

HOUSE FLOOR SUBSTITUTE FOR
HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 371 & 355

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO PROPERTY; LIMITING THE ISSUANCE OF GENERAL
OBLIGATION BONDS FOR INFRASTRUCTURE IMPROVEMENTS IN PUBLIC
IMPROVEMENT DISTRICTS; REQUIRING AN APPLICATION FOR FORMATION
OF A PUBLIC IMPROVEMENT DISTRICT TO BE SUBMITTED TO THE
MUNICIPALITY OR COUNTY IN WHICH THE DISTRICT IS TO BE LOCATED;
REQUIRING NOTICE TO BE PROVIDED TO A PURCHASER OF PROPERTY IN A
PUBLIC IMPROVEMENT DISTRICT; PROVIDING FOR REMEDIES; AMENDING
AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 5-11-1 NMSA 1978 (being Laws 2001,
Chapter 305, Section 1) is amended to read:

"5-11-1. SHORT TITLE.--~~[Sections 1 through 27 of this~~
~~act]~~ Chapter 5, Article 11 NMSA 1978 may be cited as the

"Public Improvement District Act".

.193938.1

underscoring material = new
[bracketed material] = delete

1 SECTION 2. Section 5-11-2 NMSA 1978 (being Laws 2001,
2 Chapter 305, Section 2, as amended) is amended to read:

3 "5-11-2. DEFINITIONS.--As used in the Public Improvement
4 District Act:

5 A. "allowable base" means the sum of the appraised
6 value, not including the value of public infrastructure
7 improvements, of:

8 (1) taxable property in a district that is
9 owned by persons other than the applicant or the applicant's
10 related entities;

11 (2) commercial, industrial or retail property
12 in a district that is owned by the applicant or the applicant's
13 related entities for which a certificate of completion has been
14 issued; and

15 (3) all other taxable property in a district
16 not described in Paragraphs (1) and (2) of this subsection, to
17 the extent that its appraised value is less than or equal to
18 the appraised value of property described in Paragraph (1) of
19 this subsection;

20 B. "applicant" means a person that applies for the
21 formation of a district pursuant to the Public Improvement
22 District Act;

23 [A*] C. "clerk" means the clerk of the municipality
24 or county, or any person appointed by the district board to be
25 the district clerk pursuant to Section 5-11-6 NMSA 1978;

.193938.1

1 ~~[B.]~~ D. "county" means a county that forms a public
2 improvement district pursuant to the Public Improvement
3 District Act in an unincorporated area or in an incorporated
4 area with the municipality's consent;

5 ~~[G.]~~ E. "debt service" means the principal of,
6 interest on and premium, if any, on the bonds, when due,
7 whether at maturity or prior redemption; the fees and costs of
8 registrars, trustees, paying agents or other agents necessary
9 to handle the bonds; and the costs of credit enhancement or
10 liquidity support;

11 ~~[D.]~~ F. "development agreement" means an agreement
12 between a property owner or developer and the county,
13 municipality or district, concerning the improvement of
14 specific property within the district, which agreement may be
15 used to establish obligations of the owner or developer, the
16 county or municipality or the district concerning the zoning,
17 subdivision, improvement, impact fees, financial
18 responsibilities and other matters relating to the development,
19 improvement and use of real property within a district;

20 ~~[E.]~~ G. "district" means a public improvement
21 district formed pursuant to the Public Improvement District Act
22 by a municipality or by a county in an unincorporated area or
23 in an incorporated area with the municipality's consent;

24 ~~[F.]~~ H. "district board" means the board of
25 directors of the district, which shall be composed of members

.193938.1

underscored material = new
[bracketed material] = delete

1 of the governing body, ex officio, or, at the option of the
2 governing body, five directors appointed by the governing body
3 of the municipality or county in which the district is located,
4 until replaced by elected directors, which shall occur not
5 later than six years after the date on which the resolution
6 establishing the district is enacted, as provided in Section
7 5-11-9 NMSA 1978;

8 ~~[G.]~~ I. "election" means an election held in
9 compliance with the provisions of Sections 5-11-6 and 5-11-7
10 NMSA 1978;

11 ~~[H.]~~ J. "enhanced services" means public services
12 provided by a municipality or county within the district at a
13 higher level or to a greater degree than otherwise available to
14 the land located in the district from the municipality or
15 county, including such services as public safety, fire
16 protection, street or sidewalk cleaning or landscape
17 maintenance in public areas. "Enhanced services" does not
18 include the basic operation and maintenance related to
19 infrastructure improvements financed by the district pursuant
20 to the Public Improvement District Act;

21 ~~[I.]~~ K. "general plan" means the general plan
22 described in Section 5-11-3 NMSA 1978, as the plan may be
23 amended from time to time;

24 ~~[J.]~~ L. "governing body" means the body or board
25 that by law is constituted as the governing body of the

.193938.1

1 municipality or county in which the public improvement district
2 is located;

3 ~~[K.]~~ M. "municipality" means an incorporated city,
4 village or town;

5 ~~[L.]~~ N. "owner" means:

