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## LEGISLATION

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Included in this tab are the City of Rio Rancho Administrative Policies and Procedures for Public Improvement District Guidelines and Application Procedures, §§2-10-1 through 2-10-8, followed by Chapter 5, Article 11 NMSA 1978, also referred to as the Public Improvement District Act §§5-11-1 through 5-11-27.



## CITY OF RIO RANCHO ADMINISTRATIVE POLICIES AND PROCEDURES

### Public Improvement District Guidelines And Application Procedures

Chapter: 2  
Article: 10  
Revised:  
Effective: October 31, 2003

#### Section

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#### 2-10-1 Title

Sections 2-10-1 through 2-10-8 of this article may be cited as the Public Improvement District Guidelines and Applications Procedures.

#### 2-10-2 Purpose

Public Improvement District Guidelines and Application Procedures (the “**Policy**”) are intended to serve as guidelines for the purpose of considering and, as appropriate, approving the establishment of public improvement districts and the issuance of bonds of such districts pursuant to the Public Improvement District Act, Sections 5-11-1 through 5-11-27 NMSA 1978, as amended (the “**Act**”). The purpose of this Policy is to enable the City to make a reasoned judgment concerning the terms and conditions upon which to approve the formation of a public improvement district (a “**PID**”) and to provide procedures for the City to consider PID applications.

#### 2-10-3 General Concepts

A. GENERAL USE. PIDs should be used primarily in connection with the financing of infrastructure for development of residential projects, master planned communities or substantial

commercial development and redevelopment. PIDs may also be used to provide an enhanced level of public infrastructure amenities and/or municipal services. In order to avoid inefficient use of limited resources, unless otherwise agreed, PIDs will generally not be approved to finance less than \$3,000,000. The City's approval of a PID shall be based on an applicant's demonstration that the PID will provide benefit to the end-users of the PID-financed infrastructure or to the City which would not otherwise be available. Such benefits may include, without limitation, additional amenities, services, increased quality of development or pricing benefits. A master planned development with a fiscal impact analysis which demonstrates that the cost of infrastructure delivery to the development will not have a net cost to the City will be deemed to have met the end-user benefit requirements. Public improvements financed by a PID must conform to applicable City policies for development. Except as expressly agreed, "stand alone" utilities which compete directly or indirectly with City services shall not be financed through PIDs. Real property dedications and conveyances required by existing City policies shall remain in effect, notwithstanding the establishment of a PID.

**B. COST AND EXPENSES; REIMBURSEMENT.** Unless otherwise agreed, all costs and expenses incurred by the City in connection with (i) its review of a PID application and (ii) the formation of a PID shall be paid by the applicant through advance payments as provided in this Policy. Costs and expenses incurred in connection with the application and formation of a PID shall not be a liability of the City. Costs and expenses shall include the services rendered by City staff and services rendered by outside consultants who may be retained by the City. Outside consultants may include, but not be limited to, bond counsel, financial advisers, engineers, appraisers, tax consultants and attorneys, retained at the rates normally charged by those consultants. If authorized by the PID, all or part of such costs may be reimbursed to the applicant, provided that such reimbursement shall be in conformity with federal law, state law and these guidelines. Except as otherwise agreed, PIDs will construct or finance improvements on such terms and with such persons as the PID Board of Directors determines to be appropriate, in accordance with Section 5-11-10(D) of the Act, as amended. Unless otherwise agreed, all costs of administration and operation of the PID and the operation and maintenance of public infrastructure in the PID, which has not been dedicated to and accepted by the City, shall be the responsibility of the PID, the applicant, applicable homeowners associations, or any combination of the foregoing, as may be acceptable to the City.

**C. PID BOARDS OF DIRECTORS; DELEGATED AUTHORITY.** PIDs will initially be governed by a 5-member board of directors appointed by the City Council. The board shall be composed of two full-time employees of the City, two persons selected by the Applicant with the approval of the City Council, and a fifth member selected by the other 4 members. The City Council may, in accordance with law, delegate certain responsibilities of governance of PIDs to public officials employed by the City. The day-to-day responsibilities of PIDs will be performed by outside personnel pursuant to an agreement (including a PID Development Agreement, constituting a development agreement pursuant to Section 5-11-10(A)(2) of the Act), or the City staff (which Development Agreement may be denominated a "**PID operating agreement**" or otherwise, in order to avoid confusion with other development agreements entered into by the parties with respect to real property within the City). Each PID Development Agreement shall implement this Policy. Upon

execution by the City and the Applicant, the PID Development Agreement shall supersede this Policy in the event of any conflict. On a date not more than 6 years after the formation of a PID, new PID Board Members shall be elected or the governance of the PID shall revert to 5 members of the City Council, in accordance with the Act.

D. SELF SUPPORTING; NO IMPACT ON CITY. Unless otherwise agreed, PIDs shall be self-supporting with regard to financing, operations and maintenance, and City funds will not be used for PID purposes. Notwithstanding anything contained in this Policy, neither the City's property, full faith and credit nor its taxing power shall be pledged to the payment of any PID obligation or indebtedness. The amount and structure of a PID debt should not have any direct negative material impact on the City's debt ratings with Standard & Poor's Corporation, Moody's Investors Services, Inc., Fitch Investor Services, Inc. or any other nationally recognized bond-rating agency service then rating the City's outstanding bonds.

E. PID DEVELOPMENT AGREEMENT; FEASIBILITY REPORTS. The amount, timing and form of a PID financing shall be determined by the PID board. A board's decision should be based upon a project feasibility report established by agreement of the City, the PID and the applicant through a PID Development Agreement pursuant to the Act.

#### **2-10-4 Pre-Application Meeting With City Staff**

A. PID REVIEW STAFF; PRELIMINARY TASKS. The City's PID Review Staff, (hereafter "Staff") shall be composed of the City Administrator, the City Finance Director, the City Land Use Planning Director, the City Public Works Director and the City Attorney, or their successors in function. Each PID applicant shall meet with the Staff in order to accomplish the following preliminary tasks:

1. Make an initial determination whether the proposed PID is consistent with the City's growth policies, land use and development policies, zoning and other applicable regulations;
2. Make an initial determination whether the applicant's ownership interest, delegation of ownership rights or other legal control of the real property proposed to be included in the PID creates standing to submit a PID application;
3. Establish a proposed schedule for (i) the applicant's submittal of a PID application, (ii) Staff's review of the application for completeness, and (iii) City Council meeting or meetings for consideration of and action on the application;
4. Identify any related City approvals required to permit the PID to construct the proposed improvements.

