

HOUSE BILL 298

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

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AN ACT

RELATING TO MUNICIPALITIES; AMENDING SECTIONS OF THE MUNICIPAL
CODE; CLARIFYING THE GOVERNING LAW OF MAYOR-COUNCIL FORMS OF
GOVERNMENT; PROVIDING PROCEDURES FOR FILLING VACANCIES;
PROVIDING PROCEDURES FOR THE APPOINTMENT OF OFFICIALS AND
VOTING ON MATTERS BEFORE A GOVERNING BODY; CLARIFYING MAYORAL
AUTHORITY, POWERS AND DUTIES; PROVIDING PROCEDURES FOR THE
NOMINATION AND APPOINTMENT OF EMPLOYEES AND OFFICIALS;
CODIFYING THE MAYOR AND GOVERNING BODY'S LACK OF AUTHORITY OVER
JUDICIAL BRANCH AFFAIRS; REQUIRING ORGANIZATIONAL MEETINGS;
PROVIDING THAT APPOINTED MEMBERS OF A GOVERNING BODY ARE NOT
SUBJECT TO MERIT-SYSTEM ORDINANCES; REQUIRING MEMBERS OF A
GOVERNING BODY TO RECUSE THEMSELVES FROM VOTING WHEN TRUE OR
PERCEIVED CONFLICTS OF INTEREST EXIST; SPECIFYING PROCEDURES
FOR SUCH RECUSALS; REMOVING THE REQUIREMENT THAT SPECIAL
ELECTIONS OCCUR WITHIN NINETY DAYS OF THE ADOPTION OF AN

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1 ORDINANCE TO CHANGE THE NUMBER OF MEMBERS OF A GOVERNING BODY
2 OR TRUSTEES OR SUCH A PETITION; AMENDING THE POWERS AND DUTIES
3 OF A GOVERNING BODY; AMENDING THE POWERS OF A COMMISSION IN A
4 COMMISSION-MANAGER FORM OF GOVERNMENT.

5

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

7 SECTION 1. Section 3-11-1 NMSA 1978 (being Laws 1965,
8 Chapter 300, Section 14-10-1) is amended to read:

9 "3-11-1. [~~POWERS OF MAYOR~~] APPLICABILITY.--

10 A. The provisions of Sections [~~14-10-1 through~~
11 ~~14-10-7 New Mexico Statutes Annotated, 1953 Compilation~~] 3-11-1
12 through 3-11-7 NMSA 1978 are applicable only to those
13 municipalities governed under the mayor-council form of
14 government and [~~which~~] that have not elected to be governed
15 under the commission-manager form of government.

16 B. In the event that a home rule municipality has
17 adopted procedures in the municipality's charter that conflict
18 with the provisions of Chapter 3, Article 11 or 12 NMSA 1978,
19 the municipality's charter shall govern."

20 SECTION 2. Section 3-11-2 NMSA 1978 (being Laws 1965,
21 Chapter 300, Section 14-10-2) is amended to read:

22 "3-11-2. MAYOR--VACATED OFFICE--APPOINTMENT BY GOVERNING
23 BODY.--In case of the death, disability, resignation or change
24 of residence from the municipality of the mayor, the governing
25 body shall appoint [~~by majority vote~~] a qualified elector to

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1 fill the vacancy [~~for the unexpired term of office~~] of the
2 office of the mayor by a majority vote of the members of the
3 governing body that are present; provided that:

4 A. the governing body shall vote at the next
5 meeting immediately following the vacancy to fill the vacancy
6 if the vacancy has not been filled within fifteen days after
7 the vacancy occurred; and provided further that so long as the
8 vacancy remains unfilled, the item shall be included on each
9 subsequent governing body meeting agenda until the vacancy is
10 filled;

11 B. the qualified elector appointed to fill the
12 vacancy shall serve until the next regular local election or
13 municipal officer election, whichever is applicable, when a
14 qualified elector shall be elected to fill the remaining
15 unexpired term, if any; and

16 C. a resigning mayor shall not select a nominee or
17 be involved in the appointment of a successor to fill a vacancy
18 in the office of mayor."