6 (1) the person who is listed as the owner of
7 real property in the district on the current property tax
8 assessment roll in effect at the time that the action,
9 proceeding, hearing or election has begun. For purposes of
10 voting in elections held pursuant to the Public Improvement
11 District Act, when the owner of record title is a married
12 person, only one spouse in whose name title is held may vote at
13 such election. Where record title is held in more than one
14 name, each owner may vote the number of fractions of acres
15 represented by the owner's legal interest or proportionate
16 share of and in the lands within the district;

17 (2) the administrator or executor of an estate
18 holding record title to land within the district;

19 (3) the guardian of a minor or incompetent
20 person holding record title to land within the district,
21 appointed and qualified under the laws of the state;

22 (4) an officer of a corporation holding record
23 title to land within the district, which officer has been
24 authorized by resolution of the corporation's board of
25 directors to act with respect to such land;

.193938.1

1 (5) the general partner of a partnership
2 holding record title to land within the district;

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

5 (7) the manager or member of a limited
6 liability company holding record title to land within the
7 district who has been authorized to represent the company;

8 O. "person" means any individual, estate, trust,
9 receiver, cooperative association, club, corporation, company,
10 firm, partnership, limited liability company, joint venture,
11 syndicate or other association;

12 [~~M-~~] P. "public infrastructure improvements" means
13 all improvements listed in this subsection and includes both
14 on-site improvements and off-site improvements that directly or
15 indirectly benefit the district. Such improvements include
16 necessary or incidental work, whether newly constructed,
17 renovated or existing, and all necessary or desirable
18 appurtenances. "Public infrastructure improvements" includes:

19 (1) sanitary sewage systems, including
20 collection, transport, storage, treatment, dispersal, effluent
21 use and discharge;

22 (2) drainage and flood control systems,
23 including collection, transport, diversion, storage, detention,
24 retention, dispersal, use and discharge;

25 (3) water systems for domestic, commercial,

.193938.1

1 office, hotel or motel, industrial, irrigation, municipal or
2 fire protection purposes, including production, collection,
3 storage, treatment, transport, delivery, connection and
4 dispersal;

5 (4) highways, streets, roadways, bridges,
6 crossing structures and parking facilities, including all areas
7 for vehicular use for travel, ingress, egress and parking;

8 (5) trails and areas for pedestrian,
9 equestrian, bicycle or other nonmotor vehicle use for travel,
10 ingress, egress and parking;

11 (6) pedestrian malls, parks, recreational
12 facilities and open space areas for the use of members of the
13 public for entertainment, assembly and recreation;

14 (7) landscaping, including earthworks,
15 structures, lakes and other water features, plants, trees and
16 related water delivery systems;

17 (8) public buildings, public safety facilities
18 and fire protection and police facilities;

19 (9) electrical generation, transmission and
20 distribution facilities;

21 (10) natural gas distribution facilities;

22 (11) lighting systems;

23 (12) cable or other telecommunications lines
24 and related equipment;

25 (13) traffic control systems and devices,

.193938.1

underscored material = new
~~[bracketed material] = delete~~

1 including signals, controls, markings and signage;

2 (14) school sites and facilities with the
3 consent of the governing board of the public school district
4 for which the site or facility is to be acquired, constructed
5 or renovated;

6 (15) library and other public educational or
7 cultural facilities;

8 (16) equipment, vehicles, furnishings and
9 other personalty related to the items listed in this
10 subsection; and

11 (17) inspection, construction management and
12 program management costs;

13 [~~N.~~] Q. "public infrastructure purpose" means:

14 (1) planning, design, engineering,
15 construction, acquisition or installation of public
16 infrastructure, including the costs of applications, impact
17 fees and other fees, permits and approvals related to the
18 construction, acquisition or installation of such
19 infrastructure;

20 (2) acquiring, converting, renovating or
21 improving existing facilities for public infrastructure,
22 including facilities owned, leased or installed by an owner;

23 (3) acquiring interests in real property or
24 water rights for public infrastructure, including interests of
25 an owner;

.193938.1

1 (4) establishing, maintaining and replenishing
2 reserves in order to secure payment of debt service on bonds;

3 (5) funding and paying from bond proceeds
4 interest accruing on bonds for a period not to exceed three
5 years from their date of issuance;

6 (6) funding and paying from bond proceeds
7 fiscal, financial and legal consultant fees, trustee fees,
8 discount fees, district formation and election costs and all
9 costs of issuance of bonds issued pursuant to the Public
10 Improvement District Act, including, but not limited to, fees
11 and costs for bond counsel, financial advisors, consultants and
12 underwriters, costs of obtaining credit ratings, bond insurance
13 premiums, fees for letters of credit and other credit
14 enhancement costs and printing costs;

15 (7) providing for the timely payment of debt
16 service on bonds or other indebtedness of the district;

17 (8) refinancing any outstanding bonds with new
18 bonds, including through the formation of a new public
19 improvement district; and

20 (9) incurring expenses of the district
21 incident to and reasonably necessary to carry out the purposes
22 specified in this subsection;

23 R. "related entities" means two or more entities
24 that are owned in an amount greater than fifty percent by the
25 same person, either directly or through one or more persons;

.193938.1

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

5 [~~P-~~] T. "special levy" means a levy imposed against
6 real property within a district that may be apportioned
7 according to direct or indirect benefits conferred upon
8 affected real property, as well as acreage, front footage, the
9 cost of providing public infrastructure for affected real
10 property, or other reasonable method, as determined by the
11 governing body or district board, as applicable; and

12 [~~Q-~~] U. "treasurer" means the treasurer of the
13 governing body or the person appointed by the district board as
14 the district treasurer pursuant to Section 5-11-6 NMSA 1978."

