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HOUSE BILL 355

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

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO PUBLIC IMPROVEMENT DISTRICTS; REQUIRING A DEVELOPER OF A PUBLIC IMPROVEMENT DISTRICT TO PROVIDE A MINIMUM EQUITY CONTRIBUTION; REQUIRING ADDITIONAL INFORMATION IN AN APPLICATION TO FORM A PUBLIC IMPROVEMENT DISTRICT; REMOVING THE OPTION OF A DISTRICT BOARD TO INCREASE A SPECIAL LEVY UP TO TEN PERCENT AGAINST PRIVATELY OWNED RESIDENTIAL PROPERTY WITHIN A PUBLIC IMPROVEMENT DISTRICT; REQUIRING NOTICE TO A PURCHASER OF PROPERTY WITHIN A PUBLIC IMPROVEMENT DISTRICT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE PUBLIC IMPROVEMENT DISTRICT ACT.

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~~
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1 ~~act]~~ Chapter 5, Article 11 NMSA 1978 may be cited as the
2 "Public Improvement District Act".

3 SECTION 2. Section 5-11-6 NMSA 1978 (being Laws 2001,
4 Chapter 305, Section 6) is amended to read:

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

6 A. After the hearing, the governing body shall
7 determine whether the district should be formed based upon the
8 interests, convenience or necessity of the owners, residents of
9 the district and citizens of the municipality or county in
10 which the proposed district would be located. If the governing
11 body determines that the district should be formed, it shall
12 adopt a resolution ordering that the district be formed,
13 deleting any property determined not to be directly or
14 indirectly benefited by the district or modifying the general
15 plan and then ordering that an election be held on the question
16 whether to form the district. A resolution ordering a
17 formation of the district shall state that the district will be
18 governed by a district board consisting of members of the
19 governing body, ex officio, or, upon determination of the
20 governing body, five directors appointed by the governing body,
21 and shall contain the names of the five initial directors and
22 the terms of office of each. If the governing body appoints a
23 district board, it shall appoint a treasurer and a clerk from
24 the appointed members.

25 B. A formation election shall include the owners

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1 unless a petition is presented to the governing body pursuant
2 to Subsection I of Section [~~7 of the Public Improvement~~
3 ~~District Act~~] 5-11-7 NMSA 1978. Each owner shall have the
4 number of votes or portions of votes equal to the number of
5 acres or portions of acres rounded upward to the nearest
6 one-fifth of an acre owned by that owner in the submitted
7 district. The question shall also be submitted to a vote of
8 the resident qualified electors. The conduct of a formation
9 election shall meet the requirements of Section [~~7 of the~~
10 ~~Public Improvement District Act~~] 5-11-7 NMSA 1978.

11 C. Each owner shall retain a right to vote on the
12 approval of the district and the right to vote may not be
13 assigned, delegated or otherwise assumed by any other
14 individual or entity."

15 SECTION 3. Section 5-11-7 NMSA 1978 (being Laws 2001,
16 Chapter 305, Section 7) is amended to read:

17 "5-11-7. NOTICE AND CONDUCT OF ELECTION--WAIVER.--

18 A. Any election pursuant to the Public Improvement
19 District Act shall be a nonpartisan election called by posting
20 notices in three public places within the boundaries of the
21 district not less than twenty days before the election. Notice
22 shall also be published in a newspaper of general circulation
23 in the municipality or county, or, if there is no newspaper so
24 circulated in the municipality, in a newspaper of general
25 circulation in the county in which the municipality is located

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1 once a week for two consecutive weeks before the election. The
2 notice shall state:

3 (1) the place of holding the election and
4 provisions for voting by mail, if any;

5 (2) the hours during the day, not less than
6 six, in which the polls will be open;

7 (3) if the election is a formation election,
8 the boundaries of the proposed district;

9 (4) if the election is a bond election, the
10 amount of bonds to be authorized for the district, the maximum
11 rate of interest to be paid on the bonds and the maximum term
12 of the bonds, not exceeding thirty years;

13 ~~[(5) if the election is a property tax levy~~
14 ~~election pursuant to Section 19 of the Public Improvement~~
15 ~~District Act, the maximum tax rate per one thousand dollars~~
16 ~~(\$1,000) of assessed valuation to be imposed, the purposes for~~
17 ~~which the revenues raised will be used and the existing maximum~~
18 ~~tax rate, if any;~~

19 ~~(6)]~~ (5) that a general plan is on file with
20 the clerk;

21 ~~[(7)]~~ (6) the purposes for which the property
22 taxes or the special levies will be imposed, and the revenues
23 raised will be used, including a description of the public
24 improvements to be financed with tax revenues, special levies,
25 district revenues or bond proceeds; and

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1 [~~(8)~~] (7) that the imposition of property
2 taxes or special levies will result in a lien for the payment
3 thereof on property within the district.

4 B. The district board or, in the case of a
5 formation election, the governing body, shall determine the
6 date of the election and the polling places for the election
7 and may consolidate county precincts. The district board or
8 governing body may establish provisions for voting by mail.

