CHAPTER 5
MUNICIPALITIES AND COUNTIES

ARTICLE 1
AMBULANCE SERVICE

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

A municipality or county may:

A. provide ambulance service to transport sick or injured persons to a place of treatment in the absence of an established ambulance service only as authorized by the state corporation commission;

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

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

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

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

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

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

ANNOTATIONS

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

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

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

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

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

No waiver of governmental immunity. - The language of Subsection F of this section constitutes a bar to personal actions against public employees; it does not provide an independent statutory waiver of governmental immunity. Gallegos v. Trujillo, 114 N.M. 435, 839 P.2d 645 (Ct. App. 1992).

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

ARTICLE 2
TELEVISION TRANSLATOR STATIONS

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

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

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

5-2-2. Appropriation prohibited.

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

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

ARTICLE 3
AUDITORIUMS

5-3-1. Definitions.

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

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

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

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

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

ANNOTATIONS

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

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

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

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

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

That any municipality shall have power to purchase, improve, erect and maintain public auditoriums, or to authorize the improvement or erection of same by agreement with the officers of the county in which the municipality is located, and shall have power to issue and sell bonds for the purposes herein mentioned. Bonds issued hereunder may be sold by such municipality for cash at one time or from time to time at public or private sale at not less than par. Notwithstanding the provisions of any general, special or local law it shall not be necessary for any governing body of such municipality to submit to

the people of such municipality in which said auditorium is proposed to be erected the question as to whether such auditorium shall be erected, nor shall it be necessary to submit to the people of such municipality in which said auditorium is to be erected the issuance of any bonds authorized hereunder to pay for or finance the erection of any such auditorium. Provided, however, that any bonds issued hereunder shall not constitute general obligations of any such municipality, but the payment thereof shall be secured only by a lien against the auditorium and real estate upon which the same is erected and a pledge of the net revenues of said auditorium as hereinafter provided; and provided further that any bonds issued hereunder shall be payable solely and only out of the income derived from the operation of such auditorium and by the property upon which the lien aforesaid is provided.

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

ANNOTATIONS

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

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

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

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 543; 64 Am. Jur. 2d Public Securities and Obligations § 105.

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

20 C.J.S. Counties §§ 143, 144, 218 to 226; 64 C.J.S. Municipal Corporations § 1957.

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

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

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

ANNOTATIONS

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

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

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

Revenue bonds issued under the provisions of this act [5-3-1 to 5-3-8 NMSA 1978] shall bear interest at not to exceed four and one-half (4*1*/2) percent per annum, payable annually or semiannually, shall be payable at the option of such municipality at the end of ten years from the date thereof; and due by their terms in not more than twenty years from the date thereof; as determined by the municipality; shall be serial in form and maturity and numbered from one upward, consecutively, and shall be sold for cash, at not less than par, and at either public or private sale.

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

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 C.J.S. Counties §§ 222 to 225; 64 C.J.S. Municipal Corporations § 1935.

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

Governing bodies of municipalities issuing bonds under the provisions of this act [5-3-1 to 5-3-8 NMSA 1978], may authorize the issuance thereof by ordinance adopted by the

affirmative vote of two-thirds of all the members of said governing bodies, at either regular or special meeting called for that purpose, wherein the necessity thereof shall be declared and, when issued, shall be signed by the mayor or other executive head and attested by the clerk of said governing body, with the seal of said municipality affixed thereto.

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

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 64 C.J.S. Municipal Corporations §§ 1908, 1948.

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

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

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

ANNOTATIONS

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

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

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

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

therein at the time and in the manner required by the constitution of New Mexico the ratification and approval of the issuance and sale of such bonds by such municipality.

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

ANNOTATIONS

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

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 C.J.S. Counties § 221; 64 C.J.S. Municipal Corporations § 1920.

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

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

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

ANNOTATIONS

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

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

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

taxes. If a majority of all the legal votes cast at a legal election shall be in favor of the issuance of the bonds, it shall be the duty of the authorities of the city, town or village to have the bonds issued as soon as practicable.

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

C. After the bonds are duly issued and sold, a special tax shall be levied upon all property within the city, town or village each year until the bonds and interest shall be paid in full. The special tax shall be levied and collected in the same manner as other taxes are levied and collected, sufficient to pay interest thereon and that portion of principal or sinking fund which may be necessary for the payment due upon the bonds during the succeeding year as provided in this section.

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

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

ANNOTATIONS

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

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

Effect on municipalities under 5000 population. - Considering the fifth subsection of 14-21-3, 1953 Comp. (repealed), in the light of this section, and in view of the decision in Varney v. City of Albuquerque, 40 N.M. 90, 55 P.2d 40, 106 A.L.R. 222 (1936), no municipality of less than 5,000 could issue bonds and construct a municipal auditorium. 1939-40 Op. Att'y Gen. 20.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 64 C.J.S. Municipal Corporations § 1908.

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

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

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

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

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

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

ANNOTATIONS

Generally. - This section unequivocally and clearly states that only counties having a population in excess of 25,000 are authorized to issue county auditorium bonds. 1953-54 Op. Att'y Gen. No. 5782.

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

20 C.J.S. Counties § 218.

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

The proceedings for calling, holding and canvassing the results of an election to determine whether such bonds are to be issued, the manner of issuance and the terms and provisions of such bonds, the sale thereof, the levy of taxes for the payment thereof, and the manner and time of payment thereof shall all be the same as is now or may hereafter by provided by law with respect to bonds issued for the purpose of building courthouses, and, in general, all of the provisions of law with respect to county courthouse bonds shall, so far as applicable, apply to the bonds herein authorized.

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

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 C.J.S. Counties § 221.

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

The respective boards of county commissioners of such counties are authorized and empowered to seek and obtain, if possible, from the United States government, or any department or agency thereof, financial aid and assistance to carry into effect the purposes hereof. Such boards of county commissioners are also authorized and empowered in their discretion to accept gifts and donations of any kind or character from any source whatsoever, including, but not limited to, a site for any such auditorium.

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

5-3-14. [Contracting power.]

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

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

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

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

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

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - Auditorium: maintenance of auditorium, community recreational center, building or the like by municipal corporation as governmental or proprietary function for purposes of tort liability, 47 A.L.R.2d 544.

