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HOUSE BILL 898

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Earlene Roberts

AN ACT

**RELATING TO MUNICIPALITIES; AMENDING THE MUNICIPAL CODE TO
PROVIDE THAT "QUALIFIED ELECTOR" MAY, UNDER CERTAIN
CIRCUMSTANCES, INCLUDE A RESIDENT OF A MUNICIPALITY'S
EXTRATERRITORIAL PLANNING AND PLATTING JURISDICTION.**

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

**Section 1. Section 3-1-2 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-1-2, as amended) is amended to read:**

"3-1-2. DEFINITIONS. -- As used in the Municipal Code:

**A. "acquire" or "acquisition" means purchase,
construct, accept or any combination of purchasing,
constructing or accepting;**

**B. "business" means any person, occupation,
profession, trade, pursuit, corporation, institution,
establishment, utility, article, commodity or device engaged**

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1 in making a profit, but does not include an employee;

2 C. "census" means any enumeration of population of
3 a municipality conducted under the direction of the government
4 of the United States, the state of New Mexico or the
5 municipality;

6 D. "county" means the county in which the
7 municipality or land is situated;

8 E. "district court" means the district court of
9 the district in which the municipality or land is situated;

10 F. "governing body" means the city council or city
11 commission of a city, the board of trustees of a town or
12 village, the council of incorporated counties and the board of
13 county commissioners of H class counties;

14 G. "municipal" or "municipality" means any
15 incorporated city, town or village, whether incorporated under
16 general act, special act or special charter, incorporated
17 counties and H class counties;

18 H. "municipal utility" means sewer facilities,
19 water facilities, gas facilities, electric facilities,
20 generating facilities or any interest in jointly owned
21 generating facilities owned by a municipality and serving the
22 public. A municipality that owns both electric facilities and
23 any interest in jointly owned generating facilities may, by
24 ordinance, designate such interest in jointly owned generating
25 facilities as part of its electric facilities. Generating

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1 facilities shall be considered as part of a municipality's
2 electric facilities unless the municipality designates, by
3 ordinance, the generating facilities as a separate municipal
4 utility, such designation being conclusive subject to any
5 existing property rights or contract rights;

6 I. "public ground" means any real property owned
7 or leased by a municipality;

8 J. "publish" or "publication" means printing in a
9 newspaper that maintains an office in the municipality and is
10 of general circulation within the municipality or, if such
11 newspaper is a nondaily paper that will not be circulated to
12 the public in time to meet publication requirements or if
13 there is no newspaper that maintains an office in the
14 municipality and is of general circulation within the
15 municipality, then "publish" or "publication" means posting in
16 six public places within the municipality on the first day
17 that publication is required in a newspaper that maintains an
18 office in the municipality and is of general circulation
19 within the municipality. One of the public places where
20 posting shall be made is the office of the municipal clerk who
21 shall maintain the posting during the length of time necessary
22 to comply with the provisions relating to the number of times
23 publication is required in a newspaper of general circulation
24 within the municipality. The municipal clerk may, in addition
25 to posting, publish one or more times in a newspaper of

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1 general circulation in the municipality;

2 K. "qualified elector" means any person whose
3 affidavit of voter registration has been filed by the county
4 clerk, who is registered to vote in a general election
5 precinct established by the board of county commissioners that
6 is wholly or partly within the municipal boundaries or, if
7 appropriate, the planning and platting jurisdiction and who is
8 either a resident of the municipality or, unless the
9 municipality has a population over two hundred thousand
10 persons or has in effect an ordinance enacted pursuant to
11 Subsection C of Section 3-19-5 NMSA 1978, a resident of the
12 municipality's extraterritorial planning and platting
13 jurisdiction; provided that a person who is a qualified
14 elector under this section solely because of residency in an
15 extraterritorial planning and platting jurisdiction shall not
16 be a qualified elector in an election to incur a debt pursuant
17 to Article 9, Section 12 of the constitution of New Mexico.

