

1 HOUSE BILL 423

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO SPECIAL DISTRICTS; REQUIRING NOTIFICATIONS FOR
12 PUBLIC MEETINGS REQUIRED BY THE INFRASTRUCTURE DEVELOPMENT ZONE
13 ACT BE SENT BY FIRST CLASS MAIL AND ALLOWING NOTIFICATIONS TO
14 ALSO BE SENT BY ELECTRONIC MAIL.

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

17 SECTION 1. Section 5-17-1 NMSA 1978 (being Laws 2009,
18 Chapter 136, Section 1) is amended to read:

19 "5-17-1. SHORT TITLE.--~~[This act]~~ Chapter 5, Article 17
20 NMSA 1978 may be cited as the "Infrastructure Development Zone
21 Act"."

22 SECTION 2. Section 5-17-4 NMSA 1978 (being Laws 2009,
23 Chapter 136, Section 4) is amended to read:

24 "5-17-4. PUBLIC HEARING REQUIRED.--

25 A. After receiving a petition and a service plan,

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1 the governing body shall set a date within ninety days for a
2 public hearing on the petition and service plan of the proposed
3 infrastructure development zone. The governing body, at the
4 petitioners' expense, shall provide written notice of the date,
5 time and location of the hearing to the petitioners, each
6 resident or property owner of record within the boundaries of
7 the proposed infrastructure development zone and the governing
8 body of any existing county, municipality, school district or
9 other political subdivision that has levied an ad valorem tax
10 within the next preceding tax year and that has boundaries
11 within a radius of three miles of the proposed infrastructure
12 development zone boundaries, which governmental units shall be
13 interested parties for the purposes of Subsection C of this
14 section. Notice shall also be given to any person who has
15 requested that notice be given for any petition filed pursuant
16 to the Infrastructure Development Zone Act. The governing body
17 shall make publication of the date, time, location and purpose
18 of the hearing, the first of which shall be at least twenty
19 days prior to the hearing date. The notice shall also include:
20 (1) a general description of the land
21 contained within the boundaries of the proposed infrastructure
22 development zone;
23 (2) information outlining methods and
24 procedures for excluding territory from the proposed
25 infrastructure development zone; and

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1 (3) places, including ~~[web sites]~~ websites,
2 where interested persons may obtain a copy of the petition and
3 the service plan.

4 B. Not more than thirty days nor less than twenty
5 days prior to the hearing held pursuant to this section, the
6 petitioners for the organization of the proposed infrastructure
7 development zone shall send notification by ~~[certified]~~ first
8 class mail of the hearing to the property owners within the
9 proposed infrastructure development zone as listed on the
10 records of the county clerk on the date requested unless the
11 petitioners represent one hundred percent of the property
12 owners. Notification of the hearing may also be sent by
13 electronic mail to property owners that have an electronic mail
14 address. The notification shall indicate that it is a notice
15 of a hearing for the organization of an infrastructure
16 development zone and shall indicate the date, time, location
17 and purpose of the hearing, a general description of the type
18 of services that are included in the service plan, the maximum
19 mill levy, if any, or stating that there is no maximum that may
20 be imposed by the proposed infrastructure development zone, and
21 procedures for the filing of a request for exclusion pursuant
22 to Section ~~[6 of the Infrastructure Development Zone Act]~~
23 5-17-6 NMSA 1978. The mailing of the notification by
24 ~~[certified]~~ first class mail to all addresses within the
25 proposed infrastructure development zone shall constitute a

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1 good-faith effort to comply with this subsection. [~~and~~] Failure
2 to notify all property owners by [~~certified~~] first class or
3 electronic mail shall not provide grounds for a challenge to
4 the hearing being held.

5 C. The hearing held by the governing body shall be
6 open to the public, and a record of the proceedings shall be
7 made at the expense of the petitioners. All interested parties
8 shall be afforded an opportunity to be heard under such rules
9 of procedure as may be established by the governing body. Any
10 testimony or evidence that in the discretion of the governing
11 body is relevant to the organization of the proposed
12 infrastructure development zone shall be considered."

