



City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # _____ Ordinance/Resolution# 10-200 Council District: _____

For Meeting of January 29, 2010

(Adoption Date)

TITLE:

A RESOLUTION DECLARING THE INTENT OF THE CITY OF LAS CRUCES, NEW MEXICO (THE "CITY") TO FORM AND IMPLEMENT A SPECIAL ASSESSMENT DISTRICT (THE "DISTRICT"), TO FUND STREET AND UTILITY IMPROVEMENTS FOR A TWO MILE PORTION OF NORTH SONOMA RANCH BOULEVARD AND TO LEVY ASSESSMENTS ON REAL PROPERTY BENEFITTING FROM THE IMPROVEMENTS TO PAY THE COSTS OF THE IMPROVEMENTS AND THE DISTRICT.

PURPOSE(S) OF ACTION: To approve the intent of the City to form and implement a Special Assessment District to finance street and utility improvements of a two mile portion of North Sonoma Ranch Boulevard.

Name of Drafter: Gloria Podruchny		Department: Finance		Phone: 541-2050	
Department	Signature	Phone	Department	Signature	Phone
Originating Department	<i>[Signature]</i>	541-2050	Budget	<i>[Signature]</i>	2300
			Assistant City Manager	<i>[Signature]</i>	
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In accordance with Sections 3-33-1 through 3-33-43, NMSA 1978, the City of Las Cruces has been requested to form a Special Assessment District to obtain funds to install street and utility improvements for a two mile portion of North Sonoma Ranch Boulevard.

The owners of the property to be assessed have presented a proposal to the City describing the scope of the improvements and have requested that the City form the District.

The Las Cruces Public School District intends to participate in paying part of the costs of the utility improvements associated with the District, and faces time constraints in installing the improvements to provide service to new schools currently under construction.

The District will be formed and implemented by the City, through the provisional order method or the petition method, as quickly as possible under the Special Assessment District Act and with the intent of securing financing no later than July 1, 2010.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Resolution.
2. Sections 3-33-1 through 3-33-43, NMSA 1978

OPTIONS / ALTERNATIVES:

1. Approve the Resolution authorizing the City's intent for form and implement a Special Assessment District to fund street and utility improvements for a two mile portion of North Sonoma Ranch Boulevard and to levy assessments on real property benefitting from the improvements to pay the costs of the improvements and the District.
2. Modify the Resolution.
3. Reject the Resolution.

RESOLUTION NO. 10-200

A RESOLUTION DECLARING THE INTENT OF THE CITY OF LAS CRUCES, NEW MEXICO (THE "CITY") TO FORM AND IMPLEMENT A SPECIAL ASSESSMENT DISTRICT (THE "DISTRICT"), TO FUND STREET AND UTILITY IMPROVEMENTS FOR A TWO MILE PORTION OF NORTH SONOMA RANCH BOULEVARD AND TO LEVY ASSESSMENTS ON REAL PROPERTY BENEFITTING FROM THE IMPROVEMENTS TO PAY THE COSTS OF THE IMPROVEMENTS AND THE DISTRICT.

The City Council of the City of Las Cruces is informed that:

WHEREAS, the City of Las Cruces, New Mexico (the "City"), desires to form a special assessment district (the "District") in accordance with the Sections 3-33-1 through 3-33-43, NMSA 1978, as amended (the "Special Assessment District Act"), to secure funds to install street and utility improvements (the "Improvements") in and along a two mile portion of North Sonoma Ranch Boulevard; and

WHEREAS, owners (the "Owners") of real property to be assessed for the cost of the Improvements have presented a proposal to the City outlining the scope and extent of the Improvements and have requested that the City form and implement the District; and

WHEREAS, the Las Cruces Public School District (the "School District") intends to participate in defraying a portion of the costs of the utility improvements associated with the District and faces time constraints in installing the Improvements to provide service to new public schools currently under construction; and

WHEREAS, the City Council has determined it is in the best interest of the City to pursue formation and implementing of the District as an effective method of financing and installing the Improvements on a timely basis.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT all action (not inconsistent with the provisions hereof) heretofore taken by the School District, the Owners and the City and the officers and employees thereof directed toward the formation of the District be and the same is hereby ratified, approved and confirmed.

