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HOUSE BILL 371

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

INTRODUCED BY

Jason C. Harper

AN ACT

RELATING TO PROPERTY; REQUIRING APPROVAL FROM THE STATE BOARD OF FINANCE PRIOR TO A PUBLIC IMPROVEMENT DISTRICT ISSUING CERTAIN BONDS; LIMITING THE AMOUNT OF LEVIES IMPOSED ON AN AD VALOREM BASIS BY A PUBLIC IMPROVEMENT DISTRICT; REQUIRING DISCLOSURE OF ADDITIONAL PROPERTY TAX INFORMATION IN CERTAIN REAL ESTATE TRANSACTIONS.

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

SECTION 1. Section 5-11-1 NMSA 1978 (being Laws 2001, Chapter 305, Section 1) is amended to read:

"5-11-1. SHORT TITLE.--~~[Sections 1 through 27 of this act]~~ Chapter 5, Article 11 NMSA 1978 may be cited as the "Public Improvement District Act"."

SECTION 2. Section 5-11-19 NMSA 1978 (being Laws 2001, Chapter 305, Section 19, as amended) is amended to read:

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1 "5-11-19. GENERAL OBLIGATION BONDS--TAX LEVY--

2 EXCEPTION.--

3 A. At any time after the hearing on formation of
4 the district, the district board, or, if before formation, the
5 governing body may from time to time order and call a general
6 obligation bond election to submit to the owners and qualified
7 electors the question of authorizing the district to issue
8 general obligation bonds of the district to provide money for
9 any public infrastructure purposes consistent with the general
10 plan. The question shall include authorization for a levy,
11 including a limitation on the levy, of a property tax to pay
12 debt service on the bonds. The election may be held in
13 conjunction with the formation election.

14 B. If general obligation bonds are approved at an
15 election, the district board may issue and sell general
16 obligation bonds of the district.

17 C. Bonds may be sold in a public offering or in a
18 negotiated sale.

19 D. Prior to being issued, bonds that meet either of
20 the criteria of Subsection A of Section 4 of this 2013 act
21 shall be approved by the state board of finance.

22 [~~D.~~] E. After the bonds are issued, the district
23 board shall enter in its minutes a record of the bonds sold and
24 their numbers and dates and shall annually levy and cause a
25 property tax to be collected, at the same time and in the same

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1 manner as other property taxes are levied and collected on all
2 taxable property in the district, sufficient, together with any
3 money from the sources described in Section 5-11-17 NMSA 1978
4 to pay debt service on the bonds when due. Money derived from
5 the levy of property taxes that are pledged to pay the debt
6 service on the bonds shall be kept separately from other funds
7 of the district. Property tax revenues not pledged to pay debt
8 service on bonds may be used to pay other costs of the
9 district, including costs of formation, administration,
10 operation and maintenance, services or enhanced services. A
11 district's levy of property taxes shall constitute a lien on
12 all taxable property within the district, including, without
13 limitation, all leased property or improvements to leased land,
14 which shall be subject to foreclosure in the same manner as
15 other property tax liens under the laws of this state. The
16 lien shall include delinquencies and interest thereon at a rate
17 not to exceed ten percent per year, the actual costs of
18 foreclosure and any other costs of the district resulting from
19 the delinquency. The proceeds of any foreclosure sale shall be
20 deposited in the special bond fund for payment of any
21 obligations secured thereby.

22 ~~[E-]~~ F. Subject to the election requirements of
23 this section, a district may issue general obligation bonds at
24 such times and in such amounts as the district deems
25 appropriate to carry out a project or projects in phases.

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1 [F-] G. Pursuant to this section, the district may
2 issue and sell refunding bonds to refund general obligation
3 bonds of the district authorized by the Public Improvement
4 District Act. No election is required in connection with the
5 issuance and sale of refunding bonds. Refunding bonds issued
6 pursuant to this section shall have a final maturity date no
7 later than the final maturity date of the bonds being
8 refunded."