9 C. Voter lists shall be used to determine the
10 resident qualified electors. If the district includes land
11 lying partly in and partly out of any county election precinct,
12 the voter lists may contain the names of all registered voters
13 in the precinct, and the precinct boards at those precincts
14 shall require that a prospective elector execute an affidavit
15 stating that the elector is also a resident qualified elector.

16 D. For all elections held pursuant to the Public
17 Improvement District Act, a prospective elector who is not a
18 resident qualified elector shall execute an affidavit stating
19 that the elector is the owner of land in the proposed district
20 and stating the area of land in acres owned by the prospective
21 elector. Precinct board members may administer oaths or take
22 all affirmations for these purposes.

23 E. Except as otherwise provided by this section,
24 the election shall comply with the general election laws of
25 this state. The ballot material provided to each voter shall

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1 include:

2 (1) for a formation election, an impartial
3 description of the district improvements contemplated and a
4 brief description of arguments for and against the formation of
5 the district, if any;

6 (2) for an election concerning the imposition
7 of property taxes, an impartial description of the taxes to be
8 imposed, the method of apportionment, collection and
9 enforcement and other details sufficient to enable each elector
10 to determine the amount of tax it will be obligated to pay; a
11 brief description of arguments for and against the imposition
12 of taxes that are the subject of the election, if any; and a
13 statement that the imposition of property taxes is for the
14 provision of certain but not necessarily all public
15 infrastructure improvements and services that may be needed or
16 desirable within the district, and that other taxes, levies or
17 assessments by other governmental entities may be presented for
18 approval by owners and resident qualified electors; and

19 (3) for a formation election, the ballot,
20 which shall pose the question to be voted upon as "district,
21 yes" and "district, no"; for a bond election, "bonds, yes" and
22 "bonds, no"; for a property tax election, if no tax is in
23 place, "property tax, yes" and "property tax, no"; and for an
24 election to change an existing maximum or eliminate an existing
25 tax, "tax change, yes" and "tax change, no", specifying the

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1 type of tax to which the proposed change pertains.

2 F. The governing body or, if after formation, the
3 district board, may provide for the returns of the election to
4 be made in person or by mail.

5 G. Within thirty days after an election, the
6 governing body, or if after formation, the district board,
7 shall meet and canvass the returns, determining the number of
8 votes properly cast by owners and resident qualified electors.
9 At least a three-fourths' majority of the votes cast at the
10 election shall be required for formation, issuing the bonds,
11 imposing the tax or special levy or changing the tax or special
12 levy. The canvass may be continued for an additional period
13 not to exceed thirty days at the election of the governing body
14 or district board for the purpose of completing the canvass.
15 Failure of a majority to vote in favor of the matter submitted
16 shall not prejudice the submission of the same or similar
17 matters at a later election.

18 H. If a person listed on the assessment roll is no
19 longer the owner of land in the district and the name of the
20 successor owner becomes known and is verified by recorded deed
21 or other similar evidence of transfer of ownership, the
22 successor owner is deemed to be the owner for the purposes of
23 the Public Improvement District Act.

24 I. Notwithstanding any other provision of the
25 Public Improvement District Act, if a petition for formation is

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1 signed by owners of all of the land in the district described
2 in the petition and is approved by the municipality or county,
3 the municipality or county may waive any or all requirements of
4 posting, publication, mailing, notice, hearing and owner
5 election. On receipt of such a petition, and after approval by
6 an election of resident qualified electors, if any, the
7 municipality or county shall declare the district formed
8 without being required to comply with the provisions of the
9 Public Improvement District Act for posting, publication,
10 mailing, notice, hearing or owner election.

11 J. If no person has registered to vote within the
12 district within fifty days immediately preceding any scheduled
13 election date, any election required to be held pursuant to the
14 Public Improvement District Act shall be held by vote of the
15 owners. Each owner shall have the number of votes or portion
16 of votes equal to the number of acres or portion of acres
17 rounded upward to the nearest one-fifth of an acre owned in the
18 district by that owner.

19 K. In any election held pursuant to the Public
20 Improvement District Act, an owner who is also a resident
21 qualified elector shall have the number of votes or portion of
22 votes to which ~~[he]~~ the owner is entitled as an owner and shall
23 not be entitled to an additional vote as a result of residing
24 within the district."

25 SECTION 4. Section 5-11-8 NMSA 1978 (being Laws 2001,

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1 Chapter 305, Section 8) is amended to read:

2 "5-11-8. FORMATION--DEBT LIMITATION.--

3 A. If the formation of the district is approved by
4 at least a three-fourths' majority of the votes cast at the
5 election, the governing body shall cause a copy of the
6 resolution ordering formation of the district to be delivered
7 to the county assessor and the county in which the district is
8 located and to the taxation and revenue department and the
9 local government division of the department of finance and
10 administration. A notice of the formation showing the number
11 and date of the resolution and giving a description of the land
12 included in the district shall be recorded with the county
13 clerk.