15 **SECTION 3.** Section 5-11-3 NMSA 1978 (being Laws 2001,
16 Chapter 305, Section 3, as amended) is amended to read:

17 "5-11-3. RESOLUTION DECLARING INTENTION TO FORM
18 DISTRICT.--

19 A. If the public convenience and necessity require,
20 and on presentation of an application required by Section 10 of
21 this 2013 act that is supported by a petition signed by the
22 owners of at least twenty-five percent of the real property by
23 assessed valuation proposed to be included in the district, the
24 governing body may adopt a resolution declaring its intention
25 to form a public improvement district to include contiguous or

.193938.1

underscored material = new
[bracketed material] = delete

1 noncontiguous property, which shall be wholly within the
 2 corporate boundaries of the municipality or county. If the
 3 governing body fails to act within ninety days following
 4 presentation of a petition to create a public improvement
 5 district, the petition shall be deemed to have been accepted by
 6 the governing body, which shall adopt a resolution and hold a
 7 public hearing pursuant to this section. The resolution shall
 8 state the following:

9 (1) the area or areas to be included in the
 10 district;

11 (2) the purposes for which the district is to
 12 be formed;

13 (3) that a general plan for the district is on
 14 file with the clerk that includes a map depicting the
 15 boundaries of the district and the real property proposed to be
 16 included in the district, a general description of anticipated
 17 improvements and their locations, general cost estimates,
 18 proposed financing methods and anticipated tax levies, special
 19 levies or charges, and that may include possible alternatives,
 20 modifications or substitutions concerning locations,
 21 improvements, financing methods and other information provided
 22 in the general plan;

23 (4) the rate, method of apportionment and
 24 manner of collection of a special levy, if one is proposed, in
 25 sufficient detail to enable each owner or resident within the

.193938.1

underscored material = new
 [bracketed material] = delete

1 district to estimate the maximum amount of the proposed levy;

2 (5) a notice of public hearing in conformity
3 with the requirements of Section 5-11-4 NMSA 1978;

4 (6) the place where written objections to the
5 formation of the district may be filed by an owner;

6 (7) that formation of the district may result
7 in the levy of property taxes or the imposition of special
8 levies to pay the costs of public infrastructure constructed by
9 the district and for their operation and maintenance and may
10 result in the assessment of fees or charges to pay the cost of
11 providing enhanced services;

12 (8) a reference to the Public Improvement
13 District Act; and

14 (9) whether the district will be governed by a
15 district board comprised of the members of the governing body,
16 ex officio, or comprised of five directors initially appointed
17 by the governing body.

18 ~~[B. The resolution may direct that, prior to~~
19 ~~holding a hearing on formation of the district, a study of the~~
20 ~~feasibility and estimated costs of the improvements, services,~~
21 ~~enhanced services and other benefits proposed to be provided~~
22 ~~pursuant to the Public Improvement District Act be prepared by~~
23 ~~the petitioners for consideration by the governing body at its~~
24 ~~hearing on formation of the district. The study shall~~
25 ~~substantially comply with the requirements of Section 5-11-16~~

.193938.1

1 ~~NMSA 1978. The district may require that the persons~~
2 ~~petitioning for formation of the district deposit with the~~
3 ~~treasurer an amount equal to the estimated costs of conducting~~
4 ~~the feasibility study and other estimated formation costs, to~~
5 ~~be reimbursed if the district is formed and public improvements~~
6 ~~are financed pursuant to the Public Improvement District Act.~~

7 ~~G.]~~ B. The resolution shall direct that a hearing
8 on formation of the district be scheduled and that notice be
9 mailed and published as provided in Section 5-11-4 NMSA 1978.

10 ~~[D-]~~ C. Before adopting a resolution pursuant to
11 this section, a general plan for the district shall be filed
12 with the clerk."

13 **SECTION 4.** Section 5-11-6 NMSA 1978 (being Laws 2001,
14 Chapter 305, Section 6) is amended to read:

15 "5-11-6. ORDER FORMING DISTRICT--ELECTION.--

16 A. After the hearing, the governing body shall
17 determine whether the district should be formed based upon the
18 interests, convenience or necessity of the owners, residents of
19 the district and citizens of the municipality or county in
20 which the proposed district would be located. If the governing
21 body determines that the district should be formed, it shall
22 adopt a resolution ordering that the district be formed,
23 deleting any property determined not to be directly or
24 indirectly benefited by the district or modifying the general
25 plan and then ordering that an election be held on the question

.193938.1

1 whether to form the district. A resolution ordering a
2 formation of the district shall state that the district will be
3 governed by a district board consisting of members of the
4 governing body, ex officio, or, upon determination of the
5 governing body, five directors appointed by the governing body,
6 and shall contain the names of the five initial directors and
7 the terms of office of each. If the governing body appoints a
8 district board, it shall appoint a treasurer and a clerk from
9 the appointed members.

