UNANNOTATED

CHAPTER 3
Municipalities

ARTICLE 1
General Provisions

3-1-1. Municipalities; short title.

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

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

3-1-2. Definitions.

As used in the Municipal Code:

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

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

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

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

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

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

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

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

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

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

K. "qualified elector" means any person who is a resident of the municipality and is registered to vote under the provisions of the Election Code. Persons who would otherwise be qualified electors if land on which they reside is annexed to a municipality shall be deemed to be qualified electors:

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

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

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

L. "revenue producing project" means any municipally owned self-liquidating projects that furnish public services to a municipality and its citizens, including but not

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

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

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

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

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

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

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

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

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

subject to general or limited regulation by the public regulation commission or a similar commission of any other state.

History: 1953 Comp., § 14-1-2, enacted by Laws 1965, ch. 300; 1967, ch. 223, § 1; 1969, ch. 251, § 1; 1972, ch. 81, § 1; 1973, ch. 272, § 1; 1979, ch. 260, § 1; 1985, ch. 208, § 1; 1987, ch. 323, § 1; 1993, ch. 282, § 1; 2019, ch. 212, § 178.

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

Any municipality may be known as the:

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

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

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

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

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

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

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

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

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

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

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

A. All petitions, filing of petitions, verification of petitions and all other acts to be performed by petitioners, public officers or employees, regarding only those petitions that trigger a municipal special or regular election as authorized in the Municipal Code [Chapter 3 NMSA 1978] or otherwise authorized by law, shall comply with the terms of this section, except as otherwise expressly provided by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) resolve issues of residency and major infractions in accordance with the Election Code;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) the charter of a combined municipal organization.

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

History: 1978 Comp., § 3-1-5, enacted by Laws 1985, ch. 208, § 2; 1987, ch. 323, § 2; 1991, ch. 109, § 1; 2007, ch. 46, § 1; 2018, ch. 79, § 43.

3-1-6. Final day to act.

Whenever the last day for performing an administrative duty, filing a petition or declaration in a county or municipal office, or other similar act falls on a Saturday, Sunday or holiday, the next succeeding day on which the county or municipal office is open during regular business hours shall be the final day for performing the administrative duty, filing a petition or declaration with a county or municipal clerk or other similar act.

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

ARTICLE 2
Incorporation of Municipality

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

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

(1) be in writing;

(2) state the name of the proposed municipality;

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

(4) be signed by either:

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

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

B. The petition shall be accompanied by:

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

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

(3) the current university of New Mexico geospatial and population studies group data showing that the territory proposed to be incorporated contains a population density of not less than one person per acre.

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

(1) law enforcement;

(2) fire protection and fire safety;

(3) road and street construction and maintenance;

(4) solid waste management;

(5) water supply or distribution or both;

(6) wastewater treatment;

(7) storm water collection and disposal;

(8) electric or gas utility services;

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

(10) planning and zoning; and

(11) recreational facilities.

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

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

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

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

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

E. The review team shall consider the petition and may request that the university of New Mexico geospatial and population studies group confirm that the data provided with the petition supports the finding that the proposed boundaries contain a population of at least one person per acre. The review team shall evaluate the municipal services and revenue plan and determine whether the proposed municipality meets the requirements of Chapter 3, Article 2 NMSA 1978. If the review team finds that the proposed municipality meets the requirements of that article, it shall report its findings and recommendations to the board of county commissioners. If the review team finds that the proposed municipality does not meet the requirements of that article, the review team shall notify the board of county commissioners and the petitioners of deficiencies in the petition. The review team's notification of deficiencies in the municipal services and revenue plan suspends the attempt to incorporate. Petitioners have three months from the date of notification of deficiencies to submit an amended plan to the review team. If the amended plan is rejected by the review team for deficiencies, petitioners may not submit another petition to incorporate an area until at least one year after the date of that rejection.

History: 1953 Comp., § 14-2-1, enacted by Laws 1965, ch. 300; 2013, ch. 120, § 1; 2021, ch. 112, § 1.

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

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

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

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

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

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

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

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

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

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

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

A. Urbanized territory is that territory within the same county and within five miles of the boundary of any municipality having a population of five thousand or more persons and that territory within the same county and within three miles of a municipality having a population of less than five thousand persons, except that territory in a county declared by an ordinance of the board of county commissioners to be a traditional historic community shall not be considered urbanized territory and shall not be annexed by a municipality unless it is considered for annexation pursuant to a petition requesting annexation signed by a majority of the qualified electors within the traditional historic community.

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

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

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

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

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

History: 1953 Comp., § 14-2-3, enacted by Laws 1965, ch. 300; Laws 1967, ch. 198, § 1; 1995, ch. 170, § 1; 2019, ch. 6, § 1; 2019, ch. 212, § 179.

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

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

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

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

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

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

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

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

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

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

(2) within the urbanized area of another municipality and in compliance with Section 3-2-3 NMSA 1978, the board of county commissioners shall accept the data provided by the university of New Mexico geospatial and population studies group regarding whether or not the territory proposed to be incorporated contains a population density of not less than one person per acre.

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

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

E. After the board of county commissioners has determined that all of the conditions for incorporation of the territory as a municipality have been met, the board of county commissioners shall hold an election on the question of incorporating the territory as a municipality. Special elections for the incorporation of municipalities shall only be held in June or July in odd-numbered years or July or August in even-numbered years and shall be held pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978]. The county clerk shall notify the secretary of finance and administration and the secretary of taxation and revenue of the date of the incorporation election within ten days after the adoption of the resolution calling the election.

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

History: 1953 Comp., § 14-2-4, enacted by Laws 1965, ch. 300; 1981, ch. 205, § 1; 1985, ch. 208, § 3; 1998, ch. 55, § 3; 1999, ch. 265, § 3; 2013, ch. 120, § 3; 2018, ch. 79, § 44; 2021, ch. 112, § 2.

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

A. The notice of election shall contain:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) publisher's affidavit of publication; or

(b) county clerk's affidavit of posting.

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

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

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

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

A. If a majority of the votes cast favors the incorporation of the territory as a municipality, the board of county commissioners shall call an election for the purpose of electing municipal officers at the first regular local or general election following approval. The election shall be conducted pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978]. The county clerk shall notify the secretary of finance and administration and the secretary of taxation and revenue of the date of the first election of municipal officers within ten days after the county commissioners have called the election.

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

History: 1953 Comp., § 14-2-7, enacted by Laws 1965, ch. 300; 1981, ch. 204, § 4; 1987, ch. 323, § 3; 2018, ch. 79, § 45.

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

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

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

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

ARTICLE 3
Incorporation of Municipality Under Special Act

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

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

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

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

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

A. If a petition signed by qualified electors of the municipality equal in number to not less than one-eighth of the total number of votes at the last preceding regular municipal election requests the governing body to submit to the qualified electors the question of reorganizing the municipality under the provisions of the Municipal Code, the governing body shall, within fourteen days after the petition is certified as valid, adopt an election resolution calling for a special election in the manner provided in the Local Election Act [Chapter 1, Article 22 NMSA 1978] on the question of reorganizing the municipality under the provisions of general law. The special election shall only be held in June or July in odd-numbered years or July or August in even-numbered years in accordance with the provisions of the Local Election Act.

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

(1) laid off or platted;

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

(3) not within the boundary of another municipality.

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

History: 1953 Comp., § 14-3-2, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 4; 2018, ch. 79, § 46.

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

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

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

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

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

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

A. If a majority of the votes cast on the question of reorganizing a municipality incorporated by a special act favors reorganizing the municipality under general law, the governing body shall adopt an election resolution calling for an election of officers, which shall be held at the first regular local or general election following approval of reorganization. The election shall be called, conducted and canvassed in the manner provided in the Local Election Act [Chapter 1, Article 22 NMSA 1978].

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

History: 1953 Comp., § 14-3-4, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 5; 2018, ch. 79, § 47.

ARTICLE 4
Disincorporation of Municipality

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

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

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

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

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

The day for holding the election shall not be less than fifty days or more than sixty days after the board of county commissioners adopts the election resolution.

B. Notice of the election shall be published as required in the Local Election Act [Chapter 1, Article 22 NMSA 1978].

History: 1953 Comp., § 14-4-1, enacted by Laws 1965, ch. 300; 1983, ch. 154, § 1; 1985, ch. 208, § 6; 2018, ch. 79, § 48.

3-4-2. Disincorporation; ballots.

The form of the ballot shall be:

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

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

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

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

The election for disincorporation shall be conducted pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978].

History: 1953 Comp., § 14-4-3, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 7; 2018, ch. 79, § 49.

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

If a majority of the votes cast are in favor of disincorporation, the municipality shall be disincorporated after provision has been made for payment of its current indebtedness, contracts and obligations, and for levying the requisite tax to do so. The current indebtedness, contracts and obligations do not include funded or bonded indebtedness nor any contract whose termination date is more than one year beyond the date the election was held.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5
Consolidation of Municipalities

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

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

consolidation and shall provide for an election on the question of consolidation. The election shall be conducted pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978].

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

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

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

History: 1953 Comp., § 14-5-1, enacted by Laws 1965, ch. 300; 1981, ch. 204, § 6; 2018, ch. 79, § 50.

ARTICLE 6
Changing Name of Municipality

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

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

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

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

The form of the ballot shall be:

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

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

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

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

ARTICLE 7
Annexation of Territory

3-7-1. Methods of annexation.

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

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

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

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

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

History: 1953 Comp., § 14-7-1, enacted by Laws 1965, ch. 300; 1979, ch. 159, § 1; 1995, ch. 170, § 2; 1995, ch. 211, § 1; 2019, ch. 212, § 180.

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

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

(1) be an unincorporated area of a county;

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

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

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

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

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

History: Laws 1995, ch. 170, § 5; 1995, ch. 211, § 4; 2019, ch. 6, § 2; 2019, ch. 212, § 181.

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

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

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

3-7-3. Limitation on annexation.

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Within ten days after the filing of the resolution and plat of the territory proposed to be annexed, the county clerk shall publish a notice stating that an election will be held

for the purpose of electing three members to a board of arbitration that shall determine if the territory is to be annexed to the municipality. The notice shall include a description of the boundary of the territory proposed to be annexed. The date of election shall not be less than fifty days nor more than sixty days after the date of first publication of the notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

municipality pertaining thereto. The cost of such investigation shall be paid by the municipality.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) by the municipality if:

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

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

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

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

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

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

A. The petition shall:

(1) describe the territory proposed to be annexed;

(2) be signed by:

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

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

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

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

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

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

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

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

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

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

B. After receipt of a petition, as authorized in Section 3-7-11 NMSA 1978, the secretary to the municipal boundary commission shall call a meeting of the municipal boundary commission which shall meet within sixty days of the receipt of the petition to consider the petition for annexation. The secretary to the municipal boundary commission shall publish a notice, of a public hearing on the petition, once each week for four consecutive weeks and the last publication shall be at least twenty days before the day of the hearing. The notice shall contain the date when the meeting of the municipal boundary commission will be held, the place of the meeting and a general description of the boundary of the territory petitioned to be annexed to the municipality.

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

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

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

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

(1) is contiguous to the municipality; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3-7-18. Annexation to include streets.

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

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

ARTICLE 8
Municipal Elections (Repealed.)

3-8-1. Repealed.

History: 1978 Comp., § 3-8-1, enacted by Laws 1985, ch. 208, § 9; 1991, ch. 123, § 1; 1995, ch. 200, § 1; repealed by Laws 2018, ch. 79, § 175.

3-8-2. Repealed.

History: 1978 Comp., § 3-8-2, enacted by Laws 1985, ch. 208, § 10; 1997, ch. 266, § 3; 1999, ch. 278, § 1; 2003, ch. 244, § 1; 2009, ch. 278, § 1; repealed by Laws 2018, ch. 79, § 175.

3-8-3. Repealed.

History: 1978 Comp., § 3-8-3, enacted by Laws 1985, ch. 208, § 11; repealed by Laws 2018, ch. 79, § 175.

3-8-4. Repealed.

History: 1978 Comp., § 3-8-4, enacted by Laws 1985, ch. 208, § 12; repealed by Laws 2018, ch. 79, § 175.

3-8-5. Repealed.

History: 1978 Comp., § 3-8-5, enacted by Laws 1985, ch. 208, § 13; repealed by Laws 2018, ch. 79, § 175.

3-8-6. Repealed.

History: 1978 Comp., § 3-8-6, enacted by Laws 1985, ch. 208, § 14; 1987, ch. 323, § 4.; repealed by Laws 2018, ch. 79, § 175.

3-8-6.1. Repealed.

History: 1978 Comp., § 3-8-6.1, enacted by Laws 1991, ch. 123, § 2; repealed by Laws 2018, ch. 79, § 175.

3-8-7. Repealed.

History: 1953 Comp., § 14-8-5, enacted by Laws 1965, ch. 300; 1969, ch. 246, § 1; 1971, ch. 306, § 4; 1975, ch. 255, § 125; 1978 Comp., § 3-8-5, recompiled as 1978 Comp., § 3-8-7 by Laws 1985, ch. 208, § 15; 1987, ch. 323, § 5; 1991, ch. 123, § 3; 1995, ch. 198, § 16; 1997, ch. 266, § 4; 1999, ch. 278, § 2; repealed by Laws 2018, ch. 79, § 175.

3-8-8. Repealed.

History: 1978 Comp., § 3-8-8, enacted by Laws 1985, ch. 208, § 16; repealed by Laws 2018, ch. 79, § 175.

3-8-9. Repealed.

History: 1978 Comp., § 3-8-9, enacted by Laws 1985, ch. 208, § 17; 1987, ch. 323, § 6; 2003, ch. 154, § 2; repealed by Laws 2018, ch. 79, § 175.

3-8-10. Repealed.

History: 1978 Comp., § 3-8-10, enacted by Laws 1985, ch. 208, § 18; 1997, ch. 266, § 5; repealed by Laws 2018, ch. 79, § 175.

3-8-11. Repealed.

History: 1978 Comp., § 3-8-11, enacted by Laws 1985, ch. 208, § 19; 2009, ch. 278, § 2; repealed by Laws 2018, ch. 79, § 175.

3-8-12. Repealed.

History: 1978 Comp., § 3-8-12, enacted by Laws 1985, ch. 208, § 20; repealed by Laws 2018, ch. 79, § 175.

3-8-13. Repealed.

History: 1978 Comp., § 3-8-13, enacted by Laws 1985, ch. 208, § 21; 2009, ch. 278, § 3; repealed by Laws 2018, ch. 79, § 175.

3-8-14. Repealed.

History: 1978 Comp., § 3-8-14, enacted by Laws 1985, ch. 208, § 22; 1987, ch. 323, § 7; 1993, ch. 22, § 1; 1997, ch. 266, § 6; 2001, ch. 197, § 1; 2003, ch. 244, § 2; 2009, ch. 278, § 4; repealed by Laws 2018, ch. 79, § 175.

3-8-15. Repealed.

History: 1978 Comp., § 3-8-15, enacted by Laws 1985, ch. 208, § 23; 1999, ch. 278, § 3; repealed by Laws 2009, ch. 278, § 40.

3-8-16. Repealed.

History: 1978 Comp., § 3-8-16, enacted by Laws 1985, ch. 208, § 24; 1997, ch. 266, § 7; 2009, ch. 278, § 5; repealed by Laws 2018, ch. 79, § 175.

3-8-17. Repealed.

History: 1978 Comp., § 3-8-17, enacted by Laws 1985, ch. 208, § 25; 1993, ch. 22, § 2; 2003, ch. 244, § 3; repealed by Laws 2018, ch. 79, § 175.

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

3-8-18. Repealed.

History: 1978 Comp., § 3-8-18, enacted by Laws 1985, ch. 208, § 26; 1987, ch. 323, § 8; 1999, ch. 278, § 4; 2003, ch. 244, § 4; 2009, ch. 278, § 6; repealed by Laws 2018, ch. 79, § 175.

3-8-19. Repealed.

History: 1953 Comp., § 14-8-10, enacted by Laws 1971, ch. 306, § 8; 1978 Comp., § 3-8-11, recompiled as 1978 Comp., § 3-8-19 by Laws 1985, ch. 208, § 27; 1987, ch. 323, § 9; 1997, ch. 266, § 8; 1999, ch. 278, § 5; repealed by Laws 2018, ch. 79, § 175.

3-8-20. Repealed.

History: 1953 Comp., § 14-8-10.1, enacted by Laws 1971, ch. 306, § 9; 1978 Comp., § 3-8-12, recompiled as 1978 Comp., § 3-8-20 by Laws 1985, ch. 208, § 28; 2009, ch. 278, § 7; repealed by Laws 2018, ch. 79, § 175.

3-8-21. Repealed.

History: 1978 Comp., § 3-8-21, enacted by Laws 1985, ch. 208, § 29; 1987, ch. 323, § 10; 2009, ch. 278, § 8; repealed by Laws 2018, ch. 79, § 175.

3-8-22. Repealed.

History: 1978 Comp., § 3-8-22, enacted by Laws 1985, ch. 208, § 30; 2001, ch. 197, § 2; 2007, ch. 46, § 2; 2009, ch. 278, § 9; repealed by Laws 2018, ch. 79, § 175.

3-8-23. Repealed.

History: 1978 Comp., § 3-8-23, enacted by Laws 1985, ch. 208, § 31; repealed by Laws 2018, ch. 79, § 175.

3-8-24. Repealed.

History: 1978 Comp., § 3-8-24, enacted by Laws 1985, ch. 208, § 32; repealed by Laws 2018, ch. 79, § 175.

3-8-25. Repealed.

History: 1953 Comp., § 14-8-3, enacted by Laws 1965, ch. 300; 1978 Comp., § 3-8-3, recompiled as 1978 Comp., § 3-8-25 by Laws 1985, ch. 208, § 33; repealed by Laws 2018, ch. 79, § 175.

3-8-26. Repealed.

History: 1953 Comp., § 14-8-4, enacted by Laws 1965, ch. 300; 1967, ch. 146, § 3; 1971, ch. 306, § 3; 1977, ch. 29, § 1; 1978 Comp., § 3-8-4, recompiled as 1978 Comp., § 3-8-26 by Laws 1985, ch. 208, § 34; 1997, ch. 266, § 9; 2001, ch. 197, § 3; 2003, ch. 244, § 5; repealed by Laws 2018, ch. 79, § 175.

3-8-27. Repealed.

History: 1953 Comp., § 14-8-8, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 6; 1978 Comp., § 3-8-8, recompiled as 1978 Comp., § 3-8-27 by Laws 1985, ch. 208, § 35; 1987, ch. 323, § 11; 1997, ch. 266, § 10; 2001, ch. 197, § 4; 2009, ch. 278, § 10; repealed by Laws 2018, ch. 79, § 175.

3-8-28. Repealed.

History: 1953 Comp., § 14-8-6, enacted by Laws 1965, ch. 300; 1978 Comp., § 3-8-6, recompiled as 1978 Comp., § 3-8-28 by Laws 1985, ch. 208, § 36; 1987, ch. 323, § 12; repealed by Laws 2018, ch. 79, § 175.

3-8-29. Repealed.

History: 1978 Comp., § 3-8-29, enacted by Laws 1985, ch. 208, § 37; 1987, ch. 323, § 13; 1999, ch. 278, § 6; repealed by Laws 2018, ch. 79, § 175.

3-8-30. Repealed.

History: 1953 Comp., § 14-8-9, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 7; 1978 Comp., § 3-8-9, recompiled as 1978 Comp., § 3-8-30 by Laws 1985, ch. 208, § 38; 1987, ch. 323, § 14; repealed by Laws 2018, ch. 79, § 175.

3-8-31. Repealed.

History: 1953 Comp., § 14-8-11, enacted by Laws 1971, ch. 306, § 10; 1978 Comp., § 3-8-13, recompiled as 1978 Comp., § 3-8-31 by Laws 1985, ch. 208, § 39; 1987, ch. 323, § 15; 1999, ch. 278, § 7; repealed by Laws 2018, ch. 79, § 175.

3-8-32. Repealed.

History: 1953 Comp., § 14-8-13, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 13; 1978 Comp., § 3-8-15, recompiled as 1978 Comp., § 3-8-32 by Laws 1985, ch. 208, § 40; 1987, ch. 323, § 16; repealed by Laws 2018, ch. 79, § 175.

3-8-33. Repealed.

History: 1978 Comp., § 3-8-33, enacted by Laws 1985, ch. 208, § 41; 1987, ch. 323, § 17; 1995, ch. 200, § 2; repealed by Laws 2018, ch. 79, § 175.

3-8-34. Repealed.

History: 1978 Comp., § 3-8-34, enacted by Laws 1985, ch. 208, § 42; repealed by Laws 2018, ch. 79, § 175.

3-8-35. Repealed.

History: 1953 Comp., § 14-8-2, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 2; 1978 Comp., § 3-8-2, recompiled as 1978 Comp., § 3-8-35 by Laws 1985, ch. 208, § 43; 1999, ch. 278, § 8; repealed by Laws 2018, ch. 79, § 175.

3-8-36. Repealed.

History: 1978 Comp., § 3-8-36, enacted by Laws 1985, ch. 208, § 44; 1987, ch. 323, § 18; repealed by Laws 2018, ch. 79, § 175.

3-8-37. Repealed.

History: 1978 Comp., § 3-8-37, enacted by Laws 1985, ch. 208, § 45; repealed by Laws 2018, ch. 79, § 175.

3-8-37.1. Repealed.

History: Laws 2009, ch. 278, § 31; repealed by Laws 2018, ch. 79, § 175.

3-8-38. Repealed.

History: 1978 Comp., § 3-8-38, enacted by Laws 1985, ch. 208, § 46; 1993, ch. 22, § 3; 1999, ch. 278, § 9; repealed by Laws 2018, ch. 79, § 175.

3-8-39. Repealed.

History: 1978 Comp., § 3-8-39, enacted by Laws 1985, ch. 208, § 47; 1995, ch. 200, § 3; repealed by Laws 2018, ch. 79, § 175.

3-8-40. Repealed.

History: 1978 Comp., § 3-8-40, enacted by Laws 1985, ch. 208, § 48; 1987, ch. 323, § 19; 1997, ch. 266, § 11; 1999, ch. 278, § 10; 2003, ch. 244, § 6; repealed by Laws 2018, ch. 79, § 175.

3-8-40.1. Repealed.

History: Laws 1999, ch. 278, § 45; repealed by Laws 2009, ch. 278, § 40.

3-8-41. Repealed.

History: 1978 Comp., § 3-8-41, enacted by Laws 1985, ch. 208, § 49; 2009, ch. 278, § 11; repealed by Laws 2018, ch. 79, § 175.

3-8-42. Repealed.

3-8-43. Repealed.

History: 1978 Comp., § 3-8-43, enacted by Laws 1985, ch. 208, § 51; 1987, ch. 323, § 20; 1997, ch. 266, § 12; 1999, ch. 278, § 11; 2003, ch. 244, § 7; 2009, ch. 278, § 12; repealed by Laws 2018, ch. , § 175.

3-8-44. Repealed.

History: 1978 Comp., § 3-8-44, enacted by Laws 1985, ch. 208, § 52; 1995, ch. 200, § 4; 2009, ch. 278, § 13; repealed by Laws 2018, ch. 79, § 175.

3-8-45. Repealed.

History: 1978 Comp., § 3-8-45, enacted by Laws 1985, ch. 208, § 53; repealed by Laws 2018, ch. 79, § 175.

3-8-46. Repealed.

History: 1978 Comp., § 3-8-46, enacted by Laws 1985, ch. 208, § 54; 1987, ch. 323, § 21; 2001, ch. 197, § 5; 2009, ch. 278, § 14; repealed by Laws 2018, ch. 79, § 175.

3-8-47. Repealed.

History: 1978 Comp., § 3-8-47, enacted by Laws 1985, ch. 208, § 55; 1997, ch. 266, § 13; 1999, ch. 278, § 12; 2009, ch. 278, § 15; repealed by Laws 2018, ch. 79, § 175.

3-8-48. Repealed.

History: 1978 Comp., § 3-8-48, enacted by Laws 1985, ch. 208, § 56; 1997, ch. 266, § 14; 2009, ch. 278, § 16; repealed by Laws 2018, ch. 79, § 175.

3-8-49. Repealed.

History: 1978 Comp., § 3-8-49, enacted by Laws 1985, ch. 208, § 57; 2009, ch. 278, § 17; repealed by Laws 2018, ch. 79, § 175.

3-8-50. Repealed.

History: 1978 Comp., § 3-8-50, enacted by Laws 1985, ch. 208, § 58; 2009, ch. 278, § 18; repealed by Laws 2018, ch. 79, § 175.

3-8-51. Repealed.

History: 1978 Comp., § 3-8-51, enacted by Laws 1985, ch. 208, § 59; 1999, ch. 278, § 13; 2009, ch. 278, § 19; repealed by Laws 2018, ch. 79, § 175.

3-8-52. Repealed.

History: 1978 Comp., § 3-8-52, enacted by Laws 1985, ch. 208, § 60; 1987, ch. 323, § 22; 2009, ch. 278, § 20; repealed by Laws 2018, ch. 79, § 175.

3-8-53. Repealed.

History: 1953 Comp., § 14-8-14, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 14; 1978 Comp., § 3-8-16, recompiled as 1978 Comp., § 3-8-53 by Laws 1985, ch. 208, § 61; 1987, ch. 323, § 23; 1999, ch. 278, § 14; 2001, ch. 197, § 6; repealed by Laws 2018, ch. 79, § 175.

3-8-54. Repealed.

History: 1978 Comp., § 3-8-54, enacted by Laws 1985, ch. 208, § 62; repealed by Laws 2018, ch. 79, § 175.

3-8-55. Repealed.

History: 1978 Comp., § 3-8-55, enacted by Laws 1985, ch. 208, § 63; 1997, ch. 266, § 15; 1999, ch. 278, § 15; repealed by Laws 2018, ch. 79, § 175.

3-8-56. Repealed.

History: 1978 Comp., § 3-8-56, enacted by Laws 1985, ch. 208, § 64; repealed by Laws 2018, ch. 79, § 175.

3-8-57. Repealed.

History: 1978 Comp., § 3-8-57, enacted by Laws 1985, ch. 208, § 65; 1999, ch. 278, § 16; repealed by Laws 2018, ch. 79, § 175.

3-8-58. Repealed.

History: 1978 Comp., § 3-8-58, enacted by Laws 1985, ch. 208, § 66; 2001, ch. 197, § 7; 2009, ch. 278, § 21; repealed by Laws 2018, ch. 79, § 175.

3-8-59. Repealed.

History: 1978 Comp., § 3-8-59, enacted by Laws 1985, ch. 208, § 67; repealed by Laws 2018, ch. 79, § 175.

3-8-60. Repealed.

History: 1978 Comp., § 3-8-60, enacted by Laws 1985, ch. 208, § 68; repealed by Laws 2018, ch. 79, § 175.

3-8-61. Repealed.

History: 1978 Comp., § 3-8-61, enacted by Laws 1985, ch. 208, § 69; repealed by Laws 2018, ch. 79, § 175.

3-8-62. Repealed.

History: 1953 Comp., § 14-8-16, enacted by Laws 1965, ch. 300; 1971, ch. 306, § 15; 1978 Comp., § 3-8-18, recompiled as 1978 Comp., § 3-8-62 by Laws 1985, ch. 208, § 70; repealed by Laws 2018, ch. 79, § 175.

3-8-63. Repealed.

History: 1978 Comp., § 3-8-63, enacted by Laws 1985, ch. 208, § 71; 1999, ch. 278, § 17; repealed by Laws 2018, ch. 79, § 175.

3-8-64. Repealed.

History: 1978 Comp., § 3-8-64, enacted by Laws 1985, ch. 208, § 72; repealed by Laws 2018, ch. 79, § 175.

3-8-65. Repealed.

History: 1978 Comp., § 3-8-65, enacted by Laws 1985, ch. 208, § 73; 1995, ch. 200, § 5; 1999, ch. 278, § 18; 2003, ch. 244, § 8; 2009, ch. 278, § 22; repealed by Laws 2018, ch. 79, § 175.

3-8-66. Repealed.

History: 1978 Comp., § 3-8-66, enacted by Laws 1985, ch. 208, § 74; repealed by Laws 2018, ch. 79, § 175.

3-8-67. Repealed.

History: 1978 Comp., § 3-8-67, enacted by Laws 1985, ch. 208, § 75; repealed by Laws 2018, ch. 79, § 175.

3-8-68. Repealed.

History: 1978 Comp., § 3-8-68, enacted by Laws 1985, ch. 208, § 76; 1999, ch. 278, § 19; 2001, ch. 197, § 8; 2009, ch. 278, § 23; repealed by Laws 2018, ch. 79, § 175.

3-8-69. Repealed.

History: 1978 Comp., § 3-8-69, enacted by Laws 1985, ch. 208, § 77; 1999, ch. 278, § 20; 2003, ch. 244, § 9; 2009, ch. 278, § 24; repealed by Laws 2018, ch. 79, § 175.

3-8-70. Repealed.

History: 1978 Comp., § 3-8-70, enacted by Laws 1985, ch. 208, § 78; repealed by Laws 2018, ch. 79, § 175.

3-8-71. Repealed.

History: 1978 Comp., § 3-8-71, enacted by Laws 1985, ch. 208, § 79; 1995, ch. 200, § 6; 1997, ch. 266, § 16; 1999, ch. 278, § 21; 2003, ch. 244, § 10; 2009, ch. 278, § 25; repealed by Laws 2018, ch. 79, § 175.

3-8-72. Repealed.

History: 1978 Comp., § 3-8-72, enacted by Laws 1985, ch. 208, § 80; repealed by Laws 2018, ch. 79, § 175.

3-8-73. Repealed.

History: 1978 Comp., § 3-8-73, enacted by Laws 1985, ch. 208, § 81; repealed by Laws 2018, ch. 79, § 175.

3-8-74. Repealed.

History: 1978 Comp., § 3-8-74, enacted by Laws 1985, ch. 208, § 82; 1999, ch. 278, § 22; 2003, ch. 244, § 11; repealed by Laws 2018, ch. 79, § 175.

3-8-75. Repealed.

History: 1978 Comp., § 3-8-75, enacted by Laws 1985, ch. 208, § 83; 1999, ch. 278, § 23; 2003, ch. 244, § 12; 2009, ch. 278, § 26; repealed by Laws 2018, ch. 79, § 175.

3-8-76. Repealed.

History: 1978 Comp., § 3-8-76, enacted by Laws 1985, ch. 208, § 84; 1987, ch. 323, § 24; repealed by Laws 2018, ch. 79, § 175.

3-8-77. Repealed.

History: 1978 Comp., § 3-8-77, enacted by Laws 1985, ch. 208, § 85; 1997, ch. 266, § 17; repealed by Laws 2018, ch. 79, § 175.

3-8-78. Repealed.

History: 1978 Comp., § 3-8-78, enacted by Laws 1985, ch. 208, § 86; 1997, ch. 266, § 18; repealed by Laws 2018, ch. 79, § 175.

3-8-79. Repealed.

History: 1978 Comp., § 3-8-79, enacted by Laws 1985, ch. 208, § 87; 1999, ch. 278, § 24; repealed by Laws 2018, ch. 79, § 175.

3-8-80. Repealed.

History: 1978 Comp., § 3-8-80, enacted by Laws 1985, ch. 208, § 88; 1999, ch. 278, § 25; repealed by Laws 2018, ch. 79, § 175.

3-8-81 to 3-8-95. Repealed.

ARTICLE 9
Absentee Voting (Repealed.)

3-9-1. Repealed.

History: 1953 Comp., § 14-8A-2, enacted by Laws 1973, ch. 375, § 2; 1978 Comp., § 3-9-2, recompiled as 1978 Comp., § 3-9-1 by Laws 1985, ch. 208, § 89; 2003, ch. 244, § 13; 2009, ch. 278, § 27; 2015, ch. 145, § 87; repealed by Laws 2018, ch. 79, § 175.

3-9-2. Repealed.

History: 1953 Comp., § 14-8A-1 enacted by Laws 1973, ch. 375, § 1; 1975, ch. 75, § 1; 1978 Comp., § 3-9-1, recompiled as 1978 Comp., § 3-9-3 by Laws 1985, ch. 208, § 91; 1993, ch. 22, § 4; 1999, ch. 278, § 26; 2009, ch. 278, § 29; repealed by Laws 2015, ch. 145, § 101.

3-9-3. Repealed.

History: 1953 Comp., § 14-8A-1 enacted by Laws 1973, ch. 375, § 1; 1975, ch. 75, § 1; 1978 Comp., § 3-9-1, recompiled as 1978 Comp., § 3-9-3 by Laws 1985, ch. 208, § 91; 1993, ch. 22, § 4; 1999, ch. 278, § 26; 2009, ch. 278, § 29; 2015, ch. 145, § 88; repealed by Laws 2018, ch. 79, § 175.

3-9-4. Repealed.

History: 1953 Comp., § 14-8A-3, enacted by Laws 1973, ch. 375, § 3; 1978 Comp., § 3-9-3, recompiled as 1978 Comp., § 3-9-4 by Laws 1985, ch. 208, § 92; 1987, ch. 323, § 25; 1993, ch. 22, § 5; 1999, ch. 278, § 27; 2001, ch. 197, § 10; 2003, ch. 244, § 14; 2009, ch. 278, § 30; 2015, ch. 145, § 89; repealed by Laws 2018, ch. 79, § 175.

3-9-5. Repealed.

History: 1953 Comp., § 14-8A-6, enacted by Laws 1973, ch. 375, § 6; 1978 Comp., § 3-9-6, recompiled as 1978 Comp., § 3-9-5 by Laws 1985, ch. 208, § 93; 1999, ch. 278, § 28; 2001, ch. 105, § 2; 2009, ch. 278, § 32; 2015, ch. 145, § 90; repealed by Laws 2018, ch. 79, § 175.

3-9-6. Repealed.

History: 1953 Comp., § 14-8A-7, enacted by Laws 1973, ch. 375, § 7; 1978 Comp., § 3-9-7, recompiled as 1978 Comp., § 3-9-6 by Laws 1985, ch. 208, § 94; 1993, ch. 22, §

6; 1995, ch. 98, § 1; 1997, ch. 266, § 19; 1999, ch. 278, § 29; 2009, ch. 278, § 33; 2015, ch. 145, § 91; repealed by Laws 2018, ch. 79, § 175.

3-9-7. Repealed.

History: 1953 Comp., § 14-8A-8, enacted by Laws 1973, ch. 375, § 8; 1978 Comp., § 3-9-8, recompiled as 1978 Comp., § 3-9-7 by Laws 1985, ch. 208, § 95; 1995, ch. 98, § 2; 1995, ch. 200, § 7; 1997, ch. 266, § 20; 1999, ch. 278, § 30; 2003, ch. 244, § 15; 2009, ch. 278, § 34; 2015, ch. 145, § 92; repealed by Laws 2018, ch. 79, § 175.

3-9-8. Repealed.

History: 1953 Comp., § 14-8A-9, enacted by Laws 1973, ch. 375, § 9; 1978 Comp., § 3-9-9, recompiled as 1978 Comp., § 3-9-8 by Laws 1985, ch. 208, § 96; 1999, ch. 278, § 31; 2003, ch. 244, § 16; 2009, ch. 278, § 35; 2015, ch. 145, § 93; repealed by Laws 2018, ch. 79, § 175.

3-9-9. Repealed.

History: 1953 Comp., § 14-8A-10, enacted by Laws 1973, ch. 375, § 10; 1978 Comp., § 3-9-10, recompiled as 1978 Comp., § 3-9-9 by Laws 1985, ch. 208, § 97; 1995, ch. 200, § 8; 1999, ch. 278, § 32; repealed by Laws 2018, ch. 79, § 175.

3-9-10. Repealed.

History: 1978 Comp., § 3-9-10, enacted by Laws 1985, ch. 208, § 98; 1995, ch. 200, § 9; 1999, ch. 278, § 33; 2003, ch. 244, § 17; repealed by Laws 2018, ch. 79, § 175.

3-9-11. Repealed.

History: 1978 Comp., § 3-9-11, enacted by Laws 1985, ch. 208, § 99; 1995, ch. 98, §3; 1995, ch. 200, § 10; 2009, ch. 278, § 36; 2015, ch. 145, § 94; repealed by Laws 2018, ch. 79, § 175.

3-9-12. Repealed.

History: 1978 Comp., § 3-9-12, enacted by Laws 1985, ch. 208, § 100; 2009, ch. 278, § 37; repealed by Laws 2018, ch. 79, § 175.

3-9-13. Repealed.

History: 1953 Comp., § 14-8A-11, enacted by Laws 1973, ch. 375, § 11; 1978 Comp., § 3-9-11, recompiled as 1978 Comp., § 3-9-13 by Laws 1985, ch. 208, § 101; 1999, ch. 278, § 34; 2003, ch. 244, § 18; repealed by Laws 2018, ch. 79, § 175.

3-9-13.1. Repealed.

History: Laws 2003, ch. 244, § 19; 2009, ch. 278, § 38; repealed by Laws 2018, ch. 79, § 175.

3-9-14. Repealed.

3-9-15. Repealed.

History: 1953 Comp., § 14-8A-13, enacted by Laws 1973, ch. 375, § 13; 1978 Comp., § 3-9-13, recompiled as 1978 Comp., § 3-9-15 by Laws 1985, ch. 208, § 103; 1999, ch. 278, § 35; repealed by Laws 2018, ch. 79, § 175.

3-9-16. Repealed.

History: 1953 Comp., § 14-8A-14, enacted by Laws 1973, ch. 375, § 14; 1978 Comp., § 3-9-14, recompiled as 1978 Comp., § 3-9-16 by Laws 1985, ch. 208, § 104; 1999, ch. 278, § 36; 2009, ch. 278, § 39; repealed by Laws 2018, ch. 79, § 175.

ARTICLE 10
Municipal Officers; Qualifications; Compensation; Removal from Office

3-10-1. Officers; elective; term of office.

A. The elective officers of a municipality having a mayor-council form of government are:

(1) one mayor;

(2) the members of the governing body; and

(3) a municipal judge.

B. The elective officers of a municipality having a commission-manager form of government are:

(1) five commissioners; and

(2) a municipal judge.

C. Notwithstanding the provisions of Subsection A of this section, a municipality with a population of five hundred persons or less in the last federal decennial census shall

not have a municipal judge if it adopts an effective ordinance in accordance with the provisions of Subsection B of Section 35-14-1 NMSA 1978.

D. In every noncharter municipality, except those noncharter municipalities having a commission-manager form of government or electing members of the governing body from districts, the terms of office for the mayor and members of the governing body shall be four years. The term of office for members of the governing body shall be staggered so that the terms of office for one-half of the members of the governing body will expire every two years.

E. Any elected municipal official whose term of office has expired shall continue in that office until a successor is elected and has taken office pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978].

History: 1953 Comp., § 14-9-1, enacted by Laws 1965, ch. 300; 1984, ch. 30, § 1; 1985, ch. 208, § 105; 2018, ch. 79, § 51.

3-10-2. Officers; oath and bond; failure to qualify.

A. Any officer elected or appointed to any municipal office shall take an oath or affirmation to support the constitution of the United States, the constitution and laws of New Mexico and to faithfully perform the duties of his office.

B. For the care and disposition of municipal funds in the employee's custody and for the faithful discharge of the employee's duties, the governing body of the municipality shall require a corporate surety bond from the treasurer, the police officer and any other employee it designates. In lieu of individual corporate surety bonds, the governing body may secure a blanket corporate surety bond. The municipality shall pay for the surety bond.

C. The governing body of any municipality may declare vacated the office of any person who fails, within ten days after he has been notified of his election or appointment to office, to take the oath of office, or to give bond when required.

History: 1953 Comp., § 14-9-2, enacted by Laws 1965, ch. 300.

3-10-3. Noncharter municipalities; governing bodies; compensation.

A noncharter municipality may provide by ordinance for the compensation of the mayor and other individual members of the governing body.

History: 1953 Comp., § 14-9-3, enacted by Laws 1971, ch. 194, § 1; 1995, ch. 119, § 1.

3-10-4. Repealed.

History: 1953 Comp., § 14-9-4.1, enacted by Laws 1977, ch. 78, § 1; repealed by Laws 2011, ch. 138, § 14.

3-10-5. Repealed.

History: 1953 Comp., § 14-9-5, enacted by Laws 1965, ch. 300; repealed by Laws 2011, ch. 138, § 14.

3-10-6. Officers; extra compensation; penalty.

Any mayor or member of the governing body of a municipality who receives payment for services rendered by him, contrary to law, is guilty of a misdemeanor. The fine shall be paid into the general fund of the municipality.

History: 1953 Comp., § 14-9-6, enacted by Laws 1965, ch. 300.

3-10-7. Officers; removal for malfeasance in office; complaint; jurisdiction of district court; hearing; serving notice.

Any person elected or appointed to an elective office of a municipality may be removed for malfeasance in office by the district court upon complaint of the mayor or governing body of the municipality. Any such officer is entitled to a hearing at a time fixed by the court after not less than ten days' notice of such proceedings by service, as in the case of summons in civil actions, with a copy of the complaint filed in the proceedings.

History: 1953 Comp., § 14-9-8, enacted by Laws 1965, ch. 300.

3-10-8. Officers; delivery of records.

Any officer who vacates his office shall forthwith deliver to his successor all money, records, property or other things in his charge and belonging to the municipality.

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

ARTICLE 11
Mayor-Council Municipality; Mayor

3-11-1. Powers of mayor; applicability.

The provisions of Sections 3-11-1 through 3-11-7 NMSA 1978 are applicable only to those municipalities governed under the mayor-council form of government, and which have not elected to be governed under the commission-manager form of government.

History: 1953 Comp., § 14-10-1, enacted by Laws 1965, ch. 300.

3-11-2. Mayor; vacated office; appointment by governing body.

In case of the death, disability, resignation or change of residence, from the municipality, of the mayor, the governing body shall appoint by majority vote a qualified elector to fill the vacancy for the unexpired term of office.

History: 1953 Comp., § 14-10-2, enacted by Laws 1965, ch. 300.

3-11-3. Mayor; presiding officer of governing body; limitation on vote.

The mayor of a municipality is the presiding officer of the governing body. In all municipalities the mayor shall vote only when there is a tie vote.

History: 1953 Comp., § 14-10-3, enacted by Laws 1965, ch. 300.

3-11-4. Mayor; chief executive officer; powers.

The mayor is the chief executive officer and shall:

A. cause the ordinances and regulations of the municipality to be obeyed;

B. exercise, within the municipality, powers conferred upon sheriffs of counties to suppress disorders and keep the peace; and

C. perform other duties, compatible with his office, which the governing body may require.

History: 1953 Comp., § 14-10-4, enacted by Laws 1965, ch. 300.

3-11-5. Mayor; appointment of officers after election.

A. At the organizational meeting of the governing body, the mayor shall submit, for confirmation by the governing body, the names of persons who shall fill the appointive offices of the municipality and the names of persons who shall be employed by the municipality. If the governing body fails to confirm any person as an appointive official or employee of the municipality, the mayor at the next regular meeting of the governing body shall submit the name of another person to fill the appointed office or to be employed by the municipality.

B. Any person holding an appointed office at the time of the municipal election shall continue in that office until the person's successor has been appointed and is qualified.

History: 1953 Comp., § 14-10-5, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 106; 2018, ch. 79, § 52.

3-11-6. Mayor; authority to appoint, supervise and discharge employees.

A. Subject to the approval of a majority of all members of the governing body, the mayor shall:

(1) appoint all officers and employees except those holding elective office; and

(2) designate an employee to perform any service authorized by the governing body.

B. The mayor may appoint temporary employees as required for the proper administration of municipal affairs. The employee shall serve only until the next regular meeting of the governing body at which a quorum is present. The temporary employment shall cease and the employee shall not be reappointed unless his appointment is confirmed by the governing body. A temporary employee is entitled to the usual, ordinary and reasonable compensation for services rendered to the municipality.

C. The mayor shall:

(1) supervise the employees of the municipality;

(2) examine the grounds of reasonable complaint made against any employee; and

(3) cause any violations or neglect of the employees' duties to be corrected promptly or reported to the proper authority for correction and punishment.

D. Subject to the limitation of a merit system ordinance adopted as authorized in Section 3-13-4 NMSA 1978:

(1) the governing body may discharge an appointed official or employee by a majority of all the members of the governing body;

(2) the mayor may discharge an appointed official or employee upon the approval of a majority of all the members of the governing body; or

(3) the mayor may suspend an appointed official or employee until the next regular meeting of the governing body at which time the suspension shall be approved or disapproved by a majority of all the members of the governing body. If the suspension of the appointed official or employee is disapproved by the governing body,

the suspended appointed official or employee shall be paid the compensation he was entitled to receive during the time of his suspension.

E. Any appointed official or employee who is discharged shall:

(1) upon his request, be given, by the mayor in writing, a list of reasons for his discharge; and

(2) be paid any vacation pay which he may have accrued.

History: 1953 Comp., § 14-10-6, enacted by Laws 1965, ch. 300.

3-11-7. Additional powers of mayor.

The mayor shall sign all commissions, licenses and permits granted by the governing body, and other acts that the law or ordinances may require, or the commissions, licenses and permits may be authenticated as authorized under the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978].

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

ARTICLE 12
Governing Body of Municipality

3-12-1. Vacancy on governing body.

Any vacancy on the governing body of a mayor-council municipality shall be filled by appointment of a qualified elector by the mayor of the municipality, with the advice and consent of the governing body. Any qualified elector appointed to fill a vacancy on the governing body shall serve until the next regular local election, at which time a qualified elector shall be elected to fill the remaining unexpired term, if any.

History: 1953 Comp., § 14-11-1, enacted by Laws 1965, ch. 300; 1973, ch. 129, § 1; 1985, ch. 208, § 107; 2018, ch. 79, § 53.

3-12-1.1. Election of members of governing bodies; requiring residency.

Except as provided in Section 3-12-2 NMSA 1978, members of governing bodies, excluding mayors, of municipalities having a population in excess of ten thousand shall reside in and be elected from single-member districts. If any member of the governing body permanently removes his residence from or maintains no residence in the district from which he was elected, he shall be deemed to have resigned. Once, following every federal decennial census, the governing body of the municipality shall divide the

municipality into a number of districts equal to the number of members on the governing body. Such districts shall be compact and contiguous and composed of populations as nearly equal as practicable; provided that the governing body of H class counties and of any municipality having a population of ten thousand or less may provide for single-member districts as provided in this section.

History: 1978 Comp., § 3-12-1.1, enacted by Laws 1985, ch. 203, § 1; 1987, ch. 287, § 1; 1992, ch. 6, § 1.

3-12-2. Governing body; corporate authority; legislative body; members of council and boards of trustees; quorum.

A. The corporate authority of a municipality is vested in the governing body that shall constitute the legislative branch of the municipality and shall not perform any executive functions except those functions assigned to it by law.

B. A majority of the members of the governing body is a quorum for the purpose of transacting business.

C. Unless otherwise provided by law, a question before the governing body shall be decided by a majority vote of the members present.

D. The governing body of a municipality having a mayor-council form of government is the council or board of trustees whose members are the mayor and not less than four or more than ten councilmen or trustees. Any governing body of more than six councilmen or trustees may provide by ordinance for the election of two councilmen or trustees for each ward or district or create or abolish wards or districts or alter the boundary of existing wards or districts; provided that only one councilman or trustee shall be elected from a ward or district at any one election.

E. In those municipalities with a mayor-council form of government, when there is a requirement that a certain fraction or percentage of the members of the entire governing body or of all the members of the governing body or of the entire membership of the governing body or other similar language other than the requirement of a simple majority vote for the measure, the mayor shall not be counted in determining the actual number of votes needed but he shall vote to break a tie vote as provided in Section 3-11-3 NMSA 1978 unless he has declared a conflict of interest.

F. The governing body of a municipality may redistrict the municipality whenever redistricting is warranted. Upon petition signed by qualified electors equal in number to the votes cast for the councilman or trustee receiving the greatest number of votes at the last regular municipal election, the governing body of the municipality shall redistrict the municipality.

History: 1953 Comp., § 14-11-2, enacted by Laws 1965, ch. 300; 1985, ch. 203, § 2; 1992, ch. 6, § 2; 2003, ch. 208, § 1.

3-12-2.1. Governing body; mayor-council; change in number of members.

A. The number of members on the council or board of trustees of a municipality having a mayor-council form of government may be changed as set forth in this section provided such number shall not be less than or more than that number specified in Subsection D of Section 3-12-2 NMSA 1978.

B. A majority of the members elected to the governing body may adopt an ordinance increasing or decreasing the number of councilmen or trustees of that body and calling a special election on the question of approving or disapproving the change.

C. The governing body of the municipality shall adopt an election resolution calling a special election on the question of approving or disapproving a change in the number of councilmen or trustees if there is filed with the municipal clerk a petition requesting an election on such a change and the petition is signed by at least five percent of the number of registered voters of the municipality. The petition shall specify the number of councilmen in addition to the mayor which shall constitute the governing body of the municipality. The petition shall be validated by the municipal clerk by verification that it contains the required number of signatures of registered voters. The election resolution shall be adopted within ten days after the petition is verified by the municipal clerk.

D. A special election to approve or disapprove a change in the number of councilmen or trustees shall be held within ninety days after the adoption of the ordinance as provided in Subsection B of this section or within ninety days after the date the petition is verified as provided in Subsection C of this section, as the case may be, or the election may be held in conjunction with a regular municipal election if such election occurs within ninety days after the adoption of the ordinance or verification of the petition. The municipality shall pay for the cost of the election.

E. If at an election called pursuant to this section a majority of the registered voters voting on the question of changing the number of councilmen or trustees vote in favor of such change, all councilmen or trustees shall serve until their current term of office expires. At each of the subsequent two regular municipal elections, one-half of the newly required number of councilmen or trustees shall be elected.

F. If a majority of the registered voters voting on the question of changing the number of councilmen or trustees disapproves or approves of such change, then such change in the number of members shall not be considered again for a period of four years from the date of the election.

History: 1978 Comp., § 3-12-2.1, enacted by Laws 1981, ch. 198, § 1; 1985, ch. 208, § 108; 1991, ch. 130, § 1.

3-12-3. Governing body; powers and duties.

A. The governing body of a municipality having a mayor-council form of government shall:

(1) elect one of its members to act as mayor pro tem in the absence of the mayor;

(2) possess all powers granted by law, and other municipal powers not conferred by law or ordinance on another officer of the municipality;

(3) manage and control the finances and all property, real and personal, belonging to the municipality;

(4) determine the time and place of holding its meetings, which shall be open to the public;

(5) determine the rules of its own proceedings;

(6) keep minutes of its proceedings, which shall be open to examination by any citizen;

(7) adopt rules and regulations necessary to effect the powers granted municipalities;

(8) prescribe the compensation and fees to be paid municipal officers and employees; and

(9) prescribe the powers and duties of those officers whose terms of office or powers and duties are not defined by law, and impose additional powers and duties upon those officers whose powers and duties are prescribed by law.

B. The governing body of a municipality having a mayor-council form of government may remit the fine of any person convicted of a violation of a municipal ordinance.

C. The governing body may compel the attendance of absent members in such manner and under such penalties it deems desirable.

D. The mayor or a majority of the members of the governing body may call special meetings by notice to each member of the governing body, personally served or left at his usual place of residence.

History: 1953 Comp., § 14-11-3, enacted by Laws 1965, ch. 300; 1967, ch. 146, § 4.

3-12-4. Governing body to provide for creation of certain appointive offices.

A. The governing body of each municipality shall provide for the office of clerk, treasurer and police officer. The offices of clerk and treasurer may be combined and one person appointed to perform both functions.

B. The governing body may also provide for the office of an attorney.

C. The governing body may provide for deputy appointed officials who may exercise the powers granted the appointed officials.

History: 1953 Comp., § 14-11-4, enacted by Laws 1965, ch. 300.

ARTICLE 13
Clerk, Police Officer, Manager; Duties

3-13-1. Clerk; duties.

A. The clerk of the municipality shall:

(1) keep in custody all minutes, ordinances and resolutions approved by the governing body;

(2) attend all meetings of the governing body;

(3) record all proceedings, ordinances and resolutions of the governing body; and

(4) upon request, furnish copies of municipal records. The clerk may charge a reasonable fee for the cost of furnishing copies of municipal records.

B. The mayor with the consent of the governing body may designate other municipal employees to be deputy municipal clerks who shall have the right and duty to perform all of the duties of the municipal clerk.

History: 1953 Comp., § 14-12-1, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 109; 2018, ch. 79, § 54.

3-13-2. Police officers.

A. The police officer of a municipality shall:

(1) execute and return all writs and process as directed by the municipal judge of the municipality employing the police officer;

(2) execute and return all criminal process as directed by the municipal judge of any incorporated municipality in the state if the criminal process arises out of a

charge of violation of a municipal ordinance prohibiting driving while under the influence of intoxicating liquor or drugs;

(3) serve criminal writs and process specified in Paragraphs (1) and (2) of this subsection in any part of the county wherein the municipality is situated; and

(4) within the municipality:

(a) suppress all riots, disturbances and breaches of the peace;

(b) apprehend all disorderly persons;

(c) pursue and arrest any person fleeing from justice; and

(d) apprehend any person in the act of violating the laws of the state or the ordinances of the municipality and bring him before competent authority for examination and trial.

B. In the discharge of his proper duties, a police officer shall have the same powers and be subject to the same responsibilities as sheriffs in similar cases.

History: 1953 Comp., § 14-12-2, enacted by Laws 1965, ch. 300; 1988, ch. 88, § 1.

3-13-3. Appointment of manager; duties and qualifications.

The governing body of any municipality having a population of one thousand or more persons may provide for a manager either by ordinance or by an election to be called by the governing body upon the filing of a petition containing the signatures of at least ten percent of the registered voters in the municipality. The office of manager shall carry the same qualifications, duties and responsibilities as provided for a manager under Sections 3-14-13 through 3-14-15 NMSA 1978.

History: 1953 Comp., § 14-12-3, enacted by Laws 1965, ch. 300; 1991, ch. 20, § 1.

3-13-4. Municipality may establish a merit system; provisions constitute part of an employment contract.

A. Any municipality may establish by ordinance a merit system for the hiring, promotion, discharge and general regulation of municipal employees. The ordinance may contain reasonable restrictions or prohibitions on political activities which are deemed detrimental to the merit system thereby established. The ordinance may provide for a personnel board or personnel officer to:

(1) administer the ordinance; and

(2) establish rules and regulations pursuant to the ordinance, which may include:

(a) rules governing classification of employees;

(b) service rating of employees;

(c) establishment of pay scales and ranges;

(d) establishment of the number of hours of work per week; and

(e) methods of employment, promotion, demotion, suspension and discharge of the municipal employees.

B. If a personnel board is created, the method of appointment, the number of members and terms of office shall be set forth in the ordinance. The board shall serve without compensation for its service.

C. Following the adoption of a merit system, the contract of employment between the municipality and an employee in a position covered by the merit system shall be subject to the provisions of the ordinance and rules and regulations issued pursuant to the ordinance.

D. Within ten days following the adoption of a merit system, an employee in a position covered by the merit system may file with the clerk a declaration stating that the employee does not desire to have his employment subject to the ordinance together with the rules and regulations issued pursuant to the ordinance. The contract of employment of all other employees employed at the time of the adoption of the merit system, and in positions covered by the merit system, shall be subject to the provisions of the ordinance and all rules and regulations issued pursuant to the ordinance.

History: 1953 Comp., § 14-12-4, enacted by Laws 1965, ch. 300.

ARTICLE 14
Commission-Manager Form of Government; Municipalities Over 1,000

3-14-1. Commission-manager; application to municipalities over three thousand.

Any municipality having a population of three thousand or more persons according to the last federal census or any other official census may be organized and governed as a commission-manager municipality if the qualified electors of the municipality elect to be governed under the commission-manager form of government. If the qualified

electors of the municipality do not elect to be governed under the commission-manager form of government, the municipality shall be governed under the form of government in existence on the day the election rejecting the commission-manager form was held.

History: 1953 Comp., § 14-13-1, enacted by Laws 1965, ch. 300; 1989, ch. 61, § 1; 1991, ch. 20, § 2.

3-14-2. Commission-manager; special election for adoption.

A. Upon petition signed by qualified electors, not less in number than fifteen percent of the votes cast for the office of mayor at the last regular municipal election, filed with the municipal clerk and verified by the municipal clerk to contain a sufficient number of legal signatures, the governing body shall, within ten days of verification, adopt an election resolution calling for the holding of a special election on the question of organizing the municipality under the commission-manager form of government, or the governing body may submit to the qualified electors of the municipality the question of organizing the municipality under the commission-manager form of government. The election shall be held in June or July in odd-numbered years or July or August in even-numbered years in accordance with the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978].

B. The question to be placed shall read substantially as follows:

"For the commission-manager form of government and providing for the election of five commissioners ____; and

Against the commission-manager form of government and providing for the election of five commissioners ____".

History: 1953 Comp., § 14-13-2, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 110; 2018, ch. 79, § 55.

3-14-3. Commission-manager; certifying results of election; recording; affirmative vote; organization.

After the results of the election have been canvassed, the governing body shall certify the results to the municipal clerk and they shall be recorded in the minutes book of the municipality. If a majority of the votes cast on the question favor organizing under a commission-manager form of government, the governing body shall proceed to organize the municipality under the commission-manager form of government.

History: 1953 Comp., § 14-13-3, enacted by Laws 1965, ch. 300.

3-14-4. Commission-manager; charter.

Municipalities electing to be governed under the commission-manager form of government shall be governed as provided in Sections 3-14-1 through 3-14-19 NMSA 1978.

History: 1953 Comp., § 14-13-4, enacted by Laws 1965, ch. 300.

3-14-5. Commission-manager; boundaries; retention of general powers.

Any municipality electing to be governed under the commission-manager form of government shall retain its present boundary except as it may be altered as authorized by statute and shall possess all powers granted by the constitution and statutes of New Mexico to other municipalities, not inconsistent with the provisions of Sections 3-14-1 through 3-14-19 NMSA 1978.

History: 1953 Comp., § 14-13-5, enacted by Laws 1965, ch. 300.

3-14-6. Commission-manager; districts for selection of commissioners; redistricting.

A. The governing body of a municipality organizing under the commission-manager form of government shall district the municipality into five commissioner districts. Each district shall be compact in area and equal in population, as nearly as possible. For all municipalities having a population in excess of ten thousand, a commissioner shall reside in and be elected from each district; provided that the governing body of a municipality having a population of ten thousand or less may provide for single-member districts as provided in this section.

B. The governing body of the municipality may redistrict the municipality whenever redistricting is warranted. Upon petition signed by qualified electors equal in number to the votes cast for the commissioner receiving the greatest number of votes at the last regular municipal election, the governing body of the municipality shall redistrict the municipality.

History: 1953 Comp., § 14-13-6, enacted by Laws 1965, ch. 300; 1985, ch. 203, § 3.

3-14-7. Repealed.

History: 1953 Comp., § 14-13-7, enacted by Laws 1965, ch. 300; repealed by Laws 2018, ch. 79, § 175.

3-14-8. Commissioners; special election; terms.

A. Within ten days after the adoption of the commission-manager form of government, the governing body shall adopt an election resolution calling for the holding

of an election for the purpose of electing five commissioners at the first regular or local or general election following adoption of the resolution. The election shall be conducted in the same manner as are regular local elections pursuant to the terms of the Local Election Act [Chapter 1, Article 22 NMSA 1978]. The commissioners so elected shall determine their terms of office by lot, so that three commissioners shall serve until the next regular local election and two commissioners shall serve until the succeeding regular local election.

B. Their respective successors shall hold office for staggered periods of four years and until their successors are elected and take office as provided in the Local Election Act.

History: 1953 Comp., § 14-13-8, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 111; 2018, ch. 79, § 56.

3-14-9. Vacancies in commission.

If a vacancy occurs in the commission, the remaining elected and appointed commissioners shall, by a majority vote, appoint a qualified elector to fill the vacancy until the next regular local election, at which time a qualified elector shall be elected to fill the remaining unexpired term, if any.

History: 1953 Comp., § 14-13-9, enacted by Laws 1965, ch. 300; 1973, ch. 129, § 2; 1985, ch. 208, § 112; 2018, ch. 79, § 57.

3-14-10. Commission-manager; selection of mayor; duties.

At the first meeting of the new commission after each election, or as soon thereafter as practical, the commissioners shall select one of their number as mayor to act for two years, or until a successor is selected and qualified, unless sooner removed by death, resignation or removal from office. The mayor shall preside at all meetings of the commission and perform other duties, consistent with his office, as imposed by the commission. The mayor has all powers and duties of a commissioner, including the right to vote upon all questions considered by the commission. He is the official head of the municipality for all ceremonial purposes, for the purpose of civil process and for military purposes. During his absence or disability, his duties shall be performed by another member of the commission, appointed by a majority of the commission and designated as mayor pro tem.

History: 1953 Comp., § 14-13-10, enacted by Laws 1965, ch. 300.

3-14-11. Commission meetings; disclosure.

The commission shall meet at least twice each month. Meetings shall be open to the public and the official records of the meetings shall be open to inspection at all times.

History: 1953 Comp., § 14-13-11, enacted by Laws 1965, ch. 300.

3-14-12. Powers vested in commission; duties of commission.

A. All powers of the municipality are vested in the commission. The commission shall:

(1) pass all ordinances and other measures conducive to the welfare of the municipality;

(2) perform all acts required for the general welfare of the municipality; and

(3) in addition to the office of manager, create all offices necessary for the proper carrying on of the work of the municipality.

B. The commission shall appoint a manager and shall hold him responsible for the proper and efficient administration of the municipal government.

History: 1953 Comp., § 14-13-12, enacted by Laws 1965, ch. 300.

3-14-13. Manager; employment; qualifications; salary.

The manager shall be the chief administrative officer. He shall be employed for an indefinite term and until a vacancy is created by death, resignation or removal by the commission. The manager shall be appointed solely on the basis of administrative qualifications and his selection shall not be limited by reason of former residence. The manager shall receive a salary to be fixed by the commission.

History: 1953 Comp., § 14-13-13, enacted by Laws 1965, ch. 300.

3-14-14. Manager; duties; attendance at meetings; budget.

A. The manager shall:

(1) enforce and carry out all ordinances, rules and regulations enacted by the commission;

(2) employ and discharge all persons engaged in the administrative service of the municipality;

(3) prepare and submit an annual budget; and

(4) make recommendations to the commission on all matters concerning the welfare of the municipality.

B. The manager shall have a seat, but no vote, at every meeting of the commission. Except when clearly undesirable or unnecessary, the commission shall request the opinion of the manager on any proposed measure.

History: 1953 Comp., § 14-13-14, enacted by Laws 1965, ch. 300.

3-14-15. Commissioner-manager; departments; directors.

The administration of the affairs of the municipality shall be divided into as many departments as may be deemed desirable by the commission. Each department shall be under the charge of a person employed by the manager.

History: 1953 Comp., § 14-13-15, enacted by Laws 1965, ch. 300.

3-14-16. Commission; manager; recall; election.

A. In any commission-manager municipality, any elective executive or commissioner is subject to a recall election for malfeasance in office, misfeasance in office or a violation of oath of office based upon acts or failures to act occurring during the current term of the official sought to be recalled. Recall of an elective executive or commissioner in a commissioner-manager municipality shall be conducted pursuant to the provisions of the Recall Act [Chapter 1, Article 25 NMSA 1978].

B. If all commissioners are recalled at the same election, the district court shall order an election.

History: 1953 Comp., § 14-13-16, enacted by Laws 1965, ch. 300; 2018, ch. 49, § 1; 2019, ch. 212, § 182.

3-14-17. Commission-manager; referendum; subjects petition; election; effect; repeal of emergency measure.

A. If within thirty days following the adoption of an ordinance or resolution, a petition, signed by the qualified electors in a number more than twenty percent of the average number of voters who voted at the previous four regular municipal elections or more than twenty percent of the number of voters who voted at the previous regular municipal election, whichever is the greater, is presented to the commission asking that the ordinance or resolution in question be submitted to a special election for its adoption or rejection, the ordinance or resolution shall become ineffective upon verification of the petition and the commission shall within ten days of verification adopt a resolution calling for the holding of a special election on the measure within ninety days of the verification of the petition.

B. The ballot shall contain the text of the ordinance or resolution in question. Below the text shall be the phrases:

"For the above measure", and

"Against the above measure",

followed by spaces for marking the ballot with a cross or check or other mark necessary for proper counting of the ballot, in order to cast a vote for the phrase desired. If a majority of the votes cast favor the measure, it shall take effect immediately. If a majority of the votes cast are against the measure, it shall not take effect.

C. If an ordinance or resolution is an emergency measure, it shall go into effect immediately, but it may be repealed by an adverse majority at a referendum election.

History: 1953 Comp., § 14-13-17, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 113.

3-14-18. Commission-manager; initiative; failure of commission to adopt; election.

A. In any commission-manager municipality, upon petition, signed by the qualified electors in a number more than twenty percent of the average number of voters who voted at the previous four regular municipal elections or more than twenty percent of the number of voters who voted at the previous regular municipal election, whichever is the greater, any measure may be proposed to the commission for enactment within thirty days of the date of verification of the petition. If the commission:

(1) fails to act;

(2) acts adversely; or

(3) amends the proposed measure, the commission shall, within ten days of the expiration of the thirty day period, adopt an election resolution calling for the holding of a special election within ninety days of the expiration of the thirty day period for the purpose of submitting the measure to the electorate.

B. The ballot shall contain the proposed measure and the measure as amended, if the commission amends the proposed measure. After each measure there shall be printed the words:

"For", and

"Against",

followed by spaces for marking the ballot with a cross or check or other mark necessary for proper counting of the ballot, in order to cast a vote for the phrase desired.

C. The measure receiving a majority of the votes cast on that measure in its favor is adopted. If each measure receives a majority of votes cast on that measure in its favor, the measure receiving the greatest number of votes cast in its favor is adopted.

History: 1953 Comp., § 14-13-18, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 114.

3-14-19. Abandonment of commission-manager government.

A. Within ten days of the verification of a petition submitted to the municipal clerk and signed by thirty percent of the qualified electors of the municipality, the commission shall adopt an election resolution calling for the holding of a special election to vote on the question of abandoning the commission-manager form of government. The election shall be held in June or July in odd-numbered years or July or August in even-numbered years in accordance with the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978].

B. If a majority of the votes cast at the special election favors abandonment of the commission-manager form of government, the form of government reverts to that form of government existing immediately preceding the adoption of the commission-manager form of government after the election and taking office of the new officers and the commission shall adopt an election resolution calling for the holding of an election to elect new officers, which shall be held at the first regular local or general election following adoption of the resolution.

C. The election shall be held in the same manner as regular local elections are held as provided in the Local Election Act. The mayor and one-half of the members of the governing body shall hold office until the next regular local election and the remaining one-half of the members of the governing body shall hold office until the succeeding regular local election. The terms of the members of the governing body shall be determined by lot after their election.

D. No election shall be held upon the question of abandoning the commission-manager form of government within two years after an election has been held adopting the commission-manager form of government or confirming its continued existence.

History: 1953 Comp., § 14-13-19, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 115; 2018, ch. 79, § 58.

ARTICLE 15
Municipal Charters

3-15-1. Short title.

Sections 3-15-1 through 3-15-16 NMSA 1978 may be cited as the "Municipal Charter Act."

History: 1953 Comp., § 14-14-1, enacted by Laws 1971, ch. 118, § 1.

3-15-2. Qualified electors may adopt charter.

The qualified electors of a municipality who wish to be governed pursuant to Article 10, Section 6 of the constitution of New Mexico may adopt, amend or repeal a charter pursuant to the Municipal Charter Act.

History: 1953 Comp., § 14-14-1.1, enacted by Laws 1971, ch. 118, § 2.

3-15-3. Definitions.

As used in the Municipal Charter Act, "municipality" means any incorporated city, town, village or county, whether incorporated under general act, special act or constitutional provision.

History: 1953 Comp., § 14-14-1.2, enacted by Laws 1971, ch. 118, § 3.

3-15-4. Petition; submission to voters; frequency of elections; withdrawal of signatures.

Upon petition signed by five percent of the qualified electors of the municipality, the presiding officer of the governing body of the municipality shall by proclamation submit to the qualified electors of the municipality the question of adopting a charter for the municipality under the Municipal Charter Act, at a special election to be held at a specified time, and within sixty days after the charter provided for in Section 3-15-5 NMSA 1978 has been prepared and filed with the clerk of the municipality. If the charter is not adopted at the special election, the question of adopting a charter under the Municipal Charter Act shall not be resubmitted to the voters of the municipality for two years thereafter. No elector who has signed the petition shall be permitted to withdraw his name after the petition has been filed with the clerk of the municipality except where his signature has been procured by fraud.

History: 1953 Comp., § 14-14-2, enacted by Laws 1965, ch. 300; 1971, ch. 118, § 4.

3-15-5. Charter commission; appointment; number; qualifications; duties.

Within five days after the filing of the petition, the presiding officer of the governing body shall appoint a charter commission or the governing body of a municipality may appoint a charter commission upon its own initiative at any time. The charter commission shall consist of not less than seven members, no more than a simple

majority shall belong to the same political party. The charter commission shall prepare a charter providing for the government of the municipality and shall complete the proposed charter and file it with the clerk of the municipality within one hundred eighty days from the date of its appointment. The commission shall select its own chairman.

History: 1953 Comp., § 14-14-3, enacted by Laws 1965, ch. 300; 1971, ch. 118, § 5.

3-15-6. Gratuitous service by committee; expenses.

The electors shall serve without pay and may expend money for such items as clerical help and stationery in the amount allowed by the municipality.

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

3-15-7. Charter; provisions; restrictions; prior legislation.

The charter may provide for any system or form of government that may be deemed expedient and beneficial to the people of the municipality, including the manner of appointment or election of its officers, the recall of the officers and the petition and referendum of any ordinance, resolution or action of the municipality; provided, that the charter shall not be inconsistent with the constitution of New Mexico, shall not authorize the levy of any tax not specifically authorized by the laws of the state and shall not authorize the expenditure of public funds for other than public purposes. All bylaws, ordinances and resolutions lawfully passed and in force in the municipality before the adoption of the charter shall remain in force until amended or repealed.

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

3-15-8. Boundaries; prior rights and property; saving clause.

The territorial limits of the municipality shall remain the same as under its former organization until changed in accordance with law, and all rights and property of every description which were vested in any municipality under its former organization shall remain vested in the municipality under the organization herein contemplated and provided for, and no contract or franchise, and no right or liability, either in favor of or against the municipality, and no suit or prosecution of any kind shall be affected by any such reorganization.

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

3-15-9. Special election on adoption of charter.

Within five days after the filing with the clerk of the municipality of the charter provided for by Sections 3-15-1 through 3-15-16 NMSA 1978, and the charter being approved by a majority of the members elected to the governing body of the

municipality at a regular or special meeting, the presiding officer of the governing body of the municipality shall by proclamation call a special election for the purpose of submitting to the electors of the municipality the question of whether or not the municipality shall adopt the charter prepared by the charter committee. The special election may be called and held at the same time and in conjunction with the regular election for municipal officers. Should the charter filed with the clerk of the municipality fail to be approved by the governing body of the municipality, the charter shall be returned to the chairman of the charter committee together with a letter of transmittal stating the reason why the charter has been rejected by the governing body. The charter committee shall revise the charter in accordance with their instructions in the letter of transmittal and shall refile the same with the clerk of the municipality within sixty days after the chairman of the charter committee shall have had returned to him the rejected charter. If the charter is then approved, the election proclamation shall be issued, or if not approved, the charter shall be returned by the governing body to the charter committee. This procedure shall continue until a charter is presented and approved by the governing body of the municipality.

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

3-15-10. Qualifications of voters; ballots; conduct of election; effect of adoption.

All qualified electors residing within the municipality shall be qualified to vote at the special election held under the Municipal Charter Act, and the vote shall be by separate ballots, one of which shall be:

"In favor of adoption of charter [ ]"; and the other:

"Against adoption of charter [ ]".

The special election shall be conducted in accordance with the Local Election Act [Chapter 1, Article 22 NMSA 1978] and if a majority of all the votes cast shall favor the adoption of the charter, the charter shall take effect immediately insofar as necessary to authorize the election of officers, but shall not take effect otherwise until such date as may be specified in the charter, which date shall not be less than sixty days after the special election. After the date fixed by the charter, the municipality shall be deemed reorganized under the provisions of the charter, and the powers and duties of all officers elected or appointed under the former laws shall cease.

History: 1953 Comp., § 14-14-8, enacted by Laws 1965, ch. 300; 2018, ch. 79, § 59.

3-15-11. First election of officers; time; law governing.

In case the charter is adopted pursuant to Section 3-15-10 NMSA 1978, it shall be the duty of the presiding officer of the governing body of the municipality to issue a proclamation calling a special election for the election of such elective officers as may

be provided for in the charter. The election shall be at least ten days before the date specified in the charter for it to go into effect, and the election shall be held in accordance with the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978] and the charter.

History: 1953 Comp., § 14-14-9, enacted by Laws 1965, ch. 300; 2018, ch. 79, § 60.

3-15-12. Filing and recording certified copies of charter.

In case of adoption of a charter under the provisions of Sections 3-15-1 through 3-15-16 NMSA 1978, the presiding officer of the governing body of the municipality shall transmit to the secretary of state a duly enrolled and engrossed copy of the charter, which shall be authenticated by the signature of the presiding officer of the governing body of the municipality, and the certificate of the clerk of the municipality and the corporate seal of the municipality, and thereupon the secretary of state shall cause the charter to be filed and recorded in his office. A like copy of the charter, authenticated and certified as specified in this section, shall be recorded in the office of the county clerk.

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

3-15-13. Charter controls when statute is inconsistent; statutory interpretation.

A. A municipality organized under the provisions of the Municipal Charter Act shall be governed by the provisions of the charter adopted pursuant to that act, and no law relating to municipalities inconsistent with the provisions of the charter shall apply to any such municipality.

B. A municipality which adopts a charter may exercise all legislative powers and perform all functions not expressly denied charter municipalities by general law or charter. A liberal construction shall be given to the powers of municipalities to provide for maximum local self-government.

History: 1953 Comp., § 14-14-11, enacted by Laws 1965, ch. 300; 1984, ch. 65, § 173.

3-15-14. Petitions; qualifications of signers; contents.

Petitions provided for in Sections 3-15-1 through 3-15-16 NMSA 1978, shall be signed only by qualified electors of the municipality, and each petition shall contain in addition to the names of the petitioners, the street and house number or place in which the petitioner resides.

History: 1953 Comp., § 14-14-12, enacted by Laws 1965, ch. 300.

3-15-15. Publication of proposed charter.

Whenever a proclamation calling for a special election as provided for by Section 3-15-9 NMSA 1978, shall be issued, a copy of the proposed charter shall be published once each week for four consecutive weeks, and the presiding officer of the governing body of the municipality shall cause to be printed for distribution not less than one thousand copies of the proposed charter, the distribution to be not less than three weeks before the date set for the election.

History: 1953 Comp., § 14-14-13, enacted by Laws 1965, ch. 300.

3-15-16. Amendment or repeal of charter; alternate methods.

The charter of any municipality adopted under the provisions of Article 10, Section 6 of the constitution of New Mexico, by law of the territorial legislature of New Mexico or under the provisions of the Municipal Charter Act may be amended or repealed either by a proposal submitted by the governing body of the municipality to the qualified electors or by petition as provided for in Section 3-15-4 NMSA 1978 for the adoption of an original charter at a general or special election and ratified by a majority of the qualified electors voting on the amendment or repeal.

History: 1953 Comp., § 14-14-14, enacted by Laws 1965, ch. 300; 1971, ch 118, § 6; 1990, ch. 63, § 1.

ARTICLE 16
Combined Municipal Organizations

3-16-1. Combined city-county municipal corporations; definitions.

As used in Sections 3-16-1 through 3-16-18 NMSA 1978:

A. "combined municipal organization" means the combined city and county municipal corporation, whether prior to or subsequent to the completed consolidation, including the area within the exterior boundaries of the municipality and county;

B. "city" means the municipality involved in the city and county consolidation, including the area within the boundary of the city;

C. "county" means the county government including the area within the exterior boundaries of the county involved in the city and county consolidation, and outside the boundary of the city; and

D. "election units" includes the area of the city and county, respectively.

History: 1953 Comp., § 14-15-1, enacted by Laws 1965, ch. 300.

3-16-2. Combined organization; charter committee; proposed charter; election; ballots.

When the total population of any combined municipal organization shall be at least fifty thousand inhabitants, a city-county government may be organized as hereinafter provided. The legislative authority of any city within a combined municipal organization by ordinance, and the county commissioners of a county within the same combined municipal organization, by resolution, may express their desire that the question of the formation of a combined city and county municipal corporation shall be submitted to the voters of the city and the county outside the city, in accordance with Article 10, Section 4 of the constitution of New Mexico, at a special election called and held as hereinafter provided. In the event approval is obtained by ordinance in the city and by resolution of the county commissioners, then the governing body of any city may appoint seven members who are residents of the city, and the county commissioners may appoint seven members who are residents of the county, making a total of fourteen members, which will form a city and county charter committee. Said charter committee shall meet to draft a charter not inconsistent with the constitution and laws of New Mexico pertaining to city charters. The proposed charter must be approved by a majority of the fourteen appointed members of the charter committee. In the event said proposed charter is approved by the committee, it shall be submitted separately to the county commissioners and governing body of the city, and must be approved by a majority vote of each of these bodies. In the event said bodies approve the proposed charter, then, within sixty days, the county commissioners shall call a special election to be held in the combined municipal organization for the purpose of voting upon the question of city-county consolidation and upon the proposed charter therefor. The special election shall be called, conducted and canvassed in the same manner as general elections for the election of county officers are called, conducted and canvassed; provided, that the vote of electors in voting divisions in each election unit upon each proposition shall be separately counted, canvassed and kept. The ballot for such special election shall be substantially as follows:

"City and County Consolidation: Shall the city of _____ (here insert name of city) be consolidated with the remainder of the county of _____ (here insert name of county in which the city is located) as a political subdivision and become a combined city and county government? YES ___ NO ___

Shall the City and County of _____ (here insert name of city and county) adopt the proposed city and county charter? YES ___ NO ___."

A copy of the proposed charter shall be posted at or near the front entrance of each voting division in plain view of the electors desiring to vote thereon. Each registered voter of the city and county shall be entitled to vote in the precinct or election district in which he is registered, and the propositions shall be submitted in such manner that the voters may vote for or against them. If a majority of the voters voting on the propositions in the city and a majority of the voters voting on the propositions in the county outside the city vote in favor of the propositions submitted, a city and county government for the

combined municipal organization shall be established in accordance with Sections 3-16-1 through 3-16-18 NMSA 1978. If a majority vote of either election unit is against the proposition of consolidation, the proposition shall not again be submitted to the voters of the combined municipal organization within two years of the date of such election. The cost of the election and preparing the proposed city and county charter shall be apportioned between, and paid by, the city and county in proportion to the number of votes cast on the proposition inside the city and the number of votes cast in the county outside the city.

History: 1953 Comp., § 14-15-2, enacted by Laws 1965, ch. 300.

3-16-3. Approval of charter at election; legislative body for combined organization.

If the propositions submitted to the electors shall carry in both election units, and if the charter shall be approved by the majority of electors voting on the question, it may become the organic law of the combined city and county government and shall be effective as hereinafter provided. If the charter is rejected, in the event approval is given for the consolidation, the governing body of the city and county shall, within sixty days thereafter, provide for a new charter committee as hereinbefore set forth for the purpose of framing a new proposed charter which shall be done and submitted to the voters in like manner, and this procedure shall be followed until a proposed charter for such combined city and county government is approved by the electors. The charter, when adopted, may be revised or amended as provided in the charter or bylaw for such charters. The governing body of the city and the board of county commissioners shall be the first legislative authority of the combined municipal organization and they shall continue in office until the terms for which each was elected expires, and no successor shall be elected or appointed under the combined municipal organization charter until the number of said body falls below the number provided in the city and county charter.

History: 1953 Comp., § 14-15-3, enacted by Laws 1965, ch. 300.

3-16-4. Charter; contents.

The charter shall designate the number and terms of members of the legislative authority and the name of the combined municipal corporation; the elective officers, the terms of such officers, manner of election and their powers and duties, and may provide for any form of local government for the city and county not inconsistent with the constitution and laws of New Mexico.

History: 1953 Comp., § 14-15-4, enacted by Laws 1965, ch. 300.

3-16-5. Date for commencing operation of new organization; disapproval of charter; effect.

In the event a combined municipal organization is approved by a majority of the electors in each election unit and a proposed charter therefor has likewise been approved by a majority of the electors in each election unit, the city government and the county government and all offices thereof, except as provided herein, shall terminate, and the new combined municipal organization government shall begin operation in lieu thereof on the first day of July following the adoption of a charter for the combined municipal organization by the governing authority of the combined municipal organization. If approval of the proposed charter is given by a vote of the majority of the electors voting thereon, the governing authority of the combined municipal organization may adopt the same by a majority vote. In the event the electors of either election unit shall disapprove the proposed charter submitted to them for approval for two consecutive elections upon such proposition, subsequent to the first election, then the consolidation, although previously approved, shall not become effective but shall be void, and the proposition for consolidation shall not be again submitted to a vote of the electors in the combined municipal organization for a period of two years after the last election on the question of approval of the charter.

History: 1953 Comp., § 14-15-5, enacted by Laws 1965, ch. 300.

3-16-6. Powers of combined organization.

Upon the date the new combined municipal organization begins operation as provided herein, and thereafter, the organization shall be a municipal corporation of New Mexico and thereupon and thereafter shall exercise all the powers vested in it by the charter adopted for its government and all powers and duties vested in cities by the constitution and laws of New Mexico, and also all powers vested by law in counties, except as provided in the charter adopted and in Article 10, Section 4 of the constitution of New Mexico.

History: 1953 Comp., § 14-15-6, enacted by Laws 1965, ch. 300.

3-16-7. County officers at time of city and county consolidation; duties.

In the event of a city and county consolidation, any county officer holding office at the time the charter becomes effective shall continue in office for his unexpired term and may exercise such functions or duties for the combined municipal organization as the legislative authority thereof determines, and after expiration of his term the county office shall terminate, except as provided herein.

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

3-16-8. Justices of the peace [magistrates] at time of city and county consolidation; duties; vacancies.

Unless otherwise provided for in the combined municipal organization charter, justices of the peace [magistrates] who have been elected and are holding office within the boundaries of the combined municipal organization at the time such government becomes operative, shall continue to hold office as justices of the peace [magistrates] for such combined municipal organization within their respective precincts for the term for which they have been elected, and their successors shall be elected at the time and in the manner and for the term provided by law for justices of the peace [magistrates]. Vacancies in office shall be filled by the governing body of the combined municipal organization for the term as provided for justices of the peace [magistrates] appointed to fill vacancies. Justices of the peace [magistrates] in the combined municipal organization shall exercise the same powers and jurisdiction as is provided by law for justices of the peace [magistrates].

History: 1953 Comp., § 14-15-8, enacted by Laws 1965, ch. 300.

3-16-9. Municipal judges to be provided for in charter.

If there is a city and county consolidation, there shall be municipal judges who shall exercise the powers and jurisdiction vested by the combined municipal organization charter in municipal courts. They shall be elected and their vacancies filled in the manner provided for in the charter.

History: 1953 Comp., § 14-15-9, enacted by Laws 1965, ch. 300.

3-16-10. Pending cases in courts not to be affected by consolidation.

If there is a city and county consolidation, any civil or criminal case filed or pending, in any proper court at the time the combined municipal organization becomes effective, shall not be affected by the consolidation but shall continue and may be tried, dismissed or disposed of in the same manner as if the consolidation had not been made.

History: 1953 Comp., § 14-15-10, enacted by Laws 1965, ch. 300.

3-16-11. Probate judges and district judges at time of consolidation; effect.

A. The probate judge of the county when the consolidation becomes effective shall become the probate judge of the combined municipal organization and shall have the same powers, jurisdiction and duties as provided by law for probate judges of a county, and shall hold office for the remainder of the term for which he was elected. His successor shall be elected at the time and in the manner and for the term provided by law for such office.

B. The district judge or judges acting within and for the county, after the consolidation is complete and operative, shall be district judges within and for the combined municipal organization with the same jurisdiction, powers and duties as if no consolidation had been made.

History: 1953 Comp., § 14-15-11, enacted by Laws 1965, ch. 300.

3-16-12. Real and personal property taxes; assessment, levy and collection.

If there is a city and county consolidation all real and personal property within the combined municipal organization shall be assessed, taxed and taxes levied and collected at the time and in the manner provided by law.

History: 1953 Comp., § 14-15-12, enacted by Laws 1965, ch. 300.

3-16-13. Books and records of combined organization; filing of instruments.

A. If there is a city and county consolidation, and on and after the date the combined municipal organization government becomes operative, adequate books and records shall be provided in the municipal corporation for recording or filing instruments in the municipal corporation, as will be more specifically provided in the combined municipal organization charter. All books and records provided and kept by a county officer prior to the consolidation of the city and county shall continue to be made available to the public by the combined municipal organization and copies thereof furnished as now provided by law by the combined municipal organization official who, under the charter, is required to keep and maintain the records, with the same force and effect as if the consolidation had not occurred.

B. Instruments required or authorized by law to be filed or recorded with county clerks in order to constitute public notice, shall be filed with the clerk of the combined municipal organization or officer designated in the charter for such purposes, and when so filed or recorded shall have the same force and effect and constitute public notice in the same manner and to the same extent as if filed with county clerks of a county.

History: 1953 Comp., § 14-15-13, enacted by Laws 1965, ch. 300.

3-16-14. Assets and liabilities of city and county vest in combined organization; exceptions.

If there is a city and county consolidation all property, assets, credits, causes of action or other rights or interests belonging to the city or county at the time the combined municipal organization government becomes operative shall belong to the combined municipal organization, and, if necessary, the combined municipal

organization may demand, sue for, recover and enforce the rights in appropriate courts in the name of the combined municipal organization, and all debts and obligations of the city or county existing at the time the combined municipal organization government becomes operative shall become the debt and obligation of the combined municipal organization and shall be assumed and paid by it as and when due; provided, that all bonded indebtedness of the city or county shall remain the separate debt of the city or county, respectively, and the city or county shall respectively retain its separate identity for debt service purposes until the debts of each legal entity have been fully paid. Tax levies shall continue to be made in the city and county for the required debt service. Special assessments and revenue bonds of the city or county shall likewise continue to be paid only as provided originally for the payment thereof and the city or county shall maintain its separate identity for the purpose of the debt service. All budget and cash balances in all funds of the city and county, except interest and sinking funds for debt service, shall likewise vest in and belong to the combined municipal organization and become available for its use in paying current operating expenses.

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

3-16-15. Continuation of prosecutions, ordinances, rights, privileges and franchises.

If there is a city and county consolidation all rights, franchises and privileges granted by the city or county and all ordinances of the city effective at the date the combined municipal organization government becomes operative shall continue in full force and effect throughout the combined municipal organization until expiration, repeal, termination, amendment or modification, as authorized by law, and all prosecutions not already commenced for offenses committed before or after the county-city government becomes operative may be made in the name of the combined municipal organization in the proper court.

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

3-16-16. City and county property vests in combined organization.

If there is a city and county consolidation, all property, real, personal or mixed, belonging to the city or county shall vest in and become the property of the combined municipal organization government immediately when the combined municipal organization government becomes operative.

History: 1953 Comp., § 14-15-16, enacted by Laws 1965, ch. 300.

3-16-17. Substitution of combined organization in pending court proceedings.

If any action, suit or proceeding is pending in any court for or against the city or county at the time the combined municipal organization becomes operative, the combined municipal organization shall be substituted as plaintiff or defendant, as the case may be, in such action, suit or proceeding, and the same shall proceed as if the claim, right, debt or demand upon which the action, suit or proceeding was founded, had originally existed in favor of or against the combined municipal organization.

History: 1953 Comp., § 14-15-17, enacted by Laws 1965, ch. 300.

3-16-18. Collection of taxes; budgets; powers and duties of officers of combined organization.

A. The county treasurer shall proceed to collect all taxes assessed against persons or property within the combined municipal organization prior to the effective date of the consolidation, in the same manner as if no consolidation had occurred. When the combined municipal organization becomes operative, all county officers shall deliver to the proper officer of the combined municipal organization designated in the charter to receive the same, all money, property, books and records of the respective offices.

B. After the combined municipal organization becomes operative, budgets for its government and operation shall be made in the same manner, subject to the same limitations as provided by law for budgets of cities and counties. From said date property shall be assessed for taxes and taxes levied and collected thereon by the combined municipal organization in the same manner and subject to the same limitations as provided by law for assessment, levy and collection of taxes in cities and counties including the procedure for collection of delinquent taxes.

C. After the combined municipal organization becomes operative, each officer of the organization designated by the charter to assume the powers and duties in whole or in part of the county officer or city officer whom he supersedes, shall have all of the rights, powers and duties respectively imposed by law upon the superseded county officer or city officer, and the exercise and performance of the functions when done shall be valid and of the same force and effect as if done by the officer superseded.

History: 1953 Comp., § 14-15-18, enacted by Laws 1965, ch. 300.

ARTICLE 17
Ordinances

3-17-1. Ordinances; purposes.

The governing body of a municipality may adopt ordinances or resolutions not inconsistent with the laws of New Mexico for the purpose of:

A. effecting or discharging the powers and duties conferred by law upon the municipality;

B. providing for the safety, preserving the health, promoting the prosperity and improving the morals, order, comfort and convenience of the municipality and its inhabitants; and

C. enforcing obedience to the ordinances by prosecution in the municipal court and metropolitan courts and upon conviction the imposition of:

(1) except for those violations of ordinances described in Paragraphs (2) and (3) of this subsection, a fine of not more than five hundred dollars ($500) or imprisonment for not more than ninety days or both;

(2) for a violation of an ordinance prohibiting driving a motor vehicle while under the influence of intoxicating liquor or drugs, a fine of not more than one thousand dollars ($1,000) or imprisonment for not more than three hundred sixty-four days or both; and

(3) for violations of an industrial user wastewater pretreatment ordinance as required by the United States environmental protection agency, a fine of not more than one thousand dollars ($1,000) a day for each violation.

History: 1953 Comp., § 14-16-1, enacted by Laws 1965, ch. 300; 1967, ch. 146, § 5; 1987, ch. 92, § 1; 1989, ch. 234, § 1; 1990, ch. 100, § 1; 1990, ch. 113, § 1; 1993, ch. 66, § 1.

3-17-2. Ordinances; style.

The enacting clause of a municipal ordinance shall be:

"Be it ordained by the governing body of the ..... (here insert name of municipality)."

History: 1953 Comp., § 14-16-2, enacted by Laws 1965, ch. 300.

3-17-3. Notice by publication of certain proposed ordinances.

A. Notice by publication of the title and subject matter of any ordinance proposed for adoption by the governing body of any municipality must take place at least two weeks prior to consideration of final action upon the ordinance in open session of the governing body, except that this section shall not apply to ordinances dealing with an emergency declared by the chairman of the governing body or the mayor, as the case may be, to be an immediate danger to the public health, safety and welfare of the municipality, or to ordinances the subject matter of which is amending a city zoning map, provided the amendment to such zoning map has been considered by, and

recommended to, the commission by a planning commission with jurisdiction in the matter. It is sufficient defense to any suit or prosecution to show that no notice by publication was made.

B. Notice of the proposed ordinance shall be published one time as a legal advertisement in a newspaper of general circulation in the municipality.

C. Copies of a proposed ordinance shall be available to interested persons during normal and regular business hours of the municipal clerk upon request and payment of a reasonable charge beginning with the date of publication and continuing to the date of consideration by the municipality's elected commission.

History: 1953 Comp., § 14-16-2.1, enacted by Laws 1973, ch. 85, § 1.

3-17-4. Ordinances; roll call vote; adoption.

A. If a majority of all the members of the governing body vote in favor of adopting the ordinance or resolution, it is adopted. The municipal clerk shall record in the minutes book the vote of each member of the governing body on each ordinance or resolution.

B. Within three days after the adoption of an ordinance or resolution, the mayor shall validate the ordinance or resolution by endorsing "Approved" upon the ordinance or resolution and signing the ordinance or resolution.

History: 1953 Comp., § 14-16-3, enacted by Laws 1965, ch. 300.

3-17-5. Proof of ordinance; authentication; publication; effective date; codification.

A. An ordinance shall be recorded in a book kept for that purpose, shall be authenticated by the signature of the presiding officer of the governing body and the municipal clerk and shall bear the seal of the municipality. The ordinance shall be published one time either in its entirety or by title and a general summary of the subject matter contained in the ordinance, whichever the governing body elects to do.

B. An ordinance shall not become effective until five days after it has been published, unless otherwise provided by law.

C. If the ordinances of the municipality are codified or codified and revised, it is not necessary to publish the entire codification or codification and revision. An ordinance, referring to the codification or codification and revision by title only and specifying one place in the municipality where the codification or codification and revision may be inspected during the normal and regular business hours of the municipal clerk, may be published instead of the codification or codification and revision.

D. Any court shall accept the following as prima facie evidence that an ordinance has been published:

(1) the book in which the ordinances of the municipality are recorded;

(2) any copy of an ordinance certified by the municipal clerk or his duly authorized deputy;

(3) any ordinance published in book or pamphlet form under the authority of the municipality; or

(4) any codification of ordinances prepared under the authority of the municipality. It is sufficient defense to any suit or prosecution to show that no publication was made.

History: 1953 Comp., § 14-16-4, enacted by Laws 1965, ch. 300.

3-17-6. Codes adopted and enforced by reference; availability.

A. A municipality may adopt by ordinance the conditions, provisions, limitations and terms of:

(1) an administrative code;

(2) an air pollution code;

(3) a building code that includes provisions for plan review, permitting and inspections for general, electrical, mechanical and plumbing construction;

(4) an elevator code;

(5) a fire prevention code;

(6) a health code;

(7) [a] housing code;

(8) a traffic code; or

(9) any other code not in conflict with the laws of New Mexico or valid regulations issued by any board or agency of New Mexico authorized to issue regulations.

Any code so adopted shall provide for minimum requirements at least equal to the state requirements on the same subject.

B. An ordinance adopting any such code need only refer to the proper title and date of the code, without setting forth the code's conditions, provisions, limitations and terms, and may include any exception or deletion to the code by setting forth the exception or deletion to the code. The ordinance shall further specify at least one place within the municipality where the code, so adopted, is available for inspection during the normal and regular business hours of the municipal clerk. A copy of the code shall be available upon request and payment of a reasonable charge.

C. Any amendment to such a code may be adopted in the same manner as other ordinances are adopted.

History: 1953 Comp., § 14-16-5, enacted by Laws 1965, ch. 300; 2007, ch. 132, § 1.

3-17-7. Water conservation and drought management plans.

A municipality shall consider ordinances and codes to encourage water conservation and drought management planning pursuant to the provisions of Section 3 [72-14-3.2 NMSA 1978] of this act.

History: Laws 2003, ch. 138, § 1.

ARTICLE 18
Powers of Municipalities

3-18-1. General powers; body politic and corporate powers.

A municipality is a body politic and corporate under the name and form of government selected by its qualified electors. A municipality may:

A. sue or be sued;

B. enter into contracts or leases;

C. acquire and hold property, both real and personal;

D. have a common seal which may be altered at pleasure;

E. exercise such other privileges that are incident to corporations of like character or degree that are not inconsistent with the laws of New Mexico;

F. protect generally the property of its municipality and its inhabitants;

G. preserve peace and order within the municipality; and

H. establish rates for services provided by municipal utilities and revenue-producing projects, including amounts which the governing body determines to be reasonable and consistent with amounts received by private enterprise in the operation of similar facilities.

History: 1953 Comp., § 14-17-1, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 2; 1972, ch. 81, § 2.

3-18-2. Prohibition on municipal taxing power.

Unless otherwise provided by law, no municipality may impose:

A. an income tax;

B. a tax on property measured on an ad valorem, per unit or other basis; or

C. any excise tax including but not limited to:

(1) sales taxes;

(2) gross receipts; and

(3) excise taxes on any incident relating to:

(a) tobacco;

(b) liquor;

(c) motor fuels; and

(d) motor vehicles.

D. However, any municipality may impose excise taxes of the sales, gross receipts or any other type on specific products and services, other than those enumerated in Paragraph (3) of Subsection C of this section, if the products and services taxed are each named specifically in the ordinance imposing the tax on them and if the ordinance is approved by a majority vote in the municipality.

E. Subsections C and D of this section shall not be construed to apply to or otherwise affect any occupation tax imposed prior to or after the effective date of this act under Sections 3-38-1 through 3-38-12 NMSA 1978 [3-38-1 to 3-38-6 NMSA 1978], as those sections may be amended from time to time; provided, the provisions of this subsection shall not apply to the sale of motor vehicles.

History: 1953 Comp., § 72-4-1.1, enacted by Laws 1972, ch. 26, § 1; recompiled as 1953 Comp., § 14-17-1.1, by Laws 1973, ch. 258, § 154; 1980, ch. 101, § 1.

3-18-3. Animals.

A. A municipality may:

(1) prohibit cruelty to animals;

(2) regulate, restrain and prohibit the running at large of any animal within the boundary of the municipality; and

(3) provide by ordinance for the impounding and disposition of animals found running at large. Prior to the time set for disposing of the animal as provided in the ordinance, the owner may regain possession of the animal by paying the poundmaster all costs incurred in connection with impounding the animal.

B. Dogs shall be further regulated as provided in Sections 47-1-2 through 47-1-8 New Mexico Statutes Annotated, 1953 Compilation.

C. A municipality may, by ordinance, provide for the animal control services enumerated in this section to be performed by a contractor and may enter into a contract for the services.

History: 1953 Comp., § 14-17-2, enacted by Laws 1965, ch. 300; 1971, ch. 171, § 1.

3-18-4. Buildings; construct, purchase, rehabilitate, care for.

A municipality may construct, purchase, rehabilitate, care for and adopt rules and regulations for the management of public buildings.

History: 1953 Comp., § 14-17-3, enacted by Laws 1965, ch. 300.

3-18-5. Dangerous buildings or debris; removal; notice; right of municipality to remove; lien.

A. Whenever any building or structure is ruined, damaged and dilapidated, or any premise is covered with ruins, rubbish, wreckage or debris, the governing body of a municipality may by resolution find that the ruined, damaged and dilapidated building, structure or premise is a menace to the public comfort, health, peace or safety and require the removal from the municipality of the building, structure, ruins, rubbish, wreckage or debris.

B. A copy of the resolution shall be served on the owner, occupant or agent in charge of the building, structure or premise. If the owner, as shown by the real estate records of the county clerk, occupant or agent in charge of the building, structure or premise cannot be served within the municipality, a copy of the resolution shall be

posted on the building, structure or premise and a copy of the resolution shall be published one time.

C. Within ten days of the receipt of a copy of the resolution or of the posting and publishing of a copy of the resolution, the owner, occupant or agent in charge of the building, structure or premise shall commence removing the building, structure, ruin, rubbish, wreckage or debris, or file a written objection with the municipal clerk asking for a hearing before the governing body of the municipality.

D. If a written objection is filed as required in this section, the governing body shall:

(1) fix a date for a hearing on its resolution and the objection;

(2) consider all evidence for and against the removal resolution at the hearing; and

(3) determine if its resolution should be enforced or rescinded.

E. Any person aggrieved by the determination of the governing body may appeal to the district court by:

(1) giving notice of appeal to the governing body within five days after the determination made by the governing body; and

(2) filing a petition in the district court within twenty days after the determination made by the governing body. The district court shall hear the matter de novo and enter judgment in accordance with its findings.

F. If the owner, occupant or agent in charge of the building, structure or premise fails to commence removing the building, structure, ruins, rubbish, wreckage or debris:

(1) within ten days of being served a copy of the resolution or of the posting and publishing of the resolution; or

(2) within five days of the determination by the governing body that the resolution shall be enforced; or

(3) after the district court enters judgment sustaining the determination of the governing body, the municipality may remove the building, structure, ruins, rubbish, wreckage or debris at the cost and expense of the owner. The reasonable cost of the removal shall constitute a lien against the building, structure, ruin, rubbish, wreckage or debris so removed and against the lot or parcel of land from which it was removed. The lien shall be foreclosed in the manner provided in Sections 3-36-1 through 3-36-6 NMSA 1978.

G. The municipality may pay for the costs of removal of any condemned building, structure, wreckage, rubbish or debris by granting to the person removing such materials, the legal title to all salvageable materials in lieu of all other compensation.

H. Any person or firm removing any condemned building, structure, wreckage, rubbish or debris shall leave the premises from which the material has been removed in a clean, level and safe condition, suitable for further occupancy or construction and with all excavations filled.

History: 1953 Comp., § 14-17-4, enacted by Laws 1965, ch. 300; 1967, ch. 123, § 1; 1977, ch. 126, § 1.

3-18-6. Building construction and restrictions; establishing fire zones.

A. Within its planning and platting jurisdiction, a municipality may by ordinance:

(1) prescribe standards for constructing and altering buildings;

(2) prescribe the distance a building may be built from the street line;

(3) regulate the construction of partition fences and party walls; and

(4) have exclusive enforcement over permits issued by the municipality when enforced by an approved inspector.

B. A municipality may establish fire zones and prohibit within these zones the construction or addition of structures which do not meet the fire resistance ratings or standards established for each zone.

C. The provisions of Subsection A of this section shall not apply:

(1) to construction specifically exempted by the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978] or regulations adopted pursuant thereto; or

(2) to territory outside the boundary of a municipality if a county by ordinance prescribes standards for constructing and altering buildings.

History: 1953 Comp., § 14-17-5, enacted by Laws 1965, ch. 300; 1971, ch. 256, § 1.

3-18-7. Additional county and municipal powers; flood and mudslide hazard areas; flood plain permits; land use control; jurisdiction; agreement.

A. For the purpose of minimizing or eliminating damage from floods or mudslides in federal emergency management agency and locally designated flood-prone areas and for the purpose of promoting health, safety and the general welfare, a county or municipality with identified flood or mudslide hazard areas shall by ordinance:

(1) designate and regulate flood plain areas having special flood or mudslide hazards;

(2) prescribe standards for constructing, altering, installing or repairing buildings and other improvements under a permit system within a designated flood or mudslide hazard area;

(3) require review by the local flood plain manager for development within a designated flood or mudslide hazard area; provided that final decisions are approved by the local governing body;

(4) review subdivision proposals and other new developments within a designated flood or mudslide hazard area to ensure that:

(a) all such proposals are consistent with the need to minimize flood damage;

(b) all public utilities and facilities such as sewer, gas, electrical and water systems are designed to minimize or eliminate flood damage; and

(c) adequate drainage is provided so as to reduce exposure to flood hazards;

(5) require new or replacement water supply systems or sanitary sewage systems within a designated flood or mudslide hazard area to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding; and

(6) designate and regulate floodways for the passage of flood waters.

B. A flood plain ordinance adopted pursuant to this section shall substantially conform to the minimum standards prescribed by the federal insurance administration, regulation 1910 issued pursuant to Subsection 7(d), 79 Stat. 670, Section 1361, 82 Stat. 587 and 82 Stat. 575, all as amended.

C. A county or municipality that enacts a flood plain ordinance shall designate a person, certified pursuant to the state-certified flood plain manager program, as the flood plain manager to administer the flood plain ordinance.