14 B. Except as otherwise provided in this section, a
15 district shall be a political subdivision of the state,
16 separate and apart from the municipality or county. The amount
17 of indebtedness evidenced by [~~general obligation bonds issued~~
18 ~~pursuant to Section 19 of the Public Improvement District Act~~]
19 special levy bonds issued pursuant to Section [20 ~~of that act~~]
20 5-11-20 NMSA 1978 and revenue bonds issued pursuant to Section
21 [~~21 of that act~~] 5-11-21 NMSA 1978 shall not exceed the
22 estimated cost of the public infrastructure improvements plus
23 all costs connected with the public infrastructure purposes and
24 issuance and sale of bonds, including, without limitation,
25 formation costs, credit enhancement and liquidity support fees

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1 and costs. The total aggregate outstanding amount of bonds and
2 any other indebtedness for which the full faith and credit of
3 the district are pledged shall not exceed sixty percent of the
4 market value of the real property and improvements in the
5 district after the public infrastructure improvements of the
6 district are completed plus the value of the public
7 infrastructure owned or to be acquired by the district with the
8 proceeds of the bonds, and shall not affect the general
9 obligation bonding capacity of the municipality or county in
10 which the district is located.

11 C. The debt service and bonds issued by a district
12 shall not impose an unreasonably high financial burden on any
13 future property owners in the district. No financing shall be
14 undertaken by the district in which any individual property
15 owner is liable for more than its equitable individual portion
16 of the cost of the improvements. All debt service financing
17 shall be subject to final review and approval by the county or
18 municipality.

19 D. The applicant or developer shall provide a
20 minimum equity contribution, excluding real property, of at
21 least twenty percent of the initial cost of the project.
22 Additionally, the applicant or developer shall independently
23 provide at least twenty-five cents (\$.25) in additional
24 infrastructure or community improvements for each one dollar
25 (\$1.00) of debt service to be issued by a district to finance

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1 public improvements. The municipality or county may in its
2 discretion impose additional financing requirements, including
3 the deposit of cash, a letter of credit or similar credit
4 facility as security for completion of the public
5 infrastructure development. If allowed by law, all bonds
6 issued shall include a debt service reserve fund to be funded
7 by the applicant or developer at the time of formation of the
8 district in an amount acceptable to the district board.

9 ~~[G-]~~ E. Bonds issued by a district shall not be a
10 general obligation of the state, the county or the municipality
11 in which the district is located and shall not pledge the full
12 faith and credit of the state, the county or the municipality
13 in which the district is located, irrespective of whether the
14 district board is governed by the governing body of the county
15 or municipality in which the district is located.

16 ~~[D-]~~ F. Following formation of the district, the
17 district board shall administer in a reasonable manner the
18 implementation of the general plan for the public
19 infrastructure improvements of the district."

20 SECTION 5. Section 5-11-16 NMSA 1978 (being Laws 2001,
21 Chapter 305, Section 16) is amended to read:

22 "5-11-16. PROJECT APPROVAL.--

23 A. Potential applicants for a district may schedule
24 and conduct a preapplication meeting and discussion with the
25 municipality or county in which the proposed district is

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1 located. Input provided by the municipality shall be of an
2 advisory nature for the purposes of assisting applicants in
3 submitting completed applications with detail and information
4 required to enable meaningful consideration by the municipality
5 or county. The purpose of the meeting shall be to:

6 (1) make an initial assessment whether the
7 proposed district is consistent with the municipality's or
8 county's land use and development policies and zoning and other
9 applicable regulations;

10 (2) identify any related municipality or
11 county approvals that will be required for the project;

12 (3) establish a preliminary schedule for:

13 (a) the applicant's submittal of a
14 district application;

15 (b) municipal or county review of the
16 application for completeness; and

17 (c) additional meetings with the
18 municipality or county for its consideration of and action on
19 the application; and

20 (4) identify other issues specific to the
21 district, including the municipality's or county's growth
22 policies, utility expansion policies or other related policies
23 or rules.

24 B. An application for the formation of a district
25 shall be submitted to the municipality or county in which the

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1 proposed district is located. Each application shall contain,
2 at a minimum, the following:

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

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

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

12 (c) the names and addresses of any
13 resident qualified electors located within the proposed
14 boundaries;

15 (d) an analysis of the appropriateness
16 of the district boundaries;

17 (e) adequate information to establish
18 financial parameters for the operation and financing of the
19 district; and

20 (f) information regarding the future
21 ownership and maintenance of the infrastructure;

22 (2) a detailed description of the types of
23 public infrastructure improvements to be financed by the
24 district, including:

25 (a) the estimated construction or

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1 acquisition costs of the public infrastructure and projection
2 of working capital needs, including adequate funds for repair
3 and replacement of infrastructure;

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

6 (c) the governmental approvals and
7 licenses that shall be required for both the public and private
8 improvements to be constructed and operated;

