

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

SENATE BILL 250

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

INTRODUCED BY

JOSEPH A. FIDEL

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. -- [~~This act~~] 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  
. 121125. 2

Underscored material = new  
[bracketed material] = delete

Underscored material = new  
[bracketed material] = delete

1 the County Improvement District Act:

2 A. "adjustment of assessment" means the adjustment  
3 in the estimated maximum benefit or assessment resulting from  
4 the division of the property to be assessed or assessed into  
5 smaller tracts or parcels or the combining of smaller parcels  
6 into one or more larger parcels or the changing of the  
7 configuration or legal description of such parcels.

8 "Adjustment of assessment" may also include the real location  
9 of the assessment lien, without loss of priority, among  
10 parcels under single ownership that are subject to the  
11 assessment lien in order to permit the removal of the lien  
12 from one or more parcels where adequate security for the lien  
13 is demonstrated by the assessed parcels under such single  
14 ownership or provided by the owner;

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

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

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

24 E. "engineer" means any person who is a  
25 professional engineer licensed to practice in New Mexico and

Underscored material = new  
[bracketed material] = delete

1 who is a permanent employee of the county or employed by the  
2 county in connection with an improvement;

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

6 G. "improvement district" means one or more  
7 streets or one or more public grounds or one or more locations  
8 wherein the improvement is to be constructed and one or more  
9 tracts or parcels of land to be assessed or upon which an  
10 improvement district property tax will be imposed to pay for  
11 the cost of the improvement; and

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

- 18 (1) inadequate street right-of-way or street  
19 access control;
- 20 (2) a lack of drainage easements of right-of-  
21 way;
- 22 (3) a lack of adequate park, recreation or  
23 open space area;
- 24 (4) a lack of an overall grading and drainage  
25 plan; [and] or

. 121125. 2

Underscored material = new  
[bracketed material] = delete

1 (5) a lack of adequate subdivision grading  
2 both on and off the public right-of-way. "

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

5 "4-55A-3. IMPROVEMENT DISTRICT-- AUTHORIZATION--  
6 LIMITATION. --

7 A. Whenever the board determines that the creation  
8 of an improvement district is necessary for the public safety,  
9 health or welfare, the board may create an improvement  
10 district for any one or any combination of projects authorized  
11 in [~~Chapter 4, Article 55A NMSA 1978~~] the County Improvement  
12 District Act by the:

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

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

18 C. The improvement district shall include for the  
19 purpose of assessment or imposition of an improvement district  
20 property tax all the property [~~which~~] that the board  
21 determines is benefited by the improvement authorized by  
22 [~~Sections 4-55A-1 through 4-55A-39 NMSA 1978~~] the County  
23 Improvement District Act, including property [~~utilized~~] used  
24 for public, governmental, charitable or religious purposes,  
25 except that of the United States or any agency,

Underscored material = new  
[bracketed material] = delete

1 instrumentality or corporation thereof in the absence of a  
2 consent of congress, but shall not include any property within  
3 the exterior boundaries of a municipality except as provided  
4 in Section 4-55A-5 NMSA 1978 and for purposes of the  
5 imposition of an improvement district, property tax shall not  
6 include real property exempt from property taxation."

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

9 "4-55A-10. IMPROVEMENT DISTRICT--PETITION METHOD--  
10 REQUIREMENTS--DISTRIBUTION OF COSTS--NOTICE OF HEARING.--

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

- 19 (1) create the improvement district;
- 20 (2) select the type of material and method of  
21 construction to be used; and
- 22 (3) proceed with the construction of the  
23 improvement as authorized in Section 4-55A-14 NMSA 1978 after  
24 complying with the requirements for a preliminary hearing  
25 required in this section. A governing body of a municipality,

Underscored material = new  
[bracketed material] = delete

1 board of county commissioners or local board of education may  
2 sign a petition seeking the improvement for any land under its  
3 control. The submission of separate petitions for any one  
4 improvement district within a six-month period shall be  
5 considered as a single petition.