9 **SECTION 3.** Section 5-11-20 NMSA 1978 (being Laws 2001,
10 Chapter 305, Section 20) is amended to read:

11 "5-11-20. SPECIAL LEVY--BONDS--IMPOSITION.--

12 A. At any time after the hearing on formation of
13 the district, the district board may from time to time order
14 that a hearing be held to determine whether a special levy
15 should be imposed and special levy bonds issued to provide
16 money for any public infrastructure purpose consistent with the
17 general plan. The question of imposing a special levy may be
18 considered at the hearing on district formation upon notice
19 that both issues will be heard at that time, which notice shall
20 include the information required in Subsection B of this
21 section.

22 B. Notice of hearing shall be provided at least two
23 weeks in advance of the hearing itself in a newspaper of
24 general circulation in the municipality or county in which the
25 district is located. The notice shall include the following:

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1 (1) a description of the method by which the
2 amount of the proposed special levy will be determined for each
3 class of property to which the levy is proposed to apply, in
4 sufficient detail to enable the owner of the affected parcel to
5 determine the amount of the special levy;

6 (2) a description of the project to be
7 financed with special levy bonds or revenues; and

8 (3) a statement that any person affected by
9 the proposed special levy may object in writing or in person at
10 the hearing.

11 C. Special levy bonds may be sold in a public
12 offering or in a negotiated sale.

13 D. Prior to being issued, bonds that meet either of
14 the criteria of Subsection A of Section 4 of this 2013 act
15 shall be approved by the state board of finance.

16 [~~D.~~] E. After the bonds are issued, the district
17 board shall enter in its minutes a record of the bonds sold and
18 their numbers and dates and shall annually impose and cause a
19 special levy to be collected, at the same time and in the same
20 manner as property taxes are levied and collected on all
21 property within the district that may be subject to the levy,
22 including, without limitation, all leased property or
23 improvements to leased land, sufficient, together with any
24 other money lawfully available to pay debt service on the bonds
25 when due, except to the extent that the district board has

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1 provided for other imposition, collection and foreclosure
2 procedures in connection with special levies. Money derived
3 from the imposition of the special levy when collected that is
4 pledged to pay the debt service on the bonds shall be kept
5 separately from other funds of the district. Special levy
6 revenues not pledged to pay debt service on bonds may be used
7 to pay other costs of the district, including costs of
8 formation, administration, operation and maintenance, service
9 or enhanced services.

10 ~~[E-]~~ F. The district board shall specify conditions
11 under which the obligation to pay special levies may be prepaid
12 and permanently satisfied.

13 ~~[F-]~~ G. Special levies against privately owned
14 residential property shall be subject to the following
15 provisions:

16 (1) the maximum amount of special levy that
17 may be imposed shall not be increased over time by an amount
18 exceeding two percent per year, except that the amount of
19 special levy actually imposed may be increased by up to ten
20 percent as a result of the delinquency or default by the owner
21 of any other parcel within the district;

22 (2) the special levy shall be imposed for a
23 specified time period, after which no further special levy
24 shall be imposed and collected, except that special levies
25 imposed solely to finance the cost of ongoing district

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1 services, maintenance or operations or enhanced services may be
2 levied while such services, maintenance or operations or
3 enhanced services are continuing; and

4 (3) nothing in this subsection shall preclude
5 the establishment of different categories of residential
6 property or changing the amount of the special levies for a
7 parcel whose size or use is changed. A change in the amount of
8 a special levy imposed upon a parcel due to a change in its
9 size or use shall not require voter approval if the method for
10 changing the amount of special levy was approved in the
11 election approving the special levy in sufficient detail to
12 enable the owner of the affected parcel to determine how the
13 change in size or use of the parcel would affect the amount of
14 the special levy.