20 C.J.S. Counties § 147.

ARTICLE 4
PLAYGROUNDS AND RECREATIONAL EQUIPMENT

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

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

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

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - Liability of local government entity for injury resulting from use of outdoor playground equipment at municipally owned park or recreation area, 73 A.L.R.4th 496.

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

The governing body of such municipality or county may dedicate and set apart for use as playgrounds, recreation centers, zoos and other recreation purposes, any lands or buildings, or both, owned or leased by such municipality or county, and not dedicated or devoted to another or inconsistent public use; and authorized or provided by law for the acquisition of lands or buildings for public purposes by such municipality or county, acquire or lease lands or buildings, or both, within or beyond the constituted limits of such municipality or county, for playgrounds, recreation centers, zoos and other public recreational purposes, and when the governing body of the city, town or county, so dedicates, sets apart, acquires or leases lands or buildings for such purposes, it may provide for their conduct, equipment and maintenance according to the provisions of this act [5-4-1 to 5-4-9 NMSA 1978], by making an appropriation from the general municipality or county funds.

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

ANNOTATIONS

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

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

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 202, 542; 59 Am. Jur. 2d Parks, Squares, and Playgrounds § 7.

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

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

20 C.J.S. Counties § 147; 63 C.J.S. Municipal Corporations § 1057; 64 C.J.S. Municipal Corporations § 1818.

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

The governing body of any such municipality or county may establish a system of supervised recreation and it may, by resolution or ordinance, vest the power to provide, maintain and conduct playgrounds, recreation centers, zoos and other recreational activities and facilities in the school board, park board or other existing body or in a playground and recreation board as the governing body may determine. Such governing body or any board so designated shall have the power to maintain and equip playgrounds, recreation centers, zoos and buildings thereon, and it may, for the purpose of carrying out the provisions of this act [5-4-1 to 5-4-9 NMSA 1978], employ play leaders, playground directors, supervisors, recreation superintendents, zoo directors or such other officers or employees as they deem proper; make such expenditures therefor as the board shall deem necessary or advisable, from any fund provided for by said municipality or county, said expenditures not to exceed the amount of such appropriations. Such governing body may determine by ordinance or resolution the method by which zoo animals shall be obtained, traded, loaned, borrowed or disposed of, notwithstanding the provisions of Section 4 [5-4-4 NMSA 1978] of this act, or Sections 6-5-1 through 6-5-9, or Sections 14-47-1 through 14-47-12 NMSA 1953.

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

ANNOTATIONS

Cross-references. - As to the creation of county and municipality recreational fund, see 7-12-15 NMSA 1978.

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

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

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

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

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

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

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

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

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

ANNOTATIONS

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

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

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

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

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

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

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

5-4-8. Power to issue bonds.

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

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

ANNOTATIONS

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

Counties have no inherent power to issue bonds, and can do so only pursuant to statutory or constitutional authority. 1957-58 Op. Att'y Gen. No. 57-304.

School bonds legal where facilities attached to school grounds. - A school district could legally issue bonds for playground and recreational facilities which are to constitute part of the school grounds, but not in event they are to be entirely separate therefrom. 1947-48 Op. Att'y Gen. No. 5127.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 64 C.J.S. Municipal Corporations § 1908.

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

All expenses incurred in the equipment, operation and maintenance of such recreational facilities and activities shall be paid from the treasuries of the respective municipality or county, and governing bodies of the same may annually appropriate, and cause to be raised by taxation, money for such purpose.

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

5-4-10. Revenue bonds.

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

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

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

ANNOTATIONS

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

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

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

(1) for the acceleration, deceleration or other modification of the payment of such obligations, including without limitation any capitalization of any interest thereon in arrears, or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) for the purpose of reducing interest costs or effecting other economies;

(3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds or otherwise concerning the outstanding bonds; or

(4) for any combination of such purposes.

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

C. Any such refunding bonds shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of said refunded bonds or otherwise appertaining thereto, except for any such bond which is voluntarily surrendered for exchange or payment by the holder. Refunding bonds may be delivered in exchange for the outstanding bonds refunded or may be sold at either public or private sale.

D. No bonds may be refunded under Sections 5-4-10 through 5-4-15 NMSA 1978 unless the bonds either mature or are callable for prior redemption under their terms within fifteen years from the date of issuance of the refunding bonds, or unless the

holders thereof voluntarily surrender them for exchange or payment. Provision shall be made for paying the bonds refunded within said period of time. Interest on any bond may be increased. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds, but only to the extent that any costs incidental to the refunding or any interest on the bonds refunded in arrears or about to become due within three years from the date of the refunding bonds, or both said incidental costs and interest, are capitalized with the proceeds of refunding bonds. The principal amount of the refunding bonds may also exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded. The principal amount of the refunding bonds may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

E. The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a qualified depository, which is a member of the federal deposit insurance corporation to be applied to the payment of the bonds being refunded upon their presentation therefor. To the extent any incidental expenses have been capitalized, such refunding bond proceeds may be used to defray such expenses, and any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest thereon and the principal thereof, or both interest and principal, or may be deposited in a reserve therefor, as the municipality may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for said refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other moneys available for its purpose. Any proceeds in escrow, pending such use, may be invested or reinvested in bills, certificates of indebtedness, notes or bonds which are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States of America. Such proceeds and investments in escrow, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom, to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the municipality shall exercise a prior redemption option. Any purchaser of any refunding bond issued under Sections 3-31-1 through 3-31-12 NMSA 1978 is in no manner responsible for the application of the proceeds thereof by the municipality or county or any of their officers, agents or employees.

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

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

5-4-12. Terms of bonds.

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

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

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

(3) be numbered consecutively from one upward; and

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

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

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

ANNOTATIONS

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

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

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

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

B. attested by the municipal clerk or county clerk;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNOTATIONS

Compiler's note. - Section 7-12-14 NMSA 1978, referred to in Subsection B, was repealed by Laws 1983, ch. 211, § 42, effective July 1, 1983.

Chapter 151 of Laws 1953, referred to in Subsection B, was repealed by Laws 1965, ch. 300, § 595.