18 Persons who would otherwise be qualified electors if land on
19 which they reside is annexed to a municipality shall be deemed
20 to be qualified electors:

21 (1) upon the effective date of the municipal
22 ordinance effectuating the terms of the annexation as
23 certified by the board of arbitration pursuant to Section
24 3-7-10 NMSA 1978;

25 (2) upon thirty days after the filing of an

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1 order of annexation by the municipal boundary commission
2 pursuant to Sections 3-7-15 and 3-7-16 NMSA 1978 if no appeal
3 is filed or, if an appeal is filed, upon the filing of a
4 nonappealable court order effectuating the annexation; or

5 (3) upon thirty days after the filing of an
6 ordinance pursuant to Section 3-7-17 NMSA 1978 if no appeal is
7 filed or, if an appeal is filed, upon the filing of a
8 nonappealable court order effectuating the annexation;

9 L. "revenue producing project" means any
10 municipally owned self-liquidating projects that furnish
11 public services to a municipality and its citizens, including
12 but not necessarily limited to public buildings; facilities
13 and equipment for the collection or disposal of trash, refuse
14 or garbage; swimming pools; golf courses and other
15 recreational facilities; cemeteries or mausoleums or both;
16 airports; off-street parking garages; and transportation
17 centers, which may include but are not limited to office
18 facilities and customary terminal facilities for airlines,
19 trains, monorails, subways, intercity and intracity buses and
20 taxicabs [~~but~~]. "Revenue producing facilities" does not mean
21 a municipal utility as defined in Subsection H of this
22 section;

23 M "street" means any thoroughfare that can
24 accommodate pedestrian or vehicular traffic, is open to the
25 public and is under the control of the municipality;

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1 N. "warrant" means a warrant, check or other
2 negotiable instrument issued by a municipality in payment for
3 goods or services acquired by the municipality or for the
4 payment of a debt incurred by the municipality;

5 O. "mayor" means the chief executive officer of
6 municipalities having the mayor-council form of government.
7 In municipalities having other forms of government, the
8 presiding officer of the governing body and the official head
9 of the government, without executive powers, may be designated
10 mayor by the governing body. Wherever the Municipal Code
11 requires an act to be performed by the mayor with the consent
12 of the governing body, in municipalities not having the mayor-
13 council form of government, the act shall be performed by the
14 governing body;

15 P. "generating facility" means any facility
16 located within or outside the state necessary or incidental to
17 the generation or production of electric power and energy by
18 any means and includes:

19 (1) any facility necessary or incidental to
20 the acquisition of fuel of any kind for the production of
21 electric power and energy, including the acquisition of fuel
22 deposits, the extraction of fuel from natural deposits, the
23 conversion of fuel for use in another form, the burning of
24 fuel in place and the transportation and storage of such fuel;
25 and

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1 (2) any facility necessary or incidental to
2 the transfer of the electric power and energy to the
3 municipality, including without limitation step-down
4 substations or other facilities used to reduce the voltage in
5 a transmission line in order that electric power and energy
6 may be distributed by the municipality to its retail
7 customers;

8 Q. "jointly owned generating facility" means any
9 generating facility in which a municipality owns any undivided
10 or other interest, including without limitation any right to
11 entitlement or capacity; and

12 R. "joint participant" means any municipality in
13 New Mexico or any other state; any public entity incorporated
14 under the laws of any other state having the power to enter
15 into the type of transaction contemplated by the Municipal
16 Electric Generation Act; the state of New Mexico; the United
17 States; Indian tribes; and any public electric utility,
18 investor-owned electric utility or electric cooperative
19 subject to general or limited regulation by the [~~New Mexico~~
20 ~~public utility~~] public regulation commission or a similar
21 commission of any other state. "

22 Section 2. Section 3-8-40 NMSA 1978 (being Laws 1985,
23 Chapter 208, Section 48, as amended) is amended to read:

24 "3-8-40. CONDUCT OF ELECTION-- PERSONS NOT PERMITTED TO
25 VOTE-- CERTIFICATE VOTING-- FRAUDULENT AND DOUBLE VOTING. --

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1 A. No person shall vote in a municipal special or
2 regular election unless that person is a qualified elector and
3 he has appeared to vote at the polling place in the precinct
4 or consolidated precinct [~~which~~] that encompasses his place of
5 residence as shown on the signature roster.

6 B. Notwithstanding the provisions of Subsection A
7 of this section, a person shall be permitted to vote even
8 though that person's name cannot be found in the signature
9 roster, provided:

10 (1) his residence is within the boundaries of
11 either the municipality or, unless the municipality has a
12 population of over two hundred thousand persons or has enacted
13 an ordinance pursuant to Subsection C of Section 3-19-5 NMSA
14 1978, the municipality's extraterritorial planning and
15 planning jurisdiction and within the boundaries of the
16 precinct and the district, if applicable, in which he offers
17 to vote;

18 (2) his name is not listed as having been
19 issued an absentee ballot;

20 (3) his name is not listed as having voted
21 during early voting;

22 (4) he presents a certificate bearing the
23 seal and signature of the county clerk stating that his
24 affidavit of registration is on file at the county clerk's
25 office, that he has not been purged from the voter rolls and

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1 that he shall be permitted to vote in the precinct and
2 election specified therein; provided that such authorization
3 shall not be given orally by the county clerk; and

4 (5) he executes a statement swearing or
5 affirming to the best of his knowledge that he is a qualified
6 elector resident of the municipality or of the municipality's
7 extraterritorial planning and platting jurisdiction, currently
8 registered and eligible to vote in that precinct and has not
9 cast a ballot or voted in the election.

