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SENATE BILL 195

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Joseph J. Carraro

AN ACT

RELATING TO MUNICIPALITIES; ALLOWING INCORPORATION OF A NEW MUNICIPALITY OR WITHDRAWAL FROM TERRITORY OF AN EXISTING MUNICIPALITY.

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

Section 1. A new section of the Municipal Code is enacted to read:

"[NEW MATERIAL] INCORPORATION OR WITHDRAWAL OF TERRITORY WITHIN A MUNICIPALITY--RETIRING DEBT. --

A. The residents of a contiguous territory within a municipality with a population, as shown by the latest decennial census, of two hundred thousand or more may:

(1) incorporate that territory and any unincorporated areas within that territory into a new municipality with boundaries coterminous with the boundary of

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1 an existing municipality by following all other provisions of
2 the law governing incorporation, if the territory proposed to
3 be incorporated has a population, as shown by the last
4 decennial census, of fifty thousand or more; or

5 (2) sign and present a petition from qualified
6 voters who reside in the territory to the city council of the
7 municipality. The petition shall have at least five hundred
8 signatures of qualified electors, describe the area by metes
9 and bounds and request that the territory be withdrawn from the
10 municipality. The city council shall order the question be put
11 on the ballot for the territory described in the petition at
12 the next general or special election. When a majority of the
13 votes received in the territory described in the election favor
14 withdrawing the territory as part of the municipality, the city
15 council shall declare at the first meeting following the
16 election that the territory is no longer a part of the
17 municipality and shall enter an order to that effect in the
18 minutes or records of the governing body of the municipality.
19 The territory ceases to be a part of the municipality on the
20 date of the order.

21 B. If the territory within the limits of an
22 existing municipality that has outstanding indebtedness, bonded
23 or otherwise, forms a new municipality or withdraws from the
24 municipality, the local government division of the department
25 of finance and administration shall determine the extent of the

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1 indebtedness that shall be assessed and collected by the new
2 municipality or county for retiring that debt."

3 Section 2. Section 3-2-2 NMSA 1978 (being Laws 1965,
4 Chapter 300, Section 14-2-2, as amended) is amended to read:

5 "3-2-2. CHARACTERISTICS OF TERRITORY PROPOSED TO BE
6 INCORPORATED AS A MUNICIPALITY. --

7 A. [~~Any~~] A territory proposed to be incorporated as
8 a municipality shall:

9 (1) not be within the boundary of another
10 municipality if the population of the municipality, as shown by
11 the latest decennial census, is less than two hundred thousand;

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

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

22 (4) contain a sufficient assessed value of
23 real property and a sufficient number of businesses so that the
24 proposed municipality will contain a sufficient tax base to
25 enable it to provide a clerk-treasurer, a police officer and

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1 office space for the municipal government within one year of
2 incorporation.

3 B. In the alternative to the requirements of
4 Paragraph 2 of Subsection A of this section, [~~any~~] a territory
5 proposed to be incorporated as a municipality shall:

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

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

10 Section 3. Section 3-2-5 NMSA 1978 (being Laws 1965,
11 Chapter 300, Section 14-2-4, as amended) is amended to read:

12 "3-2-5. INCORPORATION--DUTIES OF COUNTY COMMISSIONERS
13 AFTER FILING OF PETITION TO ACT--CENSUS REQUIRED--ELECTION--
14 RIGHT OF APPEAL TO DISTRICT COURT.--

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

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

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

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

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

9 (1) not within the boundary of an existing
10 municipality with a population, as determined by the latest
11 decennial census, of less than two hundred thousand and not
12 within the urbanized area of a municipality; or

13 (2) within the urbanized area of another
14 municipality and in compliance with Section 3-2-3 NMSA 1978,
15 the board of county commissioners shall cause a census to be
16 taken of the persons residing within the territory proposed to
17 be incorporated. The census shall be completed and filed with
18 the board of county commissioners within thirty days after the
19 board of county commissioners authorizes the taking of the
20 census.

21 C. Within fifteen days after the date the results
22 of the census have been filed with the board of county
23 commissioners, the board of county commissioners shall
24 determine if the conditions for incorporation of the territory
25 as a municipality have been met as required in Sections 3-2-1

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1 through 3-2-3 NMSA 1978 and shall have its determination
2 recorded in the minutes of its meeting.

3 D. If the board of county commissioners determines
4 that the conditions for incorporation have not been met, the
5 board of county commissioners shall notify the petitioners of
6 its determination by publishing in a newspaper of general
7 circulation in the territory proposed to be incorporated, once,
8 not more than ten days after its determination, a notice of its
9 determination that the conditions for incorporation have not
10 been met. If there is no newspaper of general circulation in
11 the territory proposed to be incorporated, notice of the
12 determination shall be posted in eight public places within the
13 territory proposed to be incorporated.

14 E. After the board of county commissioners has
15 determined that all of the conditions for incorporation of the
16 territory as a municipality have been met, the board of county
17 commissioners shall hold an election on the question of
18 incorporating the territory as a municipality. Elections for
19 the incorporation of municipalities shall only be held in odd-
20 numbered years upon the first Tuesday in July or in any year
21 upon the first Tuesday in January, unless that Tuesday is a
22 holiday, in which case the election shall be held on the second
23 Tuesday in July or the second Tuesday in January. The county
24 clerk shall notify the secretary of finance and administration
25 and the secretary of taxation and revenue of the date of the

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1 incorporation election within ten days after the adoption of
2 the resolution calling the election.

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

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