D. A county or municipality that has areas designated by the federal emergency management agency and the county or municipality as flood-prone shall participate in the national flood insurance program.

E. A county or municipality shall have exclusive jurisdiction over flood plain permits issued under its respective flood plain ordinance in accordance with this section and so long as all structures built in flood plains are subject to inspection and approval pursuant to the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978]. Notwithstanding Section 3-18-6 NMSA 1978, when a municipality adopts a flood plain ordinance pursuant to Paragraph (2) of Subsection A of this section, the municipality's jurisdiction under the flood plain ordinance may take precedence over a respective county flood plain ordinance within the municipality's boundary and within the municipality's subdividing and platting jurisdiction.

F. A county or municipality shall designate flood plain areas having special flood or mudslide hazards in substantial conformity with areas identified as flood- or mudslide-prone by the federal insurance administration pursuant to the national flood insurance program and may designate areas as flood- or mudslide-prone that may not be so identified by the federal insurance administration.

G. A municipality or county adopting a flood plain ordinance pursuant to this section may enter into reciprocal agreements with any agency of the state, other political subdivisions or the federal government in order to effectively carry out the provisions of this section.

H. The homeland security and emergency management department is designated as the state coordinating agency for the national flood insurance program and may assist counties or municipalities when requested by a county or municipality to provide technical advice and assistance.

History: 1953 Comp., § 14-17-5.1, enacted by Laws 1975, ch. 14, § 1; 2001, ch. 11, § 1; 2003, ch. 310, § 1; 2009, ch. 250, § 1.

3-18-8. Cemeteries.

A municipality may:

A. cause any cemetery to be removed;

B. prohibit the establishment of a cemetery within one mile of the municipal boundary; and

C. regulate cemeteries within the planning and platting jurisdiction of the municipality.

History: 1953 Comp., § 14-17-6, enacted by Laws 1965, ch. 300.

3-18-9. Census.

A. A municipality may provide for the taking of a census within the municipal boundary but no census shall be taken by the municipality more than once between the years prescribed by law for the census to be taken by the United States of America.

B. Any census taken under the authority of the municipality shall be verified by oath of the person taking the census. The census shall be approved by resolution of the governing body. One copy of the census shall be filed with the clerk of the municipality and one copy shall be filed with the county clerk.

History: 1953 Comp., § 14-17-7, enacted by Laws 1965, ch. 300.

3-18-10. Power of eminent domain; purposes; proceedings.

A. Both within the municipal boundary and for a distance not extending beyond the planning and platting jurisdiction of the municipal boundary, a municipality has the power and right of condemnation of private property for public use for the purpose of:

(1) laying out, opening and widening streets, alleys and highways or their approaches; or

(2) constructing, maintaining and operating:

(a) storm drains; or

(b) garbage and refuse disposal areas and plants.

B. A municipality may acquire by eminent domain any property within the municipality:

(1) for park purposes;

(2) to establish cemeteries or mausoleums or to acquire existing cemeteries or mausoleums; or

(3) for the purpose of correcting obsolete or impractical planning and platting of subdivisions. For the purpose of this paragraph, "obsolete or impractical planning and platting" applies only to property that:

(a) was platted prior to 1971;

(b) has remained vacant and unimproved; and

(c) threatens the health, safety and welfare of persons or property due to erosion, flooding and inadequate drainage.

C. Condemnation proceedings pursuant to this section shall be in the manner provided by law.

History: 1953 Comp., § 14-17-8, enacted by Laws 1973, ch. 395, § 1; 2007, ch. 329, § 1; 2007, ch. 330, § 1.

3-18-11. Fire prevention and protection; insurance for volunteer firemen.

A. A municipality may by ordinance:

(1) adopt regulations for the prevention of fire;

(2) regulate and prevent the carrying on of manufactories dangerous in causing and promoting fires;

(3) prohibit the deposit of ashes in unsafe places;

(4) cause any building or enclosure which is in a flammable state to be placed in a safe condition;

(5) regulate and prevent the storage and transportation of any combustible or explosive material; and

(6) regulate and prevent the use of illuminating flames and the building of bonfires.

B. A municipality may:

(1) provide proper means for protection from fire;

(2) erect fire stations and provide facilities and implements for the extinguishment of fires; and

(3) provide for the use and management of fire stations, facilities and implements for extinguishing fires by a volunteer fire department, paid fire department or partially paid and volunteer fire department.

C. A municipality having an organized volunteer fire department may purchase with money from the fire fund an accident policy from any insurance company authorized to do business in New Mexico. The accident policy shall provide for the payment to any volunteer fireman a suitable sum for injuries and a gross sum of not less than two thousand dollars ($2,000) for death caused in the course of his duties as a volunteer fireman.

History: 1953 Comp., § 14-17-9, enacted by Laws 1965, ch. 300; 1989, ch. 346, § 12.

3-18-11.1. Fingerprinting of fireman applicants required; authorization for municipality to communicate such information to the federal bureau of investigation.

After July 1, 1985, anyone applying for the position of fireman in any municipality with a population of more than one hundred thousand shall provide the municipality with copies of his fingerprints. The municipality is authorized by this section to transmit copies of all fingerprints of applicant firemen to the federal bureau of investigation.

History: Laws 1985, ch. 121, § 1.

3-18-12. Food and merchandise; regulation and inspection.

A. A municipality may regulate the sale of food and drink, and may provide for the place and manner of selling food.

B. A municipality may provide for the:

(1) inspection and regulation of food;

(2) regulation, inspection, weighing and measuring of any article of merchandise;

(3) inspection and sealing of weights and measures; and

(4) enforcement and use of proper weights and measures by vendors.

History: 1953 Comp., § 14-17-10, enacted by Laws 1965, ch. 300.

3-18-13. Industrial nuisances and nauseous locations; regulation and prohibition.

A municipality may within one mile of its boundary direct the location, regulate and prohibit any offensive and unwholesome business or establishment.

History: 1953 Comp., § 14-17-11, enacted by Laws 1965, ch. 300.

3-18-14. Municipal libraries; establishment; contract services; state publications; gifts and bequests.

A. A municipality may establish and maintain a free public library under proper regulation and may receive, hold and dispose of a gift, donation, devise or bequest that is made to the municipality for the purpose of establishing, increasing or improving the library. The governing body may apply the use, profit, proceeds, interests and rents accruing from such property in any manner that will best improve the library and its use.

B. After a public library is established, the secretary of state shall furnish to the public library a copy of any work subsequently published under his authority.

C. A municipality establishing a public library may enter into contracts and joint powers agreements with other municipalities, counties, local school boards, post-secondary educational institutions and the library division of the office of cultural affairs for the furnishing of library services. In the interest of establishing a county or regional library, a municipality may convey its library facilities to the county as part of a contract for furnishing library services to the inhabitants of the municipality by the county or regional library.

History: 1953 Comp., § 14-17-12, enacted by Laws 1965, ch. 300; 1977, ch. 246, § 45; 1980, ch. 151, § 1; 1999, ch. 20, § 1.

3-18-15. Works of art; other works; acquisition and maintenance.

A municipality may acquire works of art and other works of historical, classical or general interest and establish museums or other suitable facilities for their care and preservation. It may, through its appropriate administrative authority, trade, barter and exchange items of value with other museums or persons for items of equal or similar value for such times and on such terms as appear suitable to carry out the public purposes of the museums. It may accept and reject gifts through its appropriate administrative authority subject to the terms and conditions of the gifts.

History: 1953 Comp., § 14-17-12.1, enacted by Laws 1967, ch. 149, § 1; 1973, ch. 192, § 1.

3-18-16. Markets and market places.

A municipality may establish and regulate municipal markets and market places.

History: 1953 Comp., § 14-17-13, enacted by Laws 1965, ch. 300.

3-18-17. Nuisances and offenses; regulation or prohibition.

A municipality, including a home rule municipality that has adopted a charter pursuant to Article 10, Section 6 of the constitution of New Mexico, may by ordinance:

A. define a nuisance, abate a nuisance and impose penalties upon a person who creates or allows a nuisance to exist; provided that:

(1) the total amount of assessed penalties and fines imposed by an ordinance for failure to obey a traffic sign or signal, including a red light offense or violation, or for a speeding offense or violation shall not exceed one hundred dollars ($100), provided that the total for unlawful parking in a space or for blocking an access intended for

persons with significant mobility limitation shall not be less than or exceed the fines provided in Section 66-7-352.5 NMSA 1978;

(2) no fees or costs shall be imposed pursuant to this subsection;

(3) in a municipality with a population of two hundred thousand or greater as of the last federal decennial census, the penalties, fines and procedures imposed for failure to obey a traffic sign or signal, including a red light offense or violation, or for a speeding offense or violation shall be subject to the following:

(a) each month, or other period set by contract, the municipality shall retain from the gross total amount of penalties and fines assessed and collected that month or period an amount subject to audit that is equal to the sum of the setup, maintenance, support and processing services fees charged to the municipality for that month or period pursuant to contractual terms by a vendor providing systems and services that assist the municipality in imposing penalties or fines as provided in Paragraph (1) of this subsection;

(b) less the retention authorized in Subparagraph (a) of this paragraph: 1) one-half of the net total amount assessed and collected by the municipality pursuant to this section shall be remitted to the state treasurer and distributed to the general fund; and 2) one-half shall be retained by the municipality for municipal traffic safety programs and to offset the municipality's reasonable costs directly related to administering a program as provided in Paragraph (1) of this subsection;

(c) the municipality shall cause an audit of the program and contract described in Subparagraph (a) of this paragraph to be conducted by the state auditor or an independent auditor selected by the state auditor;

(d) if in the audit conducted pursuant to Subparagraph (c) of this paragraph it is determined that any amount retained by the municipality pursuant to this paragraph is in excess of the amount the municipality is authorized to retain, the municipality shall remit, when the audit is finalized, the amount in excess to the state treasurer to be distributed and transferred as provided in Item 1) of Subparagraph (b) of this paragraph; and

(e) a respondent may select a hearing to contest a nuisance ordinance offense or violation that shall either be conducted by a hearing officer appointed by the presiding judge of the civil division of the district court with jurisdiction over the municipality and in accordance with the rules of evidence and rules of civil procedure for the district courts or that shall be conducted by a mail-in form alternative. The notice of violation shall clearly explain the process for requesting a hearing, the hearing options, the deadline to request a hearing and where the request shall be submitted. The burden of proof for violations is on the municipality and is a preponderance of the evidence. A determination by the hearing officer shall not impose a total amount of penalties or fines in excess of that provided in the nuisance ordinance; and

(4) in a municipality other than a municipality with a population of two hundred thousand or greater as of the last federal decennial census, the penalties, fines and procedure imposed for failure to obey a traffic sign or signal, including a red light offense or violation, or for a speeding offense or violation shall be subject to the following:

(a) each month, or other period set by contract, the municipality shall retain from the gross total amount of penalties and fines assessed and collected that month or period an amount subject to audit that is equal to the sum of the setup, maintenance, support and processing services fees charged to the municipality for that month or period pursuant to contractual terms by a vendor providing systems and services that assist the municipality in imposing penalties or fines as provided in Paragraph (1) of this subsection;

(b) less the retention authorized in Subparagraph (a) of this paragraph: 1) one-half of the net total amount assessed and collected by the municipality pursuant to this section shall be remitted to the state treasurer and distributed to the general fund; and 2) one-half shall be retained by the municipality for municipal traffic safety programs and to offset the municipality's reasonable costs directly related to administering a program as provided in Paragraph (1) of this subsection;

(c) the municipality shall cause an audit of the program and contract described in Subparagraph (a) of this paragraph to be conducted by the state auditor or an independent auditor selected by the state auditor;

(d) if in the audit conducted pursuant to Subparagraph (c) of this paragraph it is determined that any amount retained by the municipality pursuant to this paragraph is in excess of the amount the municipality is authorized to retain, the municipality shall remit, when the audit is finalized, the amount in excess to the state treasurer to be distributed and transferred as provided in Item 1) of Subparagraph (b) of this paragraph; and

(e) a hearing provided for a contested nuisance ordinance offense or violation shall be conducted by a hearing officer appointed by the presiding judge of the civil division of the district court with jurisdiction over the municipality and in accordance with the rules of evidence and rules of civil procedure for the district courts. If offered by the municipality, a respondent may select a hearing conducted by a mail-in form alternative. The notice of violation shall clearly explain the process for requesting a hearing, the hearing options, the deadline to request a hearing and where the request shall be submitted. The burden of proof for violations is on the municipality and is a preponderance of the evidence. A determination by the hearing officer shall not impose a total amount of penalties or fines in excess of that provided in the nuisance ordinance;

B. regulate or prohibit any amusement or practice that tends to annoy persons on a street or public ground; and

C. prohibit and suppress:

(1) gambling and the use of fraudulent devices or practices for the purpose of obtaining money or property;

(2) the sale, possession or exhibition of obscene or immoral publications, prints, pictures or illustrations;

(3) public intoxication;

(4) disorderly conduct; and

(5) riots, noises, disturbances or disorderly assemblies in any public or private place.

History: 1953 Comp., § 14-17-14, enacted by Laws 1965, ch. 300; 2008, ch. 91, § 1; 2009, ch. 121, § 1; 2023, ch. 192, § 1.

3-18-18. Parks.

Within or without the municipal boundary, a municipality may build, beautify and improve public parks and acquire any property for park purposes. The acquisition of property for park purposes which is outside the municipal zoning boundaries, and outside the boundaries of the county in which the municipality is located, shall be subject to the prior approval of the governing body of the local government within whose boundary the property is situated. Any property acquired for park purposes is under the immediate control of the governing body. The governing body may pay any expenses of transfer or conveyance and examination of title for any property given to the municipality for park purposes.

History: 1953 Comp., § 14-17-15, enacted by Laws 1965, ch. 300; 1973, ch. 368, § 2.

3-18-19. Park and recreation construction authorized.

A municipality may create an improvement district as authorized in Sections 3-33-1 through 3-33-43 NMSA 1978 of the new Municipal Code, for the purpose of acquiring and constructing parks and recreation facilities.

History: 1953 Comp., § 14-17-15.1, enacted by Laws 1965, ch. 311, § 1.

3-18-20. Police ordinances; county jails.

A municipality may use the county jail for the confinement or punishment of offenders subject to the requirements imposed by law and the board of county commissioners.

History: 1953 Comp., § 14-17-16, enacted by Laws 1965, ch. 300.

3-18-21. Railroads; street railroads; crossings.

A. A municipality may, within its boundary:

(1) regulate the speed of diesel electric locomotives;

(2) license and regulate the laying of railroad tracks;

(3) provide for and change the location, grade and crossing of any railroad;

(4) regulate and prohibit the use of steam engines and diesel electric locomotives; and

(5) require a railroad company to:

(a) fence its railroad or any portion of it;

(b) construct cattleguards at crossings of streets and public roads;

(c) keep its fences and cattleguards in repair;

(d) keep a flagman at railroad crossings of streets;

(e) provide protection against injury to persons and property by the railroad in the use of its property; and

(f) construct and keep in repair ditches, drains, sewers and culverts along and under railroad tracks so that 1) filthy or stagnant pools of water cannot stand on its ground or right-of-way and 2) natural drainage of adjacent property is not impeded.

B. A municipality may, within its boundary, by condemnation or otherwise, extend any street, or municipal utility over, across, under or through any railroad track, right-of-way or land of any railroad company or street railroad company. If no compensation is made to the railroad company, the municipality shall restore the railroad track, right-of-way or land to its former state or in a sufficient manner so that its usefulness is not impaired.

History: 1953 Comp., § 14-17-17, enacted by Laws 1965, ch. 300.

3-18-22. Requirement for sanitary facilities; notice to owners; failure to comply; municipality to perform work; lien; interest.

A. By general ordinance, a municipality may require the owner, agent or occupant of a building on an isolated tract having facilities available or on land adjoining a street:

(1) where sewer pipe is laid, to install proper plumbing and connect with the sewer;

(2) where no sewer pipe is laid but water pipe is laid, to construct and install proper plumbing and sewage disposal devices; or

(3) where neither sewer nor water pipe is installed within one hundred fifty feet of the isolated tract of land, to construct pit toilets in compliance with plans and specifications approved by the municipality and filed with the municipal clerk.

B. If the owner, agent or occupant of a building on an isolated tract having facilities available, or on land adjoining a street, fails to comply with the ordinance, the governing body may by resolution order the owner, agent or occupant of a building on an isolated tract having facilities available, or on land adjoining a street, to comply with the ordinance. The owner, agent or occupant of the building shall be personally served with written notice of the resolution and shall be given thirty days to commence work. If the owner, as shown by the assessment roll, or agent is not a resident of the municipality, the notice shall be sent to him at his last known address by certified mail, return receipt requested, and a copy of the notice shall be posted on the property.

C. If the owner, agent or occupant fails or refuses to perform the required improvements after being given notice, the municipality may perform the improvements. The cost of the improvements shall be assessed against the owner, agent or occupant of the property and shall be a first and prior lien on the property subject only to the lien of general state and county taxes. The amount so expended for the improvements shall bear interest at the rate of six percent per year from completion of the improvements until paid.

D. After the expiration of one year from the date of completing the improvement, the lien may be enforced in the manner provided in Sections 3-36-1 through 3-36-5 NMSA 1978. Notice of the lien shall be filed in the manner provided in Section 3-36-1 NMSA 1978 and the effect of such filing shall be governed by Section 3-36-2 NMSA 1978.

History: 1953 Comp., § 14-17-18, enacted by Laws 1965, ch. 300; 1981, ch. 213, § 1.

3-18-23. Steam boiler inspection.

A municipality may provide for the inspection and regulation of steam boilers.

History: 1953 Comp., § 14-17-19, enacted by Laws 1965, ch. 300.

3-18-24. Licensing and regulating secondhand and junk stores.

A municipality may:

A. regulate, tax or license secondhand dealers and junk store dealers or any person who accepts used merchandise for value;

B. prohibit their purchasing any article from a minor without the written consent of the parent or guardian; and

C. require that a record of purchases be kept and be subject at all times to inspection by the police.

History: 1953 Comp., § 14-17-20, enacted by Laws 1965, ch. 300.

3-18-25. Water systems; sewers; assessments.

A. For the purpose of Sections 3-27-1 and 3-49-1 NMSA 1978, a municipality may:

(1) open, construct, repair, keep in order and maintain water mains, laterals, reservoirs, standpipes, sewers and drains; and

(2) assess and collect as other assessments and collections are made the amount necessary to cover the cost of the work.

B. The assessment against the lot or land along or through which the street runs shall be made in such portion as is just and equitable according to the benefits accruing to the lot or land and to its value.

History: 1953 Comp., § 14-17-21, enacted by Laws 1965, ch. 300.

3-18-26. Toll bridges.

A municipality may establish, license, regulate and fix the tolls of all toll bridges and ferries.

History: 1953 Comp., § 14-17-22, enacted by Laws 1965, ch. 300.

3-18-27. Trees and shrubs.

A municipality may, by ordinance, regulate the planting, transplanting, growing, trimming, pruning, preservation and protection of trees, shrubs and vines or create a commission for the purpose of such regulation.

History: 1953 Comp., § 14-17-23, enacted by Laws 1965, ch. 300.

3-18-28. Municipal employees' retirement system.

A municipality may enter into contracts with private insurance companies to establish a retirement system for its employees.

History: 1953 Comp., § 14-17-24, enacted by Laws 1971, ch. 71, § 1.

3-18-29. [Foreign-trade zones.]

The governing body of any municipality, pursuant to the federal Foreign-Trade Zones Act, as may be amended from time to time, and regulations adopted pursuant thereto, may:

A. with the prior written approval of the board of economic development, apply for and accept a grant of authority to establish, operate and maintain a foreign-trade zone;

B. provide such facilities and services as may be necessary or desirable in establishing a foreign-trade zone; and

C. exercise such other powers as may be necessary or desirable to establish, operate and maintain a foreign-trade zone.

History: 1953 Comp., § 14-17-25, enacted by Laws 1973, ch. 48, § 1.

3-18-30. Parking citations; certain municipalities; administrative cost assessment.

A. Each municipality with a population over one hundred thousand which is located in a metropolitan court district may impose by ordinance an administrative cost assessment of one dollar ($1.00) for each parking citation issued pursuant to municipal ordinance.

B. The administrative cost assessment collected pursuant to Subsection A of this section shall be remitted within ninety days by the metropolitan court to the municipality which issued the citation. Administrative cost assessment receipts shall be used solely to provide for enforcement of municipal parking ordinances and administration of a municipal traffic control program.

History: Laws 1986, ch. 31, § 1.

3-18-31. Sale of gasoline; authority of the municipality.

The governing body of the municipality may provide, by ordinance, for the monitoring and inspection of gasoline sales through pumps of service stations located within the territorial boundaries of the municipality in order to monitor the sale of gasoline within its municipality.

History: Laws 1989, ch. 153, § 1.

3-18-32. Limitation of county and municipal restrictions on solar collectors.

A. A county or municipality shall not restrict the installation of a solar collector as defined pursuant to the Solar Rights Act [47-3-1 to 47-3-5 NMSA 1978], except that placement of solar collectors in historic districts may be regulated or restricted by a county or municipality.

B. A covenant, restriction or condition contained in a deed, contract, security agreement or other instrument, effective after July 1, 1978, affecting the transfer, sale or use of, or an interest in, real property that effectively prohibits the installation or use of a solar collector is void and unenforceable.

History: Laws 2007, ch. 232, § 1.

ARTICLE 19
Planning and Platting

3-19-1. Creation of planning commission.

A municipality is a planning authority and may, by ordinance:

A. establish a planning commission;

B. delegate to the planning commission:

(1) the power, authority, jurisdiction and duty to enforce and carry out the provisions of law relating to planning, platting and zoning; and

(2) other power, authority, jurisdiction and duty incidental and necessary to carry out the purpose of Sections 3-19-1 through 3-19-12 NMSA 1978;

C. retain to the governing body as much of this power, authority, jurisdiction and duty as it desires; and

D. adopt, amend, extend and carry out a general municipal or master plan which may be referred to as the general or master plan.

History: 1953 Comp., § 14-18-1, enacted by Laws 1965, ch. 300.

3-19-2. Appointment, term, removal of commission.

A. A planning commission shall consist of not less than five members who shall be appointed by the mayor with the consent of the governing body of the municipality. Administrative officials of the municipality may be appointed as ex-officio, nonvoting members of the planning commission.

B. On the first planning commission a majority of the members shall be appointed for one-year terms and the balance of the members shall be appointed for two-year terms. Each subsequent term of a member on a planning commission shall be for two years or less in order to maintain the original staggering of terms of membership. A vacancy in the membership of the planning commission shall be filled for the remainder of the unexpired term.

C. After a public hearing and for cause stated in writing and made part of the public record, a mayor with the approval of the governing body may remove a member of the planning commission.

History: 1953 Comp., § 14-18-2, enacted by Laws 1965, ch. 300.

3-19-3. Chairman; regular meetings; records.

A planning commission shall:

A. elect one of its members chairman for a one-year term;

B. create and fill other offices;

C. hold at least one regular meeting each month;

D. adopt rules for the transaction of business; and

E. keep a public record of its transactions, findings, resolutions and determinations.

History: 1953 Comp., § 14-18-3, enacted by Laws 1965, ch. 300.

3-19-4. Powers of commission.

A. A planning commission shall have such powers as are necessary to:

(1) fulfill and perform its functions;

(2) promote municipal planning; and

(3) carry out the purposes of Sections 3-19-1 through 3-19-12 NMSA 1978.

B. A planning commission may:

(1) make reports and recommendations for the planning and development of the municipality to:

(a) public officials and agencies;

(b) public utility companies;

(c) civic, educational, professional and other organizations; and

(d) citizens; and

(2) recommend to the administrative and governing officials of the municipality programs for public improvements and their financing.

C. Members and employees of the planning commission, in the performance of its function, may:

(1) enter upon any land;

(2) make examinations and surveys; and

(3) place and maintain necessary monuments and markers upon the land.

D. Upon request, a public official shall furnish within a reasonable time available information which the planning commission requires for its work.

History: 1953 Comp., § 14-18-4, enacted by Laws 1965, ch. 300.

3-19-5. Planning and platting jurisdiction.

A. Each municipality shall have planning and platting jurisdiction within its municipal boundary. Except as provided in Subsection B of this section, the planning and platting jurisdiction of a municipality:

(1) having a population of twenty-five thousand or more persons includes all territory within five miles of its boundary and not within the boundary of another municipality; or

(2) having a population of fewer than twenty-five thousand persons includes all territory within three miles of its boundary and not within the boundary of another municipality.

B. A municipality located in a class A county with a population of more than three hundred thousand persons shall not have planning and platting jurisdiction in the unincorporated area of the county.

C. If territory not lying within the boundary of a municipality is within the planning and platting jurisdiction of more than one municipality, the planning and platting jurisdiction of each municipality shall terminate equidistant from the boundary of each municipality unless one municipality has a population of fewer than two thousand five hundred persons and another municipality has a population of more than two thousand five hundred persons according to the most recent census. Then the planning and platting jurisdiction of the municipality having the greatest population extends to such territory.

History: 1953 Comp., § 14-18-5, enacted by Laws 1965, ch. 300; 1966, ch. 64, § 5; 1998, ch. 42, § 3; 2003, ch. 438, § 3.

3-19-6. Subdivision regulations.

A. The planning authority of a municipality shall adopt regulations governing the subdivision of land within the planning and platting jurisdiction of the municipality. The subdivision regulations shall be approved by the governing body before they become effective. The subdivision regulations may provide for:

(1) the harmonious development of the municipality and its environs;

(2) the coordination of streets within the subdivision with existing or planned streets or other features of the master plan or official map of the municipality;

(3) adequate open space for traffic, recreation, drainage, light and air; and

(4) the distribution of population and traffic which tend to create conditions favorable to the health, safety, convenience, prosperity or general welfare of the residents of the municipality.

B. Subdivision regulations may govern:

(1) the width of streets;

(2) the width, depth and arrangement of lots;

(3) land use, including natural drainage;

(4) other matters necessary to carry out the purposes of the Municipal Code; and

(5) the extent and manner in which:

(a) streets are graded and improved; and

(b) water, sewer and other utility facilities are installed as a condition precedent to the approval of a plat.

C. The subdivision regulations or the practice of the planning commission may allow tentative approval of the plat previous to the completion of improvements and the installation of utility facilities but such tentative approval shall not be entered on a plat. In lieu of the completion of improvements and the installation of utility facilities previous to the final approval of a plat, the subdivision regulations may provide for:

(1) assessment or other methods whereby the municipality makes the improvements and installations at the cost of the owner of property within the subdivision; or

(2) acceptance of a bond, in an amount and with surety and conditions satisfactory to the planning commission, securing to the municipality the actual construction and installation of improvements and utility facilities within a period of time specified by the planning commission and expressed in the bond. A municipality may enforce such a bond by all appropriate and legal remedies; or

(3) in lieu of a bond, the municipality may enter into an agreement with a person seeking approval of a subdivision whereby the person seeking approval shall, within two years following final approval of the plat, complete the improvements and the installation of utility facilities provided for in the person's application for subdivision approval, except that the agreement set forth herein may provide that the person seeking approval shall be permitted by the municipality to sell or otherwise dispose of, or improve any lot within the subdivision, to which improvements and utility facilities have been provided by the person seeking approval at any time within the two-year period; any such agreement shall be recorded with the county clerk at the time of filing said plat.

D. The governing body or planning commission of the municipality shall hold a public hearing on the adoption of a subdivision regulation or an amendment to it. Notice of the time and place of the public hearing shall be published once at least fifteen days prior to the date of the public hearing.

E. If the requirement or restriction does not violate the zoning ordinance, the governing body or planning commission of the municipality may agree with a person seeking approval of a subdivision upon the use, height, area or bulk requirement or restriction governing buildings and premises within the subdivision. The requirement or restriction shall:

(1) accompany the plat before it is approved and recorded;

(2) have the force of law;

(3) be enforced; and

(4) be subject to amendment or repeal as the provisions of the zoning ordinance and map are enforced, amended or repealed.

History: 1953 Comp., § 14-18-6, enacted by Laws 1965, ch. 300; 1975, ch. 309, § 1.

3-19-7. Platting of street lines by planning commission.

A. A planning commission which has adopted a master plan or a major street plan may:

(1) survey for the exact location of the lines of new, extended, widened or narrowed streets within the municipality or its planning and platting jurisdiction; and

(2) certify to the governing body of the municipality a plat of the area surveyed which indicates the location of lines recommended for future streets, street extension, street widening or narrowing.

B. The certification of a plat by the planning commission does not constitute the opening of a street or the taking or accepting of land for street purposes.

History: 1953 Comp., § 14-18-7, enacted by Laws 1965, ch. 300.

3-19-8. Appeal.

Any person in interest dissatisfied with an order or determination of the planning commission, after review of the order or determination by the governing body of the municipality, may commence an appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-18-8, enacted by Laws 1965, ch. 300; 1998, ch. 55, § 5; 1999, ch. 265, § 5.

3-19-9. Master plan; purposes.

A. The planning commission shall prepare and adopt a master plan for the physical development of the municipality and the area within the planning and platting jurisdiction of the municipality which in the planning commission's judgment bears a relationship to the planning of the municipality. The planning commission may amend, extend or add to the plan or carry any part or subject matter into greater detail. In preparing the master plan, the planning commission shall make careful and comprehensive surveys and studies of existing conditions and probable future growth of the municipality and its environs. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the municipality which will, in accordance with existing and future needs, best promote health, safety, morals, order, convenience, prosperity or the general welfare as well as efficiency and economy in the process of development.

B. Among other things, the master plan with accompanying maps, plats and charts; descriptive and explanatory matter; and recommendations of the planning commission for the physical development of the municipality, and for its planning jurisdiction, may include:

(1) the general location, character and extent of streets, bridges, viaducts and parkways; parks and playgrounds, floodways, waterways and waterfront development, airports and other ways, grounds, places and spaces;

(2) the general location of public schools, public buildings and other public property;

(3) the general location and extent of public utilities and terminals, whether publicly or privately owned;

(4) the general location, character, layout and extent of community centers and neighborhood units and the replanning of blighted districts and slum areas; and

(5) the acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment or change of use of any of the foregoing public ways, grounds, places, spaces, buildings, properties, utilities or terminals.

C. Copies of the master plan shall be available at the office of the municipal clerk and may be purchased at a reasonable price.

History: 1953 Comp., § 14-18-9, enacted by Laws 1965, ch. 300; 1970, ch. 52, § 1.

3-19-10. Adoption of a master plan.

A. The planning commission may adopt:

(1) the master plan by a single resolution; or

(2) part of the master plan as work progresses on the master plan; provided the part corresponds with one of the functional subdivisions of the subject matter of the plan. Before adoption of the master plan or any part thereof, the planning commission shall hold at least one public hearing. Notice of the time and place of the hearing shall be published one time at least fifteen days before the day of the hearing. Prior to the publication of the notice, copies of the master plan shall be made available to any citizen in the office of the municipal clerk.

B. Adoption of the master plan or any part, amendment or addition to the master plan shall be by a resolution approved by a majority of the members of the planning commission. The resolution shall refer expressly to the maps, descriptive matter and other matters which the planning commission intends to form part or the whole of the master plan. The action taken by the planning commission shall be recorded on the

master plan or the part of the plan and shall be endorsed by the chairman and the secretary of the planning commission. A certified copy of the master plan or any part thereof approved by the planning commission shall be given to the governing body of the municipality.

History: 1953 Comp., § 14-18-10, enacted by Laws 1965, ch. 300.

3-19-11. Legal status of master plan.

A. After a master plan or any part thereof has been approved and within the area of the master plan or any part thereof so approved, the approval of the planning commission is necessary to construct, authorize, accept, widen, narrow, remove, extend, relocate, vacate, abandon, acquire or change the use of any:

(1) park, street or other public way, ground, place or space;

(2) public building or structure; or

(3) utility, whether publicly or privately owned.

B. The failure of the planning commission to act within sixty-five days after the submission of a proposal to it constitutes approval of the proposal unless the proponent agrees to an extension of time. If the planning commission disapproves a proposal, it must state its reasons to the governing body. The governing body may overrule the planning commission and approve the proposal by a two-thirds vote of all its members.

C. None of the provisions of Chapter 3, Article 19 NMSA 1978 shall apply to any existing building, structure, plant or other equipment owned or used by any public utility or the right to its continued use or its reasonable repair or alteration for the purpose for which it was used at the time the master plan or any part thereof affecting the property takes effect. After the adoption of the master plan or any part thereof affecting the property, all extensions, betterments or additions to buildings, structures, plants or other equipment of any public utility shall be made in conformity with the master plan or any part thereof affecting the property and upon the approval of the planning commission. After a public hearing, the state corporation commission [public regulation commission] or the New Mexico public utility commission [public regulation commission] or the regulatory agency having jurisdiction or their successors having jurisdiction, as the case may be, may order that the extensions, betterments or additions to buildings, structures, plants or other equipment are reasonable and that the extensions, betterments or additions may be made even though they conflict with the adopted master plan or any part thereof affecting the property.

D. Any public agency or official, not under the jurisdiction of the governing body of the municipality, authorizing or financing a public way, ground, place, space, building, structure or utility shall submit the proposal to the planning commission. If the planning commission disapproves the proposal, the board of the public agency by a two-thirds

vote of all its members or the official may overrule the planning commission and proceed with the proposal subject to the provisions of Subsection C of this section.

History: 1953 Comp., § 14-18-11, enacted by Laws 1965, ch. 300; 1993, ch. 282, § 3.

3-19-12. Approval constitutes amendment to master plan.

Every plat approved by the planning authority is an amendment, addition or a detail of the master plan or any part thereof adopted by the planning commission.

History: 1953 Comp., § 14-18-12, enacted by Laws 1965, ch. 300.

ARTICLE 20
Subdivisions; Planning and Platting

3-20-1. Definitions.

A. "Subdivide" or "subdivision" for the purpose of approval by a municipal planning authority means:

(1) for the area of land within the corporate boundaries of the municipality, the division of land into two or more parts by platting or by metes and bounds description into tracts for the purposes set forth in Subsection B of this section; and

(2) for the area of land within the municipal extraterritorial subdivision and platting jurisdiction, the division of land into two or more parts by platting or by metes and bounds description into tracts of less than five acres in any one calendar year for the purposes set forth in Subsection B of this section.

B. The division of land pursuant to Paragraph (1) or (2) of Subsection A of this section shall be for the purpose of:

(1) sale for building purposes;

(2) laying out a municipality or any part thereof;

(3) adding to a municipality;

(4) laying out suburban lots; or

(5) resubdivision.

C. "Plat" means a map, chart, survey, plan or replat certified by a licensed land surveyor containing a description of the subdivided land with ties to permanent monuments.

History: 1978 Comp., § 3-20-1, enacted by Laws 1979, ch. 331, § 1.

3-20-2. Subdivision; description.

Every person who desires to subdivide land shall furnish a plat of the proposed subdivision, prepared by a registered, licensed surveyor of New Mexico; except that the resubdivision of platted tracts, which are less than one acre and which are contiguous with each other, for the purpose of increasing or reducing the size of such contiguous tracts, but not less than the minimum standard size required by the political subdivision, shall not require the furnishing of a plat of the proposed resubdivision, provided that a certificate of survey setting forth the legal description of tracts resulting from such resubdivision shall be filed with the municipal planning commission, the county clerk and the county assessor of that county in which the resubdivision is situated, and such filing shall be considered as a rededication of said described lots in all respects. The plat shall refer to permanent monuments and shall accurately describe each lot, number each lot in progression, give its dimensions and the dimensions of all land dedicated for public use or for the use of the owners of lots fronting or adjacent to the land. Descriptions of the lots by number and plat designation are valid in conveyances and for the purpose of taxation.

History: 1953 Comp., § 14-19-2, enacted by Laws 1965, ch. 300; 1969, ch. 141, § 1.

3-20-3. Contents of plat; acknowledgment.

Every plat shall contain a statement that the subdivision of, [(]insert a correct description of the land being subdivided[)], appearing on the plat is with the free consent and in accordance with the desire of the undersigned owner and proprietor of the land and shall be acknowledged by the owner and proprietor or his authorized agent in the manner required for the acknowledgment of deeds. If the plat is filed by a corporation, the acknowledgment shall be made by its president and secretary.

History: 1953 Comp., § 14-19-3, enacted by Laws 1965, ch. 300.

3-20-4. Streets and alleys.

Streets and alleys in any subdivision adjoining a municipality shall be continuous with and correspond in direction and width to the streets and alleys of the municipality.

History: 1953 Comp., § 14-19-4, enacted by Laws 1965, ch. 300.

3-20-5. County and municipal jurisdiction over subdivision; concurrent jurisdiction; acceptance of unapproved streets; exercise of jurisdiction.

A. For the purpose of approving the subdivision and platting of land:

(1) the jurisdiction of a county includes all territory not within the boundary of a municipality;

(2) except as provided in Paragraph (4) of this subsection, the jurisdiction of a municipality having a population of twenty-five thousand or more persons according to the most recent census includes all territory within five miles of the boundary of the municipality and not within the boundary of another municipality;

(3) the jurisdiction of a municipality having a population of less than twenty-five thousand persons according to the most recent census includes all territory within three miles of the municipal boundary and not within the boundary of another municipality; and

(4) a municipality having a population over two hundred thousand persons according to the most recent census located in a class A county shall share approval authority with the county of subdivisions and platting of land within five miles of the municipal boundary. Approval shall be through the actions of the extraterritorial land use commission and extraterritorial land use authority.

B. Each municipality shall have jurisdiction over the territory within its boundary.

C. If territory not lying within the boundary of a municipality is within the platting jurisdiction of more than one municipality, the platting jurisdiction of each municipality shall terminate equidistant from the boundary of each municipality unless one municipality has a population according to the most recent census of less than two thousand five hundred persons and another municipality has a population according to the most recent census of more than two thousand five hundred persons. Then the platting jurisdiction of the municipality having the greatest population extends to such territory.

D. Except as provided in Paragraph (4) of Subsection A of this section, the county and a municipality shall exercise concurrent jurisdiction over territory within the platting jurisdiction of both the county and the municipality.

E. The governing body of a municipality or the board of county commissioners may not locate, construct or accept any street dedication until the street dedication is first submitted to the planning authority for approval or disapproval. If disapproved by the planning authority, the street dedication may be approved by a two-thirds vote of all the members of the governing body of the municipality having jurisdiction or of the board of county commissioners having jurisdiction. A street dedication accepted by the planning authority or by a two-thirds vote of all the members of the governing body of the municipality having jurisdiction or of the board of county commissioners having jurisdiction shall have the same status as any other public street.

History: 1953 Comp., § 14-19-5, enacted by Laws 1965, ch. 300; 1966, ch. 64, § 3; 1998, ch. 42, § 4.

3-20-6. Subdivision in unincorporated area; approval of county commission.

Before a plat of any subdivision within the jurisdiction of a county is filed in the office of the county clerk, the plat shall be approved by the board of county commissioners of the county wherein the proposed subdivision lies. The board of county commissioners shall not approve and sign a plat unless the:

A. proposed streets conform to adjoining streets;

B. streets are defined by permanent monuments to the satisfaction of the board of county commissioners; and

C. boundary of the subdivision is defined by permanent monuments.

History: 1953 Comp., § 14-19-6, enacted by Laws 1965, ch. 300.

3-20-7. Subdivision within the platting jurisdiction of a municipality; approval of the planning authority; procedure; filing fee; notice of hearing.

A. Before a plat of any subdivision within the jurisdiction of a municipality is filed in the office of the county clerk, the plat shall be submitted to the planning authority of the municipality having jurisdiction for approval.

B. The rules and regulations of the planning authority shall state:

(1) the scale and manner in which the plat is to be prepared;

(2) the number of copies of the plat which shall accompany the original plat;

(3) what other information shall accompany the plat; and

(4) the standards and regulations for subdivisions to which the planning authority may require the subdivider to conform.

C. The person submitting the plat shall pay the necessary filing fee to the municipality, and the planning authority, after approval and endorsement, shall file the plat with the county clerk. If the plat is not approved, the planning authority shall return the filing fee and the plat to the person submitting the plat.

D. A plat submitted for approval by the planning authority shall contain the name and address of the person to whom a notice of hearing shall be sent. Notice of the time and place of a hearing on a plat shall be sent by mail to the address on the plat not less than five days before the day of the hearing. No plat shall be acted upon without a

public hearing unless the requirement that a public hearing be held is waived by the person seeking approval of the plat.

E. The planning authority of a municipality shall approve or disapprove a plat within thirty-five days of the day of final submission of the plat. If the planning authority does not act within thirty-five days, the plat is deemed to be approved, and upon demand, the planning authority shall issue a certificate approving the plat. The person seeking approval of the plat may waive this requirement and agree to an extension of this time period. The reason for disapproval of a plat shall be entered upon the recordings of the planning authority.

F. No plat of territory within the planning and platting jurisdiction of a municipality shall be filed and recorded unless it has been approved by the planning commission or the governing body of the municipality pursuant to regulations and procedures adopted by ordinance of the governing body.

History: 1953 Comp., § 14-19-7, enacted by Laws 1965, ch. 300; 1999, ch. 137, § 1.

3-20-8. Alternate summary procedure.

A. The filing of a survey certified by any licensed, registered surveyor which contains a description of the subdivided land with ties to permanent monuments satisfies the requirements of Section 3-20-7 NMSA 1978.

B. In lieu of the requirements of Section 3-20-7 NMSA 1978, the following procedure may be followed:

(1) the planning authority shall establish a summary procedure for approving:

(a) subdivisions of not more than two parcels of land;

(b) resubdivisions, where the combination or recombination of portions of previously platted lots does not increase the total number of lots; or

(c) subdivisions of two or more parcels of land in areas zoned for industrial use;

(2) any subdivision approved as authorized in this section shall be in substantial conformity with the subdivision regulations of the planning authority;

(3) any administrative officer or planning commission member may be delegated the authority to approve a subdivision by this section;

(4) approval by this summary procedure shall be endorsed on the plat or on the instrument of conveyance in lieu of a plat and such approval shall be conclusive

evidence of the approval of the planning authority. The county clerk shall accept the instrument of conveyance for filing or recording.

History: 1953 Comp., § 14-19-7.1, enacted by Laws 1966, ch. 64, § 6; 1973, ch. 348, § 32.

3-20-9. Subdivision within platting jurisdiction of a county and municipality; dual approval.

Any person seeking the approval of a plat of a subdivision within the platting jurisdiction of both a county and municipality shall secure an endorsement of approval from both the board of county commissioners and the planning authority of the municipality before the plat is filed in the office of the county clerk.

History: 1953 Comp., § 14-19-8, enacted by Laws 1965, ch. 300.

3-20-9.1. Plat approval; proof of adequate water supply on lands from which irrigation water rights have been severed.

A. Before approving the final plat for a subdivision of land from which irrigation water rights appurtenant to the land have been severed, the appropriate approval authority shall require that the subdivider provide proof of a service commitment from a water provider and an opinion from the state engineer that the subdivider can fulfill the requirements of Paragraph (1) of Subsection F of Section 47-6-11 NMSA 1978 or acquire sufficient water rights through a permit issued pursuant to Section 72-5-1, 72-5-23, 72-5-24, 72-12-3 or 72-12-7 NMSA 1978 for subdivision water use. In acting on the permit application, the state engineer shall determine whether the amount of water permitted is sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses. A final plat shall not be approved unless the state engineer has so issued a permit for the subdivision water use or the subdivider has provided proof of a service commitment from a water provider and the state engineer has provided an opinion that the subdivider can fulfill the requirements of Paragraph (1) of Subsection F of Section 47-6-11 NMSA 1978. The appropriate approval authority shall not approve the final plat based on the use of water from any permit issued pursuant to Section 72-12-1.1 NMSA 1978.

B. The provisions of this section shall only apply to land from which irrigation water rights that are appurtenant to that land are severed after the effective date of this section.

History: Laws 2013, ch. 173, § 1.

3-20-10. Filing in office of county clerk; duties of county clerk.

When a plat is submitted for filing in the office of the county clerk, the county clerk shall determine if the proposed subdivision is subject to the provisions of Sections 3-20-1 through 3-20-15 NMSA 1978 and if the required endorsements are on the plat. A county clerk shall not accept for filing any plat which is subject to the provisions of the Municipal Code and which has not been approved by the planning authority of the municipality within whose jurisdiction the proposed subdivision lies. The plat shall contain an affidavit stating that the proposed subdivision does or does not lie within the planning or platting jurisdiction of any municipality.

History: 1953 Comp., § 14-19-9, enacted by Laws 1965, ch. 300; 1973, ch. 348, § 33.

3-20-11. Dedication for public use.

The endorsement and filing of a plat is a dedication of the land designated on the plat for public use. Such land is public property. Fee vests in the municipality if the dedicated land lies within the boundaries of a municipality.

History: 1953 Comp., § 14-19-10, enacted by Laws 1965, ch. 300; 1973, ch. 348, § 34.

3-20-12. Vacation or partial vacation of plat; approval of government having jurisdiction; duties of county clerk.

A. Any plat filed in the office of the county clerk may be vacated or a portion of the plat may be vacated provided:

(1) the owners of the land in the territory proposed to be vacated sign a statement, duly acknowledged, declaring the plat or a portion of the plat to be vacated; and

(2) the statement is endorsed "Approved" by the planning authority of the municipality within whose platting jurisdiction the subdivision lies.

B. In approving the vacation or partial vacation of a plat, the planning authority of the municipality shall consider if the vacation or partial vacation of a plat will adversely affect the interests or rights of persons in contiguous territory or within the subdivision being vacated. In approving the vacation or partial vacation of a plat, the planning authority of the municipality may require that streets dedicated to the municipality in the original plat shall continue to be dedicated to the municipality. The owners of lots on the vacated plat or on the portion of the plat being vacated may enclose in equal proportions the adjoining streets and alleys which are authorized to be abandoned by the planning authority of the municipality.

C. The statement declaring the vacation or partial vacation of a plat and having the proper endorsements shall be filed in the office of the county clerk wherein the original plat is filed. The county clerk shall mark the applicable words "Vacated" or "Partially

Vacated" across the plat and shall refer on the plat to the volume and page on which the statement of vacation or partial vacation is recorded.

History: 1953 Comp., § 14-19-11, enacted by Laws 1965, ch. 300; 1973, ch. 348, § 35.

3-20-13. Vacation; rights of utility.

The rights of any utility already existing shall not be affected by any vacation or partial vacation of a plat.

History: 1953 Comp., § 14-19-12, enacted by Laws 1965, ch. 300.

3-20-14. Penalties for transferring lots in unapproved subdivisions.

Any owner, or agent of the owner, of any land located within the platting jurisdiction of the planning commission of any municipality who transfers, sells, agrees to sell, or negotiates to sell the land by reference to or exhibition of or by other use of a plat or subdivision of the land before the plat has been approved as provided in the Municipal Code and recorded in the office of the appropriate county recorder, shall be guilty of a misdemeanor. Upon conviction, the owner or his agent shall pay a penalty of one hundred dollars ($100) for each lot transferred or sold, or agreed or negotiated to be sold. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. Any municipality, through its attorney or other official designated by its governing body may enjoin the transfer or sale or agreement by action for injunction or may recover the penalty by civil action.

History: 1953 Comp., § 14-19-13, enacted by Laws 1966, ch. 64, § 4; 1973, ch. 348, § 36.

3-20-15. Approval necessary for utility protection.

Until a plat has been approved by the planning authority, any official of a municipality or public utility company who shall serve or connect the land within the subdivision and within the planning and platting jurisdiction of a municipality with any public utility such as water, sewer, electric or gas is guilty of a misdemeanor. A municipality may require any utility connected in violation of this section to be disconnected.

History: 1953 Comp., § 14-19-14, enacted by Laws 1965, ch. 300.

3-20-16. Validation of deeds.

All instruments conveying real property which were voided solely under the provisions of Laws 1965, Chapter 300, Section 14-19-13 [3-20-14 NMSA 1978], are validated. After the effective date of this section, no court of this state has jurisdiction to

entertain any question based upon the provisions of Laws 1965, Chapter 300, Section 14-19-13.

History: 1953 Comp., § 14-19-14.1, enacted by Laws 1966, ch. 64, § 8.

ARTICLE 21
Zoning Regulations

3-21-1. Zoning; authority of county or municipality.

A. For the purpose of promoting health, safety, morals or the general welfare, a county or municipality is a zoning authority and may regulate and restrict within its jurisdiction the:

(1) height, number of stories and size of buildings and other structures;

(2) percentage of a lot that may be occupied;

(3) size of yards, courts and other open space;

(4) density of population; and

(5) location and use of buildings, structures and land for trade, industry, residence or other purposes.

B. The county or municipal zoning authority may:

(1) divide the territory under its jurisdiction into districts of such number, shape, area and form as is necessary to carry out the purposes of Sections 3-21-1 through 3-21-14 NMSA 1978; and

(2) regulate or restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land in each district. All such regulations shall be uniform for each class or kind of buildings within each district, but regulation in one district may differ from regulation in another district.

C. All state-licensed or state-operated community residences for persons with a mental or developmental disability and serving ten or fewer persons may be considered a residential use of property for purposes of zoning and may be permitted use in all districts in which residential uses are permitted generally, including particularly residential zones for single-family dwellings.

D. A board of county commissioners of the county in which the greatest amount of the territory of the petitioning village, community, neighborhood or district lies may declare by ordinance that a village, community, neighborhood or district is a "traditional

historic community" upon petition by twenty-five percent or more of the qualified electors of the territory within the village, community, neighborhood or district requesting the designation. The number of qualified electors shall be based on county records as of the date of the last general election.

E. Any village, community, neighborhood or district that is declared a traditional historic community shall be excluded from the extraterritorial zone and extraterritorial zoning authority of any municipality whose extraterritorial zoning authority extends to include all or a portion of the traditional historic community and shall be subject to the zoning jurisdiction of the county in which the greatest portion of the traditional historic community lies.

F. Zoning authorities, including zoning authorities of home rule municipalities, shall accommodate multigenerational housing by creating a mechanism to allow up to two kitchens within a single-family zoning district, such as conditional use permits.

G. For the purpose of this section, "multigenerational" means any number of persons related by blood, common ancestry, marriage, guardianship or adoption.

History: 1953 Comp., § 14-20-1, enacted by Laws 1965, ch. 300; 1977, ch. 279, § 20; 1995, ch. 170, § 4; 1995, ch. 211, § 3; 2007, ch. 46, § 3; 2007, ch. 270, § 1; 2019, ch. 212, § 183.

3-21-2. Jurisdiction of a county or municipal zoning authority.

To carry out the purposes of Sections 3-21-1 through 3-21-14 NMSA 1978:

A. a county zoning authority may adopt a zoning ordinance applicable to all or any portion of the territory within the county that is not within the zoning jurisdiction of a municipality;

B. a municipal zoning authority may adopt a zoning ordinance applicable to the territory within the municipal boundaries and, if not within a class A county with a population of more than three hundred thousand persons according to the last federal decennial census, shall have concurrent authority with the county to zone all or any portion of the territory within its extraterritorial zoning jurisdiction that is within:

(1) two miles of the boundary of any municipality having a population of twenty thousand or more persons, provided such territory is not within the boundary of another municipality;

(2) one mile of the boundary of any municipality having a population of one thousand five hundred or more but less than twenty thousand persons, provided such territory is not within the boundaries of another municipality;

(3) the limits of the boundaries of a municipality having a population of one thousand five hundred persons or less; or

(4) territory not lying within the boundary of a municipality but within the extraterritorial jurisdiction of more than one municipality; provided that the extraterritorial zoning jurisdiction of each municipality shall terminate equidistant from the boundary of each municipality unless one municipality has a population according to the most recent federal decennial census of less than two thousand five hundred and another municipality has a population according to the most recent federal decennial census of more than two thousand five hundred, in which case the extraterritorial zoning jurisdiction of the municipality having the greatest population extends to such territory; and

(5) territory in addition to the extraterritorial zoning jurisdiction provided by Paragraphs (1), (2), (3) and (4) of this subsection that the governing bodies of a county and a municipality agree to place within the extraterritorial zoning jurisdiction of the municipality by agreement entered into pursuant to the provisions of the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978], provided such additional territory is not within the boundary of another municipality and is contiguous to the exterior boundaries of the territory within the extraterritorial zoning jurisdiction of the municipality;

C. concurrent authority shall be exercised pursuant to an extraterritorial zoning authority or joint powers agreement; provided, however, this authority may be exercised regardless of whether a county has enacted a comprehensive zoning ordinance; and

D. in the absence of a county zoning ordinance, a qualified elector may file a petition, signed by the qualified electors of the county equal in number to not less than twenty-five percent of the votes cast for the office of governor at the last preceding general election, seeking the adoption of a zoning ordinance by the county zoning authority. Within one year of the filing of the petition seeking the adoption of a county zoning ordinance, the board of county commissioners shall adopt a county zoning ordinance.

History: 1953 Comp., § 14-20-2, enacted by Laws 1965, ch. 300; 1966, ch. 64, § 7; 1977, ch. 80, § 1; 1991, ch. 32, § 1; 2003, ch. 438, § 4.

3-21-2.1. Certain municipalities; changing the zoning or use of certain areas; election allowed.

A municipality that has a population of one thousand five hundred or less at the last federal decennial census and that is partially bordered, at the time of that census, by federal land managed by the United States forest service, may change the zoning or use of any land acquired by first submitting the question to the voters at a general election or at a special election called for that purpose if the acquired land:

A. was acquired by the municipality from or with the permission of the United States forest service;

B. lies adjacent to the municipality's geographical boundary; and

C. is zoned or used at the time of acquisition for recreation, school sites, greenbelt or buffer land.

History: Laws 1997, ch. 142, § 1.

3-21-3. Procedure for extraterritorial zoning.

A. Upon the initiative of any municipal governing body or of the board of county commissioners of any county wherein any portion of the extraterritorial zoning area of the municipality lies, the municipality and the county may enter into an agreement providing for the zoning of that portion of the extraterritorial zoning area lying within the county joining in the agreement. In the absence of such agreement, a petition requesting the zoning of the extraterritorial zoning area and signed by twenty-five percent of the qualified electors residing in the extraterritorial zoning area and within the same county may be filed with the county clerk of the county of the petitioners' residence. Upon the filing of such petition, the governing body of the municipality and the board of county commissioners shall enter into an agreement providing for the zoning of that portion of the extraterritorial zoning area lying within the county joining in the agreement. Any agreement entered into pursuant to the provisions of this subsection may be subsequently amended by agreement of both parties.

B. The agreement entered into pursuant to Subsection A of this section shall provide for an extraterritorial zoning commission consisting of equal numbers of members appointed by the municipal zoning authority and the county commission; provided that at least one-half of these members shall reside in the extraterritorial zone. Additionally, one member from an area of the county not within the zoning jurisdiction of the municipality or within the area of the county affected by the proposed extraterritorial zoning ordinance shall be appointed by a majority of the members appointed by the board of county commissioners and by the municipal zoning authority. The agreement shall also provide for a joint municipal-county zoning authority consisting of one or more members of the municipal governing body and one or more members of the board of county commissioners, provided such authority membership shall contain one more county commission member than municipal governing body member.

C. No zoning ordinance shall be adopted by the joint municipal-county zoning authority unless the ordinance has been recommended by the extraterritorial zoning commission.

D. Within three hundred sixty days of the appointment of the last member to be appointed, the extraterritorial zoning commission shall recommend to the joint municipal-county zoning authority a zoning ordinance applicable to all or any portion of

the extraterritorial zoning area lying within the county joining in the agreement pursuant to Subsection A of this section. The ordinance shall also provide, subject to the restrictions of Section 3-21-6 NMSA 1978, for the manner in which zoning regulations, restrictions and the boundaries of districts are:

(1) determined, established and enforced; and

(2) amended, supplemented or repealed.

History: 1953 Comp., § 14-20-2.2, enacted by Laws 1977, ch. 80, § 2; 2001, ch. 78, § 1.

3-21-3.1. Additional procedures for extraterritorial zoning and subdivision regulation.

In addition to the powers authorized in Sections 3-21-2, 3-21-3 and 3-21-4 NMSA 1978, any county and any municipality may agree to authorize a joint municipal-county zoning authority to enact ordinances, regulations, or both, relating to approval and regulation of subdivisions within the extraterritorial zoning area as defined by the agreement creating the joint municipal-county zoning authority. Such subdivision ordinances and regulations shall be adopted, amended and enforced pursuant to Sections 3-21-3 and 3-21-4 NMSA 1978, as appropriate. Such subdivision ordinances and regulations may define "subdivision" in a manner which differs from the definitions set forth in Subsection A of Section 3-20-1 NMSA 1978 and in Subsection I of Section 47-6-2 NMSA 1978. The joint municipal-county zoning authority may also modify portions of the comprehensive plan, provided that such modifications leave unchanged those portions in the comprehensive plan that are not in the extraterritorial area.

History: 1978 Comp., § 3-21-3.1, enacted by Laws 1988, ch. 91, § 1; 1989, ch. 238, § 1.

3-21-3.2. Extraterritorial zoning in class A counties; procedures.

A. In a class A county in which a municipality is located that has a population of:

(1) more than three hundred thousand persons according to the last federal decennial census, there shall be no extraterritorial zoning; or

(2) three hundred thousand or fewer people, concurrent extraterritorial zoning jurisdiction between that municipality and the county may be determined by an "extraterritorial land use authority" pursuant to ordinances adopted by the municipal and county governing bodies stating that the county or municipality will create an extraterritorial land use authority. The extraterritorial land use authority shall have the jurisdiction and powers of an extraterritorial zoning authority and shall carry out its duties related to planning and platting jurisdiction, extraterritorial zoning, subdivision approval and annexation approval or disapproval as provided in the Municipal Code.

The extraterritorial land use authority shall consist of four county commissioners appointed by the board of county commissioners and three city councilors or two city councilors and the mayor appointed by the municipality. Alternates to the extraterritorial land use authority shall be appointed by the board of county commissioners from among the remaining county commissioners and by the municipality from among the remaining city councilors. The alternates shall be notified prior to a meeting of the extraterritorial land use authority if an appointed member cannot attend. When replacing a member, an alternate shall have the same duties, privileges and powers as other appointed members.

B. The extraterritorial zoning commission in a class A county shall be known as the "extraterritorial land use commission" if it is formed by a municipality and a class A county that have adopted ordinances pursuant to Paragraph (2) of Subsection A of this section stating that the county and municipality will create an extraterritorial land use authority.

C. The extraterritorial zoning commission shall be composed of five members of the county planning commission appointed by the board of county commissioners and five members of the environmental planning commission of the municipality appointed by the city council. Alternates to the extraterritorial land use commission shall be appointed by the board of county commissioners from the remaining members of the county planning commission and by the municipality from the remaining members of the environmental planning commission, who shall be notified prior to a meeting of the extraterritorial land use commission if an appointed member cannot attend. When replacing a member, the alternate shall have the same duties, privileges and powers as other appointed members.

D. The composition of the extraterritorial land use commission shall not affect the composition of any other extraterritorial zoning commission that may be established in that county with any other municipality.

E. The extraterritorial land use commission shall have the authority to carry out duties related to planning and platting jurisdiction, subdivision and extraterritorial zoning.

History: Laws 1998, ch. 42, § 5; 1999, ch. 115, § 1; 2003, ch. 438, § 5.

3-21-3.3. Extraterritorial zoning jurisdiction; concurrent authority for certain counties.

A class A county with a population, as shown by the most recent federal decennial census, of greater than one hundred fifty thousand and less than four hundred thousand and a municipality within that county may exercise concurrent authority pursuant to an extraterritorial zoning authority created under Section 3-21-3 or 3-21-3.2 NMSA 1978 or pursuant to the terms of a joint powers agreement.

History: Laws 2009, ch. 34, § 1.

3-21-4. Extraterritorial zoning ordinance; enforcement and administration; appeals.

A. A zoning ordinance adopted by a joint municipal-county zoning authority shall be an ordinance of the municipality and an ordinance of the county joining in the agreement pursuant to Subsection A of Section 3-21-3 NMSA 1978 and may be enforced by appropriate procedures of either the municipality or the county. The agreement entered into pursuant to Subsection A of Section 3-21-3 NMSA 1978 may specify whether the municipality or the county shall assume primary enforcement responsibility.

B. The extraterritorial zoning commission shall administer the zoning ordinance adopted by the joint municipal-county zoning authority in the manner provided in Subsection C of Section 3-21-7 NMSA 1978.

C. Appeals from the decisions of the extraterritorial zoning commission shall be taken to the joint municipal-county zoning authority in the manner provided in Section 3-21-8 NMSA 1978, and appeals from the decisions of the joint municipal-county zoning authority shall be taken to the district court in the manner provided in Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-20-2.3, enacted by Laws 1977, ch. 80, § 3; 1998, ch. 55, § 6; 1999, ch. 265, § 6.

3-21-4.1. Extraterritorial zoning ordinances adopted under former law.

Notwithstanding any other provision of law to the contrary, all zoning ordinances adopted by class A counties pursuant to Section 15-36-26 NMSA 1953 (being Laws 1961, Chapter 21, Section 1, as amended) are valid and enforceable as of their effective dates and as they may have been amended from time to time. Such ordinances may be amended according to their provisions and may be enforced with respect to areas of the county not within the boundaries of a municipality; provided that such ordinances must be in effect as of the effective date of this 1996 act and shall not have been superseded by any municipal ordinance or by any joint ordinance of a county and a municipality adopted pursuant to the provisions of Sections 3-21-2 through 3-21-4 NMSA 1978.

History: 1978 Comp., § 3-21-4.1, enacted by Laws 1996, ch. 21, § 1.

3-21-5. Zoning; conformance to comprehensive plan.

A. The regulations and restrictions of the county or municipal zoning authority are to be in accordance with a comprehensive plan and be designed to:

(1) lessen congestion in the streets and public ways;

(2) secure safety from fire, flood waters, panic and other dangers;

(3) promote health and the general welfare;

(4) provide adequate light and air;

(5) prevent the overcrowding of land;

(6) avoid undue concentration of population;

(7) facilitate adequate provision for transportation, water, sewerage, schools, parks and other public requirements; and

(8) control and abate the unsightly use of buildings or land.

B. The zoning authority in adopting regulations and restrictions shall give reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and to conserving the value of buildings and land and encouraging the most appropriate use of land throughout its jurisdiction.

History: 1953 Comp., § 14-20-3, enacted by Laws 1965, ch. 300; 1970, ch. 52, § 2.

3-21-6. Zoning; mode of determining regulations, restrictions and boundaries of district; public hearing required; notice.

A. The zoning authority within its jurisdiction shall provide by ordinance for the manner in which zoning regulations, restrictions and the boundaries of districts are:

(1) determined, established and enforced; and

(2) amended, supplemented or repealed.

B. No zoning regulation, restriction or boundary shall become effective, amended, supplemented or repealed until after a public hearing at which all parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of the public hearing shall be published, at least fifteen days prior to the date of the hearing, within its respective jurisdiction. Whenever a change in zoning is proposed for an area of one block or less, notice of the public hearing shall be mailed by certified mail, return receipt requested, to the owners, as shown by the records of the county treasurer, of lots of land within the area proposed to be changed by a zoning regulation and within one hundred feet, excluding public right-of-way, of the area proposed to be changed by zoning regulation. Whenever a change in zoning is proposed for an area of more than one block, notice of the public hearing shall be mailed by first class mail to the owners, as shown by the records of the county treasurer, of lots or [of] land within the area

proposed to be changed by a zoning regulation and within one hundred feet, excluding public right-of-way, of the area proposed to be changed by zoning regulation. If the notice by first class mail to the owner is returned undelivered, the zoning authority shall attempt to discover the owner's most recent address and shall remit the notice by certified mail, return receipt requested, to that address.

C. If the owners of twenty percent or more of the area of the lots and [of] land included in the area proposed to be changed by a zoning regulation or within one hundred feet, excluding public right-of-way, of the area proposed to be changed by a zoning regulation, protest in writing the proposed change in the zoning regulation, the proposed change in zoning shall not become effective unless the change is approved by a majority vote of all the members of the governing body of the municipality or by a two-thirds vote of all the members of the board of county commissioners.

History: 1953 Comp., § 14-20-4, enacted by Laws 1965, ch. 300; 1979, ch. 319, § 1; 1981, ch. 91, § 1.

3-21-7. Appointment of a zoning commission; duties; preliminary report and hearing.

The zoning authority, within its jurisdiction, may:

A. act as a zoning commission;

B. designate the planning commission to act as a zoning commission; or

C. appoint a zoning commission, which shall recommend the boundaries of the various original districts and the regulations necessary to enforce the zoning restrictions. The zoning commission shall make a preliminary report and hold a hearing on the preliminary report before the report is submitted to the zoning authority for action.

History: 1953 Comp., § 14-20-5, enacted by Laws 1965, ch. 300.

3-21-8. Appeals to zoning authority; grounds; stay of proceedings.

A. The zoning authority shall provide by resolution the procedure to be followed in considering appeals allowed by this section.

B. Any aggrieved person or any officer, department, board or bureau of the zoning authority affected by a decision of an administrative officer, commission or committee in the enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or ordinance, resolution, rule or regulation adopted pursuant to these sections may appeal to the zoning authority. An appeal shall stay all proceedings in furtherance of the action appealed unless the officer, commission or committee from whom the appeal is taken certifies that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property. Upon certification, the proceedings shall not be stayed except by

order of district court after notice to the official, commission or committee from whom the appeal is taken and on due cause shown.

C. When an appeal alleges that there is error in any order, requirement, decision or determination by an administrative official, commission or committee in the enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or any ordinance, resolution, rule or regulation adopted pursuant to these sections, the zoning authority by a majority vote of all its members may:

(1) authorize, in appropriate cases and subject to appropriate conditions and safeguards, variances or special exceptions from the terms of the zoning ordinance or resolution:

(a) that are not contrary to the public interest;

(b) where, owing to special conditions, a literal enforcement of the zoning ordinance will result in unnecessary hardship;

(c) so that the spirit of the zoning ordinance is observed and substantial justice done; and

(d) so that the goals and policies of the comprehensive plan are implemented; or

(2) in conformity with Sections 3-21-1 through 3-21-14 NMSA 1978:

(a) reverse any order, requirement, decision or determination of an administrative official, commission or committee;

(b) decide in favor of the appellant; or

(c) make any change in any order, requirement, decision or determination of an administrative official, commission or committee.

History: 1953 Comp., § 14-20-6, enacted by Laws 1965, ch. 300; 1979, ch. 256, § 1; 1983, ch. 160, § 1; 2008, ch. 64, § 1.

3-21-9. Zoning; appeal.

A person aggrieved by a decision of the zoning authority or any officer, department, board or bureau of the zoning authority may appeal the decision pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-20-7, enacted by Laws 1965, ch. 300; 1998, ch. 55, § 7; 1999, ch. 265, § 7.

3-21-10. Zoning enforcement.

A. Sections 3-21-1 through 3-21-14 NMSA 1978, and any ordinance adopted pursuant to these sections, shall be enforced, by the zoning authority having jurisdiction, as municipal ordinances are enforced.

B. In addition, if any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of Sections 3-21-1 through 3-21-14 NMSA 1978, or any ordinance adopted pursuant to these sections, the zoning authority may institute any appropriate action or proceedings to:

(1) prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use;

(2) restrain, correct or abate the violation;

(3) prevent the occupancy of such building, structure or land; or

(4) prevent any illegal act, conduct, business or use in or about such premises.

C. The ordinances, rules and regulations together with the officially adopted or district zoning map of the county or municipal zoning authority shall be filed in the respective offices of the county clerk or municipal clerk and shall be available for examination by any citizen.

History: 1953 Comp., § 14-20-8, enacted by Laws 1965, ch. 300.

3-21-11. Conflicts between zoning regulations and other statutes and ordinances.

If any other statute or regulation or other local ordinance, resolution or regulation adopted under authority of Sections 3-21-1 through 3-21-14 NMSA 1978 is applicable to the same premises, the provision shall govern which requires:

A. the greater width or size of yards, courts or other open spaces;

B. the lower height of building or a less number of stories;

C. the greater percentage of lot or land to be left unoccupied;

D. or imposes, other higher standards.

History: 1953 Comp., § 14-20-9, enacted by Laws 1965, ch. 300.

3-21-12. County zoning authority; authority to contract.

A county zoning authority may contract for staff assistance and the service of another body if the other body is a:

A. state agency;

B. federal agency;

C. private planning agency; or

D. planning or zoning commission of a municipality within the county.

History: 1953 Comp., § 14-20-10, enacted by Laws 1965, ch. 300.

3-21-13. Zoning enforcement by counties.

A. Counties having authority to regulate building and zoning under Sections 3-21-1 through 3-21-14 NMSA 1978, may enact ordinances to carry out that authority the same as a municipality, except where inconsistent with statutory or constitutional limitations placed on counties. The ordinances are effective only within the zoning jurisdiction of the county.

B. County ordinances enacted under this section may be enforced by prosecution in the district court of the county. Penalties for violations of these ordinances shall not exceed a fine of three hundred dollars ($300) or imprisonment for ninety days, or both.

C. The district attorney and sheriff shall enforce these ordinances.

History: 1953 Comp., § 14-20-11, enacted by Laws 1965, ch. 300.

3-21-14. Adoption of county zoning ordinances.

A. Ordinances authorized under Section 3-21-13 NMSA 1978 may be proposed by any member of the board of county commissioners but shall not be submitted to the board for final passage until after publication.

B. A majority of the board members may order publication of the title and a general summary of a proposed ordinance in a newspaper of general circulation in the county at least once a week for two consecutive weeks prior to the date of the meeting of the board at which the ordinance is to be submitted for final passage. The date of the meeting shall be included in the published notice. The style and form of the ordinance shall be determined by the board.

C. A proposed ordinance shall be passed only by a majority vote of all the members of the board of county commissioners, and an existing ordinance shall be repealed by the same vote.

D. The original copy of the ordinance together with the proof of publication and supporting maps shall be filed in a book kept for that purpose and authenticated by the signature of the county clerk. The county clerk shall keep the book together with supporting maps in his office. The title and a general summary of the ordinance shall be published in a newspaper of general circulation in the county once each week for two consecutive weeks, the last date of publication being not less than fifteen nor more than thirty days prior to the effective date of the ordinance. No ordinance shall take effect until at least fifteen days after the last date of publication. It is a sufficient defense to any prosecution for violation of an ordinance to show that no publication was made. Copies of the proposed ordinance shall be made available to interested persons during normal and regular business hours of the county clerk upon request and payment of a reasonable charge, beginning with the date of publication and continuing to the date of consideration by the board of county commissioners.

E. Whenever the book of ordinances is introduced as evidence, the Rules of Civil Procedure shall govern.

History: 1953 Comp., § 14-20-12, enacted by Laws 1965, ch. 300; 1981, ch. 218, § 1.

3-21-15. [Special zoning districts;] short title.

This act [3-21-15 to 3-21-26 NMSA 1978] may be cited as the "Special Zoning District Act."

History: 1953 Comp., § 14-20-13, enacted by Laws 1965, ch. 206, § 1.

3-21-16. Purpose of act.

The purpose of the Special Zoning District Act [3-21-15 to 3-21-26 NMSA 1978] is to promote the health, safety, morals and general welfare of persons residing in areas outside the boundary limits of incorporated municipalities.

History: 1953 Comp., § 14-20-14, enacted by Laws 1965, ch. 206, § 2.

3-21-17. Definitions.

As used in the Special Zoning District Act [3-21-15 to 3-21-26 NMSA 1978]:

A. "person" includes one or more individuals, partnerships, associations, corporations, the state, any political subdivisions of the state and its agencies;

B. "district" means special zoning district;

C. "commission" means zoning commission;

D. "single family dwelling" means a house which is occupied, as a rule, for permanent residence purposes by a person maintaining a household, or two or more persons maintaining a common household.

History: 1953 Comp., § 14-20-15, enacted by Laws 1965, ch. 206, § 3.

3-21-18. Special zoning district.

A special zoning district is created in an area consisting of no more than twenty thousand contiguous acres that is outside the boundary limits of an incorporated municipality when:

A. there are at least one hundred fifty single family dwellings within the area;

B. at least fifty-one percent of the registered electors residing in the area sign a petition requesting a special zoning district;

C. the signed petition, along with a plat of the area included within the district, is filed in the office of the county clerk of the county or counties in which the area is situate; and

D. no general zoning ordinance applying to all areas in the county outside of incorporated municipalities has been adopted by the county or counties in which the area is situate; provided that any special zoning district in existence upon the effective date of this 1979 act may continue to exist without cost to any county, and any special zoning district created pursuant to this section may continue to exist after adoption of a general zoning ordinance applying to all areas in the county outside of incorporated municipalities by the county or counties in which the district is situate without cost to any county; but no new special zoning districts shall be created in any county after the adoption of such general zoning ordinance by such county.

History: 1953 Comp., § 14-20-16, enacted by Laws 1965, ch. 206, § 4; 1979, ch. 334, § 1; 1993, ch. 264, § 1.

3-21-19. Zoning commission.

A zoning commission consisting of five members shall be elected by the registered electors residing within the district in accordance with the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978]. Members of the commission shall be residents of the district, and each shall be elected for a term of two years. Any vacancy on the commission shall be filled by the remaining members appointing a new member to fill the unexpired term. Members of the commission shall serve without compensation.

History: 1953 Comp., § 14-20-17, enacted by Laws 1965, ch. 206, § 5; 2018, ch. 79, § 61.

3-21-20. Election of members to the commission.

Election of members to the commission shall be conducted pursuant to the Local Election Act [Chapter 1, Article 22 NMSA 1978].

History: 1953 Comp., § 14-20-18, enacted by Laws 1965, ch. 206, § 6; 2018, ch. 79, § 62.

3-21-21. Powers of the commission.

A. The commission shall have power within the district as part of the building and zoning ordinances, regulations and restrictions adopted by it in the manner otherwise provided by law, to regulate and restrict:

(1) the height, number of stories and size of buildings and other structures;

(2) the percentage of a lot that may be occupied;

(3) the size of yards, courts and other open spaces;

(4) the density of populations;

(5) the location and use of buildings and structures; and

(6) the use of lands for trade, industry, residence or other purposes.

B. The commission shall adopt a comprehensive zoning plan or ordinance for the district that includes a master land use plan.

History: 1953 Comp., § 14-20-19, enacted by Laws 1965, ch. 206, § 7; 1993, ch. 264, § 2.

3-21-22. Procedures for regulations or restrictions.

The procedure for the commission in establishing, amending or repealing the ordinances, regulations or restrictions provided in the Special Zoning District Act [3-21-15 to 3-21-26 NMSA 1978] shall be the same as for the governing body of counties in Sections 3-21-5 through 3-21-8 NMSA 1978.

History: 1953 Comp., § 14-20-20, enacted by Laws 1965, ch. 206, § 8; 1993, ch. 264, § 3.

3-21-23. Ordinance; penalty; remedies.

The commission may provide by ordinance for the enforcement of the Special Zoning District Act [3-21-15 to 3-21-26 NMSA 1978]. A violation of the Special Zoning District Act, or any ordinance made thereunder, is a misdemeanor. If the Special Zoning District Act or any ordinance made thereunder is violated, the commission, in addition to other remedies, may institute any appropriate action or proceeding to prevent, abate or restrain the violation.

History: 1953 Comp., § 14-20-21, enacted by Laws 1965, ch. 206, § 9.

3-21-24. Enforcement.

The ordinances enacted under the authority of the Special Zoning District Act [3-21-15 to 3-21-26 NMSA 1978] shall be enforced by the district attorney and the sheriff of the county or counties in which the district is situate.

History: 1953 Comp., § 14-20-22, enacted by Laws 1965, ch. 206, § 10.

3-21-25. Judicial review.

Any person aggrieved by any regulation, restriction, or ordinance made by the commission may file a claim for relief in the district court.

History: 1953 Comp., § 14-20-23, enacted by Laws 1965, ch. 206, § 11.

3-21-26. Costs incurred by zoning commission of special zoning district; fees.

All necessary costs incurred by the zoning commission of a special zoning district in connection with official acts performed pursuant to the Special Zoning District Act [3-21-15 to 3-21-26 NMSA 1978] shall be borne by the parties in interest. Provided, that the commission may by ordinance impose reasonable fees upon parties in interest and such fees shall be used to defray the costs incurred by the commission.

For purposes of this section, the term "party in interest" means the person who requests a variance or a change in zoning or who requests the amendment or repeal of any regulation, restriction or ordinance adopted pursuant to the Special Zoning District Act.

History: 1978 Comp., § 3-21-26, enacted by Laws 1981, ch. 201, § 1.

ARTICLE 21A
Manufactured Housing and Zoning

3-21A-1. Short title.

This act [3-21A-1 to 3-21A-8 NMSA 1978] may be cited as the "Manufactured Housing and Zoning Act".

History: Laws 1987, ch. 196, § 1.

3-21A-2. Definitions.

As used in the Manufactured Housing and Zoning Act:

A. "multi-section manufactured home" means a manufactured home or modular home that is a single-family dwelling with a heated area of at least thirty-six by twenty-four feet and at least eight hundred sixty-four square feet and constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or the Uniform Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act and with the rules made pursuant thereto relating to permanent foundations;

B. "mobile home" means a movable or portable housing structure larger than forty feet in body length, eight feet in width or eleven feet in overall height, designed for and occupied by no more than one family for living and sleeping purposes that is not constructed to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or Uniform Building Code, as amended to the date of the unit's construction or built to the standards of any municipal building code; and

C. "excavated site" means a site that results in the upper plane of the concrete slab, or similar component of any other authorized permanent foundation system, being below ground level or grade.

History: Laws 1987, ch. 196, § 2; 1999, ch. 125, § 1; 2001, ch. 22, § 1.

3-21A-3. Manufactured housing; permissible regulations.

In the exercise of any of the powers and duties conferred by law, no governing body of a political subdivision of the state or any planning and zoning agency thereunder shall exclude multi-section manufactured homes from a specific-use district in which site-built, single-family housing is allowed or place more severe restrictions upon a multi-section manufactured home than are placed upon single-family, site-built housing within that specific-use district so long as the manufactured housing is built or constructed according to the Housing and Urban Development Zone Code II or the Uniform Building Code. The governing body of any political subdivision of the state or any planning and

zoning agency thereunder is authorized to regulate manufactured housing to require that it meets all requirements other than original construction requirements of other single-family dwellings that are site-built homes in the same specific-use district and to further require by ordinance that such manufactured housing be consistent with applicable historic or aesthetic standards.

History: Laws 1987, ch. 196, § 3; 1999, ch. 125, § 2.

3-21A-4. Mobile homes; permissible regulations.

In the exercise of any of the powers and duties conferred by law, a governing body of a political subdivision of the state, or any planning or zoning agency thereunder, may regulate the occupancy or location of dwelling units in such a way as to effect the reasonable regulation of mobile homes. Such regulation may exclude mobile homes from residential-use districts and restrict them to mobile home parks or mobile home subdivisions.

History: Laws 1987, ch. 196, § 4.

3-21A-5. Impermissible regulations.

A. No ordinance or regulation authorized by the Manufactured Housing and Zoning Act shall regulate the original construction of the manufactured home or mobile home.

B. No ordinance or regulation otherwise authorized or permitted by the Manufactured Housing and Zoning Act shall be permissible or enforceable if it would have the direct or indirect effect of requiring that a multi-section manufactured home be installed in an excavated site in order to be included in a specific-use district in which site-built, single-family housing is allowed.

History: Laws 1987, ch. 196, § 5; 1999, ch. 125, § 3; 2001, ch. 22, § 2.

3-21A-6. Private covenants and deed restrictions; local government restrictions.

A. Nothing in the Manufactured Housing and Zoning Act or any ordinance or regulation adopted pursuant thereto shall be construed as abrogating or limiting a recorded restrictive covenant or deed restriction.

B. The provisions of the Manufactured Housing and Zoning Act shall not be construed as abrogating or limiting the powers of political subdivisions regarding the exercise of zoning, planning and subdivision powers except to the extent the exercise of such powers is inconsistent with the provisions of the Manufactured Housing and Zoning Act and the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978].

History: Laws 1987, ch. 196, § 6; 1999, ch. 125, § 4.

3-21A-7. Existing ordinances.

The Manufactured Housing and Zoning Act shall apply to all municipalities and counties except that the Manufactured Housing and Zoning Act shall not apply to any ordinance or regulation adopted by a home rule municipality which was adopted prior to January 1, 1987 or an ordinance or regulation adopted by a home rule municipality after January 1, 1987 which is not inconsistent with the Manufactured Housing and Zoning Act. However, if such ordinance or regulation is repealed then the Manufactured Housing and Zoning Act shall apply thereafter to that home rule municipality.

History: Laws 1987, ch. 196, § 7.

3-21A-8. Municipal inspection program; manufactured housing.

Notwithstanding any other provisions of law for inspection of manufactured housing, a municipality over 100,000 in population located in a class "A" county may establish a manufactured housing inspection program to inspect foundations, tie-downs and utility service hookups and lines including but not limited to sewer, water, electrical and gas service. The municipality may establish and collect a reasonable inspection fee. The inspections may be made in addition to any other inspections authorized by law.

History: Laws 1987, ch. 196, § 8.

ARTICLE 22
Historic Districts and Landmarks

3-22-1. Historic District and Landmark Act; short title.

Chapter 3, Article 22 NMSA 1978 may be cited as the "Historic District and Landmark Act."

History: 1953 Comp., § 14-21-1, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 1.

3-22-1.1. Definition.

As used in the Historic District and Landmark Act, "landmark" means a structure or site of historical interest.

History: 1978 Comp., § 3-22-1.1, enacted by Laws 1983, ch. 178, § 2.

3-22-2. Purpose.

The legislature of the state of New Mexico hereby declares that the historical heritage of this state is among its most valued and important assets and that it is the intention of the Historic District and Landmark Act to empower the counties and municipalities of this state with as full and complete powers to preserve, protect and enhance the historic areas and landmarks lying within their respective jurisdictions as it is possible for this legislature to permit under the constitution of the United States and the constitution of New Mexico and subject to the specific duties and responsibilities respecting historical matters already granted or to be granted under other statutes of this state.

History: 1953 Comp., § 14-21-2, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 3.

3-22-3. Establishment of historic districts and landmarks by zoning.

Any county or municipality otherwise empowered by law to adopt and enforce zoning ordinances, rules and regulations is hereby empowered to create, as part of the building and zoning regulations and restrictions adopted by it in the manner otherwise provided by law and in accordance with a comprehensive zoning plan, a zoning district designating certain areas as historical areas and landmarks and may, for the purpose of preserving, protecting and enhancing such historical areas and landmarks, adopt and enforce regulations and restrictions within such district relating to the erection, alteration and destruction of those exterior features of buildings and other structures subject to public view from any public street, way or other public place.

History: 1953 Comp., § 14-21-3, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 4.

3-22-4. Historic areas and landmarks; authorization to expend funds, to enter [into] agreements and, where necessary, exercise power of eminent domain.

Any county or municipality is hereby empowered to expend public funds for any purposes connected with the preservation, protection or enhancement of historical areas and landmarks, areas related to historical areas or areas otherwise of special architectural or visual interest, including but not limited to the purchase of any or all of such areas and landmarks, if necessary, through the use of eminent domain in the manner provided by law for the acquisition of property for a public purpose, which acquisition is hereby declared to be:

A. the leasing or acquisition of any other title or interest in the same by negotiation or, if necessary, through the use of eminent domain in the manner provided by law, including the acquisition of easements in and related to such areas and landmarks which will permit the county or municipality to control development of the same in a manner consistent with the purposes of the Historic District and Landmark Act;

B. the entering into any reasonable agreement with private persons to promote the objectives of this section; or

C. the enactment of appropriate ordinances or resolutions under which the county or municipality, as the case may be, may be given prior right to acquire any interest in property in such areas and landmarks as over any private person offering an equal price for the same interest or any other similar measures as may be consistent with the purposes of the Historic District and Landmark Act.

History: 1953 Comp., § 14-21-4, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 5.

3-22-5. Historic areas and landmarks; construction of this act.

Nothing in the Historic District and Landmark Act shall be construed to limit any existing inherent, statutory or other powers under which any county or municipality has enacted appropriate measures regarding historic areas and landmarks.

History: 1953 Comp., § 14-21-5, enacted by Laws 1965, ch. 300; 1983, ch. 178, § 6.

3-22-6. Applicability to construction or renovation of state buildings; limitation.

A. Recognizing the fragility of the state's historic heritage, the purpose of this section is to establish a procedure under which the state and its municipalities and counties will commit to collaborate in good faith and work jointly to preserve and protect the historic districts of New Mexico.

B. Ordinances enacted by a municipality or county pursuant to the Historic District and Landmark Act shall apply to any construction or renovation of a state building only as provided in this section and only if the ordinances contain special provisions and standards applicable to state buildings, including provisions concerning the design, construction, alteration or demolition of the exterior features of state buildings. If requested by a resolution of the governing body of a municipality or county, the staff of the capitol buildings planning commission shall work jointly with the staff of the municipality or county in developing the provisions and standards required by this subsection.

C. The applicable state agency shall carry out the construction or renovation of a state building in a manner that is harmonious and generally compatible with the municipal or county ordinances.

D. Before commencing the design phase of the construction or renovation of a state building, the applicable state agency shall consult with the municipality or county as to the design standards in the ordinances and how those design standards would impact costs and the operation or manner in which the construction or renovation of a state building will ultimately be expected to function; provided that, if the municipality or county has an agency or other entity review projects within the area zoned as a historic district or landmark, then the consultation shall be with that review agency or other entity. The state agency shall work collaboratively with the municipality or county or its

review agency or other entity to arrive at compatibility with the design standards, considering reasonable costs and preserving essential functionality. If the municipality or county has identifiable community groups involved in historic preservation, the agency shall also make every reasonable effort to obtain input from members of those identified groups before commencing the design phase.

E. After the design phase and before soliciting a bid or a proposal for design-build or lease-purchase for the construction or renovation of a state building, the applicable state agency shall transmit its plans for review and comment to the municipality or county or its review agency or other entity and shall also conduct a public meeting to receive public input. Notice of the public meeting shall also be given to any identifiable community groups involved in historic preservation in the municipality or county.

F. Within sixty days after the public meeting, the municipality or county or its review agency or other entity, any identifiable historic preservation community group and any other interested party shall communicate recommendations and comments in writing to the state agency. The state agency shall consult with the municipality or county or its review agency or other entity to resolve any issues raised. If, at the end of the sixty-day period, unresolved issues remain, the municipality or county may, within five days after the end of the period, notify the applicable state agency that the issues remain unresolved and should be finally determined pursuant to Subsection G of this section; provided that, if notice is not timely given, the applicable state agency may, after incorporating those provisions to which the state agency and the municipality or county have agreed, proceed with the construction or renovation of a state building.

G. If notice is timely given by a municipality or county, pursuant to Subsection F of this section, that issues remain unresolved, those issues shall be decided pursuant to the following provisions:

(1) within five days after the notice, a state-local government historic review board shall be formed, consisting of eight members as follows:

(a) one member appointed by the capitol buildings planning commission, who shall chair the board and who shall vote only if there is a tie among the other board members present;

(b) one member appointed by the cultural properties review committee;

(c) the state historic preservation officer or a designee of the officer;

(d) one member appointed by the agency or other entity that reviews projects within the area zoned as a historic district or landmark; provided that, if the municipality or county has no such agency or other entity, the member shall be appointed by the governing body of the municipality or county;

(e) one member appointed by the agency or entity of the municipality or county that is concerned with historic preservation; provided that, if the municipality or county has no such agency or other entity, the member shall be appointed by the governing body of the municipality or county; and

(f) three public members who have a demonstrated interest in historic preservation appointed as follows: 1) one member appointed by the secretary of general services; 2) one member appointed by the governing body of the municipality or county; and 3) one public member appointed by the other two public members;

(2) the staff of the capitol buildings planning commission shall serve as the staff of the state-local government historic review board; and

(3) the state-local government historic review board shall, at a public meeting, consider each of the unresolved issues and, within twenty days of its formation shall, for each issue, make a final decision that is harmonious and generally compatible with the municipal or county ordinance.

H. Appeals from the decisions of the state-local government historic review board shall be taken to the district court in the manner provided in Section 39-3-1.1 NMSA 1978.

I. The state agency shall not take any irrevocable action on the construction or renovation of a state building in reliance on the plans until the procedures set forth in Subsections F and G of this section have been followed.

J. As used in this section:

(1) "construction or renovation" applies only to the exterior envelope of a state building, regardless of the source of funds for the project; and

(2) "state building" means an affixed structure with walls and a roof designed for enclosure or shelter that is owned or leased by the state or located on land owned by the state or held in trust by the state; provided that any lessee of lands held in trust by the state pursuant to the Enabling Act shall be subject to the state agency obligations.

History: Laws 2009, ch. 23, § 1; 2019, ch. 93, § 1.

ARTICLE 23
Public Utilities

3-23-1. Municipal utility; service charges; deposits; discontinuance of water service for nonpayment of charges; supplemental method.

A. A municipality, including an entity established pursuant to Section 72-1-10 NMSA 1978, may require a reasonable payment in advance or a reasonable deposit for water, electricity, gas, sewer service, geothermal energy, refuse collection service or street maintenance.

B. If payment of any price, rent, fee or other charge for water, sewer service, refuse collection or street maintenance is not made within thirty days from the date the payment is due, the water service may be discontinued and shall not be again supplied to the person liable for the payment until the arrears with interest and penalties have been fully paid.

C. The provisions of this section are intended to afford an additional method of enforcing payment of charges for water, sewer service, refuse collection or street maintenance furnished by the municipality.

History: 1953 Comp., § 14-22-1, enacted by Laws 1965, ch. 300; 1985, ch. 81, § 1; 2011, ch. 117, § 1.

3-23-2. Election on question of acquiring utility.

A. No municipality shall acquire a municipal utility from funds acquired from the issuance of revenue bonds until the question of acquiring the utility is submitted, at a regular local election or special election, to a vote of the qualified electors of the municipality, and a majority of the votes cast on the question favors the acquisition of the utility. No special election shall be set for a date ninety days prior to the day of a regular local election. The acquisition by a municipality, which owns municipal electric facilities on July 1, 1979, of a generating facility or any interest in a jointly owned generating facility from funds acquired from the issuance of revenue bonds shall not be subject to the election requirement of this section.

B. Each question shall be listed separately on the ballot. The ballot shall:

(1) contain a general description of the property to be acquired; and

(2) allow each voter to indicate whether the voter favors or opposes the acquisition.

C. The election shall be called and conducted as provided in the Local Election Act [Chapter 1, Article 22 NMSA 1978].

D. If a majority of the votes cast on the question favors the acquisition of the utility, the governing body may acquire the utility.

E. If, pursuant to Article 9, Section 12 of the constitution of New Mexico and Sections 3-30-1 through 3-30-9 NMSA 1978, the qualified electors of the municipality and nonresident municipal electors have voted in favor of creating a debt for the

acquisition of a municipal utility and the municipality has incurred the debt, the municipality need not hold the election required in this section and it shall be presumed that the acquisition of a municipal utility has been approved, or, if the municipality has owned and operated a municipal utility for a period of more than one year, it shall be presumed that the acquisition of the municipal utility has been approved.

History: 1953 Comp., § 14-22-2, enacted by Laws 1965, ch. 300; 1979, ch. 260, § 2; 2018, ch. 79, § 63.

3-23-3. Municipal utility; approval of New Mexico public utility commission.

A. If the acquisition of a utility is to be financed from funds received from the issuance and sale of revenue bonds, the price of the acquisition of the utility shall be approved by the New Mexico public utility commission [public regulation commission] and the commission shall require:

(1) a determination by appraisal or otherwise of the true value of the utility to be purchased; or

(2) an engineer's estimate of the cost of the utility to be constructed.

B. No revenue bonds shall be issued for the acquisition of such a utility until the New Mexico public utility commission [public regulation commission] has approved the issue and its amount, date of issuance, maturity, rate of interest and general provisions.

C. The provisions of Subsections A and B of this section shall not apply to the condemnation by a municipality having a population of twenty-five thousand or more persons according to the 1990 federal decennial census of electricity facilities as authorized by Chapter 3, Article 24 NMSA 1978, sewer facilities as authorized by Chapter 3, Article 26 NMSA 1978 or water facilities as authorized by Chapter 3, Article 27 NMSA 1978.

History: 1953 Comp., § 14-22-3, enacted by Laws 1965, ch. 300; 1993, ch. 282, § 4; 1995, ch. 67, § 1; 1997, ch. 228, § 1.

3-23-4. Municipal utility; use of revenue.

A. Income derived from the operation of a municipal utility that has funds received from a revenue bond issue shall be used in the following priority:

(1) to maintain the municipal utility in good repair and to pay legitimate expenses of operation;

(2) to pay interest on revenue bonds issued for the purpose of acquiring, repairing, improving or enlarging the municipal utility;

(3) to create a sinking fund and a reasonable reserve fund as required by the ordinance authorizing the revenue bonds and the law governing their issue; and

(4) to pay the cost of improving and extending the municipal utility and the redemption of revenue bonds prior to their maturity if permitted by the ordinance authorizing their issuance.

B. If the municipal utility annually transfers to an interest and sinking fund for the retirement of outstanding revenue bonds an amount equal to one hundred twenty-five percent of the interest and sinking fund requirements for that year, any income in excess of this amount may then be transferred to the general fund of the municipality and expended as the governing body of the municipality directs. When the balance in the interest and sinking fund is equal to the total amount of interest and sinking fund requirements necessary to retire all such outstanding revenue bonds, the annual transfer of income to the sinking fund is not required.

History: 1953 Comp., § 14-22-4, enacted by Laws 1965, ch. 300.

3-23-5. Municipal utility; duty to maintain and improve.

A. After the qualified electors at a regular or special municipal election have approved the acquisition of a municipal utility, the municipality shall maintain a municipal utility in good repair and improve and enlarge the municipal utility to accomplish the objectives and purposes for which it was designed.

B. A municipality may use other funds to defray the cost of operating or repairing a municipal utility, other than an electric or gas utility, generating facility or its interest in a jointly owned generating facility.

History: 1953 Comp., § 14-22-5, enacted by Laws 1965, ch. 300; 1979, ch. 260, § 3.

3-23-5.1. Municipal utility permanent fund.

A. The governing body of a municipality may by ordinance establish a municipal utility permanent fund for each utility owned and operated by the municipality.

B. The municipal utility permanent fund shall be a fund in the municipal treasury into which may be deposited money from the sale of municipal utility assets or any portion of the unappropriated utility fund cash surplus that is in excess of fifty percent of the prior fiscal year's municipal utility budget. Money in the fund may be invested by the municipal board of finance as provided in Sections 6-10-10, 6-10-36 and 6-10-44 NMSA 1978.

C. Earnings from investment of a municipal utility permanent fund may be budgeted and appropriated by the governing body of the municipality for expenditure for any

purpose related to the operation, maintenance and improvement of the municipal utility or deposited in the municipal utility permanent fund.

D. Money in the municipal utility permanent fund may be appropriated or expended only pursuant to approval of the voters of the municipality. The municipality may adopt a resolution calling for an election on the question of the expenditure of a specified amount of the municipal utility permanent fund for a specified purpose. The election shall be held within sixty days after the adoption of the resolution by the governing body. The election shall be called, conducted, counted and canvassed pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978]. If a majority of the voters of the municipality voting on the question votes to approve the expenditure, that amount of money shall be available for appropriation from the municipal utility permanent fund for expenditure by the municipality for the specified purpose. If a majority of the voters of the municipality voting on the question votes against the expenditure, no money in the municipal utility permanent fund may be appropriated or expended for that purpose. Following an election at which the question was not approved, that question shall not again be submitted to the voters of the municipality for at least one year from the date of that election.

History: Laws 2001, ch. 179, § 1; 2018, ch. 79, § 64.

3-23-6. Charge for service of municipal utility becomes a lien against the property served; exception.

A. Any charge imposed by ordinance for service rendered by a municipal utility, including an entity established pursuant to Section 72-1-10 NMSA 1978, except as indicated in Subsection C of this section, shall be:

(1) payable by the owner, personally, at the time the charge accrues and becomes due; and

(2) a lien upon the tract or parcel of land being served from such time.

B. The lien shall be enforced in the manner provided in Sections 3-36-1 through 3-36-5 NMSA 1978. In any proceedings where pleadings are required, it shall be sufficient to declare generally for the municipal utility service. Notice of the lien shall be filed in the manner provided in Section 3-36-1 NMSA 1978, and the effect of such filing shall be governed by Section 3-36-2 NMSA 1978.

C. Subsection A of this section shall not apply if an owner notifies the municipality that utility charges that may be incurred by a renter will not be the responsibility of the owner. Such notification shall be given in writing prior to the initiation of the debt and shall include the location of the rental property.

History: 1953 Comp., § 14-22-6, enacted by Laws 1965, ch. 300; 1971, ch. 225, § 1; 1981, ch. 213, § 2; 2011, ch. 117, § 2.

3-23-7. Appointment of receiver; qualifications; powers.

A. Upon the failure of any municipality coming within the provisions of Sections 3-23-4, 3-23-7, 3-23-8 and 3-23-9 NMSA 1978, to comply with the provisions of these sections, the district court may at the suit of any resident taxpayer of the municipality appoint a receiver for the municipal utility. Under the court's direction, the receiver shall operate the municipal utility to accomplish the objectives and purposes of Sections 3-23-4, 3-23-7, 3-23-8 and 3-23-9 NMSA 1978.

B. No person shall be appointed a receiver unless he:

(1) has been an actual resident in good faith of the municipality for not less than one year prior to the date of his appointment; and

(2) is a taxpayer and owner of real estate of the value of at least five hundred dollars ($500) within the municipality. Upon petition to remove the receiver signed by not less than fifty-one percent of the qualified electors who are taxpayers resident within the municipality, the district court shall remove the receiver. A receiver shall act until discharged by the district court.

History: 1953 Comp., § 14-22-7, enacted by Laws 1965, ch. 300.

3-23-8. Municipal utility; receiver's certificates.

A. Upon the order of the district court, the receiver may issue receiver's certificates for the purpose of providing funds to operate, repair, improve or enlarge the municipal utility. Unless otherwise provided by the district court, payment of the receiver's certificates shall be pledged from the net income of the municipal utility and the receiver's certificates are a first lien upon the real and personal property of the municipal utility. The district court shall prescribe the certificates':

(1) form;

(2) term; and

(3) rate of interest.

B. Receiver's certificates are exempt from the operation of any law which regulates the issuance or sale of securities of public utilities.

History: 1953 Comp., § 14-22-8, enacted by Laws 1965, ch. 300.

3-23-9. Municipal utility; levy and collection of taxes not terminated by receivership.

The appointment of a receiver as authorized in Section 3-23-7 NMSA 1978, does not release the municipality from its obligation to levy and collect the taxes provided by the terms of bonds or the law governing their issue.

History: 1953 Comp., § 14-22-9, enacted by Laws 1965, ch. 300.

3-23-10. Municipal utility; board of utility commissioners.

A. A municipality may establish a municipal board of utility commissioners to manage and operate a municipal utility. The board of utility commissioners is responsible for the administration of the affairs of the utility. Members of the board of utility commissioners shall be appointed by the mayor with the consent of the governing body, and, except in the case of a class H county, each shall represent a commissioner district within the area served by the utility.

B. The ordinance establishing the board of utility commissioners:

(1) shall fix the number of commissioners;

(2) except in the case of a class H county, shall establish commissioner districts within the municipal utility's service area, with each district representing approximately the same number of consumers of the municipal utility;

(3) shall set the term of office for commissioners, which shall not exceed six years;

(4) may provide for staggered terms of office;

(5) shall establish the duties and jurisdiction of the board with respect to the management and administration of the affairs of the utility; and

(6) may contain such terms and provisions, consistent with law, that are reasonably necessary or desirable to accomplish the purposes assigned to the board.

C. Any municipality establishing a board of utility commissioners shall retain and possess all powers with respect to the utility for which the board is established as are consistent with the laws and constitution of New Mexico.

History: 1953 Comp., § 14-22-10, enacted by Laws 1965, ch. 300; 1967, ch. 223, § 2; 1999, ch. 135, § 1.

ARTICLE 23A
Municipal Cable Television

3-23A-1. Short title.

This act [3-23A-1 to 3-23A-6 NMSA 1978] may be cited as the "Municipal Cable Television Act".

History: Laws 1993, ch. 208, § 1.

3-23A-2. Purpose.

The purpose of the Municipal Cable Television Act is to authorize municipalities to acquire, construct, own or operate cable television systems within the state.

History: Laws 1993, ch. 208, § 2.

3-23A-3. Definition.

As used in the Municipal Cable Television Act, "municipality" means a municipality with a population of more than thirty-three thousand people but less than thirty-five thousand people.

History: Laws 1993, ch. 208, § 3.

3-23A-4. Delegation of authority.

Municipalities may acquire, construct, own, operate or manage cable television systems or related equipment or facilities.

History: Laws 1993, ch. 208, § 4.

3-23A-5. Service area.

A municipally owned or operated cable television system may operate anywhere within the municipal boundaries of the municipality or within an area not to exceed five miles from its boundaries. A municipally owned or operated cable television system may not operate within the municipal boundaries of another municipality without the consent of the other municipality.

History: Laws 1993, ch. 208, § 5.

3-23A-6. Service charges.

A municipality owning or operating a cable television system may charge reasonable, nondiscriminatory usage fees to its cable system customers. A municipality may not charge fees based on whether the customer is located inside or outside the municipal boundaries of the municipality owning or operating the system.

History: Laws 1993, ch. 208, § 6.

ARTICLE 24
Electric Utility

3-24-1. Electric utility; municipality may acquire and operate; certain municipalities may acquire by contract or condemnation.

A. Any municipality may, by ordinance, acquire, operate and maintain an electric utility for the generation and distribution of electricity to persons residing within its service area. The service area of a municipality includes:

(1) territory within the municipality;

(2) territory within five miles of the boundary of the municipality in the case of any municipality heretofore acquiring or operating any municipal electric utility or part thereof in the territory within five miles of the boundary of the municipality;

(3) the sale of electricity to the United States government, the state of New Mexico or any department or agency of these governments; and

(4) as further provided in Section 3-24-8 NMSA 1978.

B. No municipality may sell electric power and energy on a retail basis except as provided in Subsection A of this section.

C. The acquisition of any electric utility facility beyond the municipal boundary shall be financed only by the sale of revenue bonds.

D. Any municipality that owns a generating facility or an interest in a jointly owned generating facility may sell surplus electric power and energy on a wholesale basis either within or outside its service area. Any contract or agreement to sell surplus electric power and energy may be entered into on a public bid basis, a competitive basis or a negotiated basis, as the municipality may determine; provided, however, that subject to the sale or other interchange of power and energy with a joint participant or a co-member of a power pool necessary or convenient to the economical operation of a generating facility or a jointly owned generating facility or contractual requirements of a power pool in which the municipality is a member, such surplus electric power and energy shall be subject to a preference right to purchase by:

(1) first, municipalities that own electric facilities on July 1, 1979;

(2) second, public electric utilities, investor-owned utilities and electric cooperatives subject to general or limited regulation by the New Mexico public utility commission and the United States of America or any of its departments or agencies; and

(3) any other person or entity.

