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HOUSE BILL 1144

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO PUBLIC IMPROVEMENT DISTRICTS; AMENDING THE PUBLIC IMPROVEMENT DISTRICT ACT TO EXPAND THE DEFINITION OF "PUBLIC INFRASTRUCTURE IMPROVEMENTS" AND TO REQUIRE A SIMPLE MAJORITY IN ALL ELECTIONS.

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

Section 1. Section 5-11-2 NMSA 1978 (being Laws 2001, Chapter 305, Section 2) is amended to read:

"5-11-2. 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]~~ 5-11-6 NMSA 1978;

B. "county" means a county that forms a public

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1 improvement district pursuant to the Public Improvement
2 District Act in an unincorporated area or in an incorporated
3 area with the municipality's consent;

4 C. "debt service" means the principal of, interest
5 on and premium, if any, on the bonds, when due, whether at
6 maturity or prior redemption; ~~and~~ the fees and costs of
7 registrars, trustees, paying agents or other agents necessary
8 to handle the bonds; and the costs of credit enhancement or
9 liquidity support;

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

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

23 F. "district board" means the board of directors of
24 the district, which shall be comprised of members of the
25 governing body, ex officio, or, at the option of the governing

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1 body, five directors appointed by the governing body of the
2 municipality or county in which the district is located, until
3 replaced by elected directors, which shall occur not later than
4 six years after the date on which the resolution establishing
5 the district is enacted, as provided in Section [~~9 of the~~
6 ~~Public Improvement District Act~~] 5-11-9 NMSA 1978;

7 G. "election" means an election held in compliance
8 with the provisions of Sections [~~6 and 7 of the Public~~
9 ~~Improvement District Act~~] 5-11-6 and 5-11-7 NMSA 1978;

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

20 I. "general plan" means the general plan described
21 in Section [~~3 of the Public Improvement District Act~~] 5-11-3
22 NMSA 1978, as the plan may be amended from time to time;

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

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

3 L. "owner" means:

4 (1) the person who is listed as the owner of
5 real property in the district on the current property tax
6 assessment roll in effect at the time that the action,
7 proceeding, hearing or election has begun. For purposes of
8 voting in elections held pursuant to the Public Improvement
9 District Act, when the owner of record title is a married
10 person, only one spouse in whose name title is held may vote at
11 such election. Where record title is held in more than one
12 name, each owner may vote the number of fractions of acres
13 represented by ~~[his]~~ the owner's legal interest or
14 proportionate share of and in the lands within the district;

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

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

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

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

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

3 M. "public infrastructure improvements" means all
4 improvements listed in this subsection and includes both
5 on-site improvements and off-site improvements that directly or
6 indirectly benefit the district. Such improvements include
7 necessary or incidental work, whether newly constructed,
8 renovated or existing, and all necessary or desirable
9 appurtenances. "Public infrastructure improvements" includes:

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

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

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

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

24 (5) trails and areas for pedestrian,
25 equestrian, bicycle or other nonmotor vehicle use for travel,

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1 ingress, egress and parking;

2 (6) pedestrian ~~[malls]~~ and transit facilities,
3 parks, recreational facilities and open space areas for the use
4 of members of the public for entertainment, assembly and
5 recreation;

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

9 (8) public buildings, public safety facilities
10 and fire protection and police facilities;

11 (9) electrical generation, transmission and
12 distribution facilities;

13 (10) natural gas distribution facilities;

14 (11) lighting systems;

15 (12) cable or other telecommunications lines
16 and related equipment;

17 (13) traffic control systems and devices,
18 including signals, controls, markings and signage;

19 (14) school sites and facilities with the
20 consent of the governing board of the public school district
21 for which the site or facility is to be acquired, constructed
22 or renovated;

23 (15) library and other public educational or
24 cultural facilities;

25 (16) equipment, vehicles, furnishings and

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1 other personalty related to the items listed in this
2 subsection; ~~and~~

3 (17) inspection, construction management and
4 program management costs and the costs of other professional
5 services incidental to the project;

6 (18) workforce housing; and

7 (19) any other improvement that the governing
8 body determines to be for the use or benefit of the public;

9 N. "public infrastructure purpose" means:

10 (1) planning, design, engineering,
11 construction, acquisition or installation of public
12 infrastructure, including the costs of applications, impact
13 fees and other fees, permits and approvals related to the
14 construction, acquisition or installation of such
15 infrastructure;

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

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

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

24 (5) funding and paying from bond proceeds
25 interest accruing on bonds for a period not to exceed three

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1 years from their date of issuance;

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

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

13 (8) refinancing any outstanding bonds with new
14 bonds, including through the formation of a new public
15 improvement district; and

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

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

23 P. "special levy" means a levy imposed against real
24 property within a district that may be apportioned according to
25 direct or indirect benefits conferred upon affected real

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1 property, as well as acreage, front footage, the cost of
2 providing public infrastructure for affected real property, or
3 other reasonable method, as determined by the governing body or
4 district board, as applicable; and

5 Q. "treasurer" means the treasurer of the governing
6 body or the person appointed by the district board as the
7 district treasurer pursuant to Section [~~6 of the Public~~
8 ~~Improvement District Act~~] 5-11-6 NMSA 1978."

