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HOUSE BILL 238

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

INTRODUCED BY

JAMES G. TAYLOR

AN ACT

RELATING TO LAND USE; PROVIDING FOR METHODS OF ANNEXATION,
ZONING, SUBDIVISION, PLANNING AND PLATTING IN EXTRATERRITORIAL
ZONES OF CERTAIN MUNICIPALITIES AND COUNTIES; CREATING AN
EXTRATERRITORIAL LAND USE COMMISSION AND AN EXTERRITORIAL LAND
USE AUTHORITY; PROVIDING POWERS AND DUTIES; AMENDING AND
ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 3-7-17 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-7-17, as amended) is amended to read:

"3-7-17. ANNEXATION--PETITION BY OWNERS OF CONTIGUOUS
TERRITORY--DUTY [ØR] OF GOVERNING BODY--ORDINANCE--APPEAL.--

A. Except as provided in Sections 3-7-17.1 and
3-57-4 NMSA 1978, whenever a petition:

- (1) seeks the annexation of territory

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1 contiguous to a municipality;

2 (2) is signed by the owners of a majority of
3 the number of acres in the contiguous territory;

4 (3) is accompanied by a map [~~which shall~~
5 ~~show~~] that shows the external boundary of the territory
6 proposed to be annexed and the relationship of the territory
7 proposed to be annexed to the existing boundary of the
8 municipality; and

9 (4) is presented to the governing body,
10 the governing body shall by ordinance express its consent or
11 rejection to the annexation of such contiguous territory.

12 B. If the ordinance consents to the annexation of
13 the contiguous territory, a copy of the ordinance, with a copy
14 of the plat of the territory so annexed, shall be filed in the
15 office of the county clerk. After the filing, the contiguous
16 territory is part of the municipality. The clerk of the
17 municipality shall also send copies of the ordinance annexing
18 the territory and of the plat of the territory so annexed to
19 the secretary of finance and administration and to the
20 secretary of taxation and revenue.

21 C. Within thirty days after the filing of the copy
22 of the ordinance in the office of the county clerk, any person
23 owning land within the territory annexed to the municipality
24 may appeal to the district court questioning the validity of
25 the annexation proceedings. If no appeal to the district court

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1 is filed within thirty days after the filing of the ordinance
2 in the office of the county clerk [~~of it~~] or if the court
3 renders judgment in favor of the municipality, the annexation
4 shall be deemed complete. "

5 Section 2. A new Section 3-7-17.1 NMSA 1978 is enacted
6 to read:

7 "3-7-17.1. [NEW MATERIAL] ANNEXATION--CERTAIN
8 MUNICIPALITIES IN CLASS A COUNTIES--PROCEDURES--LIMITATIONS.--

9 A. A petition seeking the annexation of territory
10 contiguous to a municipality with a population over two
11 hundred thousand persons and located in a class A county shall
12 be presented to the city council and be accompanied by a map
13 that shows the external boundary of the territory proposed to
14 be annexed and the relationship of the territory proposed to
15 be annexed to the existing boundary of the municipality.

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

18 (1) the city council shall submit the
19 petition to the board of county commissioners of the county in
20 which the municipality is located for its review and comment.
21 Any comments shall be submitted by the board of county
22 commissioners to the city council within thirty days of
23 receipt; and

24 (2) not less than thirty days nor more than
25 sixty days after receiving the petition, the city council

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1 shall by ordinance approve or disapprove the annexation after
2 considering any comments submitted by the board of county
3 commissioners.

4 C. If the petition is not signed by the owners of
5 a majority of the number of acres in the contiguous territory,
6 the extraterritorial land use commission shall consider the
7 matter and make a recommendation to the extraterritorial land
8 use authority. The extraterritorial land use authority shall
9 approve or disapprove the petition. If approved by the
10 extraterritorial land use authority, the city council may by
11 ordinance approve the annexation.

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

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

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1 part by federal, state or county money. The municipality may
2 make agreement to annexation a condition of extending sewer
3 and water service if the extension of the service is paid for
4 entirely with municipal money. "

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

7 "3-19-5. PLANNING AND PLATTING JURISDICTION. --

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

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

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

20 B. A municipality with a population over two
21 hundred thousand persons and located in a class A county shall
22 share planning and platting jurisdiction with the county over
23 territory within five miles of the boundary of the
24 municipality and not within the boundary of another
25 municipality. Upon the recommendations and reports of the

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1 extraterritorial land use commission, the extraterritorial
2 land use authority shall exercise the jurisdiction.

