

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 246

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

This document incorporates amendments that have been adopted during the current legislative session. The document 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; AMENDING PROVISIONS PURSUANT TO THE PUBLIC IMPROVEMENT DISTRICT ACT; ALLOWING ONLY A GOVERNING BODY OF A MUNICIPALITY OR COUNTY TO IMPOSE A PROPERTY TAX, SUBJECT TO AN ELECTION, OR A SPECIAL LEVY FOR PURPOSES OF THAT ACT; AMENDING PROCEDURES FOR APPOINTING MEMBERS OF A DISTRICT BOARD PURSUANT TO THE ACT; ALLOWING FOR THE FORMATION OF A PUBLIC IMPROVEMENT DISTRICT AND OTHER ALLOWABLE ACTIONS WITHOUT AN ELECTION BUT BY DETERMINATION OF OWNERS OF LAND IN THE DISTRICT IN CERTAIN CIRCUMSTANCES UNLESS AN ELECTION IS REQUIRED BY THE CONSTITUTION OF NEW MEXICO; REMOVING THE OPTION

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TO IMPOSE A HIGHER RATE OF PROPERTY TAX IF APPROVED BY VOTERS IN THE DISTRICT; AMENDING PROVISIONS PURSUANT TO THE TAX INCREMENT FOR DEVELOPMENT ACT; ALLOWING ONLY A GOVERNING BODY TO IMPOSE A PROPERTY TAX FOR PURPOSES OF THAT ACT; AMENDING PROCEDURES FOR APPOINTING MEMBERS OF A DISTRICT BOARD PURSUANT TO THE ACT; CHANGING THE TERMS OF MEMBERS OF A DISTRICT BOARD; SUBJECTING CONTRACTS ENTERED INTO BY A DISTRICT BOARD TO THE PROCUREMENT CODE; PROVIDING FOR THE CONTINUATION AND EXPIRATION OF TERMS OF DISTRICT BOARD MEMBERS APPOINTED OR ELECTED PURSUANT TO THE PUBLIC IMPROVEMENT DISTRICT ACT AND THE TAX INCREMENT FOR DEVELOPMENT ACT PRIOR TO THE EFFECTIVE DATE OF THIS ACT; GIVING DISTRICT BOARDS PURSUANT TO THOSE ACTS THE POWER OF EMINENT DOMAIN; AMENDING A SECTION OF THE AUDIT ACT TO ALLOW A GOVERNMENT COMPONENT UNIT TO BE AUDITED SEPARATELY FROM ITS PRIMARY GOVERNMENT ENTITY AND TO REQUIRE THAT THE COMPONENT UNIT'S AUDIT BE INCLUDED IN THE PRIMARY GOVERNMENT ENTITY'S AUDIT.

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

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

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

A. "allowable base" means the sum of the appraised value, not including the value of public infrastructure

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improvements, of:

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

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

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

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

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

D. "county" means a county ~~[that forms a public improvement district pursuant to the Public Improvement District Act in an unincorporated area or in an incorporated area with the municipality's consent]~~ in this state, a combined city and county corporation, an incorporated county, an urban

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county or a single urban government;

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

F. "development agreement" means an agreement between a property owner or developer and the county, municipality or district, concerning the improvement of specific property within the district, which agreement may be used to establish obligations of the owner or developer, the county or municipality or the district concerning the zoning, subdivision, improvement, impact fees, financial responsibilities and other matters relating to the development, improvement and use of real property within a district;

G. "district" means a public improvement district formed pursuant to the Public Improvement District Act by a municipality or by a county in an unincorporated area or in an incorporated area with the municipality's consent;

H. "district board" means the board of directors of [the] a district [~~which shall be composed of members of the governing body, ex officio, or, at the option of the governing body, five directors appointed by the governing body of the municipality or county in which the district is located, until~~

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~~replaced by elected directors, which shall occur not later than six years after the date on which the resolution establishing the district is enacted, as provided in Section 5-11-9 NMSA 1978];~~

I. "election" means an election held in compliance with the provisions of Sections 5-11-6 and 5-11-7 NMSA 1978 and pursuant to the provisions of the Local Election Act;

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

K. "general plan" means the general plan described in Section 5-11-3 NMSA 1978, as the plan may be amended from time to time;

L. "governing body" means the body or board that by law is constituted as the governing body of the municipality or county ~~[in which]~~ ordering formation of the ~~[public improvement]~~ district ~~[is located]~~;

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M. "municipality" means an incorporated city, town or village, [or town] whether incorporated under general act, special act, special charter or territorial charter, but does not mean a combined city and county corporation, an incorporated county or a single urban government;

N. "owner" means:

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

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

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

(4) an officer of a corporation holding record title to land within the district, which officer has been authorized by resolution of the corporation's board of

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directors to act with respect to such land;

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

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

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

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

P. "public infrastructure improvements" means all improvements listed in this subsection and includes both on-site improvements and off-site improvements that directly or indirectly benefit the district. Such improvements include necessary or incidental work, whether newly constructed, renovated or existing, and all necessary or desirable appurtenances. "Public infrastructure improvements" includes:

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

(2) drainage and flood control systems, including collection, transport, diversion, storage, detention,

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retention, dispersal, use and discharge;

(3) water systems for domestic, commercial, office, hotel or motel, industrial, irrigation, municipal or fire protection purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;

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

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

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

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

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

(9) electrical generation, transmission and distribution facilities;

(10) natural gas distribution facilities;

(11) lighting systems;

(12) cable or other telecommunications lines

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and related equipment;

(13) traffic control systems and devices, including signals, controls, markings and signage;

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

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

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

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

Q. "public infrastructure purpose" means:

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

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

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

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

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

(6) funding and paying from bond proceeds fiscal, financial and legal consultant fees, trustee fees, discount fees, district formation and election costs and all costs of issuance of bonds issued pursuant to the Public Improvement District Act, including fees and costs for bond counsel, financial advisors, consultants and underwriters, costs of obtaining credit ratings, bond insurance premiums, fees for letters of credit and other credit enhancement costs and printing costs;

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

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

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

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

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

T. "treasurer" means the treasurer of the governing body or the person appointed by the district board as the district treasurer pursuant to Section 5-11-6 NMSA 1978."

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

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

A. If the public convenience and necessity require, and on presentation of an application required by Section [~~10 of this 2013 act~~] 5-11-2.1 NMSA 1978 that is supported by a petition signed by the owners of at least twenty-five percent of the real property by assessed valuation proposed to be included in the district, the governing body may adopt a resolution declaring its intention to form a public improvement

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

- (1) the area or areas to be included in the district;
- (2) the purposes for which the district is to be formed;
- (3) that a general plan for the district is on file with the clerk that includes a map depicting the boundaries of the district and the real property proposed to be included in the district, a general description of anticipated improvements and their locations, general cost estimates, proposed financing methods and anticipated tax levies, special levies or charges, and that may include possible alternatives, modifications or substitutions concerning locations, improvements, financing methods and other information provided in the general plan;
- (4) the rate, method of apportionment and manner of collection of a special levy, if one is proposed, in sufficient detail to enable each owner or resident within the

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district to estimate the maximum amount of the proposed levy;

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

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

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

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

(9) whether the district board will be ~~[governed by a district board comprised]~~ initially composed of the members of the governing body ~~[ex officio]~~ or ~~[comprised of]~~ five directors ~~[initially]~~ appointed by the governing body.

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

C. Before adopting a resolution pursuant to this section, a general plan for the district shall be filed with the clerk."

SECTION 3. Section 5-11-6 NMSA 1978 (being Laws 2001,

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Chapter 305, Section 6, as amended) is amended to read:

"5-11-6. ORDER FORMING DISTRICT--~~[FORMATION DETERMINATION]~~ ELECTION PROCEDURES--FORMATION DETERMINATION.--

A. After the hearing, the governing body shall determine whether the district should be formed based upon the interests, convenience or necessity of the owners, residents of the district and citizens of the municipality or county in which the proposed district would be located. If the governing body determines that the district should be formed, it shall adopt a resolution ordering that the district be formed, deleting any property determined not to be directly or indirectly benefited by the district or modifying the general plan and then ordering that a formation determination be conducted and an election be held on the question whether to form the district. A resolution ordering a formation of the district shall require the owners to authorize by determination the issuance of general obligation bonds and that an election be called to submit the question of imposing a property tax to pay debt service on the bonds pursuant to Section 5-11-19 NMSA 1978 to the qualified electors or declare that a special levy may be imposed in the district in compliance with Section 5-11-20 NMSA 1978 and set a maximum levy for each class of property. A resolution ordering a formation of the district shall state that the district will be governed by a district board consisting of members of the governing body [~~ex officio,~~

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~~or, upon determination of the governing body]~~ or the five directors appointed [~~by the governing body]~~ pursuant to Section 5-11-9 NMSA 1978, and shall contain the names or titles of the five initial directors [~~and the terms of office of each~~]. If the governing body appoints a district board, it shall appoint [~~a~~] the initial treasurer and a clerk from the appointed [~~members]~~ directors.

B. Before submitting the question of formation of the district to the qualified electors of the proposed district, a formation determination shall be conducted by the governing body among the owners unless a petition is presented to the governing body pursuant to Subsection F of Section 5-11-7 NMSA 1978. [~~In the formation determination, each owner shall have the number of votes or portions of votes equal to the number of acres or portions of acres rounded upward to the nearest one-fifth of an acre owned by that owner in the submitted district.]~~

C. A formation or other determination shall not be a local election for purposes of the Local Election Act or a special election for purposes of the Special Election Act. The governing body or the district board may establish local procedures for noticing, conducting and canvassing determinations, which may include determinations made by unanimous written approval of the owners in affidavits executed

by the owners and confirmed in a review by the district board.
In a determination, each owner shall have one vote for each one-fifth of an acre located within the district rounded upward to the nearest one-fifth of an acre.