**B. ROLE OF PID REVIEW STAFF.** Staff's determinations shall be advisory for the purposes of assisting applicants in submitting complete applications with detail and information required to enable meaningful consideration by the City Council. Staff determinations and recommendations shall be considered by, but not be binding on, the City Council.

**C. INVITATION TO APPLY FOR PID.** If Staff concludes that an application is consistent with City policies and regulations, including this Policy, then an invitation to submit an application will be extended to the applicant. Staff will advise the applicant of the requested application contents in the matter set forth in Section 2-10-5. If Staff determines that the proposed PID is inconsistent with City policies and regulations, the applicant may appeal that determination to the City Council, which will determine whether or not an invitation to apply for a PID will be extended.

### **2-10-5 Application Contents**

Considering the recommendations of the Staff or the City Council, the application should include the following information and documentation.

**A. LEGAL DESCRIPTION; QUALIFIED ELECTORS' CONSENT.** A description of the proposed PID, including a legal description of its boundaries, names and addresses of all persons or entities with any interest in the property, and the names and addresses of any qualified electors located within the proposed boundaries. A current title report on the property and a certificate from the county clerk shall be submitted as evidence of the names of persons with any interest in the land and qualified resident electors located within the proposed PID boundaries. The application shall include evidence satisfactory to the City of the irrevocable consent of the number of property owners and qualified electors required by the Act for the creation of the PID.

**B. GENERAL PLAN.** A detailed description of the types of public infrastructure to be financed by the PID, including the estimated construction or acquisition costs of the public infrastructure, projection of working capital needs, including adequate funds for repair and replacement of infrastructure, the annual operation and maintenance costs of the public infrastructure and the governmental approvals that will be required for both the public and private improvements to be constructed and operated. The description shall contain adequate information to establish financial parameters for the operation and financing of the PID as set forth in Section 2-10-7 of this Policy.

#### **C. PRELIMINARY FINANCING PLAN AND SCHEDULE.**

1. An estimated project schedule for construction commencement and completion of (a) the public infrastructure and (b) the private development, which shall include a financing plan for the public infrastructure, including both capital and operating/maintenance costs for all undedicated improvements undertaken by the PID.

2. The financing plan may include projections for a period covering (i) the expected term of

existence of the PID, (ii) 30 years following the creation of a PID property tax or special levy, or (iii) the bond payment date of any Bonds issued by the PID, whichever shall be the longest. The financing plan should include (a) the estimated costs of improvements; (b) projected costs of maintenance after construction and (c) a preliminary description of the improvements to be owned and maintained by the City and the PID.

D. FEASIBILITY STUDY. A financial feasibility study prepared by an independent professional with appropriate expertise for the entire project (or such phases of the project that are expected to be constructed during the term of the development), covering both the public infrastructure and the private development. The feasibility study should include:

1. An analysis of how the proposed debt financing, operation and maintenance costs, user charges and other PID costs will impact the ultimate end users of the property; and
2. Specifically projected property taxes, property tax rates, special levies, special assessments, fees, charges and other costs that would be imposed on property in the PID, and analysis of the potential impact that such taxes, levies and charges will have on the marketability of the private development; and comparison of proposed tax rates and charges in adjoining and similar areas outside of the proposed district.

E. APPRAISAL. To the extent applicable to a request for debt financing the applicant shall provide a current appraisal (the "MAI Appraisal") of the fair market value of the property within the proposed PID, including (i) the improvements to be financed by the PID and (ii) other improvements being constructed by the applicant during the PID construction period, the completion of which is guaranteed by the applicant. The MAI Appraisal shall be prepared by a person who is designated as a Member Appraisal Institute ("MAI") and a certified general real estate appraiser (an "MAI Appraiser"). The form and substance of the MAI Appraisal shall be acceptable to the City.

F. MARKET DEMAND STUDY. To the extent applicable, a market demand study for private development in the PID prepared or reviewed and concurred with by an independent consultant acceptable to the City. Such study shall include estimates of the revenue to be generated by the development and estimated market absorption of the development.

G. APPLICANT FINANCIAL INFORMATION. A description of the applicant's professional experience and evidence demonstrating its financial capacity to undertake the development associated with the public infrastructure and private development. Such information may be accompanied by audited, reviewed, or at minimum, compiled financial statements for the most recent 3 years, a description of past projects and disclosure of any material litigation.

H. DRAFT DISCLOSURE. An initial draft form of disclosure to prospective PID landowners which may be filed and recorded with the County Clerk at the time of each sale of real property within the PID, describing the anticipated and maximum tax, special levy, assessment, charge, and any other financial obligation that is anticipated to be imposed on real property within the PID. The

disclosure from shall be subject to City review and approval.

I. OPERATING PLAN. A draft operating plan for the PID describing the operation and maintenance of the infrastructure and all other services in the PID, the estimated costs of the same, and whether operation and maintenance is proposed to be provided by the PID or the City.

J. COMPLIANCE CERTIFICATE. A certificate that the PID will comply with City's current zoning requirements.

K. OTHER INFORMATION. Such other information as the City may reasonably require after its initial review of the application, including, but not limited to, preliminary legal opinions, further information regarding the relationship of the plan to City's development objectives, additional proof of financial capability, business references, term sheets for financing and financial commitment letters. Following the application conference, the City shall, within 15 days, provide as complete as practicable a list of additional information items needed.

#### **2-10-6 Application And Approval Process**

A. APPLICATION SUBMISSION. **10 copies** of an application for the formation of a PID and an application fee of \$30,000 (the "**Application Fee**") shall be submitted to the City Administrator. The Application Fee must accompany the submission of the application copies.

B. APPLICATION FEES. The Application Fee shall be used for the initial application review and project feasibility analysis, including the payment of the City's financial and legal advisors, at their customary rates. \$10,000 of the Application Fee shall be non-refundable. If the applicant withdraws its application prior to the City's completion of its application review, the City shall remit the unused portion, if any, of the Application Fee to the applicant. Upon the applicant's request, the City will provide an accounting of expenditures of funds advanced above \$10,000. Any unused portion of advances shall be refunded to the application at such time as the City determines that all costs and expenses have been paid. The City and its financial and legal consultants shall use reasonable efforts to determine whether any features of a proposed PID appear not to be feasible and to advise the applicant early in the review process.

C. POST APPLICATION CONFERENCE. After the application and Application Fee have been submitted, the City Administrator will arrange a conference with Staff for the purpose of reviewing the application and determining whether the application is complete. If, following the application conference or any other time during the application process, Staff requests additional information, the applicant shall provide any and all supplemental information, in accordance with the provisions of Section 2-10-5 K.

