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SENATE BILL 715

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

INTRODUCED BY

Joseph A. Fidel

AN ACT

RELATING TO IMPROVEMENT DISTRICTS; PROVIDING ADDITIONAL MEANS FOR FINANCING NEEDED PUBLIC IMPROVEMENTS IN MUNICIPALITIES AND COUNTIES; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1. Section 3-33-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-32-1, as amended) is amended to read:

"3-33-1. IMPROVEMENT DISTRICT- - AUTHORIZATION. - -

A. Whenever [~~the~~] a governing body determines that the creation of an improvement district is necessary for the public safety, health or welfare, the governing body may create an improvement district for any one or any combination of projects authorized in Chapter 3, Article 33 NMSA 1978 by the:

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1 (1) provisional order method; or

2 (2) petition method.

3 B. The governing body may adopt any ordinance or
4 resolution necessary or proper to accomplish the purposes of
5 Chapter 3, Article 33 NMSA 1978.

6 C. The improvement district shall include, for the
7 purpose of assessment or imposition of an improvement district
8 property tax, all the property ~~[which]~~ that the governing body
9 determines is benefitted by the improvement ~~[or improvements]~~,
10 including property lying without the municipality creating the
11 improvement district if such property abuts or is served by
12 improvements authorized by Chapter 3, Article 33 NMSA 1978 and
13 including property utilized for public, governmental,
14 charitable or religious purposes, except that of the United
15 States or any agency, instrumentality or corporation thereof,
16 in the absence of a consent of congress. "

17 Section 2. Section 3-33-2 NMSA 1978 (being Laws 1965,
18 Chapter 300, Section 14-32-2, as amended by Laws 1991, Chapter
19 17, Section 1 and also by Laws 1991, Chapter 199, Section 2)
20 is amended to read:

21 "3-33-2. IMPROVEMENT DISTRICT--DEFINITIONS.--As used in
22 Chapter 3, Article 33 NMSA 1978:

23 A. "adjustment of assessment" means the adjustment
24 in the estimated maximum benefit or assessment resulting from
25 the division of the property to be assessed or assessed into

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1 smaller tracts or parcels or the combining of smaller parcels
2 into one or more larger parcels or the changing of the
3 configuration or legal description of such parcels.

4 "Adjustment of assessment" may also include the reallocation
5 of the assessment lien, without loss of priority, among
6 parcels under single ownership that are subject to the
7 assessment lien in order to permit the removal of the lien
8 from one or more parcels where adequate security for the lien
9 is demonstrated by the assessed parcels under such single
10 ownership or provided by the owner;

11 B. "construct" or "construction" means to plan,
12 design, engineer, construct, reconstruct, install, extend,
13 better, alter, build, rebuild, improve, purchase or otherwise
14 acquire any project authorized in Sections 3-33-3, 3-33-4,
15 [~~3-33-4A~~] 3-33-4.1 and 3-33-6 NMSA 1978, except that it shall
16 not include "to acquire" for the purposes of projects
17 authorized in Section 3-33-6 NMSA 1978;

18 C. "engineer" means any person who is a
19 professional engineer licensed to practice in New Mexico and
20 who is a permanent employee of the municipality or employed
21 [~~by the municipality~~] in connection with an improvement by the
22 municipality or by a property owner subject to the improvement
23 district property tax imposed by Section 3-33-14.1 NMSA 1978;

24 D. "improvement" means any one or any combination
25 of projects in one or more locations authorized in Sections

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1 3-33-3, 3-33-4, 3-33-4.1 and 3-33-6 NMSA 1978;

2 E. "improvement district" means one or more
3 streets or one or more public grounds or one or more locations
4 wherein the improvement is to be constructed and one or more
5 tracts or parcels of land to be assessed or upon which an
6 improvement district property tax will be imposed to pay for
7 the cost of the improvement; and

8 F. "premature subdivision" means a subdivision
9 that has been platted and sold into multiple private ownership
10 prior to installation or financial guarantee of all required
11 improvements for land development. Such subdivisions contain
12 one or more ~~[of the following]~~ developmental inadequacies
13 under current local government standards and requirements,
14 such as, but not limited to:

15 (1) inadequate street right of way or
16 street access control;

17 (2) a lack of drainage easements of
18 right of way;

19 (3) a lack of adequate park, recreation
20 or open space area;

21 (4) a lack of an overall grading and
22 drainage plan; ~~[and]~~ or

23 (5) a lack of adequate subdivision
24 grading both on and off the public right of way. "

25 Section 3. Section 3-33-3 NMSA 1978 (being Laws 1965,

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1 Chapter 300, Section 14-32-3, as amended) is amended to read:

