

AN ACT
RELATING TO COUNTIES; AMENDING THE COUNTY IMPROVEMENT
DISTRICT ACT TO PROVIDE FOR GENERAL OBLIGATION BOND
FINANCING; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 4-55A-1 NMSA 1978 (being Laws 1980, Chapter 91, Section 1) is amended to read:

"4-55A-1. SHORT TITLE. -- Chapter 4, Article 55A NMSA 1978 may be cited as the "County Improvement District Act". "

Section 2. Section 4-55A-2 NMSA 1978 (being Laws 1980, Chapter 91, Section 2, as amended by Laws 1991, Chapter 17, Section 3 and also by Laws 1991, Chapter 199, Section 31) is amended to read:

"4-55A-2. IMPROVEMENT DISTRICT--DEFINITIONS. --As used in the County Improvement District Act:

A. "adjustment of assessment" means the adjustment in the estimated maximum benefit or assessment resulting from the division of the property to be assessed or assessed into smaller tracts or parcels or the combining of smaller parcels into one or more larger parcels or the changing of the configuration or legal description of such parcels. "Adjustment of assessment" may also include the real location of the assessment lien, without loss of priority, among parcels under single ownership that are

subject to the assessment lien in order to permit the removal of the lien from one or more parcels where adequate security for the lien is demonstrated by the assessed parcels under such single ownership or provided by the owner;

B. "board" means the board of county commissioners;

C. "construct" or "construction" means to plan, design, engineer, construct, reconstruct, install, extend, better, alter, build, rebuild, improve, purchase or otherwise acquire any project authorized in the County Improvement District Act;

D. "county" means any county except an H class county;

E. "engineer" means any person who is a professional engineer licensed to practice in New Mexico and who is a permanent employee of the county or employed by the county in connection with an improvement;

F. "improvement" means any one or any combination of projects in one or more locations authorized in the County Improvement District Act;

G. "improvement district" means one or more streets or one or more public grounds or one or more locations wherein the improvement is to be constructed and one or more tracts or parcels of land to be assessed or upon

which an improvement district property tax will be imposed to pay for the cost of the improvement; and

H. "premature subdivision" means a subdivision that has been platted and sold into multiple private ownership prior to installation or financial guarantee of all required improvements for land development. Such subdivisions contain one or more of the following developmental inadequacies under current local government standards and requirements:

- (1) inadequate street right-of-way or street access control;
- (2) a lack of drainage easements of right-of-way;
- (3) a lack of adequate park, recreation or open space area;
- (4) a lack of an overall grading and drainage plan; or
- (5) a lack of adequate subdivision grading both on and off the public right-of-way. "

Section 3. Section 4-55A-3 NMSA 1978 (being Laws 1980, Chapter 91, Section 3, as amended) is amended to read:

"4-55A-3. IMPROVEMENT DISTRICT-- AUTHORIZATION--
LIMITATION.--

A. Whenever the board determines that the creation of an improvement district is necessary for the

public safety, health or welfare, the board may create an improvement district for any one or any combination of projects authorized in the County Improvement District Act by the:

- (1) provisional order method; or
- (2) petition method.

B. The board may adopt any ordinance or resolution necessary or proper to accomplish the purposes of the County Improvement District Act.

C. The improvement district shall include for the purpose of assessment or imposition of an improvement district property tax all the property that the board determines is benefited by the improvement authorized by the County Improvement District Act, including property used for public, governmental, charitable or religious purposes, except that of the United States or any agency, instrumentality or corporation thereof in the absence of a consent of congress, but shall not include any property within the exterior boundaries of a municipality except as provided in Section 4-55A-5 NMSA 1978 and for purposes of the imposition of an improvement district, property tax shall not include real property exempt from property taxation. "

Section 4. Section 4-55A-10 NMSA 1978 (being Laws 1980, Chapter 91, Section 10, as amended) is amended to

read:

