

(6) "related taxpayer" means:

(a) a corporation, partnership, limited liability company, trust or association controlled by the taxpayer;

(b) an individual, corporation, limited liability company, partnership, trust or association under the control of the taxpayer; or

(c) a corporation, limited liability company, partnership, trust or association controlled by an individual, corporation, limited liability company, partnership, trust or association under the control of the taxpayer.

For the purposes of this paragraph, "control of a corporation" means ownership, directly or indirectly, of stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and at least eighty percent of all other classes of stock of the corporation; "control of a partnership, limited liability company or association" means ownership of at least eighty percent of the capital or profits interest in such partnership, limited liability company or association; and "control of a trust" means ownership, directly or indirectly, of at least eighty percent of the beneficial interest in the principal or income of the trust;

(7) "replacement business facility" means a facility as defined in Paragraph (3) of this subsection and referred to in this paragraph as a "new facility" that replaces another facility, referred to in this paragraph as an "old facility", located within the state in which the taxpayer or a related taxpayer previously operated but discontinued operating on or before the close of the first property tax year in which the exemption authorized by Section 3-64-3 NMSA 1978 is claimed; a new facility shall be deemed to replace an old facility if the following conditions are met:

(a) the old facility was operated by the taxpayer or a related taxpayer for more than three full property tax years out of the five property tax years next preceding the property tax year in which commencement of commercial operations occurs at the new facility; and

(b) the old facility was employed by the taxpayer or a related taxpayer in the operation of a revenue-producing enterprise and the taxpayer continues the operation of the same or a substantially identical revenue-producing enterprise at the new facility.

Notwithstanding the provisions of Subparagraph (a) of this paragraph, a facility shall not be considered a "replacement business facility" if the taxpayer's investment in the new facility exceeds three million dollars ($3,000,000) or, if less, three hundred percent of the investment in the old facility by the taxpayer or related taxpayer. The investment in the new facility and in the old facility shall be determined in the manner provided in Paragraph (5) of this subsection;

(8) "revenue-producing enterprise" means:

(a) the production, assembly, fabrication, manufacture or processing of any agricultural, mineral or manufactured product;

(b) the storage, warehousing, distribution or sale of any products of agriculture, mining or manufacturing;

(c) the feeding of livestock at a feedlot;

(d) the operation of laboratories or other facilities for scientific, agricultural animal husbandry or industrial research development;

(e) the generation of electricity;

(f) the performance of services of any type;

(g) the administrative management of any of the activities listed in Subparagraphs (a) through (f) of this paragraph; or

(h) any combination of any of the activities referred to in Subparagraphs (a) through (g) of this paragraph; and

(9) "same or a substantially identical revenue-producing enterprise" means a revenue-producing enterprise in which the products produced or sold, the services performed or the activities conducted are the same in character and use and are produced, sold, performed or conducted in the same manner and to or for the same types of customers as the products, services or activities produced, sold, performed or conducted in another revenue-producing enterprise.

B. The new business facility investment shall be determined by dividing by twelve the sum of the total value of such property on the last business day of each calendar month of the property tax year. If the new business facility is in operation for less than an entire property tax year, the new business facility investment shall be determined by dividing the sum of the total value of the property on the last business day of each full calendar month during the portion of the property tax year during which the new business facility was in operation by the number of full calendar months during that period.

C. If a facility that does not constitute a new business facility is expanded by the taxpayer, the expansion shall be considered a separate facility eligible for the exemption authorized by Section 3-64-3 NMSA 1978 if:

(1) the taxpayer's investment in the expansion exceeds one million dollars ($1,000,000) or, if less, one hundred percent of its investment in the original facility prior to expansion; and

(2) the expansion otherwise constitutes a new business facility.

The taxpayer's investment in the expansion and in the original facility prior to expansion shall be determined in the manner provided in Paragraph (5) of Subsection A of this section.

D. If a facility that does not constitute a new business facility is expanded by the taxpayer, the expansion shall be considered a separate facility for purposes of the exemption granted by Section 3-64-3 NMSA 1978 if:

(1) the expansion results in the employment of ten or more new business facility employees over and above the average number of employees employed in the

county or municipality granting the exemption by the taxpayer during the twelve months immediately prior to the expansion, computed pursuant to Paragraph (4) of Subsection A of this section; and

(2) the expansion otherwise constitutes a new business facility.

