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HOUSE BILL 462

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Gail Chasey and Charlotte Little and Pamelya Herndon and
Joy Garratt

AN ACT

RELATING TO MUNICIPALITIES; AMENDING PROCEDURES AND PENALTIES
FOR NUISANCES.

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

SECTION 1. Section 3-18-17 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-17-14, as amended) is amended to read:

"3-18-17. NUISANCES AND OFFENSES--REGULATION OR
PROHIBITION.--A municipality, including a home rule
municipality that has adopted a charter pursuant to Article 10,
Section 6 of the constitution of New Mexico, may by ordinance:

A. define a nuisance, abate a nuisance and impose
penalties upon a person who creates or allows a nuisance to
exist; provided that:

(1) the total amount of assessed penalties and
fines [~~fees and costs~~] imposed by an ordinance for failure to

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1 obey a traffic sign or signal, including a red light offense or
2 violation, or for a speeding offense or violation shall not
3 exceed one hundred dollars (\$100), provided that the total for
4 unlawful parking in a space or for blocking an access intended
5 for persons with significant mobility limitation shall not be
6 less than or exceed the fines provided in Section 66-7-352.5
7 NMSA 1978;

8 (2) no fees or costs shall be imposed pursuant
9 to this section;

10 [~~(2)~~] (3) in a municipality with a population
11 of two hundred thousand or greater as of the last federal
12 decennial census, the penalties, fines [~~fees, costs~~] and
13 [~~procedure~~] procedures imposed for failure to obey a traffic
14 sign or signal, including a red light offense or violation, or
15 for a speeding offense or violation shall be subject to the
16 following:

17 (a) each month, or other period set by
18 contract, the municipality shall retain from the gross total
19 amount of penalties and fines [~~fees and costs~~] assessed and
20 collected that month or period an amount subject to audit that
21 is equal to the sum of the setup, maintenance, support and
22 processing services fees charged to the municipality for that
23 month or period pursuant to contractual terms by a vendor
24 providing systems and services that assist the municipality in
25 imposing penalties or fines [~~and costs or fees~~] as provided in

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1 Paragraph (1) of this subsection;

2 (b) less the retention authorized in
3 Subparagraph (a) of this paragraph: 1) one-half of the net
4 total amount assessed ~~[in penalties, fines, fees and costs]~~ and
5 collected by the municipality pursuant to this section shall be
6 remitted to the state treasurer and distributed to the
7 ~~[administrative office of the courts, of which ten percent~~
8 ~~shall be credited to DWI drug court programs and ninety percent~~
9 ~~shall be transferred to the New Mexico finance authority for~~
10 ~~deposit into the metropolitan court bond guarantee fund]~~
11 general fund; and 2) one-half shall be retained by the
12 municipality for municipal traffic safety programs and to
13 offset the municipality's reasonable costs directly related to
14 administering a program ~~[imposing penalties or fines and costs~~
15 ~~or fees]~~ as provided in Paragraph (1) of this subsection;

16 (c) ~~[in fiscal year 2009, and annually~~
17 ~~thereafter]~~ the municipality shall cause an audit of the
18 program and contract described in Subparagraph (a) of this
19 paragraph to be conducted by the state auditor or an
20 independent auditor selected by the state auditor;

21 (d) if in the audit conducted pursuant
22 to Subparagraph (c) of this paragraph it is determined that any
23 amount retained by the municipality pursuant to this paragraph
24 is in excess of the amount the municipality is authorized to
25 retain, the municipality shall remit, when the audit is

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1 finalized, the amount in excess to the state treasurer to be
2 distributed and transferred as provided in Item 1) of
3 Subparagraph (b) of this paragraph; and

4 (e) a respondent may select a hearing
5 ~~[provided for a contested]~~ to contest a nuisance ordinance
6 offense or violation that shall either be ~~[held]~~ conducted by a
7 hearing officer appointed by the presiding judge of the civil
8 division of the district court with jurisdiction over the
9 municipality and ~~[the hearing itself shall be conducted~~
10 ~~following]~~ in accordance with the rules of evidence and rules
11 of civil procedure for the district courts or that shall be
12 conducted by a mail-in form alternative. The notice of
13 violation shall clearly explain the process for requesting a
14 hearing, the hearing options, the deadline to request a hearing
15 and where the request shall be submitted. The burden of proof
16 for violations is on the municipality and ~~[defenses]~~ is a
17 preponderance of the evidence. A determination by the hearing
18 officer shall not impose a total amount of penalties or fines
19 ~~[fees and costs]~~ in excess of that provided in the nuisance
20 ordinance; and