"4-55A-10. IMPROVEMENT DISTRICT--PETITION METHOD--
REQUIREMENTS--DISTRIBUTION OF COSTS--NOTICE OF HEARING.--

A. Whenever the owners of sixty-six and two-thirds percent or more of the total assessed valuation of the property described in Subsection C of Section 4-55A-3 NMSA 1978, but exclusive of any land owned by the United States or the state of New Mexico, petition the board in writing to create an improvement district and construct the improvement described in the petition, the board may:

(1) create the improvement district;

(2) select the type of material and method of construction to be used; and

(3) proceed with the construction of the improvement as authorized in Section 4-55A-14 NMSA 1978 after complying with the requirements for a preliminary hearing required in this section. A governing body of a municipality, board of county commissioners or local board of education may sign a petition seeking the improvement for any land under its control. The submission of separate petitions for any one improvement district within a six-month period shall be considered as a single petition.

B. The board may:

(1) pay the cost of the improvement;

(2) assess the cost of the improvement

against the benefiting tracts or parcels of land;

(3) pay part of the cost of the improvement and assess part of the cost of the improvement against the benefiting tracts or parcels of land; or

(4) impose an improvement district property tax pursuant to the County Improvement District Act.

C. If any part or all of the cost of the improvement sought to be constructed as authorized in this section is to be assessed against the benefiting tracts or parcels of land or paid for by the imposition of an improvement district property tax, the board shall hold a preliminary hearing on the proposed improvement district and give notice of the preliminary hearing. "

Section 5. Section 4-55A-11 NMSA 1978 (being Laws 1980, Chapter 91, Section 11, as amended) is amended to read:

"4-55A-11. IMPROVEMENT DISTRICT--NOTICE OF PRELIMINARY HEARING. --

A. The notice of the preliminary hearing required in Section 4-55A-10 NMSA 1978 shall contain:

(1) the time and place when the board will hold a preliminary hearing on the proposed improvement;

(2) the estimated cost of the improvement;

(3) the boundary of the improvement

district;

(4) the route of the improvement by streets or roads or location of the improvements;

(5) the location of the proposed improvement;

(6) a description of each property to be assessed or against which an improvement district property tax is to be imposed;

(7) the estimated amount of the assessment against or property tax imposed upon each tract or parcel of land; and

(8) the amount of the cost to be assumed by the county, if any.

B. If the owners are found within the county, the notices shall be personally served on them at least thirty days prior to the day of the hearing. The notice shall also be published in a newspaper published in the county once each week for four successive weeks. The last publication shall be at least three days before the day of the preliminary hearing."

Section 6. Section 4-55A-12 NMSA 1978 (being Laws 1980, Chapter 91, Section 12, as amended) is amended to read:

"4-55A-12. IMPROVEMENT DISTRICT--PRELIMINARY HEARING-- PROTEST--ACTION OF THE BOARD--ACTION IN DISTRICT COURT.--

A. At the preliminary hearing of the board on the

question of creating an improvement district as authorized in Section 4-55A-10 NMSA 1978, any owner of a tract or parcel of land to be assessed or upon which it is proposed to impose an improvement district property tax may contest:

- (1) the proposed assessment or tax;
- (2) the regularity of the proceedings

relating to the improvement;

- (3) the benefits of the improvement; or
- (4) any other matter relating to the

improvement district.

B. The board shall not assess the tract or parcel of land an amount greater than the actual benefit to the tract or parcel of land by reason of the enhanced value of the tract or parcel of land as a result of the improvement as ascertained at the hearing. The board may allow a fair price, based on its current value, as a setoff against any assessment against a tract or parcel of land if the owner has improved the tract or parcel of land in such a manner that the improvement may be made part of the proposed improvement.

C. At the hearing, the board may:

- (1) correct any mistake or irregularity in any proceeding relating to the improvement;

- (2) correct an assessment to be made against any tract or parcel of land;

(3) in case of any invalidity, reassess the cost of the improvement against a benefiting tract or parcel of land; or

(4) recess the hearing from time to time.

