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SENATE BILL 154

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

MANNY M. ARAGON

AN ACT

RELATING TO FLOOD CONTROL AND DRAINAGE; ENACTING THE FLOOD CONTROL AND DRAINAGE IMPROVEMENT DISTRICT ACT; AUTHORIZING CERTAIN FLOOD CONTROL AUTHORITIES TO RAISE REVENUES FOR IMPROVEMENTS BY AN ASSESSMENT LEVY ON IMPROVED LANDS.

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

Section 1. SHORT TITLE. -- This act may be cited as the "Flood Control and Drainage Improvement District Act".

Section 2. IMPROVEMENT DISTRICT--DEFINITIONS. -- As used in the Flood Control and Drainage 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

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1 configuration or legal description of such parcels.

2 "Adjustment of assessment" may also include the real location  
3 of the assessment lien, without loss of priority, among  
4 parcels under single ownership that are subject to the  
5 assessment lien in order to permit the removal of the lien  
6 from one or more parcels where adequate security for the lien  
7 is demonstrated by the assessed parcels under such single  
8 ownership or provided by the owner;

9 B. "authority" means a flood control authority  
10 created pursuant to Chapter 72, Articles 16 and 19 NMSA 1978;

11 C. "board" means the board of directors of the  
12 authority;

13 D. "construct" or "construction" means to plan,  
14 design, engineer, construct, reconstruct, install, extend,  
15 better, alter, build, rebuild, improve, purchase or otherwise  
16 acquire any project authorized in the Flood Control and  
17 Drainage Improvement District Act;

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

22 F. "improvement" means any one or any combination  
23 of projects in one or more locations authorized in the Flood  
24 Control and Drainage Improvement District Act;

25 G. "improvement district" means one or more

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1 locations wherein the improvement is to be constructed and one  
2 or more tracts or parcels of land to be assessed for the cost  
3 of the improvement; and

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

10 (1) a lack of drainage easements of right-of-  
11 way;

12 (2) a lack of an overall grading and drainage  
13 plan; or

14 (3) a lack of adequate subdivision grading  
15 both on and off the public right-of-way.

16 Section 3. IMPROVEMENT DISTRICT-- AUTHORIZATION--  
17 LIMITATION.--

18 A. Whenever the board determines that the creation  
19 of an improvement district is necessary for the public safety,  
20 health or welfare, the board may create an improvement  
21 district for any one or any combination of projects authorized  
22 in the Flood Control and Drainage Improvement District Act by  
23 the:

24 (1) provisional order method; or

25 (2) petition method.

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1           B. The board may adopt any resolution necessary or  
2 proper to accomplish the purposes of the Flood Control and  
3 Drainage Improvement District Act.

4           C. The improvement district shall include for the  
5 purpose of assessment all the property that the board  
6 determines is benefited by the improvement authorized by the  
7 Flood Control and Drainage Improvement District Act, including  
8 property utilized for public, governmental, charitable or  
9 religious purposes, except that of the United States or any  
10 agency, instrumentality or corporation thereof in the absence  
11 of a consent of congress, but shall not include any property  
12 within the exterior boundaries of a municipality except as  
13 provided in Section 6 of that act.

14           Section 4. IMPROVEMENT DISTRICT--PURPOSE. -- An  
15 improvement district may be created as authorized in the Flood  
16 Control and Drainage Improvement District Act in order to  
17 construct, acquire, repair or maintain in one or more  
18 locations any one or any combination of the following  
19 projects, including without limitation any right-of-way,  
20 easement or privilege appurtenant or related thereto:

21           A. a bridge, walkway or gutter project, including  
22 without limitation ramps and stairways, arches, support  
23 structures and pilings and the grading, regrading, surfacing,  
24 graveling, excavating, macadamizing, paving, repairing,  
25 laying, backfilling, leveling, lighting, landscaping,

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1 beautifying or in any manner improving of all or any part of  
2 one or more bridges, walkways, pathways, gutters or any  
3 combination of the foregoing;

4 B. any storm sewer project, including without  
5 limitation investigating, planning, constructing, acquiring,  
6 excavating, laying, leveling, backfilling or in any manner  
7 improving all or any part of one or more storm sewers, drains  
8 and property connections and acquiring or improving valves,  
9 catch basins, inlets, outlets, lift or pumping stations and  
10 machinery and equipment incidental thereto or any combination  
11 of the foregoing; or

12 C. a flood control or storm drainage project,  
13 including without limitation the investigation, planning,  
14 construction, improvement, replacement, repair or acquisition  
15 of dams, dikes, levees, ditches, canals, basins and  
16 appurtenances such as spillways, outlets, syphons and drop  
17 structures, channel construction, diversions, rectification  
18 and protection with appurtenant structures such as concrete  
19 linings, banks, revetments, culverts, inlets, bridges,  
20 transitions and drop structures, rundowns and retaining walls,  
21 storm sewers and related appurtenances such as inlets,  
22 outlets, manholes, catch basins, syphons and pumping stations,  
23 appliances, machinery and equipment and property rights  
24 connected therewith or incidental thereto convenient and  
25 necessary to control floods or to provide drainage and lessen

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1 their danger and damages.

2 Section 5. IMPROVEMENT DISTRICT-- ADDITIONAL PURPOSE. -- An  
3 improvement district may also be created as authorized in the  
4 Flood Control and Drainage Improvement District Act in order  
5 to construct, repair or maintain improvements in one or more  
6 locations or to construct, acquire, repair, operate or  
7 maintain one or more of the following items necessary to bring  
8 a premature subdivision into compliance within an improvement  
9 district within an authority:

- 10 A. drainage easements or rights of way;
  - 11 B. overall grading and drainage plan; or
  - 12 C. adequate subdivision grading either on or off
- 13 the public right of way.

14 Section 6. IMPROVEMENT DISTRICT-- POWERS OF AN  
15 AUTHORITY. --An authority shall have the power to construct  
16 improvements authorized by the Flood Control and Drainage  
17 Improvement District Act on any location within the boundaries  
18 of the authority or a municipality or county outside the  
19 authority's boundaries. Improvements shall be constructed  
20 pursuant to the powers granted in the Flood Control and  
21 Drainage Improvement District Act only if the governing body  
22 of a municipality or the board of county commissioners of a  
23 county outside the boundaries of the authority in which such  
24 improvements are to be made has, by resolution submitted to  
25 the board of county commissioners of the county, determined:

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1           A. that the construction of such improvements is  
2 in the best interests of the municipality or the county;

3           B. that the maximum amount of benefit estimated to  
4 be conferred on the tracts or parcels of land lying within the  
5 municipality or county is determined in the same manner as the  
6 maximum amount of benefit estimated to be conferred on the  
7 tracts or parcels of land lying within the authority; and

8           C. that the owners of real property representing  
9 at least fifty-one percent of the total assessed valuation of  
10 the property benefited, which lies within the municipality or  
11 county, have not objected in writing to such improvements  
12 within thirty days after having received written notice of the  
13 adoption of the provisional order described in Subsection E of  
14 Section 8 of the Flood Control and Drainage Improvement  
15 District Act by the board of county commissioners. The  
16 authority may enter into a joint powers agreement with the  
17 governing body of the municipality or the board of county  
18 commissioners of the county to provide for joint  
19 administration of any such improvement district.

20           Section 7. IMPROVEMENT DISTRICT--LIMITATIONS ON POWERS  
21 OF AUTHORITY WITH RESPECT TO STREET OR RIGHT OF WAY UNDER  
22 JURISDICTION OF STATE HIGHWAY COMMISSION.--The authority shall  
23 not construct improvements on or through any street or right  
24 of way under the jurisdiction of the state highway commission  
25 unless it receives prior written approval from the state

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1 highway commission to undertake such improvements.