21 ~~[(3)]~~ (4) in a municipality other than a
22 municipality with a population of two hundred thousand or
23 greater as of the last federal decennial census, the penalties,
24 fines ~~[fees, costs]~~ and procedure imposed for failure to obey a
25 traffic sign or signal, including a red light offense or

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1 violation, or for a speeding offense or violation shall be
2 subject to the following:

3 (a) each month, or other period set by
4 contract, the municipality shall retain from the gross total
5 amount of penalties and fines [~~fees and costs~~] assessed and
6 collected that month or period an amount subject to audit that
7 is equal to the sum of the setup, maintenance, support and
8 processing services fees charged to the municipality for that
9 month or period pursuant to contractual terms by a vendor
10 providing systems and services that assist the municipality in
11 imposing penalties or fines [~~and costs or fees~~] as provided in
12 Paragraph (1) of this subsection;

13 (b) less the retention authorized in
14 Subparagraph (a) of this paragraph: 1) one-half of the net
15 total amount assessed [~~in penalties, fines, fees and costs~~] and
16 collected by the municipality pursuant to this section shall be
17 remitted to the state treasurer [~~of which sixty-five percent~~
18 ~~shall be credited to the court automation fund, twenty percent~~
19 ~~to the traffic safety education and enforcement fund and~~
20 ~~fifteen percent to the judicial education fund~~] and distributed
21 to the general fund; and 2) one-half [~~of the net total amount~~
22 ~~assessed in penalties, fines, fees and costs~~] shall be retained
23 by the municipality for municipal traffic safety programs and
24 to offset the municipality's reasonable costs directly related
25 to administering a program [~~imposing penalties or fines and~~

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1 ~~costs or fees~~] as provided in Paragraph (1) of this subsection;

2 (c) [~~in fiscal year 2009, and annually~~
3 ~~thereafter~~] the municipality shall cause an audit of the
4 program and contract described in Subparagraph (a) of this
5 paragraph [~~and the money collected and distributed pursuant to~~
6 ~~this paragraph~~] to be conducted by the state auditor or an
7 independent auditor selected by the state auditor;

8 (d) if in the audit conducted pursuant
9 to Subparagraph (c) of this paragraph it is determined that any
10 amount retained by the municipality pursuant to this paragraph
11 is in excess of the amount the municipality is authorized to
12 retain, the municipality shall remit, when the audit is
13 finalized, the amount in excess to the state treasurer to be
14 distributed and transferred as provided in Item 1) of
15 Subparagraph (b) of this paragraph; and

16 (e) a hearing provided for a contested
17 nuisance ordinance offense or violation shall be [~~held~~]
18 conducted by a hearing officer appointed by the presiding judge
19 of the civil division of the district court with jurisdiction
20 over the municipality and [~~the hearing itself shall be~~
21 ~~conducted following~~] in accordance with the rules of evidence
22 and rules of civil procedure for the district courts. The
23 notice of violation shall clearly explain the process for
24 requesting a hearing, the hearing options, the deadline to
25 request a hearing and where the request shall be submitted.

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1 The burden of proof for ~~[offenses or violations and defenses]~~
2 violations is on the municipality and is a preponderance of the
3 evidence. A determination by the hearing officer shall not
4 impose a total amount of penalties or fines ~~[fees and costs]~~ in
5 excess of that provided in the nuisance ordinance;

6 B. regulate or prohibit any amusement or practice
7 that tends to annoy persons on a street or public ground; and

8 C. prohibit and suppress:

9 (1) gambling and the use of fraudulent devices
10 or practices for the purpose of obtaining money or property;

11 (2) the sale, possession or exhibition of
12 obscene or immoral publications, prints, pictures or
13 illustrations;

14 (3) public intoxication;

15 (4) disorderly conduct; and

16 (5) riots, noises, disturbances or disorderly
17 assemblies in any public or private place."

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