15 [~~G.~~] H. A district's imposition of a special levy
16 shall constitute a lien on the property within the district
17 subject to the special levy, including property acquired by the
18 state or its political subdivisions after imposition of the
19 special levy, which shall be effective during the period in
20 which the special levy is imposed and shall have priority
21 co-equal to the lien of property taxes. A special levy shall
22 be subject to foreclosure by the district at any time after six
23 months following written notice of delinquency to the owner of
24 the real property to which the delinquency applies. The lien
25 shall include delinquencies, penalties and interest thereon at

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1 a rate not to exceed the maximum legal rate of interest per
2 year and penalties otherwise applicable for delinquent property
3 taxes, the district's actual costs of foreclosure and any other
4 costs of the district resulting from the delinquency. All
5 rights of redemption applicable to property sold in connection
6 with property tax foreclosures pursuant to the laws of this
7 state shall apply to property sold following foreclosure of a
8 special levy lien. The portion of proceeds of any foreclosure
9 sale necessary to discharge the lien for the special levy shall
10 be deposited in the special bond fund for payment of any
11 obligations secured thereby.

12 ~~[H.]~~ I. No holder of special levy bonds issued
13 pursuant to the Public Improvement District Act may compel any
14 exercise of the taxing power of the district, municipality or
15 county to pay the bonds or the interest on the bonds. Special
16 levy bonds issued pursuant to that act are not a debt of the
17 district, municipality or county, nor is the payment of special
18 levy bonds enforceable out of any money other than the revenue
19 pledged to the payment of the bonds.

20 ~~[I.]~~ J. Subject to the requirements of this
21 section, a district may issue special levy bonds at such times
22 and in such amounts as the district deems appropriate to carry
23 out a project or projects in phases.

24 ~~[J.]~~ K. Pursuant to this section, the district may
25 issue and sell refunding bonds to refund any special levy bonds

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1 of the district authorized by the Public Improvement District
2 Act. Refunding bonds issued pursuant to this section shall
3 have a final maturity date no later than the final maturity
4 date of the bonds being refunded."

5 SECTION 4. A new section of the Public Improvement
6 District Act is enacted to read:

7 "[NEW MATERIAL] DEBT SERVICE DEPENDENT ON THIRD-PARTY
8 PAYMENTS OR LARGE PROPERTY OWNERS--STATE BOARD OF FINANCE PRIOR
9 APPROVAL REQUIRED.--

10 A. Before the bonds may be issued, the state board
11 of finance shall approve general obligation or special levy
12 bonds issued pursuant to Sections 5-11-19 and 5-11-20 NMSA
13 1978, including refunding bonds, if:

14 (1) a third party has agreed to make payments
15 for the debt service on the bonds; provided that state board of
16 finance approval is not required if the third party makes the
17 agreement after the bonds to which the agreement relates have
18 been issued; or

19 (2) there is a large property owner in the
20 district, which shall be determined prior to the bonds being
21 issued based on the net taxable value established pursuant to
22 the Property Tax Code for the current property tax year, or if
23 not then available, the prior property tax year.

24 B. The state board of finance shall approve or
25 disapprove the issuance of general obligation or special levy

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1 bonds that require approval pursuant to Subsection A of this
2 section by resolution and upon determining whether the proposed
3 general obligation or special levy bonds are in the best
4 interest of the property owners of the district. In making the
5 required determination, the state board of finance shall
6 consider, as applicable, the following factors:

7 (1) the impact on the property tax levy or
8 special levy needed for debt service if the large property
9 owner is delinquent in paying debt service levies or the third
10 party agreeing to make payments for debt service defaults;

11 (2) the credit worthiness and solvency of the
12 large property owner or the third party agreeing to make
13 payments for debt service on the bonds;

14 (3) the security for the payments by a third
15 party for debt service on the bonds;

16 (4) the impact of the public infrastructure
17 purpose to be financed with the bonds on property within the
18 district; and

19 (5) any other factors affecting the interests
20 of property owners of the district as the state board of
21 finance may establish.