2 Section 8. IMPROVEMENT DISTRICT--PROVISIONAL ORDER  
3 METHOD--PROCEDURE--PRELIMINARY LIEN--NOTICE OF PENDENCY OF  
4 DISTRICT--EFFECT. --

5 A. Whenever the board determines that the creation  
6 of an improvement district is necessary by the provisional  
7 order method, the board shall by resolution direct the  
8 engineer to prepare preliminary plans and an estimate of cost  
9 for the proposed improvement district.

10 B. The resolution shall:

11 (1) describe in general terms the property to  
12 be included in the improvement district; and

13 (2) require the engineer to prepare:

14 (a) an assessment plat showing the area  
15 to be included in the improvement district; and

16 (b) an addendum to the assessment plat  
17 showing the amount of maximum benefit estimated to be assessed  
18 against each tract or parcel in the improvement district on a  
19 front-foot, zone, area or other equitable basis, which shall  
20 be set forth in the resolution; provided, if the benefit to a  
21 tract or parcel is derived from a combination of improvements,  
22 the amount of maximum benefit estimated to be assessed against  
23 such tract or parcel may be based upon an appraisal or  
24 determination of the value of the improvements as a whole; and

25 (3) require the engineer to prepare



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1 preliminary plans for one or more types of construction  
2 showing:

3 (a) for each type of storm sewer or  
4 drain, the type of material and approximate diameter of any  
5 trunk lines, mains, laterals or house connections; or

6 (b) for each other type of project or  
7 other major component of the foregoing types of projects, a  
8 general description.

9 C. The engineer shall include in the total cost  
10 estimate for the improvement district all expenses, including  
11 but not limited to advertising, appraising, tax reimbursement,  
12 capital improvement, expansion, construction period interest,  
13 reserve fund, financing, engineering and printing expenses,  
14 which the engineer deems necessary to pay the complete cost of  
15 the improvement.

16 D. The engineer shall submit to the board the:

17 (1) assessment plat;

18 (2) preliminary plans of the type of  
19 construction; and

20 (3) estimates of costs for the improvement.

21 E. After the board examines the assessment plat,  
22 preliminary plans and estimates of cost for the improvement  
23 district, the board may adopt a provisional order that:

24 (1) orders the improvement to be constructed;

25 (2) instructs the engineer to give notice of

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1 a hearing on the provisional order; and

2 (3) orders, if deemed necessary by the board  
3 and with the consent of the owners of the tracts or parcels to  
4 be encumbered with a preliminary assessment lien, the  
5 immediate placement of a preliminary assessment lien on tracts  
6 or parcels in the improvement district based on the estimated  
7 maximum benefit to be assessed against such tracts or parcels  
8 in order to facilitate interim financing of the improvement  
9 and provides for times and terms of paying the preliminary  
10 assessment lien, for the adjustment of the preliminary  
11 assessment lien and the placement of a final assessment lien  
12 upon each such tract or parcel pursuant to the provisions of  
13 Sections 19 and 20 of the Flood Control and Drainage  
14 Improvement District Act. Both the preliminary and the final  
15 assessment liens shall be coequal with the lien for general ad  
16 valorem taxes and the lien of other improvement districts and  
17 are superior to all other liens, claims and titles. The  
18 consent of any owner in an improvement district to the  
19 placement of a preliminary assessment lien on the owner's  
20 property shall not alter the assessment on any other tracts or  
21 parcels in the improvement district.

22 F. Upon the adoption of the provisional order by  
23 the board, the estimated maximum benefit roll showing the  
24 legal description of the property to be included in the  
25 district and the owners thereof may be recorded with the clerk

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1 of the county in which the property is located, which  
2 recording shall constitute notice of the pendency of the  
3 special assessment district and shall be constructive notice  
4 to the owner, purchaser or encumbrancer of the property  
5 concerned; and any person whose conveyance is subsequently  
6 recorded shall be considered a subsequent purchaser or  
7 encumbrancer and shall be subject to and bound by all the  
8 proceedings taken after the recording of the notice to the  
9 same extent as if he were made a party to such special  
10 assessment proceedings.

11 G. This notice need not be acknowledged to entitle  
12 it to be recorded.

13 H. Nothing in this section shall be construed to  
14 affect the priority of special assessment liens.

15 Section 9. IMPROVEMENT DISTRICT--NOTICE OF ASSESSMENT--  
16 PROTESTS. --

17 A. The notice of the provisional order creating an  
18 improvement district shall:

19 (1) contain the time and place when the board  
20 shall hold a hearing on the provisional order creating the  
21 improvement district;

22 (2) describe the improvement to be  
23 constructed and the general location thereof; and

24 (3) state that any interested person may  
25 ascertain in the office of the county clerk:

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1 (a) a description of the property to be  
2 assessed; and

3 (b) the maximum amount of benefit  
4 estimated to be conferred on each tract or parcel of land.

5 B. Not more than thirty days nor less than ten  
6 days before the day of the hearing, the county clerk, his  
7 deputy or the engineer shall mail the notice of the hearing on  
8 the provisional order to the owner of the tract or parcel of  
9 land being assessed the cost of the improvement at his last  
10 known address. The name and address of the owner of each  
11 tract of land shall be obtained from the records of the county  
12 assessor or any other source the county clerk or engineer  
13 deems reliable. Proof of the mailing is to be made by  
14 affidavit of the county clerk, his deputy or the engineer and  
15 shall be filed in the office of the county clerk. Failure to  
16 mail any notice shall not invalidate any of the proceedings  
17 authorized in the Flood Control and Drainage Improvement  
18 District Act.

19 C. Notice of the hearing shall also be published  
20 once each week for three consecutive weeks, and the last  
21 publication shall be at least one week prior to the day of the  
22 hearing. Such service by publication shall be verified by an  
23 affidavit of the publisher, which is to be filed in the office  
24 of the county clerk.

25 Section 10. IMPROVEMENT DISTRICT--PROVISIONAL ORDER--

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1 PROTEST--ACTION IN DISTRICT COURT. --

2 A. At the hearing of the board on the provisional  
3 order creating an improvement district, any interested person  
4 or owner of property to be assessed for the improvement may  
5 file a written protest or objection questioning the:

- 6 (1) propriety and advisability of
- 7 constructing the improvement;
- 8 (2) estimated cost of the improvement;
- 9 (3) manner of paying for the improvement; or
- 10 (4) estimated maximum benefit to each
- 11 individual tract or parcel of land.

12 B. The board may recess the hearing from time to  
13 time so that all protestants may be heard.

14 C. Within thirty days after the board, by adoption  
15 of a resolution, has:

- 16 (1) concluded the hearing;
- 17 (2) determined:
  - 18 (a) the advisability of constructing
  - 19 the improvement; and
  - 20 (b) the type and character of the
  - 21 improvement; and
  - 22 (3) created the improvement district, any
  - 23 person who during the hearing filed a written protest with the
  - 24 board protesting the construction of the improvement may
  - 25 commence an action in district court to correct or set aside

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1 the determination of the board. After the lapse of thirty  
2 days after adoption of the resolution by the board, any action  
3 attacking the validity of the proceedings and the amount of  
4 benefit to be derived from the improvement is perpetually  
5 barred. Where no person has filed a written protest during  
6 the hearing and all owners of property to be assessed, upon  
7 conclusion of the hearing, submit to the governing body  
8 written statements in favor of the creation of the improvement  
9 district for the types and character of improvements indicated  
10 in the provisional order, such owners shall be deemed to have  
11 waived their right to bring any action challenging the  
12 validity of the proceedings or the amount of benefit to be  
13 derived from the improvements.