10 B. A formation election shall include the owners
11 unless a petition is presented to the governing body pursuant
12 to Subsection I of Section [~~7 of the Public Improvement~~
13 ~~District Act~~] 5-11-7 NMSA 1978. Each owner shall have the
14 number of votes or portions of votes equal to the number of
15 acres or portions of acres rounded upward to the nearest
16 one-fifth of an acre owned by that owner in the submitted
17 district. The right to vote on the question of formation of
18 the district shall not be assigned or delegated to the property
19 owners signing a petition submitted to the governing body for
20 formation of a district or related entities of such property
21 owners. The question shall also be submitted to a vote of the
22 resident qualified electors. The conduct of a formation
23 election shall meet the requirements of Section [~~7 of the~~
24 ~~Public Improvement District Act~~] 5-11-7 NMSA 1978."

25 SECTION 5. Section 5-11-9 NMSA 1978 (being Laws 2001,

.193938.1

1 Chapter 305, Section 9, as amended) is amended to read:

2 "5-11-9. APPOINTMENT OF DIRECTORS--QUALIFICATIONS--
3 TERMS--RESUMPTION OF GOVERNANCE BY GOVERNING BODY.--

4 A. The governing body, at its option, may authorize
5 the appointment of a separate district board. In the case of
6 an appointed district board, three of the appointed directors
7 shall serve an initial term of six years. Two of the appointed
8 directors shall serve an initial term of four years. The
9 resolution forming the district shall state which directors
10 shall serve four-year terms and which shall serve six-year
11 terms. If a vacancy occurs on the district board because of
12 death, resignation or inability of the director to discharge
13 the duties of director, the governing body shall appoint a
14 director to fill the vacancy, who shall hold office for the
15 remainder of the unexpired term until a successor is appointed
16 or elected.

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

19 C. At the end of the appointed directors' terms,
20 the governing body shall resume governance of the district as
21 its board either directly or through the governing body's
22 designees or, at the governing body's option, shall hold an
23 election of new directors by majority vote of the qualified
24 electors and owners."

25 SECTION 6. Section 5-11-16 NMSA 1978 (being Laws 2001,
.193938.1

1 Chapter 305, Section 16) is amended to read:

2 "5-11-16. PROJECT APPROVAL.--

3 A. Before constructing or acquiring any public
4 infrastructure improvement, the district board shall ~~[cause]~~
5 have approved a study of the feasibility and benefits of the
6 public infrastructure improvement project to be prepared, which
7 shall include:

8 (1) a description of the public infrastructure
9 improvement to be constructed or acquired and enhanced services
10 to be provided and estimated costs thereof, if any, and other
11 information reasonably necessary to understand the project;

12 (2) a map showing, in general, the location of
13 the project within the district;

14 (3) an estimate of the cost to construct,
15 acquire, operate and maintain the project;

16 (4) an estimated schedule for completion of
17 the project, a map or description of the area to be benefited
18 by the project and a plan for financing the project;

19 (5) an estimated or projected annual mill or
20 special levy for all owners in the proposed district;

21 (6) the current, direct and overlapping tax
22 and assessment burden on taxable property that is proposed to
23 be taxed and the assessed valuation of the taxable property as
24 shown on the most recent assessment roll;

25 (7) the expected market absorption of the

.193938.1

1 development within the district and the effect of the bond
2 issuance by the district on tax rates within the district,
3 calculated at the beginning, middle and end of the market
4 absorption period or based on the phasing of the project to be
5 financed, as applicable;

6 (8) projections of working capital needs for a
7 period that shall be the longer of:

8 (a) thirty years following the creation
9 of a tax upon the district taxable property; or

10 (b) the final maturity date of any bonds
11 issued by the district;

12 (9) an analysis of:

13 (a) the impact of the proposed debt
14 financing, operation and maintenance costs, user charges and
15 other district costs on the ultimate end users of the property,
16 including projected property tax rates, special levies, fees,
17 charges and other costs that would be borne by the property in
18 the district;

19 (b) the impact that the costs described
20 in Subparagraph (a) of this paragraph will have on the
21 marketability of the private development; and

22 (c) a comparison of proposed tax rates
23 and charges in adjoining and similar areas outside of the
24 proposed district;

25 (10) a financing plan for any private

.193938.1

1 development in the district that is not to be dedicated to the
2 municipality or county; and

3 (11) a market absorption study for the private
4 development in the district prepared by an independent
5 consultant, which shall include the ability of the market to
6 absorb the private development and a market absorption calendar
7 for the private development.

8 B. Prior to approval of a project, the district
9 board shall provide notice and opportunity to comment to the
10 owners and the municipality or county.