D. PID REVIEW STAFF REPORT. After analysis of a complete application, Staff, will prepare a report, including recommendations, an analysis of the impact of PID formation, and its effects on

the City. The report may recommend disposition of the application and any additional requirements in connection with the applicant and/or the PID. If all costs billed to or incurred by the City have been paid by the applicant by a date at least 14 days prior to the date of the meeting of the City Council at which the appropriate resolution(s) approving the application are to be introduced, and if the application meets the qualifications provided herein, the application, along with any report and recommendations by Staff, will be forwarded to the City Council, along with drafts of the appropriate implementing resolution(s).

E. **PID DEVELOPMENT AGREEMENT.** If the City Council preliminarily approves a PID application, the applicant and Staff shall coordinate a schedule for formation of the PID and shall negotiate an appropriate PID Development Agreement. The PID Development Agreement shall be entered into prior to formation of the PID and shall incorporate Staff recommendations and any other restrictions, provisions and agreements required by the City.

F. **PRELIMINARY APPROVAL.** An applicant may request preliminary, non-binding approval of its PID application by the City Council ("**Preliminary Approval**").

1. A request for Preliminary Approval will be considered following payment of the Initial Application Fee and information as follows:

- (i) A description of the proposed PID's boundaries;
- (ii) A description of the improvements to be constructed by the applicant;
- (iii) The estimated construction costs of the improvements and anticipated completion time;
- (iv) A description, by category, of improvements and related costs to be financed by the PID;
- (v) The estimated issuance amount of PID bonds;
- (vi) The total annual special levy amount (i.e. estimated aggregate annual debt service on bonds); and
- (vii) The maximum annual PID property tax or, in the case of a special levy, the allocation method and maximum special levy per dwelling unit (single family residences) or per acre (multi-family and commercial), and method by which the levy will be allocated from a bulk tract to finished lots.

2. The Staff report will advise the City Council whether Preliminary Approval is recommended, not recommended, or that no recommendation is made.

G. **ADDITIONAL FEES.** An applicant that has received Preliminary Approval may be required to make such additional advances as Staff determines are necessary to pay the costs of reviewing the

applicant's request for formal approval of the formation of the PID. However, an applicant may be required to submit an additional Initial Application Fee if Staff determines the application for formal approval of a PID departs substantially from the parameters set forth in the application for Preliminary Approval.

H. APPROVAL OF PID INFORMATION AND FINANCING. The City Council may consider approval of the formation of the PID based on the terms of the PID Development Agreement which may be approved prior to or concurrently with the approval. The City Council may include in its approval the issuance of one or more series of PID bonds, subject to the terms and conditions of the PID Development Agreement. The City Council's approval of PID formation and issuance of bonds shall be conditioned on the requirement that the PID shall use bond counsel, underwriters and/or other consultants acceptable to the City. PID Development Agreements shall not be amended without the express written approval of the City Council.

#### **2-10-7 PID Operations And Debt Financing.**

A. PID ADMINISTRATION EXPENSE FEE. Upon formation of a PID the applicant shall deposit with the PID a nonrefundable administrative expense fee in the amount of \$10,000. The administrative expense fee shall be applied to the costs and expenses incurred in connection with the formation, review of any feasibility study, election costs, administration, operation and maintenance of the PID or its public improvements. From time to time, upon depletion of the administrative expense fee, the PID may request, and the applicant shall promptly deposit with the PID, additional amounts deemed by the PID to be reasonably necessary for the purposes contemplated in this Section 2-10-7A. Nothing in this Section 2-10-7A shall preclude the reimbursement of such expenses from PID taxes, levies, charges or bond proceeds, as permitted by the Act.

B. ADMINISTRATION, OPERATION AND MAINTENANCE CHARGE. For the PID to be self-supporting for its administrative, operation and maintenance expenses, and to finance services in addition to those provided by the City, the City may condition its approval of a PID on the PID'S imposition of up to \$3.00 per \$1,000 of assessed value ad valorem tax, not as tax or charge of the City, but in accordance with the provisions of Section 5-11-23 of the Act, as amended. Provided, however, that, to the extent permitted by law the PID shall be entitled to charge such rates, fees and charges to property owners as are necessary to address any shortfall in the expense required to operate and maintain the PID's improvements, and that such rates, fees and charges shall be establish in the Development Agreement for the PID.

C. GENERAL OBLIGATION BONDS. General Obligation Bonds of the PID will be payable from an unlimited ad valorem tax on taxable property located within the PID designated by the PID general plan as subject to the PID property tax, as required by the Act.

1. In a feasibility report, an applicant for general obligation bonds shall describe to the PID Board of Directors the following:

- (i) The current direct and overlapping tax and assessment burden on the taxable property that is proposed to be taxed and the fair market value and assessed valuation of the taxable property, as shown on the most recent assessment roll.
- (ii) The projected amount and timing of PID general obligation bonds to be used.
- (iii) The projected market absorption of the development within the PID.
- (iv) The effect of the PID bond issuance on PID tax rates, calculated as of the beginning, midway through, and at the end of the market absorption period or based on the phasing of the project to be financed, as applicable.
- (v) An estimate of the applicant's construction costs associated with the public improvements, in excess of the estimated PID funded costs of the project.
- (vi) The necessity of the applicant and the PID entering into a contribution agreement, which may require a letter of credit or other third-party guarantee of the bonds by the applicant.

2. The value to lien ratio, after the issuance of the bonds and construction of the improvements to be financed by the PID, will be at least 3 to 1 based on a MAI appraisal, except as otherwise approved by the City;

3. The projected tax rate for debt service set forth in the feasibility report shall be established in the PID Development Agreement and may include provisions which (i) limit the maximum tax rate that will be imposed by the PID for the payment of debt service on PID bonds, (ii) require a contribution agreement from the Applicant for the payment of debt service in the event of a shortfall in revenue from the PID tax revenues projected in connection with, and at the time of, PID formation, or (iii) establish, to the City's satisfaction, other protection for homeowners or other end-users of the property located in the PID against excessive tax rates in the event that PID indebtedness exceeds PID tax revenues available to pay debt service in any particular year.

D. SPECIAL LEVY BONDS. Special Levy Bonds shall be secured by a first lien (co-equal to the lien for general taxes and prior special assessments) on the property benefitted in the manner contemplated by Section 5-11-20(G) NMSA 1978.