14 Section 11. IMPROVEMENT DISTRICT--PETITION METHOD--  
15 REQUIREMENTS--DISTRIBUTION OF COSTS--NOTICE OF HEARING.--

16 A. Whenever the owners of sixty-six and two-thirds  
17 percent or more of the total assessed valuation of the  
18 property to be benefited, exclusive of any land owned by the  
19 United States or New Mexico, petition the board in writing to  
20 create an improvement district and construct the improvement  
21 described in the petition, the board may:

- 22 (1) create the improvement district;
- 23 (2) select the type of material and method of  
24 construction to be used; and
- 25 (3) proceed with the construction of the

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1 improvement as authorized in Section 15 of the Flood Control  
2 and Drainage Improvement District Act after complying with the  
3 requirements for a preliminary hearing required in this  
4 section. A governing body of a municipality, board of county  
5 commissioners or local board of education may sign a petition  
6 seeking the improvement for any land under its control. The  
7 submission of separate petitions for any one improvement  
8 district within a six-month period shall be considered as a  
9 single petition.

10 B. The board may:

- 11 (1) pay the cost of the improvement;
- 12 (2) assess the cost of the improvement  
13 against the benefiting tracts or parcels of land; or
- 14 (3) pay part of the cost of the improvement  
15 and assess part of the cost of the improvement against the  
16 benefiting tracts or parcels of land.

17 C. If any part or all of the cost of the  
18 improvement sought to be constructed as authorized in this  
19 section is to be assessed against the benefiting tracts or  
20 parcels of land, the board shall hold a preliminary hearing on  
21 the proposed improvement district and give notice of the  
22 preliminary hearing.

23 Section 12. IMPROVEMENT DISTRICT--NOTICE OF PRELIMINARY  
24 HEARING. --

25 A. The notice of the preliminary hearing required

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1 in Section 11 of the Flood Control and Drainage Improvement  
2 District Act shall contain:

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

5 (2) the estimated cost of the improvement;

6 (3) the boundary of the improvement district;

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

9 (5) the location of the proposed improvement;

10 (6) a description of each property to be  
11 assessed;

12 (7) the estimated amount of the assessment  
13 against each tract or parcel of land; and

14 (8) the amount of the cost to be assumed by  
15 the authority, if any.

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

22 Section 13. IMPROVEMENT DISTRICT--PRELIMINARY HEARING--  
23 PROTEST--ACTION OF THE BOARD--ACTION IN DISTRICT COURT.--

24 A. At the preliminary hearing of the board on the  
25 question of creating an improvement district as authorized in



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1 Section 11 of the Flood Control and Drainage Improvement  
2 District Act, any owner of a tract or parcel of land to be  
3 assessed may contest:

- 4 (1) the proposed assessment;
- 5 (2) the regularity of the proceedings  
6 relating to the improvement;
- 7 (3) the benefits of the improvement; or
- 8 (4) any other matter relating to the  
9 improvement district.

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

- 19 C. At the hearing, the board may:
- 20 (1) correct any mistake or irregularity in  
21 any proceeding relating to the improvement;
  - 22 (2) correct an assessment made against any  
23 tract or parcel of land;
  - 24 (3) in case of any invalidity, reassess the  
25 cost of the improvement against a benefiting tract or parcel

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1 of land; or

2 (4) recess the hearing from time to time.

3 D. Within thirty days after the hearing, any owner  
4 of a tract or parcel of land assessed, whether he appeared at  
5 the hearing or not, may commence an action in district court  
6 seeking an account of any error or invalidity of the  
7 proceedings relating to the improvement district or to set  
8 aside or correct the assessment or any proceedings relating to  
9 the improvement district. Thereafter, any owner or his heirs,  
10 assigns, successors or personal representatives are  
11 perpetually barred from any action or any defense of error or  
12 invalidity in the proceedings or assessments. Where no owner  
13 of a tract or parcel to be assessed has presented a protest  
14 during the hearing and all owners of the property to be  
15 assessed, upon conclusion of the hearing, submit written  
16 statements in favor of the creation of the improvement  
17 district for the types and character of improvements indicated  
18 in the petition, such owners shall be deemed to have waived  
19 their right to bring any action in district court seeking an  
20 account of any error or invalidity of the proceedings relating  
21 to the improvement district or to set aside or correct the  
22 assessment or any proceedings relating to the improvement  
23 district.

24 Section 14. IMPROVEMENT DISTRICT--LEVY AND COLLECTION OF  
25 ASSESSMENTS PRIOR TO COMMENCING IMPROVEMENT--SPECIAL FUND--

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1 MISUSE - - PENALTY. - -

2 A. Whenever the board:

3 (1) elects to order the construction of a  
4 project as authorized in the Flood Control and Drainage  
5 Improvement District Act;

6 (2) uses authority-owned or -leased equipment  
7 to construct the project; and

8 (3) determines what portion of the estimated  
9 cost of the construction shall be paid by each tract or parcel  
10 of land benefited or to be benefited by the construction; the  
11 assessment may be levied and the installments collected prior  
12 to the commencement of work and as work progresses according  
13 to the terms of payment fixed by the board.

14 B. The construction shall commence within sixty  
15 days after the payment of the first installment of the  
16 assessment and be diligently prosecuted so that the  
17 construction is completed within one year from the date of  
18 commencement. At the end of the one-year period, any tract or  
19 parcel of land that has not received the benefits provided by  
20 this section shall be released of any lien assessed against  
21 the tract or parcel of land by reason of this section, and all  
22 assessment money collected from each owner of a tract or  
23 parcel of land so assessed and not benefited shall be  
24 returned.

25 C. All assessment money collected under this

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1 section shall be held by the county treasurer in a special  
2 account as a separate fund and used only for constructing the  
3 improvement, including the purchasing or leasing of necessary  
4 equipment. The use of the special fund for any purpose other  
5 than that required under this section by any public official,  
6 treasurer or member of the board is prohibited and is a felony  
7 punishable by a fine not exceeding one thousand dollars  
8 (\$1,000) or by imprisonment in the penitentiary for not more  
9 than two years or by both fine and imprisonment in the  
10 discretion of the court.

11 Section 15. IMPROVEMENT DISTRICT--ADVERTISING FOR BIDS--  
12 AUTHORITY MAY DO WORK--CONTRIBUTION BY GOVERNMENTAL AGENCY.--

13 A. If a continuous area proposed to be improved  
14 exceeds five hundred feet in length, the board, before using  
15 authority equipment and employees to construct the  
16 improvement, shall advertise for bids for the construction of  
17 the improvement and award the contract for the construction of  
18 the improvement to the lowest responsible bidder; provided,  
19 however, an authority may construct the improvement using the  
20 same specifications upon which bids were requested if:

- 21 (1) the authority can guarantee to construct  
22 the improvement for an amount less than the lowest bid amount  
23 and not assess the benefiting tracts or parcels of land an  
24 amount in excess of the lowest responsible bid, if a bid is  
25 received; or

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1 (2) the authority receives no bids for the  
2 construction of the improvement.

3 B. If using authority-owned or -leased equipment  
4 and authority employees in constructing an improvement, an  
5 authority may cooperate with another governmental agency that  
6 contributes money, labor or a portion of the cost of materials  
7 towards completion of the improvement.