9 (3) a feasibility study pursuant to Subsection
10 E of this section;

11 (4) a description of the applicant's
12 professional experience and evidence demonstrating its
13 financial capacity to undertake the development associated with
14 the public infrastructure and private development and the
15 direct and indirect benefits of all parties with financial
16 interest in the proposed development. If available, such
17 information shall be accompanied by three-year audited
18 financial statements, a description of past projects and
19 disclosure of any material litigation;

20 (5) a disclosure form to prospective
21 homeowners and landowners describing:

22 (a) the estimated or projected property
23 tax, special levy or special assessment and other financial
24 burdens of the district;

25 (b) the ability of the district to be

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1 fiscally self-sufficient;

2 (c) that the district will receive no
3 direct or indirect financial support from the municipality or
4 county; and

5 (d) that the municipality or county
6 shall have the right to reject any unacceptable version of the
7 form;

8 (6) a receipt signed by the purchaser
9 acknowledging the disclosure pursuant to Paragraph (5) of this
10 subsection that, upon the sale of property within the district,
11 the applicant shall file and record with the clerk of the
12 county in which the district is located;

13 (7) an operating plan for the district,
14 including the functions provided by the district, the operation
15 and maintenance of the infrastructure in the district and all
16 other services of the district;

17 (8) a description of how the proposed district
18 meets the existing development objectives of the municipality
19 or county, including how the district is consistent with:

20 (a) the goals of promoting orderly
21 development;

22 (b) the municipality's or county's
23 comprehensive plan;

24 (c) growth management policies and
25 zoning requirements; and

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1 (d) the municipality's or county's
2 applicable policies for development, growth management and
3 zoning; and

4 (9) any other information that the
5 municipality or county may reasonably require after its initial
6 review of the application, including preliminary legal
7 opinions, information regarding the relationship of the
8 application to the municipality's or county's development
9 objectives, additional proof of financial capability, business
10 references, terms sheets for financing and financial commitment
11 letters.

12 C. Landowners, developers, real estate agents, home
13 builders and any other party involved in the sale of property
14 in the proposed district, including the applicant, shall
15 describe in their marketing or promotional material the purpose
16 of the district, the financial and other relative impacts of
17 the district and the additional tax levy or assessment that
18 will burden the property in the district.

19 D. In connection with any request for debt
20 financing, the applicant shall provide a current appraisal,
21 subject to update to remain current at the time of any debt
22 financing, of the fair cash market value of the property within
23 the proposed district that may be taxed, assessed or levied
24 upon. The appraisal shall be prepared by a member appraiser of
25 the appraisal institute, chosen by the municipality or county

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1 reviewing the request for debt financing and be, in form and
2 substance, acceptable to the municipality or county in the
3 municipality's or county's sole and absolute discretion. In
4 the event that the appraiser chosen by the municipality or
5 county cannot approve the appraisal, the appraisal shall be
6 rejected and a new appraisal may be provided for consideration.

7 E. Before constructing or acquiring any public
8 infrastructure improvement, the district board shall cause a
9 study of the feasibility and benefits of the public
10 infrastructure improvement project to be prepared, which shall
11 be satisfactory to the municipality or county, made available
12 on the municipality's or county's web site and include:

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

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

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

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

24 (5) an estimated or projected annual mill or
25 tax levy for all landowners, property owners or residential

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1 property owners in the proposed district;

2 (6) the current, direct and overlapping tax
3 and assessment burden on taxable property that is proposed to
4 be taxed and the full cash value and assessed valuation of the
5 taxable property as shown on the most recent assessment roll;

6 (7) the expected market absorption of
7 development within the district and the effect of the bond
8 issuance by the district on tax rates within the district,
9 calculated at the beginning, middle and end of the market
10 absorption period or based on the phasing of the project to be
11 financed, as applicable;

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

14 (a) the expected term of existence of
15 the district;

16 (b) thirty years following the creation
17 of a tax upon the district taxable property; or

18 (c) the final maturity date of any bonds
19 issued by the district;

20 (9) an analysis of:

21 (a) the impact of the proposed debt
22 financing, operation and maintenance costs, user charges and
23 other district costs on the ultimate end users of the property,
24 including projected property tax rates, special levies, special
25 assessments, fees, charges and other costs that would be borne

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1 by the property in the district;

2 (b) the impact that the costs described
3 in Subparagraph (a) of this paragraph will have on the
4 marketability of the private development; and

5 (c) a comparison of proposed tax rates
6 and charges in adjoining and similar areas outside of the
7 proposed district;

8 (10) a financing plan for any private
9 development in the district that is not to be dedicated to the
10 municipality or county; and

11 (11) a market absorption study for the private
12 development in the district prepared by an independent
13 consultant acceptable to the municipality or county, which
14 shall include estimates of the revenue to be generated by the
15 development, the ability of the market to absorb the private
16 development and a market absorption calendar for the private
17 development.

