

1 SENATE BILL 438

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Joseph Cervantes

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10 AN ACT

11 RELATING TO MUNICIPALITIES; PROVIDING ADDITIONAL REQUIREMENTS
12 TO BE MET FOR THE INCORPORATION OF A MUNICIPALITY; REQUIRING
13 THE LOCAL GOVERNMENT DIVISION OF THE DEPARTMENT OF FINANCE AND
14 ADMINISTRATION TO CONVENE A REVIEW TEAM TO CONSIDER PETITIONS
15 FOR MUNICIPAL INCORPORATION; REQUIRING PETITIONERS TO PRESENT A
16 MUNICIPAL SERVICES AND REVENUE PLAN THAT DEMONSTRATES THE
17 SERVICES TO BE PROVIDED TO RESIDENTS AND HOW THOSE SERVICES
18 WILL BE PAID FOR; LIMITING ATTEMPTS TO INCORPORATE IF A REVIEW
19 TEAM REJECTS THE MUNICIPAL PLAN.

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

24 "3-2-1. PETITION TO INCORPORATE AREA AS A MUNICIPALITY--
25 MAP AND MONEY FOR CENSUS.--

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1 A. The residents of territory proposed to be
2 incorporated as a municipality may petition the board of county
3 commissioners of the county in which the greatest portion of
4 the territory proposed to be incorporated lies to incorporate
5 the territory as a municipality. The petition shall:

6 (1) be in writing;

7 (2) state the name of the proposed
8 municipality;

9 (3) describe the territory proposed to be
10 incorporated as a municipality; and

11 (4) be signed by either:

12 (a) not less than two hundred qualified
13 electors, each of whom shall, on the petition: 1) swear or
14 affirm that ~~[he]~~ the qualified elector has resided within the
15 territory proposed to be incorporated for a period of six
16 months immediately prior to the signing of the petition; and 2)
17 list the street address of ~~[his]~~ the qualified elector's
18 residence; or

19 (b) the owners of not less than sixty
20 percent of the real estate within the territory proposed to be
21 incorporated who are not delinquent in their payment of real
22 property taxes.

23 B. The petition shall be accompanied by:

24 (1) an accurate map or plat ~~[which shall show]~~
25 that shows the boundary of the territory proposed to be

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1 incorporated; ~~and~~

2 (2) a municipal services and revenue plan that
3 describes the municipal services the proposed municipality will
4 provide and the details of how the municipality will generate
5 sufficient revenue to cover the costs of providing those
6 services; and

7 [~~2~~] (3) money in an amount determined by the
8 board of county commissioners to be sufficient to conduct a
9 census in the territory proposed to be incorporated. The money
10 shall be deposited with the county treasurer for payment of the
11 census required in Section [~~14-2-4 New Mexico Statutes~~
12 ~~Annotated, 1953 Compilation~~] 3-2-5 NMSA 1978.

13 C. The municipal services and revenue plan shall
14 demonstrate that the proposed municipality will provide at
15 least three of the following services and that it will have a
16 tax base sufficient to pay the costs of those services:

- 17 (1) law enforcement;
- 18 (2) fire protection and fire safety;
- 19 (3) road and street construction and
20 maintenance;
- 21 (4) solid waste management;
- 22 (5) water supply or distribution or both;
- 23 (6) wastewater treatment;
- 24 (7) storm water collection and disposal;
- 25 (8) electric or gas utility services;

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1 (9) enforcement of building, housing, plumbing
2 and electrical codes and other similar codes;

3 (10) planning and zoning; and

4 (11) recreational facilities.

5 D. The county shall forward the petition to the
6 local government division of the department of finance and
7 administration, which shall convene a municipal incorporation
8 review team consisting of:

9 (1) the director of the local government
10 division or the director's designee;

11 (2) the general counsel of the department or
12 the general counsel's designee, who shall be an attorney;

13 (3) the secretary of taxation and revenue or
14 the secretary's designee;

15 (4) a representative of the New Mexico
16 municipal league; and

17 (5) at least one representative of the county
18 in which the proposed municipality would be located.