1. Applicants for special levy bonds shall describe in each project feasibility report, the following:
  - (i) The current direct and overlapping tax, assessment burdens and special levy on real property to comprise the PID and the full cash value and assessed valuation of that property as shown on the most recent assessment roll.
  - (ii) The projected amount and timing of the PID special levy bonds to be issued.

- (iii) The projected market absorption of development on the PID.
- (iv) The projected special levy burden to be placed on the assessed parcels and the anticipated method of assessment.
- (v) An estimate of the applicant's construction cost associated with the public improvements in excess of the estimated PID funded costs of the project.
- (vi) The necessity of the applicant and the PID entering into a contribution agreement, which may require a letter of credit or other third-party guarantee of the bonds by the applicant.

2. The value to lien ratio, after the issuance of the bonds and construction of the improvements to be financed by the PID, will be at least 3 to 1 based on a MAI appraisal;

3. At the time the PID is formed, the maximum allowable rate of special levy for residential property shall not cause the total tax and assessment obligation for such property, including projected ad valorem taxes, special levies and special assessments, to exceed 1.99% of the anticipated market value of residential property as determined by a then current MAI Appraisal. The 1.99% shall include all known and authorized, but unissued debt and any other anticipated fees or assessments which may be imposed by the City or special district on a property within the PID - i.e., special assessment districts, including the proposed maximum special levy, except service charges for utilities and refuse.

E. REVENUE BONDS. Revenue Bonds shall be payable from a PID revenue source.

- 1. An applicant for revenue bonds shall describe in each project feasibility report, the following:
  - (i) The current fee structure for comparable services or otherwise incurred by persons who would be responsible for paying the proposed rates, fees, and charges
  - (ii) The revenue source from which bonds will be payable. The City reserves the right to require the applicant to produce such independently prepared feasibility studies or reports as it deems necessary to confirm the amount and availability of revenues.
  - (iii) The projected market absorption of development within the PID.
  - (iv) The projected amount and timing of PID revenue bonds to be issued.
  - (v) The financial impact of the proposed rates, fees, and charges on prospective residents or other users of such rates, fees and charges.
  - (vi) An estimate of the applicant's construction cost associated with the public improvements in excess of the estimated PID funded costs of the project.

- (vii) The necessity of the applicant and the PID entering into an appropriate contribution agreement, which may require a letter of credit or other third-party guarantee of the bonds by the applicant.

F. **SUITABILITY.** The City intends that the PID only have the power to sell the proposed bonds to suitable investors. If the proposed bond issue is not rated (either on its own merits or by the use of appropriate credit enhancement) in 1 of the 3 highest rating categories used by Standard & Poor's Corporation, Moody's Investors Services, Inc., Fitch Investors Services, Inc. or any other nationally recognized bond-rating agency service, then the bonds must have minimum denominations of \$100,000 and be available for purchase and restricted with respect to resale to "Qualified Institutional Buyers" (as such term is defined in Rule 144A of the Securities and Exchange Commission) or to "accredited investors" (as such term is defined in Rule 501 of Regulation D of the Rules Governing the Limited Offering and Sale Securities without Registration under the Securities Act of 1933). It is the intention of the City to have investor suitability achieved through the rating requirements set forth in the preceding sentence or the establishment of large minimum denominations (e.g. not less than \$100,000) and, if the City determines it is appropriate, covenants limiting secondary market sales of PID bonds through registered broker-dealers. Notwithstanding the restrictions pertaining to public sales and private placements of bonds set forth in Section 2-10-7, the restrictions may be modified or relaxed if other financing structures or features are presented which, in the sole discretion of the City Council, provide other means to address investor suitability concerns. The minimum denomination requirements set forth above for PID bonds which are initially issued without rating shall not continue to apply if the PID subsequently obtains a rating in one of the three highest rating categories as provided in this Section.

G. **CONTRIBUTION.** At the time the PID is formed, financial projections must demonstrate that the landowners shall provide over the life of the Project at least \$0.25 in infrastructure or community improvements (which may include, for example, dry utilities and other improvements for the benefit of the property owners within the PID, irrespective of whether such improvements are publicly or privately owned) for each \$1.00 of debt to be issued by a PID to finance public infrastructure purposes, except as otherwise determined by the City. The City may condition approval of PID formation on additional financing requirements, including, without limitation, the deposit of cash or a letter of credit (or similar credit facility) as security for completion of the infrastructure development. If agreed to by the City or PID Board, as applicable, infrastructure and community improvements constructed or acquired by the applicant prior to, contemporaneously with or subsequent to the formation of the PID may be included in calculating the applicant's compliance with this Section 2-10-7G; provided, that no improvements which have not already been constructed or acquired shall be included in that calculation unless the completion of the improvements is guaranteed or secured by an appropriate completion bond, cash deposit or other security acceptable to the City or PID Board, as applicable.

H. **DEBT SERVICE RESERVE FUNDS.** If allowed by law (including any applicable federal laws relating to the tax exempt status of the bonds), all bond issues may include a debt service reserve fund in an amount acceptable to the PID Board.

I. ENVIRONMENT SITE ASSESSMENTS. Unless otherwise provided to the City, the PID and City will require an independent environmental report or assessment of any real property which will be dedicated to or otherwise owned, leased or operated by the City or the PID and a proposed form or indemnity agreement with respect to all environmental law liability.

J. REFINANCING AND REFUNDING BONDS. Refinancings and refundings of bonds issued on behalf of a PID will be considered using the same criteria set forth in Section 2-10-7 of this Policy and shall be subject to the review and approval of the City Council. Refinancings and refundings will be expected to either (i) generate interest rate or net present value savings; (ii) restructure payment of principal; (iii) reimburse the applicant for actual costs expended for public improvements contemplated to be part of the proposed Project; or (iv) eliminate burdensome covenants.

K. COST OF CHANGE. Applicants shall be responsible for all additional costs and expenses incurred in any special levy or property tax modifications resulting from changes to the development not anticipated in the application.

#### **2-10-8 Miscellaneous.**

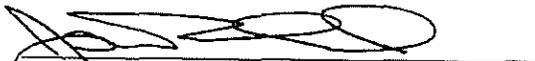
A. DISCRETION AND WAIVER. Based upon the recommendations of Staff and/or financing and legal consultants retained by the City, the City Council may approve PID applications which do not meet the foregoing criteria, if the City Council determines that the particular features of the proposed PID, likelihood that the PID's projects and purposes will be successfully completed, and mechanisms protecting against default on bonds, all warrant that the foregoing criteria need not be applied. In making that determination, the City Council may consider an opinion of an underwriter that the particular features of the PID, the proposed projects and the bonds proposed to be issued can be successfully marketed and that the finance plan is feasible.

