

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

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

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

1 "3-11-1. APPLICABILITY.--

2 A. The provisions of Sections 3-11-1 through  
3 3-11-7 NMSA 1978 are applicable only to those municipalities  
4 governed under the mayor-council form of government and that  
5 have not elected to be governed under the commission-manager  
6 form of government.

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

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

13 "3-11-2. MAYOR--VACATED OFFICE--APPOINTMENT BY  
14 GOVERNING BODY.--In case of the death, disability,  
15 resignation or change of residence from the municipality of  
16 the mayor, the governing body shall appoint a qualified  
17 elector to fill the vacancy of the office of the mayor by a  
18 majority vote of the members of the governing body that are  
19 present; provided that:

20 A. the governing body shall vote at the next  
21 meeting immediately following the vacancy to fill the vacancy  
22 if the vacancy has not been filled within fifteen days after  
23 the vacancy occurred; and provided further that so long as  
24 the vacancy remains unfilled, the item shall be included on  
25 each subsequent governing body meeting agenda until the

1 vacancy is filled;

2 B. the qualified elector appointed to fill the  
3 vacancy shall serve until the next regular local election or  
4 municipal officer election, whichever is applicable, when a  
5 qualified elector shall be elected to fill the remaining  
6 unexpired term, if any; and

7 C. a resigning mayor shall not select a nominee or  
8 be involved in the appointment of a successor to fill a  
9 vacancy in the office of mayor."

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

12 "3-11-3. MAYOR--PRESIDING OFFICER OF GOVERNING BODY--  
13 LIMITATION ON VOTE--QUORUM.--

14 A. The mayor of a municipality is the presiding  
15 officer of the governing body and shall constitute a member  
16 of the governing body for purposes of determining whether a  
17 quorum exists.

18 B. In all municipalities, the mayor shall vote  
19 only when there is a tie vote between members of a governing  
20 body; provided that the mayor is vested with the authority to  
21 break a tie vote in all circumstances, including matters  
22 requiring an affirmative vote of a supermajority of members  
23 of the governing body.

24 C. A member of a governing body presiding as the  
25 mayor pro tem shall retain the ability to vote as a member of

1 the governing body but shall not vote as a mayor in the event  
2 of a tie vote as provided pursuant to Subsection B of this  
3 section."

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

6 "3-11-4. MAYOR--CHIEF EXECUTIVE OFFICER--POWERS.--The  
7 mayor is the chief executive officer and shall:

8 A. enforce the ordinances and regulations of the  
9 municipality;

10 B. exercise within the municipality the authority,  
11 indirectly through the use of police personnel, to suppress  
12 disorders and keep the peace; and

13 C. perform other duties compatible with the  
14 mayor's office that the governing body may require; provided  
15 that such performance is in accordance with state law or the  
16 municipality's charter."

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

19 "3-11-5. ORGANIZATIONAL MEETING--MAYOR--APPOINTMENT OF  
20 OFFICERS AFTER ELECTION.--

21 A. After each regular local election or municipal  
22 officer election, the governing body shall hold an  
23 organizational meeting no earlier than fifteen days but no  
24 later than twenty-one days after the newly elected officials  
25 begin their terms. Such a meeting may constitute a special

1 meeting or a regular meeting of the governing body.

2 B. At the organizational meeting of the governing  
3 body, the mayor shall submit, for confirmation by the  
4 governing body, the names of persons who shall fill the  
5 appointive offices of the municipality.

6 C. The failure of the mayor to nominate an  
7 appointee to the governing body for appointment to office at  
8 the organizational meeting does not preclude the mayor from  
9 doing so at a subsequent meeting. If the governing body  
10 fails to confirm any person as an appointive official of the  
11 municipality, the mayor at the next regular meeting of the  
12 governing body may submit the name of a previous nominee or  
13 another person to fill the appointed office of the  
14 municipality. Failure to fill a vacant office shall not  
15 constitute malfeasance of an elected official.

16 D. Any person holding an appointed office at the  
17 time of the regular local election or municipal officer  
18 election shall continue in that office until the person's  
19 successor has been appointed and is qualified."

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

22 "3-11-6. MAYOR--AUTHORITY TO APPOINT, SUPERVISE AND  
23 DISCHARGE EMPLOYEES.--

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

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

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

5                   B. The mayor may appoint temporary employees as  
6 required for the proper administration of municipal affairs.  
7 The employee shall serve only until the next regular meeting  
8 of the governing body at which a quorum is present. The  
9 temporary employment shall cease, and the employee shall not  
10 be reappointed unless appointment is confirmed by the  
11 governing body. A temporary employee is entitled to usual,  
12 ordinary and reasonable compensation for services rendered to  
13 the municipality.