History: Laws 1991, ch. 163, § 2; 2003, ch. 293, § 2; 2003, ch. 405, § 2.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, inserted "Community" preceding "Development Incentive Act" near the beginning of Subsection A; in Subsection A(3)(b), substituted "2003" for "1991" following "after July 1," near the beginning; substituted "provided" for "and within those property tax years ending on or before December 31, 2001" preceding "the facility shall" near the beginning; substituted "on or after" for "within" preceding "the specified date" near the middle; substituting "on or after that date" for "within those dates" following "the taxpayer occurs" near the middle; substituted "on or after that date" for "within those dates" following "installation is completed" at the end; substituted "3-64-3 NMSA 1978" for "3 of the Development Incentive Act" following "authorized by Section" near the middle of Subsection A(4); substituted "3-64-3 NMSA 1978" for "3 of the Development Incentive Act" following "authorized by Section" near the end of Subsection A(5); substituted "3-64-3 NMSA 1978" for "3 of the Development Incentive Act" following "authorized by Section" near the end of Subsection A(7); added present Subsection A(8)(e) and redesignated the subsequent subparagraphs accordingly; substituted "Subparagraphs (a) through (g)" for "Subparagraph (f)" following "referred to in" near the middle of Subsection A(8)(h); substituted "3-64-3 NMSA 1978" for "3 of the Development Incentive Act" following "authorized by Section" near the end of Subsection C; and substituted "3-64-3 NMSA 1978" for "3 of the Development Incentive Act" following "granted by Section" near the end of Subsection D.

Laws 2003, ch. 293, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 2003, ch. 405, § 2. *See* 12-1-8 NMSA 1978.

3-64-3. Exemption of certain commercial personal property from property tax by local bodies.

A. The governing body of a county or a municipality may by a majority vote of the members elected to the governing body adopt a resolution exempting commercial personal property of a new business facility located in the county or municipality from the imposition of any property tax on commercial personal property authorized to be imposed by the respective governing body, subject to the limitations of Subsection B of this section.

B. The exemption authorized by Subsection A of this section may be for up to one hundred percent of the value for property taxation purposes of the property exempted.

C. The exemption authorized by Subsection A of this section may be for any period of time not to exceed twenty years. The effective date of any exemption shall be January 1 of the property tax year in which the new business facility commences commercial operations.

History: Laws 1991, ch. 163, § 3; 2003, ch. 293, § 3; 2003, ch. 405, § 3.

ANNOTATIONS

Cross references. — For constitutionally tax exempt property, *see* N.M. Const., art. VIII, § 3.

For the Property Tax Code, *see* Chapter 7, Articles 35 to 38 NMSA 1978.

The 2003 amendment, effective June 20, 2003, deleted "other than a class A county or a municipality in such county," following "county or a municipality" near the beginning of Subsection A; substituted "up to one hundred" for "fifty" preceding "percent of the value" near the middle of Subsection B; and substituted "twenty" for "five" following "time not to exceed" near the middle of Subsection C.

Laws 2003, ch. 293, § 3 enacted identical amendments to this section. The section was set out as amended by Laws 2003, ch. 405, § 3. *See* 12-1-8 NMSA 1978.

3-64-4. Transmittal of exemption resolution; action of assessor.

A. After a resolution of exemption of personal property is adopted by a governing body, copies of it shall be certified by the clerk of the entity; one copy shall be delivered immediately to the county assessors; and one copy shall be sent to the taxation and revenue department.

B. Upon receipt of a certified copy of an exemption resolution, the county assessor of the county in which the exempted property is located shall take appropriate action to enter the exemption in the property tax schedule for the property tax year in which the exemption becomes effective and shall also enter the exemption as appropriate for subsequent years during which the exemption remains in effect.

History: Laws 1991, ch. 163, § 4.

3-64-5. Expiration of exemption; action of assessor.

An exemption granted under Section 3-64-3 NMSA 1978 shall automatically terminate on the last day of the property tax year in which it expires pursuant to the exemption resolution or on the last day of the property tax year in which a new business facility ceases commercial operations, whichever occurs first.

