

AN ACT

RELATING TO PUBLIC IMPROVEMENTS; ESTABLISHING A METHOD FOR MUNICIPALITIES AND COUNTIES TO CREATE TAX-LEVYING PUBLIC IMPROVEMENT DISTRICTS TO CONSTRUCT AND FINANCE NECESSARY PUBLIC IMPROVEMENTS IN THE STATE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. SHORT TITLE.--Sections 1 through 27 of this act may be cited as the "Public Improvement District Act".

Section 2. DEFINITIONS.--As used in the Public Improvement District Act:

A. "clerk" means the clerk of the municipality or county, or any person appointed by the district board to be the district clerk pursuant to Section 6 of the Public Improvement District Act;

B. "county" means a county that forms a public improvement district pursuant to the Public Improvement District Act in an unincorporated area or in an incorporated area with the municipality's consent;

C. "debt service" means the principal of, interest on and premium, if any, on the bonds, when due, whether at maturity or prior redemption and fees and costs of registrars, trustees, paying agents or other agents necessary to handle the bonds and the costs of credit

enhancement or liquidity support;

D. "development agreement" means an agreement between a property owner or developer, the county or municipality, or district concerning the improvement of specific property within the district, which agreement may be used to establish obligations of the owner or developer, the county or municipality or the district concerning the zoning, subdivision, improvement, impact fees, financial responsibilities and other matters relating to the development, improvement and use of real property within a district;

E. "district" means a public improvement district formed pursuant to the Public Improvement District Act by a municipality or by a county in an unincorporated area or in an incorporated area with the municipality's consent;

F. "district board" means the board of directors of the district, which shall be comprised of members of the governing body, ex officio, or, at the option of the governing body, five directors appointed by the governing body of the municipality or county in which the district is located, until replaced by elected directors, which shall occur not later than six years after the date on which the resolution establishing the district is enacted, as provided in Section 9 of the Public Improvement District Act;

G. "election" means an election held in compliance with the provisions of Sections 6 and 7 of the

Public Improvement District Act;

H. "enhanced services" means public services provided by a municipality or county within the district at a higher level or to a greater degree than otherwise available to the land located in the district from the municipality or county, including such services as public safety, fire protection, street or sidewalk cleaning or landscape maintenance in public areas. "Enhanced services" does not include the basic operation and maintenance related to infrastructure improvements financed by the district pursuant to the Public Improvement District Act;

I. "general plan" means the general plan described in Section 3 of the Public Improvement District Act, as the plan may be amended from time to time;

J. "governing body" means the body or board that by law is constituted as the governing body of the municipality or county in which the public improvement district is located;

K. "municipality" means an incorporated city, village or town;

L. "owner" means:

(1) the person who is listed as the owner of real property in the district on the current property tax assessment roll in effect at the time that the action, proceeding, hearing or election has begun. For purposes of voting in elections held pursuant to the Public Improvement

District Act, when the owner of record title is a married person, only one spouse in whose name title is held may vote at such election. Where record title is held in more than one name, each owner may vote the number of fractions of acres represented by his legal interest or proportionate share of and in the lands within the district;

(2) the administrator or executor of an estate holding record title to land within the district;

(3) the guardian of a minor or incompetent person holding record title to land within the district, appointed and qualified under the laws of the state;

(4) an officer of a corporation holding record title to land within the district, which officer has been authorized by resolution of the corporation's board of directors to act with respect to such land;

(5) the general partner of a partnership holding record title to land within the district; and

(6) the trustee of a trust holding record title to land within the district;

M "public infrastructure improvements" means all improvements listed in this subsection and includes both on-site improvements and off-site improvements that directly or indirectly benefit the district. Such improvements include necessary or incidental work, whether newly constructed, renovated or existing, and all necessary or desirable

appurtenances. "Public infrastructure improvements" includes:

(1) sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;

(2) drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;

(3) water systems for domestic, commercial, office, hotel or motel, industrial, irrigation, municipal or fire protection purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;

(4) highways, streets, roadways, bridges, crossing structures and parking facilities, including all areas for vehicular use for travel, ingress, egress and parking;

(5) trails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking;

(6) pedestrian malls, parks, recreational facilities and open space areas for the use of members of the public for entertainment, assembly and recreation;

(7) landscaping, including earthworks, structures, lakes and other water features, plants, trees and related water delivery systems;

- (8) public buildings, public safety facilities and fire protection and police facilities;
- (9) electrical generation, transmission and distribution facilities;
- (10) natural gas distribution facilities;
- (11) lighting systems;
- (12) cable or other telecommunications lines and related equipment;
- (13) traffic control systems and devices, including signals, controls, markings and signage;
- (14) school sites and facilities with the consent of the governing board of the public school district for which the site or facility is to be acquired, constructed or renovated;
- (15) library and other public educational or cultural facilities;
- (16) equipment, vehicles, furnishings and other personalty related to the items listed in this subsection; and
- (17) inspection, construction management and program management costs;

N. "public infrastructure purpose" means:

- (1) planning, design, engineering, construction, acquisition or installation of public infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the

construction, acquisition or installation of such infrastructure;

(2) acquiring, converting, renovating or improving existing facilities for public infrastructure, including facilities owned, leased or installed by an owner;

(3) acquiring interests in real property or water rights for public infrastructure, including interests of an owner;

(4) establishing, maintaining and replenishing reserves in order to secure payment of debt service on bonds;

(5) funding and paying from bond proceeds interest accruing on bonds for a period not to exceed three years from their date of issuance;