E. Municipalities located within a class A county and having a population of more than sixty thousand, but less than one hundred thousand according to the 1990 federal decennial census, may acquire, maintain, contract for and condemn for use as a municipal utility privately owned electric facilities used or to be used for the furnishing and supply of electricity to the municipality or inhabitants within its service area. The service area of a municipality authorized to acquire, maintain, contract for or condemn private facilities pursuant to this subsection includes customers located in:

(1) territory within the municipality;

(2) territory within five miles of the boundary of the municipality in the case of any municipality heretofore acquiring or operating any municipal electric utility or part thereof in the territory within five miles of the boundary of the municipality;

(3) United States government-owned installations, the state or any department or agency of these governments; and

(4) as further provided in Section 3-24-8 NMSA 1978.

F. A municipality that acquires, maintains, contracts for or condemns privately owned electric facilities for use as a municipal utility pursuant to the provisions of Subsection E of this section shall:

(1) not use revenues earned from the electric facilities for any purposes other than those directly related to the furnishing and supply of electricity to the municipality or inhabitants within the service area;

(2) not restrict use of the electric facilities or distribution system to any person authorized to use the facilities or distribution system pursuant to state law; and

(3) adopt a shared payment policy for line extensions, with public input, that is fair and equitable, requiring reasonable contributions from the persons who will directly benefit from the line extension and not imposing an unreasonable burden on the municipality or inhabitants within the service area that do not directly benefit from the line extension.

G. Condemnation authorized in this section shall be conducted in the manner of proceedings provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978].

History: 1953 Comp., § 14-23-1, enacted by Laws 1965, ch. 300; 1979, ch. 260, § 4; 1993, ch. 282, § 5; 1997, ch. 228, § 2.

3-24-2. Electric utility; charges.

A municipality owning and operating an electric utility shall charge only the person receiving the electric service. Charges shall not be limited to measurement by kilowatt or the kilowatt hour. The provisions of this section shall not apply to the sale by a municipality of surplus electric power and energy derived from its generating facility or its interest in a jointly owned generating facility.

History: 1953 Comp., § 14-23-2, enacted by Laws 1965, ch. 300; 1979, ch. 260, § 5; 1999, ch. 70, § 1.

3-24-3. Electric utility; municipality serving a governmental agency.

Any municipality maintaining electric transmission lines more than five miles beyond the municipal boundary for the purpose of supplying electricity to the United States government, the state of New Mexico or any department or agency of these governments may:

A. acquire, by purchase, gift or other conveyance, any public utility system using such transmission line in providing service; and

B. acquire, construct, operate and maintain any electric utility system served by and contiguous to such transmission line, in conformity with:

(1) any franchise possessed by the public utility; or

(2) the consent and franchise from the governmental authority controlling the area to be served by the electric utility.

History: 1953 Comp., § 14-23-3, enacted by Laws 1965, ch. 300.

3-24-4. Jurisdiction over land of electric utility.

A. For the purpose of constructing, operating, maintaining and protecting an electric utility, a municipality has jurisdiction over:

(1) territory, occupied by an electric utility;

(2) all poles, lines, mains, pipes and other facilities of the electric utility; and

(3) that portion of any land upon which is located the electric utility and its facilities, or over which they extend, to the extent reasonably necessary to properly operate, maintain, and protect the facilities.

B. Any municipality is granted:

(1) easements not to exceed twenty feet in width along, upon, and across any land over which an existing distribution line, main, and pipe extends, and parallel to such lines, mains, and pipes, and on any street, road and highway abutting such land;

(2) authority to cut down and trim trees and shrubbery, to the extent necessary to keep them clear of the lines, means, pipes or systems; and

(3) authority to cut down and trim trees which are dead, weak, leaning or dangerous, and tall enough to strike the wire in falling.

History: 1953 Comp., § 14-23-4, enacted by Laws 1965, ch. 300.

3-24-5. Electric utility; eminent domain power.

Any municipality owning, operating or proposing to construct an electric utility has the power of eminent domain for the purpose of acquiring property for the use of the electric utility according to the procedure for condemnation as provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978].

History: 1953 Comp., § 14-23-5, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 4; 1981, ch. 125, § 37.

3-24-6. Electric utility; power to issue revenue bonds.

A. A municipality may issue electric utility revenue bonds as provided in Sections 3-31-1 through 3-31-12 NMSA 1978. The proceeds from the sale of the electric utility revenue bonds are to be used solely for the purpose of purchasing, acquiring, constructing and making necessary improvements, extensions, repairs and betterments of the electric utility.

B. The electric utility revenue bonds are to be paid solely from the net income derived from the operation of the electric utility.

History: 1953 Comp., § 14-23-6, enacted by Laws 1965, ch. 300.

3-24-7. Limitations on electric utility of municipality.

A. No municipality in the operation of its electric utility may exercise dominion over territory outside its boundary in which rights have been granted to an electric cooperative under the provisions of Section 62-15-3 NMSA 1978.

B. All acts and parts of acts in conflict with Sections 3-24-1 through 3-24-10 NMSA 1978, are repealed, except that these sections shall not be construed as amending or repealing Section 62-9-1 NMSA 1978.

History: 1953 Comp., § 14-23-7, enacted by Laws 1965, ch. 300.

3-24-8. Electric utility; limitation on right to acquire system beyond five-mile limit.

A. The acquisition of any public utility system by a municipality furnishing electric service more than five miles beyond its boundary is subject to the rights and liabilities of the public utility, and the obligations assumed by the municipality shall be paid from the gross revenue ascribable to the electric system so acquired.

B. No municipality shall acquire any public utility system for furnishing electricity more than five miles beyond its boundary in territory receiving similar utility service:

(1) from a public utility subject to the jurisdiction of the New Mexico public utility commission and the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] without the consent of the public utility or as otherwise provided by law;

(2) within any municipality that already owns or operates its electric utility without the consent of the municipality or as otherwise provided by law; or

(3) within territory receiving similar utility service from a rural electric cooperative without the consent of the rural electric cooperative or as otherwise provided by law.

C. The provisions of this section shall not apply to either the acquisition by a municipality of a generating facility or any interest in a jointly owned generating facility or the sale of electric power and energy derived from any such facility as authorized by Section 3-24-1 NMSA 1978.

History: 1953 Comp., § 14-23-8, enacted by Laws 1965, ch. 300; 1979, ch. 260, § 6; 1993, ch. 282, § 6.

3-24-9. Electric utility; rates, charges and service conditions beyond five-mile limit; rate, charge and service standards; fees paid by municipality.

A. Any municipality acquiring, operating or maintaining an electric utility system in that area more than five miles beyond its boundary shall:

(1) establish, maintain and collect rates or charges for service in that area that are just and reasonable; and

(2) furnish adequate, efficient and reasonable service in that area.

B. No municipality acquiring, operating or maintaining an electric utility system in that area more than five miles beyond its boundary shall, as to rates or services:

(1) make or grant any unreasonable preference or advantage to any customer or group of customers;

(2) subject any customer or group of customers to any unreasonable prejudice or disadvantage; or

(3) establish and maintain any unreasonable differences either as between or among areas being served or as between or among customer groups.

C. Prior to implementing general retail rate increases for customers of its electric utility system in that area more than five miles beyond its boundaries, a municipality shall, after reasonable notice by publication in one or more newspapers of general circulation in such area and to the board of county commissioners of each county in which such customers are situated and to the New Mexico public utility commission, provide an opportunity at one or more public forums for affected customers and the board of county commissioners to present their views, comments and data. The New Mexico public utility commission may also appear and present matters within its rate-making expertise. The municipality and board of county commissioners may agree to alternative or additional rate-making procedures for such rate increases.

D. No later than June 1 of each year, the property tax division of the taxation and revenue department shall determine the actual value of all property belonging to the municipality in any electric utility system in that area five miles beyond its boundary and certify to the local assessor in the county in which any property is located the value of such property. The municipality shall pay to the treasurer of that county a fee for extraterritorial operation in that area five miles beyond its boundary, payable in installments and at the dates when taxes levied for ad valorem purposes are payable, equal to the taxes for ad valorem purposes and assessments that would be paid upon the property if privately owned, to be distributed by the county treasurer in the manner provided by law for the distribution of taxes for ad valorem purposes and assessments upon real and personal property.

History: 1953 Comp., § 14-23-9, enacted by Laws 1965, ch. 300; 1977, ch. 249, § 18; 1987, ch. 170, § 1; 1993, ch. 282, § 7.

3-24-10. Contracts with electric utilities for the operation of facilities.

A. Any municipality owning and operating facilities for the furnishing of electricity may contract with any electric utility:

(1) to operate and manage all or part of the electric system of the electric utility; or

(2) for the operation and management of the municipal electric facilities by the electric utility upon such terms and conditions as are mutually agreeable to the

contracting parties. No utility, by virtue of the contract or the operation and management of the municipal electric facilities, shall acquire any rights, interest or equity in the municipal system nor shall the municipality surrender any of its rights, interest or equity in the municipal system.

B. No municipal funds shall be expended for the operation and management of such system except such funds as are contracted to be reimbursed by the contracting electric utility. Any municipality entering into a contract and operating and managing such electric system shall not acquire any right, interest or equity in such electric utility.

C. No contract entered into by a municipality pursuant to this section shall run for more than ten years.

D. Nothing contained in this section shall operate to prevent a municipality from entering into contracts pursuant to Section 3-24-15 NMSA 1978 for the operation, maintenance and management of a jointly owned generating facility in which such municipality has any interest, nor from entering into a lease agreement or lease-purchase agreement with respect to any of such municipality's electric facilities.

History: 1953 Comp., § 14-23-10, enacted by Laws 1965, ch. 300; 1979, ch. 260, § 7.

3-24-11. Short title.

Sections 3-24-11 through 3-24-18 NMSA 1978 may be cited as the "Municipal Electric Generation Act".

History: 1978 Comp., § 3-24-11, enacted by Laws 1979, ch. 260, § 8.

3-24-12. Legislative intent.

It is the intent of the legislature by the passage of the Municipal Electric Generation Act to authorize municipalities which own municipal electric distribution systems on July 1, 1979 to acquire, own and dispose of any generating facility and any undivided or other interest, including without limitation any right to entitlement or capacity, in a jointly owned generating facility and to participate in the operation, maintenance and management of any such facility or contract with respect to the operation, maintenance and management of any such facility for the purpose of meeting present or future electric power and energy necessities.

History: 1978 Comp., § 3-24-12, enacted by Laws 1979, ch. 260, § 9.

3-24-13. Limitation on applicability of the Municipal Electric Generation Act.

The powers and rights granted pursuant to the Municipal Electric Generation Act may only be exercised by municipalities which own municipal electric distribution systems on July 1, 1979.

History: 1978 Comp., § 3-24-13, enacted by Laws 1979, ch. 260, § 10.

3-24-14. Additional powers conferred on municipalities.

In addition to any other powers which it may now have, a municipality which owns a municipal electric distribution system on July 1, 1979:

A. shall have the power to acquire, own, lease, encumber and dispose of a generating facility and shall have the power to contract with respect to the operation, maintenance and management of such facility;

B. shall have the power to acquire, own, lease, encumber and dispose of any undivided or other interest, including without limitation any right to entitlement or capacity, in a jointly owned generating facility with one or more joint participants and shall have the power to participate in the operation, maintenance and management of such facility or contract with respect to the operation, maintenance and management of such facility;

C. may issue revenue bonds in the manner provided in Sections 3-31-1 through 3-31-6 and 3-31-8 through 3-31-12 NMSA 1978, as amended from time to time, either as generating facility revenue bonds, jointly owned generating facility revenue bonds, electric utility revenue bonds or joint utility revenue bonds for the purpose of:

(1) financing the cost of acquiring, extending, enlarging, bettering, repairing or otherwise improving any generating facility or facilities, or any combination of the foregoing purposes;

(2) financing its share of the cost of acquiring, extending, enlarging, bettering, repairing or otherwise improving any jointly owned generating facility or facilities either individually or jointly, or any combination of the foregoing purposes; and

(3) refinancing, paying and discharging all or any part of any revenue bonds previously issued pursuant to Paragraphs (1) or (2) of Subsection C of this section;

D. may issue such revenue bonds as special obligations and may pledge irrevocably:

(1) any or all of the net revenues derived from one or more of its generating facilities in the case of generating facility revenue bonds;

(2) any or all of the net revenues derived from its interest in one or more jointly owned generating facilities in the case of jointly owned generating facility revenue bonds;

(3) any or all of the net revenues of its electric utility, which utility shall include the municipality's generating facility or facilities or its interest in the jointly owned generating facility or facilities being financed by such bonds, in the case of electric utility revenue bonds; and

(4) any or all of the net revenues of its joint utility, which utility shall include the municipality's generating facility or facilities or its interest in the jointly owned generating facility or facilities being financed by such bonds, in the case of joint utility revenue bonds;

E. may impose rates and charges, including a special generating charge, with respect to each of its generating facilities and each of the jointly owned generating facilities in which it has an interest or with respect to all such facilities;

F. shall, upon issuance of revenue bonds secured in whole or in part by the net revenues of its generating facility or its interest in a jointly owned generating facility, establish rates or charges for services rendered by such facility to provide revenues which when added to any revenues to be received with respect to such facility from the sale of surplus power pursuant to Section 3-24-1 NMSA 1978 will be sufficient to meet the following requirements:

(1) pay all costs and expenses of service, operation and maintenance including funding reasonable reserves and reasonable renewal and replacement funds; and

(2) pay all principal and interest payments on the revenue bonds as they become due, including payments into one or more sinking funds for the retirement of principal of the revenue bonds. Such rates or charges shall remain in effect until the revenue bonds are liquidated;

G. shall have the power of eminent domain necessary to acquire, operate and maintain a generating facility and an interest in a jointly owned generating facility, exercisable in the same manner provided by the laws of this state for the exercise of that power by corporations organized for the generation, production, transmission, distribution, sale or utilization of electricity for lighting, heating, power, manufacturing or other purposes;

H. shall, where it may be necessary to cross the right-of-way of another corporation, person or governmental or private entity, have the power to effect such crossing by mutual agreement or in the manner now provided by law for the crossing of one railroad by another railroad;

I. shall have all rights and powers necessary or incidental to or implied from the specific powers granted in the Municipal Electric Generation Act, subject to constitutional or express legislative restrictions imposed upon such municipality; and

J. may exercise the powers granted by the Municipal Electric Generation Act in the manner provided in the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978]. Provided, however, in carrying out the powers granted by the Municipal Electric Generation Act, a municipality shall not issue revenue bonds to finance a generating facility or an interest in a jointly-owned generating facility if the electric power and energy to be derived by the municipality from such facility will be sold to one or more investor-owned utilities under a contract or contracts which have the effect of transferring to such investor-owned utility or utilities benefits of ownership of such facility and the burden of paying the debt service on the revenue bonds issued to finance such facility, so that such bonds would constitute nonexempt industrial development bonds within the meaning of Subsection C of Section 103 of the Internal Revenue Code of 1954 and the regulations promulgated thereunder. The validity of any such revenue bond issue shall not be questioned if, prior to or upon issuance, there has been an internal revenue service revenue ruling that such bonds shall not be industrial development bonds under Subsection C of Section 103 of the Internal Revenue Code of 1954 and the regulations promulgated thereunder.

History: 1978 Comp., § 3-24-14, enacted by Laws 1979, ch. 260, § 11.

3-24-15. Contract for participation in and operation and management of jointly owned generating facility; sharing of costs of [on] proportional basis.

Any municipality which intends to acquire any interest in [a] jointly owned generating facility shall enter into a contract with the other joint participants which contract shall set forth the respective rights, duties, obligations and responsibilities of each joint participant for the operation, maintenance and management of the jointly owned generating facility and shall further provide that any municipality shall own a percentage of the jointly owned generating facility equal to at least the percentage of the money furnished or the value of the property supplied by it for the acquisition of such jointly owned generating facility and shall own or control, in the case of a generating facility, at least an identical percentage of the electric power and energy output of the jointly owned generating facility. Such contract may include, without limitation, the designation of one joint participant as the agent for other joint participants with respect to the construction, operation, maintenance and management of a jointly owned generating facility and may provide, without limitation, for the sharing of costs, including but not limited to third-party claims, insurance premiums and insurance deductibles, on a proportional basis reflective of ownership. Notwithstanding the provisions of Section 3-24-10 NMSA 1978, any contract entered into pursuant to this section may be for such term as the joint participants deem necessary or convenient.

History: 1978 Comp., § 3-24-15, enacted by Laws 1979, ch. 260, § 12; 1981, ch. 124, § 1.

3-24-16. Municipal liability.

In carrying out the powers granted by the Municipal Electric Generation Act [3-24-11 to 3-24-18 NMSA 1978], a municipality shall be liable only for its own acts with regard to the acquisition, operation, maintenance or management of a jointly owned generating facility in which it has any interest and shall not be liable for the acts, omissions or obligations of any other joint participant. The term "joint participant" as used in this section does not include an agent designated pursuant to Section 3-24-15 NMSA 1978 acting in its capacity as such. The provisions of this section shall not affect the liabilities, immunities, duties, limitations or other provisions affecting a municipality or public employee granted, permitted, required or provided for in the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978], as amended from time to time, nor the liabilities and duties assumed by the municipality under a contract pursuant to Section 3-24-15 NMSA 1978.

History: 1978 Comp., § 3-24-16, enacted by Laws 1979, ch. 260, § 13; 1981, ch. 124, § 2.

3-24-17. Application of municipal money or property.

No money or other property supplied by a municipality for the acquisition, operation, maintenance or management of a jointly owned generating facility in which the municipality has any interest shall be credited or otherwise applied to the account of any other joint participant.

History: 1978 Comp., § 3-24-17, enacted by Laws 1979, ch. 260, § 14.

3-24-18. Exemption from certain acts.

The provisions of Sections 6-6-11, 6-6-13 through 6-6-18 and 13-4-1 through 13-4-24 NMSA 1978 and of the Public Purchases Act shall not apply to the acquisition, construction, disposal and operation by a municipality of any generating facility and any undivided or other interest in a jointly owned generating facility, or to any contract, indebtedness or agreement for the operation, maintenance and management of such facility or the sale or other disposal of power or energy therefrom.

History: 1978 Comp., § 3-24-18, enacted by Laws 1979, ch. 260, § 15.

ARTICLE 25
Gas Utility

3-25-1. Gas or geothermal utility; acquisition by municipality; intent of legislature; self-liquidating project; liberal construction.

A. It is the intent of the legislature to authorize municipalities to:

(1) obtain the benefits of a natural gas supply, additional supply or supply of geothermal energy for their inhabitants and others within five miles of the municipal boundary;

(2) take proper steps and actions necessary to that end by the acquisition of a natural gas or geothermal system;

(3) finance the acquisition of the natural gas or geothermal system through the issuance of bonds; and

(4) operate and manage a natural gas association, in which it was an organizer, organized by two or more municipalities pursuant to Sections 3-28-1 through 3-28-19 NMSA 1978 if the operating municipality finds that the association can no longer maintain adequate service. The terms and conditions of the operation and management by the municipality shall be set forth in a joint powers agreement between the municipality and the association.

B. Chapter 3, Article 25 NMSA 1978 shall be liberally construed in conformity with the intent of this section.

History: 1953 Comp., § 14-24-1, enacted by Laws 1965, ch. 300; 1983, ch. 123, § 1; 1985, ch. 81, § 2.

3-25-2. Gas or geothermal utility; authorization to acquire; charges.

A. A municipality may, if a satisfactory supply is not otherwise obtainable as determined, by ordinance, acquire and operate natural gas or geothermal energy facilities for the distribution of natural gas or heat.

B. A municipality owning and operating a gas utility shall measure the gas used by the person receiving the service by volume or energy content.

C. A municipality owning and operating a geothermal utility shall measure the heat used by the person receiving the service by fluid volume and temperature or energy content.

History: 1953 Comp., § 14-24-2, enacted by Laws 1965, ch. 300; 1985, ch. 81, § 3.

3-25-3. Natural gas or geothermal utility; extent of facilities; distribution to consumers beyond the municipal boundary; within

the boundary of another municipality; approval of other municipality and public regulation commission.

A. The natural gas or geothermal utility may include but is not limited to:

(1) in the municipality and within one hundred miles of the municipal boundary, facilities appropriate to the transportation, pumping, storage or purification of natural gas or geothermal waters; and

(2) in the municipality and within five miles of the municipal boundary, facilities for the distribution of natural gas or geothermal heat.

The natural gas or geothermal utility shall include any land or real estate needed for the location of the facilities.

B. A municipality shall not acquire and operate natural gas or geothermal distribution facilities in whole or in part within the boundary of another municipality, as then existing, until the:

(1) public regulation commission issues an order authorizing the acquisition and operation of the natural gas or geothermal distribution facilities; and

(2) other municipality authorizes, by ordinance, the acquisition and operation of the natural gas or geothermal distribution facilities.

C. No formal franchise need be granted by the other municipality, and the ordinance granting the consent of the other municipality:

(1) shall be sufficient;

(2) may be adopted on a single reading;

(3) may become immediately effective;

(4) shall not be subject to a referendum; and

(5) shall be valid for such period of years as may be specified in the ordinance.

History: 1953 Comp., § 14-24-3, enacted by Laws 1965, ch. 300; 1985, ch. 81, § 4; 1993, ch. 282, § 8; 2003, ch. 347, § 1.

3-25-4. Financing acquisition of gas or geothermal utility.

The acquisition of facilities of a municipal gas or geothermal utility shall only be financed from funds received from the issuance and sale of bonds as authorized in

Sections 3-30-5 through 3-30-8 and 3-31-1 through 3-31-12 NMSA 1978 except as provided in Section 3-23-4 NMSA 1978.

History: 1953 Comp., § 14-24-4, enacted by Laws 1965, ch. 300; 1985, ch. 81, § 5.

3-25-5. Gas or geothermal utility; eminent domain power; procedure.

Any municipality acquiring a natural gas or geothermal utility may exercise the power of eminent domain within or without the municipality boundary for the purpose of acquiring property or interest in property for the location of or for the extension of the facilities of a natural gas or geothermal utility. Proceedings to obtain such condemnation shall be in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978].

History: 1953 Comp., § 14-24-5, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 5; 1981, ch. 125, § 38; 1985, ch. 81, § 6.

3-25-6. Gas or geothermal utility; lease agreement; operating agreement; option to purchase; election on question of acquisition, issuance of bonds and lease agreement.

A. A municipality acquiring a municipal gas or geothermal utility may, by ordinance, contract to lease the gas or geothermal utility to a lessee. The term of the lease shall not exceed twenty-five years, and, consistent with the provisions of this section, the ordinance may contain such provisions and be in such form as the governing body determines.

B. The governing body shall set forth in the ordinance or in the proceedings under which the revenue bonds are proposed to be issued provisions requiring payments to the municipality by the lessee adequate to meet and discharge when due:

(1) all amounts found by the governing body to be necessary in connection with the transaction;

(2) the amount necessary in each year to pay the principal and interest on the revenue bonds proposed to be issued;

(3) the amount necessary to be paid each year into any reserve fund which the governing body deems advisable to establish in connection with the retirement of the proposed bonds or the maintenance of the natural gas or geothermal utility or both; and

(4) the estimated cost to the municipality of maintaining the utility in good repair and keeping it properly insured unless the terms under which the utility is to be

leased provide that the lessee shall maintain the utility and carry all proper insurance relating to the utility.

C. The lease agreement shall also:

(1) require the lessee to complete and connect the natural gas or geothermal utility;

(2) require the lessee to place the utility in operation; and

(3) obligate the lessee through the utility to provide the supply and service of natural gas or geothermal energy.

The original lessee and any succeeding holder of the lease shall be subject to regulation as a public utility under the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978].

D. The lease may contain an option to purchase the natural gas or geothermal utility at the election of the lessee upon compliance by the lessee with the terms of the lease. Any option to purchase the natural gas or geothermal utility shall provide for a purchase price not less than the amount:

(1) necessary to discharge in full the principal and interest of any outstanding revenue bonds issued by the municipality to finance the acquisition of the natural gas or geothermal utility; and

(2) of all expenses incurred or to be incurred in completing the transaction.

E. No ordinance providing for the acquisition of a natural gas or geothermal utility, the issuance of revenue bonds and the leasing of the natural gas or geothermal utility to a lessee shall become effective until the question of acquiring the natural gas or geothermal utility, issuing the revenue bonds and leasing the natural gas or geothermal utility, as proposed, has, as a single question, been submitted to the qualified electors at a regular or special municipal election, which election shall be substituted for the election required in Section 3-23-2 NMSA 1978. A special election may be called for the purpose of voting on the question, but no special election shall be called for a date less than ninety days prior to the date of the regular municipal election. The ordinance authorizing the acquisition of the natural gas or geothermal utility, the issuance of revenue bonds for the acquisition of the utility and the leasing of the natural gas or geothermal utility shall be published in full once a week for two successive weeks, and the last publication shall be at least seven days before the date of the election.

F. The ballot provided for the election shall set forth in general terms the question to be voted upon substantially as follows:

"Shall the (city, town or village - choose the applicable term) of ....., New Mexico proceed with the program for acquisition of natural gas or geothermal facilities, the issuance and sale of not to exceed $ ..... principal amount of revenue bonds for the cost thereof and incidental purposes and the leasing of such facilities to ....., a public utility, all according to Ordinance No. ..... adopted on the .. day of ....., 19 ...?"

The ballot shall provide for each voter to indicate whether he favors or opposes such proposition.

G. If a majority of the qualified electors voting on the question approve the proposition, the ordinance shall become effective.

H. No municipality shall pay from its general fund or otherwise contribute any property or asset to pay any part of the cost of acquiring a natural gas or geothermal system which is to be leased as provided in this section; provided that nothing herein shall be construed to prevent a municipality from accepting private donations of property or other assets to be used for defraying any part of the cost of the natural gas or geothermal system.

History: 1953 Comp., § 14-24-6, enacted by Laws 1965, ch. 300; 1985, ch. 81, § 7.

ARTICLE 26
Sewage Facilities

3-26-1. Sanitary sewers; authority to acquire; condemnation; jurisdiction over system.

A. In the manner provided in Section 3-23-2 NMSA 1978, a municipality may, within and without the municipality:

(1) acquire and maintain facilities for the collection, treatment and disposal of sewage;

(2) condemn private property for the construction, maintenance and operation of sewer facilities; and

(3) acquire, maintain, contract for or condemn for use as a municipal utility privately owned sewer facilities used or to be used for the collection, treatment and disposal of sewage of the municipality or its inhabitants.

B. For the purpose of acquiring, maintaining, contracting for, condemning or protecting the sewer facilities, the jurisdiction of the municipality extends to the territory occupied by the sewer facilities; in exercising its jurisdiction to acquire, maintain, contract for or condemn, the municipality shall not act so as to physically isolate and make nonviable any portion of the sewer facilities, within or without the municipality.

C. Proceedings to obtain any condemnation authorized in this section shall be in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978].

History: 1953 Comp., § 14-25-1, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 6; 1994, ch. 99, § 1.

3-26-2. Sanitary sewers; charges and assessments for maintenance and extension; lien.

A. A municipality, for the purpose of maintaining, enlarging, extending, constructing and repairing sewer facilities and for paying the interest and principal on revenue bonds issued for the acquisition, condemnation or construction of sewer facilities, may levy by general ordinance a just and reasonable service charge upon a front-foot, volume-of-sewage, number-of-outlets or other equitable basis on:

(1) an improved or unimproved lot or land that adjoins a street in which a sewage collection system exists or that is accessible to such a sewage collection system; and

(2) premises and improvements otherwise situated but connected to the sewage collection system.

B. Any charge authorized in Subsection A of this section is a lien co-equal with a similar water lien and superior to all other liens except general property taxes upon the property so charged and is a personal liability of the owner of the property so charged. The lien shall be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978.

History: 1953 Comp., § 14-25-2, enacted by Laws 1965, ch. 300; 1967, ch. 146, § 6; 1977, ch. 324, § 1; 1994, ch. 99, § 2.

3-26-3. Authority to require sewer connections; adoption of rules and regulations; penalties.

A municipality may, by general ordinance:

A. require the owner, agent or occupant of a building on a lot or land adjoining a street in which a sewage collection system exists to connect the building to the sewage collection system; and

B. adopt necessary rules and regulations relating to the connection, use, injury, maintenance, supervision and inspection of the sewage facilities.

History: 1953 Comp., § 14-25-3, enacted by Laws 1965, ch. 300.

ARTICLE 27
Water Facilities

3-27-1. Potable; authority to acquire and operate water facilities.

A. A municipality, within and without the municipal boundary, may:

(1) acquire water facilities that may include but are not limited to:

(a) wells, cisterns and reservoirs;

(b) distribution pipes and ditches;

(c) pumps;

(d) rights of way;

(e) water treatment plants; and

(f) their necessary appurtenances; and

(2) use and supply water for:

(a) sewer purposes;

(b) private use; and

(c) public use.

B. In acquiring private property pursuant to this section, a municipality may exercise the power of eminent domain pursuant to procedures of the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978] and subject to any applicable provisions of Section 3-27-2 NMSA 1978.

History: 1953 Comp., § 14-26-1, enacted by Laws 1965, ch. 300; 2009, ch. 269, § 1.

3-27-2. Potable; methods of acquisition; condemnation conveyances authorized; land for appurtenances; public and private use; compensation.

A. Subject to the provisions of this section, municipalities within and without the municipal boundary may:

(1) acquire, contract for or condemn:

(a) springs;

(b) wells;

(c) water rights;

(d) other water supplies; and

(e) rights of way or other necessary ownership for the acquisition of water facilities;

(2) acquire, maintain, contract for or condemn for use as a municipal utility privately owned water facilities used or to be used for the furnishing and supply of water to the municipality or its inhabitants; and

(3) change the place of diversion of any water to any place selected by the municipality in order to make the water available to the municipality.

B. Municipalities shall not condemn water sources used by, water stored for use by or water rights owned or served by an acequia, community ditch, irrigation district, conservancy district or political subdivision of the state. The provisions of this subsection apply only to an acequia or community ditch formed before July 1, 2009.

C. For the purposes stated in Section 3-27-3 NMSA 1978, a municipality may take water from any stream, gulch or spring. If the taking of the water materially interferes with or impairs the vested right of any person to the creek, gulch or stream or to any milling or manufacturing on the creek, gulch or stream, the municipality shall obtain the consent of the person with the vested right or acquire the vested right by condemnation and make full compensation or satisfaction for all damages occasioned to the person, subject to the provisions set forth in Subsection B of this section.

D. Any person may lawfully convey to any municipality any water, water right and ditch right or any interest in any water, water right and ditch right held or claimed by the grantor. No change or use of the:

(1) water;

(2) water right;

(3) place of diversion; or

(4) purpose for which the water or water right was originally acquired by the grantor, shall invalidate the right of the municipality to use the water or water right.

E. Proceedings to obtain any condemnation authorized in this section shall be in the manner provided by law.

F. At any time before or after commencement of a condemnation action authorized by Chapter 3, Article 27 NMSA 1978 to condemn any well, cistern, reservoir, distribution pipe or ditch, spring, stream, water or water right, the parties may agree to and carry out a compromise or settlement as to any matter. Within twenty days following the filing of the petition, the condemnee may elect to proceed through an arbitration process pursuant to the Uniform Arbitration Act by filing a written notice with the condemnor. The arbitrators may award an amount they find to be just compensation for the condemnation of the water or water rights. The arbitrators may decide that the interests of justice are not served by permitting the taking of the condemnee's water or water rights and may order that the arbitration be dismissed and that the property not be taken by the municipality. If the award of the arbitrators exceeds the amount offered by the condemnor pursuant to this subsection by more than one hundred fifteen percent, or if the arbitrators decide that no taking shall occur as permitted in this subsection, or if the arbitration is abandoned by the condemnor, then the arbitrators shall award reasonable and necessary arbitration expenses, including attorney fees, to the condemnee.

G. In any condemnation proceeding pursuant to this section, the entity shall have reasonably satisfied the following criteria prior to commencing any such proceeding:

(1) the entity has a requirement for water or water rights for public health or safety purposes; or

(2) the entity has a requirement for water or water rights for other purposes and:

(a) suitable water rights are unavailable for voluntary sale at up to one hundred twenty-five percent of appraised value;

(b) suitable water rights in the public domain are unavailable for purchase at up to one hundred twenty-five percent of appraised value;

(c) the entity has implemented a water conservation plan; and

(d) the acquisition and purpose is consistent with the regional water plan.

History: 1953 Comp., § 14-26-2, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 7; 1994, ch. 99, § 3; 2009, ch. 269, § 2.

3-27-3. Potable; jurisdiction over water facilities and source.

A. For the purpose of acquiring, maintaining, contracting for, condemning or protecting its water facilities and water from pollution, the jurisdiction of the municipality extends within and without its boundary to:

(1) all territory occupied by the water facilities;

(2) all reservoirs, streams and other sources supplying the reservoirs and streams; and

(3) five miles above the point from which the water is taken.

B. In exercising its jurisdiction to acquire, maintain, contract for or condemn and protect the water facilities, the municipality shall not act so as to physically isolate and make nonviable any portion of the water facilities, within or without the municipality. The municipality may adopt any ordinance and regulation necessary to carry out the power conferred by this section.

History: 1953 Comp., § 14-26-3, enacted by Laws 1965, ch. 300; 1994, ch. 99, § 4; 2009, ch. 269, § 3.

3-27-4. Potable; charges and assessments for maintenance and extension; lien; frontage tax for water service.

A. A municipality owning and operating a water utility may, for the purpose of maintaining, enlarging, extending, constructing and repairing water facilities and for paying the interest and principal on revenue bonds issued for the acquisition, condemnation or construction of water facilities, levy by general ordinance a just and reasonable service charge upon a front-foot, volume-of-water or other reasonable basis on:

(1) an improved or unimproved lot or land that adjoins a street in which a water supply system exists or which is otherwise accessible to such water supply system; and

(2) premises and improvements otherwise situated but connected to the water supply system.

B. The charges authorized in this section shall in no way limit the authority of a municipality to collect an assessment levied for the payment of a special improvement as authorized in Chapter 3, Article 33 NMSA 1978.

C. Any charge authorized in Subsection A of this section is a lien co-equal with a similar sanitary sewer lien and superior to all other liens except general property taxes upon the property so charged and is a personal liability of the owner of the property so charged. The lien shall be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978.

History: 1953 Comp., § 14-26-4, enacted by Laws 1965, ch. 300; 1977, ch. 324, § 2; 1994, ch. 99, § 5.

3-27-5. Potable; contracts for acquiring and supplementing supply; storage; payments from water charges; joint water supply contracts between two or more municipalities.

A. For the purpose of obtaining, securing or supplementing its water supply and providing for the storage, treatment, distribution and transportation of water, a municipality may by ordinance:

(1) contract over a period of years with:

(a) the United States government or any of its agencies;

(b) the state of New Mexico or any of its agencies, boards or instrumentalities; or

(c) any person or association;

(2) agree to accept any pay for a specified amount of water per annum during the term of the contract; and

(3) adopt and enforce water charges sufficient to meet the payments required by the contract.

B. Payments required by a contract authorized by this section shall be made from any funds of the municipality other than the proceeds from an ad valorem tax and shall be considered an expense of the operation and maintenance of the water utility. In no event shall the obligation to make such payments be considered a general obligation or indebtedness of the municipality within the meaning of any constitutional or statutory provision.

C. Two or more municipalities may become parties to any contract authorized by this section.

History: 1953 Comp., § 14-26-5, enacted by Laws 1965, ch. 300.

3-27-6. Judicial examination, approval and confirmation.

In their discretion, municipalities through their respective governing bodies, may file a petition at any time in the district court in and for the county in which such municipality is located, praying a judicial examination, approval and confirmation of contracts authorized by Section 3-27-5 NMSA 1978. The petition shall set forth the facts whereon the validity of the contract is founded and shall be verified by an appropriate official of the governing body. The action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication and posting. The court shall fix the time for the hearing of the petition and shall order the clerk of the court,

under the seal thereof, to give notice of the filing of the petition, stating in brief outline the contents of the petition and showing where a full copy of any contract therein mentioned may be examined. The notice shall also state the time and place fixed for the hearing of the petition, and that any owner of property, or any resident, within the limits of the municipality, or any person interested in the contract or in the premises, may at any time, prior to the date fixed for the hearing or within such further time as may be allowed by the court, appear and move to dismiss or answer the petition. The notice shall be served by publication once each week for four consecutive weeks in a newspaper of general circulation published in the county wherein the case is pending, and by posting the notice in the office of the clerk of the municipality, at least thirty days prior to the date fixed in the notice for the hearing of the petition. Jurisdiction shall be complete after the publication and posting. Any owner of property, or any resident, within the limits of the municipality, or any person interested in the contract or in the premises, may appear and move to dismiss or answer the petition at any time prior to the date fixed for the hearing or within any additional time as may be allowed by the court, and the petition shall be taken as confessed by all persons who fail so to appear.

History: 1953 Comp., § 14-26-6, enacted by Laws 1965, ch. 310, § 1.

3-27-7. Hearing; costs; review.

At the hearing the court shall have power and jurisdiction to examine into and determine all matters and things affecting the question submitted, and shall make findings with reference thereto, and render judgment and decree thereon as the case warrants. Costs may be divided or apportioned among any contesting parties in the discretion of the trial court. Review of the judgment of the court may be had as in other civil action. The Rules of Civil Procedure shall govern in matters of pleading and practice where not otherwise specified. The court shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties. The provisions of Section [Sections] 3-27-6 and 3-27-7 NMSA 1978, shall apply to contracts entered into pursuant to the provisions of Section 3-27-5 NMSA 1978.

History: 1953 Comp., § 14-26-7, enacted by Laws 1965, ch. 310, § 2.

3-27-8. [Furnishing or selling water outside of corporate limits.]

A. Any municipality owning or operating a municipal water utility may furnish or sell, and may contract to furnish or sell, water to any person, association or legal entity, including governmental agencies and political subdivisions, situate without the corporate limits of the municipality.

B. Contracts for the sale of municipal water may be for a term, and upon conditions, acceptable to the municipality, but the contracts shall be entered in the name of the municipality following approval of its governing body.

History: 1953 Comp., § 14-26-8, enacted by Laws 1965, ch. 38, § 1.

3-27-9. Emergency water supply fund created; expenditure.

The "emergency water supply fund" is created in the state treasury. Expenditures from this fund shall be made upon order of the state board of finance when the board determines that an emergency exists requiring the expenditure in order to provide an adequate and safe drinking water supply for residents of any community of less than 5,000 population in New Mexico using a drinking water supply system in common. Disbursements from the fund shall be upon vouchers signed by the secretary of finance and administration or his authorized representative.

History: 1953 Comp., § 14-26-9, enacted by Laws 1972, ch. 25, § 1; 1983, ch. 301, § 8.

ARTICLE 28
Water or Natural Gas Associations

3-28-1. Water or natural gas associations; powers.

Any combination of two or more municipalities and the board of county commissioners of the county in which the municipalities are located shall have the power by joint or concurring resolution of the governing bodies to appoint three or more commissioners to organize an association for the purpose of acquiring a water or natural gas supply system. The board of county commissioners of any county in which any unincorporated rural community is located that is situate five miles or more from the nearest municipality in which natural gas utility service is available shall have the power by resolution to appoint three or more commissioners from the rural community to organize an association for the purpose of acquiring a natural gas supply system to provide natural gas utility service as provided in Chapter 3, Article 28 NMSA 1978. If commissioners are appointed by the board of county commissioners from two or more rural communities in the county, the commissioners who have been appointed may jointly organize an association for the purpose of acquiring a natural gas supply system to provide natural gas utility service as provided in Chapter 3, Article 28 NMSA 1978. The association may, by resolution of its board of directors, purchase or otherwise acquire any water or natural gas supply system, as the case may be, including distribution and transmission pipelines or other water or natural gas works, as the case may be, whether already constructed or that may be constructed, and to further acquire all the rights, privileges and franchises of any person, persons or corporation owning the same or having any interest or right therein and to hold and operate the same in the same manner as the persons or corporation from whom the same may be acquired and distribute the water or natural gas, as the case may be, in the same manner or as may otherwise be determined by the board of directors from time to time. No association or corporation formed by commissioners appointed by the board of county commissioners shall distribute natural gas in any municipality unless the municipality is incorporated in an area served by the association or corporation after the association or corporation has been formed, nor shall it distribute natural gas outside the county. An association or corporation formed by commissioners appointed by the board of county commissioners

may distribute natural gas for domestic or residential, commercial and irrigation purposes but shall not distribute natural gas for industrial purposes except with the consent of any public utility holding a certificate of public convenience and necessity from the New Mexico public utility commission authorizing the same kind of utility service at any location in the county. Any association formed pursuant to this section shall not provide gas service to any customers of a gas utility regulated by the New Mexico public utility commission within any area described in the utility's jurisdictional certificate; provided that an association may serve an area not served in fact, although in the certificated area, but in the case of any dispute, the burden of persuasion shall be upon the association. The corporation is empowered to enter into joint or several agreements for the acquisition of water supply or natural gas transmission and distribution systems, as the case may be, whether existing or to be constructed in the future, with any existing consumer or any other person, firm or corporation, either private or municipal, upon such terms as may be agreed. As used in this section, the term "rural community" means an area that contains not less than fifty inhabitants and has a population density of not less than one person per acre.

History: 1953 Comp., § 14-27-1, enacted by Laws 1969, ch. 186, § 1; 1981, ch. 203, § 1; 1990, ch. 60, § 1; 1993, ch. 282, § 9.

3-28-2. Intercommunity water or natural gas supply association; directors.

Any association formed under Chapter 3, Article 28 NMSA 1978 shall be designated an intercommunity water or natural gas supply association. The directors of the association shall be composed of the commissioners appointed by and shall serve at the pleasure of the governing body of the municipalities who appoint the commissioners.

History: 1953 Comp., § 14-27-2, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 2.

3-28-3. Certificate of association.

The incorporators of an association formed under Chapter 3, Article 28 NMSA 1978 shall execute a certificate setting forth:

A. the name of the association. No name shall be assumed that is in use by another association or corporation in this state or so nearly similar as to lead to uncertainty or confusion;

B. the names of the incorporators;

C. the location of its principal office in this state;

D. the objects and purposes of the association, the county or counties in which its operations are to be carried on and the general description of the lands, reservoir,

pipelines and water or natural gas supply systems to be used under the management of the association;

E. the amount of capital stock and number and denomination of the shares or, if the incorporators do not desire to issue shares of stock, the plan and manner of acquiring membership and of providing funds or means for the acquisition, construction, improvement and maintenance of its works and for its necessary expenses;

F. the period, if any, limited for the duration of the association; and

G. the number of members to serve upon the board of directors of the association and the duration of their offices, and it may name the persons who shall serve as the board of directors for the first three months or until their successors are duly appointed and qualified.

The certificate or any amendment thereof may also contain any provision not inconsistent with the law of this state that the incorporators may choose to insert for the regulation and conduct of the affairs of the association extending its membership, enlarging or changing the scope of its operations, creating and enforcing a lien upon the reservoirs, works, water rights and pipelines of the association or its members for the cost of the acquisition, construction, repair, improvement and maintenance of same, collecting the necessary funds for expenses and purposes of the association, defining or limiting its powers and for its dissolution and the distribution or other disposition of its property.

History: 1953 Comp., § 14-27-3, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 3.

3-28-4. Acknowledgment and filing of original certificate; recording of copy.

The certificate of association shall be acknowledged as required for deeds of real estate and shall be filed in the office of the secretary of state, and a copy of the certificate, duly certified by the secretary of state, shall be recorded in the office of the county clerk of the county or counties where the lands or works are located. The certificate or a copy thereof duly certified by the secretary of state or county clerk shall be evidence in all courts and places.

History: 1953 Comp., § 14-27-4, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 4; 2013, ch. 75, § 1.

3-28-5. Powers of association as body corporate.

Upon the filing of the certificate and copy thereof as provided in Section 3-28-4 NMSA 1978, the persons so associating, their successors and those who may thereafter become members of the association shall constitute a body corporate by the name set forth in the certificate and by such name may sue and be sued and shall have

capacity to make contracts, acquire, hold, enjoy, dispose of and convey property, real and personal, and to do any other act or thing necessary or proper for carrying out the purposes of their organization.

History: 1953 Comp., § 14-27-5, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 5.

3-28-6. Amendment of certificate of incorporation.

Every association formed under Chapter 3, Article 28 NMSA 1978 may change its name, increase or decrease its capital stock or membership, change the location of its principal office in this state, extend the period of its existence and make such other amendment, change or alteration as may be desired, not inconsistent with Chapter 3, Article 28 NMSA 1978 or other law of this state, by a resolution duly adopted by a two-thirds' vote of the entire membership of the board of directors. A certified copy of such resolution with the affidavit of the president and secretary that the resolution was duly adopted by a two-thirds' vote of the entire membership of the board of directors at a meeting held in accordance with the provisions of its bylaws shall be filed and recorded as provided for filing the original certificate of incorporation, and, thereupon, the certificate of incorporation shall be deemed to be amended accordingly, and a copy of the certificate of amendment certified by the secretary of state and the county clerk shall be accepted as evidence of such change or amendment in all courts and places.

History: 1953 Comp., § 14-27-6, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 6; 2013, ch. 75, § 2.

3-28-7. Notice of first meeting.

The first meeting of every association formed under Chapter 3, Article 28 NMSA 1978 shall be called by a notice signed by a majority of the incorporators named in the certificate of incorporation, which notice shall be served personally or by mail at least ten days prior to the date of the meeting.

History: 1953 Comp., § 14-27-7, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 7.

3-28-8. Board of directors; powers.

The power to make and alter bylaws or rules and regulations for the management and operation of the works of the association, and the control and conduct of its business and affairs, shall be in the board of directors.

History: 1953 Comp., § 14-27-8, enacted by Laws 1965, ch. 300.

3-28-9. Officers or agents; manner of appointment.

Associations formed under Chapter 3, Article 28 NMSA 1978 may have such officers or agents chosen or appointed in such manner and for such terms as may be provided by the bylaws except as is otherwise provided in Chapter 3, Article 28 NMSA 1978.

History: 1953 Comp., § 14-27-9, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 8.

3-28-10. Revenue bond issues.

Whenever the board of directors for any intercommunity water or natural gas supply association determines, by resolution, that interest or necessity demands the acquisition, construction, repair, extension, improvement or betterment of any water system or natural gas transmission and distribution system, the association is hereby authorized to make and issue revenue bonds, payable solely out of the net income to be derived from the operation of such system, and to pledge irrevocably such income to the payment of the bonds, the proceeds of the bonds to be used solely for the purchasing, acquiring, constructing and making of necessary improvements, extension, repairs and betterments of the systems or for the purchase and acquiring of wells, cisterns, reservoirs or other sources of supply, rights-of-way, pipelines and pumping plants or other machinery necessary for the operation thereof and the land and real estate upon which the same are situated or to be situated.

History: 1953 Comp., § 14-27-10, enacted by Laws 1965, ch. 300; 1981, ch. 203, § 2; 1990, ch. 60, § 9.

3-28-11. Terms and provisions of revenue bond issues.

A. Revenue bonds issued as provided in Chapter 3, Article 28 NMSA 1978:

(1) shall bear interest at such rates as the association may determine payable annually or semiannually except for the first interest payment which may be for any period not to exceed one year from the date of the bonds;

(2) may be subject to prior redemption at the association's option at such time and upon such terms and conditions with or without payment of a premium as may be provided by the resolution, indenture or other authorizing instrument;

(3) shall be numbered from one upward consecutively;

(4) shall be in such form as may be determined by the association;

(5) shall mature at any time or times not exceeding thirty-five years from the date of such bonds;

(6) may be secured by a bond reserve fund that may be funded by proceeds of the bonds or net revenues of the system or both;

(7) may be secured by municipal bond insurance or other credit facilities;

(8) may be issued pursuant to an indenture of trust or similar instrument with a corporate or other trustee; and

(9) may have such other terms and conditions as the association may provide.

B. Such revenue bonds may be sold at either public or private sale, at, above or below par and at any net effective interest rate as the association may determine; provided that such revenue bonds shall not be sold at any net effective interest rate in excess of twelve percent a year unless the state board of finance at any time prior to delivery of the revenue bonds approves such higher net effective interest rate in writing, based upon the determination of the board that the higher rate is reasonable under existing or anticipated bond market conditions. Any approval of any net effective interest rate in excess of twelve percent shall constitute conclusive authority for the association to issue its revenue bonds at the higher net effective interest rate. As used in this subsection "net effective interest rate" means the interest rate based on the actual price to such association, calculated to maturity according to standard tables of bond values.

History: 1978 Comp., § 3-28-11, enacted by Laws 1990, ch. 60, § 10.

3-28-12. Resolution for issuance of bond; execution.

A. The board of directors of any intercommunity water or natural gas supply association issuing revenue bonds under the provisions of Chapter 3, Article 28 NMSA 1978 may authorize the issuance of revenue bonds by resolution adopted by the affirmative vote of two-thirds of the entire membership of the board of directors at a regular or special meeting called for that purpose wherein the necessity of the revenue bond issue shall be declared, and, when issued, the bonds shall be signed by the president of the board of directors and attested by the secretary, with the seal of the corporation affixed thereto.

B. The bonds may be issued in book entry form, any registered form or bearer form, with or without interest coupons, or any combination thereof, with or without right of conversion to another form and in any denomination with or without right of conversion to any other denomination, subject to such conditions for transfer, as may be provided in the resolution, indenture or other authorizing instrument. The bonds may be made registrable, transferable and payable by the registrar under such terms and conditions as may be provided in the resolution, indenture or other authorizing instrument. Payment at designated due dates or in installments may be by check, draft, warrant or other order for payment or medium of payment and need not be conditioned upon presentation of any security or coupon. The resolution, indenture or other authorizing instrument may require that the public securities be authenticated with the manual or facsimile signature of an officer or other authorized person of the registrar or of any other officer or officers of the public body whose manual or facsimile signature is not

otherwise required by law, or by any combination thereof. Any registrar may hold in custody any partially or fully executed public securities if provided by, and to the extent permitted by, the authorizing instrument. As used in this section, "registrar" means any officer of the association, any corporate or other trustee, paying agent or transfer agent within the United States, as may be appointed or designated by the bond resolution, indenture or other authorizing instrument.

C. Any officer of the association or of the registrar, if any, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

(1) any bond, provided that at least one signature required or permitted to be placed thereon by statute, resolution, indenture or other instrument shall be manually subscribed; and

(2) any check, draft, warrant or order for the payment, delivery or transfer of funds.

Upon compliance with this provision by the authorizing officer, his facsimile signature has the same legal effect as his manual signature. As used in this section, "facsimile signature" means a reproduction by engraving, imprinting, stamping or other means of the manual signature of an authorized officer. The seal of the authority may also be printed, engraved, stamped or placed in facsimile on any bond and shall have the same legal effect as a manual impression of the seal thereon.

History: 1953 Comp., § 14-27-12, enacted by Laws 1965, ch. 300; 1981, ch. 203, § 3; 1990, ch. 60, § 11.

3-28-13. Payment of bonds.

Revenue bonds issued under Chapter 3, Article 28 NMSA 1978 shall not be considered or held to be general obligations of the intercommunity water or natural gas supply association issuing them and shall be collectible only out of the net revenues derived from the operation of the water or natural gas system whose income is so pledged. Each of the bonds of any issue of revenue bonds so issued shall recite on its face that it is payable and collectible solely from the revenues derived from the operations of the water or natural gas system, the income of which is so pledged, and that the holders of the bonds may not look to any general or other fund for the payment of principal or interest of such obligations; provided, further, that such revenue bonds may additionally be secured by a mortgage on the properties of the association and that the properties may be conveyed to a trustee for the benefit and security of the holders of the bonds. To the extent provided in the bond resolution or the trust indenture securing such bonds, additional bonds may be issued on a parity basis with bonds issued previously, and bonds constituting a junior lien on the net revenues or properties may be issued unless prohibited by any such bond resolution or trust indenture.

History: 1953 Comp., § 14-27-13, enacted by Laws 1965, ch. 300; 1967, ch. 40, § 1; 1990, ch. 60, § 12.

3-28-14. Refunding authorization; terms.

A. Whenever the board of directors for any intercommunity water or natural gas supply association determines, by resolution adopted by an affirmative vote of two-thirds of the entire membership of the board of directors of the association at a regular or special meeting called for that purpose, that it is in the best interest of the association to issue revenue bonds for the purpose of refinancing, refunding and payment of outstanding revenue bonds of the association, the board of directors may issue and sell or issue and exchange refunding revenue bonds for the purpose of refinancing, refunding and paying all or any part of the outstanding revenue bonds of the association.

B. The association may pledge irrevocably, for the payment of interest and principal on refunding bonds, the appropriate pledged revenues which may be pledged to an original issue of bonds as provided in Section 3-28-10 NMSA 1978.

C. In addition to pledging net income derived from the operations of the association for the payment of the refunding bonds, the association may grant by resolution a mortgage on the properties of the association to the bondholder or a trustee for the benefit and security of the holders of the refunding bonds.

D. The terms of refunding bonds issued by the association shall be in accordance with the provisions of Section 3-28-11 NMSA 1978 to the extent not inconsistent with the provisions of this section.

E. The valid adoption, issuance and sale of refunding bonds by any intercommunity water or natural gas supply association shall in no way be adversely or otherwise legally affected by the area of the state in which the association is presently rendering utility service.

F. The proceeds derived from the issuance of any refunding bonds shall be either immediately applied to the payment or redemption and retirement of the bonds to be refunded and the costs and expenses incident to issuance of the refunding bonds, redemption and payment of the bonds refunded and procedures relating thereto, including but not necessarily limited to establishment of a bond reserve fund, or shall immediately be placed in escrow to be applied to the payment of said bonds upon their presentation therefor and to the aforesaid costs and expenses. Any money remaining after providing for the payment of the refunded bonds and any expenses and costs incident therewith shall be used to pay maturing principal and interest on the refunding bonds. Any such escrowed proceeds and any other funds contributed to the refunding by the association, pending such use, may be invested or, if necessary, reinvested only in direct obligations of the United States, or obligations guaranteed by the United States, maturing at such time or times as to ensure the prompt payment of the bonds

refunded, the interest accruing thereon and any prior redemption premium in connection therewith. Such escrowed proceeds and investments, together with any interest or other income to be derived from such investments, shall be in an amount that shall be sufficient to pay the bonds refunded as they become due at their respective maturities or as they are called for redemption and payment on prior redemption dates, as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom. The board of directors of the association shall have the power to enter into escrow agreements and to establish escrow accounts with any commercial bank or trust company within or without the state that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation.

History: 1953 Comp., § 14-27-13.1, enacted by Laws 1968, ch. 27, § 1; 1981, ch. 203, § 4; 1990, ch. 60, § 13.

3-28-14.1. Publication of notice after adoption of resolutions; limitation of action.

The association, after its board of directors has adopted a resolution authorizing the issuance of the bonds, shall publish notice of the adoption of such resolution once in a newspaper of general circulation within the area served by the association. After the passage of thirty days from such publication, any action attacking the validity of the bonds, the resolution, indenture or other instrument or any proceedings had or taken by the board of directors or association preliminary to and in the authorization and issuance of the bonds described in the notice, including but not necessarily limited to any attack on the power to issue such bonds, is perpetually barred.

History: 1978 Comp., § 3-28-14.1, enacted by Laws 1990, ch. 60, § 14.

3-28-15. Financial assistance.

Any association formed under Section 3-28-1 NMSA 1978 to provide natural gas service in an unincorporated rural community or to purchase, acquire, hold and operate a water supply system is authorized to apply for and accept grants, contributions and any other form of financial assistance from the federal government, the state, the county or other public body or from any sources, public or private, for the purposes for which it is organized.

History: 1953 Comp., § 14-27-13.2, enacted by Laws 1969, ch. 186, § 2; 1990, ch. 60, § 15; 1991, ch. 62, § 1.

3-28-16. Establishment of rates or contracts for service; lien against property served.

A. Boards of directors of intercommunity water or natural gas supply associations, while any revenue bonds are outstanding, shall establish rates and charges for services

rendered by the water or natural gas supply system to a user of those services other than a city, town, village or other political subdivision or shall enter into such leases or other agreements or any combination of such rates and charges, leases and other agreements as shall be sufficient to provide revenues that are sufficient to meet at least the following requirements:

(1) pay all reasonable expenses of operation and maintenance of such system;

(2) pay all interest on the revenue bonds as it comes due; and

(3) pay the principal of the revenue bonds as it comes due.

Such rates, charges, leases and agreements shall remain in effect until the revenue bonds have been paid or sufficient provision has been fully made for their payment.

B. In the event the board of directors of the intercommunity water or natural gas supply association fails or refuses to establish rates and charges for the system or alternatively to enter into a lease or other agreement where applicable to such system, or both, as required in this section, any bondholder may apply to the district court for a mandatory order requiring the board to establish rates or, if applicable, to enter into such applicable leases or agreements, or both, that will provide revenues adequate to meet the requirements of this section. Any city, town, village or other political subdivision entering into any such lease or agreement with the association is authorized to use and pledge revenues of its water, gas or utility system to such payments pursuant to any such lease or agreement as a part of the operation and maintenance costs of its water, gas or utility system, and its obligations under the lease or agreement shall not constitute an indebtedness of such city, town, village or other political subdivision for purposes of Article 9, Sections 9 through 13 of the constitution of New Mexico.

C. Any rates or charges imposed upon a user other than a city, town, village or other political subdivision for service rendered by a water or natural gas supply system, except as otherwise indicated in this subsection, shall be:

(1) payable by the owner of the tract or parcel of land being served at the time the rate or charge accrues and becomes due; and

(2) a lien upon the tract or parcel of land being served from such time which lien shall be a first and prior lien on the property coequal with municipal liens pursuant to Section 3-36-2 NMSA 1978, but subject only to the lien of general state and county taxes.

D. The lien provided for in Subsection C of this section shall be enforced in the manner prescribed in Sections 3-36-1 through 3-36-5 NMSA 1978; provided, however, that any action to be taken by the municipal clerk or any successor under Sections 3-

36-1 through 3-36-5 NMSA 1978 shall, for purposes of this section, be taken by the secretary of the board of directors of the association. In any proceedings where pleadings are required, it shall be sufficient to declare generally for the service supplied by the system. Notice of the lien shall be filed in the manner provided in Section 3-36-1 NMSA 1978, and the effect of such filing shall be governed by Section 3-36-2 NMSA 1978. Paragraphs (1) and (2) of Subsection C of this section shall not apply if an owner notifies the intercommunity water or natural gas supply system that charges that may be incurred by a renter shall not be the responsibility of the owner. Such notification shall be given in writing prior to the initiation of the debt and shall include the location of the rental property.

E. Any law that authorizes the pledge of any or all of the net revenues of a system pledged to the payment of any revenue bonds issued pursuant to Chapter 3, Article 28 NMSA 1978 or any law supplemental thereto or otherwise appertaining thereto shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

History: 1978 Comp., § 3-28-16, enacted by Laws 1990, ch. 60, § 16.

3-28-17. Proceeds from bond issues not to be diverted from purpose.

Whenever, under the provisions of the laws of this state, any intercommunity water or natural gas supply association obtains or has obtained any money or credits by means of the issue of its bonds or other evidences of indebtedness for the purpose of the purchase, construction or extension or repair of any particular system, it shall be unlawful to divert, use or expend any of the money or credits in the purchase, construction or extension or repair of any other system or for any purpose other than that for which the money or credits were or shall be obtained.

History: 1953 Comp., § 14-27-15, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 17.

3-28-18. Violations of act; penalty.

The members of any board of directors and any officer or agent of any intercommunity water or natural gas supply association violating the provisions of Chapter 3, Article 28 NMSA 1978 shall be deemed guilty of a misdemeanor and, upon conviction thereof in the district court, shall be subject to a fine not to exceed five hundred dollars ($500) or to imprisonment in the county jail not to exceed six months or both in the discretion of the court trying the case.

History: 1953 Comp., § 14-27-16, enacted by Laws 1965, ch. 300; 1990, ch. 60, § 18.

3-28-19. Eminent domain.

Associations organized under Chapter 3, Article 28 NMSA 1978 shall have the power of eminent domain as provided by law, except the power of eminent domain shall not be used to acquire any plant or system or extension thereof described in a certificate of public convenience and necessity, or any interest therein, owned or operated by an entity that is regulated by the New Mexico public utility commission or the federal energy regulatory commission or their successors.

History: 1953 Comp., § 14-27-17, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 8; 1981, ch. 203, § 6; 1990, ch. 60, § 19; 1993, ch. 282, § 10.

3-28-20. Associations not subject to utility laws.

No association organized under the provisions of Chapter 3, Article 28 NMSA 1978 is subject to the jurisdiction of the New Mexico public utility commission [public regulation commission] or the terms and provisions of the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978], as amended.

History: 1978 Comp., § 3-28-20, enacted by Laws 1981, ch. 203, § 7; 1990, ch. 60, § 20; 1993, ch. 282, § 11.

3-28-21. New Mexico public utility commission [public regulation commission] jurisdiction.

Any association organized under the provisions of Chapter 3, Article 28 NMSA 1978 may elect by resolution adopted by its board of directors to become subject to the jurisdiction of the New Mexico public utility commission [public regulation commission] in matters of rates, security issues, jurisdictional area and industrial service and to all of the terms and provisions of the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978], as amended. Provided, any association that so elects shall not be subject to any limits on its power of eminent domain as provided in Section 3-28-19 NMSA 1978 nor shall it be prohibited from providing gas service within an area described in any other gas utility's jurisdictional certificate as provided in Section 3-28-1 NMSA 1978.

History: Laws 1981, ch. 203, § 8; 1990, ch. 60, § 21; 1993, ch. 282, § 12.

3-28-22. Validation; existing association and outstanding bonds.

All intercommunity water and natural gas associations established or purportedly established pursuant to Chapter 3, Article 28 NMSA 1978 or any predecessor or similar statute, all prior bonds issued by such associations and all action taken by boards of directors of such associations preliminary to and in the issuance of bonds of such associations pursuant to Chapter 3, Article 28 NMSA 1978 or any predecessor or similar statute, are hereby validated, ratified, approved and confirmed.

History: 1978 Comp., § 3-28-22, enacted by Laws 1990, ch. 60, § 22.

ARTICLE 29
Sanitary Projects

3-29-1. Sanitary Projects Act; short title.

Chapter 3, Article 29 NMSA 1978 may be cited as the "Sanitary Projects Act".

History: 1953 Comp., § 14-28-1, enacted by Laws 1965, ch. 300; 2001, ch. 200, § 1.

3-29-2. Definitions.

As used in the Sanitary Projects Act:

A. "community" means a rural unincorporated community and includes a combination of two or more rural unincorporated communities when they have been combined for the purposes set forth in the Sanitary Projects Act;

B. "association" includes an association or mutual domestic water consumers association organized under Laws 1947, Chapter 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52, as well as any association organized under the provisions of the Sanitary Projects Act;

C. "department" means the department of environment;

D. "member" or "membership" means a person who has paid the appropriate fees and has been issued a certificate as required by association bylaws;

E. "person" means a single residence or property owner, as determined by the rules adopted by the association's board of directors; and

F. "project" means a water supply or reuse, storm drainage or wastewater facility owned, constructed or operated by an association.

History: 1953 Comp., § 14-28-2, enacted by Laws 1965, ch. 300; 1971, ch. 277, § 26; 1977, ch. 253, § 44; 2000, ch. 56, § 1; 2006, ch. 60, § 1.

3-29-3. Purpose of act.

The purpose of the Sanitary Projects Act is to improve the public health of rural communities in New Mexico by providing for the establishment and maintenance of a political subdivision of the state that is empowered by the state to receive public funds for acquisition, construction and improvement of water supply, reuse, storm drainage and wastewater facilities in communities, and to operate and maintain such facilities for the public good.

History: 1953 Comp., § 14-28-3, enacted by Laws 1965, ch. 300; 2004, ch. 121, § 1; 2006, ch. 60, § 2.

3-29-4. Projects.

Plans, specifications and contracts for each project, as appropriate, shall be prepared by a practicing professional engineer licensed under the Engineering and Surveying Practice Act [Chapter 61, Article 23 NMSA 1978] and selected by the association in accordance with the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978].

History: 1953 Comp., § 14-28-4, enacted by Laws 1965, ch. 300; 1969, ch. 192, § 1; 1971, ch. 277, § 27; 2006, ch. 60, § 3.

3-29-5. Restrictions on forming an association.

A. A new association shall not be formed under the Sanitary Projects Act by original incorporation after January 1, 2000, and a new association shall not be formed by reorganization after January 1, 2000, unless the preceding entity was in existence on January 1, 2000, if the service area of either association includes property contiguous to an incorporated municipality or an unincorporated area currently served by a municipality or by a water and sanitation district. The restrictions on forming an association set forth in this subsection shall not apply if the contiguous incorporated municipality or water and sanitation district does not provide the services or cannot provide the services to be provided by the association at or below the cost proposed by the association.

B. An association shall not construct with state funds a project required in order to allow creation of a subdivision under the provisions of the Land Subdivision Act [47-5-1 to 47-5-8 NMSA 1978], the New Mexico Subdivision Act [Chapter 47, Article 6 NMSA 1978] or Section 47-5-9 NMSA 1978; however, an association may construct a project serving a previously approved subdivision in the service area of the association.

C. After July 1, 2006, a new association shall not be formed as a capital stock corporation.

D. A new association shall not be formed under the Sanitary Projects Act after July 1, 2017 unless the association will service at least fifteen connections or a population of at least twenty-five people for at least six months of the year.

History: 1953 Comp., § 14-28-5, enacted by Laws 1965, ch. 300; 1969, ch. 192, § 2; 1983, ch. 296, § 27; 2000, ch. 56, § 2; 2006, ch. 60, § 4; 2017, ch. 127, § 1.

3-29-6. Board of directors; powers and duties.

A. The board of directors of each association shall be responsible for the acquisition or purchase of all property, rights of way, equipment and materials as may be necessary for the completion of a project. The directors shall act on behalf of the association and as its agents. The association, acting through its board of directors, may exercise the right of eminent domain to take and acquire the necessary property or rights of way for the construction, maintenance and operation of water and sewer lines and related facilities, but such property and rights of way shall in all cases be so located as to do the least damage to private and public property consistent with proper use and economical construction. Such property or rights of way shall be acquired in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978]. In accordance with Sections 42A-1-8 through 42A-1-12 NMSA 1978, engineers, surveyors and other persons under contract with the board for the purposes of the project shall have the right to enter upon property of the state, its political subdivisions, private persons and private and public corporations for the purpose of making necessary surveys and examinations for selecting and locating suitable routes for water and sewer lines and facilities.

B. The board of directors of the association may set and, from time to time, increase or adjust assessments, water and sewer rates, tolls or charges for services or facilities furnished or made available by the association. The assessments, tolls and charges may include:

(1) membership fees;

(2) a base monthly service fee for each active connection delivering water;

(3) a base monthly service fee for each inactive connection;

(4) a standby charge for the privilege of connecting into the association's water service at some date in the future;

(5) assessments based on the volume of water delivered;

(6) a connection charge; and

(7) an assessment necessary to cover the cost of extending either water or sewer service.

C. The board of directors of the association may place a lien on property to which services have been extended in the amount of all outstanding assessments, charges and fees associated with the services. The board of directors may enforce the lien in a manner provided by the laws of the state. In the event the board of directors is forced to enforce the lien in a court of competent jurisdiction in New Mexico, the board of directors shall be entitled to recover all costs and attorney fees.

D. After notice is given, the board of directors of the association shall shut off unauthorized connections, illegal connections or a connection for which charges are delinquent in payment. The board of directors may file suit in a court of competent jurisdiction to recover costs associated with an unauthorized or illegal connection or delinquent connection, including the cost of water delivered, charges for facility connection and disconnection, damages and attorney fees.

E. The board of directors of the association shall prescribe and enforce rules for the connection to and disconnection from properties of facilities of the association.

F. Each member of the board of directors of the association shall complete training, as determined by rules of the department.

History: 1953 Comp., § 14-28-6, enacted by Laws 1965, ch. 300; 1969, ch. 192, § 3; 1981, ch. 125, § 39; 2006, ch. 60, § 5.

3-29-7. Department powers.

A. Insofar as the department deems it necessary for the purpose of the Sanitary Projects Act, the department may recommend agreements, covenants or rules in regard to operation, maintenance and permanent use of water supply, reclamation, storm drainage and wastewater facilities.

B. The department may:

(1) conduct periodic reviews of the operation of the association;

(2) require the association to submit information to the department;

(3) require submittal of financial reports required pursuant to the Audit Act [12-6-1 to 12-6-14 NMSA 1978];

(4) review and require changes to the rate-setting analysis described in Section 3-29-12 NMSA 1978;

(5) after a hearing, intervene in the operation and management with full powers, including the power to set and collect assessments from members of the association, to set and collect service charges and use the same for the proper operation and management of the association; and

(6) appoint and delegate authority to a representative to oversee operation of the association for a specified period.

C. The department may in its discretion or shall, upon a petition of twenty-five percent of the members of the association, conduct investigations as it deems

necessary to determine if the association is being operated and managed in the best interests of all the members of the association.

D. Whenever the department determines that an association violated or is violating the Sanitary Projects Act or a rule adopted pursuant to that act, the department may:

(1) issue a compliance order requiring compliance immediately or within a specified time period, or both; or

(2) commence a civil action in district court for appropriate relief, including injunctive relief.

E. A compliance order shall state with reasonable specificity the nature of the violation.

F. If an association fails to take corrective actions within the time specified in a compliance order, the department may assess a civil penalty of not more than two hundred fifty dollars ($250) for each day of continued noncompliance with the compliance order.

G. Any compliance order issued by the department pursuant to this section shall become final unless, no later than thirty days after the compliance order is served, any association named in the compliance order submits a written request to the department for a public hearing. The department shall conduct a public hearing within ninety days after receipt of a request.

H. The department may appoint an independent hearing officer to preside over any public hearing held pursuant to Subsection G of this section. The hearing officer shall:

(1) make and preserve a complete record of the proceedings; and

(2) forward to the department a report that includes recommendations, if recommendations are requested by the department.

I. The department shall consider the findings of the independent hearing officer and, based on the evidence presented at the hearing, the department shall make a final decision regarding the compliance order.

J. In connection with any proceeding under this section, the department may:

(1) adopt rules for discovery and hearing procedures; and

(2) issue subpoenas for the attendance and testimony of witnesses and for relevant papers, books and documents.

K. Penalties collected pursuant to this section shall be deposited in the general fund.

History: 1953 Comp., § 14-28-7, enacted by Laws 1965, ch. 300; 1969, ch. 192, § 4; 2004, ch. 121, § 2; 2006, ch. 60, § 6.

3-29-8. Repealed.

History: 1953 Comp., § 14-28-8, enacted by Laws 1965, ch. 300; repealed by Laws 2006, ch. 60, § 20.

3-29-9. Rules.

For the purposes of the Sanitary Projects Act, the department may perform such acts and prescribe such rules as are deemed necessary to carry out its provisions. Rules shall be drafted in consultation with representatives of the associations.

History: 1953 Comp., § 14-28-9, enacted by Laws 1965, ch. 300; 2006, ch. 60, § 7.

3-29-10. Repealed.

History: 1953 Comp., § 14-28-10, enacted by Laws 1965, ch. 300; 1969, ch. 192, § 5; repealed by Laws 2006, ch. 60, § 20.

3-29-11. Membership.

All persons within a community who participate or desire to participate in any project may become members of an association upon complying with the rules and regulations prescribed by the board of directors of the association, such rules and regulations to meet with the approval of the department. Any person or persons who did not participate in an original project shall be admitted to membership in an association upon payment to the association of a reasonable fee as determined by the board of directors and the department.

History: 1953 Comp., § 14-28-11, enacted by Laws 1965, ch. 300.

3-29-12. Local administration of association; board of directors.

A. The local administration of the association and the operation and maintenance of the project shall be carried out in each community by a board of directors composed of an odd number of at least three members. Members of the board of directors shall:

(1) be elected annually or as specified in the bylaws of the association;

(2) be members in good standing of the association; and

(3) serve staggered terms of up to four years to ensure that terms will end in different election years.

B. The board of directors shall choose among its members a president, a vice president and a secretary-treasurer or a secretary and a treasurer.

C. Funds sufficient to provide for proper operation and maintenance of the association shall be identified through a rate-setting analysis that will ensure enough revenue to cover yearly expenses and emergencies, a reserve fund for non-major capital items and equitable pay for staff. The rate-setting analysis may be reviewed and changed if necessary on a yearly basis, and the funds shall be obtained by the association by a monthly assessment against the users of the facilities, the assessment to be determined by the board of directors.

D. The board of directors of the association shall have power to do all things necessary in the local administration of any project subject to the provisions of the Sanitary Projects Act.

History: 1953 Comp., § 14-28-12, enacted by Laws 1965, ch. 300; 1969, ch. 192, § 6; 2006, ch. 60, § 8.

3-29-13. Existing associations.

Associations organized under the provisions of Laws 1947, Chapter 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52 shall have the same powers and duties as associations organized under the provisions of the Sanitary Projects Act; provided that the articles of incorporation shall be amended in accordance with the provisions of Section 3-29-19 NMSA 1978.

History: 1953 Comp., § 14-28-13, enacted by Laws 1965, ch. 300; 2006, ch. 60, § 9.

3-29-14. Existing water systems or water rights unaffected.

The provisions of the Sanitary Projects Act shall not in any way affect any water systems or water rights under existing law.

History: 1953 Comp., § 14-28-14, enacted by Laws 1965, ch. 300.

3-29-15. Association constitutes a public body corporate.

Upon the filing of each certificate and copy thereof as provided in Section 3-29-17 NMSA 1978, the persons so associating, their successors and those who may thereafter become members of the association constitute a public body corporate by the name set forth in the certificate and by such name may sue and be sued, have capacity to make contracts, acquire, hold, enjoy, dispose of and convey property real and personal, accept grants and donations, borrow money, incur indebtedness, impose fees

and assessments and do any other act or thing necessary or proper for carrying out the purposes of their organization.

History: 1953 Comp., § 14-28-15, enacted by Laws 1965, ch. 300; 1967, ch. 45, § 1; 2000, ch. 56, § 3; 2006, ch. 60, § 10.

3-29-16. Certificate of association.

A. The members of an association shall execute a certificate setting forth:

(1) the name of the association;

(2) the name of the individuals organizing the association;

(3) the location of the principal office of the association in this state;

(4) the objects and purposes of the association;

(5) the address of the initial registered office of the association and the name of the initial registered agent at that address;

(6) the plan and manner of acquiring membership and of providing funds or means for the acquisition, construction, improvement and maintenance of its work and for its necessary expenses;

(7) the duration of existence of the association, which may be perpetual;

(8) the number and manner of electing the board of directors of the association and the length of the terms that the directors will serve;

(9) the definition of a member of the association and the voting rights associated with the membership; and

(10) the manner of dissolution of the association as a public body.

B. Pursuant to the registered agent requirement of Paragraph (5) of Subsection A of this section, there shall be attached to the certificate a statement executed by the registered agent in which the agent acknowledges acceptance of the appointment by the filing association, if the agent is an individual, or a statement executed by an authorized officer of a corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent, if the agent is a corporation.

C. The certificate or any amendment thereof made as provided in Section 3-29-19 NMSA 1978 may also contain provisions not inconsistent with the Sanitary Projects Act or other law of this state that the organizers may choose to insert for the regulation and

conduct of the business and affairs of the association. There shall accompany each certificate a list to show the total number of members of the association and the total number of dwelling units served by the association at the time of filing.

History: 1953 Comp., § 14-28-16, enacted by Laws 1965, ch. 300; 2001, ch. 200, § 2; 2003, ch. 318, § 1; 2006, ch. 60, § 11.

3-29-17. Filing of certificate and bylaws.

The certificate of association and bylaws shall be acknowledged as required for deeds of real estate and shall be filed in the office of the secretary of state. A copy of the certificate, duly certified by the secretary of state or county clerk, shall be evidence in all courts and places.

History: 1953 Comp., § 14-28-17, enacted by Laws 1965, ch. 300; 2001, ch. 200, § 3; 2006, ch. 60, § 12; 2013, ch. 75, § 3.

3-29-17.1. Registered office and registered agent.

An association shall have and continuously maintain in the state:

A. a registered office, which may be the same as its principal office; and

B. a registered agent that may be:

(1) an individual resident in the state whose business office is identical with the registered office of the association;

(2) a for-profit or not-for-profit domestic corporation having an office identical with the registered office of the association; or

(3) a for-profit or not-for-profit foreign corporation authorized to transact business or conduct affairs in New Mexico and having an office identical with the registered office of the corporation.

History: Laws 2001, ch. 200, § 4.

3-29-17.2. Change of registered office or registered agent.

A. An association may change its registered office or its registered agent, or both, by filing in the office of the secretary of state a statement that includes:

(1) the name of the association;

(2) the address of its registered office;

(3) if the address of the association's registered office is changed, the address to which the registered office is changed;

(4) the name of its registered agent;

(5) if the association's registered agent is changed:

(a) the name of its successor registered agent; and

(b) if the successor registered agent is an individual, a statement executed by the successor registered agent acknowledging acceptance of the appointment by the filing association as its registered agent; or

(c) if the successor registered agent is a corporation, an affidavit executed by the president or vice president of the corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent;

(6) a statement that the address of the association's registered office and the address of the office of its registered agent, as changed, will be identical; and

(7) a statement that the change was authorized by resolution duly adopted by its board of directors.

B. The statement made pursuant to the provisions of Subsection A of this section shall be executed by the association by any two members and delivered to the secretary of state. If the secretary of state finds that the statement conforms to the provisions of the Sanitary Projects Act, it shall file the statement in the office of the secretary of state. The change of address of the registered office, or the appointment of a new registered agent, or both, shall become effective upon filing of the statement required by this section.

C. A registered agent of an association may resign as agent upon filing a written notice thereof, executed in duplicate, with the secretary of state. The secretary of state shall mail a copy immediately to the association in care of an officer, who is not the resigning registered agent, at the address of the officer as shown by the most recent annual report of the association. The appointment of the agent shall terminate upon the expiration of thirty days after receipt of the notice by the secretary of state.

History: Laws 2001, ch. 200, § 5; 2013, ch. 75, § 4.

3-29-17.3. Service of process on association.

The registered agent appointed by an association shall be an agent of the association upon whom any process, notice or demand required or permitted by law to be served upon the association may be served. Nothing in this section limits or affects

the right for process, notice or demand to be served upon an association in any other manner permitted by law.

History: Laws 2001, ch. 200, § 6.

3-29-17.4. Annual report.

A. An association shall file, within the time prescribed by the Sanitary Projects Act, on forms prescribed and furnished by the secretary of state to the association not less than thirty days prior to the date the report is due, an annual report setting forth:

(1) the name of the association;

(2) the address of the registered office of the association in the state and the name of its registered agent in this state at that address;

(3) a brief statement of the character of the affairs that the association is actually conducting; and

(4) the names and respective addresses of the directors and officers of the association.

B. The report shall be signed and sworn to by two of the members of the association. If the association is in the hands of a receiver or trustee, the report shall be executed on behalf of the association by the receiver or trustee. A copy of the report shall be maintained at the association's principal place of business as contained in the report and shall be made available to the general public for inspection during regular business hours.

History: Laws 2001, ch. 200, § 7; 2006, ch. 60, § 13; 2013, ch. 75, § 5.

3-29-17.5. Filing of annual report; supplemental report; extension of time; penalty.

A. The annual report of the association shall be delivered to the public regulation commission on or before the fifteenth day of the fifth month following the end of its fiscal year.

B. A supplemental report shall be filed by the association with the public regulation commission, if, within thirty days after the filing of the annual report required under the Sanitary Projects Act, a change is made in:

(1) the name of the association;

(2) the mailing address, street address or the geographical location of the association's registered office in this state and the name of the agent upon whom process against the association may be served; or

(3) the character of the association's business and its principal place of business within the state.

C. Proof to the satisfaction of the public regulation commission that, prior to the due date of a report required by this section, the report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed compliance with the requirements of this section. If the commission finds that the report conforms to the requirements of the Sanitary Projects Act, it shall file the report. If the commission finds that it does not conform, it shall promptly return the report to the association for necessary corrections. The penalties prescribed for failure to file the report within the time provided shall not apply if the report is corrected to conform to the requirements of the Sanitary Projects Act and returned to the commission within thirty days from the date on which it was mailed to the association by the commission.

D. The public regulation commission may, upon application by the association and for good cause shown, extend, for no more than a total of twelve months, the date on which an annual report required by the provisions of the Sanitary Projects Act must be filed or the date on which the payment of a fee is required. The commission shall, when an extension of time has been granted an association under the federal Internal Revenue Code of 1986 for the time in which to file a return, grant the association the same extension of time to file the required annual report and to pay the required fees, provided that a copy of the approved federal extension of time is attached to the association's report, and provided further that no such extension shall prevent the accrual of interest as otherwise provided by law.

E. Nothing contained in this section prevents the collection of a fee or penalty due upon the failure of an association to submit the required report.

F. An annual or supplemental report required to be filed under this section shall not be deemed to have been filed if the fees accompanying the report have been paid by check and the check is dishonored upon presentation.

G. An association that fails or refuses to file a report for a year within the time prescribed by the Sanitary Projects Act is subject to a penalty of ten dollars ($10.00) to be assessed by the public regulation commission.

H. An association shall file with the department a member accountability report that shall include:

(1) a financial statement prepared in accordance with generally accepted accounting principles; and

(2) a copy of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] resolution stating what notice for a public meeting is reasonable. The report shall be signed and sworn to as to accuracy and completeness by all members of the board of directors of the association. A statement shall be included in the consumer confidence report required for water systems that the member accountability report is available to the public upon request. The member accountability report shall be filed with the department with the consumer confidence report no later than July 1 of each year.

History: Laws 2001, ch. 200, § 8; 2006, ch. 60, § 14.

3-29-18. Repealed.

History: 1953 Comp., § 14-28-18, enacted by Laws 1965, ch. 300; repealed by Laws 2006, ch. 60, § 20.

3-29-19. Amendment of certificate of association and bylaws; method.

Every association may make such amendment, change or alteration to its certificate of association or bylaws as may be desired not inconsistent with the Sanitary Projects Act or other law of this state by a resolution adopted by a vote of a majority of the members present at any regular or special meeting duly held upon such notice as the bylaws provide. A certified copy of such resolution with the affidavit of the president and secretary that the resolution was duly adopted by a majority vote of the members at a meeting held in accordance with the provisions of this section shall be filed and recorded as provided for filing and recording the original certificate of association and bylaws, and thereupon the certificate of association and bylaws shall be deemed to be amended accordingly, and a copy of such certificate of amendment certified by the secretary of state or the county clerk shall be accepted as evidence of each change or amendment in all courts and places.

History: 1953 Comp., § 14-28-19, enacted by Laws 1965, ch. 300; 2006, ch. 60, § 15; 2013, ch. 75, § 6.

3-29-19.1. Bylaws.

A. Members shall adopt bylaws by no less than a majority vote of a quorum of the membership of the association setting forth:

(1) the name of the association;

(2) the requirement of an association seal;

(3) the fiscal year of the association;

(4) guidelines for membership, which shall include the sentence "Membership shall not be denied because of the applicant's race, color, creed, national origin or sex.";

(5) guidelines for meetings of the membership, which shall include the date or time period of a membership meeting, required notice of a meeting, establishment of a quorum and the order of business to be conducted at a meeting of the membership;

(6) the functions of the board of directors, including a conflict of interest policy for the board;

(7) the duties of officers of the board of directors; and

(8) provisions for the board of directors to establish rules to govern the day-to-day operations of the project, including a code of conduct for staff and provisions to establish an annual budget, rate structure, assessments and reserve funds.

B. The bylaws, or any amendment thereof made as provided in Section 3-29-19 NMSA 1978, may also contain provisions not inconsistent with the Sanitary Projects Act or other law of this state that the organizers may choose to insert for the regulation and conduct of the business and affairs of the association.

C. The department may prescribe by rule guidelines for bylaws and rules of an association.

History: Laws 2006, ch. 60, § 17.

3-29-20. Reorganization of cooperative associations and nonprofit corporations pursuant to the Sanitary Projects Act.

A. Cooperative associations formed pursuant to Sections 53-4-1 through 53-4-45 NMSA 1978 and nonprofit corporations formed under the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] may reorganize under the Sanitary Projects Act upon approval of the reorganization by a majority vote of a quorum of the members of a cooperative association or nonprofit corporation. Notice of the meeting to consider the reorganization and a copy of the proposed certificate of association shall be sent at least fifteen days prior to such meeting by the cooperative association to each member at the member's last known address and by the nonprofit corporation to each member, if any, at the member's last known address. Upon approval of the reorganization by the majority vote of a quorum of the members, the cooperative association or the nonprofit corporation shall execute a certificate of association pursuant to Sections 3-29-16 and 3-29-17 NMSA 1978. The certificate of association shall state that it supersedes the articles of incorporation and all amendments to the articles of incorporation of the cooperative association or the nonprofit corporation.

B. Duplicate originals of the certificate of association shall be filed with the secretary of state. One duplicate original of the certificate of association shall be returned to the association.

C. The certificate of association is effective upon filing and supersedes the articles of incorporation and all amendments to the articles of incorporation of the prior cooperative association or nonprofit corporation. The association shall:

(1) be the surviving entity, and the separate existence of the prior cooperative association or nonprofit corporation shall cease;

(2) have all of the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of an association organized pursuant to the Sanitary Projects Act;

(3) possess all the rights, privileges, immunities and franchises of the prior cooperative association or nonprofit corporation. All property, real, personal and mixed; all debts due on whatever account; all other choses in action; and all and every other interest of or belonging to or due to the prior cooperative association or nonprofit corporation shall be taken and deemed to be transferred to and vested in the association without further act or deed. The title to any real estate, or any interest therein, vested in the prior cooperative association or nonprofit corporation shall not revert or be in any way impaired by reason of the reorganization; and

(4) be liable for all the liabilities and obligations of the prior cooperative association or nonprofit corporation, and any claim existing or action or proceeding pending by or against the cooperative association or nonprofit corporation may be prosecuted as if the reorganization had not taken place or the new association may be substituted in its place. Neither the rights of creditors nor any liens upon the property of the cooperative association or nonprofit corporation shall be impaired by the reorganization.

D. A cooperative association formed pursuant to the Cooperative Association Act [Chapter 53, Article 4 NMSA 1978] or nonprofit corporation formed pursuant to the Nonprofit Corporation Act that reorganized under Subsection A of this section prior to June 30, 2006 may, within three years of the effective date of this 2006 act, reorganize pursuant to the act under which it had previously been organized upon approval of the reorganization by a two-thirds' vote of the directors of the association or corporation. Notice of the meeting to consider the reorganization and a copy of the proposed articles of incorporation shall be sent by the association or the corporation at least fifteen days prior to the meeting to each member at the member's last known address. Upon approval of the reorganization, the association or corporation shall execute articles of incorporation pursuant to Sections 53-4-5 and 53-4-6 or 53-8-31 and 53-8-32 NMSA 1978. The articles of incorporation shall state that they supersede the certificate of association or incorporation and all amendments thereto of the association or corporation and shall follow the filing procedures of Subsections B and C of this section.

History: Laws 2000, ch. 56, § 4; 2006, ch. 60, § 16; 2013, ch. 75, § 7.

3-29-20.1. Merger of two or more associations into one association.

Upon approval by vote of a majority of a quorum of each membership, two or more associations may merge into one association pursuant to a plan of merger approved in the manner provided by this section. The board of directors of each association shall, by resolution adopted by each board, approve a plan of merger setting forth:

A. the names of the associations proposing to merge, and the association into which they propose to merge, which is hereinafter designated as the "surviving association";

B. the terms and conditions of the proposed merger, including transfer of assets and liabilities;

C. the manner and basis of converting each association's obligations or other securities into the surviving association;

D. a statement of any changes in the certificate of association of the surviving association to be affected by the merger; and

E. other provisions with respect to the proposed merger as deemed necessary or desirable.

History: Laws 2006, ch. 60, § 19.

3-29-21. Exemptions from Special District Procedures Act provisions.

An association formed pursuant to the provisions of the Sanitary Projects Act may be formed exclusively as provided in that act, and formation of the association shall be exempt from all review and requirements set forth in the Special District Procedures Act [4-53-1 to 4-53-11 NMSA 1978].

History: Laws 2006, ch. 60, § 18.

ARTICLE 30
Municipal Debt; Voting on Question

3-30-1. Bond elections; findings; qualified electors.

A. The legislature finds that the provisions of Article 9, Section 12 of the constitution of New Mexico regarding nonresident municipal electors violate the rights of property

owners who are not qualified electors of the county where such city, town or village is situated compared to nonresident property owners who are qualified electors of the county where such city, town or village is located, and further finds that providing voting rights based on property ownership violates the franchise provisions in Article 7, Section 1 of the constitution of New Mexico.

B. Voting for all purposes in all public elections in a municipality shall be based exclusively on voter registration by qualified electors of the municipality as provided in the Municipal Code and Election Code [Chapter 1 NMSA 1978].

History: 1953 Comp., § 14-29-1, enacted by Laws 1965, ch. 300; 1978 Comp., § 3-30-1, repealed and reenacted by Laws 2019, ch. 212, § 184.

3-30-2. Repealed.

History: 1953, Comp., § 14-29-2, enacted by Laws 1965, ch. 300; repealed by Laws 2019, ch. 212, § 284.

3-30-3. Repealed.

History: 1953 Comp., § 14-29-3, enacted by Laws 1965, ch. 300; repealed by Laws 2019, ch. 212, § 284.

3-30-4. Repealed.

History: 1953, Comp., § 14-29-4, enacted by Laws 1965, ch. 300; repealed by Laws 2019, ch. 212, § 284.

3-30-5. General obligation bonds; authority to issue.

Subject to the limitations and in accordance with Article 9 of the constitution of New Mexico and Sections 6-15-1 and 6-15-2 NMSA 1978, a municipality may issue and dispose of negotiable bonds for the purpose of securing funds for:

A. erecting and operating natural or artificial gas works;

B. erecting and operating electric works;

C. constructing, purchasing, rehabilitating or remodeling, or any combination thereof, public buildings, including additions and improvements thereto;

D. building, beautifying and improving public parks within or without the municipal boundary, but not beyond the planning and platting jurisdiction of the municipality;

E. acquiring land or buildings for playgrounds, recreation centers, zoos and other recreational purposes, and the equipment thereof, or any combination thereof;

F. providing proper means for protecting from fire including but not necessarily limited to purchasing apparatus for fire protection and providing, enlarging and improving fire equipment and facilities;

G. laying off, opening, constructing, repairing, and otherwise improving municipal alleys, streets, public roads and bridges, or any combination thereof;

H. providing apparatus for the collection and disposal of garbage and refuse;

I. acquiring, constructing and maintaining garbage and refuse disposal areas and plants within or without the municipal boundary;

J. constructing or purchasing a system for supplying water or constructing and purchasing such a system, for the municipality, including without limiting the generality of the foregoing, the enlargement, improvement, extension or acquisition of the system, and acquisition of water or water rights, necessary real estate or rights-of-way, bridges and easements, and necessary apparatus for a water system, or any combination of the foregoing;

K. constructing or purchasing a sewer system or the construction and purchase of a sewer system, including without limiting the generality of the foregoing, acquiring, enlarging, improving or extending, or any combination of the foregoing, said system;

L. flood control purposes as provided in Section 3-41-1 NMSA 1978;

M. constructing, purchasing, rehabilitating or remodeling, or any combination thereof, hospitals, including additions and improvements thereto;

N. purchasing, improving or erecting public auditoriums or public buildings of a similar nature for general civic purposes, or for authorizing the improvement or erection of public auditoriums or buildings of a similar nature by agreement, with the officers of the county in which the municipality is located; and

O. acquiring, purchasing, constructing, improving, rehabilitating, or remodeling, or any combination thereof, of cemeteries or mausoleums.

History: 1953 Comp., § 14-29-5, enacted by Laws 1973, ch. 395, § 2.

3-30-6. Bond election; qualifications of voters; separation of items; time; publication or posting; ballots.

A. Before bonds are issued, the governing body of the municipality shall submit to a vote of the qualified electors of the municipality the question of issuing the bonds. The

election may be held at the same time as the regular local election or at any special election held pursuant to Article 9, Section 12 of the constitution of New Mexico.

B. The governing body of the municipality shall give notice of the time and place of holding the election and the purpose for which the bonds are to be issued. The election shall be conducted pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978].

C. The question shall state the purpose for which the bonds are to be issued and the amount of the issue. If bonds are to be issued for more than one purpose, a separate question shall be submitted to the voter for each purpose to be voted upon. The ballots shall contain words indicating the purpose of the bond issue and a place for a vote "For . . . (designate type) bonds" and "Against . . . (designate type) bonds" for each bond issue. The ballots shall be deposited in a separate ballot box unless voting machines are used.

History: 1953 Comp., § 14-29-6, enacted by Laws 1965, ch. 300; 1977, ch. 28, § 5; 1985, ch. 208, § 116; 2018, ch. 79, § 65; 2019, ch. 212, § 185.

3-30-7. Canvass of bond election; certification of results; effect.

A. The vote upon each question proposing to issue negotiable bonds shall be canvassed as provided in the Local Election Act [Chapter 1, Article 22 NMSA 1978], and the municipal clerk shall file the certificate of canvass in the official minute book of the municipality.

B. If a majority of those voting on the question favors the creation of the debt, the governing body of the municipality may proceed to issue the negotiable bonds.

History: 1953 Comp., § 14-29-7, enacted by Laws 1965, ch. 300; 1985, ch. 208, § 117; 2018, ch. 79, § 66.

3-30-8. General obligation bonds; issuance; sale; payable.

A. The bonds shall be issued and sold in the manner authorized under Sections 6-15-3 through 6-15-10 NMSA 1978.

B. The bonds shall be of such denomination or denominations and shall be payable at such place or places within or without the state or both, shall be in such form, and otherwise shall bear such terms and conditions, as the governing body may determine, except as otherwise provided by law.

C. Said bonds shall be signed by the mayor and by the clerk, and the coupons appertaining thereto shall be signed by the treasurer.

D. The facsimile signature of the treasurer may be engraved, imprinted, stamped or otherwise reproduced on the coupons.

E. The bonds may be executed in the manner provided by the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978].

History: 1953 Comp., § 14-29-8, enacted by Laws 1965, ch. 300.

3-30-9. Pledge of full faith and credit.

The full faith and credit of the municipality shall be pledged to the payment of the negotiable bonds. The governing body shall levy and collect, upon all the taxable property within the municipality subject to taxation, such taxes as are necessary to pay the interest on and the principal of the negotiable bonds as the interest and principal become due, without limitation as to rate or amount. The municipality may pay the principal of and interest on any general obligation bonds from any available revenues, and the levy or levies of taxes may be diminished to the extent such other revenues are available for the payment of such principal and interest.

History: 1953 Comp., § 14-29-9, enacted by Laws 1965, ch. 300.

ARTICLE 31
Revenue Bonds

3-31-1. Revenue bonds; authority to issue; pledge of revenues; limitation on time of issuance.

A. In addition to any other law and constitutional home rule powers authorizing a municipality to issue revenue bonds, a municipality may issue revenue bonds pursuant to Chapter 3, Article 31 NMSA 1978 for the purposes specified in this section.

B. Utility revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing or otherwise improving a municipal utility or for any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the net revenues from the operation of the municipal utility or of any one or more of other such municipal utilities for payment of the interest on and principal of the revenue bonds.

C. Joint utility revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing or otherwise improving joint water facilities, sewer facilities, gas facilities or electric facilities or for any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the net revenues from the operation of these municipal utilities for the payment of the interest on and principal of the bonds.

D. Gross receipts tax revenue bonds may be issued for any municipal purpose. A municipality may pledge irrevocably any or all of the gross receipts tax revenue received

by the municipality pursuant to Section 7-1-6.4 or 7-1-6.12 NMSA 1978 to the payment of the interest on and principal of the gross receipts tax revenue bonds or for any area of municipal government services. A law that imposes or authorizes the imposition of a tax authorized by the Municipal Local Option Gross Receipts Taxes Act [Chapter 7, Article 19D NMSA 1978] or that affects the tax, or a law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding revenue bonds that may be secured by a pledge of such tax unless the outstanding revenue bonds have been discharged in full or provision has been fully made therefor. Revenues in excess of the annual principal and interest due on gross receipts tax revenue bonds secured by a pledge of gross receipts tax revenue may be accumulated in a debt service reserve account. The governing body of the municipality may appoint a commercial bank trust department to act as trustee of the gross receipts tax revenue and to administer the payment of principal of and interest on the bonds.

E. Gasoline tax revenue bonds may be issued for laying off, opening, constructing, reconstructing, resurfacing, maintaining, acquiring rights of way, repairing and otherwise improving municipal buildings, alleys, streets, public roads and bridges or any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the gasoline tax revenue received by the municipality to the payment of the interest on and principal of the gasoline tax revenue bonds.

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

G. Fire district revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping and rehabilitating any fire district project, including, where applicable, purchasing, otherwise acquiring or improving the ground therefor, or for any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the revenues received by the fire district from the fire protection fund as provided in the Fire Protection Fund Law [Chapter 59A, Article 53 NMSA 1978] and any or all of the revenues provided for

the operation of the fire district project for which the particular bonds are issued to the payment of the interest on and principal of the bonds. The revenues of any fire district project shall not be pledged to the bonds issued for a fire district project that clearly is unrelated in its purpose; but nothing in this section prevents the pledge to such bonds of any revenues received from existing, future or disconnected facilities and equipment that are related to and that may constitute a part of the particular fire district project. A general determination by the governing body of the municipality that any facilities or equipment is reasonably related to and constitutes a part of a specified fire district project shall be conclusive if set forth in the proceedings authorizing the fire district bonds.

H. Law enforcement protection revenue bonds may be issued for the repair and purchase of law enforcement apparatus and equipment that meet nationally recognized standards. The municipality may pledge irrevocably any or all of the revenues received by the municipality from the law enforcement protection fund distributions pursuant to the Law Enforcement Protection Fund Act [Chapter 29, Article 13 NMSA 1978] to the payment of the interest on and principal of the law enforcement protection revenue bonds.

I. Except for the purpose of refunding previous revenue bond issues, no municipality may sell revenue bonds payable from pledged revenues after the expiration of two years from the date of the ordinance authorizing the issuance of the bonds or, for bonds to be issued and sold to the New Mexico finance authority as authorized in Subsection C of Section 3-31-4 NMSA 1978, after the expiration of two years from the date of the resolution authorizing the issuance of the bonds. However, any period of time during which a particular revenue bond issue is in litigation shall not be counted in determining the expiration date of that issue.

History: 1953 Comp., § 14-30-1, enacted by Laws 1973, ch. 395, § 3; 1979, ch. 311, § 1; 1981, ch. 6, § 1; 1982, ch. 38, § 1; 1983, ch. 57, § 1; 1985, ch. 81, § 8; 1985, ch. 86, § 1; 1989, ch. 356, § 1; 1990, ch. 99, § 43; 1991, ch. 9, § 8; 1995, ch. 141, § 1; 1998, ch. 90, § 1; 1999, ch. 199, § 1; 2007, ch. 148, § 2; 2019, ch. 274, § 1.

3-31-1.1. Definitions.

As used in Chapter 3, Article 31 NMSA 1978:

A. "bond" means any obligation of a municipality issued under Chapter 3, Article 31 NMSA 1978, whether designated as a bond, note, loan, warrant, debenture, lease-purchase agreement or other instrument evidencing an obligation of a municipality to make payments;

B. "gasoline tax revenue" means all or portions of the amounts of tax revenues distributed to municipalities pursuant to Sections 7-1-6.9 and 7-1-6.27 NMSA 1978;

C. "gasoline tax revenue bonds" means the bonds authorized by Subsection E of Section 3-31-1 NMSA 1978;

D. "gross receipts tax revenue" means the amount of money distributed to a municipality pursuant to Section 7-1-6.4 NMSA and transferred to a municipality pursuant to Section 7-1-6.12 NMSA 1978 for any municipal gross receipts tax imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act [Chapter 7, Article 19D NMSA 1978];

E. "gross receipts tax revenue bonds" means the bonds authorized by Subsection D of Section 3-31-1 NMSA 1978;

F. "joint utility revenue bonds" or "joint utility bonds" means the bonds authorized by Subsection C of Section 3-31-1 NMSA 1978;

G. "pledged revenues" means the revenues, net income or net revenues authorized to be pledged to the payment of revenue bonds as specifically provided in Chapter 3, Article 31 NMSA 1978;

H. "project revenue bonds" means the bonds authorized by Subsection F of Section 3-31-1 NMSA 1978; and

I. "utility revenue bonds" or "utility bonds" means the bonds authorized by Subsection B of Section 3-31-1 NMSA 1978.

History: 1978 Comp., § 3-31-1.1, enacted by Laws 2019, ch. 274, § 2.

3-31-2. Use of proceeds of bond issue.

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

History: 1953 Comp., § 14-30-2, enacted by Laws 1965, ch. 300.

3-31-3. Revenue bonds; terms.

Municipal revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the governing body;

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

C. may mature at any time or times not exceeding fifty years after the date of issuance, except municipal revenue bonds issued for reconstructing, resurfacing or repairing existing streets, which may mature at any time or times not exceeding twenty years after the date of issuance;

D. may be serial in form and maturity or may consist of one bond payable at one time or in installments or may be in such other form as may be determined by the governing body;

E. shall be sold for cash at above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; and

F. may be sold at public or negotiated sale.

History: 1953 Comp., § 14-30-3, enacted by Laws 1965, ch. 300; 1969, ch. 217, § 2; 1972, ch. 81, § 4; 1979, ch. 311, § 2; 1983, ch. 108, § 1; 1985, ch. 86, § 2; 1989, ch. 355, § 1; 1995, ch. 141, § 2.

3-31-3.1. Exemption from taxation.

The bonds authorized by Chapter 3, Article 31 NMSA 1978 and the income from the bonds or any mortgages or other instruments executed as security for the bonds shall be exempt from all taxation by the state or any political subdivision of the state.

History: Laws 2001, ch. 126, § 1.

3-31-4. Ordinance authorizing revenue bonds; three-fourths majority required; resolution authorizing revenue bonds to be issued and sold to the New Mexico finance authority.

A. At a regular or special meeting called for the purpose of issuing revenue bonds as authorized in Section 3-31-1 NMSA 1978, the governing body may adopt an ordinance that:

(1) declares the necessity for issuing revenue bonds;

(2) authorizes the issuance of revenue bonds by an affirmative vote of three-fourths of all the members of the governing body; and

(3) designates the source of the pledged revenues.

B. If a majority of the governing body, but less than three-fourths of all the members, votes in favor of adopting the ordinance authorizing the issuance of revenue bonds, the ordinance is adopted but shall not become effective until the question of

issuing the revenue bonds is submitted to a vote of the qualified electors for their approval at a special or regular local election. If an election is necessary, the election shall be conducted in the manner provided in the Local Election Act [Chapter 1, Article 22 NMSA 1978].

C. In addition and as an alternative to adopting an ordinance as required by the provisions of Subsections A and B of this section, at a regular or special meeting called for the purpose of issuing revenue bonds as authorized in Section 3-31-1 NMSA 1978, the governing body may authorize the issuance and sale, from time to time, of revenue bonds in amounts not to exceed one million dollars ($1,000,000) at any one time to the New Mexico finance authority by adoption of a resolution that:

(1) declares the necessity for issuing and selling revenue bonds to the New Mexico finance authority;

(2) authorizes the issuance and sale of revenue bonds to the New Mexico finance authority by an affirmative vote of a majority of all the members of the governing body; and

(3) designates the source of the pledged revenues.