D. Within thirty days after the hearing, any owner of a tract or parcel of land to be assessed, whether he appeared at the hearing or not, may commence an action in district court seeking an account of any error or invalidity of the proceedings relating to the improvement district to set aside or correct the assessment or any proceedings relating to the improvement district. Thereafter, any owner or his heirs, assigns, successors or personal representatives are perpetually barred from any action or any defense of error or invalidity in the proceedings or assessments. Where no owner of a tract or parcel to be assessed has presented a protest during the hearing and all owners of the property to be assessed, upon conclusion of the hearing, submit written statements in favor of the creation of the improvement district for the types and character of improvements indicated in the petition, such owners shall be deemed to have waived their right to bring any action in district court seeking an account of any error or invalidity of the proceedings relating to the improvement district or to set aside or correct the assessment or any proceedings relating to the improvement district."

Section 7. A new section of the County Improvement District Act, Section 4-55A-12.1 NMSA 1978, is enacted to read:

"4-55A-12.1. IMPOSITION OF IMPROVEMENT DISTRICT PROPERTY TAX--LIMITATIONS.--

A. If in connection with the creation of the improvement district the board determines that it is in the best interest of the county to finance the district improvements by the imposition of an improvement district property tax and the issuance of improvement district general obligation bonds, the board shall enact an ordinance making the determination and provide in the ordinance the tax rate to be imposed, the amount of the bonds to be issued to finance the improvements and any other matters the board deems necessary or appropriate. The board shall call an election within the district for the purpose of authorizing the board to issue general obligation bonds, the proceeds of the sale of which shall be used for constructing the improvements for which the district was created and to impose property taxes on all taxable property within the district for the purpose of paying the principal, debt service and other expenses incidental to the issuance and sale of the bonds. The ordinance shall include a limitation on the rate of the authorized imposition of not to exceed twenty dollars (\$20.00) per one thousand dollars (\$1,000) of

net taxable value of real property in the district subject to property taxation. The ordinance shall also include procedures for the conduct of the election based upon the size of the improvement district and the number of voters entitled to vote.

B. If at the election described in Subsection A of this section the property tax imposition and the issuance of improvement district general obligation bonds are approved by a majority of the voters voting on the issues, the board shall impose the tax at a rate not to exceed the limitation in Subsection A of this section and sufficient to pay the debt service on the bonds and retire them at maturity.

C. Imposition and collection of the improvement district property tax authorized in this section shall be made at the same time and in the same manner as impositions and collections of property taxes for use by counties are made.

D. Bonds issued by the board for payment of the specified improvement district improvements shall be sold at a price that does not result in a net effective interest rate exceeding the maximum net effective interest rate permitted by the Public Securities Act. The bonds may be sold at public or private sale and may be in denominations that the board determines.

E. The form and terms of the bonds, including provisions for their payment and redemption, shall be as determined by the board. The bonds shall be executed in the name of and on behalf of the improvement district. The bonds may be executed and sealed in accordance with the provisions of the Uniform Facsimile Signature of Public Officials Act.

F. To provide for the payment of the interest and principal of the bonds issued and sold pursuant to this section, the board shall annually impose a property tax on all taxable property in the district in an amount sufficient to produce a sum equal to the principal and interest on all bonds as they mature subject to the limitation of Subsection A of this section.

G. The bonds authorized in this section are general obligation bonds of the district and the full faith and credit of the district are pledged to the payment of the bonds. The proceeds obtained from the issuance of the bonds shall not be diverted or expended for any purposes other than those provided in the County Improvement District Act.

H. All bonds issued by an improvement district shall be fully negotiable and constitute negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code. If lost or completely destroyed, any bond may be reissued in the form and tenor of

the lost or destroyed bond upon the owner furnishing to the satisfaction of the board:

- (1) proof of ownership;
- (2) proof of loss or destruction;
- (3) a surety bond in twice the face amount of the bond and coupons; and
- (4) payment of the cost of preparing and issuing the new bond and coupons.

I. The board may in any proceedings authorizing improvement district bonds provide for the initial issuance of one or more bonds aggregating the amount of the entire issue or may make provision for installment payments of the principal amount of any bond as it may consider desirable.