22 C. The state board of finance may make and adopt
23 rules to implement the provisions of this section. All rules
24 shall be filed in accordance with the State Rules Act.

25 D. As used in this section:

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1 (1) "large property owner" means a single
2 person or related entities that collectively own property a
3 levy on which will produce thirty-three percent or more of the
4 required annual debt service on the general obligation or
5 special levy bonds at issue;

6 (2) "person" means any individual, estate,
7 trust, receiver, cooperative association, club, corporation,
8 company, firm, partnership, limited liability company, joint
9 venture, syndicate or other association; and

10 (3) "related entities" means two or more
11 entities that are owned in an amount greater than fifty percent
12 by the same person, either directly or through one or more
13 persons."

14 SECTION 5. A new section of the Public Improvement
15 District Act is enacted to read:

16 "[NEW MATERIAL] LIMITATION ON AD VALOREM TAXES.--

17 A. Notwithstanding the provisions of any section of
18 the Public Improvement District Act that establishes a maximum
19 for a specific type of levy on property, the aggregate total of
20 all taxes and special levies imposed on an ad valorem basis
21 levied pursuant to the Public Improvement District Act shall
22 not exceed ten dollars (\$10.00), or any lower maximum required
23 pursuant to Section 7-37-7.1 NMSA 1978, on each one thousand
24 dollars (\$1,000) of net taxable value of taxable property
25 within the district.

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1 B. The limitation in Subsection A of this section
2 does not apply to levies for debt service on general obligation
3 or special levy bonds issued before July 1, 2013."

4 SECTION 6. Section 47-13-4 NMSA 1978 (being Laws 2009,
5 Chapter 165, Section 3) is amended to read:

6 "47-13-4. FINDING--DISCLOSURE OF INFORMATION REQUIRED IN
7 CERTAIN REAL ESTATE TRANSACTIONS.--

8 A. The legislature finds that property tax levied
9 on a residential property for the current year can be a
10 misleading guide to property tax levies in the years following
11 the sale of that property and that a prospective buyer needs
12 information regarding the property tax obligation in the year
13 following the property's sale to properly judge the
14 affordability of a contemplated purchase.

15 B. Prior to accepting an offer to purchase, the
16 property seller or the seller's broker shall:

17 (1) request from the county assessor the
18 [~~estimated amount of property tax levy with respect to the~~
19 ~~property and shall specify the listed price as the value of the~~
20 ~~property to be used in the estimate]~~ information described in
21 Subsection E of this section, with respect to the property,
22 specifying in the request the listed price as the value of the
23 property; and

24 (2) provide a copy of the assessor's response
25 pursuant to Subsection D of this section in writing to the

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1 prospective buyer or the buyer's broker.

2 C. A buyer's broker shall provide to the
3 prospective buyer the county assessor's [~~estimated amount of~~
4 ~~property tax levy~~] response to the request pursuant to
5 Subsection B of this section immediately upon receiving it from
6 the property seller or the seller's broker. The prospective
7 buyer shall acknowledge in writing the receipt of the
8 [~~estimated amount of property tax levy~~] county assessor's
9 response.

10 D. Upon request, a county assessor shall furnish in
11 writing [~~pursuant to the provisions of~~] the information
12 described in Subsection E of this section, [~~an estimated amount~~
13 ~~of property tax levy with respect to a residential property in~~
14 ~~the county~~] calculated at a property value specified by the
15 requestor. The request shall be complied with by the close of
16 business of the business day following the day the request is
17 received. A county may satisfy this obligation through an
18 internet site or other automated format that allows a user to
19 print the requested [~~estimated amount of property tax levy~~]
20 information. A document associated with the request or the
21 response is not a public record or a valuation record. County
22 assessors shall not use information provided with a request,
23 including the specified value, to assess the valuation of the
24 property. Neither the county nor any jurisdiction levying a
25 tax against residential property in the county is bound in any

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1 way by the [~~estimate~~] information given.