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

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

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

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

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

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

ANNOTATIONS

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

78 C.J.S. Schools and School Districts § 243.

ARTICLE 5
JOINT CITY-COUNTY BUILDING

5-5-1. Short title.

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

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

5-5-2. Legislative declaration.

It is hereby declared as a matter of legislative determination that providing counties and cities, towns and villages constituting county seats in the state of New Mexico with the purposes, powers and duties, rights, privileges and immunities provided in this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] will serve a public use and will promote the

health, safety, prosperity, security and general welfare of the inhabitants thereof and of the state of New Mexico; and that the acquisition, improvement, equipment, maintenance and operation of any project herein authorized is in the public interest and constitutes a part of the established and permanent policy of the state of New Mexico. For the accomplishment of these purposes the provisions of this law shall be broadly construed.

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

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 541.

20 C.J.S. Counties § 145; 64 C.J.S. Municipal Corporations § 1808.

5-5-3. Definitions.

As used in the Joint City-County Building Law [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978], the following words or phrases shall be defined as follows:

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

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

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

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

E. "municipality" means a city or county;

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

G. "building" means any building for use as a county courthouse, city hall, jail, regional jail, library, museum, utility office, garage for housing county and city vehicles, transportation office, communications office, maintenance shop, warehouse, cafeteria and restaurant facilities for county and city personnel, sheriff's office, police station, fire station, records office and administration building and for similar uses, or any

combination thereof, to be acquired and jointly owned by a county and a city as tenants in common;

H. "site" means land and any estate, interest or right therein on which to locate a building. Any building site may include landscaped grounds and off-street parking facilities, including but not limited to improved or unimproved parking lots and buildings erected above or below the surface of the land for the accommodation of parked motor and other vehicles;

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

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

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

L. "project" means any building site therefor, structure, facility and undertaking of any kind which a county and a city are authorized by the Joint City-County Building Law to acquire, improve, equip, maintain and operate. A project may consist of any kind or all kinds of personal and real property, including but not limited to land, improvements and fixtures thereon, property of any nature appurtenant thereto or used in connection therewith and every estate, interest and right therein, legal or equitable, including terms for years, or any combination thereof;

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

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

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

P. "elector" of a municipality means a registered and qualified elector thereof;

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

R. for the purpose of computing any period of time prescribed in the Joint City-County Building Law, including but not limited to publications, the day of the first publication, other act or designated time shall be excluded and the day of the last publication, other act or designated time shall be included; and

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

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

5-5-4. Jointly owned projects.

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

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

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

Every county and city having been authorized to acquire any building, in addition to other powers conferred by the Joint City-County Building Law [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978], shall thereafter have the following powers, jointly and severably [severally]:

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

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

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

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

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

F. to hire and retain independent contractors, agents and employees, including but not limited to engineers, architects, fiscal agents, attorneys at law and any other persons necessary or desirable to effect the purposes of the Joint City-County Building Law and to prescribe their compensation, duties and other terms of employment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNOTATIONS

Cross-references. - For Joint Powers Agreements Act, see 11-1-1 NMSA 1978 et seq.

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

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

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

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

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

short-term notes;

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

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

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

5-5-8. Short-term notes.

A municipality, upon the affirmative vote of at least two-thirds of the members of its governing body present and constituting a quorum, is hereby authorized to borrow money without an election in anticipation of the collection of taxes or other revenues and to issue short-term notes to evidence the amount so borrowed. Such short-term notes shall be payable from the fund for which the money was borrowed; shall mature before the close of the fiscal year in which the money is so borrowed; and shall not be extended or funded except in compliance with the provisions of this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] concerning the issuance of general obligation bonds.

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

5-5-9. Limitations upon incurring debts.

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

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

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

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

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

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

The governing body of any municipality may fix a date for an election and may order the submission at the election of a question or proposal to authorize the issuance of general obligation bonds or the incurrence of any other indebtedness for any project or part thereof authorized by the Joint City-County Building Law [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] subject to the limitations of Section 5-5-9 NMSA 1978; and notice of the election shall be given by publication, commencing at least twenty days prior to the election. The notice of election shall be signed by the clerk of the municipality and by the chairman of the board, mayor of the city or other titular head of the municipality; and the notice shall contain:

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

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

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

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

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

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

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

Except for notices of elections, except for the necessity of and the time of holding registrations for elections and except for any provisions inconsistent with any provision in the Joint City-County Building Law [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] specifically made or necessarily implied, any debt election for any project shall be held, conducted, canvassed and otherwise governed as nearly as practicable as then provided for a regular municipal election in the case of any city election and as then provided for a general election in the case of a county election.

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

5-5-11. Authorization of bonds.

A board by resolution or a council by ordinance shall authorize the issuance by the municipality, upon the affirmative vote of at least a majority of the members of the governing body present and constituting a quorum, of any general obligation bond

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

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

5-5-12. Payment of bonds.

The principal of and interest on general obligation bonds herein authorized to be issued, and any prior redemption premium or premiums, shall be payable from the proceeds of general (ad valorem) property taxes levied without limitation as to rate or amount, except to the extent other revenues are made available therefor. The principal of and interest on revenue bonds herein authorized to be issued and any prior redemption premium or premiums shall be payable solely from the gross or net revenues derived from the operation of any project for the acquisition or improvement of which the bonds are issued, including without limiting the generality of the foregoing, revenues of a prior existing project which is improved by the expenditure of the bond proceeds, and revenues of improvements theretofore or thereafter acquired for such project which are not acquired by the expenditure of such bond proceeds, and from revenues and proceeds of any tolls, rates, charges, fees, license taxes, other excise taxes or quasi-excise taxes which the municipality is empowered to fix, levy and collect (but excluding any general (ad valorem) property taxes), or any combination of such revenues and proceeds. Any such revenues or proceeds pledged directly or as additional security for the payment of bonds of any one issue or series which revenues are not exclusively pledged therefor may subsequently be pledged directly or as additional security for the payment of the bonds of one or more issues or series subsequently authorized. If more than one series of bonds shall be issued hereunder payable from the same revenues or proceeds, priority of lien thereof on such revenues shall depend on the provisions of the proceedings authorizing the issuance of such bonds, it being within the discretion of the governing body at the time it authorizes the first such series to provide that subsequent series of bonds payable from such revenues may not be issued, that subsequent series of bonds shall be subordinate as to lien or that subsequent series of bonds shall enjoy parity of lien if such conditions and restrictions as may be specified in such proceedings can be met. All bonds of the same issue or series shall be equally and ratably secured without priority by reason of number, date of maturity, date of bonds, of sale, of execution or of delivery, by a lien on said revenues and proceeds in accordance with the provisions of this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] and the proceedings authorizing said bonds, except to the extent the proceedings shall otherwise specifically provide. All bonds not issued payable solely from such revenues and proceeds shall be the general obligations of the municipality, and the full faith and credit of the municipality shall be pledged for the payment thereof.