History: Laws 1991, ch. 163, § 5; 2003, ch. 293, § 4; 2003, ch. 405, § 4.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, substituted "3-64-3 NMSA 1978" for "3 of the Development Incentive Act" following "granted under Section" near the beginning of the section.

Laws 2003, ch. 293, § 4 enacted identical amendments to this section. The section was set out as amended by Laws 2003, ch. 405, § 4. *See* 12-1-8 NMSA 1978.

ARTICLE 65
Minor League Baseball Stadium Funding

3-65-1. Short title.

Sections 1 through 11 [3-65-1 through 3-65-10 NMSA 1978] of this act may be cited as the "Minor League Baseball Stadium Funding Act".

History: Laws 2001, ch. 231, § 1.

ANNOTATIONS

Cross references. — For exemption to gross receipts tax, *see* 7-9-13.3 NMSA 1978.

Emergency clause. — Laws 2001, ch. 231, § 13 contained an emergency clause and was approved April 3, 2001.

Compiler's notes. — Laws 2001, Chapter 231 enacted the Minor League Baseball Stadium Funding Act. Section 1 of that act defined the Minor League Baseball Stadium Funding Act as Sections 1 to 11 of Chapter 231, however, Section 11 of Chapter 231 was not codified and appears as a note following 3-65-10 NMSA 1978.

3-65-2. Findings and purpose.

A. The legislature finds that:

(1) the costs of land for and of designing, purchasing, constructing, remodeling, rehabilitating, renovating, improving, equipping, furnishing, operating and maintaining minor league baseball stadiums have increased to a level that local financial resources are inadequate to meet all of the costs;

(2) functional and modern minor league baseball stadiums are essential in retaining and attracting minor league baseball teams to the state; and

(3) even after utilizing local financial resources, municipalities need additional means to provide complete funding for functional and modern minor league baseball stadiums.

B. The purpose of the Minor League Baseball Stadium Funding Act is to provide an additional method of accessing the capital markets with the assistance of the New Mexico finance authority to meet the need for a complete funding package for functional and modern minor league baseball stadiums.

History: Laws 2001, ch. 231, § 2.

ANNOTATIONS

Emergency clause. — Laws 2001, ch. 231, § 13 contained an emergency clause and was approved April 3, 2001.

3-65-3. Definitions.

As used in the Minor League Baseball Stadium Funding Act:

A. "authority" means the New Mexico finance authority;

B. "chief executive officer" means the mayor or chief administrative officer of a municipality when designated in writing by the mayor to perform duties required by the Minor League Baseball Stadium Funding Act;

C. "governing body" means the council, commission or other group of elected officials of a municipality in which is vested the legislative authority of a municipality;

D. "loan" means a loan or other financial arrangement pursuant to which money is lent or otherwise made available by the authority to a municipality to pay for some or all of the costs of land for and designing, purchasing, constructing, remodeling, rehabilitating, renovating, improving, equipping and furnishing a minor league baseball stadium;

E. "loan payments" means all payments of principal, interest, premiums, charges, expenses or other obligations required to be paid by a municipality to the authority to repay the loan;

F. "minor league baseball stadium" means a stadium, including land, buildings and related improvements, primarily designed and intended for use by minor league baseball teams as a venue for playing baseball games;

G. "municipality" means a municipality located in a class A county with a population of more than two hundred thousand according to the 1990 federal decennial census;

H. "stadium surcharge" means a surcharge on tickets, parking, souvenirs, concessions, programs, advertising, merchandise, corporate suites or boxes, broadcast revenues and all other products or services sold at or related to the minor league baseball stadium or related to activities occurring at the stadium;

I. "vendor" means every person, corporation, partnership or other entity, including a division or department of a municipality, providing products or services sold at or related to the minor league baseball stadium; and

J. "vendor contract" means a contract, agreement or other written arrangement between a municipality and a vendor pursuant to which the vendor provides products or services sold at or related to the minor league baseball stadium.

History: Laws 2001, ch. 231, § 3.

ANNOTATIONS

Emergency clause. — Laws 2001, ch. 231, § 13 contained an emergency clause and was approved April 3, 2001.