2 E. A county assessor's [~~estimated amount of property~~
3 ~~tax levy~~] response to a request from the property seller or the
4 seller's broker pursuant to Subsection B of this section, with
5 respect to a residential property in the county, shall contain
6 the following:

7 (1) the actual amount of property tax levied
8 for the property for the current calendar year if the tax rates
9 for the current year have been imposed in accordance with
10 Section 7-38-34 NMSA 1978 for the county in which the property
11 is located or, in all other cases, the amount of property tax
12 levied with respect to the property for the prior calendar
13 year;

14 (2) the estimated amount of property tax levy,
15 as calculated by the county assessor, for the property for the
16 calendar year following the year in which the transaction takes
17 place; [~~and~~]

18 (3) the actual amount of any special levy
19 imposed on, against or with respect to the property by an
20 authorized taxing authority for the current calendar year if
21 the special levy is not included in the amount of property tax
22 disclosed pursuant to Paragraph (1) of this subsection;

23 (4) the estimated amount of any special levy
24 imposed on, against or with respect to the property by an
25 authorized taxing authority if the special levy is not included

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1 in the estimated amount of property tax levy disclosed pursuant
2 to Paragraph (2) of this subsection, as calculated by the
3 county assessor, for the calendar year following the year in
4 which the transaction takes place;

5 (5) the taxing authorities authorized to
6 impose property taxes or special levies on the property;

7 (6) the imposed rates by each authorized
8 taxing authority for the previous and, if set, current property
9 tax year;

10 (7) the maximum property tax and special levy
11 rates that each authorized taxing authority is authorized to
12 impose without voter approval, as set forth in the annual
13 notification from the department of finance and administration
14 required by Subsection F of this section; and

15 [~~3~~] (8) a disclaimer substantially similar
16 to the following:

17 "The estimated amount of property tax levy and estimated
18 amount of a special levy is calculated using the stated
19 price and estimates of the applicable tax rates. The
20 county assessor is required by law to value the property
21 at its "current and correct" value, which may differ from
22 the listed price. Further, the estimated tax rates may be
23 higher or lower than those that will actually be imposed.
24 Accordingly, the actual tax levy may be higher or lower
25 than the estimated amount. New Mexico law requires your

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1 real estate broker or agent to provide you [~~an estimate of~~
2 ~~the property tax levy~~] with information regarding actual
3 and potential levies on the property on which you have
4 submitted or intend to submit an offer to purchase. All
5 real estate brokers and agents who have complied with
6 these disclosure requirements shall be immune from suit
7 and liability arising from suit relating to the [~~estimated~~
8 ~~amount of property tax levy~~] information regarding actual
9 and potential levies.".

10 F. The department of finance and administration
11 shall annually notify county assessors of the maximum property
12 tax and special levy rates that each authorized taxing
13 authority within their respective counties is authorized to
14 impose without voter approval. The annual notification shall
15 be given within thirty days after the secretary of finance and
16 administration issues the written order setting property tax
17 rates pursuant to Section 7-38-33 NMSA 1978.

18 [~~F.~~] G. A prospective buyer may waive the disclosure
19 requirements of this section by signing a written document
20 prior to the time the offer to purchase is to be made in which
21 the buyer acknowledges that the required [~~estimated amount of~~
22 ~~property tax levy~~] information pursuant to Subsection E of this
23 section is not readily available and waives disclosure of the
24 [~~estimated amount of property tax levy~~] information.

25 [~~G.~~] H. All property sellers and real estate

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1 brokers and agents who have complied with the provisions of
2 this section shall be immune from suit and liability arising
3 from or relating to the ~~[estimated amount of property tax levy]~~
4 disclosure of information pursuant to this section.

5 ~~[H.]~~ I. The New Mexico real estate commission shall
6 biannually inform all New Mexico real estate licensees of the
7 statutory requirement for disclosure of the estimated amount of
8 property tax levy and other information required pursuant to
9 this section to prospective residential property purchasers."