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

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

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

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

5-5-14. Incontestable recital in bonds.

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

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

5-5-15. Form of bonds.

Any general obligations bonds or revenue bonds herein authorized to be issued shall bear such date or dates, shall be in such denomination or denominations, and shall mature serially, commencing not later than three years from the date therefrom, at times not exceeding the estimated life of the improvements acquired with the bond proceeds nor the maximum limitation stated in Section 7 [5-5-7 NMSA 1978] hereof, shall bear interest payable annually or semiannually, except that interest on any bond may be first payable for any period not in excess of one year, at such rate or rates not greater than six per centum per annum, shall be payable in such medium of payment at such place or places within or without the state and at the option of the governing body may be in one or more series, may be made subject to prior redemption in such order or by lot in advance of maturity at such time or times without or with the payment of such premium or premiums not exceeding six per centum of the principal amount of each bond redeemed, may provide for the payment of interest thereon from the proceeds thereof for a period not to exceed three years from the date thereof, may be issued with privileges for registration for payment as to principal and as to both principal and interest, or either, and generally shall be issued in such manner, in such form, either

coupon or registered, carrying such conversion or registration privileges, with such recitals, terms, covenants and conditions and with such other details as may be provided by the governing body in the proceedings authorizing the bonds, except as herein otherwise provided. Pending preparations of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued. Except for payment provisions herein specifically provided, said bonds and any interest coupons thereto attached shall be fully negotiable and constitute negotiable instruments within the meaning of and for all the purposes of the Negotiable Instruments Law as that law is now or may hereafter be in force in the state of New Mexico. If lost or completely destroyed, any bond may be reissued in the form and tenor of the lost or destroyed bond upon the owner furnishing to the satisfaction of the governing body:

A. proof of ownership;

B. proof of loss or destruction;

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

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

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

ANNOTATIONS

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

5-5-16. Alternate bond form.

Notwithstanding any other provision of law, the governing body may in any proceedings authorizing bonds hereunder provide for the initial issuance of one or more bonds (in this section called "bond") aggregating the amount of the entire issue and may make such provision for installment payments of the principal amount of any such bond as it may consider desirable and may provide for the making of any such bond payable to bearer or otherwise, registrable as to principal or as to both principal and interest, and where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bond. The governing body may further make provisions in any such resolution for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal or principal and interest.

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

5-5-17. Execution of bonds.

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

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

ANNOTATIONS

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

5-5-18. Sale of bonds.

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

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

5-5-19. Application of proceeds.

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

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

5-5-20. Covenants in bond proceedings.

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

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

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

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

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

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

F. the operation and maintenance of any project;

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

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

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

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

K. the terms and conditions upon which the holders of the bonds or of a specified portion, percentage or amount thereof or any trustee therefor shall be entitled to the

appointment of a receiver, which receiver may enter and take possession of any project, operate and maintain the same, prescribe tolls, fees, rates, rentals, charges and taxes, and collect, receive and apply all revenues thereafter arising therefrom in the same manner as the municipality itself might do;

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

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

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

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

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

5-5-21. Remedies of bondholders.

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

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

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

C. by action or suit in equity to have appointed a receiver, which receiver may enter and take possession of any project revenues from which are pledged for the payment of the

bonds, prescribe sufficient tolls, fees, rates, rentals, charges and excise taxes or quasi-excise taxes, and collect, receive and apply all revenues or other moneys pledged for the payment of the bonds in the same manner as the municipality itself might do;

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

E. bring suit upon the bonds.

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

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

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

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

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

5-5-23. Revenue bond charges.

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

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

5-5-24. Pledging of occupation taxes.

Occupation taxes authorized by Section 3-38-3 NMSA 1978 may be pledged for the retirement of revenue bonds issued pursuant to the Joint City-County Building Law [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978].

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

5-5-25. Exemption from taxation.

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

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

5-5-26. Sufficiency of act.

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

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

5-5-27. Liberal construction.

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

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

ARTICLE 6
DANCES

(Repealed by Laws 1993, ch. 181, § 1.)

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

ANNOTATIONS

Repeals. - Laws 1993, ch. 181, § 1 repeals 5-6-1 through 5-6-5 NMSA 1978, as enacted by Laws 1861, p. 30, §§ 1 and 2, Laws 1869, ch. 32, §§ 14 and 15, and Laws 1963, ch. 142, § 1, regulating dances, effective June 18, 1993. For former provisions, see 1992 Replacement Pamphlet.

ARTICLE 7
FIRE DISTRICT BONDS

5-7-1. Short title.

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

History: Laws 1983, ch. 162, § 1.

5-7-2. Definitions.

As used in the Fire District Bond Act [5-7-1 to 5-7-7 NMSA 1978]:

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

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

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

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

History: Laws 1983, ch. 162, § 2.

ANNOTATIONS

Compiler's note. - Sections 59-15-1 through 59-15-18 NMSA 1978, referred to in Subsection D, and relating to the fire protection fund, were repealed by Laws 1984, ch. 127, § 997. For present similar provisions, see 59A-53-1 through 59A-53-17 NMSA 1978.

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

A. In addition to any other law authorizing a county or municipality to issue revenue bonds, a county or municipality may issue fire district bonds pursuant to the Fire District Bond Act [5-7-1 to 5-7-7 NMSA 1978] for the purposes specified in this section.