3-65-4. Authorization of surcharge; use of proceeds.

A. A municipality may impose a stadium surcharge by majority vote of the governing body. If a stadium surcharge has been imposed, the municipality shall include a stadium surcharge in each vendor contract, and each vendor contract shall be signed by the chief executive officer.

B. Before establishing the amount of the stadium surcharge to be included in each vendor contract, the municipality shall notify the authority in writing of the proposed amount of the loan requested for the minor league baseball stadium and of the proposed amount of the surcharge to be included in each vendor contract. The authority shall review the proposed amount of the stadium surcharge and shall make a written recommendation to a municipality setting forth the minimum amount of the surcharge to be set forth in the loan and related documents. The minimum amount of the stadium surcharge shall never be less than five percent and may be any higher percentage recommended by the authority or otherwise established by the municipality.

C. After receipt of the written recommendation from the authority, a municipality shall establish the amount of the stadium surcharge to be included in each vendor contract, provided that the amount of the surcharge to be set forth in the loan and related documents shall be at least the minimum amount recommended by the authority.

D. The receipts from the stadium surcharge may be used by the municipality for all or any portion of:

(1) loan payments;

(2) costs of constructing, renovating, operating, maintaining or improving the minor league baseball stadium; or

(3) costs of collecting and otherwise administering the surcharge.

E. A municipality shall establish a fund for construction, renovation, operation, maintenance and improvement of a minor league baseball stadium for deposit of all receipts from the stadium surcharge that exceed the required loan payments, and all receipts deposited in that fund shall be used for such purposes and may also be used for the costs of collection and otherwise administering the surcharge.

History: Laws 2001, ch. 231, § 4.

ANNOTATIONS

Emergency clause. — Laws 2001, ch. 231, § 13 contained an emergency clause and was approved April 3, 2001.

3-65-5. Collection of surcharge; remittance to the municipality.

A. Every vendor shall collect the stadium surcharge on behalf of the municipality and shall act as a trustee therefor.

B. The stadium surcharge shall be collected by vendors from the users of products or services subject to the surcharge. Users shall be charged separately for the stadium surcharge from the cost of the product or service subject to the surcharge or the vendor shall institute accounting controls or procedures sufficient to identify the amount of the surcharge owed to a municipality for each sale, transaction or exchange subject to the surcharge.

C. All receipts from the stadium surcharge shall be remitted by vendors to the treasurer of the municipality no later than the tenth day of the month following collection of the receipts. The treasurer of the municipality shall deposit the receipts in a separate account and shall act as trustee of the receipts on behalf of the authority so long as any loan is unpaid.

History: Laws 2001, ch. 231, § 5.

ANNOTATIONS

Emergency clause. — Laws 2001, ch. 231, § 13 contained an emergency clause and was approved April 3, 2001.

3-65-6. Audits.

A municipality shall provide by ordinance a method to either audit or otherwise ensure that vendors subject to the stadium surcharge collect and remit to the treasurer of the municipality the full amount of the surcharge receipts due to the municipality.

History: Laws 2001, ch. 231, § 6.

ANNOTATIONS

Emergency clause. — Laws 2001, ch. 231, § 13 contained an emergency clause and was approved April 3, 2001.

3-65-7. Enforcement; penalties.

A. An action to enforce the imposition and collection of a stadium surcharge by a vendor may be brought by a municipality.

B. A district court may issue an appropriate judgment, order or remedy to enforce the provisions of a vendor contract.

C. Any judgment issued by a district court requiring stadium surcharge receipts to be paid to a municipal treasurer by a vendor shall also award interest at twelve percent on past-due amounts, attorney fees and costs to a municipality.

History: Laws 2001, ch. 231, § 7.

ANNOTATIONS

Emergency clause. — Laws 2001, ch. 231, § 13 contained an emergency clause and was approved April 3, 2001.

3-65-8. Authorization of project.

A. Pursuant to the provisions of Section 6-21-6 NMSA 1978, the legislature authorizes the authority to make a loan from the public project revolving fund to a municipality to acquire land for and to design, purchase, construct, remodel, renovate, rehabilitate, improve, equip or furnish a minor league baseball stadium on terms and conditions established by the authority.