(II)

THAT officers, employees and consultants to the City are hereby authorized to proceed with (i) determining the most effective schedule and method for forming and implementing the District on an expedited basis, (ii) assembling the necessary information for forming and implementing the District, and (iii) assembling the necessary professional engineering, financial, appraisal and legal services required for forming and implementing the District and obtaining financing for the District; provided that no costs or expenses related to such efforts will be paid or reimbursed by the City until financing for the District is obtained.

(III)

THAT the District will be formed and implemented by the City, through the provisional order method or the petition method, as expeditiously as possible

under the Special Assessment District Act and with the intent of obtaining financing for the District no later than July 1, 2010.

(IV)

THAT this Resolution take effect immediately upon its passage and adoption by the City Council.

(V)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 29th day of January, 2010.

APPROVED:

[SEAL]

By _____
Mayor

ATTEST:

By _____
City Clerk

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

Vote:	
Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councilor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Thomas:	_____


Deputy City Attorney

West's New Mexico Statutes Annotated Currentness

Chapter 3. Municipalities

→ Article 33. Improvement Districts

→ § 3-33-1. Improvement district; authorization

A. Whenever 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:

(1) provisional order method; or

(2) petition method.

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

C. The improvement district shall include, for the purpose of assessment or imposition of an improvement district property tax, all the property that the governing body determines is benefitted by the improvement, including property lying without the municipality creating the improvement district if such property abuts or is served by improvements authorized by Chapter 3, Article 33 NMSA 1978 and including property utilized for public, governmental, charitable or religious purposes, except that of the United States or any agency, instrumentality or corporation thereof, in the absence of a consent of congress.

§ 3-33-2. Improvement district; definitions

As used in Chapter 3, Article 33 NMSA 1978:

A. "adjustment of assessment" means the adjustment in the estimated maximum benefit or assessment resulting from the division of the property to be assessed or assessed into smaller tracts or parcels or the combining of smaller parcels into one or more larger parcels or the changing of the configuration or legal description of such parcels. "Adjustment of assessment" may also include the reallocation of the assessment lien, without loss of priority, among parcels under single ownership that are subject to the assessment lien in order to permit the removal of the lien from one or more parcels where adequate security for the lien is demonstrated by the assessed parcels under such single ownership or provided by the owner;

B. "construct" or "construction" means to plan, design, engineer, construct, reconstruct, install, extend, better, alter, build, rebuild, improve, purchase or otherwise acquire any project authorized in Sections 3-33-3, 3-33-4, 3-33-4.1 and 3-33-6 NMSA 1978, except that it shall not include "to acquire" for the purposes of projects au-

thorized in Section 3-33-6 NMSA 1978;

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

D. "improvement" means any one or any combination of projects in one or more locations authorized in Sections 3-33-3, 3-33-4, 3-33-4.1 and 3-33-6 NMSA 1978;

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

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

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

§ 3-33-3. Improvement district; purpose

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

A. a street, road, bridge, walkway, overpass, underpass, pathway, alley, curb, gutter or sidewalk project, including without limitation median and divider strips, parkways and boulevards, ramps and stairways, interchanges, alleys and intersections, arches, support structures and pilings and the grading, regrading, oiling, sur-

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

B. a storm sewer project, sanitary sewer project or water project, including without limitation investigating, planning, constructing, acquiring, excavating, laying, leveling, backfilling or in any manner improving all or any part of one or more storm sewers, drains, sanitary sewers, water lines, trunk lines, mains, laterals or property connections and acquiring or improving hydrants, meters, valves, catch basins, inlets, outlets, lift or pumping stations and machinery and equipment incidental thereto or any combination of the foregoing;