8 Section 16. NOTICE OF BID--ACCEPTANCE OF BID.--

9 A. After the board creates an improvement  
10 district, the board may proceed as authorized in Section 14 or  
11 15 of the Flood Control and Drainage Improvement District Act  
12 or call for sealed bids on the proposed improvement. The  
13 notice of the call for bids shall be made in accordance with  
14 the provisions of Section 13-1-104 NMSA 1978.

15 B. After advertising for bids, the authority may  
16 make minor alterations or changes in the plans and  
17 specifications to correct errors or omissions in the original  
18 plans and specifications.

19 C. The board shall award the contract to the  
20 lowest responsible bidder unless the board:

21 (1) elects to construct the improvements as  
22 authorized in Section 14 or 15 of the Flood Control and  
23 Drainage Improvement District Act; or

24 (2) rejects all bids submitted for the  
25 construction of the improvement. Such bids shall be rejected

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1 in the following manner:

2 (a) if less than three bids are  
3 received, the purchase may be made without bids at the best  
4 documented obtainable price; or

5 (b) if three or more bids are received,  
6 the authority may reject any or all bids but shall readvertise  
7 and accept new bids; and

8 (c) if no new bids are received or if  
9 all new bids are rejected, the rejection shall be accompanied  
10 by a written statement of the board declaring the reasons for  
11 the rejection, and the authority may then purchase the  
12 required items on the open market at the best documented  
13 obtainable price.

14 Section 17. IMPROVEMENT DISTRICT--ASSESSMENT OF RAILROAD  
15 PROPERTY.--The board may assess the property of any railroad  
16 the whole cost of the improvement between or under the rails  
17 or tracks and two feet on each side of the rail or track of  
18 the railroad. The assessment shall be levied as other  
19 assessments are levied and shall constitute a lien coequal  
20 with the lien of other taxes and prior and superior to all  
21 other liens, claims and titles and may be enforced by sale of  
22 the railroad property or by suit against the owner of the  
23 railroad.

24 Section 18. IMPROVEMENT DISTRICT--ASSESSMENT ROLL--  
25 NOTICE OF ASSESSMENT HEARING.--

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1           A. After the contract has been awarded and the  
2 board determines the total cost of the improvement to the  
3 authority, the board shall determine what portion of the total  
4 cost of the improvement shall be assessed against the  
5 benefited tract or parcel of land. The assessment, including  
6 the cost of the improvement at an intersection, shall not  
7 exceed the estimated benefit to the tract or parcel of land  
8 assessed.

9           B. With the engineer, the board shall prepare and  
10 cause to be filed in the office of the county clerk an  
11 assessment roll containing, among other things:

12                   (1) the name of the last known owner of the  
13 tract or parcel of land to be assessed or, if his name is  
14 unknown, state "unknown";

15                   (2) a description of the tract or parcel of  
16 land to be assessed; and

17                   (3) the amount of the assessment against each  
18 tract or parcel of land.

19           C. After the filing of the assessment roll, the  
20 board shall, by resolution, set a time and place for the  
21 assessment hearing when an owner may object to the amount of  
22 the assessment.

23           D. Not more than thirty days nor less than ten  
24 days before the day of the hearing, the county clerk, his  
25 deputy or the engineer shall mail the notice of the hearing on

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1 the assessment roll to the owner of the tract or parcel of  
2 land being assessed the cost of the improvement at his last  
3 known address. The name and address of the owner of each  
4 tract of land shall be obtained from the records of the county  
5 assessor or any other source the county clerk or engineer  
6 deems reliable. Proof of the mailing is to be made by  
7 affidavit of the county clerk, his deputy or the engineer and  
8 shall be filed in the office of the county clerk. Failure to  
9 mail any notice shall not invalidate any of the proceedings  
10 authorized in the Flood Control and Drainage Improvement  
11 District Act. The notice of the hearing shall also be  
12 published once each week for three consecutive weeks, and the  
13 last publication shall be at least one week prior to the day  
14 of the hearing. Such service by publication shall be verified  
15 by an affidavit of the publisher, which is to be filed in the  
16 office of the county clerk.

17 Section 19. IMPROVEMENT DISTRICT-- FILING OF OBJECTIONS--  
18 ASSESSMENT HEARING-- ACTION OF THE BOARD-- APPEAL TO DISTRICT  
19 COURT. --

20 A. Not later than three days before the date of  
21 the hearing on the assessment roll, any owner of a tract or  
22 parcel of land that is listed on the assessment roll may file  
23 his specific objections in writing with the county clerk.  
24 Unless presented as required in this subsection, any objection  
25 to the regularity, validity and correctness of:

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- 1 (1) the proceedings;
- 2 (2) the assessment roll;
- 3 (3) each assessment contained on the
- 4 assessment roll; or
- 5 (4) the amount of the assessment levied
- 6 against each tract or parcel of land, is waived.

7 B. At the hearing, the board shall hear all  
8 objections that have been filed as provided in this section  
9 and may recess the hearing from time to time and, by  
10 resolution, revise, correct, confirm or set aside any  
11 assessment and order another assessment be made de novo.

12 C. The board by resolution shall, by reference to  
13 the assessment roll as so modified, if modified, and as  
14 confirmed by the resolution, levy the assessments contained in  
15 the assessment roll. The assessments may be levied in stages  
16 if preliminary liens are established pursuant to Section 8 of  
17 the Flood Control and Drainage Improvement District Act. The  
18 resolution of the board shall be:

- 19 (1) a final determination of the regularity,
- 20 validity and correctness of:
  - 21 (a) the proceedings;
  - 22 (b) the assessment roll;
  - 23 (c) each assessment contained on the
  - 24 assessment roll; and
  - 25 (d) the amount of the assessment levied

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1 against each tract or parcel of land; and

2 (2) conclusive upon the owners of the tract  
3 or parcel of land assessed.

4 D. Within fifteen days after the publication of  
5 the title and general summary of the resolution or posting of  
6 the resolution, any owner who has filed an objection as  
7 provided in this section may commence an action in district  
8 court to correct or set aside the determination of the board.  
9 After the lapse of fifteen days after the publication or  
10 posting, all actions that include the defense of confiscation  
11 or attack the regularity, validity and correctness of:

12 (1) the proceedings;

13 (2) the assessment roll;

14 (3) each assessment contained on the  
15 assessment roll; or

16 (4) the amount of the assessment levied  
17 against each tract or parcel of land, are perpetually barred.

18 Section 20. IMPROVEMENT DISTRICT--ASSESSMENTS--TERMS OF  
19 PAYMENT--LIENS.--

20 A. The board may, by resolution:

21 (1) establish the time and terms of paying  
22 the assessment or installments on the assessment, including  
23 but not limited to any provision for differing optional time  
24 periods over which installments of assessments for the same  
25 district may be paid and, at the discretion of the board,

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1 differing interest rates on the assessments that are payable  
2 over different time periods; provided that in the situation  
3 where the board provides for optional time periods for payment  
4 of assessment installments, the resolution shall set a limit  
5 on the time during which the affected property owner must  
6 select one of the specified options in writing and shall  
7 provide that failure to select one of the options within the  
8 time limit conclusively establishes the selection of a  
9 specific option designated in the resolution;

10 (2) set any rate or rates of interest upon  
11 deferred payments of the assessment or provide for setting, by  
12 resolution, of the rate or rates of interest upon deferred  
13 payments after sale of bonds or assignable certificates as  
14 provided in Section 21 of the Flood Control and Drainage  
15 Improvement District Act, which shall commence from the date  
16 of publication or posting of the resolution levying the  
17 assessment; provided that the same interest rate shall be set  
18 for assessments that are payable over the same time period;  
19 and provided further that no rate or rates of interest in  
20 excess of twelve percent a year upon such deferred payments of  
21 the assessment shall become effective unless the state board  
22 of finance or any successor thereof at any time approves such  
23 higher rate or rates in writing based upon the determination  
24 of the state board of finance that the higher rate is  
25 reasonable under existing or anticipated bond market

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1 conditions, which approval shall be conclusive;

2 (3) fix penalties to be charged for  
3 delinquent payment of an assessment; and

4 (4) establish procedures and standards for an  
5 adjustment of assessment in order to allow transfer of a  
6 parcel free of an assessment lien, accommodate subdivision of  
7 an assessed parcel or accommodate property line corrections  
8 and adjustments without changing the original payment  
9 schedule, the priority or original amount of the assessment.  
10 Such an adjustment of assessment may allow the owner of the  
11 original tract of land to pay off any pro rata share of the  
12 assessment lien in advance of the schedule of payments. The  
13 procedures and standards may also provide for the method of  
14 assessment on the newly created parcels to vary from the  
15 method of assessment used on the original tract.