B. Fire district bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping and rehabilitating any fire district project, including, where applicable, purchasing, otherwise acquiring or improving the ground therefor, or for any combination of the foregoing purposes. The county or municipality may pledge irrevocably any or all of the project revenues provided for the operation of the fire district project for which the particular bonds are issued to the payment of the interest on and principal of such bonds. The net revenues of any fire district project shall not be pledged to the bonds issued for any fire district project which clearly is unrelated in its purpose; but nothing in this section shall prevent the pledge to any of such bonds of any such revenues received from any existing, future or disconnected facilities and equipment which are related to and which may constitute a part of the particular fire district project. Any general determination by the governing body of the county or municipality that any facilities or equipment are reasonably related to and shall constitute a part of a specified fire district project shall be conclusive if set forth in the proceedings authorizing such fire district bonds.

History: Laws 1983, ch. 162, § 3.

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

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

History: Laws 1983, ch. 162, § 4.

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

County or municipal fire district bonds:

A. shall bear interest at a coupon rate or coupon rates not exceeding the maximum coupon rate which is permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; provided that interest shall be payable annually or semiannually and may or may not be evidenced by coupons; and provided further that the first interest payment date may be for interest accruing for any period not exceeding one year;

B. may be subject to a prior redemption at the county's or municipality's option at such time or times and upon such terms and conditions, with or without the payment of such premium or premiums, as may be provided by ordinance;

C. may mature at any time or times not exceeding twenty years after the date of issuance;

D. may be serial in form and maturity or may consist of one bond payable at one time or in installments;

E. shall be sold for cash at, above or below par and at a price which results in a net effective interest rate which does not exceed the maximum permitted by the Public Securities Act; and

F. may be sold at public or private sale.

History: Laws 1983, ch. 162, § 5.

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

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

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

(2) authorizes the issuance of fire district bonds by an affirmative vote of two-thirds of all the members of the governing body; and

(3) designates the source of the pledged revenues.

History: Laws 1983, ch. 162, § 6.

ANNOTATIONS

Compiler's note. - This section was enacted without a Subsection B.

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

A. Fire district bonds or refunding bonds issued as authorized in the Fire District Bond Act [5-7-1 to 5-7-7 NMSA 1978] are:

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

(2) collectible only from the proper pledged revenues, and each bond shall state that it is payable solely from the proper pledged revenues and that the bondholders may not

look to any other county or municipal fund for the payment of the interest and principal of the bonds.

B. The bonds and coupons shall be signed and sealed as provided by the ordinance issuing the same, and the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978] shall be applicable.

History: Laws 1983, ch. 162, § 7.

ARTICLE 8
DEVELOPMENT FEES

5-8-1. Short title.

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

History: Laws 1993, ch. 122, § 1.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

5-8-2. Definitions.

As used in the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978]:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Laws 1993, ch. 122, § 2.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

5-8-3. Authorization of fee.

A. Unless otherwise specifically authorized by the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978], no municipality or county may enact or impose an impact fee.

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

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

History: Laws 1993, ch. 122, § 3.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

5-8-4. Items payable by fee.

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

(1) estimated capital improvements plan cost;

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

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

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

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

History: Laws 1993, ch. 122, § 4.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

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

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

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

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

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

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

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

History: Laws 1993, ch. 122, § 5.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

5-8-6. Capital improvements plan.

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

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

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

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

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

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

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

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

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

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

History: Laws 1993, ch. 122, § 6.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

History: Laws 1993, ch. 122, § 7.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

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

C. For land that is platted after the effective date of the Development Fees Act, the municipality or county shall assess the fees at the time of recording of the subdivision

plat and this assessment shall be valid for a period of not less than four years from the date of recording of the plat.

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

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

F. After the expiration of the four-year period described in Subsections B and C of this section, a municipality or county may adjust the assessed impact fee to the level of current impact fees as provided in the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

History: Laws 1993, ch. 122, § 8.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

History: Laws 1993, ch. 122, § 9.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

A municipality or county is authorized to enter into an agreement with the owner of a tract of land for which a plat has been recorded providing for a method of payment of the impact fees over an extended period of time otherwise in compliance with the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

History: Laws 1993, ch. 122, § 10.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

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

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

C. time period set forth in Subsection A of this section can be extended, provided the municipality or county obtains a performance bond or similar surety securing performance of the obligation to construct the capital improvements or facility expansions but in no event longer than seven years from commencement of construction of the capital improvements or facility expansion for which fees have been collected. The municipality or county shall establish written procedures to ensure that the owner of a new development shall not lose the value of the credits. Any refund for fees shall be made as provided in Section 17 [5-8-17 NMSA 1978] of the Development Fees Act.

History: Laws 1993, ch. 122, § 11.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

5-8-12. Entitlement to services.

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

History: Laws 1993, ch. 122, § 12.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

History: Laws 1993, ch. 122, § 13.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

Governmental entities shall pay all impact fees imposed under the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

History: Laws 1993, ch. 122, § 14.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

5-8-15. Credits against facilities fees.

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

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

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

History: Laws 1993, ch. 122, § 15.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

B. Interest earned on impact fees shall become part of the account on which it is earned and shall be subject to all restrictions placed on the use of impact fees under the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

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

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

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

History: Laws 1993, ch. 122, § 16.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

5-8-17. Refunds.

A. Upon the request of an owner of the property on which an impact fee has been paid, the municipality or county shall refund the impact fee if existing facilities are available and service is not provided or the municipality or county has, after collecting the fee when service was not available, failed to complete construction within the time allowed under Section 11 [5-8-11 NMSA 1978] of the Development Fees Act or service is not available within a reasonable period of time after completion of construction considering the type of capital improvement or facility expansion to be constructed, but in no event later than seven years from the date of payment under Subsection A of Section 11 of the Development Fees Act.

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

C. The municipality or county shall refund any impact fee or part of it that is not spent as authorized by the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978] within seven years after the date of payment.

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

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

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

History: Laws 1993, ch. 122, § 17.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

5-8-18. Compliance with procedures required.

Except as otherwise provided by the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978], a municipality or county shall comply with that act to levy an impact fee.