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

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

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

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

§ 3-33-4. Improvement district; additional purpose

An improvement district may also be created as authorized in Chapter 3, Article 33 NMSA 1978 in order to construct, repair and maintain in one or more locations facilities for the parking of motor vehicles off the public streets or to construct or acquire, repair, operate and maintain one or more of the following inadequacies necessary to bring a premature subdivision into compliance within an improvement district within a municipality:

A. street right-of-way or street access control;

B. drainage easements or right-of-way;

C. park, recreation or open space areas;

D. overall grading and drainage plan; and

E. adequate subdivision grading both on or off the public right-of-way.

§ 3-33-4.1. Improvement district; additional purpose

An improvement district may also be created as authorized in Chapter 3, Article 33 NMSA 1978:

A. in order to construct, repair or maintain improvements in one or more locations as a means to stimulate manufacturing, industrial, commercial or business development; or

B. by any municipality with a boundary contiguous to an international boundary to construct, repair or maintain international port of entry facilities in one or more locations as a means to stimulate manufacturing, industrial, commercial or business development.

§ 3-33-5. Improvement district; powers of municipality

In addition to other powers granted by Sections 3-33-1 through 3-33-43 NMSA 1978, every municipality shall have all powers necessary or convenient to carry out the purposes of Section 3-33-4 NMSA 1978, including the following:

A. to construct, repair, maintain and operate facilities for the parking of motor vehicles off the public streets, together with public rights of way necessary or convenient therefor;

B. to purchase or acquire by gift, bequest, devise or otherwise, any real or personal property or any interest therein, together with the improvement thereon, to be used as parking facilities or incidental thereto;

C. to insure and to provide for the insurance of any parking facility established by the municipality against risks and hazards as the municipality deems desirable; and

D. to receive, control, invest and order the expenditure of all money pertaining to parking facilities.

E. The provisions of this act shall not authorize any municipality to exercise the power of eminent domain for the purposes enumerated in Section 3-33-4 or 3-33-5 NMSA 1978.

§ 3-33-6. Improvement district; additional purpose

An improvement district may also be created as authorized in Sections 3-33-1 through 3-33-43 NMSA 1978 in

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order to construct or acquire, operate and maintain a municipally owned electric or gas utility in an H class county or an incorporated county.

§ 3-33-6.1. Improvement district; additional purpose

An improvement district may also be created as authorized in Section 3-33-1 NMSA 1978 in order to construct or acquire, repair, operate and maintain one or more of the following inadequacies necessary to bring a premature subdivision into compliance within an improvement district within a municipality:

- A. street right-of-way or street access control;
- B. drainage easements or right-of-way;
- C. park, recreation, or open space areas;
- D. overall grading and drainage plan; or
- E. adequate subdivision grading both on or off the public right-of-way.

§ 3-33-7. Improvement district; powers of and restrictions upon a county

A. An H class county or incorporated county which constructs, acquires, operates or maintains a utility pursuant to Section 3-33-6 NMSA 1978 may exercise all of the powers exercised by a municipality which constructs, acquires, operates or maintains a utility pursuant to Section 3-24-1 or 3-25-2 NMSA 1978.

B. An H class county or incorporated county which constructs, acquires, operates or maintains a utility pursuant to Section 3-33-6 NMSA 1978 shall be subject to all of the restrictions and limitations as a municipality which constructs, acquires, operates or maintains a utility pursuant to Section 3-24-1 or 3-25-2 NMSA 1978 except:

- (1) the H class county or incorporated county need not hold an election prior to the construction of the utility; and
- (2) the H class county or incorporated county need not finance the utility by revenue bonds.

C. If an H class county or incorporated county seeks to acquire an existing utility through the creation of indebtedness, the question shall be submitted to a vote pursuant to the procedures established in Section 3-23-2 NMSA 1978.