11 C. In the event that project approval and formation
12 of the public improvement district are occurring concurrently,
13 a single feasibility study may be used to satisfy the
14 requirement in Subsection A of this section and Paragraph (3)
15 of Subsection A of Section 10 of this 2013 act.

16 D. For public infrastructure improvement projects
17 undertaken by a district after formation, the district board
18 shall hold a public hearing on the study and provide notice of
19 the hearing by publication not less than two weeks in advance
20 in the official newspaper of the municipality or county or, if
21 there are none in the municipality or county, a newspaper of
22 general circulation in the county. If the district board is
23 composed of members other than the governing body, the notice
24 shall be mailed to the governing body of the municipality or
25 county in which the district is located. After the hearing,

.193938.1

underscored material = new
[bracketed material] = delete

1 the district board may reject, amend or approve the report. If
 2 the report is amended substantially, a new hearing shall be
 3 held before approval. If the report is approved, the district
 4 board shall adopt a resolution approving the public
 5 infrastructure improvement of the project, identifying the
 6 areas benefited, the expected method of financing and an
 7 appropriate system of providing revenues to operate and
 8 maintain the project."

9 SECTION 7. Section 5-11-18 NMSA 1978 (being Laws 2001,
 10 Chapter 305, Section 18) is amended to read:

11 "5-11-18. RECORDING DOCUMENTS.--

12 A. The district shall file and record with the
 13 county clerk the resolution ordering formation of the district,
 14 the general plan of the district and the canvass of any general
 15 obligation bond election.

16 B. Upon formation of a district, and within thirty
 17 days before June 1 and December 1 of each year, a district
 18 shall file and record with the county clerk the notice
 19 requirements described in Subsection A of Section 11 of this
 20 2013 act and include contact information for the district
 21 board."

22 SECTION 8. Section 5-11-19 NMSA 1978 (being Laws 2001,
 23 Chapter 305, Section 19, as amended) is amended to read:

24 "5-11-19. GENERAL OBLIGATION BONDS--TAX LEVY--
 25 EXCEPTION.--

.193938.1

underscored material = new
 [bracketed material] = delete

1 A. At any time after the hearing on formation of
2 the district, the district board, or, if before formation, the
3 governing body may from time to time order and call a general
4 obligation bond election to submit to the owners and qualified
5 electors the question of authorizing the district to issue
6 general obligation bonds of the district to provide money for
7 any public infrastructure purposes consistent with the general
8 plan. The question shall include authorization for a levy,
9 including a limitation on the levy, of a property tax to pay
10 debt service on the bonds. The election may be held in
11 conjunction with the formation election.

12 B. If general obligation bonds are approved at an
13 election, the district board may issue and sell general
14 obligation bonds of the district; provided that the district
15 board shall have determined by resolution that the principal
16 amount of all district general obligation bonds currently
17 outstanding and the district general obligation bonds proposed
18 for issuance and sale shall not result in a total annual debt
19 service that exceeds five-tenths percent of the allowable base.

20 C. Bonds may be sold in a public offering or in a
21 negotiated sale.

22 D. After the bonds are issued, the district board
23 shall enter in its minutes a record of the bonds sold and their
24 numbers and dates and shall annually levy and cause a property
25 tax to be collected, at the same time and in the same manner as

.193938.1

1 other property taxes are levied and collected on all taxable
 2 property in the district, sufficient, together with any money
 3 from the sources described in Section 5-11-17 NMSA 1978 to pay
 4 debt service on the bonds when due. Money derived from the
 5 levy of property taxes that are pledged to pay the debt service
 6 on the bonds shall be kept separately from other funds of the
 7 district. Property tax revenues not pledged to pay debt
 8 service on bonds may be used to pay other costs of the
 9 district, including costs of formation, administration,
 10 operation and maintenance, services or enhanced services. A
 11 district's levy of property taxes shall constitute a lien on
 12 all taxable property within the district, including, without
 13 limitation, all leased property or improvements to leased land,
 14 which shall be subject to foreclosure in the same manner as
 15 other property tax liens under the laws of this state. The
 16 lien shall include delinquencies and interest thereon at a rate
 17 not to exceed ten percent per year, the actual costs of
 18 foreclosure and any other costs of the district resulting from
 19 the delinquency. The proceeds of any foreclosure sale shall be
 20 deposited in the special bond fund for payment of any
 21 obligations secured thereby.

22 E. Subject to the election requirements of this
 23 section, a district may issue general obligation bonds at such
 24 times and in such amounts as the district deems appropriate to
 25 carry out a project or projects in phases.

.193938.1

underscored material = new
~~[bracketed material] = delete~~

1 F. Pursuant to this section, the district may issue
2 and sell refunding bonds to refund general obligation bonds of
3 the district authorized by the Public Improvement District Act.
4 No election is required in connection with the issuance and
5 sale of refunding bonds. Refunding bonds issued pursuant to
6 this section shall have a final maturity date no later than the
7 final maturity date of the bonds being refunded."

