

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 241

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO THE EXTRATERRITORIAL POWERS OF MUNICIPALITIES IN A  
CLASS A COUNTY WITH MORE THAN THREE HUNDRED THOUSAND PERSONS.

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

Section 1. Section 3-7-3 NMSA 1978 (being Laws 1965,  
Chapter 300, Section 14-7-3) is amended to read:

"3-7-3. LIMITATION ON ANNEXATION. -- No municipality may  
annex territory within the boundary of another municipality or  
territory within a class A county with a population of more  
than three hundred thousand persons unless approved by the  
board of county commissioners for that county."

Section 2. Section 3-7-17.1 NMSA 1978 (being Laws 1998,  
Chapter 42, Section 2) is amended to read:

"3-7-17.1. ANNEXATION-- CERTAIN MUNICIPALITIES IN CLASS A  
COUNTIES-- PROCEDURES-- LIMITATIONS. --

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1           A. A petition seeking the annexation of territory  
2 contiguous to a municipality [~~with a population over two~~  
3 ~~hundred thousand persons and~~] located in a class A county with  
4 a population of less than three hundred thousand persons shall  
5 be presented to the city council and be accompanied by a map  
6 that shows the external boundary of the territory proposed to  
7 be annexed and the relationship of the territory proposed to be  
8 annexed to the existing boundary of the municipality.

9           B. If the petition is signed by the owners of a  
10 majority of the number of acres in the contiguous territory:

11                   (1) the city council shall submit the petition  
12 to the board of county commissioners of the county in which the  
13 municipality is located for its review and comment. Any  
14 comments shall be submitted by the board of county  
15 commissioners to the city council within thirty days of  
16 receipt; and

17                   (2) not less than thirty days nor more than  
18 sixty days after receiving the petition, the city council shall  
19 by ordinance approve or disapprove the annexation after  
20 considering any comments submitted by the board of county  
21 commi ssi oners.

22           C. Except as provided in Subsection D of this  
23 section, if the petition is not signed by the owners of a  
24 majority of the number of acres in the contiguous territory,  
25 the extraterritorial land use commission shall consider the

1 matter and make a recommendation to the extraterritorial land  
2 use authority. The extraterritorial land use authority shall  
3 approve or disapprove the petition. If approved by the  
4 extraterritorial land use authority, the city council may by  
5 ordinance approve the annexation.

6 D. When the nonconsenting property owners'  
7 properties are entirely surrounded by consenting property  
8 owners, the city council may approve the annexation without  
9 approval or disapproval of the extraterritorial land use  
10 authority.

11 E. In considering an annexation pursuant to this  
12 section, the city council shall consider the impact of the  
13 annexation on existing county contracts and provisions of  
14 services, including fire protection, solid waste collection or  
15 water and sewer service, and may make agreements with the  
16 county to continue such services if it is in the interest of  
17 the county, the residents of the proposed annexed area or the  
18 municipality.

19 F. A municipality with a population over two  
20 hundred thousand persons and located in a class A county shall  
21 not force a resident or business located in the unincorporated  
22 area of the county to agree to annexation as a condition of  
23 extending sewer and water service to that person or business,  
24 if that sewer or water service extension is paid for all or in  
25 part by federal, state or county money. The municipality may

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1 make agreement to annexation a condition of extending sewer and  
2 water service if the extension of the service is paid for  
3 entirely with municipal money. "

4 Section 3. Section 3-19-5 NMSA 1978 (being Laws 1965,  
5 Chapter 300, Section 14-18-5, as amended) is amended to read:

6 "3-19-5. PLANNING AND PLATTING JURISDICTION. --

7 A. Each municipality shall have planning and  
8 platting jurisdiction within its municipal boundary. Except as  
9 provided in Subsection B of this section, the planning and  
10 platting jurisdiction of a municipality:

11 (1) having a population of twenty-five  
12 thousand or more persons includes all territory within five  
13 miles of its boundary and not within the boundary of another  
14 municipality; or

15 (2) having a population of [~~less~~] fewer than  
16 twenty-five thousand persons includes all territory within  
17 three miles of its boundary and not within the boundary of  
18 another municipality.

19 B. A municipality [~~having a population over two~~  
20 ~~hundred thousand persons~~] located in a class A county with a  
21 population of more than three hundred thousand persons shall  
22 not have planning and platting jurisdiction [~~within five miles~~  
23 ~~of the boundary of the municipality shared with the county and~~  
24 ~~not within the boundary of another municipality through the~~  
25 ~~extraterritorial land use commission that shall make~~

1 ~~recommendations to the extraterritorial land use authority] in~~  
 2 the unincorporated area of the county.