6 B. The board may:

7 (1) pay the cost of the improvement;

8 (2) assess the cost of the improvement  
9 against the benefiting tracts or parcels of land; [ or ]

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

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

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

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

24 "4-55A-11. IMPROVEMENT DISTRICT--NOTICE OF PRELIMINARY  
25 HEARING. --

. 121125. 2

Underscored material = new  
[bracketed material] = delete

1           A. The notice of the preliminary hearing required  
2 in Section 4-55A-10 NMSA 1978 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 or against which an improvement district property tax  
12 is to be imposed;

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

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

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

25           Section 6. Section 4-55A-12 NMSA 1978 (being Laws 1980,  
. 121125. 2

Underscored material = new  
[bracketed material] = delete

1 Chapter 91, Section 12, as amended) is amended to read:

2 "4-55A-12. IMPROVEMENT DISTRICT--PRELIMINARY HEARING--  
3 PROTEST--ACTION OF THE BOARD--ACTION IN DISTRICT COURT.--

4 A. At the preliminary hearing of the board on the  
5 question of creating an improvement district as authorized in  
6 Section 4-55A-10 NMSA 1978, any owner of a tract or parcel of  
7 land to be assessed or upon which it is proposed to impose an  
8 improvement district property tax may contest:

- 9 (1) the proposed assessment or tax;
- 10 (2) the regularity of the proceedings  
11 relating to the improvement;
- 12 (3) the benefits of the improvement; or
- 13 (4) any other matter relating to the  
14 improvement district.

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

24 C. At the hearing, the board may:

- 25 (1) correct any mistake or irregularity in



Underscored material = new  
[bracketed material] = delete

1 any proceeding relating to the improvement;

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

4 (3) in case of any invalidity, reassess the  
5 cost of the improvement against a benefiting tract or parcel  
6 of land; [~~and~~] or

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

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

Underscored material = new  
[bracketed material] = delete

1 to the improvement district or to set aside or correct the  
2 assessment or any proceedings relating to the improvement  
3 district. "

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

7 "4-55A-12.1. [NEW MATERIAL] IMPOSITION OF IMPROVEMENT  
8 DISTRICT PROPERTY TAX--LIMITATIONS. --

9 A. If in connection with the creation of the  
10 improvement district the board determines that it is in the  
11 best interest of the county to finance the district  
12 improvements by the imposition of an improvement district  
13 property tax and the issuance of improvement district general  
14 obligation bonds, the board shall enact an ordinance making  
15 the determination and provide in the ordinance the tax rate to  
16 be imposed, the amount of the bonds to be issued to finance  
17 the improvements and any other matters the board deems  
18 necessary or appropriate. The board shall call an election  
19 within the district for the purpose of authorizing the board  
20 to issue general obligation bonds, the proceeds of the sale of  
21 which shall be used for constructing the improvements for  
22 which the district was created and to impose property taxes on  
23 all taxable property within the district for the purpose of  
24 paying the principal, debt service and other expenses  
25 incidental to the issuance and sale of the bonds. The

. 121125. 2

Underscored material = new  
[bracketed material] = delete

1 ordinance shall include a limitation on the rate of the  
2 authorized imposition of not to exceed twenty dollars (\$20.00)  
3 per one thousand dollars (\$1,000) of net taxable value of real  
4 property in the district subject to property taxation. The  
5 ordinance shall also include procedures for the conduct of the  
6 election based upon the size of the improvement district and  
7 the number of voters entitled to vote.

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

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

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

. 121125. 2

Underscored material = new  
[bracketed material] = delete

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

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

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

20           H. All bonds issued by an improvement district  
21 shall be fully negotiable and constitute negotiable  
22 instruments within the meaning of and for all the purposes of  
23 the Uniform Commercial Code. If lost or completely destroyed,  
24 any bond may be reissued in the form and tenor of the lost or  
25 destroyed bond upon the owner furnishing to the satisfaction

Underscored material = new  
[bracketed material] = delete

1 of the board:

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

8 I. The board may in any proceedings authorizing

9 improvement district bonds provide for the initial issuance of

10 one or more bonds aggregating the amount of the entire issue

11 or may make provision for installment payments of the

12 principal amount of any bond as it may consider desirable.

13 J. The board may issue bonds to be denominated

14 refunding bonds, for the purpose of refunding any of the

15 general obligation bonded indebtedness of the district.