8 **SECTION 9.** Section 5-11-20 NMSA 1978 (being Laws 2001,
9 Chapter 305, Section 20) is amended to read:

10 "5-11-20. SPECIAL LEVY--BONDS--IMPOSITION.--

11 A. At any time after the hearing on formation of
12 the district, the district board may from time to time order
13 that a hearing be held to determine whether a special levy
14 should be imposed and special levy bonds issued to provide
15 money for any public infrastructure purpose consistent with the
16 general plan. The question of imposing a special levy may be
17 considered at the hearing on district formation upon notice
18 that both issues will be heard at that time, which notice shall
19 include the information required in Subsection B of this
20 section.

21 B. Notice of hearing shall be provided at least two
22 weeks in advance of the hearing itself in a newspaper of
23 general circulation in the municipality or county in which the
24 district is located. The notice shall include the following:

25 (1) a description of the method by which the

1 amount of the proposed special levy will be determined for each
2 class of property to which the levy is proposed to apply, in
3 sufficient detail to enable the owner of the affected parcel to
4 determine the amount of the special levy;

5 (2) a description of the project to be
6 financed with special levy bonds or revenues; and

7 (3) a statement that any person affected by
8 the proposed special levy may object in writing or in person at
9 the hearing.

10 C. Prior to issuing special levy bonds, the
11 district board shall set a maximum levy for each class of
12 property that may be imposed for debt service on the special
13 levy bonds.

14 D. Unless a local government has enacted an
15 ordinance providing a greater limitation, no special levy bonds
16 may be issued if at the time of issuance of such bonds the
17 estimated total tax and assessment obligation for a class of
18 property, including projected ad valorem taxes and special
19 levies as provided in the feasibility study, exceeds one and
20 ninety-five hundredths percent of the anticipated, average
21 market value of each class of property at the time of issuance
22 of a certificate of occupancy as determined by a member
23 appraiser of the appraisal institute.

24 [~~G.~~] E. Special levy bonds may be sold in a public
25 offering or in a negotiated sale.

.193938.1

1 ~~[D.]~~ F. After the bonds are issued, the district
2 board shall enter in its minutes a record of the bonds sold and
3 their numbers and dates and shall annually impose and cause a
4 special levy to be collected, at the same time and in the same
5 manner as property taxes are levied and collected on all
6 property within the district that may be subject to the levy,
7 including, without limitation, all leased property or
8 improvements to leased land, sufficient, together with any
9 other money lawfully available to pay debt service on the bonds
10 when due, except to the extent that the district board has
11 provided for other imposition, collection and foreclosure
12 procedures in connection with special levies. Money derived
13 from the imposition of the special levy when collected that is
14 pledged to pay the debt service on the bonds shall be kept
15 separately from other funds of the district. Special levy
16 revenues not pledged to pay debt service on bonds may be used
17 to pay other costs of the district, including costs of
18 formation, administration, operation and maintenance, service
19 or enhanced services.

20 ~~[E.]~~ G. The district board shall specify conditions
21 under which the obligation to pay special levies may be prepaid
22 and permanently satisfied.

23 ~~[F.]~~ H. Special levies against privately owned
24 residential property shall be subject to the following
25 provisions:

.193938.1

underscoring material = new
[bracketed material] = delete

1 (1) the [~~maximum~~] amount of special levy that
2 may be imposed shall not be increased over time by an amount
3 exceeding two percent per year, except that the amount of
4 special levy actually imposed may be increased by up to ten
5 percent as a result of the delinquency or default by the owner
6 of any other parcel within the district, but in no case shall
7 the amount of the special levy imposed exceed the maximum
8 special levy provided in the rate and method of apportionment;

9 (2) the special levy shall be imposed for a
10 specified time period, after which no further special levy
11 shall be imposed and collected, except that special levies
12 imposed solely to finance the cost of ongoing district
13 services, maintenance or operations or enhanced services may be
14 levied while such services, maintenance or operations or
15 enhanced services are continuing; and

16 (3) nothing in this subsection shall preclude
17 the establishment of different categories of residential
18 property or changing the amount of the special levies for a
19 parcel whose size or use is changed. A change in the amount of
20 a special levy imposed upon a parcel due to a change in its
21 size or use shall not require voter approval if the method for
22 changing the amount of special levy was approved in the
23 election approving the special levy in sufficient detail to
24 enable the owner of the affected parcel to determine how the
25 change in size or use of the parcel would affect the amount of

.193938.1

underscoring material = new
[bracketed material] = delete

1 the special levy.

2 ~~[G.]~~ I. A district's imposition of a special levy
3 shall constitute a lien on the property within the district
4 subject to the special levy, including property acquired by the
5 state or its political subdivisions after imposition of the
6 special levy, which shall be effective during the period in
7 which the special levy is imposed and shall have priority
8 co-equal to the lien of property taxes. A special levy shall
9 be subject to foreclosure by the district at any time after six
10 months following written notice of delinquency to the owner of
11 the real property to which the delinquency applies. The lien
12 shall include delinquencies, penalties and interest thereon at
13 a rate not to exceed the maximum legal rate of interest per
14 year and penalties otherwise applicable for delinquent property
15 taxes, the district's actual costs of foreclosure and any other
16 costs of the district resulting from the delinquency. All
17 rights of redemption applicable to property sold in connection
18 with property tax foreclosures pursuant to the laws of this
19 state shall apply to property sold following foreclosure of a
20 special levy lien. The portion of proceeds of any foreclosure
21 sale necessary to discharge the lien for the special levy shall
22 be deposited in the special bond fund for payment of any
23 obligations secured thereby.