History: Laws 1993, ch. 122, § 18.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

History: Laws 1993, ch. 122, § 19.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

History: Laws 1993, ch. 122, § 20.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

B. The notice shall contain:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON LAND

USE ASSUMPTIONS RELATING

TO POSSIBLE ADOPTION OF

IMPACT FEES";

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

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

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

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

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

D. An ordinance, order or resolution approving land use assumptions shall not be adopted as an emergency measure and its adoption must comply with the procedural requirements of the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

History: Laws 1993, ch. 122, § 21.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

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

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

History: Laws 1993, ch. 122, § 22.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

History: Laws 1993, ch. 122, § 23.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

History: Laws 1993, ch. 122, § 24.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

History: Laws 1993, ch. 122, § 25.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

B. The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON CAPITAL

IMPROVEMENTS PLAN AND

ADOPTION OF IMPACT

FEES";

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

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

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

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

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

History: Laws 1993, ch. 122, § 26.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

History: Laws 1993, ch. 122, § 27.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

B. An ordinance, order or resolution approving the capital improvements plan and imposition of an impact fee shall not be adopted as an emergency measure and its adoption must comply with the procedural requirements of the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

History: Laws 1993, ch. 122, § 28.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

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

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

"NOTICE OF PUBLIC HEARING ON

ADOPTION OF LAND USE

ASSUMPTIONS AND

IMPACT FEES";

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

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

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

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

History: Laws 1993, ch. 122, § 29.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

B. The municipality or county shall review and evaluate its current land use assumptions and shall cause an update of the capital improvements plan to be prepared in accordance with the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

History: Laws 1993, ch. 122, § 30.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

The governing body of the municipality or county shall, within sixty days after the date it receives the update of the land use assumptions and the capital improvements plan,

schedule and publish notice of a public hearing to discuss and review the update and shall determine whether to amend the plan.

History: Laws 1993, ch. 122, § 31.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

History: Laws 1993, ch. 122, § 32.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

B. The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON AMENDMENTS

TO LAND USE ASSUMPTIONS, CAPITAL

IMPROVEMENTS PLAN OR

IMPACT FEES";

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

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

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

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

History: Laws 1993, ch. 122, § 33.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

History: Laws 1993, ch. 122, § 34.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

5-8-35. Approval of amendments required.

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

B. An ordinance, order or resolution approving the amendments to the land use assumptions, the capital improvements plan or impact fees shall not be adopted as an emergency measure and such adoption must comply with the procedural requirements of the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

History: Laws 1993, ch. 122, § 35.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

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

B. The notice shall contain the following:

(1) a headline to read as follows:

"NOTICE OF DETERMINATION NOT TO

UPDATE LAND USE ASSUMPTIONS,

CAPITAL IMPROVEMENTS PLAN OR

IMPACT FEES";

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

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

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

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

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

D. If by the date specified in Paragraph (4) of Subsection B of this section, a person requests in writing that the land use assumptions, capital improvements plan or impact fees be updated, the governing body shall cause, accept or reject an update of the land use assumptions and capital improvements plan to be prepared in accordance with Sections 30 through 35 of the Development Fees Act.

E. An ordinance, order or resolution determining the need for updating land use assumptions, capital improvements plan or impact fees shall not be adopted as an emergency measure and its adoption must comply with the procedural requirements of the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

History: Laws 1993, ch. 122, § 36.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

5-8-37. Advisory committee.

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

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

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

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

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

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

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

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

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

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

History: Laws 1993, ch. 122, § 37.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

If the governing body of the municipality or county does not perform a duty imposed under the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978] within the prescribed period, a person who has paid an impact fee or an owner of land on which an impact fee has been paid has the right to present a written request to the governing body of the municipality or county stating the nature of the unperformed duty and requesting that it be performed within sixty days after the date of the request. If the governing body of the municipality or county finds that the duty is required under the Development Fees Act and is late in being performed, it shall cause the duty to commence within sixty days after the date of the request and continue until completion.

History: Laws 1993, ch. 122, § 38.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

5-8-39. Records of hearings.

A record shall be made of any public hearing provided for by the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978]. The record shall be maintained and be made available for public inspection by the municipality or county for at least ten years after the date of the public hearing.

History: Laws 1993, ch. 122, § 39.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

5-8-40. Prior impact fees replaced by fees under development fees act.

An impact fee that is in place on the effective date of the Development Fees Act shall be replaced by an impact fee imposed under that act [5-8-1 to 5-8-42 NMSA 1978] by July 1, 1995. Any municipality or county having an impact fee that has not been replaced under that act by July 1, 1995 shall be liable to any party who, after the effective date of that act, pays an impact fee that exceeds the maximum permitted under that act by more than ten percent for an amount equal to two times the difference between the maximum impact fee allowed and the actual impact fee imposed, plus reasonable attorneys' fees and court costs.

History: Laws 1993, ch. 122, § 40.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

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

The Development Fees Act [5-8-1 to 5-8-42 NMSA 1978] does not prohibit, affect or regulate any tax, fee, charge or assessment specifically authorized by state law.

History: Laws 1993, ch. 122, § 41.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

5-8-42. Moratorium on development prohibited.

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

History: Laws 1993, ch. 122, § 42.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 122, § 43 makes the act effective on July 1, 1993.

ARTICLE 9
ENTERPRISE ZONES

5-9-1. Short title.

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

History: Laws 1993, ch. 33, § 1.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 33, § 17 makes the act effective on July 1, 1993.

5-9-2. Purpose.

It is the purpose of the Enterprise Zone Act [5-9-1 to 5-9-15 NMSA 1978] to provide for the establishment of enterprise zones in a wide variety of geographic areas in order to stimulate the creation of new jobs, particularly for economically disadvantaged workers and long-term unemployed individuals, and to promote revitalization of economically distressed areas by providing or encouraging:

A. tax relief at the state and local levels;

B. zoning relief at the local level; and

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

History: Laws 1993, ch. 33, § 2.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 33, § 17 makes the act effective on July 1, 1993.

5-9-3. Definitions.

As used in the Enterprise Zone Act [5-9-1 to 5-9-15 NMSA 1978]:

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

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

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

D. "local government" means:

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

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

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

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

History: Laws 1993, ch. 33, § 3.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 33, § 17 makes the act effective on July 1, 1993.

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

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

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

(2) the contents of an enterprise zone plan.