§ 3-33-8. Improvement district; powers of a municipality outside its boundaries

Every municipality shall have the power to construct improvements authorized by Chapter 3, Article 33 NMSA 1978 on any location within the boundaries of the county in which the municipality is located.

§ 3-33-9. Improvement district; limitations on powers of a municipality outside its boundaries

Improvements shall be constructed pursuant to the powers granted in Section 3-33-8 NMSA 1978 and assessments shall be levied against property lying without the municipality only if the board of county commissioners of the county in which such improvements are to be made has, by resolution, submitted to the governing body of the municipality, determined:

A. that the construction of such improvements is in the best interests of the county;

B. that the maximum amount of benefit estimated to be conferred on the tracts or parcels of land lying within the county but without the municipality constructing the improvements is determined in the same manner as the maximum amount of benefit estimated to be conferred on the tracts or parcels of land lying within the municipality; and

C. that the owners of real property representing at least fifty-one percent of the total assessed valuation of the property benefited which lies within the county but outside the municipal boundary have not objected in writing to the construction of such improvements within thirty days after having received written notice of the adoption of the provisional order described in Subsection E of Section 3-33-11 NMSA 1978 by the governing body of the municipality. The governing body of the municipality may enter into a joint powers agreement with the board of county commissioners to provide for joint administration of any such improvement district.

§ 3-33-10. Improvement district; limitations on powers of municipality with respect to street or right of way under jurisdiction of state transportation commission

The municipality shall not construct improvements authorized by Section 3-33-3 NMSA 1978 on or through any street or right of way under the jurisdiction of the state transportation commission unless it receives prior written approval from the state transportation commission to undertake such improvements.

§ 3-33-11. Improvement district; provisional order method; procedure; preliminary lien; notice of pendency of district; effect

A. Whenever the governing body determines that the creation of an improvement district is necessary by the provisional order method, the governing body shall by resolution direct the engineer to prepare preliminary plans and an estimate of cost for the proposed improvement district.

B. The resolution shall:

(1) describe in general terms the property to be included in the improvement district;

(2) require the engineer to prepare:

(a) an assessment plat showing the area to be included in the improvement district; and

(b) an addendum to the assessment plat showing the amount of maximum benefit estimated to be assessed against each tract or parcel in the improvement district on a front-foot, zone, area or other equitable basis, which shall be set forth in the resolution and, if the benefit to a tract or parcel is derived from a combination of improvements, the amount of maximum benefit estimated to be assessed against such tract or parcel may be based upon an appraisal or determination of the value of the improvements as a whole; and

(3) require the engineer to prepare preliminary plans for one or more types of construction showing:

(a) for each type of road, curb, gutter, sidewalk and street, a typical section of the contemplated improvement, the type of material to be used and the approximate thickness and width of the material;

(b) for each type of storm sewer or drain, sanitary sewer or water line, the type of material and approximate diameter of any trunk lines, mains, laterals or house connections; or

(c) for each other type of project or other major component of the foregoing types of projects, a general description.

C. The engineer shall include in the total cost estimate for the improvement district all expenses, including but not limited to advertising, appraising, tax reimbursement, capital improvement, expansion, construction period interest, reserve fund, financing, engineering and printing expenses that the engineer deems necessary to pay the complete cost of the improvement.

D. The engineer shall submit to the municipal clerk the:

(1) assessment plat;

(2) preliminary plans of the type of construction; and

(3) estimate of costs for the improvement.