B. PURCHASER DISCLOSURE; MARKETING MATERIALS. Each purchaser of real property located in the PID shall execute an acknowledgment of the PID disclosure form. The applicant shall also supply the City with a copy of the receipt. Applicants are required to describe in their promotional material the financial and other relative impacts on the developments being induced in a PID. Copies of the disclosure form must be placed on file with the City.

C. INDEMNITY. The applicant (or such other third party acceptable to the City and the PID), shall indemnify the City and the PID and their agents and employees and shall hold the City and the PID and their agents, officers and employees harmless for, from and against any and all liabilities, claims, costs and expenses, including attorneys' fees, incurred in any challenge or proceeding to the formation, operation, administration of the PID, the offer and sale of PID bonds, the levying by the PID of any tax, assessment, special levy or charge and the operation and maintenance of public infrastructure financed or owned by the PID.

D. AMENDMENT. All amendments to this Policy shall have a prospective effect only and shall not in any way affect or otherwise modify the approval of a preexisting PID.

Approved this 31<sup>st</sup> day October, 2003.



James M. Palenick  
City Administrator

**ARTICLE 11**  
**Public Improvement District**

Section	
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5-11-4	Notice and public hearing.
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**5-11-1. Short title.**

Chapter 5, Article 11 NMSA 1978 may be cited as the "Public Improvement District Act".

**History:** Laws 2001, ch. 305, § 1; 2013, ch. 45, § 1.

**The 2013 amendment,** effective July 1, 2013, added the NMSA chapter and article for the Public Improvement District Act; and at the beginning of the sentence, deleted "Sections 1 through 27 of this act" and added "Chapter 5, Article 11 NMSA 1978".

**Applicability.** — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1 through 4 and 6 through 10, do not apply to an application for formation of a public improvement district

submitted to a governing body prior to January 1, 2014.

#### **5-11-2. Definitions.**

As used in the Public Improvement District Act:

A. "allowable base" means the sum of the appraised value, not including the value of public infrastructure improvements, of:

(1) taxable property in a district that is owned by persons other than the applicant or the applicant's related entities;

(2) commercial, industrial or retail property in a district that is owned by the applicant or the applicant's related entities for which a certificate of completion has been issued; and

(3) all other taxable property in a district not described in Paragraphs (1) and (2) of this subsection, to the extent that its appraised value is less than or equal to the appraised value of property described in Paragraph (1) of this subsection;

B. "applicant" means a person that applies for the formation of a district pursuant to the Public Improvement District Act;

C. "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 5-11-6 NMSA 1978;

D. "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;

E. "debt service" means the principal of, interest on and premium, if any, on the bonds, when due, whether at maturity or prior redemption; the 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;

F. "development agreement" means an agreement between a property owner or developer and the county, 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;

G. "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;

H. "district board" means the board of directors of the district, which shall be composed 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 5-11-9 NMSA 1978;

I. "election" means an election held in compliance with the provisions of Sections 5-11-6 and 5-11-7 NMSA 1978;

J. "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;

K. "general plan" means the general plan described in Section 5-11-3 NMSA 1978, as the plan may be amended from time to time;

L. "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;

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

N. "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 the owner's 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;

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

(7) the manager or member of a limited liability company holding record title to land within the district who has been authorized to represent the company;

O. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or

other association;

P. "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;

Q. "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;

R. "related entities" means two or more entities that are owned in an amount greater than fifty percent by the same person, either directly or through one or more persons;

S. "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;

T. "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

U. "treasurer" means the treasurer of the governing body or the person appointed by the district board as the district treasurer pursuant to Section 5-11-6 NMSA 1978.

History: Laws 2001, ch. 305, § 2; 2009, ch. 46, § 1; 2013, ch. 45, § 2.

The 2013 amendment, effective July 1, 2013, defined the additional terms; and added Subsections A, B, O and R.

**Applicability.** — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1 through 4 and 6 through 10, do not apply to an application for formation of a public improvement district submitted to a governing body prior to January 1, 2014.

The 2009 amendment, effective June 19, 2009, added Subsection L(7).

#### **5-11-2.1. Formation of a public improvement district; application requirements.**

A. An application for the formation of a district shall be submitted to the governing body. Each application shall be supported by 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 and shall contain, at a minimum, the following:

- (1) a description of the proposed district, including:
  - (a) a legal description of its boundaries;
  - (b) the identity and addresses of all persons or entities with any interest in the property, including submitting a current title report on the property as evidence of the names of persons with any interest in the property;
  - (c) the names and addresses of any resident qualified electors located within the proposed boundaries, if applicable;
  - (d) an explanation as to how the district boundaries were chosen;
  - (e) adequate information to establish financial parameters for the operation of the district, if applicable; and
  - (f) information regarding the future ownership and maintenance of the public infrastructure improvements or enhanced services;
- (2) a detailed description of the types of public infrastructure improvements or enhanced services to be provided by the district, including, if applicable:
  - (a) the estimated construction or acquisition costs of the public infrastructure improvements, including costs for repair and replacement of public infrastructure improvements;
  - (b) the estimated annual operation and maintenance costs of the public infrastructure improvements;
  - (c) projection of working capital needs for enhanced services; and
  - (d) any governmental approvals and licenses that are expected to be required for both the public and private improvements to be constructed and operated;
- (3) a feasibility study containing the information required in Subsection A of Section 5-11-16 NMSA 1978;

(4) a description of the applicant's professional experience and evidence demonstrating its financial capacity to undertake the development associated with the public infrastructure, enhanced services and private development, as applicable;

(5) a disclosure form to owners describing:

(a) that the applicant intends to file an application for formation of a public improvement district;

(b) the purpose of the proposed public improvement district;

(c) a description of what a public improvement district is; and

(d) 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;

(6) certification that the disclosure pursuant to Paragraph (5) of this subsection has been provided to each owner;

(7) a description of how the proposed district meets the existing development objectives of the municipality or county, to the extent that the municipality or county has adopted policies identifying such objectives, including how the district is consistent with:

(a) the goals of promoting orderly development;

(b) the municipality's or county's comprehensive plan;

(c) growth management policies and zoning requirements; and

(d) the municipality's or county's applicable policies for development, growth management and zoning; and

(8) any other information that the governing body may reasonably require after its initial review of the application.