3 C. If territory not lying within the boundary of a  
 4 municipality is within the planning and platting jurisdiction  
 5 of more than one municipality, the planning and platting  
 6 jurisdiction of each municipality shall terminate equidistant  
 7 from the boundary of each municipality unless one municipality  
 8 has a population of [~~less~~] fewer than two thousand five hundred  
 9 persons and another municipality has a population of more than  
 10 two thousand five hundred persons according to the most recent  
 11 census. Then the planning and platting jurisdiction of the  
 12 municipality having the greatest population extends to such  
 13 territory. "

14 Section 4. Section 3-21-2 NMSA 1978 (being Laws 1965,  
 15 Chapter 300, Section 14-20-2, as amended) is amended to read:

16 "3-21-2. JURISDICTION OF A COUNTY OR MUNICIPAL ZONING  
 17 AUTHORITY. --To carry out the purposes of Sections 3-21-1  
 18 through 3-21-14 NMSA 1978:

19 A. a county zoning authority may adopt a zoning  
 20 ordinance applicable to all or any portion of the territory  
 21 within the county that is not within the zoning jurisdiction of  
 22 a municipality;

23 B. a municipal zoning authority may adopt a zoning  
 24 ordinance applicable to the territory within the municipal  
 25 boundaries and, if not within a class A county with a

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1 population of more than three hundred thousand persons  
2 according to the last federal decennial census, shall have  
3 concurrent authority with the county to zone all or any portion  
4 of the territory within its extraterritorial zoning  
5 jurisdiction [~~which~~] that is within:

6 [~~(1) three miles of the boundary of any~~  
7 ~~municipality having a population of two hundred thousand or~~  
8 ~~more persons, provided such territory is not within the~~  
9 ~~boundary of another municipality;~~

10 ~~(2)]~~ (1) two miles of the boundary of any  
11 municipality having a population of twenty thousand or more  
12 [~~but less than two hundred thousand~~] persons, provided such  
13 territory is not within the boundary of another municipality;

14 [~~(3)]~~ (2) one mile of the boundary of any  
15 municipality having a population of one thousand five hundred  
16 or more but less than twenty thousand persons, provided such  
17 territory is not within the boundaries of another municipality;

18 [~~(4)]~~ (3) the limits of the boundaries of a  
19 municipality having a population of one thousand five hundred  
20 persons or less; or

21 [~~(5) if]~~ (4) territory not lying within the  
22 boundary of a municipality [~~is~~] but within the extraterritorial  
23 jurisdiction of more than one municipality; provided that the  
24 extraterritorial zoning jurisdiction of each municipality shall  
25 terminate equidistant from the boundary of each municipality

1 unless one municipality has a population according to the most  
 2 recent federal decennial census of less than two thousand five  
 3 hundred and another municipality has a population according to  
 4 the most recent federal decennial census of more than two  
 5 thousand five hundred, [~~Then~~] in which case the  
 6 extraterritorial zoning jurisdiction of the municipality having  
 7 the greatest population extends to such territory; and

8 [~~(6)—such areas~~] (5) territory in addition to  
 9 the extraterritorial zoning jurisdiction provided by Paragraphs  
 10 (1), (2), (3) and (4) [~~and (5)~~] of this subsection that the  
 11 governing bodies of a county and a municipality agree to place  
 12 within the extraterritorial zoning jurisdiction of the  
 13 municipality by agreement entered into pursuant to the  
 14 provisions of the Joint Powers Agreements Act, provided such  
 15 additional territory is not within the boundary of another  
 16 municipality and is contiguous to the exterior boundaries of  
 17 the territory within the extraterritorial zoning jurisdiction  
 18 of the municipality;

19 C. concurrent authority shall be exercised pursuant  
 20 to an extraterritorial zoning authority or joint powers  
 21 agreement; provided, however, this authority may be exercised  
 22 regardless of whether a county has enacted a comprehensive  
 23 zoning ordinance; and

24 D. in the absence of a county zoning ordinance, a  
 25 qualified elector may file a petition, signed by the qualified

1 electors of the county equal in number to not less than twenty-  
2 five percent of the votes cast for the office of governor at  
3 the last preceding general election, seeking the adoption of a  
4 zoning ordinance by the county zoning authority. Within one  
5 year of the filing of the petition seeking the adoption of a  
6 county zoning ordinance, the board of county commissioners  
7 shall adopt a county zoning ordinance. "