18 F. At the time of submission of the application,
19 the applicant shall pay the municipality or county a
20 nonrefundable application fee of twenty thousand dollars
21 (\$20,000) to be applied by the municipality or county to the
22 costs incurred in connection with the processing and review of
23 the application and formation of the district in accordance
24 with this section. Upon formation of the district, the
25 applicant shall pay the municipality or county an additional

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1 nonrefundable administrative expense fee of fifteen thousand
2 dollars (\$15,000) to be applied by the municipality or county
3 to the costs and expenses incurred in the formation of the
4 district, specifically the review of the feasibility study and
5 current appraisal of the project. For public infrastructure
6 improvement projects undertaken by a district after formation,
7 the district board shall hold a public hearing on the study and
8 provide notice of the hearing by publication not less than two
9 weeks in advance in the official newspaper of the municipality
10 or county or, if there are none in the municipality or county,
11 a newspaper of general circulation in the county. If the
12 district board is composed of members other than the governing
13 body, the notice shall be mailed to the governing body of the
14 municipality or county in which the district is located. After
15 the hearing, the district board may reject, amend or approve
16 the report. If the report is amended substantially, a new
17 hearing shall be held before approval. If the report is
18 approved, the district board shall adopt a resolution approving
19 the public infrastructure improvement of the project,
20 identifying the areas benefited, the expected method of
21 financing and an appropriate system of providing revenues to
22 operate and maintain the project."

23 **SECTION 6.** Section 5-11-18 NMSA 1978 (being Laws 2001,
24 Chapter 305, Section 18) is amended to read:

25 "5-11-18. RECORDING DOCUMENTS.--The district shall file
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1 and record with the county clerk the resolution ordering
2 formation of the district, the general plan of the district and
3 the ~~[canvass of any general obligation bond election]~~ receipt
4 signed by a purchaser acknowledging the disclosure required by
5 Subsection B of Section 5-11-16 NMSA 1978."

6 SECTION 7. Section 5-11-20 NMSA 1978 (being Laws 2001,
7 Chapter 305, Section 20) is amended to read:

8 "5-11-20. SPECIAL LEVY--BONDS--IMPOSITION.--

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

19 B. Notice of ~~[hearing shall be provided at least~~
20 ~~two weeks in advance of the hearing itself in a newspaper of~~
21 ~~general circulation in the municipality or county in which the~~
22 ~~district is located]~~ the hearing or election shall be mailed by
23 registered or certified mail, postage prepaid, to all owners of
24 real property in the proposed district at least thirty days
25 prior to the date of the hearing or election. Notice shall be

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1 published once each week for two successive weeks in a
2 newspaper of general circulation in the municipality or county
3 in which the proposed district is located. The last
4 publication shall be at least three days before the date of the
5 hearing. The notice shall include the following:

6 (1) a description of the method by which the
7 amount of the proposed special levy will be determined for each
8 class of property to which the levy is proposed to apply, in
9 sufficient detail to enable the owner of the affected parcel to
10 determine the amount of the special levy;

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

13 (3) a statement that any person affected by
14 the proposed special levy may object in writing or in person at
15 the hearing.

16 C. Special levy bonds may be sold in a public
17 offering or in a negotiated sale.

18 D. After the bonds are issued, the district board
19 shall enter in its minutes a record of the bonds sold and their
20 numbers and dates and shall annually impose and cause a special
21 levy to be collected, at the same time and in the same manner
22 as property taxes are levied and collected on all property
23 within the district that may be subject to the levy, including,
24 without limitation, all leased property or improvements to
25 leased land, sufficient, together with any other money lawfully

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1 available to pay debt service on the bonds when due, except to
2 the extent that the district board has provided for other
3 imposition, collection and foreclosure procedures in connection
4 with special levies. Money derived from the imposition of the
5 special levy when collected that is pledged to pay the debt
6 service on the bonds shall be kept separately from other funds
7 of the district. Special levy 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, service or enhanced services.

11 E. The district board shall specify conditions
12 under which the obligation to pay special levies may be prepaid
13 and permanently satisfied.

14 F. Special levies against privately owned
15 residential property shall be subject to the following
16 provisions:

17 (1) the maximum amount of special levy that
18 may be imposed shall not be increased over time by an amount
19 exceeding two percent per year [~~except that the amount of~~
20 ~~special levy actually imposed may be increased by up to ten~~
21 ~~percent as a result of the delinquency or default by the owner~~
22 ~~of any other parcel within the district];~~

23 (2) the special levy shall be imposed for a
24 specified time period, after which no further special levy
25 shall be imposed and collected, except that special levies

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1 imposed solely to finance the cost of ongoing district
2 services, maintenance or operations or enhanced services may be
3 levied while such services, maintenance or operations or
4 enhanced services are continuing; and

5 (3) nothing in this subsection shall preclude
6 the establishment of different categories of residential
7 property or changing the amount of the special levies for a
8 parcel whose size or use is changed. A change in the amount of
9 a special levy imposed upon a parcel due to a change in its
10 size or use shall not require voter approval if the method for
11 changing the amount of special levy was approved in the
12 election approving the special levy in sufficient detail to
13 enable the owner of the affected parcel to determine how the
14 change in size or use of the parcel would affect the amount of
15 the special levy.