(6) funding and paying from bond proceeds fiscal, financial and legal consultant fees, trustee fees, discount fees, district formation and election costs and all costs of issuance of bonds issued pursuant to the Public Improvement District Act, including, but not limited to, fees and costs for bond counsel, financial advisors, consultants and underwriters, costs of obtaining credit ratings, bond insurance premiums, fees for letters of credit and other credit enhancement costs and printing costs;

(7) providing for the timely payment of debt service on bonds or other indebtedness of the district;

(8) refinancing any outstanding bonds with

new bonds, including through the formation of a new public improvement district; and

(9) incurring expenses of the district incident to and reasonably necessary to carry out the purposes specified in this subsection;

O. "resident qualified elector" means a person who resides within the boundaries of a district or proposed district and who is qualified to vote in the general elections held in the state pursuant to Section 1-1-4 NMSA 1978;

P. "special levy" means a levy imposed against real property within a district that may be apportioned according to direct or indirect benefits conferred upon affected real property, as well as acreage, front footage, the cost of providing public infrastructure for affected real property, or other reasonable method, as determined by the governing body or district board, as applicable; and

Q. "treasurer" means the treasurer of the governing body or the person appointed by the district board as the district treasurer pursuant to Section 6 of the Public Improvement District Act.

Section 3. RESOLUTION DECLARING INTENTION TO FORM DISTRICT. --

A. If the public convenience and necessity require, and on presentation of a petition signed by the owners of at least twenty-five percent of the real property

by assessed valuation proposed to be included in the district, the governing body may adopt a resolution declaring its intention to form a public improvement district to include contiguous or noncontiguous property, which shall be wholly within the corporate boundaries of the municipality or county. The resolution shall state the following:

(1) the area or areas to be included in the district;

(2) the purposes for which the district is to be formed;

(3) that a general plan for the district is on file with the clerk that includes a map depicting the boundaries of the district and the real property proposed to be included in the district, a general description of anticipated improvements and their locations, general cost estimates, proposed financing methods and anticipated tax levies, special levies or charges, and that may include possible alternatives, modifications or substitutions concerning locations, improvements, financing methods and other information provided in the general plan;

(4) the rate, method of apportionment and manner of collection of a special levy, if one is proposed, in sufficient detail to enable each owner or resident within the district to estimate the maximum amount of the proposed levy;

(5) a notice of public hearing in conformity with the requirements of Section 4 of the Public Improvement District Act;

(6) the place where written objections to the formation of the district may be filed by an owner;

(7) that formation of the district may result in the levy of property taxes or the imposition of special levies to pay the costs of public infrastructure constructed by the district and for their operation and maintenance and may result in the assessment of fees or charges to pay the cost of providing enhanced services;

(8) a reference to the Public Improvement District Act; and

(9) whether the district will be governed by a district board comprised of the members of the governing body, ex officio, or comprised of five directors initially appointed by the governing body.

B. The resolution may direct that, prior to holding a hearing on formation of the district, a study of the feasibility and estimated costs of the improvements, services, enhanced services and other benefits proposed to be provided pursuant to the Public Improvement District Act be prepared by the petitioners for consideration by the governing body at its hearing on formation of the district. The study shall substantially comply with the requirements of Section 16 of the Public Improvement District Act. The

district may require that the persons petitioning for formation of the district deposit with the treasurer an amount equal to the estimated costs of conducting the feasibility study and other estimated formation costs, to be reimbursed if the district is formed and public improvements are financed pursuant to the Public Improvement District Act.

C. The resolution shall direct that a hearing on formation of the district be scheduled and that notice be mailed and published as provided in Section 4 of the Public Improvement District Act.

D. Before adopting a resolution pursuant to this section, a general plan for the district shall be filed with the clerk.

Section 4. NOTICE AND PUBLIC HEARING. --

A. The notice of public hearing to be held concerning the formation of a public improvement district pursuant to the Public Improvement District Act shall be mailed by registered or certified United States mail, postage prepaid, to all owners of real property in the proposed district at least thirty days prior to the date of the hearing. In addition, notice shall be published once each week for two successive weeks in a newspaper of general circulation in the municipality or county in which the proposed district lies. The last publication shall be at least three days before the date of the hearing. The notice

shall comply with requirements of Subsections B and C of this section.

B. The clerk shall execute a notice, which shall read substantially as follows:

"To whom it may concern:

The governing body of the (municipality)(county) of _____, on (Date), adopted the attached resolution declaring its intention to form a tax-levying public improvement district. A hearing on formation will be held on (Date), at (Time) at (Location). All persons owning or claiming an interest in property in the proposed district who object to the inclusion of their land in the district, to the formation of the district or to the contents of the general plan must file a written objection with the undersigned at the following address before the time set for the hearing.

(Date) _____

Clerk

Address

(Name of municipality or county)".

C. A summary of the resolution declaring the governing body's intention to form the district shall be attached to the notice, and the clerk shall cause a copy to be mailed to the owners of real property in the district and

to all other persons claiming an interest in such property who have filed a written request for a copy of the notice within the six months preceding or at any time following the adoption of the resolution of intent to form the district. The clerk shall also publish a copy of the notice and resolution summary at least twice in a newspaper of general circulation in the municipality or county in which the proposed district lies. The clerk shall execute an affidavit of mailing stating the date of mailing and the names and addresses of the persons to whom the notices and copies of the resolutions were mailed. The clerk shall obtain an affidavit from the newspaper in which the publication was made. The clerk shall cause both affidavits to be placed in the official records of the municipality or county. The affidavits are conclusive evidence of the mailing and publishing of notice. Notice shall not be held invalid for failure of delivery to the addressee.

D. If the clerk is informed that the person listed on the assessment roll is no longer the owner and the name and address of the successor owner become known, the clerk shall cause a copy of the notice and resolution to be mailed to the successor owner as soon as practicable after learning of the change of ownership.