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

14 Section 4. Section 3-20-5 NMSA 1978 (being Laws 1965,
15 Chapter 300, Section 14-19-5, as amended) is amended to read:

16 "3-20-5. COUNTY AND MUNICIPAL JURISDICTION OVER
17 SUBDIVISION-- CONCURRENT JURISDICTION-- ACCEPTANCE OF UNAPPROVED
18 STREETS-- EXERCISE OF JURISDICTION. --

19 A. For the purpose of approving the subdivision
20 and platting of land:

21 (1) the jurisdiction of a county includes all
22 territory not within the boundary of a municipality;

23 (2) except as provided in Paragraph (4) of
24 this subsection, the jurisdiction of a municipality having a
25 population of twenty-five thousand or more persons according

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1 to the most recent census includes all territory within five
2 miles of the boundary of the municipality and not within the
3 boundary of another municipality; [and]

4 (3) the jurisdiction of a municipality having
5 a population of less than twenty-five thousand persons
6 according to the most recent census includes all territory
7 within three miles of the municipal boundary and not within
8 the boundary of another municipality; and

9 (4) a municipality with a population over two
10 hundred thousand persons and located in a class A county shall
11 share the jurisdiction with the county over territory within
12 five miles of the boundary of the municipality and not within
13 the boundary of another municipality. Upon the
14 recommendations and reports of the extraterritorial land use
15 commission, the extraterritorial land use authority shall
16 exercise the jurisdiction.

17 B. Each municipality shall have jurisdiction over
18 the territory within its boundary.

19 [~~B.~~] C. If territory not lying within the boundary
20 of a municipality is within the platting jurisdiction of more
21 than one municipality, the platting jurisdiction of each
22 municipality shall terminate equidistant from the boundary of
23 each municipality unless one municipality has a population
24 according to the most recent census of less than two thousand
25 five hundred persons and another municipality has a population

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1 according to the most recent census of more than two thousand
2 five hundred persons. Then the platting jurisdiction of the
3 municipality having the greatest population extends to such
4 territory.

5 ~~[C-]~~ D. Except as provided in Paragraph (4) of
6 Subsection A of this section, the county and a municipality
7 shall exercise concurrent jurisdiction over territory within
8 the platting jurisdiction of both the county and the
9 municipality.

10 ~~[D-]~~ E. The governing body of a municipality or
11 the board of county commissioners may not locate, construct or
12 accept any street dedication until the street dedication is
13 first submitted to the planning authority for approval or
14 disapproval. If disapproved by the planning authority, the
15 street dedication may be approved by a two-thirds vote of all
16 the members of the governing body of the municipality having
17 jurisdiction or of the board of county commissioners having
18 jurisdiction. A street dedication accepted by the planning
19 authority or by a two-thirds vote of all the members of the
20 governing body of the municipality having jurisdiction or of
21 the board of county commissioners having jurisdiction shall
22 have the same status as any other public street. "

23 Section 5. A new section of Chapter 3, Article 21 NMSA
24 1978 is enacted to read:

25 "[NEW MATERIAL] EXTRATERRITORIAL ZONING IN CLASS A

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1 COUNTY WITH MUNICIPALITY OVER TWO HUNDRED THOUSAND PERSONS--
2 PROCEDURES. --

3 A. In a class A county that has a municipality
4 with a population over two hundred thousand persons,
5 concurrent extraterritorial zoning jurisdiction between that
6 municipality and the county shall be determined by an
7 "extraterritorial land use authority". The extraterritorial
8 land use authority shall have the jurisdiction and powers of
9 an extraterritorial zoning authority and shall carry out its
10 duties related to planning and platting jurisdiction,
11 extraterritorial zoning, subdivision approval and annexation
12 approval or disapproval as provided in the Municipal Code.
13 The extraterritorial land use authority shall consist of four
14 county commissioners appointed by the board of county
15 commissioners and three city councilors or two city councilors
16 and the mayor appointed by the municipality.

17 B. The extraterritorial zoning commission in a
18 class A county having a municipality with a population over
19 two hundred thousand persons that is concerned with
20 extraterritorial zoning between that municipality and the
21 county shall be known as the "extraterritorial land use
22 commission". The commission shall be composed of five members
23 of the county planning commission appointed by the board of
24 county commissioners and five members of the environmental
25 planning commission of the municipality appointed by the city

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1 council.

2 C. The composition of the extraterritorial land
3 use commission shall not affect the composition of any other
4 extraterritorial zoning commission that may be established in
5 that county with any other municipality.