16 G. A district's imposition of a special levy shall
17 constitute a lien on the property within the district subject
18 to the special levy, including property acquired by the state
19 or its political subdivisions after imposition of the special
20 levy, which shall be effective during the period in which the
21 special levy is imposed and shall have priority co-equal to the
22 lien of property taxes. A special levy shall be subject to
23 foreclosure by the district at any time after six months
24 following written notice of delinquency to the owner of the
25 real property to which the delinquency applies. The lien shall

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1 include delinquencies, penalties and interest thereon at a rate
2 not to exceed the maximum legal rate of interest per year and
3 penalties otherwise applicable for delinquent property taxes,
4 the district's actual costs of foreclosure and any other costs
5 of the district resulting from the delinquency. All rights of
6 redemption applicable to property sold in connection with
7 property tax foreclosures pursuant to the laws of this state
8 shall apply to property sold following foreclosure of a special
9 levy lien. The portion of proceeds of any foreclosure sale
10 necessary to discharge the lien for the special levy shall be
11 deposited in the special bond fund for payment of any
12 obligations secured thereby.

13 H. No holder of special levy bonds issued pursuant
14 to the Public Improvement District Act may compel any exercise
15 of the taxing power of the district, municipality or county to
16 pay the bonds or the interest on the bonds. Special levy bonds
17 issued pursuant to that act are not a debt of the district,
18 municipality or county, nor is the payment of special levy
19 bonds enforceable out of any money other than the revenue
20 pledged to the payment of the bonds.

21 I. Subject to the requirements of this section, a
22 district may issue special levy bonds at such times and in such
23 amounts as the district deems appropriate to carry out a
24 project or projects in phases.

25 J. Pursuant to this section, the district may issue

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1 and sell refunding bonds to refund any special levy bonds of
2 the district authorized by the Public Improvement District Act.
3 Refunding bonds issued pursuant to this section shall have a
4 final maturity date no later than the final maturity date of
5 the bonds being refunded."

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

8 "5-11-22. TERMS OF BONDS.--For any bonds issued in
9 connection with Section [~~19, 20 or 21 of the Public Improvement~~
10 ~~District Act~~] 5-11-20 or 5-11-21 NMSA 1978, the district board
11 shall prescribe the denominations of the bonds, the principal
12 amount of each issue and the form of the bonds and shall
13 establish the maturities, which shall not exceed thirty years,
14 interest payment dates and interest rates, whether fixed or
15 variable, not exceeding the maximum rate stated in the notice
16 of the election or the resolution of the district board. The
17 bonds may be sold by competitive bid or negotiated sale for
18 public or private offering at, below or above par. The
19 proceeds of the bonds shall be deposited with the treasurer, or
20 with a trustee or agent designated by the district board, to
21 the credit of the district to be withdrawn for the purposes
22 provided by the Public Improvement District Act. Pending that
23 use, the proceeds may be invested as determined by the
24 district. The bonds shall be made payable as to both principal
25 and interest solely from revenues of the district, and shall

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1 specify the revenues pledged for such purposes, and shall
2 contain such other terms, conditions, covenants and agreements
3 as the district board deems proper. The bonds may be payable
4 from any combination of taxes, levies or revenues of the types
5 described in Sections [~~19, 20 and 21 of the Public Improvement~~
6 ~~District Act~~] 5-11-20 and 5-11-21 NMSA 1978."

7 SECTION 9. Section 5-11-23 NMSA 1978 (being Laws 2001,
8 Chapter 305, Section 23) is amended to read:

9 "5-11-23. DISTRICT TAXES--ANNUAL FINANCIAL ESTIMATE--
10 ANNUAL FINANCIAL ESTIMATE AND BUDGET--CERTIFICATION TO LOCAL
11 GOVERNMENT DIVISION.--

12 A. All property taxes for the operation and
13 maintenance expenses of the district shall not exceed an amount
14 equal to three dollars (\$3.00) per one thousand dollars
15 (\$1,000) of net taxable value for all real and personal
16 property in the district, unless a higher rate is approved by a
17 vote of the resident qualified electors and owners, voting at
18 an election not less than three years after the date of the
19 formation of the district.

20 B. Once approved at an election or, in the case of
21 a special levy, by resolution of the district board, the
22 maximum rate of a property tax shall remain in effect until
23 increased or decreased at a subsequent election, and the
24 maximum rate of a special levy shall remain in effect until
25 increased or decreased by resolution of the district board at a

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1 subsequent hearing.