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

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

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

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

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

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

E. The secretary of economic development shall have the authority to make performance audits at any time of any designated enterprise zone to determine whether the enterprise zone is in compliance with the Enterprise Zone Act [5-9-1 to 5-9-15 NMSA 1978], local zone ordinances, resolutions, joint powers agreements and the enterprise zone plan. If an enterprise zone is determined to be out of compliance, the secretary may immediately revoke the designation of the area as an enterprise zone.

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

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

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

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

History: Laws 1993, ch. 33, § 4.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 33, § 17 makes the act effective on July 1, 1993.

5-9-5. Eligibility requirements.

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

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

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

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

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

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

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

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

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

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

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

(a) the average rate of unemployment in the area under consideration as an enterprise zone for the most recent eighteen-month period for which data is available exceeds the

average rate of unemployment for the state for that period by at least one percentage point; or

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

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

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

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

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

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

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

E. Copies of all ordinances, resolutions, joint powers agreements and enterprise zone plans of a local government made under the Enterprise Zone Act [5-9-1 to 5-9-15 NMSA 1978] shall be mailed within ten days after their adoption to the secretary of economic development, the secretary of finance and administration and the secretary of taxation and revenue.

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

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

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

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

History: Laws 1993, ch. 33, § 5.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 33, § 17 makes the act effective on July 1, 1993.

Housing and Community Development Act. - Section 119 of the federal Housing and Community Development Act of 1974, referred to in subsections B(3)(b), C(3)(b), and D(3)(b), appears as 42 U.S.C. § 5318.

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

A. The enterprise zone plan shall include:

(1) a map of the enterprise zone;

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

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

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

(5) the termination date for the enterprise zone;

(6) a listing of properties within the enterprise zone to which the tax increment procedures authorized by the Enterprise Zone Act [5-9-1 to 5-9-15 NMSA 1978] are to be applied;

(7) a boundary description of the enterprise zone;

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

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

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

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

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

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

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

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

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

History: Laws 1993, ch. 33, § 6.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 33, § 17 makes the act effective on July 1, 1993.

5-9-7. Administration.

The local government that created the enterprise zone shall organize, coordinate and direct the administration of the enterprise zone in accordance with law, applicable ordinances, resolutions, any joint powers agreements and the enterprise zone plan. It may enter into a contract with an appropriate organization to provide the management of the activities of the zone. The local government is solely responsible for meeting the reporting requirements listed in Section 8 of the Enterprise Zone Act [5-9-8 NMSA 1978].

History: Laws 1993, ch. 33, § 7.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 33, § 17 makes the act effective on July 1, 1993.

5-9-8. Evaluation and reporting requirements.

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

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

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

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

D. compliance with the enterprise zone plan;

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

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

History: Laws 1993, ch. 33, § 8.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 33, § 17 makes the act effective on July 1, 1993.

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

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

B. The economic development department shall conduct workshops throughout the state for the purpose of explaining the provisions of the Enterprise Zone Act [5-9-1 to 5-9-15 NMSA 1978] to local governments.

History: Laws 1993, ch. 33, § 9.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 33, § 17 makes the act effective on July 1, 1993.

Job Training Partnership Act. - The federal Job Training Partnership Act, referred to Subsection A, appears as 29 U.S.C. § 1501 through 1792b.

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

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

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

History: Laws 1993, ch. 33, § 10.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 33, § 17 makes the act effective on July 1, 1993.

5-9-11. Tax increment procedures.

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

B. Upon receipt of notification pursuant to Subsection A of this section, the county assessor and the taxation and revenue department shall identify the parcels of project property within the enterprise zone within their respective valuation jurisdictions and at the time tax rates are certified under the Property Tax Code shall certify to the county

treasurer the net taxable value of the property as of January 1 of the year in which the notification was made. This certified value is the "base value" for the distribution of property tax revenues authorized by the Property Tax Code under the tax increment method. If property within the enterprise zone becomes tax exempt because of acquisition by any local government, the county assessor and the taxation and revenue department shall note that fact on their respective records and so notify the county treasurer, but the county assessor, the taxation and revenue department and the county treasurer shall preserve the record of the base value for the purpose of distribution of property tax revenues when the parcel again becomes taxable.

C. If a property within the enterprise zone that became tax exempt because of acquisition by a local government again becomes taxable, the local government administering the enterprise zone shall notify the county assessor and the taxation and revenue department of the property which, because of improvements to the property, are to be revalued for property tax purposes. A new taxable value of this property shall then be determined by the county assessor or by the taxation and revenue department if the property is within the valuation jurisdiction of that department.

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

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

History: Laws 1993, ch. 33, § 11.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 33, § 17 makes the act effective on July 1, 1993.

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

A. Every local government administering an enterprise zone shall create an "enterprise zone fund" for purposes of the Enterprise Zone Act [5-9-1 to 5-9-15 NMSA 1978].

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

History: Laws 1993, ch. 33, § 12.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 33, § 17 makes the act effective on July 1, 1993.

5-9-13. Tax increment method approval.

The tax increment method shall be used only upon prior approval by a majority of the units of government participating in property tax revenue derived from property within an enterprise zone project. The local government administering the enterprise zone shall request in writing such approval for a period of no more than five years for property included in the tax increment funding. The governing body of each other participating unit shall approve or disapprove by ordinance or resolution the use of the method for their respective units. All participating units shall notify the local government seeking approval within thirty days of receipt of the request. Upon approval by a majority of the participating units of the tax increment method of financing, it shall be deemed approved for the period requested.

History: Laws 1993, ch. 33, § 13.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 33, § 17 makes the act effective on July 1, 1993.

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

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

History: Laws 1993, ch. 33, § 14.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 33, § 17 makes the act effective on July 1, 1993.

5-9-15. Regulations.

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

History: Laws 1993, ch. 33, § 15.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 33, § 17 makes the act effective on July 1, 1993.

ARTICLE 10
LOCAL ECONOMIC DEVELOPMENT

5-10-1. Short title. (Contingent effective date - See effective date note.)

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

History: Laws 1993, ch. 297, § 1.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 297, § 16 makes the Local Economic Development Act 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.

5-10-2. Findings and purpose of act. (Contingent effective date - See effective date note.)