D. Should the formation determination by the owners result in a three-fourths' majority vote in favor of formation, the question shall also be submitted to a vote of the qualified electors of the proposed district. The conduct of a formation election by qualified electors shall meet the requirements of Section 5-11-7 NMSA 1978.

E. The right of the qualified electors to vote on the question of formation of the district shall not be assigned or delegated to the property owners, or related entities of the property owners, signing a petition submitted to the governing body for formation of a district."

SECTION 4. Section 5-11-7 NMSA 1978 (being Laws 2001, Chapter 305, Section 7, as amended) is amended to read:

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

A. ~~[Any]~~ Except as otherwise provided by this section, an election by qualified electors pursuant to the Public Improvement District Act shall be a nonpartisan election called, conducted and canvassed pursuant to the provisions of the ~~[Election Code]~~ Local Election Act.

B. In addition to those matters required for notice as provided in the Local Election Act, the notice of election

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shall state:

(1) if the election is a formation election, the boundaries of the proposed district;

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

(3) if the election is a property tax levy election pursuant to Section 5-11-19 NMSA 1978, the maximum tax rate per one thousand dollars (\$1,000) of assessed valuation to be imposed, the purposes for which the revenues raised will be used and the existing maximum tax rate, if any;

(4) that a general plan is on file with the clerk;

(5) the purposes for which the property taxes or the special levies will be imposed, and the revenues raised will be used, including a description of the public improvements to be financed with tax revenues, special levies, district revenues or bond proceeds; and

(6) that the imposition of property taxes or special levies will result in a lien for the payment thereof on property within the district.

~~[B. The district board, or in the case of a formation election, the governing body, shall determine the~~

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~~date of the election by passing a resolution to place the ballot question on a regular local election or general election ballot or by adopting a proclamation calling for a special election.~~

~~C. Except as otherwise provided by this section, the election shall comply with the Local Election Act.]~~

C. The ballot material provided to each qualified elector shall include:

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

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

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(3) for a formation election, the ballot, which shall pose the question to be voted upon as "district, yes" and "district, no" and for a bond election, "bonds, yes" and "bonds, no"; for a property tax election, if no tax is in place, "property tax, yes" and "property tax, no"; and for an election to change an existing maximum or eliminate an existing tax, "tax change, yes" and "tax change, no", specifying the type of tax to which the proposed change pertains.

D. At least a three-fourths' majority of the votes cast by qualified electors at the election shall be required for formation, issuing the bonds or imposing ~~[the]~~ a property tax ~~[or special levy]~~ or changing the tax ~~[or special levy]~~. Failure of a required majority to vote in favor of the matter submitted shall not prejudice the submission of the same or similar matters at a later election.

E. If a person listed on the assessment roll is no longer the owner of land in the district and the name of the successor owner becomes known to the governing body or the district board, as applicable, and is verified by recorded deed or other similar evidence of transfer of ownership, the successor owner is deemed to be the owner for the purposes of the Public Improvement District Act.

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

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

G. If no person is registered to vote within the district or proposed district areas within [~~seventy~~] sixty-three days immediately preceding any scheduled election date, the election required to be held pursuant to the Public Improvement District Act shall be canceled and the determination made by the owners of land in the district or proposed district areas shall prevail. Under such circumstances, when the question is on the formation of the district, the results of the formation determination of the owners shall prevail, unless the formation determination was waived by the governing body pursuant to Subsection F of this section. To the extent allowable by the constitution of New Mexico, when the question is on any other allowable action otherwise requiring a vote of the qualified electors, the owners or the owners of the proposed district areas shall make

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a determination, the result of which shall prevail."

SECTION 5. Section 5-11-7.1 NMSA 1978 (being Laws 2019, Chapter 212, Section 274) is amended to read:

"5-11-7.1. POSTING OF NOTICES.--For any election conducted pursuant to the Public Improvement District Act, in addition to the notice requirements set forth in Section 5-11-7 NMSA 1978, the ~~[owners]~~ district board shall ensure that notices shall be posted in three conspicuous public places within the boundaries of the district not less than twenty days before the first day for voting in the election."

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

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

A. If ~~[the formation of the]~~ a district is ~~[approved by at least a three-fourths' majority of the votes cast at the election]~~ formed pursuant to Section 5-11-7 NMSA 1978, the governing body shall cause a copy of the resolution ordering formation of the district to be delivered to the county assessor and the county treasurer and shall be recorded by the county clerk for the county in which the district is located and to the taxation and revenue department and the local government division of the department of finance and administration. A notice of the formation showing the number and date of the resolution and giving a description of the land

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included in the district shall be recorded with the county clerk.

B. Except as otherwise provided in this section, a district shall be a political subdivision of the state, separate and apart from the municipality or county. The amount of indebtedness evidenced by general obligation bonds issued pursuant to Section 5-11-19 NMSA 1978, special levy bonds issued pursuant to Section 5-11-20 NMSA 1978 and revenue bonds issued pursuant to Section 5-11-21 NMSA 1978 shall not exceed the estimated cost of the public infrastructure improvements plus all costs connected with the public infrastructure purposes and issuance and sale of bonds, including, without limitation, formation costs, credit enhancement and liquidity support fees and costs. The total aggregate outstanding amount of bonds and any other indebtedness for which the full faith and credit of the district are pledged shall not exceed sixty percent of the market value of the real property and improvements in the district after the public infrastructure improvements of the district are completed plus the value of the public infrastructure owned or to be acquired by the district with the proceeds of the bonds and shall not affect the general obligation bonding capacity of the municipality or county in which the district is located.

C. Bonds issued by a district shall not be a general obligation of the state, the county or the municipality

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in which the district is located and shall not pledge the full faith and credit of the state, the county or the municipality in which the district is located [~~irrespective of whether the district board is governed by the governing body of the county or municipality in which the district is located~~].

D. Following formation of the district, the district board shall administer in a reasonable manner the implementation of the general plan for the public infrastructure improvements of the district."

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

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

A. The governing body, at its option, may [~~authorize the appointment of a separate district board. In the case of an appointed district board, three of the appointed directors shall serve an initial term to expire following a regular local election and not to exceed six years. Two of the appointed directors shall serve an initial term to expire following a regular local election and not to exceed four years. The resolution forming the district shall state which directors shall serve the longer terms and which shall serve the shorter terms~~] appoint itself as the district board or appoint a separate district board consisting of five directors.

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The appointed members of the district board shall serve five-year terms. If a vacancy occurs on the district board because of death, resignation or inability of ~~[the]~~ an appointed director to discharge the duties of director, the governing body shall appoint a director to fill the vacancy, who shall hold office for the remainder of the unexpired term ~~[until a successor is appointed or elected]~~.

B. At the end of ~~[the appointed directors' terms]~~ each five-year term, the governing body shall ~~[resume governance of the district as its board either directly or through the governing body's designees or, at the governing body's option, shall hold an election of new directors by majority vote of the qualified electors or if the election is canceled pursuant to Subsection G of Section 5-11-7 NMSA 1978, an owner's determination conducted by ballot shall decide the new]~~ appoint itself as the district board or shall appoint directors pursuant to Subsection A of this section."

SECTION 8. Section 5-11-10 NMSA 1978 (being Laws 2001, Chapter 305, Section 10) is amended to read:

"5-11-10. POWERS OF A PUBLIC IMPROVEMENT DISTRICT

BOARD.--

A. In addition to the powers otherwise granted to a district board pursuant to the Public Improvement District Act, the district board, in implementing the general plan, may:

- (1) enter into contracts and expend money for

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any public infrastructure purpose with respect to the district;

(2) enter into development agreements with municipalities, counties or other local government entities in connection with property located within the boundaries of the district;

(3) enter into intergovernmental agreements as provided in the Joint Powers Agreements Act for the planning, design, inspection, ownership, control, maintenance, operation or repair of public infrastructure or the provision of enhanced services by the municipality or the county in the district and any other purpose authorized by the Public Improvement District Act;

(4) sell, lease or otherwise dispose of district property if the sale, lease or conveyance is not a violation of the terms of any contract or bond covenant of the district;

(5) reimburse the municipality or county in which the district is located for providing enhanced services in the district;

(6) operate, maintain and repair public infrastructure;

~~[(7) establish, impose and collect special levies for the purposes of funding public infrastructure improvements or enhanced services;~~

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~~(8)~~ (7) employ staff, counsel and consultants;

~~(9)~~ (8) reimburse the municipality or county in which the district is located for staff and consultant services and support facilities supplied by the municipality or county;

~~(10)~~ (9) accept gifts or grants and incur and repay loans for any public infrastructure purpose;

~~(11)~~ (10) enter into agreements with owners concerning the advance of money by owners for public infrastructure purposes or the granting of real property by the owner for public infrastructure purposes;

~~(12) levy property taxes~~ (11) impose ~~[special levies or]~~ fees and charges for any public infrastructure purpose on any real property located in the district and, in conjunction with the ~~[levy]~~ imposition of such ~~[taxes]~~ fees and charges, set and collect administrative fees;

~~(13)~~ (12) pay the financial, legal and administrative costs of the district;

~~(14)~~ (13) enter into contracts, agreements and trust indentures to obtain credit enhancement or liquidity support for its bonds and process the issuance, registration, transfer and payment of its bonds and the disbursement and investment of proceeds of the bonds;

~~(15)~~ (14) with the consent of the governing

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body of the municipality or county that formed the district, enter into agreements with persons outside of the district to provide enhanced services to persons and property outside of the district; [~~and~~

~~(16)] (15) use public easements and rights of way in or across public property, roadways, highways, streets or other thoroughfares and other public easements and rights of way, whether in or out of the geographical limits of the district, the municipality or the county; and~~

Sf1 → ~~(16) within sixty days of delivering written notice to the governing body that formed the district, exercise the power of eminent domain as provided by law and to carry out the purposes of the Public Improvement District Act.~~ ← Sf1

Sf1 → (16) exercise the power of eminent domain as provided by law and subject to the limitations of Subsection B of this section and the requirements of Subsection C of this section.