9 Section 2. Section 5-11-7 NMSA 1978 (being Laws 2001,
10 Chapter 305, Section 7) is amended to read:

11 "5-11-7. NOTICE AND CONDUCT OF ELECTION--WAIVER.--

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

22 (1) the place of holding the election and
23 provisions for voting by mail, if any;

24 (2) the hours during the day, not less than
25 six, in which the polls will be open;

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1 (3) if the election is a formation election,
2 the boundaries of the proposed district;

3 (4) if the election is a bond election, the
4 amount of bonds to be authorized for the district, the maximum
5 rate of interest to be paid on the bonds and the maximum term
6 of the bonds, not exceeding thirty years;

7 (5) if the election is a property tax levy
8 election pursuant to Section [~~19 of the Public Improvement~~
9 ~~District Act~~] 5-11-19 NMSA 1978, the maximum tax rate per one
10 thousand dollars (\$1,000) of assessed valuation to be imposed,
11 the purposes for which the revenues raised will be used and the
12 existing maximum tax rate, if any;

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

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

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

23 B. The district board or, in the case of a
24 formation election, the governing body, shall determine the
25 date of the election and the polling places for the election

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1 and may consolidate county precincts. The district board or
2 governing body may establish provisions for voting by mail.

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

10 D. For all elections held pursuant to the Public
11 Improvement District Act, a prospective elector who is not a
12 resident qualified elector shall execute an affidavit stating
13 that the elector is the owner of land in the proposed district
14 and stating the area of land in acres owned by the prospective
15 elector. Precinct board members may administer oaths or take
16 all affirmations for these purposes.

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

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

25 (2) for an election concerning the imposition

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1 of property taxes, an impartial description of the taxes to be
2 imposed, the method of apportionment, collection and
3 enforcement and other details sufficient to enable each elector
4 to determine the amount of tax it will be obligated to pay; a
5 brief description of arguments for and against the imposition
6 of taxes that are the subject of the election, if any; and a
7 statement that the imposition of property taxes is for the
8 provision of certain but not necessarily all public
9 infrastructure improvements and services that may be needed or
10 desirable within the district, and that other taxes, levies or
11 assessments by other governmental entities may be presented for
12 approval by owners and resident qualified electors; and

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

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

24 G. Within thirty days after an election, the
25 governing body, or if after formation, the district board,

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1 shall meet and canvass the returns, determining the number of
2 votes properly cast by owners and resident qualified electors.
3 [~~At least a three-fourths~~¹] A majority of the votes cast at the
4 election shall be required for formation, issuing the bonds,
5 imposing the tax or special levy or changing the tax or special
6 levy. The canvass may be continued for an additional period
7 not to exceed thirty days at the election of the governing body
8 or district board for the purpose of completing the canvass.
9 Failure of a majority to vote in favor of the matter submitted
10 shall not prejudice the submission of the same or similar
11 matters at a later election.

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

18 I. Notwithstanding any other provision of the
19 Public Improvement District Act, if a petition for formation is
20 signed by owners of all of the land in the district described
21 in the petition and is approved by the municipality or county,
22 the municipality or county may waive any or all requirements of
23 posting, publication, mailing, notice, hearing and owner
24 election. On receipt of such a petition, and after approval by
25 an election of resident qualified electors, if any, the

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1 municipality or county shall declare the district formed
2 without being required to comply with the provisions of the
3 Public Improvement District Act for posting, publication,
4 mailing, notice, hearing or owner election.

5 J. If no person has registered to vote within the
6 district within fifty days immediately preceding any scheduled
7 election date, any election required to be held pursuant to the
8 Public Improvement District Act shall be held by vote of the
9 owners. Each owner shall have the number of votes or portion
10 of votes equal to the number of acres or portion of acres
11 rounded upward to the nearest one-fifth of an acre owned in the
12 district by that owner.

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

19 Section 3. Section 5-11-8 NMSA 1978 (being Laws 2001,
20 Chapter 305, Section 8) is amended to read:

21 "5-11-8. FORMATION--DEBT LIMITATION.--

22 A. If the formation of the district is approved by
23 ~~[at least a three-fourths¹]~~ a majority of the votes cast at the
24 election, the governing body shall cause a copy of the
25 resolution ordering formation of the district to be delivered

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1 to the county assessor and the county in which the district is
2 located and to the taxation and revenue department and the
3 local government division of the department of finance and
4 administration. A notice of the formation showing the number
5 and date of the resolution and giving a description of the land
6 included in the district shall be recorded with the county
7 clerk.

8 B. Except as otherwise provided in this section, a
9 district shall be a political subdivision of the state,
10 separate and apart from the municipality or county. The amount
11 of indebtedness evidenced by general obligation bonds issued
12 pursuant to Section [~~19 of the Public Improvement District Act~~]
13 5-11-19 NMSA 1978, special levy bonds issued pursuant to
14 Section [~~20 of that act~~] 5-11-20 NMSA 1978 and revenue bonds
15 issued pursuant to Section [~~21 of that act~~] 5-11-21 NMSA 1978
16 shall not exceed the estimated cost of the public
17 infrastructure improvements plus all costs connected with the
18 public infrastructure purposes and issuance and sale of bonds,
19 including, without limitation, formation costs, credit
20 enhancement and liquidity support fees and costs. The total
21 aggregate outstanding amount of bonds and any other
22 indebtedness for which the full faith and credit of the
23 district are pledged shall not exceed sixty percent of the
24 market value of the real property and improvements in the
25 district after the public infrastructure improvements of the

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1 district are completed plus the value of the public
2 infrastructure owned or to be acquired by the district with the
3 proceeds of the bonds, and shall not affect the general
4 obligation bonding capacity of the municipality or county in
5 which the district is located.

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

13 D. Following formation of the district, the
14 district board shall administer in a reasonable manner the
15 implementation of the general plan for the public
16 infrastructure improvements of the district."