2 "3-33-3. IMPROVEMENT DISTRICT--PURPOSE. --An improvement
3 district may be created as authorized in Chapter 3, Article 33
4 NMSA 1978 in order to construct, acquire, repair or maintain
5 in one or more locations any one or any combination of the
6 following projects, including without limitation land served
7 by any project and any right of way, easement or privilege
8 appurtenant or related thereto:

9 A. a street, road, bridge, walkway, overpass,
10 underpass, pathway, alley, curb, gutter or sidewalk project,
11 including without limitation median and divider strips,
12 parkways and boulevards, ramps and stairways, interchanges,
13 alleys and intersections, arches, support structures and
14 pilings and the grading, regrading, oiling, surfacing,
15 graveling, excavating, macadamizing, paving, repairing,
16 laying, backfilling, leveling, lighting, landscaping,
17 beautifying or in any manner improving of all or any part of
18 one or more streets, roads, bridges, walkways, pathways,
19 curbs, gutters or sidewalks or any combination of the
20 foregoing;

21 B. a storm sewer project, sanitary sewer project
22 or water project, including without limitation [~~investigation~~]
23 investigating, planning, constructing, acquiring, excavating,
24 laying, leveling, backfilling or in any manner improving all
25 or any part of one or more storm sewers, drains, sanitary

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1 sewers, water lines, trunk lines, mains, laterals [~~and~~] or
2 property connections and acquiring or improving hydrants,
3 meters, valves, catch basins, inlets, outlets, lift or pumping
4 stations and machinery and equipment incidental thereto or any
5 combination of the foregoing;

6 C. a flood control or storm drainage project,
7 including without limitation the investigation, planning,
8 construction, improvement, replacement, repair or acquisition
9 of dams, dikes, levees, ditches, canals, basins and
10 appurtenances such as spillways, outlets, syphons and drop
11 structures, channel construction, diversions, rectification
12 and protection with appurtenant structures such as concrete
13 lining, banks, revetments, culverts, inlets, bridges,
14 transitions and drop structures, rundowns and retaining walls,
15 storm sewers and related appurtenances such as inlets,
16 outlets, manholes, catch basins, syphons and pumping stations,
17 appliances, machinery and equipment and property rights
18 connected therewith or incidental thereto convenient and
19 necessary to control floods or provide drainage and lessen
20 their danger and damages; [~~or~~]

21 D. a utility project providing gas, water,
22 electricity or telephone service;

23 E. railroad spurs, railroad tracks, railyards,
24 rail switches and any necessary real property; or

25 F. on-site or off-site improvements required as a

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1 condition to obtaining required approvals of a development to
2 be served by a project, including the payment of any fees or
3 charges levied as a means of paying for all or part of such
4 on-site or off-site improvements. "

5 Section 4. Section 3-33-14 NMSA 1978 (being Laws 1965,
6 Chapter 300, Section 14-32-7, as amended) is amended to read:

7 "3-33-14. IMPROVEMENT DISTRICT--PETITION METHOD--
8 REQUIREMENTS--DISTRIBUTION OF COSTS--NOTICE OF HEARING.--

9 A. Whenever the owners of sixty-six and two-thirds
10 percent or more of the total assessed valuation of the
11 property to be benefited, exclusive of any land owned by the
12 United States or the state of New Mexico, petition in writing
13 the governing body to create an improvement district and
14 construct the improvement described in the petition, the
15 governing body may:

- 16 (1) create the improvement district;
- 17 (2) select the type of material and method of
18 construction to be used; and
- 19 (3) proceed with the construction of the
20 improvement as authorized in Section 3-33-18 NMSA 1978 after
21 complying with the requirements for a preliminary hearing
22 required in this section. A governing body, board of county
23 commissioners or local board of education may sign a petition
24 seeking the improvement for any land under its control. The
25 submission of separate petitions for any one improvement

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1 district within a six-month period shall be considered as a
2 single petition.

3 B. The governing body may:

4 (1) pay the cost of the improvement;

5 (2) assess the cost of the improvement
6 against the benefiting tracts or parcels of land; [~~or~~]

7 (3) pay part of the cost of the improvement
8 and assess part of the cost of the improvement against the
9 benefiting tracts or parcels of land; or

10 (4) impose an improvement district property
11 tax pursuant to Section 3-33-14.1 NMSA 1978.