B. The requirements of Paragraph (5) of Subsection A of this section shall not apply if the petition is signed by the owner of all the land in the district described in the petition submitted to the governing body.

C. The governing body may charge a fee to be applied by the governing body to the costs incurred in connection with the processing and review of the application and formation of the district in accordance with this section. Upon formation of the district, the governing body may charge an additional administrative expense fee to be applied by the governing body to the costs and expenses incurred in the formation of the district, specifically the review of the feasibility study and current appraisal of the project.

History: Laws 2013, ch. 45, § 10.

**Effective dates.** — Laws 2013, ch. 45, § 13 made Laws 2013, ch. 45, § 10 effective July 1, 2013.

**Applicability.** — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1

through 4 and 6 through 10, do not apply to an application for formation of a public improvement district submitted to a governing body prior to January 1, 2014.

### **5-11-3. Resolution declaring intention to form district.**

A. If the public convenience and necessity require, and on presentation of an application required by Section 10 [5-11-2.1 NMSA 1978] of this 2013 act that is supported by 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. If the governing body fails to act within ninety days following presentation of a petition to create a public improvement district, the petition shall be deemed to have been accepted by the governing body, which shall adopt a resolution and hold a public hearing pursuant to this section. 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 5-11-4 NMSA 1978;
- (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 shall direct that a hearing on formation of the district be scheduled and that notice be mailed and published as provided in Section 5-11-4 NMSA 1978.

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

**History:** Laws 2001, ch. 305, § 3; 2003, ch. 435, § 1; 2013, ch. 45, § 3.

**The 2013 amendment**, effective July 1, 2013, required the filing of an application for formation of a public improvement district; eliminated the authority of a governing body to require the petitioners to prepare a study of the feasibility and costs of the proposed district; in Subsection A, in the first sentence, after "on presentation of", added "an application required by Section 10 of this 2013 act that is supported by"; and deleted former Subsection B, which authorized a governing body to require that the petitioners prepare a study of the feasibility and cost of the proposed district and which authorized the district to require the petitioners to deposit the estimated cost of the study with the treasurer of the governing body.

**Applicability.** — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1 through 4 and 6 through 10, do not apply to an application for formation of a public improvement district submitted to a governing body prior to January 1, 2014.

**The 2003 amendment**, effective June 20, 2003, inserted the penultimate sentence in the undesignated paragraph of Subsection A; and updated the internal references.

#### 5-11-4. 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.

**History:** Laws 2001, ch. 305, § 4.

#### **5-11-5. 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.

**History:** Laws 2001, ch. 305, § 5.

**Cross references.** — For subpoena power, see Rule 1-045 NMRA.

## ANNOTATIONS

**Home rule municipality.** — The provisions of the Public Improvement District Act, 5-11-1 NMSA 1978 et seq., do not expressly limit the legislative powers of a home rule municipality; thus, such a municipality has the authority to enter into a contract, or development agreement, with a private developer to facilitate the construction of retail business establishments. 2002 Op. Att'y Gen. No. 02-02.

In order to avoid the constitutional pitfalls associated with development agreements, a home rule municipality should include in any authorizing ordinance items such as: (a) who can enter into an agreement; (b) how it is entered into; (c) its duration; (d) what zoning rules will be affected; (e) description and proposed use of the property; (f) how the agreement is consistent with current municipal planning documents; and (g) how to handle Procurement Code, 13-1-28 to 13-1-199 NMSA 1978, issues. 2002 Op. Att'y Gen. No. 02-02.

### 5-11-6. 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

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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 5-11-7 NMSA 1978. 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 right to vote on the question of formation of the district shall not be assigned or delegated to the property owners signing a petition submitted to the governing body for formation of a district or related entities of such property owners. 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 5-11-7 NMSA 1978.

**History:** Laws 2001, ch. 305, § 6; 2013, ch. 45, § 4.

**The 2013 amendment,** effective July 1, 2013, prohibited the assignment of the right to vote on the question of formation of a public improvement district to the property owners who sign the petition that is submitted to the governing body or to related entities of those property owners; and in Subsection B, added the third sentence.

**Applicability.** — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1 through 4 and 6 through 10, do not apply to an application for formation of a public improvement district submitted to a governing body prior to January 1, 2014.

#### **5-11-7. 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 [5-11-19 NMSA 1978] 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 [be] 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, [or] 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.

**History:** Laws 2001, ch. 305, § 7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Effective dates.** — Laws 2001, ch. 305 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

## ANNOTATIONS

**Application of the Election Code to public improvement district formation elections.** — The Election Code's thirty-day limitation period for filing a complaint to contest an election applies to a public improvement district formation election under the Public Improvement District Act. *Glaser v. LeBus*, 2012-NMSC-012, 276 P.3d 959.

Where the petitioners filed a complaint to contest an election to form a public improvement district under the Public Improvement District Act thirteen months after the election, the action was barred by the thirty-day limitation for filing a complaint to contest an election under the Election Code. *Glaser v. LeBus*, 2012-NMSC-012, 276 P.3d 959.

**Election Code applies to public improvement district formation elections.** — The formation election provisions of the Public Improvement District Act incorporate the election contest procedures of the Election Code. *Glaser v. LeBus*, 2012-NMCA-028, 274 P.3d 114.

**Elements of election contest.** — An election contest is a challenge to the result of an election, as well as a challenge to the inherent validity of an election when the challenge would necessarily require overturning the results or effects of an election. An election contest can derive from a violation of a provision of the Election Code, from a violation of another statute governing the particular election at issue, or from the New Mexico Constitution. *Glaser v. LeBus*, 2012-NMCA-028, 274 P.3d 114.

**Plaintiff's complaint presented an election contest under the Public Improvement District Act.** — Where plaintiff alleged that the petition and ballot to form a public improvement district were invalid because they did not meet statutory requirements; that the information provided to the municipality and the voters prior to the formation election was false, fraudulent, or misleading; and that the ballot did not present a question that specifically addressed the authority to tax, the challenges to the underlying validity of the election based on a failure to comply with statutory requirements was an election contest governed by the Election Code's election contest procedures. *Glaser v. LeBus*, 2012-NMCA-028, 274 P.3d 114.

### **5-11-8. 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 [5-11-19 NMSA 1978] of the Public Improvement District Act, special levy bonds issued pursuant to Section 20 [5-11-20 NMSA 1978] of that act and revenue bonds issued pursuant to Section 21 [5-11-21 NMSA 1978] 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.