At the option of the governing body, revenue bonds in an amount in excess of one million dollars ($1,000,000) may be authorized by an ordinance adopted in accordance with Subsections A and B of this section and issued and sold to the New Mexico finance authority.

D. No ordinance or resolution may be adopted under the provisions of this section that uses as pledged revenues the municipal gross receipts tax authorized by Section 7-19D-9 NMSA 1978 for a purpose that would be inconsistent with the purpose for which that municipal gross receipts tax revenue was dedicated. Any revenue in excess of the amount necessary to meet all principal and interest payments and other requirements incident to repayment of the bonds shall be used for the purposes to which the revenue was dedicated.

History: 1953 Comp., § 14-30-4, enacted by Laws 1965, ch. 300; 1979, ch. 311, § 3; 1995, ch. 141, § 3; 2018, ch. 79, § 67.

3-31-5. Revenue bonds not general municipal obligations; authentication.

A. Revenue bonds or refunding revenue bonds issued as authorized in Chapter 3, Article 31 NMSA 1978 are:

(1) not general obligations of the municipality; and

(2) collectible only from the proper pledged revenues, and each bond shall state that it is payable solely from the proper pledged revenues and that the bondholders may not look to any other municipal fund for the payment of the interest and principal of the bond.

B. The bonds shall be executed by the mayor and treasurer or the clerk and may be authenticated by any public or private transfer agent or registrar, or its successor, named or otherwise designated by the governing body. The bonds may be executed as provided under the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978], and the coupons, if any, shall bear the facsimile signature of the treasurer of the municipality.

History: 1953 Comp., § 14-30-5, enacted by Laws 1965, ch. 300; 1967, ch. 244, § 2; 1985, ch. 86, § 3.

3-31-6. Revenue bonds; mandatory rates for utility, joint utility or revenue-producing project; mandamus; impairment of payment.

A. The governing body of any municipality issuing utility revenue bonds, joint utility revenue bonds or project revenue bonds as authorized in Sections 3-31-1 through 3-31-7 NMSA 1978 shall establish rates for services rendered by the municipal utility, joint utility or the applicable revenue-producing project to provide revenue sufficient to meet the following requirements or, where applicable to a revenue-producing project, to enter into such leases or other agreements sufficient to provide revenues which are sufficient to meet the following requirements:

(1) pay all reasonable expenses of operation;

(2) pay all interest on the revenue bonds as it comes due; and

(3) provide a sinking fund adequate to discharge the revenue bonds as they mature. Such rates shall remain in effect until the bond issue is liquidated.

B. In the event the governing body fails or refuses to establish rates for the utility, joint utility or the applicable revenue-producing project, or to enter into a lease or other agreement where applicable to a revenue-producing project, as required in this section, any bondholder may apply to the district court for a mandatory order requiring the governing body to establish rates or to enter into such applicable leases or agreements which will provide revenues adequate to meet the requirements of this section. The provisions of Section 3-23-6 NMSA 1978 shall apply to any rates or charges which may be imposed for services rendered by any applicable revenue-producing project.

C. Any law which authorizes the pledge of any or all of the pledged revenues to the payment of any revenue bonds issued pursuant to Sections 3-31-1 through 3-31-12 NMSA 1978 or which affects the pledged revenues, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly

or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

History: 1953 Comp., § 14-30-6, enacted by Laws 1965, ch. 300; 1967, ch. 244, § 3; 1972, ch. 81, § 5.

3-31-7. Revenue bonds; mortgaging water utility property.

If revenue bonds are issued for the acquisition or improvement, betterment or extension of a municipal water utility, the municipality may further assure payment of the revenue bonds by mortgaging and conveying the water utility to a trustee for the benefit and security of the bondholders.

History: 1953 Comp., § 14-30-7, enacted by Laws 1965, ch. 300.

3-31-8. Revenue bonds; refunding authorization; authority to mortgage municipal utility.

A. Any municipality having issued revenue bonds as authorized in Sections 3-31-1 through 3-31-7 NMSA 1978 or pursuant to any other laws enabling the governing body of any municipality having issued such revenue bonds payable only out of the pledged revenue may issue refunding revenue bonds for the purpose of refinancing, paying and discharging all or any part of such outstanding bonds of any one or more or all outstanding issues:

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

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

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

(4) for any combination of such purposes.

B. The municipality may pledge irrevocably for the payment of interest and principal on refunding bonds the appropriate pledged revenues, which may be pledged to an original issue of bonds as provided in Section 3-31-1 NMSA 1978, and it may pledge revenues from one source to the payment of bonds that refund bonds payable from a different source of revenue.

C. Bonds for refunding and bonds for any purpose permitted by Section 3-31-1 NMSA 1978 may be issued separately or issued in combination in one series or more.

D. In addition to pledging of utility revenues to the payment of the refunding revenue bonds that refund utility bonds or joint utility bonds as provided in Section 3-23-4 NMSA 1978, the municipality may grant by ordinance, or by resolution if the refunding revenue bonds are issued and sold to the New Mexico finance authority pursuant to Subsection C of Section 3-31-4 NMSA 1978, a mortgage of the municipal utility that has been solely financed by revenue bonds to the bondholder or a trustee for the benefit and security of the holders of the refunding revenue bonds.

History: 1953 Comp., § 14-30-8, enacted by Laws 1965, ch. 300; 1967, ch. 244, § 4; 1969, ch. 179, § 1; 1985, ch. 86, § 4; 1987, ch. 170, § 2; 1995, ch. 141, § 4; 2019, ch. 72, § 1.

3-31-9. Refunding bonds; escrow; detail.

A. Refunding bonds issued pursuant to Sections 3-31-1 through 3-31-12 NMSA 1978 shall be authorized by ordinance or by resolution if the refunding bonds are to be issued and sold to the New Mexico finance authority pursuant to Subsection C of Section 3-31-4 NMSA 1978. Any bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provision shall be made for paying the bonds refunded at the time or times provided in Subsection A of this section. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds and may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

C. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company, which possesses and is exercising trust powers and which is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that such refunding bond proceeds, including any accrued interest and any premium appertaining to a sale of refunding bonds, may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest thereon and the principal thereof or both interest and principal as the municipality may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of

the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available for its purpose. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of or the principal and interest of which obligations are unconditionally guaranteed by the United States of America or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of or the payment of which is unconditionally guaranteed by the United States of America, the par value of which obligations is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the municipality shall exercise a prior redemption option. Any purchaser of any refunding bond issued under Sections 3-31-1 through 3-31-12 NMSA 1978 is in no manner responsible for the application of the proceeds thereof by the municipality or any of its officers, agents or employees.

D. Refunding bonds may bear such additional terms and provisions as may be determined by the municipality subject to the limitations in this section and Section 3-31-10 NMSA 1978 and, to the extent applicable, Sections 3-31-1 through 3-31-12 NMSA 1978 relating to original bond issues, and the refunding bonds are not subject to the provisions of any other statute except as may be incorporated by reference in Sections 3-31-1 through 3-31-12 NMSA 1978.

E. The municipality shall receive from the department of finance and administration written approval of any gross receipts tax refunding revenue bonds, gasoline tax refunding revenue bonds or project refunding revenue bonds issued pursuant to the provisions of Sections 3-31-8 through 3-31-12 NMSA 1978.

History: 1953 Comp., § 14-30-8.1, enacted by Laws 1973, ch. 399, § 1; 1974, ch. 2, § 1; 1983, ch. 108, § 2; 1985, ch. 86, § 5; 1995, ch. 141, § 5.

3-31-10. Refunding revenue bonds; terms.

Municipal refunding revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the governing body;

B. may be subject to prior redemption at the municipality's option at such time or times and upon such terms and conditions with or without the payment of premium or premiums as may be determined by the governing body;

C. may be serial in form and maturity or may consist of a single bond payable in one or more installments or may be in such other form as may be determined by the governing body; and

D. shall be exchanged for the bonds and any matured unpaid interest being refunded at not less than par or sold at public or negotiated sale at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978].

History: 1953 Comp., § 14-30-9, enacted by Laws 1965, ch. 300; 1969, ch. 179, § 2; 1972, ch. 81, § 6; 1974, ch. 2, § 2; 1983, ch. 108, § 3; 1984, ch. 42, § 1; 1985, ch. 86, § 6; 1989, ch. 355, § 2; 1995, ch. 141, § 6.

3-31-11. Refunding revenue bonds; ordinance; resolution.

A. At any regular or special meeting called for the purpose of issuing refunding revenue bonds, the governing body by a majority vote of all the members of the governing body may adopt an ordinance authorizing the issuance of the refunding revenue bonds.

B. At any regular or special meeting called for the purpose of issuing and selling refunding revenue bonds to the New Mexico finance authority, the governing body by an affirmative vote of a majority of all members of the governing body may adopt a resolution authorizing issuance and sale of the refunding revenue bonds to the New Mexico finance authority pursuant to Subsection C of Section 3-31-4 NMSA 1978.

History: 1953 Comp., § 14-30-10, enacted by Laws 1965, ch. 300; 1995, ch. 141, § 7.

3-31-12. Refunding revenue bonds; foreclosure of mortgage.

A. If any municipality which has granted a mortgage of the municipal utility to a trustee or the holder of the refunding bonds as further assurance of paying the refunding revenue bonds, defaults in payment of the interest or serial maturity of the refunding revenue bonds, the holder of the refunding revenue bonds or trustee to whom the municipal utility has been conveyed by mortgage may foreclose the mortgage against the municipality in the same manner a real estate mortgage is foreclosed. The district court may appoint a receiver to operate the municipal utility during the default period.

B. In the event the mortgage is foreclosed, the governing body shall grant a franchise to the receiver or to the subsequent purchaser upon sale by foreclosure. The franchise shall:

(1) be upon reasonable terms and conditions under which the public utility shall be privately operated;

(2) be for a period of twenty-five years or a less number of years if satisfactory to the trustee or holder of the revenue bonds; and

(3) be subject to the approval of the district court or any other state agency which has jurisdiction.

History: 1953 Comp., § 14-30-11, enacted by Laws 1965, ch. 300.

ARTICLE 32
Industrial Revenue Bonds

3-32-1. Industrial Revenue Bond Act; definitions.

Wherever used in the Industrial Revenue Bond Act unless a different meaning clearly appears in the context, the following terms whether used in the singular or plural shall be given the following respective interpretations:

A. "municipality" means a city, town or village in New Mexico;

B. "project" means any land and building or other improvements thereon, the acquisition by or for a New Mexico corporation of the assets or stock of an existing business or corporation located outside the state to be relocated within or near the municipality in the state and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use by the following or by any combination of two or more thereof:

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

(2) a commercial enterprise in storing, warehousing, distributing or selling products of agriculture, mining or industry but does not include a facility designed for the sale of goods or commodities at retail or distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;

(3) a business in which all or part of the activities of the business involve the supplying of services to the general public or to governmental agencies or to a specific industry or customer but does not include an establishment primarily engaged in the sale of goods or commodities at retail;

(4) a water distribution or irrigation system, including without limitation, pumps, distribution lines, transmission lines, towers, dams and similar facilities and equipment, designed to provide water to a vineyard or winery;

(5) an electric generation or transmission facility, other than one for which both location approval and a certificate of convenience and necessity are required prior

to commencing construction or operation of the facility, pursuant to the Public Utility Act [Chapter 62, Articles 1 to 13 NMSA 1978];

(6) an energy storage facility, which is a facility that uses mechanical, chemical, thermal, kinetic or other processes to store energy for release at a later time to integrate energy supply associated with renewable generation across the electric grid; and

(7) a 501(c)(3) corporation;

C. "governing body" means the board or body in which the legislative powers of the municipality are vested;

D. "property" means any land, improvements thereon, buildings and any improvements thereto, machinery and equipment of any and all kinds necessary to the project, operating capital and any other personal properties deemed necessary in connection with the project;

E. "mortgage" means a mortgage or a mortgage and deed of trust or the pledge and hypothecation of any assets as collateral security;

F. "health care service" means the diagnosis or treatment of sick or injured persons or medical research and includes the ownership, operation, maintenance, leasing and disposition of health care facilities such as hospitals, clinics, laboratories, x-ray centers and pharmacies and, for any small municipality only, office facilities for physicians;

G. "refinance a hospital or 501(c)(3) corporation project" means the issuance of bonds by a municipality and the use of all or substantially all of the proceeds to liquidate any obligations previously incurred to finance or aid in financing a project of a nonprofit corporation engaged in health care services, including nursing homes, or of a 501(c)(3) corporation, which would constitute a project under the Industrial Revenue Bond Act [Chapter 4, Article 59 NMSA 1978] had it been originally undertaken and financed by a municipality pursuant to the Industrial Revenue Bond Act; and

H. "501(c)(3) corporation" means a corporation that demonstrates to the taxation and revenue department that it has been granted exemption from the federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered.

History: 1953 Comp., § 14-31-1, enacted by Laws 1965, ch. 300; 1969, ch. 201, § 1; 1974, ch. 50, § 1; 1977, ch. 267, § 1; 1977, ch. 335, § 1; 1981, ch. 45, § 1; 1983, ch. 282, § 1; 2002, ch. 25, § 1; 2002, ch. 37, § 1; 2020, ch. 14, § 1; 2024, ch. 67, § 1.

3-32-2. Short title.

Chapter 3, Article 32 NMSA 1978 may be cited as the "Industrial Revenue Bond Act".

History: 1953 Comp., § 14-31-1.1, enacted by Laws 1967, ch. 84, § 1; 1997, ch. 216, § 1; 1997, ch. 226, § 1.

3-32-3. Addition to definitions.

As used in the Industrial Revenue Bond Act, “project” also means:

A. any land and buildings or other improvements thereon and all real and personal property deemed necessary in connection therewith whether or not now in existence which shall be suitable for use by any private institution of higher education or any nonprofit corporation engaged in health care services, including nursing homes, and, for any small municipality only, office facilities for physicians, any mass transit or other transportation activity involving the movement of passengers, any industrial park, any office headquarters and any research and development facility; or

B. urban transit buses, whether or not already in existence, that are:

(1) manufactured or assembled in New Mexico;

(2) equipped to hold at least thirty passengers; and

(3) suitable for use by a commercial enterprise for leasing.

History: 1953 Comp., § 14-31-1.2, enacted by Laws 1967, ch. 84, § 2; 1974, ch. 50, § 2; 1975, ch. 222, § 1; 1981, ch. 45, § 2; 2005, ch. 9, § 1.

3-32-4. Legislative intent.

It is the intent of the legislature by the passage of Sections 3-32-1 through 3-32-16 NMSA 1978 to authorize municipalities to acquire, own, lease or sell projects for the purpose of promoting industry and trade other than retail trade, by inducing manufacturing, industrial and commercial enterprises to locate or expand in this state, promoting the use of the agricultural products and natural resources of this state, and promoting a sound and proper balance in this state between agriculture, commerce and industry. It is intended that each project be self-liquidating. It is not intended hereby to authorize any municipality itself to operate any manufacturing, industrial or commercial enterprise. Sections 3-32-1 through 3-32-16 NMSA 1978 shall be liberally construed in conformity with the said intent.

History: 1953 Comp., § 14-31-2, enacted by Laws 1965, ch. 300; 1977, ch. 267, § 2.

3-32-5. Additional legislative intent.

It is further the legislative intent that the Industrial Revenue Bond Act authorize municipalities to refinance hospital or 501(c)(3) corporation projects and projects of any independent, nonprofit, nonsectarian four-year college or university accredited by the north central association of colleges and schools, to acquire, own, lease or sell projects for the purpose of promoting the local economy and improving local health and the general welfare by inducing private institutions of higher education, nonprofit corporations engaged in health care services, including nursing homes, 501(c)(3) corporations and, for any small municipality only, office facilities for physicians, to provide more adequate facilities of higher education and to provide more adequate health care services in this state and by inducing mass transit or other transportation activities, industrial parks, office headquarters and research and development activities to locate or expand in this state. It is not intended to authorize any municipality to own or lease projects for retail business or by itself to operate any private institution of higher education; nonprofit corporation engaged in health care services, including nursing homes; 501(c)(3) corporation; industrial parks; office headquarters; or research and development facilities.

History: 1953 Comp., § 14-31-2.1, enacted by Laws 1967, ch. 84, § 3; 1974, ch. 50, § 3; 1975, ch. 222, § 2; 1977, ch. 267, § 3; 1977, ch. 335, § 2; 1981, ch. 45, § 3; 1994, ch. 134, § 1; 2002, ch. 25, § 2; 2002, ch. 37, § 2.

3-32-5.1. Small communities; definition; attracting physicians.

It is the legislative intent that small communities have the power to issue municipal revenue bonds for the purpose of constructing office facilities for physicians as a method of attracting physicians. Therefore, for the purposes of Sections 3-32-3, 3-32-5 and Subsection F of Section 3-32-1 NMSA 1978, "small municipality" means an incorporated municipality having a population of less than fifteen thousand as shown by the last preceding official United States census. For limited purposes stated in this section, physicians offices are allowed even though the physicians operate as a profit-making enterprise.

History: 1978 Comp., § 3-32-5.1, enacted by Laws 1981, ch. 45, § 4.

3-32-6. Additional powers conferred on municipalities.

In addition to any other powers that it may now have, a municipality shall have the following powers:

A. to acquire, whether by construction, purchase, gift or lease, one or more projects that shall be located within this state and may be located within or without the municipality or partially within or partially without the municipality, but which shall not be located more than fifteen miles outside of the corporate limits of the municipality; provided that:

(1) urban transit buses qualifying as a project pursuant to Subsection B of Section 3-32-3 NMSA 1978 need not be continuously located within this state, but the commercial enterprise using the urban transit buses for leasing shall meet the location requirement of this subsection; and

(2) a municipality shall not acquire any electricity generation facility, transmission facility or energy storage facility project unless the school districts within the municipality in which the project is located receive annual in-lieu tax payments; provided that the annual in-lieu tax payments required by this paragraph shall be:

(a) payable to the school districts for the period the municipality owns and leases the project;

(b) in an aggregate amount equal to the amount received by the municipality multiplied by the percentage determined by dividing the average of mills imposed by the school districts within the municipality plus state debt service mills as of the date of issuance of the bonds by the average of the mills imposed by all entities levying taxes on property in the municipality as of such date;

(c) divided among the school districts located within the municipality, if there is more than one school district in such municipality, and the in-lieu payment shall be allocated as follows: 1) fifty percent allocated equally among all school districts in which the project is located; 2) forty percent allocated to the school districts within the municipality in proportion to the area of each school district within the municipality; and 3) ten percent allocated to the school districts in proportion to the average of each school district's student membership pursuant to the Public School Code [Chapter 22 NMSA 1978, except Article 5A] reported on the second and third reporting dates for the most recent school year for which data is available as of the date of issuance of the bonds; and

(d) for each individual school district located within the municipality, no less than the amount due to the school district in the tax year immediately preceding the issuance of the bonds from the property included in a project, had such project not been created;

B. to sell or lease or otherwise dispose of any or all of its projects upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of the Industrial Revenue Bond Act;

C. to issue revenue bonds for the purpose of defraying the cost of acquiring by construction and purchase, or either, any project and to secure the payment of such bonds, all as provided in the Industrial Revenue Bond Act. No municipality shall have the power to operate any project as a business or in any manner except as lessor;

D. to refinance one or more hospital or 501(c)(3) corporation projects and to acquire any such hospital or 501(c)(3) corporation project whether by construction, purchase,

gift or lease, which hospital or 501(c)(3) corporation project shall be located within this state and may be located within or without the municipality or partially within or partially without the municipality, but which shall not be located more than fifteen miles outside of the corporate limits of the municipality, and to issue revenue bonds to refinance and acquire a hospital or 501(c)(3) corporation project and to secure the payment of such bonds, all as provided in the Industrial Revenue Bond Act. A municipality shall not have the power to operate a hospital or 501(c)(3) corporation project as a business or in any manner except as lessor; and

E. to refinance one or more projects of any private institution of higher education and to acquire any such project, whether by construction, purchase, gift or lease; provided that the project shall be located within this state and may be located within or without the municipality or partially within or partially without the municipality, but the project shall not be located more than fifteen miles outside of the corporate limits of the municipality, and to issue revenue bonds to refinance and acquire any project of any private institution of higher education and to secure the payment of such bonds. A municipality shall not have the power to operate a project of a private institution of higher education as a business or in any manner except as lessor.

History: 1953 Comp., § 14-31-3, enacted by Laws 1965, ch. 300; 1977, ch. 335, § 3; 1994, ch. 134, § 2; 2002, ch. 25, § 3; 2002, ch. 37, § 3; 2005, ch. 9, § 2; 2020, ch. 14, § 2; 2021, ch. 91, § 1; 2023, ch. 180, § 1; 2024, ch. 67, § 2.

3-32-6.1. Notice to county.

A. Prior to adopting an ordinance issuing industrial revenue bonds, the municipality shall give notice to the board of county commissioners and the county assessor of its intent to consider the matter. The board and the county assessor shall be notified at least thirty days prior to the meeting at which final action is to be taken so that comments can be transmitted to the municipality.

B. The board of county commissioners and the county assessor shall be able to forward their comments and any concerns to the city council, but there is no approval required from the board or the county assessor and they do not have veto over the proposed industrial revenue bond issuance.

C. The municipality and county shall jointly develop criteria for issuance of industrial revenue bonds by either government; provided, however, that industrial revenue bonds may be authorized and issued before development of the criteria is completed.

D. The municipality shall notify the board of county commissioners and the county assessor when an industrial revenue bond has matured, expired or been replaced by a refunding bond.

History: Laws 1997, ch. 216, § 2 and Laws 1997, ch. 226, § 2; 2003, ch. 221, § 1.

3-32-6.2. Electric transmission projects; payments to the state.

A person proposing an electric transmission facility project pursuant to Paragraph (2) of Subsection A of Section 3-32-6 NMSA 1978 shall pay to the state annual payments equal to five percent of the total amount of in-lieu tax payments to be made in that calendar year by such person to counties, municipalities and other local entities authorized to levy taxes on property, including in-lieu tax payments made to school districts pursuant to Paragraph (2) of Subsection A of Section 3-32-6 NMSA 1978, and five percent of the value of any other consideration related to the project paid to local entities authorized to levy taxes on property by a person proposing an electric transmission project. A copy of any agreement providing for such in-lieu tax payments shall be provided to the secretary of finance and administration within thirty days of written approval of such agreement by all of the parties. Each annual payment to the state shall be made no later than the end of each fiscal year in which in-lieu tax payments are made to local taxing entities. Each annual payment shall be made to the department of finance and administration for deposit to the general fund.

History: Laws 2020, ch. 14, § 3; 2021, ch. 91, § 2.

3-32-7. Bonds issued to finance projects.

A. Bonds issued by a municipality under authority of the Industrial Revenue Bond Act shall not be the general obligation of the municipality within the meaning of Article 9, Sections 12 and 13 of the constitution of New Mexico. The bonds shall be payable solely out of the revenue derived from the projects for which the bonds are issued. Bonds and interest coupons, if any, issued under authority of the Industrial Revenue Bond Act shall never constitute an indebtedness of the municipality within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers, and such fact shall be plainly stated on the face of each bond.

B. The bonds may be executed and delivered at any time, and from time to time, may be in such form and denominations, may be of such tenor, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding thirty years from their date, may be payable at such place or places, may bear interest at such rate or rates payable at such place or places and evidenced in such manner and may contain such provisions not inconsistent with the Industrial Revenue Bond Act, all as shall be provided in the ordinance and proceedings of the governing body under which the bonds are authorized to be issued.

C. Bonds issued under the authority of the Industrial Revenue Bond Act may be sold at public or private sale in such manner and from time to time as may be determined by the governing body to be most advantageous, and the municipality may pay all expenses, attorney, engineering and architects' fees, premiums and

commissions that the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance of the bonds.

D. Bonds issued under the authority of the Industrial Revenue Bond Act and all interest coupons applicable thereto, if any, shall be construed to be negotiable.

E. A bond shall not be issued by a municipality having a population of more than forty thousand according to the most recent decennial census to finance a project that is valued at eight million dollars ($8,000,000) or more unless an employer of the project:

(1) offers to its employees and their dependents health insurance coverage that is in compliance with the New Mexico Insurance Code [Chapter 59A, except for Articles 30A and 42A NMSA 1978] or a comparable health benefits plan pursuant to the federal Employee Retirement Income Security Act of 1974; and

(2) contributes not less than fifty percent of the premium for the health care coverage for those employees who choose to enroll; provided that the fifty percent employer contribution shall not be a requirement for the dependent coverage that is offered.

History: 1953 Comp., § 14-31-4, enacted by Laws 1965, ch. 300; 1983, ch. 265, § 7; 2003, ch. 360, § 1.

3-32-8. Security for bonds.

The principal of and interest on any bonds issued under the authority of Sections 3-32-1 through 3-32-16 NMSA 1978, shall be secured by a pledge of the revenues out of which such bonds shall be made payable, may be secured by a mortgage covering all or any part of the project from which the revenues so pledged may be derived, and may be secured by a pledge of the lease of such project. The ordinance and proceedings under which such bonds are authorized to be issued or any such mortgage may contain any agreement and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of all revenues from any project covered by such proceedings or mortgage, the terms to be incorporated in the lease of such project, the maintenance and insurance of such project, the creation and maintenance of special funds from the revenues from such project, and the rights and remedies available in event of default to the bondholders or to the trustee under a mortgage, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of Sections 3-32-1 through 3-32-16 NMSA 1978; provided, however, that in making any such agreements or provisions a municipality shall not have the power to obligate itself except with respect to the project and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers. The proceedings authorizing any bonds hereunder and any mortgage securing such bonds may provide the procedure and remedies in the event of default in payment of the principal of or the interest on such bonds or in the performance of any

agreement. No breach of any such agreement shall impose any pecuniary liability upon a municipality or any charge upon its general credit or against its taxing powers.

History: 1953 Comp., § 14-31-5, enacted by Laws 1965, ch. 300.

3-32-9. Requirements respecting lease.

Prior to the leasing of any project, the governing body must determine and find the following:

A. the amount necessary in each year to pay the principal of and the interest on the bonds proposed to be issued to finance such project; and

B. the amount necessary to be paid each year into any reserve funds which the governing body may deem it advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project; and unless the terms under which the project is to be leased provide that the lessee shall maintain the project and carry all proper insurance with respect thereto, the estimated cost of maintaining the project in good repair and keeping it properly insured. The determinations and findings of the governing body required to be made in the preceding sentence shall be set forth in the proceedings under which the proposed bonds are to be issued; and prior to the issuance of such bonds, the municipality shall lease or sell the project to a lessee or purchaser under an agreement conditioned upon completion of the project and providing for payment to the municipality of such rentals or payments as, upon the basis of such determinations and findings, will be sufficient:

(1) to pay the principal of and interest on the bonds issued to finance the project;

(2) to build up and maintain any reserve deemed by the governing body to be advisable in connection therewith; and

(3) to pay the costs of maintaining the project in good repair and keeping it properly insured, unless the agreement of lease obligates the lessee to pay for the maintenance and insurance of the project.

History: 1953 Comp., § 14-31-6, enacted by Laws 1965, ch. 300.

3-32-10. Refunding bonds.

A. Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by a municipality by the issuance of its refunding bonds in such amount as the governing body may determine to refund the principal of the bonds so to be refunded, all unpaid accrued and unaccrued interest thereon to the normal maturity date of such bonds or to selected prior redemption dates thereof, any redemption premiums, any commission and all estimated costs incidental to the

issuance of such bonds and to such refunding as may be determined by the governing body. The principal amount of any such refunding bonds may be equal to, less than or greater than the principal amount of the bonds to be so refunded. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby; provided, that the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of Sections 3-32-1 through 3-32-16 NMSA 1978 shall be payable solely from the revenues out of which other bonds issued under Sections 3-32-1 through 3-32-16 NMSA 1978 may be payable or solely from those amounts derived from an escrow as herein provided, including amounts derived from the investment of refunding bond proceeds and other legally available amounts also as herein provided, or from any combination of the foregoing sources, and shall be subject to the provisions contained in Section 3-32-7 NMSA 1978 and may be secured in accordance with the provisions of Section 3-32-8 NMSA 1978.

B. Proceeds of refunding bonds shall either be applied immediately to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company which possesses and is exercising trust powers. Notwithstanding any provision to the contrary in Section 3-32-11 NMSA 1978 or in any other statute, such escrowed proceeds may be invested in short-term securities, long-term securities or both. Except to the extent inconsistent with the express terms of Sections 3-32-1 through 3-32-16 NMSA 1978, the ordinance and other proceedings under which the bonds to be so refunded were issued, including any mortgage or trust indenture given to secure the same, shall govern the establishment of any escrow in connection therewith and the investment or reinvestment of any escrowed proceeds.

History: 1953 Comp., § 14-31-7, enacted by Laws 1965, ch. 300; 1977, ch. 335, § 4.

3-32-11. Use of proceeds from sale of bonds.

The proceeds from the sale of any bonds issued under authority of Sections 3-32-1 through 3-32-16 NMSA 1978, shall be applied only for the purpose for which the bonds were issued; provided, however, that any accrued interest and premiums received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided, further, that if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such balance of said proceeds shall be applied to the payment of the principal of or the interest on said bonds, and provided, further, that any portion of the proceeds from the sale of said bonds or any accrued interest and premium received in any such sale, may, in the event the money will not be needed, or cannot be effectively used to the advantage of the municipality for the purposes herein provided, be invested in short term, interest-bearing

securities if such investment will not interfere with the use of such funds for the primary purpose as herein provided. The cost of acquiring any project shall be deemed to include the following:

A. the actual cost of the construction of any part of a project which may be constructed, including architect's, attorney's and engineer's fee;

B. the purchase price of any part of a project that may be acquired by purchase;

C. the actual cost of the extension of any utility to the project site, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition; and

D. the interest on such bonds for a reasonable time prior to construction, during construction and for not exceeding six months after completion of construction.

History: 1953 Comp., § 14-31-8, enacted by Laws 1965, ch. 300.

3-32-12. No contribution by municipality.

No municipality shall have the power to pay out of its general funds or otherwise contribute any part of the costs of acquiring a project, and shall not have the power to use land already owned by the municipality, or in which the municipality has an equity, for construction thereon of a project or any part thereof, unless the municipality is fully reimbursed for the value of the land as may be determined by a current appraisal, or unless the city leases the land at an annual rental fee of not less than five percent of the appraised value. The entire cost of acquiring any project must be paid out of the proceeds from the sale of bonds issued under the authority of Sections 3-32-1 through 3-32-16 NMSA 1978; provided, however, that this provision shall not be construed to prevent a municipality from accepting donations of property to be used as a part of any project or money to be used for defraying any part of the cost of any project.

History: 1953 Comp., § 14-31-9, enacted by Laws 1965, ch. 300; 1968, ch. 21, § 1.

3-32-13. Bonds made legal investments.

Bonds issued under the provisions of Sections 3-32-1 through 3-32-16 NMSA 1978, shall be legal investments for savings banks and insurance companies organized under the laws of this state.

History: 1953 Comp., § 14-31-10, enacted by Laws 1965, ch. 300.

3-32-14. Exemption from taxation.

The bonds authorized by Sections 3-32-1 through 3-32-16 NMSA 1978, and the income from said bonds, all mortgages or other security instrument executed as security

for said bonds, all lease agreements made pursuant to the provisions hereof, and revenue derived from any lease or sale by the municipality thereof shall be exempt from all taxation by the state of New Mexico, or any subdivision thereof.

History: 1953 Comp., § 14-31-11, enacted by Laws 1965, ch. 300.

3-32-15. Construction of act.

Neither Sections 3-32-1 through 3-32-16 NMSA 1978, nor anything herein contained shall be construed as a restriction or limitation upon any powers which a municipality might otherwise have under any laws of this state, but shall be construed as cumulative; and Sections 3-32-1 through 3-32-16 NMSA 1978, shall not be construed as requiring an election by the voters of a municipality prior to the issuance of bonds hereunder by such municipality.

History: 1953 Comp., § 14-31-12, enacted by Laws 1965, ch. 300.

3-32-16. No notice or publication required.

No notice, consent or approval by any governmental body or public officer shall be required as a prerequisite to the sale or issuance of any bonds or the making of a mortgage under the authority of Sections 3-32-1 through 3-32-16 NMSA 1978, except as provided in these sections.

History: 1953 Comp., § 14-31-13, enacted by Laws 1965, ch. 300.

ARTICLE 33
Improvement Districts

3-33-1. Improvement district; authorization.

A. Whenever a governing body determines that the creation of an improvement district is necessary for the public safety, health or welfare, the governing body may create an improvement district for any one or any combination of projects authorized in Chapter 3, Article 33 NMSA 1978 by the:

(1) provisional order method; or

(2) petition method.

B. The governing body may adopt any ordinance or resolution necessary or proper to accomplish the purposes of Chapter 3, Article 33 NMSA 1978.

C. The improvement district shall include, for the purpose of assessment or imposition of an improvement district property tax, all the property that the governing

body determines is benefitted by the improvement, including property lying without the municipality creating the improvement district if such property abuts or is served by improvements authorized by Chapter 3, Article 33 NMSA 1978 and including property utilized for public, governmental, charitable or religious purposes, except that of the United States or any agency, instrumentality or corporation thereof, in the absence of a consent of congress.

History: 1953 Comp., § 14-32-1, enacted by Laws 1965, ch. 300; 1977, ch. 325, § 1; 1991, ch. 199, § 1; 2001, ch. 312, § 1.

3-33-2. Improvement district; definitions.

As used in Chapter 3, Article 33 NMSA 1978:

A. "adjustment of assessment" means the adjustment in the estimated maximum benefit or assessment resulting from the division of the property to be assessed or assessed into smaller tracts or parcels or the combining of smaller parcels into one or more larger parcels or the changing of the configuration or legal description of such parcels. "Adjustment of assessment" may also include the reallocation of the assessment lien, without loss of priority, among parcels under single ownership that are subject to the assessment lien in order to permit the removal of the lien from one or more parcels where adequate security for the lien is demonstrated by the assessed parcels under such single ownership or provided by the owner;

B. "construct" or "construction" means to plan, design, engineer, construct, reconstruct, install, extend, better, alter, build, rebuild, improve, purchase or otherwise acquire any project authorized in Sections 3-33-3, 3-33-4, 3-33-4.1 and 3-33-6 NMSA 1978, except that it shall not include "to acquire" for the purposes of projects authorized in Section 3-33-6 NMSA 1978;

C. "engineer" means any person who is a professional engineer licensed to practice in New Mexico and who is a permanent employee of the municipality or employed in connection with an improvement by the municipality or by a property owner subject to the improvement district property tax imposed by Section 3-33-14.1 NMSA 1978;

D. "improvement" means any one or any combination of projects in one or more locations authorized in Sections 3-33-3, 3-33-4, 3-33-4.1 and 3-33-6 NMSA 1978;

E. "improvement district" means one or more streets or one or more public grounds or one or more locations wherein the improvement is to be constructed and one or more tracts or parcels of land to be assessed or upon which an improvement district property tax will be imposed to pay for the cost of the improvement; and

F. "premature subdivision" means a subdivision that has been platted and sold into multiple private ownership prior to installation or financial guarantee of all required improvements for land development. Such subdivisions contain one or more

developmental inadequacies under current local government standards and requirements, such as, but not limited to:

(1) inadequate street right of way or street access control;

(2) a lack of drainage easements of right of way;

(3) a lack of adequate park, recreation or open space area;

(4) a lack of an overall grading and drainage plan; or

(5) a lack of adequate subdivision grading both on and off the public right of way.

History: 1953 Comp., § 14-32-2, enacted by Laws 1965, ch. 300; 1967, ch. 217, § 1; 1975, ch. 81, § 1; 1987, ch. 47, § 1; 1991, ch. 17, § 1; 1991, ch. 199, § 2; 2001, ch. 312, § 2.

3-33-3. Improvement district; purpose.

An improvement district may be created as authorized in Chapter 3, Article 33 NMSA 1978 in order to construct, acquire, repair or maintain in one or more locations any one or any combination of the following projects, including without limitation land served by any project and any right of way, easement or privilege appurtenant or related thereto:

A. a street, road, bridge, walkway, overpass, underpass, pathway, alley, curb, gutter or sidewalk project, including without limitation median and divider strips, parkways and boulevards, ramps and stairways, interchanges, alleys and intersections, arches, support structures and pilings and the grading, regrading, oiling, surfacing, graveling, excavating, macadamizing, paving, repairing, laying, backfilling, leveling, lighting, landscaping, beautifying or in any manner improving of all or any part of one or more streets, roads, bridges, walkways, pathways, curbs, gutters or sidewalks or any combination of the foregoing;

B. a storm sewer project, sanitary sewer project or water project, including without limitation investigating, planning, constructing, acquiring, excavating, laying, leveling, backfilling or in any manner improving all or any part of one or more storm sewers, drains, sanitary sewers, water lines, trunk lines, mains, laterals or property connections and acquiring or improving hydrants, meters, valves, catch basins, inlets, outlets, lift or pumping stations and machinery and equipment incidental thereto or any combination of the foregoing;

C. a flood control or storm drainage project, including without limitation the investigation, planning, construction, improvement, replacement, repair or acquisition of dams, dikes, levees, ditches, canals, basins and appurtenances such as spillways,

outlets, syphons and drop structures, channel construction, diversions, rectification and protection with appurtenant structures such as concrete lining, banks, revetments, culverts, inlets, bridges, transitions and drop structures, rundowns and retaining walls, storm sewers and related appurtenances such as inlets, outlets, manholes, catch basins, syphons and pumping stations, appliances, machinery and equipment and property rights connected therewith or incidental thereto convenient and necessary to control floods or provide drainage and lessen their danger and damages;

D. a utility project providing gas, water, electricity or telephone service;

E. railroad spurs, railroad tracks, railyards, rail switches and any necessary real property; or

F. on-site or off-site improvements required as a condition to obtaining required approvals of a development to be served by a project, including the payment of any fees or charges levied as a means of paying for all or part of such on-site or off-site improvements.

History: 1953 Comp., § 14-32-3, enacted by Laws 1965, ch. 300; 1967, ch. 90, § 1; 1981, ch. 211, § 1; 1987, ch. 47, § 2; 1991, ch. 199, § 3; 2001, ch. 312, § 3.

3-33-4. Improvement district; additional purpose.

An improvement district may also be created as authorized in Chapter 3, Article 33 NMSA 1978 in order to construct, repair and maintain in one or more locations facilities for the parking of motor vehicles off the public streets or to construct or acquire, repair, operate and maintain one or more of the following inadequacies necessary to bring a premature subdivision into compliance within an improvement district within a municipality:

A. street right-of-way or street access control;

B. drainage easements or right-of-way;

C. park, recreation or open space areas;

D. overall grading and drainage plan; and

E. adequate subdivision grading both on or off the public right-of-way.

History: 1953 Comp., § 14-32-3.1, enacted by Laws 1967, ch. 217, § 2; 1991, ch. 199, § 4.

3-33-4.1. Improvement district; additional purpose.

An improvement district may also be created as authorized in Chapter 3, Article 33 NMSA 1978:

A. in order to construct, repair or maintain improvements in one or more locations as a means to stimulate manufacturing, industrial, commercial or business development; or

B. by any municipality with a boundary contiguous to an international boundary to construct, repair or maintain international port of entry facilities in one or more locations as a means to stimulate manufacturing, industrial, commercial or business development.

History: 1978 Comp., § 3-33-4.1, enacted by Laws 1991, ch. 199, § 5; 1992, ch. 98, § 1.

3-33-5. Improvement district; powers of municipality.

In addition to other powers granted by Sections 3-33-1 through 3-33-43 NMSA 1978, every municipality shall have all powers necessary or convenient to carry out the purposes of Section 3-33-4 NMSA 1978, including the following:

A. to construct, repair, maintain and operate facilities for the parking of motor vehicles off the public streets, together with public rights of way necessary or convenient therefor;

B. to purchase or acquire by gift, bequest, devise or otherwise, any real or personal property or any interest therein, together with the improvement thereon, to be used as parking facilities or incidental thereto;

C. to insure [and] to provide for the insurance of any parking facility established by the municipality against risks and hazards as the municipality deems desirable; and

D. to receive, control, invest and order the expenditure of all money pertaining to parking facilities.

E. The provisions of this act shall not authorize any municipality to exercise the power of eminent domain for the purposes enumerated in Section 3-33-4 or 3-33-5 NMSA 1978.

History: 1953 Comp., § 14-32-3.2, enacted by Laws 1967, ch. 217, § 3.

3-33-6. Improvement district; additional purpose.

An improvement district may also be created as authorized in Sections 3-33-1 through 3-33-43 NMSA 1978 in order to construct or acquire, operate and maintain a municipally owned electric or gas utility in an H class county or an incorporated county.

History: 1953 Comp., § 14-32-3.3, enacted by Laws 1975, ch. 81, § 2.

3-33-6.1. Improvement district; additional purpose.

An improvement district may also be created as authorized in Section 3-33-1 NMSA 1978 in order to construct or acquire, repair, operate and maintain one or more of the following inadequacies necessary to bring a premature subdivision into compliance within an improvement district within a municipality:

A. street right-of-way or street access control;

B. drainage easements or right-of-way;

C. park, recreation, or open space areas;

D. overall grading and drainage plan; or

E. adequate subdivision grading both on or off the public right-of-way.

History: Laws 1991, ch. 17, § 2.

3-33-7. Improvement district; powers of and restrictions upon a county.

A. An H class county or incorporated county which constructs, acquires, operates or maintains a utility pursuant to Section 3-33-6 NMSA 1978 may exercise all of the powers exercised by a municipality which constructs, acquires, operates or maintains a utility pursuant to Section 3-24-1 or 3-25-2 NMSA 1978.

B. An H class county or incorporated county which constructs, acquires, operates or maintains a utility pursuant to Section 3-33-6 NMSA 1978 shall be subject to all of the restrictions and limitations as a municipality which constructs, acquires, operates or maintains a utility pursuant to Section 3-24-1 or 3-25-2 NMSA 1978 except:

(1) the H class county or incorporated county need not hold an election prior to the construction of the utility; and

(2) the H class county or incorporated county need not finance the utility by revenue bonds.

C. If an H class county or incorporated county seeks to acquire an existing utility through the creation of indebtedness, the question shall be submitted to a vote pursuant to the procedures established in Section 3-23-2 NMSA 1978.

History: 1953 Comp., § 14-32-3.4, enacted by Laws 1975, ch. 81, § 3.

3-33-8. Improvement district; powers of a municipality outside its boundaries.

Every municipality shall have the power to construct improvements authorized by Chapter 3, Article 33 NMSA 1978 on any location within the boundaries of the county in which the municipality is located.

History: 1953 Comp., § 14-32-3.5, enacted by Laws 1977, ch. 325, § 2; 1991, ch. 199, § 6.

3-33-9. Improvement district; limitations on powers of a municipality outside its boundaries.

Improvements shall be constructed pursuant to the powers granted in Section 3-33-8 NMSA 1978 and assessments shall be levied against property lying without the municipality only if the board of county commissioners of the county in which such improvements are to be made has, by resolution, submitted to the governing body of the municipality, determined:

A. that the construction of such improvements is in the best interests of the county;

B. that the maximum amount of benefit estimated to be conferred on the tracts or parcels of land lying within the county but without the municipality constructing the improvements is determined in the same manner as the maximum amount of benefit estimated to be conferred on the tracts or parcels of land lying within the municipality; and

C. that the owners of real property representing at least fifty-one percent of the total assessed valuation of the property benefited which lies within the county but outside the municipal boundary have not objected in writing to the construction of such improvements within thirty days after having received written notice of the adoption of the provisional order described in Subsection E of Section 3-33-11 NMSA 1978 by the governing body of the municipality. The governing body of the municipality may enter into a joint powers agreement with the board of county commissioners to provide for joint administration of any such improvement district.

History: 1953 Comp., § 14-32-3.6, enacted by Laws 1977, ch. 325, § 3; 1991, ch. 199, § 7.

3-33-10. Improvement district; limitations on powers of municipality with respect to street or right of way under jurisdiction of state transportation commission.

The municipality shall not construct improvements authorized by Section 3-33-3 NMSA 1978 on or through any street or right of way under the jurisdiction of the state

transportation commission unless it receives prior written approval from the state transportation commission to undertake such improvements.

History: 1953 Comp., § 14-32-3.7, enacted by Laws 1977, ch. 325, § 4; 2003, ch. 142, § 1.

3-33-11. Improvement district; provisional order method; procedure; preliminary lien; notice of pendency of district; effect.

A. Whenever the governing body determines that the creation of an improvement district is necessary by the provisional order method, the governing body shall by resolution direct the engineer to prepare preliminary plans and an estimate of cost for the proposed improvement district.

B. The resolution shall:

(1) describe in general terms the property to be included in the improvement district;

(2) require the engineer to prepare:

(a) an assessment plat showing the area to be included in the improvement district; and

(b) an addendum to the assessment plat showing the amount of maximum benefit estimated to be assessed against each tract or parcel in the improvement district on a front-foot, zone, area or other equitable basis, which shall be set forth in the resolution and, if the benefit to a tract or parcel is derived from a combination of improvements, the amount of maximum benefit estimated to be assessed against such tract or parcel may be based upon an appraisal or determination of the value of the improvements as a whole; and

(3) require the engineer to prepare preliminary plans for one or more types of construction showing:

(a) for each type of road, curb, gutter, sidewalk and street, a typical section of the contemplated improvement, the type of material to be used and the approximate thickness and width of the material;

(b) for each type of storm sewer or drain, sanitary sewer or water line, the type of material and approximate diameter of any trunk lines, mains, laterals or house connections; or

(c) for each other type of project or other major component of the foregoing types of projects, a general description.

C. The engineer shall include in the total cost estimate for the improvement district all expenses, including but not limited to advertising, appraising, tax reimbursement, capital improvement, expansion, construction period interest, reserve fund, financing, engineering and printing expenses that the engineer deems necessary to pay the complete cost of the improvement.

D. The engineer shall submit to the municipal clerk the:

(1) assessment plat;

(2) preliminary plans of the type of construction; and

(3) estimate of costs for the improvement.

E. After the governing body examines the assessment plat, preliminary plans and estimates of cost for the improvement district, the governing body may adopt a provisional order which:

(1) orders the improvement to be constructed;

(2) instructs the municipal clerk or engineer to give notice of a hearing on the provisional order; and

(3) orders, if deemed necessary by the governing body and with the consent of the owners of the tracts or parcels to be encumbered with a preliminary assessment lien, the immediate placement of a preliminary assessment lien on tracts or parcels in the improvement district based on the estimated maximum benefit to be assessed against such tracts or parcels in order to facilitate interim financing of the improvement and provides for times and terms of paying the preliminary assessment lien, for the adjustment of the preliminary assessment lien and for the placement of a final assessment lien upon each such tract or parcel pursuant to the provisions of Sections 3-33-22 and 3-33-23 NMSA 1978. Both the preliminary and the final assessment liens shall be coequal with the lien for general ad valorem taxes and the lien of other improvement districts and are superior to all other liens, claims and titles. The consent of any owner in an improvement district to the placement of a preliminary assessment lien on the owner's property shall not alter the assessment on any other tracts or parcels in the improvement district.

F. Upon the adoption of the provisional order by the governing body, the estimated maximum benefit roll showing the legal description of the property to be included in the district and the owners thereof may be recorded with the clerk of the county in which the property is located, which recording shall constitute notice of the pendency of the special assessment district and shall be constructive notice to the owner, purchaser or encumbrancer of the property concerned; and any person whose conveyance is subsequently recorded shall be considered a subsequent purchaser or encumbrancer and shall be subject to and bound by all the proceedings taken after the recording of the

notice to the same extent as if he were made a party to such special assessment proceedings.

G. This notice need not be acknowledged to entitle it to be recorded.

H. Nothing herein shall be construed to affect the priority of special assessment liens.

History: 1953 Comp., § 14-32-4, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 8.

3-33-12. Improvement district; notice of assessment; protests.

A. The notice of the provisional order creating an improvement district shall:

(1) contain the time and place when the governing body shall hold a hearing on the provisional order creating the improvement district;

(2) describe the improvement to be constructed and the general location thereof; and

(3) state that any interested person may ascertain in the office of the municipal clerk:

(a) a description of the property to be assessed; and

(b) the maximum amount of benefit estimated to be conferred on each tract or parcel of land.

B. Not more than thirty days nor less than ten days before the day of the hearing, the municipal clerk, his deputy or the engineer shall mail the notice of the hearing on the provisional order to the owner of the tract or parcel of land being assessed the cost of the improvement at his last-known address. The name and address of the owner of each tract of land shall be obtained from the records of the county assessor or any other source the municipal clerk or engineer deems reliable. Proof of the mailing is to be made by affidavit of the municipal clerk, his deputy or the engineer, which shall be filed in the office of the municipal clerk. Failure to mail any notice shall not invalidate any of the proceedings authorized in Sections 3-33-1 through 3-33-43 NMSA 1978.

C. Notice of the hearing shall also be published once each week for three consecutive weeks and the last publication shall be at least one week prior to the day of the hearing. Such service by publication shall be verified by an affidavit of the publisher which is to be filed in the office of the municipal clerk.

History: 1953 Comp., § 14-32-5, enacted by Laws 1965, ch. 300.

3-33-13. Improvement district; provisional order; protest; appeal to district court.

A. At the hearing of the governing body on the provisional order creating an improvement district, an interested person or owner of property to be assessed for the improvement may file a written protest or objection questioning the:

(1) propriety and advisability of constructing the improvement;

(2) estimated cost of the improvement;

(3) manner of paying for the improvement; or

(4) estimated maximum benefit to each individual tract or parcel of land.

B. The governing body may recess the hearing from time to time so that all protestants may be heard.

C. Within thirty days after the governing body has, by adoption of a resolution:

(1) concluded the hearing;

(2) determined:

(a) the advisability of constructing the improvement; and

(b) the type and character of the improvement; and

(3) created the improvement district, a person who during the hearing filed a written protest with the governing body protesting the construction of the improvement may appeal the determination of the governing body pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

D. Where no person has filed a written protest during the hearing and all owners of property to be assessed, upon conclusion of the hearing, submit to the governing body written statements in favor of the creation of the improvement district for the types and character of improvements indicated in the provisional order, those owners shall be deemed to have waived their right to bring any action challenging the validity of the proceedings or the amount of benefit to be derived from the improvements.

History: 1953 Comp., § 14-32-6, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 9; 1998, ch. 55, § 8; 1999, ch. 265, § 8.

3-33-14. Improvement district; petition method; requirements; distribution of costs; notice of hearing.

A. Whenever the owners of sixty-six and two-thirds percent or more of the total assessed valuation of the property to be benefited, exclusive of any land owned by the United States or the state of New Mexico, petition in writing the governing body to create an improvement district and construct the improvement described in the petition, the governing body may:

(1) create the improvement district;

(2) select the type of material and method of construction to be used; and

(3) proceed with the construction of the improvement as authorized in Section 3-33-18 NMSA 1978 after complying with the requirements for a preliminary hearing required in this section. A governing body, board of county commissioners or local board of education may sign a petition seeking the improvement for any land under its control. The submission of separate petitions for any one improvement district within a six-month period shall be considered as a single petition.

B. The governing body may:

(1) pay the cost of the improvement;

(2) assess the cost of the improvement against the benefiting tracts or parcels of land;

(3) pay part of the cost of the improvement and assess part of the cost of the improvement against the benefiting tracts or parcels of land; or

(4) impose an improvement district property tax pursuant to Section 3-33-14.1 NMSA 1978.

C. If any part or all of the cost of the improvement sought to be constructed as authorized in this section is to be assessed against the benefiting tracts or parcels of land or paid for by the imposition of an improvement district property tax, the governing body shall hold a preliminary hearing on the proposed improvement district and give notice of the preliminary hearing.

History: 1953 Comp., § 14-32-7, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 10; 2001, ch. 312, § 4.

3-33-14.1. Imposition of improvement district property tax; limitations.

A. If in connection with the creation of the improvement district the governing body determines that it is in the best interest of the municipality to finance the district improvements by the imposition of an improvement district property tax and the issuance of improvement district general obligation bonds, the governing body shall

enact an ordinance making the determination and provide in the ordinance the improvement district property tax rate to be imposed; the date, which may be a predetermined date or a date to be established in the future after completion of the improvements, of commencement of the tax; the amount of the bonds to be issued to finance the improvements; and any other matters the governing body deems necessary or appropriate. The governing body shall call an election within the improvement district for the purpose of authorizing the governing body to issue general obligation bonds, the proceeds of the sale of which shall be used for constructing the improvements for which the district was created and to impose improvement district property taxes on all taxable property within the district for the purpose of paying the principal, debt service and other expenses incidental to the issuance and sale of the bonds. The election shall be conducted as prescribed by the Local Election Act [Chapter 1, Article 22 NMSA 1978] and pursuant to the requirements of the property tax division of the taxation and revenue department.

B. If at the election described in Subsection A of this section the property tax imposition and the issuance of improvement district general obligation bonds are approved by a majority of the voters voting on the issues, the governing body shall impose the tax at a rate sufficient to pay the debt service on the bonds and retire them at maturity.

C. Imposition and collection of the improvement district property tax authorized in this section shall be made at the same time and in the same manner as impositions and collections of property taxes for use by municipalities and counties are made.

D. Bonds issued by the governing body for payment of the specified improvement district improvements shall be sold at a price that does not result in a net effective interest rate exceeding the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]. The bonds may be sold at public or private sale and may be in denominations that the governing body determines.

E. The form and terms of the bonds, including a final maturity of thirty years and provisions for their payment and redemption, shall be as determined by the governing body. The bonds shall be executed in the name of and on behalf of the improvement district by the mayor and clerk of the municipality. The bonds may be executed and sealed in accordance with the provisions of the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978].

F. To provide for the payment of the interest and principal of the bonds issued and sold pursuant to this section, the governing body shall annually impose a property tax on all taxable property in the district in an amount sufficient to produce a sum equal to the principal and interest on all bonds as they mature.

G. The bonds authorized in this section are general obligation bonds of the district, and the full faith and credit of the district are pledged to the payment of the bonds. The

proceeds obtained from the issuance of the bonds shall not be diverted or expended for any purposes other than those provided in Chapter 3, Article 33 NMSA 1978.

H. All bonds issued by an improvement district shall be fully negotiable and constitute negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code. If lost or completely destroyed, any bond may be reissued in the form and tenor of the lost or destroyed bond upon the owner furnishing to the satisfaction of the governing body:

(1) proof of ownership;

(2) proof of loss or destruction;

(3) a surety bond in twice the face amount of the bond and coupons; and

(4) payment of the cost of preparing and issuing the new bond and coupons.

I. The governing body may in any proceeding authorizing improvement district bonds provide for the initial issuance of one or more bonds aggregating the amount of the entire issue or may make provision for installment payments of the principal amount of any bond as it may consider desirable.

J. The governing body may issue bonds to be denominated refunding bonds, for the purpose of refunding any of the general obligation bonded indebtedness of the improvement district. Whenever the governing body deems it expedient to issue refunding bonds, it shall adopt an ordinance setting out the facts making the issuance of the refunding bonds necessary or advisable, the determination of the necessity or advisability by the governing body and the amount of refunding bonds that the governing body deems necessary and advisable to issue. The ordinance shall fix the form of the bonds; the rate or rates of interest of the bonds, but the net effective interest rate of the bonds shall not exceed the maximum net effective interest rate permitted by the Public Securities Act; the date of the refunding bonds; the denominations of the refunding bonds; the maturity dates; and the place or places of payment within or without the state of both principal and interest. Refunding bonds when issued, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be negotiable in form and shall bear the signature or the facsimile signature of the mayor and clerk of the municipality. All refunding bonds may be exchanged dollar for dollar for the bonds to be refunded or they may be sold as directed by the governing body, and the proceeds of the sale shall be applied only to the purpose for which the bonds were issued and the payment of any incidental expenses.

K. The principal amount of improvement district general obligation bonds that may be issued by the governing body for any improvement district shall not exceed twenty-five percent of the final estimated value of properties in the district after completion of the projects to be financed with the improvement district general obligation bonds and after development of the properties in the improvement district in accordance with their

planned use, as determined by the governing body with the assistance of the engineer and other qualified professionals.

L. In connection with an improvement district project to be financed with the proceeds of improvement district general obligation bonds issued pursuant to this section, a property owner subject to the improvement district property tax or the governing body may enter into contracts to design, engineer, finance, construct or acquire a project with contractors and professionals, on such terms and with such persons as a property owner subject to the improvement district property tax or the governing body determines to be appropriate, without following the procedures or meeting the requirements of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978] or the requirements of Sections 6-15-1 through 6-15-22 NMSA 1978.

History: Laws 2001, ch. 312, § 5; 2019, ch. 212, § 186.

3-33-15. Improvement district; notice of preliminary hearing.

A. The notice of the preliminary hearing required in Section 3-33-14 NMSA 1978 shall contain:

(1) the time and place when the governing body will hold a preliminary hearing on the proposed improvement;

(2) the estimated cost of the improvement;

(3) the boundary of the improvement district;

(4) the route of the improvement by streets or location of the improvements;

(5) the location of the proposed improvement;

(6) a description of each property to be assessed or against which an improvement district property tax is to be imposed;

(7) the estimated amount of the assessment against or improvement district property tax to be imposed upon each tract or parcel of land; and

(8) the amount of the cost to be assumed by the municipality, if any.

B. If the owners are found within the county, the notices shall be personally served on them at least thirty days prior to the day of the hearing. The notice shall also be published in a newspaper published in the municipality once each week for four successive weeks. The last publication shall be at least three days before the day of the preliminary hearing.

History: 1953 Comp., § 14-32-8, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 11; 2001, ch. 312, § 6.

3-33-16. Improvement district; preliminary hearing; protest; action of the governing body; appeal to district court.

A. At the preliminary hearing of the governing body on the question of creating an improvement district as authorized in Section 3-33-14 NMSA 1978, an owner of a tract or parcel of land to be assessed or upon which it is proposed to impose an improvement district property tax may contest:

(1) the proposed assessment or improvement district property tax;

(2) the regularity of the proceedings relating to the improvement;

(3) the benefits of the improvement; or

(4) any other matter relating to the improvement district.

B. The governing body shall not assess the tract or parcel of land an amount greater than the actual benefit to the tract or parcel of land by reason of the enhanced value of the tract or parcel of land as a result of the improvement as ascertained at the hearing. The governing body may allow a fair price, based on its current value, as a set-off against any assessment against a tract or parcel of land if the owner has improved the tract or parcel of land in such a manner that the improvement may be made part of the proposed improvement.

C. At the hearing, the governing body may:

(1) correct a mistake or irregularity in any proceeding relating to the improvement;

(2) correct an assessment made against or an improvement district property tax imposed upon any tract or parcel of land;

(3) in case of any invalidity, reassess the cost of the improvement against a benefiting tract or parcel of land; or

(4) recess the hearing.

D. An owner of a tract or parcel of land assessed or upon which it is proposed to impose an improvement district property tax, whether he appeared at the hearing or not, may commence an appeal in district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-32-9, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 12; 1998, ch. 55, § 9; 1999, ch. 265, § 9; 2001, ch. 312, § 7.

3-33-17. Improvement district; municipalities under 25,000; levy and collection of assessments prior to commencing improvement; special fund; misuse; penalty.

A. Whenever the governing body of a municipality having a population of less than twenty-five thousand persons:

(1) elects to order the construction of a street as authorized in Sections 3-33-1 through 3-33-43 NMSA 1978;

(2) uses municipally owned or leased equipment to construct the street; and

(3) determines what portion of the estimated cost of the construction shall be paid by tract or parcel of land benefited or to be benefited by the construction, the assessment may be levied and the installments collected prior to the commencement of work and as work progresses according to the terms of payment fixed by the governing body.

B. The construction shall commence within sixty days after the payment of the first installment of the assessment and be diligently prosecuted so that the construction is completed within one year from the date of commencement. At the end of the one year period, any tract or parcel of land that has not received the benefits provided by this section shall be released of any lien assessed against the tract or parcel of land by reason of this section and all assessment money collected from each owner of a tract or parcel of land so assessed and not benefited shall be returned.

C. All assessment money collected under this section shall be held by the municipal treasurer in a special account as a separate fund and used only for constructing the improvement, including the purchasing or leasing of necessary equipment. The use of the special fund for any purpose other than that required under this section by any public official, treasurer or member of the governing body is prohibited and is a felony punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the penitentiary for not more than two years or by both fine and imprisonment in the discretion of the court.

History: 1953 Comp., § 14-32-10, enacted by Laws 1965, ch. 300; 1971, ch. 56, § 1.

3-33-18. Improvement district; advertising for bids; municipality may do work; contribution by governmental agency.

A. If a continuous area proposed to be improved on any one street exceeds five hundred feet in length, the governing body, before using municipal equipment and

employees to construct the improvement, shall advertise for bids for the construction of the improvement and award the contract for the construction of the improvement to the lowest responsible bidder; provided, however, a municipality may construct the improvement using the same specifications upon which bids were requested if:

(1) the municipality can guarantee to construct the improvement for an amount less than the lowest bid amount and not assess the benefiting tracts or parcels of land an amount in excess of the lowest responsible bid if a bid is received; or

(2) the municipality receives no bids for the construction of the improvement.

B. A municipality using municipally owned or leased equipment and municipal employees in constructing an improvement may cooperate with another governmental agency which contributes money, labor or a portion of the cost of materials towards completion of the improvement.

History: 1953 Comp., § 14-32-11, enacted by Laws 1965, ch. 300.

3-33-19. Notice of bid; acceptance of bid.

A. After the governing body creates an improvement district, the governing body may proceed as authorized in Section 3-33-17 or 3-33-18 NMSA 1978, or call for sealed bids on the proposed improvement. The notice of the call for bids shall be made in accordance with the provisions of Section 13-1-11 NMSA 1978 [repealed].

B. After advertising for bids, the municipality may make minor alterations or changes in the plans and specifications to correct errors or omissions in the original plans and specifications.

C. The governing body shall award the contract to the lowest responsible bidder unless the governing body:

(1) elects to construct the improvement as authorized in Section 3-33-17 or 3-33-18 NMSA 1978; or

(2) rejects all bids submitted for the construction of the improvement. Such bids shall be rejected in the following manner:

(a) if less than three bids are received, the purchase may be made without bids at the best documented obtainable price; or

(b) if three or more bids are received, the municipality may reject any or all bids but shall readvertise and accept new bids; and

(c) if no new bids are received or if all new bids are rejected, the rejection shall be accompanied by a written statement of the governing body declaring the

reasons for such rejection and the municipality may then purchase the required items on the open market at the best documented price.

History: 1953 Comp., § 14-32-12, enacted by Laws 1965, ch. 300; 1977, ch. 325, § 5.

3-33-20. Improvement district; assessment of railroad property.

The governing body may assess the property of any railroad or street railroad which occupies or abuts any street the whole cost of the improvement between or under the rails or tracks and two feet on each side of the rail or track of the railroad or street railroad. The assessment shall be levied as other assessments are levied and shall constitute a lien coequal with the lien of other taxes and prior and superior to all other liens, claims and titles, and which may be enforced by sale of the railroad or street railroad property or by suit against the owner of the railroad or street railroad.

History: 1953 Comp., § 14-32-13, enacted by Laws 1965, ch. 300.

3-33-21. Improvement district; assessment roll; notice of assessment hearing.

A. After the contract has been awarded and the governing body determines the total cost of the improvement to the municipality, the governing body shall determine what portion of the total cost of the improvement shall be assessed against the benefited tract or parcel of land. The assessment, including the cost of the improvement at an intersection, shall not exceed the estimated benefit to the tract or parcel of land assessed.

B. With the engineer, the governing body shall prepare and cause to be filed in the office of the municipal clerk an assessment roll containing, among other things:

(1) the name of the last-known owner of the tract or parcel of land to be assessed, or if his name is unknown, state "unknown";

(2) a description of the tract or parcel of land to be assessed; and

(3) the amount of the assessment against each tract or parcel of land.

C. After the filing of the assessment roll, the governing body shall, by resolution, set a time and place for the assessment hearing when an owner may object to the amount of the assessment.

D. Not more than thirty days nor less than ten days before the day of the hearing, the municipal clerk, his deputy or the engineer shall mail the notice of the hearing on the assessment roll to the owner of the tract or parcel of land being assessed the cost of the improvement at his last known address. The name and address of the owner of each tract of land shall be obtained from the records of the county assessor or any other

source the municipal clerk or engineer deems reliable. Proof of the mailing is to be made by affidavit of the municipal clerk, his deputy, or the engineer, which shall be filed in the office of the municipal clerk. Failure to mail any notice shall not invalidate any of the proceedings authorized in Sections 3-33-1 through 3-33-43 NMSA 1978. The notice of the hearing shall also be published once each week for three consecutive weeks and the last publication shall be at least one week prior to the day of the hearing. Such service by publication shall be verified by an affidavit of the publisher which is to be filed in the office of the municipal clerk.

History: 1953 Comp., § 14-32-14, enacted by Laws 1965, ch. 300.

3-33-22. Improvement district; filing of objections; assessment hearing; action of the governing body; appeal to district court.

A. Not later than three days before the date of the hearing on the assessment roll, an owner of a tract or parcel of land that is listed on the assessment roll may file his specific objections in writing with the municipal clerk. Unless presented as required in this section, an objection to the regularity, validity and correctness of:

(1) the proceedings;

(2) the assessment roll;

(3) each assessment contained on the assessment roll; or

(4) the amount of the assessment levied against each tract or parcel of land, is deemed waived.

B. At the hearing, the governing body shall hear all objections that have been filed as provided in this section and may recess the hearing and, by resolution, revise, correct, confirm or set aside an assessment and order another assessment be made de novo.

C. The governing body by ordinance shall, by reference to the assessment roll as so modified, if modified, and as confirmed by the resolution, levy the assessments contained in the assessment roll. The assessments may be levied in stages if preliminary liens are established pursuant to Section 3-33-11 NMSA 1978. The decision, resolution and ordinance of the governing body is:

(1) a final determination of the regularity, validity and correctness of:

(a) the proceedings;

(b) the assessment roll;

(c) each assessment contained on the assessment roll; and

(d) the amount of the assessment levied against each tract or parcel of land; and

(2) conclusive upon the owners of the tract or parcel of land assessed.

D. An owner who has filed an objection as provided in this section may commence an appeal in district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-32-15, enacted by Laws 1965, ch. 300; 1967, ch. 146, § 7; 1991, ch. 199, § 13; 1998, ch. 55, § 10; 1999, ch. 265, § 10.

3-33-23. Improvement district; assessments; terms of payment; liens.

A. The governing body may, by ordinance:

(1) establish the time and terms of paying the assessment or installments on the assessment, including but not limited to any provision for differing optional time periods over which installments of assessments for the same district may be paid and, at the discretion of the governing body, differing interest rates on such assessments that are payable over different time periods; provided that in the situation where the governing body provides for such optional time periods for payment of assessment installments, the ordinance shall set a limit on the time during which the affected property owner must select one of the specified options in writing and shall provide that failure to so select one of the options within the time limit conclusively establishes the selection of a specific option designated in the ordinance;

(2) set any rate or rates of interest upon deferred payments of the assessment or provide for setting, by resolution, of the rate or rates of interest upon deferred payments after sale of bonds or assignable certificates as provided in Section 3-33-24 NMSA 1978, which shall commence from the date of publication or posting of the ordinance levying the assessment; provided that the same interest rate shall be set for assessments that are payable over the same time period; and provided further that no rate or rates of interest in excess of twelve percent a year upon such deferred payments of the assessment shall become effective unless the state board of finance or any successor thereof at any time approves a higher interest rate or rates in writing based upon the determination of the state board of finance that the higher rate is reasonable under existing or anticipated bond market conditions, which approval shall be conclusive;

(3) fix penalties to be charged for delinquent payment of an assessment;

(4) establish procedures and standards for an adjustment of assessment in order to allow transfer of a parcel free of an assessment lien, accomodate [accommodate] subdivision of an assessed parcel or accommodate property line corrections and adjustments without changing the original payment schedule, the

priority or original amount of the assessment. Such an adjustment of assessment may allow the owner of the original tract of land to pay off any pro rata share of the assessment lien in advance of the schedule of payments. The procedures and standards may also provide for the method of assessment on the newly created parcels to vary from the method of assessment used on the original tract; and

(5) provide for the payment of any assessments levied pursuant to Chapter 3, Article 33 NMSA 1978 from other funds received by any owner of a tract or parcel in an improvement district in a location also intended by the governing body for the stimulation of manufacturing, industrial, commercial or business development pursuant to Section 3-33-4.1.

B. After the publication or posting of the ordinance levying an assessment as provided in Section 3-33-22 NMSA 1978, the assessment together with any interest or penalty accruing to the assessment is a lien upon the tract or parcel of land so assessed. Such a lien is coequal with the lien for general ad valorem taxes and the lien of other improvement districts and is superior to all other liens, claims and titles. Unmatured installments are not deemed to be within the terms of any general covenant or warranty. All purchasers, mortgagees or encumbrancers of a tract or parcel of land so assessed shall hold the tract or parcel of land subject to the lien so created unless the assessment lien is adjusted pursuant to this section.

C. Within sixty days after the publication or posting of the ordinance ratifying an assessment roll and levying the assessments, the municipal clerk shall prepare, sign, attest with the municipal seal and record in the office of the county clerk a claim of lien for any unpaid amount due and assessed against a tract or parcel of land.

D. Any tract or parcel so assessed shall not be relieved from the assessment or lien by the sale of the tract or parcel of land for general taxes or any other assessment, subject to the provisions of Section 3-33-30 NMSA 1978. The statute of limitations shall not begin to run against an assessment until after the last installment of the assessment becomes due.

E. The fact that an improvement is omitted for any benefited tract or parcel of land does not invalidate a lien or assessment made against any other tract or parcel of land.

History: 1953 Comp., § 14-32-16, enacted by Laws 1965, ch. 300; 1979, ch. 108, § 1; 1981, ch. 44, § 3; 1991, ch. 199, § 14.

3-33-24. Improvement district; authority to issue bonds or assignable certificates.

A. To pay all or any part of the cost of the improvement, including those items set out in Subsection C of Section 3-33-11 NMSA 1978, the governing body may proceed pursuant to the provisions of Section 3-33-14.1 NMSA 1978 or may issue in the name of the municipality bonds in such form as the governing body may determine or assignable

certificates in an amount not exceeding the total cost of the improvement and maturing not more than twenty years from the date of issuance. If the bonds or assignable certificates recite that:

(1) the proceedings relating to making the improvement and levying the assessments as provided in Section 3-33-22 NMSA 1978 or placing the preliminary lien as provided in Section 3-33-11 NMSA 1978 to pay for the improvement have been done in compliance with law; and

(2) all prerequisites to the fixing of the assessment lien or placing the preliminary lien against the tract or parcel of land benefited by the improvement have been performed, such recital shall be conclusive evidence of the facts recited.

B. The assignable certificates shall:

(1) declare the liability of the owner of the tract or parcel of land so assessed or the liability of the tract or parcel of land so assessed for payment of the assessment, interest and penalties;

(2) fix the terms and conditions of the certificates; and

(3) accurately describe the tract or parcel of land covered by the certificate.

C. The bonds shall:

(1) recite the terms and conditions for their issuance;

(2) be payable from money collected from the preliminary assessment lien authorized in Section 3-33-11 NMSA 1978 and, if so payable, also payable from the proceeds of bonds payable from the final assessment lien authorized in Section 3-33-22 NMSA 1978; or

(3) be payable from the money collected from the assessments authorized in Section 3-33-22 NMSA 1978; provided that if assessments are made payable over more than one period of time as permitted by Section 3-33-23 NMSA 1978, specified portions of the bonds may be payable from money collected from those assessments payable over that period of time that generally corresponds to the period of time over which such specified portions of the bonds are payable; and

(4) bear a rate or rates of interest that shall not exceed the rate of interest on the deferred installments of the assessments or, if more than one rate of interest is specified for assessments as permitted by Section 3-33-23 NMSA 1978, on that portion of the deferred installments of assessments from which that specified portion of the bonds may be payable. Payment of the bonds issued for the construction of a project described in Subsection A of Section 3-33-3 NMSA 1978 may be supplemented from gasoline tax money in the street improvement fund authorized by Section 3-34-1 NMSA

1978 on or before a date not more than twelve months after the last deferred installment of an assessment is due from the owner of a tract or parcel of land so assessed.

D. The bonds may be issued to the contractor in payment for the construction of the improvement or may be issued and sold:

(1) in payment of the municipality's proportion of the cost of the improvement;

(2) in payment of the proportionate cost if the improvement is done in cooperation with another governmental agency;

(3) in payment of the construction of the improvement done under contract; or

(4) in reimbursement to the municipality if the municipality constructed the improvement with municipally owned or leased equipment and municipal employees.

E. Any municipality creating a street improvement fund as authorized by Section 3-34-1 NMSA 1978 may contract for the issuance and sale of bonds or assignable certificates.

F. Bonds or assignable certificates may be sold at public or private sale at a discount.

History: 1953 Comp., § 14-32-17, enacted by Laws 1965, ch. 300; 1970, ch. 51, § 1; 1979, ch. 108, § 2; 1983, ch. 265, § 8; 1991, ch. 199, § 15; 2001, ch. 312, § 8.

3-33-25. Improvement district; rights of negotiable bondholders or assignable certificate holders.

A. If the governing body fails or refuses to foreclose and sell a tract or parcel of land for the delinquent assessment or installment of the assessment as required in Section 3-33-26 NMSA 1978, any holder of a bond or assignable certificate secured by the assessment may foreclose the assessment lien on such delinquent property in the manner provided by law for the foreclosure of mortgages on real estate.

B. Any person holding two or more assignable certificates issued as authorized in Section 3-33-24 NMSA 1978 may sue in the same action on all tracts or parcels of land described in the certificate to enforce the lien against the tract or parcel of land described in the certificate unless the assessment lien has been adjusted pursuant to Section 3-33-23 NMSA 1978.

C. Whenever a governing body, board of county commissioners or local board of education is delinquent in the payment of an assessment, the holder of any assignable certificate issued against the tract or parcel of land of the municipality, county or school district has the rights and remedies for the collection of the assessment as are given by law for the collection of judgments against municipalities, counties and school districts.

History: 1953 Comp., § 14-32-18, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 16.

3-33-26. Improvement district; additional duties imposed on municipality.

A. Whenever an improvement district has been created and bonds or assignable certificates have been issued to finance the improvement, a municipality shall:

(1) act as agent for the collection of the assessments;

(2) collect the assessments when due;

(3) act as trustee for the benefit of the holders of the bonds or assignable certificates;

(4) annually prepare a statement that shall:

(a) be available for inspection in the office of the municipal treasurer;

(b) reflect the financial condition of the improvement district; and

(c) list all the delinquencies existing at that time; and

(5) institute proceedings to foreclose the assessment lien against any tract or parcel of land that is delinquent in the payment of the assessment or installment of an assessment for a period of more than one year.

B. If more than one improvement district is created, the money from assessments in each district shall be kept in a separate fund and used for the payment of principal and interest of the bonds or assignable certificates outstanding against that improvement district.

History: 1953 Comp., § 14-32-19, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 17.

3-33-27. Improvement district; acceptance of deed in lieu of foreclosure.

In lieu of the foreclosure of a lien against any tract or parcel of land which is delinquent in the payment of an assessment or installment of an assessment for a period of more than one year, a municipality may accept a deed to the property subject to the lien if the owner of the property tenders the deed to the municipality.

History: 1953 Comp., § 14-32-20, enacted by Laws 1965, ch. 300.

3-33-28. Improvement district; foreclosure; trustee may purchase at foreclosure of liens; contents of bid.

Any delinquent assessment has the effect of a mortgage and shall be foreclosed and sold in the manner provided by law for the foreclosure of mortgages on real estate. In any action seeking the foreclosure of a lien against any tract or parcel of land assessed by a municipality for the construction of any project after either or both assignable certificates or bonds have been issued, if there is no other purchaser for the tract or parcel of land having a delinquent assessment, the municipality, as trustee of the fund from which the assignable certificates or bonds are to be paid, may:

A. purchase the tract or parcel of land sold at the foreclosure sale; and

B. bid, in lieu of cash, the full amount of the assessment, interest, penalties, attorneys' fees and costs found by the court to be due and payable under the ordinance creating the lien and any cost taxed by the court in the foreclosure proceedings against the property ordered sold.

History: 1953 Comp., § 14-32-21, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 18.

3-33-29. Improvement district; title subject to redemption vests in trustee.

Upon the acceptance or purchase of the tract or parcel of land as provided in Section 3-33-27 or 3-33-28 NMSA 1978, title to the tract or parcel of land, subject to the right of redemption provided by Subsection A of Section 3-33-30 NMSA 1978, vests in the trustee of the fund from which the assignable certificates or bonds are payable.

History: 1953 Comp., § 14-32-22, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 19.

3-33-30. Improvement district; private or public sale of property; redemption period; disposition of proceeds.

A. No real property shall be sold by the trustee to satisfy a delinquent assessment until at least fifteen days after the date of the order, judgment or decree of the court, within which time the owner of the tract or parcel of land may pay off the decree and avoid the sale. Any real estate sold under any order, judgment or decree of court to satisfy the lien may be redeemed at any time within one year of the date of sale by the owner or mortgage holder or other person having an interest, or their assigns by repaying to the purchaser or his assign the amount paid with interest from the date of purchase at the rate of twelve percent per year.

B. After expiration of the fifteen-day period, the trustee may sell the property at a public or private sale subject to the right of redemption, and, if not paid from the proceeds of the sale, subject to the indebtedness claimed under the lien, ad valorem

taxes and other special assessments having a lien on the property that is coequal with the lien for ad valorem taxes.

C. The proceeds of the sale of the foreclosed tract or parcel of land at either a private sale or a public sale shall be applied as follows:

(1) first, to the payment of costs in giving notice of the sale and conducting the sale;

(2) second, to costs and fees taxed against the tract or parcel of land in the foreclosure proceedings;

(3) third, on a pro rata basis, to indebtedness claimed under the lien and to ad valorem taxes and other special assessments having a lien on the property that are coequal with the ad valorem taxes; and

(4) fourth, after all such costs, liens and assessments are paid to the former owner, mortgage holder or other parties having an interest in the tract or parcel, upon such persons providing satisfactory proof to the court of an interest and upon approval of the court.

D. Receipts for the satisfaction of the indebtedness claimed under the lien shall be paid into the proper improvement district fund for payment of the interest and the bonds or assignable certificates.

E. In case of the sale of any tract or parcel of land subject to more than one delinquent assessment, such remaining proceeds shall be distributed into the proper improvement district funds for such payment pro rata based upon the total unpaid amount due each such district.

History: 1953 Comp., § 14-32-23, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 20.

3-33-31. Improvement district; assessment funds; expenditures; misuse; penalties.

A. All money received by the municipality from any special assessment or assessment within an improvement district shall be held in a special fund and used to:

(1) pay the cost of the improvement for which the assessment was made;

(2) reimburse the municipality for any work performed by the municipality in constructing the improvement and for administrative costs associated with the improvement district; or

(3) pay the interest and principal due on any outstanding bonds or assignable certificates.

B. Any person who uses money in an improvement district fund other than as provided in this section is guilty of a felony and shall be punished by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the state penitentiary for not more than two years or by both such fine and imprisonment in the discretion of the court.

History: 1953 Comp., § 14-32-24, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 21.

3-33-32. Transfer of improvement district funds.

The governing body may transfer to the general fund of the municipality any money obtained from the levy of an assessment for an improvement district if:

A. bonds or assignable certificates were issued to finance the improvement;

B. the proceeds of the bonds or assignable certificates were spent for the improvement;

C. the assessments were levied and collected for the payment of the bonds or assignable certificates; and

D. either the bondholders or assignable certificate holders are barred by the statute of limitations or a court judgment or decree from collecting the indebtedness; or

E. the bonded indebtedness or assignable certificates have been paid.

History: 1953 Comp., § 14-32-25, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 22.

3-33-33. Improvement district; reassessment after voiding of assessments; procedure.

A. It is the purpose of Sections 3-33-33 through 3-33-37 NMSA 1978 to:

(1) charge the cost of any improvement payable by the tract or parcel of land benefited by the improvement by making a reassessment for the cost of the improvement; and

(2) permit the making of a reassessment when an original assessment is declared void or the enforcement of the original assessment is refused by a court.

B. Whenever any assessment for improvements is declared void or unenforceable, either directly or indirectly, by a decision of any court for any cause whatever, the governing body shall reassess the tracts or parcels of land which are benefited or will be benefited by the improvement to the extent of the proportionate share of the cost of the improvement of each tract or parcel of land together with accrued interest.

C. The reassessment roll shall be prepared, a hearing held on the reassessment roll and a final determination of the reassessment made by the governing body; all to be conducted in the manner provided in Sections 3-33-21 through 3-33-23 NMSA 1978 for the original assessment.

History: 1953 Comp., § 14-32-28, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 23.

3-33-34. Improvement district; reassessment; defects waived; credit for previous payment.

A. The fact that:

(1) the contract has been let;

(2) an improvement has been wholly or partially constructed;

(3) an omission, failure or neglect of the governing body or municipal officer to comply with the requirements of Sections 3-33-1 through 3-33-23 NMSA 1978; or

(4) any other matter whatsoever connected with the improvement or initial assessment is invalid, shall not invalidate or in any way effect the making of a reassessment as authorized in Section 3-33-33 NMSA 1978, and charging the benefited tract or parcel of land the cost of the improvement.

B. When the reassessment is complete, any money paid on the former attempted assessment against a tract or parcel of land shall be credited to the tract or parcel of land in partial or whole payment of the reassessment.

History: 1953 Comp., § 14-32-29, enacted by Laws 1965, ch. 300.

3-33-35. Improvement district; notice of appeal; appeal to district court.

After an owner has filed a written objection with the municipal clerk to a reassessment as provided in Section 3-33-22 NMSA 1978 and the governing body has determined the reassessment, an owner of a tract or parcel of land that is reassessed may file a notice of appeal to the district court. The appeal shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-32-30, enacted by Laws 1965, ch. 300; 1998, ch. 55, § 11; 1999, ch. 265, § 11.

3-33-36. Improvement district; payment of reassessment; continuing proceedings to collect assessment.

A. The governing body shall enforce payment of the reassessment of the tract or parcel of land benefiting from an improvement in the manner provided in Chapter 3, Article 33 NMSA 1978 for the enforcement of the original assessment.

B. If for any reason a reassessment is held to be invalid or uncollectible, the governing body shall continue to reassess the tract or parcel of land as provided in Sections 3-33-33 through 3-33-37 NMSA 1978 until the benefited tract or parcel of land has paid the cost of any improvement chargeable to the benefited tract or parcel of land.

History: 1953 Comp., § 14-32-31, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 24.

3-33-37. Improvement district; appeal of reassessment; procedure exclusive.

A. The rights and remedies granted in Section 3-33-22 NMSA 1978, to any owner who objects, contests or appeals the amount, correctness, regularity or validity of the reassessment:

(1) are declared to exclude any other right, remedy, suit or action either at law or in equity which might otherwise be available; and

(2) do afford the owner a sufficient day in court for the redressing of all rights and grievances that he may have in connection with the reassessment.

B. Any person who fails to file an objection to a reassessment in the manner provided in Section 3-33-22 NMSA 1978, or fails to appeal to the district court in the manner provided in Section 3-33-35 NMSA 1978, is forever absolutely barred from objecting to or contesting the amount, correctness, regularity or validity of the reassessment.

History: 1953 Comp., § 14-32-32, enacted by Laws 1965, ch. 300.

3-33-38. Improvement district; application of reassessment fund to outstanding indebtedness.

A. Whenever a municipality has:

(1) issued bonds or assignable certificates to obtain money to pay for an improvement that has been constructed; and

(2) reassessed the tract or parcel of land benefiting from the improvement as provided in Sections 3-33-32 through 3-33-35 NMSA 1978, the municipality shall apply all money received from the payment of the reassessment to the payment of the bonds or assignable certificates.

B. Bonds or assignable certificates that have been issued to obtain money to pay for any improvement that has been constructed are:

(1) valid and binding obligations of the municipality; and

(2) payable from the payments received from any reassessment that shall be levied until all obligations of indebtedness of the improvement have been paid in full.

History: 1953 Comp., § 14-32-33, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 25.

3-33-39. Improvement district; definition of "bonds"; refunding improvement bonds; authority.

A. As used in this section and in Sections 3-33-40 through 3-33-42 NMSA 1978, "bonds", when not modified by the word "refunding", includes assignable certificates.

B. The governing body may issue refunding improvement district bonds to refund all or any part of outstanding improvement district bonds. Refunding bonds may be issued:

(1) to change the payment schedule for the bonds;

(2) to fund principal and interest due on bonds that are in default, or for which there is not and, in the opinion of the governing body, will not be sufficient money available to pay the principal and interest when due;

(3) to reduce interest costs on the bonds or on the assessments providing security for the bonds or to provide other savings;

(4) to modify or eliminate restrictive or burdensome contractural [contractual] limitations concerning the bonds;

(5) to provide enhanced or substitute security for the bonds; or

(6) to provide for any other reasonable and necessary purpose or any combination of the foregoing purposes.

History: 1953 Comp., § 14-32-34, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 26.

3-33-40. Refunding bonds; escrow; detail.

A. Refunding bonds issued pursuant to Sections 3-33-39 through 3-33-42 NMSA 1978 shall be authorized by ordinance. Any bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the ordinance authorizing the issuance of the refunded bonds or otherwise appertaining thereto,

except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provision shall be made for paying the refunded bonds at the time or times provided in Subsection A of this section.

C. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the refunded bonds or be placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the refunded bonds; provided that such refunding bond proceeds, including any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest thereon and the principal thereof or both interest and principal as the municipality may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available for its purpose. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of or the principal and interest of which obligations are unconditionally guaranteed by the United States of America or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of or the payment of which is unconditionally guaranteed by the United States of America, the par value of which obligations is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the refunded bonds as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the municipality shall exercise a prior redemption option. Any purchaser of any refunding bond issued under Sections 3-33-39 through 3-33-42 NMSA 1978 is in no manner responsible for the application of the proceeds thereof by the municipality or any of its officers, agents or employees.

History: 1978 Comp., § 3-33-40, enacted by Laws 1991, ch. 199, § 27.

3-33-41. Improvement district; ordinance for refunding bonds; conditions; sale or exchange.

A. The ordinance authorizing the issuance of refunding bonds for an improvement district shall describe the:

(1) details of the issue;

(2) form of the refunding bonds and interest coupons, if any;

(3) fund from which the principal and interest of the refunding bonds will be paid; and

(4) manner in which the bonds are to be issued.

B. The refunding bonds may:

(1) be issued in an amount less than, equal to or greater than the principal amount of improvement district bonds being refunded;

(2) not bear a rate of interest greater than the rate of interest borne by the assessments providing security for the refunding bonds if secured by assessments;

(3) become due and payable in regular numerical order;

(4) not be issued for a period of more than twenty years from the date of issuance; and

(5) be payable from substitute security or from the same funds that were applicable to the payment of the bonds being refunded.

C. The refunding bonds may be:

(1) sold at a public or private sale at a discount; or

(2) exchanged, dollar for dollar, for the improvement district bonds being refunded.

History: 1953 Comp., § 14-32-36, enacted by Laws 1965, ch. 300; 1983, ch. 265, § 9; 1991, ch. 199, § 28.

3-33-42. Improvement district; payment of assessment for refunding bond; maximum term; interest; prepayment; liens.

A. In connection with issuance of refunding bonds as provided in Sections 3-33-39 through 3-33-42 NMSA 1978, the governing body may, by ordinance, provide that any unpaid assessment and accrued interest on the assessment shall be paid in not more than twenty years with interest at a rate of interest not less than the rate borne by the refunding bonds and with the penalties as lawfully attached to the original assessment.

The owner of a tract or parcel of land that is assessed may at any time pay the assessment in full with interest to the time of payment.

B. The assessment may be collected as provided in Section 3-33-23 NMSA 1978, and the refunding bonds may be secured and enforced as the original lien was established as provided in Section 3-33-23 NMSA 1978.

History: 1953 Comp., § 14-32-37, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 29.

3-33-43. Improvement district; construction of Sections 3-33-39 through 3-33-42 NMSA 1978.

Nothing contained in Sections 3-33-39 through 3-33-42 NMSA 1978 shall be construed as:

A. increasing the burden or liability of any tract or parcel of land or the owner of any tract or parcel of land; or

B. except for issuance of the refunding bonds, creating any additional liability of the municipality.

History: 1953 Comp., § 14-32-38, enacted by Laws 1965, ch. 300; 1991, ch. 199, § 30.

ARTICLE 34
Street Improvement Fund

3-34-1. Street improvement fund authorization.

The governing body of any municipality may, by ordinance, establish a "street improvement fund" into which may be placed all or any part of the distributions of the amounts of tax revenues distributed to the municipality under the provisions of Section 7-1-6.9 NMSA 1978 as the governing body has, in any ordinance, determined necessary for use as a fund in the financing of street improvement projects within the municipality.

History: 1953 Comp., § 14-33-1, enacted by Laws 1965, ch. 300; 1967, ch. 170, § 1; 1977, ch. 342, § 1; 1983, ch. 211, § 1.

3-34-2. Street improvement fund; use.

Bonds or assignable certificates authorized in Section 3-33-24 NMSA 1978 for the construction of a street, alley, curb, gutter or sidewalk project may be purchased by the street improvement fund; provided that the bonds or assignable certificates shall be held in trust by the municipal treasurer, and any receipts from the sale of the bonds or

assignable certificates or from the payment of the assessment made to pay the interest and principal of the bonds or assignable certificates shall be credited to the street improvement fund.

History: 1953 Comp., § 14-33-2, enacted by Laws 1965, ch. 300; 1983, ch. 265, § 10.

3-34-3. Street improvement fund; repurchasing bonds or certificates; pledging income.

A. The governing body may, by ordinance approved by three-fourths of all the members of the governing body and irrepealable during the term of the contract and for a period not exceeding twenty-one years, contract:

(1) to repurchase bonds or assignable certificates authorized in Section 3-33-24 NMSA 1978 for the construction of a street, alley, curb, gutter or sidewalk project with the money in the street improvement fund; or

(2) to pledge the income of the street improvement fund to pay the interest and principal of bonds or assignable certificates when default in payment may occur by reason of nonpayment of any assessment levied for the payment of a street, alley, curb, gutter or sidewalk project authorized in Section 3-33-3 NMSA 1978.

B. The municipality may anticipate the annual income to be received by the street improvement fund. The amount contracted or pledged to be expended each year as authorized in this section shall not exceed the amount that is accumulated in the street improvement fund.

C. The ordinance authorized in this section shall state that:

(1) all disbursements made pursuant to the contract shall be paid solely from the street improvement fund and from no other source;

(2) the obligations created by the contract are not general obligations of the municipality; and

(3) the contracting parties may not look to any other fund for the performance of the contractual obligation.

D. In the event of disbursement from the street improvement fund pursuant to the obligations created by the contract, the municipality shall be subrogated for the benefit of the street improvement fund to all the rights and remedies of the holders of the securities upon which payment is made.

History: 1953 Comp., § 14-33-3, enacted by Laws 1965, ch. 300; 1977, ch. 247, § 140; 1979, ch. 108, § 3; 1983, ch. 265, § 11; 1987, ch. 220, § 1.

3-34-4. Street improvement fund; diverting proceeds from tax.

After the adoption of the ordinance creating a contract as authorized in Section 3-34-3 NMSA 1978, and so long as the contract is effective, it is unlawful:

A. to, directly or indirectly, divert any such amounts of tax revenue directed to be credited to the street improvement fund; and

B. without the written approval of the secretary of finance and administration, for the governing body or any municipal employee to expend any money from the street improvement fund for any purpose other than the performance of the contract.

History: 1953 Comp., § 14-33-4, enacted by Laws 1978, ch. 51, § 1.

3-34-5. Saving clause.

The provisions of Sections 3-34-1 through 3-34-4 NMSA 1978 remain in force and apply to obligations issued pursuant thereto prior to July 1, 1967. Distributions of motor fuel excise tax and special fuels use tax revenues to municipalities under the provisions of Section 7-13-9 NMSA 1978 [repealed] replace all gasoline and motor fuel license taxes formerly authorized to be imposed by Sections 14-38-1 through 14-38-4 NMSA 1953 (being Laws 1965, Chapter 300, Sections 14-38-1 through 14-38-4, repealed by Laws 1967, Chapter 170, Section 13). Any irrevocable pledge of municipal revenues effected prior to July 1, 1967, by any municipality under the provisions of Section 3-34-4 NMSA 1978 or Sections 14-38-1 through 14-38-4 NMSA 1953 (being Laws 1965, Chapter 300, Sections 14-38-1 through 14-38-4, repealed by Laws 1967, Chapter 170, Section 13) apply to the aforesaid distributions of motor fuel excise tax and special fuels use tax revenues to the municipality.

History: 1953 Comp., § 14-33-5, enacted by Laws 1967, ch. 170, § 2; 1977, ch. 342, § 3.

ARTICLE 35
Fire-Fighting Facilities

3-35-1. Fire-fighting facilities; preliminary plans of contemplated improvement; estimate of cost; assessment plat; provisional order.

The governing body of any municipality, when it believes the municipality requires fire stations, fire hydrants or fire-fighting equipment or water, may, by resolution, direct the city engineer or other competent engineer to prepare preliminary plans of the contemplated improvement and a preliminary estimate of the cost. He shall also submit an assessment plat showing the area to be assessed and the amount of maximum benefits estimated to be assessed against each tract or parcel of land in the

assessment area, based on a front-foot zone, area or other equitable basis established by the resolution. The resolution may provide for one or more types of construction and the engineer shall separately estimate the cost of each type, either in a lump sum or by unit prices as the engineer thinks more desirable. The total estimate shall also include cost of advertising, appraising, engineering, printing and other necessary expenses. Upon filing with the municipal clerk, the governing body shall examine them and, if satisfactory, make a provisional order that the work of improvement be done.

History: 1953 Comp., § 14-34-1, enacted by Laws 1965, ch. 300.

3-35-2. Hearing on provisional order; notice; description of property to be assessed.

In any provisional order, the governing body shall set a time and place for it to hear property owners to be assessed and other interested persons wanting to comment on the order. At least ten days before the hearing, written notice of the hearing shall be mailed to the property owners and proof of mailing made by affidavit of the municipal clerk. Failure to mail the notice does not invalidate the proceedings. Notice of the hearing shall also be given by publication for three consecutive publications, the last to be at least one week prior to the date of the hearing. Each notice shall describe the property to be assessed, and proof of publication made by affidavit of the publisher filed with the municipal clerk.

History: 1953 Comp., § 14-34-2, enacted by Laws 1965, ch. 300.

3-35-3. Hearing on provisional order; protest by property owner or interested person; appeal.

At the hearing on a provisional order, a property owner or interested person may file a written protest and may be heard by the governing body on the order. A person filing a written protest may bring an appeal concerning the governing body's determination on the protest pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-34-3, enacted by Laws 1965, ch. 300; 1998, ch. 55, § 12; 1999, ch. 265, § 12.

3-35-4. Provisional order; determination of advisability; advertising for bids; contract with lowest bidder.

After the hearing, the governing body shall determine the advisability of the order, the improvements to be made, advertise for bids on the work and equipment, and enter into a contract with the lowest bidder for the work and furnishing of necessary supplies. Where the work is to be done by the municipality, by itself or in cooperation with another governmental agency contributing money, labor or materials, it is not necessary to advertise for bids or enter into contracts.

History: 1953 Comp., § 14-34-4, enacted by Laws 1965, ch. 300.

3-35-5. Assessment of cost; hearing on assessment roll; notice; objections by property owners.

A. After making the contracts and determining the net cost to the municipality, the governing body shall:

(1) determine what portion of the costs of the work and equipment, including advertising, appraising, engineering, legal, printing and other costs, shall be paid by the property specially benefited;

(2) together with the engineer, make an assessment roll containing, among other things:

(a) the names of the last known owners of the property to be assessed or, if not known, a statement that the name is unknown;

(b) a description of each tract or parcel of land to be assessed; and

(c) the amount of the assessment on each tract or parcel; and

(3) fix a time and place for hearing and file the roll with the municipal clerk.

B. Assessments may be made on a front-foot zone, area or other equitable basis determined by the governing body, but never exceeding the estimated benefits to the property assessed.

C. The municipal clerk shall give notice of the hearing by publication once a week for two consecutive weeks, the last publication at least one week prior to the date of the hearing. The notice shall include a statement that the assessment roll is on file in his office and the time and place of the hearing when the governing body will consider objections to the assessment roll. Any owner of property to be assessed, whether or not named in the roll, may file his specific written objections with the clerk within ten days of the first publication provided in this section. Any objection to the regularity, validity and correctness of the proceedings, the assessment roll, each assessment on the roll and the amount levied on each tract or parcel of land is waived unless presented at the time and in the manner provided in this section.

History: 1953 Comp., § 14-34-5, enacted by Laws 1965, ch. 300.

3-35-6. Hearing and determination of objections; modification, confirmation or setting aside of assessment; levy of assessments on the assessment roll.

A. At the time and place designated for the hearing, the governing body shall:

(1) hear and determine all objections filed in accordance with Section 3-35-5 NMSA 1978, but it may adjourn from time to time; and

(2) in its discretion, by resolution, revise, correct, confirm or set aside any assessment and order it be made de novo.

B. The governing body shall, by ordinance referring to the assessment roll as modified or confirmed by the resolution, levy the assessments on the roll and the ordinance is a final determination of the regularity, validity and correctness of the proceedings of the assessment roll, each assessment on the roll and the amount levied on each tract or parcel of land and it is conclusive on the owners of the property assessed unless, within fifteen days of publication of the ordinance, any person who filed a written objection files an action in the district court to correct or set aside the determination, and thereafter all such actions are barred.

History: 1953 Comp., § 14-34-6, enacted by Laws 1965, ch. 300.

3-35-7. Lien for assessment; terms of payment.

The amount assessed, including all installment and interest and penalties, is a lien upon each tract or parcel from the time of the assessment and the lien is coequal with the lien of other taxes and prior and superior to all other liens, claims and titles. The governing body may provide for the time and terms of payment of the assessments, the rate of interest on deferred payments, not exceeding six percent a year, and it shall fix penalties for delinquent payments. No sale of the property to enforce any general taxes or other lien shall extinguish the perpetual lien of the assessment and the statute of limitations does not begin to run against the assessment until after the last installment becomes due.

History: 1953 Comp., § 14-34-7, enacted by Laws 1965, ch. 300.

3-35-8. Certificates of liability; description of property covered by assessment; bonds to pay cost of work; foreclosure of assessment lien.

A. The governing body may issue, in the name of the municipality, assignable certificates declaring the liability of the property for payment of the assessments, interest and penalties and fix the terms of the certificates. The certificates shall accurately describe the property covered by the assessment. The governing body may also issue bonds in such form as the governing body may determine in an amount not exceeding the total assessments levied to pay the cost of the work performed and equipment installed.

B. Recitals in the bonds that the proceedings were regular and that all prerequisites to fixing the assessment lien against the property described have been performed are conclusive evidence of the facts recited.

C. Within sixty days after publication of the assessing ordinance, the municipal clerk shall make, sign, seal and file for record with the county clerk a claim for lien for the unpaid amount assessed against each tract and parcel of land. When delinquent, the assessment may be foreclosed in the same manner as provided by law for foreclosure of mortgages on real estate. In the event of sale, the property may be bought by the municipality for the amount of the balance due on the assessment, principal, interest, penalties and costs if there is no other purchaser.

History: 1953 Comp., § 14-34-8, enacted by Laws 1965, ch. 300; 1983, ch. 265, § 12.

3-35-9. Interest on assessments; penalties after delinquency.

Assessments shall bear interest at the rate provided in the ordinance and from the date of the publication of the assessing ordinance until paid. The ordinance shall prescribe when the assessments become due and delinquent, and the penalties payable after delinquency.

History: 1953 Comp., § 14-34-9, enacted by Laws 1965, ch. 300.

ARTICLE 36
Municipal Liens

3-36-1. Municipal lien; filing with county clerk; contents of lien; interest on principal amount of utility [lien].

A. The municipal clerk shall file in the office of the county clerk any notice of lien created by ordinance or under authority of law. The notice of lien shall include:

(1) the number of the ordinance under which the lien is established;

(2) the fact that a lien is established;

(3) the general purpose of the lien;

(4) the name of the owner of the property against which the lien is established as determined from the records of the county assessor;

(5) a description of the property against which the lien is established;

(6) the amount of the lien; and

(7) if the lien is for more than one period of time, the date for which the lien is established.

B. A lien for charges or assessments which are provided for or fixed by any one ordinance or under authority of law may be included in the same notice of lien, and it shall not be necessary to file separate liens against the separate properties. The lien shall be attested in the name of the municipal clerk under the seal of the municipality.

C. The principal amount of any lien imposed for a municipal utility charge or assessment shall bear interest at the rate of twelve percent per year from the date of filing the notice of the lien unless otherwise provided by law.

History: 1953 Comp., § 14-35-1, enacted by Laws 1965, ch. 300; 1981, ch. 213, § 3.

3-36-2. Effect of filing notice of lien.

After the filing of the notice of the lien in the office of the county clerk, the municipality shall have a lien upon the property described in the notice of lien. The filing of the notice of the lien shall be notice to all the world of the existence of the lien and of the contents of the notice of lien. No such lien shall affect the title or rights to or in any real estate, of any purchaser, mortgagee in good faith or judgment lien creditor, without knowledge of the existence of such lien, unless the notice of the lien is filed in accordance with Section 3-36-1 NMSA 1978 in the office of the county clerk of the county in which the real estate affected thereby is situated. All municipal liens filed in conformity with Sections 3-36-1 through 3-36-6 NMSA 1978 shall be first and prior liens on the property subject only to the lien of general state and county taxes.

History: 1953 Comp., § 14-35-2, enacted by Laws 1965, ch. 300; 1981, ch. 213, § 4.

3-36-3. Manner of releasing lien.

The municipal clerk may release a lien against any specific property by:

A. entering and signing a receipt of payment upon the notice of lien filed in the office of the county clerk; or

B. issuing a separate receipt which recites that payment of the lien with any accrued interest and penalty has been made.

History: 1953 Comp., § 14-35-3, enacted by Laws 1965, ch. 300.

3-36-4. Municipal lien; foreclosure; joinder of defendants; contents of complaint; several judgment or decree; lien recitals as prima facie evidence; attorney fee.

A. The municipality or the holder of any lien may, in a single suit, foreclose the liens against all of the persons named in the notice of liens or against the property if the owners are unknown. The complaint filed by the municipality shall:

(1) expressly name each defendant if known;

(2) describe the property against which the lien is established; and

(3) set forth the amount of the lien.

B. The judgment or decree rendered in said cause shall be several against the named defendants and against the several properties for the amounts decreed to be due by each. A lien against real estate may be foreclosed in the same manner that mortgages or other liens against real estate are foreclosed with like rights of redemption. Lien against personal property may be foreclosed in the same manner security interests are foreclosed. At the trial of any case foreclosing any lien, the recitals of the lien or other evidence of indebtedness shall be received in evidence as prima facie true. In the foreclosure of any lien created by municipal ordinance or under authority of law, a reasonable attorney's fee shall be taxed by the court as part of the costs.