10 C. Upon compliance with the requirements of
11 Subsection B of this section, the election judge shall cause
12 the election clerks to:

13 (1) write the person's name and address, as
14 shown on the certificate, in the signature roster under the
15 heading for name and address in the first blank space
16 immediately below the last name and address appearing in the
17 signature roster;

18 (2) insert the person's ballot number or
19 voter number as shown on the public counter of the voting
20 machine on the certificate and on his executed sworn
21 statement;

22 (3) retain the completed certificate and the
23 executed sworn statement, which shall be returned to the
24 municipal clerk with the election returns; and

25 (4) comply with all relevant requirements of

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1 Section 3-8-41 NMSA 1978.

2 D. After canvass, the municipal clerk shall in
3 writing notify the county clerk of the names of all
4 individuals voting on certificates.

5 E. A person who knowingly executes a false
6 statement required by Paragraph (5) of Subsection B of this
7 section is guilty of perjury as provided in the Criminal Code,
8 and voting on the basis of such falsely executed statement
9 constitutes fraudulent voting.

10 F. A person not entitled to vote who fraudulently
11 votes or a person who votes or offers to vote more than once
12 at any election is guilty of a fourth degree felony. "

13 Section 3. Section 3-8-40.1 NMSA 1978 (being Laws 1999,
14 Chapter 278, Section 45) is amended to read:

15 "3-8-40.1. CERTIFICATE VOTING. --

16 A. No person shall vote in a municipal special or
17 regular election unless that person is a qualified elector, in
18 accordance with the provisions of Subsection K of Section
19 3-1-2 NMSA 1978, for the precinct or consolidated precinct
20 that encompasses his place of residence as shown on the
21 signature roster.

22 B. A person shall be permitted to vote even though
23 that person's name cannot be found in the signature roster,
24 provided:

25 (1) his residence is within the boundaries of

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1 either the municipality or, unless the municipality has a
2 population of over two hundred thousand persons or has enacted
3 an ordinance pursuant of Subsection C of Section 3-19-5 NMSA
4 1978, the municipality's extraterritorial planning and
5 plating jurisdiction and within the boundaries of the
6 precinct, and district if applicable, in which he offers to
7 vote;

8 (2) his name [~~is~~] is not listed as having
9 been issued an absentee ballot;

10 (3) he presents a certificate bearing the
11 seal and signature of the county clerk stating that his
12 affidavit of registration is on file at the county clerk's
13 office, that he has not been purged from the voter rolls and
14 that he shall be permitted to vote in the precinct and
15 election specified therein, provided that such authorization
16 shall not be given orally by the county clerk; and

17 (4) he executes a statement swearing or
18 affirming to the best of his knowledge that he is a qualified
19 elector, a resident of the municipality or of the
20 municipality's extraterritorial planning and plating
21 jurisdiction, currently registered and eligible to vote in
22 that precinct and has not cast a ballot or voted in the
23 election.

24 C. Upon compliance with the requirements of
25 Subsection B of this section, the person shall be permitted to

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1 vote. "

2 Section 4. Section 3-8-85 NMSA 1978 (being Laws 1999,
3 Chapter 278, Section 41) is amended to read:

4 "3-8-85. EARLY VOTING APPLICATION. - -

5 A. Application by a voter for early voting shall
6 be made only in person by the voter on a form prescribed and
7 furnished by the municipal clerk of the municipality in which
8 the voter is registered to vote. The municipal clerk shall
9 prescribe the form of the early voting application.

10 B. The voter shall fill out the application to
11 vote early in the office of the municipal clerk. Upon the
12 receipt of a properly completed early voting application, the
13 municipal clerk shall verify that the applicant is a qualified
14 elector of the municipality.