16 B. After the publication or posting of the  
17 resolution levying an assessment as provided in Section 19 of  
18 the Flood Control and Drainage Improvement District Act, the  
19 assessment, together with any interest or penalty accruing to  
20 the assessment, is a lien upon the tract or parcel of land so  
21 assessed. Such a lien is coequal with the lien for general ad  
22 valorem taxes and the lien of other improvement districts and  
23 is superior to all other liens, claims and titles. Unmatured  
24 installments are not deemed to be within the terms of any  
25 general covenant or warranty. All purchasers, mortgagees or

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1 encumbrancers of a tract or parcel of land so assessed shall  
2 hold the tract or parcel of land subject to the lien so  
3 created unless the assessment lien is adjusted pursuant to  
4 this section.

5 C. Within sixty days after the publication or  
6 posting of the resolution ratifying an assessment roll and  
7 levying the assessments, the county clerk shall prepare, sign,  
8 attest and record in his office a claim of lien for any unpaid  
9 amount due and assessed against a tract or parcel of land.

10 D. Any tract or parcel of land so assessed shall  
11 not be relieved from the assessment or lien by the sale of the  
12 tract or parcel of land for general taxes or any other  
13 assessment, subject to the provisions of Section 27 of the  
14 Flood Control and Drainage Improvement District Act. The  
15 statute of limitations shall not begin to run against an  
16 assessment until after the last installment of the assessment  
17 becomes due.

18 E. The fact that an improvement is omitted for any  
19 benefited tract or parcel of land does not invalidate a lien  
20 or assessment made against any other tract or parcel of land.

21 Section 21. IMPROVEMENT DISTRICT--AUTHORITY TO ISSUE  
22 BONDS OR ASSIGNABLE CERTIFICATES.--

23 A. To pay all or any part of the cost of the  
24 improvement, including those items set out in Subsection C of  
25 Section 8 of the Flood Control and Drainage Improvement

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1 District Act, the board may issue in the name of the authority  
2 bonds in such form as the board may determine or assignable  
3 certificates in an amount not exceeding the total cost of the  
4 improvement and maturing not more than twenty years from the  
5 date of issuance. If the bonds or assignable certificates  
6 recite that:

7 (1) the proceedings relating to making the  
8 improvement and levying the assessments as provided in Section  
9 19 of that act or placing the preliminary lien as provided in  
10 Section 8 of that act to pay for the improvement have been  
11 done in compliance with law; and

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

17 B. The assignable certificates shall:

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

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

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

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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 8 of the Flood Control and Drainage Improvement District Act and, if so payable, also payable from the proceeds of bonds payable from the final assessment lien authorized in Section 19 of that act; or

(3) be payable from the money collected from the assessments authorized in Section 19 of that act; provided that if assessments are made payable over more than one period of time as permitted by Section 20 of that act, 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 19 of that act, on that portion of the deferred installments of assessments from which that specified portion of the bonds may be payable.

D. The bonds may be issued to the contractor in

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1 payment for the construction of the improvement or may be  
2 issued and sold:

3 (1) in payment of the authority's proportion  
4 of the cost of the improvement;

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

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

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

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

15 Section 22. IMPROVEMENT DISTRICT-- RIGHTS OF NEGOTIABLE  
16 BONDHOLDERS OR ASSIGNABLE CERTIFICATE HOLDERS. --

17 A. If the board fails or refuses to foreclose and  
18 sell a tract or parcel of land for the delinquent assessment  
19 or installment of the assessment as required in Section 23 of  
20 the Flood Control and Drainage Improvement District Act, any  
21 holder of a bond or assignable certificate secured by the  
22 assessment may foreclose the assessment lien on such  
23 delinquent property in the manner provided by law for the  
24 foreclosure of mortgages on real estate.

25 B. Any person holding two or more assignable



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1 certificates issued as authorized in Section 21 of the Flood  
2 Control and Drainage Improvement District Act may sue in the  
3 same action on all tracts or parcels of land described in the  
4 certificate to enforce the lien against the tract or parcel of  
5 land described in the certificate unless the assessment lien  
6 has been adjusted pursuant to Section 20 of that act.

7 C. Whenever a governing body of a municipality,  
8 board of county commissioners or local board of education is  
9 delinquent in the payment of an assessment, the holder of any  
10 assignable certificate issued against the tract or parcel of  
11 land of the municipality, county or school district has the  
12 rights and remedies for the collection of the assessment as  
13 are given by law for the collection of judgments against  
14 municipalities, counties and school districts.

15 Section 23. IMPROVEMENT DISTRICT-- ADDITIONAL DUTIES  
16 IMPOSED ON AUTHORITY.--

17 A. Whenever an improvement district has been  
18 created and bonds or assignable certificates have been issued  
19 to finance the improvement, the authority shall:

20 (1) act as agent for the collection of the  
21 assessments;

22 (2) collect the assessments when due;

23 (3) act as trustee for the benefit of the  
24 holders of the bonds or assignable certificates;

25 (4) annually prepare a statement that shall:

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1 (a) be available for inspection in the  
2 office of the county treasurer;

3 (b) reflect the financial condition of  
4 the improvement district; and

5 (c) list all the delinquencies existing  
6 at that time; and

7 (5) institute proceedings to foreclose the  
8 assessment lien against any tract or parcel of land that is  
9 delinquent in the payment of the assessment or installment of  
10 an assessment for a period of more than one year.

11 B. If more than one improvement district is  
12 created, the money from assessments in each district shall be  
13 kept in a separate fund and used for the payment of principal  
14 and interest of the bonds or assignable certificates  
15 outstanding against that improvement district.

16 Section 24. IMPROVEMENT DISTRICT--ACCEPTANCE OF DEED IN  
17 LIEU OF FORECLOSURE.--In lieu of the foreclosure of a lien  
18 against any tract or parcel of land that is delinquent in the  
19 payment of an assessment or installment of an assessment for a  
20 period of more than one year, the authority may accept a deed  
21 to the property subject to the lien if the owner of the  
22 property tenders the deed to the authority.