History: 1953 Comp., § 14-35-4, enacted by Laws 1965, ch. 300.

3-36-5. Municipal lien; provisions supplementary to other methods of foreclosing liens.

The provisions of Sections 3-36-1 through 3-36-5 NMSA 1978, are intended to afford another and additional method of filing and enforcing municipal liens and are not intended to be construed as repealing any other method provided by law for the filing and foreclosure of liens.

History: 1953 Comp., § 14-35-5, enacted by Laws 1965, ch. 300.

3-36-6. Special alternative procedure for the foreclosure of municipal liens by action in rem.

A. As used in this section:

(1) "lien" means any unpaid assessment for a street, alley, curb, gutter, storm sewer, sanitary sewer, off-street parking or any other type of municipal special assessment, together with interest and penalties on all of the foregoing and cost in connection therewith, which is a lien on real property duly recorded in the land records of the county;

(2) "court" means the district court of the county in which the land is situate; and

(3) "municipal clerk" means the clerk of the municipality, his deputy, if any, or his designated representative.

B. The provisions of this section shall be applicable only to liens owned by a municipality and shall not:

(1) affect existing remedy or procedure for the enforcement or foreclosure of liens provided for in this chapter or any other law, but the procedure provided herein for foreclosure by action in rem shall be in addition to any other remedies now provided by law for the foreclosure of any municipal lien and shall not be construed as repealing or amending any existing procedure by implication; and

(2) affect pending actions or proceedings, provided, however, that any pending action or proceeding for the enforcement or foreclosure of municipal liens may, at the election of the municipality, be discontinued without prejudice, and a new action may be instituted pursuant to the provisions of this section in respect to any such lien which new action, if instituted within sixty days, shall relate back for purposes of the statute of limitations to the date of the filing of the original action.

C. The district courts shall have jurisdiction of actions authorized by this section.

D. Whenever it shall appear that a lien as defined herein, or any installments thereon, has been due and unpaid and is delinquent after the date said assessment or other legal charge became a lien, the municipality may elect to declare the total amount due and payable and such lien may be foreclosed in the manner provided herein notwithstanding the provisions of any other general or special law. An election to declare the total amount due and payable shall not constitute an acceleration of the payment for the purpose of the statute of limitation and the statute of limitation shall not commence to run until the last installment would normally come due.

(1) The director of finance or other municipal officer designated by the governing body to collect and receive payments due on municipal liens shall, from time to time, submit to the municipal clerk a list of tracts or parcels of land against which the municipality holds a lien and a payment or any installments due thereon have been unpaid and are delinquent. Such list shall contain the legal description of the parcels concerned and may include one or more separate parcels or tracts with the name and address of the owners, and other parties of interest, if known.

(2) The municipal clerk shall then prepare and sign a notice of foreclosure, which will also bear the signature and mailing address of an attorney representing the municipality. The notice shall be substantially in the following form:

"STATE OF NEW MEXICO COUNTY OF .....

IN THE DISTRICT COURT

NOTICE OF FORECLOSURE OF LIENS BY THE CITY OF .....,

Plaintiff.

By: Action in rem

To: (List the names and addresses, if known, of all parties having an interest in any of the parcels of land to be described below)

Defendants.

A. List all parcels by legal description with name of the title owner and mortgage holder, and other interested parties if known, with the following information as to each parcel:

1. The date such lien was made of record.

2. The legal basis for the lien, such as assessment district and account number.

3. If lien is imposed by an ordinance, the number and the date of the ordinance.

4. The date of the last payment made on such assessment or charges which constitute the lien.

5. A statement that payments on the assessment or charges or any installment of an assessment are delinquent.

6. The total amount due and payable including penalties and interest to date.

7. A statement that the municipality elects to declare the total unpaid balance now due and payable.

B. A statement to the effect all persons and corporations named above and any and all unknown persons who may have an interest in the lands described are hereby notified that the filing of this notice of foreclosure with the clerk of the district court constitutes the complaint and commencement by the city of ..... of an action in the district court of ..... county to foreclose the liens herein described by foreclosure proceedings in rem, and that the filing of a duplicate original of this notice in the office of the county clerk of the county where the land is situate constitutes notice of pendency of the action against each piece or parcel of land herein described to enforce the payment of such liens. This action is brought against the real property only and is to foreclose the liens described in this notice.

C. All interested parties are hereby notified that a copy of this notice is on file in the office of the municipal clerk and is open to public inspection during normal business

hours for a period of sixty (60) days from the date this notice was filed with the district court.

D. And take further notice that any person having or claiming to have an interest in any such parcel or parcels and the legal right thereto, may, on or before sixty (60) days from the date of the filing of this notice with the clerk of the district court, by paying to the municipality all amounts due, including interest and penalties due thereon, computed to the date of payment, attorneys' fees and costs, or at the option of the municipality, by paying to the municipality the amount of the unpaid installments thereon, plus all interest and penalties due thereon computed to the date of payment, attorneys' fees and costs, move for dismissal of the foreclosure with or without prejudice, as applicable.

.....

Municipal Clerk

ATTEST:

.....

Attorney for the city of .....

(mailing address)."

(3) Upon the filing of the notice of foreclosure as provided herein the clerk of the district court shall forthwith issue a summons substantially in the following form:

"SUMMONS

Defendants: Greeting:

You are hereby commanded to appear before the Honorable ....., Division ....., the ... Judicial District of the state of New Mexico, sitting within and for the county of ... that being the county in which the notice of foreclosure of liens herein is filed, within sixty (60) days after the date hereof and then and there answer the notice of foreclosure of liens and show cause why the foreclosure should not be granted.

You are further notified that in the event of failure to pay the total amount due, including interest, penalties, attorneys' fees and costs or at the option of the municipality to pay the unpaid installments due together with interest and penalties computed to date, attorneys' fees and costs or to answer by any person having the right to redeem or answer within the time provided, a judgment of foreclosure shall be entered and ownership of said property shall in due course pass to the city of ..... unless redeemed as provided by law.

WITNESS the Honorable ....., district judge of the .... judicial district court of the state of New Mexico, and the seal of the district court of ..... county this ... day of ..., 19 ...

.....

Clerk

(SEAL) ..... By: .....

Deputy"

E. The original notice of foreclosure prepared in accordance with Subsection D 1 of this section shall be filed with the clerk of the district court, and such notice shall constitute a complaint, a duplicate original of the notice shall be filed with the county clerk which filing shall constitute constructive notice to all purchasers or encumbrancers of the property concerned, of commencement of the foreclosure action in rem. Upon the filing of the notice of foreclosure the municipal clerk shall forthwith cause a copy thereof to be published once each week for two successive weeks in a newspaper published in or having general circulation within the county in which the property affected is located.

F. Within five days after filing the notice of foreclosure as provided herein, the municipal clerk shall cause a copy of such notice and summons to be mailed by registered or certified mail, return receipt requested, to the last known address of each owner, the mortgage holder, lien holder and all other known persons having an interest in any of the property affected thereby as the same appears upon the records of the county clerk, the county assessor or any other source he deems reliable. An affidavit of such mailing shall be filed with the clerk of the district court. In the event the address of the owner or other persons having an interest, is unknown, the municipal clerk shall so state in his affidavit of mailing which shall be filed with the clerk of the district court, and in such event, a copy of the notice of foreclosure, summons and such affidavit shall be posted in the county courthouse of the county where the land is situated.

G. All affidavits of filing, posting, mailing or other acts required herein shall be filed with the clerk of the district court and together with all other documents required herein, constitute and become part of the court record in such foreclosure action.

H. It shall not be necessary for the municipality to plead or prove the various steps, procedures and notices taken prior to the enactment of an ordinance imposing an assessment, or other lawful charges against the lands described in the notice of foreclosure and all such assessments or other lawful charges shall be presumed to be valid. A defendant alleging any jurisdictional defect or invalidity in the assessment or other lawful charge must particularly specify in his answer such defect or invalidity and must affirmatively establish such defense.

I. If an answer is filed and served upon the municipality within the time provided herein the court shall forthwith hear and determine the issues raised. Upon such trial, proof that such assessment or other charges was [were] paid, together with any penalties and interest costs which may have been due or that the property was not legally subject to the assessment or charges, shall constitute a complete defense. If the court finds for the municipality, it shall issue its judgment foreclosing the liens and transferring title in fee simple to the municipality subject only to unpaid ad valorem taxes, other special assessments having a lien on the property which is coequal with the lien for ad valorem taxes, and the right of redemption as hereinafter provided. A certified copy of the judgment shall be filed for a record with the county clerk.

J. If a defendant fails to answer within the time period provided herein, the court shall find such defendant in default and shall thereupon make a final judgment

foreclosing the liens and transferring title in fee simple to the municipality subject only to unpaid ad valorem taxes and other special assessments having a lien on the property which is coequal with the lien for ad valorem taxes, and the right of redemption as hereinafter provided.

K. The owner or mortgage holder or other person having an interest, or their assigns, of any parcel of land foreclosed upon under this procedure to satisfy municipal liens, may redeem said parcel any time within one year after the date the judgment of foreclosure is entered by paying to the municipality the total amount due to satisfy the lien, including all interest and penalties, attorneys' fees and other costs, if any, computed to the date of payment.

L. The municipality may at any time prior to final judgment, withdraw any parcel from a proceeding under this section where the liens and other charges have been paid up to date or paid in full or in cases where a parcel was listed on the notice of foreclosure in error, or where the municipality has accepted a deed in lieu of foreclosure.

M. Sale of property foreclosed under this procedure. No real property foreclosed under this procedure shall be sold to satisfy a delinquent assessment until at least fifteen days after the date of judgment or decree of the court within which time the owner, mortgage holder or other parties having an interest in the tract or parcel of land may pay off the judgment or decree and avoid the sale. Thereafter, the municipality may sell the property at public or private sale, subject to the right of redemption, ad valorem taxes and other special assessments having a lien on the property which is coequal with the lien for ad valorem taxes.

History: 1953 Comp., § 14-35-6, enacted by Laws 1973, ch. 379, § 1; 1977, ch. 190, § 1.

3-36-7. Application of proceeds from sale of property.

The proceeds of the sale of the property by the municipality pursuant to a foreclosure sale on a municipal lien under the provisions of Section 3-36-4 or 3-36-6 NMSA 1978 shall be applied as follows:

A. first, to the payment of costs in giving notice of the sale and of conducting the sale;

B. second, to the indebtedness claimed under the lien and thence to ad valorem taxes and other special assessments having a lien of the property which are coequal with the lien for ad valorem taxes; and

C. third, after all such costs, liens, assessments and taxes are paid, to the former owner, mortgage holder or other parties having an interest in the tract or parcel, upon

such person providing satisfactory proof to the court of such interest and upon approval of the court.

History: 1978 Comp., § 3-36-7, enacted by Laws 1980, ch. 51, § 1.

ARTICLE 37
Municipal Finances

3-37-1. Governing body is board of finance; duties of clerk and treasurer.

A. The governing body is the board of finance of the municipality and the members of the governing body shall serve without compensation additional to the compensation authorized by law for their services as members of the governing body.

B. The municipal clerk shall:

(1) serve as secretary to the board of finance;

(2) keep a record of the proceedings of the board of finance which shall be a public record; and

(3) convene a meeting of the board of finance whenever necessary or whenever requested to do so by any member of the board of finance.

C. The municipal treasurer shall:

(1) supervise the depositing and safekeeping of all money belonging to the municipality; and

(2) with the advice and consent of the municipal board of finance, designate banks qualified to receive on deposit money entrusted to his care.

History: 1953 Comp., § 14-36-1, enacted by Laws 1965, ch. 300.

3-37-2. Finance; authorization.

The governing body shall:

A. control the finances and property of the municipality;

B. appropriate money for municipal purposes only; and

C. provide for payment of debts and expenses of the municipality.

History: 1953 Comp., § 14-36-2, enacted by Laws 1965, ch. 300.

3-37-3. Finance officer; duties; records open to inspection.

A. The treasurer shall be the finance officer for the municipality unless another officer is directed by ordinance to be the finance officer. The finance officer shall:

(1) receive all money belonging to the municipality;

(2) keep his accounts and records in the manner prescribed by the governing body;

(3) keep the money of the municipality separate from any other money in his possession;

(4) expend the money only as directed by the governing body;

(5) submit monthly, or oftener if required by the governing body, a report of the receipts and expenditures of the municipality; and

(6) prepare annually, at the close of the fiscal year, a financial report showing the receipts, expenditures and balances for each fund. A copy of the financial report shall be filed in the office of the municipal clerk as a public document.

B. The records of the finance officer shall be open to inspection by any citizen during the regular business hours of the municipality.

History: 1953 Comp., § 14-36-3, enacted by Laws 1965, ch. 300.

3-37-4. Finance receipts.

A. A municipal official receiving money for the municipality shall make a receipt in not less than duplicate form which shall show the:

(1) amount received;

(2) date of payment; and

(3) account for which payment is made. One copy shall be made available to the person paying money to the municipality.

B. In lieu of a receipt, a municipal official may mark "paid" and the date paid on the portion of a municipal utility bill or statement to be retained by the payer and on the portion retained by the municipality.

History: 1953 Comp., § 14-36-4, enacted by Laws 1965, ch. 300.

3-37-5. Warrants; execution; registration.

A. No payment of funds shall be made except upon a warrant of the municipality. A warrant shall be signed by the mayor or his authorized representative, and countersigned by the municipal treasurer or as prescribed by the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978]. A warrant shall state the:

(1) account or account number to which the warrant is chargeable; and

(2) name of the person to whom the warrant is payable.

B. The finance officer shall keep a record of all warrants issued. The record shall show the:

(1) number of the warrant;

(2) date it was issued;

(3) amount of the warrant;

(4) account to which the warrant is chargeable; and

(5) name of the person to whom the warrant was issued.

History: 1953 Comp., § 14-36-5, enacted by Laws 1965, ch. 300.

3-37-6. Accepting or borrowing funds from the federal government.

Pursuant to any act of congress, a municipality may accept or borrow funds from the United States or any of its agencies or instrumentalities for any purpose authorized by the laws of this state.

History: 1953 Comp., § 14-36-6, enacted by Laws 1965, ch. 300.

3-37-7. Determination of uncollectable account; removal from accounts receivable.

If the finance officer of a municipality states:

A. the manner in which a utility account or any unsecured account has been incurred;

B. the efforts made to collect the utility account or unsecured account and to locate the debtor;

C. that the utility account or unsecured account has been uncollectable for a period of more than four years; and

D. that in his opinion the utility account or unsecured account is uncollectable, the governing body of a municipality may, by resolution, remove the uncollectable utility account or unsecured account from the list of accounts receivable of the municipality.

History: 1953 Comp., § 14-36-7, enacted by Laws 1965, ch. 19, § 1.

ARTICLE 37A
Small Cities Assistance Fund

3-37A-1. Short title.

Chapter 3, Article 37A NMSA 1978 may be cited as the "Small Cities Assistance Act".

History: Laws 1979, ch. 284, § 1; 2003, ch. 220, § 1.

3-37A-2. Definitions.

As used in the Small Cities Assistance Act:

A. "municipality" means an incorporated city, town or village, whether incorporated under general act, special act or special charter, and incorporated counties and H-class counties;

B. "municipal share" means one and thirty-five one-hundredths percent of the taxable gross receipts as defined in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] reported annually for each municipality to the taxation and revenue department during a twelve-month period ending June 30;

C. "total municipal share" means the sum of all municipal shares;

D. "statewide per capita average" means the quotient of the total municipal share divided by the total population in all municipalities;

E. "municipal per capita average" means the quotient of the municipal share divided by the municipality's population;

F. "population" means the most recent official census or estimate determined by the bureau of the census, or, if neither is available, "population" means an estimate as determined by the local government division of the department of finance and administration;

G. "local tax effort" means the amount produced by a one-fourth of one percent municipal gross receipts tax in the previous fiscal year;

H. "qualifying municipality" means a municipality with a population of less than ten thousand that has enacted on or before the last day of the preceding fiscal year an ordinance or ordinances imposing a municipal gross receipts tax pursuant to Section 7-19D-9 NMSA 1978 at a rate of one-fourth of one percent or more;

I. "enacted" means adopted by a majority of the members of the governing body of the municipality pursuant to Section 7-19D-9 NMSA 1978 and:

(1) for which no election has been called in the manner and within the time provided by Section 7-19D-9 NMSA 1978; or

(2) that has been approved by a majority of the registered voters voting on the question pursuant to Section 7-19D-9 NMSA 1978; and

J. "minimum amount" means an amount equal to ninety thousand dollars ($90,000).

History: Laws 1979, ch. 284, § 2; 1981, ch. 37, § 1; 1981, ch. 215, § 1; 1983, ch. 205, § 1; 1983, ch. 214, § 1; 1999, ch. 170, § 1; 2003, ch. 220, § 2; 2012, ch. 5, § 1.

3-37A-3. Small cities assistance fund; distribution.

A. The "small cities assistance fund" is created within the state treasury.

B. On or before January 31, 2004 and on or before January 31 of each subsequent year, the bureau of business and economic research located at the university of New Mexico shall certify to the taxation and revenue department the population of each municipality in the state.

C. On or before the last day of February of 2004 and of each subsequent year, the taxation and revenue department shall compute the amount to be distributed to each qualifying municipality as follows:

(1) the department first shall compute a distribution share for each qualifying municipality. The distribution share shall be an amount equal to the product of the qualifying municipality's population multiplied by the difference between the statewide per capita average and the municipal per capita average less the local tax effort of the qualifying municipality;

(2) in 2004 and subsequent years, the balance in the small cities assistance fund in February immediately after the distribution to the fund pursuant to Section 7-1-6.2 NMSA 1978 for the preceding January will be divided by the number of qualifying municipalities. The quotient will be rounded down to the nearest dollar and may be cited as the "target amount";

(3) if the target amount determined in Paragraph (2) of this subsection is less than or equal to the minimum amount, the target amount is the amount to be distributed to each qualifying municipality; and

(4) if the target amount exceeds the minimum amount, the amount to be distributed to all qualifying municipalities whose distribution share equals or is less than the minimum amount shall equal the minimum amount. The sum to be distributed to such municipalities shall be subtracted from the amount in the fund. The target amount then shall be increased by dividing the balance remaining in the fund by the number of remaining qualifying municipalities. The amount to be distributed to each remaining qualifying municipality shall equal the lesser of the municipality's distribution share or the increased target amount. If the distribution share of one or more of these remaining qualifying municipalities is less than the increased target amount, the balance of the fund is to be further reduced by the amount necessary to provide for a distribution to those municipalities of their distribution shares. The target amount is to be increased again by dividing the recomputed fund balance by the number of qualifying municipalities not yet provided for. Successive iterations of the process to increase the target amount shall occur until no remaining municipality's distribution share is less than the increased target amount.

D. The state treasurer shall distribute from the small cities assistance fund on or before March 1, 2004 and March 1 of each subsequent year to each qualifying municipality the amount certified by the taxation and revenue department for each qualifying municipality for the year.

E. Funds distributed in accordance with this section shall be placed in the general fund of the qualifying municipalities receiving distributions.

History: Laws 1979, ch. 284, § 3; 1981, ch. 215, § 2; 1983, ch. 214, § 2; 1984, ch. 25, § 1; 1986, ch. 20, § 1; 1987, ch. 291, § 1; 1988, ch. 129, § 1; 1999, ch. 170, § 2; 2003, ch. 220, § 3; 2004, ch. 112, § 1; 2009, ch. 144, § 1.

ARTICLE 38
Licenses and Taxes

3-38-1. Licensing; business activities.

The governing body may declare, by ordinance, that the licensing or regulation of a business not otherwise exempt by law is conducive to the promotion of the health and general welfare of the municipality and may impose a license fee on and require a separate license for each place of business conducted by the same person, firm, corporation or association. The license fee shall bear a reasonable relation to the regulation of the business.

History: 1953 Comp., § 14-37-1, enacted by Laws 1965, ch. 300; 1981, ch. 37, § 2.

3-38-2. Denial or revocation of license; hearing.

A. For the purpose of regulation and when deemed in the public interest, the governing body may refuse to grant a license but no license shall be refused until the person seeking the license has been given the opportunity of a hearing by the governing body. After such a hearing, the majority of the governing body at the hearing may still refuse to grant a license.

B. Whenever a person is guilty of violating an ordinance relating to the granting of a license, or in the judgment of the governing body the public welfare requires a license be revoked, the governing body may revoke the license.

History: 1953 Comp., § 14-37-2, enacted by Laws 1965, ch. 300.

3-38-3. Authorization for business registration fee.

A. In addition to the licensing authority contained in Section 3-38-1 NMSA 1978, a municipality shall, by ordinance, charge a business registration fee on each place of business conducted within a municipality that is not licensed by the municipality under Section 3-38-1 NMSA 1978. The business registration fee shall not be more than thirty-five dollars ($35.00) a year and may be prorated for businesses conducted for a portion of the year.

B. Notwithstanding the provisions of this section and Section 3-38-1 NMSA 1978:

(1) no license fee or business registration fee shall be imposed on any sanctioned and registered athletic official who officiates for any association or organization which regulates any public school activity and whose rules and regulations are approved by the state board of education; and

(2) a municipality may exempt from the business regulation fee imposed by the municipality any part-time artist whose income from sales of his artwork in the prior taxable year did not exceed one thousand dollars ($1,000).

History: 1978 Comp., § 3-38-3, enacted by Laws 1981, ch. 37, § 3; 1987, ch. 84, § 1; 1988, ch. 36, § 1; 1993, ch. 196, § 1.

3-38-4. Business licensing; business registration; application to do business; issuance of license or registration; proration of license fee; renewal of registration; staggered periods for business registration.

A. Prior to engaging in any business, any person proposing to engage in a business shall pay to the municipality any applicable business registration fee or any applicable business license fee. A municipality may provide by ordinance for the prorating of the

business license fee and the issuing of a business license for the remainder of the calendar year in which the business is to be operated.

B. Each year, any person engaging in a business within a municipality shall apply for the renewal of any applicable business license as authorized in Section 3-38-1 NMSA 1978 or any applicable business registration as authorized in Section 3-38-3 NMSA 1978 with the municipal clerk. A municipality may provide by ordinance for a staggered system of business registration.

C. Any person filing an application for issuance or renewal of any business license as authorized in Section 3-38-1 NMSA 1978 or any business registration as authorized in Section 3-38-3 NMSA 1978 shall include on the application his current revenue division taxpayer identification number or evidence of application for a current revenue division taxpayer identification number. No municipality shall issue or renew a business license or a business registration authorizing the conduct of a business to any person who has not furnished to the municipality the information required in this section.

History: 1978 Comp., § 3-38-4, enacted by Laws 1981, ch. 37, § 4; 1993, ch. 196, § 2.

3-38-5. Collection; enforcement.

A. Sections 3-38-1 through 3-38-6 NMSA 1978 and any ordinance adopted pursuant to those sections may be enforced by the municipality having jurisdiction as municipal ordinances are enforced.

B. In addition, if any business is conducted in violation of Sections 3-38-1 through 3-38-6 NMSA 1978 or any ordinance adopted pursuant to those sections, the municipality may institute any appropriate action or proceedings to:

(1) prevent the conduct of the business;

(2) restrain, correct or abate the violation;

(3) prevent the occupancy of the building, structure or land on which the business is located; or

(4) charge a late fee of no more than ten dollars ($10.00) per year.

C. In addition to the remedies provided in Subsections A and B of this section, the business license fee and business registration fee may be collected and Sections 3-38-1 through 3-38-6 NMSA 1978 may be enforced by the municipality by suit in district court or under such other regulation as the municipality may provide by ordinance.

D. The municipality may initiate any appropriate action or proceeding as provided in Subsections A and B of this section any time up to four years after the violation.

History: 1978 Comp., § 3-38-5, enacted by Laws 1981, ch. 37, § 5; 1988, ch. 36, § 2.

3-38-6. Lien for license; priority; payment from proceeds of judicial sale; certificate of liens.

A. The business license fee constitutes a lien in favor of the municipality upon the personal property of the business. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978.

B. Under process or order of court, no person shall sell the property of any business without first ascertaining from the clerk or treasurer of the municipality in which the business is located the amount of any business license fee due the municipality. Any business license fee due the municipality shall be paid from the proceeds of the sale before payment is made to the judgment creditor or other person at whose instance such sale is had.

C. The municipal clerk or treasurer shall furnish to any person applying for a certificate, a certificate showing the amount of all liens on record in the records of the municipality against any business coming under the provisions of Chapter 3, Article 38 NMSA 1978.

History: 1953 Comp., § 14-37-11, enacted by Laws 1965, ch. 300; 1978 Comp., § 3-38-11, recompiled as 1978 Comp., § 3-38-6 by Laws 1981, ch. 37, § 6.

3-38-7 to 3-38-10. Repealed.

3-38-11. Recompiled.

3-38-12. Repealed.

3-38-13. Short title.

Sections 3-38-13 through 3-38-25 NMSA 1978 may be cited as the "Lodgers' Tax Act".

History: 1953 Comp., § 14-37-14, enacted by Laws 1969, ch. 199, § 1; 1996, ch. 58, § 1; 2020, ch. 19, § 1.

3-38-14. Definitions.

As used in the Lodgers' Tax Act [3-38-13 to 3-38-25 NMSA 1978]:

A. "gross taxable rent" means the total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes;

B. "lodging" means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who for rent uses, possesses or has the right to use or possess the rooms or other units of accommodations in or at a taxable premises;

C. "lodgings" means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodging;

D. "occupancy tax" means the tax on lodging authorized by the Lodgers' Tax Act;

E. "person" means a corporation, firm, other body corporate, partnership, association or individual. "Person" includes an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity. "Person" does not include the United States of America, the state of New Mexico, any corporation, department, instrumentality or agency of the federal government or the state government or any political subdivision of the state;

F. "rent" means the consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to an occupancy tax authorized in the Lodgers' Tax Act;

G. "taxable premises" means a hotel, motel or other premises used for lodging that is not the vendee's household or primary residence;

H. "temporary lodging" means lodgings for the purpose of housing a vendee within proximity of the vendee's employment or job location;

I. "tourist" means a person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax;

J. "tourist-related events" means events that are planned for, promoted to and attended by tourists;

K. "tourist-related facilities and attractions" means facilities and attractions that are intended to be used by or visited by tourists;

L. "tourist-related transportation systems" means transportation systems that provide transportation for tourists to and from tourist-related facilities and attractions and tourist-related events;

M. "vendee" means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging; and

N. "vendor" means a person or the person's agent furnishing lodgings in the exercise of the taxable service of lodging.

History: 1953 Comp., § 14-37-15, enacted by Laws 1969, ch. 199, § 2; 1996, ch. 58, § 2; 2000, ch. 37, § 1; 2020, ch. 19, § 2.

3-38-15. Authorization of tax; limitations on use of proceeds.

A. A municipality may impose by ordinance an occupancy tax for revenues on lodging within the municipality, and the board of county commissioners of a county may impose by ordinance an occupancy tax for revenues on lodging within that part of the county outside of the incorporated limits of a municipality.

B. The occupancy tax shall not exceed five percent of the gross taxable rent.

C. Every vendor who is furnishing any lodgings within a municipality or county is exercising a taxable privilege.

D. The following portions of the proceeds from the occupancy tax that are collected based on the first thirty days a vendee rents lodgings in taxable premises shall be used only for advertising, publicizing and promoting tourist-related facilities and attractions and tourist-related events:

(1) if the municipality or county imposes an occupancy tax of no more than two percent, not less than one-fourth of the proceeds shall be used for those purposes;

(2) if the occupancy tax imposed is more than two percent and the municipality is not located in a class A county or the county is not a class A county, not less than one-half of the proceeds from the first three percent of the occupancy tax and not less than one-fourth of the proceeds from the occupancy tax in excess of three percent shall be used for those purposes; and

(3) if the occupancy tax imposed is more than two percent and the municipality is located in a class A county or the county is a class A county, not less than one-half of the proceeds from the occupancy tax shall be used for those purposes.

E. The proceeds from the occupancy tax that are collected based on the first thirty days a vendee rents lodgings in taxable premises in excess of the amount required to be used for advertising, publicizing and promoting tourist-related facilities and attractions and tourist-related events may be used for any purpose authorized in Section 3-38-21 NMSA 1978.

F. The proceeds from the occupancy tax that are required to be used to advertise, publicize and promote tourist-related facilities and attractions and tourist-related events shall be used within two years of the close of the fiscal year in which they were collected and shall not be accumulated beyond that date or used for any other purpose.

G. Notwithstanding the provisions of Paragraph (2) of Subsection D of this section, any use by a municipality or county of occupancy tax proceeds on January 1, 1996 may

continue to be so used after July 1, 1996 in accordance with the provisions of this section and Section 3-38-21 NMSA 1978 as they were in effect prior to July 1, 1996; provided, any change in the use of those occupancy tax proceeds after July 1, 1996 is subject to the limitations of that paragraph.

H. Notwithstanding the provisions of Paragraph (2) of Subsection D of this section, the payment of principal and interest on outstanding bonds issued prior to January 1, 1996 pursuant to Section 3-38-23 or 3-38-24 NMSA 1978 shall be made in accordance with the retirement schedules of the bonds established at the time of issuance. The amount of expenditures required under Paragraph (2) of Subsection D of this section shall be reduced each year, if necessary, to make the required payments of principal and interest of all outstanding bonds issued prior to January 1, 1996.

History: 1953 Comp., § 14-37-16, enacted by Laws 1969, ch. 199, § 3; 1976 (S.S.), ch. 34, § 1; 1977, ch. 294, § 1; 1983, ch. 207, § 1; 1987, ch. 9, § 1; 1996, ch. 58, § 3; 2020, ch. 19, § 3.

3-38-16. Exemptions.

The occupancy tax shall not apply:

A. if a vendee:

(1) has been a permanent resident of the taxable premises for a period of at least thirty consecutive days, unless those premises are temporary lodging; or

(2) enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least thirty consecutive days, unless those premises are temporary lodging;

B. if the rent paid by a vendee is less than two dollars ($2.00) a day;

C. to lodging accommodations at institutions of the federal government, the state or any political subdivision thereof;

D. to lodging accommodations at religious, charitable, educational or philanthropic institutions, including accommodations at summer camps operated by such institutions;

E. to clinics, hospitals or other medical facilities; or

F. to privately owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill.

History: 1953 Comp., § 14-37-17, enacted by Laws 1969, ch. 199, § 4; 2000, ch. 37, § 2; 2019, ch. 25, § 1; 2020, ch. 19, § 4.

3-38-17. Collection of taxes.

A. Every vendor providing lodgings in a municipality or county imposing an occupancy tax shall collect the proceeds thereof on behalf of the municipality or county and shall act as a trustee therefor.

B. The tax shall be collected from vendees in accordance with the ordinance imposing the tax and shall be charged separately from the rent fixed by the vendor for the lodgings.

History: 1953 Comp., § 14-37-18, enacted by Laws 1969, ch. 199, § 5; 1976 (S.S.), ch. 34, § 2.

3-38-17.1. Audit of vendors.

The governing body of any municipality or county collecting over two hundred fifty thousand dollars ($250,000) in occupancy tax proceeds shall select for annual random audits one or more vendors to verify the amount of gross rent subject to the occupancy tax and to ensure that the full amount of occupancy tax on that rent is collected. The governing body of any municipality or county collecting less than two hundred fifty thousand dollars ($250,000) in receipts, per annum, of occupancy tax proceeds shall conduct random audits to verify full payment of occupancy tax receipts. Copies of audits completed shall be filed annually with the local government division of the department of finance and administration.

History: Laws 1992, ch. 12, § 2; 1996, ch. 58, § 4.

3-38-17.2. Financial reporting.

A. The governing body of any municipality or county imposing and collecting an occupancy tax shall furnish to the advisory board that portion of any proposed budget, report or audit filed or received by the governing body pursuant to either Chapter 6, Article 6 NMSA 1978 or the Audit Act [12-6-1 to 12-6-14 NMSA 1978] that relates to the expenditure of occupancy tax funds within ten days of the filing or receipt of such proposed budget, report or audit by the local governing body.

B. The governing body of any municipality or county imposing and collecting an occupancy tax shall report to the local government division of the department of finance and administration on a quarterly basis any expenditure of occupancy tax funds pursuant to Sections 3-38-15 and 3-38-21 NMSA 1978 and shall furnish a copy of this report to the advisory board when it is filed with the division.

History: Laws 1996, ch. 58, § 5.

3-38-17.3. Enforcement.

A. An action to enforce the Lodgers' Tax Act [3-38-13 to 3-38-25 NMSA 1978] may be brought by:

(1) the attorney general or the district attorney in the county of jurisdiction; or

(2) a vendor who is collecting the proceeds of an occupancy tax in the county of jurisdiction.

B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Lodgers' Tax Act.

C. The court shall award costs and reasonable attorneys' fees to the prevailing party in a court action to enforce the provisions of the Lodgers' Tax Act.

History: Laws 1996, ch. 58, § 6.

3-38-18. Collection of delinquencies.

A. The governing body of the municipality or county shall, by ordinance, provide that a vendor is liable for the payment of the proceeds of any occupancy tax that the vendor failed to remit to the municipality or county, due to his failure to collect the tax or otherwise, and shall provide for a civil penalty for any such failure in an amount equal to the greater of ten percent of the amount that was not duly remitted to the municipality or county or one hundred dollars ($100).

B. The municipality or county may bring an action in law or equity in the district court for the collection of any amounts due, including without limitation penalties thereon, interest on the unpaid principal at a rate of not exceeding one percent a month, the costs of collection and reasonable attorneys' fees incurred in connection therewith.

History: 1953 Comp., § 14-37-19, enacted by Laws 1969, ch. 199, § 6; 1976 (S.S.), ch. 34, § 3; 1992, ch. 12, § 3.

3-38-18.1. Lien for occupancy tax; payment; certificate of liens.

A. The occupancy tax imposed by a municipality or county constitutes a lien in favor of that municipality or county upon the personal and real property of the vendor providing lodgings in that municipality or county. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be determined from the date of filing.

B. Under process or order of court, no person shall sell the property of any vendor without first ascertaining from the clerk or treasurer of the municipality or county in which the vendor is located the amount of any occupancy tax due the municipality or county. Any occupancy tax due the municipality or county shall be paid from the

proceeds of the sale before payment is made to the judgment creditor or any other person with a claim on the sale proceeds.

C. The clerk or treasurer of the municipality or county shall furnish to any person applying for such a certificate a certificate showing the amount of all liens in the records of the municipality or county against any vendor pursuant to Chapter 3, Article 38 NMSA 1978.

History: Laws 1992, ch. 12, § 1.

3-38-19. Penalties.

The governing body of the municipality or county shall, by ordinance, provide for penalties by creating a misdemeanor and imposing a fine of not more than five hundred dollars ($500) or imprisonment for not more than ninety days or both for a violation by any person of the provisions of the occupancy tax ordinance for a failure to pay the tax, to remit the proceeds thereof to the municipality or county or to account properly for any lodging and the tax proceeds pertaining thereto.

History: 1953 Comp., § 14-37-20, enacted by Laws 1969, ch. 199, § 7; 1976 (S.S.), ch. 34, § 4; 1992, ch. 12, § 4.

3-38-20. Ordinance requirements.

The ordinance imposing an occupancy tax or any ordinance amendatory thereof or supplemental thereto, except as limited by or otherwise provided in the Lodgers' Tax Act [3-38-13 to 3-38-25 NMSA 1978], shall:

A. provide a procedure for licensing each vendor and for refusing a vendor a license after an opportunity has been given to the vendor of a public hearing thereon by the governing body of the municipality or county, as the case may be;

B. state the rate or other amount of the occupancy tax; the times, place and method for the payment of the occupancy tax proceeds to the municipality or county; the accounts and other records to be maintained in connection with the occupancy tax; a procedure for making refunds and resolving disputes relating to the occupancy tax, including exemptions pertaining thereto; the procedure for preservation and destruction of records and their inspection and investigation; vendor audit requirements; applicable civil and criminal penalties; and a procedure of liens, distraint and sales to satisfy such liens; and

C. provide other rights, privileges, powers, immunities and other details relating to any such vendor licenses, the collection of the occupancy tax and the remittance of the proceeds thereof to the municipality or county.

History: 1953 Comp., § 14-37-21, enacted by Laws 1969, ch. 199, § 8; 1976 (S.S.), ch. 34, § 5; 1992, ch. 12, § 5.

3-38-21. Eligible uses of tax proceeds.

A. Subject to the limitations contained in Section 3-38-15 NMSA 1978, a municipality or county imposing an occupancy tax may use the proceeds from the occupancy tax that are collected based on the first thirty days a vendee rents lodgings in taxable premises to defray costs of:

(1) collecting and otherwise administering the occupancy tax, including the performance of audits required by the Lodgers' Tax Act [3-38-13 to 3-38-25 NMSA 1978] pursuant to guidelines issued by the department of finance and administration;

(2) establishing, operating, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving, equipping, furnishing or acquiring real property or any interest in real property for the site or grounds for tourist-related facilities and attractions or tourist-related transportation systems of the municipality, the county in which the municipality is located or the county;

(3) the principal of and interest on any prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by Section 3-38-23 or 3-38-24 NMSA 1978;

(4) advertising, publicizing and promoting tourist-related attractions, facilities and events of the municipality or county and tourist-related facilities, attractions and events within the area;

(5) providing police and fire protection and sanitation service for tourist-related facilities, attractions and events located in the respective municipality or county;

(6) providing a required minimum revenue guarantee for air service to the municipality or county to increase the ability of tourists to easily access the municipality's or county's tourist-related facilities, attractions and events; or

(7) any combination of the foregoing purposes or transactions stated in this section, but for no other municipal or county purpose.

B. A municipality or county imposing an occupancy tax may use the proceeds from the occupancy tax that are collected based on the thirty-first and subsequent days a vendee rents lodgings in taxable premises for any municipality or county purpose; provided that the use is stated in the ordinance imposing the tax.

C. As used in this section, "minimum revenue guarantee" is the amount of money guaranteed by a municipality or county to be earned by an airline providing air services to and from that municipality or county, which is the difference between the minimum

flight charge revenue specified in the contract between the municipality or county and the airline and the amount of actual flight charge revenue received by the airline that is less than that contractual amount.

History: 1953 Comp., § 14-37-22, enacted by Laws 1969, ch. 199, § 9; 1976 (S.S.), ch. 34, § 6; 1983, ch. 217, § 1; 1987, ch. 9, § 2; 1989, ch. 203, § 1; 1995, ch. 97, § 1; 1996, ch. 58, § 7; 2016, ch. 30, § 1; 2020, ch. 19, § 5.

3-38-21.1. Contracting for services.

A. The governing body of a municipality or county may contract for the management of programs and activities funded with revenue from the tax authorized in Section 3-38-15 NMSA 1978. The governing body shall require periodic reports to the governing body, at least quarterly, listing the expenditures for those periods. Within ten days of receiving the reports, the governing body shall furnish copies of them to the advisory board. Funds provided to the contracting person or governmental agency shall be maintained in a separate account established for that purpose and shall not be commingled with any other money.

B. A person or governmental agency with whom a municipality contracts under this section to conduct an activity authorized by Section 3-38-21 NMSA 1978 shall maintain complete and accurate financial records of each expenditure of the tax revenue made and upon request of the governing body of the municipality or county shall make such records available for inspection.

C. The occupancy tax revenue spent for a purpose authorized by the Lodgers' Tax Act [3-38-13 to 3-38-25 NMSA 1978] may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses and other administrative costs only if those administrative costs are incurred directly for that purpose.

D. A person or governmental agency with whom a local governmental body contracts under this section may subcontract with the approval of the governing body of the municipality or county. A subcontractor shall be subject to the same terms and conditions as the contractor regarding separate financial accounts, periodic reports and inspection of records.

History: Laws 1996, ch. 58, § 8.

3-38-22. Advisory boards created; duties.

A. The mayor of every municipality that imposes an occupancy tax pursuant to the Lodgers' Tax Act [3-38-13 to 3-38-25 NMSA 1978] shall appoint a five-member advisory board that consists of two members who are owners or operators of lodgings subject to the occupancy tax within the municipality, two members who are owners or operators of industries located within the municipality that primarily provide services or products to

tourists and one member who is a resident of the municipality and represents the general public.

B. The chairman of every county commission that imposes an occupancy tax pursuant to the Lodgers' Tax Act shall appoint a five-member advisory board that consists of two members who are owners or operators of lodgings subject to the occupancy tax within the unincorporated area of the county, two members who are owners or operators of industries located within the unincorporated area of the county that primarily provide services or products to tourists and one member who is a resident of the unincorporated area of the county who represents the general public.

C. Members of the boards created under Subsections A and B of this section shall serve at the pleasure of the respective appointing authorities. The boards shall advise the respective governing bodies on the expenditure of funds authorized by Section 3-38-15 NMSA 1978 for advertising, publicizing and promoting tourist attractions and facilities in the respective counties and municipalities.

D. The advisory board shall submit to the mayor and council or county commission recommendations for the expenditures of funds authorized pursuant to the Lodgers' Tax Act for advertising, publicizing and promoting tourist-related attractions, facilities and events in the respective counties and municipalities.

History: 1953 Comp., § 14-37-22.1, enacted by Laws 1977, ch. 294, § 2; 1996, ch. 58, § 9.

3-38-23. Revenue bonds.

A. Revenue bonds may be issued at any time or from time to time by a municipality or county to defray wholly or in part the costs of any one, all or any combination of purposes authorized in Paragraphs (2) through (5) of Subsection A of Section 3-38-21 NMSA 1978.

B. The revenue bonds may be payable from and such payment may be secured by a pledge of and lien on the revenues derived from:

(1) the proceeds of the occupancy tax of the municipality or county after the deduction of those amounts required to be expended pursuant to Subsection D of Section 3-38-15 NMSA 1978 and the administration costs pertaining to the occupancy tax in an amount not to exceed ten percent of the occupancy tax receipts collected by the municipality or county in any fiscal year, excluding from the computation of such costs the administration costs ultimately recovered from delinquent vendors by civil action as penalties, costs of collection and attorney fees but not as interest on unpaid principal;

(2) the tourist-related facilities and attractions or tourist-related transportation systems to which the bonds pertain, after provision is made for the payment of the

operation and maintenance expenses of the tourist-related facilities and attractions or tourist-related transportation systems; or

(3) a combination of such net revenues from both sources designated in Paragraphs (1) and (2) of this subsection.

C. The bonds shall bear interest at a rate as authorized in the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], and the first interest payment may be for any period authorized in the Public Securities Act.

D. Except as otherwise provided in the Lodgers' Tax Act [3-38-13 to 3-38-25 NMSA 1978], revenue bonds authorized in the Lodgers' Tax Act shall be issued in accordance with the provisions of Sections 3-31-2 through 3-31-6 NMSA 1978.

History: 1953 Comp., § 14-37-23, enacted by Laws 1969, ch. 199, § 10; 1976 (S.S.), ch. 34, § 7; 1987, ch. 9, § 3; 1996, ch. 58, § 10; 2016, ch. 30, § 2.

3-38-24. Refunding bonds.

A. Any municipality or county having issued revenue bonds as authorized in the Lodgers' Tax Act [3-38-13 to 3-38-25 NMSA 1978] may issue refunding revenue bonds payable from pledged revenues therein authorized for the payment of revenue bonds at the time of the refunding or at the time of the issuance of the bonds being refunded as the governing body of the municipality or county may determine, notwithstanding the revenue sources or the pledge of such revenues or both are thereby modified.

B. Refunding bonds may be issued for the purpose of refinancing, paying and discharging all or any part of such outstanding bonds of any one or more or all outstanding issues:

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

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

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

(4) for any combination of the foregoing purposes.

C. The interest on any bond refunded shall not be increased to any rate in excess of the rate authorized in the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978] and shall be paid as authorized in that act.

D. Bonds for refunding any bonds for any other purpose permitted by the Lodgers' Tax Act may be issued separately or issued in combination in one series or more.

E. Except as otherwise provided in the Lodgers' Tax Act, refunding bonds authorized in the Lodgers' Tax Act shall be issued in accordance with the provisions of Sections 3-31-10 and 3-31-11 NMSA 1978.

History: 1953 Comp., § 14-37-24, enacted by Laws 1969, ch. 199, § 11; 1976 (S.S.), ch. 34, § 8; 1987, ch. 9, § 4.

3-38-25. Maintaining revenue dedication.

If a municipality or county has dedicated any amount of revenue attributable to a tax imposed pursuant to the Lodgers' Tax Act [3-38-13 to 3-38-25 NMSA 1978], the municipality or county shall continue to dedicate the same amount of revenue attributable to the tax until the ordinance dedicating the revenue expires, the term of the dedication expires, the governing body acts to change the dedication or, in the case of bonded indebtedness, the debt is fully discharged or otherwise provided for in full.

History: 1978 Comp., § 3-38-25, enacted by Laws 2020, ch. 19, § 6.

ARTICLE 38A
Hospitality Fee

3-38A-1. Short title. (Repealed effective July 1, 2028.)

This act [3-38A-1 to 3-38A-12 NMSA 1978] may be cited as the "Hospitality Fee Act".

History: Laws 2003, ch. 417, § 1.

3-38A-2. Definitions. (Repealed effective July 1, 2028.)

As used in the Hospitality Fee Act:

A. "gross rent" means the total amount of rent paid for tourist accommodations, not including the state and local option gross receipts taxes paid on the rent receipts;

B. "municipality" means a municipality located in a class A county with a population greater than two hundred fifty thousand according to the most recent federal decennial census;

C. "person" means a corporation, firm, other body corporate, partnership, association or individual, including an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity.

"Person" does not include the United States of America; the state of New Mexico; any corporation, department, instrumentality or agency of the federal government or the state government; or any political subdivision of the state;

D. "proprietor" means a person who furnishes tourist accommodations to a renter;

E. "rent" means the consideration received by a proprietor in money, credits, property or other consideration valued in money from renters for tourist accommodations, other than:

(1) consideration received from a renter who has been a permanent resident of the tourist accommodation for a period of at least thirty consecutive days or a renter who enters into or has entered into a written agreement for rental of the tourist accommodation for a period of at least thirty consecutive days; or

(2) consideration received from a renter for a room or other unit of accommodation for which the renter has paid less than two dollars ($2.00) per day;

F. "renter" means a person to whom tourist accommodations are furnished;

G. "room" means a room or other unit of accommodation furnished by a proprietor to a renter in a tourist accommodation; and

H. "tourist accommodation" means a hotel, apartment, apartment hotel, apartment house, lodge, lodginghouse, rooming house, motor hotel, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises used for accommodation. "Tourist accommodation" does not include:

(1) accommodations at religious, charitable, educational or philanthropic institutions, including summer camps operated by such institutions;

(2) clinics, hospitals or other medical facilities;

(3) privately owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill; or

(4) accommodations that do not have at least three rooms or other units of accommodation.

History: Laws 2003, ch. 417, § 2.

3-38A-3. Hospitality fee authorized; rate; purpose. (Repealed effective July 1, 2028.)

A. A municipality may impose by ordinance a hospitality fee on the gross rent received by proprietors of tourist accommodations within the municipality in an amount not to exceed one percent of the gross rent. The fee imposed by this subsection may be referred to as the "hospitality fee".

B. Proceeds from the hospitality fee shall be used as follows:

(1) fifty percent of the proceeds shall be used to equip and furnish a municipal convention center; and

(2) fifty percent of the proceeds shall be used by the municipality to contract to purchase advertising that publicizes and promotes tourist-related attractions, facilities and events in the municipality and the county and tourist facilities or attractions within the area.

History: Laws 2003, ch. 417, § 3; 2007, ch. 233, § 2; 2008, ch. 5, § 1.

3-38A-4. Collection of hospitality fee; audit. (Repealed effective July 1, 2028.)

A. Every proprietor of a tourist accommodation in a municipality imposing a hospitality fee shall collect the hospitality fee on behalf of the municipality and shall act as a trustee of the fee revenues. The fee shall be collected from proprietors in accordance with the ordinance imposing the fee and shall be charged separately from the rent fixed by the proprietor for the tourist accommodations.

B. The governing body of a municipality imposing a hospitality fee shall select for annual random audits one or more proprietors or tourist accommodations subject to the fee to verify the amount of gross rent subject to the fee and to ensure that the full amount of the fee on that rent is collected. Copies of audits completed shall be filed annually with the local government division of the department of finance and administration.

History: Laws 2003, ch. 417, § 4.

3-38A-5. Financial reporting. (Repealed effective July 1, 2028.)

The governing body of a municipality imposing a hospitality fee shall:

A. furnish to any municipal advisory board dealing with occupancy, lodging or accommodation taxes or fees information on that portion of a proposed budget report or audit filed or received by the governing body pursuant to either Chapter 6, Article 6 NMSA 1978 or the Audit Act [12-6-1 to 12-6-14 NMSA 1978] that relates to the expenditure of hospitality fee proceeds within ten days of the filing or receipt of that proposed budget, report or audit; and

B. report quarterly to the local government division of the department of finance and administration on the expenditure of hospitality fee proceeds pursuant to Sections 3-38-15 and 3-38-21 NMSA 1978.

History: Laws 2003, ch. 417, § 5.

3-38A-6. Ordinance requirements. (Repealed effective July 1, 2028.)

The ordinance imposing a hospitality fee and, as applicable, any ordinance amending the fee, shall:

A. set out the procedures for licensing a proprietor and for suspending or revoking a license or refusing to license a proprietor after the governing body of the municipality has given the proprietor an opportunity for a public hearing on the suspension, revocation or refusal;

B. state the rate of the hospitality fee; the time, place and method for the payment of the fee to the municipality; the accounts and other records to be maintained in connection with the fee; a procedure for making refunds and resolving disputes relating to the fee; the procedure for preservation and destruction of records pertaining to the fee and their inspection and investigation; audit requirements; applicable civil and criminal penalties; and a procedure for liens, distraint and sales to satisfy such liens; and

C. clearly state any other rights, privileges, powers, immunities and other details relating to proprietor licensure, the collection of the hospitality fee and the remittance of the fee proceeds to the municipality.

History: Laws 2003, ch. 417, § 6.

3-38A-7. Collection of delinquencies; civil penalty. (Repealed effective July 1, 2028.)

A. A proprietor is liable for the payment of any amount of the hospitality fee proceeds the proprietor has failed to remit to the municipality.

B. A municipality shall provide by ordinance for a civil penalty for failure to remit the hospitality fee due in an amount equal to the greater of ten percent of the amount of the hospitality fee that was not remitted to the municipality or one hundred dollars ($100).

C. The municipality may bring an action in law or equity in the district court for the collection of any amount of hospitality fee due, including without limitation penalties on that amount, interest on the unpaid principal amount at a rate of not exceeding one percent a month, the costs of collection and reasonable attorney fees incurred in connection with such an action.

History: Laws 2003, ch. 417, § 7.

3-38A-8. Lien for hospitality fee; payment; certificate of liens. (Repealed effective July 1, 2028.)

A. The hospitality fee imposed by a municipality constitutes a lien in favor of that municipality upon the personal and real property of the proprietor providing tourist accommodations in that municipality. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be determined from the date of filing.

B. Under process or order of court, no person shall sell the property of any proprietor of a tourist accommodation without first ascertaining from the clerk or treasurer of the municipality in which the tourist accommodation is located the amount of any hospitality fee due the municipality. The hospitality fee due the municipality shall be paid from the proceeds of the sale before payment is made to the judgment creditor or to any other person with a claim on the sale proceeds.

C. The clerk or treasurer of the municipality shall furnish upon request to any person a certificate showing the amount of all liens in the records of the municipality against a proprietor of a tourist accommodation pursuant to the Hospitality Fee Act.

History: Laws 2003, ch. 417, § 8.

3-38A-9. Enforcement. (Repealed effective July 1, 2028.)

A. An action to enforce the Hospitality Fee Act may be brought by:

(1) the attorney general or the district attorney in the county of jurisdiction; or

(2) a proprietor of a tourist accommodation who is collecting the proceeds of a hospitality fee in the county of jurisdiction.

B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Hospitality Fee Act.

C. The court shall award costs and reasonable attorney fees to the prevailing party in a court action to enforce the provisions of the Hospitality Fee Act.

History: Laws 2003, ch. 417, § 9.

3-38A-10. Penalties; criminal. (Repealed effective July 1, 2028.)

A. It is a violation of the municipal ordinance imposing a hospitality fee and providing for collection and administration of the fee pursuant to the Hospitality Fee Act

for any proprietor subject to the fee to fail to pay the hospitality fee, to fail to remit the proceeds of the fee to the municipality or to fail to account properly for a tourist accommodation and the proceeds of the fee pertaining to the accommodation.

B. The governing body of the municipality shall provide by ordinance that a violation of an ordinance imposing and providing for collection and enforcement of the hospitality fee pursuant to the Hospitality Fee Act is a misdemeanor subject to a fine of not more than five hundred dollars ($500) or imprisonment for not more than ninety days, or both.

History: Laws 2003, ch. 417, § 10.

3-38A-11. Revenue bonds. (Repealed effective July 1, 2028.)

A. Revenue bonds may be issued at any time by a municipality to defray wholly or in part the costs of equipping or furnishing a municipal convention center.

B. The revenue bonds may be payable from and payment may be secured by a pledge of and lien on the revenues derived from:

(1) the proceeds of the hospitality fee of the municipality after the deduction of the administrative costs pertaining to the fee in an amount not to exceed ten percent of the gross rent fees collected by the municipality in a fiscal year and excluding from the computation of such costs the administrative costs ultimately recovered from delinquent proprietors by civil action as penalties, costs of collection and attorney fees, but not as interest on unpaid principal;

(2) any convention center facility, after provision is made for the payment of the operation and maintenance expenses of the convention center; and

(3) a combination of such net revenues from both sources in Paragraphs (1) and (2) of this subsection.

C. The bonds shall bear interest at a rate or rates as authorized in the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], and the first interest payment may be for any period authorized in that act.

D. Except as otherwise provided in the Hospitality Fee Act, revenue bonds authorized in the Hospitality Fee Act shall be issued in accordance with the provisions of Sections 3-31-2 through 3-31-6 NMSA 1978.

History: Laws 2003, ch. 417, § 11.

3-38A-12. Refunding bonds. (Repealed effective July 1, 2028.)

A. A municipality having issued revenue bonds pursuant to the Hospitality Fee Act may issue refunding bonds payable from pledged revenues therein authorized for the

payment of revenue bonds at the time of the refunding or at the time of the issuance of the bonds being refunded as the governing body of the municipality may determine, notwithstanding that the revenue sources or the pledge of such revenues, or both, are thereby modified.

B. Refunding bonds may be issued for the purpose of refinancing, paying and discharging all or any part of such outstanding bonds of any one or more or all outstanding issues:

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

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

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

(4) for any combination of the foregoing purposes.

C. The interest on any bond refunded shall not be increased to a rate in excess of the rate authorized in the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978] and shall be paid as authorized in that act.

D. Except as otherwise provided in the Hospitality Fee Act, refunding bonds authorized in the Hospitality Fee Act shall be issued in accordance with the provisions of Sections 3-31-10 and 3-31-11 NMSA 1978.

History: Laws 2003, ch. 417, § 12.

ARTICLE 39
Municipal Airports

3-39-1. Municipal Airport Law.

Sections 3-39-1 through 3-39-15 NMSA 1978 may be cited as the "Municipal Airport Law."

History: 1953 Comp., § 14-40-1, enacted by Laws 1965, ch. 300.

3-39-2. Purpose of law.

The purpose of the Municipal Airport Law is to enable municipalities to acquire and operate municipal airport facilities for the convenience of the public, to promote aviation facilities of all types and to promote the economy of the area by making air transportation available.

History: 1953 Comp., § 14-40-2, enacted by Laws 1965, ch. 300; 1989, ch. 174, § 1.

3-39-3. Definitions.

As used in the Municipal Airport Law:

A. "bond" means any bond, note, temporary bond, interim certificate, negotiable instrument or any other evidence of indebtedness issued under the Municipal Airport Law;

B. "obligee" means any bondholder, trustee for any bondholders or lessor or his assignee of property leased to the municipality for use in connection with an airport facility and the state or federal government when a party to a contract with the municipality by which aid is given to the municipality;

C. "federal government" means the United States or any of its agencies; and

D. "airport facility" includes a runway, taxiway, terminal, real estate, parking facility, hanger [hangar] facility, maintenance facility for repair, construction and modification and any other facility related to aircraft or airports.

History: 1953 Comp., § 14-40-3, enacted by Laws 1965, ch. 300; 1989, ch. 174, § 2.

3-39-4. Municipal airports.

The governing body of any municipality may:

A. acquire by purchase, lease, gift or otherwise, and may establish, construct, improve, maintain and operate an airport or any airport facility either inside or outside the limits of the municipality;

B. insure or provide for insurance of any airport facility of the municipality;

C. provide or arrange for services in connection with any airport facility;

D. acquire by eminent domain either inside or outside the limits of the municipality any property necessary or desirable under the Municipal Airport Law in accordance with the procedure set forth by law;

E. sell, lease or otherwise dispose of or allow the use of any real or personal property or any interest acquired or used for the purposes included in the Municipal Airport Law;

F. enact any ordinance, rule or regulation not inconsistent with state or federal law or regulation which provides for the safety, health, prosperity, morals, order, comfort, convenience or welfare of the inhabitants of the municipality and of the general public or for the orderly and efficient management or operation of the airport or any airport facility, and to provide penalties for the violation thereof, all with respect to its airport or any of its airport facilities either inside or outside the limits of the municipality; and

G. perform any other act necessary to carry out the provisions of the Municipal Airport Law.

History: 1953 Comp., § 14-40-4, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 9.

3-39-5. Planning and zoning laws.

All municipal airport facilities are subject to planning and zoning laws, ordinances and regulations applicable to the area in which the airport facility is located.

History: 1953 Comp., § 14-40-5, enacted by Laws 1965, ch. 300.

3-39-6. Irrepealable bond ordinance.

A. Any municipality may issue bonds for:

(1) the purpose of preparing, acquiring, constructing or improving airport facilities;

(2) the purpose of refinancing, refunding and paying any bonds or obligations payable from any revenues of any municipal airport facility as provided in Section 3-39-7 NMSA 1978; or

(3) any combination of the aforesaid purposes set forth in Paragraphs (1) and (2).

B. The bonds are payable solely from a pledge of:

(1) net income derived by the municipality from the airport facility financed with the proceeds;

(2) net income of all or designated municipal airport facilities whether or not financed in whole or in part with the proceeds;

(3) contributions, grants or other financial assistance from the state or federal governments or any other sources;

(4) the additional special funds authorized by Section 3-39-12 NMSA 1978; or

(5) any combination of these sources.

C. The bonds shall be authorized by ordinance which is irrepealable as long as any obligation on the bonds is unpaid by the municipality.

History: 1953 Comp., § 14-40-6, enacted by Laws 1965, ch. 300; 1971, ch. 206, § 1.

3-39-7. Refunding bonds.

A. Any bonds issued by any municipality and payable from any revenues of any airport facility may be refunded in the name of the municipality issuing the bonds being refunded, by the issuance of bonds to refund, pay and discharge all or any part of the outstanding bonds, including any interest on the bonds in arrears or about to become due within three years from the date of the refunding bonds and for the purpose of avoiding or terminating any default in the payment of interest on and principal of the bonds, of reducing interest costs or effecting other economies, or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any facilities or income appertaining thereto, or for any combination of the foregoing purposes. Refunding bonds shall be authorized by ordinance, shall be payable from a pledge of the net income derived from any or all designated airport facilities, whether or not financed from any bond proceeds, and additionally may be payable from a pledge of any or all of the additional sources permitted by Sections 3-39-6 and 3-39-12 NMSA 1978 and may be issued under the same terms and conditions allowable by the Municipal Airport Law for airport facilities bonds. Any bonds which are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of said refunded bonds or otherwise appertaining thereto, except for any such bond which is voluntarily surrendered for exchange or payment by the holder. Refunding bonds may be delivered in exchange for the outstanding bonds refunded or may be sold at either public or private sale.

B. No bonds may be refunded under the Municipal Airport Law unless the bonds either mature or are callable for prior redemption under their terms within fifteen years from the date of issuance of the refunding bonds, or unless the holders thereof voluntarily surrender them for exchange or payment. Provision shall be made for paying the bonds refunded within said period of time. Interest on any bond may be increased. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds, but only to the extent that any costs incidental to the refunding bonds or any interest on the bonds refunded in arrears or about to become due within three years from the date of the refunding bonds, or both said incidental costs and interest,

are capitalized with the proceeds of refunding bonds. The principal amount of the refunding bonds may also exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded. The principal amount of the refunding bonds may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

C. The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company, either a state or national banking institution, which possesses and is exercising trust powers, which is located within New Mexico and which is a member of the Federal Deposit Insurance Corporation, to be applied to the payment of the bonds being refunded upon their presentation therefor. To the extent any incidental expenses have been capitalized, such refunding bond proceeds may be used to defray such expenses, and any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest thereon and the principal thereof, or both interest and principal, or may be deposited in a reserve therefor, as the municipality may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for said refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other moneys available for its purpose. Any proceeds in escrow, pending such use, may be invested or reinvested in bills, certificates of indebtedness, notes or bonds which are directed obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States of America. Such proceeds and investments in escrow, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom, to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the municipality shall exercise a prior redemption option. Any purchaser of any refunding bond issued under the Municipal Airport Law, is in no manner responsible for the application of the proceeds thereof by the municipality or any of its officers, agents or employees.

D. Refunding bonds may bear such additional terms and provisions as may be determined by the municipality subject to the limitations in the Municipal Airport Law for original bond issues and are not subject to the provisions of any other statute except as may be incorporated by reference in the Municipal Airport Law.

E. Municipalities may pledge irrevocably for the payment of interest and principal of refunding bonds, any of such net income of airport facilities, and any such additional special funds and additional security which may be pledged to an original issue of

bonds authorized pursuant to the Municipal Airport Law, even if any of such additional special fund and additional security was not pledged to the bonds being refunded.

History: 1953 Comp., § 14-40-6.1, enacted by Laws 1971, ch. 206, § 2; 1973, ch. 196, § 1.

3-39-8. Impairment of payment.

Any law which authorizes the pledge of any or all of the net income and revenues to the payment of any bonds issued pursuant to the Municipal Airport Law or which affects any of the net income or revenues pledged to such bonds, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding bonds unless such outstanding bonds have been discharged in full or provision has been fully made therefor.

History: 1953 Comp., § 14-40-6.2, enacted by Laws 1971, ch. 206, § 3.

3-39-9. Terms of bonds.

A. The ordinance authorizing issuance of bonds pursuant to the Municipal Airport Law shall specify:

(1) issuance in any number of series;

(2) any maturity date or dates, but the final maturity date shall not exceed fifty years from the date of the bonds;

(3) the interest rate or rates the bonds shall bear;

(4) denominations;

(5) form, either coupon or registered;

(6) conversion or registration privileges;

(7) rank or priority;

(8) manner of execution; and

(9) the terms, manner and medium of payment and redemption.

B. No member of the governing body or any person executing bonds is personally liable on any bond. All bonds are payable solely from the special funds allowed by the Municipal Airport Law as specified in the authorizing ordinance. No bond is a debt or general obligation of the issuing municipality.

C. The terms prescribed by the authorizing ordinance and by this section shall be carried on the face of each bond.

History: 1953 Comp., § 14-40-7, enacted by Laws 1965, ch. 300; 1971, ch. 206, § 4; 1983, ch. 265, § 13.

3-39-10. Sale, exchange and details of bonds.

A. Bonds may be sold at public or private sale at, above or below par and at a price which results in a net effective interest rate which does not exceed the maximum permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978] or, in the case of municipalities having a population of one hundred thousand or more persons, may be exchanged for property to be used in connection with an airport facility.

B. If any municipal officer whose signature appears on any bond ceases to be an officer before delivery of the bonds, the signature is valid for all purposes as if the officer had remained in office until delivery.

C. All bonds are fully negotiable as provided by Article 8 [55-8-101 to 55-8-511 NMSA 1978] of the Uniform Commercial Code unless the instrument authorizing the bonds expressly provides to the contrary.

History: 1953 Comp., § 14-40-8, enacted by Laws 1965, ch. 300; 1971, ch. 206, § 5; 1973, ch. 196, § 2.

3-39-11. Construction.

The Municipal Airport Law is full authority for authorization and issuance of bonds and no election is necessary. In any proceeding involving the validity and enforceability of any bond or its security, any bond reciting in substance that it was issued by the municipality to aid in financing an airport facility is conclusively presumed to have been issued for an airport facility planned, located and constructed in accordance with the Municipal Airport Law.

History: 1953 Comp., § 14-40-9, enacted by Laws 1965, ch. 300.

3-39-12. Additional security.

To further the marketability of bonds issued pursuant to the Municipal Airport Law, the ordinance authorizing their issue may:

A. secure their payment by deed of trust or mortgage conveying municipally owned land and improvements acquired for the airport facility from the proceeds of the bonds to a trustee for the benefit and security of the bondholders;

B. secure their payment by a pledge of all or any part of the amounts distributed to municipalities pursuant to Section 7-1-6.9 NMSA 1978 as from time to time amended and supplemented; provided any ordinance securing the payment of bonds by a pledge of revenues derived from such distributions may also provide for the creation and terms of a sinking fund into which the municipality shall annually transfer any or all of the revenues obtained from such distributions; and

C. authorize any other security agreement not in conflict with law.

History: 1953 Comp., § 14-40-10, enacted by Laws 1965, ch. 300; 1965, ch. 307, § 1; 1967, ch. 170, § 3; 1977, ch. 342, § 4; 1983, ch. 211, § 2.

3-39-13. Foreclosure.

If the interest or any serial maturity of any bond is in default, any obligee may foreclose against the municipality under the same procedure provided for foreclosure of real estate mortgages. The district court may appoint a receiver to operate the airport facility in default.

History: 1953 Comp., § 14-40-11, enacted by Laws 1965, ch. 300.

3-39-14. Legal investments.

Bonds are legal investments for savings banks and insurance companies under the laws of this state. They are bonds, notes or other obligations of a municipal subdivision of this state, issued pursuant to a law of this state, for the purposes of investment or purchase by the state investment officer.

History: 1953 Comp., § 14-40-12, enacted by Laws 1965, ch. 300.

3-39-15. Tax exemptions.

Bonds and their income and all mortgages or other instruments executed as security for them are exempt from all taxation by this state or any of its political subdivisions.

History: 1953 Comp., § 14-40-13, enacted by Laws 1965, ch. 300.

3-39-16. [Municipal Airport Zoning Law.]

Sections 3-39-16 through 3-39-26 NMSA 1978, may be cited as the "Municipal Airport Zoning Law."

History: 1953 Comp., § 14-40-14, enacted by Laws 1965, ch. 300.

3-39-17. Definitions.

As used in the Municipal Airport Zoning Law [3-39-16 to 3-39-26 NMSA 1978], unless the context otherwise requires:

A. "airport" means any area of land or water designated for the landing and taking-off of aircraft and utilized or to be utilized by the public as a point of arrival or departure by air;

B. "airport hazard" means any overhead power line which interferes with radio communication between a publicly owned airport and aircraft approaching or leaving same; or any structure or tree which obstructs the aerial approaches of such an airport or is otherwise hazardous to its use for landing or taking off;

C. an airport is "publicly owned" if the portion thereof used for landing and taking-off of aircraft is owned by a governmental body, political subdivision, public agency or other public corporation;

D. "legislative body" means the legislative or governing body of any county or municipal or political subdivision of the state of New Mexico, having or acquiring a publicly owned airport within its corporate or political limits;

E. "person" means any individual, firm, copartnership, corporation, company, association, joint stock association or body politic, and includes any trustee, receiver, assignee or other similar representative thereof;

F. "structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks and overhead transmission lines; and

G. "tree" means any object of natural growth.

History: 1953 Comp., § 14-40-15, enacted by Laws 1965, ch. 300.

3-39-18. Airport hazards not in public interest.

It is hereby found and declared that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein, and is therefore not in the interest of the public health, public safety or general welfare.

History: 1953 Comp., § 14-40-16, enacted by Laws 1965, ch. 300.

3-39-19. Preparation of airport approach plans.

The legislative body is hereby empowered to formulate and adopt, and from time to time as may be necessary, revise an airport approach plan for any publicly owned

airport within its corporate or political limits. Each such plan shall indicate the hazards, the area within which measures for the protection of the airport's aerial approaches should be taken, and what the height limits and other objectives of such measure should be. In adopting or revising any such plan, the legislative body shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, and the possibility of lowering or removing existing obstructions, and the legislative body may obtain and consider the views of the agency of the federal government charged with the fostering of civil aeronautics as to the aerial approaches necessary to safe flying operations at the airport.

History: 1953 Comp., § 14-40-17, enacted by Laws 1965, ch. 300.

3-39-20. Adoption of airport zoning regulations.

A. Every municipality and county or other political subdivision having within its territorial limits an area within which, according to an airport approach plan adopted by the legislative body, measures should be taken for the protection of airport approaches, shall adopt, administer and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations applicable to such area, which regulations shall divide the area into zones and within such zones, specify the land uses permitted, regulate and restrict the height to which structures and trees may be erected or allowed to grow, and impose such other restrictions and requirements as may be necessary to effectuate the legislative body's approach plan for the airport.

B. In the event that a political subdivision has adopted, or hereafter adopts, a general zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations adopted for the same area or portion thereof under the Municipal Airport Zoning Law [3-39-16 to 3-39-26 NMSA 1978] may be incorporated and made a part of such general zoning regulations, and be administered and enforced in connection therewith, but such general zoning regulations shall not limit the effectiveness or scope of the regulations adopted under this act.

C. Any zoning or other regulations applicable to any area within which, according to an airport approach plan adopted by the legislative body, measures should be taken for the protection of airport approaches, including not only any airport zoning regulations adopted under Sections 3-39-16 through 3-39-26 NMSA 1978, but any zoning or other regulations dealing with the same or similar matters, that have been or may be adopted under authority other than that conferred by Sections 3-39-16 through 3-39-26 NMSA 1978, shall be consistent with, and conform to, the legislative body's approach plan for such area, and shall be amended from time to time as may be necessary to conform to any revision of the plan that may be made by the legislative body.

D. All airport zoning regulations adopted under Sections 3-39-16 through 3-39-26 NMSA 1978, shall be reasonable and none shall require the removal, lowering or other

change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in Section 3-39-21 NMSA 1978.

History: 1953 Comp., § 14-40-18, enacted by Laws 1965, ch. 300.

3-39-21. Permits and variances.

A. When advisable to facilitate the enforcement of the Municipal Airport Zoning Law [3-39-16 to 3-39-26 NMSA 1978], a system may be established for granting permits to establish or construct new structures and other uses. In any event, before any nonconforming structure may be replaced with a taller one or any nonconforming tree allowed to grow higher or be replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement or change. No such permit shall be granted that would allow the structure to become a greater hazard to air navigation than it was when the applicable regulation was adopted; and whenever the administrative agency determines that nonconforming structure or tree has been abandoned or more than eighty percent torn down, destroyed, deteriorated or decayed, no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations. Except as indicated, all applications for permits for replacement, change or repair of nonconforming uses shall be granted.

B. Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property, in violation of airport zoning regulations adopted under the Municipal Airport Zoning Law, may apply to the board of appeals, as provided in Section 3-39-22 NMSA 1978, for a variance from the zoning regulations in question. Such variance shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations.

C. In granting any permit or variance under this section, the administrative agency or board of appeals may, if it deems such action advisable to effectuate the purposes of the Municipal Airport Zoning Law, and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate and maintain suitable obstruction markers and obstruction lights thereon.

History: 1953 Comp., § 14-40-19, enacted by Laws 1965, ch. 300.

3-39-22. Zoning regulations; procedure.

A. No airport zoning regulations shall be adopted, amended or changed under the Municipal Airport Zoning Law [3-39-16 to 3-39-26 NMSA 1978] except by action of the legislative body of the political subdivision in question, after a public hearing in relation

thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision.

B. The legislative body of any political subdivision adopting airport zoning regulations under the Municipal Airport Zoning Law may delegate the duty of administering and enforcing such regulations to any administrative agency under its jurisdiction, but such administrative agency shall not be or include any member of the board of appeals. The duties of such administrative agency shall include that of hearing and deciding all permits under Section 3-39-21 NMSA 1978, but such agency shall not have or exercise any of the powers delegated to the board of appeals.

C. Airport zoning regulations adopted under the Municipal Airport Zoning Law shall provide for appointment of a board of appeals to have and exercise the following powers:

(1) to hear and decide appeals from any order, requirement, decision or determination made by the administrative agency in the enforcement of Sections 3-39-16 through 3-39-26 NMSA 1978, or of any ordinance adopted pursuant thereto;

(2) to hear and decide special exceptions to the terms of the ordinance upon which such board may be required to pass under such ordinance; and

(3) to hear and decide specific variances under Section 3-39-21 NMSA 1978.

D. Where a zoning board of appeals or adjustment already exists, it may be appointed as the board of appeals. Otherwise, the board of appeals shall consist of five members, each to be appointed for a term of three years and to be removable for cause by the appointing authority upon written charges and after public hearing.

E. The board shall adopt rules in accordance with the provisions of any ordinance adopted under Sections 3-39-16 through 3-39-26 NMSA 1978. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the board and shall be a public record.

F. Appeals to the board may be taken by any person aggrieved, or by any other officer, department, board or bureau of the political subdivision affected, by any decision of the administrative agency. An appeal must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency

from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

G. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application on notice to the agency from which the appeal is taken and on due cause shown.

H. The board shall fix a reasonable time for the hearing of the appeal, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

I. The board may, in conformity with the provisions of the Municipal Airport Zoning Law, reverse or affirm, wholly or partly, or modify, the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

J. The concurring vote of a majority of the members of the board shall be sufficient to reverse any order, requirement, decision or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

History: 1953 Comp., § 14-40-20, enacted by Laws 1965, ch. 300.

3-39-23. Judicial review.

A. Any person aggrieved by a decision of the board of appeals, any taxpayer or any officer, department, board or bureau of the political subdivision may file an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. Costs shall not be allowed against the board of appeals unless it appears to the court that it acted with gross negligence, in bad faith or with malice in making the decision appealed from.

History: 1953 Comp., § 14-40-21, enacted by Laws 1965, ch. 300; 1998, ch. 55, § 13; 1999, ch. 265, § 13.

3-39-24. Enforcement and remedies.

Each violation of the Municipal Airport Zoning Law [3-39-16 to 3-39-26 NMSA 1978] or of any regulations, order or ruling promulgated or made pursuant to this act, shall constitute a misdemeanor and shall be punishable by a fine of not more than one

hundred dollars ($100) or imprisonment for not more than ninety days or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition the legislative body or the political subdivision within which the property is located may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of the Municipal Airport Zoning Law, or of airport zoning regulations adopted under the Municipal Airport Zoning Law, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by the way of injunction, which may be mandatory, or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of the Municipal Airport Zoning Law and of the regulations adopted and orders made pursuant thereto.

History: 1953 Comp., § 14-40-22, enacted by Laws 1965, ch. 300.

3-39-25. Removal of airport obstructions by municipalities.

Any county, municipality or political subdivision which is authorized by law to establish and maintain an airport or landing field, hereby is authorized and empowered whenever, in the judgment of the legislative body of such county, municipality or other political subdivision, any structure or object located adjacent to such airport or landing field constitutes a hazard to the efficient and safe use of such airport or landing field, or whenever notified of the existence of any such hazard to require the removal and elimination or relocation of such structure or such object, and to acquire all necessary lands or rights-of-way and easements over lands incidental to such removal, elimination or relocation of any such structure or object upon payment to the owner of any land that may be affected by such relocation and the damages occasioned by such removal, elimination or relocation.

History: 1953 Comp., § 14-40-23, enacted by Laws 1965, ch. 300.

3-39-26. Acquisition of air rights.

In any case in which:

A. it is desired to remove, lower or otherwise terminate a nonconforming use; or

B. the approach protection necessary according to the legislative body's airport approach plan cannot, because of constitutional limitations, be provided by airport zoning regulations under the Municipal Airport Zoning Law [3-39-16 to 3-39-26 NMSA 1978]; or

C. it appears advisable that the necessary approach protection is provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is now located, or the political subdivision owning the airport or served by it, may acquire, by purchase, grant or condemnation in the manner provided by the law under which political subdivisions

are authorized to acquire real property for public purposes, such an air right, easement or other estate or interest in the property or nonconforming use in question as may be necessary to effectuate the purpose of the Municipal Airport Zoning Law.

History: 1953 Comp., § 14-40-24, enacted by Laws 1965, ch. 300.

3-39-27. Issuance of bonds; purposes.

Subject to the limitation and in accordance with Article 9 of the constitution of New Mexico, any municipality may issue and dispose of negotiable bonds thereof, for the purposes of securing funds for the acquisition or construction of an airport or any part of an airport and the rights and properties used and connected with the airport in the manner provided for in Sections 3-30-1 through 3-30-9 NMSA 1978.

History: 1953 Comp., § 14-40-25, enacted by Laws 1965, ch. 300.

ARTICLE 40
Municipal Cemeteries

3-40-1. Cemeteries; authorization.

A. Subject to the provisions of law relating to the maintaining of cemeteries, a municipality may establish, maintain and regulate a municipal cemetery and may acquire within the planning and platting jurisdiction of the municipality, or condemn within the municipality in the manner provided by law, any property for cemetery purposes. Any property acquired for cemetery purposes by condemnation shall be acquired at a location that is in compliance with a municipality's master plan.

B. A municipality may abandon any street within a municipal cemetery, provided that ownership is retained by the municipality and the abandoned street is used for a municipal purpose.

History: 1953 Comp., § 14-41-1, enacted by Laws 1973, ch. 395, § 4.

3-40-2. Cemetery board; appointment of members; term; qualifications.

A. A municipality may create by ordinance a "cemetery board" to care for, manage and control a municipal cemetery. The cemetery board shall:

(1) be known as the "cemetery board of .....";

(2) consist of five members; and

(3) be appointed by the mayor with the consent of the governing body.

B. A member of the cemetery board shall:

(1) hold office for a term of two years;

(2) serve without compensation; and

(3) qualify by taking an oath of office to faithfully and impartially discharge the duties of the office.

C. Within ten days of their appointment, the members of the cemetery board shall meet and organize by electing one of the members president of the board. The cemetery board shall adopt regulations governing the time and place of its meeting.

History: 1953 Comp., § 14-41-2, enacted by Laws 1973, ch. 395, § 5.

3-40-3. Removal of cemetery board members; filling vacancies.

The governing body of a municipality may remove a member of the cemetery board for cause and shall fill any vacancy on the cemetery board that may occur.

History: 1953 Comp., § 14-41-3, enacted by Laws 1965, ch. 300.

3-40-4. Cemetery board; duties of municipal clerk.

The municipal clerk shall serve as clerk and treasurer of the cemetery board without additional compensation.

History: 1953 Comp., § 14-41-4, enacted by Laws 1965, ch. 300.

3-40-5. Powers and duties of cemetery board.

The cemetery board shall:

A. take charge of the cemetery belonging to the municipality;

B. have the management of the cemetery;

C. recommend rules and regulations for the operation, management, care and custody of the cemetery;

D. employ a sexton and other employees necessary for the care, maintenance and beautification of the cemetery; and

E. prescribe the manner and place of burials.

History: 1953 Comp., § 14-41-5, enacted by Laws 1973, ch. 395, § 6.

3-40-6. Cemeteries; ordinance to enforce regulation.

Upon the recommendation of the cemetery board or on its own discretion, the governing body of a municipality may provide, by ordinance, penalties for the violation of the rules and regulations of the cemetery board.

History: 1953 Comp., § 14-41-7, enacted by Laws 1965, ch. 300.

3-40-7. Transfer of other cemeteries to cemetery board.

A. Subject to the approval of the governing body of the municipality, a cemetery board may accept any cemetery within or adjacent to the municipality used as a burial place by the inhabitants of the municipality from any person, corporation or organization owning, controlling or maintaining the cemetery.

B. If the cemetery board accepts a cemetery whose records have been lost or destroyed or are otherwise nonexistent, the cemetery board or the municipality shall not be liable for any liabilities of prior owners.

C. Any cemetery accepted by the cemetery board as provided in this section shall become part of the municipality and shall be governed as any other municipal cemetery is governed.

History: 1953 Comp., § 14-41-8, enacted by Laws 1965, ch. 300; 2001, ch. 301, § 1.

3-40-8. Deeds to burial lots; execution.

The municipality in disposing of a burial lot may execute a deed conveying title to a purchaser. The deed is to be executed by the mayor and attested to by the clerk and bear the seal of the municipality.

History: 1953 Comp., § 14-41-9, enacted by Laws 1973, ch. 395, § 7.

3-40-9. Acquisition or condemnation of an existing cemetery.

A. Except as provided in Subsection B of Section 3-40-7 NMSA 1978, a municipality shall not acquire or condemn a cemetery or part of a cemetery unless a detailed audit listing all the assets and liabilities of the cemetery is prepared by a certified public accountant and submitted to the governing body. The municipality shall not be held liable for any liabilities not shown in the audit.

B. Any person, estate, trust, receiver or other group acting as a unit shall transfer to the municipality all records, property, trusts and other relevant material pertaining to the

cemetery or part of the cemetery acquired or condemned by the municipality. The acquisition or condemnation and transfer of a cemetery or part of a cemetery shall be in compliance with the Endowed Care Cemetery Act of 1961 [Chapter 58, Article 17 NMSA 1978] and other provisions relating to cemeteries.

History: 1953 Comp., § 14-41-10, enacted by Laws 1973, ch. 395, § 8; 2001, ch. 301, § 2.

ARTICLE 41
Flood Control

3-41-1. Flood control; authorization.

A. For the purpose of protecting its inhabitants from damage by flood waters, a municipality may construct and maintain within or without the municipality:

(1) dikes;

(2) dams;

(3) embankments;

(4) ditches;

(5) storm sewers;

(6) structures; or

(7) excavations necessary to prevent flood waters from damaging property or threatening human lives within the municipality.

B. The municipality may change, extend, widen, deepen and raise the natural channel of any stream within or without the municipality or remove any obstruction in any stream within or without the municipality for the purpose of opening a channel and diverting flood waters.

History: 1953 Comp., § 14-42-1, enacted by Laws 1965, ch. 300.

3-41-2. Flood control; tax levy; limitations; election; result; bond issue may supplement; levy.

A. A municipality may levy a tax upon all property subject to property taxation within the municipality for such length of time as is necessary to accomplish the purpose authorized in Sections 3-41-1 and 3-41-3 NMSA 1978. The rate of the tax authorized by this subsection shall not exceed five dollars ($5.00), or any lower maximum amount

required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a tax levied under this section, on each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978].

B. Before levying the tax, the municipality shall submit to the qualified electors of the municipality the question of levying the tax. The question may be submitted at any regular or special local election called for that purpose. Notice of the election shall be given as provided in the Local Election Act [Chapter 1, Article 22 NMSA 1978].

C. The municipality shall print the words "For tax levy for flood protection purposes" and "Against tax levy for flood protection purposes" or words of like import. The vote upon the question shall be separately canvassed as other municipal elections are canvassed.

D. If a majority of the votes cast favors the levy of the tax, the governing body shall levy and certify the levy as any other tax is levied for municipal purposes.

E. Nothing in this section shall be construed as prohibiting the issuance of negotiable bonds as authorized in Section 3-30-5 NMSA 1978 to pay the cost of preventing flood damage.

F. If a county has levied a tax for flood control purposes as authorized in Sections 4-50-1 through 4-50-9 NMSA 1978 or any other law, the municipality is not prohibited from levying a tax as authorized in this section.

History: 1953 Comp., § 14-42-2, enacted by Laws 1965, ch. 300; 1981, ch. 37, § 56; 1985, ch. 208, § 118; 1986, ch. 32, § 1; 2018, ch. 79, § 68.

3-41-3. Flood control; eminent domain; condemnation.

A. A municipality may acquire by condemnation land, easements and right-of-way within or without the municipality for any construction as authorized in Section 3-41-1 NMSA 1978, or the removal of any obstruction in a stream.

B. The proceedings for condemnation shall be as authorized by law. If the governing body determines that the compensation awarded by the commissioners, as provided in Section 42-1-3 NMSA 1978 [repealed] is more than the municipality should pay or is able to pay, the municipality, before taking possession of the property or removing any obstruction, may dismiss the proceedings for condemnation and is relieved of any obligation to pay compensation.

History: 1953 Comp., § 14-42-3, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 10.

3-41-4. Flood control; right of entry; obstructing.

A. An employee or representative of a municipality has free and unobstructed ingress and egress on any land or premise if such ingress or egress is necessary to carry out the provisions of Sections 3-41-1 through 3-41-5 NMSA 1978, and is not liable for damages because of such entry except for wanton and malicious injury. Any person obstructing such ingress or egress is guilty of a misdemeanor.

B. If the state engineer files a written objection with the governing body, no dike, embankment, dam, ditch, structure or excavation shall be constructed or maintained in any public stream except in a manner approved by the state engineer.

History: 1953 Comp., § 14-42-4, enacted by Laws 1965, ch. 300.

3-41-5. Flood control; cooperation with other public agencies.

A municipality may cooperate with:

A. any other municipality;

B. any county or any flood control authority;

C. the state of New Mexico; or

D. any agency of the United States, in carrying out the objectives of Sections 3-41-1 through 3-41-5 NMSA 1978.

History: 1953 Comp., § 14-42-5, enacted by Laws 1965, ch. 300.

ARTICLE 42
Franchises to Public Utilities

3-42-1. Franchises; authorization.

A. A municipality may grant, by ordinance, a franchise to any person, firm or corporation for the construction and operation of any public utility.

B. No franchise ordinance shall become effective until at least thirty days after its adoption, during which time the franchise ordinance shall be twice published in full, not less than seven days apart.

C. If, during the thirty-day period, a petition signed by bona fide adult residents of the municipality equal in number to twenty percent of the number of those who voted at the last regular municipal election, and objection to the granting of the franchise is presented to the governing body of the municipality, the governing body of the municipality shall submit the question of granting the franchise to a vote of the qualified electors at a regular or special municipal election. If the date for the next regular

municipal election is not more than ninety days after the date the petition is filed, the question shall be submitted at the regular municipal election; otherwise, a special municipal election shall be held.

D. If a majority of the qualified electors voting on the question favor the granting of a franchise, the franchise ordinance becomes effective. If a majority of the qualified electors voting on the question do not favor granting the franchise, the ordinance is repealed and the applicant for the franchise acquires no rights or privileges.

E. The expense of publishing the franchise ordinance and of holding a special election shall be paid by the applicant for the franchise.

F. No franchise ordinance shall be in effect for more than twenty-five years. The municipality may contract with the public utility for such services as are necessary for the health and safety of the municipality and may pay a sum agreed upon by the contracting parties for such services.

History: 1953 Comp., § 14-43-1, enacted by Laws 1965, ch. 300.

3-42-2. New municipality required to grant franchise when right-of-way granted by county commissioners.

A. If previous to the incorporation of a municipality, the board of county commissioners has granted to any person right-of-way over, upon, in and about the streets of the municipality for the erection, construction, maintenance or operation of a public utility, and such person has erected, constructed, or in good faith commenced the erection or construction of such a utility, the governing body shall, without a vote by the electorate:

(1) authorize the completion of the system;

(2) authorize the continued or subsequent operation and maintenance of the system;

(3) recognize the rights acquired by the person erecting or constructing such a system; and

(4) grant such a person a franchise for the maximum term of years allowed by law upon such terms as are fair, just and equitable to all parties concerned.

B. Pending the granting of the franchise, no person shall interfere with the free exercise and enjoyment of the rights acquired by the person erecting or constructing a public utility by the right-of-way granted by the board of county commissioners.

History: 1953 Comp., § 14-43-2, enacted by Laws 1965, ch. 300.

ARTICLE 43
Health; Control of Disease (Repealed.)

3-43-1. Repealed.

History: 1953 Comp., § 14-44-1, enacted by Laws 1965, ch. 300; repealed by Laws 2017, ch. 87, § 31.

3-43-2. Repealed.

History: 1953 Comp., § 14-44-2, enacted by Laws 1965, ch. 300; repealed by Laws 2017, ch. 87, § 31.

ARTICLE 44
Hospitals

3-44-1. Hospitals; authority.

A municipality may:

A. control and regulate hospitals;

B. construct hospitals and medical dispensaries;

C. contribute to the support of any county hospital located within the municipality;

D. own, maintain and operate hospitals;

E. charge for hospital services rendered;

F. lease the hospital, sanitarium or other institution upon such terms and conditions as the governing body may determine to any person, corporation or association for the operation and maintenance of the hospital; provided that the lease may be terminated by the governing body of the municipality without cause upon one hundred eighty days' notice after the first three years of the lease; and further provided that a person, association or corporation demonstrating a consistent history of service to sick and indigent persons may include the value of in-kind services provided to the municipality as a portion of consideration due on any lease for the use of hospital facilities owned by the municipality. The lease agreement must set forth the respective value of services being provided to residents and the relative value of the use of property provided by the municipality;

G. contract with the human services department [health care authority department] or the board of county commissioners for the care of sick or indigent persons;

H. accept grants for constructing, equipping and maintaining the hospital; and

I. perform any act or adopt any regulation necessary or expedient to carry out the provisions of this section.

History: 1953 Comp., § 14-45-1, enacted by Laws 1965, ch. 300; 1973, ch. 258, § 135; 2001, ch. 291, § 1; 2007, ch. 196, § 1.

3-44-2. Hospitals; joint operation with county; indebtedness authorized.

A. Any municipality may enter into an agreement with the county for the construction, maintenance and operation of a county-municipal hospital.

B. A municipality or county is authorized to issue, separately, general obligation bonds or revenue bonds for the purpose of constructing, maintaining and operating a joint county-municipal hospital. The bonds shall be issued in the manner provided by law for the issuance of bonds for the construction of public buildings or revenue bonds for the construction of a municipal utility.

History: 1953 Comp., § 14-45-2, enacted by Laws 1965, ch. 300; 1983, ch. 265, § 14.

3-44-3. Joint county-municipal hospitals.

If a county-municipal hospital is authorized, the board of county commissioners and the governing body of the municipality may jointly:

A. lease the hospital upon such terms and conditions as they may determine to a person, firm, corporation, association or the county or municipality for the operation and maintenance of the hospital, provided that the lease may be terminated by the board of county commissioners and the governing body of the municipality without cause upon one hundred eighty days' notice after the first three years of the lease;

B. enter into an agreement with the state human services department [health care authority department] for the care of sick or indigent persons;

C. accept gifts, endowments or grants-in-aid for the purpose of constructing, equipping and maintaining the hospital or endowing rooms or wards for sick, needy or indigent persons; or

D. perform any act or adopt any regulation necessary or expedient to carry out the purposes of Sections 3-44-2 through 3-44-4 NMSA 1978.

History: 1953 Comp., § 14-45-3, enacted by Laws 1965, ch. 300; 2001, ch. 291, § 2.

3-44-4. County-municipal hospital; board of trustees; powers.

A. A county-municipal hospital shall be governed by a board of trustees consisting of five members who shall be appointed for two-year terms. Three of the trustees shall be appointed by the board of county commissioners and two of the trustees shall be appointed by the governing body of the municipality.

B. Upon approval by both the board of county commissioners and the governing body of the municipality, the board of trustees shall consist of seven members, appointed for terms of two years. Seven-member boards shall consist of four trustees appointed by the board of county commissioners and three trustees appointed by the governing body of the municipality.

C. The board of trustees has complete control of the management of the hospital. Once each year the board of trustees shall submit to the board of county commissioners and the governing body of the municipality:

(1) a report of its management of the hospital; and

(2) a financial statement showing all money received and expended and the purposes for which the money was expended.

History: 1953 Comp., § 14-45-4, enacted by Laws 1965, ch. 300; 1975, ch. 74, § 1.

3-44-5. Hospitals; special charter towns; authority.

A. Any town incorporated, organized and operating under a special act of the legislature may, by resolution or ordinance:

(1) own, maintain and operate hospitals, sanitariums and other institutions for the care of sick or indigent persons;

(2) issue negotiable bonds for the construction of a hospital, sanitarium or other institution; or

(3) upon such conditions and terms as the governing body of the town may determine:

(a) delegate the operation and maintenance of the hospital, sanitarium or other institution to any person, corporation or association as it selects; or

(b) lease the hospital, sanitarium or other hospital to any person, corporation or association for the care of sick or indigent persons, provided that the lease may be terminated by the governing body of the town without cause upon one hundred eighty days' notice after the first three years of the lease.

B. The provisions of Sections 3-54-1 through 3-54-3 NMSA 1978 relating to the leasing of municipal property are not applicable to this section.

History: 1953 Comp., § 14-45-5, enacted by Laws 1965, ch. 300; 1973, ch. 258, § 136; 2001, ch. 291, § 3.

3-44-6. Hospitals; expenditure of public funds.

The use of public funds for the operation and maintenance of a hospital pursuant to a lease authorized by Chapter 3, Article 44 NMSA 1978 is deemed to be funding to the hospital as a public institution, and the hospital facility and lessee thereof are subject to the laws of this state regarding the expenditure of public money.

History: Laws 2001, ch. 291, § 4.

ARTICLE 45
Municipal Housing

3-45-1. Municipal Housing Law; short title.

Chapter 3, Article 45 NMSA 1978 may be cited as the "Municipal Housing Law".

History: 1953 Comp., § 14-46-1, enacted by Laws 1965, ch. 300; 2009, ch. 226, § 1.

3-45-2. Finding and declaration of necessity.

It is hereby declared that:

A. unsanitary or unsafe dwelling accommodations exist in the state;

B. persons of low and moderate income are forced to reside in such unsanitary or unsafe accommodations;

C. within the state, there is a shortage of safe or sanitary dwelling accommodations available at rents that persons of low and moderate income can afford and that such persons are forced to occupy overcrowded, congested dwelling accommodations and that the aforesaid conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety and welfare of the residents of the state and impair economic values;

D. these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection and other public services and facilities;

E. these areas in the state cannot be cleared nor can the shortage of safe and sanitary dwellings for persons of low and moderate income be relieved through the operation of private enterprise and that the construction of housing projects for persons of low and moderate income, as defined in the Municipal Housing Law, would therefore not be competitive with private enterprise;

F. the clearance, replanning and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low and moderate income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state and municipal concern; and

G. it is in the public interest that work on projects for such purposes be commenced as soon as possible in order to relieve a shortage of affordable housing, which now constitutes an emergency; and the necessity in the public interest for the provisions enacted by the Municipal Housing Law is hereby declared as a matter of legislative determination.

History: 1953 Comp., § 14-46-2, enacted by Laws 1965, ch. 300; 2009, ch. 226, § 2.

3-45-3. Definitions.

The following terms, wherever used or referred to in the Municipal Housing Law, shall have the following respective meanings:

A. "city" means any municipality and, unless the context otherwise clearly indicates, any county. "The city" means the particular city or county for which a particular housing authority is created. "County" means any county;

B. "governing body" means, in the case of a city, the council or board of commissioners and, in the case of other state public bodies, the council, commissioners, board or other body having charge of the fiscal affairs of the state public body;

C. "mayor" means the mayor of the city or the officer charged with the duties customarily imposed on the mayor or executive head of a city. In the case of a county, the term "mayor" means the board of county commissioners;

D. "clerk" means the city recorder, the county clerk or the officer charged with the duties customarily imposed on the clerk;

E. "area of operation" includes all of the city or, in the case of a county, includes all of the county, except the area shall not include any area that lies within the boundaries of any city that has an established housing authority or housing agency without the consent of the city. Upon approval by the governing bodies of the cities involved, the area of operation of one city pursuant to the Municipal Housing Law may be enlarged to

include the area within the boundaries of any other city. Any subsequent withdrawal of consent of a city for operation within its boundaries by another city shall not prohibit the development and operation of any housing projects initiated in the city by another city prior to the date of withdrawal;

F. "authority" or "housing authority" means any agency or other instrumentality of a city or a separate public body politic and corporate created pursuant to the Municipal Housing Law;

G. "state public body" means any county, municipal corporation, commission, district, authority, including a housing authority that is a separate body politic, other subdivision or public body of the state;

H. "federal government" includes the United States of America, the federal department of housing and urban development or any other agency or instrumentality, corporate or otherwise, of the United States of America;

I. "slum" means any area where dwellings predominate that by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities or any combination of these factors, are detrimental to the safety, health or well-being of the occupants or to surrounding properties;

J. "housing project" means any work or undertaking of the city:

(1) to demolish, clear or remove buildings from any slum area. The work or undertaking may embrace the adaptation of the area to public purposes, including parks or other recreational or community purposes;

(2) to provide decent, safe and sanitary dwellings, apartments, single-family dwellings or other affordable living accommodations for persons of low and moderate income. The work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare or other purposes; or

(3) to accomplish a combination of the foregoing.

The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property or existing structures, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith;

K. "low-income person" means any individual, couple or family whose gross income does not exceed eighty percent of that person's particular area median income and who cannot afford to pay more than thirty-five percent of gross annual income for housing

rent or mortgage payments or a "low-income person" as defined by the federal government;

L. "bonds" means any bonds, notes, interim certificates, debentures or other obligations issued pursuant to the Municipal Housing Law;

M. "real property" includes all lands, including improvements and fixtures on the lands and property of any nature appurtenant to the lands or used in connection with the lands, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens;

N. "obligee" includes any holder of bonds issued pursuant to the Municipal Housing Law, trustees for any such bondholders, or lessor demising to a city property used in connection with a housing project, or any assignee or assignees of the lessor's interest or any part of the lessor's interest and the federal government when it is a party to any contract with a city in regard to a housing project;

O. "affordable housing" means any housing accommodations that serve the needs of low- and moderate-income persons;

P. "affordable housing program" means an ongoing delivery system of affordable housing services that assists persons of low and moderate income;

Q. "moderate-income person" means any individual, couple or family whose gross annual income is not less than eighty percent of that person's particular area median income and does not exceed one hundred twenty percent of that area median income;

R. "multi-jursidictional housing authority" means two or more housing authorities joined or cooperating for the purposes of consolidating administrative duties and obligations and providing more effective and efficient housing projects and programs within their jurisdictions; and

S. "immediate family member" means:

(1) a spouse, including a former spouse, a de facto spouse or a former de facto spouse;

(2) a child or an adult child, including an adopted child, a step-child or an ex-nuptial child;

(3) a parent or a step-parent;

(4) a grandparent;

(5) a grandchild;

(6) a sibling or a step-sibling;

(7) a first cousin;

(8) an aunt or an uncle;

(9) a father-in-law or a mother-in-law;

(10) a sister-in-law or a brother-in-law; and

(11) any other relative who is financially supported.

History: 1953 Comp., § 14-46-3, enacted by Laws 1965, ch. 300; 1989, ch. 50, § 1; 2009, ch. 226, § 3; 2014, ch. 60, § 1.

3-45-4. Powers.

A. Every city, in addition to other powers conferred by the Municipal Housing Law, may:

(1) within its area of operation, prepare, carry out, acquire, purchase, lease, construct, reconstruct, improve, alter, extend or repair any housing project or any part of a housing project and operate and maintain the housing project, and for any of those purposes, the governing body of the city may appropriate money and authorize the use of any property of the city;

(2) purchase its bonds issued pursuant to the Municipal Housing Law at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be canceled;

(3) lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and, subject to the limitations contained in the Municipal Housing Law, establish and revise the rents or charges therefor; own, hold and improve real or personal property; purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal property or any interest in real or personal property; acquire by the exercise of the power of eminent domain any real property; sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest in real or personal property; and procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts of any bonds issued pursuant to the Municipal Housing Law, including the power to pay premiums on any such insurance;

(4) enter on any lands, buildings or property for the purpose of making surveys, soundings and examinations in connection with the planning or construction or both of any housing project;

(5) insure or provide for the insurance of any housing project of the city against such risks as the city may deem advisable;

(6) arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for or in connection with a housing project or the occupants of a housing project; and include in any construction contract let in connection with a housing project stipulations requiring that the contractor and any subcontractors comply with employment requirements, including those in the constitution and laws of this state, as to minimum wages and maximum hours of labor and comply with any conditions that the federal government may have attached to its financial aid of the project;

(7) within its area of operation, investigate the living, dwelling and housing conditions and the means and methods of improving the conditions; determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low and moderate income; make studies and recommendations relating to the problem of clearing, replanning and reconstructing slum areas and the problem of providing dwelling accommodations for persons of low and moderate income and cooperate with the state or any political subdivision of the state in action taken in connection with the problems; and engage in research, studies and experimentation on the subject of housing and affordable housing programs; and

(8) exercise all or any part or combination of powers herein granted.

B. Any two or more cities or authorities may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing, including the issuance of bonds, notes or other obligations and giving security therefor, or contracting with respect to housing projects or affordable housing programs located within the area of operation of any one or more of the cities or authorities. For that purpose, a city or authority may, by resolution, prescribe and authorize any other city or authority so joining or cooperating with it to act on its behalf with respect to any or all powers, as its agent or otherwise, in the name of the city or authority so joining or cooperating or in its own name.

History: 1953 Comp., § 14-46-4, enacted by Laws 1965, ch. 300; 1969, ch. 183, § 1; 2009, ch. 226, § 4.

3-45-5. Creation of authority.

A. Every city, in addition to other powers conferred by the Municipal Housing Law, shall have power and is authorized, by proper resolution of its governing body, to create an authority to be known as the "housing authority" of the city as a public body politic and corporate separate from the city. The city may delegate to the authority the power to construct, maintain, operate and manage any housing project or affordable housing programs of the city and may delegate to the authority any or all of the powers conferred on the city by the Municipal Housing Law.

B. When the governing body of a city adopts a resolution pursuant to Subsection A of this section:

(1) the mayor shall appoint three, five or seven persons as commissioners of the authority as follows:

(a) at least three commissioners if the municipality is a village, town or county that does not contain a metropolitan statistical area as defined by the United States census; or

(b) at least five but no more than seven commissioners if the municipality is a city or a county that contains a metropolitan statistical area as defined by the United States census; and

(2) the commissioners who are first appointed shall be designated to serve staggered terms of one to five years from the date of their appointment, depending on the size of the authority. Thereafter, commissioners shall be appointed for a term of office of five years, except that all vacancies shall be filled for the unexpired term. A commissioner of an authority shall not hold any other office or employment of the city for which the authority is created. A commissioner shall hold office until a successor has been appointed and has qualified, unless sooner removed according to law. A commissioner may serve two or more successive terms of office. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk, and the certificate shall be conclusive evidence of the due and proper appointment of the commissioner. A commissioner shall receive no compensation for services for the authority in any capacity, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of duties.

C. Two or more cities joined together pursuant to Subsection B of Section 3-45-4 NMSA 1978 shall establish their commissioners in accordance with Subsection B of this section, except that each city shall have equitable representation on the commission. The commissioners representing each city shall be appointed by the mayor of the city.