Section 5. HEARING ON OBJECTIONS. --

A. Any person claiming an interest in real property that the resolution discloses is situated in the

district may file a written objection with the clerk before 5:00 p.m. on the business day preceding the date and time set for the hearing. The objection may raise one or more of the following issues:

(1) that the objector's property would not be substantially benefited, directly or indirectly, from the public infrastructure improvements or enhanced services proposed to be financed, as set forth in the general plan, and that the property should be excluded from the district;

(2) that the district should not be formed, stating the specific reasons; and

(3) that the general plan should be modified, stating the reasons for modification.

B. At the hearing, including any adjournments or continuances, the governing body shall hear and pass on the written objections and the testimony and evidence presented in support of or opposition to the objections. The hearing shall be either transcribed by a court reporter or recorded by a tape recorder. The court reporter's transcript or a tape recording certified to be true and correct by the clerk shall be filed or otherwise preserved in the official records of the governing body.

C. In furtherance of the hearing, the clerk, on written request being presented, shall issue subpoenas or subpoenas duces tecum to compel the attendance and testimony of any person or the submission of any documents at the

hearing. Compliance with the subpoena shall be enforced as if the subpoena were issued by a clerk of the state district court.

D. Testimony at the hearing need not be under oath, unless requested by any owner or required by the governing board. Requests by owners that the testimony be under oath must be made in writing and be filed with, or served on, the clerk before the hearing begins or the request is deemed waived.

E. The minutes or a copy of a written transcript or a tape recording of the proceedings of a hearing conducted pursuant to this section shall be open to public inspection three working days after the conclusion of a hearing. Any person may request to examine or be furnished copies, printouts, photographs, transcripts or recordings of a hearing during regular office hours of the governing body. The custodian of the records shall furnish the copies, printouts, photographs, transcripts or recordings and may charge a reasonable fee which does not exceed the actual cost of reproducing the item requested.

Section 6. ORDER FORMING DISTRICT--ELECTION. --

A. After the hearing, the governing body shall determine whether the district should be formed based upon the interests, convenience or necessity of the owners, residents of the district and citizens of the municipality or county in which the proposed district would be located.

If the governing body determines that the district should be formed, it shall adopt a resolution ordering that the district be formed, deleting any property determined not to be directly or indirectly benefited by the district or modifying the general plan and then ordering that an election be held on the question whether to form the district. A resolution ordering a formation of the district shall state that the district will be governed by a district board consisting of members of the governing body, ex officio or, upon determination of the governing body, five directors appointed by the governing body, and shall contain the names of the five initial directors and the terms of office of each. If the governing body appoints a district board, it shall appoint a treasurer and a clerk from the appointed members.

B. A formation election shall include the owners unless a petition is presented to the governing body pursuant to Subsection I of Section 7 of the Public Improvement District Act. Each owner shall have the number of votes or portions of votes equal to the number of acres or portions of acres rounded upward to the nearest one-fifth of an acre owned by that owner in the submitted district. The question shall also be submitted to a vote of the resident qualified electors. The conduct of a formation election shall meet the requirements of Section 7 of the Public Improvement District Act.

Section 7. NOTICE AND CONDUCT OF ELECTION--WAIVER. --

A. Any election pursuant to the Public Improvement District Act shall be a nonpartisan election called by posting notices in three public places within the boundaries of the district not less than twenty days before the election. Notice shall also be published in a newspaper of general circulation in the municipality or county, or if there is no newspaper so circulated in the municipality, in a newspaper of general circulation in the county in which the municipality is located once a week for two consecutive weeks before the election. The notice shall state:

- (1) the place of holding the election and provisions for voting by mail, if any;
- (2) the hours during the day, not less than six, in which the polls will be open;
- (3) if the election is a formation election, the boundaries of the proposed district;
- (4) if the election is a bond election, the amount of bonds to be authorized for the district, the maximum rate of interest to be paid on the bonds and the maximum term of the bonds, not exceeding thirty years;
- (5) if the election is a property tax levy election pursuant to Section 19 of the Public Improvement District Act, the maximum tax rate per one thousand dollars (\$1,000) of assessed valuation to be imposed, the purposes for which the revenues raised will be used and the existing

maximum tax rate, if any;

(6) that a general plan is on file with the clerk;

(7) the purposes for which the property taxes or the special levies will be imposed, and the revenues raised will be used, including a description of the public improvements to be financed with tax revenues, special levies, district revenues or bond proceeds; and

(8) that the imposition of property taxes or special levies will result in a lien for the payment thereof on property within the district.

B. The district board or, in the case of a formation election, the governing body, shall determine the date of the election and the polling places for the election and may consolidate county precincts. The district board or governing body may establish provisions for voting by mail.

C. Voter lists shall be used to determine the resident qualified electors. If the district includes land lying partly in and partly out of any county election precinct, the voter lists may contain the names of all registered voters in the precinct, and the precinct boards at those precincts shall require that a prospective elector execute an affidavit stating that the elector is also a resident qualified elector.

D. For all elections held pursuant to the Public Improvement District Act, a prospective elector who is not a

resident qualified elector shall execute an affidavit stating that the elector is the owner of land in the proposed district and stating the area of land in acres owned by the prospective elector. Precinct board members may administer oaths or take all affirmations for these purposes.

