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SENATE BILL 463

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY
Carlos R. Cisneros

AN ACT

RELATING TO LOCAL GOVERNMENT; AMENDING A SECTION OF THE
MUNICIPAL CODE TO PROVIDE FOR PRESUMPTIVE STATE PREEMPTION OF
LOCAL GOVERNMENT BY STATE LEGISLATION REGULATING AN ACTIVITY OR
UNDERTAKING.

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

SECTION 1. Section 3-21-2 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-20-2, as amended) is amended to read:

"3-21-2. JURISDICTION OF A COUNTY OR MUNICIPAL ZONING
AUTHORITY.--To carry out the purposes of Sections 3-21-1
through 3-21-14 NMSA 1978:

A. a county zoning authority may adopt a zoning
ordinance applicable to all or any portion of the territory
within the county that is not within the zoning jurisdiction of
a municipality;

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1 B. a municipal zoning authority may adopt a zoning
2 ordinance applicable to the territory within the municipal
3 boundaries and, if not within a class A county with a
4 population of more than three hundred thousand persons
5 according to the last federal decennial census, shall have
6 concurrent authority with the county to zone all or any portion
7 of the territory within its extraterritorial zoning
8 jurisdiction that is within:

9 (1) two miles of the boundary of any
10 municipality having a population of twenty thousand or more
11 persons, provided such territory is not within the boundary of
12 another municipality;

13 (2) one mile of the boundary of any
14 municipality having a population of one thousand five hundred
15 or more but less than twenty thousand persons, provided such
16 territory is not within the boundaries of another municipality;

17 (3) the limits of the boundaries of a
18 municipality having a population of one thousand five hundred
19 persons or less; or

20 (4) territory not lying within the boundary of
21 a municipality but within the extraterritorial jurisdiction of
22 more than one municipality; provided that the extraterritorial
23 zoning jurisdiction of each municipality shall terminate
24 equidistant from the boundary of each municipality unless one
25 municipality has a population according to the most recent

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1 federal decennial census of less than two thousand five hundred
2 and another municipality has a population according to the most
3 recent federal decennial census of more than two thousand five
4 hundred, in which case the extraterritorial zoning jurisdiction
5 of the municipality having the greatest population extends to
6 such territory; and

7 (5) territory in addition to the
8 extraterritorial zoning jurisdiction provided by Paragraphs
9 (1), (2), (3) and (4) of this subsection that the governing
10 bodies of a county and a municipality agree to place within the
11 extraterritorial zoning jurisdiction of the municipality by
12 agreement entered into pursuant to the provisions of the Joint
13 Powers Agreements Act, provided such additional territory is
14 not within the boundary of another municipality and is
15 contiguous to the exterior boundaries of the territory within
16 the extraterritorial zoning jurisdiction of the municipality;

17 C. concurrent authority shall be exercised pursuant
18 to an extraterritorial zoning authority or joint powers
19 agreement; provided, however, this authority may be exercised
20 regardless of whether a county has enacted a comprehensive
21 zoning ordinance; ~~and~~

22 D. in the absence of a county zoning ordinance, a
23 qualified elector may file a petition, signed by the qualified
24 electors of the county equal in number to not less than twenty-
25 five percent of the votes cast for the office of governor at

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1 the last preceding general election, seeking the adoption of a
2 zoning ordinance by the county zoning authority. Within one
3 year of the filing of the petition seeking the adoption of a
4 county zoning ordinance, the board of county commissioners
5 shall adopt a county zoning ordinance; and

6 E. notwithstanding the foregoing, the provisions of
7 the Oil and Gas Act and the rules promulgated by the oil
8 conservation commission and the oil conservation division of
9 the energy, minerals and natural resources department are
10 intended to exclusively occupy the field of regulating the
11 exploration, development, production and transportation of oil
12 and gas and any associated remediation and reclamation
13 activities related thereto, and the jurisdiction of county or
14 municipal zoning authorities is expressly preempted."

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