15 C. The municipal clerk shall reject an early
16 voting application for any of the following reasons:

17 (1) [if] the applicant has no valid affidavit
18 of registration on file with the county clerk and is not a
19 federal qualified elector or federal voter;

20 (2) [if] the applicant has a valid affidavit
21 of registration on file with the county clerk, but is not a
22 resident of either the municipality or, unless the
23 municipality has a population of over two hundred thousand
24 persons or has enacted an ordinance pursuant to Subsection C
25 of Section 3-19-5 NMSA 1978, the municipality's

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1 extraterritorial planning and platting jurisdiction, or
2 district if applicable, of the municipality;

3 (3) the applicant has been issued an absentee
4 ballot;

5 (4) [~~if~~] the applicant is a federal qualified
6 elector or federal voter, but is not entitled to vote in the
7 municipal election; or

8 (5) the applicant cannot comply with
9 Paragraph (1), (2) or (3) of this subsection pursuant to
10 Subsection B of Section 3-8-40 NMSA 1978.

11 D. The reverse side of each early voting
12 application shall contain a form to be signed by the person
13 completing the application. The form shall be signed by the
14 applicant and shall contain the following oath: "I will not
15 vote in this election other than by early ballot. I will not
16 receive or offer any compensation or reward for giving or
17 withholding any vote."

18 E. If the municipal clerk rejects the early voter
19 application pursuant to Subsection C of this section, then the
20 municipal clerk shall refuse to permit the voter to vote and
21 shall mark the application "rejected" and enter "rejected" in
22 the early voting register and file the application in a
23 separate file.

24 F. If the application for early voting is
25 accepted, the municipal clerk shall:

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- 1 (1) mark the application "accepted";
- 2 (2) enter the required information in the
- 3 early voting register; and
- 4 (3) permit the voter to vote by issuing the
- 5 voter an early voter ballot if the ballots are to be counted
- 6 and canvassed by hand; or
- 7 (4) issue the voter an early voting marksense
- 8 ballot if the marksense voting device is being used in the
- 9 election; or
- 10 (5) permit the voter to cast his vote on the
- 11 voting machine if a voting machine is being used in the
- 12 election.

13 G. The municipal clerk shall notify the county
14 clerk who shall enter "early voter" on the signature line of
15 the signature roster next to the name of the person who has
16 cast an early voting ballot. Names of individuals that have
17 been labeled "early voter" shall appear on a separate list
18 called the "early voter list". This list shall be submitted
19 to the municipal clerk by the county clerk in the same manner
20 as provided in Subsection B of Section 3-8-7 NMSA 1978. "

21 Section 5. Section 3-9-4 NMSA 1978 (being Laws 1973,
22 Chapter 375, Section 3, as amended) is amended to read:

23 "3-9-4. ABSENTEE BALLOT APPLICATION--REJECTION--
24 ACCEPTANCE--ISSUANCE OF ABSENTEE BALLOT.--

25 A. Application by a federal qualified elector or

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1 federal voter shall be made on the federal postcard
2 application form to the municipal clerk.

3 B. The municipal clerk shall prescribe the form of
4 the absentee ballot application.

5 C. An absentee ballot application shall be
6 furnished by the municipal clerk by mail or in person in the
7 office of the municipal clerk to the voter upon request by the
8 voter.

9 D. A list containing the names and [~~address~~]
10 addresses of voters requesting absentee ballot applications
11 shall be kept and shall be made a part of the absent ballot
12 register.

13 E. Upon receipt of a properly completed and
14 delivered application for an absentee ballot, the municipal
15 clerk shall contact the county clerk to determine if the
16 applicant is a qualified elector of the municipality.

17 F. The municipal clerk shall reject an absentee
18 ballot application for any of the following reasons:

19 (1) the application is not made on the form
20 provided by the municipal clerk;

21 (2) the application does not set forth the
22 applicant's full name and address;

23 (3) the applicant has voted early;

24 (4) the application is not signed by the
25 applicant; or

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(5) the applicant:

(a) has no valid affidavit of registration on file with the county clerk and is not a federal qualified elector or federal voter;

(b) has a valid affidavit of registration on file with the county clerk, but is not a resident of either the municipality or, unless the municipality has a population of over two hundred thousand persons or has enacted an ordinance pursuant to Subsection C of Section 3-19-5 NMSA 1978, the municipality's extraterritorial planning and platting jurisdiction; or

(c) is a federal qualified elector or federal voter, but is not entitled to vote in the municipal election; and

(d) cannot comply with Subparagraph (a), (b) or (c) of this paragraph pursuant to Subsection B of Section 3-8-40 NMSA 1978.