8 Section 5. Section 3-21-3.2 NMSA 1978 (being Laws 1998,  
9 Chapter 42, Section 5, as amended) is amended to read:

10 "3-21-3.2. EXTRATERRITORIAL ZONING IN CLASS A  
11 COUNTIES--PROCEDURES.--

12 A. In a class A county in which a municipality is  
13 located that has a population of:

14 (1) more than three hundred thousand persons  
15 [~~concurrent extraterritorial zoning jurisdiction between that~~  
16 ~~municipality and the county shall be determined by an~~  
17 ~~"extraterritorial land use authority". The extraterritorial~~  
18 ~~land use authority shall have the jurisdiction and powers of an~~  
19 ~~extraterritorial zoning authority and shall carry out its~~  
20 ~~duties related to planning and platting jurisdiction,~~  
21 ~~extraterritorial zoning, subdivision approval and annexation~~  
22 ~~approval or disapproval as provided in the Municipal Code. The~~  
23 ~~extraterritorial land use authority shall consist of four~~  
24 ~~county commissioners appointed by the board of county~~  
25 ~~commissioners and three city councilors or two city councilors~~

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1 ~~and the mayor appointed by the municipality. Alternates to the~~  
 2 ~~extraterritorial land use authority shall be appointed by the~~  
 3 ~~board of county commissioners from among the remaining county~~  
 4 ~~commissioners and by the municipality from among the remaining~~  
 5 ~~city councilors. The alternates shall be notified prior to a~~  
 6 ~~meeting of the extraterritorial land use authority if an~~  
 7 ~~appointed member cannot attend. When replacing a member, an~~  
 8 ~~alternate shall have the same duties, privileges and powers as~~  
 9 ~~other appointed members] according to the last federal~~  
 10 ~~decennial census, there shall be no extraterritorial zoning; or~~

11 (2) three hundred thousand or fewer people,  
 12 concurrent extraterritorial zoning jurisdiction between that  
 13 municipality and the county may be determined by an  
 14 "extraterritorial land use authority" pursuant to ordinances  
 15 adopted by the municipal and county governing bodies stating  
 16 that the county or municipality will create an extraterritorial  
 17 land use authority [~~with the composition, jurisdiction and~~  
 18 ~~powers set forth in Paragraph (1) of this subsection]. The~~  
 19 ~~extraterritorial land use authority shall have the jurisdiction~~  
 20 ~~and powers of an extraterritorial zoning authority and shall~~  
 21 ~~carry out its duties related to planning and platting~~  
 22 ~~jurisdiction, extraterritorial zoning, subdivision approval and~~  
 23 ~~annexation approval or disapproval as provided in the Municipal~~  
 24 ~~Code. The extraterritorial land use authority shall consist of~~  
 25 ~~four county commissioners appointed by the board of county~~

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1 commissioners and three city councilors or two city councilors  
2 and the mayor appointed by the municipality. Alternates to the  
3 extraterritorial land use authority shall be appointed by the  
4 board of county commissioners from among the remaining county  
5 commissioners and by the municipality from among the remaining  
6 city councilors. The alternates shall be notified prior to a  
7 meeting of the extraterritorial land use authority if an  
8 appointed member cannot attend. When replacing a member, an  
9 alternate shall have the same duties, privileges and powers as  
10 other appointed members.

11 B. The extraterritorial zoning commission in a  
12 class A county shall be known as the "extraterritorial land use  
13 commission" if it is formed by

14 [~~(1) a class A county and a municipality that~~  
15 ~~has a population of more than three hundred thousand people and~~  
16 ~~that is located within that class A county; or~~

17 (2)] a municipality and a class A county that  
18 have adopted ordinances pursuant to Paragraph (2) of Subsection  
19 A of this section stating that the county and municipality will  
20 create an extraterritorial land use authority.

21 C. The extraterritorial zoning commission shall be  
22 composed of five members of the county planning commission  
23 appointed by the board of county commissioners and five members  
24 of the environmental planning commission of the municipality  
25 appointed by the city council. Alternates to the

1 extraterritorial land use commission shall be appointed by the  
2 board of county commissioners from the remaining members of the  
3 county planning commission and by the municipality from the  
4 remaining members of the environmental planning commission, who  
5 shall be notified prior to a meeting of the extraterritorial  
6 land use commission if an appointed member cannot attend. When  
7 replacing a member, the alternate shall have the same duties,  
8 privileges and powers as other appointed members.

9 D. The composition of the extraterritorial land use  
10 commission shall not affect the composition of any other  
11 extraterritorial zoning commission that may be established in  
12 that county with any other municipality.

13 E. The extraterritorial land use commission shall  
14 have the authority to carry out duties related to planning  
15 and platting jurisdiction, subdivision and extraterritorial  
16 zoning. "

17 Section 6. EFFECTIVE DATE.--The effective date of the  
18 provisions of this act is July 1, 2003.

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