B. Prior to receiving the loan, the governing body shall approve the loan and related documents by an ordinance to be adopted by a majority of the members of the governing body. The ordinance shall pledge the stadium surcharge receipts to make the loan payments. In addition to pledging stadium surcharge receipts for making loan payments, the ordinance shall pledge legally available gross receipts tax revenues distributed to a municipality pursuant to Section 7-1-6.4 or 7-1-6.12 NMSA 1978 in an amount satisfactory to the authority and in an amount at least sufficient to make the loan payments. No action shall be brought questioning the legality of the pledge of receipts

and revenues, the ordinance, the loan, the proceedings, the stadium surcharge or any other matter concerning the loan after thirty days from the date of publication of the ordinance approving the loan and related documents and pledging stadium surcharge receipts and gross receipts tax revenues of the municipality to make the loan payments.

C. The legislature or a municipality shall not repeal, amend or otherwise modify any law or ordinance that adversely affects or impairs the stadium surcharge or any loan from the authority secured by a pledge of the stadium surcharge and gross receipts tax revenues, unless the loan has been paid in full or provisions have been made for full payment.

History: Laws 2001, ch. 231, § 8.

ANNOTATIONS

Emergency clause. — Laws 2001, ch. 231, § 13 contained an emergency clause and was approved April 3, 2001.

3-65-9. Cumulative and complete authority.

The Minor League Baseball Stadium Funding Act shall be deemed to provide an additional and alternative method for obtaining funding for a minor league baseball stadium, establishing the stadium surcharge and completing the acts authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws of the state, without reference to such other laws of the state, and shall constitute full authority for the exercise of powers granted herein, including but not limited to the pledging of stadium surcharge receipts and gross receipts tax revenues by the governing body to make loan payments to the authority.

History: Laws 2001, ch. 231, § 9.

ANNOTATIONS

Emergency clause. — Laws 2001, ch. 231, § 13 contained an emergency clause and was approved April 3, 2001.

3-65-10. Liberal interpretation.

The Minor League Baseball Stadium Funding Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes of the act.

History: Laws 2001, ch. 231, § 10.

ANNOTATIONS

Emergency clause. — Laws 2001, ch. 231, § 13 contained an emergency clause and was approved April 3, 2001.

Severability. — Laws 2001, ch. 231, § 11 provided for the severability of the act if any part or application of the Minor League Baseball Stadium Funding Act is held invalid.

ARTICLE 66
Municipal Event Center Funding

3-66-1. Short title.

Sections 3 through 11 of this act [3-66-1 through 3-66-11 NMSA 1978] may be cited as the "Municipal Event Center Funding Act".

History: Laws 2005, ch. 351, § 3.

ANNOTATIONS

Compiler's notes. — Laws 2005, ch. 351 was not enacted as part of the Municipal Code but was included in that code as a convenience to the user.

Emergency clause. — Laws 2005, ch. 351, § 14 contained an emergency clause and was approved April 8, 2005.

3-66-2. Findings and purpose.

A. The legislature finds that:

(1) the costs of acquiring land for and of designing, purchasing, constructing, remodeling, rehabilitating, renovating, improving, equipping, furnishing, operating and maintaining municipal event centers have increased to a level that local financial resources are inadequate to meet all of the costs;

(2) functional and modern municipal event centers are essential in retaining and attracting cultural, educational, entertainment and sporting events to municipalities and the state and are essential for the economic development and prosperity of municipalities and the state; and

(3) even after using local financial resources, municipalities need additional means to provide complete funding for functional and modern municipal event centers.

B. The purpose of the Municipal Event Center Funding Act is to provide an additional method of accessing the capital markets to meet the need for a complete funding package for functional and modern municipal event centers.

History: Laws 2005, ch. 351, § 4.

ANNOTATIONS

Emergency clause. — Laws 2005, ch. 351, § 14 contained an emergency clause and was approved April 8, 2005.

3-66-3. Definitions.