E. Except as otherwise provided by this section, the election shall comply with the general election laws of this state. The ballot material provided to each voter shall include:

(1) for a formation election, an impartial description of the district improvements contemplated and a brief description of arguments for and against the formation of the district, if any;

(2) for an election concerning the imposition of property taxes, an impartial description of the taxes to be imposed, the method of apportionment, collection and enforcement and other details sufficient to enable each elector to determine the amount of tax it will be obligated to pay; a brief description of arguments for and against the imposition of taxes that are the subject of the election, if any; and a statement that the imposition of property taxes is for the provision of certain but not necessarily all public infrastructure improvements and services that may be needed or desirable within the district, and that other taxes, levies or assessments by

other governmental entities may be presented for approval by owners and resident qualified electors; and

(3) for a formation election, the ballot, which shall pose the question to voted upon as "district, yes" and "district, no"; for a bond election, "bonds, yes" and "bonds, no"; for a property tax election, if no tax is in place, "property tax, yes" and "property tax, no"; and for an election to change an existing maximum or eliminate an existing tax, "tax change, yes" and "tax change, no", specifying the type of tax to which the proposed change pertains.

F. The governing body or, if after formation, the district board, may provide for the returns of the election to be made in person or by mail.

G. Within thirty days after an election, the governing body, or if after formation, the district board, shall meet and canvass the returns, determining the number of votes properly cast by owners and resident qualified electors. At least a three-fourths majority of the votes cast at the election shall be required for formation, issuing the bonds, imposing the tax or special levy or changing the tax or special levy. The canvass may be continued for an additional period not to exceed thirty days at the election of the governing body or district board for the purpose of completing the canvass. Failure of a majority to vote in favor of the matter submitted shall not

prejudice the submission of the same or similar matters at a later election.

H. If a person listed on the assessment roll is no longer the owner of land in the district and the name of the successor owner becomes known and is verified by recorded deed or other similar evidence of transfer of ownership, the successor owner is deemed to be the owner for the purposes of the Public Improvement District Act.

I. Notwithstanding any other provision of the Public Improvement District Act, if a petition for formation is signed by owners of all of the land in the district described in the petition and is approved by the municipality, county, the municipality or county may waive any or all requirements of posting, publication, mailing, notice, hearing and owner election. On receipt of such a petition, and after approval by an election of resident qualified electors, if any, the municipality or county shall declare the district formed without being required to comply with the provisions of the Public Improvement District Act for posting, publication, mailing, notice, hearing or owner election.

J. If no person has registered to vote within the district within fifty days immediately preceding any scheduled election date, any election required to be held pursuant to the Public Improvement District Act shall be held by vote of the owners. Each owner shall have the

number of votes or portion of votes equal to the number of acres or portion of acres rounded upward to the nearest one-fifth of an acre owned in the district by that owner.

K. In any election held pursuant to the Public Improvement District Act, an owner who is also a resident qualified elector shall have the number of votes or portion of votes to which he is entitled as an owner and shall not be entitled to an additional vote as a result of residing within the district.

Section 8. FORMATION--DEBT LIMITATION.--

A. If the formation of the district is approved by at least a three-fourths majority of the votes cast at the election, the governing body shall cause a copy of the resolution ordering formation of the district to be delivered to the county assessor and the county in which the district is located and to the taxation and revenue department and the local government division of the department of finance and administration. A notice of the formation showing the number and date of the resolution and giving a description of the land included in the district shall be recorded with the county clerk.

B. Except as otherwise provided in this section, a district shall be a political subdivision of the state, separate and apart from the municipality or county. The amount of indebtedness evidenced by general obligation bonds issued pursuant to Section 19 of the Public Improvement

District Act, special levy bonds issued pursuant to Section 20 of that act and revenue bonds issued pursuant to Section 21 of that act shall not exceed the estimated cost of the public infrastructure improvements plus all costs connected with the public infrastructure purposes and issuance and sale of bonds, including, without limitation, formation costs, credit enhancement and liquidity support fees and costs. The total aggregate outstanding amount of bonds and any other indebtedness for which the full faith and credit of the district are pledged shall not exceed sixty percent of the market value of the real property and improvements in the district after the public infrastructure improvements of the district are completed plus the value of the public infrastructure owned or to be acquired by the district with the proceeds of the bonds, and shall not affect the general obligation bonding capacity of the municipality or county in which the district is located.

C. Bonds issued by a district shall not be a general obligation of the state, the county or the municipality in which the district is located and shall not pledge the full faith and credit of the state, the county or the municipality in which the district is located, irrespective of whether the district board is governed by the governing body of the county or municipality in which the district is located.

D. Following formation of the district, the

district board shall administer in a reasonable manner the implementation of the general plan for the public infrastructure improvements of the district.

Section 9. APPOINTMENT OF DIRECTORS--QUALIFICATIONS--TERMS--RESUMPTION OF GOVERNANCE BY GOVERNING BODY.--

A. The governing body, at its option, may authorize the appointment of a separate district board. In the case of an appointed district board, three of the appointed directors shall serve an initial term of six years. Two of the appointed directors shall serve an initial term of four years. The resolution forming the district shall state which directors shall serve four-year terms and which shall serve six-year terms. If a vacancy occurs on the district board because of death, resignation or inability of the director to discharge the duties of director, the governing body shall appoint a director to fill the vacancy, who shall hold office for the remainder of the unexpired term until his successor is appointed or elected.

B. A director may be a director of more than one district.

C. At the end of the appointed directors' initial term, the governing body shall resume governance of the district as its board or, at its option, shall hold an election of new directors by majority vote of the residents of the district.