16 Whenever the board deems it expedient to issue refunding

17 bonds, it shall adopt a resolution setting out the facts

18 making the issuance of the refunding bonds necessary or

19 advisable, the determination of the necessity or advisability

20 by the board and the amount of refunding bonds that the board

21 deems necessary and advisable to issue. The resolution shall

22 fix the form of the bonds; the rate or rates of interest of

23 the bonds, but the net effective interest rate of the bonds

24 shall not exceed the maximum net effective interest rate

25 permitted by the Public Securities Act; the date of the

. 121125. 2

Underscored material = new  
[bracketed material] = delete

1 refunding bonds; the denominations of the refunding bonds; the  
2 maturity dates; and the place or places of payment within or  
3 without the state of both principal and interest. Refunding  
4 bonds when issued, except for bonds issued in book entry or  
5 similar form without the delivery of physical securities,  
6 shall be negotiable in form, shall bear the signature or the  
7 facsimile signature of the chairman of the board and shall be  
8 attested to by the secretary of the board. All refunding  
9 bonds may be exchanged dollar for dollar for the bonds to be  
10 refunded or they may be sold as directed by the board, and the  
11 proceeds of the sale shall be applied only to the purpose for  
12 which the bonds were issued and the payment of any incidental  
13 expenses. "

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

16 "4-55A-20. IMPROVEMENT DISTRICT--AUTHORITY TO ISSUE  
17 BONDS OR ASSIGNABLE CERTIFICATES.--

18 A. To pay all or any part of the cost of the  
19 improvement, including those items set out in Subsection C of  
20 Section 4-55A-7 NMSA 1978, the board may proceed pursuant to  
21 the provisions of Section 4-55A-12.1 NMSA 1978 or may issue in  
22 the name of the county bonds in such form as the board may  
23 determine or assignable certificates in an amount not  
24 exceeding the total cost of the improvement and maturing not  
25 more than twenty years from the date of issuance. If the

Underscored material = new  
[bracketed material] = delete

1 bonds or assignable certificates recite that:

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

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

12 B. The assignable certificates shall:

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

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

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

21 C. The bonds shall:

22 (1) recite the terms and conditions for their  
23 issuance;

24 (2) be payable from money collected from the  
25 preliminary assessment lien authorized in Section 4-55A-7 NMSA

Underscored material = new  
[bracketed material] = delete

1 1978 and, if so payable, also payable from the proceeds of  
2 bonds payable from the final assessment lien authorized in  
3 Section 4-55A-18 NMSA 1978; or

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

12 (4) bear a rate or rates of interest that  
13 shall not exceed the rate of interest on the deferred  
14 installments of the assessments or, if more than one rate of  
15 interest is specified for assessments as permitted by Section  
16 4-55A-19 NMSA 1978, on that portion of the deferred  
17 installments of assessments from which that specified portion  
18 of the bonds may be payable. Payment of the bonds issued for  
19 the construction of a project described in Subsection A of  
20 Section 4-55A-4 NMSA 1978 may be supplemented from gasoline  
21 tax and special fuel [use] excise tax distributed to the  
22 county [~~under Section 7-13-9 NMSA 1978~~] pursuant to Section  
23 7-1-6.39 NMSA 1978 on or before a date not more than twelve  
24 months after the last deferred installment of an assessment is  
25 due from the owner of a tract or parcel of land so assessed.



Underscored material = new  
[bracketed material] = delete

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

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.

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

6 February 4, 1998  
7

8 Mr. President:  
9

10 Your COMMITTEES' COMMITTEE, to whom has been referred  
11

12 SENATE BILL 250  
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 WAYS & MEANS COMMITTEE.  
17

18  
19 Respectfully submitted,  
20  
21  
22  
23  
24

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

Underscored material = new  
~~[bracketed material]~~ = delete

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

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

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

S0250CC1

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3  
4  
5  
6 February 9, 1998

7  
8 Mr. President:

9  
10 Your WAYS AND MEANS COMMITTEE, to whom has been referred

11  
12 SENATE BILL 250

13  
14 has had it under consideration and reports same with recommendation  
15 that it DO PASS.

16  
17  
18 Respectfully submitted,

19  
20  
21  
22 \_\_\_\_\_  
23 Carlos R. Cisneros, Chairman  
24  
25

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

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

Date \_\_\_\_\_

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Duran, McSorley, Nava, Wilson

Absent: None

S0250WM1

Underscored material = new  
[bracketed material] = delete

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

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 250  
14

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

17 Respectfully submitted,  
18

19  
20  
21 \_\_\_\_\_  
22 Jerry W. Sandel, Chairman  
23  
24  
25

1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998

3 HTRC/SB 250

Page 23

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

6  
7 Date \_\_\_\_\_

8  
9 The roll call vote was 10 For 0 Against

10 Yes: 10

11 Excused: Sandoval

12 Absent: Lovejoy, Lujan

13  
14 G:\BILLTEXT\BILLW\_98\S0250

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
Underscored material = new  
[bracketed material] = delete