As used in the Municipal Event Center Funding Act:

A. "bonds" means revenue bonds issued by a municipality to pay for some or all of the costs of acquiring land for and designing, purchasing, constructing, remodeling, rehabilitating, renovating, improving, equipping and furnishing a municipal event center;

B. "chief executive officer" means the mayor or chief administrative officer of a municipality when designated in writing by the mayor to perform duties required by the Municipal Event Center Funding Act;

C. "debt service payments" means rentals, receipts, fees or other charges paid to a municipality for the rights to use, operate or manage a municipal event center by any person, corporation or other entity;

D. "event center revenues" means rentals, receipts, fees or other charges imposed by and paid to a municipality pursuant to the Municipal Event Center Funding Act for the rights to use, operate or manage a municipal event center by any person, corporation or other entity;

E. "event center surcharge" means a surcharge to be included in each vendor contract on tickets, parking, souvenirs, concessions, programs, advertising, merchandise, corporate suites or boxes, broadcast revenues and all other products or services sold at or related to the municipal event center or related to activities occurring at the event center;

F. "governing body" means the council, commission or other group of elected officials of a municipality in which is vested the legislative authority of a municipality;

G. "municipal event center" means an event center providing seating for a minimum of four thousand people, including land, buildings and related improvements, primarily designed and intended for cultural, educational, entertainment and sporting events, but does not include a civic or convention center;

H. "municipality" means a political subdivision of the state, organized and operating under a home-rule charter or the Municipal Code;

I. "vendor" means every person, corporation, partnership or other entity, including a division or department of a municipality, providing products or services sold at or related to the municipal event center; and

J. "vendor contract" means a contract, agreement or other written arrangement between a municipality and a vendor pursuant to which the vendor provides products or services sold at or related to the municipal event center.

History: Laws 2005, ch. 351, § 5.

ANNOTATIONS

Emergency clause. — Laws 2005, ch. 351, § 14 contained an emergency clause and was approved April 8, 2005.

3-66-4. Authorization of surcharge and other fees; use of proceeds; transfer.

A. A municipality in which a municipal event center is located may establish by ordinance an event center surcharge of not less than five percent of each vendor contract entered into by that municipality. As otherwise established by that municipality, the event center surcharge may be any percentage greater than five percent of each vendor contract entered into by the municipality.

B. A municipality shall include an event center surcharge in the terms of each vendor contract into which it enters. A chief executive officer of a municipality shall sign each vendor contract into which that municipality enters.

C. A municipality may establish charges and fees deemed necessary by the governing body or the chief executive officer for the use, operation or management of a municipal event center by a person, corporation or other entity.

D. From the proceeds of the event center surcharge, an amount equal to two percent of each vendor contract entered into by the municipality shall be transferred monthly by the municipality that established the event center surcharge to the tax administration suspense fund.

E. A municipality shall establish a fund for construction, renovation, operation, equipment, maintenance and improvement of a municipal event center for deposit of all event center revenues and event center surcharge proceeds that exceed the required debt service payments, except for event center surcharge proceeds transferred to the tax administration suspense fund pursuant to this section. Money in the fund may be used to pay:

(1) debt service payments;

(2) costs of operating a municipal event center during the life of the bonds issued by the municipality pursuant to the Municipal Event Center Funding Act;

(3) costs of constructing, renovating, equipping, maintaining or improving that municipal event center; or

(4) costs of collecting or administering the event center surcharge.

History: Laws 2005, ch. 351, § 6.

ANNOTATIONS

Emergency clause. — Laws 2005, ch. 351, § 14 contained an emergency clause and was approved April 8, 2005.

3-66-5. Collection of event center surcharge; remittance to municipality.

A. Upon the sale of a product or service subject to the event center surcharge, a vendor shall collect the event center surcharge from the purchaser of that product or service on behalf of the municipality and shall act as a trustee for the surcharge receipts. A purchaser of a product or service subject to the event center surcharge shall be charged separately for the event center surcharge from the cost of the product or service, or the vendor shall institute accounting controls or procedures sufficient to identify the amount of the surcharge owed to a municipality for each sale, transaction or exchange subject to the surcharge. Receipts from the event center surcharge shall be remitted by a vendor to the treasurer of the municipality in which the municipal event center at which the vendor sold the product or service is located no later than the tenth day of the month following the collection of the surcharge.