Section 10. POWERS OF A PUBLIC IMPROVEMENT DISTRICT. --

A. In addition to the powers otherwise granted to a district pursuant to the Public Improvement District Act, the district board, in implementing the general plan, may:

(1) enter into contracts and expend money for any public infrastructure purpose with respect to the district;

(2) enter into development agreements with municipalities, counties or other local government entities in connection with property located within the boundaries of the district;

(3) enter into intergovernmental agreements as provided in the Joint Powers Agreements Act for the planning, design, inspection, ownership, control, maintenance, operation or repair of public infrastructure or the provision of enhanced services by the municipality or the county in the district and any other purpose authorized by the Public Improvement District Act;

(4) sell, lease or otherwise dispose of district property if the sale, lease or conveyance is not a violation of the terms of any contract or bond covenant of the district;

(5) reimburse the municipality or county in which the district is located for providing enhanced services in the district;

(6) operate, maintain and repair public

infrastructure;

(7) establish, impose and collect special levies for the purposes of funding public infrastructure improvements or enhanced services;

(8) employ staff, counsel and consultants;

(9) reimburse the municipality or county in which the district is located for staff and consultant services and support facilities supplied by the municipality or county;

(10) accept gifts or grants and incur and repay loans for any public infrastructure purpose;

(11) enter into agreements with owners concerning the advance of money by owners for public infrastructure purposes or the granting of real property by the owner for public infrastructure purposes;

(12) levy property taxes, impose special levies or fees and charges for any public infrastructure purpose on any real property located in the district and, in conjunction with the levy of such taxes, fees and charges, set and collect administrative fees;

(13) pay the financial, legal and administrative costs of the district;

(14) enter into contracts, agreements and trust indentures to obtain credit enhancement or liquidity support for its bonds and process the issuance, registration, transfer and payment of its bonds and the

disbursement and investment of proceeds of the bonds;

(15) with the consent of the governing body of the municipality or county that formed the district, enter into agreements with persons outside of the district to provide enhanced services to persons and property outside of the district; and

(16) use public easements and rights of way in or across public property, roadways, highways, streets or other thoroughfares and other public easements and rights of way, whether in or out of the geographical limits of the district, the municipality or the county.

B. Public infrastructure improvements other than personalty may be located only in or on lands, easements or rights of way owned by the state, a county, a municipality or the district, whether in or out of the district, the municipality or the county.

C. An agreement pursuant to Paragraph (11) of Subsection A of this section may include agreements to repay all or part of such advances, fees and charges from the proceeds of bonds if issued or from advances, fees and charges collected from other owners or users or those having a right to use any public infrastructure. A person does not have authority to compel the issuance or sale of the bonds of the district or the exercise of any taxing power of the district to make repayment under any agreement.

D. Notwithstanding the provisions of the

Procurement Code, or local procurement requirements that may otherwise be applicable to the municipality or county in which the district is located, the district board, whether appointed or composed of members of the governing body, ex officio, may enter into contracts to carry out any of the district's authorized powers, including the planning, design, engineering, financing, construction and acquisition of public improvements for the district, with a contractor, an owner or other person or entity, on such terms and with such persons as the district board determines to be appropriate.

Section 11. PERPETUAL SUCCESSION. --The district has perpetual succession until terminated pursuant to Section 24 of the Public Improvement District Act.

Section 12. RECORDS-- BOARD OF DIRECTORS-- OPEN MEETINGS. --

A. The district shall keep the following records, which shall be open to public inspection:

(1) minutes of all meetings of the district board;

(2) all resolutions;

(3) accounts showing all money received and disbursed;

(4) the annual budget; and

(5) all other records required to be maintained by law.

B. The district board shall appoint a clerk and treasurer for the district.

Section 13. CHANGE IN DISTRICT BOUNDARIES OR GENERAL PLAN. --

A. After the formation election, an area may be deleted from the district only following a hearing on notice to the owners of land in the district given in the manner prescribed for the formation hearing, adoption of a resolution of intention to do so by the district board and voter approval by the owners and resident qualified electors as provided in Sections 6 and 7 of the Public Improvement District Act. Lands within the district that are subject to the lien of property taxes, special levies or other charges imposed pursuant to the Public Improvement District Act shall not be deleted from the district while there are bonds outstanding that are payable by such taxes, special levies or charges.

B. At any time after adoption of a resolution creating a district, an area may be added to the district upon the approval of the owners of land in the proposed addition area and the resident qualified electors residing therein, as well as the owners of land in the district and the resident qualified electors, in the same manner as required for the formation of a district.

C. The district board, following a hearing on notice to the owners of real property located in the

district given in the manner prescribed for the formation hearing, may amend the general plan in any manner that it determines will not substantially reduce the benefits to be received by any land in the district from the public infrastructure on completion of the work to be performed under the general plan. No election shall be required solely for the purposes of this subsection.

Section 14. PARTICIPATION BY MUNICIPALITY OR COUNTY. --The governing body of the municipality or county by resolution may summarily provide public services to the district or participate in the costs of any public infrastructure purpose.

Section 15. OTHER DISTRICTS OR IMPROVEMENTS. --The formation of a district pursuant to the Public Improvement District Act shall not prevent the subsequent establishment of similar districts or the improvement or assessment of land in the district by the municipality or county or the exercise by the municipality or county of any of its powers on the same basis as on all other land in its corporate boundaries.

Section 16. PROJECT APPROVAL. --Before constructing or acquiring any public infrastructure, the district board shall cause a study of the feasibility and benefits of the public infrastructure improvement project to be prepared, which shall include a description of the public infrastructure improvement to be constructed or acquired and

enhanced services to be provided and estimated costs thereof, if any, and other information reasonably necessary to understand the project, a map showing, in general, the location of the project within the district, an estimate of the cost to construct, acquire, operate and maintain the project, an estimated schedule for completion of the project, a map or description of the area to be benefited by the project and a plan for financing the project. For public infrastructure improvement projects undertaken by a district after formation, the district board shall hold a public hearing on the study and provide notice of the hearing by publication not less than two weeks in advance in the official newspaper of the municipality or county or, if there are none in the municipality or county, a newspaper of general circulation in the county. If the district board is composed of members other than the governing body, the notice shall be mailed to the governing body of the municipality or county in which the district is located. After the hearing, the district board may reject, amend or approve the report. If the report is amended substantially, a new hearing shall be held before approval. If the report is approved, the district board shall adopt a resolution approving the public infrastructure improvement of the project, identifying the areas benefited, the expected method of financing and an appropriate system of providing revenues to operate and maintain the project.