2 C. If a maximum property tax rate is in effect, the
3 district board, on petition of twenty-five percent of the
4 resident qualified electors, or by the owners of twenty-five
5 percent of the land area of the district, shall call an
6 election to reduce the maximum tax rate but not below the
7 lesser of that rate determined by the district board to be
8 necessary to maintain the district's facilities and
9 improvements where the tax was authorized for operation and
10 maintenance, or the actual rate then in effect, but in no event
11 shall the rate be reduced below the rate necessary to satisfy
12 the district's obligations in connection with any outstanding
13 bonds issued pursuant to the Public Improvement District Act.

14 D. If a maximum special levy is in effect, the
15 district board, on petition of twenty-five percent of the
16 resident qualified electors, or by the owners of twenty-five
17 percent of the land area of the district, shall hold a hearing
18 to determine whether to reduce the maximum special levy but not
19 below the lesser of that rate determined by the district board
20 to be necessary to maintain the district's facilities and
21 improvements, where the special levy was authorized for
22 operation and maintenance, or the actual rate then in effect,
23 but in no event shall the rate be reduced below the rate
24 necessary to satisfy the district's obligations in connection
25 with any outstanding bonds issued pursuant to the Public

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1 Improvement District Act.

2 E. Upon presentation to the district board of a
3 petition signed by the owners of a majority of the property in
4 the district, the district board shall adopt a resolution to
5 reduce or eliminate the portion of the tax or special levy,
6 beginning the next fiscal year, required for one or more
7 services or enhanced services specified in the petition.
8 Signatures on a petition to reduce or eliminate a tax or
9 special levy shall be valid for a period of sixty days.

10 F. When levying property tax or imposing a special
11 levy, the district board shall make annual statements and
12 estimates of the operation and maintenance expenses of the
13 district, the costs of public improvements to be financed by
14 the taxes or special levy and the amount of all other
15 expenditures for public infrastructure improvements and
16 enhanced services proposed to be paid from the taxes or special
17 levy and of the amount to be raised to pay [~~general obligation~~
18 ~~bonds of the district or~~] special levy bonds, all of which
19 shall be provided for by the levy and collection of property
20 taxes on the net taxable value of the real property in the
21 district or by the imposition and collection of special levies.
22 The district board shall file the annual statements and
23 estimates with the clerk. The district board shall publish a
24 notice of the filing of the estimate, shall hold hearings on
25 the portions of the estimate not relating to debt service on

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1 ~~[general obligation bonds or]~~ special levy bonds and shall
2 adopt a budget. The district board, on or before the date set
3 by law for certifying the annual budget of the municipality or
4 county, shall fix, levy and assess the amounts to be raised by
5 property taxes or special levies of the district and shall
6 cause certified copies of the order to be delivered to the
7 local government division of the department of finance and
8 administration. All statutes relating to the levy and
9 collection of property taxes, including the collection of
10 delinquent taxes and sale of property for nonpayment of taxes,
11 apply to district property taxes and to special levies, except
12 to the extent that the district board has provided for other
13 imposition, collection and foreclosure procedures in connection
14 with special levies."

15 SECTION 10. Section 5-11-24 NMSA 1978 (being Laws 2001,
16 Chapter 305, Section 24) is amended to read:

17 "5-11-24. DISSOLUTION OF DISTRICT.--

18 A. The district shall be dissolved by the district
19 board by a resolution of the district board upon a
20 determination that each of the following conditions exist:

21 (1) all improvements owned by the district
22 have been, or provision has been made for all improvements to
23 be, conveyed to the municipality or county in which the
24 district is located;

25 (2) either the district has no outstanding

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1 bond obligations or the municipality or county has assumed all
2 of the outstanding bond obligations of the district; and

3 (3) all obligations of the district pursuant
4 to any development agreement with the municipality or county
5 have been satisfied.

6 B. All property in the district that is subject to
7 the lien of district taxes or special levies shall remain
8 subject to the lien for the payment of [~~general obligation~~
9 ~~bonds and~~] special levy bonds, notwithstanding dissolution of
10 the district. The district shall not be dissolved if any
11 revenue bonds of the district remain outstanding unless an
12 amount of money sufficient, together with investment income
13 thereon, to make all payments due on the revenue bonds either
14 at maturity or prior redemption has been deposited with a
15 trustee or escrow agent and pledged to the payment and
16 redemption of the bonds. The district may continue to operate
17 after dissolution only as needed to collect money and make
18 payments on any outstanding bonds."

19 SECTION 11. A new section of the Public Improvement
20 District Act is enacted to read:

21 "[NEW MATERIAL] NOTICE OBLIGATIONS TO PURCHASER--FORM.--

22 A. A seller or agent of a seller of residential
23 real property that is located in a district established
24 pursuant to the Public Improvement District Act has an
25 affirmative duty to give to the purchaser of the property a

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1 written notice three days prior to execution of a sale or
2 purchase agreement.

3 B. The seller shall deliver the notice required by
4 Subsection A of this section to the purchaser three days prior
5 to the effective date of an executory contract binding the
6 purchaser to purchase the property. The notice must be given
7 separately, as part of the contract during negotiations, and
8 not part of any other notice the seller delivers to the
9 purchaser at closing.