19 SECTION 3. Section 3-11-3 NMSA 1978 (being Laws 1965,
20 Chapter 300, Section 14-10-3) is amended to read:

21 "3-11-3. MAYOR--PRESIDING OFFICER OF GOVERNING BODY--
22 LIMITATION ON VOTE--QUORUM.--

23 A. The mayor of a municipality is the presiding
24 officer of the governing body and shall constitute a member of
25 the governing body for purposes of determining whether a quorum

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1 exists.

2 B. In all municipalities, the mayor shall vote only
3 when there is a tie vote between members of a governing body;
4 provided that the mayor is vested with the authority to break a
5 tie vote in all circumstances, including matters requiring an
6 affirmative vote of a supermajority of members of the governing
7 body.

8 C. A member of a governing body presiding as the
9 mayor pro tem shall retain the ability to vote as a member of
10 the governing body but shall not vote as a mayor in the event
11 of a tie vote as provided pursuant to Subsection B of this
12 section."

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

15 "3-11-4. MAYOR--CHIEF EXECUTIVE OFFICER--POWERS.--The
16 mayor is the chief executive officer and shall:

17 A. [~~cause~~] enforce the ordinances and regulations
18 of the municipality [~~to be obeyed~~];

19 B. exercise within the municipality [~~powers~~
20 ~~conferred upon sheriffs of counties~~] the authority, indirectly
21 through the use of police personnel, to suppress disorders and
22 keep the peace; and

23 C. perform other duties compatible with [~~his~~] the
24 mayor's office [~~which~~] that the governing body may require;
25 provided that such performance is in accordance with state law

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1 or the municipality's charter."

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

4 "3-11-5. ORGANIZATIONAL MEETING--MAYOR--APPOINTMENT OF
5 OFFICERS AFTER ELECTION.--

6 A. After each regular local election or municipal
7 officer election, the governing body shall hold an
8 organizational meeting no earlier than fifteen days but no
9 later than twenty-one days after the newly elected officials
10 begin their terms. Such a meeting may constitute a special
11 meeting or a regular meeting of the governing body.

12 [~~A.~~] B. At the organizational meeting of the
13 governing body, the mayor shall submit, for confirmation by the
14 governing body, the names of persons who shall fill the
15 appointive offices of the municipality [~~and the names of~~
16 ~~persons who shall be employed by the municipality~~].

17 C. The failure of the mayor to nominate an
18 appointee to the governing body for appointment to office at
19 the organizational meeting does not preclude the mayor from
20 doing so at a subsequent meeting. If the governing body fails
21 to confirm any person as an appointive official [~~or employee~~]
22 of the municipality, the mayor at the next regular meeting of
23 the governing body [~~shall~~] may submit the name of a previous
24 nominee or another person to fill the appointed office [~~or to~~
25 ~~be employed by~~] of the municipality. Failure to fill a vacant

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1 office shall not constitute malfeasance of an elected official.

2 [B-] D. Any person holding an appointed office at
3 the time of the regular local election or municipal officer
4 election shall continue in that office until the person's
5 successor has been appointed and is qualified."

6 SECTION 6. Section 3-11-6 NMSA 1978 (being Laws 1965,
7 Chapter 300, Section 14-10-6) is amended to read:

8 "3-11-6. MAYOR--AUTHORITY TO APPOINT, SUPERVISE AND
9 DISCHARGE EMPLOYEES.--

10 A. Subject to the approval of a majority vote of
11 all members of the governing body, the mayor shall:

12 (1) appoint all officers and employees except
13 those holding elective office; and

14 (2) designate an employee to perform any
15 service authorized by the governing body.

16 B. The mayor may appoint temporary employees as
17 required for the proper administration of municipal affairs.
18 The employee shall serve only until the next regular meeting of
19 the governing body at which a quorum is present. The temporary
20 employment shall cease, and the employee shall not be
21 reappointed unless [his] appointment is confirmed by the
22 governing body. A temporary employee is entitled to [the]
23 usual, ordinary and reasonable compensation for services
24 rendered to the municipality.

25 C. Only the mayor shall:

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1 (1) supervise the employees of the
2 municipality;

3 (2) examine the grounds of reasonable
4 complaint made against any employee; and

5 (3) cause any violations or neglect of the
6 employees' duties to be corrected promptly or reported to the
7 proper authority for correction and punishment.