6 D. The extraterritorial land use commission shall
7 have the authority to carry out duties related to planning and
8 platting jurisdiction, subdivision and extraterritorial
9 zoning. "

10 Section 6. Section 3-57-4 NMSA 1978 (being Laws 1967,
11 Chapter 248, Section 4, as amended) is amended to read:

12 "3-57-4. METHODS OF ANNEXATION. -- There shall be two
13 methods of annexing territory to a municipality within class A
14 counties:

15 A. by petition to a municipality as provided by
16 Section [~~14-58-5 NMSA 1953~~] 3-57-5 NMSA 1978 or, if the
17 municipality has over two hundred thousand persons, as
18 provided by Section 3-7-17.1 NMSA 1978; and

19 B. by petition to the district court as provided
20 by Sections [~~14-58-6 through 14-58-8 NMSA 1953~~] 3-57-6 through
21 3-57-8 NMSA 1978.

22 Any other method provided by the Municipal Code or any
23 other act shall have no application within class A counties. "

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 February 3, 1998
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8 Mr. Speaker:
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10 Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to
11 whom has been referred
12

13 HOUSE BILL 238
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 JUDICIARY COMMITTEE.

18 Respectfully submitted,
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22 _____
23 Gary K. King, Chairman
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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HCPAC/HB 238

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4 Adopted _____ Not Adopted _____

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6 (Chief Clerk)

(Chief Clerk)

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8 Date _____

9
10 The roll call vote was 7 For 0 Against

11 Yes: 7

12 Excused: Dana, Sandel, Trujillo Knauer

13 Absent: None

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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5 February 11, 1998
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7 Mr. Speaker:
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9 Your JUCICIARY COMMITTEE, to whom has been referred
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11 HOUSE BILL 238
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13 has had it under consideration and reports same with
14 recommendation that it DO PASS, amended as follows:

15 1. On page 4, line 4, strike "If" and insert in lieu
16 thereof "Except as provided in Subsection D of this section,
17 if".

18 2. On page 4, between lines 11 and 12, insert the
19 following new subsection:
20

21 "D. When the nonconsenting property owners'
22 properties are entirely surrounded by consenting property
23 owners, the city council may approve the annexation without
24 approval or disapproval of the extraterritorial land use
25 authority. ".
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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HCPAC/HB 238

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4 3. Reletter the succeeding subsections accordingly.

5
6 4. On page 5, lines 20 through 25, and on page 6, lines 1
7 and 2, strike Subsection B in its entirety and insert in lieu
8 thereof the following new subsection:

9
10 "B. A municipality having a population over two
11 hundred thousand persons located in a class A county shall have
12 planning and platting jurisdiction within five miles of the
13 boundary of the municipality shared with the county and not
14 within the boundary of another municipality through the
15 extraterritorial land use commission that shall make
16 recommendations to the extraterritorial land use authority."

17 5. On page 7, lines 9 through 16, strike Paragraph (4) in
18 its entirety and insert in lieu thereof the following new
19 paragraph:

20 "(4) a municipality having a population over
21 two hundred thousand persons according to the most recent census
22 located in a class A county shall share approval authority with
23 the county of subdivisions and platting of land within five
24 miles of the municipal boundary. Approval shall be through the
25 actions of the extraterritorial land use commission and
extraterritorial land use authority."

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HCPAC/HB 238

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4
5 Respectfully submitted,
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10 Thomas P. Foy, Chairman
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12 Adopted _____

Not Adopted _____

13
14 (Chief Clerk)

(Chief Clerk)

15
16 Date _____

17 The roll call vote was 12 For 0 Against

18 Yes: 12

19 Excused: Sanchez

20 Absent: None
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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

1 HCPAC/HB 238

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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February 17, 1998

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Mr. President:

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Your JUDICIARY COMMITTEE, to whom has been referred

11

12

HOUSE BILL 238, as amended

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

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16

Respectfully submitted,

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Fernando R. Macias, Chairman

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

1 HCPAC/HB 238

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Adopted _____ Not

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Adopted _____

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(Chief Clerk)

(Chief Clerk)

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Date _____

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The roll call vote was 6 For 2 Against

11

Yes: 6

12

No: Payne, McSorley

13

Excused: None

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Absent: None

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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February 16, 1998

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Mr. President:

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Your PUBLIC AFFAIRS COMMITTEE, to whom has been
referred

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HOUSE BILL 238, as amended

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has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
JUDICIARY COMMITTEE.

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Respectfully submitted,

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Shannon Robinson, Chairman

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

1 HCPAC/HB 238

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Adopted _____ Not

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Adopted _____

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(Chief Clerk)

(Chief Clerk)

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Date _____

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The roll call vote was 4 For 1 Against

12

Yes: 4

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No: Smith

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Excused: Adair, Boitano, Garcia, Ingle

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Absent: None

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