12 C. If any part or all of the cost of the
13 improvement sought to be constructed as authorized in this
14 section is to be assessed against the benefiting tracts or
15 parcels of land or paid for by the imposition of an
16 improvement district property tax, the governing body shall
17 hold a preliminary hearing on the proposed improvement
18 district and give notice of the preliminary hearing. "

19 Section 5. A new Section 3-33-14.1 NMSA 1978 is enacted
20 to read:

21 "3-33-14.1. [NEW MATERIAL] IMPOSITION OF IMPROVEMENT
22 DISTRICT PROPERTY TAX--LIMITATIONS.--

23 A. If in connection with the creation of the
24 improvement district the governing body determines that it is
25 in the best interest of the municipality to finance the

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1 district improvements by the imposition of an improvement
2 district property tax and the issuance of improvement district
3 general obligation bonds, the governing body shall enact an
4 ordinance making the determination and provide in the
5 ordinance the improvement district property tax rate to be
6 imposed; the date, which may be a predetermined date or a date
7 to be established in the future after completion of the
8 improvements, of commencement of the tax; the amount of the
9 bonds to be issued to finance the improvements; and any other
10 matters the governing body deems necessary or appropriate.

11 The governing body shall call an election within the
12 improvement district for the purpose of authorizing the
13 governing body to issue general obligation bonds, the proceeds
14 of the sale of which shall be used for constructing the
15 improvements for which the district was created and to impose
16 improvement district property taxes on all taxable property
17 within the district for the purpose of paying the principal,
18 debt service and other expenses incidental to the issuance and
19 sale of the bonds. The ordinance shall also include
20 procedures for the conduct of the election based upon the size
21 of the improvement district and the number of voters entitled
22 to vote.

23 B. If at the election described in Subsection A of
24 this section the property tax imposition and the issuance of
25 improvement district general obligation bonds are approved by

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1 a majority of the voters voting on the issues, the governing
2 body shall impose the tax at a rate sufficient to pay the debt
3 service on the bonds and retire them at maturity.

4 C. Imposition and collection of the improvement
5 district property tax authorized in this section shall be made
6 at the same time and in the same manner as impositions and
7 collections of property taxes for use by municipalities and
8 counties are made.

9 D. Bonds issued by the governing body for payment
10 of the specified improvement district improvements shall be
11 sold at a price that does not result in a net effective
12 interest rate exceeding the maximum net effective interest
13 rate permitted by the Public Securities Act. The bonds may be
14 sold at public or private sale and may be in denominations
15 that the governing body determines.

16 E. The form and terms of the bonds, including a
17 final maturity of thirty years and provisions for their
18 payment and redemption, shall be as determined by the
19 governing body. The bonds shall be executed in the name of
20 and on behalf of the improvement district by the mayor and
21 clerk of the municipality. The bonds may be executed and
22 sealed in accordance with the provisions of the Uniform
23 Facsimile Signature of Public Officials Act.

24 F. To provide for the payment of the interest and
25 principal of the bonds issued and sold pursuant to this

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1 section, the governing body shall annually impose a property
2 tax on all taxable property in the district in an amount
3 sufficient to produce a sum equal to the principal and
4 interest on all bonds as they mature.

5 G. The bonds authorized in this section are
6 general obligation bonds of the district, and the full faith
7 and credit of the district are pledged to the payment of the
8 bonds. The proceeds obtained from the issuance of the bonds
9 shall not be diverted or expended for any purposes other than
10 those provided in Chapter 3, Article 33 NMSA 1978.

11 H. All bonds issued by an improvement district
12 shall be fully negotiable and constitute negotiable
13 instruments within the meaning of and for all the purposes of
14 the Uniform Commercial Code. If lost or completely destroyed,
15 any bond may be reissued in the form and tenor of the lost or
16 destroyed bond upon the owner furnishing to the satisfaction
17 of the governing body:

- 18 (1) proof of ownership;
19 (2) proof of loss or destruction;
20 (3) a surety bond in twice the face amount of
21 the bond and coupons; and
22 (4) payment of the cost of preparing and
23 issuing the new bond and coupons.

24 I. The governing body may in any proceeding
25 authorizing improvement district bonds provide for the initial

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1 issuance of one or more bonds aggregating the amount of the
2 entire issue or may make provision for installment payments of
3 the principal amount of any bond as it may consider desirable.

4 J. The governing body may issue bonds to be
5 denominated refunding bonds, for the purpose of refunding any
6 of the general obligation bonded indebtedness of the
7 improvement district. Whenever the governing body deems it
8 expedient to issue refunding bonds, it shall adopt an
9 ordinance setting out the facts making the issuance of the
10 refunding bonds necessary or advisable, the determination of
11 the necessity or advisability by the governing body and the
12 amount of refunding bonds that the governing body deems
13 necessary and advisable to issue. The ordinance shall fix the
14 form of the bonds; the rate or rates of interest of the bonds,
15 but the net effective interest rate of the bonds shall not
16 exceed the maximum net effective interest rate permitted by
17 the Public Securities Act; the date of the refunding bonds;
18 the denominations of the refunding bonds; the maturity dates;
19 and the place or places of payment within or without the state
20 of both principal and interest. Refunding bonds when issued,
21 except for bonds issued in book entry or similar form without
22 the delivery of physical securities, shall be negotiable in
23 form and shall bear the signature or the facsimile signature
24 of the mayor and clerk of the municipality. All refunding
25 bonds may be exchanged dollar for dollar for the bonds to be

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1 refunded or they may be sold as directed by the governing
2 body, and the proceeds of the sale shall be applied only to
3 the purpose for which the bonds were issued and the payment of
4 any incidental expenses.