13 SECTION 3. Section 5-17-15 NMSA 1978 (being Laws 2009,
14 Chapter 136, Section 15) is amended to read:

15 "5-17-15. INCLUSION OF TERRITORY--PROCEDURE.--

16 A. Additional territory may be added to an
17 infrastructure development zone without an election pursuant to
18 the following provisions:

19 (1) the boundaries of an infrastructure
20 development zone may be altered by the inclusion of additional
21 real property by the fee owners of one hundred percent of any
22 real property capable of being served with facilities of the
23 infrastructure development zone filing with the board a
24 petition in writing requesting that the property be included in
25 the infrastructure development zone. The petition shall

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1 include a legal description of the property, shall state that
2 assent to the inclusion of the property in the infrastructure
3 development zone is given by the fee owners thereof and shall
4 be acknowledged by the fee owners in the same manner as
5 required for conveyance of land;

6 (2) the board shall hear the petition at a
7 public meeting after publication of notice of the filing of the
8 petition, the place, time and date of the meeting, the names
9 and addresses of the petitioners and notice that all persons
10 interested shall appear at the time and place and show cause in
11 writing why the petition should not be granted. There shall be
12 no withdrawal from a petition after publication of notice by
13 the board without the consent of the board. The failure of any
14 municipality or county that may be able to provide service to
15 the real property described in the petition, or of any person
16 in the existing infrastructure development zone to file a
17 written objection, shall be taken as an assent to the inclusion
18 of the area described in the notice;

19 (3) the board shall grant or deny the
20 petition, in whole or in part, with or without conditions, and
21 the action of the board shall be final and conclusive, except
22 as provided in Paragraph (4) of this subsection. If a
23 municipality or county has filed a written objection to the
24 inclusion, the board shall not grant the petition as to any of
25 the real property to which adequate service is, or will be,

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1 available from the municipality or county within a reasonable
2 time and on a comparable basis. If a petition is granted as to
3 all or any of the real property, the board shall make an order
4 to that effect and file the order with the county clerk of each
5 county in which any part of the infrastructure development zone
6 is located, and the property shall thereafter be included in
7 the infrastructure development zone; and

8 (4) a municipality or county that has filed a
9 written objection to the inclusion and that can provide
10 adequate service to the real property described in the petition
11 within a reasonable time and on a comparable basis may bring an
12 action in the district court for the county in which the land
13 proposed to be included is located, commenced within thirty
14 days after entry of the order of the board, to determine
15 whether the action of the board granting the inclusion was
16 arbitrary, capricious or unreasonable.

17 B. In addition to the procedures specified in
18 Subsection A of this section, additional territory may also be
19 added to an infrastructure development zone pursuant to the
20 following provisions:

21 (1) either:
22 (a) not less than twenty percent or two
23 hundred, whichever number is smaller, of the taxpaying electors
24 of an area that contains twenty-five thousand or more square
25 feet of land may file a petition with the board in writing

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1 requesting that the area be included within the infrastructure
2 development zone; except that no single tract of property
3 constituting more than fifty percent of the total area to be
4 included may be included in any infrastructure development zone
5 without the consent of the owner thereof. The petition shall
6 set forth a legal and a general description of the area to be
7 included and shall be acknowledged in the same manner as
8 required for conveyance of land; or

9 (b) the board may adopt a resolution
10 proposing the inclusion of a specifically described area; but
11 no single tract or parcel of property constituting more than
12 fifty percent of the total area to be included may be included
13 in an infrastructure development zone without the consent of
14 the owner thereof;

15 (2) nothing in this subsection shall permit
16 the inclusion in an infrastructure development zone of any
17 property if a petition that objects to the inclusion and that
18 is signed by the owners of taxable real and personal property,
19 which property equals more than fifty percent of the total
20 assessed value of all taxable real and personal property to be
21 included, is filed with the board no later than ten days prior
22 to the public meeting held under Paragraph (3) of this
23 subsection;

24 (3) upon the filing of a petition or the
25 adoption of a resolution pursuant to Paragraph (1) of this

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1 subsection, the board shall hear the petition or resolution at
2 a public meeting after publication of notice of the filing of
3 the petition or adoption of the resolution, the place, time and
4 date of the meeting, the names and addresses of the
5 petitioners, if applicable, the description of the area
6 proposed for inclusion and notice that all persons interested
7 and any municipality or county that may be able to provide
8 service to the real property therein described shall appear at
9 the time and place stated and show cause in writing why the
10 petition should not be granted or the resolution not finally
11 adopted. There shall be no withdrawal from a petition after
12 publication of notice by the board without the consent of the
13 board. The failure of any person in the existing
14 infrastructure development zone to file a written objection
15 shall be taken as an assent on that person's part to the
16 inclusion of the area described in the notice;