24 ~~[H.]~~ J. No holder of special levy bonds issued
25 pursuant to the Public Improvement District Act may compel any

.193938.1

1 exercise of the taxing power of the district, municipality or
 2 county to pay the bonds or the interest on the bonds. Special
 3 levy bonds issued pursuant to that act are not a debt of the
 4 district, municipality or county, nor is the payment of special
 5 levy bonds enforceable out of any money other than the revenue
 6 pledged to the payment of the bonds.

7 ~~[F.]~~ K. Subject to the requirements of this
 8 section, a district may issue special levy bonds at such times
 9 and in such amounts as the district deems appropriate to carry
 10 out a project or projects in phases.

11 ~~[J.]~~ L. Pursuant to this section, the district may
 12 issue and sell refunding bonds to refund any special levy bonds
 13 of the district authorized by the Public Improvement District
 14 Act. Refunding bonds issued pursuant to this section shall
 15 have a final maturity date no later than the final maturity
 16 date of the bonds being refunded."

17 **SECTION 10.** A new section of the Public Improvement
 18 District Act is enacted to read:

19 "[NEW MATERIAL] FORMATION OF A PUBLIC IMPROVEMENT
 20 DISTRICT--APPLICATION REQUIREMENTS.--

21 A. An application for the formation of a district
 22 shall be submitted to the governing body. Each application
 23 shall be supported by a petition signed by the owners of at
 24 least twenty-five percent of the real property by assessed
 25 valuation proposed to be included in the district and shall

.193938.1

underscored material = new
 [bracketed material] = delete

1 contain, at a minimum, the following:

2 (1) a description of the proposed district,
3 including:

4 (a) a legal description of its
5 boundaries;

6 (b) the identity and addresses of all
7 persons or entities with any interest in the property,
8 including submitting a current title report on the property as
9 evidence of the names of persons with any interest in the
10 property;

11 (c) the names and addresses of any
12 resident qualified electors located within the proposed
13 boundaries, if applicable;

14 (d) an explanation as to how the
15 district boundaries were chosen;

16 (e) adequate information to establish
17 financial parameters for the operation the district, if
18 applicable; and

19 (f) information regarding the future
20 ownership and maintenance of the public infrastructure
21 improvements or enhanced services;

22 (2) a detailed description of the types of
23 public infrastructure improvements or enhanced services to be
24 provided by the district, including, if applicable:

25 (a) the estimated construction or

.193938.1

1 acquisition costs of the public infrastructure improvements,
2 including costs for repair and replacement of public
3 infrastructure improvements;

4 (b) the estimated annual operation and
5 maintenance costs of the public infrastructure improvements;

6 (c) projection of working capital needs
7 for enhanced services; and

8 (d) any governmental approvals and
9 licenses that are expected to be required for both the public
10 and private improvements to be constructed and operated;

11 (3) a feasibility study containing the
12 information required in Subsection A of Section 5-11-16 NMSA
13 1978;

14 (4) a description of the applicant's
15 professional experience and evidence demonstrating its
16 financial capacity to undertake the development associated with
17 the public infrastructure, enhanced services and private
18 development, as applicable;

19 (5) a disclosure form to owners describing:
20 (a) that the applicant intends to file
21 an application for formation of a public improvement district;
22 (b) the purpose of the proposed public
23 improvement district;
24 (c) a description of what a public
25 improvement district is; and

.193938.1

1 (d) the rate, method of apportionment
2 and manner of collection of a special levy, if one is proposed,
3 in sufficient detail to enable each owner or resident within
4 the district to estimate the maximum amount of the proposed
5 levy;

6 (6) certification that the disclosure pursuant
7 to Paragraph (5) of this subsection has been provided to each
8 owner;

9 (7) a description of how the proposed district
10 meets the existing development objectives of the municipality
11 or county, to the extent that the municipality or county has
12 adopted policies identifying such objectives, including how the
13 district is consistent with:

14 (a) the goals of promoting orderly
15 development;

16 (b) the municipality's or county's
17 comprehensive plan;

18 (c) growth management policies and
19 zoning requirements; and

20 (d) the municipality's or county's
21 applicable policies for development, growth management and
22 zoning; and

23 (8) any other information that the governing
24 body may reasonably require after its initial review of the
25 application.

1 B. The requirements of Paragraph (5) of Subsection
2 A of this section shall not apply if the petition is signed by
3 the owner of all the land in the district described in the
4 petition submitted to the governing body.

5 C. The governing body may charge a fee to be
6 applied by the governing body to the costs incurred in
7 connection with the processing and review of the application
8 and formation of the district in accordance with this section.
9 Upon formation of the district, the governing body may charge
10 an additional administrative expense fee to be applied by the
11 governing body to the costs and expenses incurred in the
12 formation of the district, specifically the review of the
13 feasibility study and current appraisal of the project."