D. Any powers delegated by a city to an authority shall be vested in the commissioners of the authority in office from time to time. A majority of commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present. The commission shall organize itself at its annual meeting each even-numbered year. Any city creating a housing authority may authorize the authority to employ a secretary, who shall be executive director and who shall be removable only for cause. With the delegated authority from the commission, the executive director may hire or terminate, according to the procurement and personnel policies and procedures of the authority, technical experts and such other officers, attorneys, agents and employees, permanent and temporary, as the authority may require; determine their qualifications, duties and compensation;

and delegate to one or more of them such powers or duties as the authority may deem proper.

History: 1953 Comp., § 14-46-5, enacted by Laws 1965, ch. 300; 1989, ch. 50, § 2; 2009, ch. 226, § 5; 2014, ch. 60, § 2.

3-45-6. Prohibited actions.

Neither a housing authority nor any of its contractors or their subcontractors may enter into any contract, subcontract or agreement in connection with a housing project under any contract in which any of the following persons has an interest, direct or indirect, during the person's tenure or for one year thereafter:

A. any present or former member of the commission of the housing authority or any member of the member's immediate family. The prohibition established by this subsection does not apply to any member who has not served on the governing body of a resident management corporation and who otherwise has not occupied a policymaking position with the resident management corporation or the housing authority;

B. any employee of the housing authority who formulates policy or who influences decisions with respect to a housing project, any member of the employee's immediate family or any partner of the employee; or

C. any public official, member of a governing body or state legislator, or any member of that person's immediate family, who exercises functions or responsibilities with respect to the housing project or the housing authority.

History: 1953 Comp., § 14-46-6, enacted by Laws 1965, ch. 300; 2009, ch. 226, § 6.

3-45-7. Removal of commissioners.

A commissioner of an authority may be removed by the mayor, but only for inefficiency, neglect of duty or misconduct in office and only after the commissioner has been given a copy of the charges at least ten days prior to the hearing on the charges and has had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner by the mayor, a record of the proceedings, together with the charges and findings, shall be filed in the office of the clerk. Commissioners may be removed for cause based on noncompliance with housing program regulations.

History: 1953 Comp., § 14-46-7, enacted by Laws 1965, ch. 300; 2009, ch. 226, § 7.

3-45-8. Eminent domain.

In addition to the other purposes for which a city may appropriate property, a city shall have the right to acquire by the exercise of the power of eminent domain any real

property which it may deem necessary for its purposes under the Municipal Housing Law after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. A city may exercise the power of eminent domain hereunder in the manner provided by the laws of the state of New Mexico, and acts amendatory thereof or supplementary thereto; or it may exercise the power of eminent domain hereunder in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain. Title to property so acquired shall be taken in the name of the city.

History: 1953 Comp., § 14-46-8, enacted by Laws 1965, ch. 300.

3-45-9. Operation not for profit.

It is declared to be the policy of this state that each city shall manage and operate its housing projects and affordable housing programs in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations and that no city shall construct or operate any housing project for profit. To this end, a city shall set the rental rates for dwellings in the housing projects it manages and operates at no higher rates than it finds to be necessary in order to produce revenues that, together with any grants or subsidies from the federal government or other sources for housing projects, will be sufficient:

A. to pay, as they become due, the principal and interest on the bonds or other obligations of the city issued under the Municipal Housing Law;

B. to meet the cost of and to provide for maintaining and operating the housing projects and affordable housing programs, including the cost of any insurance, the administrative expenses of the city incurred in connection with the housing projects and affordable housing programs and the funding of any operational reserves as the authority deems appropriate;

C. to fund such reserves to secure the payment of its bonds as the authority deems appropriate or convenient; and

D. to allow private, profit-making entities to enter into agreements with the authority, and such agreements shall not be deemed to affect the nonprofit status of the authority or conflict with the intent of the creation of the authority.

History: 1953 Comp., § 14-46-9, enacted by Laws 1965, ch. 300; 1989, ch. 50, § 3; 2009, ch. 226, § 8.

3-45-10. Sales, rentals and tenant selection.

A. In the operation or management of housing projects and affordable housing programs or the sale of any property pursuant to the Municipal Housing Law, a city shall

at all times observe the following duties with respect to rentals, property and tenant selection:

(1) it may rent, lease or sell the dwelling accommodations in the housing project and affordable housing programs only to persons falling within federally established standards;

(2) it may rent, lease or sell to a tenant dwelling accommodations consisting of the number of rooms, but no greater number, that it deems necessary to provide safe and sanitary accommodations to the proposed occupants without overcrowding; and

(3) it shall not accept any person as a tenant in any housing program if the person has an annual net income in excess of federally established standards.

B. Nothing contained in this section or Section 3-45-9 NMSA 1978 shall be construed as limiting the power of a city to vest in an obligee the right, in the event of a default by the city, to take possession and operate housing projects or affordable housing programs or cause the appointment of a receiver thereof, free from all the restrictions imposed by this section or Section 3-45-9 NMSA 1978.

History: 1953 Comp., § 14-46-10, enacted by Laws 1965, ch. 300; 1989, ch. 50, § 4; 2009, ch. 226, § 9.

3-45-11. Bonds.

A. A city shall have power to issue bonds from time to time in its discretion to finance in whole or in part the cost of the preparation, acquisition, purchase, lease, construction, reconstruction, improvement, alteration, extension or repair of any project or undertaking hereunder. A city shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it hereunder. In order to carry out the purposes of the Municipal Housing Law, a city may issue, upon proper resolution, bonds on which the principal and interest are payable:

(1) exclusively from the income and revenues of the housing project or projects financed with the proceeds of such bonds; or

(2) exclusively from such income and revenues together with grants and contributions from the federal government or other sources in aid of such project or projects.

B. Neither the governing body of a city nor any person executing the bonds shall be liable personally on any bonds by reason of the issuance thereof hereunder. The bonds issued under the provisions of the Municipal Housing Law shall be payable solely from the sources provided in this section. Such bonds shall not be a general obligation of the city issuing them, and they shall so state on their face. The bonds shall not constitute a

debt or indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction.

History: 1953 Comp., § 14-46-11, enacted by Laws 1965, ch. 300.

3-45-12. Form and sale of bonds; interest on certain obligations.

A. Bonds of a city issued under the Municipal Housing Law shall be authorized by its resolution and may be issued in any one or more series and shall bear such date, mature at such time, bear interest at such rate, be in such denomination, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place and be subject to such terms of redemption, with or without premium, as the resolution, its trust indenture or the bond so issued may provide.

B. Obligations issued by a city that are true loan obligations made to the farm service agency of the United States department of agriculture or the department of housing and urban development may bear interest at a rate of interest not exceeding par.

C. The bonds shall be sold at not less than par at public sale held after notice published once at least five days prior to the sale in a newspaper having a general circulation in the city jurisdiction and in a financial newspaper published in the city of San Francisco, California, or in the city of New York, New York; provided that the bonds may be sold to the federal government at private sale at not less than par, and, in the event less than all of the bonds authorized in connection with any housing project are sold to the federal government, the balance of the bonds may be sold at private sale at not less than par at an interest cost to the city not to exceed the interest cost to the city of the portion of the bonds sold to the federal government.

D. In case any of the officers of the city, the authority or any of its instrumentalities whose signatures appear on any bonds or coupons cease to be officers before the delivery of the bonds, the signatures shall, nevertheless, be valid and sufficient for all purposes the same as if the officers had remained in office until delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to the Municipal Housing Law shall be fully negotiable.

E. In any suit, action or proceedings involving the validity or enforceability of any bond of a city or the security for the bond, any such bond reciting in substance that it has been issued by the city to aid in financing a housing project to provide dwelling accommodations for persons of low and moderate income shall be conclusively deemed to have been issued for a housing project of that character, and the housing project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of the Municipal Housing Law.

History: 1953 Comp., § 14-46-12, enacted by Laws 1965, ch. 300; 1979, ch. 270, § 1; 1989, ch. 50, § 5; 2009, ch. 226, § 10; 2014, ch. 60, § 3.

3-45-13. Provisions of bonds and trust indentures.

In connection with the issuance of bonds pursuant to the Municipal Housing Law or the incurring of obligations under leases made pursuant to the Municipal Housing Law and in order to secure the payment of such bonds or obligations, a city in addition to its other powers, shall have power:

A. to pledge all or any part of the gross or net rents, fees or revenues of a housing project, financed with the proceeds of such bonds, to which its rights then exist or may thereafter come into existence;

B. to covenant against pledging all or any part of the rents, fees and revenues, or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it;

C. to covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof;

D. to covenant, subject to the limitations contained in the Municipal Housing Law, as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves or other purposes, and to covenant as to the use and disposition of the moneys held in such funds;

E. to prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

F. to covenant as to the use of any or all of its real or personal property acquired pursuant to the Municipal Housing Law; and to covenant as to the maintenance of such real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys;

G. to covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation; and to covenant and prescribe as to

events of default and terms and conditions upon which such declaration and its consequences may be waived;

H. to vest in a trustee or trustees or the holders of bonds issued pursuant to the Municipal Housing Law, or any specified proportion of them, the right to enforce the payment of such bonds or any covenants securing or relating to such bonds; to vest in a trustee or trustees the right, in the event of a default by said city, to take possession of any housing project or part thereof, and, so long as the city shall continue in default, to retain such possession and use, operate and manage said project, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the city with said trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or the holders of bonds, or any proportion of them, may enforce any covenant or rights securing or relating to such bonds; and

I. to exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, or like or different character; to make such covenants as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

History: 1953 Comp., § 14-46-13, enacted by Laws 1965, ch. 300.

3-45-14. Construction of bond provisions.

The Municipal Housing Law without reference to other statutes of the state shall constitute full authority for the authorization and issuance of bonds hereunder. No other act or law with regard to the authorization or issuance of bonds that provides for an election, requires an approval or in any way impedes or restricts the carrying out of the acts herein authorized to be done shall be construed as applying to any proceedings taken hereunder or acts done pursuant hereto.

History: 1953 Comp., § 14-46-14, enacted by Laws 1965, ch. 300.

3-45-15. Certification of attorney general.

A city may submit to the attorney general of the state any bonds to be issued hereunder after all proceedings for the issuance of such bonds have been taken. Upon the submission of such proceedings to the attorney general, it shall be the duty of the attorney general to examine into and pass upon the validity of such bonds and the regularity of all proceedings in connection therewith. If such bonds and proceedings conform to the provisions of the Municipal Housing Law and are otherwise regular in form and if such bonds when delivered and paid for will constitute binding and legal obligations enforceable according to the terms thereof, the attorney general shall certify in substance upon the back of each of said bonds that it is issued in accordance with the constitution and laws of New Mexico.

History: 1953 Comp., § 14-46-15, enacted by Laws 1965, ch. 300.

3-45-16. Remedies of an obligee.

An obligee of a city shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

A. by mandamus, suit, action or proceeding at law or in equity, to compel said city and the officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said city with or for the benefit of such obligee and to require the carrying out of any or all such covenants and agreements of said city and the fulfillment of all duties imposed upon said city by the Municipal Housing Law; and

B. by suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or in violation of any of the rights of such obligee of said city.

History: 1953 Comp., § 14-46-16, enacted by Laws 1965, ch. 300.

3-45-17. Additional remedies conferrable to an obligee.

A city shall have the power by its resolution, trust indenture, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

A. to cause possession of any housing project or any part hereof to be surrendered to any such obligee, which possession may be retained by such bondholder or trustee so long as the city shall continue in default;

B. to obtain the appointment of a receiver of any housing project of said city or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such housing project or any part thereof and, so long as the city shall continue in default, operate and maintain the same, and collect and receive all fees, rents, revenues or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said city as the court shall direct; and

C. to require said city and the officers and agents thereof to account for the money actually received as if it and they were the trustees of an express trust.

History: 1953 Comp., § 14-46-17, enacted by Laws 1965, ch. 300.

3-45-18. Exemption of property from execution sale.

All real property owned or held by a city for the purposes of the Municipal Housing Law shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall be issued against the same nor shall any judgment against a city be a charge or lien on such real property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given to them on rents, fees or revenues.

History: 1953 Comp., § 14-46-18, enacted by Laws 1965, ch. 300.

3-45-19. Exemption of property from taxation.

The real property of a housing project, as defined in Section 3-45-3 NMSA 1978, is declared to be public property used for essential public and governmental purposes and is property of a city of this state and is exempt from taxation until a deed conveying that property to a nonexempt entity is executed and delivered by the city.

History: 1953 Comp., § 14-46-19, enacted by Laws 1965, ch. 300; 1979, ch. 258, § 1.

3-45-20. Aid from state or federal government.

In addition to the powers conferred upon a city by other provisions of the Municipal Housing Law, a city is empowered to borrow money or accept contributions, grants or other financial assistance from the state or federal government for, or in aid of, any housing project or affordable housing program within its area of operation and, to these ends, to comply with such conditions, trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of the Municipal Housing Law to authorize every city to do any and all things necessary, convenient or desirable to secure the financial aid or cooperation of the federal government in the undertaking, acquisition, construction, maintenance or operation of any housing project or affordable housing program of the city.

History: 1953 Comp., § 14-46-20, enacted by Laws 1965, ch. 300; 2009, ch. 226, § 11.

3-45-21. Cooperation in undertaking housing projects or affordable housing programs.

A. For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects or affordable housing programs located within the area in which it is authorized to act, any state public body may, upon such terms, with or without consideration, as it may determine:

(1) dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or any other rights or privileges therein to any city;

(2) cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities or any other works that it is otherwise empowered to undertake to be furnished adjacent to or in connection with housing projects or affordable housing programs;

(3) furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places that it is otherwise empowered to undertake;

(4) cause services to be furnished for housing projects or affordable housing programs of the character that the state public body is otherwise empowered to furnish;

(5) enter into agreements with respect to the exercise by the state public body of its powers relating to the repair, elimination or closing of unsafe, unsanitary or unfit dwellings;

(6) do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such housing projects;

(7) incur the entire expense of any public improvements made by the state public body in exercising the powers granted in the Municipal Housing Law; and

(8) enter into agreements that may extend over any period, notwithstanding any provision or rule of law to the contrary, with any city or multi-jurisdictional housing authority as agent therefor, respecting action to be taken by the state public body pursuant to any of the powers granted by the Municipal Housing Law.

B. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by a state public body without appraisal, public notice, advertisement or public bidding.

C. In the event an authority is declared by the federal department of housing and urban development to be in default on its annual contributions contract with that department, the authority may, by resolution of its governing body, transfer its assets and operation to another housing authority, including a multi-jurisdictional housing authority or regional housing authority. The multi-jurisdictional housing authority or regional housing authority shall accept, by resolution of its governing board, a transfer of assets and operations of an authority that has been declared by the federal department of housing and urban development to be in default of the annual contributions contract between that department and the authority.

History: 1953 Comp., § 14-46-21, enacted by Laws 1965, ch. 300; 2009, ch. 226, § 12.

3-45-22. Procedure for exercising powers.

The exercise by the city or other state public body of the powers herein granted may be authorized by resolution of the governing body of such state public body adopted by a majority of the members of its governing body present at a meeting of said governing body, which resolution may be adopted at the meeting at which such resolution is introduced. Such a resolution or resolutions shall take effect immediately and need not be laid over or published or posted.

History: 1953 Comp., § 14-46-22, enacted by Laws 1965, ch. 300.

3-45-23. Supplemental nature of the Municipal Housing Law.

The powers conferred by the Municipal Housing Law shall be in addition and supplemental to the powers conferred by any other law.

History: 1953 Comp., § 14-46-23, enacted by Laws 1965, ch. 300.

3-45-24. Housing bonds; legal investments; security; negotiable.

The state and all public officers, municipal corporations, political subdivisions and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or other obligations issued pursuant to the Municipal Housing Law or issued by any public housing authority or agency in the United States, when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof, and such bonds and other obligations shall be authorized security for all public deposits and shall be fully negotiable in this state; it being the purpose of the Municipal Housing Law to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension and trust funds and funds held on deposit, for the purchase of any such bonds or other obligations and that any such bonds or other obligations shall be authorized security for all public deposits and shall be fully negotiable in this state; provided, however, that nothing contained in the Municipal Housing Law shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities.

History: 1953 Comp., § 14-46-24, enacted by Laws 1965, ch. 300.

3-45-25. Law controlling.

Insofar as the provisions of the Municipal Housing Law are inconsistent with the provisions of any other law, the provisions of the Municipal Housing Law shall be controlling.

History: 1953 Comp., § 14-46-25, enacted by Laws 1965, ch. 300.

ARTICLE 46
Urban Development

3-46-1. Repealed.

History: 1953 Comp., § 14-47-1, enacted by Laws 1965, ch. 300; 1971, ch. 200, § 1; 1975, ch. 333, § 1; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-2. Repealed.

History: 1953 Comp., § 14-47-1.1, enacted by Laws 1971, ch. 200, § 2; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-3. Repealed.

History: 1953 Comp., § 14-47-2, enacted by Laws 1969, ch. 221, § 1; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-4. Repealed.

History: 1953 Comp., § 14-47-2.1, enacted by Laws 1969, ch. 221, § 2; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-5. Repealed.

History: 1953 Comp., § 14-47-2.2, enacted by Laws 1969, ch. 221, § 3; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-6. Repealed.

History: 1953 Comp., § 14-47-2.3, enacted by Laws 1969, ch. 221, § 4; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-7. Repealed.

History: 1953 Comp., § 14-47-2.4, enacted by Laws 1969, ch. 221, § 5; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-8. Repealed.

History: 1953 Comp., § 14-47-2.5, enacted by Laws 1969, ch. 221, § 6; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-9. Repealed.

History: 1953 Comp., § 14-47-2.6, enacted by Laws 1969, ch. 221, § 7; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-10. Repealed.

History: 1953 Comp., § 14-47-2.7, enacted by Laws 1969, ch. 221, § 8; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-11. Repealed.

History: 1953 Comp., § 14-47-2.8, enacted by Laws 1969, ch. 221, § 9; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-12. Repealed.

History: 1953 Comp., § 14-47-2.9, enacted by Laws 1969, ch. 221, § 10; 1971, ch. 200, § 3; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-13. Repealed.

History: 1953 Comp., § 14-47-2.10, enacted by Laws 1969, ch. 221, § 11; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-14. Repealed.

History: 1953 Comp., § 14-47-2.11, enacted by Laws 1969, ch. 221, § 12; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-15. Repealed.

History: 1953 Comp., § 14-47-2.12, enacted by Laws 1969, ch. 221, § 13; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-16. Repealed.

History: 1953 Comp., § 14-47-2.13, enacted by Laws 1969, ch. 221, § 14; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-17. Repealed.

History: 1953 Comp., § 14-47-2.14, enacted by Laws 1969, ch. 221, § 15; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-18. Repealed.

History: 1953 Comp., § 14-47-2.15, enacted by Laws 1969, ch. 221, § 16; 1971, ch. 200, § 4; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-19. Repealed.

History: 1953 Comp., § 14-47-2.16, enacted by Laws 1969, ch. 221, § 17; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-20. Repealed.

History: 1953 Comp., § 14-47-2.17, enacted by Laws 1969, ch. 221, § 18; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-21. Repealed.

History: 1953 Comp., § 14-47-2.18, enacted by Laws 1969, ch. 221, § 19; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-22. Repealed.

History: 1953 Comp., § 14-47-2.19, enacted by Laws 1969, ch. 221, § 20; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-23. Repealed.

History: 1953 Comp., § 14-47-2.20, enacted by Laws 1971, ch. 200, § 5; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-24. Repealed.

History: 1953 Comp., § 14-47-2.21, enacted by Laws 1971, ch. 200, § 6; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-25. Repealed.

History: 1953 Comp., § 14-47-2.22, enacted by Laws 1971, ch. 200, § 7; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-26. Repealed.

History: 1953 Comp., § 14-47-3, enacted by Laws 1965, ch. 300; 1971, ch. 200, § 8; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-27. Repealed.

History: 1953 Comp., § 14-47-4, enacted by Laws 1965, ch. 300; 1971, ch. 200, § 9; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-28. Repealed.

History: 1953 Comp., § 14-47-5, enacted by Laws 1965, ch. 300; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-29. Repealed.

History: 1953 Comp., § 14-47-6, enacted by Laws 1965, ch. 300; 1971, ch. 200, § 10; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-30. Repealed.

History: 1953 Comp., § 14-47-7, enacted by Laws 1965, ch. 300; 1969, ch. 221, § 21; 1971, ch. 200, § 11; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-31. Repealed.

History: 1953 Comp., § 14-47-8, enacted by Laws 1965, ch. 300; 1969, ch. 221, § 22; 1971, ch. 200, § 12; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-32. Repealed.

History: 1953 Comp., § 14-47-9, enacted by Laws 1965, ch. 300; 1971, ch. 200, § 13; 1981, ch. 125, § 40; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-33. Repealed.

History: 1953 Comp., § 14-47-9.1, enacted by Laws 1969, ch. 279, § 1; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-34. Repealed.

History: 1953 Comp., § 14-47-10, enacted by Laws 1965, ch. 300; 1967, ch. 247, § 2; 1971, ch. 200, § 14; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-35. Repealed.

History: 1953 Comp., § 14-47-11, enacted by Laws 1965, ch. 300; 1971, ch. 200, § 15; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-36. Repealed.

History: 1953 Comp., § 14-47-12, enacted by Laws 1965, ch. 300; 1971, ch. 200, § 16; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-37. Repealed.

History: 1953 Comp., § 14-47-13, enacted by Laws 1965, ch. 300; 1971, ch. 200, § 17; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-38. Repealed.

History: 1953 Comp., § 14-47-14, enacted by Laws 1965, ch. 300; 1971, ch. 200, § 18; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-39. Repealed.

History: 1953 Comp., § 14-47-15, enacted by Laws 1965, ch. 300; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-40. Repealed.

History: 1953 Comp., § 14-47-16, enacted by Laws 1965, ch. 300; 1971, ch. 200, § 19; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-41. Repealed.

History: 1953 Comp., § 14-47-17, enacted by Laws 1965, ch. 300; 1967, ch. 247, § 3; 1969, ch. 204, § 1; 1971, ch. 200, § 20; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-42. Repealed.

History: 1953 Comp., § 14-47-18, enacted by Laws 1965, ch. 300; 1971, ch. 200, § 21; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-43. Ordinances relating to repair, closing and demolition of dwellings unfit for human habitation; complaint; service of complaint; appeal.

A. Whenever a municipality finds that there exist dwellings that are unfit for human habitation due to dilapidation; defects increasing the hazards of fire, accidents or other calamities; lack of ventilation, light or sanitary facilities; or other conditions, including those set forth in Subsection C of this section, rendering the dwellings unsafe and unsanitary or dangerous or detrimental to the health, safety or morals or otherwise inimical to the welfare of the residents of the municipality, power is conferred upon the municipality to require or cause the repair, closing or demolition or removal of the dwellings in the manner provided in this section. "Dwelling" means a building or structure or part thereof used and occupied for human habitation or intended to be so used and includes any appurtenances usually enjoyed in the dwelling.

B. Upon the adoption of an ordinance finding that dwelling conditions of the character described in Subsection A of this section exist, the governing body of the municipality may adopt ordinances relating to the dwellings within the municipality that are unfit for human habitation. The ordinances shall include the following provisions:

(1) a public officer shall be designated or appointed to exercise the powers prescribed by the ordinances;

(2) whenever it appears to the public officer, on the officer's own motion, that a dwelling is unfit for human habitation, the officer shall, if the officer's preliminary investigation discloses a basis for the charges, issue and cause to be served on the owner, every mortgagee of record and all parties in interest in the dwelling, including persons in possession, a complaint stating the charges in that respect. The complaint shall contain a notice that a hearing will be held before the public officer or the officer's designated agent at a place fixed in the complaint not less than ten days nor more than thirty days after the serving of the complaint; that the owner, mortgagee and parties in interest shall be given the right to file an answer to the complaint and to appear in person or otherwise and give testimony at the place and the time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer;

(3) if after the notice and hearing the public officer determines that the dwelling under consideration is unfit for human habitation, the officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner an order in writing that advises the owner of the owner's rights under Subsection E of this section and that:

(a) if the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling, the ordinance of the municipality shall fix a certain percentage of the cost as being reasonable for that purpose and require the owner, within the time specified in the order, to repair, alter or improve the dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or

(b) if the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling, the ordinance of the municipality shall fix a certain percentage of the cost as being reasonable for the purpose, and require the owner, within the time specified in the order, to remove or demolish the dwelling;

(4) if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed;

(5) if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause the dwelling to be removed or demolished; and

(6) the amount of the cost of the repairs, alterations or improvements or the vacating and closing or the removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred. If the dwelling is removed or demolished by the public officer, the officer shall sell the materials of the dwelling and shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining shall be deposited in the district court by the public officer and shall be secured in the manner as may be directed by the court and shall be disbursed by the court to the persons found to be entitled to the balance by final order or decree of the court.

C. An ordinance adopted by a municipality pursuant to this section shall provide that the public officer may determine a dwelling is unfit for human habitation if the officer finds that conditions exist in the dwelling that are dangerous or injurious to the health, safety or morals of the occupants of the dwelling, the occupants of neighboring dwellings or other residents of the municipality or that have a blighting influence on properties in the area. The conditions may include the following without limitations: defects increasing the hazards of fire, accident or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness; overcrowding; inadequate ingress and egress; inadequate drainage; or any violation of health, fire, building or zoning regulations or any other laws or regulations relating to the use of land and the use and occupancy of buildings and improvements. The ordinance may provide additional standards to guide the public officer or the officer's agents or employees in determining the fitness of a dwelling for human habitation.

D. Complaints or orders issued by a public officer pursuant to an ordinance adopted under the provisions of this section shall be served upon persons either personally or by registered mail. If the whereabouts of the persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence and the public officer makes an affidavit to that effect, the serving of the complaint or order upon the persons may be made by publishing the complaint or order once each week for two consecutive weeks in a newspaper printed and published in the municipality or, in the absence of a newspaper, in one printed and published in the county and circulating in

the municipality in which the dwellings are located. A copy of the complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of the complaint or order shall also be filed with the clerk of the county in which the dwelling is located. Filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law.

E. A person affected by an order issued by the public officer may file an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

F. An ordinance adopted by the governing body of the municipality may authorize the public officer to exercise powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this section, including the following powers:

(1) to investigate the dwelling conditions in the municipality in order to determine which dwellings are unfit for human habitation;

(2) to administer oaths and affirmations, examine witnesses and receive evidence;

(3) to enter upon premises for the purpose of making examinations, provided that the entries shall be made in a manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted;

(4) to appoint and fix the duties of any officers, agents and employees as the officer deems necessary to carry out the purposes of the ordinances; and

(5) to delegate any functions and powers under the ordinance to officers, agents and employees that the public officer may designate.

G. The governing body of a municipality adopting an ordinance under this section shall, as soon as possible thereafter, prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwellings in the municipality for the purpose of determining the fitness of the dwellings for human habitation and for the enforcement and administration of its ordinance or ordinances adopted under this section.

H. Nothing in this section shall be construed to abrogate or impair the powers of the courts or of a department of a municipality to enforce any provisions of its charter or its ordinances or regulations or to prevent or punish violations thereof. The powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law.

I. Nothing in this section shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

History: 1953 Comp., § 14-47-19, enacted by Laws 1965, ch. 300; 1998, ch. 55, § 14; 1999, ch. 265, § 14; 2007, ch. 329, § 2; 2007, ch. 330, § 2.

3-46-44. Repealed.

History: 1953 Comp., § 14-47-20, enacted by Laws 1971, ch. 200, § 22; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-46-45. Repealed.

History: 1953 Comp., § 14-47-21, enacted by Laws 1975, ch. 333, § 2; 1977, ch. 249, § 22; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

ARTICLE 47
Park Commission

3-47-1. Park commission; appointment; term; qualification; removal; vacancy.

A. The governing body may appoint a park commission. One commissioner shall serve a one-year term, one commissioner shall serve a two-year term and one commissioner shall serve a three-year term so that after the initial appointments, one commissioner shall be appointed each year for a three-year term. The first three commissioners shall determine by lot their respective terms. Each commissioner shall be a resident of the municipality.

B. The governing body may remove any park commissioner for cause and may fill any vacancy on the park commission for the balance of the unexpired term.

History: 1953 Comp., § 14-48-1, enacted by Laws 1965, ch. 300.

3-47-2. Organization of park commission; powers and duties of officers.

A. The park commission shall meet within ten days after the date of the appointment of any new member or members and elect one member president and one member secretary.

B. The park commission shall submit to the governing body for its approval all matters concerning the management, improvement and development of parks.

C. The secretary shall keep a record of activities and meetings of the park commission.

History: 1953 Comp., § 14-48-2, enacted by Laws 1965, ch. 300.

ARTICLE 48
Refuse; Collection and Disposal

3-48-1. Refuse; yard waste; definitions.

As used in Chapter 3, Article 48 NMSA 1978:

A. "refuse" means any garbage, rejected or waste food, offal, swill, carrion, ashes, dirt, slop, waste paper, trash, rubbish, waste or unwholesome material of any kind; and

B. "yard waste" means yard clippings, grass cuttings, yard cleanings, fallen trees, tree limbs, slash and pine needles.

History: 1953 Comp., § 14-49-1, enacted by Laws 1965, ch. 300; 2003, ch. 230, § 1.

3-48-2. Authority to regulate refuse.

A municipality may, by ordinance:

A. acquire and maintain refuse disposal areas or plants within or without the municipal boundary;

B. enforce a general system of refuse collection and disposal;

C. prohibit the deposit of refuse on either public or private property;

D. compel the taking of refuse to designated places;

E. specify the kind, size and material of a refuse receptacle;

F. provide for the destruction of refuse or its use for a beneficial purpose; and

G. require any person owning or controlling any occupied real property to:

(1) provide and maintain suitable refuse receptacles;

(2) deposit all refuse in the receptacles; and

(3) place a receptacle in a place convenient for removal.

History: 1953 Comp., § 14-49-2, enacted by Laws 1965, ch. 300.

3-48-3. Refuse; authority to collect and dispose; fee.

A. A municipality may, by ordinance, provide for the collection and disposal of refuse by:

(1) the municipality;

(2) contract; or

(3) any other manner deemed suitable by the municipality.

B. A municipality may appoint or contract with a refuse collector and prescribe the duties and compensation of a refuse collector.

C. A municipality may require each person owning or controlling real property to pay a reasonable fee for the collection and disposal of refuse and shall determine if the municipality or the refuse collector shall collect the fee for the collection and disposal of refuse. The refuse collection fee shall only be charged against real property that is occupied or has been previously occupied.

D. A municipality providing for the collection of refuse may require any person owning or controlling real property to pay the refuse collection fee whether or not the refuse collection service is used by the person owning or controlling real property.

E. A municipality providing for the collection and disposal of yard waste may require any person owning or controlling real property to pay a yard waste collection and disposal fee.

History: 1953 Comp., § 14-49-3, enacted by Laws 1965, ch. 300; 2003, ch. 230, § 2.

3-48-4. Refuse; failure to place in proper container or use refuse collection service; failure to pay charge; assessment.

A. A municipality may remove refuse from real property and make a charge against the real property specially benefited by the removal of the refuse, if:

(1) any person owning or controlling real property allows refuse to be deposited upon his property other than in the proper receptacle and fails to remove the refuse or to place the refuse in the proper receptacle within forty-eight hours after the refuse is deposited on the real property; or

(2) the owner owning or controlling real property refuses to use the refuse collection service provided by the municipality.

B. If any person, owning or controlling the real property, fails or refuses to pay:

(1) the charge imposed for the collection and disposal of refuse; or

(2) the charge made against the real property specially benefited by the removal of refuse, the municipality may make an assessment against the real property.

History: 1953 Comp., § 14-49-4, enacted by Laws 1965, ch. 300.

3-48-5. Refuse; assessment roll; publication of notice of hearing.

A. To collect the assessment authorized in Section 3-48-4 NMSA 1978, the governing body shall have prepared an assessment roll. The assessment roll shall list, in columns:

(1) the name of the owner, if known, of the parcel of real estate being assessed;

(2) a description of the parcel of real estate being assessed;

(3) the amount assessed against each parcel of real estate; and

(4) describe, in general terms, the removal and what was removed from the real estate being assessed.

B. The municipal clerk shall publish a notice stating that the assessment roll for delinquent refuse collection charges due the municipality is on file in the office of the municipal clerk and the time and place when the governing body will hear appeals or protests by any person aggrieved by the assessment. The notice shall be published once not less than ten nor more than twenty days before the day of the protest hearing. If the address of the owner of the real property is known, a copy of the notice shall be mailed by certified mail, return receipt requested, to the known address of the owner of the real property being assessed.

C. The provisions of this section are intended to afford an additional and not an exclusive method for enforcing payment of charges for refuse collection furnished by the municipality.

History: 1953 Comp., § 14-49-5, enacted by Laws 1965, ch. 300; 1967, ch. 146, § 9; 1981, ch. 92, § 1.

3-48-6. Refuse; protest meeting; confirmation; finality.

A. At the protest hearing authorized in Section 3-48-5 NMSA 1978, any interested person may protest to the governing body the:

(1) regularity of the proceedings;

(2) amount assessed against the real estate; or

(3) correctness of the amount of the assessment.

B. The governing body shall:

(1) determine the regularity of the proceedings;

(2) correct any errors found in the assessment; and

(3) by resolution, confirm the proceedings and the assessments. The proceedings and assessments so confirmed shall be deemed to be the final determination as to the regularity, validity and correctness of the assessment.

History: 1953 Comp., § 14-49-6, enacted by Laws 1965, ch. 300.

3-48-7. Refuse; delinquent assessments; penalty; lien; foreclosure.

On or before October 1, of each year, the municipal clerk shall certify to the governing body a list containing any delinquent assessment with penalty added for nonpayment of the assessment at the rate of one percent per month of any assessment confirmed by resolution as provided in Section 3-48-6 NMSA 1978, and describe the parcel of real estate to which the assessment is applicable. After the certified list is accepted by the governing body, the assessment shall be a lien, when processed, against the parcel of real estate and shall be processed as provided in Sections 3-36-1 to 3-36-5 NMSA 1978. Any such lien shall be a lien superior to all other liens except general property taxes upon the property so charged and a personal liability of the owner of the property so charged.

History: 1953 Comp., § 14-49-7, enacted by Laws 1965, ch. 300; 1967, ch. 146, § 10.

ARTICLE 49
Streets, Sidewalks and Public Grounds

3-49-1. Streets; sidewalks; curbs and gutters; public grounds.

A municipality may lay out, establish, open, vacate, alter, repair, widen, extend, grade, pave or otherwise improve streets; including, but not necessarily limited to median and divider strips, parkways and boulevards; alleys, avenues, sidewalks, curbs, gutters and public grounds, and may:

A. regulate their use and use of structures under them;

B. prohibit and remove encroachments or obstructions on them;

C. provide for their lighting, cleaning, beautification, landscaping and maintenance;

D. regulate their opening or repair;

E. require the owner or occupant of any premise to keep the sidewalk, along the premise, free from any snow or other obstruction;

F. regulate and prohibit the throwing or depositing of any offensive matter on them;

G. prohibit injury to them;

H. provide for and regulate crosswalks, curbs and gutters;

I. regulate and prohibit their use for signs, signposts, awnings, awning posts, telegraph poles, horse troughs, posting handbills and advertisements;

J. regulate and prohibit the exhibition or carrying of banners, placards, advertisements or handbills in the streets or upon the sidewalks;

K. regulate and prohibit the flying of banners, flags or signs across the streets or from houses;

L. regulate traffic and sales upon streets, sidewalks and public places;

M. regulate the numbering of lots and houses;

N. name and change the name of any street, alley, avenue or other public place; and

O. with the written consent of the owner, regulate the speed and traffic conditions on private property.

History: 1953 Comp., § 14-50-1, enacted by Laws 1965, ch. 300; 1967, ch. 90, § 2.

3-49-2. Straightening or altering streets; exchange of street land for land on new route; consent of owner; deeds.

Whenever it is necessary to straighten or alter any street to facilitate traffic, the governing body may:

A. with the consent of the owner, exchange the land on which the street lies for any land owned and held in fee simple;

B. convert the land received from the owner in fee simple to a street; and

C. execute a deed to the land on which the street lies to the owner who has exchanged his land with the municipality for the land on which the street lies.

History: 1953 Comp., § 14-50-2, enacted by Laws 1965, ch. 300.

3-49-3. Street sprinkling and maintenance; assessment; lien for assessment.

A. Whenever the governing body determines that the streets shall be watered or maintained in whole or in part at the expense of the owner of any property which abuts upon the streets, the governing body shall determine:

(1) the expense of watering or maintaining the streets;

(2) the proportion of the expense to be borne by the owner of property which abuts upon the streets;

(3) the charge to be assessed against each lineal foot of frontage of the abutting property; and

(4) assess, according to its frontage, each tract or parcel of abutting property its proportionate share of the expense of watering or maintaining the streets.

B. The assessment for the expense of watering or maintaining the streets shall be collected as authorized in Section 3-23-1 NMSA 1978, and shall be a lien against the tract or parcel of property abutting the street and the lien shall be enforced as provided in Sections 3-36-1 through 3-36-5 NMSA 1978.

C. As used in this section the term "streets" shall include both improved and unimproved streets, alleys, parkways, boulevards, thoroughfares, and median and divider strips, or any combination of the foregoing.

History: 1953 Comp., § 14-50-3, enacted by Laws 1965, ch. 300; 1967, ch. 90, § 3.

3-49-4. Sidewalks; repairing; improving; constructing.

A. If the governing body determines that it is necessary to repair, improve or construct a sidewalk fronting an individual tract or parcel of land, the governing body shall adopt a resolution requiring that a sidewalk be repaired, improved or constructed in conformity with the existing sidewalk standards adopted by the municipality.

B. A copy of the resolution shall be served by certified mail at his last known address on the owner or agent in charge of the tract or parcel of land which is contiguous to the sidewalk. If the owner, as shown by the real estate records of the county clerk or agent in charge of the building, structure or premise cannot be served as provided in this subsection, a copy of the resolution shall be posted on the building,

structure or tract or parcel of land which is contiguous to the sidewalk and a copy of the resolution shall be published one time.

C. Within fifteen days of the receipt of a copy of the resolution or of the posting and publishing of a copy of the resolution, the owner or agent in charge of the building, structure or premise shall commence repairing, improving or constructing a sidewalk, or file a written objection with the municipal clerk asking for a hearing before the governing body of the municipality.

D. If a written objection is filed as required in this section, the governing body shall:

(1) fix a date for a hearing on its resolution and the objection;

(2) consider all evidence for and against the sidewalk resolution at the hearing; and

(3) determine if its resolution should be enforced or rescinded.

E. Any person aggrieved by the determination of the governing body may appeal to the district court by:

(1) giving notice of appeal to the governing body within five days after the determination made by the governing body; and

(2) filing a petition in the district court within twenty days after the determination made by the governing body. The district court shall hear the matter de novo and enter judgment in accordance with its findings.

F. If the owner or agent in charge of the tract or parcel of land which is contiguous to the sidewalk fails to commence repairing, improving or constructing the sidewalk:

(1) within fifteen days of being served a copy of the resolution or of the posting and publishing of the resolution if no written objection is filed;

(2) within five days of the determination by the governing body that the resolution shall be enforced if no appeal is taken; or

(3) after the district court enters judgment sustaining the determination of the governing body, the municipality may repair, improve or construct the sidewalk at the cost and expense of the owner. The reasonable cost of the repair, improvement or construction shall constitute a lien against the tract or parcel of land which is contiguous to the sidewalk. The lien shall be foreclosed in the manner provided in Sections 3-36-1 through 3-36-5 NMSA 1978.

G. If, within twenty days of the receipt of the final order, the owner of the tract or parcel of land which is contiguous to the sidewalk fails to repair, improve or reconstruct

the sidewalk as required in the notice, the owner of the tract or parcel of land contiguous to the sidewalk is liable for any injury received by any person which injury is proximately caused by the negligence of such owner pertaining to such faulty repair, construction or maintenance of the sidewalk and the municipality is not liable.

History: 1953 Comp., § 14-50-4, enacted by Laws 1967, ch. 240, § 1.

3-49-5. Streets; public grounds; water systems; sewers; sidewalks; assessments.

A. For the purpose of Sections 3-49-1 and 3-53-1 NMSA 1978, a municipality may:

(1) open, construct, repair, keep in order and maintain water mains, laterals, reservoirs, standpipes, sewers and drains; and

(2) assess and collect as other assessments and collections are made the amount necessary to cover the cost of such work.

B. The assessment against the lot or land along or through which the street, alley, sidewalk or public ground runs shall be made in such portion as is just and equitable according to the benefits accruing to the lot or land and to its value.

History: 1953 Comp., § 14-50-5, enacted by Laws 1965, ch. 300.

ARTICLE 50
Municipal Parking

3-50-1. Municipal Parking Law; short title.

Sections 3-50-1 through 3-50-22 NMSA 1978, may be cited as the "Municipal Parking Law."

History: 1953 Comp., § 14-51-1, enacted by Laws 1965, ch. 300.

3-50-2. Finding and declaration of necessity.

It is hereby declared:

A. that there exists in cities in the state of New Mexico serious conditions of congestion of street traffic, preventing free circulation of traffic, obstructing access to and use of both public and private property, increasing traffic hazards, impeding rapid and effective fighting of fires and the disposition of police forces and endangering the public peace, health and safety;

B. that this condition is caused in substantial part by insufficiency of space or accommodations for the parking of motor vehicles off the public streets;

C. that the installation of parking meters and the establishment of additional parking facilities, together with all undertakings incidental or advantageous thereto for the improvement of traffic control and regulation, are public uses and purposes for which public money may be spent and private property acquired;

D. that it is in the public interest that work on projects for such purposes be commenced as soon as possible in order to relieve traffic congestion; and the necessity in the public interest for the provisions hereinafter enacted, is hereby declared as a matter of legislative determination.

History: 1953 Comp., § 14-51-2, enacted by Laws 1965, ch. 300.

3-50-3. Definitions.

As used in the Municipal Parking Law:

A. "city" means any municipality having a population of five thousand or more. "The city" means the particular city for which a particular authority is created;

B. "authority" or "parking authority" means any agent or agency of a city created pursuant to the Municipal Parking Law;

C. "governing body" means, in the case of a city, that body in which the legislative powers of the city are vested;

D. "bonds" means any obligation issued by a city pursuant to the Municipal Parking Law;

E. "obligee" includes any bondholder, trustee or trustees for any bondholders, or lessor demising to the authority or city property used in connection with a parking facility or any assignee or assignees of such lessor's interest, or any part thereof, and the state or the United States or any agency of either, when a party to any contract with an authority or city by which aid or a loan is given or made to the city;

F. "project" means any acquisition, improvement, construction or undertaking of any kind authorized in the Municipal Parking Law;

G. "ordinance" means ordinance or resolution which may be passed, adopted or entered into by the governing body of a city;

H. "parking facilities" means any space on the streets or off the streets used for the purpose of parking motor vehicles, and includes buildings erected above or below the

land when used for the purpose of increasing accommodations for parking motor vehicles;

I. "federal government" includes the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America; and

J. "real property" includes all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years.

History: 1953 Comp., § 14-51-3, enacted by Laws 1965, ch. 300.

3-50-4. Creation of parking authorities.

Every city, in addition to other powers conferred by the Municipal Parking Law, shall have power and may by proper ordinance of its governing body:

A. create as an agent of the city, an authority to be known as the "parking authority" of the city;

B. delegate to said authority any or all of the powers conferred on the city by the Municipal Parking Law, except the power to issue bonds and purchase real property; and

C. prescribe the number of members of said authority, the term of office of said members, their appointment and removal and the powers, rights and duties which they shall have and exercise. Said ordinance shall provide that the authority shall file with the governing body of the city, a detailed report of all its transactions, including a statement of all revenues and expenditures at quarterly, semiannual or annual intervals as the governing body may prescribe.

History: 1953 Comp., § 14-51-4, enacted by Laws 1965, ch. 300.

3-50-5. Powers of city.

Every city, in addition to other powers conferred by the Municipal Parking Law, shall have power, and it is hereby authorized:

A. to purchase and install, maintain, regulate, operate and manage parking meters and parking spaces upon the streets of said city;

B. to purchase, acquire, lease, rent, construct, reconstruct, improve, alter, repair, maintain, operate and manage parking facilities for the parking of motor vehicles off the public streets together with public rights-of-way necessary or convenient therefor, including the leasing of the operation thereof, and including the leasing of a portion of the space at any such parking facility to private operators for commercial purposes,

such as gasoline service stations, which are directly related to the operation of such parking facility when in the judgment of the governing body it is convenient or necessary to permit such leasing in order to utilize the balance of the property as a parking facility;

C. to purchase, acquire by gift, grant, bequest or devise or otherwise, any real or personal property or any interest therein, together with the improvements thereon, to be used as parking facilities or incident thereto;

D. to insure or provide for the insurance of any parking facility established by the city against such risks and hazards as the city may deem advisable;

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

F. to acquire by the exercise of the power of eminent domain any real property which it deems necessary for its purposes under the Municipal Parking Law after the adoption by it of a resolution declaring that its acquisition is necessary for such purposes. This power shall be exercised in the manner provided by any applicable statutory provisions and laws of the state of New Mexico and acts amendatory thereof or supplementary thereto. Title to property so acquired shall be taken in the name of the city; provided, however, that no existing parking facility shall be acquired by the exercise of the power of eminent domain unless the project to be furnished or constructed by the city will encompass a parking facility not less than three times the area of the existing parking facility and unless the owner or lessor of the existing parking facility shall refuse to furnish or construct a parking facility not less than three times its present area;

G. to sell, lease, exchange, transfer, assign or otherwise dispose of any real or personal property, or any interest therein acquired for the purpose of the Municipal Parking Law;

H. to do any act in order to furnish motor vehicle parking space and to establish parking facilities for motor vehicles parked within the city and to handle and care for any such vehicles parked within any parking space owned, controlled or operated by the city;

I. to receive, control, invest, order the expenditure of, any and all moneys and funds pertaining to parking facilities and parking meters, or related properties;

J. to exercise all or any part or combination of the powers herein granted; and

K. to do and perform any and all other acts and things necessary, convenient, desirable or appropriate to carry out the provisions of the Municipal Parking Law.

History: 1953 Comp., § 14-51-5, enacted by Laws 1965, ch. 300.

3-50-6. Interested officers and employees.

It is declared to be against public policy for any officer or employee of a city to acquire any interest direct or indirect in any parking facilities or related properties or any commercial enterprise connected or incidental thereto, or to have any interest direct or indirect in any contract or proposed contract related to or affecting parking facilities, unless said officer or employee shall first disclose the same in writing to the governing body of the city. Such disclosures shall be entered upon the minutes of the governing body of the city. Upon such disclosure, such officer or employee shall not participate in any action by the city affecting such property or contract. The failure so to disclose such interest shall constitute misconduct in office, and the governing body may take such action with reference to any such contract or interest as it may deem advisable. Any such contract or interest shall be void at the election of the governing body.

History: 1953 Comp., § 14-51-6, enacted by Laws 1965, ch. 300.

3-50-7. Planning, zoning and building laws.

All parking facilities of the city shall be subject to planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the parking facility is situated.

History: 1953 Comp., § 14-51-7, enacted by Laws 1965, ch. 300.

3-50-8. Lease of parking facilities; bids.

If a city desires to lease any project acquired by it under the provisions of the Municipal Parking Law, it shall do so by publication of notice and award to the highest responsible bidder. The governing body shall by ordinance prescribe the method of giving notice inviting bids. The notice shall distinctly and specifically describe the project and the facilities in connection therewith which are to be leased, the period of time for which the project is to be leased and the minimum rental to be paid under the lease. The governing body may reject any and all bids presented, and readvertise.

History: 1953 Comp., § 14-51-8, enacted by Laws 1965, ch. 300.

3-50-9. Power to issue bonds.

A city shall have power to issue bonds from time to time in its discretion to finance in whole or in part the cost of the preparation, acquisition, purchase, lease, construction, reconstruction, improvement, alteration, extension or repair of any project hereunder and including the acquisition, installation and maintenance of parking meters. A city shall also have the power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it hereunder.

History: 1953 Comp., § 14-51-9, enacted by Laws 1965, ch. 300.

3-50-10. Liability on bonds.

Neither the governing body of a city nor any person executing the bonds shall be liable personally on any bonds by reason of the issuance thereof hereunder. The bonds issued under the provisions of the Municipal Parking Law shall be payable solely from the sources provided in Section 3-50-11 NMSA 1978. Such bonds shall not be a debt, liability or general obligation of the city issuing them, and they shall so state on their face. The bonds shall not constitute a debt or indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction.

History: 1953 Comp., § 14-51-10, enacted by Laws 1965, ch. 300.

3-50-11. Types of bonds; sources from which payable.

In order to carry out the purposes of the Municipal Parking Law, a city may issue upon proper resolution, such types of bonds as it may determine, including bonds on which the principal and interest are payable:

A. from the income and revenues of the projects financed with the proceeds of such bonds; or

B. from such income and revenues, together with financial assistance from the state or federal government in aid of such projects; or

C. from the income and revenues of certain designated parking facilities whether or not they were financed in whole or in part with the proceeds of such bonds; or

D. from any contributions, grants or other financial assistance from the state or federal government or from any other source; or

E. from parking meter revenues of the city which may be appropriated by the governing body of the city; or

F. by any combination of these methods. Any such bonds may be additionally secured by a pledge of any parking meter revenues. The governing body of a city may pledge or allocate such parking meter revenues or special taxes for periods of years for the financing or operation of any project authorized by the Municipal Parking Law and the payment of principal and interest on all or any type of bond issued and outstanding pursuant to the Municipal Parking Law, until all of such bonds have been fully paid.

History: 1953 Comp., § 14-51-11, enacted by Laws 1965, ch. 300.

3-50-12. Form and sale of bonds.

Bonds of a city issued hereunder, shall be authorized by its resolution and may be issued in any one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, not exceeding six percent per annum, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution, its trust indenture, or the bonds so issued may provide.

The bonds shall be sold for cash at not less than par at either public or private sale.

In case any of the officers of the city whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes, the same as if such officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding any bonds issued pursuant to the Municipal Parking Law shall be fully negotiable.

In any suit, action or proceedings involving the validity or enforceability of any bond of a city or the security therefor, any such bond reciting in substance that it has been issued by the city to aid in financing a parking facility project to provide additional facilities for parking motor vehicles off the public streets shall be conclusively presumed to have been issued for a parking facility project of such character, and said project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of the Municipal Parking Law.

History: 1953 Comp., § 14-51-12, enacted by Laws 1965, ch. 300.

3-50-13. Provisions of bonds and trust indentures.

In connection with the issuance of bonds pursuant to the Municipal Parking Law or in the incurring of obligations under leases made pursuant to the Municipal Parking Law, and in order to secure the payment of such bonds or obligations, a city in addition to its other powers, shall have power:

A. to pledge all or any part of the gross or net rents, fees or revenues of a parking facility project, financed with the proceeds of such bonds, to which its rights then exist or may thereafter come into existence;

B. to covenant against pledging all or any part of the rents, fees and revenues, or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any parking facility project or any part thereof; and to covenant as to what other or additional debts or obligations may be incurred by it;

C. to covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof;

D. to covenant as to the rents and fees to be charged in the operation of a parking facility project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves or other purposes, and to covenant as to the use and disposition of the moneys held in such funds;

E. to covenant and agree on its part as it deems necessary and advisable for the better security of the bonds issued thereunder including a pledge of the project;

F. to prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

G. to covenant as to the use of any or all of its real or personal property acquired pursuant to the Municipal Parking Law, and to covenant as to the maintenance of such real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys;

H. to covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which such declaration and its consequences may be waived;

I. to vest in a trustee or trustees or the holders of bonds issued pursuant to the Municipal Parking Law, or any specified proportion of them, the right to enforce the payment of such bonds or any covenants securing or relating to such bonds; to vest in a trustee or trustees the rights, in the event of a default by said city, to take possession of any parking facility project or part thereof, and, so long as the city shall continue in default, to retain such possession and use, operate and manage said project, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the city with such trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or the holder of bonds, or any proportion of them, may enforce any covenant or rights securing or relating to such bonds; and

J. to exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character; to make such covenants as will tend to make the bonds more

marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

History: 1953 Comp., § 14-51-13, enacted by Laws 1965, ch. 300.

3-50-14. Construction of bond provisions.

The Municipal Parking Law, without reference to other statutes of the state, shall constitute full authority for the authorization and issuance of bonds hereunder. No other act or law with regard to the authorization or issuance of bonds that provides for an election, requires an approval or in any way impedes or restricts the carrying out of the acts herein authorized to be done shall be construed as applying to any proceedings taken hereunder or acts done pursuant hereto.

History: 1953 Comp., § 14-51-14, enacted by Laws 1965, ch. 300.

3-50-15. Examination of bond issue by attorney general.

A city may submit to the attorney general of the state any bonds to be issued hereunder after all proceedings for the issuance of such bonds have been taken. Upon the submission of such proceedings to the attorney general, it shall be the duty of the attorney general to examine into and pass upon the validity of such bonds and the regularity of all proceedings in connection therewith. If such bonds and proceedings conform to the provisions of the Municipal Parking Law, and are otherwise regular in form, and if such bonds when delivered and paid for will constitute binding and legal obligations enforceable according to the terms thereof, the attorney general shall certify in substance that such bonds are issued in accordance with the constitution and laws of the state of New Mexico.

History: 1953 Comp., § 14-51-15, enacted by Laws 1965, ch. 300.

3-50-16. Remedies of an obligee.

An obligee of a city shall have the right in addition to all other rights which may be conferred upon such obligee, subject only to any contractual restrictions binding upon such obligee:

A. by mandamus, suit, action or proceedings at law or in equity to compel said city and the officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said city with or for the benefit of such obligee and to require the carrying out of any or all such covenants and agreements of said city and the fulfillment of all duties imposed under said city by the Municipal Parking Law; and

B. by suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or in violation of any of the rights of such obligee of said city.

History: 1953 Comp., § 14-51-16, enacted by Laws 1965, ch. 300.

3-50-17. Additional remedies conferrable to an obligee.

A city shall have the power by its resolution, trust indenture, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right, in addition to all rights that may be otherwise conferred, upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

A. to cause possession of any parking facility project or any part thereof to be surrendered to any such obligee, which possession may be retained by such bondholder or trustee so long as the city shall continue in default;

B. to obtain the appointment of a receiver of any parking facility project of said city or any part thereof and of the rents and profits therefrom. If such receiver be appointed he may enter and take possession of such parking facility project or any part thereof and so long as the city shall continue in default operate and maintain the same, and collect and receive all fees, rents, revenues or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said city as the court shall direct; and

C. to require said city and the officers and agents thereof to account for the money actually received as if it and they were the trustees of an express trust.

History: 1953 Comp., § 14-51-17, enacted by Laws 1965, ch. 300.

3-50-18. Bonds; exemption from taxation.

Bonds and other evidences of indebtedness issued under the provisions of the Municipal Parking Law shall forever be and remain free and exempt from taxation by this state or any subdivision thereof.

History: 1953 Comp., § 14-51-18, enacted by Laws 1965, ch. 300.

3-50-19. Aid from federal government.

In addition to the powers conferred upon a city by other provisions of the Municipal Parking Law, a city is empowered to borrow money or accept contributions, grants or other financial assistance from the federal government for or in aid of any parking facility project within its area of operation; and, to these ends, to comply with such conditions, trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of the Municipal Parking Law to authorize every city to do any and all things necessary, convenient or desirable to secure the financial aid or cooperation of the federal government in the undertaking, acquisition, construction, maintenance or operation of any parking facility project of such city.

History: 1953 Comp., § 14-51-19, enacted by Laws 1965, ch. 300.

3-50-20. Contracts; leases; increase of revenue.

Every contract entered into by the authority for the use of any project or the services or facilities thereof acquired, constructed or completed from the proceeds of the sale of revenue bonds shall incorporate by reference the provisions of any ordinance pursuant to which the bonds were issued. Every such contract or lease shall also refer to the provisions of the Municipal Parking Law with respect to the obligation of the city to fix fees and charges to meet the payments provided for in the Municipal Parking Law and the proceedings for the issuance of revenue bonds and all payments required to be made to the authority under such contract shall be subject to increase if and when the authority is required to increase rates or charges to meet its obligations hereunder and under any ordinance providing for the issuance of bonds.

History: 1953 Comp., § 14-51-20, enacted by Laws 1965, ch. 300.

3-50-21. Validity of law.

If any provision of the Municipal Parking Law, or the application thereof to any person or circumstance is held invalid, the remainder of the law, or the application of such provision to other persons or circumstances, shall not be affected thereby.

History: 1953 Comp., § 14-51-21, enacted by Laws 1965, ch. 300.

3-50-22. Law controlling.

Insofar as the provisions of the Municipal Parking Law are inconsistent with the provisions of any other law, the provisions of the Municipal Parking Law shall be controlling.

History: 1953 Comp., § 14-51-22, enacted by Laws 1965, ch. 300.

ARTICLE 51
Greater Municipality Parking

3-51-1. Greater Municipality Parking Law; short title.

Sections 3-51-1 through 3-51-45 NMSA 1978, may be cited as the "Greater Municipality Parking Law."

History: 1953 Comp., § 14-52-1, enacted by Laws 1965, ch. 300.

3-51-2. Finding and declaration of necessity.

It is hereby declared that:

A. there exists in cities in the state of New Mexico serious conditions of congestion of street traffic, preventing free circulation of traffic, obstructing access to and use of both public and private property, increasing traffic hazards, impeding rapid and effective fighting of fires and the disposition of police forces and endangering the public peace, health and safety;

B. this condition is caused in substantial part by insufficiency of space or accommodations for the parking of motor vehicles off the public streets;

C. the installation of parking meters and the establishment of additional parking facilities, together with all undertakings incidental or advantageous thereto for the improvement of traffic control and regulation, are public uses and purposes for which public money may be spent and private property acquired;

D. projects for such purposes will, in addition, confer special benefits on property within their environs; and

E. it is in the public interest that work on projects for such purposes be commenced as soon as possible in order to relieve traffic congestion; and the necessity in the public interest for the provisions hereinafter enacted, is hereby declared as a matter of legislative determination.

History: 1953 Comp., § 14-52-2, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 1.

3-51-3. Definitions.

The following terms, wherever used or referred to in the Greater Municipality Parking Law, shall have the following respective meaning:

A. "city" or "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, and H class counties. "The city" means the particular city in which a particular parking district is created;

B. "authority" or "parking authority" means any agent or agency of a city created pursuant to the Greater Municipality Parking Law;

C. "district" or "parking district" means the area or portion of a city which shall be benefited and assessed for the improvements made pursuant to the Greater Municipality Parking Law;

D. "governing body" means, in the case of a city, that body in which the legislative powers of the city are vested;

E. "bonds" means any obligation issued by a city pursuant to the Greater Municipality Parking Law;

F. "obligee" includes any bondholder, trustee or trustees for any bondholders, or lessor demising to the city property used in connection with a parking facility or any assignee or assignees of such lessor's interest, or any part thereof, and the state or the United States or any agency of either, when a party to any contract with a city by which aid or a loan is given or made to the city;

G. "project" means the acquisition, improvement or construction of parking facilities and also means parking facilities which have been acquired, improved or constructed within the area of a parking district not more than five years preceding the formation of the district, or any combination of any of the foregoing;

H. "parking facilities" means any space on the streets or off the streets used for the purpose of parking motor vehicles, and includes buildings erected above or below the surface of the ground;

I. "federal government" includes the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America; and

J. "real property" or "property" includes all lands, including improvements and fixtures thereon.

History: 1953 Comp., § 14-52-3, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 2.

3-51-4. Creation of parking authorities.

Every city, in addition to other powers conferred by the Greater Municipality Parking Law, shall have power and is hereby authorized by proper ordinance of its governing body:

A. to create as an agent of the city, an authority to be known as the "Parking Authority" of the city; and

B. to prescribe the number of members of said authority, the term of office of said members, their appointment and removal and the powers, rights and duties which they shall have and exercise.

History: 1953 Comp., § 14-52-4, enacted by Laws 1965, ch. 300.

3-51-5. Powers of city.

Every city shall have all the powers necessary, convenient, desirable or appropriate to carry out the purposes and provisions of the Greater Municipality Parking Law

including the following powers in addition to other powers conferred by the Greater Municipality Parking Law:

A. to purchase and install, maintain, regulate, operate and manage parking meters and parking spaces upon the streets of the city;

B. to purchase, acquire, lease, rent, construct, reconstruct, improve, alter, repair, maintain, operate and manage parking facilities for the parking of motor vehicles off the public streets together with public rights of way necessary or convenient therefor, including the leasing of the operation thereof, and including the leasing of a portion of the space at any such parking facility to private operators for commercial purposes, when in the judgment of the governing body it is convenient or necessary to permit such leasing in order to utilize the balance of the property as a parking facility;

C. to purchase, acquire by gift, grant, bequest or devise or otherwise, any real or personal property or any interest therein, together with the improvement thereon, to be used as parking facilities or incident thereto;

D. to insure or provide for the insurance of any parking facility established by the city against such risks and hazards as the city may deem advisable;

E. to acquire by the exercise of the power of eminent domain any real property or personal property, or any interest therein which it deems necessary for its purposes under the Greater Municipality Parking Law after the adoption by it of an ordinance declaring that its acquisition is necessary for such purposes. This power shall be exercised in the manner provided by any applicable statutory provisions and laws of the state of New Mexico and acts amendatory thereof or supplementary thereto. Title to property so acquired shall be taken in the name of the city;

F. to sell, lease, exchange, transfer, assign or otherwise dispose of any real or personal property, or any interest therein acquired for the purpose of the Greater Municipality Parking Law; and

G. to receive, control, invest, order the expenditure of, any and all moneys and funds pertaining to parking facilities and parking meters, or related properties, if the same are not otherwise committed.

History: 1953 Comp., § 14-52-5, enacted by Laws 1965, ch. 300.

3-51-6. Interested officers and employees.

It is against public policy for any officer or employee of a city to acquire any interest in any parking facilities or related properties or any commercial enterprise connected or incidental thereto, or to have any interest in any contract or proposed contract related to parking facilities, unless the officer or employee shall first disclose the same in writing to the governing body of the city. Such disclosures shall be entered upon the minutes of

the governing body of the city. Upon such disclosure, such officer or employee shall not participate in any action by the city affecting such property or contract. The failure so to disclose such interest shall constitute misconduct in office and the governing body may take such action with reference to any such contract or interest as it deems advisable. Any such contract or interest shall be void at the election of the governing body.

History: 1953 Comp., § 14-52-6, enacted by Laws 1965, ch. 300.

3-51-7. Planning, zoning and building laws.

All parking facilities of the city shall be subject to planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the parking facility is situated.

History: 1953 Comp., § 14-52-7, enacted by Laws 1965, ch. 300.

3-51-8. Lease of parking facilities.

If a city desires to lease any project acquired by it under the provisions of the Greater Municipality Parking Law it may do so under such procedures as it shall prescribe. The city may accept such lease proposal as it deems to be in the public interest and in furtherance of the purposes of the Greater Municipality Parking Law.

History: 1953 Comp., § 14-52-8, enacted by Laws 1971, ch. 173, § 3.

3-51-9. Formation of district by governing body; provisional order.

A. Whenever the governing body of any city determines that special assessments shall be levied to wholly or partially finance any project, the governing body by resolution shall direct the preparation of:

(1) preliminary plans showing:

(a) a general description of the contemplated project; and

(b) a preliminary estimate of the cost of the project, including incidental costs; and

(2) an assessment plat showing the proposed area to be assessed.

B. The resolution may provide for one or more types of construction and shall separately estimate the cost of each type of construction. The estimate may be made in a lump sum or by unit prices, as may seem most desirable for the project complete in place.

C. The resolution shall describe and locate the project in general terms.

D. The resolution shall state:

(1) what part or portion of the expense thereof is of special benefit and therefore shall be paid by assessments; and

(2) what part, if any, has been or is proposed to be defrayed with moneys derived from other than the levy of assessments.

E. The resolution shall:

(1) by apt description designate the parking district, including the tracts proposed to be assessed; and

(2) state that the assessment is to be made upon all the tracts benefited by the project proportionately to the benefits received.

F. It shall not be necessary in any case to describe minutely in the resolution each particular tract to be assessed, but simply to designate the property, district or the location, so that the various parts to be assessed can be ascertained and determined to be within or without the proposed district.

G. The preliminary plans and assessment plat shall forthwith be prepared and filed with the city clerk.

H. Upon the filing of the plans and plat, the governing body shall examine the same; and if the plans and plat be found to be satisfactory, the governing body by resolution shall make a provisional order to the effect that such parking district shall be formed.

History: 1953 Comp., § 14-52-9, enacted by Laws 1971, ch. 173, § 4.

3-51-10. Formation of district by petition.

A. A district for the construction of any improvement authorized by the Greater Municipality Parking Law may be formed by the filing of a petition in the office of the clerk of the city in which the district is to be formed, signed by the owners of not less than one-half of the assessed value of all the real property within the tentative boundaries of the proposed district, as shown by the last preceding assessment roll of the county wherein such district is proposed to be formed.

B. The petition may be signed by any private corporation or, upon being authorized by the proper court, by a trustee, guardian, executor or administrator of an estate who is appointed as such under the laws of this state and who as such trustee, guardian, executor or administrator is entitled to exercise the rights of ownership of the real property belonging to the estate which he represents.

C. In determining whether a requisite number of property owners have signed the petition, the governing body of the city may rely upon the names appearing in the records of the county assessor, which shall be prima facie evidence of ownership.

D. The petition shall set forth:

(1) a general description of the proposed boundaries of the district;

(2) a general description of the contemplated project and its proposed location;

(3) a request that the governing body of the city declare the formation of a parking district; and

(4) a statement that the petition is filed pursuant to this section.

E. Upon filing of a petition satisfying the requirements of this section, in the office of the clerk of the city, the governing body shall proceed as if the formation of the district had been initiated by the governing body pursuant to Section 3-51-9 NMSA 1978.

History: 1953 Comp., § 14-52-10, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 5.

3-51-11. Formation of district; provisional order hearing; notice.

A. In the provisional order the governing body shall set a time at least twenty days thereafter and place at which the owners of the property to be assessed may appear and be heard as to the propriety and advisability of forming the parking district which has been provisionally ordered.

B. Notice shall be given:

(1) by publication in a newspaper of general circulation in the city once each week on the same weekday for two consecutive weeks, the last publication to be at least five days prior to the date of the hearing; and

(2) by mailing a copy of the notice to each of the property owners at his last known address at least ten days before such hearing. The names and addresses of the property owners shall be obtained from the records of the county assessor or from such other sources as the city clerk deems reliable.

C. Proof of publication shall be by affidavit of the publisher.

D. Proof of mailing shall be by affidavit of the person mailing the notice.

E. The notice shall describe:

(1) the project proposed (without mentioning minor details or incidentals);

(2) the estimated cost of the project and the part or portion, if any, to be paid from sources other than assessments;

(3) the fact that assessments shall be in proportion to the special benefits derived to the property comprising the proposed district;

(4) the extent of the proposed district to be assessed (by boundaries or other brief description);

(5) the maximum amount of the preliminary fund assessment, if any, to be levied against the property within the district pursuant to Section 3-51-14 NMSA 1978;

(6) the time and place when and where the governing body will consider the ordering of the proposed project and hear all objections that may be made in writing and filed with the city clerk at least two days prior thereto, or verbally at the hearing, concerning the same, by the owner of any property to be assessed; and

(7) the fact that the description of the property proposed to be assessed and all proceedings in the premises are on file and can be seen and examined at the office of the city clerk during business hours, at any time, by any person so interested.

History: 1953 Comp., § 14-52-10.1, enacted by Laws 1971, ch. 173, § 6.

3-51-12. Formation of district; provisional order hearing; conduct; appeal.

A. The owner of any property within the proposed district may, not less than two days preceding the hearing, file with the clerk his specific objections in writing. Any objection to the regularity, validity and correctness of the proceedings, including the validity and amount of the preliminary fund assessment, shall be deemed waived unless presented at the time and in the manner specified in this subsection.

B. At the time and place designated for hearing the objections, the governing body of the city shall hear and determine all objections that have been filed. The governing body shall have the power to adjourn the hearing and shall have power by resolution, in its discretion, to revise, correct or confirm any proceedings previously taken.

C. Within fifteen days after the publication of the ordinance forming the parking district, a person who has filed an objection, as provided in Subsection A of this section, shall have the right to appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 14-52-10.2, enacted by Laws 1971, ch. 173, § 7; 1998, ch. 55, § 15; 1999, ch. 265, § 15.

3-51-13. Formation of district; ordinance forming district.

A. If the governing body determines to proceed, it shall by ordinance form the parking district.

B. The ordinance shall prescribe:

(1) the extent of the district to be assessed, by boundaries or other brief description;

(2) the general nature and location of the proposed project (without mentioning minor details); and

(3) the amount or proportion of the total cost to be defrayed by assessments.

History: 1953 Comp., § 14-52-10.3, enacted by Laws 1971, ch. 173, § 8.

3-51-14. Preliminary fund assessment; purpose; limit.

Upon formation of a parking district, the governing body of the city shall have power by ordinance to levy a uniform special assessment upon all real property within the boundaries for the purpose of paying the expenses of traffic surveys, construction plans and assessment of benefits and damages to the surrounding real property and other incidental expenses incurred prior to receipt of money from the sale of bonds or otherwise. The rate of the assessment authorized by this section shall not exceed six dollars ($6.00), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon an assessment levied under this section, on each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978].

History: 1953 Comp., § 14-52-11, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 9; 1986, ch. 32, § 2.

3-51-15. Levying, collecting and use of preliminary fund assessment.

The preliminary fund assessment shall be levied by an ordinance of the governing body. Within thirty days after publication of the levying ordinance the clerk of the city shall serve notice in writing of the amount of each assessment on each of the property owners to be assessed by mailing to his last known address, the names and addresses of such property owners to be obtained from the records of the county assessor or from such other sources as the clerk deems reliable. The notice shall state where and on what terms the assessment must be paid, and that it is a lien upon the property assessed. Within thirty days after the publication of the levying ordinance, the clerk of the city shall prepare, sign, attest with seal of the city, and file for record with the county

clerk of the county in which the property is located, a claim of lien for the unpaid amount assessed against each tract or parcel of real property, and penalties or interest which may arise thereon. If the proceeds of such assessments exceed the preliminary expenses, the surplus shall be placed in the general fund of the district and used to pay the cost of the project.

History: 1953 Comp., § 14-52-12, enacted by Laws 1965, ch. 300.

3-51-16. Determination of location, size and nature of project.

Upon formation of a parking district, the governing body of the city shall, by means of traffic surveys, investigations and studies of present and future parking needs and other appropriate means, finally determine the proper location, nature and size of the proposed project.

History: 1953 Comp., § 14-52-13, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 10.

3-51-17. Preparation of plans and estimates.

Upon final determination of the location, nature and size of the proposed project, the governing body of the city shall by resolution direct the city engineer, or some other competent engineer, to prepare detailed plans of the contemplated project and a final cost estimate which shall include the advertising, appraising, engineering, printing and such other expenses as in the judgment of the engineer is necessary or essential to the completion of the project and the payment of the cost thereof. The plans and estimates shall be filed with the clerk of the city upon their completion.

History: 1953 Comp., § 14-52-14, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 11.

3-51-18. Appraisers; appointment; term of office; duties; pay; qualifications and replacement.

Upon completion of the plans and cost estimates for the proposed project, the governing body of the city shall appoint a board of appraisers which shall consist of three appraisers, whose terms of office shall run until the appraisals of benefits and damages are filed in the office of the clerk of the city and rendered final by failure of the property owners to protest or by approval after hearing on the protest.

The duties of the board of appraisers shall be to appraise all benefits and damages accruing to all real property within or without the tentative boundaries of the district by reason of the making of the proposed project.

The governing body of the city by ordinance shall prescribe the qualifications and the compensation of the appraisers, the government of the board and methods for filling vacancies on the board or for the replacement of members of the board.

History: 1953 Comp., § 14-52-15, enacted by Laws 1965, ch. 300.

3-51-19. Appraisal of benefits.

The amount of the special assessment shall be proportional to the benefits conferred upon the property by the project and, in determining a method of apportioning benefits and assessments, the board of appraisers may consider ad valorem valuation, location, size, use, zoning classification, parking requirements, any other basis, or any combination of the foregoing, which it may deem to be equitable.

History: 1953 Comp., § 14-52-16, enacted by Laws 1971, ch. 173, § 12.

3-51-20. Preparation of assessment rolls.

Upon the filing in the office of the clerk of the city of detailed plans and final cost estimates for the project, the board of appraisers shall make out a special assessment roll, entering and describing therein all of the lots and parcels of real property to be assessed, with the names of the persons, if known, chargeable with the assessments thereon, the amount of the benefits conferred thereon, and the amount to be assessed thereon.

History: 1953 Comp., § 14-52-17, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 13.

3-51-21. Inclusion of benefited property not within the proposed boundaries.

If the special assessment roll includes real property not located within the proposed boundaries of the parking district as being benefited by the proposed project, the governing body of the city shall, if the parking district has been formed by the governing body of the city pursuant to Section 3-51-9 NMSA 1978, by ordinance declare the boundaries of the parking district changed to include such property. If the parking district has been formed by petition, and the special assessment roll includes real property not located within the proposed boundaries of the parking district as benefited by the proposed project, the governing body shall by ordinance declare the boundaries of the parking district changed to include such property if the signatures on the petition were of owners of not less than one-half of the assessed value of all of the real property within the boundaries of the parking district after such change. If the original petition does not contain the signatures of owners of the required amount of property, a supplemental petition may be filed to add signatures of owners of additional property to the original petition. The additional signatures may be of owners of property located within the boundaries as they are proposed to be changed, whether the property is within or without the original proposed boundaries of the parking district.

History: 1953 Comp., § 14-52-18, enacted by Laws 1965, ch. 300.

3-51-22. Notice of hearing; revision or confirmation of assessment; levy; court action.

A. Upon completion of the special assessment roll, it shall be filed in the office of the clerk of the city and the governing body of the city shall set a time and place when objections thereto by the owners of the property to be assessed will be heard.

B. Upon receiving the assessment roll, the clerk of the city shall serve notice in writing of the time and place of such hearing on the owners of the property to be assessed by mailing a copy of the notice to each of the property owners at his last known address, the names and addresses of the property owners to be obtained from the records of the county assessor or from such other sources as the city clerk deems reliable. The notice shall be mailed at least ten days before such hearing.

C. The clerk of the city shall also give notice of the time and place of the hearing by publication in a newspaper of general circulation therein once each week on the same day of the week for two consecutive weeks, the last publication to be at least five days prior to the date of the protest hearing. The notice shall state that such assessment roll is on file in his office, the date of filing the same, the time and place when and where the governing body will hear and consider objections to the assessment roll and to the proposed assessments by the owners of property to be assessed.

D. The owner or owners of any property which is listed in the assessment roll, whether therein named or not, may, not less than two days preceding the hearing, file with the clerk his specific objections in writing. Any objection to the regularity, validity and correctness of the proceedings, of the assessment roll, of each appraisal of benefits, and of the amount thereof to be levied on each tract and parcel of land, shall be deemed waived unless presented at the time and in the manner herein specified.

E. At the time and place so designated for hearing the objections, the governing body of the city shall hear and determine all objections which have been so filed by any property owner to the regularity of the proceedings in making the assessment, and the correctness of the appraisal, or of the amount levied on any particular tract or parcel of real property to be assessed, and said governing body shall have the power to adjourn the hearing from time to time, and shall have power by ordinance, in its discretion, to revise, correct, confirm or set aside any assessment, and to order that the assessment be made de novo.

F. The governing body by ordinance shall, by reference to the assessment roll as so modified, and as confirmed by the ordinance, levy the assessments in the roll; and such decision and ordinance shall be a final determination of the regularity, validity and correctness of the proceedings, of the assessment roll, of each assessment contained herein, and of the amount levied on each tract and parcel of real property. The determination by the governing body shall be conclusive upon the owners of the property assessed.

G. Within fifteen days after the publication of the ordinance, any person who has filed an objection or objections, as hereinbefore provided, shall have the right to appeal to the district court for the county in which the city is located for review of errors of law in the determination; but thereafter all actions or suits attacking the regularity, validity, and correctness of the proceedings, of assessment roll, of each assessment contained therein, and of the amount thereof levied on each tract and parcel of real property, including, without limiting the generality of the foregoing, the defense of confiscation, shall be perpetually barred.

History: 1953 Comp., § 14-52-19, enacted by Laws 1965, ch. 300.

3-51-23. Alternative assessment procedure; annual levies.

A. As an alternative to the assessment procedure set forth in Section 3-51-20 and 3-51-22 NMSA 1978, the governing body may elect to levy annual assessments.

B. In each year after the formation of a parking district, the governing body shall meet to determine the amount of special assessments which, together with other available funds, will be required to pay the annual interest on outstanding bonds of the district and the principal thereof as the same may mature or be required to be paid. Thereafter, the board of appraisers shall make out an annual special assessment roll, entering and describing therein all of the lots and parcels of real property to be assessed, with the names of the persons, if known, chargeable with the assessments thereon, and the amount to be assessed thereon in the current year. The method of apportioning benefits and assessments shall be as determined by the board pursuant to Section 3-51-19 NMSA 1978, and shall remain unchanged and be applied uniformly from year to year.

C. Upon the completion and filing of the annual assessment roll in the office of the clerk of the city, a hearing shall be called and conducted thereon in all respects as provided by Section 3-51-22 NMSA 1978. The governing body shall have all powers and duties set forth therein and appeals for review of errors of law in the determinations of the governing body shall be permitted only to the extent and within the times set forth therein.

D. Annual assessments levied as hereinabove provided may be secured and enforced and shall be payable as provided by Sections 3-51-24 through 3-51-28, inclusive, NMSA 1978; provided that annual assessments shall be payable in full within thirty days after publication of the annual assessing ordinance and if not paid by such time shall be delinquent.

History: 1953 Comp., § 14-52-20, enacted by Laws 1971, ch. 173, § 14.

3-51-24. Lien for assessments.

The amounts assessed pursuant to the Greater Municipality Parking Law against each tract or parcel of real property, and the interest and penalties thereon, shall be a lien upon the property from the time of publication of the assessment ordinance coequal with the lien of taxes and prior and superior to all other liens, claims and titles, and no sale of the property to enforce any general taxes or other lien shall extinguish the lien of the assessment, nor shall the statute of limitations begin to run against the lien until after the last installment thereof shall become due.

History: 1953 Comp., § 14-52-21, enacted by Laws 1965, ch. 300.

3-51-25. Payment; interest; penalties.

The governing body of the city shall have the power to provide for the time and terms of payment of the assessments and the rate of interest upon deferred payments thereof, which rate shall not exceed eight percent per annum. The assessments shall bear interest from the date of publication of the assessing ordinance. The maximum time for the payment of the assessments on deferred installment payments shall be thirty years.

History: 1953 Comp., § 14-52-22, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 15.

3-51-26. Personal liability of owners for indebtedness.

The assessments levied under the Greater Municipality Parking Law shall be the personal liability of the owner or owners of the property against which the assessments are levied.

History: 1953 Comp., § 14-52-23, enacted by Laws 1965, ch. 300.

3-51-27. Recording of claim of lien.

The clerk of the city shall, within sixty days after publication of the assessing ordinance, prepare, sign, attest with the seal of the city, and file for record with the county clerk of the county in which the city is located, a claim of lien for the unpaid amount assessed against each tract or parcel of real property, plus penalties and interest which may arise thereon.

History: 1953 Comp., § 14-52-24, enacted by Laws 1965, ch. 300.

3-51-28. Enforcement of lien.

The lien of any assessments levied under the Greater Municipality Parking Law shall be enforced, when delinquent, by the method now or hereafter provided by statute for the foreclosure of mortgages on real estate. In the event of a foreclosure sale, the municipality may buy in the property for the amount of the balance due on the

assessment, including principal, interest, penalties and costs, unless there are higher bids.

History: 1953 Comp., § 14-52-25, enacted by Laws 1965, ch. 300.

3-51-29. Real property in more than one district.

The same real property may be included in more than one district and be subject to the provisions of the Greater Municipality Parking Law for each and every district in which it may be included.

History: 1953 Comp., § 14-52-26, enacted by Laws 1965, ch. 300.

3-51-30. Real property in more than one district; maximum assessments.

When real property is included within the boundaries of more than one parking district, the maximum total of the assessments which may be levied upon the property by all of the parking districts in which it is included shall be no greater than the total benefits conferred upon the property by the improvements of all the districts in which it is included.

History: 1953 Comp., § 14-52-27, enacted by Laws 1965, ch. 300.

3-51-31. Real property in more than one district; objections; notice; hearing.

Objections to the organization of a district in whole or in part within the boundaries of a preexisting district shall be heard at the provisional order hearing called pursuant to Section 3-51-11 NMSA 1978. The notice of hearing to be served and published pursuant to that section shall state that part or all of the property included within the proposed boundaries, as the case may be, is included within a preexisting district. If the governing body determines that the purposes of the Greater Municipality Parking Law will best be accomplished by such district including lands of another district, it shall approve the additional district.

History: 1953 Comp., § 14-52-28, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 16.

3-51-32. Power to issue bonds.

A. A city shall have power to issue bonds from time to time, in its discretion for the purpose of financing, in whole or in part, the cost of any project.

B. A city shall also have the power to issue refunding bonds from time to time for the purpose of refunding, paying and retiring:

(1) any bonds issued by it pursuant to the Greater Municipality Parking Law or pursuant to Laws 1963, Chapter 313, as amended and supplemented;

(2) any bonds authorized for parking facilities and payable from the revenues of any parking facilities;

(3) any bonds authorized for parking facilities and payable from any parking meter revenues;

(4) any sales tax revenue bonds authorized for the purpose of any public building to be used for parking facilities and pursuant to Section 3-31-1C NMSA 1978;

(5) any gasoline tax revenue bonds authorized for the purpose of any public building to be used for parking facilities and pursuant to Section 3-31-1D NMSA 1978 [3-31-1E NMSA 1978];

(6) any bonds authorized for parking facilities and payable from any combination of the income and revenue pledged to the bonds described in Paragraphs (1) through (5) of this Subsection B; or

(7) any bonds which have refunded the bonds described in Paragraphs (1) through (6) of this Subsection B.

C. A city shall also have the power to issue bonds for any combination of the purposes described in this section.

History: 1953 Comp., § 14-52-29, enacted by Laws 1971, ch. 173, § 17.

3-51-33. Refunding bonds.

A. Any refunding bonds may be issued to refund, pay, and discharge all or any part of such outstanding bonds which may be refunded pursuant to Section 3-51-32 NMSA 1978, including any interest on such bonds in arrears or about to become due within three years from the date of the refunding bonds and for the purpose of avoiding or terminating any default in the payment of interest on and principal of the bonds, of reducing interest cost or effecting other economies, or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any system appertaining thereto, or for any combination of the foregoing purposes. Refunding bonds shall be authorized by ordinance. Any bonds which are refunded under the provisions of the Greater Municipality Parking Law shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of said refunded bonds or otherwise appertaining thereto, except for any such bond which is voluntarily surrendered for exchange or payment by the holder. Refunding bonds may be delivered

in exchange for the outstanding bonds refunded or may be sold at either public or private sale.

B. No bonds may be refunded under the Greater Municipality Parking Law unless said bonds either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds, or unless the holders thereof voluntarily surrender them for exchange or payment. Provision shall be made for paying the bonds refunded within said period of time. Interest on any bond may be increased. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds, but only to the extent that any costs incidental to the refunding bonds or any interest on the bonds refunded in arrears of [or] about to become due within three years from the date of the refunding bonds, or both said incidental costs and interest, are capitalized with the proceeds of refunding bonds. The principal amount of the refunding bonds may also exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded. The principal amount of the refunding bonds may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

C. The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company, either a state or national banking institution, which possesses and is exercising trust powers, which is located within the state of New Mexico and which is a member of the Federal Deposit Insurance Corporation, to be applied to the payment of the bonds being refunded upon their presentation therefor; provided, to the extent any incidental expenses have been capitalized, such refunding bond proceeds may be used to defray such expenses; and any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest thereon and the principal thereof, or both interest and principal, or may be deposited in a reserve therefor, as the municipality may determine. Nothing herein shall require the establishment of an escrow if the refunded bonds shall become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time is [are] deposited with the paying agent for said refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other moneys available for its purpose. Any proceeds in escrow, pending such use, may be invested or reinvested in bills, certificates of indebtedness, notes, or bonds which are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by the United States of America. Such proceeds and investments in escrow, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom, to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the municipality shall exercise a prior redemption option. Any purchaser of any refunding bond issued under the Greater Municipality Parking Law,

shall in no manner be responsible for the application of the proceeds thereof by the city or any of its officers, agents, or employees.

D. Refunding bonds may bear such additional terms and provisions as may be determined by the city subject to the limitations in the Greater Municipality Parking Law for original bond issues and are not subject to the provisions of any other statute except as may be incorporated by reference in the Greater Municipality Parking Law.

History: 1953 Comp., § 14-52-29.1, enacted by Laws 1971, ch. 173, § 18.

3-51-34. Liability of bonds; prohibition on impairment of payment.

A. Neither the governing body of a city nor any person executing the bonds shall be liable personally on any bonds by reason of the issuance thereof hereunder. The bonds issued under the provisions of the Greater Municipality Parking Law shall be payable solely from the sources provided in Section 3-51-35 NMSA 1978. The bonds shall not be a debt or general obligation of the city issuing them, and they shall so state on their face. The bonds shall not constitute a debt or indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction.

B. Any law which authorizes the pledge of any or all of the special funds described in Section 3-51-35 NMSA 1978 to the payment of any bonds issued pursuant to the Greater Municipality Parking Law or which affects any of such special funds pledged to such bonds, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding bonds unless such outstanding bonds have been discharged in full or provision has been fully made therefor.

History: 1953 Comp., § 14-52-30, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 19.

3-51-35. Bonds; special funds from which payable.

In order to carry out the purposes of the Greater Municipality Parking Law, a city upon enactment of a proper ordinance may issue bonds for any purposes permitted by Section 3-51-32 NMSA 1978 and may pledge irrevocably to the payment of the principal of and interest on such bonds, the following special funds:

A. all or any part of special assessments levied upon real property within a parking district formed for the particular project financed with the proceeds of such bonds; or

B. all or any part of the income and revenues of the particular project financed with the proceeds of the bonds; or

C. all or any part of the income and revenue of certain designated parking facilities whether or not they were financed in whole or in part with the proceeds of the bonds; or

D. all or any part of the parking meter revenues of the city; or

E. all or any part of the amount of money remitted to the city as authorized by Section 7-1-6 NMSA 1978; or

F. all or any part or [of] the proceeds distributed to the city pursuant to Section 64-26-19 NMSA 1953 [repealed]; or

G. all or any part or [of] the proceeds of any tolls, rates, fees, charges, license taxes, other excise taxes, or quasi-excise taxes legally available therefor which the city is empowered to fix, levy and collect; or

H. any combination of these special funds specified in Subsections A through F, even if, in the case of refunding bonds, any of such special funds were not pledged to the payment of the bonds being refunded.

History: 1953 Comp., § 14-52-31, enacted by Laws 1971, ch. 173, § 20.

3-51-36. Form and sale of bonds.

A. Bonds of a city issued hereunder, shall be authorized by its ordinance and may be issued in one or more series and shall bear the date or dates, mature at such time or times, not exceeding thirty years from the date of issue, bear interest at any coupon rate or rates, of not exceeding the maximum coupon rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as such ordinance, its trust indenture, or the bonds so issued may provide.

B. Any bonds issued under the authority of the Greater Municipality Parking Law may be sold at public or private sale at, above or below par in such manner and at a price which shall result in a net effective interest rate of not exceeding that permitted by the Public Securities Act, and from time to time as may be determined by the governing body to be most advantageous.

C. In case any of the officers of the city whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, the signatures shall nevertheless be valid and sufficient for all purposes, the same as if such officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding any bonds issued pursuant to the Greater Municipality Parking Law shall be fully negotiable.

D. In any suit, action or proceedings involving the validity or enforceability of any bond of a city or the security therefor, any such bond reciting in substance that it has

been issued by the city to aid in financing a parking facility project to provide additional facilities for parking motor vehicles shall be conclusively presumed to have been issued for a parking facility project of such character, and said project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of the Greater Municipality Parking Law.

History: 1953 Comp., § 14-52-32, enacted by Laws 1965, ch. 300; 1971, ch. 173, § 21.

3-51-37. Provisions of bonds and trust indentures.

In connection with the issuance of bonds pursuant to the Greater Municipality Parking Law or in the incurring of obligations under leases made pursuant to the Greater Municipality Parking Law, and to secure the payment of such bonds or obligations, a city, in addition to its other powers, shall have power:

A. to pledge all or any part of the gross or net rents, fees or revenues, of a parking facility project financed with the proceeds of the bonds, to which its rights then exist or may thereafter come into existence;

B. to covenant against pledging all or any part of the rents, fees and revenues, or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any parking facility project or any part thereof; and to covenant as to what other or additional debts or obligations may be incurred by it;

C. to covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof;

D. to covenant as to the rents and fees to be charged in the operation of a parking facility project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves or other purposes, and to covenant as to the use and disposition of the moneys held in such funds;

E. to covenant and agree on its part as it deems necessary and advisable for the better security of the bonds issued thereunder;

F. to prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

G. to covenant as to the use of any or all of its real or personal property acquired pursuant to the Greater Municipality Parking Law, and to covenant as to the maintenance of the real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys;

H. to covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which such declaration and its consequences may be waived;

I. to vest in a trustee or trustees or the holders of bonds issued pursuant to the Greater Municipality Parking Law, or any specified proportion of them the right to enforce the payment of such bonds or any covenants securing or relating to such bonds; to vest in a trustee or trustees the rights, in the event of a default by said city, to take possession of any parking facility project or part thereof, and, so long as the city shall continue in default, to retain such possession and use, operate and manage the project, and to collect the rents and revenues arising therefrom and to dispose of the moneys in accordance with the agreement of the city with the trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or the holder of bonds, or any proportion of them may enforce any covenant or rights securing or relating to the bonds;

J. to exercise all or any part or combination of the power herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character; to make such covenants as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

History: 1953 Comp., § 14-52-33, enacted by Laws 1965, ch. 300.

3-51-38. Construction of bond provisions.

The Greater Municipality Parking Law, without reference to other statutes of the state, shall constitutes [constitute] full authority for the authorization and issuance of bonds hereunder. No other act or law with regard to the authorization or issuance of bonds that provides for an election requires an approval or in any way impedes or restricts the carrying out of the acts herein authorized to be done shall be construed as applying to any proceedings taken hereunder or acts done pursuant hereto.

History: 1953 Comp., § 14-52-34, enacted by Laws 1965, ch. 300.

3-51-39. Filing proceedings with attorney general.

A city shall file with the attorney general of the state a copy of all proceedings in connection with the issue of bonds pursuant to the Greater Municipality Parking Law.

History: 1953 Comp., § 14-52-35, enacted by Laws 1965, ch. 300.

3-51-40. Remedies of an obligee.

An obligee shall have the right, in addition to all other rights which may be conferred upon such obligee subject only to any contractual restrictions binding upon such obligee:

A. by mandamus, suit, action or proceedings at law or in equity to compel the city and the officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of the city with or for the benefit of the obligee and to require the carrying out of any or all such covenants and agreements of the city and the fulfillment of all duties imposed upon the city by the Greater Municipality Parking Law; and

B. by suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or in violation of any of the rights of such obligee.

History: 1953 Comp., § 14-52-36, enacted by Laws 1965, ch. 300.

3-51-41. Additional remedies conferrable to an obligee.

A city shall have the power by its ordinance, trust indenture, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right, in addition to all rights that may be otherwise conferred, upon the happening of an event of default as defined in the ordinance or instrument, to do the following by suit, action or proceeding in any court of competent jurisdiction:

A. obtain the appointment of a receiver of any parking facility project of the city or any part thereof and of the rents and profits therefrom. If the receiver be appointed he may enter and take possession of the parking facility project or any part thereof and so long as the city continues in default operate and maintain the same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the city as the court shall direct;

B. require the city and the officers and agents thereof to account for the money actually received as if it and they were the trustees of an express trust.

History: 1953 Comp., § 14-52-37, enacted by Laws 1965, ch. 300.

3-51-42. Bonds; exemption from taxation.

Bonds and other evidences of indebtedness issued under the provisions of the Greater Municipality Parking Law shall forever be and remain free and exempt from taxation by this state or any subdivision thereof.

History: 1953 Comp., § 14-52-38, enacted by Laws 1965, ch. 300.

3-51-43. Aid from federal government.

In addition to the powers conferred upon a city by other provisions of the Greater Municipality Parking Law, a city is empowered to borrow money or accept contributions, grants or other financial assistance from the federal government for, or in aid of, any parking facility project within its area of operation; and to these ends, to comply with the conditions, trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of the Greater Municipality Parking Law to authorize every city to do any and all things necessary, convenient or desirable to secure the financial aid or cooperation of the federal government in the undertaking, acquisition, construction, maintenance or operation of any parking facility project of the city.

History: 1953 Comp., § 14-52-39, enacted by Laws 1965, ch. 300.

3-51-44. Contracts; leases; increase of revenue.

Every contract entered into by the city for the use of any project or the services or facilities thereof acquired, constructed or completed from the proceeds of the sale of revenue bonds shall incorporate by reference the provisions of any ordinance pursuant to which the bonds were issued. Every such contract or lease shall also refer to the provisions of the Greater Municipality Parking Law with respect to the obligation of the city to fix fees and charges to meet the payments provided for in the Greater Municipality Parking Law and the proceedings for the issuance of revenue bonds and all payments required to be made to the city under such contract shall be subject to increase if and when the city is required to increase rates or charges to meet its obligations hereunder and under any ordinance providing for the issuance of bonds.

History: 1953 Comp., § 14-52-40, enacted by Laws 1965, ch. 300.

3-51-45. Greater Municipality Parking Law controlling.

Insofar as the provisions of the Greater Municipality Parking Law are inconsistent with the provisions of any other law, the provisions of the Greater Municipality Parking Law shall be controlling. No other existing law providing for establishment and maintenance of parking facilities contemplated by the Greater Municipality Parking Law shall be repealed thereby, but such laws shall remain in force to be applied by the governing body of the city to which it applies without reference to the Greater Municipality Parking Law.

History: 1953 Comp., § 14-52-41, enacted by Laws 1965, ch. 300.

3-51-46. Passenger motor vehicle of a person with a disability; parking privilege.

Passenger motor vehicles owned by and carrying a person with a disability and displaying special registration plates, or passenger motor vehicles carrying persons with severe mobility impairment and displaying parking placards, issued pursuant to Section 66-3-16 NMSA 1978, shall be permitted to park for unlimited periods of time in parking zones restricted as to length of time parking is normally permitted and are exempt from payment of any parking fee of the state or its political subdivisions, except that airport parking facilities may charge long-term parking fees for periods of time exceeding twenty-four hours. The provisions of this section shall prevail over any other law, rule or local ordinance but do not apply to zones where stopping, standing or parking is prohibited, zones reserved for special types of vehicles, zones where parking is prohibited during certain hours of the day in order to facilitate traffic during those hours when parking is prohibited and zones subject to similar regulation because parking presents a traffic hazard.

History: 1953 Comp., § 14-52-42, enacted by Laws 1973, ch. 22, § 3; 1999, ch. 297, § 3; 2007, ch. 46, § 4; 2009, ch. 227, § 1.

ARTICLE 52
Municipal Transit

3-52-1. Municipal Transit Law; short title.

Sections 3-52-1 through 3-52-13 NMSA 1978, may be cited as the "Municipal Transit Law".

History: 1953 Comp., § 14-53-1, enacted by Laws 1965, ch. 300.

3-52-2. Legislative determination.

The legislature finds that privately operated public transportation has declined in patronage and use and become less attractive to investment capital than formerly. Growth of population in relation to area, the development of improved highways and intersecting structures, the wider use of the private automobile and the scattering of shopping and employment centers have diverted users to private transportation, provided intense competition for public transportation facilities, and pyramided operating costs of public transit to a point that increases in rates are being required and municipalities formerly and now depending on public transit are threatened with having inadequate facilities for public transportation publicly or privately owned.

History: 1953 Comp., § 14-53-2, enacted by Laws 1965, ch. 300.

3-52-3. Authorization.

A. A municipality may invoke the authority contained in the Municipal Transit Law on finding all of the following state of facts to exist:

(1) general transportation of persons is necessary and convenient;

(2) privately owned public transportation facilities in operation are inadequate;

(3) it is impossible for existing franchise operators to render necessary service with adequate resulting return on the investment of capital; and

(4) assignment of the existing franchise by the holder or release of the existing franchise and granting of a new franchise by the city will not afford adequate service. Such finding, if made, shall be by resolution adopted by the governing body on the affirmative recorded vote of at least two-thirds of the elected members of the governing body. The resolution shall be published in full in a daily newspaper of general circulation in the municipality. It shall not take effect until thirty days after the publication. If within the thirty days of the publication a petition signed by qualified voters in number equal to twenty percent of the number of voters at the preceding city election on which members of the governing body were elected asks that the resolution in question be submitted to a vote of the people for adoption or rejection, the measure shall not take effect until an election is held as petitioned. The governing body may then rescind the resolution or, in its discretion, call an election within ninety days, at which time the proposition shall be submitted to the voters; provided that the date is not in conflict with the provisions of Section 1-24-1 NMSA 1978. The governing body shall provide for the election pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978]. If a majority of the votes cast at such election are against the measure, it shall be void. If a majority of the votes cast favor the measure, the governing body may proceed to acquire and operate a transit system as provided in the Municipal Transit Law. If a majority of those voting on the proposition disapprove the proposition, the matter may not again be submitted by the governing body until the next election at which city commissioners are chosen.

B. Any transit department so established is declared to be a public utility.

History: 1953 Comp., § 14-53-3, enacted by Laws 1965, ch. 300; 1971, ch. 11, § 1; 2019, ch. 212, § 187.

3-52-4. Powers of authorized municipality.

A. Any eligible municipal corporation having elected to invoke the powers set forth in the Municipal Transit Law may engage in the business of transportation of passengers and property within the municipality by whatever means it may decide, and may acquire cars, motor buses and other equipment necessary for carrying on the business. It may acquire land and erect buildings and equip them with all necessary

machinery and facilities for operation, maintenance, modification, repair and storage of any buses, cars, trucks or other equipment needed. It may do all things necessary for the acquisition and conduct of the business of transportation.

B. The governing body may provide for the selection of officers, agents, and employees necessary to be employed in connection with the acquisition, construction, maintenance and operation of such system of transportation, define their duties, regulate their compensation, and provide for their removal.

C. The governing body may make, ordain and establish all such ordinances, resolutions, rules and regulations as it may deem necessary and proper for the conduct of the business of transportation and for fixing and collecting all fares, rates and charges for services rendered therein.

D. Any municipality engaging in the business of transportation may extend any system of transportation to points outside the municipality where necessary and incidental to furnishing efficient transportation to points in the municipality.

E. The governing body may lease any system of transportation in whole or in part to any person who will contract to operate it according to rules, time tables and other requirements established by the governing body.

F. Any municipality may furnish transportation service to areas located outside the city limits and within the county in which it is located provided that prior contracts have been made with the county in which the areas are located covering the schedules, rates, service and other pertinent matters before initiation of such service.

G. Power of eminent domain:

(1) is granted to a qualifying municipality for the purpose of acquiring lands and buildings necessary to provide efficient public transit;

(2) is granted to a qualifying municipality for the purpose of acquiring lands, equipment, buses, contracts and other assets of persons holding franchises for public transit therein; and

(3) may be exercised as provided by law.

H. The city, as an operating entity, may enter into contracts for special transportation service, charter buses, advertising and any other function which private enterprise, operating a public transit facility could do or perform for revenue.

I. The governing body may spend public moneys to pay part of the costs of operation of public transit if revenues of the system prove to be insufficient.

J. The municipality is authorized to enter into binding agreements with the United States or any of its officers or agencies, of [or] the state or any of its officers or agencies, or any combination of agencies, departments, or officers of both the United States and the state of New Mexico, for planning, developing, modernizing, studying, improving, financing, operating or otherwise affecting public transit, to accept any loans, grants or payments from such agencies, and to make any commitments or assume any obligations required by such agencies as a condition of receiving the benefits thereof.

History: 1953 Comp., § 14-53-4, enacted by Laws 1965, ch. 300; 1969, ch. 251, § 11.

3-52-5. Transportation contracts.

All contracts for work, material or labor in connection with a transportation system shall be let in the manner provided by law for the letting of other contracts by the municipality.

History: 1953 Comp., § 14-53-5, enacted by Laws 1965, ch. 300; 1999, ch. 74, § 1.

3-52-6. Bond ordinance.

The governing body may adopt an ordinance providing:

A. for issuance of bonds to enable the municipality to acquire land, buildings, buses or other equipment required for public transit or for refunding bonds previously issued for such purpose or both such purposes;

B. the bonds are payable solely from a pledge of:

(1) gross income derived by the municipality from the transit facilities financed with the proceeds and other transit facilities not so financed; provided that when gross revenues are so pledged, the municipality may apply to the payment of the expense of maintaining and operating the transit facilities, the gross revenues of which are so pledged, the city's revenues derived from sources other than the proceeds of ad valorem taxes and may, in the proceedings authorizing such issue of such bonds, covenant and agree to apply to the payment of such maintenance and operation expenses so much of such revenues as may be necessary for such purposes or as may be specified in the proceedings;

(2) income derived from franchises granted by the governing body of the municipality;

(3) contributions, grants or other financial assistance from the state or federal governments or any other source; or

(4) any combination of these sources; and

C. the ordinance is irrepealable as long as any indebtedness on the bonds is unpaid by the municipality.

History: 1953 Comp., § 14-53-6, enacted by Laws 1965, ch. 300; 1965, ch. 309, § 1.

3-52-7. Terms of bonds.

A. The ordinance authorizing issuance of bonds shall specify:

(1) issuance in any number of series;

(2) maturity dates;

(3) interest not exceeding six percent a year;

(4) denominations;

(5) form, either coupon or registered;

(6) conversion or registration privileges;

(7) rank or priority;

(8) manner of execution;

(9) if desirable, features of redemption, prior to maturity with or without premium; and

(10) the terms, manner and medium of payment and redemption.

B. No member of the governing body or any person executing bonds is personally liable on any bond. All bonds are payable solely from the sources allowed by the governing body as specified in the authorizing ordinance. No bond is a debt, liability or general obligation of the issuing municipality.

C. The terms prescribed by the authorizing ordinance and by this section shall be carried on the face of each bond.

History: 1953 Comp., § 14-53-7, enacted by Laws 1965, ch. 300.

3-52-8. Sale of bonds.

A. Bonds may be sold at either public or private sale; provided that no such bonds may be sold at any price which does not result in an actual net interest cost to maturity, computed on the basis of standard tables of bond values, in excess of six percent.

B. If any municipal officer whose signature appears on any bond ceases to be an officer before delivery of the bonds, the signature is valid for all purposes as if the officer had remained in office until delivery.

C. All bonds are fully negotiable.

History: 1953 Comp., § 14-53-8, enacted by Laws 1965, ch. 300.

3-52-9. Construction.