**History:** Laws 2001, ch. 305, § 8.

**5-11-9. 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 a 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' terms, the governing body shall resume governance of the district as its board either directly or through the governing body's designees or, at the governing body's option, shall hold an election of new directors by majority vote of the qualified electors and owners.

History: Laws 2001, ch. 305, § 9; 2009, ch. 46, § 2; 2013, ch. 45, § 5.

The 2013 amendment, effective July 1, 2013, provided for the resumption of governance of a public improvement district by the governing body at the end of the appointed directors' terms; and in Subsection C, after "the governing body shall", added "resume governance of the district as its board either directly or through the governing body's designees or, at the governing body's option, shall".

The 2009 amendment, effective June 19, 2009, deleted former Subsection C which provided that at the end of the appointed director's initial term, the governing body could either resume governance of the district as its board or hold an election of new directors and added a new Subsection C.

#### **5-11-10. 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 [11-1-1 through 11-1-7 NMSA 1978] 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 [13-1-28 through 13-1-199 NMSA 1978], 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.

**History:** Laws 2001, ch. 305, § 10.

#### **5-11-11. Perpetual succession.**

The district has perpetual succession until terminated pursuant to Section 24 [5-11-24 NMSA 1978] of the Public Improvement District Act.

**History:** Laws 2001, ch. 305, § 11.

**5-11-12. 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.

**History:** Laws 2001, ch. 305, § 12.

**5-11-13. 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 [5-11-6 and 5-11-7 NMSA 1978] 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.

**History:** Laws 2001, ch. 305, § 13.

**5-11-14. 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.

**History:** Laws 2001, ch. 305, § 14.

**5-11-15. 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.

**History:** Laws 2001, ch. 305, § 15.

**5-11-16. Project approval.**

A. Before constructing or acquiring any public infrastructure improvement, the district board shall have approved a study of the feasibility and benefits of the public infrastructure improvement project to be prepared, which shall include:

- (1) 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;
- (2) a map showing, in general, the location of the project within the district;
- (3) an estimate of the cost to construct, acquire, operate and maintain the project;
- (4) 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;
- (5) an estimated or projected annual mill or special levy for all owners in the proposed district;
- (6) the current, direct and overlapping tax and assessment burden on taxable property that is proposed to be taxed and the assessed valuation of the taxable property as shown on the most recent assessment roll;
- (7) the expected market absorption of the development within the district and the effect of the bond issuance by the district on tax rates within the district, calculated at the beginning, middle and end of the market absorption period or based on the phasing of the project to be financed, as applicable;
- (8) projections of working capital needs for a period that shall be the longer of:
  - (a) thirty years following the creation of a tax upon the district taxable property; or
  - (b) the final maturity date of any bonds issued by the district;
- (9) an analysis of:
  - (a) the impact of the proposed debt financing, operation and maintenance costs, user charges and other district costs on the ultimate end users of the property, including projected property tax rates, special levies, fees, charges and other costs that would be borne by the

property in the district;

(b) the impact that the costs described in Subparagraph (a) of this paragraph will have on the marketability of the private development; and

(c) a comparison of proposed tax rates and charges in adjoining and similar areas outside of the proposed district;

(10) a financing plan for any private development in the district that is not to be dedicated to the municipality or county; and

(11) a market absorption study for the private development in the district prepared by an independent consultant, which shall include the ability of the market to absorb the private development and a market absorption calendar for the private development.

B. Prior to approval of a project, the district board shall provide notice and opportunity to comment to the owners and the municipality or county.

C. In the event that project approval and formation of the public improvement district are occurring concurrently, a single feasibility study may be used to satisfy the requirement in Subsection A of this section and Paragraph (3) of Subsection A of Section 10 [5-11-2.1 NMSA 1978] of this 2013 act.

D. 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.

**History:** Laws 2001, ch. 305, § 16; 2013, ch. 45, § 6.

**The 2013 amendment,** effective July 1, 2013, expanded the issues that must be addressed in a feasibility and benefits study to include issues related to taxes and assessments, market absorption, working capital needs and debt financing; required a public improvement district to provide notice and an opportunity to comment on the study; in Subsection A, in the introductory sentence, after "public infrastructure", added "improvement" and after "district board shall", deleted "cause" and added "have approved"; added Paragraphs (5) through (11) of Subsection A; and added Subsections B and C.

**Applicability.** — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1 through 4 and 6 through 10, do not apply to an application for formation of a public improvement district submitted to a governing body prior to January 1, 2014.

**5-11-17. 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.

**History:** Laws 2001, ch. 305, § 17.

**5-11-18. Recording documents.**

A. 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.

B. Upon formation of a district, and within thirty days before June 1 and December 1 of each year, a district shall file and record with the county clerk the notice requirements described in Subsection A of Section 11 [5-11-18.1 NMSA 1978] of this 2013 act and include contact information for the district board.

**History:** Laws 2001, ch. 305, § 18; 2013, ch. 45, § 7.

**The 2013 amendment**, effective July 1, 2013, required a public improvement district to file and record with the county clerk notice of obligations to purchasers; and added Subsection B.

**Applicability.** — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1 through 4 and 6 through 10, do not apply to an application for formation of a public improvement district submitted to a governing body prior to January 1, 2014.

**5-11-18.1. Notice obligations to purchaser; requirements; remedies.**

A. Prior to accepting an offer to purchase, a seller or an agent or broker of a seller of residential real property that is located in a district established pursuant to the Public Improvement District Act has an affirmative duty to provide to the purchaser of the property a written notice of information filed with the county clerk pursuant to Subsection B of Section

5-11-18 NMSA 1978, in addition to the disclosure required by Section 47-13-4 NMSA 1978, that includes:

- (1) information that the property is within a public improvement district;
- (2) the purpose of the district;
- (3) an explanation that the purchaser is obligated to pay any property tax or special levy that is imposed by the district board;
- (4) an explanation that the property tax or special levy imposed by the district board is in addition to any other state, county or other local governmental taxes and assessments;
- (5) for special levies:
  - (a) if a special levy has not been authorized by the district board, information that a special levy has not been authorized; or
  - (b) if a special levy has been authorized by the district board: 1) the maximum special levy that is authorized to be imposed upon the property in the district; or 2) that the special levy to be imposed on the property in the district has been prepaid in full as provided in the rate or method of apportionment;
- (6) for general obligation bonds:
  - (a) if general obligation bonds have not been issued, information that general obligation bonds have not been issued; or
  - (b) if general obligation bonds have been issued: 1) the amount of general obligation bonds that are outstanding; 2) the amount of annual debt service on outstanding general obligation bonds; 3) that the maximum rate and amount of property taxes that may be imposed upon the property in the district are limited only by the amount of debt outstanding; and 4) the estimated or projected annual mill levy or special levy per one thousand dollars (\$1,000) of assessed value as of the date of the disclosure with an explanation that the estimated levy or rate may be increased by the district board when necessary to meet debt obligations;
- (7) information that the failure to pay the property tax or special levy could result in the foreclosure of the property;
- (8) information that more information concerning the rate of the property tax or the amount of the assessment and the due dates of each may be obtained from the governing body that authorized the formation of the district; and
- (9) information that a feasibility study was completed as part of the formation of the district and that the feasibility study is available through the governing body that authorized the formation of the district.