Section 17. FINANCES. --The projects to be constructed or acquired as shown in the general plan may be financed from the following sources of revenue:

- A. proceeds received from the sale of bonds of the district;
- B. money of the municipality or county contributed to the district;
- C. annual property taxes or special levies;
- D. state or federal grants or contributions;
- E. private contributions;
- F. user, landowner and other fees and charges;
- G. proceeds of loans or advances; and
- H. any other money available to the district by law.

Section 18. RECORDING DOCUMENTS. --The district shall file and record with the county clerk the resolution ordering formation of the district, the general plan of the district and the canvass of any general obligation bond election.

Section 19. GENERAL OBLIGATION BONDS--TAX LEVY--EXCEPTION. --

- A. At any time after the hearing on formation of the district, the district board, or, if before formation, the governing body, may from time to time order and call a general obligation bond election to submit to the owners and resident qualified electors the question of authorizing the

district to issue general obligation bonds of the district to provide money for any public infrastructure purposes consistent with the general plan. The election may be held in conjunction with the formation election.

B. If general obligation bonds are approved at an election, the district board may issue and sell general obligation bonds of the district.

C. Bonds may be sold in a public offering or in a negotiated sale.

D. After the bonds are issued, the district board shall enter in its minutes a record of the bonds sold and their numbers and dates and shall annually levy and cause a property tax to be collected, at the same time and in the same manner as other property taxes are levied and collected on all taxable property in the district, sufficient, together with any money from the sources described in Section 17 of the Public Improvement District Act to pay debt service on the bonds when due. Money derived from the levy of property taxes that are pledged to pay the debt service on the bonds shall be kept separately from other funds of the district. Property tax revenues not pledged to pay debt service on bonds may be used to pay other costs of the district, including costs of formation, administration, operation and maintenance, services or enhanced services. A district's levy of property taxes shall constitute a lien on all taxable property within the district, including, without

limitation, all leased property or improvements to leased land, which shall be subject to foreclosure in the same manner as other property tax liens under the laws of this state. The lien shall include delinquencies and interest thereon at a rate not to exceed ten percent per year, the actual costs of foreclosure and any other costs of the district resulting from the delinquency. The proceeds of any foreclosure sale shall be deposited in the special bond fund for payment of any obligations secured thereby.

E. Subject to the election requirements of this section, a district may issue general obligation bonds at such times and in such amounts as the district deems appropriate to carry out a project or projects in phases.

F. Pursuant to this section, the district may issue and sell refunding bonds to refund general obligation bonds of the district authorized by the Public Improvement District Act. No election is required in connection with the issuance and sale of refunding bonds. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

Section 20. SPECIAL LEVY--BONDS--IMPOSITION. --

A. At any time after the hearing on formation of the district, the district board may from time to time order that a hearing be held to determine whether a special levy should be imposed and special levy bonds issued to provide

money for any public infrastructure purpose consistent with the general plan. The question of imposing a special levy may be considered at the hearing on district formation upon notice that both issues will be heard at that time, which notice shall include the information required in Subsection B of this section.

B. Notice of hearing shall be provided at least two weeks in advance of the hearing itself in a newspaper of general circulation in the municipality or county in which the district is located. The notice shall include the following:

(1) a description of the method by which the amount of the proposed special levy will be determined for each class of property to which the levy is proposed to apply, in sufficient detail to enable the owner of the affected parcel to determine the amount of the special levy;

(2) a description of the project to be financed with special levy bonds or revenues; and

(3) a statement that any person affected by the proposed special levy may object in writing or in person at the hearing.

C. Special levy bonds may be sold in a public offering or in a negotiated sale.

D. After the bonds are issued, the district board shall enter in its minutes a record of the bonds sold and their numbers and dates and shall annually impose and cause

a special levy to be collected, at the same time and in the same manner as property taxes are levied and collected on all property within the district that may be subject to the levy, including, without limitation, all leased property or improvements to leased land, sufficient, together with any other money lawfully available to pay debt service on the bonds when due, except to the extent that the district board has provided for other imposition, collection and foreclosure procedures in connection with special levies. Money derived from the imposition of the special levy when collected that is pledged to pay the debt service on the bonds shall be kept separately from other funds of the district. Special levy revenues not pledged to pay debt service on bonds may be used to pay other costs of the district, including costs of formation, administration, operation and maintenance, service or enhanced services.

E. The district board shall specify conditions under which the obligation to pay special levies may be prepaid and permanently satisfied.

F. Special levies against privately owned residential property shall be subject to the following provisions:

(1) the maximum amount of special levy that may be imposed shall not be increased over time by an amount exceeding two percent per year, except that the amount of special levy actually imposed may be increased by up to ten

percent as a result of the delinquency or default by the owner of any other parcel within the district;

(2) the special levy shall be imposed for a specified time period, after which no further special levy shall be imposed and collected, except that special levies imposed solely to finance the cost of ongoing district services, maintenance or operations or enhanced services may be levied while such services, maintenance or operations or enhanced services are continuing; and

(3) nothing in this subsection shall preclude the establishment of different categories of residential property or changing the amount of the special levies for a parcel whose size or use is changed. A change in the amount of a special levy imposed upon a parcel due to a change in its size or use shall not require voter approval if the method for changing the amount of special levy was approved in the election approving the special levy in sufficient detail to enable the owner of the affected parcel to determine how the change in size or use of the parcel would affect the amount of the special levy.