19 E. The review team shall consider the petition and
20 the required census results, evaluate the municipal services
21 and revenue plan and determine whether the proposed
22 municipality meets the requirements of Chapter 3, Article 2
23 NMSA 1978. If the review team finds that the proposed
24 municipality meets the requirements of that article, it shall
25 report its findings and recommendations to the board of county

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1 commissioners. If the review team finds that the proposed
2 municipality does not meet the requirements of that article,
3 the review team shall notify the board of county commissioners
4 and the petitioners of its rejection of the petition. The
5 review team's rejection of the municipal services and revenue
6 plan terminates the attempt to incorporate. Petitioners may
7 not submit another petition to incorporate an area until at
8 least one year after the date of that rejection."

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

11 "3-2-2. CHARACTERISTICS OF TERRITORY PROPOSED TO BE
12 INCORPORATED AS A MUNICIPALITY.--

13 A. ~~Any~~ A territory proposed to be incorporated as
14 a municipality shall:

15 (1) not be within the boundary of another
16 municipality;

17 (2) have a population density of not less than
18 one person per acre, except for a class B county with a net
19 taxable value of property for property tax purposes in 1990 of
20 over ninety-five million dollars (\$95,000,000) and a population
21 of less than ten thousand according to the 1990 federal
22 decennial census and where the population density of the
23 territory proposed to be incorporated is not less than one
24 person per four acres;

25 (3) contain not less than one hundred fifty

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1 persons; and

2 (4) contain a sufficient assessed value of
3 real property and a sufficient number of businesses so that the
4 proposed municipality will contain a sufficient tax base to
5 enable it to provide a clerk-treasurer, a police officer and
6 office space for the municipal government within one year of
7 incorporation.

8 B. In the alternative to the requirements of
9 Paragraph [2] (2) of Subsection A of this section, [~~any~~] a
10 territory proposed to be incorporated as a municipality shall:

11 (1) contain within its boundaries a resort
12 area having more than fifty thousand visitors a year; and

13 (2) have more than one hundred fifty single-
14 family residences, as shown by the property tax rolls."

15 SECTION 3. Section 3-2-5 NMSA 1978 (being Laws 1965,
16 Chapter 300, Section 14-2-4, as amended) is amended to read:

17 "3-2-5. INCORPORATION--DUTIES OF COUNTY COMMISSIONERS
18 AFTER FILING OF PETITION TO ACT--CENSUS REQUIRED--ELECTION--
19 RIGHT OF APPEAL TO DISTRICT COURT.--

20 A. After the petition for incorporation, together
21 with the accompanying map or plat, the municipal services and
22 revenue plan and the amount of money sufficient to pay the cost
23 of a census have been filed with the board of county
24 commissioners, the board of county commissioners [~~shall~~], in
25 lieu of complying with the requirements of Section 3-1-5 NMSA

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1 1978, shall determine within thirty days after the filing of
2 the petition [~~determine~~]:

3 (1) from the voter registration list in the
4 office of the county clerk if the signers of the petition are
5 qualified electors residing in the territory proposed to be
6 incorporated; or

7 (2) from the tax schedules of the county if
8 any of the owners of the real estate who signed the petition
9 are delinquent in the payment of property taxes; and

10 (3) if the territory proposed to be
11 incorporated is within an existing municipality or within the
12 urbanized area of a municipality.

13 B. If the board of county commissioners determines
14 that the territory proposed to be incorporated is:

15 (1) not within the boundary of an existing
16 municipality and not within the urbanized area of a
17 municipality; or

18 (2) within the urbanized area of another
19 municipality and in compliance with Section 3-2-3 NMSA 1978,
20 the board of county commissioners shall cause a census to be
21 taken of the persons residing within the territory proposed to
22 be incorporated.

23 C. The census shall be completed and filed with the
24 board of county commissioners within thirty days after the
25 board of county commissioners authorizes the taking of the

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1 census.