The Municipal Transit Law is full authority for authorization and issuance of bonds and no election is necessary. In any proceeding involving the validity and enforceability of any bond or its security, any bond reciting in substance that it was issued by the municipality to aid in financing public transit facilities is conclusively presumed to have been issued for a public transit facility planned, operated and used in accordance with the Municipal Transit Law.

History: 1953 Comp., § 14-53-9, enacted by Laws 1965, ch. 300.

3-52-10. Additional security.

To further the marketability of bonds, the ordinance authorizing their issue may:

A. secure their payment by deed of trust or mortgage conveying municipally owned land and improvements acquired for the public transit facility from the proceeds of the bonds to a trustee for the benefit and security of the bondholders; and

B. authorize any other security agreement not in conflict with law.

History: 1953 Comp., § 14-53-10, enacted by Laws 1965, ch. 300.

3-52-11. Foreclosure.

If the interest or any serial maturity of any bond is in default, any obligee may foreclose against the municipality under the same procedure provided for foreclosure of real estate mortgages. The district court may appoint a receiver to operate the transit facilities in default.

History: 1953 Comp., § 14-53-11, enacted by Laws 1965, ch. 300.

3-52-12. Legal investments.

Bonds are legal investments for savings banks and insurance companies under the laws of this state. They are bonds, notes or other obligations of a municipal subdivision

of this state, issued pursuant to a law of this state, for the purposes of investment or purchase by the state investment officer.

History: 1953 Comp., § 14-53-12, enacted by Laws 1965, ch. 300.

3-52-13. Tax exemptions.

Bonds and their income and all mortgages or other instruments executed as security for them are exempt from all taxation by this state or any of its political subdivisions.

History: 1953 Comp., § 14-53-13, enacted by Laws 1965, ch. 300.

3-52-14. Declaration of legislative intent.

The legislature in recognition of the provisions of Public Law 88-365, 88th Congress, 1964, and realizing the importance of modern, efficient, economical transportation facilities in a municipality as an assurance of the convenience to the citizenry and the promotion of economic progress and development, desires to bring existing New Mexico laws in accord with the provisions of the Urban Mass Transportation Act of 1964 and to enable a municipality to qualify for a grant under such law through recognition of, and collective bargaining with, an appropriate union as required under the labor standards provision in Section 10, Paragraph (c) of the above federal law.

History: 1953 Comp., § 14-53-14, enacted by Laws 1965, ch. 274, § 1.

3-52-15. Authorization of collective bargaining in municipalities wishing to qualify for grant.

Any municipality desiring to qualify for a grant under the Urban Mass Transportation Act of 1964 (being Public Law 88-365, 88th Congress) may in order to meet the requirements of Section 10, Paragraph (c) of that act, recognize, and enter into collective bargaining with, an appropriate union representing employees of such municipal transit system with regard to the preservation of employee rights, privileges and benefits under any existing collective bargaining agreements or otherwise; the continuation of collective bargaining rights; the protection of individual employees against a worsening of their positions with respect to their employment; assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and paid training or retraining programs.

History: 1953 Comp., § 14-53-15, enacted by Laws 1965, ch. 274, § 2.

3-52-16. Coercive action prohibited.

This act [3-52-14 to 3-52-16 NMSA 1978] shall not be construed as authorizing or permitting such public employees, associations or groups to carry out such collective bargaining by means of strikes, picketing or any other coercive action.

History: 1953 Comp., § 14-53-16, enacted by Laws 1965, ch. 274, § 3.

ARTICLE 53
Waters; Regulation of Use

3-53-1. Regulation of watercourses, ponds, wells and cisterns.

A municipality may:

A. deepen, widen, dock-cover, wall, alter or change the channel of watercourses;

B. cleanse and purify waters, watercourses and canals;

C. drain or fill ponds on private property to prevent or abate nuisances;

D. construct, repair and regulate the use of vaults, cisterns, hydrants, pumps, bridges, viaducts, tunnels and wells; and

E. regulate and authorize the construction of any ditch carrying water on, through or across any street.

History: 1953 Comp., § 14-54-1, enacted by Laws 1965, ch. 300.

3-53-1.1. New domestic water wells; municipal authority.

A. A municipality may, by ordinance, restrict the drilling of new domestic water wells, except for property zoned agricultural, if the property line of the applicant is within three hundred feet of the municipal water distribution lines and the property is located within the exterior boundaries of the municipality.

B. No municipality may deny authorization for a new domestic water well permit to an applicant if the total cost to the applicant of extending the municipal water distribution line, meter and hook-up to the applicant's residence exceeds the cost of drilling a new domestic water well.

C. A municipality that fails to authorize the drilling of a new domestic water well shall provide domestic water service within ninety days to the property owner under the municipal water provider's usual and customary charges and rate schedules.

D. A municipality shall file with the state engineer its municipal ordinance restricting the drilling of new domestic water wells.

E. An applicant for a domestic water well located within the exterior boundaries of a municipality with a new domestic water well drilling ordinance shall obtain a permit to drill the well from the municipality subsequent to the state engineer's approval.

F. A municipality with a domestic water well drilling ordinance shall act upon a new domestic water well permit application within thirty days of receipt of the request.

G. A municipality shall notify the state engineer of all municipal permit denials for domestic well authorization.

H. An applicant may appeal the decision of the municipality to the district court in the county of the municipality.

I. Nothing in this section shall limit the authority of the state engineer to administer water rights as provided by law.

J. The state engineer shall not be liable for actions taken in accordance with a municipal ordinance authorizing restriction of domestic well drilling within the exterior boundaries of a qualified municipality.

History: Laws 2001, ch. 207, § 1.

3-53-2. Regulation of water use.

In order to prevent waste and to conserve the supply of water, a municipality which owns and operates a water utility, or has granted a franchise for the operation of a public water system, may by ordinance regulate and restrict the use of water.

History: 1953 Comp., § 14-54-2, enacted by Laws 1965, ch. 300.

3-53-2.1. Water resources; county or municipal requirements.

A. For the purpose of preserving and protecting water resources and to provide an assured water supply for the community, a county or municipality may require:

(1) site development standards to conserve water and minimize water loss;

(2) water harvesting and storage;

(3) low water use landscaping and plant materials;

(4) nonagricultural residential and commercial water use limitations; or

(5) recycling and reuse of water.

B. The provisions of this section shall be implemented consistent with state engineer rules.

C. Agricultural water users or agricultural water rights owners are excluded from the provisions of Subsection A of this section.

History: Laws 2007, ch. 120, § 1.

3-53-3. Irrigation; regulation of public acequias.

A municipality may regulate the flow and use of water in public acequias for irrigating purposes.

History: 1953 Comp., § 14-54-3, enacted by Laws 1965, ch. 300.

3-53-4. Purchase or lease of canal or ditch; election; assumption of powers and duties when acquired.

A. If a majority of the voters at a regular municipal election approve the purchase or lease of any canal or ditch, the governing body may, for the purpose of supplying water for the use of the people of the municipality:

(1) purchase or lease the canal or ditch;

(2) acquire all the rights, privileges [and] franchises of any person owning or having an interest in the canal or ditch;

(3) hold and operate the canal or ditch in the same manner as the person from whom the canal or ditch was purchased or leased; and

(4) repair, improve or enlarge the canal or ditch or any flume, dam or gate connected with the canal or ditch.

B. The municipality purchasing or leasing a canal or ditch shall assume all obligations and other duties which by law had devolved upon the owner from whom the canal or ditch was purchased or leased.

History: 1953 Comp., § 14-54-4, enacted by Laws 1965, ch. 300; 1973, ch. 258, § 137.

3-53-5. Irrigation of trees and shrubs; assessment of cost against abutting property; manner of making assessment; lien; irrigation of private property; annual charge; payment in advance.

A. If the governing body determines it is necessary to procure water for the benefit of the shade or ornamental trees in the streets and public grounds within the municipality, the governing body may:

(1) procure water from any available source at the lowest price for which the water may be obtained; and

(2) construct irrigation ditches, laterals, headgates and other works for properly and economically conducting the water to the streets and public grounds for the benefit of the shade and ornamental trees.

B. On or before the first Monday in April of each year, the governing body by resolution shall for the ensuing calendar year:

(1) determine what streets, parts of streets and public grounds shall be irrigated;

(2) estimate the expense of irrigating the shade and ornamental trees which shall include the cost of water, constructing ditches and laterals, keeping the ditches and laterals in repair, and delivering the water throughout the irrigation system; and

(3) equitably assess each tract or parcel of land along, by or in front of which a ditch or lateral runs and conducts water, its proportion cost of the total estimated expense according to the length of the row of trees along the streets contiguous to the lots or tracts of lands.

C. The resolution shall further provide for the manner of giving notice of the assessment and when the assessment is due and payable.

D. If the owner or agent of the tract or parcel of land assessed as provided in this section fails to pay the assessment within the time provided by the resolution required in this section and after notice is given to the owner or agent of the tract or parcel of land assessed, the assessment becomes a lien against the tract or parcel of land so assessed and shall be enforced as provided in Sections 3-36-1 through 3-36-5 NMSA 1978.

E. On or before the first Monday in April of each year, the governing body may establish a charge in addition to the assessment provided for in this section for furnishing water to any tract or parcel of land privately owned within the municipality for irrigation purposes but no water shall be delivered to a tract or parcel of land until the annual charge has been paid in advance.

F. The governing body may by ordinance adopt regulations preventing the waste or excess use of water.

History: 1953 Comp., § 14-54-5, enacted by Laws 1965, ch. 300.

ARTICLE 54
Sale or Lease of Property

3-54-1. Authority to sell or lease municipal utility facilities or real property; notice; referendum.

A. A municipality may lease or sell and exchange any municipal utility facilities or real property having a value of twenty-five thousand dollars ($25,000) or less by public or private sale or lease any municipal facility or real property of any value normally leased in the regular operations of such facility or real property, and such sale or lease shall not be subject to referendum.

B. A municipality may lease or sell and exchange any municipal utility facilities or real property having an appraised value in excess of twenty-five thousand dollars ($25,000) by public or private sale or lease, subject to the referendum provisions set forth in this section. The value of municipal utility facilities or real property to be leased or sold and exchanged shall be determined by the appraised value of the municipal utility facilities or real property and not by the value of the lease. An appraisal shall be made by a qualified appraiser and submitted in writing to the governing body. If the sale price is less than the appraised value, the governing body shall cause a detailed written explanation of that difference to be prepared, and the written explanation shall be made available to any interested member of the public upon demand.

C. If a public sale is held, the bid of the highest responsible bidder shall be accepted unless the terms of the bid do not meet the published terms and conditions of the proposed sale, in which event the highest bid that does meet the published terms and conditions shall be accepted; provided, however, a municipality may reject all bids. Terms and conditions for a proposed public sale or lease shall be published at least twice, not less than seven days apart, with the last publication no less than fourteen days prior to the bid opening, and in accordance with the provisions of Subsection J of Section 3-1-2 NMSA 1978.

D. Any sale or lease of municipal utility facilities or real property entered into pursuant to Subsection B of this section shall be by ordinance of the municipality. Such an ordinance shall be effective forty-five days after its adoption, unless a referendum election is held pursuant to this section. The ordinance shall be published prior to adoption pursuant to the provisions of Subsection J of Section 3-1-2 NMSA 1978 and Section 3-17-3 NMSA 1978 and shall be published after adoption at least once within one week after adoption pursuant to the provisions of Subsection J of Section 3-1-2 NMSA 1978. Such publications shall concisely set forth at least:

(1) the terms of the sale or lease;

(2) the appraised value of the municipal utility facilities or real property;

(3) the time and manner of payments on the lease or sale;

(4) the amount of the lease or sale;

(5) the identities of the purchasers or lessees; and

(6) the purpose for the municipality making the lease or sale.

E. In order to call for a referendum election on a sale or lease ordinance, a petition shall be filed with the municipal clerk:

(1) no later than thirty days after the adoption of the sale or lease ordinance;

(2) containing the names, addresses and signatures of at least fifteen percent of the qualified electors of the municipality; and

(3) containing the following heading on each page of the petition reprinted as follows:

"PETITION FOR A REFERENDUM

We, the undersigned registered voters of _____ (insert name of municipality) petition the governing body of _____ (insert name of municipality) to conduct a referendum election on ordinance number _____. Ordinance number _____ would cause a _____ (insert "sale" or "lease") of municipal _____ (insert "real property" or "utility facilities").

Date Name (printed) Address Signature".

F. Section 3-1-5 NMSA 1978 shall apply to all petitions filed calling for a referendum election on a sale or lease ordinance.

G. If the municipal clerk certifies to the municipal governing body that the petition does contain the minimum number of valid names, addresses and signatures required to call a referendum election on the sale or lease ordinance, the municipal governing body shall adopt an election resolution within fourteen days after the date the clerk makes such certification, calling for a referendum election on the sale or lease ordinance. The election resolution shall be adopted and published pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978] and shall also concisely set forth:

(1) the terms of the sale or lease;

(2) the appraised value of the municipal utility facilities or real property;

(3) the time and manner of payments on the lease or sale;

(4) the amount of the lease or sale;

(5) the identities of all purchasers or lessees; and

(6) the purpose for the municipality making the lease or sale.

H. The referendum election on the sale or lease ordinance shall be held not later than ninety days after the election resolution is adopted. Such election shall be held at a special or regular local election and shall be conducted pursuant to the provisions of the Local Election Act. Any qualified elector of the municipality may vote in such a referendum election.

I. If a majority of the votes cast is to approve the sale or lease ordinance, the sale or lease ordinance shall be effective after the election results have been canvassed and certified. If a majority of the votes cast is to disapprove the sale or lease ordinance, the ordinance shall not be effective.

History: 1953 Comp., § 3-54-1, enacted by Laws 1983, ch. 115, § 1; 1985, ch. 208, § 119; 1999, ch. 134, § 1; 2018, ch. 79, § 69.

3-54-2. Sale, exchange and gift of property.

A. A municipality may sell personal property for cash at public or private sale without notice where it is shown to the governing body that such property does not exceed the value of two thousand five hundred dollars ($2,500).

B. A municipality may sell personal property having a value of more than two thousand five hundred dollars ($2,500) at public or private sale. If a private sale is held under this subsection, such sale shall be held only after notice is published at least twice, pursuant to the provisions of Subsection J of Section 3-1-2 NMSA 1978, not less than seven days apart, with the last publication not less than fourteen days prior to the sale.

C. If a public sale is held, the bid of the highest responsible bidder shall be accepted unless the terms of the bid do not meet the published terms and conditions of the municipality, in which event the highest bid which does meet the published terms and conditions shall be accepted; provided, however, a municipality may reject all bids. Terms and conditions for a proposed sale or lease shall be published at least twice, not less than seven days apart, with the last publication no less than fourteen days prior to the bid opening, and shall be published according to the provisions of Subsection J of Section 3-1-2 NMSA 1978.

D. A municipality may sell, at a private or public sale, exchange or donate real or personal property to the state, to any of its political subdivisions or to the federal

government if such sale, exchange or gift is in the best interests of the public and is approved by the local government division of the department of finance and administration. The provisions of Section 6-6-11 NMSA 1978 shall not apply to such sale, exchange or a donation.

History: 1953 Comp., § 14-55-2, enacted by Laws 1967, ch. 126, § 1; 1981, ch. 52, § 2; 1983, ch. 115, § 2; 1989, ch. 380, § 2.

3-54-3. Supplemental method for disposing of municipal property.

Sections 3-54-1 and 3-54-2 NMSA 1978 are intended to afford another and additional method of disposing of municipal real and personal property and are not to be construed as repealing or qualifying any other statutory authorization granted a municipality to dispose of or exchange real or personal municipal property or as affecting in any way the sale, lease, exchange or other disposition of real or personal property pursuant to the Local Economic Development Act [Chapter 5, Article 10 NMSA 1978].

History: 1953 Comp., § 14-55-3, enacted by Laws 1965, ch. 300; 1993, ch. 297, § 15.

ARTICLE 55
Unclaimed Property (Repealed.)

3-55-1 to 3-55-3. Repealed.

ARTICLE 56
Regional Planning

3-56-1. Short title.

This act [3-56-1 to 3-56-9 NMSA 1978] may be cited as the "Regional Planning Act."

History: 1953 Comp., § 14-57-1, enacted by Laws 1967, ch. 239, § 1.

3-56-2. Creation of regional planning commission.

A. A regional planning commission may be established as follows:

(1) two or more municipalities, two or more adjacent counties, or one or more counties and a municipality or municipalities within or adjacent to the county or counties may, by agreement among their respective governing bodies, create a regional planning commission, if:

(a) the municipality having the greatest population within the regional planning area is a party to the agreement; and

(b) the number of counties and municipalities party to the agreement equals all of the total number of counties and municipalities within the region. The agreement shall be effected through the adoption by each governing body concerned, acting individually, of an appropriate resolution. A copy of the agreement shall be filed with the local government division and the secretary of the department of finance and administration; or

(2) any municipality or county may, by legislative action of its governing body, delegate any or all of its planning powers and functions to a regional planning commission, or a county and one or more municipalities may merge their respective planning powers and functions into a planning commission in accordance with the provisions of the Regional Planning Act.

B. Any additional county, municipality or school district within the regional planning area may become party to the agreement upon request of the regional planning commission.

History: 1953 Comp., § 14-57-2, enacted by Laws 1967, ch. 239, § 2; 1983, ch. 296, § 11.

3-56-3. Membership and organization.

A. Membership of the regional planning commission shall consist of representatives from each participating government, in number and for terms specified in the agreement. Representatives are not required to be members of the local governing body or district they represent but may be selected from among residents of the area within its jurisdiction. A representative of the state government may be designated by the governor to attend meetings of the commission.

B. Members of the commission shall serve without compensation, but shall be reimbursed for expenses incurred in pursuit of their duties on the commission pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978]. The commission shall elect its own chairman from among its members, and shall establish its own rules and the committees it deems necessary to carry on its work. Committees may have as members persons other than members of the commission and other than elected officials. The commission shall meet as often as necessary but no less than four times a year.

C. The commission shall adopt an annual budget to be submitted to the participating governments which shall each contribute to the financing of the commission according to a formula specified in the agreement. Subject to approval of the secretary of the department of finance and administration, a regional planning commission may apply

for, receive and utilize grants or other aid from the federal government or any of its agencies or from any other source.

History: 1953 Comp., § 14-57-3, enacted by Laws 1967, ch. 239, § 3; 1977, ch. 247, § 142; 1983, ch. 296, § 12.

3-56-4. Staff.

The regional planning commission shall appoint a director qualified by training and experience who serves at the pleasure of the commission. The director is the chief administrative and planning officer and regular technical adviser of the commission, and shall appoint and remove the staff of the commission. The director may make agreements with local planning agencies within the jurisdiction of the commission for temporary transfer or joint use of staff employees and may contract for professional or consultant services from other governmental and private agencies.

History: 1953 Comp., § 14-57-4, enacted by Laws 1967, ch. 239, § 4.

3-56-5. Powers and duties [of regional planning commission].

The regional planning commission shall:

A. prepare and from time to time revise, amend, extend or add to a plan or plans for the development of the region. The plans shall be based on studies of physical, social, economic and governmental conditions and trends, and shall aim at the coordinated development of the region in order to promote the general health, welfare, convenience and prosperity of its people. The plans shall embody the policy recommendations of the commission and shall include, but not be limited to:

(1) a statement of the objectives, standards and principles sought to be expressed in the plan;

(2) recommendations for the most desirable pattern and intensity of general land use within the region in the light of the best available information concerning natural environmental factors, the present and prospective economic and demographic bases of the region, and the relation of land use within the region to land use in adjoining regions;

(3) recommendations for the general circulation pattern for the region, including land, water and air transportation and communication facilities whether used for movement within the region or to and from adjoining areas;

(4) recommendations concerning the need and proposed general location of public and private works and facilities which, by reason of their function, size, extent or for any other cause, are of a regional, as distinguished from purely local, concern;

(5) recommendations for the long-range programming and financing of capital projects and facilities; and

(6) other appropriate recommendations concerning current and impending problems which may affect the region;

B. prepare studies of the region's resources, both natural and human, with respect to existing and emerging problems of industry, commerce, transportation, population, housing, agriculture, public service, local governments and any other matters relevant to regional planning;

C. collect, process and analyze at regular intervals social and economic statistics for the region necessary to planning studies and make the results available to the public;

D. participate with other government agencies, educational institutions and private organizations in the coordination of regional research activities under Subsections B and C of this section;

E. cooperate with, and provide planning assistance to, county, municipal or other local governments, instrumentalities or planning agencies within the region and coordinate regional planning with the planning activities of the state and of the counties, municipalities, special districts or other government units within the regions, as well as neighboring regions, and the programs of federal departments and agencies;

F. provide information to officials of departments, agencies and instrumentalities of federal, state and local governments, and to the public at large, in order to foster public awareness and understanding of the objectives of the regional plan and the functions of regional and local planning, and to stimulate public interest and participation in the orderly, integrated development of the region;

G. receive and review for compatibility with regional plans all proposed comprehensive land use, circulation and public facilities plans and projects, zoning and subdivision regulations, official maps and building codes of local governments in the geographic area and any amendments or revisions thereof, and make recommendations for their modification where necessary to achieve compatibility;

H. review participating local government applications for capital project financial assistance from state and federal governments, and comment upon their consistency with the regional development plan; and review and comment upon state plans for highways and public works within the area to promote coordination of all intergovernmental activities in the region on a continuing basis;

I. exercise all other powers necessary and proper for the discharge of its duties; and

J. when deemed desirable, exercise its powers jointly or in cooperation with agencies or political subdivisions of this state or any other state, with agencies of the United States, or with Indian reservations, tribes or pueblos, subject to statutory provisions applicable to interjurisdictional agreements.

History: 1953 Comp., § 14-57-5, enacted by Laws 1967, ch. 239, § 5.

3-56-6. Implementation of regional plans.

All comprehensive regional plans, as well as subdivisions and platting regulations, shall be approved by the regional planning commission after public hearing and certified by the commission to all local governments and special districts within the region. Notice of the public hearing by the regional planning commission shall be published in a newspaper or newspapers of general circulation within the region, not more than fifteen nor less than ten days before the date set for the public hearing. Parties to the agreement shall be the constituent agencies for implementing the plan.

History: 1953 Comp., § 14-57-6, enacted by Laws 1967, ch. 239, § 6.

3-56-7. Termination of membership.

Any governmental member of the commission may terminate its membership after giving not less than ninety days' notice in writing of its intention to withdraw. The notice shall be served upon the chairman of the commission personally or by mail. The ninety-day period begins to run from the date the notice is received by the chairman. The withdrawal of a member does not abrogate or impair any contract or commitment previously made by the withdrawing governmental agency for the fiscal year.

History: 1953 Comp., § 14-57-7, enacted by Laws 1967, ch. 239, § 7.

3-56-8. Cooperation.

Any local government or special district within the region may, and all participating local governments and special districts shall, file with the regional planning commission all current and proposed plans, zoning ordinances, official maps, building codes, subdivision regulations and project plans for capital facilities and amendments and revisions of any of them as well as copies of their regular and special reports dealing with planning matters. Each governmental unit within the geographic area over which a regional planning commission has jurisdiction shall give the commission a reasonable opportunity to comment upon any proposed plans, zoning, subdivision and platting ordinances, regulations and capital facilities projects and shall consider any comments prior to adopting the plan, ordinance, regulation or project. By appropriate revision of an agreement, the parties may require that, as a condition precedent to their adoption, any or all proposed plans, zoning, subdivision and platting ordinances, regulations and capital facilities projects of their respective jurisdictions be determined by the regional planning commission to be in conformity with the relevant plan of the commission. The

sole power to adopt proposed plans, ordinances, regulations or projects remains with the local governing body or special district proposing them.

History: 1953 Comp., § 14-57-8, enacted by Laws 1967, ch. 239, § 8.

3-56-9. Annual report [of commission].

The regional planning commission shall submit an annual report to the chief executive officers, legislative bodies and planning agencies of all local governments within the region and to the governor.

History: 1953 Comp., § 14-57-9, enacted by Laws 1967, ch. 239, § 9.

ARTICLE 57
Metropolitan Boundaries for Class A Counties

3-57-1. Short title.

This act [3-57-1 to 3-57-9 NMSA 1978] may be cited as the "Metropolitan Boundary Act for Class A Counties."

History: 1953 Comp., § 14-58-1, enacted by Laws 1967, ch. 248, § 1.

3-57-2. Purpose of act.

The purpose of this act [3-57-1 to 3-57-9 NMSA 1978] is to provide for the orderly extension of municipal boundaries, to control the formation of new local public bodies, and to minimize the overlapping of a [sic] local governmental services, within class A counties.

History: 1953 Comp., § 14-58-2, enacted by Laws 1967, ch. 248, § 2.

3-57-3. Definitions.

As used in the Metropolitan Boundary Act for Class A Counties:

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

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

C. "local public body" means every political subdivision of the state which is empowered to receive or expend public money from whatever source derived;

D. "publish" or "publication" means printing in a newspaper which maintains an office in the county and is of general circulation within the county; and

E. "municipality" means all municipalities having a population over one hundred thousand and located within a class A county, but only as to that land located within a conservancy district.

History: 1953 Comp., § 14-58-3, enacted by Laws 1967, ch. 248, § 3; 1976 (S.S.), ch. 4, § 1; 1979, ch. 159, § 2.

3-57-4. Methods of annexation.

There shall be two methods of annexing territory to a municipality within class A counties:

A. by petition to a municipality as provided by Section 3-57-5 NMSA 1978 or, if the municipality has over two hundred thousand persons, as provided by Section 3-7-17.1 NMSA 1978; and

B. by petition to the district court as provided by Sections 3-57-6 through 3-57-8 NMSA 1978.

Any other method provided by the Municipal Code or any other act shall have no application within class A counties.

History: 1953 Comp., § 14-58-4, enacted by Laws 1967, ch. 248, § 4; 1976 (S.S.), ch. 4, § 2; 1998, ch. 42, § 6.

3-57-5. Annexation by petition to municipality.

A. Whenever a petition:

(1) seeks the annexation of territory to a municipality in a class A county;

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

(3) is signed by a majority of the owners of land in such territory;

(4) is accompanied by a map which shall show the external boundary of the territory proposed to be annexed and the relationship of the territory proposed to be annexed to the existing boundary of the municipality; and

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

B. If the ordinance consents to the annexation of the territory, a copy of the ordinance, with a copy of the plat of the territory so annexed, shall be filed in the office of the county clerk.

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

History: 1953 Comp., § 14-58-5, enacted by Laws 1967, ch. 248, § 5.

3-57-6. Petition to district court.

Whenever a petition is filed in the district court which:

A. seeks the annexation of territory to a municipality in a class A county;

B. is signed by an owner of land in such territory or by the authorized agent of any local public body;

C. is accompanied by a map which shall show the external boundary of the territory proposed to be annexed and the relationship of such territory to the existing boundary of the municipality;

D. names as respondents the county and the board of county commissioners of the county;

E. states that there exists in such territory a particular hazard to the health of persons residing within or without such territory; and

F. alleges that such hazard would be removed or materially alleviated by such municipality upon annexation, and that no other adequate and speedy remedy for the removal or material alleviation of such hazard is available, the district court shall set a date for a nonjury trial to consider the merits of such petition.

History: 1953 Comp., § 14-58-6, enacted by Laws 1967, ch. 248, § 6.

3-57-7. [Petition to district court;] service and publication of notice.

A copy of the petition and the order setting the petition down for hearing shall be served upon the county and each county commissioner, upon the clerk of the municipality, and published once a week for three weeks. Service shall be completed, and the first publication made, not more than sixty days nor less than thirty days prior to the date set for hearing.

History: 1953 Comp., § 14-58-7, enacted by Laws 1967, ch. 248, § 7.

3-57-8. Trial and judgment.

The municipality and any owner of real property in such territory may appear in such action and present evidence and argument on all issues involved. During the trial, the district court may take notice of generally recognized technical or scientific facts within the specialized knowledge of physicians and other persons qualified as experts in the field of public health. The judgment of the district court shall state whether all, a part or none of such territory shall be annexed to the municipality. Upon the filing of a copy of a judgment annexing territory in the office of the county clerk, the annexation shall be deemed complete. Except as inconsistent herewith, the Rules of Civil Procedure for the district courts, the court of appeals, and the supreme court shall apply to all actions under Sections 6, 7, and 8 of this act [3-57-6, 3-57-7 and 3-57-8 NMSA 1978].

History: 1953 Comp., § 14-58-8, enacted by Laws 1967, ch. 248, § 8.

3-57-9. Formation of local public bodies.

No local public body shall be organized within a five-mile radius of the corporate limits of the municipality having the greatest number of inhabitants in a class A county, unless the governing body of such municipality consents thereto. No local public body shall be organized beyond such five-mile radius in a class A county, unless the governing body of such county consents thereto. As a condition to granting such consent, such governing body may require such new local public body to comply with all master plans and all design and construction criteria for public improvements adopted by ordinance by such governing body.

History: 1953 Comp., § 14-58-14, enacted by Laws 1967, ch. 248, § 14.

ARTICLE 58
Economic Development Promotion

3-58-1. Short title.

This act [3-58-1 and 3-58-2 NMSA 1978] may be cited as the "Economic Development Promotion Act."

History: 1953 Comp., § 14-59-1, enacted by Laws 1968, ch. 68, § 1.

3-58-2. Authority to utilize revenues.

The governing board of any municipality or county may budget and utilize revenues for economic development promotion only upon approval by a majority of all of the members of the governing board.

History: 1953 Comp., § 14-59-2, enacted by Laws 1968, ch. 68, § 2; 1981, ch. 80, § 1.

ARTICLE 59
Pollution Control Revenue Bonds

3-59-1. Short title.

This act [3-59-1 to 3-59-14 NMSA 1978] may be cited as the "Pollution Control Revenue Bond Act."

History: 1953 Comp., § 14-60-1, enacted by Laws 1973, ch. 397, § 1.

3-59-2. Pollution Control Revenue Bond Act; definitions.

Wherever used in the Pollution Control Revenue Bond Act, unless a different meaning clearly appears in the context, the following terms, whether used in the singular or plural, shall be given the following respective interpretations:

A. "municipality" means any incorporated municipality in New Mexico;

B. "project" means any land, interest in land, building, structure, facility, system, fixture, improvement, appurtenance, machinery, equipment or any combination thereof, or any interest in any one or more of the foregoing, whether or not presently in existence or under construction, used by any individual, partnership, firm, company, corporation (including a public utility), association, trust, estate, political subdivision, state agency or any other legal entity, or its legal representative, agent or assigns, substantially for the reduction, abatement or prevention of pollution, including, but not limited to, the removal of pollutants, contaminants or foreign substances from land, air or water, or for the removal or treatment of any substance in a processed material which otherwise would cause pollution when such material is used;

C. "governing body" means the board or body in which the legislative powers of the municipality are vested;

D. "property" means any land, improvements thereon, buildings and any improvements thereto, machinery and equipment of any and all kinds, whether or not presently in existence or under construction, necessary to the project or projects or substantially related to the project or projects, operating capital and any other personal properties deemed necessary or substantially related to the project or projects, in connection with the said project or projects;

E. "mortgage" means a mortgage or a mortgage and deed of trust, or the pledge and hypothecation of any assets as collateral security; and

F. "pollution" means any form of environmental pollution including, but not limited to, water pollution, air pollution, pollution caused by solid waste disposal, thermal pollution, radiation contamination or noise pollution.

History: 1953 Comp., § 14-60-2, enacted by Laws 1973, ch. 397, § 2; 1977, ch. 312, § 1.

3-59-3. Legislative intent.

It is the intent of the legislature by the passage of the Pollution Control Revenue Bond Act to authorize municipalities to acquire, own, lease or sell projects for the purpose of reducing, abating or preventing pollution, including, but not limited to, removing pollutants, contaminants or foreign substances from land, air or water, or removing or treating any substance in a processed material which otherwise would cause pollution when such material is used, to protect and promote the health, welfare and safety of the citizens of this state and its habitat and wildlife, with the resultant higher level of employment and economic activity and stability. It is not intended hereby to authorize any municipality itself to operate any manufacturing, industrial or commercial enterprise. The provisions of the Pollution Control Revenue Bond Act shall be liberally construed in conformity with this intent.

History: 1953 Comp., § 14-60-3, enacted by Laws 1973, ch. 397, § 3; 1977, ch. 312, § 2.

3-59-4. Additional powers conferred on municipalities.

In addition to any other powers which it may now have, each municipality shall have the following powers:

A. to acquire, whether by construction, purchase, gift or lease, one or more projects which shall be located within this state and which may be located within or without the municipality, or partially within or partially without the municipality, but which shall not be located more than fifteen miles outside of the corporate limits of the municipality, unless there is no municipality within fifteen miles of the project, in which case any municipality in the county in which the project or projects are or may be located shall have the additional powers referred to in this section;

B. to sell or lease or otherwise dispose of any or all of its projects upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of the Pollution Control Revenue Bond Act ; and

C. to issue revenue bonds for the purpose of defraying the cost of acquiring, constructing, reconstructing, improving, maintaining, equipping, or furnishing any project

or projects and to secure the payment of such bonds, all as hereinafter provided. No municipality shall have the power to operate any project as a business or in any manner except as lessor thereof or seller thereof under an agreement of sale.

History: 1953 Comp., § 14-60-4, enacted by Laws 1973, ch. 397, § 4; 1977, ch. 312, § 3.

3-59-5. Bonds issued to finance projects.

Bonds issued by a municipality under authority of the Pollution Control Revenue Bond Act shall not be the general obligation of the municipality within the meaning of Article 9, Sections 12 and 13 of the constitution of New Mexico. The bonds shall be payable solely out of the revenue derived from the project or from the sale or lease of the project to finance which the bonds are issued. Bonds and interest coupons issued under authority of the Pollution Control Revenue Bond Act shall never constitute an indebtedness of the municipality within the meaning of any state constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers, and such fact shall be plainly stated on the face of each bond. The bonds may be executed and delivered at any time and from time to time, may be in such form and denominations, may be of such tenor, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding thirty years from their date, may be payable at such place or places, may bear interest payable at such place or places and evidenced in such manner and may contain such provisions not inconsistent with the Pollution Control Revenue Bond Act, all as shall be provided in the ordinance and proceedings of the governing body whereunder the bonds shall be authorized to be issued. Said bonds may bear interest at such rate or rates as shall be provided, or determined in the manner provided, in said ordinance and proceedings. Any bonds issued under the authority of the Pollution Control Revenue Bond Act may be sold at public or private sale in such manner and from time to time as may be determined by the governing body to be most advantageous, and the municipality may pay all expenses, attorneys', engineering and architects' fees and premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance of the bonds. All bonds issued under the authority of the Pollution Control Revenue Bond Act and all interest coupons applicable to the bonds shall be construed to be negotiable.

History: 1953 Comp., § 14-60-5, enacted by Laws 1973, ch. 397, § 5; 1977, ch. 312, § 4; 1983, ch. 114, § 1.

3-59-6. Security for bonds.

The principal of and interest on any bonds issued under the authority of the Pollution Control Revenue Bond Act shall be secured by a pledge of the revenues out of which such bonds shall be made payable, may be secured by a mortgage covering all or any part of the project or projects from which the revenues so pledged may be derived and

may be secured by a pledge of the lease or the agreement of sale of such project or projects. The ordinance and proceedings under which such bonds are authorized to be issued or any such mortgage may contain other agreements and provisions including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of all revenues from any project or projects covered by such proceedings or mortgage, the terms to be incorporated in the lease of such project or projects, the maintenance and insurance of such project or projects, the creation and maintenance of special funds from the revenues from such project or projects and the rights and remedies available in event of default to the bondholders or to the trustee under a mortgage, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of the Pollution Control Revenue Bond Act; provided, that in making any such agreements or provisions, a municipality shall not have the power to obligate itself except with respect to the project or projects and the application of the revenues therefrom and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers. The ordinance and proceedings authorizing any bonds hereunder and any mortgage securing such bonds may provide the procedure and remedies in the event of default in payment of the principal of or the interest on such bonds or in the performance of any agreement. No breach of any such agreement shall impose any pecuniary liability upon a municipality or any charge upon its general credit or against its taxing powers.

History: 1953 Comp., § 14-60-6, enacted by Laws 1973, ch. 397, § 6; 1977, ch. 312, § 5.

3-59-7. Requirements respecting lease, or agreement of sale.

Prior to the leasing, selling or other disposition of any project or projects, the governing body must determine and find the following:

A. the amount necessary in each year to pay the principal of and the interest on the bonds proposed to be issued to finance part or all of the cost of such project or projects; and

B. the amount necessary to be paid each year into any reserve fund which the governing body may deem it advisable to establish in connection with the retirement of the proposed bonds and maintenance of the project or projects; and in the case of an agreement of lease or sale unless the terms under which each such project is to be leased or sold provide that the lessee or the purchaser shall maintain the project or projects and carry all proper insurance with respect thereto, the estimated cost of maintaining the project or projects in good repair and keeping it or them properly insured. The determinations and findings of the governing body required to be made in the preceding sentence shall be made and set forth either in an ordinance or, if authorized by ordinance, in a resolution constituting part of the proceedings under which the proposed bonds are to be issued; and prior to the issuance of such bonds, the municipality shall lease or sell the project or projects to a lessee or purchaser under an agreement conditioned upon completion of the project or projects and providing for

payment to the municipality of such rentals or payments, as upon the basis of such determinations and findings, will be sufficient:

(1) to pay the principal of and interest on the bonds issued to finance the project or projects;

(2) to build up and maintain any reserve deemed by the governing body to be advisable in connection therewith; and

(3) to pay the costs of maintaining the project or projects in good repair and keeping it or them properly insured, unless the agreement of lease or sale obligates the lessee or purchaser to pay for the maintenance and insurance of the project or projects.

History: 1953 Comp., § 14-60-7, enacted by Laws 1973, ch. 397, § 7; 1977, ch. 312, § 6.

3-59-8. Refunding bonds.

Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by a municipality by the issuance of its refunding bonds in such amounts as the governing body may deem necessary. The amount of such refunding bonds may be the same as, less than or more than the outstanding principal amount of the bonds being refunded, but shall not exceed an amount which, after including amounts legally available from other sources and income to be received from the investment of such refunding bond proceeds and amounts from other legally available sources, is sufficient to pay promptly as the same become due either at normal maturity dates or at prior redemption dates as the governing body may determine, the principal of the bonds so to be refunded, all unpaid accrued and unaccrued interest thereon to the normal maturity dates of such bonds or to selected prior redemption dates thereof, any redemption premiums and any commissions and all estimated costs incidental to the issuance of such bonds and to such refunding as may be determined by the governing body to be necessary or advisable. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby; provided, that the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of the Pollution Control Revenue Bond Act shall be payable solely from the revenues out of which other bonds issued under the Pollution Control Revenue Bond Act may be payable or solely from those amounts derived from an escrow as herein provided, including amounts derived from the investment of refunding bond proceeds and other legally available amounts also as herein provided, or from any combination of the foregoing sources, and shall be subject

to the provisions contained in the Pollution Control Revenue Bond Act and may be secured in accordance with the provisions of the Pollution Control Revenue Bond Act.

Proceeds of refunding bonds shall either be applied immediately to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company which possesses and is exercising trust powers. Notwithstanding any provision to the contrary in Section 3-59-9 NMSA 1978 or in any other statute, such escrowed proceeds may be invested in short-term securities, long-term securities or both. Except to the extent inconsistent with the express terms of Sections 3-59-1 through 3-59-14 NMSA 1978, the ordinance and other proceedings under which the bonds to be so refunded were issued, including any mortgage or trust indenture given to secure the same, shall govern the establishment of any escrow in connection with such refunding and the investment and reinvestment of any escrowed proceeds.

History: 1953 Comp., § 14-60-8, enacted by Laws 1973, ch. 397, § 8; 1977, ch. 312, § 7.

3-59-9. Use of proceeds from sale of bonds.

The proceeds from the sale of any bonds issued under authority of the Pollution Control Revenue Bond Act shall be applied only for the purpose for which the bonds were issued; provided, that any accrued interest and premiums received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided further, that if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such balance of the proceeds shall be applied to the payment of the principal of or the redemption premium, if any, and interest on the bonds, and provided further, that any portion of the proceeds from the sale of the bonds, including refunding bonds, or any accrued interest and premium, received in any such sale, may, in the event the money currently will not be needed or cannot be effectively used to the advantage of the municipality for the purposes herein provided, be invested, in accordance with the procedures and subject to any restrictions established by the ordinance and other proceedings under which the bonds are issued, in any securities without limitation except as expressly provided to the contrary in Section 3-59-8 NMSA 1978, if such investment will not interfere with the use of such funds for the primary purposes as herein provided. The cost of acquiring any project or projects shall be deemed to include the following:

A. the actual cost of the construction of any part of a project or projects which shall be constructed, including architects', attorneys' and engineers' fees;

B. the purchase price of any part of a project or projects that may be acquired by purchase;

C. the actual cost of the extension of any utility to the project site or sites, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition; and

D. the interest on any bonds issued by the same municipality for the same or any other project or projects for a reasonable time prior to construction, during construction and for not exceeding six months after completion of construction.

History: 1953 Comp., § 14-60-9, enacted by Laws 1973, ch. 397, § 9; 1977, ch. 312, § 8; 1978, ch. 181, § 18.

3-59-10. No contribution by municipality.

No municipality shall have the power to pay out of its general funds or otherwise contribute any part of the costs of acquiring a project and shall not have the power to use land already owned by the municipality, or in which the municipality has an equity, for construction thereon of a project or any part thereof, unless the municipality is fully reimbursed for the value of the land as may be determined by a current appraisal, or unless the city leases the land at an annual rental fee of not less than five percent of the appraised value. The entire cost of acquiring any project must be paid out of the proceeds from the sale of bonds issued under the authority of the Pollution Control Revenue Bond Act; provided, that this provision shall not be construed to prevent a municipality from accepting donations of property to be used as a part of any project or money to be used for defraying any part of the cost of any project.

History: 1953 Comp., § 14-60-10, enacted by Laws 1973, ch. 397, § 10.

3-59-11. Bonds made legal investments.

Bonds issued under the provisions of the Pollution Control Revenue Bond Act shall be legal investments for savings banks and insurance companies organized under the laws of this state and shall be eligible for pledging as collateral for public deposits.

History: 1953 Comp., § 14-60-11, enacted by Laws 1973, ch. 397, § 11.

3-59-12. Exemption from taxation.

The bonds authorized by the Pollution Control Revenue Bond Act and the income from said bonds, all mortgages or other security instrument executed as security for said bonds, all lease agreements made pursuant to the provisions hereof and revenue derived from any lease or sale by the municipality thereof shall be exempt from all taxation by New Mexico or any subdivision thereof.

History: 1953 Comp., § 14-60-12, enacted by Laws 1973, ch. 397, § 12.

3-59-13. Construction of act.

Neither the Pollution Control Revenue Bond Act nor anything herein contained shall be construed as a restriction or limitation upon any powers which a municipality might

otherwise have under any laws of this state, but shall be construed as cumulative; and the Pollution Control Revenue Bond Act shall not be construed as requiring an election by the voters of a municipality prior to the issuance of bonds hereunder by such municipality, and all other laws of the state relative to public contracts and properties shall have no application to projects or bonds issued under this act.

History: 1953 Comp., § 14-60-13, enacted by Laws 1973, ch. 397, § 13.

3-59-14. Proceedings for issuance and sale of bonds; no notice or publication required.

Issuance and sale of bonds pursuant to the Pollution Control Revenue Bond Act shall be authorized by ordinance adopted by the governing body of the municipality issuing the bonds, which ordinance shall determine the maximum aggregate principal amount, maximum maturity and maximum interest rate of the bonds to be issued (which maximum interest rate may be used in the determination required by Section 3-59-7 NMSA 1978) and may provide for determinations to be made by resolution adopted by the governing body with respect to the issuance of a lesser aggregate principal amount of bonds, the designation or substitution of a trustee for bondholders or depositary or escrow agent for bond proceeds, the issuance of bonds in one or more series and, with respect to any series of bonds, the principal amount, maturity or maturities, sinking fund provisions, redemption provisions, price or prices, which may be at, above or below par, and interest rate or rates of the bonds of such series. Such resolution may provide for the determination from time to time of such interest rate or rates by a designated entity in accordance with any standard and by any procedure specified in such resolution. The agreement of lease or sale securing the bonds of any series and the execution and delivery thereof may be authorized by resolution adopted by the governing body.

No notice, consent or approval by any governmental body or public officer shall be required as a prerequisite to the sale or issuance of any bonds or the making of a mortgage under the authority of the Pollution Control Revenue Bond Act except as provided in that act.

History: 1953 Comp., § 14-60-14, enacted by Laws 1973, ch. 397, § 14; 1977, ch. 312, § 9; 1983, ch. 114, § 2.

ARTICLE 60
Community Development (Repealed.)

3-60-1. Repealed.

History: 1953 Comp., § 14-62-1, enacted by Laws 1975, ch. 341, § 1; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-2. Repealed.

History: 1953 Comp., § 14-62-2, enacted by Laws 1975, ch. 341, § 2; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-3. Repealed.

History: 1953 Comp., § 14-62-3, enacted by Laws 1975, ch. 341, § 3; 1979, ch. 315, § 1; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-4. Repealed.

History: 1953 Comp., § 14-62-4, enacted by Laws 1975, ch. 341, § 4; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-5. Repealed.

History: 1953 Comp., § 14-62-5, enacted by Laws 1975, ch. 341, § 5; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-6. Repealed.

History: 1953 Comp., § 14-62-6, enacted by Laws 1975, ch. 341, § 6; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-7. Repealed.

History: 1953 Comp., § 14-62-7, enacted by Laws 1975, ch. 341, § 7; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-8. Repealed.

History: 1953 Comp., § 14-62-8, enacted by Laws 1975, ch. 341, § 8; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-9. Repealed.

History: 1953 Comp., § 14-62-8, enacted by Laws 1975, ch. 341, § 9; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-10. Repealed.

History: 1953 Comp., § 14-62-10, enacted by Laws 1975, ch. 341, § 10; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-11. Repealed.

History: 1953 Comp., § 14-62-11, enacted by Laws 1975, ch. 341, § 11; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-12. Repealed.

History: 1953 Comp., § 14-62-12, enacted by Laws 1975, ch. 341, § 12; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-13. Repealed.

History: 1953 Comp., § 14-62-13, enacted by Laws 1975, ch. 341, § 13; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-14. Repealed.

History: 1953 Comp., § 14-62-14, enacted by Laws 1975, ch. 341, § 14; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-15. Repealed.

History: 1953 Comp., § 14-62-15, enacted by Laws 1975, ch. 341, § 15; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-16. Repealed.

History: 1953 Comp., § 14-62-16, enacted by Laws 1975, ch. 341, § 16; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-17. Repealed.

History: 1953 Comp., § 14-62-17, enacted by Laws 1975, ch. 341, § 17; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-18. Repealed.

History: 1953 Comp., § 14-62-18, enacted by Laws 1975, ch. 341, § 18; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-19. Repealed.

History: 1953 Comp., § 14-62-19, enacted by Laws 1975, ch. 341, § 19; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-20. Repealed.

History: 1953 Comp., § 14-62-20, enacted by Laws 1975, ch. 341, § 20; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-21. Repealed.

History: 1953 Comp., § 14-62-21, enacted by Laws 1975, ch. 341, § 21; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-22. Repealed.

History: 1953 Comp., § 14-62-22, enacted by Laws 1975, ch. 341, § 22; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-23. Repealed.

History: 1953 Comp., § 14-62-23, enacted by Laws 1975, ch. 341, § 23; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-24. Repealed.

History: 1953 Comp., § 14-62-24, enacted by Laws 1975, ch. 341, § 24; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-25. Repealed.

History: 1953 Comp., § 14-62-25, enacted by Laws 1975, ch. 341, § 25; 1979, ch. 319, § 2; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-26. Repealed.

History: 1953 Comp., § 14-62-26, enacted by Laws 1975, ch. 341, § 26; 2007, ch. 46, § 5; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-27. Repealed.

History: 1953 Comp., § 14-62-27, enacted by Laws 1975, ch. 341, § 27; 1981, ch. 125, § 41; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-28. Repealed.

History: 1953 Comp., § 14-62-28, enacted by Laws 1975, ch. 341, § 28; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-29. Repealed.

History: 1953 Comp., § 14-62-29, enacted by Laws 1975, ch. 341, § 29; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-30. Repealed.

History: 1953 Comp., § 14-62-30, enacted by Laws 1975, ch. 341, § 30; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-31. Repealed.

History: 1953 Comp., § 14-62-31, enacted by Laws 1975, ch. 341, § 31; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-32. Repealed.

History: 1953 Comp., § 14-62-32, enacted by Laws 1975, ch. 341, § 32; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-33. Repealed.

History: 1953 Comp., § 14-62-33, enacted by Laws 1975, ch. 341, § 33; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-34. Repealed.

History: 1953 Comp., § 14-62-34, enacted by Laws 1975, ch. 341, § 34; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-35. Repealed.

History: 1953 Comp., § 14-62-35, enacted by Laws 1975, ch. 341, § 35; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-36. Repealed.

History: 1953 Comp., § 14-62-36, enacted by Laws 1975, ch. 341, § 36; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60-37. Repealed.

History: 1953 Comp., § 14-62-37, enacted by Laws 1975, ch. 341, § 37; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

ARTICLE 60A
Metropolitan Redevelopment

3-60A-1. Short title.

Chapter 3, Article 60A NMSA 1978 may be cited as the "Metropolitan Redevelopment Code".

History: Laws 1979, ch. 391, § 1; 2018, ch. 60, § 1.

3-60A-2. Findings and declarations of necessity.

A. It is found and declared that there exist in the state slum areas and blighted areas that constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; that the existence of these areas contributes substantially to the spread of disease and crime, constitutes an economic and social burden, substantially impairs or arrests the sound and orderly development of many areas of the state and retards the maintenance and expansion of necessary housing accommodations; that economic and commercial activities are lessened in those areas by the slum or blighted conditions, and the effects of these conditions include less employment in the area, lower property values, less gross receipts tax revenue and reduced use of buildings, residential dwellings and other facilities in the area; that the prevention and elimination of slum areas and blighted areas and the prevention and elimination of conditions that impair sound and orderly development is a matter of state policy and concern in order that the state shall not continue to be endangered by these areas that contribute little to the tax income of the state and its local governments and that consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization or other forms of public protection, services and facilities.

B. Certain slum areas and blighted areas or portions thereof may require land acquisition and clearance by local government, since prevailing conditions may make impracticable their reclamation or development; other areas or portions of the slum or blighted area may be suitable for conservation or rehabilitation efforts and the conditions and evils enumerated in Subsection A of this section may be eliminated, remedied or prevented by those efforts; and to the extent feasible, salvageable slum and blighted areas should be conserved and rehabilitated through voluntary action and the regulatory process and, when necessary, by government assistance.

C. The powers conferred by the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978] regarding the use of public money are for public uses or purposes for which public money may be expended. The individual benefits accruing to persons as the result of the powers conferred by the Metropolitan Redevelopment Code and projects conducted in accordance with its provisions are found and declared to be incidental to the objectives of that code and are far outweighed by the benefit to the

public as a whole. Activities authorized and powers granted by the Metropolitan Redevelopment Code are hereby declared not to result in a donation or aid to any person, association or public or private organization or enterprise. The necessity for these provisions and the power is declared to be in the public interest as a matter of legislative determination.

History: Laws 1979, ch. 391, § 2; 2007, ch. 329, § 3; 2007, ch. 330, § 3; 2018, ch. 60, § 2.

3-60A-3. Legislative intent.

A. It is the intent of the legislature by the passage of the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978] to authorize local governments to acquire, own, lease, improve and dispose of properties in a designated metropolitan redevelopment area to the end that such local governments may be able to promote industry and develop trade or other economic activity by inducing profit or nonprofit corporations, federal governmental offices, hospitals and manufacturing, industrial, commercial or business enterprises to locate, expand or remain in such area, to mitigate the serious threat of extensive unemployment in a metropolitan redevelopment area and to secure and maintain a balanced and stable economy in an area declared to be a slum or blighted area.

B. It is the further intent of the legislature to authorize local governments to acquire, own, lease, improve and dispose of properties so that adequate medical care, residential housing and facilities for the disposal of sewage and solid waste may be provided; and industrial, manufacturing, commercial or business activities may be begun or expanded in these areas; furnishing water, energy and gas may be provided; more adequate facilities for sports events and activities and recreation activities, conventions and trade shows may be provided; more parking facilities or storage or training facilities may be provided; and more adequate research, product-testing and administrative facilities may be provided, all of which promote the public health, welfare, safety, convenience and prosperity.

C. It is, therefore, the intention of the legislature to vest local governments with all powers, other than the power of eminent domain, that may be necessary to enable them to accomplish such purposes, which powers shall in all respects be exercised for the benefit of the inhabitants of this state and within the jurisdiction of the local governments of the state for the promotion of their health, safety, welfare, convenience and prosperity.

D. It is not intended by the Metropolitan Redevelopment Code to authorize any local government to operate any manufacturing, industrial, commercial or business enterprise or any research, product-testing or administrative facilities of such enterprise. Nor is it the intent of that code to prohibit the operation of residential housing facilities, health care facilities, sewage or solid waste disposal facilities or the furnishing of water, sports or recreation facilities, convention or trade show facilities, airports, public transportation

facilities or operations, parking facilities or storage or training facilities by any local government.

History: Laws 1979, ch. 391, § 3; 2007, ch. 329, § 4; 2007, ch. 330, § 4; 2018, ch. 60, § 3.

3-60A-4. Definitions.

As used in the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978]:

A. "public body" means a local government, board, commission, authority, district or other political subdivision or public body of the state;

B. "local government" means an incorporated city, town or village, whether incorporated under general act, special act or special charter, or a county or, when the context requires, the governing body of an incorporated city, town or village or a county;

C. "clerk" means the clerk or other official of a local government who is the chief custodian of the official records of the local government;

D. "federal government" means the United States of America or an agency or instrumentality, corporate or otherwise, of the United States;

E. "slum area" means an area within the area of operation in which there are numerous residential or nonresidential buildings, improvements and structures that are dilapidated, deteriorated, aged or obsolete or that have inadequate provision for ventilation, light, air or sanitation or the area lacks open spaces or has a high density of population or overcrowding or there exist in the area conditions that endanger life or property by fire or other causes, and the area is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime and is detrimental to the public health, safety, morals or welfare;

F. "blighted area" means an area within the area of operation other than a slum area that substantially impairs or arrests the sound growth and economic health and well-being within the jurisdiction of a local government or a locale within the jurisdiction of a local government because of the presence of a substantial number of deteriorated or deteriorating structures; a predominance of defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility or usefulness; unsanitary or unsafe conditions; deterioration of site or other improvements; diversity of ownership; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; improper subdivision; lack of adequate housing facilities in the area; or obsolete or impractical planning and platting or an area where a significant number of commercial or mercantile businesses have closed or significantly reduced their operations due to the economic losses or loss of profit due to operating in the area, low levels of commercial or industrial activity or redevelopment or any combination of

such factors; or an area that retards the provisions of housing accommodations or constitutes an economic or social burden and is a menace to the public health, safety, morals or welfare in its present condition and use;

G. "metropolitan redevelopment project" or "project" means an activity, undertaking or series of activities or undertakings designed to eliminate slums or blighted areas in areas designated as metropolitan redevelopment areas and the activity or undertaking conforms to an approved plan for the area for slum clearance and redevelopment, rehabilitation and conservation;

H. "slum clearance and redevelopment" means the use of those powers authorized by the Metropolitan Redevelopment Code to eliminate slum areas and undertake activities authorized by the Metropolitan Redevelopment Code to rejuvenate or revitalize those areas so that the conditions that caused those areas to be designated slum areas are eliminated;

I. "rehabilitation" or "conservation" means the restoration and renewal of a slum or blighted area or portion thereof in accordance with an approved plan by use of powers granted by the Metropolitan Redevelopment Code;

J. "metropolitan redevelopment area" means a slum area or a blighted area or a combination thereof that the local government so finds and declares and designates as appropriate for a metropolitan redevelopment project;

K. "metropolitan redevelopment plan" means a plan, as it exists from time to time, for one or more metropolitan redevelopment areas or for a metropolitan redevelopment project, which plan shall:

(1) seek to eliminate the problems created by a slum area or blighted area;

(2) conform to the general plan for the local government as a whole; and

(3) be sufficient to indicate the proposed activities to be carried out in the area, including any proposals for land acquisition; proposals for demolition and removal of structures; redevelopment; proposals for improvements, rehabilitation and conservation; zoning and planning changes; land uses, maximum densities, building restrictions and requirements; and the plan's relationship to definite local objectives respecting land uses, improved traffic patterns and controls, public transportation, public utilities, recreational and community facilities, housing facilities, commercial activities or enterprises, industrial or manufacturing use and other public improvements;

L. "real property" includes all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise;

M. "bonds" means any bonds, including refunding bonds, notes, interim certificates, certification of indebtedness, debentures, metropolitan redevelopment bonds or other securities evidencing an obligation and issued under the provisions of the Metropolitan Redevelopment Code or other obligations;

N. "obligee" includes a bondholder, agent or trustee for a bondholder or lessor demising to the local government property used in connection with a metropolitan redevelopment project or any assignee or assignees of such lessor's interest or any part thereof;

O. "person" means an individual, firm, partnership, corporation, company, association, joint stock association or body politic or the state or any political subdivision thereof and shall further include any trustee, receiver, assignee or other person acting in a similar representative capacity;

P. "area of operation" means an area within a local government's jurisdiction, except that it shall not include an area that lies within the jurisdiction of another local government unless an ordinance has been adopted by the other local government declaring a need therefor;

Q. "board" or "commission" means a board, commission, department, division, office, body or other unit of a local government designated by the local government to perform functions authorized by the Metropolitan Redevelopment Code as directed by the local government;

R. "public officer" means any person who is in charge of any department or branch of government of the local government; and

S. "fair value" means the negotiated price or value of an asset or liability agreed upon by a local government and a private entity.

History: Laws 1979, ch. 391, § 4; 1980, ch. 52, § 1; 1983, ch. 32, § 1; 2000, ch. 103, § 1; 2018, ch. 60, § 4.

3-60A-5. Redevelopment Law; short title.

Sections 5 through 18 [3-60A-5 to 3-60A-13, 3-60A-14 to 3-60A-18 NMSA 1978] of the Metropolitan Redevelopment Code may be cited as the "Redevelopment Law."

History: Laws 1979, ch. 391, § 5.

3-60A-6. Use of private enterprise and public powers.

A local government, to the greatest feasible extent, shall afford maximum opportunity for the rehabilitation or redevelopment of the metropolitan redevelopment areas by private enterprise. A local government shall give consideration to this objective

in exercising its powers provided by the Redevelopment Law [3-60A-5 to 3-60A-18 NMSA 1978], including the approval of metropolitan redevelopment plans consistent with the general plan for the local government; the exercise of its zoning powers; the enforcement of other laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements; the disposition of any property acquired; and the provision of necessary public improvements.

History: Laws 1979, ch. 391, § 6; 2018, ch. 60, § 5.

3-60A-7. Finding of necessity by local government.

No local government shall exercise any of the powers conferred upon local governments by the Redevelopment Law [3-60A-5 to 3-60A-18 NMSA 1978] until the local government has adopted a resolution finding that:

A. one or more slum areas or blighted areas exist in the local government's jurisdiction; and

B. the rehabilitation, conservation, slum clearance, redevelopment or development, or a combination thereof, of and in such area is necessary in the interest of the public health, safety, morals or welfare of the residents of the local government's jurisdiction.

History: Laws 1979, ch. 391, § 7; 2018, ch. 60, § 6.

3-60A-8. Designation of a metropolitan redevelopment area.

A. A local government shall not prepare a metropolitan redevelopment plan for an area unless the local government has, by resolution, determined the area to be a slum area or a blighted area or a combination thereof and designated the area as appropriate for a metropolitan redevelopment project, which resolution may be adopted only after the local government has caused to be published in a newspaper of general circulation within the area of operation of the local government a notice that contains a general description of the area and the date, time and place where the local government shall hold a public hearing to consider the resolution and a notice that any interested party may appear and speak to the issue of the adoption of the resolution.

B. Notice shall be published at least twice, and the last publication shall be not less than twenty days before the hearing. The owner of any real property affected by the resolution has the right to file in the district court of the county within which the local government is located, within twenty days after the adoption of the resolution, an action to set aside the determination made by the local government.

C. A local government shall not acquire real property for a metropolitan redevelopment project unless the local government has approved a metropolitan redevelopment plan relating to the metropolitan redevelopment area in which the real property is located.

History: Laws 1979, ch. 391, § 8; 2018, ch. 60, § 7.

3-60A-9. Preparation of a metropolitan redevelopment plan.

A. When a local government has complied with the provisions of the Redevelopment Law [3-60A-5 to 3-60A-18 NMSA 1978] concerning public hearing and designation of an area as a metropolitan redevelopment area, it may prepare or cause to be prepared a metropolitan redevelopment plan; however, prior to final consideration of the plan by the local government, the plan shall be the subject of at least one public hearing held by the local government or the local government's planning commission, at which time comments from the public as a whole can be gathered and considered by the local government in its preparation of the final plan. The local government may hold a public hearing for purposes of approval of the proposed plan, as provided in Subsection B of this section, only after the hearing required by this subsection.

B. The local government shall hold a public hearing on a metropolitan redevelopment plan or substantial modification of an approved plan after public notice by publication in a newspaper having a general circulation in the area of operation of the local government. The notice shall describe the time, date, place and purpose of the hearing, shall generally identify the area covered by the plan and shall outline the general scope of the metropolitan redevelopment project under consideration. Prior to the public hearing on this matter, notice of the public hearing shall be mailed by first class mail to the owners of real property in the metropolitan redevelopment area. The mailing shall be to the owner's address as shown on the records of the county treasurer. If the notice by first class mail to the owner is returned undelivered, the local government shall attempt to discover the owner's most recent address and shall remail the notice by certified mail, return receipt requested, to the address.

C. Following the public hearing, the local government may approve a metropolitan redevelopment plan if it finds that:

(1) the proposed activities will aid in the elimination or prevention of slum or blight or the conditions that lead to the development of slum or blight;

(2) a feasible method is included in the plan to provide individuals and families who occupy residential dwellings in the metropolitan redevelopment area and who may be displaced by the proposed activities with decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such individuals and families;

(3) the plan conforms to the general plan for the local government; and

(4) the plan affords maximum opportunity consistent with the needs of the community for the rehabilitation or redevelopment of the area by private enterprise or persons and the objectives of the plan justify the proposed activities as public purposes and needs.

D. A metropolitan redevelopment plan may be modified at any time; however, if the plan is modified after the lease or sale by the local government of real property in the project area, the modification shall be subject to any rights at law or in equity a lessee or purchaser or the lessee's or purchaser's successors in interest may be entitled to assert. Any proposed modification that will substantially change the plan as previously approved by the local government shall be subject to the requirements of this section, including the requirement of a public hearing, before it may be approved.

History: Laws 1979, ch. 391, § 9; 2018, ch. 60, § 8.

3-60A-10. Powers of local government.

A local government shall have all the powers, other than the power of eminent domain, necessary or convenient to carry out and effectuate the purposes and provisions of the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978], including the following powers:

A. to undertake and carry out metropolitan redevelopment projects within its area of operation, including clearance and redevelopment, rehabilitation, conservation and development activities and programs; to make, enter into and execute contracts and other agreements and instruments necessary or convenient to the exercise of its powers under the Redevelopment Law [3-60A-5 to 3-60A-18 NMSA 1978]; and to disseminate information regarding slum clearance, prevention of blight and the metropolitan redevelopment projects and areas;

B. to provide, arrange or contract for the furnishing or repair by a public or private person or agency for services, privileges, works, streets, roads, public utilities, public buildings or other facilities for or in connection with a metropolitan redevelopment project; to, within its area of operation, install, acquire, construct, reconstruct, remodel, rehabilitate, maintain and operate streets, utilities, parks, buildings, playgrounds and public buildings, including parking facilities, transportation centers, public safety buildings and other public improvements or facilities or improvements for public purposes, as may be required by the local government, the state or a political subdivision of the state; to agree to conditions that it may deem reasonable and appropriate that are attached to federal financial assistance and imposed pursuant to federal law, including conditions relating to the determination of prevailing salaries or wages or compliance with federal and state labor standards, compliance with federal property acquisition policy and the provision of relocation assistance in accordance with federal law in the undertaking or carrying out of a metropolitan redevelopment project; and to include in a contract let in connection with the project provisions to fulfill these conditions as it may deem reasonable and appropriate; provided, however, that all purchases of personal property shall be in accordance with the Procurement Code [13-1-28 to 13-1-199 NMSA 1978];

C. within its area of operation, to inspect any building or property in a metropolitan redevelopment area in order to make surveys, appraisals, soundings or test borings and

to obtain an order for this purpose from a court of competent jurisdiction in the event inspection is denied by the property owner or occupant; to acquire, by purchase, lease, option, gift, grant, bequest, devise or otherwise, any real property or personal property for its administrative or project purposes, together with any improvements thereon; to hold, improve, clear or prepare for redevelopment any such property; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of real or personal property or operations of the local government against risks or hazards, including the power to pay premiums on that insurance; and to enter into contracts necessary to effectuate the purposes of the Metropolitan Redevelopment Code;

D. to invest metropolitan redevelopment project funds held in reserve, sinking funds or other project funds that are not required for immediate disbursement in property or securities in which local governments may legally invest funds subject to their control; to redeem bonds as have been issued pursuant to the Metropolitan Redevelopment Code at the redemption price established in the bonds or to purchase the bonds at less than redemption price. Bonds so redeemed or purchased shall be canceled;

E. to borrow or lend money subject to those procedures and limitations as may be provided in the constitution of New Mexico or statutes and to apply for and accept advances, loans, grants, contributions and other forms of financial assistance from the federal government, the state, the county or other public body or from sources, public or private, for the purposes of the Metropolitan Redevelopment Code; and to give security as may be required and subject to the provisions and limitations of general law except as may otherwise be provided by the Redevelopment Law and to enter into and carry out contracts in connection with that law. A local government may include in a contract for financial assistance with the federal government for a metropolitan redevelopment project conditions imposed pursuant to federal law that the local government may deem reasonable or appropriate and that are not inconsistent with the purposes of the Metropolitan Redevelopment Code;

F. within its area of operation, to make plans necessary for the carrying out of the purposes of the Metropolitan Redevelopment Code and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify and amend the plans. The plans may include without limitation:

(1) a general plan for redevelopment of the area as a whole;

(2) redevelopment plans for specific areas;

(3) plans for programs of voluntary or assisted repair and rehabilitation of buildings and improvements;

(4) plans for the enforcement of state and local laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements

and to the compulsory repair, rehabilitation, demolition or removal of buildings and improvements; and

(5) appraisals, title searches, surveys, studies and other preliminary plans and work necessary to prepare for the undertaking of metropolitan redevelopment projects;

G. to develop, test and report methods and techniques and carry out demonstrations and other activities for the prevention and elimination of slums and blight and to pay for, accept and use grants of funds from the federal government for those purposes;

H. to prepare plans for the relocation of families displaced from a metropolitan redevelopment area to the extent essential for acquiring possession of and clearing the area or its parts or permit the carrying out of the metropolitan redevelopment project;

I. to appropriate under existing authority the funds and make expenditures necessary to carry out the purposes of the Metropolitan Redevelopment Code and under existing authority to levy taxes and assessments for such purposes; to close, vacate, plan or replan streets, roads, sidewalks, ways or other places; in accordance with applicable law or ordinances, to plan or replan, zone or rezone any part within the jurisdiction of the local government or make exceptions from building regulations; and to enter into agreements with a metropolitan redevelopment agency vested with metropolitan redevelopment project powers, which agreements may extend over any period, notwithstanding any provision or rule of law to the contrary, respecting action to be taken by the local government pursuant to the powers granted by the Redevelopment Law;

J. within its area of operation, to organize, coordinate and direct the administration of the provisions of the Redevelopment Law as they apply to the local government in order that the objective of remedying slum areas and blighted areas and preventing the causes of those areas within the jurisdiction of the local government may be most effectively promoted and achieved and to establish any new office of the local government or to reorganize existing offices as necessary;

K. to acquire real property that is appropriate for the preservation or restoration of historic sites; the beautification of urban land; the conservation of open spaces, natural resources and scenic areas; or the provision of recreational opportunities; or that is to be used for public purposes;

L. to engage in the following activities as part of a metropolitan redevelopment project:

(1) acquisition, construction, reconstruction or installation of public works, facilities and site or other improvements, including neighborhood facilities, senior citizen centers, historic properties, utilities, streets, street lights, water and sewer facilities,

including connections for residential users, foundations and platforms for air-rights sites, pedestrian malls and walkways, parks, playgrounds and other recreation facilities, flood and drainage facilities, parking facilities, solid waste disposal facilities and fire protection or health facilities that serve designated areas;

(2) special projects directed to the removal of materials and architectural barriers that restrict the mobility and accessibility of elderly and disabled persons;

(3) provision of public services in the metropolitan redevelopment area that are not otherwise available in the area, including the provisions of public services directed to the employment, economic development, crime prevention, child care, health, drug abuse, welfare or recreation needs of the people who reside in the metropolitan redevelopment area;

(4) payment of the nonfederal share of any federal grant-in-aid program to the local government that will be a part of a metropolitan redevelopment project;

(5) if federal funds are used in the project, to provide for payment of relocation costs and assistance to individuals, families, businesses, organizations and farm operations displaced as a direct result of a metropolitan redevelopment project in accordance with applicable law governing such payment;

(6) payment of reasonable administrative costs and carrying charges related to the planning and execution of plans and projects;

(7) economic and marketing studies to determine the economic condition of an area and to determine the viability of certain economic ventures proposed for the metropolitan redevelopment area;

(8) issuance of bonds, grants or loans as authorized by the Metropolitan Redevelopment Code in accordance with the requirements of that code; and

(9) grants to nonprofit corporations, local development corporations or entities organized under Section 301 (d) of the federal Small Business Investment Act of 1958 for the purposes of carrying out the provisions of the Metropolitan Redevelopment Code;

M. if payments are to be made by the local government or metropolitan redevelopment agency under the terms of a contract for reconstruction or rehabilitation of private property, payments shall be made from a special fund created for that purpose and shall not be paid directly to the property owner but shall instead be paid to the contractor by the local government or agency from such fund upon proper authorization of the property owner and notification that the terms of the contract have been fulfilled. However, those rehabilitation contracts shall be between the property owner and the contractor after a sealed bidding procedure and award of contract approved by the local government has taken place;

N. in a metropolitan redevelopment project or rehabilitation or conservation undertaking or activity, to exercise the following powers in one or more metropolitan redevelopment areas to include the elimination and prevention of the development or spread of slums or blight and may involve slum clearance and redevelopment in that area or rehabilitation or conservation in that area or any combination or part of those areas in accordance with a metropolitan redevelopment plan and for undertakings or activities of a local government in a metropolitan redevelopment area to eliminate the conditions that caused an area to be so designated and may include the following:

(1) acquisition of real property within the metropolitan redevelopment area pursuant to any powers and for purposes enumerated in the Metropolitan Redevelopment Code;

(2) clearing the land, grading the land and replatting the land in accordance with the metropolitan redevelopment plan; installation, construction or reconstruction of roads, streets, gutters, sidewalks, storm drainage facilities, water lines or water supply installations, sewer lines and sewage disposal installations, steam, gas and electric lines and installations, airport facilities and construction of any other needed public facilities or buildings whether on or off the site if deemed necessary by the local government to prepare the land in the metropolitan redevelopment area for residential, commercial, industrial and public use in accordance with the metropolitan redevelopment plan; and

(3) making the land available for development by private enterprise or public agencies, including sale, initial leasing, leasing or retention by the local government itself, at its fair market value for uses in accordance with the metropolitan redevelopment plan for the area;

O. the local government is empowered in a metropolitan redevelopment area to undertake slum clearance and redevelopment that includes:

(1) acquisition of a slum area or a blighted area or portion thereof;

(2) demolition and removal of buildings and improvements;

(3) installation, construction, reconstruction, maintenance and operation of streets, utilities, storm drainage facilities, curbs and gutters, parks, playgrounds, single-family or multifamily dwelling units, buildings, public buildings, including parking facilities, transportation centers, safety buildings and other improvements, necessary for carrying out in the area the provisions of an approved plan for the area; and

(4) making the real property available for development or redevelopment by private enterprise or public agencies, including sale, leasing or retention by the local government itself, at its fair value for uses in accordance with the metropolitan redevelopment area plan; and

P. to engage in rehabilitation or conservation that includes the restoration and renewal of a slum or blighted area or portion thereof in accordance with any approved plan, by:

(1) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements;

(2) acquisition of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, unsanitary or unsafe conditions, lessen or increase density, eliminate obsolete or other uses detrimental to the public welfare or to otherwise remove or prevent the spread of blight or deterioration or to provide land for needed public facilities;

(3) installation, construction or reconstruction of streets, utilities, parks, playgrounds and other improvements necessary for carrying out in the area the provisions of the Metropolitan Redevelopment Code;

(4) the disposition of any property acquired in the area, including sale, leasing or retention by the local government itself, for uses in accordance with an approved plan;

(5) acquisition of real property in the area that, under a plan, is to be repaired or rehabilitated;

(6) repair or rehabilitation of structures within the area;

(7) power to resell repaired or rehabilitated property;

(8) acquisition, without regard to any requirement that the area be a slum or blighted area, of air-rights in an area consisting principally of land on which is located a highway, railway, bridge or subway tracks or tunnel entrance or other similar facilities that have a blighting influence on the surrounding area and over which air-rights sites are to be developed for the elimination of such blighting influences; and

(9) making loans or grants or authorizing the use of the proceeds of bonds issued pursuant to the Metropolitan Redevelopment Code for the purpose of repairing, remodeling, modifying or otherwise reconstructing a building or buildings located in the metropolitan redevelopment area. Such rehabilitation or conservation with use of funds expended by authority of the Metropolitan Redevelopment Code or by metropolitan revenue bonds authorized by that code shall be authorized only after approval by the local government and after it has been determined that the expenditure is in accordance with the metropolitan redevelopment plan for that area.

History: Laws 1979, ch. 391, § 10; 2007, ch. 329, § 5; 2007, ch. 330, § 5; 2018, ch. 60, § 9.

3-60A-10. Powers of local government. (Effective January 1, 2025.)

A local government shall have all the powers, other than the power of eminent domain, necessary or convenient to carry out and effectuate the purposes and provisions of the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978], including the following powers:

A. to undertake and carry out metropolitan redevelopment projects within its area of operation, including clearance and redevelopment, rehabilitation, conservation and development activities and programs; to make, enter into and execute contracts and other agreements and instruments necessary or convenient to the exercise of its powers under the Redevelopment Law; and to disseminate information regarding slum clearance, prevention of blight and the metropolitan redevelopment projects and areas;

B. to provide, arrange or contract for the furnishing or repair by a public or private person or agency for services, privileges, works, streets, roads, public utilities, public buildings or other facilities for or in connection with a metropolitan redevelopment project; to, within its area of operation, install, acquire, construct, reconstruct, remodel, rehabilitate, maintain and operate streets, utilities, parks, buildings, playgrounds and public buildings, including parking facilities, transportation centers, public safety buildings and other public improvements or facilities or improvements for public purposes, as may be required by the local government, the state or a political subdivision of the state; to agree to conditions that it may deem reasonable and appropriate that are attached to federal financial assistance and imposed pursuant to federal law, including conditions relating to the determination of prevailing salaries or wages or compliance with federal and state labor standards, compliance with federal property acquisition policy and the provision of relocation assistance in accordance with federal law in the undertaking or carrying out of a metropolitan redevelopment project; and to include in a contract let in connection with the project provisions to fulfill these conditions as it may deem reasonable and appropriate; provided, however, that all purchases of personal property shall be in accordance with the Procurement Code [13-1-28 through 13-1-199 NMSA 1978];

C. within its area of operation, to inspect any building or property in a metropolitan redevelopment area in order to make surveys, appraisals, soundings or test borings and to obtain an order for this purpose from a court of competent jurisdiction in the event inspection is denied by the property owner or occupant; to acquire, by purchase, lease, option, gift, grant, bequest, devise or otherwise, any real property or personal property for its administrative or project purposes, together with any improvements thereon; to hold, improve, clear or prepare for redevelopment any such property; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of real or personal property or operations of the local government against risks or hazards, including the power to pay premiums on that insurance; and to enter into contracts necessary to effectuate the purposes of the Metropolitan Redevelopment Code;

D. to invest metropolitan redevelopment project funds held in reserve, sinking funds or other project funds that are not required for immediate disbursement in property or securities in which local governments may legally invest funds subject to their control; to redeem bonds as have been issued pursuant to the Metropolitan Redevelopment Code at the redemption price established in the bonds or to purchase the bonds at less than redemption price. Bonds so redeemed or purchased shall be canceled;

E. to borrow or lend money subject to those procedures and limitations as may be provided in the constitution of New Mexico or statutes and to apply for and accept advances, loans, grants, contributions and other forms of financial assistance from the federal government, the state, the county or other public body or from sources, public or private, for the purposes of the Metropolitan Redevelopment Code; and to give security as may be required and subject to the provisions and limitations of general law except as may otherwise be provided by the Redevelopment Law and to enter into and carry out contracts in connection with that law. A local government may include in a contract for financial assistance with the federal government for a metropolitan redevelopment project conditions imposed pursuant to federal law that the local government may deem reasonable or appropriate and that are not inconsistent with the purposes of the Metropolitan Redevelopment Code;

F. within its area of operation, to make plans necessary for the carrying out of the purposes of the Metropolitan Redevelopment Code and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify and amend the plans. The plans may include without limitation:

(1) a general plan for redevelopment of the area as a whole;

(2) redevelopment plans for specific areas;

(3) plans for programs of voluntary or assisted repair and rehabilitation of buildings and improvements;

(4) plans for the enforcement of state and local laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition or removal of buildings and improvements; and

(5) appraisals, title searches, surveys, studies and other preliminary plans and work necessary to prepare for the undertaking of metropolitan redevelopment projects;

G. to develop, test and report methods and techniques and carry out demonstrations and other activities for the prevention and elimination of slums and blight and to pay for, accept and use grants of funds from the federal government for those purposes;

H. to prepare plans for the relocation of families displaced from a metropolitan redevelopment area to the extent essential for acquiring possession of and clearing the area or its parts or permit the carrying out of the metropolitan redevelopment project;

I. to appropriate under existing authority the funds and make expenditures necessary to carry out the purposes of the Metropolitan Redevelopment Code and under existing authority to levy taxes and assessments for such purposes; to close, vacate, plan or replan streets, roads, sidewalks, ways or other places; in accordance with applicable law or ordinances, to plan or replan, zone or rezone any part within the jurisdiction of the local government or make exceptions from building regulations; and to enter into agreements with a metropolitan redevelopment agency vested with metropolitan redevelopment project powers, which agreements may extend over any period, notwithstanding any provision or rule of law to the contrary, respecting action to be taken by the local government pursuant to the powers granted by the Redevelopment Law;

J. within its area of operation, to organize, coordinate and direct the administration of the provisions of the Redevelopment Law as they apply to the local government in order that the objective of remedying slum areas and blighted areas and preventing the causes of those areas within the jurisdiction of the local government may be most effectively promoted and achieved and to establish any new office of the local government or to reorganize existing offices as necessary;

K. to acquire real property that is appropriate for the preservation or restoration of historic sites; the beautification of urban land; the conservation of open spaces, natural resources and scenic areas; or the provision of recreational opportunities; or that is to be used for public purposes;

L. to engage in the following activities as part of a metropolitan redevelopment project:

(1) acquisition, construction, reconstruction or installation of public works, facilities and site or other improvements, including neighborhood facilities, senior citizen centers, historic properties, utilities, streets, street lights, water and sewer facilities, including connections for residential users, foundations and platforms for air-rights sites, pedestrian malls and walkways, parks, playgrounds and other recreation facilities, flood and drainage facilities, parking facilities, solid waste disposal facilities and fire protection or health facilities that serve designated areas;

(2) special projects directed to the removal of materials and architectural barriers that restrict the mobility and accessibility of elderly and disabled persons;

(3) provision of public services in the metropolitan redevelopment area that are not otherwise available in the area, including the provisions of public services directed to the employment, economic development, crime prevention, child care,

health, drug abuse, welfare or recreation needs of the people who reside in the metropolitan redevelopment area;

(4) payment of the nonfederal share of any federal grant-in-aid program to the local government that will be a part of a metropolitan redevelopment project;

(5) if federal funds are used in the project, to provide for payment of relocation costs and assistance to individuals, families, businesses, organizations and farm operations displaced as a direct result of a metropolitan redevelopment project in accordance with applicable law governing such payment;

(6) payment of reasonable administrative costs and carrying charges related to the planning and execution of plans and projects;

(7) economic and marketing studies to determine the economic condition of an area and to determine the viability of certain economic ventures proposed for the metropolitan redevelopment area;

(8) issuance of bonds, grants or loans as authorized by the Metropolitan Redevelopment Code in accordance with the requirements of that code; and

(9) grants to nonprofit corporations, local development corporations or entities organized under Section 301 (d) of the federal Small Business Investment Act of 1958 for the purposes of carrying out the provisions of the Metropolitan Redevelopment Code;

M. in a metropolitan redevelopment project or rehabilitation or conservation undertaking or activity, to exercise the following powers in one or more metropolitan redevelopment areas to include the elimination and prevention of the development or spread of slums or blight and may involve slum clearance and redevelopment in that area or rehabilitation or conservation in that area or any combination or part of those areas in accordance with a metropolitan redevelopment plan and for undertakings or activities of a local government in a metropolitan redevelopment area to eliminate the conditions that caused an area to be so designated and may include the following:

(1) acquisition of real property within the metropolitan redevelopment area pursuant to any powers and for purposes enumerated in the Metropolitan Redevelopment Code;

(2) clearing the land, grading the land and replatting the land in accordance with the metropolitan redevelopment plan; installation, construction or reconstruction of roads, streets, gutters, sidewalks, storm drainage facilities, water lines or water supply installations, sewer lines and sewage disposal installations, steam, gas and electric lines and installations, airport facilities and construction of any other needed public facilities or buildings whether on or off the site if deemed necessary by the local government to prepare the land in the metropolitan redevelopment area for residential,

commercial, industrial and public use in accordance with the metropolitan redevelopment plan; and

(3) making the land available for development by private enterprise or public agencies, including sale, initial leasing, leasing or retention by the local government itself, at its fair market value for uses in accordance with the metropolitan redevelopment plan for the area;

N. the local government is empowered in a metropolitan redevelopment area to undertake slum clearance and redevelopment that includes:

(1) acquisition of a slum area or a blighted area or portion thereof;

(2) demolition and removal of buildings and improvements;

(3) installation, construction, reconstruction, maintenance and operation of streets, utilities, storm drainage facilities, curbs and gutters, parks, playgrounds, single-family or multifamily dwelling units, buildings, public buildings, including parking facilities, transportation centers, safety buildings and other improvements, necessary for carrying out in the area the provisions of an approved plan for the area; and

(4) making the real property available for development or redevelopment by private enterprise or public agencies, including sale, leasing or retention by the local government itself, at its fair value for uses in accordance with the metropolitan redevelopment area plan; and

O. to engage in rehabilitation or conservation that includes the restoration and renewal of a slum or blighted area or portion thereof in accordance with any approved plan, by:

(1) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements;

(2) acquisition of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, unsanitary or unsafe conditions, lessen or increase density, eliminate obsolete or other uses detrimental to the public welfare or to otherwise remove or prevent the spread of blight or deterioration or to provide land for needed public facilities;

(3) installation, construction or reconstruction of streets, utilities, parks, playgrounds and other improvements necessary for carrying out in the area the provisions of the Metropolitan Redevelopment Code;

(4) the disposition of any property acquired in the area, including sale, leasing or retention by the local government itself, for uses in accordance with an approved plan;

(5) acquisition of real property in the area that, under a plan, is to be repaired or rehabilitated;

(6) repair or rehabilitation of structures within the area;

(7) power to resell repaired or rehabilitated property;

(8) acquisition, without regard to any requirement that the area be a slum or blighted area, of air-rights in an area consisting principally of land on which is located a highway, railway, bridge or subway tracks or tunnel entrance or other similar facilities that have a blighting influence on the surrounding area and over which air-rights sites are to be developed for the elimination of such blighting influences; and

(9) making loans or grants or authorizing the use of the proceeds of bonds issued pursuant to the Metropolitan Redevelopment Code for the purpose of constructing, repairing, remodeling or modifying a building or buildings located in the metropolitan redevelopment area. Such rehabilitation or conservation with use of funds expended by authority of the Metropolitan Redevelopment Code or by metropolitan revenue bonds authorized by that code shall be authorized after approval by the local government and after it has been determined that the expenditure is in accordance with the metropolitan redevelopment plan for that area.

History: *Laws 1979, ch. 391, § 10; 2007, ch. 329, § 5; 2007, ch. 330, § 5; 2018, ch. 60, § 9; 2023, ch. 112, § 1.*

3-60A-11. Repealed.

History: Laws 1979, ch. 391, § 11; 1981, ch. 125, § 42; repealed by Laws 2007, ch. 329, § 7 and Laws 2007, ch. 330, § 7.

3-60A-12. Disposal of property.

A. A local government may sell, lease or otherwise transfer real property or any interest in real property acquired by it in a metropolitan redevelopment area and may enter into contracts with respect to the real property for residential, commercial, industrial or other uses or for public use or may retain such property or interest for public use in accordance with the metropolitan redevelopment plan, subject to any covenants, conditions and restrictions, including covenants running with the land and including the incorporation by reference in the covenants of the provisions of a metropolitan redevelopment plan or any part thereof, as it may deem to be in the public interest or necessary to carry out the purposes of the metropolitan redevelopment plan. The purchasers or lessees and their successors and assigns shall be obligated to devote the real property only to the uses specified in the metropolitan redevelopment plan for a period of years as set out in the sale or lease agreement and may be obligated to comply with other requirements that the local government may determine to be in the public interest, including the obligation to begin within a reasonable time any

improvements on real property required by the metropolitan redevelopment plan. The real property or interest shall be sold, leased, otherwise transferred or retained at not less than its fair value for uses in accordance with the Redevelopment Law [3-60A-5 to 3-60A-18 NMSA 1978] as determined by the local government or by the metropolitan redevelopment agency, if so authorized. In determining the fair value of real property for uses in accordance with the metropolitan redevelopment plan, a local government shall take into account and give consideration to the uses provided in the plan, the restrictions upon and the covenants, conditions and obligations assumed by the purchaser or lessee or by the local government retaining the property and the objectives of the plan for the prevention of and recurrence of slum or blighted areas. The local government in any instrument of conveyance to a private purchaser or lessee may provide that the purchaser or lessee shall be without power to sell, lease or otherwise transfer the real property without the prior written consent of the local government until the purchaser or lessee has completed the construction of any and all improvements that the purchaser or lessee is obligated to construct on the real property. Real property acquired by a local government that, in accordance with the provisions of the metropolitan redevelopment plan, is to be transferred shall be transferred consistent with the carrying out of the provisions of the plan. The inclusion in any contract or conveyance to a purchaser or lessee of covenants, restrictions or conditions, including the incorporation by reference in the covenants of the provisions of a metropolitan redevelopment plan or any part thereof, shall not prevent the filing of the contract or conveyance in the land records of the county in a manner as to afford actual or constructive notice thereof.

B. A local government may dispose of real property in a metropolitan redevelopment area to private persons only in accordance with the procedures set out in this subsection. The local government shall, prior to entering into any agreement to convey title or an interest in real property, publish a public notice once each week for at least two consecutive weeks of the date, time and place it will receive proposals for the purchase, lease or rental, for development or redevelopment purposes, of the real property or interest in the real property it intends to dispose of. The public notice shall contain sufficient information to describe the location of the real property, the type of development sought or land use requirement and the selection criteria the local government will follow during review of proposals and shall state that details may be obtained at the office designated in the notice. The local government shall consider all proposals submitted in accordance with the public notice and shall only accept proposals it deems in the public interest and meeting the objectives of the metropolitan redevelopment plan after considering the type of development, redevelopment or use proposed and the financial ability of the persons making the proposals to carry them out.

C. If, after following the procedures set out in Subsection B of this section, a local government receives no proposals or determines the ones received are not in accordance with the call for proposals or do not meet the objectives of the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978], the local government may reject any proposals received and then dispose of the real property through reasonable

negotiating procedures; provided, however, that negotiated sales, leases or transfers shall be reported to the local government and approved before the sale, lease or transfer may take effect.

D. A local government may operate and maintain real property acquired in a metropolitan redevelopment area pending the disposition of the property for development or redevelopment without regard to the provisions of Subsection A of this section for any uses and purposes deemed desirable even though not in conformity with the Redevelopment Law.

History: Laws 1979, ch. 391, § 12; 2018, ch. 60, § 10.

3-60A-13. Property exempt from taxes and from levy and sale by virtue of an execution.

A. All property of a local government, including funds, owned or held in fee simple by it for the purposes of the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978] shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the property nor shall judgment against a local government be a charge or lien upon the property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to the Redevelopment Law [3-60A-5 to 3-60A-18 NMSA 1978] by a local government on its rents, fees, grants, land or revenues from projects.

B. The property of a local government acquired or held for the purposes of the Metropolitan Redevelopment Code is declared to be public property used for essential public and governmental purposes, and the property shall be exempt from property taxes or assessments of the local government, the county, the state or any political subdivision thereof; provided that the exemption shall terminate when the local government transfers its fee simple interest in the property to a purchaser that is not entitled to the exemption with respect to the property. Nothing in this subsection authorizes an exemption or deduction from the imposition of the gross receipts and compensating taxes under the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] on the gross receipts from the sale of property to or the use of property by a local government or any other person in connection with a metropolitan redevelopment project created under the Metropolitan Redevelopment Code.

History: Laws 1979, ch. 391, § 13; 1985, ch. 225, § 1; 2018, ch. 60, § 11.

3-60A-13.1. Payments in lieu of property taxes and assessments.

A. If interests in project property are exempt from property taxation and assessments under Subsection B of Section 3-60A-13 NMSA 1978 or Section 7-36-3.1 NMSA 1978, then during the period extending from the date of acquisition of the property by the local government through December 31 of the year in which the seventh

anniversary of that acquisition date occurs, any lessee of the project property or owner of a substantial beneficial interest in the project property, in whose ownership the property would not be exempt from property taxation except for the exemption granted under Section 7-36-3.1 NMSA 1978, shall pay to the county treasurer annually, at the same time property tax payments are due under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], an amount equal to the sum of:

(1) general property taxes that would have been imposed under Subsection B of Section 7-37-7 NMSA 1978 had it not been exempt and had it been valued at the valuation for property taxation purposes that existed in the year immediately preceding the year of acquisition by the local government;

(2) amounts that would have been imposed under Subsection C of Section 7-37-7 NMSA 1978 on the project property had it not been exempt and had it been valued at the valuation for property taxation purposes that existed in the year immediately preceding the year of acquisition by the local government; and

(3) amounts that would have been imposed as benefit assessments on the project property had it not been exempt and had it been valued at the valuation for property taxation purposes that existed in the year immediately preceding the year of acquisition by the local government if those benefit assessments are authorized by law and are expressed in mills per dollar or dollars per thousand dollars of net taxable value of property, assessed value of property or similar terms.

B. The county treasurer shall distribute all amounts collected under Subsection A of this section in the same manner as the amounts would have been distributed if they had been collected as taxes or assessments on nonexempt property.

C. The provisions of this section shall apply only to project property acquired by a local government under the provisions of the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978] on or after January 1, 1986.

History: 1978 Comp., § 3-60A-13.1, enacted by Laws 1985, ch. 225, § 2; 2018, ch. 60, § 12.

3-60A-14. Cooperation by public bodies.

A. For the purpose of aiding in the planning, undertaking or carrying out of a metropolitan redevelopment project located within the area in which it is authorized to act, any public body upon terms with or without consideration may:

(1) dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or other rights or privileges in the property to a local government;

(2) incur the entire expense of any public improvements made by the public body in exercising the powers granted in this section;

(3) do any and all things necessary to aid or cooperate in the planning or carrying out of a metropolitan redevelopment plan;

(4) lend, grant or contribute funds to a local government;

(5) enter into agreements that may extend over any period, notwithstanding any provision or rule of law to the contrary, with a local government or other public body respecting action to be taken pursuant to any of the powers granted by the Redevelopment Law [3-60A-5 to 3-60A-18 NMSA 1978], including the furnishing of funds or other assistance in connection with metropolitan redevelopment; or

(6) cause public buildings and public facilities, including parks and playgrounds, recreational, community, educational, transportation, water, sewer or drainage facilities or any other works that it is otherwise empowered to undertake, to be furnished to the local government; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places; plan or replan, zone or rezone any part of the public property or make exceptions from building regulations; and cause administrative and other services to be furnished to the local government.

If at any time title to or possession of any redevelopment project is held by any public body or governmental agency, other than the local government that is authorized by law to engage in the undertaking, carrying out or administration of development projects, including the federal government, the provisions of the agreements referred to in this section shall inure to the benefit of and may be enforced by such public body or governmental agency. As used in this subsection, the term "local government" includes a metropolitan redevelopment agency vested with metropolitan redevelopment project powers pursuant to the provisions of the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978].

B. For the purpose of aiding in the planning, undertaking or carrying out of the metropolitan redevelopment project by a redevelopment agency, a local government may, in addition to its other powers and upon such terms with or without consideration, perform any or all of the actions or things that, by the provisions of Subsection A of this section, a public body is authorized to do or perform, including the furnishing of financial and other assistance.

C. For the purposes of this section or for the purpose of aiding in the planning, undertaking or carrying out of a metropolitan redevelopment project of a local government, the local government may, in addition to any authority to issue bonds pursuant to the Redevelopment Bonding Law [3-60A-26 to 3-60A-46 NMSA 1978], issue and sell its general obligation or revenue bonds. Any bonds issued by a local government pursuant to this section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by a local government for public purposes generally.

History: Laws 1979, ch. 391, § 14; 2018, ch. 60, § 13.

3-60A-15. Exercise of powers in carrying out projects.

A. A local government may directly exercise its metropolitan redevelopment project powers or it may, by ordinance if it determines such action to be in the public interest, elect to delegate the exercise of such powers to the metropolitan redevelopment agency created pursuant to the Redevelopment Law [3-60A-5 to 3-60A-18 NMSA 1978]. If the local government so determines, the agency shall be vested with all of the powers in the same manner as though all the powers were conferred on the agency or authority instead of the local government.

B. As used in this section, the term "redevelopment project powers" includes any rights, powers, functions and duties of a local government authorized by the Redevelopment Law except the following, which are reserved to the local government, the power to:

(1) declare an area to be a slum or a blighted area or combination thereof and to designate the area as appropriate for a redevelopment project;

(2) approve or amend redevelopment plans;

(3) approve a general plan for the local government as a whole;

(4) make findings of necessity prior to preparation of a metropolitan redevelopment plan as provided in the Redevelopment Law and the findings and determinations required prior to approval of a metropolitan redevelopment plan or project as provided in the Redevelopment Law;

(5) issue general obligation bonds and revenue bonds as authorized by law;

(6) approve loans or grants;

(7) approve leases of more than one year's duration;

(8) issue redevelopment bonds; and

(9) appropriate funds and levy taxes and assessments.

History: Laws 1979, ch. 391, § 15; 2007, ch. 329, § 6; 2007, ch. 330, § 6; 2018, ch. 60, § 14.

3-60A-15. Exercise of powers in carrying out projects. (Effective January 1, 2025.)

A. A local government may directly exercise its metropolitan redevelopment project powers or it may, by ordinance if it determines such action to be in the public interest, elect to delegate the exercise of such powers to the metropolitan redevelopment agency created pursuant to the Redevelopment Law. If the local government so determines, the agency shall be vested with all of the powers in the same manner as though all the powers were conferred on the agency or authority instead of the local government.

B. As used in this section, the term "redevelopment project powers" includes any rights, powers, functions and duties of a local government authorized by the Redevelopment Law except the following, which are reserved to the local government, the power to:

(1) declare an area to be a slum or a blighted area or combination thereof and to designate the area as appropriate for a redevelopment project;

(2) approve or amend redevelopment plans;

(3) approve a general plan for the local government as a whole;

(4) make findings of necessity prior to preparation of a metropolitan redevelopment plan as provided in the Redevelopment Law and the findings and determinations required prior to approval of a metropolitan redevelopment plan or project as provided in the Redevelopment Law;

(5) issue general obligation bonds and revenue bonds as authorized by law;

(6) issue redevelopment bonds; and

(7) appropriate funds and levy taxes and assessments.

History: *Laws 1979, ch. 391, § 15; 2007, ch. 329, § 6; 2007, ch. 330, § 6; 2018, ch. 60, § 14; 2023, ch. 112, § 2.*

3-60A-16. Metropolitan redevelopment agency.

A. There may be created in each local government a public body to be known as the "metropolitan redevelopment agency". The metropolitan redevelopment agency shall not transact any business or exercise any powers until the local government has adopted an ordinance creating a metropolitan redevelopment agency and has specified the powers and duties of the agency.

B. When the metropolitan redevelopment agency has been authorized to transact business and exercise powers, the mayor or manager of the local government, with the advice and consent of the local government, shall appoint a board of commissioners of the redevelopment agency, which shall consist of five commissioners. The

commissioners shall be initially appointed to serve staggered terms as follows from the date of their appointment:

(1) two members for three-year terms;

(2) two members for two-year terms; and

(3) one member for a one-year term. Thereafter, commissioners shall be appointed for terms of five years each.

C. A commissioner shall receive no compensation for services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of the commissioner's duties. Each commissioner shall hold office until the commissioner's successor has been appointed and qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the local government, and the certificate shall be conclusive evidence of the due and proper appointment of the commissioner. A commissioner may be removed from office at any time by the mayor or manager of the local government.

D. The powers of a metropolitan redevelopment agency shall be exercised by the commissioners. A majority of the appointed commissioners constitutes a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present at a lawful meeting, unless the bylaws require a larger number. Any person may be appointed as commissioner if the person resides within the area of operation of the agency, which shall be coterminous with the area of operation of the local government, and is otherwise eligible for appointment under the Redevelopment Law [3-60A-5 to 3-60A-18 NMSA 1978].

E. The mayor or manager of the local government shall designate a chair and vice chair from among the commissioners. The commission may employ and determine the qualifications, duties and compensation of an executive director, technical experts and other agents and employees, permanent and temporary, as the metropolitan redevelopment agency may require. For legal services as the agency may require, the commission may employ or retain for the agency legal counsel and a legal staff. A metropolitan redevelopment agency shall file annually with the local government a report of its activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expenses as of the end of the fiscal year.

History: Laws 1979, ch. 391, § 16; 2018, ch. 60, § 15.

3-60A-17. Conflict of interest; misconduct.

No public official or employee of a local government or member of any board or commission of a local government and no commissioner or employee of a metropolitan

redevelopment agency that has been vested by a local government with metropolitan redevelopment project powers by the Redevelopment Law [3-60A-5 to 3-60A-18 NMSA 1978] shall voluntarily acquire any interest, direct or indirect, in any metropolitan redevelopment project of the local government or in any contract or proposed contract in connection with the project. Where the acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local government, and the disclosure shall be entered upon its minutes. If any such official, commissioner or employee currently owns or controls or owned or controlled within the preceding two years any interest, direct or indirect, in any property that the official, commissioner or employee knows is included or planned to be included in a metropolitan redevelopment project, the official, commissioner or employee shall immediately disclose this fact in writing to the local government, and this disclosure shall be entered upon the minutes of the local government, and the official, commissioner or employee shall not participate in any action by the local government affecting the property. Any disclosure required to be made by this section to the local government shall concurrently be made to a metropolitan redevelopment agency that has been vested with metropolitan redevelopment project powers by the local government.

History: Laws 1979, ch. 391, § 17; 2018, ch. 60, § 16.

3-60A-18. Other powers.

A. Except as otherwise specifically set forth in Section 3-60A-15 NMSA 1978, the local government may delegate its metropolitan redevelopment powers in the manner provided for delegation of powers in the Redevelopment Law [3-60A-5 to 3-60A-18 NMSA 1978] to a metropolitan redevelopment agency that shall be vested with the powers in the same manner as though the powers were conferred on the agency instead of the local government.

B. The local government may, in the manner required by state law or municipal charter, provide for ordinances, rules, regulations or by other means it deems proper as are necessary to implement the Redevelopment Law. The local government and the agency shall be empowered to exercise only those powers authorized by the Redevelopment Law or otherwise provided by law. Nothing in the Redevelopment Law shall be construed to authorize the local government to operate an electric or gas utility.

History: Laws 1979, ch. 391, § 18; 2018, ch. 60, § 17.

3-60A-19. Tax Increment Law; short title.

Sections 3-60A-19 through 3-60A-24 NMSA 1978 may be cited as the "Tax Increment Law".

History: Laws 1979, ch. 391, § 19; 2018, ch. 60, § 18.

3-60A-20. Alternative method of financing.

A. Effective for tax years beginning on or after January 1, 1980, the local government may elect by resolution to use the procedures set forth in the Tax Increment Law [3-60A-19 to 3-60A-24 NMSA 1978] for financing metropolitan redevelopment projects. Such procedures may be used in addition to or in conjunction with other methods provided by law for financing such projects.

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

History: Laws 1979, ch. 391, § 20; 2018, ch. 60, § 19.

3-60A-20. Alternative funding method. (Effective January 1, 2025.)

A local government may elect by resolution to use the procedures set forth in the Tax Increment Law for funding metropolitan redevelopment projects. Such procedures may be used in addition to or in conjunction with other methods provided by law for funding such projects.

History: *Laws 1979, ch. 391, § 20; 2018, ch. 60, § 19; 2023, ch. 112, § 3.*

3-60A-21. Tax increment procedures.

The procedures to be used in the tax increment method are:

A. the local government shall, at the time after approval of a metropolitan redevelopment project, notify the county assessor and the taxation and revenue department of the taxable parcels of property within the project;

B. upon receipt of notification pursuant to Subsection A of this section, the county assessor and the taxation and revenue department shall identify the parcels of property within the metropolitan redevelopment project within their respective jurisdictions and certify to the county treasurer the net taxable value of the property at the time of notification as the base value for the distribution of property tax revenues authorized by the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978]. If because of acquisition by the local government the property becomes tax exempt, the county assessor and the taxation and revenue department shall note that fact on their respective records and so notify the county treasurer, but the county assessor, the taxation and revenue department and the county treasurer shall preserve a record of the net taxable value at the time of inclusion of the property within the metropolitan redevelopment project as the base value for the purpose of distribution of property tax revenues when the parcel again becomes taxable. The county assessor is not required by this section to preserve the new taxable value at the time of inclusion of the property

within the metropolitan redevelopment project as the base value for the purposes of valuation of the property;

C. if because of acquisition by the local government the property becomes tax exempt, when the parcel again becomes taxable, the local government shall notify the county assessor and the taxation and revenue department of the parcels of property that because of their rehabilitation or other improvement are to be revalued for property tax purposes. A new taxable value of this property shall then be determined by the county assessor or by the taxation and revenue department if the property is within the valuation jurisdiction of that department. If no acquisition by the local government occurs, improvement or rehabilitation of property subject to valuation by the assessor shall be reported to the assessor as required by the Property Tax Code, and the new taxable value shall be determined as of January 1 of the tax year following the year in which the improvement or rehabilitation is completed;

D. current tax rates shall then be applied to the new taxable value. The amount by which the revenue received exceeds that which would have been received by application of the same rates to the base value before inclusion in the metropolitan redevelopment project shall be credited to the local government and deposited in the metropolitan redevelopment fund. This transfer shall take place only after the county treasurer has been notified to apply the tax increment method to a specific property included in a metropolitan redevelopment area. Unless the entire metropolitan redevelopment area is specifically included by the 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; and

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

History: Laws 1979, ch. 391, § 21; 1987, ch. 316, § 1; 2000, ch. 103, § 2; 2018, ch. 60, § 20.