G. A district's imposition of a special levy shall constitute a lien on the property within the district subject to the special levy, including property acquired by the state or its political subdivisions after imposition of the special levy, which shall be effective during the period in which the special levy is imposed and shall have priority

co-equal to the lien of property taxes. A special levy shall be subject to foreclosure by the district at any time after six months following written notice of delinquency to the owner of the real property to which the delinquency applies. The lien shall include delinquencies, penalties and interest thereon at a rate not to exceed the maximum legal rate of interest per year and penalties otherwise applicable for delinquent property taxes, the district's actual costs of foreclosure and any other costs of the district resulting from the delinquency. All rights of redemption applicable to property sold in connection with property tax foreclosures pursuant to the laws of this state shall apply to property sold following foreclosure of a special levy lien. The portion of proceeds of any foreclosure sale necessary to discharge the lien for the special levy shall be deposited in the special bond fund for payment of any obligations secured thereby.

H. No holder of special levy bonds issued pursuant to the Public Improvement District Act may compel any exercise of the taxing power of the district, municipality or county to pay the bonds or the interest on the bonds. Special levy bonds issued pursuant to that act are not a debt of the district, municipality or county, nor is the payment of special levy bonds enforceable out of any money other than the revenue pledged to the payment of the bonds.

I. Subject to the requirements of this section, a district may issue special levy bonds at such times and in such amounts as the district deems appropriate to carry out a project or projects in phases.

J. Pursuant to this section, the district may issue and sell refunding bonds to refund any special levy bonds of the district authorized by the Public Improvement District Act. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

Section 21. REVENUE BONDS--FEES AND CHARGES.--

A. At any time after the hearing on formation of the district, the district board may hold a hearing on the question of authorizing the district board to issue one or more series of revenue bonds of the district to provide money for any public infrastructure purposes consistent with the general plan.

B. If revenue bonds are approved by resolution, the district board may issue and sell revenue bonds of the district.

C. The revenue bonds may be sold in a public offering or in a negotiated sale; however, if the bonds are to be sold in a public offering, no revenue bonds may be issued by the district unless the revenue bonds receive one of the four highest investment grade ratings by a nationally recognized bond rating agency.

D. The district board may pledge to the payment of its revenue bonds any revenues of the district or revenues to be collected by the municipality or county in trust for the district and returned to the district.

E. The district shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient, together with any money from the sources described in Section 17 of the Public Improvement District Act, to pay when due the principal and interest of all revenue bonds for the payment of which revenue has been pledged. The establishment or revision of any rates, fees and charges shall be identified and noticed concurrently with the annual budget process of the district pursuant to Section 23 of the Public Improvement District Act.

F. If, in the resolution of the district board, the revenues to be pledged are limited to certain types of revenues, only those types of revenues may be pledged and only those revenues shall be maintained.

G. No holder of revenue bonds issued pursuant to the Public Improvement District Act may compel any exercise of the taxing power of the district, municipality or county to pay the bonds or the interest on the bonds. Revenue bonds issued pursuant to that act are not a debt of the district, municipality or county, nor is the payment of revenue bonds enforceable out of any money other than the revenue pledged to the payment of the bonds.

H. Subject to the requirements of this section, a district may issue revenue bonds at such times and in such amounts as the district deems appropriate to carry out a project in phases.

I. Pursuant to this section, the district may issue and sell refunding bonds to refund revenue bonds of the district authorized by the Public Improvement District Act. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

Section 22. TERMS OF BONDS. --For any bonds issued in connection with Section 19, 20 or 21 of the Public Improvement District Act, the district board shall prescribe the denominations of the bonds, the principal amount of each issue and the form of the bonds and shall establish the maturities, which shall not exceed thirty years, interest payment dates and interest rates, whether fixed or variable, not exceeding the maximum rate stated in the notice of the election or the resolution of the district board. The bonds may be sold by competitive bid or negotiated sale for public or private offering at, below or above par. The proceeds of the bonds shall be deposited with the treasurer, or with a trustee or agent designated by the district board, to the credit of the district to be withdrawn for the purposes provided by the Public Improvement District Act. Pending that use, the proceeds may be invested as determined by the

district. The bonds shall be made payable as to both principal and interest solely from revenues of the district, and shall specify the revenues pledged for such purposes, and shall contain such other terms, conditions, covenants and agreements as the district board deems proper. The bonds may be payable from any combination of taxes, levies or revenues of the types described in Sections 19, 20 and 21 of the Public Improvement District Act.

Section 23. DISTRICT TAXES--ANNUAL FINANCIAL ESTIMATE--ANNUAL FINANCIAL ESTIMATE AND BUDGET--CERTIFICATION TO LOCAL GOVERNMENT DIVISION.--

A. All property taxes for the operation and maintenance expenses of the district shall not exceed an amount equal to three dollars (\$3.00) per one thousand dollars (\$1,000) of net taxable value for all real and personal property in the district, unless a higher rate is approved by a vote of the resident qualified electors and owners, voting at an election not less than three years after the date of the formation of the district.

B. Once approved at an election or, in the case of a special levy, by resolution of the district board, the maximum rate of a property tax shall remain in effect until increased or decreased at a subsequent election, and the maximum rate of a special levy shall remain in effect until increased or decreased by resolution of the district board at a subsequent hearing.