B. A district board may exercise the power of eminent domain on property located in a district solely for purposes of carrying out the purposes of the Public Improvement District Act; provided that the district board's power of eminent domain shall not exceed the power of eminent domain held by the governing body.

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C. If a district board determines to exercise the power of eminent domain on property within a district, the district board shall request the governing body to hold a hearing to determine whether the power of eminent domain should be exercised. The request shall identify the location of the property on which the power will be exercised and the reason the power should be exercised. Upon receipt of the request, the governing body shall promptly hold a hearing to determine whether the power of eminent domain should be exercised on the property identified in the request. If the governing body determines the power should be exercised, the governing body shall, by resolution, approve the exercise of the power of eminent domain on the identified property and transmit a certified copy of the resolution to the district board. Upon receipt of the certified copy of the resolution, the district board may proceed with exercising the power of eminent domain on the specified property.

~~Sf1~~ ~~B.~~ ~~Sf1~~ ~~Sf1~~ ~~D.~~ ~~Sf1~~ Public infrastructure improvements other than personalty may be located only in or on lands, easements or rights of way owned by the state, a county, a municipality or the district, whether in or out of the district, the municipality or the county.

~~Sf1~~ ~~C.~~ ~~Sf1~~ ~~Sf1~~ ~~E.~~ ~~Sf1~~ An agreement pursuant to Paragraph ~~(11)~~ (10) of Subsection A of this section may include agreements to repay all or part of such advances, fees

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and charges from the proceeds of bonds if issued or from advances, fees and charges collected from other owners or users or those having a right to use any public infrastructure. A person does not have authority to compel the issuance or sale of the bonds of the district or the exercise of any taxing power of the district to make repayment under any agreement.

~~[D. Notwithstanding the provisions of the Procurement Code, or local procurement requirements that may otherwise be applicable to the municipality or county in which the district is located, the district board, whether appointed or composed of members of the governing body, ex officio, may enter into contracts to carry out any of the district's authorized powers, including the planning, design, engineering, financing, construction and acquisition of public improvements for the district, with a contractor, an owner or other person or entity, on such terms and with such persons as the district board determines to be appropriate.] SJC→"←SJC~~

SJC→Sf1→~~D.~~←Sf1 Sf1→~~F.~~←Sf1 **The district board is subject to the Procurement Code, or a local procurement code adopted by the governing body, as applicable, for public procurement.**"←SJC

SECTION 9. Section 5-11-19 NMSA 1978 (being Laws 2001, Chapter 305, Section 19, as amended) is repealed and a new Section 5-11-19 NMSA 1978 is enacted to read:

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"5-11-19. [NEW MATERIAL] GENERAL OBLIGATION BONDS--
PROPERTY TAX LEVY.--

A. A district board may determine that general obligation bonds should be issued to provide money for public infrastructure purposes consistent with the general plan. If such determination is made, the district board shall request the governing body to call a general obligation bond election to submit the question to the qualified electors. The question shall include authorization for a levy, including a limitation on the levy, of a property tax to pay debt service on the bonds. The election shall be held pursuant to the provisions of the Local Election Act and may be held in conjunction with the formation election.

B. Upon receipt of a request to call an election pursuant to Subsection A of this section, the governing body shall promptly hold a hearing to determine whether the election should be called. If the governing body determines an election should be called, the governing body shall hold an election on the question of imposing a property tax on property in the district pursuant to Section 5-11-7 NMSA 1978. If the required majority votes in favor of the matter, the governing body shall, subject to the limitation provided in Subsection C of this section, levy and cause the property tax to be collected, at the same time and in the same manner as other property taxes are levied and collected on taxable property in the district,

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together with any money from the sources described in Section 5-11-17 NMSA 1978 to pay debt service on the bonds when due. Money derived from the levy of property taxes that are pledged to pay the debt service on the bonds shall be kept separately from other funds of the district. Property tax revenues not pledged to pay debt service on bonds may be used to pay other costs of the district, including costs of formation, administration, operation and maintenance, services or enhanced services. A levy of property taxes shall constitute a lien on all taxable property within the district, including all leased property or improvements to leased land, which shall be subject to foreclosure in the same manner as other property tax liens under the laws of this state. The lien shall include delinquencies and interest thereon at a rate not to exceed ten percent per year, the actual costs of foreclosure and any other costs of the district resulting from the delinquency. The proceeds of any foreclosure sale shall be deposited in the special bond fund for payment of any obligations secured thereby.

C. All property taxes for the operation and maintenance expenses of the district shall not exceed an amount equal to three dollars (\$3.00) per one thousand dollars (\$1,000) of net taxable value for all real and personal property in the district. The rate of a property tax shall

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remain in effect until increased or decreased at a subsequent election; provided that upon presentation of a petition signed by the owners of a majority of the property in the district, the governing body shall adopt a resolution to reduce or eliminate the portion of the property tax, beginning the next fiscal year, required for one or more services or enhanced services specified in the petition. Signatures on a petition to reduce or eliminate a property tax shall be valid for a period of sixty days.

D. Once the governing body has levied a property tax, the district board may issue and sell general obligation bonds of the district; provided that the district board shall have determined by resolution that the principal amount of all district general obligation bonds currently outstanding and the district general obligation bonds proposed for issuance and sale shall not result in a total annual debt service that exceeds five-tenths percent of the allowable base. After the bonds are issued, the district board shall enter in its minutes a record of the bonds sold and their numbers and dates.

E. Bonds may be sold in a public offering or in a negotiated sale.

F. Subject to the determination and election provisions of this section, a district may issue general obligation bonds at such times and in such amounts as the district deems appropriate to carry out a project or projects

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in phases.

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

SECTION 10. Section 5-11-20 NMSA 1978 (being Laws 2001, Chapter 305, Section 20, as amended) is repealed and a new Section 5-11-20 NMSA 1978 is enacted to read:

"5-11-20. [NEW MATERIAL] SPECIAL LEVY--BONDS--IMPOSITION OF SPECIAL LEVY.--

A. A district board may determine that special levy bonds should be issued to provide money for any public infrastructure purpose consistent with the general plan. If such determination is made, the district board shall request the governing body to impose a special levy. Included with the request, the district board shall specify conditions under which the obligation to pay special levies may be prepaid and permanently satisfied.

B. Upon receipt of a request to impose a special levy pursuant to Subsection A of this section, the governing

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body shall promptly hold a hearing to determine whether the special levy should be imposed. If the governing body determines the special levy should be imposed, the governing body shall, by resolution and subject to the limitations provided in Subsection D of this section, set a maximum levy for each class of property that may be imposed for debt service on special levy bonds and impose and cause the special levy to be collected, at the same time and in the same manner as property taxes are levied and collected on all property within the district that may be subject to the levy, including all leased property or improvements to leased land, together with any other money lawfully available to pay debt service on the bonds when due, except to the extent that the district board has provided for other imposition, collection and foreclosure procedures in connection with special levies. Money derived from the imposition of the special levy when collected that is pledged to pay the debt service on the bonds shall be kept separately from other funds of the district. Special levy revenues not pledged to pay debt service on bonds may be used to pay other costs of the district, including costs of formation, administration, operation and maintenance, service or enhanced services.

C. Once approved by resolution of the governing body, the rate of a special levy shall remain in effect until increased or decreased by resolution of the governing body at a

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subsequent hearing. Upon presentation of a petition signed by the owners of a majority of the property in the district, the governing body shall adopt a resolution to reduce or eliminate the portion of the special levy, beginning the next fiscal year, required for one or more services or enhanced services specified in the petition. Signatures on a petition to reduce or eliminate a special levy shall be valid for a period of sixty days.

D. Special levies against privately owned residential property shall be subject to the following provisions:

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

(2) the special levy shall be imposed for a specified time period, after which no further special levy shall be imposed and collected, except that special levies imposed solely to finance the cost of ongoing district services, maintenance or operations or enhanced services may be

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levied while such services, maintenance or operations or enhanced services are continuing; and

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

E. The imposition of a special levy shall constitute a lien on the property within the district subject to the special levy, including property acquired by the state or its political subdivisions after imposition of the special levy, which shall be effective during the period in which the special levy is imposed and shall have priority co-equal to the lien of property taxes. A special levy shall be subject to foreclosure by the district at any time after six months following written notice of delinquency to the owner of the real property to which the delinquency applies. The lien shall include delinquencies, penalties and interest thereon at a rate not to exceed the maximum legal rate of interest per year and

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penalties otherwise applicable for delinquent property taxes, the district's actual costs of foreclosure and any other costs of the district resulting from the delinquency. All rights of redemption applicable to property sold in connection with property tax foreclosures pursuant to the laws of this state shall apply to property sold following foreclosure of a special levy lien. The portion of proceeds of any foreclosure sale necessary to discharge the lien for the special levy shall be deposited in the special bond fund for payment of any obligations secured thereby.

F. If the governing body imposes a special levy, the district board may issue special levy bonds pursuant to this section. After the bonds are issued, the district board shall enter in its minutes a record of the bonds sold and their numbers and dates.