14 **SECTION 11.** A new section of the Public Improvement
15 District Act is enacted to read:

16 "NEW MATERIAL] NOTICE OBLIGATIONS TO PURCHASER--
17 REQUIREMENTS--REMEDIES.--

18 A. Prior to accepting an offer to purchase, a
19 seller or an agent or broker of a seller of residential real
20 property that is located in a district established pursuant to
21 the Public Improvement District Act has an affirmative duty to
22 provide to the purchaser of the property a written notice of
23 information filed with the county clerk pursuant to Subsection
24 B of Section 5-11-18 NMSA 1978, in addition to the disclosure
25 required by Section 47-13-4 NMSA 1978, that includes:

.193938.1

underscored material = new
[bracketed material] = delete

1 (1) information that the property is within a
2 public improvement district;

3 (2) the purpose of the district;

4 (3) an explanation that the purchaser is
5 obligated to pay any property tax or special levy that is
6 imposed by the district board;

7 (4) an explanation that the property tax or
8 special levy imposed by the district board is in addition to
9 any other state, county or other local governmental taxes and
10 assessments;

11 (5) for special levies:

12 (a) if a special levy has not been
13 authorized the district board, information that a special levy
14 has not been authorized; or

15 (b) if a special levy has been
16 authorized by the district board: 1) the maximum special levy
17 that is authorized to be imposed upon the property in the
18 district; or 2) that the special levy to be imposed on the
19 property in the district has been prepaid in full as provided
20 in the rate or method of apportionment;

21 (6) for general obligation bonds:

22 (a) if general obligation bonds have not
23 been issued, information that general obligation bonds have not
24 been issued; or

25 (b) if general obligation bonds have

.193938.1

1 been issued: 1) the amount of general obligation bonds that
 2 are outstanding; 2) the amount of annual debt service on
 3 outstanding general obligation bonds; 3) that the maximum rate
 4 and amount of property taxes that may be imposed upon the
 5 property in the district are limited only by the amount of debt
 6 outstanding; and 4) the estimated or projected annual mill levy
 7 or special levy per one thousand dollars (\$1,000) of assessed
 8 value as of the date of the disclosure with an explanation that
 9 the estimated levy or rate may be increased by the district
 10 board when necessary to meet debt obligations;

11 (7) information that the failure to pay the
 12 property tax or special levy could result in the foreclosure of
 13 the property;

14 (8) information that more information
 15 concerning the rate of the property tax or the amount of the
 16 assessment and the due dates of each may be obtained from the
 17 governing body that authorized the formation of the district;
 18 and

19 (9) information that a feasibility study was
 20 completed as part of the formation of the district and that the
 21 feasibility study is available through the governing body that
 22 authorized the formation of the district.

23 B. The provisions of Paragraphs (5) through (7) of
 24 Subsection A of this section shall be set apart in a clear and
 25 conspicuous manner and in at least twelve-point bold type.

.193938.1

underscoring material = new
~~[bracketed material]~~ = delete

- 1 C. This section does not apply to a transfer:
2 (1) of property under a court order or
3 foreclosure sale;
4 (2) of property by a trustee in bankruptcy;
5 (3) of property to a mortgagee by a mortgagor
6 or successor in interest or to a beneficiary of a deed of trust
7 by a trustor or successor in interest;
8 (4) of property by a mortgagee or a
9 beneficiary under a deed of trust who has acquired the land at
10 a sale conducted under a power of sale under a deed of trust or
11 a sale under a court-ordered foreclosure or has acquired the
12 land by a deed in lieu of foreclosure;
13 (5) of property by a fiduciary in the course
14 of the administration of a decedent's estate, guardianship,
15 conservatorship or trust;
16 (6) of property from one co-owner to another
17 co-owner of an undivided interest in the real property; or
18 (7) of only a mineral interest or leasehold
19 interest.

20 D. In the event of a finalized sale, any person who
21 suffers any loss of money or property, real or personal, as a
22 result of a violation of Subsection A or B of this section by a
23 seller or an agent or broker of a seller may bring an action to
24 recover actual damages and may be granted injunctive relief
25 under the principles of equity and on terms that the court

1 considers reasonable. The court shall award attorney fees and
2 costs to the party complaining of a violation if the party
3 prevails and actual damages are awarded. The court shall award
4 attorney fees and costs to the party charged with a violation
5 of Subsection A or B of this section if the court finds that
6 the party complaining of such violation brought an action that
7 was groundless. The relief provided in this subsection is in
8 addition to remedies otherwise available against the same
9 conduct under the common law or other laws of this state."

10 **SECTION 12. APPLICABILITY.**--The provisions of Sections 1
11 through 4 and 6 through 10 of this act do not apply to an
12 application for formation of a public improvement district
13 submitted to a governing body prior to January 1, 2014.

14 **SECTION 13. EFFECTIVE DATE.**--The effective date of the
15 provisions of this act is July 1, 2013.