14                   C. Only the mayor shall:

15                   (1) supervise the employees of the  
16 municipality;

17                   (2) examine the grounds of reasonable  
18 complaint made against any employee; and

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

22                   D. Subject to the limitation of a merit system  
23 ordinance of the municipality:

24                   (1) the governing body may discharge an  
25 appointed official or employee by a majority vote of all the

1 members of the governing body; and

2 (2) the mayor may discharge an appointed  
3 official or employee upon the approval of a majority vote of  
4 all the members of the governing body.

5 E. The mayor may suspend an appointed official or  
6 employee until the next regular meeting of the governing  
7 body, at which time the suspension shall be approved or  
8 disapproved by a majority vote of all the members of the  
9 governing body. If the suspension of the appointed official  
10 or employee is disapproved by the governing body, the  
11 suspended appointed official or employee shall be paid the  
12 compensation that the appointed official or employee was  
13 entitled to receive during the time of the suspension.

14 F. Any appointed official or employee who is  
15 discharged shall:

16 (1) upon the official's or employee's  
17 request, be given, by the mayor in writing, a list of reasons  
18 for the discharge; and

19 (2) be paid any vacation pay that may have  
20 accrued, subject to the limitations of a merit system  
21 ordinance.

22 G. Neither the mayor nor the governing body shall  
23 supervise, hire, discipline or terminate any employee,  
24 personnel or judge of the judicial branch.

25 H. Appointed members shall not be subject to a

1 merit system ordinance."

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

4 "3-11-7. ADDITIONAL POWERS OF MAYOR.--The mayor shall  
5 sign all commissions, licenses and permits granted by the  
6 governing body and other acts that the law or ordinances may  
7 require, or the commissions, licenses and permits may be  
8 authenticated as authorized pursuant to the:

9 A. Uniform Facsimile Signature of Public Officials  
10 Act;

11 B. Uniform Electronic Transactions Act; and

12 C. Electronic Authentication of Documents Act."

13 SECTION 8. Section 3-12-1 NMSA 1978 (being Laws 1965,  
14 Chapter 300, Section 14-11-1, as amended) is amended to read:

15 "3-12-1. VACANCY ON GOVERNING BODY--APPOINTMENT--  
16 PROCEDURES.--

17 A. A vacancy on the governing body of a mayor-  
18 council municipality shall be filled by appointment of a  
19 qualified elector by the mayor of the municipality, with the  
20 advice, the consent and a majority vote of the members of the  
21 governing body that are present; provided that the governing  
22 body shall vote at the next meeting immediately following the  
23 vacancy to fill the vacancy if the vacancy has not been  
24 filled within fifteen days after the vacancy occurred; and  
25 provided further that so long as the vacancy remains

1 unfilled, the item shall be included on each subsequent  
2 governing body meeting agenda until the vacancy is filled.

3 B. A qualified elector appointed to fill a vacancy  
4 on the governing body shall serve until the next regular  
5 local election or municipal officer election, whichever is  
6 applicable, at which time a qualified elector shall be  
7 elected to fill the remaining unexpired term, if any."

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

10 "3-12-2. GOVERNING BODY--CORPORATE AUTHORITY--  
11 LEGISLATIVE BODY--MEMBERS OF A GOVERNING BODY AND BOARDS OF  
12 TRUSTEES--QUORUM--RECUSAL.--

13 A. The corporate authority of a municipality is  
14 vested in the governing body that shall constitute the  
15 legislative branch of the municipality and shall not perform  
16 any executive functions except those functions assigned to it  
17 by law.

18 B. A majority of the members of the governing body  
19 currently serving is a quorum for the purpose of transacting  
20 business. All members of the governing body present at a  
21 meeting are counted toward a quorum.

22 C. Unless otherwise provided by law, a question  
23 before the governing body shall be decided by a majority vote  
24 of the members present.

25 D. A member of a governing body shall recuse the

1 member's self from a vote only when a true or perceived  
2 conflict of interest exists regarding an item currently being  
3 deliberated by the governing body. Upon the recusal at such  
4 meeting, the governing body member shall state the conflict  
5 of interest on the record and then leave the meeting room  
6 until deliberation on that item has concluded. A recusal or  
7 abstention of a governing body member is counted as a vote  
8 neither for nor against a question before the governing body.