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

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appraiser of the appraisal institute.

H. Special levy bonds may be sold in a public offering or in a negotiated sale.

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

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

K. Pursuant to this section, the district may issue and sell refunding bonds to refund any special levy bonds of the district authorized by the Public Improvement District Act. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded."

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

"5-11-23. [~~DISTRICT TAXES~~] ANNUAL FINANCIAL ESTIMATE--ANNUAL FINANCIAL ESTIMATE AND BUDGET--CERTIFICATION

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TO LOCAL GOVERNMENT DIVISION AND GOVERNING BODY.--

A. ~~[All property taxes for the operation and maintenance expenses of the district shall not exceed an amount equal to three dollars (\$3.00) per one thousand dollars (\$1,000) of net taxable value for all real and personal property in the district, unless a higher rate is approved by a vote of the qualified electors voting at an election conducted pursuant to the provisions of the Local Election Act not less than three years after the date of the formation of the district.~~

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

C. ~~If a maximum property tax rate is in effect, the district board, on petition of twenty-five percent of the qualified electors, or by the owners of twenty-five percent of the land area of the district, shall call an election pursuant to the provisions of the Local Election Act to reduce the maximum tax rate but not below the lesser of that rate determined by the district board to be necessary to maintain~~

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~~the district's facilities and improvements where the tax was authorized for operation and maintenance, or the actual rate then in effect, but in no event shall the rate be reduced below the rate necessary to satisfy the district's obligations in connection with any outstanding bonds issued pursuant to the Public Improvement District Act.~~

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

~~E. Upon presentation to the district board of a petition signed by the owners of a majority of the property in the district, the district board shall adopt a resolution to reduce or eliminate the portion of the tax or special levy, beginning the next fiscal year, required for one or more services or enhanced services specified in the petition.~~

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~~Signatures on a petition to reduce or eliminate a tax or special levy shall be valid for a period of sixty days.~~

~~F. When levying property tax or imposing a special levy]~~ The district board shall make annual statements and estimates of:

(1) the operation and maintenance expenses of the district;

(2) the costs of public infrastructure improvements ~~[to be financed by the taxes or special levy and];~~

(3) the amount of all other expenditures for public infrastructure ~~[improvements]~~ and enhanced services ~~[proposed to be paid from the taxes or special levy and of];~~
and

(4) the amount to be raised to pay general obligation bonds of the district or special levy bonds. ~~[all of which shall be provided for by the levy and collection of property taxes on the net taxable value of the real property in the district or by the imposition and collection of special levies.]~~

B. The district board shall file the annual statements and estimates with the clerk. The district board shall publish a notice of the filing of the estimate, shall hold ~~[hearings]~~ a hearing on the portions of the estimate not relating to debt service on general obligation bonds or special

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~~levy bonds and shall adopt a budget. [The district board, on or before the date set by law for certifying the annual budget of the municipality or county, shall fix, levy and assess the amounts to be raised by property taxes or special levies of the district and]~~

C. After the hearing, the district board shall cause certified copies of the [order] the adopted budget to be delivered to the local government division of the department of finance and administration [All statutes relating to the levy and collection of property taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, apply to district property taxes and to special levies, except to the extent that the district board has provided for other imposition, collection and foreclosure procedures in connection with special levies.] and to the governing body."

SECTION 12. Section 5-15-3 NMSA 1978 (being Laws 2006, Chapter 75, Section 3, as amended by Laws 2019, Chapter 212, Section 199 and also by Laws 2019, Chapter 275, Section 1) is amended to read:

"5-15-3. DEFINITIONS.--As used in the Tax Increment for Development Act:

A. "base gross receipts taxes" means:

(1) the total amount of gross receipts taxes collected within a [~~tax increment development~~] district, as estimated by the governing body that adopted a resolution to

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form that district, in consultation with the taxation and revenue department, in the calendar year preceding the formation of the [~~tax increment development~~] district or, when an area is added to an existing district, the amount of gross receipts taxes collected in the calendar year preceding the effective date of the modification of the tax increment development plan and designated by the governing body to be available as part of the gross receipts tax increment; and

(2) any amount of gross receipts taxes that would have been collected in such year if any applicable additional gross receipts taxes imposed after that year had been imposed in that year;

B. "base property taxes" means:

(1) the portion of property taxes produced by the total of all property tax levied at the rate fixed each year by each governing body levying a property tax on the assessed value of taxable property within the tax increment development area last certified for the year ending immediately prior to the year in which a tax increment development plan is approved for the tax increment development area, or, when an area is added to an existing tax increment development area, "base property taxes" means that portion of property taxes produced by the total of all property tax levied at the rate fixed each year by each governing body levying a property tax

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upon the assessed value of taxable property within the tax increment development area on the date of the modification of the tax increment development plan and designated by the governing body to be available as part of the property tax increment; and

(2) any amount of property taxes that would have been collected in such year if any applicable additional property taxes imposed after that year had been imposed in that year;

C. "county" means a county in this state, a combined city and county corporation, an incorporated county, an urban county or a single urban government;

~~[C.]~~ D. "county option gross receipts taxes" means gross receipts taxes imposed by counties pursuant to the County Local Option Gross Receipts and Compensating Taxes Act and designated by the governing body of the county to be available as part of the gross receipts tax increment;

~~[D.]~~ E. "district" means a tax increment development district formed for the purposes of carrying out tax increment development projects;

~~[E.]~~ F. "district board" means a board formed in accordance with the provisions of the Tax Increment for Development Act to govern a ~~[tax increment development]~~ district;

~~[F.]~~ G. "enhanced services" means public services

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provided by a municipality or county within the district at a higher level or to a greater degree than otherwise available to the land located in the district from the municipality or county, including such services as public safety, fire protection, street or sidewalk cleaning or landscape maintenance in public areas; provided that "enhanced services" does not include the basic operation and maintenance related to infrastructure improvements financed by the district pursuant to the Tax Increment for Development Act;

[G.] H. "governing body" means the city council or city commission of a [~~city, the board of trustees or council of a town or village~~] municipality or the board of county commissioners of a county;

[H.] I. "gross receipts tax increment" means the gross receipts taxes collected within a [~~tax increment development~~] district in excess of the base gross receipts taxes collected in the district;

[I.] J. "gross receipts tax increment bonds" means bonds issued by a district in accordance with the Tax Increment for Development Act, the pledged revenue for which is a gross receipts tax increment;

[J.] K. "local government" means a municipality or county;

[K.] L. "municipal option gross receipts taxes"

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means those gross receipts taxes imposed by municipalities pursuant to the Municipal Local Option Gross Receipts and Compensating Taxes Act and designated by the governing body of the municipality to be available as part of the gross receipts tax increment;

~~[E-]~~ M. "municipality" means an incorporated city, town or village, whether incorporated under general act, special act, special charter or territorial charter, but does not mean a combined city and county corporation, an incorporated county or a single urban government;

~~[M-]~~ N. "new full-time economic base job" means a job:

- (1) that is primarily performed in New Mexico;
- (2) that is held by an employee who is hired to work an average of at least thirty-two hours per week for at least forty-eight weeks per year;

- (3) that is:
 - (a) involved, directly or in a supervisory capacity, with the production of: 1) a service; provided that the majority of the revenue generated from the service is from sources outside the state; or 2) tangible or intangible personal property for sale; or
 - (b) held by an employee that is employed at a regional, national or international headquarters operation or at an operation that primarily provides services for other

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operations of the qualifying entity that are located outside the state; and

(4) that is not directly involved with natural resources extraction or processing, on-site services where the customer is present for the delivery of the service, retail, construction or agriculture except for value-added processing performed on agricultural products that would then be sold for wholesale or retail consumption;

~~[N.]~~ O. "owner" means a person owning real property within the boundaries of a district;

~~[O.]~~ P. "person" means an individual, corporation, association, partnership, limited liability company or other legal entity;

~~[P.]~~ Q. "project" means a tax increment development project;

~~[Q.]~~ R. "property tax increment" means all property tax collected on real property within the designated tax increment development area that is in excess of the base property tax until termination of the district and distributed to the district in the same manner as distributions are made under the provisions of the Tax Administration Act;

~~[R.]~~ S. "property tax increment bonds" means bonds issued by a district in accordance with the Tax Increment for Development Act, the pledged revenue for which is a property

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tax increment;

~~[S-]~~ T. "public improvements" means on-site improvements and off-site improvements that directly or indirectly benefit a ~~[tax increment development]~~ district or facilitate development within a tax increment development area and that are dedicated to the ~~[governing body in which the district lies]~~ state or a local government or other political subdivision. "Public improvements" includes:

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

(2) drainage and flood control systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;

(3) water systems for domestic, commercial, office, hotel or motel, industrial, irrigation, municipal or fire protection purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;

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

(5) trails and areas for pedestrian, equestrian, bicycle or other non-motor vehicle use for travel, ingress, egress and parking;

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

(7) landscaping, including earthworks, structures, plants, trees and related water delivery systems;

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

(9) electrical generation, transmission and distribution facilities;

(10) natural gas distribution facilities;

(11) lighting systems;

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

(13) traffic control systems and devices, including signals, controls, markings and signage;

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

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

(16) equipment, vehicles, furnishings and other personal property related to the items listed in this

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subsection;

(17) inspection, construction management, planning and program management and other professional services costs incidental to the project;

(18) workforce housing; and

(19) any other improvement that the governing body determines to be for the use or benefit of the public;