8 D. Subject to the limitation of a merit system
9 ordinance [~~adopted as authorized in Section 14-12-4 New Mexico~~
10 ~~Statutes Annotated, 1953 Compilation~~] of the municipality:

11 (1) the governing body may discharge an
12 appointed official or employee by a majority vote of all the
13 members of the governing body; and

14 (2) the mayor may discharge an appointed
15 official or employee upon the approval of a majority vote of
16 all the members of the governing body. [~~or~~

17 ~~(3)]~~ E. The mayor may suspend an appointed official
18 or employee until the next regular meeting of the governing
19 body, at which time the suspension shall be approved or
20 disapproved by a majority vote of all the members of the
21 governing body. If the suspension of the appointed official or
22 employee is disapproved by the governing body, the suspended
23 appointed official or employee shall be paid the compensation
24 [~~he~~] that the appointed official or employee was entitled to
25 receive during the time of [~~his~~] the suspension.

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1 ~~[E.]~~ F. Any appointed official or employee who is
2 discharged shall:

3 (1) upon ~~[his]~~ the official's or employee's
4 request, be given, by the mayor in writing, a list of reasons
5 for ~~[his]~~ the discharge; and

6 (2) be paid any vacation pay ~~[which he]~~ that
7 may have accrued, subject to the limitations of a merit system
8 ordinance.

9 G. Neither the mayor nor the governing body shall
10 supervise, hire, discipline or terminate any employee,
11 personnel or judge of the judicial branch.

12 H. Appointed members shall not be subject to a
13 merit system ordinance."

14 SECTION 7. Section 3-11-7 NMSA 1978 (being Laws 1965,
15 Chapter 300, Section 14-10-7) is amended to read:

16 "3-11-7. ADDITIONAL POWERS OF MAYOR.--The mayor shall
17 sign all commissions, licenses and permits granted by the
18 governing body and other acts that the law or ordinances may
19 require, or the commissions, licenses and permits may be
20 authenticated as authorized ~~[under the]~~ pursuant to the:

21 A. Uniform Facsimile Signature of Public Officials
22 Act;

23 B. Uniform Electronic Transactions Act; and

24 C. Electronic Authentication of Documents Act."

25 SECTION 8. Section 3-12-1 NMSA 1978 (being Laws 1965,

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1 Chapter 300, Section 14-11-1, as amended) is amended to read:

2 "3-12-1. VACANCY ON GOVERNING BODY--APPOINTMENT--
3 PROCEDURES.--

4 [~~Any~~] A. A vacancy on the governing body of a
5 mayor-council municipality shall be filled by appointment of a
6 qualified elector by the mayor of the municipality, with the
7 advice, [~~and~~] the consent and a majority vote of the members of
8 the governing body [~~Any~~] that are present; provided that the
9 governing body shall vote at the next meeting immediately
10 following the vacancy to fill the vacancy if the vacancy has
11 not been filled within fifteen days after the vacancy occurred;
12 and provided further that so long as the vacancy remains
13 unfilled, the item shall be included on each subsequent
14 governing body meeting agenda until the vacancy is filled.

15 B. A qualified elector appointed to fill a vacancy
16 on the governing body shall serve until the next regular local
17 election or municipal officer election, whichever is
18 applicable, at which time a qualified elector shall be elected
19 to fill the remaining unexpired term, if any."

20 SECTION 9. Section 3-12-2 NMSA 1978 (being Laws 1965,
21 Chapter 300, Section 14-11-2, as amended) is amended to read:

22 "3-12-2. GOVERNING BODY--CORPORATE AUTHORITY--
23 LEGISLATIVE BODY--MEMBERS OF [~~COUNCIL~~] A GOVERNING BODY AND
24 BOARDS OF TRUSTEES--QUORUM--RECUSAL.--

25 A. The corporate authority of a municipality is

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1 vested in the governing body that shall constitute the
2 legislative branch of the municipality and shall not perform
3 any executive functions except those functions assigned to it
4 by law.

5 B. A majority of the members of the governing body
6 currently serving is a quorum for the purpose of transacting
7 business. All members of the governing body present at a
8 meeting are counted toward a quorum.