B. The provisions of Paragraphs (5) through (7) of Subsection A of this section shall be set apart in a clear and conspicuous manner and in at least twelve-point bold type.

C. This section does not apply to a transfer:

- (1) of property under a court order or foreclosure sale;
- (2) of property by a trustee in bankruptcy;
- (3) of property to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;
- (4) of property by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;
- (5) of property by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship or trust;
- (6) of property from one co-owner to another co-owner of an undivided interest in the real property; or
- (7) of only a mineral interest or leasehold interest.

D. In the event of a finalized sale, any person who suffers any loss of money or property, real or personal, as a result of a violation of Subsection A or B of this section by a seller or an agent or broker of a seller may bring an action to recover actual damages and may be granted injunctive relief under the principles of equity and on terms that the court considers reasonable. The court shall award attorney fees and costs to the party complaining of a violation if the party prevails and actual damages are awarded. The court shall award attorney fees and costs to the party charged with a violation of Subsection A or B of this section if the court finds that the party complaining of such violation brought an action that was groundless. The relief provided in this subsection is in addition to remedies otherwise available against the same conduct under the common law or other laws of this state.

History: Laws 2013, ch. 45, § 11.

Effective dates. — Laws 2013, ch. 45, § 13 made Laws 2013, ch. 45, § 11 effective July 1, 2013.

#### **5-11-19. 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 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 question shall include authorization for a levy, including a limitation on the levy, of a property tax to pay debt service on the bonds. 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; provided that the district board shall have determined by resolution that the principal amount of all district general obligation bonds currently

outstanding and the district general obligation bonds proposed for issuance and sale shall not result in a total annual debt service that exceeds five-tenths percent of the allowable base.

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 5-11-17 NMSA 1978 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.

History: Laws 2001, ch. 305, § 19; 2009, ch. 46, § 3; 2013, ch. 45, § 8.

**Cross references.** — For property tax liens, see 7-38-48 NMSA 1978.

**The 2013 amendment,** effective July 1, 2013, prohibited a public improvement district from selling general obligation bonds until it has determined that the principal amount of its bonds will not exceed a total debt service of five-tenths percent of the value of taxable property in the district; and in Subsection B, after "may issue and sell general obligation bonds of the district", added the remainder of the sentence.

**Applicability.** — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1 through 4 and 6 through 10, do not apply to an application for formation of a public improvement district submitted to a governing body prior to January 1, 2014.

**The 2009 amendment,** effective June 19, 2009, in Subsection A, added the next to the last sentence.

**5-11-20. 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. Prior to issuing special levy bonds, the district board shall set a maximum levy for each class of property that may be imposed for debt service on the special levy bonds.

D. Unless a local government has enacted an ordinance providing a greater limitation, no special levy bonds may be issued if at the time of issuance of such bonds the estimated total tax and assessment obligation for a class of property, including projected ad valorem taxes and special levies as provided in the feasibility study, exceeds one and ninety-five hundredths percent of the anticipated, average market value of each class of property at the time of issuance of a certificate of occupancy as determined by a member appraiser of the appraisal institute.

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

F. 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.

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

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

(1) the 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, but in no case shall the amount of the special levy imposed exceed the maximum special levy provided in the rate and method of apportionment;

(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.

I. 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.

J. 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.

K. 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.

L. 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.

**History:** Laws 2001, ch. 305, § 20; 2013, ch. 45, § 9.

**Cross references.** — For property tax enforcement provisions, see 7-38-48 NMSA 1978 et seq.

The 2013 amendment, effective July 1, 2013, added minimum procedural requirements for the issuance of special levy bonds; added Subsections C and D; and in Paragraph (1) of Subsection H, at the beginning of the sentence, after "the", deleted "maximum" and after "within the district", added the remainder of the sentence.

**Applicability.** — Laws 2013, ch. 45, § 12 provided that the provisions of Laws 2013, ch. 45, §§ 1 through 4 and 6 through 10, do not apply to an application for formation of a public improvement district submitted to a governing body prior to January 1, 2014.

## ANNOTATIONS

**Approval of a special levy.** — A public improvement district special levy may be approved either by a resolution of the board of directors of the district or by an election. *Glaser v. LeBus*, 2012-NMSC-012, 276 P.3d 959.

### 5-11-21. 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 [5-11-17 NMSA 1978] 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 [5-11-23 NMSA 1978] 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.

**History:** Laws 2001, ch. 305, § 21.

#### **5-11-22. Terms of bonds.**

For any bonds issued in connection with Section 19, 20 or 21 [5-11-19, 5-11-20 or 5-11-21 NMSA 1978] 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.

**History:** Laws 2001, ch. 305, § 22.

**5-11-23. 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.

**History:** Laws 2001, ch. 305, § 23.

**Cross references.** — For property taxes in general, see Chapter 7, Article 38 NMSA 1978.

#### **5-11-24. 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.

**History:** Laws 2001, ch. 305, § 24.

**5-11-25. 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.

**History:** Laws 2001, ch. 305, § 25.

**5-11-26. 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, except the Public Securities Limitation of Action Act [6-14-4 through 6-14-7 NMSA 1978], which shall apply.

**History:** Laws 2001, ch. 305, § 26; 2009, ch. 46, § 4.

The 2009 amendment, effective June 19, 2009, added the exception at the end of the sentence.

## ANNOTATIONS

**Home rule municipality.** — The provisions of the Public Improvement District Act, 5-11-1 NMSA 1978 et seq., do not expressly limit the legislative powers of a home rule municipality; thus, such a municipality has the authority to enter into a contract, or development agreement, with a private developer to facilitate the construction of retail business establishments. 2002 Op. Att'y Gen. No. 02-02.

**5-11-27. 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.

**History:** Laws 2001, ch. 305, § 27.

**Severability.** — Laws 2001, ch. 305, § 29 provided for the severability of the act if any part or application is held invalid.