~~[F.]~~ U. "state gross receipts tax" means the gross receipts tax imposed pursuant to the Gross Receipts and Compensating Tax Act, but does not include that portion distributed to municipalities pursuant to Sections 7-1-6.4 and 7-1-6.46 NMSA 1978 or to counties pursuant to Section 7-1-6.47 NMSA 1978;

~~[H.]~~ V. "sustainable development" means land development that achieves sustainable economic and social goals in ways that can be supported for the long term by conserving resources, protecting the environment and ensuring human health and welfare using mixed-use, pedestrian-oriented, multimodal land use planning;

~~[V.]~~ W. "tax increment development area" means the land included within the boundaries of a [~~tax increment development~~] district;

~~[W. "tax increment development district" means a district formed for the purposes of carrying out tax increment development projects;]~~

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X. "tax increment development plan" means a plan for the undertaking of a tax increment development project;

Y. "tax increment development project" means activities undertaken within a tax increment development area to enhance the sustainability of the local, regional or statewide economy; to support the creation of jobs, schools and workforce housing; and to generate tax revenue for the provision of public improvements and may include:

(1) acquisition of land within a designated tax increment development area or a portion of that tax increment development area;

(2) demolition and removal of buildings and improvements and installation, construction or reconstruction of streets, utilities, parks, playgrounds and improvements necessary to carry out the objectives of the Tax Increment for Development Act;

(3) installation, construction or reconstruction of streets, water utilities, sewer utilities, parks, playgrounds and other public improvements necessary to carry out the objectives of the Tax Increment for Development Act;

(4) disposition of property acquired or held by a [~~tax increment development~~] district as part of the undertaking of a tax increment development project at the fair

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market value of such property for uses in accordance with the Tax Increment for Development Act;

(5) payments for professional services contracts necessary to implement a tax increment development plan or project;

(6) borrowing to purchase land, buildings or infrastructure in an amount not to exceed the revenue stream that may be derived from the gross receipts tax increment or the property tax increment estimated to be received by a [~~tax increment development~~] district; and

(7) grants for public improvements essential to the location or expansion of a business; and

~~[Z. "taxing entity" means the governing body of a political subdivision of the state, the gross receipts tax increment or property tax increment of which may be used for a tax increment development project; and~~

~~AA.]~~ Z. "workforce housing" means decent, safe and sanitary dwellings, apartments, single-family dwellings or other living accommodations that are affordable for persons or families earning less than eighty percent of the median income within the county in which the tax increment development project is located; provided that an owner-occupied housing unit is affordable to a household if the expected sales price is reasonably anticipated to result in monthly housing costs that do not exceed thirty-three percent of the household's

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gross monthly income; provided that:

(1) determination of mortgage amounts and payments is to be based on down payment rates and interest rates generally available to lower- and moderate-income households; and

(2) a renter-occupied housing unit is affordable to a household if the unit's monthly housing costs, including rent and basic utility and energy costs, do not exceed thirty-three percent of the household's gross monthly income."

SECTION 13. Section 5-15-8 NMSA 1978 (being Laws 2006, Chapter 75, Section 8, as amended) is amended to read:

"5-15-8. FORMATION DETERMINATION--ELECTION.--

A. The formation determination and election procedures set forth in this section shall be used for:

- (1) formation of a new ~~[tax increment development]~~ district;
- (2) ~~[selection of a district board member]~~ modification of the boundaries of a tax increment development area;
- (3) ~~[adoption]~~ the levy of a property tax [levy by a tax increment development district] on property in the district;
- (4) use of property tax increment financing by

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a ~~[tax increment development]~~ district; or

(5) issuing of property tax increment bonds to be repaid by funds raised by property tax increments.

B. A formation determination may be waived and a ~~[tax increment development]~~ district shall be formed upon the governing body's adoption of a resolution to form a ~~[tax increment development]~~ district if a petition is presented to a governing body in accordance with the Tax Increment for Development Act and if the petition contains the signatures of all owners of the real property within the proposed tax increment development area and states that the owners waive the right to a formation determination.

C. A formation or other determination shall not be a local election for purposes of the Local Election Act or a special election for purposes of the Special Election Act. The governing body or district board may establish local procedures for noticing, conducting and canvassing determinations, which may include determinations by unanimous written approval of the owners in affidavits executed by the owners and confirmed in a review by the district board.

D. Except as otherwise provided by this section, an election by the qualified electors pursuant to the Tax Increment for Development Act shall be a nonpartisan election called, conducted and canvassed pursuant to the provisions of the ~~[Election Code]~~ Local Election Act.

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E. In addition to the notice requirements in the Local Election Act, the notice of election shall state:

(1) if the election is a formation election, the boundaries of the proposed [~~tax increment development~~] district;

(2) if the election is a bond election, the purpose for which the bonds are to be issued and the amount of the issue;

(3) if the election is a property tax levy election, the maximum tax rate per one thousand dollars (\$1,000) of assessed valuation to be imposed, the purposes for which the revenues raised will be used and the existing maximum tax rate, if any;

(4) that an approved tax increment development plan is on file with the clerk of the governing body;

(5) the purposes for which property taxes will be imposed and for which the revenues raised will be used, including a description of the public improvements to be financed with tax revenues, bond proceeds or other revenues of the [~~tax increment development~~] district; and

(6) that the imposition of property taxes will result in a lien for the payment on property within the district.

F. [~~The district board, or, in the case of a~~

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~~formation election, the governing body, shall determine the date of the election, which shall comply with the provisions of the Local Election Act.]~~ The ballot material provided to each qualified ~~[electors]~~ elector shall include:

(1) for a formation election, an impartial description of the tax increment development plan and a brief description of arguments for and against the formation of the ~~[tax increment development]~~ district, if any;

(2) for an election concerning the imposition of property taxes, an impartial description of the taxes to be imposed, the method of apportionment, collection and enforcement and other details sufficient to enable each qualified elector to determine the amount of tax it will be obligated to pay; a brief description of arguments for and against the imposition of taxes that are the subject of the election, if any; and a statement that the imposition of property taxes is for the provision of certain, but not necessarily all, public improvements that may be needed or desirable within the ~~[tax increment development]~~ district, and that other taxes, levies or assessments by other governmental entities may be presented for approval by owners and qualified electors;

(3) for an election concerning the use of property tax increment ~~[financing]~~ bonds, an impartial description of the estimated increment to be generated over the

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life of the project and the nature and extent of the public improvements to be constructed [~~and maintained~~] using such financing;

(4) for a formation election, the question to be voted upon as "district, yes" and "district, no";

(5) for a property tax imposition election, the question to be voted upon as "property tax, yes" and "property tax, no";

(6) for an election to change an existing maximum tax or eliminate an existing tax, the question to be voted upon as "tax change, yes" and "tax change, no" and shall specify the type of tax to which the proposed change pertains; and

(7) for an election concerning the use of property tax increment bonds, the ballot shall pose the question to be voted upon as "bonds, yes" and "bonds, no".

G. Failure of a majority to vote in favor of the matter submitted shall not prejudice the submission of the same or similar matters at a later election; provided that an election on the same question shall not be held within one year of the failure of a majority to vote in favor of that question.

H. If a person transfers real property located in a district and the name of the successor owner becomes known to the [~~governing body or the~~] district board [~~as applicable~~] and

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is verified by recorded deed or other similar evidence of transfer of ownership, the successor owner is deemed to be the owner of the real property for the purposes of the Tax Increment for Development Act.

I. If there are no persons registered to vote within a district or proposed district areas within [~~seventy~~ sixty-three] days immediately preceding a scheduled election date, an election required to be held pursuant to the Tax Increment for Development Act shall be canceled and the determination made by the owners of property within the district or proposed district areas shall prevail, unless an election is otherwise required by the constitution of New Mexico or the determination was waived by the governing body pursuant to Subsection B of this section. In a determination, each owner shall have [~~the number of votes or portion of votes equal to the number of acres or portion of acres~~] one vote for each one-fifth of an acre located in the district, rounded upward to the nearest one-fifth of an acre [~~owned in the district by that owner~~]."

SECTION 14. Section 5-15-9 NMSA 1978 (being Laws 2006, Chapter 75, Section 9, as amended) is amended to read:

"5-15-9. FORMATION OF A DISTRICT.--

A. If the formation of the [~~tax increment development~~] district is approved in accordance with the provisions of Section 5-15-8 NMSA 1978, the governing body

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shall deliver a copy of the resolution ordering formation of the ~~[tax increment development]~~ district to each of the following persons or entities:

(1) the county assessor, the county treasurer and the clerk of the county in which the district is located;

(2) the school district within which any portion of the property located within a tax increment development area lies;

~~[(3) any other taxing entities within which any portion of the property located within a tax increment development area lies;~~

~~[(4)]~~ (3) the taxation and revenue department;

~~[(5)]~~ (4) the local government division of the department of finance and administration; and

~~[(6)]~~ (5) the director of the legislative finance committee.

B. A notice of the formation showing the number and date of the resolution and giving a description of the land included in the district shall be recorded with the clerk of the county in which the district is located.

C. A ~~[tax increment development]~~ district shall be a political subdivision of the state, separate and apart from a municipality or county."

SECTION 15. Section 5-15-10 NMSA 1978 (being Laws 2006,

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Chapter 75, Section 10, as amended) is amended to read:

"5-15-10. GOVERNANCE OF THE DISTRICT.--

A. Following formation of a [~~tax increment development~~] district, a district board shall administer in a reasonable manner the implementation of the tax increment development plan as approved by the governing body.

B. The district shall be governed by the governing body that adopted a resolution to form the district or by a five-member board composed of four members appointed by that governing body; provided, however, that the fifth member of the five-member board is the secretary of finance and administration or the secretary's designee with full voting privileges.