9 C. Unless otherwise provided by law, a question
10 before the governing body shall be decided by a majority vote
11 of the members present.

12 D. A member of a governing body shall recuse the
13 member's self from a vote only when a true or perceived
14 conflict of interest exists regarding an item currently being
15 deliberated by the governing body. Upon the recusal at such
16 meeting, the governing body member shall state the conflict of
17 interest on the record and then leave the meeting room until
18 deliberation on that item has concluded. A recusal or
19 abstention of a governing body member is counted as a vote
20 neither for nor against a question before the governing body.

21 [~~D.~~] E. The governing body of a municipality having
22 a mayor-council form of government is the [~~council~~] governing
23 body or board of trustees whose members are the mayor and not
24 less than four or more than ten [~~councilmen~~] members of the
25 governing body or trustees. Any governing body of more than

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1 six [~~councilmen~~] members of the governing body or trustees may
2 provide by ordinance for the election of two [~~councilmen~~]
3 members of the governing body or trustees for each ward or
4 district or create or abolish wards or districts or alter the
5 boundary of existing wards or districts; provided that only one
6 [~~councilman~~] member of the governing body or trustee shall be
7 elected from a ward or district at any one election.

8 [E.] F. In those municipalities with a mayor-
9 council form of government, when there is a requirement that a
10 certain fraction or percentage of the members of the entire
11 governing body or of all the members of the governing body or
12 of the entire membership of the governing body or other similar
13 language other than the requirement of a simple majority vote
14 for the measure, the mayor shall not be counted in determining
15 the actual number of votes needed but [~~he~~] shall vote to break
16 a tie vote as provided in Section 3-11-3 NMSA 1978, unless [~~he~~]
17 the mayor has declared a conflict of interest.

18 [F.] G. The governing body of a municipality may
19 redistrict the municipality whenever redistricting is
20 warranted. Upon petition signed by qualified electors equal
21 in number to the votes cast for the [~~councilman~~] member of
22 the governing body or trustee receiving the greatest number
23 of votes at the last regular municipal election, the
24 governing body of the municipality shall redistrict the
25 municipality."

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1 SECTION 10. Section 3-12-2.1 NMSA 1978 (being Laws
2 1981, Chapter 198, Section 1, as amended) is amended to read:

3 "3-12-2.1. GOVERNING BODY--MAYOR-COUNCIL--CHANGE IN
4 NUMBER OF MEMBERS.--

5 A. The number of members [~~on the council~~] of the
6 governing body or board of trustees of a municipality having
7 a mayor-council form of government may be changed as set
8 forth in this section; provided such number shall not be less
9 than or more than that number specified in Subsection [D] E
10 of Section 3-12-2 NMSA 1978.

11 B. [~~A majority of the members elected to the~~
12 ~~governing body may adopt an ordinance increasing or~~
13 ~~decreasing the number of councilmen or trustees of that body~~
14 ~~and calling a special election on the question of approving~~
15 ~~or disapproving the change] The members of a governing body
16 may adopt an ordinance that increases or decreases the number
17 of members of the governing body or trustees and call an
18 election on that question in accordance with the Election
19 Code.~~

20 C. The governing body of the municipality shall
21 adopt an election resolution calling [~~a special~~] an election
22 on the question of approving or disapproving a change in the
23 number of [~~councilmen~~] members of a governing body or
24 trustees if there is filed with the municipal clerk a
25 petition requesting an election on such a change and the

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1 petition is signed by at least five percent of the number of
2 registered voters of the municipality. The petition shall
3 specify the number of [~~councilmen~~] members of the governing
4 body in addition to the mayor [~~which~~] that shall constitute
5 the governing body of the municipality. The petition shall
6 be validated by the municipal clerk by verification that it
7 contains the required number of signatures of registered
8 voters. The election resolution shall be adopted within
9 [~~ten~~] thirty days after the petition is verified by the
10 municipal clerk.

