

HOUSE BILL 217

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Linda M. Trujillo

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO SPECIAL DISTRICTS; REQUIRING NOTIFICATIONS FOR PUBLIC MEETINGS REQUIRED BY THE INFRASTRUCTURE DEVELOPMENT ZONE ACT BE SENT BY FIRST CLASS MAIL AND ALLOWING NOTIFICATIONS TO ALSO BE SENT BY ELECTRONIC MAIL.

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

SECTION 1. Section 5-17-1 NMSA 1978 (being Laws 2009, Chapter 136, Section 1) is amended to read:

"5-17-1. SHORT TITLE.--~~[This act]~~ Chapter 5, Article 17 NMSA 1978 may be cited as the "Infrastructure Development Zone

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Act"."

SECTION 2. Section 5-17-4 NMSA 1978 (being Laws 2009, Chapter 136, Section 4) is amended to read:

"5-17-4. PUBLIC HEARING REQUIRED.--

A. After receiving a petition and a service plan, the governing body shall set a date within ninety days for a public hearing on the petition and service plan of the proposed infrastructure development zone. The governing body, at the petitioners' expense, shall provide written notice of the date, time and location of the hearing to the petitioners, each resident or property owner of record within the boundaries of the proposed infrastructure development zone and the governing body of any existing county, municipality, school district or other political subdivision that has levied an ad valorem tax within the next preceding tax year and that has boundaries within a radius of three miles of the proposed infrastructure development zone boundaries, which governmental units shall be interested parties for the purposes of Subsection C of this section. Notice shall also be given to any person who has requested that notice be given for any petition filed pursuant to the Infrastructure Development Zone Act. The governing body shall make publication of the date, time, location and purpose of the hearing, the first of which shall be at least twenty days prior to the hearing date. The notice shall also include:

- (1) a general description of the land

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contained within the boundaries of the proposed infrastructure development zone;

(2) information outlining methods and procedures for excluding territory from the proposed infrastructure development zone; and

(3) places, including [~~web sites~~] websites, where interested persons may obtain a copy of the petition and the service plan.

B. Not more than thirty days nor less than twenty days prior to the hearing held pursuant to this section, the petitioners for the organization of the proposed infrastructure development zone shall send notification by [~~certified~~] first class mail of the hearing to the property owners within the proposed infrastructure development zone as listed on the records of the county clerk on the date requested unless the petitioners represent one hundred percent of the property owners. Notification of the hearing may also be sent by electronic mail to property owners that have an electronic mail address. The notification shall indicate that it is a notice of a hearing for the organization of an infrastructure development zone and shall indicate the date, time, location and purpose of the hearing, a general description of the type of services that are included in the service plan, the maximum mill levy, if any, or stating that there is no maximum that may be imposed by the proposed infrastructure development zone, and .212327.1

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procedures for the filing of a request for exclusion pursuant to Section [6 of the Infrastructure Development Zone Act] 5-17-6 NMSA 1978. The mailing of the notification by [certified] first class mail to all addresses within the proposed infrastructure development zone shall constitute a good-faith effort to comply with this subsection. [and] Failure to notify all property owners by [certified] first class SPAC→or electronic←SPAC mail shall not provide grounds for a challenge to the hearing being held.

C. The hearing held by the governing body shall be open to the public, and a record of the proceedings shall be made at the expense of the petitioners. All interested parties shall be afforded an opportunity to be heard under such rules of procedure as may be established by the governing body. Any testimony or evidence that in the discretion of the governing body is relevant to the organization of the proposed infrastructure development zone shall be considered."

SECTION 3. Section 5-17-15 NMSA 1978 (being Laws 2009, Chapter 136, Section 15) is amended to read:

"5-17-15. INCLUSION OF TERRITORY--PROCEDURE.--

A. Additional territory may be added to an infrastructure development zone without an election pursuant to the following provisions:

(1) the boundaries of an infrastructure development zone may be altered by the inclusion of additional

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real property by the fee owners of one hundred percent of any real property capable of being served with facilities of the infrastructure development zone filing with the board a petition in writing requesting that the property be included in the infrastructure development zone. The petition shall include a legal description of the property, shall state that assent to the inclusion of the property in the infrastructure development zone is given by the fee owners thereof and shall be acknowledged by the fee owners in the same manner as required for conveyance of land;

(2) the board shall hear the petition at a public meeting after publication of notice of the filing of the petition, the place, time and date of the meeting, the names and addresses of the petitioners and notice that all persons interested shall appear at the time and place and show cause in writing why the petition should not be granted. There shall be no withdrawal from a petition after publication of notice by the board without the consent of the board. The failure of any municipality or county that may be able to provide service to the real property described in the petition, or of any person in the existing infrastructure development zone to file a written objection, shall be taken as an assent to the inclusion of the area described in the notice;

(3) the board shall grant or deny the petition, in whole or in part, with or without conditions, and

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the action of the board shall be final and conclusive, except as provided in Paragraph (4) of this subsection. If a municipality or county has filed a written objection to the inclusion, the board shall not grant the petition as to any of the real property to which adequate service is, or will be, available from the municipality or county within a reasonable time and on a comparable basis. If a petition is granted as to all or any of the real property, the board shall make an order to that effect and file the order with the county clerk of each county in which any part of the infrastructure development zone is located, and the property shall thereafter be included in the infrastructure development zone; and

(4) a municipality or county that has filed a written objection to the inclusion and that can provide adequate service to the real property described in the petition within a reasonable time and on a comparable basis may bring an action in the district court for the county in which the land proposed to be included is located, commenced within thirty days after entry of the order of the board, to determine whether the action of the board granting the inclusion was arbitrary, capricious or unreasonable.