C. [~~Two of the appointed directors shall serve an initial term to expire following a regular local election and not to exceed six years. Two of the appointed directors shall serve an initial term to expire following a regular local election and not to exceed four years. The resolution forming the district shall state which directors shall serve the longer terms and which shall serve the shorter terms~~] The members of the district board shall serve five-year terms. At the end of each five-year term, the governing body shall appoint itself as the district board or appoint five directors as provided in Subsection B of this section.

D. If a vacancy occurs on the district board

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because of the death, resignation or inability of the director to discharge the duties of the director, the governing body shall appoint a director to fill the vacancy, and the director shall hold office for the remainder of the unexpired term until a successor is appointed [~~or elected~~].

~~[D. In the case of an appointed board of directors that is not the governing body, at the end of the appointed directors' initial terms, the board shall hold an election of new directors by majority vote of qualified electors in accordance with the Local Election Act and the Tax Increment for Development Act. If the election is canceled pursuant to Subsection I of Section 5-15-8 NMSA 1978, a determination by the owners conducted by ballot shall select the new directors.]"~~

SECTION 16. Section 5-15-12 NMSA 1978 (being Laws 2006, Chapter 75, Section 12) is amended to read:

"5-15-12. DISTRICT POWERS--LIMITATIONS.--

A. In addition to other express or implied authority granted by law, a district board shall have the power to:

- (1) enter into contracts or expend money for any public purpose with respect to the district;
- (2) enter into agreements with a municipality, county or other local government entity in connection with real

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property located within the district;

(3) enter into an intergovernmental agreement in accordance with the Joint Powers Agreements Act for the planning, design, inspection, ownership, control, maintenance, operation or repair of public infrastructure or the provision of enhanced services by the municipality or county in which the district lies or for any other purpose authorized by the Tax Increment for Development Act;

(4) sell, lease or otherwise dispose of district property if the sale, lease or conveyance is not a violation of the terms of any contract or bond covenant of the district;

(5) reimburse a municipality or county in which the ~~[tax increment development]~~ district is located for providing services within the tax increment development area;

(6) operate, maintain and repair public infrastructure ~~[until dedicated to the governing body];~~

(7) employ staff, counsel, advisors and consultants;

(8) reimburse a municipality or county in which the district is located for staff and consultant services and support facilities supplied by the municipality or county;

(9) accept gifts or grants and incur and repay loans for a public purpose;

(10) enter into an agreement with an owner

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concerning the advance of money by an owner for a public purpose or the granting of real property by the owner for a public purpose;

~~[(11) levy property taxes in accordance with election requirements of the Tax Increment for Development Act for a public purpose on real property located in the district;~~

~~(12)]~~ (11) pay the financial, legal and administrative costs of the district;

~~[(13)]~~ (12) enter into contracts, agreements and trust indentures to obtain credit enhancement or liquidity support for its bonds and process the issuance, registration, transfer and payment of its bonds and the disbursement and investment of proceeds of the bonds in accordance with the provisions for investment of funds by municipal treasurers;

~~[(14)]~~ (13) borrow money within the limits of the Tax Increment for Development Act to fund the construction, operation and maintenance of public improvements; ~~[until dedicated to the governing body or for any other lawful public purposes related to the purposes of the Tax Increment for Development Act; and~~

~~(15)]~~ (14) use public easements and rights of way in or across public property, roadways, highways, streets or other thoroughfares and other public easements and rights of way of the district, municipality or county; and

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~~Sf1→(15) within sixty days of delivering written notice to the governing body ordering formation of the district, exercise the power of eminent domain as provided by law and to carry out the purposes of the Tax Increment for Development Act.~~←Sf1

~~[B. Notwithstanding the provisions of the Procurement Code or local procurement requirements that may otherwise be applicable to the municipality or county in which the district is located, the district board may enter into contracts to carry out any of the tax increment development district's authorized powers, including the planning, design, engineering, financing, construction and acquisition of public improvements for the district, with a contractor, an owner or other person or entity, on such terms and with such persons as the district board determines to be appropriate.~~

~~G. A district shall not have the power of eminent domain for any purpose.~~SJC→]←SJC

Sf1→SJC→B. ~~The district board is subject to the Procurement Code, or a local procurement code adopted by the governing body, as applicable, for public procurement.~~←SJC←Sf1

SJC→D.] B.←SJC Sf1→SJC→C.←SJC←Sf1 Sf1→Sf1→D.] B.←Sf1←Sf1

Sf1→(15) exercise the power of eminent domain as provided by law and subject to the limitations of Subsection B of this section and the requirements of Subsection C of this

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section.

B. A district board may exercise the power of eminent domain on property located in a district solely for purposes of carrying out the purposes of the Tax Increment for Development Act; provided that the district board's power of eminent domain shall not exceed the power of eminent domain held by the governing body.

C. If a district board determines to exercise the power of eminent domain on property within a district, the district board shall request the governing body to hold a hearing to determine whether the power of eminent domain should be exercised. The request shall identify the location of the property on which the power will be exercised and the reason the power should be exercised. Upon receipt of the request, the governing body shall promptly hold a hearing to determine whether the power of eminent domain should be exercised on the property identified in the request. If the governing body determines the power should be exercised, the governing body shall, by resolution, approve the exercise of the power of eminent domain on the identified property and transmit a certified copy of the resolution to the district board. Upon receipt of the certified copy of the resolution, the district board may proceed with exercising the power of eminent domain on the specified property.

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D. The district board is subject to the Procurement Code, or a local procurement code adopted by the governing body, as applicable, for public procurement.

E. ←Sf1 A casino shall not be located in a district, and a district shall not use the proceeds of property tax increment bonds or gross receipts tax increment bonds to finance public improvements for a casino."

SECTION 17. Section 5-15-13 NMSA 1978 (being Laws 2006, Chapter 75, Section 13, as amended) is amended to read:

"5-15-13. [AUTHORITY TO IMPOSE] PROPERTY TAX LEVY-- LIMITATIONS.--A [district has the power to establish a] property tax levy upon real property located within the tax increment development area may be imposed by a governing body with the following limitations:

A. the maximum property tax levy [~~a district may impose is~~] shall not exceed five dollars (\$5.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code, which may be used for operation and maintenance [~~and capital improvements~~], in furtherance of the purposes of the Tax Increment for Development Act;

B. [~~a district may impose~~] a property tax levy may be imposed only after authorization through a determination made by the owners of real property in the district and by a majority of votes cast by the qualified resident electors of a

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district in an election held [~~in accordance with the Local Election Act and the Tax Increment for Development Act~~] pursuant to Section 5-15-8 NMSA 1978; and

C. a property tax levy [~~imposed by a district~~] shall not be effective for more than four years."

SECTION 18. Section 5-15-15 NMSA 1978 (being Laws 2006, Chapter 75, Section 15, as amended by Laws 2019, Chapter 274, Section 8 and by Laws 2019, Chapter 275, Section 2) is amended to read:

"5-15-15. TAX INCREMENT FINANCING--GROSS RECEIPTS TAX INCREMENT TO SECURE BONDS.--

A. A tax increment development plan, as originally approved or as later modified, may contain a provision that gross receipts tax increments collected within the tax increment development area after the effective date of approval of the tax increment development plan may be dedicated for the purpose of securing gross receipts tax increment bonds pursuant to the Tax Increment for Development Act.

B. A municipality may dedicate a portion of [~~a gross receipts tax increment from~~] any of the following [~~taxes~~] to pay the principal of, the interest on and any premium due in connection with the bonds of, loans or advances to, or any indebtedness incurred by, whether funded, refunded, assumed or otherwise, the authority for financing or refinancing, in whole

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or in part, a tax increment development project within the tax increment development area:

(1) an increment of a municipal option gross receipts tax [~~that is dedicated by the ordinance imposing the increment to the tax increment development project~~]; and

(2) an amount distributed to municipalities pursuant to Sections 7-1-6.4 and 7-1-6.46 NMSA 1978.

C. A county may dedicate a portion of [~~a gross receipts tax increment from~~] any of the following [~~taxes~~] to pay the principal of, the interest on and any premium due in connection with the bonds of, loans or advances to or any indebtedness incurred by, whether funded, refunded, assumed or otherwise, the district for financing or refinancing, in whole or in part, a tax increment development project within the tax increment development area:

(1) an increment of a county option gross receipts tax [~~that is dedicated by the ordinance imposing the increment to the tax increment development project~~]; and

(2) the amount distributed to counties pursuant to Section 7-1-6.47 NMSA 1978.

D. Subject to the provisions of Subsection G of this section, the state board of finance may dedicate a gross receipts tax increment attributable to the state gross receipts tax to pay the financing and refinancing costs, the principal of, the interest on and any premium due in connection with

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gross receipts tax increment bonds issued to finance a tax increment development project within the tax increment development area; provided that:

(1) beginning July 1, 2029, the increment from the state gross receipts tax is no more than the average of:

(a) the increment from municipal option gross receipts taxes dedicated by resolution by the municipality, if the district is located in a municipality; and

(b) the increment from county option gross receipts taxes dedicated by resolution by the county;

(2) the state board of finance has adopted a resolution dedicating an increment attributable to the state gross receipts tax for the purpose of securing gross receipts tax increment bonds pursuant to Subsection G of this section; and

(3) the dedication shall be conditioned on the gross receipts tax increment bonds being issued no later than four years after the state board of finance has adopted the resolution dedicating the increment.

E. The gross receipts tax increment generated by the imposition of municipal or county option gross receipts taxes specified by statute for particular purposes may nonetheless be dedicated for the purposes of the Tax Increment for Development Act if intent to do so is set forth in the tax

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increment development plan approved by the governing body, if the purpose for which the increment is intended to be used is consistent with the purposes set forth in the statute authorizing the municipal or county option gross receipts tax.