23 Section 25. IMPROVEMENT DISTRICT--FORECLOSURE--TRUSTEE  
24 MAY PURCHASE AT FORECLOSURE OF LIENS--CONTENTS OF BID.--Any  
25 delinquent assessment has the effect of a mortgage and shall

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1 be foreclosed and sold in the manner provided by law for the  
2 foreclosure of mortgages on real estate. In any action  
3 seeking the foreclosure of a lien against any tract or parcel  
4 of land assessed by the authority for the construction of any  
5 project after either or both assignable certificates or bonds  
6 have been issued, if there is no other purchaser for the tract  
7 or parcel of land having a delinquent assessment, the  
8 authority as trustee of the fund from which the assignable  
9 certificates or bonds are to be paid, may:

10 A. purchase the tract or parcel of land sold at  
11 the foreclosure sale; and

12 B. bid, in lieu of cash, the full amount of the  
13 assessment, interest, penalties, attorney fees and costs found  
14 by the court to be due and payable under the resolution  
15 creating the lien and any cost taxed by the court in the  
16 foreclosure proceedings against the property ordered sold.

17 Section 26. IMPROVEMENT DISTRICT--TITLE SUBJECT TO  
18 REDEMPTION VESTS IN TRUSTEE.--Upon the acceptance or purchase  
19 of the tract or parcel of land as provided in Sections 24 and  
20 25 of the Flood Control and Drainage Improvement District Act,  
21 title to the tract or parcel of land, subject to the right of  
22 redemption provided by Subsection A of Section 27 of that act  
23 vests in the trustee of the fund from which the assignable  
24 certificates or bonds are payable.

25 Section 27. IMPROVEMENT DISTRICT--PRIVATE OR PUBLIC SALE

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1 OF PROPERTY--REDEMPTION PERIOD--APPLICATION FOR AUTHORIZATION--  
2 APPRAISEMENT--DISPOSITION OF PROCEEDS.--

3 A. No real property shall be sold by the trustee to  
4 satisfy a delinquent assessment until at least fifteen days  
5 after the date of the order, judgment or decree of the court,  
6 within which time the owner of the tract or parcel of land may  
7 pay off the decree and avoid the sale. Any real estate sold  
8 under any order, judgment or decree of court to satisfy the  
9 lien may be redeemed at any time within one year of the date of  
10 sale by the owner or mortgage holder or other person having an  
11 interest, or their assigns, by repaying to the purchaser or his  
12 assign the amount paid with interest from the date of purchase  
13 at the rate of twelve percent per year.

14 B. After expiration of the fifteen-day period, the  
15 trustee may sell the property at a public or private sale  
16 subject to the right of redemption, and, if not paid from the  
17 proceeds of the sale, subject to the indebtedness claimed under  
18 the lien, ad valorem taxes and other special assessments having  
19 a lien on the property that is coequal with the lien for ad  
20 valorem taxes.

21 C. The proceeds of the sale of the foreclosed tract  
22 or parcel of land at either a private sale or a public sale  
23 shall be applied as follows:

- 24 (1) first, to the payment of costs in giving  
25 notice of the sale and of conducting the sale;

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1 (2) second, to costs and fees taxed against  
2 the tract or parcel of land in the foreclosure proceedings;

3 (3) third, on a pro rata basis, to the  
4 indebtedness claimed under the lien and to ad valorem taxes and  
5 other special assessments having a lien on the property that  
6 are coequal with the ad valorem taxes; and

7 (4) fourth, after all such costs, liens,  
8 assessments and taxes are paid, to the former owner, mortgage  
9 holder or other parties having an interest in the tract or  
10 parcel, upon such person providing satisfactory proof to the  
11 court of such interest and upon approval of the court.

12 Receipts for the satisfaction of the indebtedness claimed under  
13 the lien shall be paid into the proper improvement district  
14 fund for payment of the interest and the bonds or assignable  
15 certificates. In case of the sale of any tract or parcel of  
16 land subject to more than one delinquent assessment, such  
17 remaining proceeds shall be distributed into the proper  
18 improvement district funds for such payment pro rata based upon  
19 the total unpaid amount due each such district.

20 Section 28. IMPROVEMENT DISTRICT--ASSESSMENT FUNDS--  
21 EXPENDITURES--MISUSE--PENALTIES.--

22 A. All money received by the authority from any  
23 special assessment or assessment within an improvement district  
24 shall be held in a special fund and used to:

25 (1) pay the cost of the improvement for which

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1 the assessment was made;

2 (2) reimburse the authority for any work  
3 performed by the authority in constructing the improvement and  
4 for administrative costs associated with the improvement  
5 district; or

6 (3) pay the interest and principal due on any  
7 outstanding bonds or assignable certificates.

8 B. Any person who uses money in an improvement  
9 district fund other than as provided in this section is guilty  
10 of a felony and shall be punished by a fine not exceeding one  
11 thousand dollars (\$1,000) or by imprisonment in the state  
12 penitentiary for not more than two years or by both such fine  
13 and imprisonment in the discretion of the court.

14 Section 29. TRANSFER OF IMPROVEMENT DISTRICT FUNDS. --The  
15 board may transfer to the general fund of the authority any  
16 money obtained from the levy of an assessment for an  
17 improvement district if:

18 A. bonds or assignable certificates were issued to  
19 finance the improvement;

20 B. the proceeds of the bonds or assignable  
21 certificates were spent for the improvement;

22 C. the assessments were levied and collected for the  
23 payment of the bonds or assignable certificates; and

24 D. either the bondholders or assignable certificate  
25 holders are barred by the statute of limitations or a court

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1 judgment or decree from collecting the indebtedness; or

2 E. the bonded indebtedness or assignable  
3 certificates have been paid.

4 Section 30. IMPROVEMENT DISTRICT-- REASSESSMENT AFTER  
5 VOIDING OF ASSESSMENTS-- PROCEDURE. --

6 A. It is the purpose of Sections 30 through 34 of  
7 the Flood Control and Drainage Improvement District Act to:

8 (1) charge the cost of any improvement payable  
9 by the tract or parcel of land benefited by the improvement by  
10 making a reassessment for the cost of the improvement; and

11 (2) permit the making of a reassessment when  
12 an original assessment is declared void or the enforcement of  
13 the original assessment is refused by a court.

14 B. Whenever any assessment for improvements is  
15 declared void or unenforceable, either directly or indirectly,  
16 by a decision of any court for any cause whatever, the board  
17 shall reassess the tracts or parcels of land that are benefited  
18 or will be benefited by the improvement to the extent of the  
19 proportionate share of the cost of the improvement of each  
20 tract or parcel of land, together with accrued interest.

21 C. The reassessment roll shall be prepared, a  
22 hearing held on the reassessment roll and a final determination  
23 of the reassessment made by the board, all in the manner  
24 provided in Sections 19 through 21 of the Flood Control and  
25 Drainage Improvement District Act for the original assessment.

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1           Section 31.   IMPROVEMENT DISTRICT-- REASSESSMENT-- DEFECTS  
2 WAIVED-- CREDIT FOR PREVIOUS PAYMENT. --

3           A.   The fact that:

- 4                   (1)   the contract has been let;
- 5                   (2)   an improvement has been wholly or  
6 partially constructed;
- 7                   (3)   an omission, failure or neglect of the  
8 board, authority or county officer to comply with the  
9 requirements of Sections 1 through 21 of the Flood Control and  
10 Drainage Improvement District Act; or
- 11                  (4)   any other matter whatsoever connected with  
12 the improvement or initial assessment is invalid;  
13 shall not invalidate or in any way affect the making of a  
14 reassessment as authorized in Section 30 of that act and  
15 charging the benefited tract or parcel of land the cost of the  
16 improvement.

17           B.   When the reassessment is complete, any money paid  
18 on the former attempted assessment against a tract or parcel of  
19 land shall be credited to the tract or parcel of land in  
20 partial or whole payment of the reassessment.