9 E. The governing body of a municipality having a  
10 mayor-council form of government is the governing body or  
11 board of trustees whose members are the mayor and not less  
12 than four or more than ten members of the governing body or  
13 trustees. Any governing body of more than six members of the  
14 governing body or trustees may provide by ordinance for the  
15 election of two members of the governing body or trustees for  
16 each ward or district or create or abolish wards or districts  
17 or alter the boundary of existing wards or districts;  
18 provided that only one member of the governing body or  
19 trustee shall be elected from a ward or district at any one  
20 election.

21 F. In those municipalities with a mayor-council  
22 form of government, when there is a requirement that a  
23 certain fraction or percentage of the members of the entire  
24 governing body or of all the members of the governing body or  
25 of the entire membership of the governing body or other

1 similar language other than the requirement of a simple  
2 majority vote for the measure, the mayor shall not be counted  
3 in determining the actual number of votes needed but shall  
4 vote to break a tie vote as provided in Section 3-11-3 NMSA  
5 1978, unless the mayor has declared a conflict of interest.

6 G. The governing body of a municipality may  
7 redistrict the municipality whenever redistricting is  
8 warranted. Upon petition signed by qualified electors equal  
9 in number to the votes cast for the member of the governing  
10 body or trustee receiving the greatest number of votes at the  
11 last regular municipal election, the governing body of the  
12 municipality shall redistrict the municipality."

13 SECTION 10. Section 3-12-2.1 NMSA 1978 (being Laws  
14 1981, Chapter 198, Section 1, as amended) is amended to read:

15 "3-12-2.1. GOVERNING BODY--MAYOR-COUNCIL--CHANGE IN  
16 NUMBER OF MEMBERS.--

17 A. The number of members of the governing body or  
18 board of trustees of a municipality having a mayor-council  
19 form of government may be changed as set forth in this  
20 section; provided such number shall not be less than or more  
21 than that number specified in Subsection E of Section 3-12-2  
22 NMSA 1978.

23 B. The members of a governing body may adopt an  
24 ordinance that increases or decreases the number of members  
25 of the governing body or trustees and call an election on

1 that question in accordance with the Election Code.

2 C. The governing body of the municipality shall  
3 adopt an election resolution calling an election on the  
4 question of approving or disapproving a change in the number  
5 of members of a governing body or trustees if there is filed  
6 with the municipal clerk a petition requesting an election on  
7 such a change and the petition is signed by at least five  
8 percent of the number of registered voters of the  
9 municipality. The petition shall specify the number of  
10 members of the governing body in addition to the mayor that  
11 shall constitute the governing body of the municipality. The  
12 petition shall be validated by the municipal clerk by  
13 verification that it contains the required number of  
14 signatures of registered voters. The election resolution  
15 shall be adopted within thirty days after the petition is  
16 verified by the municipal clerk.

17 D. A special election to approve or disapprove a  
18 change in the number of members of the governing body or  
19 trustees shall be held at the first available election in  
20 which the question can be placed on the ballot in accordance  
21 with the provisions of the Election Code. The municipality  
22 shall pay for the cost of the election.

23 E. If at an election called pursuant to this  
24 section a majority of the registered voters voting on the  
25 question of changing the number of members of the governing

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

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

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

15 "3-12-3. GOVERNING BODY--POWERS AND DUTIES.--

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

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

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

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

25 (4) determine the time and place of holding

1 its meetings, which shall be open to the public;

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

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

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

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

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

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

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

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

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

1           C. The mayor or a majority of the members of the  
2 governing body may call special meetings by notice to each  
3 member of the governing body, personally served or left at  
4 the member's usual place of residence; provided that such  
5 meetings shall be in accordance with the Open Meetings Act."

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

8           "3-14-12. POWERS VESTED IN COMMISSION--DUTIES OF  
9 COMMISSION.--

10           A. All powers of the municipality are vested in  
11 the commission. The commission shall:

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

14                   (2) perform all acts required for the  
15 general welfare of the municipality;

16                   (3) in addition to the office of manager,  
17 create all offices necessary for the proper carrying on of  
18 the work of the municipality; and

19                   (4) have the authority to cross-commission  
20 public safety officers by resolution; provided that the  
21 resolution shall be renewed at each subsequent meeting of the  
22 commission as necessary.

23           B. The commission shall appoint a manager and  
24 shall hold the manager responsible for the proper and  
25 efficient administration of the municipal government."