3-60A-21. Property and gross receipts tax increments; procedures. (Effective January 1, 2025.)

A. The procedures to be used in determining a property tax increment are:

(1) the local government shall, after approval of a metropolitan redevelopment plan, notify the county assessor of the taxable parcels of property within the metropolitan redevelopment area;

(2) upon receipt of the notification, the county assessor shall identify the parcels of property within the metropolitan redevelopment area within their respective

jurisdictions and certify to the county treasurer the net taxable value of the property at the time of notification as the base value for the distribution of property tax revenues authorized by the Property Tax Code [Articles 35 through 38 of Chapter 7 NMSA 1978]. If because of acquisition by the local government the property becomes tax exempt, the county assessor shall note that fact on their respective records and so notify the county treasurer, but the county assessor and the county treasurer shall preserve a record of the net taxable value at the time of inclusion of the property within the metropolitan redevelopment area as the base value for the purpose of distribution of property tax revenues when the parcel again becomes taxable. The county assessor is not required by this section to preserve the new taxable value at the time of inclusion of the property within the metropolitan redevelopment area as the base value for the purposes of valuation of the property;

(3) if because of acquisition by the local government the property becomes tax exempt, when the parcel again becomes taxable, the local government shall notify the county assessor of the parcels of property that because of their rehabilitation or other improvement are to be revalued for property tax purposes. A new taxable value of this property shall then be determined by the county assessor. If no acquisition by the local government occurs, improvement or rehabilitation of property subject to valuation by the assessor shall be reported to the assessor as required by the Property Tax Code, and the new taxable value shall be determined as of January 1 of the tax year following the year in which the improvement or rehabilitation is completed; and

(4) current tax rates shall then be applied to the new taxable value of property included in the metropolitan redevelopment area. The amount by which the revenue received exceeds that which would have been received by application of the same rates to the base value before inclusion in the metropolitan redevelopment area shall be multiplied by the percentage of the increment dedicated by the local government pursuant to Section 3-60A-23 NMSA 1978, credited to the local government and deposited in the metropolitan redevelopment fund. This transfer shall take place only after the county treasurer has been notified to apply the procedures pursuant to this subsection to property included in a metropolitan redevelopment area. Unless the entire metropolitan redevelopment area 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.

B. The procedures to be used in determining a gross receipts tax increment are:

(1) the local government shall notify the taxation and revenue department of the geographic boundaries of the metropolitan redevelopment area;

(2) by the January 1 or July 1 following at least ninety days after receipt of the notice of the geographic boundaries, the taxation and revenue department shall

designate a reporting location code for the metropolitan redevelopment area pursuant to Section 7-1-14 NMSA 1978;

(3) using data from the twelve months of reporting periods following designation of the reporting location code, the taxation and revenue department shall calculate the gross receipts tax revenue for the base year as follows:

(a) the amount of the local government's local option gross receipts tax revenue attributable to the gross receipts sourced to the metropolitan redevelopment area pursuant to Section 7-1-14 NMSA 1978 in the previous twelve months; and

(b) the amount of state gross receipts tax revenue attributable to gross receipts sourced to the metropolitan redevelopment area pursuant to Section 7-1-14 NMSA 1978 in the previous twelve months, less any amount distributed to the municipality pursuant to Section 7-1-6.4 NMSA 1978 attributable to gross receipts sourced to the metropolitan redevelopment area; and

(4) following making the calculation of the gross receipts tax revenue for the base year:

(a) the taxation and revenue department shall compare the amounts of gross receipts tax revenues of the base year with the amounts of gross receipts tax revenues of that following twelve months, using the same calculation methods as provided in Paragraph (3) of this subsection; and

(b) if there is an increase between the gross receipts tax revenue of the base year and the gross receipts tax revenue of that following twelve months, the taxation and revenue department shall distribute, pursuant to Section 7-1-6.71 NMSA 1978, the sum of: 1) the product of the total rate of the local government's local option gross receipts tax multiplied by the increased amount of the local government's local option gross receipts tax revenue, further multiplied by the percentage of the gross receipts tax increment dedicated by the local government pursuant to Section 3-60A-23 NMSA 1978; plus 2) the product of the state gross receipts tax rate multiplied by the increased amount of the state gross receipts tax revenue, further multiplied by the percentage of the gross receipts tax increment dedicated by the state board of finance pursuant to Section 3-60A-23 NMSA 1978.

C. The procedures specified in this section shall be followed annually for a maximum period of twenty years following the date of notification provided by this section.

D. As used in this section:

(1) "local option gross receipts tax revenue" means revenue transferred to the local government pursuant to Section 7-1-6.12 or 7-1-6.13 NMSA 1978, as appropriate; and

(2) "state gross receipts tax revenue" means revenue received from the gross receipts tax imposed pursuant to Section 7-9-4 NMSA 1978.

History: *Laws 1979, ch. 391, § 21; 1987, ch. 316, § 1; 2000, ch. 103, § 2; 2018, ch. 60, § 20; 2023, ch. 112, § 4; 2024, ch. 62, § 1.*

3-60A-22. Metropolitan redevelopment fund; creation; disbursement.

There is created a "metropolitan redevelopment fund" for purposes of the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978]. Money in the metropolitan redevelopment fund shall be disbursed to the local government to be used as other money is authorized to be used in the Metropolitan Redevelopment Code.

History: Laws 1979, ch. 391, § 22; 2018, ch. 60, § 21.

3-60A-23. Tax increment financing method approval.

A. The property tax increment method shall be applicable only to the units of government participating in property tax revenue derived from the properties within the district.

B. A local government shall request an approval for up to a twenty-year period for property included in the tax increment funding. The governor or the governor's authorized representative shall approve, partially approve or disapprove the use of the method for state government; the governing body of each other participating unit shall approve, partially approve or disapprove by ordinance or resolution the use of the method for its respective units.

C. At the request of a participating unit of government, made within ten days of receipt of the request by the local government, the local government shall make a presentation to the governor or the governor's authorized representative and to the governing bodies of all participating units of government, which presentation shall include a description of the metropolitan redevelopment project and the parcels in the project to which the tax increment method will apply and an estimate of the general effect of the project and the application of the tax increment method on property values and tax revenues. All participating units shall notify the local government seeking approval within thirty days of receipt of the local government's request. At the expiration of that time, the alternative method of financing set forth in this section shall be effective for a period of up to twenty tax years.

History: Laws 1979, ch. 391, § 23; 1987, ch. 316, § 2; 1995, ch. 92, § 1; 2000, ch. 103, § 3; 2018, ch. 60, § 22.

3-60A-23. Approval of alternative funding method. (Effective January 1, 2025.)

A. A metropolitan redevelopment plan, as originally approved or as later modified, may contain a provision that a portion of a property tax increment or gross receipts tax increment may be dedicated for the purpose of funding a metropolitan redevelopment project for a period of up to twenty years.

B. A local government may dedicate up to seventy-five percent of a property tax increment or gross receipts tax increment and the state board of finance, subject to the provisions of Subsection C of this section, may dedicate up to seventy-five percent of a gross receipts tax increment, each as determined pursuant to Section 3-60A-21 NMSA 1978, with the agreement of the municipality, county or state board of finance, evidenced by a resolution adopted by a majority vote of those entities. A resolution to dedicate a property tax increment or gross receipts tax increment shall become effective only on January 1 or July 1 of the calendar year.

C. The state board of finance shall condition a dedication of a gross receipts tax increment attributable to the state gross receipts tax on the approval required pursuant to Section 6 [3-60A-49 NMSA 1978] of this 2023 act and that the initial bonds issuance secured by such an increment shall be issued no later than four years after the state board of finance has adopted the resolution making the dedication. A resolution of the state board of finance shall find that:

(1) the state board of finance has reviewed the request for the use of the state gross receipts tax increment; and

(2) based upon review by the state board of finance of the applicable metropolitan redevelopment plan, the dedication by the state board of finance of the gross receipts tax increment within the metropolitan redevelopment area for use in meeting the required goals of the metropolitan redevelopment plan is reasonable and in the best interest of the state.

D. The governing body of the jurisdiction in which a metropolitan redevelopment area has been established shall timely notify the assessor of the county in which the area has been established, the taxation and revenue department and the local government division of the department of finance and administration when:

(1) a metropolitan redevelopment plan has been approved that contains a provision for the allocation and percentage of property tax increments and gross receipts tax increments;

(2) any outstanding bonds of the area have been paid off; and

(3) the purposes of the area have otherwise been achieved.

History: *Laws 1979, ch. 391, § 23; 1987, ch. 316, § 2; 1995, ch. 92, § 1; 2000, ch. 103, § 3; 2018, ch. 60, § 22; 2023, ch. 112, § 5.*

3-60A-23.1. Tax increment bonds.

A. For the purpose of financing metropolitan redevelopment projects, in whole or in part, a local government may issue tax increment bonds or tax increment bond anticipation notes that are payable from and secured by real property taxes, in whole or in part, allocated to the metropolitan redevelopment fund pursuant to the provisions of Sections 3-60A-21 and 3-60A-23 NMSA 1978. The principal of, premium, if any, and interest on the bonds or notes shall be payable from and secured by a pledge of such revenues, and the local government shall irrevocably pledge all or part of the revenues to the payment of the bonds or notes. The revenues deposited in the metropolitan redevelopment fund or the designated part thereof may thereafter be used only for the payment of the principal of, premium, if any, and interest on the bonds or notes, and a holder of the bonds or notes shall have a first lien against the revenues deposited in the metropolitan redevelopment fund or the designated part thereof for the payment of principal of, premium, if any, and interest on the bonds or notes. To increase the security and marketability of the tax increment bonds or notes, the local government may:

(1) create a lien for the benefit of the bondholders on any public improvements or public works used solely by the metropolitan redevelopment project or portion of a project financed by the bonds or notes, or on the revenues of such improvements or works;

(2) provide that the proceeds from the sale of real and personal property acquired with the proceeds from the sale of bonds or notes issued pursuant to the Tax Increment Law [3-60A-19 to 3-60A-25 NMSA 1978] shall be deposited in the metropolitan redevelopment fund and used for the purposes of repayment of principal of, premium, if any, and interest on the bonds or notes; and

(3) make covenants and do any and all acts not inconsistent with law as may be necessary, convenient or desirable in order to additionally secure the bonds or notes or make the bonds or notes more marketable in the exercise of the discretion of the local government.

B. Bonds and notes issued pursuant to this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, shall not be general obligations of the local government, shall be collectible only from the proper pledged revenues and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of tax increment bonds or tax increment bond anticipation notes. Bonds and notes issued pursuant to the Tax Increment Law are declared to be issued for an essential public and governmental purpose and, together with interest thereon, shall be exempted from all taxes by the state.

C. The bonds or notes shall be authorized by an ordinance of the local government; shall be in a denomination or denominations, a such date and mature, in the case of bonds, at a time not exceeding twenty years from their date, and in the case of notes, not exceeding five years from the date of the original note; bear interest at a rate or have appreciated principal value not exceeding the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; and be in a form, carry registration privileges, be executed in a manner, be payable at a place within or without the state, be payable at intervals or at maturity and be subject to terms of redemption as the authorizing ordinance or supplemental resolution of the local government may provide.

D. The bonds or notes may be sold in one or more series at, below or above par, at public or private sale, in a manner and for a price as the local government, in its discretion, shall determine; provided that the price at which the bonds or notes are sold shall not result in a net effective interest rate that exceeds the maximum permitted by the Public Securities Act. As an incidental expense of a metropolitan redevelopment project or the portion financed with the bonds or notes, the local government in its discretion may employ financial and legal consultants with regard to the financing of the project.

E. In case any of the public officials of the local government whose signatures appear on any bonds or notes issued pursuant to the Tax Increment Law cease to be public officials before the delivery of the bonds or notes, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officials had remained in office until delivery. Any provision of law to the contrary notwithstanding, any bonds or notes issued pursuant to the Tax Increment Law shall be fully negotiable.

F. In any suit, action or proceeding involving the validity or enforceability of any bond or note issued pursuant to the Tax Increment Law or the security therefor, any bond or note reciting in substance that it has been issued by the local government in connection with a metropolitan redevelopment project shall be conclusively deemed to have been issued for that purpose and the project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978].

G. The proceedings under which tax increment bonds or tax increment bond anticipation notes are authorized to be issued and any mortgage, deed of trust, trust indenture or other lien or security device on real and personal property given to secure the same may contain provisions customarily contained in instruments securing bonds and notes and constituting a covenant with the bondholders.

H. A local government may issue bonds or notes pursuant to this section with the proceeds from the bonds or notes to be used as other money is authorized to be used in the Metropolitan Redevelopment Code.

I. The local government shall have the power to issue renewal notes, to issue bonds to pay notes and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for other purposes in connection with financing metropolitan redevelopment projects, in whole or in part. Refunding bonds issued pursuant to the Tax Increment Law to refund outstanding tax increment bonds shall be payable from real property tax revenues, out of which the bonds to be refunded thereby are payable or from other lawfully available revenues.

J. The proceeds from the sale of any bonds or notes shall be applied only for the purpose for which the bonds or notes were issued, and if, for any reason, any portion of the proceeds are not needed for the purpose for which the bonds or notes were issued, the unneeded portion of the proceeds shall be applied to the payment of the principal of or the interest on the bonds or notes.

K. The cost of financing a metropolitan redevelopment project shall be deemed to include the actual cost of acquiring a site and the cost of the construction of any part of a project, including architects' and engineers' fees, the purchase price of any part of a project that may be acquired by purchase and all expenses in connection with the authorization, sale and issuance of the bonds or notes to finance the acquisition and any related costs incurred by the local government.

L. No action shall be brought questioning the legality of any contract, mortgage, deed of trust, trust indenture or other lien or security device, proceeding or bonds or notes executed in connection with any project authorized by the Metropolitan Redevelopment Code on and after thirty days from the effective date of the ordinance authorizing the issuance of such bonds or notes.

History: Laws 2000, ch. 103, § 4; 2018, ch. 60, § 23.

3-60A-23.1. Tax increment bonds. (Effective January 1, 2025.)

A. For the purpose of financing metropolitan redevelopment projects, in whole or in part, a local government may issue tax increment bonds or tax increment bond anticipation notes that are payable from and secured by revenue from a gross receipts tax increment allocated to the metropolitan redevelopment fund pursuant to Sections 3-60A-21 and 3-60A-23 NMSA 1978. The principal of, premium, if any, and interest on the bonds or notes shall be payable from and secured by a pledge of such revenues, and the local government shall irrevocably pledge all or part of the revenues to the payment of the bonds or notes. The revenues deposited in the metropolitan redevelopment fund or the designated part thereof may thereafter be used only for the payment of the principal of, premium, if any, and interest on the bonds or notes, and a holder of the bonds or notes shall have a first lien against the revenues deposited in the metropolitan redevelopment fund or the designated part thereof for the payment of principal of, premium, if any, and interest on the bonds or notes. To increase the

security and marketability of the tax increment bonds or notes, the local government may:

(1) create a lien for the benefit of the bondholders on any public improvements or public works used solely by the metropolitan redevelopment project or portion of a project financed by the bonds or notes, or on the revenues of such improvements or works;

(2) provide that the proceeds from the sale of real and personal property acquired with the proceeds from the sale of bonds or notes issued pursuant to the Tax Increment Law [3-60A-19 to 3-60A-25 NMSA 1978] shall be deposited in the metropolitan redevelopment fund and used for the purposes of repayment of principal of, premium, if any, and interest on the bonds or notes; and

(3) make covenants and do any and all acts not inconsistent with law as may be necessary, convenient or desirable in order to additionally secure the bonds or notes or make the bonds or notes more marketable in the exercise of the discretion of the local government.

B. Bonds and notes issued pursuant to this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, shall not be general obligations of the local government, shall be collectible only from the proper pledged revenues and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of tax increment bonds or tax increment bond anticipation notes. Bonds and notes issued pursuant to the Tax Increment Law are declared to be issued for an essential public and governmental purpose and, together with interest thereon, shall be exempted from all taxes by the state.

C. The bonds or notes shall be authorized by an ordinance of the local government; shall be in a denomination or denominations, bear a date and mature, in the case of bonds, at a time not exceeding twenty years from their date, and in the case of notes, not exceeding five years from the date of the original note; bear interest at a rate or have appreciated principal value not exceeding the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978]; and be in a form, carry registration privileges, be executed in a manner, be payable at a place within or without the state, be payable at intervals or at maturity and be subject to terms of redemption as the authorizing ordinance or supplemental resolution of the local government may provide.

D. The bonds or notes may be sold in one or more series at, below or above par, at public or private sale, in a manner and for a price as the local government, in its discretion, shall determine; provided that the price at which the bonds or notes are sold shall not result in a net effective interest rate that exceeds the maximum permitted by the Public Securities Act. As an incidental expense of a metropolitan redevelopment project or the portion financed with the bonds or notes, the local government in its

discretion may employ financial and legal consultants with regard to the financing of the project.

E. In case any of the public officials of the local government whose signatures appear on any bonds or notes issued pursuant to the Tax Increment Law cease to be public officials before the delivery of the bonds or notes, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officials had remained in office until delivery. Any provision of law to the contrary notwithstanding, any bonds or notes issued pursuant to the Tax Increment Law shall be fully negotiable.

F. In any suit, action or proceeding involving the validity or enforceability of any bond or note issued pursuant to the Tax Increment Law or the security therefor, any bond or note reciting in substance that it has been issued by the local government in connection with a metropolitan redevelopment project shall be conclusively deemed to have been issued for that purpose and the project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978].

G. The proceedings under which tax increment bonds or tax increment bond anticipation notes are authorized to be issued and any mortgage, deed of trust, trust indenture or other lien or security device on real and personal property given to secure the same may contain provisions customarily contained in instruments securing bonds and notes and constituting a covenant with the bondholders.

H. A local government may issue bonds or notes pursuant to this section with the proceeds from the bonds or notes to be used as other money is authorized to be used in the Metropolitan Redevelopment Code.

I. Subject to the provisions of Section 6 of this 2023 act, the local government shall have the power to issue renewal notes, to issue bonds to pay notes and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for other purposes in connection with financing metropolitan redevelopment projects, in whole or in part. Refunding bonds issued pursuant to the Tax Increment Law to refund outstanding tax increment bonds shall be payable from a gross receipts tax increment, out of which the bonds to be refunded thereby are payable or from other lawfully available revenues.

J. The proceeds from the sale of any bonds or notes shall be applied only for the purpose for which the bonds or notes were issued, and if, for any reason, any portion of the proceeds are not needed for the purpose for which the bonds or notes were issued, the unneeded portion of the proceeds shall be applied to the payment of the principal of or the interest on the bonds or notes.

K. The cost of financing a metropolitan redevelopment project shall be deemed to include the actual cost of acquiring a site and the cost of the construction of any part of

a project, including architects' and engineers' fees, the purchase price of any part of a project that may be acquired by purchase and all expenses in connection with the authorization, sale and issuance of the bonds or notes to finance the acquisition and any related costs incurred by the local government.

L. No action shall be brought questioning the legality of any contract, mortgage, deed of trust, trust indenture or other lien or security device, proceeding or bonds or notes executed in connection with any project authorized by the Metropolitan Redevelopment Code on and after thirty days from the effective date of the ordinance authorizing the issuance of such bonds or notes.

History: *Laws 2000, ch. 103, § 4; 2018, ch. 60, § 23; 2023, ch. 112, § 7.*

3-60A-24. Tax increment method; base value for distribution. (Repealed effective January 1, 2025.)

If the tax increment method of financing metropolitan redevelopment projects is used, the base value for distribution of property tax revenues shall be the value used in calculating the limit of general obligation indebtedness imposed by the constitution of New Mexico and the statutes of New Mexico.

History: Laws 1979, ch. 391, § 24.

3-60A-25. Repealed.

3-60A-26. Redevelopment Bonding Law; short title.

Sections 3-60A-26 through 3-60A-46 NMSA 1978 may be cited as the "Redevelopment Bonding Law".

History: Laws 1979, ch. 391, § 26; 2018, ch. 60, § 24.

3-60A-27. Definitions.

As used in the Redevelopment Bonding Law [3-60A-26 to 3-60A-46 NMSA 1978]:

A. "finance" or "financing" means the issuing of bonds by a local government and the use of substantially all of the proceeds from the bonds pursuant to a financing agreement with the user to pay or to reimburse the user or its designee for the costs of the acquisition or construction of a project, whether these costs are incurred by the local government, the user or a designee of the user; provided that title to or in the project may at all times remain in the user, and, in such case, the bonds of the local government may be secured by mortgage or other lien upon the project or upon any other property of the user, or both, granted by the user or by a pledge of one or more notes, debentures, bonds or other secured or unsecured debt obligations of the user, as

the governing body deems advisable, but no local government shall be authorized hereby to pledge any of its property or to otherwise secure the payment of any bonds with its property, except that the local government may pledge the property of the project or revenues from the project;

B. "financing agreement" includes a lease, sublease, installment purchase agreement, rental agreement, option to purchase or any other agreement or any combination thereof entered into in connection with the financing of a project pursuant to the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978];

C. "mortgage" means a deed of trust or any other security device for both real and personal property;

D. "ordinance" means an ordinance of a local government financing or refinancing an activity involving or affecting improvement or improvements;

E. "project" means an activity that can be funded or refinanced by revenue bonds issued pursuant to the Redevelopment Bonding Law for the purpose of acquiring, improving, rehabilitating, conserving, financing, refinancing, erecting or building new or improved facilities on land, building or buildings or any other improvement or improvements, site or any other activity authorized by the Metropolitan Redevelopment Code for projects or activities located within the boundaries of a metropolitan redevelopment area. The revenue bonds may be used for the projects hereafter enumerated for any purpose or use in such project, except that no funds shall be used for inventories, raw materials or other working capital, whether or not in existence, suitable or used for or in connection with any of the following projects:

(1) manufacturing, industrial, commercial or business enterprises, including without limitation enterprises engaged in storing, warehousing, distributing, selling or transporting any products of industry, commerce, manufacturing or business or any utility plant;

(2) hospital, health care or nursing home facilities, including without limitation clinics and outpatient facilities and facilities for the training of hospital, health care or nursing home personnel;

(3) residential facilities intended for use as the place of residence by the owners or intended occupants;

(4) sewage or solid waste disposal facilities;

(5) facilities for the furnishing of water, if available, on reasonable demand to members of the general public;

(6) facilities for the furnishing of energy or gas;

(7) sports and recreational facilities;

(8) convention or trade show facilities;

(9) research, product testing and administrative facilities;

(10) creative enterprises or industries;

(11) cultural facilities as defined in the Local Economic Development Act [Chapter 5, Article 10 NMSA 1978]; and

(12) public infrastructure in state-authorized main street projects or arts and cultural districts;

F. "revenue bonds" means bonds, notes or other securities evidencing an obligation and issued pursuant to the powers granted by the Metropolitan Redevelopment Code by a local government for purposes authorized by that code;

G. "user" means one or more persons who enter into a financing agreement with a local government relating to a project, except that the user need not be the person actually occupying, operating or maintaining the project; and

H. "utility plant" means any facility used for or in connection with the generation, production, transmission or distribution of electricity; the production, manufacture, storage or distribution of gas; the transportation or conveyance of gas, oil or other fluid substance by pipeline; or the diverting, developing, pumping, impounding, distributing or furnishing of water.

History: Laws 1979, ch. 391, § 27; 2018, ch. 60, § 25.

3-60A-27. Definitions. (Effective January 1, 2025.)

As used in the Redevelopment Bonding Law:

A. "finance" or "financing" means the issuing of bonds by a local government and the use of substantially all of the proceeds from the bonds pursuant to a financing agreement with the user to pay or to reimburse the user or its designee for the costs of the acquisition or construction of a project, whether these costs are incurred by the local government, the user or a designee of the user; provided that title to or in the project may at all times remain in the user, and, in such case, the bonds of the local government may be secured by mortgage or other lien upon the project or upon any other property of the user, or both, granted by the user or by a pledge of one or more notes, debentures, bonds or other secured or unsecured debt obligations of the user, as the governing body deems advisable, but no local government shall be authorized hereby to pledge any of its property or to otherwise secure the payment of any bonds

with its property, except that the local government may pledge the revenues from the project;

B. "financing agreement" includes a lease, sublease, installment purchase agreement, rental agreement, option to purchase or any other agreement or any combination thereof entered into in connection with the financing of a project pursuant to the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978];

C. "mortgage" means a deed of trust or any other security device for both real and personal property;

D. "ordinance" means an ordinance of a local government financing or refinancing an activity involving or affecting improvement or improvements;

E. "project" means an activity that can be funded or refinanced by revenue bonds issued pursuant to the Redevelopment Bonding Law [3-60A-26 through 3-60A-46 NMSA 1978] for the purpose of acquiring, improving, rehabilitating, conserving, financing, refinancing, erecting or building new or improved facilities on land, building or buildings or any other improvement or improvements, site or any other activity authorized by the Metropolitan Redevelopment Code for projects or activities located within the boundaries of a metropolitan redevelopment area. The revenue bonds may be used for the projects hereafter enumerated for any purpose or use in such project, except that no funds shall be used for inventories, raw materials or other working capital, whether or not in existence, suitable or used for or in connection with any of the following projects:

(1) manufacturing, industrial, commercial or business enterprises, including without limitation enterprises engaged in storing, warehousing, distributing, selling or transporting any products of industry, commerce, manufacturing or business or any utility plant;

(2) hospital, health care or nursing home facilities, including without limitation clinics and outpatient facilities and facilities for the training of hospital, health care or nursing home personnel;

(3) residential facilities intended for use as the place of residence by the owners or intended occupants;

(4) sewage or solid waste disposal facilities;

(5) facilities for the furnishing of water, if available, on reasonable demand to members of the general public;

(6) facilities for the furnishing of energy or gas;

(7) sports and recreational facilities;

(8) convention or trade show facilities;

(9) research, product testing and administrative facilities;

(10) creative enterprises or industries;

(11) cultural facilities as defined in the Local Economic Development Act [Chapter 5, Article 10 NMSA 1978]; and

(12) public infrastructure in state-authorized main street projects or arts and cultural districts;

F. "revenue bonds" means bonds, notes or other securities evidencing an obligation and issued pursuant to the powers granted by the Metropolitan Redevelopment Code by a local government for purposes authorized by that code;

G. "user" means one or more persons who enter into a financing agreement with a local government relating to a project, except that the user need not be the person actually occupying, operating or maintaining the project; and

H. "utility plant" means any facility used for or in connection with the generation, production, transmission or distribution of electricity; the production, manufacture, storage or distribution of gas; the transportation or conveyance of gas, oil or other fluid substance by pipeline; or the diverting, developing, pumping, impounding, distributing or furnishing of water.

History: *Laws 1979, ch. 391, § 27; 2018, ch. 60, § 25; 2023, ch. 112, § 8.*

3-60A-28. General powers.

In addition to any other powers, each local government has the following powers:

A. to acquire, whether by construction, purchase, gift, devise, lease or sublease; to improve and equip; and to finance, sell, lease or otherwise dispose of one or more projects or part thereof. If a local government issues revenue bonds as provided by the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978] to finance or acquire projects, the projects shall be located within the jurisdiction of the local government and within a metropolitan redevelopment area;

B. to enter into financing agreements with others for the purpose of providing revenues to pay the bonds authorized by the Redevelopment Bonding Law [3-60A-26 to 3-60A-46 NMSA 1978]; to lease, sell or otherwise dispose of any or all of its projects to others for revenue and upon terms and conditions the local government may deem advisable; and to grant options to renew any lease or other agreement with respect to the project and to grant options to buy any project at a price the local government deems desirable;

C. to issue revenue bonds for the purpose of defraying the cost of financing, acquiring, improving and equipping any project, including the payment of principal and interest on the bonds for a period not to exceed three years and all other incidental expenses incurred in issuing the bonds; and

D. to secure payment of revenue bonds as provided in the Redevelopment Bonding Law.

History: Laws 1979, ch. 391, § 28; 2018, ch. 60, § 26.

3-60A-29. Revenue bonds; issuance.

A. A local government may issue revenue bonds from time to time in its discretion to finance the undertaking of any project authorized by the Redevelopment Bonding Law [3-60A-26 to 3-60A-46 NMSA 1978] or the exercise of any power or authority delegated under the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978]. These bonds shall be made payable as to both principal and interest solely from the income, proceeds, revenues and funds of the project.

B. Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds. Bonds issued under the provisions of the Metropolitan Redevelopment Code are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income thereon and income therefrom, shall be exempted from all taxes by the state.

C. Bonds issued under this section shall be authorized by resolution of the local government. The bonds may be issued in one or more series and shall bear a date or dates, be payable upon demand or mature at a time or times, bear interest at a rate or rates not exceeding the legally authorized rate, be in a denomination or denominations, be in a form either coupon or registered, carry conversion or registration privileges, have rank or priority, be executed in a manner, be payable in a medium of payment at a place or places, be subject to the terms of redemption with or without premium, be secured in a manner and have the other characteristics as may be provided by the resolution or trust indenture or mortgage issued pursuant to the bonds.

D. The revenue bonds or any portion to the bonds may be sold at not less than par at public sales held after notice published prior to the sale in a newspaper having a general circulation in the area of operation and in any other medium of publication as the local government may determine or may be exchanged for other bonds on the basis of par; provided that the bonds may be sold to the federal government or to the state at private sale at not less than par, and, in the event less than all of the authorized principal amount of the bonds is sold to the federal government or to the state or to political subdivisions thereof, the balance may be sold at private sale at not less than

par at an interest cost to the local government of not to exceed the interest cost to the local government of the portion of the bonds sold to the federal government.

E. In case any of the public officials of the local government whose signatures appear on any bonds or coupons issued under the Metropolitan Redevelopment Code cease to be public officials before the delivery of the bonds, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officials had remained in office until delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to the Metropolitan Redevelopment Code shall be fully negotiable.

F. In any suit, action or proceeding involving the validity or enforceability of any bond issued under the Metropolitan Redevelopment Code or the security therefor, any bond reciting in substance that it has been issued by the local government in connection with a metropolitan redevelopment project shall be conclusively deemed to have been issued for such purpose, and the project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of the Metropolitan Redevelopment Code.

History: Laws 1979, ch. 391, § 29; 2018, ch. 60, § 27.

3-60A-30. Bonds as legal investments.

All banks, trust companies, bankers, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business; all insurance companies, insurance associations and other persons carrying on an insurance business; and all executors, administrators, curators, trustees and other fiduciaries may legally invest any sinking funds, money or other funds belonging to them or within their control in any bonds or other obligations issued by a local government pursuant to the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978] or by any agency vested with metropolitan redevelopment project powers under the Redevelopment Law [3-60A-5 to 3-60A-18 NMSA 1978]; provided that the bonds and other obligations shall be secured by a pledge of property or revenues or combinations thereof that is of sufficient value to equal the principal and interest of the bonds at maturity. The bonds and other obligations shall be authorized security for all public deposits. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

History: Laws 1979, ch. 391, § 30; 2018, ch. 60, § 28.

3-60A-30. Bonds as legal investments. (Effective January 1, 2025.)

All banks, trust companies, bankers, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business; all insurance companies, insurance associations and other

persons carrying on an insurance business; and all executors, administrators, curators, trustees and other fiduciaries may legally invest any sinking funds, money or other funds belonging to them or within their control in any bonds or other obligations issued by a local government pursuant to the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978] or by any agency vested with metropolitan redevelopment project powers under the Redevelopment Law [3-60A-5 to 3-60A-13, 3-60A-14 to 3-60A-18 NMSA 1978]; provided that the bonds and other obligations shall be secured by a pledge of revenues that is of sufficient value to equal the principal and interest of the bonds at maturity. The bonds and other obligations shall be authorized security for all public deposits. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

History: *Laws 1979, ch. 391, § 30; 2018, ch. 60, § 28; 2023, ch. 112, § 9.*

3-60A-31. Revenue bonds; issuance; status.

A. A local government may issue revenue bonds in connection with a financing agreement for the purposes of financing a project authorized by the provisions of the Redevelopment Bonding Law [3-60A-26 to 3-60A-46 NMSA 1978].

B. A revenue bond shall be a limited obligation of the local government, the principal and interest of which shall be payable, subject to the mortgage provisions of the Redevelopment Bonding Law, solely out of the revenues derived from the financing, sale or leasing of the project with respect to which the bonds are issued.

C. The revenue bond and interest coupons, if any, appurtenant thereto shall never constitute a debt or indebtedness of the local government within the meaning of any provision or limitation of the constitution of New Mexico, statutes of the state or a home rule charter of the local government, and the bond shall not constitute or give rise to a pecuniary liability of the local government or a charge against its general credit or taxing powers. These limitations shall be plainly stated on the face of each bond.

History: Laws 1979, ch. 391, § 31; 2018, ch. 60, § 29.

3-60A-32. Revenue bonds; form and terms.

A. Revenue bonds shall be authorized by ordinance of the local government, shall be subject to a maximum net effective interest rate and shall be in denominations, bear a date, mature at a time not exceeding forty years from their respective dates, bear an interest at a rate, be in a form, carry registration privileges, be executed in a manner, be payable at a place within or without the state and be subject to terms of redemption as the authorizing ordinance or supplemental resolution of the local government may provide.

B. The revenue bonds may be sold in one or more series at par or below or above par at public or private sale in a manner and for a price as the local government in its discretion shall determine; but the local government shall not sell revenue bonds at a price such that the net effective interest rate of the issue of bonds exceeds the maximum net effective interest rate authorized. As an incidental expense of the project, the local government in its discretion may employ financial and legal consultants in regard to the financing of the project.

History: Laws 1979, ch. 391, § 32; 2018, ch. 60, § 30.

3-60A-33. Revenue bonds; bond security.

The principal of, the interest on and any prior redemption premiums due in connection with the revenue bonds shall be payable from, secured by a pledge of and constitute a lien on the revenues out of which the bonds shall be made payable. In addition, they may be secured by a mortgage covering all or any part of the project or upon any other property of the user or both by a pledge of the revenues from or a financing agreement for the project or both as the local government in its discretion may determine; but no local government shall be authorized by the Redevelopment Bonding Law [3-60A-26 to 3-60A-46 NMSA 1978] to pledge any of its property or to otherwise secure the payment of any bonds with its property, except that the local government may pledge the property of the project or revenues from the project.

History: Laws 1979, ch. 391, § 33; 2018, ch. 60, § 31.

3-60A-33. Revenue bonds; bond security. (Effective January 1, 2025.)

The principal of, the interest on and any prior redemption premiums due in connection with the revenue bonds shall be payable from, secured by a pledge of and constitute a lien on the revenues out of which the bonds shall be made payable. In addition, they may be secured by a mortgage covering all or any part of the project or upon any other property of the user or both by a pledge of the revenues from or a financing agreement for the project or both as the local government in its discretion may determine; but no local government shall be authorized by the Redevelopment Bonding Law [3-60A-26 through 3-60A-46 NMSA 1978] to pledge any of its property or to otherwise secure the payment of any bonds with its property, except that the local government may pledge the revenues from the project.

History: *Laws 1979, ch. 391, § 33; 2018, ch. 60, § 31; 2023, ch. 112, § 10.*

3-60A-34. Revenue bonds; terms of proceedings and instruments.

The proceedings under which the revenue bonds are authorized to be issued and any mortgage or trust indenture given to secure the bonds may contain any provisions

customarily contained in instruments securing bonds and constituting a covenant with the bondholders, including:

A. provisions respecting custody of the proceeds from the sale of the bonds, including their investment and reinvestment until used to defray the cost of the project;

B. provisions respecting the fixing and collection of revenues from the project;

C. the terms to be incorporated in the financing agreement and any mortgage or trust indenture for the project, including without limitation provision for subleasing;

D. the maintenance and insurance of the project;

E. the creation of funds and accounts into which any bond proceeds, revenues and income may be deposited or credited;

F. limitation on the purpose to which the proceeds of any bonds then or thereafter to be issued may be applied;

G. limitation on the issuance of additional bonds, the terms upon which additional bonds are issued and secured, the refunding of bonds and the replacement of bonds;

H. the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated;

I. vesting in a trustee properties, rights, powers and duties in trust as the local government determines and limiting the rights, duties and powers of the trustees; and

J. the rights and remedies available in case of a default to the bondholders or to any trustee under the financing agreement, a mortgage or a trust indenture for the project.

History: Laws 1979, ch. 391, § 34; 2018, ch. 60, § 32.

3-60A-35. Revenue bonds; investments and bank deposits.

A. The local government may provide that proceeds from the sale of revenue bonds and special funds from the revenues of the project shall be invested and reinvested in securities and other investments, whether or not any investment or reinvestment is authorized under any other law of this state, as may be provided in the proceedings under which the bonds are authorized to be issued, including:

(1) bonds or other obligations of the United States;

(2) bonds or other obligations, the payment of the principal and interest of which is unconditionally guaranteed by the United States;

(3) obligations issued or guaranteed as to principal and interest by any agency or person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the congress of the United States;

(4) obligations issued or guaranteed by any state of the United States or any political subdivision of any such state;

(5) prime commercial paper;

(6) prime finance company paper;

(7) bankers' acceptances drawn on and accepted by commercial banks;

(8) repurchase agreements fully secured by obligations issued or guaranteed as to principal and interest by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the congress of the United States; and

(9) certificates of deposit issued by commercial banks.

B. The local government may also provide that the proceeds, funds or investments and the revenues payable under the financing agreement shall be received, held and disbursed by one or more banks or trust companies located within or without this state.

History: Laws 1979, ch. 391, § 35; 2018, ch. 60, § 33.

3-60A-36. Revenue bonds; acquisition of project.

A. The local government may also provide that:

(1) the project and improvements to be constructed, if any, shall be constructed by the local government, the user, the user's designee or any one or more of them on real estate owned by the local government, the user or the user's designee, as the case may be; and

(2) the bond proceeds shall be disbursed by the trustee bank or trust company during construction upon the estimate, order or certificate of the user or the user's designee.

B. The project, if and to the extent constructed on real estate not owned by the local government, may be conveyed or leased or an easement in the real estate granted to the local government at any time.

History: Laws 1979, ch. 391, § 36; 2018, ch. 60, § 34.

3-60A-37. Revenue bonds; limited obligation.

In making agreements or provisions, a local government shall not obligate itself except with respect to the project and the application of the revenues and revenue bond proceeds from the project.

History: Laws 1979, ch. 391, § 37; 2018, ch. 60, § 35.

3-60A-38. Revenue bonds; rights upon default.

A. The proceedings authorizing any revenue bonds, or any mortgage securing such bonds, may provide that if there is a default in the payment of the principal of, the interest on, or any prior redemption premiums due in connection with the bonds or in the performance of any agreement contained in such proceedings or mortgage, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with the proceedings or the provisions of the mortgage.

B. Any mortgage to secure bonds issued thereunder may also provide that if there is a default in the payment thereof or a violation of any agreement contained in the mortgage it may be foreclosed and there may be a sale under proceedings in equity or in any other manner permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any bonds secured thereby may become the purchaser at any foreclosure sale if he is the highest bidder and may apply toward the purchase price unpaid bonds at the face value thereof.

History: Laws 1979, ch. 391, § 38.

3-60A-39. Revenue bonds; determination of revenue.

A. Prior to entering into a financing agreement for the project and the issuance of revenue bonds in connection with the project, the local government shall determine:

(1) the amount necessary in each year to pay the principal of and the interest on the first bonds proposed to be issued to finance the project;

(2) the amount necessary to be paid each year into any reserve funds that the local government may deem advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project; and

(3) the estimated cost of maintaining the project in good repair and keeping it properly insured unless the terms under which the project is to be financed provide that the user shall maintain the project and carry all proper insurance with respect to the project.

B. The determination and findings of the local government required to be made by Subsection A of this section shall be set forth in the proceedings under which the proposed revenue bonds are to be issued; but the foregoing amounts need not be

expressed in dollars and cents in the financing agreement and proceedings under which the bonds are authorized to be issued.

History: Laws 1979, ch. 391, § 39; 2018, ch. 60, § 36.

3-60A-40. Revenue bonds; financing of project.

Prior to the issuance of any revenue bonds authorized by the Redevelopment Bonding Law [3-60A-26 to 3-60A-46 NMSA 1978], the local government shall enter into a financing agreement with respect to the project with a user providing for payment to the local government of revenue upon the basis of determinations and findings that the revenue will be sufficient to pay the principal of and interest on the bonds issued to finance the project, to build up and maintain any reserves deemed advisable by the local government in connection with the project and to pay the costs of maintaining the project in good repair and keeping it properly insured unless the financing agreement obligates the user to pay for the maintenance of and insurance on the project.

History: Laws 1979, ch. 391, § 40; 2018, ch. 60, § 37.

3-60A-41. Option to purchase.

A. A lease may grant the user of a project an option to purchase all or a part of the project at a stipulated purchase price or at a price to be determined upon appraisal as is provided in the lease.

B. The option may be exercised at a time as the lease may provide.

C. The local government and the user may agree and provide in the lease that all or a part of the rentals paid by the user prior to and at the time of the exercise of the option shall be applied toward the purchase price and shall be in full or partial satisfaction of the purchase price.

History: Laws 1979, ch. 391, § 41; 2018, ch. 60, § 38.

3-60A-42. Revenue bonds; refunding.

A. Any revenue bonds issued under the provisions of the Redevelopment Bonding Law [3-60A-26 to 3-60A-46 NMSA 1978] and at any time outstanding may at any time and from time to time be refunded by a local government by the issuance of its refunding bonds in such amount as the local government may deem necessary to refund the principal of the bonds to be so refunded, any unpaid interest on the bonds and any premiums and incidental expenses necessary to be paid in connection with the bonds.

B. Any refunding may be effected, whether the bonds to be refunded have matured or shall thereafter mature, either by sale of the refunding bonds and the application of

the proceeds, directly or indirectly, to the payment of the bonds to be refunded or by exchange of the refunding bonds for the bonds to be refunded, but the holders of any bonds to be so refunded shall not be compelled, without their consent, to surrender their bonds for payment or exchange prior to the date on which they are payable by maturity date, option to redeem or otherwise or if they are called for redemption prior to the date on which they are by their terms subject to redemption by option or otherwise.

C. All refunding bonds issued under authority of the Redevelopment Bonding Law to refund revenue bonds shall be payable solely from revenues out of which bonds to be refunded are payable or from revenues out of which bonds of the same character may be made payable under the Redevelopment Bonding Law or any other law in effect at the time of the refunding.

History: Laws 1979, ch. 391, § 42; 2018, ch. 60, § 39.

3-60A-43. Revenue bonds; application of proceeds.

A. The proceeds from the sale of any revenue bonds shall be applied only for the purpose for which the bonds were issued, and, if for any reason any portion of the proceeds are not needed for the purpose for which the bonds were issued, the unneeded portion of the proceeds shall be applied to the payment of the principal of or the interest on the bonds.

B. The cost of acquiring any project shall be deemed to include the actual cost of acquiring a site and the cost of the construction of any part of a project that may be constructed, including architects' and engineers' fees, the purchase price of any part of a project that may be acquired by purchase and all expenses in connection with the authorization, sale and issuance of the bonds to finance the acquisition and any costs incurred by the local government.

History: Laws 1979, ch. 391, § 43; 2018, ch. 60, § 40.

3-60A-44. No payment by local government.

A. No local government or public body shall pay out of its general fund or otherwise contribute any part of the costs of acquiring a project and, unless specifically acquired for uses of the character described in the Redevelopment Bonding Law [3-60A-26 to 3-60A-46 NMSA 1978] or unless the land is determined by the governing body to be no longer necessary for other municipal purposes or purposes of a public body, shall not use land already owned by the local government or public body or in which the local government or public body has an equity for the construction thereon of a project or any part thereof.

B. The entire cost of acquiring any project shall be paid out of the proceeds from the sale of the revenue bonds, but this provision shall not be construed to prevent a local

government or public body from accepting donations of property to be used as a part of any project or money to be used for defraying any part of the cost of any project.

History: Laws 1979, ch. 391, § 44; 2018, ch. 60, § 41.

3-60A-45. No local government operation.

A. When all principal of, interest on and any prior redemption premium due in connection with the revenue bonds issued for a project leased to a user have been paid in full and in the event the option to purchase or option to renew the lease, if any, contained in the lease has not been exercised as to all of the property contained in the project, the lease shall terminate and the local government shall sell the remaining property or devote the property to local government purposes other than manufacturing, commercial or industrial.

B. Any sale that is not made pursuant to the exercise of an option to purchase by the user of a project shall be conducted in the same manner as is then provided by law governing the issuer's sale of surplus property.

History: Laws 1979, ch. 391, § 45; 2018, ch. 60, § 42.

3-60A-46. Limitation of actions.

No action shall be brought questioning the legality of any contract, financing agreement, mortgage, trust indenture, proceeding or bonds executed in connection with any project or improvements authorized by the Redevelopment Bonding Law [3-60A-26 to 3-60A-46 NMSA 1978] on and after thirty days from the effective date of the resolution or ordinance authorizing the issuance of such bonds.

History: Laws 1979, ch. 391, § 46.

3-60A-47. Sufficiency of code.

A. The Metropolitan Redevelopment Code [3-60A-1 to 3-60A-13, 3-60A-14 to 3-60A-48 NMSA 1978], without reference to other statutes of the state, constitutes full authority for the exercise of powers granted herein, including but not limited to the authorization and issuance of bonds under that code.

B. No other act or law with regard to the authorization of issuance of bonds that provides for an election requiring an approval or in any way impeding or restricting the carrying out of the acts authorized in the Metropolitan Redevelopment Code to be done shall be construed as applying to any proceedings taken under or acts done pursuant to that code, except for laws to which reference is expressly made in that code or by necessary implication of that code.

C. The provisions of no other law, either general or local, except as provided in the Metropolitan Redevelopment Code, shall apply to the things authorized to be done pursuant to that code, and no board, agency, bureau, commission or official not designated herein has any authority or jurisdiction over any of the acts authorized in that code to be done, except as otherwise provided by that code.

D. No notice, consent or approval by any public body or officer thereof shall be required as a prerequisite to the sale or issuance of any bonds, the making of any contract or financing agreement or the exercise of any other power under the Metropolitan Redevelopment Code, except as provided herein.

E. The powers conferred by the Metropolitan Redevelopment Code shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by that code shall not affect the powers conferred by any other law.

F. No part of the Metropolitan Redevelopment Code shall repeal or affect any other law or part thereof except to the extent that the provisions of that code are inconsistent with any other law, it being intended that the Metropolitan Redevelopment Code shall provide a separate method of accomplishing its objectives and not an exclusive one; and the Metropolitan Redevelopment Code shall not be construed as repealing, amending or changing any other law except to the extent of such inconsistency.

History: Laws 1979, ch. 391, § 47.

3-60A-48. Liberal interpretation.

The Metropolitan Redevelopment Code [3-60A-1 to 3-60A-13, 3-60A-14 to 3-60A-48 NMSA 1978] shall be liberally construed to carry out its purposes.

History: Laws 1979, ch. 391, § 48.

3-60A-49. Approval required for issuance of bonds against a state gross receipts tax increment. (Effective January 1, 2025.)

A. In addition to all other requirements of the Metropolitan Redevelopment Code, prior to issuing bonds that are issued in whole or in part against a gross receipts tax increment attributable to the state gross receipts tax within a metropolitan redevelopment area and before a distribution attributable to the state gross receipts tax is made pursuant to Section 11 [7-1-6.71 NMSA 1978] of this 2023 act, the New Mexico finance authority shall review the proposed issuance of the bonds and determine that the proceeds of the bonds will be used for a metropolitan redevelopment project in accordance with the area's metropolitan redevelopment plan and present the proposed issuance of the bonds to the legislature for approval.

B. The issuance of the bonds and the maximum amount of bonds to be issued shall be specifically authorized by law.

History: *Laws 2023, ch. 112, § 6.*

ARTICLE 60B
Main Street

3-60B-1. Short title.

Chapter 3, Article 60B NMSA 1978 may be cited as the "Main Street Act".

History: Laws 1985, ch. 88, § 1; 2013, ch. 60, § 1; 2013, ch. 62, § 1.

3-60B-2. Purpose.

The purpose of the Main Street Act is to provide for the revitalization of central business districts in New Mexico communities based on the preservation and rehabilitation of existing structures of unique historical and architectural character and the development of progressive marketing and management techniques as an economic development strategy for local governments.

History: Laws 1985, ch. 88, § 2.

3-60B-3. Definitions.

As used in the Main Street Act:

A. "program" means the state main street program developed in conjunction with the national trust for historic preservation; and

B. "coordinator" means the person responsible for coordinating the program and state and federal activities relevant to the program.

History: Laws 1985, ch. 88, § 3.

3-60B-4. Main street program; created; coordinator; powers and duties.

A. There is created the "main street program" in the economic development department. The secretary of economic development shall employ a coordinator to oversee the program.

B. The coordinator shall:

(1) carry out state responsibilities pursuant to contract with the national main street center of the national trust for historic preservation;

(2) coordinate activities of the program in consultation with the historic preservation division of the cultural affairs department;

(3) advise the New Mexico community development council on the development of criteria for requests for proposals and selection of local government grantees for the program to be funded through community development block grants;

(4) monitor the progress of main street projects;

(5) assist local main street project managers;

(6) assist in the development of the frontier communities program; and

(7) perform other duties necessary to carry out the provisions of the Main Street Act.

History: Laws 1985, ch. 88, § 4; 1989, ch. 163, § 1; 1991, ch. 21, § 8; 2013, ch. 60, § 2; 2013, ch. 62, § 2.

ARTICLE 60C
Main Street Revolving Loan

3-60C-1. Short title.

Chapter 3, Article 60C NMSA 1978 may be cited as the "Main Street Revolving Loan Act".

History: Laws 2007, ch. 103, § 1; 2009, ch. 185, § 1.

3-60C-2. Purpose.

The purpose of the Main Street Revolving Loan Act is to provide owners of eligible properties with low-cost financial assistance, through the creation of a self-sustaining revolving loan program, in the restoration, rehabilitation and repair of those properties if they meet certain eligibility criteria and would contribute substantially to the state's economic well-being and to a sound and proper balance between preservation and development.

History: Laws 2007, ch. 103, § 2.

3-60C-3. Definitions.

As used in the Main Street Revolving Loan Act:

A. "committee" means the main street revolving loan committee;

B. "division" means the historic preservation division of the cultural affairs department;

C. "eligible property" means a site, structure, building or object that is subject to the Main Street Act or otherwise found pursuant to rule of the committee to merit preservation pursuant to the Main Street Revolving Loan Act;

D. "fund" means the main street revolving loan fund;

E. "lending institution" means a bank, savings and loan association, credit union or nonprofit organization with lending programs as part of its bylaws; and

F. "property owner" means the sole owner, joint owner, owner in partnership or an owner of a leasehold interest with a term of five years or longer of an eligible property.

History: Laws 2007, ch. 103, § 3; 2009, ch. 185, § 2.

3-60C-4. Main street revolving loan committee; committee and division duties.

A. The "main street revolving loan committee" is created, consisting of six members as follows:

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

(2) the coordinator of the main street program under the Main Street Act [3-60B-1 to 3-60B-4 NMSA 1978] or the coordinator's designee;

(3) the chair of the cultural properties review committee or the chair's designee;

(4) the director of the local government division of the department of finance and administration or the director's designee;

(5) a member appointed by the governor with expertise in small loans; and

(6) the chair of the board of directors of friends of New Mexico mainstreet, inc., or the chair's designee.

B. Public members of the committee shall not be paid but shall be reimbursed for per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

C. The committee shall:

(1) elect a chair and such other officers as it deems necessary;

(2) meet at the call of the chair but no less than four times per year;

(3) by rule, establish eligibility criteria for properties and owners, establish procedures to govern the application outreach and marketing of the loan program and promulgate such other rules as are necessary to carry out the provisions of the Main Street Revolving Loan Act;

(4) after considering the recommendations of the division, make awards of loans or loan subsidies; and

(5) approve expenditures by the division for marketing, managing and administering the loan program.

D. A member of the committee may participate in a meeting of the committee by means of a conference telephone or other similar communications equipment as provided in the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]. Participation by conference telephone or other similar communications equipment shall constitute presence in person at a meeting.

E. The division shall:

(1) review applications for loans and loan subsidies and make recommendations to the committee;

(2) administer all loans and loan subsidies;

(3) serve as staff to the committee; and

(4) report annually to the governor, the legislative finance committee and the legislature on loans made, loan payments received and all other activities conducted pursuant to the Main Street Revolving Loan Act.

History: Laws 2007, ch. 103, § 4; 2009, ch. 185, § 3.

3-60C-5. Main street revolving loan fund.

A. The "main street revolving loan fund" is created in the state treasury. The fund shall consist of appropriations, loan payments, federal funds received for the purpose of making loans, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year. Money in the fund is appropriated to the committee for the purposes of:

(1) making revolving loans, including related fees, to property owners, with the loans processed and serviced by a lending institution; and

(2) paying division expenses to market, manage and administer the loan program; provided that no more than ten percent of the annual appropriation or other distribution or transfer made to the fund may be used for marketing, managing and administering the loan program.

B. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the director of the division.

History: Laws 2007, ch. 103, § 5; 2009, ch. 185, § 4.

3-60C-6. Loan program; applications; awards.

A. The division shall administer a program to make direct loans or loan subsidies and shall contract with one or more lending institutions for deposits to be used for the purpose of making or subsidizing loans to property owners for the restoration, rehabilitation or repair of eligible properties.

B. The committee shall adopt a procedure for the priority ranking of applications and projects, both eligible and ineligible for federal funding assistance, for which loan or loan subsidy applications have been received by the division. The procedure shall be based on factors including geographic distribution of recipient projects, severity of deterioration of the eligible property, degree of architectural and construction detail in the loan application demonstrating the feasibility of the proposed restoration, rehabilitation or repair of the eligible property and availability of other funding for the project. All loans or loan subsidies from the fund shall be granted pursuant to the procedure, and the procedure shall be reviewed annually by the division and the committee.

C. Loans or loan subsidies shall be made by the committee pursuant to the following criteria:

(1) loans or loan subsidies from the fund shall be made only to property owners who:

(a) agree to repay the loan in a time period not to exceed ten years;

(b) agree to maintain the eligible property as restored, rehabilitated or repaired for the period specified in the loan or five years, whichever is greater;

(c) agree to maintain complete and proper financial records regarding the eligible property and to make these available to the division and the committee on request;

(d) agree to complete the proposed restoration, rehabilitation or repair work on the eligible property within twenty-four months from the date of loan approval by the committee;

(e) provide sufficient collateral security interest, as determined by the lending institution, to the state in accordance with rules established by the committee;

(f) submit conceptual design and business plans with respect to the use of the loan proceeds, prepared with the assistance of the local main street project organization, the state main street program or other professionals with experience in architecture, design or business and financial planning;

(g) agree to all financial and other commitments, terms and conditions for the loan established by the division or the committee; and

(h) agree to any restrictions on assignments of loans from the fund required by the committee or the division;

(2) a loan shall be made for a period not to exceed ten years with interest on the unpaid balance at a rate not greater than the yield at the time of loan approval on United States treasury bills with a maturity of three hundred sixty-five days plus one-half of one percent. A loan shall be repaid by the property owner in equal installments not less often than annually with the first installment due within one year of the date the loan is issued. If a property owner transfers ownership of the eligible property with respect to which a loan is made, all amounts outstanding under the loan shall become immediately due and payable and the property owner shall make a final interest payment on the principal amount due at a rate equal to the interest rate on the loan plus an additional one percent;

(3) loans shall be made only for eligible costs. Eligible costs include loan servicing fees, architectural, design, graphic design, construction and engineering documents and planning costs, inspection of work in progress, contracted restoration, rehabilitation and repair costs and costs necessary to meet code requirements. Eligible costs do not include costs of land acquisition, legal costs or certain fiscal agents' fees as determined by the committee; and

(4) loans are not assignable.

D. The division shall deposit in the fund all receipts from the repayment of loans made pursuant to the Main Street Revolving Loan Act.

History: Laws 2007, ch. 103, § 6; 2009, ch. 185, § 5.

ARTICLE 61
Metropolitan Water Boards

3-61-1. Power to create metropolitan water board; exercise of power.

In addition to all other powers granted to municipalities and counties, the board of county commissioners of any county and the governing board of any municipality lying totally or partially within the boundaries of that county may, by the passage of identical ordinances that comply with the provisions of Section 3-61-1.1 NMSA 1978, create a metropolitan water board of not more than ten members and grant to that board that portion of the powers of the municipality and the county which pass the identical ordinances necessary to allow the board to:

A. contract for, lease or sublease any supply of water which the municipality and the county in combination with any other entity, public or private, may receive from the United States department of the interior, bureau of reclamation, for municipal, domestic or industrial purposes pursuant to the Reclamation Act of 1902 (32 Stat. 388), the Act of June 13, 1962 (76 Stat. 96) and the Act of April 11, 1956 (70 Stat. 105), all as amended or supplemented;

B. enter into contracts, leases or subleases with other agencies of the United States and the state of New Mexico for purposes related to municipal, industrial and domestic water use, as necessary, pursuant to appropriate federal and state law; and

C. conduct or engage in analysis or studies of the short and long range availability and need of water resources and of ways to accomplish more efficient use of water resources for purposes related to municipal, industrial and domestic water use in order to provide recommendations thereon.

History: 1953 Comp., § 14-63-1, enacted by Laws 1976, ch. 47, § 1; 1977, ch. 304, § 1; 1985, ch. 144, § 1; 1989, ch. 358, § 1.

3-61-1.1. Metropolitan water board.

A. Except as provided in Subsection B of this section, a metropolitan water board shall be composed of the following:

(1) seven elected members as provided in Subsection C of this section;

(2) one member who is a registered voter of the municipality appointed by the governing body of the municipality; and

(3) one member who is a registered voter of the county appointed by the governing body of the county.

B. In addition to the members specified in Subsection A of this section, the members of a metropolitan water board that is located in a class B county and a municipality lying totally or partially within the boundaries of that county shall include one additional member appointed by the primary privately owned water company of that municipality if:

(1) the city has a population of more than fifty thousand but less than one hundred thousand according to the last federal decennial census or any subsequent decennial census; or

(2) the county has a population separate of the city of more than twenty-five thousand but less than sixty thousand according to the last federal decennial census or any subsequent decennial census.

C. Elected members of a metropolitan water board shall be elected at a county-wide special election or at a general election by the registered voters of such county and municipality for such terms as are specified in the respective identical ordinances of the municipality and the county, pursuant to Section 3-61-1 NMSA 1978. Public employees may be elected to and serve on the board.

D. For the purpose of electing members of the metropolitan water board, the governing bodies of the municipality and the county shall, in the identical such ordinances pursuant to Section 3-61-1 NMSA 1978, district the county once after each federal decennial census into a number of single-member districts equal to the number of elected board members; provided that in class B counties the board shall consist of no less than seven elected members. The districts shall be of equal populations as nearly as is practicable, and each member of the board shall reside in and be elected from his respective district.

E. Change of residence to a place outside the district from which a metropolitan board member was elected shall automatically terminate the service of that member on the board, and the office shall be declared vacant. The respective governing bodies shall jointly, by appointment, fill any vacancies on the board until the next succeeding regular or special election, other than a school election, which is applicable to the area over which the board has jurisdiction, at which time the position shall be filled by election for the remainder of the unexpired term of the member creating the vacancy.

History: 1978 Comp., § 3-61-1.1, enacted by Laws 1985, ch. 144, § 2; 1989, ch. 358, § 2.

3-61-2. Approval of budget.

A metropolitan water board created by this act [3-61-1 to 3-61-4 NMSA 1978] may incur reasonable costs and expenses in carrying out its power; the budget of the water board shall be included in the budget of the municipality and the county creating the water board and shall be subject to the approval of the New Mexico department of finance and administration as required by Section 6-6-2 et seq., NMSA 1978, as enacted or amended.

History: 1953 Comp., § 14-63-2, enacted by Laws 1976, ch. 47, § 2.

3-61-3. Reservation of powers.

A metropolitan water board may acquire, construct and operate a water utility and to accomplish this purpose shall be deemed a municipality for the purpose of Chapter 62 NMSA 1978 and for Articles 23 and 27 of Chapter 3 NMSA 1978.

History: 1978 Comp., § 3-61-3, enacted by Laws 1985, ch. 144, § 3.

3-61-3.1. Eminent domain; restriction.

A metropolitan water board shall not use the power of eminent domain or dominant eminent domain to condemn the private property of the primary privately owned water company serving a municipality in the area in which a metropolitan water board has jurisdiction.

History: 1978 Comp., § 3-61-3.1, enacted by Laws 1989, ch. 358, § 3.

3-61-4. Limitation on powers of water boards.

No water board created under this act [3-61-1 to 3-61-4 NMSA 1978] shall have the power to enter into a contract which by its terms prohibits any governing body or any local subdivision from abolishing the water board by repeal of the ordinance or ordinances by which the water board was created.

History: 1953 Comp., § 14-63-4, enacted by Laws 1976, ch. 47, § 4.

ARTICLE 62
Methods of Insurance

3-62-1. Providers of insurance.

Any insurance authorized by law to be purchased, obtained or provided by a municipality or other political subdivision or local public body or any insurance which a subdivision or body may assist in providing to its employees may be provided by:

A. self-insurance which may be funded by appropriations or contributions to establish or maintain reserves for self-insurance purposes;

B. insurance secured in accordance with any other method provided by law; or

C. any combination of insurance authorized by Sections 3-62-1 and 3-62-2 NMSA 1978.

History: 1978 Comp., § 3-62-1, enacted by Laws 1979, ch. 287, § 1; 1986, ch. 92, § 1.

3-62-2. Pooling.

A. Two or more municipalities or other political subdivisions or local public bodies may provide insurance for any purpose by any one or more of the methods specified in Chapter 3, Article 62 NMSA 1978. Self-insurance or the pooling of self-insured reserves, claims or losses among subdivisions or bodies as authorized pursuant to Sections 3-62-1 and this section NMSA 1978 shall not be construed to be transacting insurance or otherwise subject to the provisions of the laws of this state regulating insurance or insurance companies. Two or more municipalities or other political subdivisions or local public bodies may also be insured under a master policy or contract of insurance. Premium costs may be set individually for each municipality, political subdivision or local public body or apportioned among participating municipalities as provided in the master policy or contract. Pooling to provide property coverage shall constitute the purchase of insurance for the purpose of Section 13-5-3 NMSA 1978.

B. The pooling of self-insured reserves, claims or losses under this section shall be marketed to municipalities, other political subdivisions and local public bodies only through a licensed insurance agent.

C. An estimated annual standard premium of at least two hundred fifty thousand dollars ($250,000) during first year of operation shall be required for two or more local public bodies to pool for the purposes of this act [3-62-1 to 3-62-2 NMSA 1978].

History: 1978 Comp., § 3-62-2, enacted by Laws 1979, ch. 287, § 2; 1984, ch. 127, § 988.4; 1986, ch. 92, § 2.

ARTICLE 63
Business Improvement Districts

3-63-1. Short title.

This act [3-63-1 to 3-63-16 NMSA 1978] may be cited as the "Business Improvement District Act".

History: Laws 1988, ch. 32, § 1.

3-63-2. Purpose of act.

The purpose of the Business Improvement District Act is to:

A. promote and restore the economic vitality of areas within municipalities by allowing the establishment of business improvement districts with the powers to provide for the administration and financing of additional and extended services to businesses within business improvement districts;

B. finance local improvements within those districts; and

C. provide municipalities and entrepreneurs a more flexible and proactive vehicle to collaborate in the revitalization efforts of their downtowns, commercial districts and central business districts.

History: Laws 1988, ch. 32, § 2; 1999, ch. 204, § 1.

3-63-3. Definitions.

As used in the Business Improvement District Act:

A. "business" means a fixed place of business within an incorporated municipality where one or more persons are employed or engaged in the purchase, sale, provision or manufacturing of commodities, products or services, and includes the ownership of unoccupied real property that is held for commercial investment purposes, for sale or for lease;

B. "council" means the governing body of the incorporated municipality within which the district is found;

C. "district" means an entity having a contiguous area of clearly defined boundaries within an incorporated municipality in which at least three-quarters of the area is zoned and used for business or mixed commercial or retail use, that is established pursuant to the Business Improvement District Act in which the improvements are to be constructed and upon which the business improvement benefit fee for the costs of the improvements is to be imposed;

D. "improvement" means any one or any combination of services or projects in one or more locations authorized pursuant to the Business Improvement District Act;

E. "management committee" means the district management committee as established pursuant to the Business Improvement District Act;

F. "planning group" means a group appointed by the council to prepare the proposed district plans as provided in the Business Improvement District Act; and

G. "real property" means real property that is used to engage in the purchase, sale, provision or manufacturing of commodities, products or services and unoccupied real property that is held for commercial investment purposes, for sale or for lease.

History: Laws 1988, ch. 32, § 3.

3-63-4. District creation; purpose; improvement; authority.

A district may be created pursuant to the Business Improvement District Act to provide services that shall attempt to restore or promote the economic vitality of the district and the general welfare of the incorporated municipality.

History: Laws 1988, ch. 32, § 4.

3-63-5. District; authority; creation.

A. A district shall assess a business improvement benefit fee on any real property or business located within the district.

B. A district shall include any real property or business that benefits by the improvements set out in the business improvement district plan and that is located within the district's geographic boundaries.

C. The district benefit fee assessment schedule shall not include:

(1) governmentally owned real property;

(2) residential real property that is not multifamily residential rental property with at least four units or homeowners associations of multifamily ownership properties;

(3) real property owned by a nonprofit corporation; or

(4) residential real property, located within an existing district, that became eligible for a business improvement benefit fee assessment after the district was created, unless the ordinance that created the district is amended to include the new business or property after notice is provided and a hearing is held in accordance with Section 3-63-10 NMSA 1978.

D. A district may be created by petition of real property owners or by petition of business owners in a proposed district after notice and public hearing.

History: Laws 1988, ch. 32, § 5; 1999, ch. 204, § 2; 2009, ch. 172, § 2.

3-63-6. Creation by petition.

A. Whenever ten or more business owners comprising at least fifty-one percent of the total business owners in the proposed district or whenever five or more real property owners comprising at least fifty-one percent of the total real property owners in the proposed district, exclusive of any real property owned by the United States or the state or any of its political subdivisions, petition the council in writing to create a district, the council shall refer the petition to a planning group to prepare a plan pursuant to the provisions of the Business Improvement District Act to implement the creation of the district. The plans shall:

(1) state the purpose for the creation of the district;

(2) describe in general terms the real property to be included in the district;

(3) provide an assessment plat of the area to be included in the district showing an estimate of the benefits to such real property and an amount estimated to be assessed against each parcel of real property;

(4) provide such other information as the council deems necessary for the proper evaluation of the plan;

(5) in the case of a petition brought by a majority of business owners within a proposed district, describe in general terms both the real property and the businesses included in the district; and

(6) in the case of a petition brought by a majority of business owners within a proposed district, provide a formula to be used to assess businesses in the district for the business improvement benefit fee to be collected along with the municipal property tax.

B. After the completion of the plan, the planning group shall have the municipal clerk give notice of a hearing on the proposed plan.

C. If after the hearing the planning group recommends to the council the creation of the district as proposed or amended, the council may adopt by ordinance the proposed district requested by petition and as described by the plan.

History: Laws 1988, ch. 32, § 6; 1999, ch. 204, § 3.

3-63-7. Ordinance creating the district.

The ordinance to create a district shall include:

A. a list of improvements to be provided by the district;

B. the amount of benefit estimated to be conferred on each tract or parcel of real property;

C. a description of the real property or businesses to be assessed a business improvement benefit fee;

D. the assessment method to be used to finance the improvements of the district;

E. the amount of the assessment to be imposed on each real property owner; and

F. the terms of members, method of appointment and duties of the management committee for the district.

History: Laws 1988, ch. 32, § 7; 1999, ch. 204, § 4.

3-63-8. Repealed.

3-63-9. Planning group.

Upon the initiation of a proposed district, the council shall appoint a planning group consisting of not more than five members, not less than one of which shall be a business owner and not less than two of which shall be real property owners, subject to the assessment, located within the proposed district.

History: Laws 1988, ch. 32, § 9.

3-63-10. Notice and hearing.

A. The notice of public hearing required by the Business Improvement District Act shall contain:

(1) the time and place where the planning committee will hold a hearing on the proposed district and improvements;

(2) the estimated cost of improvements;

(3) the boundary of the district; and

(4) the recommended formula or the preliminary estimate of assessment of a business improvement benefit fee against each tract or parcel of real property or business.

B. The notice of the public hearing shall be mailed to the affected real property owners or business owners in the proposed district at least thirty days prior to the date of the hearing. In addition, notice shall be published once each week for two successive weeks in a newspaper of general circulation in the municipality in which the proposed district lies. The last publication shall be at least three days before the date of the hearing.

C. Any citizen, business owner or real property owner affected by the proposed district shall be given opportunity to appear at the public hearing and present his views on the creation of the district as outlined in the preliminary plan.

D. Upon completion of the hearing, the planning group shall present its recommendation on the creation of the proposed district. If the recommendation is against the creation of the district, the council may not adopt an ordinance creating the district.

History: Laws 1988, ch. 32, § 10; 1999, ch. 204, § 5.

3-63-11. Management committee; creation; duties.

A. The council, upon adoption of an ordinance creating a district, shall appoint a management committee that shall be responsible for the operation of the district in one of the following manners:

(1) the council shall appoint an existing downtown, community or central business district revitalization nonprofit corporation that operates within the boundaries of the district, to administer and implement the business improvement district plan; or

(2) the council shall appoint a management committee to administer and implement the business improvement district plan from nominees submitted by the owners of businesses and the owners of real property located in the district.

B. The management committee shall prepare and file annually with the council for its review and approval a budget and progress report for the district.

C. The management committee shall administer all improvements within the district.

D. The management committee shall recommend the annual assessment to be made by the council.

E. The management committee shall file annually with the council a report of the district activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expenses as of the end of the fiscal year and the benefits of the district's program to the real property and business owners of the district.

F. The management committee shall be a nonprofit corporation created pursuant to the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978].

History: Laws 1988, ch. 32, § 11; 1999, ch. 204, § 6.

3-63-12. Issuance and sale of bonds.

A. An incorporated municipality shall have power to issue business improvement district revenue bonds from time to time in its discretion to finance the undertaking of any improvement within a district or the exercise of any power, authorized or delegated under the Business Improvement District Act, including but not limited to the issuance of bonds to pay the costs of installation, acquisition, construction or reconstruction of any public facility within the district's area of operation. An incorporated municipality shall also have power to issue refunding bonds for the payment or retirement of bonds previously issued by it pursuant to the Business Improvement District Act. These bonds shall be made payable as to both principal and interest solely from the income, proceeds, revenues and funds of the incorporated municipality derived from or held in connection with its undertakings and carrying out of authorized improvements within a

district or activities under the Business Improvement District Act. Payment of these bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant or contribution from the federal government or other source in aid of any improvements within a district under the Business Improvement District Act and by a mortgage or pledge of any of the real property acquired within a district or otherwise pursuant to the authority granted by the Business Improvement District Act.

B. Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds. Bonds issued under the provisions of the Business Improvement District Act are declared to be issued for an essential public and governmental purpose and the bonds and interest and income from them shall be exempted from all taxes.

C. Bonds issued under this section shall be authorized by ordinance of the council if the authorization and planned issuance of the bonds was included in an improvement approved by the council and may be issued in one or more series and shall bear a date or dates, be payable upon demand or mature at a time or times, bear interest at a rate or rates not exceeding the legally authorized rate, be in a denomination or denominations, be in the form provided by the Supplemental Public Securities Act [6-14-8 to 6-14-11 NMSA 1978] as to registration, have rank or priority, be executed in a manner, be payable in a medium of payment at a place or places, be subject to the terms of redemption, with or without premium, be secured in a manner and have the other characteristics as may be provided by the resolution or trust indenture or mortgage issued pursuant thereto.

D. The bonds or any portion of the bonds may be sold at not less than par at public sales held after notice published prior to the sale in a newspaper having a general circulation in the area of operation and in any other medium of publication as the council may determine. The bonds may be exchanged for other bonds on the basis of par. The bonds may be sold to the federal government or to the state at private sale at not less than par, and, in the event less than all of the authorized principal amount of the bonds is sold to the federal government or to the state, the balance may be sold at private sale at not less than par at an interest cost to the incorporated municipality of not to exceed the interest cost to the incorporated municipality of the portion of the bonds sold to the federal government.

E. In case any of the public officials of the incorporated municipality whose signatures appear on any bonds or coupons issued under the Business Improvement District Act shall cease to be public officials before the delivery of the bonds, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officials had remained in office until delivery. Any bonds issued pursuant to the Business Improvement District Act shall be fully negotiable.

F. In any suit, action or proceeding involving the validity or enforceability of any bond issued under the Business Improvement District Act or the security therefor, any bond reciting in substance that it has been issued by the incorporated municipality in connection with authorized improvements within a district shall be conclusively deemed to have been issued for that purpose, and the project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of the Business Improvement District Act.

History: Laws 1988, ch. 32, § 12.

3-63-13. Annual assessment; special account.

A. The council, upon recommendation of the management committee, may annually assess a business improvement benefit fee as defined by the ordinance upon all real property owners and business owners, exclusive of:

(1) governmentally owned real property;

(2) residential real property that is not multifamily residential rental property with at least four units or homeowners associations of multifamily ownership properties;

(3) real property owned by a nonprofit corporation; or

(4) residential real property, located within an existing district, that became eligible for a business improvement benefit fee assessment after the district was created, unless the ordinance that created the district is amended to include the new business or property after notice is provided and a hearing is held in accordance with Section 3-63-10 NMSA 1978.

B. The council may make reasonable classifications regarding real property owners located within the district. The annual assessment may be based on the amount of space used for business purposes, street front footage, building or land square footage or such other factors or combination of factors as shall be deemed reasonable. The annual assessment shall be in addition to any other incorporated municipal-imposed license fees or other taxes, fees or other charges assessed or levied for the general benefit and use of the incorporated municipality.

C. All money received by the municipality from the district assessment shall be held in a special account for the benefit of the district.

D. In the case of a district that was created by a majority of real property owners, the amount owed by a commercial tenant shall be proportional to the square footage of space that the tenant rents but shall not be more than seventy-five percent of the total business improvement benefit fee assessed on the property. The property owner shall pay at least twenty-five percent of the business improvement benefit fee.

E. In the case of a district that was created by a majority of businesses, the business improvement benefit fee shall be collected at the same time that the real property owner's property taxes are collected. Businesses shall be assessed for one hundred percent of the business fee assessed to the property.

History: Laws 1988, ch. 32, § 13; 1999, ch. 204, § 7; 2009, ch. 172, § 3.

3-63-14. Assessments; terms of payment; liens; foreclosure.

A. The council shall by ordinance:

(1) establish the time and terms of paying the business improvement benefit fee or installments on the fee;

(2) set any rate or rates of interest upon deferred payments of the fee, which shall commence from the last date of publication of the ordinance ratifying the assessment;

(3) fix penalties to be charged for delinquent payment of an assessment;

(4) establish procedures and guidelines for the classification of property for the fee;

(5) set a reasonable charge to recover the municipality's expense for the assessment, collection and administration of the fee; and

(6) provide for the control and investment and order the expenditure of all money pertaining to the district.

B. The same interest rate shall be set for fees which are payable over the same time period. No rate or rates of interest in excess of twelve percent a year upon such deferred payments of the fee shall become effective unless the state board of finance or any successor thereof at any time approves a higher interest rate in writing based upon the determination of the state board of finance that the higher rate is reasonable under existing or anticipated bond market conditions, which approval shall be conclusive.

C. After the publication of the ordinance ratifying the assessment, as provided in the Business Improvement District Act, the assessment together with any interest or penalty accruing to the assessment is a lien upon the tract or parcel of land so assessed. Such a lien is coequal with the lien for general real property taxes and the lien of other improvement districts and all other liens, claims and titles. Unmatured installments are not deemed to be within the terms of any general covenant or warranty. All purchasers, mortgagees or encumbrancers of a tract or parcel of land so assessed shall hold the tract or parcel of land subject to the lien so created.

D. Within sixty days after the publication of the assessment roll for a district, the municipal clerk shall prepare, sign, attest with the municipal seal and record in the office of the county clerk a claim of lien for any unpaid amount due and assessed against a tract or parcel of land.

E. Any tract or parcel so assessed shall not be relieved from the assessment or lien by the sale of the tract or parcel of land for general taxes or any other assessment.

History: Laws 1988, ch. 32, § 14.

3-63-15. District review.

The council shall review each district every five years, and prior to the issuance of business improvement district revenue bonds other than those issued or committed during the first five-year period, to determine whether the district should remain in existence. If a majority of the council decides that the purpose for which the district was created has been served and that it is in the best interest for the district, the council shall terminate the district's status by ordinance or resolution and record this with the municipal clerk. If upon termination of a district's status there is an outstanding revenue bond obligation, the municipality shall continue to assess the business improvement benefit fee for the life of the outstanding bond.

History: Laws 1988, ch. 32, § 15.

3-63-16. Business improvement benefit fee distribution.

The business improvement benefit fee shall be distributed to the management committee on an annual basis pursuant to rules and guidelines established by the council and in accordance with the approved budget of the management committee.

History: Laws 1988, ch. 32, § 16.

ARTICLE 64
Development Incentives

3-64-1. Short title.

Chapter 3, Article 64 NMSA 1978 may be cited as the "Community Development Incentive Act".

History: Laws 1991, ch. 163, § 1; 2003, ch. 293, § 1; 2003, ch. 405, § 1.

3-64-2. Definitions.

A. As used in the Community Development Incentive Act:

(1) "commencement of commercial operations" occurs when the new business facility is first available for use by the taxpayer or first capable of being used by the taxpayer in the revenue-producing enterprise in which the taxpayer intends to use the new business facility;

(2) "facility" means any factory, mill, plant, refinery, warehouse, dairy, feedlot, building or complex of buildings located within the state, including the land on which the facility is located and all machinery, equipment and other real and tangible personal property located at or within the facility and used in connection with the operation of the facility;

(3) "new business facility" means a facility that satisfies the following requirements:

(a) the facility is employed by the taxpayer in the operation of a revenue-producing enterprise; the facility shall not be considered a "new business facility" in the hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person; if the taxpayer employs only a portion of the facility in the operation of a revenue-producing enterprise and leases another portion of the facility to another person or does not otherwise use such other portions in the operation of a revenue-producing enterprise, the portion employed by the taxpayer in the operation of a revenue-producing enterprise shall be considered a "new business facility" if the requirements of Subparagraphs (b), (c) and (d) of this paragraph are satisfied;

(b) the facility is acquired by or leased to the taxpayer on or after July 1, 2003; provided, the facility shall be deemed to have been acquired by or leased to the taxpayer on or after the specified date if the transfer of title to the taxpayer, the transfer of possession pursuant to a binding contract to transfer title to the taxpayer or the commencement of the term of the lease to the taxpayer occurs on or after that date or if the facility is constructed, erected or installed by or on behalf of the taxpayer, the construction, erection or installation is completed on or after that date;

(c) if the facility was acquired by the taxpayer from another person and the facility was employed, immediately prior to the transfer of title to the facility to the taxpayer or to the commencement of the term of the lease of the facility to the taxpayer, by any other person in the operation of a revenue-producing enterprise, the taxpayer does not continue the operation of the same or a substantially identical revenue-producing enterprise at the facility; and

(d) the facility is not a replacement business facility;

(4) "new business facility employee" means a person employed by the taxpayer in the operation of a new business facility during the taxable year for which the exemption authorized by Section 3-64-3 NMSA 1978 is granted; a person shall be

considered to have been so employed if the person performs duties in connection with the operation of the new business facility on:

(a) a regular, full-time basis;

(b) a part-time basis if the person is customarily performing the described duties at least twenty hours per week throughout the taxable year; or

(c) a seasonal basis if the person performs the described duties for substantially all of the season customary for the position in which the person is employed.

The number of new business facility employees during any property tax year shall be determined by dividing by twelve the sum of the number of new business facility employees on the last business day of each month of that year. If the new business facility is in operation for less than the entire property tax year, the number of new business facility employees shall be determined by dividing the sum of the number of new business facility employees on the last business day of each full calendar month during the portion of the property tax year during which the new business facility was in operation by the number of full calendar months during that period;

(5) "new business facility investment" means the value of the real and tangible personal property, except inventory or property held for sale to customers in the ordinary course of the taxpayer's business, that constitutes the new business facility or that is used by the taxpayer in the operation of the new business facility during the property tax year for which the exemption authorized by Section 3-64-3 NMSA 1978 is granted and the value of that property during the year shall be:

(a) its original cost if owned by the taxpayer; or

(b) eight times the net annual rental rate if leased by the taxpayer; the "net annual rental rate" is the annual rental rate paid by the taxpayer, less any annual rental rate received by the taxpayer from subrentals;

(6) "related taxpayer" means:

(a) a corporation, partnership, limited liability company, trust or association controlled by the taxpayer;

(b) an individual, corporation, limited liability company, partnership, trust or association under the control of the taxpayer; or

(c) a corporation, limited liability company, partnership, trust or association controlled by an individual, corporation, limited liability company, partnership, trust or association under the control of the taxpayer.

For the purposes of this paragraph, "control of a corporation" means ownership, directly or indirectly, of stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and at least eighty percent of all other classes of stock of the corporation; "control of a partnership, limited liability company or association" means ownership of at least eighty percent of the capital or profits interest in such partnership, limited liability company or association; and "control of a trust" means ownership, directly or indirectly, of at least eighty percent of the beneficial interest in the principal or income of the trust;

(7) "replacement business facility" means a facility as defined in Paragraph (3) of this subsection and referred to in this paragraph as a "new facility" that replaces another facility, referred to in this paragraph as an "old facility", located within the state in which the taxpayer or a related taxpayer previously operated but discontinued operating on or before the close of the first property tax year in which the exemption authorized by Section 3-64-3 NMSA 1978 is claimed; a new facility shall be deemed to replace an old facility if the following conditions are met:

(a) the old facility was operated by the taxpayer or a related taxpayer for more than three full property tax years out of the five property tax years next preceding the property tax year in which commencement of commercial operations occurs at the new facility; and

(b) the old facility was employed by the taxpayer or a related taxpayer in the operation of a revenue-producing enterprise and the taxpayer continues the operation of the same or a substantially identical revenue-producing enterprise at the new facility.

Notwithstanding the provisions of Subparagraph (a) of this paragraph, a facility shall not be considered a "replacement business facility" if the taxpayer's investment in the new facility exceeds three million dollars ($3,000,000) or, if less, three hundred percent of the investment in the old facility by the taxpayer or related taxpayer. The investment in the new facility and in the old facility shall be determined in the manner provided in Paragraph (5) of this subsection;

(8) "revenue-producing enterprise" means:

(a) the production, assembly, fabrication, manufacture or processing of any agricultural, mineral or manufactured product;

(b) the storage, warehousing, distribution or sale of any products of agriculture, mining or manufacturing;

(c) the feeding of livestock at a feedlot;

(d) the operation of laboratories or other facilities for scientific, agricultural animal husbandry or industrial research development;

(e) the generation of electricity;

(f) the performance of services of any type;

(g) the administrative management of any of the activities listed in Subparagraphs (a) through (f) of this paragraph; or

(h) any combination of any of the activities referred to in Subparagraphs (a) through (g) of this paragraph; and

(9) "same or a substantially identical revenue-producing enterprise" means a revenue-producing enterprise in which the products produced or sold, the services performed or the activities conducted are the same in character and use and are produced, sold, performed or conducted in the same manner and to or for the same types of customers as the products, services or activities produced, sold, performed or conducted in another revenue-producing enterprise.

B. The new business facility investment shall be determined by dividing by twelve the sum of the total value of such property on the last business day of each calendar month of the property tax year. If the new business facility is in operation for less than an entire property tax year, the new business facility investment shall be determined by dividing the sum of the total value of the property on the last business day of each full calendar month during the portion of the property tax year during which the new business facility was in operation by the number of full calendar months during that period.

C. If a facility that does not constitute a new business facility is expanded by the taxpayer, the expansion shall be considered a separate facility eligible for the exemption authorized by Section 3-64-3 NMSA 1978 if:

(1) the taxpayer's investment in the expansion exceeds one million dollars ($1,000,000) or, if less, one hundred percent of its investment in the original facility prior to expansion; and

(2) the expansion otherwise constitutes a new business facility.

The taxpayer's investment in the expansion and in the original facility prior to expansion shall be determined in the manner provided in Paragraph (5) of Subsection A of this section.

D. If a facility that does not constitute a new business facility is expanded by the taxpayer, the expansion shall be considered a separate facility for purposes of the exemption granted by Section 3-64-3 NMSA 1978 if:

(1) the expansion results in the employment of ten or more new business facility employees over and above the average number of employees employed in the

county or municipality granting the exemption by the taxpayer during the twelve months immediately prior to the expansion, computed pursuant to Paragraph (4) of Subsection A of this section; and

(2) the expansion otherwise constitutes a new business facility.

History: Laws 1991, ch. 163, § 2; 2003, ch. 293, § 2; 2003, ch. 405, § 2.

3-64-3. Exemption of certain commercial personal property from property tax by local bodies.

A. The governing body of a county or a municipality may by a majority vote of the members elected to the governing body adopt a resolution exempting commercial personal property of a new business facility located in the county or municipality from the imposition of any property tax on commercial personal property authorized to be imposed by the respective governing body, subject to the limitations of Subsection B of this section.

B. The exemption authorized by Subsection A of this section may be for up to one hundred percent of the value for property taxation purposes of the property exempted.

C. The exemption authorized by Subsection A of this section may be for any period of time not to exceed twenty years. The effective date of any exemption shall be January 1 of the property tax year in which the new business facility commences commercial operations.

History: Laws 1991, ch. 163, § 3; 2003, ch. 293, § 3; 2003, ch. 405, § 3.

3-64-4. Transmittal of exemption resolution; action of assessor.

A. After a resolution of exemption of personal property is adopted by a governing body, copies of it shall be certified by the clerk of the entity; one copy shall be delivered immediately to the county assessors; and one copy shall be sent to the taxation and revenue department.

B. Upon receipt of a certified copy of an exemption resolution, the county assessor of the county in which the exempted property is located shall take appropriate action to enter the exemption in the property tax schedule for the property tax year in which the exemption becomes effective and shall also enter the exemption as appropriate for subsequent years during which the exemption remains in effect.

History: Laws 1991, ch. 163, § 4.

3-64-5. Expiration of exemption; action of assessor.

An exemption granted under Section 3-64-3 NMSA 1978 shall automatically terminate on the last day of the property tax year in which it expires pursuant to the exemption resolution or on the last day of the property tax year in which a new business facility ceases commercial operations, whichever occurs first.

History: Laws 1991, ch. 163, § 5; 2003, ch. 293, § 4; 2003, ch. 405, § 4.

ARTICLE 65
Minor League Baseball Stadium Funding

3-65-1. Short title.

Sections 1 through 11 [3-65-1 to 3-65-10 NMSA 1978] of this act may be cited as the "Minor League Baseball Stadium Funding Act".

History: Laws 2001, ch. 231, § 1.

3-65-2. Findings and purpose.

A. The legislature finds that:

(1) the costs of land for and of designing, purchasing, constructing, remodeling, rehabilitating, renovating, improving, equipping, furnishing, operating and maintaining minor league baseball stadiums have increased to a level that local financial resources are inadequate to meet all of the costs;

(2) functional and modern minor league baseball stadiums are essential in retaining and attracting minor league baseball teams to the state; and

(3) even after utilizing local financial resources, municipalities need additional means to provide complete funding for functional and modern minor league baseball stadiums.

B. The purpose of the Minor League Baseball Stadium Funding Act is to provide an additional method of accessing the capital markets with the assistance of the New Mexico finance authority to meet the need for a complete funding package for functional and modern minor league baseball stadiums.

History: Laws 2001, ch. 231, § 2.

3-65-3. Definitions.

As used in the Minor League Baseball Stadium Funding Act:

A. "authority" means the New Mexico finance authority;

B. "chief executive officer" means the mayor or chief administrative officer of a municipality when designated in writing by the mayor to perform duties required by the Minor League Baseball Stadium Funding Act;

C. "governing body" means the council, commission or other group of elected officials of a municipality in which is vested the legislative authority of a municipality;

D. "loan" means a loan or other financial arrangement pursuant to which money is lent or otherwise made available by the authority to a municipality to pay for some or all of the costs of land for and designing, purchasing, constructing, remodeling, rehabilitating, renovating, improving, equipping and furnishing a minor league baseball stadium;

E. "loan payments" means all payments of principal, interest, premiums, charges, expenses or other obligations required to be paid by a municipality to the authority to repay the loan;

F. "minor league baseball stadium" means a stadium, including land, buildings and related improvements, primarily designed and intended for use by minor league baseball teams as a venue for playing baseball games;

G. "municipality" means a municipality located in a class A county with a population of more than two hundred thousand according to the 1990 federal decennial census;

H. "stadium surcharge" means a surcharge on tickets, parking, souvenirs, concessions, programs, advertising, merchandise, corporate suites or boxes, broadcast revenues and all other products or services sold at or related to the minor league baseball stadium or related to activities occurring at the stadium;

I. "vendor" means every person, corporation, partnership or other entity, including a division or department of a municipality, providing products or services sold at or related to the minor league baseball stadium; and

J. "vendor contract" means a contract, agreement or other written arrangement between a municipality and a vendor pursuant to which the vendor provides products or services sold at or related to the minor league baseball stadium.

History: Laws 2001, ch. 231, § 3.

3-65-4. Authorization of surcharge; use of proceeds.

A. A municipality may impose a stadium surcharge by majority vote of the governing body. If a stadium surcharge has been imposed, the municipality shall include a stadium surcharge in each vendor contract, and each vendor contract shall be signed by the chief executive officer.

B. Before establishing the amount of the stadium surcharge to be included in each vendor contract, the municipality shall notify the authority in writing of the proposed amount of the loan requested for the minor league baseball stadium and of the proposed amount of the surcharge to be included in each vendor contract. The authority shall review the proposed amount of the stadium surcharge and shall make a written recommendation to a municipality setting forth the minimum amount of the surcharge to be set forth in the loan and related documents. The minimum amount of the stadium surcharge shall never be less than five percent and may be any higher percentage recommended by the authority or otherwise established by the municipality.

C. After receipt of the written recommendation from the authority, a municipality shall establish the amount of the stadium surcharge to be included in each vendor contract, provided that the amount of the surcharge to be set forth in the loan and related documents shall be at least the minimum amount recommended by the authority.

D. The receipts from the stadium surcharge may be used by the municipality for all or any portion of:

(1) loan payments;

(2) costs of constructing, renovating, operating, maintaining or improving the minor league baseball stadium; or

(3) costs of collecting and otherwise administering the surcharge.

E. A municipality shall establish a fund for construction, renovation, operation, maintenance and improvement of a minor league baseball stadium for deposit of all receipts from the stadium surcharge that exceed the required loan payments, and all receipts deposited in that fund shall be used for such purposes and may also be used for the costs of collection and otherwise administering the surcharge.

History: Laws 2001, ch. 231, § 4.

3-65-5. Collection of surcharge; remittance to the municipality.

A. Every vendor shall collect the stadium surcharge on behalf of the municipality and shall act as a trustee therefor.

B. The stadium surcharge shall be collected by vendors from the users of products or services subject to the surcharge. Users shall be charged separately for the stadium surcharge from the cost of the product or service subject to the surcharge or the vendor shall institute accounting controls or procedures sufficient to identify the amount of the surcharge owed to a municipality for each sale, transaction or exchange subject to the surcharge.

C. All receipts from the stadium surcharge shall be remitted by vendors to the treasurer of the municipality no later than the tenth day of the month following collection of the receipts. The treasurer of the municipality shall deposit the receipts in a separate account and shall act as trustee of the receipts on behalf of the authority so long as any loan is unpaid.

History: Laws 2001, ch. 231, § 5.

3-65-6. Audits.

A municipality shall provide by ordinance a method to either audit or otherwise ensure that vendors subject to the stadium surcharge collect and remit to the treasurer of the municipality the full amount of the surcharge receipts due to the municipality.

History: Laws 2001, ch. 231, § 6.

3-65-7. Enforcement; penalties.

A. An action to enforce the imposition and collection of a stadium surcharge by a vendor may be brought by a municipality.

B. A district court may issue an appropriate judgment, order or remedy to enforce the provisions of a vendor contract.

C. Any judgment issued by a district court requiring stadium surcharge receipts to be paid to a municipal treasurer by a vendor shall also award interest at twelve percent on past-due amounts, attorney fees and costs to a municipality.

History: Laws 2001, ch. 231, § 7.

3-65-8. Authorization of project.

A. Pursuant to the provisions of Section 6-21-6 NMSA 1978, the legislature authorizes the authority to make a loan from the public project revolving fund to a municipality to acquire land for and to design, purchase, construct, remodel, renovate, rehabilitate, improve, equip or furnish a minor league baseball stadium on terms and conditions established by the authority.

B. Prior to receiving the loan, the governing body shall approve the loan and related documents by an ordinance to be adopted by a majority of the members of the governing body. The ordinance shall pledge the stadium surcharge receipts to make the loan payments. In addition to pledging stadium surcharge receipts for making loan payments, the ordinance shall pledge legally available gross receipts tax revenues distributed to a municipality pursuant to Section 7-1-6.4 or 7-1-6.12 NMSA 1978 in an amount satisfactory to the authority and in an amount at least sufficient to make the loan payments. No action shall be brought questioning the legality of the pledge of receipts

and revenues, the ordinance, the loan, the proceedings, the stadium surcharge or any other matter concerning the loan after thirty days from the date of publication of the ordinance approving the loan and related documents and pledging stadium surcharge receipts and gross receipts tax revenues of the municipality to make the loan payments.

C. The legislature or a municipality shall not repeal, amend or otherwise modify any law or ordinance that adversely affects or impairs the stadium surcharge or any loan from the authority secured by a pledge of the stadium surcharge and gross receipts tax revenues, unless the loan has been paid in full or provisions have been made for full payment.

History: Laws 2001, ch. 231, § 8.

3-65-9. Cumulative and complete authority.

The Minor League Baseball Stadium Funding Act shall be deemed to provide an additional and alternative method for obtaining funding for a minor league baseball stadium, establishing the stadium surcharge and completing the acts authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws of the state, without reference to such other laws of the state, and shall constitute full authority for the exercise of powers granted herein, including but not limited to the pledging of stadium surcharge receipts and gross receipts tax revenues by the governing body to make loan payments to the authority.

History: Laws 2001, ch. 231, § 9.

3-65-10. Liberal interpretation.

The Minor League Baseball Stadium Funding Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes of the act.

History: Laws 2001, ch. 231, § 10.

ARTICLE 66
Municipal Event Center Funding

3-66-1. Short title.

Sections 3 through 11 [3-66-1 to 3-66-11 NMSA 1978] of this act may be cited as the "Municipal Event Center Funding Act".

History: Laws 2005, ch. 351, § 3.

3-66-2. Findings and purpose.

A. The legislature finds that:

(1) the costs of acquiring land for and of designing, purchasing, constructing, remodeling, rehabilitating, renovating, improving, equipping, furnishing, operating and maintaining municipal event centers have increased to a level that local financial resources are inadequate to meet all of the costs;

(2) functional and modern municipal event centers are essential in retaining and attracting cultural, educational, entertainment and sporting events to municipalities and the state and are essential for the economic development and prosperity of municipalities and the state; and

(3) even after using local financial resources, municipalities need additional means to provide complete funding for functional and modern municipal event centers.

B. The purpose of the Municipal Event Center Funding Act is to provide an additional method of accessing the capital markets to meet the need for a complete funding package for functional and modern municipal event centers.

History: Laws 2005, ch. 351, § 4.

3-66-3. Definitions.

As used in the Municipal Event Center Funding Act:

A. "bonds" means revenue bonds issued by a municipality to pay for some or all of the costs of acquiring land for and designing, purchasing, constructing, remodeling, rehabilitating, renovating, improving, equipping and furnishing a municipal event center;

B. "chief executive officer" means the mayor or chief administrative officer of a municipality when designated in writing by the mayor to perform duties required by the Municipal Event Center Funding Act;

C. "debt service payments" means rentals, receipts, fees or other charges paid to a municipality for the rights to use, operate or manage a municipal event center by any person, corporation or other entity;

D. "event center revenues" means rentals, receipts, fees or other charges imposed by and paid to a municipality pursuant to the Municipal Event Center Funding Act for the rights to use, operate or manage a municipal event center by any person, corporation or other entity;

E. "event center surcharge" means a surcharge to be included in each vendor contract on tickets, parking, souvenirs, concessions, programs, advertising,

merchandise, corporate suites or boxes, broadcast revenues and all other products or services sold at or related to the municipal event center or related to activities occurring at the event center;

F. "governing body" means the council, commission or other group of elected officials of a municipality in which is vested the legislative authority of a municipality;

G. "municipal event center" means an event center providing seating for a minimum of four thousand people, including land, buildings and related improvements, primarily designed and intended for cultural, educational, entertainment and sporting events, but does not include a civic or convention center;

H. "municipality" means a political subdivision of the state, organized and operating under a home-rule charter or the Municipal Code;

I. "vendor" means every person, corporation, partnership or other entity, including a division or department of a municipality, providing products or services sold at or related to the municipal event center; and

J. "vendor contract" means a contract, agreement or other written arrangement between a municipality and a vendor pursuant to which the vendor provides products or services sold at or related to the municipal event center.

History: Laws 2005, ch. 351, § 5.

3-66-4. Authorization of surcharge and other fees; use of proceeds; transfer.

A. A municipality in which a municipal event center is located may establish by ordinance an event center surcharge of not less than five percent of each vendor contract entered into by that municipality. As otherwise established by that municipality, the event center surcharge may be any percentage greater than five percent of each vendor contract entered into by the municipality.

B. A municipality shall include an event center surcharge in the terms of each vendor contract into which it enters. A chief executive officer of a municipality shall sign each vendor contract into which that municipality enters.

C. A municipality may establish charges and fees deemed necessary by the governing body or the chief executive officer for the use, operation or management of a municipal event center by a person, corporation or other entity.

D. From the proceeds of the event center surcharge, an amount equal to two percent of each vendor contract entered into by the municipality shall be transferred monthly by the municipality that established the event center surcharge to the tax administration suspense fund.

E. A municipality shall establish a fund for construction, renovation, operation, equipment, maintenance and improvement of a municipal event center for deposit of all event center revenues and event center surcharge proceeds that exceed the required debt service payments, except for event center surcharge proceeds transferred to the tax administration suspense fund pursuant to this section. Money in the fund may be used to pay:

(1) debt service payments;

(2) costs of operating a municipal event center during the life of the bonds issued by the municipality pursuant to the Municipal Event Center Funding Act;

(3) costs of constructing, renovating, equipping, maintaining or improving that municipal event center; or

(4) costs of collecting or administering the event center surcharge.

History: Laws 2005, ch. 351, § 6.

3-66-5. Collection of event center surcharge; remittance to municipality.

A. Upon the sale of a product or service subject to the event center surcharge, a vendor shall collect the event center surcharge from the purchaser of that product or service on behalf of the municipality and shall act as a trustee for the surcharge receipts. A purchaser of a product or service subject to the event center surcharge shall be charged separately for the event center surcharge from the cost of the product or service, or the vendor shall institute accounting controls or procedures sufficient to identify the amount of the surcharge owed to a municipality for each sale, transaction or exchange subject to the surcharge. Receipts from the event center surcharge shall be remitted by a vendor to the treasurer of the municipality in which the municipal event center at which the vendor sold the product or service is located no later than the tenth day of the month following the collection of the surcharge.

B. A treasurer of a municipality shall deposit municipal event center revenues and event center surcharge receipts in a separate account and act as trustee of the revenue on behalf of bondholders pursuant to the Municipal Event Center Funding Act so long as any bonds remain outstanding.

History: Laws 2005, ch. 351, § 7.

3-66-6. Audits.

A municipality shall provide by ordinance a method to audit or otherwise ensure that vendors subject to the event center surcharge collect and remit to the treasurer of the municipality the full amount of the surcharge receipts due to the municipality.

History: Laws 2005, ch. 351, § 8.

3-66-7. Enforcement; penalties.

A. An action to enforce the imposition and collection of an event center surcharge by a vendor may be brought by a municipality.

B. A district court may issue an appropriate judgment, order or remedy to enforce the provisions of a vendor contract.

C. A judgment issued by a district court requiring event center surcharge receipts to be paid to a municipal treasurer by a vendor shall also award interest at an annual rate of twelve percent on past due amounts, attorney fees and costs to a municipality.

History: Laws 2005, ch. 351, § 9.

3-66-8. Issuance of bonds.

A. A municipality may issue revenue bonds, in accordance with the procedures set forth in Sections 3-31-3 through 3-31-7 NMSA 1978, to acquire land for and to design, purchase, construct, remodel, renovate, rehabilitate, improve, equip or furnish a municipal event center.

B. Revenue bonds issued by a municipality may be secured by event center revenues, event center surcharge receipts or gross receipts tax revenues distributed to that municipality pursuant to Section 7-1-6.4 or 7-1-6.12 NMSA 1978.

C. An action shall not be brought questioning the legality of the pledge of event center revenues, event center surcharge receipts or gross receipts tax revenues, bonds issued pursuant to the Municipal Event Center Funding Act, issuance of those bonds, an event center surcharge included in a vendor contract or any other matter concerning the bonds after thirty days from the date of publication of the ordinance authorizing issuance of the bonds and the pledging of event center receipts, event center surcharge receipts or gross receipts tax revenues of a municipality to make debt service payments.

D. The legislature or a municipality shall not repeal, amend or otherwise modify any law or ordinance that adversely affects or impairs the event center surcharge or any bonds secured by a pledge of the event center revenues, event center surcharge receipts or gross receipts tax revenues, unless the bonds have been paid in full or provisions have been made for full payment.

History: Laws 2005, ch. 351, § 10.

3-66-9. Cumulative and complete authority.

The Municipal Event Center Funding Act shall be deemed to provide an additional and alternative method for obtaining funding for a municipal event center, establishing and collecting event center revenues and the event center surcharge and completing the acts authorized pursuant to that act, and shall be regarded as supplemental and additional to powers conferred by other laws of the state and shall constitute full authority for the exercise of powers granted pursuant to the Municipal Event Center Funding Act.

History: Laws 2005, ch. 351, § 11.

3-66-10. Liberal interpretation.

The Municipal Event Center Funding Act shall be liberally construed to carry out its purpose.

History: Laws 2005, ch. 351, § 12.

3-66-11. Severability.

If any part or application of the Municipal Event Center Funding Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

History: Laws 2005, ch. 351, § 13.