J. The board may issue bonds to be denominated refunding bonds, for the purpose of refunding any of the general obligation bonded indebtedness of the district. Whenever the board deems it expedient to issue refunding bonds, it shall adopt a resolution setting out the facts making the issuance of the refunding bonds necessary or advisable, the determination of the necessity or advisability by the board and the amount of refunding bonds that the board deems necessary and advisable to issue. The resolution shall fix the form of the bonds; the rate or rates of interest of the bonds, but the net effective interest rate of the bonds shall not exceed the maximum net

effective interest rate permitted by the Public Securities Act; the date of the refunding bonds; the denominations of the refunding bonds; the maturity dates; and the place or places of payment within or without the state of both principal and interest. Refunding bonds when issued, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be negotiable in form, shall bear the signature or the facsimile signature of the chairman of the board and shall be attested to by the secretary of the board. All refunding bonds may be exchanged dollar for dollar for the bonds to be refunded or they may be sold as directed by the board, and the proceeds of the sale shall be applied only to the purpose for which the bonds were issued and the payment of any incidental expenses. "

Section 8. Section 4-55A-20 NMSA 1978 (being Laws 1980, Chapter 91, Section 20, as amended) is amended to read:

"4-55A-20. IMPROVEMENT DISTRICT--AUTHORITY TO ISSUE BONDS OR ASSIGNABLE CERTIFICATES. --

A. To pay all or any part of the cost of the improvement, including those items set out in Subsection C of Section 4-55A-7 NMSA 1978, the board may proceed pursuant to the provisions of Section 4-55A-12.1 NMSA 1978 or may issue in the name of the county bonds in such form as the

board may determine or assignable certificates in an amount not exceeding the total cost of the improvement and maturing not more than twenty years from the date of issuance. If the bonds or assignable certificates recite that:

(1) the proceedings relating to making the improvement and levying the assessments as provided in Section 4-55A-18 NMSA 1978 or placing the preliminary lien as provided in Section 4-55A-7 NMSA 1978 to pay for the improvement have been done in compliance with law; and

(2) all prerequisites to the fixing of the assessment lien or placing the preliminary lien against the tract or parcel of land benefited by the improvement have been performed, such recital shall be conclusive evidence of the facts recited.

B. The assignable certificates shall:

(1) declare the liability of the owner of the tract or parcel of land so assessed or the liability of the tract or parcel of land so assessed for payment of the assessment, interest and penalties;

(2) fix the terms and conditions of the certificates; and

(3) accurately describe the tract or parcel of land covered by the certificate.

C. The bonds shall:

(1) recite the terms and conditions for

their issuance;

(2) be payable from money collected from the preliminary assessment lien authorized in Section 4-55A-7 NMSA 1978 and, if so payable, also payable from the proceeds of bonds payable from the final assessment lien authorized in Section 4-55A-18 NMSA 1978; or

(3) be payable from the money collected from the assessments authorized in Section 4-55A-18 NMSA 1978; provided that if assessments are made payable over more than one period of time as permitted by Section 4-55A-19 NMSA 1978, specified portions of the bonds may be payable from money collected from those assessments payable over that period of time that generally corresponds to the period of time over which such specified portions of the bonds are payable; and

(4) bear a rate or rates of interest that shall not exceed the rate of interest on the deferred installments of the assessments or, if more than one rate of interest is specified for assessments as permitted by Section 4-55A-19 NMSA 1978, on that portion of the deferred installments of assessments from which that specified portion of the bonds may be payable. Payment of the bonds issued for the construction of a project described in Subsection A of Section 4-55A-4 NMSA 1978 may be supplemented from gasoline tax and special fuel excise tax

distributed to the county pursuant to Section 7-1-6.39 NMSA 1978 on or before a date not more than twelve months after the last deferred installment of an assessment is due from the owner of a tract or parcel of land so assessed.

D. The bonds may be issued to the contractor in payment for the construction of the improvement or may be issued and sold:

(1) in payment of the county's proportion of the cost of the improvement;

(2) in payment of the proportionate cost, if the improvement is done in cooperation with another governmental agency;

(3) in payment of the construction of the improvement done under contract; or

(4) in reimbursement to the county, if the county constructed the improvement with county-owned or -leased equipment and county employees.

E. Bonds or assignable certificates may be sold at a public or private sale at a discount. "

Section 9. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 1998. _____