E. After the governing body examines the assessment plat, preliminary plans and estimates of cost for the improvement district, the governing body may adopt a provisional order which:

(1) orders the improvement to be constructed;

(2) instructs the municipal clerk or engineer to give notice of a hearing on the provisional order; and

(3) orders, if deemed necessary by the governing body and with the consent of the owners of the tracts or parcels to be encumbered with a preliminary assessment lien, the immediate placement of a preliminary assessment lien on tracts or parcels in the improvement district based on the estimated maximum benefit to be assessed against such tracts or parcels in order to facilitate interim financing of the improvement and provides for times and terms of paying the preliminary assessment lien, for the adjustment of the preliminary assessment lien and for the placement of a final assessment lien upon each such tract or parcel pursuant to the provisions of Sections 3-33-22 and 3-33-23 NMSA 1978. Both the preliminary and the final assessment liens shall be coequal with the lien for general ad valorem taxes and the lien of other improvement districts and are superior to all other liens, claims and titles. The consent of any owner in an improvement district to the placement of a preliminary assessment lien on the owner's property shall not alter the assessment on any other tracts or parcels in the improvement district.

F. Upon the adoption of the provisional order by the governing body, the estimated maximum benefit roll showing the legal description of the property to be included in the district and the owners thereof may be recorded with the clerk of the county in which the property is located, which recording shall constitute notice of the pendency of the special assessment district and shall be constructive notice to the owner, purchaser or encumbrancer of the property concerned; and any person whose conveyance is subsequently recorded shall be considered a subsequent purchaser or encumbrancer and shall be subject to and bound by all the proceedings taken after the recording of the notice to the same extent as if he were made a party to such special assessment proceedings.

G. This notice need not be acknowledged to entitle it to be recorded.

H. Nothing herein shall be construed to affect the priority of special assessment liens.

§ 3-33-12. Improvement district; notice of assessment; protests

A. The notice of the provisional order creating an improvement district shall:

(1) contain the time and place when the governing body shall hold a hearing on the provisional order creating the improvement district;

(2) describe the improvement to be constructed and the general location thereof; and

(3) state that any interested person may ascertain in the office of the municipal clerk:

(a) a description of the property to be assessed; and

(b) the maximum amount of benefit estimated to be conferred on each tract or parcel of land.

B. Not more than thirty days nor less than ten days before the day of the hearing, the municipal clerk, his deputy or the engineer shall mail the notice of the hearing on the provisional order to the owner of the tract or parcel of land being assessed the cost of the improvement at his last-known address. The name and address of the owner of each tract of land shall be obtained from the records of the county assessor or any other source the municipal clerk or engineer deems reliable. Proof of the mailing is to be made by affidavit of the municipal clerk, his deputy or the engineer, which shall be filed in the office of the municipal clerk. Failure to mail any notice shall not invalidate any of the proceedings authorized in Sections 3-33-1 through 3-33-43 NMSA 1978.

C. Notice of the hearing shall also be published once each week for three consecutive weeks and the last publication shall be at least one week prior to the day of the hearing. Such service by publication shall be verified by an affidavit of the publisher which is to be filed in the office of the municipal clerk.

§ 3-33-13. Improvement district; provisional order; protest; appeal to district court

A. At the hearing of the governing body on the provisional order creating an improvement district, an interested person or owner of property to be assessed for the improvement may file a written protest or objection questioning the:

(1) propriety and advisability of constructing the improvement;

(2) estimated cost of the improvement;

(3) manner of paying for the improvement; or

(4) estimated maximum benefit to each individual tract or parcel of land.

B. The governing body may recess the hearing from time to time so that all protestants may be heard.

C. Within thirty days after the governing body has, by adoption of a resolution:

(1) concluded the hearing;

(2) determined:

(a) the advisability of constructing the improvement; and

(b) the type and character of the improvement; and

(3) created the improvement district, a person who during the hearing filed a written protest with the governing body protesting the construction of the improvement may appeal the determination of the governing body pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

D. Where no person has filed a written protest during the hearing and all owners of property to be assessed, upon conclusion of the hearing, submit to the governing body written statements in favor of the creation of the improvement district for the types and character of improvements indicated in the provisional order, those owners shall be deemed to have waived their right to bring any action challenging the validity of the proceedings or the amount of benefit to be derived from the improvements.