21           Section 32.   IMPROVEMENT DISTRICT-- NOTICE OF APPEAL--  
22 APPEAL TO DISTRICT COURT-- APPEAL TO SUPREME COURT. --

23           A.   After an owner has filed a written objection with  
24 the authority to any reassessment as provided in Section 20 of  
25 the Flood Control and Drainage Improvement District Act and the



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1 board has determined the reassessment, any owner of a tract or  
2 parcel of land that is reassessed may within ten days after the  
3 reassessment roll has been ratified by resolution file a notice  
4 of appeal to the district court. The notice to the authority  
5 shall describe the tract or parcel of land being reassessed and  
6 shall state the objections of the appellant to the  
7 reassessment.

8 B. Within twenty days after the reassessment roll  
9 has been ratified by resolution, the appellant shall file with  
10 the clerk of the district court copies of the:

- 11 (1) notice of appeal;
- 12 (2) appeal;
- 13 (3) reassessment roll;
- 14 (4) reassessment proceedings, all certified by  
15 the authority; and

16 (5) a bond to the authority conditioned to pay  
17 all costs that may be awarded against the appellant in a sum of  
18 not less than two hundred dollars (\$200), with such security as  
19 shall be approved by the district court.

20 C. The case shall:

21 (1) be docketed by the clerk of the district  
22 court in the name of the owner taking such appeal against the  
23 authority as "an equal appeal from reassessments";

24 (2) have preference over all civil cases  
25 pending in the district court except proceedings under:

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1 (a) the law relating to eminent domain by  
2 counties; or

3 (b) actions of forcible entry and  
4 detainer; and

5 (3) be tried as in the case of equitable  
6 causes, except that no pleadings are necessary. The judgment  
7 of the district court shall be to confirm, modify or annul the  
8 reassessment insofar as the reassessment affects the tract or  
9 parcel of land of the appellant. If the reassessment is  
10 confirmed, the fees of the authority for copies of the record  
11 shall be taxed against the appellant with the other costs.

12 D. On any judgment of the district court, appeal  
13 shall be to the supreme court as in other causes. If an appeal  
14 is taken to the supreme court, the transcript of the  
15 proceedings in the district court shall be filed in the office  
16 of the clerk of the supreme court within thirty days after the  
17 rendering of the decree being appealed. If the appeal is not  
18 filed within the thirty-day period, the appeal shall be  
19 forthwith dismissed upon motion. If the appeal is properly  
20 prosecuted, the supreme court shall advance the cause on the  
21 docket and hear the appeal at the earliest possible  
22 opportunity.

23 Section 33. IMPROVEMENT DISTRICT-- PAYMENT OF  
24 REASSESSMENT-- CONTINUING PROCEEDINGS TO COLLECT ASSESSMENT.--

25 A. The board shall enforce payment of the

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1 reassessment of the tract or parcel of land benefiting from an  
2 improvement in the manner provided in the Flood Control and  
3 Drainage Improvement District Act for the enforcement of the  
4 original assessment.

5 B. If for any reason a reassessment is held to be  
6 invalid or uncollectible, the board shall continue to reassess  
7 the tract or parcel of land as provided in Sections 30 through  
8 34 of the Flood Control and Drainage Improvement District Act  
9 until the benefited tract or parcel of land has paid the cost  
10 of any improvement chargeable to the benefited tract or parcel  
11 of land.

12 Section 34. IMPROVEMENT DISTRICT-- APPEAL OF REASSESSMENT--  
13 PROCEDURE EXCLUSIVE. --

14 A. The rights and remedies granted in Section 19 of  
15 the Flood Control and Drainage Improvement Act to any owner who  
16 objects to, contests or appeals the amount, correctness,  
17 regularity or validity of the reassessment:

18 (1) are declared to exclude any other right,  
19 remedy, suit or action either at law or in equity that might  
20 otherwise be available; and

21 (2) do afford the owner a sufficient day in  
22 court for the redressing of all rights and grievances that he  
23 may have in connection with the reassessment.

24 B. Any person who fails to file an objection to a  
25 reassessment in the manner provided in Section 19 of the Flood

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1 Control and Drainage Improvement District Act or fails to appeal  
2 to the district court in the manner provided in Section 32 of  
3 that act is forever absolutely barred from objecting to or  
4 contesting the amount, correctness, regularity or validity of  
5 the reassessment.

6 Section 35. IMPROVEMENT DISTRICT--APPLICATION OF  
7 REASSESSMENT FUND TO OUTSTANDING INDEBTEDNESS.--

8 A. Whenever the authority has:

9 (1) issued bonds or assignable certificates to  
10 obtain money to pay for an improvement that has been  
11 constructed; and

12 (2) reassessed the tract or parcel of land  
13 benefiting from the improvement as provided in Sections 30  
14 through 34 of the Flood Control and Drainage Improvement  
15 District Act, the authority shall apply all money received from  
16 the payment of the reassessment to the payment of the bonds or  
17 assignable certificates.

18 B. Bonds or assignable certificates that have been  
19 issued to obtain money to pay for any improvement that has been  
20 constructed are:

21 (1) valid and binding obligations of the  
22 authority; and

23 (2) payable from the payments received from any  
24 reassessment that shall be levied until all obligations of  
25 indebtedness of the improvement have been paid in full.

. 119899. 3

Underscored material = new  
[bracketed material] = delete

1           Section 36.   **IMPROVEMENT DISTRICT--REFUNDING IMPROVEMENT**  
2   **BONDS--AUTHORITY.--**

3           A.   As used in this section and in Sections 37  
4 through 39 of the Flood Control and Drainage Improvement  
5 District Act "bonds", when not modified by the word "refunding",  
6 includes assignable certificates.

7           B.   The board may issue refunding improvement  
8 district bonds to refund all or any part of improvement district  
9 bonds.   Refunding bonds may be issued:

10                   (1)   to change the payment schedule for the  
11 bonds;

12                   (2)   to fund principal and interest due on bonds  
13 that are in default or for which there is not and, in the  
14 opinion of the governing body, will not be sufficient money  
15 available to pay the principal and interest when due;

16                   (3)   to reduce interest costs on the bonds or on  
17 the assessments providing security for the bonds or to provide  
18 other savings;

19                   (4)   to modify or eliminate restrictive or  
20 burdensome contractual limitations concerning the bonds;

21                   (5)   to provide enhanced or substitute security  
22 for the bonds; or

23                   (6)   to provide for any other reasonable and  
24 necessary purpose or any combination of the foregoing purposes.

25           Section 37.   **REFUNDING BONDS--ESCROW--DETAIL.--**

Underscored material = new  
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1           A. Refunding bonds issued pursuant to Sections 36  
2 through 39 of the Flood Control and Drainage Improvement  
3 District Act shall be authorized by resolution. Any bonds that  
4 are refunded under the provisions of this section shall be paid  
5 at maturity or on any permitted prior redemption date in the  
6 amounts at the time and places and, if called prior to maturity,  
7 in accordance with any applicable notice provisions, all as  
8 provided in the resolution authorizing the issuance of the  
9 refunded bonds or otherwise appertaining thereto, except for any  
10 such bond that is voluntarily surrendered for exchange or  
11 payment by the holder or owner.

12           B. Provisions shall be made for paying the refunded  
13 bonds at the time or times provided in Subsection A of this  
14 section.