F. An imposition of a gross receipts tax increment attributable to a gross receipts tax by a ~~[taxing entity]~~ governing body may be dedicated for the purpose of securing gross receipts tax increment bonds with the agreement of the ~~[taxing entity]~~ governing body, evidenced by a resolution adopted by a majority vote of that ~~[taxing entity]~~ governing body. A ~~[taxing entity]~~ governing body shall not agree to dedicate for the purposes of securing gross receipts tax increment bonds more than seventy-five percent of its gross receipts tax increment attributable to gross receipts taxes by the ~~[taxing entity]~~ governing body. A resolution of the ~~[taxing entity]~~ governing body to dedicate a gross receipts tax increment or to increase the dedication of a gross receipts tax increment shall become effective only on January 1 or July 1 of the calendar year.

G. The state board of finance shall condition a dedication of a gross receipts tax increment attributable to the state gross receipts tax on the approval required pursuant to Section 5-15-21 NMSA 1978 and that the initial gross receipts tax increment bonds issuance secured by a portion of the gross receipts tax increment attributable to the state

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gross receipts tax shall be issued no later than four years after the state board of finance has adopted the resolution making the dedication. Subject to the limitations provided in Subsection D of this section, the state board of finance shall not agree to dedicate more than seventy-five percent of the gross receipts tax increment attributable to the state gross receipts tax within the district. The resolution of the state board of finance shall become effective on January 1 or July 1 of the calendar year following the notification period pursuant to Section 5-15-27 NMSA 1978 and shall find that:

(1) the state board of finance has reviewed the request for the use of the state gross receipts tax;

(2) based upon review by the state board of finance of the applicable tax increment development plan, the dedication by the state board of finance of a portion of the gross receipts tax increment within the district for use in meeting the required goals of the tax increment plan is reasonable and in the best interest of the state; and

(3) based upon the review by the state board of finance, the use of the state gross receipts tax is likely to stimulate the creation of jobs, economic opportunities and general revenue for the state through the addition of new businesses to the state and the expansion of existing businesses within the state; provided that, when reviewing the

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applicable tax increment development plan to create jobs and economic opportunities, the state board of finance shall prioritize in its consideration net, new full-time economic base jobs that would not have occurred on a similar scale and time line but for the use of the state gross receipts tax increment. The benefit to be evaluated is the marginal benefit of the speed-up in time or the incremental change in job creation above expected normal growth and shall exclude retail jobs, call center jobs and service jobs where the customer is typically on site.

H. The governing body of the jurisdiction in which a [~~tax increment development~~] district has been established shall timely notify the assessor of the county in which the district has been established, the taxation and revenue department and the local government division of the department of finance and administration when:

(1) a tax increment development plan has been approved that contains a provision for the allocation of a gross receipts tax increment;

(2) any outstanding bonds of the district have been paid off; and

(3) the purposes of the district have otherwise been achieved."

SECTION 19. Section 5-15-17 NMSA 1978 (being Laws 2006, Chapter 75, Section 17) is amended to read:

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"5-15-17. PROPERTY TAX INCREMENT BONDS.--

A. Notwithstanding any law to the contrary, but in accordance with the Tax Increment for Development Act, a tax increment development plan, as originally approved or as later modified, may contain a provision that a portion of property taxes levied after the effective date of the approval of the tax increment development plan upon taxable property within a tax increment development area each year, by or for the benefit of any public body, may be dedicated for securing property tax increment bonds pursuant to the Tax Increment for Development Act, according to the following procedures:

(1) the base property taxes shall be paid into the funds of each public body as are all other taxes collected by or for the public body;

(2) the portion of the property taxes in excess of the base property tax amount shall be allocated to, and, when collected, paid into a special fund of the district to pay the principal of, the interest on and any premiums due in connection with the bonds of, loans or advances to, or indebtedness incurred by, whether funded, refunded, assumed or otherwise, the authority for financing or refinancing, in whole or in part, a tax increment development project within the tax increment development area. Unless and until the total assessed value of the taxable property in a tax increment

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development area exceeds the base assessed value of the taxable property in the tax increment development area, all of the taxes levied upon the taxable property in the tax increment development area shall be paid into the funds of the respective public bodies; and

(3) when the bonds, loans, advances and indebtedness, if any, including interest thereon and any premiums due in connection with the bonds, loans, advances and indebtedness have been paid, all taxes upon taxable property in a tax increment development area shall be paid into the funds of the respective public bodies.

B. The portion of property taxes in excess of the amount of base property taxes may be irrevocably pledged by the district for the payment of the principal of, the interest on and any premiums due in connection with the bonds, loans, advances and indebtedness.

C. Upon general reassessment of taxable property valuations in a county, including all or part of a tax increment development area in which a property tax increment has been pledged for property tax increment bonds, the portions of valuations for assessment shall be proportionately adjusted in accordance with that reassessment or change.

D. A tax increment development plan, as originally approved or as later modified, may contain a provision that the taxes levied upon taxable property within the tax increment

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development area may continue to be allocated after the effective date of the adoption of the property tax increment provision if the existing bonds are in default or about to go into default; except that those taxes shall not be allocated after all bonds of the district issued pursuant to the plan, including loans, advances and indebtedness, if any, and interest thereon, and any premiums due in connection with the loans, advances and indebtedness have been paid.

E. The property tax increment generated by the imposition of property taxes may nonetheless be dedicated for the purposes of the Tax Increment for Development Act if intent to do so is set forth in the tax increment development plan approved by the governing body and if the property tax was not approved in an election.

F. The municipality in which a [~~tax increment development~~] district has been established shall timely notify the assessor of the county in which the district has been established when:

- (1) a tax increment development plan has been approved;
- (2) any outstanding obligation incurred by the district has been paid off; and
- (3) the purposes of the district have otherwise been achieved.

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G. As used in this section, "taxes" includes all levies authorized to be made on an ad valorem basis upon real and personal property.

H. ~~[The increment attributable to a levy by a taxing entity shall not be dedicated for the purpose of securing property tax increment bonds without the agreement of the taxing entity. The agreement shall be evidenced by a resolution adopted by a majority vote of that taxing entity.]~~ A ~~[taxing entity]~~ governing body shall not ~~[agree to]~~ dedicate for the purpose of securing property tax increment bonds more than seventy-five percent of the property tax increment attributable to a property tax levy ~~[by that taxing entity]."~~

SECTION 20. Section 5-15-20 NMSA 1978 (being Laws 2006, Chapter 75, Section 20, as amended) is amended to read:

"5-15-20. GENERAL BONDING AUTHORITY OF A ~~[TAX INCREMENT DEVELOPMENT]~~ DISTRICT--OTHER LIMITATIONS.--

A. A district board shall not issue bonds against gross receipts tax increments attributable to:

(1) the state gross receipts tax without:

(a) the state board of finance adopting a resolution dedicating a gross receipts tax increment attributable to the state gross receipts tax for the purpose of securing the gross receipts tax increment bonds pursuant to Subsection G of Section 5-15-15 NMSA 1978; and

(b) the approval required by Section

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5-15-21 NMSA 1978; and

(2) a gross receipts tax imposed by a [~~taxing entity~~] governing body without the agreement of the [~~taxing entity~~] governing body as evidenced by a resolution adopted pursuant to Subsection B or C of Section 5-15-15 NMSA 1978.

B. Except as otherwise provided in this section, a district board shall not issue bonds against either gross receipts tax increments or property tax increments without the express written authorization of the department of finance and administration, as evidenced by a letter signed by the secretary of finance and administration. A district formed and approved by a class A county or by a municipality within a class A county if the municipality has a population of more than sixty-five thousand persons, according to the most recent federal decennial census, is not required to obtain express written authorization of the department of finance and administration for the issuance of gross receipts tax increment bonds or property tax increment bonds.

C. Prior to the issuance of indebtedness evidenced by the gross receipts tax increment bonds or property tax increment bonds issued by a district pursuant to the Tax Increment for Development Act, the property owners within the district shall contribute a minimum of twenty percent of the initial public infrastructure costs, which may be reimbursed

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with proceeds of gross receipts tax increment bonds or property tax increment bonds; unless the project to be financed with gross receipts tax increment bonds or property tax increment bonds is a metropolitan redevelopment project pursuant to the Metropolitan Redevelopment Code.

D. The amount of indebtedness evidenced by the gross receipts tax increment bonds or property tax increment bonds issued pursuant to the Tax Increment for Development Act shall not exceed the estimated cost of the public improvements plus all costs connected with the public infrastructure purposes and the issuance and sale of bonds, including, without limitation, formation costs, credit enhancement and liquidity support fees and costs.

E. The indebtedness evidenced by the gross receipts tax increment bonds or property tax increment bonds shall not affect the general obligation bonding capacity of the municipality or county in which the [~~tax increment development~~] district is located.

F. The indebtedness evidenced by the gross receipts tax increment bonds or property tax increment bonds shall be payable only from the special funds into which are deposited the gross receipts tax increments and property tax increments as set forth in the Tax Increment for Development Act.

G. Bonds issued by a [~~tax increment development~~] district shall not be a general obligation of the state, the

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county or the municipality in which the [~~tax increment development~~] district is located and shall not pledge the full faith and credit of the state, the county or the municipality in which the [~~tax increment development~~] district is located."