10 C. This section does not apply to a transfer:

11 (1) under a court order or foreclosure sale;

12 (2) by a trustee in bankruptcy;

13 (3) to a mortgagee by a mortgagor or successor
14 in interest or to a beneficiary of a deed of trust by a trustor
15 or successor in interest;

16 (4) by a mortgagee or a beneficiary under a
17 deed of trust who has acquired the land at a sale conducted
18 under a power of sale under a deed of trust or a sale under a
19 court-ordered foreclosure or has acquired the land by a deed in
20 lieu of foreclosure;

21 (5) by a fiduciary in the course of the
22 administration of a decedent's estate, guardianship,
23 conservatorship or trust;

24 (6) from one co-owner to another co-owner of
25 an undivided interest in the real property; or

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1 (7) of only a mineral interest or leasehold
2 interest.

3 D. If the seller or agent of a seller of
4 residential real property that is located in a district
5 established pursuant to the Public Improvement District Act
6 fails to provide notice pursuant to this section, the purchaser
7 may cancel the real estate transaction, without cost, within
8 three business days from whichever of the following events
9 occurs last:

- 10 (1) the date of the new transaction;
- 11 (2) the date that the purchaser received the
12 notice required by this section; or
- 13 (3) the closing date of purchase of the
14 property within the district.

15 E. If the seller or agent of a seller of
16 residential real property that is located in a district
17 established pursuant to the Public Improvement District Act
18 fails to provide notice pursuant to this section, the purchaser
19 may cancel the real estate transaction in writing by the use of
20 any written statement that is signed and dated by the purchaser
21 and that states the purchaser's intent to cancel; or the
22 purchaser may use the notice provided in Subsection F of this
23 section within three business days of the events described in
24 Subsection D of this section. If the purchaser cancels by
25 mail, the purchaser must send the notice no later than midnight

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1 of the third business day following the latest of the three
2 events listed in Subsection D of this section.

3 F. The written notice required pursuant to
4 Subsection A of this section shall read substantially similar
5 to the following:

6 "NOTICE OF OBLIGATION TO PAY PUBLIC IMPROVEMENT DISTRICT LEVY
7 OR ASSESSMENT TO (municipality or county levying assessment)
8 CONCERNING THE PROPERTY AT (street address).

9 You are entering into a transaction where the property you
10 are purchasing is located in a public improvement district
11 (PID). As a purchaser of this parcel of real property, you are
12 obligated to pay a tax assessment to a municipality or county
13 for the public improvement project undertaken by the
14 _____ district.

15 (The following paragraph should be in bold, twelve-point type:)

16 TAX LEVY

17 The estimated assessment at the time of purchase on this
18 property is _____ for _____ (year). You
19 will be subject to annual increases limited to _____ with
20 a maximum increase over the term of the PID of _____.
21 The assessment may be due annually or in periodic installments.
22 This assessment is in addition to your property taxes. The
23 amount of the assessment is subject to change. Your failure to
24 pay an assessment could result in a lien on and the foreclosure
25 of your property.

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1 A feasibility study was completed as part of the PID. The
2 feasibility study for the public improvement project is
3 available through the _____ (municipality or county)
4 web site. More information concerning the amount of the
5 assessment and the due dates of that assessment may be obtained
6 from the municipality or county levying the assessment.

7 Landowners, developers, real estate agents, homebuilders
8 and any other party, including the applicant, are required to
9 describe in their marketing or promotional material the purpose
10 of the district, the financial and other relative impacts of
11 the district and the additional tax levy or assessment that
12 will burden your property.

13 Date: _____

14 Signature of Purchaser: _____

15 RIGHT OF CANCELLATION:

16 You have a legal right under state law to cancel this
17 transaction, without cost, within three business days from
18 whichever of the following events occurs last:

- 19 1) the date of the new transaction, which is
20 _____;
- 21 2) the date you received the Notice of Obligation to Pay
22 PID Assessment; or
- 23 3) the closing date of purchase of the property subject
24 to the PID assessment.

25 HOW TO CANCEL:

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1 If you decide to cancel this transaction, you may do so by
2 notifying _____ in writing at:
3 (mailing address of seller or agent of seller)
4 You may use any written statement that is signed and dated by
5 you and states your intention to cancel, or you may use this
6 notice by dating and signing below. Keep one copy of this
7 notice. If you cancel by mail, you must send the notice no
8 later than midnight of the third business day following the
9 latest of the three events listed above. If you send or
10 deliver your written notice to cancel another way, it must be
11 delivered to the above address no later than that time.

12 I WISH TO CANCEL

13 Date: _____

14 Signature of Purchaser: _____".

15 SECTION 12. REPEAL.--Section 5-11-19 NMSA 1978 (being
16 Laws 2001, Chapter 305, Section 19, as amended) is repealed.

17 SECTION 13. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2013.