2 ~~[G-]~~ D. Within fifteen days after the date the
3 results of the census and the municipal incorporation review
4 team's report have been filed with the board of county
5 commissioners, the board of county commissioners shall
6 determine if the conditions for incorporation of the territory
7 as a municipality have been met as required in Sections 3-2-1
8 through 3-2-3 NMSA 1978 and shall have its determination
9 recorded in the minutes of its meeting.

10 ~~[D-]~~ E. Based on the census results and the
11 municipal incorporation review team's report, if the board of
12 county commissioners determines that the conditions for
13 incorporation have not been met, the board of county
14 commissioners shall notify the petitioners of its determination
15 by publishing in a newspaper of general circulation in the
16 territory proposed to be incorporated, once, not more than ten
17 days after its determination, a notice of its determination
18 that the conditions for incorporation have not been met. If
19 there is no newspaper of general circulation in the territory
20 proposed to be incorporated, notice of the determination shall
21 be posted in eight public places within the territory proposed
22 to be incorporated.

23 ~~[E-]~~ F. After the board of county commissioners has
24 determined that all of the conditions for incorporation of the
25 territory as a municipality have been met, the board of county

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1 commissioners shall hold an election on the question of
2 incorporating the territory as a municipality. Elections for
3 the incorporation of municipalities shall only be held in odd-
4 numbered years [~~upon~~] on the first Tuesday in July or in any
5 year [~~upon~~] on the first Tuesday in January, unless that
6 Tuesday is a holiday, in which case the election shall be held
7 on the second Tuesday in July or the second Tuesday in January.
8 The county clerk shall notify the secretary of finance and
9 administration and the secretary of taxation and revenue of the
10 date of the incorporation election within ten days after the
11 adoption of the resolution calling the election.

12 [~~F-~~] G. The signers of the petition or a
13 municipality within whose urbanized area the territory proposed
14 to be incorporated is located may appeal any determination of
15 the board of county commissioners to the district court
16 pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

17 SECTION 4. Section 3-2-6 NMSA 1978 (being Laws 1965,
18 Chapter 300, Section 14-2-5) is amended to read:

19 "3-2-6. INCORPORATION--NOTICE OF THE ELECTION--REGISTERED
20 VOTERS TO VOTE--APPOINTMENT OF ELECTION OFFICIALS--CONDUCT OF
21 ELECTION--QUESTION TO BE SUBMITTED--LOCATION OF VOTING
22 PLACES.--

23 A. The notice of election shall contain:
24 (1) a description of the territory proposed to
25 be incorporated as a municipality;

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1 (2) a statement that a plat or map of the
2 territory, [~~is~~] the municipal services and revenue plan and the
3 findings of the municipal incorporation review team are on file
4 in the office of the county clerk;

5 (3) the date and time the election will be
6 held on incorporation; and

7 (4) a list of the polling places within the
8 territory proposed to be incorporated wherein [~~the qualified~~
9 ~~electors~~] registered voters may vote.

10 B. The notice of election shall be published in a
11 newspaper of general circulation within the territory proposed
12 to be incorporated once each week for three successive weeks.
13 The last publication shall not be more than fourteen nor less
14 than seven days before the day of the election. If there is no
15 newspaper of general circulation within the territory proposed
16 to be incorporated, notice of the election shall be posted in
17 eight public places within the territory proposed to be
18 incorporated. The posting shall be made at least three weeks
19 before the day of the election.

20 C. The board of county commissioners shall appoint
21 the judges and clerks of the election in the manner judges and
22 clerks of election are appointed for [~~the~~] general elections.
23 The election shall be conducted in the manner provided for the
24 conduct of general elections.

25 D. The question on the ballot shall read

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1 substantially as follows:

2 "Shall the territory described as (herein insert a
3 description of the territory proposed to be incorporated) and
4 to be known as (herein insert the name of the proposed
5 municipality) become an incorporated municipality?

6 For incorporation -----[]

7 Against incorporation -----[]".

8 E. Any registered voter who is a resident of the
9 territory proposed to be incorporated may vote on the question
10 of incorporating the territory as a municipality.

11 F. The board of county commissioners shall canvass
12 the votes and declare the results of the election in the manner
13 provided for the canvassing and declaring of votes in a general
14 election."