SECTION 21. Section 5-15-25 NMSA 1978 (being Laws 2006, Chapter 75, Section 25, as amended) is amended to read:

"5-15-25. MODIFICATION OF TAX INCREMENT DEVELOPMENT AREA BOUNDARIES OR TAX INCREMENT DEVELOPMENT PLAN.--

A. Following formation of a district, an area may be eliminated from the tax increment development area only following a hearing conducted upon notice given to the owners of land in the tax increment development area in the manner prescribed for the formation hearing, adoption of a resolution of intention to do so by the district board, a determination by the owners of real property within the district to eliminate the area and voter approval by the qualified electors as provided in the Local Election Act and the Tax Increment for Development Act. Real property within the tax increment development area that is subject to the lien of property taxes [~~special levies~~] or other charges or taxes imposed and dedicated to the district pursuant to the Tax Increment for Development Act shall not be eliminated from the district while there are bonds or other obligations outstanding that are payable by [~~those~~] the revenues generated from the dedicated

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amounts of taxes [~~special levies~~] or charges, except in circumstances where such revenues continue to be impressed with the obligation to repay the outstanding bonds or obligations.

B. Following formation of a district, an area may be added to the district upon a determination by the owners of real property in the proposed additional area and the approval of the qualified electors residing therein, as well as a determination by the owners of real property in the district and approval of the qualified electors, as provided in the Local Election Act and the Tax Increment for Development Act.

C. The district board, following a hearing conducted upon notice given to the owners of real property located in the district in the manner prescribed for the formation hearing, may, subject to the approval of the governing body that approved the district's tax increment development plan, amend the tax increment development plan in any manner that it determines will not substantially reduce the benefits to be received by any land in the district from the public infrastructure on completion of the work to be performed under the general plan. A determination by the owners and an election shall not be required solely for the purposes of this subsection."

SECTION 22. Section 5-15-25.3 NMSA 1978 (being Laws 2014, Chapter 11, Section 3) is amended to read:

"5-15-25.3. BASE YEAR REVISION--EFFECT.--

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A. Upon notice of the approval of a revision of the base year used to determine a district's gross receipts tax increment, the district shall:

(1) return to the taxation and revenue department any gross receipts tax increment credited to the period between the time that the revenue collection began and the end of the revised base year and distributed to the district;

(2) update the district tax increment development plan to reflect the revision; and

(3) file with the clerk of the governing body that formed the district the revised tax increment development plan.

B. Upon receipt of the revenue identified in Paragraph (1) of Subsection A of this section, the taxation and revenue department shall remit to the ~~[taxing entities that have dedicated a gross receipts tax increment to the district an]~~ appropriate governing body the amount of ~~[that]~~ revenue dedicated from a gross receipts tax increment in proportion to the amount of gross receipts tax increment attributable to ~~[their]~~ the dedication."

SECTION 23. Section 5-15-27 NMSA 1978 (being Laws 2006, Chapter 75, Section 27, as amended) is amended to read:

"5-15-27. DEDICATION OF GROSS RECEIPTS TAX INCREMENT--

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NOTICE TO TAXATION AND REVENUE DEPARTMENT.--

A. If the state board of finance or a [~~taxing entity~~] governing body approves a dedication or increase in the dedication of a gross receipts tax increment to a district, the state board of finance or the [~~taxing entity~~] governing body shall notify the taxation and revenue department of that approval at least one hundred twenty days before the effective date of the dedication or increase in the dedication; provided that the effective date of the dedication by the state board of finance is on or after the date the bonds are approved by the legislature pursuant to Section 5-15-21 NMSA 1978.

B. In regard to a dedication of a gross receipts tax increment attributable to the state gross receipts tax, if the approval required pursuant to Section 5-15-21 NMSA 1978 has not occurred when the notice pursuant to Subsection A of this section is made, the state board of finance shall include in the notice that legislative approval is needed prior to a distribution pursuant to Section 7-1-6.54 NMSA 1978 attributable to the state gross receipts tax can be made. Upon approval pursuant to Section 5-15-21 NMSA 1978, the state board of finance shall notify the department of the approval."

SECTION 24. Section 12-6-3 NMSA 1978 (being Laws 1969, Chapter 68, Section 3, as amended) is amended to read:

"12-6-3. ANNUAL AND SPECIAL AUDITS--FINANCIAL EXAMINATIONS.--

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A. Except as otherwise provided in Subsection B of this section, the financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor's office designated by the state auditor or independent auditors approved by the state auditor. The comprehensive annual financial report for the state shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor's office designated by the state auditor or independent auditors approved by the state auditor. The audits shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor.

B. The examination of the financial affairs of a local public body shall be determined according to its annual revenue each year. All examinations and compliance with agreed-upon procedures shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor. If a local public body has an annual revenue, calculated on a cash basis of accounting, exclusive of capital outlay funds, federal or private grants or capital outlay funds disbursed directly by an administrating agency, of:

(1) less than ten thousand dollars (\$10,000) and does not directly expend at least fifty percent of, or the remainder of, a single capital outlay award, it is exempt from

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submitting and filing quarterly reports and final budgets for approval to the local government division of the department of finance and administration and from any financial reporting to the state auditor;

(2) at least ten thousand dollars (\$10,000) but less than fifty thousand dollars (\$50,000), it shall comply only with the applicable provisions of Section 6-6-3 NMSA 1978;

(3) less than fifty thousand dollars (\$50,000) and directly expends at least fifty percent of, or the remainder of, a single capital outlay award, it shall submit to the state auditor a financial report consistent with agreed-upon procedures for financial reporting that are:

(a) focused solely on the capital outlay funds directly expended;

(b) economically feasible for the affected local public body; and

(c) determined by the state auditor after consultation with the affected local public body;

(4) at least fifty thousand dollars (\$50,000) but not more than two hundred fifty thousand dollars (\$250,000), it shall submit to the state auditor, at a minimum, a financial report that includes a schedule of cash basis comparison and that is consistent with agreed-upon procedures for financial reporting that are:

(a) narrowly tailored to the affected

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local public body;

(b) economically feasible for the affected local public body; and

(c) determined by the state auditor after consultation with the affected local public body;

(5) at least fifty thousand dollars (\$50,000) but not more than two hundred fifty thousand dollars (\$250,000) and expends any capital outlay funds, it shall submit to the state auditor, at a minimum, a financial report that includes a schedule of cash basis comparison and a test sample of expended capital outlay funds and that is consistent with agreed-upon procedures for financial reporting that are:

(a) narrowly tailored to the affected local public body;

(b) economically feasible for the affected local public body; and

(c) determined by the state auditor after consultation with the affected local public body;

(6) at least two hundred fifty thousand dollars (\$250,000) but not more than five hundred thousand dollars (\$500,000), it shall submit to the state auditor, at a minimum, a compilation of financial statements and a financial report consistent with agreed-upon procedures for financial reporting that are:

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(a) economically feasible for the affected local public body; and

(b) determined by the state auditor after consultation with the affected local public body; or

(7) five hundred thousand dollars (\$500,000) or more, it shall be thoroughly examined and audited as required by Subsection A of this section.

C. In addition to the annual audit, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part.

D. Annual financial and compliance audits of agencies under the oversight of the financial control division of the department of finance and administration shall be completed and submitted by an agency and independent auditor to the state auditor no later than sixty days after the state auditor receives notification from the financial control division to the effect that an agency's books and records are ready and available for audit. The local government division of the department of finance and administration shall inform the state auditor of the compliance or failure to comply by a local public body with the provisions of Section 6-6-3 NMSA 1978.

E. In order to comply with United States department of housing and urban development requirements, the financial affairs of a public housing authority that is determined to be

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a component unit in accordance with generally accepted accounting principles, other than a housing department of a local government or a regional housing authority, at the public housing authority's discretion, may be audited separately from the audit of its local primary government entity. If a separate audit is made, the public housing authority audit shall be included in the local primary government entity audit and need not be conducted by the same auditor who audits the financial affairs of the local primary government entity.

F. The financial affairs of a political subdivision of the state that is determined to be a component unit of a primary government entity in accordance with generally accepted accounting principles may be audited separately from the audit of the component unit's primary government entity. If the primary government entity or the component unit chooses to have a separate audit conducted, the component unit audit shall be included in the primary government entity's audit but need not be conducted by the same auditor that audits the financial affairs of the primary government entity. The auditor for the primary government entity shall accept the audit performed by the auditor selected by the component unit.

[F.] G. The state auditor shall notify the legislative finance committee and the public education department if:

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(1) a school district, charter school or regional education cooperative has failed to submit a required audit report within ninety days of the due date specified by the state auditor; and

(2) the state auditor has investigated the matter and attempted to negotiate with the school district, charter school or regional education cooperative but the school district, charter school or regional education cooperative has not made satisfactory progress toward compliance with the Audit Act.

[G-] H. The state auditor shall notify the legislative finance committee and the secretary of finance and administration if:

(1) a state agency, state institution, municipality or county has failed to submit a required audit report within ninety days of the due date specified by the state auditor; and

(2) the state auditor has investigated the matter and attempted to negotiate with the state agency, state institution, municipality or county but the state agency, state institution, municipality or county has not made satisfactory progress toward compliance with the Audit Act."

SECTION 25. TEMPORARY PROVISION--TERMS OF MEMBERS PRIOR TO EFFECTIVE DATE OF THIS ACT.--The term of a district board member appointed or elected prior to the effective date of this

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act pursuant to the Public Improvement District Act or the Tax Increment for Development Act shall continue and expire on December 31, 2021, and the term of that member's successor shall begin on January 1, 2022.

SECTION 26. APPLICABILITY.--The provisions of Sections 8 and 16 of this act relating to the applicability of the Procurement Code apply to public procurement initiated on or after January 1, 2021.

SECTION 27. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2021.

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