17 (4) after a hearing pursuant to Paragraph (3)
18 of this subsection, the board shall grant or deny the petition
19 or finally adopt the resolution, in whole or in part, with or
20 without conditions, and, subject to an election conducted
21 pursuant to Paragraph (6) of this subsection, the action of the
22 board shall be final and conclusive, except as provided in
23 Paragraph (5) of this subsection. If a municipality or county
24 has filed a written objection to the inclusion, the board shall
25 not grant the petition or finally adopt the resolution as to

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1 any of the real property to which adequate service is, or will
2 be, available from the municipality or county within a
3 reasonable time and on a comparable basis;

4 (5) a municipality or county that has filed a
5 written objection to the inclusion and that can provide
6 adequate service to the real property described in the petition
7 within a reasonable time and on a comparable basis may bring an
8 action in the district court for the county in which the area
9 proposed to be included is located, commenced within thirty
10 days after entry of the order of the board, to determine
11 whether the action of the board granting the inclusion was
12 arbitrary, capricious or unreasonable;

13 (6) upon final action by a board pursuant to
14 Paragraph (4) of this subsection or affirmation by a district
15 court pursuant to Paragraph (5) of this subsection, an election
16 shall be held within the area sought to be included. The
17 secretary shall give published notice of the time and place of
18 the election and of the question to be submitted, together with
19 a summary of any conditions attached to the proposed inclusion.
20 The ballot shall be prepared by the board and shall
21 substantially contain the following words:

22 "Shall the following described area become a part of the
23 infrastructure development zone upon the
24 following conditions, if any?
25 (Insert description of area)

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1 (Insert accurate summary of conditions)

2 For inclusion

3 Against inclusion"

4 (7) if the majority of the votes cast at the
5 election are in favor of inclusion, the election official shall
6 enter an order including any conditions so prescribed and
7 making the area a part of the infrastructure development zone.
8 The validity of the inclusion shall not be questioned directly
9 or indirectly in any suit, action or proceeding; and

10 (8) nothing in this subsection shall permit
11 the inclusion in an infrastructure development zone of any
12 property that could not be included in the infrastructure
13 development zone at the time of its organization without the
14 written consent of the owners thereof, unless the owners of the
15 property consent in writing to the inclusion of the property in
16 the infrastructure development zone in a petition filed
17 pursuant to this section or unless the property is no longer
18 excludable pursuant to the provisions of Paragraph (4) of this
19 subsection.

20 C. Nothing in this section shall be construed to
21 permit the inclusion in an infrastructure development zone of
22 any real property located in a municipality or a county outside
23 a municipality unless the governing body of the municipality or
24 county has adopted a resolution authorizing the inclusion or
25 waives its right to require the resolution in its sole

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1 discretion. Any resolution of approval so adopted or waiver so
2 given shall be appended to any petition filed pursuant to
3 Paragraph (1) of Subsection A of this section or Subparagraph
4 (a) of Paragraph (1) of Subsection B of this section.

5 D. Not more than thirty days nor less than twenty
6 days prior to a meeting of the board held pursuant to Paragraph
7 (2) of Subsection A of this section or Paragraph (3) of
8 Subsection B of this section, the secretary shall send
9 notification by [~~certified~~] first class mail of the meeting to
10 the property owners within the area proposed to be included
11 within the infrastructure development zone as listed on the
12 records of the county clerk on the date requested.

13 Notification of the hearing may also be sent by electronic mail
14 to property owners that have an electronic mail address. The
15 notification shall indicate that it is a notice of a meeting
16 for consideration of the inclusion of real property within an
17 infrastructure development zone and shall indicate the date,
18 time, location and purpose of the meeting, a reference to the
19 services of the infrastructure development zone as described in
20 the service plan, the maximum mill levy, if any, or stating
21 that there is no maximum that may be imposed if the proposed
22 area is included within the infrastructure development zone,
23 and procedures for the filing of a petition for exclusion
24 pursuant to Paragraph (4) of Subsection B of this section.

25 Except as provided in this subsection, the mailing of the

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1 notification by [~~certified~~] first class mail to all addresses
2 within the area proposed to be included within the
3 infrastructure development zone shall constitute a good-faith
4 effort to comply with this section. [~~and~~] Failure to notify all
5 electors by [~~certified~~] first class or electronic mail shall
6 not provide grounds for a challenge to the meeting being held."

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