G. If the municipal clerk rejects the absentee ballot application pursuant to Subsection F of this section, then the municipal clerk shall refuse to issue an absentee ballot and shall mark the application "rejected" and enter "rejected" in the absentee ballot register and file the application in a separate file. The municipal clerk shall, within twenty-four hours of rejection of the application, notify the applicant of the reasons for rejection of the

1 application. Upon rejection of the application, the municipal
2 clerk shall determine the method of notification to the voter.
3 Notification shall only be made by courier with return receipt
4 or certified mail, return receipt requested. The person whose
5 application has been rejected shall have ten days from receipt
6 of notice to appeal or show cause why the application should
7 be accepted. In addition, if the application is incomplete,
8 the clerk shall mail immediately a new application for
9 absentee ballot.

10 H. If the application for absentee ballot is
11 accepted, the municipal clerk shall:

- 12 (1) mark the application "accepted";
13 (2) enter the required information in the
14 absentee ballot register; and
15 (3) issue to the applicant an absentee
16 ballot.

17 I. The municipal clerk shall deliver the absentee
18 ballot to the applicant in the office of the municipal clerk
19 if the application for absentee ballot has been accepted and
20 if the application is submitted in person by the applicant or
21 mail an absentee ballot to any qualified elector, federal
22 qualified elector or federal voter whose application for an
23 absentee ballot was received by mail and has been accepted.
24 The municipal clerk shall notify the county clerk who shall
25 write "absentee ballot" on the signature line of the signature

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1 roster next to the name of the person who has been sent an
2 absentee ballot. Names of individuals [~~which~~] that have been
3 labeled "absentee ballot" shall appear on a separate list
4 called the "absentee voter list". This list shall be
5 submitted to the municipal clerk by the county clerk in the
6 same manner as provided in Subsection B of Section 3-8-7 NMSA
7 1978.

8 J. It is the duty of the municipal clerk to verify
9 the signature roster and absentee voter list to ensure that
10 all names of individuals who have been issued absentee ballots
11 have been labeled "absentee ballot" on the signature roster
12 and their names listed on the absentee voter list. If not,
13 the municipal clerk shall write "absentee ballot" on the
14 signature line of the signature roster next to the name of the
15 person who has been sent an absentee ballot. The municipal
16 clerk shall then enter the name and all required information
17 on the absentee voter list.

18 K. If the application for an absentee ballot is
19 delivered in person to the municipal clerk during regular
20 hours and days of business and is accepted, the municipal
21 clerk shall issue the voter the absentee ballot and it shall
22 be marked by the applicant in a voting booth in the municipal
23 clerk's office, sealed in the proper envelopes and otherwise
24 properly executed and returned to the municipal clerk or the
25 clerk's authorized representative before the applicant leaves

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1 the office of the municipal clerk. Absentee ballots may be
2 cast in person beginning on the twenty-seventh day before the
3 election at the municipal clerk's office until 5:00 p.m. on
4 the Thursday immediately prior to the date of election.

5 L. The act of marking the absentee ballot in the
6 office of the municipal clerk shall be a convenience to the
7 voter in the delivery of the absentee ballot and does not make
8 the office of the municipal clerk a polling place subject to
9 the requirements of a polling place in the Municipal Election
10 Code other than is provided in this subsection. During the
11 period of time between the date a person may first apply in
12 person for an absentee ballot and the final date for such
13 application and marking of the ballot in the office of the
14 municipal clerk, it is unlawful to solicit votes or display or
15 otherwise make accessible any posters, signs or other forms of
16 campaign literature whatsoever in the clerk's office.

17 M Absentee ballots shall be air mailed to federal
18 qualified electors and federal voters whose applications have
19 been accepted not earlier than thirty-five days prior to the
20 election and not later than 5:00 p.m. on the Thursday
21 immediately prior to the date of the election.

22 N. Absentee ballots shall be mailed to voters
23 whose applications have been approved not earlier than thirty-
24 five days prior to the election and not later than 5:00 p.m.
25 on Thursday immediately prior to the date of the election.

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1 0. No absentee ballot shall be delivered or mailed
2 to any person other than the applicant for such ballot."

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

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

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

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

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

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

25 C. The governing body of a municipality with a

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1 population of two hundred thousand or fewer may, by ordinance,
2 decline to exercise power in its extraterritorial planning and
3 platting jurisdiction. An ordinance enacted pursuant to this
4 subsection shall apply to all powers within the
5 extraterritorial planning and platting jurisdiction that the
6 municipality would otherwise have and shall not be amended or
7 repealed for a period of at least two years.

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

19 Section 7. EFFECTIVE DATE. -- The effective date of the
20 provisions of this act is January 1, 2002.