5 K. The principal amount of improvement district
6 general obligation bonds that may be issued by the governing
7 body for any improvement district shall not exceed twenty-five
8 percent of the final estimated value of properties in the
9 district after completion of the projects to be financed with
10 the improvement district general obligation bonds and after
11 development of the properties in the improvement district in
12 accordance with their planned use, as determined by the
13 governing body with the assistance of the engineer and other
14 qualified professionals.

15 L. In connection with an improvement district
16 project to be financed with the proceeds of improvement
17 district general obligation bonds issued pursuant to this
18 section, a property owner subject to the improvement district
19 property tax or the governing body may enter into contracts to
20 design, engineer, finance, construct or acquire a project with
21 contractors and professionals, on such terms and with such
22 persons as a property owner subject to the improvement
23 district property tax or the governing body determines to be
24 appropriate, without following the procedures or meeting the
25 requirements of the Procurement Code or the requirements of

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1 Sections 6-15-1 through 6-15-22 NMSA 1978. "

2 Section 6. Section 3-33-15 NMSA 1978 (being Laws 1965,
3 Chapter 300, Section 14-32-8, as amended) is amended to read:

4 "3-33-15. IMPROVEMENT DISTRICT--NOTICE OF PRELIMINARY
5 HEARING. --

6 A. The notice of the preliminary hearing required
7 in Section 3-33-14 NMSA 1978 shall contain:

8 (1) the time and place when the governing
9 body will hold a preliminary hearing on the proposed
10 improvement;

11 (2) the ~~[estimate-cost]~~ estimated cost of the
12 improvement;

13 (3) the boundary of the improvement district;

14 (4) the route of the improvement by streets
15 or location of the improvements;

16 (5) the location of the proposed improvement;

17 (6) a description of each property to be
18 assessed or against which an improvement district property tax
19 is to be imposed;

20 (7) the estimated amount of the assessment
21 against or improvement district property tax to be imposed
22 upon each tract or parcel of land; and

23 (8) the amount of the cost to be assumed by
24 the municipality, if any.

25 B. If the owners are found within the county, the

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1 notices shall be personally served on them at least thirty
2 days prior to the day of the hearing. The notice shall also
3 be published in a newspaper published in the municipality once
4 each week for four successive weeks. The last publication
5 shall be at least three days before the day of the preliminary
6 hearing. "

7 Section 7. Section 3-33-16 NMSA 1978 (being Laws 1965,
8 Chapter 300, Section 14-32-9, as amended) is amended to read:

9 "3-33-16. IMPROVEMENT DISTRICT--PRELIMINARY HEARING--
10 PROTEST--ACTION OF THE GOVERNING BODY--APPEAL TO DISTRICT
11 COURT. --

12 A. At the preliminary hearing of the governing
13 body on the question of creating an improvement district as
14 authorized in Section 3-33-14 NMSA 1978, an owner of a tract
15 or parcel of land to be assessed or upon which it is proposed
16 to impose an improvement district property tax may contest:

17 (1) the proposed assessment or improvement
18 district property tax;

19 (2) the regularity of the proceedings
20 relating to the improvement;

21 (3) the benefits of the improvement; or

22 (4) any other matter relating to the
23 improvement district.

24 B. The governing body shall not assess the tract
25 or parcel of land an amount greater than the actual benefit to

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1 the tract or parcel of land by reason of the enhanced value of
2 the tract or parcel of land as a result of the improvement as
3 ascertained at the hearing. The governing body may allow a
4 fair price, based on its current value, as a set-off against
5 any assessment against a tract or parcel of land if the owner
6 has improved the tract or parcel of land in such a manner that
7 the improvement may be made part of the proposed improvement.

8 C. At the hearing, the governing body may:

9 (1) correct a mistake or irregularity in any
10 proceeding relating to the improvement;

11 (2) correct an assessment made against or an
12 improvement district property tax imposed upon any tract or
13 parcel of land;

14 (3) in case of any invalidity, reassess the
15 cost of the improvement against a [~~benefitting~~] benefiting
16 tract or parcel of land; or

17 (4) recess the hearing.