15           C. The proceeds of refunding bonds, including any  
16 accrued interest and premium appertaining to the sale of  
17 refunding bonds, shall either be immediately applied to the  
18 retirement of the refunded bonds or be placed in escrow in a  
19 commercial bank or trust company that possesses and is  
20 exercising trust powers and that is a member of the federal  
21 deposit insurance corporation, to be applied to the payment of  
22 the principal of, interest on and any prior redemption premium  
23 due in connection with the refunded bonds; provided that such  
24 refunding bond proceeds, including any accrued interest and any  
25 premium appertaining to a sale of refunding bonds, may be

. 119899. 3

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1 applied to the establishment and maintenance of a reserve fund  
2 and to the payment of expenses incidental to the refunding and  
3 the issuance of the refunding bonds, the interest thereon and  
4 the principal thereof or both interest and principal as the  
5 authority may determine. Nothing in this section requires the  
6 establishment of an escrow if the refunded bonds become due and  
7 payable within one year from the date of the refunding bonds and  
8 if the amounts necessary to retire the refunded bonds within  
9 that time are deposited with the paying agent for the refunded  
10 bonds. Any such escrow shall not necessarily be limited to  
11 proceeds of refunding bonds but may include other money  
12 available for its purpose. Any proceeds in escrow pending such  
13 use may be invested or reinvested in bills, certificates of  
14 indebtedness, notes or bonds that are direct obligations of or  
15 the principal and interest of which obligations are  
16 unconditionally guaranteed by the United States or in  
17 certificates of deposit of banks that are members of the federal  
18 deposit insurance corporation, the par value of which  
19 certificates of deposit is collateralized by a pledge of  
20 obligations of or the payment of which is unconditionally  
21 guaranteed by the United States, the par value of which  
22 obligations is at least seventy-five percent of the par value of  
23 the certificates of deposit. Such proceeds and investments in  
24 escrow together with any interest or other income to be derived  
25 from any such investment shall be in an amount at all times

. 119899. 3

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1 sufficient as to principal, interest, any prior redemption  
2 premium due and any charges of the escrow agent payable  
3 therefrom to pay the refunded bonds as they become due at their  
4 respective maturities or due at any designated prior redemption  
5 date or dates in connections with which the authority shall  
6 exercise a prior redemption option. Any purchaser of any  
7 refunding bond issued under Sections 36 through 39 of the Flood  
8 Control and Drainage Improvement District Act is in no manner  
9 responsible for the application of the proceeds thereof by the  
10 authority or any of its officers, agents or employees.

11 Section 38. IMPROVEMENT DISTRICT--RESOLUTION FOR REFUNDING  
12 BONDS--CONDITIONS--SALE OR EXCHANGE. --

13 A. The resolution authorizing the issuance of  
14 refunding bonds for an improvement district shall describe the:

- 15 (1) details of the issue;  
16 (2) form of the refunding bonds and interest  
17 coupons, if any;  
18 (3) fund from which the principal and interest  
19 of the refunding bonds will be paid; and  
20 (4) manner in which the bonds are to be issued.

21 B. The refunding bonds may:

- 22 (1) be issued in an amount less than, equal to  
23 or greater than the principal amount of improvement district  
24 bonds being refunded;  
25 (2) not bear a rate of interest greater than



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1 the rate of interest borne by the assessments providing security  
2 for the refunding bonds if secured by assessments;

3 (3) become due and payable in regular numerical  
4 order;

5 (4) not be issued for a period of more than  
6 twenty years from the date of issuance; and

7 (5) be payable from substitute security or from  
8 the same funds that were applicable to the payment of the bonds  
9 being refunded.

10 C. The refunding bonds may be:

11 (1) sold at a public or private sale at a  
12 discount; or

13 (2) exchanged, dollar for dollar, for the  
14 improvement district bonds being refunded.

15 Section 39. IMPROVEMENT DISTRICT--PAYMENT OF ASSESSMENT  
16 FOR REFUNDING BOND--MAXIMUM TERM--INTEREST--PREPAYMENT--LIENS.--

17 A. In connection with issuance of refunding bonds as  
18 provided in Sections 36 through 39 of the Flood Control and  
19 Drainage Improvement District Act, the board may by resolution  
20 provide that any unpaid assessment and accrued interest on the  
21 assessment shall be paid in not more than twenty years with  
22 interest at a rate of interest not less than the rate borne by  
23 the refunding bonds and with the penalties as lawfully attached  
24 to the original assessment. The owner of a tract or parcel of  
25 land that is assessed may at any time pay the assessment in full

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1 with interest to the time of payment.

2 B. The assessment may be collected as provided in  
3 Section 20 of the Flood Control and Drainage Improvement  
4 District Act and the refunding bonds may be secured and enforced  
5 as the original lien was established as provided in that  
6 section.

7 Section 40. IMPROVEMENT DISTRICT-- CONSTRUCTION OF  
8 SECTIONS.-- Nothing contained in Sections 36 through 39 of the  
9 Flood Control and Drainage Improvement District Act shall be  
10 construed as:

11 A. increasing the burden or liability of any tract  
12 or parcel of land or the owner of any tract or parcel of land;  
13 or

14 B. except for issuance of the refunding bonds,  
15 creating any additional liability of the authority.

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3  
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5  
6 January 29, 1998

7  
8 Mr. President:

9  
10 Your COMMITTEES' COMMITTEE, to whom has been referred

11  
12 SENATE BILL 154

13  
14 has had it under consideration and finds same to be GERMANE, in  
15 accordance with constitutional provisions, and thence referred to the  
16 FINANCE COMMITTEE.

17  
18  
19 Respectfully submitted,

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24 \_\_\_\_\_  
25 Manny M. Aragon, Chairman

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

S0154CC1

1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998  
3  
4  
5

6 February 5, 1998  
7

8 Mr. President:  
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10 Your FINANCE COMMITTEE, to whom has been referred  
11

12 SENATE BILL 154  
13

14 has had it under consideration and reports same with recommendation  
15 that it DO PASS.  
16

17  
18 Respectfully submitted,  
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22 \_\_\_\_\_  
23 Ben D. Altamirano, Chairman  
24  
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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

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Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Carraro, Eisenstadt, Lyons, McKibben, Romero

Absent: None

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

SB 154/a

February 14, 1998

Mr. President:

Your CONSERVATION COMMITTEE, to whom has been referred

SENATE BILL 154

has had it under consideration and reports same with recommendation  
that it DO PASS, amended as follows:

1. On page 6, line 25, strike "board of county commissioners of  
the county" and insert in lieu thereof "authority".

2. On page 7, line 15, strike "board of county commissioners"

. 119899. 3

Underscored material = new  
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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

SCONC/SB 154

Page 56

and insert in lieu thereof "authority".

3. On page 31, line 22, strike "19" and insert in lieu thereof "20".

4. On page 39, line 24, strike "19 through 21" and insert in lieu thereof "18 through 20".

5. On page 40, line 24, strike "20" and insert in lieu thereof "19".

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

SCONC/SB 154

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Respectfully submitted,

\_\_\_\_\_  
Michael S. Sanchez, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 0 Against

Yes: 8

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

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SCONC/SB 154

Page 58

No: None

Excused: Davis

Absent: None

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1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998  
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6 February 17, 1998  
7

8 Mr. Speaker:  
9

10 Your TAXATION AND REVENUE COMMITTEE, to whom has been  
11 referred

12  
13 SENATE BILL 154, as amended  
14

15 has had it under consideration and reports same with  
16 recommendation that it DO PASS.

17 Respectfully submitted,  
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21 \_\_\_\_\_  
22 Jerry W. Sandel, Chairman  
23  
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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

HTRC/SB 154/a

Page 60

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

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(Chief Clerk)

(Chief Clerk)

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Date \_\_\_\_\_

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The roll call vote was 7 For 4 Against

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Yes: 7

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No: Crook, Parsons, Russell, Stell

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Excused: Lujan, Sandel

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Absent: None

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