A. The legislature finds that:

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

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

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

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

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

B. The purpose of the Local Economic Development Act [5-10-1 to 5-10-13 NMSA 1978] is to implement the provisions of the 1994 constitutional amendment to Article 9, Section 14 of the constitution of New Mexico to allow public support of economic development to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources. Further, the purpose of that act is to allow municipalities and counties to enter into joint powers agreements to plan and support regional economic development projects.

History: Laws 1993, ch. 297, § 2.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 297, § 16 makes the Local Economic Development Act 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.

5-10-3. Definitions. (Contingent effective date - See effective date note.)

As used in the Local Economic Development Act [5-10-1 to 5-10-13 NMSA 1978]:

A. "department" means the economic development department;

B. "economic development project" or "project" means the provision of direct or indirect assistance to a qualifying business by a local or regional government, and includes the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure; public works improvements essential to the location or expansion of a qualifying business; and payments for professional services contracts necessary for local or regional governments to implement a plan or project;

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

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

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

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

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

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

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

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

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

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

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

History: Laws 1993, ch. 297, § 3.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 297, § 16 makes the Local Economic Development Act 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.

5-10-4. Economic development projects; restrictions on public expenditures or pledges of credit. (Contingent effective date - See effective date note.)

A. No local or regional government shall provide public support for economic development projects as permitted pursuant to Article 9, Section 14 of the constitution of New Mexico except as provided in the Local Economic Development Act [5-10-1 to 5-10-13 NMSA 1978] or as otherwise permitted by law.

B. The total amount of public money expended and the value of credit pledged in the fiscal year in which that money is expended by a local government for economic development projects pursuant to Article 9, Section 14 of the constitution of New Mexico and the Local Economic Development Act shall not exceed five percent of the annual general fund expenditures of the local government in that fiscal year. The value of any land or building contributed to any project pursuant to a project participation agreement shall not be subject to the limits of this subsection.

History: Laws 1993, ch. 297, § 4.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 297, § 16 makes the Local Economic Development Act 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.

5-10-5. Economic development department; technical assistance. (Contingent effective date - See effective date note.)

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

History: Laws 1993, ch. 297, § 5.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 297, § 16 makes the Local Economic Development Act 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.

5-10-6. Economic development plan; contents; publication. (Contingent effective date - See effective date note.)

A. Every local or regional government seeking to pursue economic development projects shall adopt an economic development plan or a comprehensive plan that includes an economic development component. The plan may be specific to a single economic development goal or strategy or may include several goals or strategies. Any

plan or plan amendment shall be adopted by ordinance of the governing body of the local government or each local government of a regional government proposing the plan or plan amendment.

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

(1) describe the local or regional government's economic development and community goals and assign priority to and strategies for achieving those goals;

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

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

(4) describe the manner in which a qualifying entity may submit an economic development project application, including the type of information required from the qualifying entity sufficient to ensure its solvency and ability to perform its contractual obligations, its commitment to remain in the community and its commitment to the stated economic development goals of the local or regional government;

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

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

(7) identify revenue sources other than those of the local or regional government which must be used to support economic development projects;

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

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

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

reneges on its contractual or implied obligations to the local or regional government; and

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

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

History: Laws 1993, ch. 297, § 6.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 297, § 16 makes the Local Economic Development Act 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.

5-10-7. Regional plans; joint powers agreement; regional government. (Contingent effective date - See effective date note.)

A. Two or more municipalities, two or more counties or one or more municipalities and counties may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] to develop a regional economic development plan which may consist of existing local plans. The parties to the agreement shall be deemed a regional government for the purposes of the Local Economic Development Act [5-10-1 to 5-10-13 NMSA 1978].

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

History: Laws 1993, ch. 297, § 7.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 297, § 16 makes the Local Economic Development Act 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.

5-10-8. Economic development project applications. (Contingent effective date - See effective date note.)

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

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

History: Laws 1993, ch. 297, § 8.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 297, § 16 makes the Local Economic Development Act 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.

5-10-9. Project evaluation; department. (Contingent effective date - See effective date note.)

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

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

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

History: Laws 1993, ch. 297, § 9.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 297, § 16 makes the Local Economic Development Act 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.

5-10-10. Project participation agreement; duties and requirements. (Contingent effective date - See effective date note.)

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

B. The local or regional government shall require a substantive contribution from the qualifying entity for each economic development project. The contribution shall be of value and may be paid in money, in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion of the economy.

C. The participation agreement at a minimum shall set out:

(1) the contributions to be made by each party to the participation agreement;

(2) the security provided to the local or regional government by the qualifying entity in the form of a lien, mortgage or other indenture and the pledge of the qualifying business's financial or material participation and cooperation to guarantee the qualifying entity's performance pursuant to the project participation agreement;

(3) a schedule for project development and completion, including measurable goals and time limits for those goals; and

(4) provisions for performance review and actions to be taken upon a determination that project performance is unsatisfactory.

History: Laws 1993, ch. 297, § 10.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 297, § 16 makes the Local Economic Development Act 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.

5-10-11. Project revenues; special fund; annual audit. (Contingent effective date - See effective date note.)

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

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

C. The local or regional government shall provide for an annual independent audit in accordance with the Audit Act [12-6-1 to 12-6-14 NMSA 1978] of each special fund and project account. The audit shall be submitted to the local or regional government. The audit is a public record.

History: Laws 1993, ch. 297, § 11.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 297, § 16 makes the Local Economic Development Act 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.

5-10-12. Plan and project termination. (Contingent effective date - See effective date note.)

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

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

History: Laws 1993, ch. 297, § 12.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 297, § 16 makes the Local Economic Development Act 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.

5-10-13. Limitations. (Contingent effective date - See effective date note.)

Nothing in the Local Economic Development Act [5-10-1 to 5-10-13 NMSA 1978] shall be construed to affect any other requirements of the constitution or other laws regarding local government debt, issuance of bonds, use of tax revenues or the grant, lease or sale of land or other property.

History: Laws 1993, ch. 297, § 13.

ANNOTATIONS

Effective dates. - Laws 1993, ch. 297, § 16 makes the Local Economic Development Act 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.

Severability clauses. - Laws 1993, ch. 297, § 14 provides for the severability of the act if any part or application thereof is held invalid.