18 D. An owner of a tract or parcel of land assessed
19 or upon which it is proposed to impose an improvement district
20 property tax, whether he appeared at the hearing or not, may
21 commence an appeal in district court pursuant to the
22 provisions of Section 39-3-1.1 NMSA 1978. "

23 Section 8. Section 3-33-24 NMSA 1978 (being Laws 1965,
24 Chapter 300, Section 14-32-17, as amended) is amended to read:

25 "3-33-24. IMPROVEMENT DISTRICT-- AUTHORITY TO ISSUE BONDS

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1 OR ASSIGNABLE CERTIFICATES. --

2 A. To pay all or any part of the cost of the
3 improvement, including those items set out in Subsection C of
4 Section 3-33-11 NMSA 1978, the governing body may proceed
5 pursuant to the provisions of Section 3-33-14.1 NMSA 1978 or
6 may issue in the name of the municipality bonds in such form
7 as the governing body may determine or assignable certificates
8 in an amount not exceeding the total cost of the improvement
9 and maturing not more than twenty years from the date of
10 issuance. If the bonds or assignable certificates recite
11 that:

12 (1) the proceedings relating to making the
13 improvement and levying the assessments as provided in Section
14 3-33-22 NMSA 1978 or placing the preliminary lien as provided
15 in Section 3-33-11 NMSA 1978 to pay for the improvement have
16 been done in compliance with law; and

17 (2) all prerequisites to the fixing of the
18 assessment lien or placing the preliminary lien against the
19 tract or parcel of land benefited by the improvement have been
20 performed, such recital shall be conclusive evidence of the
21 facts recited.

22 B. The assignable certificates shall:

23 (1) declare the liability of the owner of the
24 tract or parcel of land so assessed or the liability of the
25 tract or parcel of land so assessed for payment of the

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1 assessment, interest and penalties;

2 (2) fix the terms and conditions of the
3 certificates; and

4 (3) accurately describe the tract or parcel
5 of land covered by the certificate.

6 C. The bonds shall:

7 (1) recite the terms and conditions for their
8 issuance;

9 (2) be payable from money collected from the
10 preliminary assessment lien authorized in Section 3-33-11 NMSA
11 1978 and, if so payable, also payable from the proceeds of
12 bonds payable from the final assessment lien authorized in
13 Section 3-33-22 NMSA 1978; or

14 (3) be payable from the money collected from
15 the assessments authorized in Section 3-33-22 NMSA 1978;
16 provided that if assessments are made payable over more than
17 one period of time as permitted by Section 3-33-23 NMSA 1978,
18 specified portions of the bonds may be payable from money
19 collected from those assessments payable over that period of
20 time that generally corresponds to the period of time over
21 which such specified portions of the bonds are payable; and

22 (4) bear a rate or rates of interest that
23 shall not exceed the rate of interest on the deferred
24 installments of the assessments or, if more than one rate of
25 interest is specified for assessments as permitted by Section

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1 3-33-23 NMSA 1978, on that portion of the deferred
2 installments of assessments from which that specified portion
3 of the bonds may be payable. Payment of the bonds issued for
4 the construction of a project described in Subsection A of
5 Section 3-33-3 NMSA 1978 may be supplemented from gasoline tax
6 money in the street improvement fund authorized by Section
7 3-34-1 NMSA 1978 on or before a date not more than twelve
8 months after the last deferred installment of an assessment is
9 due from the owner of a tract or parcel of land so assessed.

10 D. The bonds may be issued to the contractor in
11 payment for the construction of the improvement or may be
12 issued and sold:

13 (1) in payment of the municipality's
14 proportion of the cost of the improvement;

15 (2) in payment of the proportionate cost if
16 the improvement is done in cooperation with another
17 governmental agency;

18 (3) in payment of the construction of the
19 improvement done under contract; or

20 (4) in reimbursement to the municipality if
21 the municipality constructed the improvement with municipally
22 owned or leased equipment and municipal employees.

23 E. Any municipality creating a street improvement
24 fund as authorized by Section 3-34-1 NMSA 1978 may contract
25 for the issuance and sale of bonds or assignable certificates.

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1 F. Bonds or assignable certificates may be sold at
2 public or private sale at a discount."

3 Section 9. Section 4-55A-2 NMSA 1978 (being Laws 1980,
4 Chapter 91, Section 2, as amended) is amended to read:

5 "4-55A-2. IMPROVEMENT DISTRICT--DEFINITIONS.--As used in
6 the County Improvement District Act:

7 A. "adjustment of assessment" means the adjustment
8 in the estimated maximum benefit or assessment resulting from
9 the division of the property to be assessed or assessed into
10 smaller tracts or parcels or the combining of smaller parcels
11 into one or more larger parcels or the changing of the
12 configuration or legal description of such parcels.