11 D. A special election to approve or disapprove a
12 change in the number of [~~councilmen~~] members of the governing
13 body or trustees shall be held [~~within ninety days after the~~
14 ~~adoption of the ordinance as provided in Subsection B of this~~
15 ~~section or within ninety days after the date the petition is~~
16 ~~verified as provided in Subsection C of this section, as the~~
17 ~~case may be, or the election may be held in conjunction with~~
18 ~~a regular municipal election, if such election occurs within~~
19 ~~ninety days after the adoption of the ordinance or~~
20 ~~verification of the petition] at the first available election
21 in which the question can be placed on the ballot in
22 accordance with the provisions of the Election Code. The
23 municipality shall pay for the cost of the election.~~

24 E. If at an election called pursuant to this
25 section a majority of the registered voters voting on the

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1 question of changing the number of [~~councilmen~~] members of
2 the governing body or trustees vote in favor of such change,
3 all [~~councilmen~~] members of the governing body or trustees
4 shall serve until their current term of office expires. At
5 each of the subsequent two regular municipal elections, one-
6 half of the newly required number of [~~councilmen~~] members of
7 the governing body or trustees shall be elected.

8 F. If a majority of the registered voters voting
9 on the question of changing the number of [~~councilmen~~]
10 members of the governing body or trustees disapproves or
11 approves of such change, then such change in the number of
12 members shall not be considered again for a period of four
13 years from the date of the election."

14 SECTION 11. Section 3-12-3 NMSA 1978 (being Laws 1965,
15 Chapter 300, Section 14-11-3, as amended) is amended to read:

16 "3-12-3. GOVERNING BODY--POWERS AND DUTIES.--

17 A. The governing body of a municipality having a
18 mayor-council form of government shall:

19 (1) elect one of its members to act as mayor
20 pro tem in the absence of the mayor;

21 (2) possess all powers granted by law and
22 other municipal powers not conferred by law or ordinance on
23 another officer of the municipality;

24 (3) manage and control the finances and all
25 property, real and personal, belonging to the municipality;

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1 (4) determine the time and place of holding
2 its meetings, which shall be open to the public;

3 (5) determine and adopt the rules of its own
4 proceedings at an organizational meeting;

5 (6) keep minutes of its proceedings, which
6 shall be open to examination by any citizen;

7 (7) adopt rules and regulations necessary to
8 effect the powers granted municipalities;

9 (8) prescribe the compensation and fees to
10 be paid municipal officers and employees; [~~and~~]

11 (9) prescribe the powers and duties of those
12 officers whose terms of office or powers and duties are not
13 defined by law and impose additional powers and duties upon
14 those officers whose powers and duties are prescribed by law;
15 and

16 (10) have the authority to cross-commission
17 public safety officers by resolution; provided that the
18 resolution shall be renewed at each subsequent meeting of the
19 governing body as necessary.

20 B. The governing body of a municipality having a
21 mayor-council form of government may:

22 (1) remit the fine of any person convicted
23 of a violation of a municipal ordinance; and

24 (2) compel the attendance of absent members
25 in such manner and under such penalties as it deems

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1 desirable.

2 ~~[G. The governing body may compel the attendance~~
3 ~~of absent members in such manner and under such penalties it~~
4 ~~deems desirable.~~

5 ~~D.]~~ C. The mayor or a majority of the members of
6 the governing body may call special meetings by notice to
7 each member of the governing body, personally served or left
8 at ~~[his]~~ the member's usual place of residence; provided that
9 such meetings shall be in accordance with the Open Meetings
10 Act."

11 SECTION 12. Section 3-14-12 NMSA 1978 (being Laws
12 1965, Chapter 300, Section 14-13-12) is amended to read:

13 "3-14-12. POWERS VESTED IN COMMISSION--DUTIES OF
14 COMMISSION.--

15 A. All powers of the municipality are vested in
16 the commission. The commission shall:

17 (1) pass all ordinances and other measures
18 conducive to the welfare of the municipality;

19 (2) perform all acts required for the
20 general welfare of the municipality; ~~[and]~~

21 (3) in addition to the office of manager,
22 create all offices necessary for the proper carrying on of
23 the work of the municipality; and

24 (4) have the authority to cross-commission
25 public safety officers by resolution; provided that the

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1 resolution shall be renewed at each subsequent meeting of the
2 commission as necessary.

3 B. The commission shall appoint a manager and
4 shall hold [~~him~~] the manager responsible for the proper and
5 efficient administration of the municipal government."

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