B. In addition to the procedures specified in Subsection A of this section, additional territory may also be added to an infrastructure development zone pursuant to the following provisions:

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(1) either:

(a) not less than twenty percent or two hundred, whichever number is smaller, of the taxpaying electors of an area that contains twenty-five thousand or more square feet of land may file a petition with the board in writing requesting that the area be included within the infrastructure development zone; except that no single tract of property constituting more than fifty percent of the total area to be included may be included in any infrastructure development zone without the consent of the owner thereof. The petition shall set forth a legal and a general description of the area to be included and shall be acknowledged in the same manner as required for conveyance of land; or

(b) the board may adopt a resolution proposing the inclusion of a specifically described area; but no single tract or parcel of property constituting more than fifty percent of the total area to be included may be included in an infrastructure development zone without the consent of the owner thereof;

(2) nothing in this subsection shall permit the inclusion in an infrastructure development zone of any property if a petition that objects to the inclusion and that is signed by the owners of taxable real and personal property, which property equals more than fifty percent of the total assessed value of all taxable real and personal property to be

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included, is filed with the board no later than ten days prior to the public meeting held under Paragraph (3) of this subsection;

(3) upon the filing of a petition or the adoption of a resolution pursuant to Paragraph (1) of this subsection, the board shall hear the petition or resolution at a public meeting after publication of notice of the filing of the petition or adoption of the resolution, the place, time and date of the meeting, the names and addresses of the petitioners, if applicable, the description of the area proposed for inclusion and notice that all persons interested and any municipality or county that may be able to provide service to the real property therein described shall appear at the time and place stated and show cause in writing why the petition should not be granted or the resolution not finally adopted. There shall be no withdrawal from a petition after publication of notice by the board without the consent of the board. The failure of any person in the existing infrastructure development zone to file a written objection shall be taken as an assent on that person's part to the inclusion of the area described in the notice;

(4) after a hearing pursuant to Paragraph (3) of this subsection, the board shall grant or deny the petition or finally adopt the resolution, in whole or in part, with or without conditions, and, subject to an election conducted

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pursuant to Paragraph (6) of this subsection, the action of the board shall be final and conclusive, except as provided in Paragraph (5) of this subsection. If a municipality or county has filed a written objection to the inclusion, the board shall not grant the petition or finally adopt the resolution as to any of the real property to which adequate service is, or will be, available from the municipality or county within a reasonable time and on a comparable basis;

(5) a municipality or county that has filed a written objection to the inclusion and that can provide adequate service to the real property described in the petition within a reasonable time and on a comparable basis may bring an action in the district court for the county in which the area proposed to be included is located, commenced within thirty days after entry of the order of the board, to determine whether the action of the board granting the inclusion was arbitrary, capricious or unreasonable;

(6) upon final action by a board pursuant to Paragraph (4) of this subsection or affirmation by a district court pursuant to Paragraph (5) of this subsection, an election shall be held within the area sought to be included. The secretary shall give published notice of the time and place of the election and of the question to be submitted, together with a summary of any conditions attached to the proposed inclusion. The ballot shall be prepared by the board and shall

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substantially contain the following words:

"Shall the following described area become a part of the
..... infrastructure development zone upon the
following conditions, if any?

(Insert description of area)

(Insert accurate summary of conditions)

For inclusion

Against inclusion"

(7) if the majority of the votes cast at the election are in favor of inclusion, the election official shall enter an order including any conditions so prescribed and making the area a part of the infrastructure development zone. The validity of the inclusion shall not be questioned directly or indirectly in any suit, action or proceeding; and

(8) nothing in this subsection shall permit the inclusion in an infrastructure development zone of any property that could not be included in the infrastructure development zone at the time of its organization without the written consent of the owners thereof, unless the owners of the property consent in writing to the inclusion of the property in the infrastructure development zone in a petition filed pursuant to this section or unless the property is no longer excludable pursuant to the provisions of Paragraph (4) of this subsection.

C. Nothing in this section shall be construed to

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permit the inclusion in an infrastructure development zone of any real property located in a municipality or a county outside a municipality unless the governing body of the municipality or county has adopted a resolution authorizing the inclusion or waives its right to require the resolution in its sole discretion. Any resolution of approval so adopted or waiver so given shall be appended to any petition filed pursuant to Paragraph (1) of Subsection A of this section or Subparagraph (a) of Paragraph (1) of Subsection B of this section.

D. Not more than thirty days nor less than twenty days prior to a meeting of the board held pursuant to Paragraph (2) of Subsection A of this section or Paragraph (3) of Subsection B of this section, the secretary shall send notification by [~~certified~~] first class mail of the meeting to the property owners within the area proposed to be included within the infrastructure development zone as listed on the records of the county clerk on the date requested.

Notification of the hearing may also be sent by electronic mail to property owners that have an electronic mail address. The notification shall indicate that it is a notice of a meeting for consideration of the inclusion of real property within an infrastructure development zone and shall indicate the date, time, location and purpose of the meeting, a reference to the services of the infrastructure development zone as described in the service plan, the maximum mill levy, if any, or stating

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that there is no maximum that may be imposed if the proposed area is included within the infrastructure development zone, and procedures for the filing of a petition for exclusion pursuant to Paragraph (4) of Subsection B of this section. Except as provided in this subsection, the mailing of the notification by [~~certified~~] first class mail to all addresses within the area proposed to be included within the infrastructure development zone shall constitute a good-faith effort to comply with this section. [~~and~~] Failure to notify all electors by [~~certified~~] first class SPAC→~~or~~ ~~electronic~~←SPAC mail shall not provide grounds for a challenge to the meeting being held."