13 "Adjustment of assessment" may also include the real location
14 of the assessment lien, without loss of priority, among
15 parcels under single ownership that are subject to the
16 assessment lien in order to permit the removal of the lien
17 from one or more parcels where adequate security for the lien
18 is demonstrated by the assessed parcels under such single
19 ownership or provided by the owner;

20 B. "board" means the board of county
21 commi ssi oners;

22 C. "construct" or "construction" means to plan,
23 design, engineer, construct, reconstruct, install, extend,
24 better, alter, build, rebuild, improve, purchase or otherwise
25 acquire any project authorized in the County Improvement

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1 District Act;

2 D. "county" means any county except an H class
3 county;

4 E. "engineer" means any person who is a
5 professional engineer licensed to practice in New Mexico and
6 who is a permanent employee of the county or employed [~~by the~~
7 ~~county~~] in connection with an improvement by the county or by
8 a property owner subject to the improvement district property
9 tax imposed by Section 4-55A-12.1 NMSA 1978;

10 F. "improvement" means any one or any combination
11 of projects in one or more locations authorized in the County
12 Improvement District Act;

13 G. "improvement district" means one or more
14 streets or one or more public grounds or one or more locations
15 wherein the improvement is to be constructed and one or more
16 tracts or parcels of land to be assessed or upon which an
17 improvement district property tax will be imposed to pay for
18 the cost of the improvement; and

19 H. "premature subdivision" means a subdivision
20 that has been platted and sold into multiple private ownership
21 prior to installation or financial guarantee of all required
22 improvements for land development. Such subdivisions contain
23 one or more [~~of the following~~] developmental inadequacies
24 under current local government standards and requirements,
25 such as, but not limited to:

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- 1 (1) inadequate street right of way or street
2 access control;
- 3 (2) a lack of drainage easements of right of
4 way;
- 5 (3) a lack of adequate park, recreation or
6 open space area;
- 7 (4) a lack of an overall grading and drainage
8 plan; or
- 9 (5) a lack of adequate subdivision grading
10 both on and off the public right of way. "

11 Section 10. Section 4-55A-4 NMSA 1978 (being Laws 1980,
12 Chapter 91, Section 4, as amended) is amended to read:

13 "4-55A-4. IMPROVEMENT DISTRICT--PURPOSE. --An improvement
14 district may be created as authorized in the County
15 Improvement District Act in order to construct, acquire,
16 repair or maintain in one or more locations any one or any
17 combination of the following projects, including land served
18 by any project and any right of way, easement or privilege
19 appurtenant or related thereto:

20 A. a street, road, bridge, walkway, overpass,
21 underpass, parkway, alley, curb, gutter or sidewalk project,
22 including median and divider strips, parkways and boulevards,
23 ramps and stairways, interchanges, alleys and intersections,
24 arches, support structures and pilings and the grading,
25 regrading, oiling, surfacing, graveling, excavating,

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1 macadamizing, paving, repairing, laying, backfilling,
2 leveling, lighting, landscaping, beautifying or in any manner
3 improving of all or any part of one or more streets, roads,
4 bridges, walkways, pathways, curbs, gutters or sidewalks or
5 any combination of the foregoing;

6 B. any utility project for providing gas, water,
7 electricity or telephone service;

8 C. any storm sewer project, sanitary sewer project
9 or water project, including investigating, planning,
10 constructing, acquiring, excavating, laying, leveling,
11 backfilling or in any manner improving all or any part of one
12 or more storm sewers, drains, sanitary sewers, water lines,
13 trunk lines, mains, laterals and property connections and
14 acquiring or improving hydrants, meters, valves, catch basins,
15 inlets, outlets, lift or pumping stations and machinery and
16 equipment incidental thereto or any combination of the
17 foregoing;

18 D. a flood control or storm drainage project,
19 including the investigation, planning, construction,
20 improvement, replacement, repair or acquisition of dams,
21 dikes, levees, ditches, canals, basins and appurtenances such
22 as spillways, outlets, syphons and drop structures, channel
23 construction, diversions, rectification and protection with
24 appurtenant structures such as concrete lining, banks,
25 revetments, culverts, inlets, bridges, transitions and drop

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1 structures, rundowns and retaining walls, storm sewers and
2 related appurtenances such as inlets, outlets, manholes, catch
3 basins, syphons and pumping stations, appliances, machinery
4 and equipment and property rights connected therewith or
5 incidental thereto convenient and necessary to control floods
6 or to provide drainage and lessen their danger and damages;
7 [~~or~~]

8 E. railroad spurs, railroad tracks, railyards,
9 rail switches and any necessary real property; or

10 F. on-site or off-site improvements required as a
11 condition to obtaining required approvals of a development to
12 be served by a project, including the payment of any fees or
13 charges levied as a means of paying for all or part of such
14 on-site or off-site improvements. "