C. If a maximum property tax rate is in effect, the district board, on petition of twenty-five percent of the resident qualified electors, or by the owners of twenty-five percent of the land area of the district, shall call an election to reduce the maximum tax rate but not below the lesser of that rate determined by the district board to be necessary to maintain the district's facilities and improvements where the tax was authorized for operation and maintenance, or the actual rate then in effect, but in no event shall the rate be reduced below the rate necessary to satisfy the district's obligations in connection with any outstanding bonds issued pursuant to the Public Improvement District Act.

D. If a maximum special levy is in effect, the district board, on petition of twenty-five percent of the resident qualified electors, or by the owners of twenty-five percent of the land area of the district, shall hold a hearing to determine whether to reduce the maximum special levy but not below the lesser of that rate determined by the district board to be necessary to maintain the district's facilities and improvements, where the special levy was authorized for operation and maintenance, or the actual rate then in effect, but in no event shall the rate be reduced below the rate necessary to satisfy the district's obligations in connection with any outstanding bonds issued pursuant to the Public Improvement District Act.

E. Upon presentation to the district board of a petition signed by the owners of a majority of the property in the district, the district board shall adopt a resolution to reduce or eliminate the portion of the tax or special levy, beginning the next fiscal year, required for one or more services or enhanced services specified in the petition. Signatures on a petition to reduce or eliminate a tax or special levy shall be valid for a period of sixty days.

F. When levying property tax or imposing a special levy, the district board shall make annual statements and estimates of the operation and maintenance expenses of the district, the costs of public improvements to be financed by the taxes or special levy and the amount of all other expenditures for public infrastructure improvements and enhanced services proposed to be paid from the taxes or special levy and of the amount to be raised to pay general obligation bonds of the district or special levy bonds, all of which shall be provided for by the levy and collection of property taxes on the net taxable value of the real property in the district or by the imposition and collection of special levies. The district board shall file the annual statements and estimates with the clerk. The district board shall publish a notice of the filing of the estimate, shall hold hearings on the portions of the estimate not relating to debt service on general obligation

bonds or special levy bonds and shall adopt a budget. The district board, on or before the date set by law for certifying the annual budget of the municipality or county, shall fix, levy and assess the amounts to be raised by property taxes or special levies of the district and shall cause certified copies of the order to be delivered to the local government division of the department of finance and administration. All statutes relating to the levy and collection of property taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, apply to district property taxes and to special levies, except to the extent that the district board has provided for other imposition, collection and foreclosure procedures in connection with special levies.

Section 24. DISSOLUTION OF DISTRICT. --

A. The district shall be dissolved by the district board by a resolution of the district board upon a determination that each of the following conditions exist:

(1) all improvements owned by the district have been, or provision has been made for all improvements to be, conveyed to the municipality or county in which the district is located;

(2) either the district has no outstanding bond obligations or the municipality or county has assumed all of the outstanding bond obligations of the district; and

(3) all obligations of the district

pursuant to any development agreement with the municipality or county have been satisfied.

B. All property in the district that is subject to the lien of district taxes or special levies shall remain subject to the lien for the payment of general obligation bonds and special levy bonds, notwithstanding dissolution of the district. The district shall not be dissolved if any revenue bonds of the district remain outstanding unless an amount of money sufficient, together with investment income thereon, to make all payments due on the revenue bonds either at maturity or prior redemption has been deposited with a trustee or escrow agent and pledged to the payment and redemption of the bonds. The district may continue to operate after dissolution only as needed to collect money and make payments on any outstanding bonds.

Section 25. LIMITATION OF LIABILITY. --Neither any member of the board of directors of a district nor any person acting on behalf of the district, while acting within the scope of his authority, shall be subject to any personal liability for any action taken or omitted within that scope of authority.

Section 26. CUMULATIVE AUTHORITY. --The Public Improvement District Act shall be deemed to provide an additional and alternative method for the doing of things authorized by that act and shall be regarded as supplemental and additional to powers conferred by other laws and shall

not be regarded as in derogation of any powers now existing; provided that the issuance of bonds under the provisions of the Public Improvement District Act need not comply with the requirements of any other law applicable to the issuance of bonds.

Section 27. LIBERAL INTERPRETATION. --The Public Improvement District Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes of that act.

Section 28. Section 13-1-98 NMSA 1978 (being Laws 1984, Chapter 65, Section 71, as amended) is amended to read:

"13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE. --The provisions of the Procurement Code shall not apply to:

A. procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;

B. procurement of tangible personal property or services for the governor's mansion and grounds;

C. printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;

D. purchases of publicly provided or publicly

regulated gas, electricity, water, sewer and refuse collection services;

E. purchases of books and periodicals from the publishers or copyright holders thereof;

F. travel or shipping by common carrier or by private conveyance or to meals and lodging;

G. purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibit;

H. contracts with businesses for public school transportation services;

I. procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to regulations adopted by the corrections commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;

J. minor purchases not exceeding five thousand dollars (\$5,000) consisting of magazine subscriptions, conference registration fees and other similar purchases where prepayments are required;

K. municipalities having adopted home rule charters and having enacted their own purchasing ordinances;

L. the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute,

with the exception of bond attorneys and general financial consultants;

M. contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;

N. contracts for maintenance of grounds and facilities at highway rest stops and other employment opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into by state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps;

O. contracts and expenditures for services to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;

P. contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

Q. contracts with professional entertainers;

R. contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts; and

S. contracts for services relating to the design,

engineering, financing, construction and acquisition of public improvements undertaken in county improvement districts pursuant to Section 4-55A-12.1 NMSA 1978 and in public improvement districts created pursuant to the Public Improvement District Act. "

Section 29. SEVERABILITY. --If any part or application of the Public Improvement District Act is held invalid, the remainder or its application to other situations shall not be affected. _____

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