B. A treasurer of a municipality shall deposit municipal event center revenues and event center surcharge receipts in a separate account and act as trustee of the revenue on behalf of bondholders pursuant to the Municipal Event Center Funding Act so long as any bonds remain outstanding.

History: Laws 2005, ch. 351, § 7.

ANNOTATIONS

Emergency clause. — Laws 2005, ch. 351, § 14 contained an emergency clause and was approved April 8, 2005.

3-66-6. Audits.

A municipality shall provide by ordinance a method to audit or otherwise ensure that vendors subject to the event center surcharge collect and remit to the treasurer of the municipality the full amount of the surcharge receipts due to the municipality.

History: Laws 2005, ch. 351, § 8.

ANNOTATIONS

Emergency clause. — Laws 2005, ch. 351, § 14 contained an emergency clause and was approved April 8, 2005.

3-66-7. Enforcement; penalties.

A. An action to enforce the imposition and collection of an event center surcharge by a vendor may be brought by a municipality.

B. A district court may issue an appropriate judgment, order or remedy to enforce the provisions of a vendor contract.

C. A judgment issued by a district court requiring event center surcharge receipts to be paid to a municipal treasurer by a vendor shall also award interest at an annual rate of twelve percent on past due amounts, attorney fees and costs to a municipality.

History: Laws 2005, ch. 351, § 9.

ANNOTATIONS

Emergency clause. — Laws 2005, ch. 351, § 14 contained an emergency clause and was approved April 8, 2005.

3-66-8. Issuance of bonds.

A. A municipality may issue revenue bonds, in accordance with the procedures set forth in Sections 3-31-3 through 3-31-7 NMSA 1978, to acquire land for and to design, purchase, construct, remodel, renovate, rehabilitate, improve, equip or furnish a municipal event center.

B. Revenue bonds issued by a municipality may be secured by event center revenues, event center surcharge receipts or gross receipts tax revenues distributed to that municipality pursuant to Section 7-1-6.4 or 7-1-6.12 NMSA 1978.

C. An action shall not be brought questioning the legality of the pledge of event center revenues, event center surcharge receipts or gross receipts tax revenues, bonds issued pursuant to the Municipal Event Center Funding Act, issuance of those bonds, an event center surcharge included in a vendor contract or any other matter concerning the bonds after thirty days from the date of publication of the ordinance authorizing

issuance of the bonds and the pledging of event center receipts, event center surcharge receipts or gross receipts tax revenues of a municipality to make debt service payments.

D. The legislature or a municipality shall not repeal, amend or otherwise modify any law or ordinance that adversely affects or impairs the event center surcharge or any bonds secured by a pledge of the event center revenues, event center surcharge receipts or gross receipts tax revenues, unless the bonds have been paid in full or provisions have been made for full payment.

History: Laws 2005, ch. 351, § 10.

ANNOTATIONS

Emergency clause. — Laws 2005, ch. 351, § 14 contained an emergency clause and was approved April 8, 2005.

3-66-9. Cumulative and complete authority.

The Municipal Event Center Funding Act shall be deemed to provide an additional and alternative method for obtaining funding for a municipal event center, establishing and collecting event center revenues and the event center surcharge and completing the acts authorized pursuant to that act, and shall be regarded as supplemental and additional to powers conferred by other laws of the state and shall constitute full authority for the exercise of powers granted pursuant to the Municipal Event Center Funding Act.

History: Laws 2005, ch. 351, § 11.

ANNOTATIONS

Emergency clause. — Laws 2005, ch. 351, § 14 contained an emergency clause and was approved April 8, 2005.

3-66-10. Liberal interpretation.

The Municipal Event Center Funding Act shall be liberally construed to carry out its purpose.

History: Laws 2005, ch. 351, § 12.

ANNOTATIONS

Emergency clause. — Laws 2005, ch. 351, § 14 contained an emergency clause and was approved April 8, 2005.

3-66-11. Severability.

If any part or application of the Municipal Event Center Funding Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

History: Laws 2005, ch. 351, § 13.

ANNOTATIONS

Emergency clauses. — Laws 2005, ch. 351, § 14 contained an emergency clause and was approved April 8, 2005.