15 Section 11. Section 4-55A-12 NMSA 1978 (being Laws 1980,
16 Chapter 91, Section 12, as amended) is amended to read:

17 "4-55A-12. IMPROVEMENT DISTRICT--PRELIMINARY HEARING--
18 PROTEST--ACTION OF THE BOARD--ACTION IN DISTRICT COURT.--

19 A. At the preliminary hearing of the board on the
20 question of creating an improvement district as authorized in
21 Section 4-55A-10 NMSA 1978, any owner of a tract or parcel of
22 land to be assessed or upon which it is proposed to impose an
23 improvement district property tax may contest:

- 24 (1) the proposed assessment or tax;
25 (2) the regularity of the proceedings

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1 relating to the improvement;

2 (3) the benefits of the improvement; or

3 (4) any other matter relating to the
4 improvement district.

5 B. The board shall not assess the tract or parcel
6 of land an amount greater than the actual benefit to the tract
7 or parcel of land by reason of the enhanced value of the tract
8 or parcel of land as a result of the improvement as
9 ascertained at the hearing. The board may allow a fair price,
10 based on its current value, as a setoff against any assessment
11 against a tract or parcel of land if the owner has improved
12 the tract or parcel of land in such a manner that the
13 improvement may be made part of the proposed improvement.

14 C. At the hearing, the board may:

15 (1) correct any mistake or irregularity in
16 any proceeding relating to the improvement;

17 (2) correct an assessment to be made against
18 or an improvement district property tax to be imposed upon any
19 tract or parcel of land;

20 (3) in case of any invalidity, reassess the
21 cost of the improvement against a benefiting tract or parcel
22 of land; or

23 (4) recess the hearing from time to time.

24 D. Within thirty days after the hearing, any owner
25 of a tract or parcel of land to be assessed or upon which it

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1 is proposed to impose an improvement district property tax,
2 whether he appeared at the hearing or not, may commence an
3 action in district court seeking an account of any error or
4 invalidity of the proceedings relating to the improvement
5 district to set aside or correct the assessment or any
6 proceedings relating to the improvement district. Thereafter,
7 any owner or his heirs, assigns, successors or personal
8 representatives are perpetually barred from any action or any
9 defense of error or invalidity in the proceedings or
10 assessments. Where no owner of a tract or parcel to be
11 assessed has presented a protest during the hearing and all
12 owners of the property to be assessed, upon conclusion of the
13 hearing, submit written statements in favor of the creation of
14 the improvement district for the types and character of
15 improvements indicated in the petition, such owners shall be
16 deemed to have waived their right to bring any action in
17 district court seeking an account of any error or invalidity
18 of the proceedings relating to the improvement district or to
19 set aside or correct the assessment or any proceedings
20 relating to the improvement district."

21 Section 12. Section 4-55A-12.1 NMSA 1978 (being Laws
22 1998, Chapter 47, Section 7) is amended to read:

23 "4-55A-12.1. IMPOSITION OF IMPROVEMENT DISTRICT PROPERTY
24 TAX--LIMITATIONS.--

25 A. If in connection with the creation of the

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1 improvement district the board determines that it is in the
2 best interest of the county to finance the district
3 improvements by the imposition of an improvement district
4 property tax and the issuance of improvement district general
5 obligation bonds, the board shall enact an ordinance making
6 the determination and provide in the ordinance the improvement
7 district property tax rate to be imposed; the date, which may
8 be a predetermined date or a date to be established in the
9 future after completion of the improvements, of commencement
10 of the tax; the amount of the bonds to be issued to finance
11 the improvements; and any other matters the board deems
12 necessary or appropriate. The board shall call an election
13 within the improvement district for the purpose of authorizing
14 the board to issue general obligation bonds, the proceeds of
15 the sale of which shall be used for constructing the
16 improvements for which the district was created and to impose
17 property taxes on all taxable property within the district for
18 the purpose of paying the principal, debt service and other
19 expenses incidental to the issuance and sale of the bonds.
20 [~~The ordinance shall include a limitation on the rate of the~~
21 ~~authorized imposition of not to exceed twenty dollars (\$20.00)~~
22 ~~per one thousand dollars (\$1,000) of net taxable value of real~~
23 ~~property in the district subject to property taxation.] The
24 ordinance shall also include procedures for the conduct of the
25 election based upon the size of the improvement district and~~

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1 the number of voters entitled to vote.

2 B. If at the election described in Subsection A of
3 this section the property tax imposition and the issuance of
4 improvement district general obligation bonds are approved by
5 a majority of the voters voting on the issues, the board shall
6 impose the tax at a rate [~~not to exceed the limitation in~~
7 ~~Subsection A of this section and~~] sufficient to pay the debt
8 service on the bonds and retire them at maturity.

9 C. Imposition and collection of the improvement
10 district property tax authorized in this section shall be made
11 at the same time and in the same manner as impositions and
12 collections of property taxes for use by counties are made.

13 D. Bonds issued by the board for payment of the
14 specified improvement district improvements shall be sold at a
15 price that does not result in a net effective interest rate
16 exceeding the maximum net effective interest rate permitted by
17 the Public Securities Act. The bonds may be sold at public or
18 private sale and may be in denominations that the board
19 determines.

20 E. The form and terms of the bonds, including a
21 final maturity of thirty years and provisions for their
22 payment and redemption, shall be as determined by the board.
23 The bonds shall be executed in the name of and on behalf of
24 the improvement district by the chairman of the board. The
25 bonds may be executed and sealed in accordance with the

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1 provisions of the Uniform Facsimile Signature of Public
2 Officials Act.

3 F. To provide for the payment of the interest and
4 principal of the bonds issued and sold pursuant to this
5 section, the board shall annually impose a property tax on all
6 taxable property in the district in an amount sufficient to
7 produce a sum equal to the principal and interest on all bonds
8 as they mature [~~subject to the limitation of Subsection A of~~
9 ~~this section~~].

10 G. The bonds authorized in this section are
11 general obligation bonds of the district, and the full faith
12 and credit of the district are pledged to the payment of the
13 bonds. The proceeds obtained from the issuance of the bonds
14 shall not be diverted or expended for any purposes other than
15 those provided in the County Improvement District Act.

16 H. All bonds issued by an improvement district
17 shall be fully negotiable and constitute negotiable
18 instruments within the meaning of and for all the purposes of
19 the Uniform Commercial Code. If lost or completely destroyed,
20 any bond may be reissued in the form and tenor of the lost or
21 destroyed bond upon the owner furnishing to the satisfaction
22 of the board:

- 23 (1) proof of ownership;
24 (2) proof of loss or destruction;
25 (3) a surety bond in twice the face amount of

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1 the bond and coupons; and

2 (4) payment of the cost of preparing and
3 issuing the new bond and coupons.

4 I. The board may in any proceedings authorizing
5 improvement district bonds provide for the initial issuance of
6 one or more bonds aggregating the amount of the entire issue
7 or may make provision for installment payments of the
8 principal amount of any bond as it may consider desirable.

9 J. The board may issue bonds to be denominated
10 refunding bonds, for the purpose of refunding any of the
11 general obligation bonded indebtedness of the district.
12 Whenever the board deems it expedient to issue refunding
13 bonds, it shall adopt a resolution setting out the facts
14 making the issuance of the refunding bonds necessary or
15 advisable, the determination of the necessity or advisability
16 by the board and the amount of refunding bonds that the board
17 deems necessary and advisable to issue. The resolution shall
18 fix the form of the bonds; the rate or rates of interest of
19 the bonds, but the net effective interest rate of the bonds
20 shall not exceed the maximum net effective interest rate
21 permitted by the Public Securities Act; the date of the
22 refunding bonds; the denominations of the refunding bonds; the
23 maturity dates; and the place or places of payment within or
24 without the state of both principal and interest. Refunding
25 bonds when issued, except for bonds issued in book entry or

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1 similar form without the delivery of physical securities,
2 shall be negotiable in form and shall bear the signature or
3 the facsimile signature of the chairman of the board [~~and~~
4 ~~shall be attested to by the secretary of the board~~]. All
5 refunding bonds may be exchanged dollar for dollar for the
6 bonds to be refunded or they may be sold as directed by the
7 board, and the proceeds of the sale shall be applied only to
8 the purpose for which the bonds were issued and the payment of
9 any incidental expenses.

10 K. The principal amount of improvement district
11 general obligation bonds that may be issued by the board for
12 any improvement district shall not exceed twenty-five percent
13 of the final estimated value of properties in the improvement
14 district after completion of the projects to be financed with
15 the improvement district general obligation bonds and after
16 development of the properties in the improvement district in
17 accordance with their planned use, as determined by the board
18 with the assistance of the engineer and other qualified
19 professionals.

20 L. In connection with an improvement district
21 project to be financed with the proceeds of improvement
22 district general obligation bonds issued pursuant to this
23 section, a property owner subject to the improvement district
24 property tax or the board may enter into contracts to design,
25 engineer, finance, construct or acquire a project with

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1 contractors and professionals, on such terms and with such
2 persons as the property owner subject to the improvement
3 district property tax or the board determines to be
4 appropriate, without following the procedures or meeting the
5 requirements of the Procurement Code or the requirements of
6 Sections 6-15-1 through 6-15-22 NMSA 1978. "