§ 3-33-14. Improvement district; petition method; requirements; distribution of costs; notice of hearing

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

(1) create the improvement district;

(2) select the type of material and method of construction to be used; and

(3) proceed with the construction of the improvement as authorized in Section 3-33-18 NMSA 1978 after complying with the requirements for a preliminary hearing required in this section. A governing body, board of county commissioners or local board of education may sign a petition seeking the improvement for any land under its control. The submission of separate petitions for any one improvement district within a six-month period shall be considered as a single petition.

B. The governing body may:

(1) pay the cost of the improvement;

(2) assess the cost of the improvement against the benefiting tracts or parcels of land;

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

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

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

§ 3-33-14.1. Imposition of improvement district property tax; limitations

A. If in connection with the creation of the improvement district the governing body determines that it is in the best interest of the municipality to finance the district improvements by the imposition of an improvement district property tax and the issuance of improvement district general obligation bonds, the governing body shall enact an ordinance making the determination and provide in the ordinance the improvement district property tax rate to be imposed; the date, which may be a predetermined date or a date to be established in the future after completion of the improvements, of commencement of the tax; the amount of the bonds to be issued to finance the improvements; and any other matters the governing body deems necessary or appropriate. The governing body shall call an election within the improvement district for the purpose of authorizing the governing body to issue general obligation bonds, the proceeds of the sale of which shall be used for constructing the improvements for which the district was created and to impose improvement district property taxes on all taxable property within the district for the purpose of paying the principal, debt service and other expenses incidental to the issuance and sale of the bonds. The ordinance shall also include procedures for the conduct of the election based upon the size of the improvement district and the number of voters entitled to vote.

B. If at the election described in Subsection A of this section the property tax imposition and the issuance of improvement district general obligation bonds are approved by a majority of the voters voting on the issues, the governing body shall impose the tax at a rate sufficient to pay the debt service on the bonds and retire them at maturity.

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

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

E. The form and terms of the bonds, including a final maturity of thirty years and provisions for their payment

and redemption, shall be as determined by the governing body. The bonds shall be executed in the name of and on behalf of the improvement district by the mayor and clerk of the municipality. The bonds may be executed and sealed in accordance with the provisions of the Uniform Facsimile Signature of Public Officials Act.

F. To provide for the payment of the interest and principal of the bonds issued and sold pursuant to this section, the governing body shall annually impose a property tax on all taxable property in the district in an amount sufficient to produce a sum equal to the principal and interest on all bonds as they mature.

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

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

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

I. The governing body may in any proceeding authorizing improvement district bonds provide for the initial issuance of one or more bonds aggregating the amount of the entire issue or may make provision for installment payments of the principal amount of any bond as it may consider desirable.

J. The governing body may issue bonds to be denominated refunding bonds, for the purpose of refunding any of the general obligation bonded indebtedness of the improvement district. Whenever the governing body deems it expedient to issue refunding bonds, it shall adopt an ordinance setting out the facts making the issuance of the refunding bonds necessary or advisable, the determination of the necessity or advisability by the governing body and the amount of refunding bonds that the governing body deems necessary and advisable to issue. The ordinance shall fix the form of the bonds; the rate or rates of interest of the bonds, but the net effective interest rate of the bonds shall not exceed the maximum net effective interest rate permitted by the Public Securities Act; the date of the refunding bonds; the denominations of the refunding bonds; the maturity dates; and the place or places of payment within or without the state of both principal and interest. Refunding

bonds when issued, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be negotiable in form and shall bear the signature or the facsimile signature of the mayor and clerk of the municipality. All refunding bonds may be exchanged dollar for dollar for the bonds to be refunded or they may be sold as directed by the governing body, and the proceeds of the sale shall be applied only to the purpose for which the bonds were issued and the payment of any incidental expenses.

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

L. In connection with an improvement district project to be financed with the proceeds of improvement district general obligation bonds issued pursuant to this section, a property owner subject to the improvement district property tax or the governing body may enter into contracts to design, engineer, finance, construct or acquire a project with contractors and professionals, on such terms and with such persons as a property owner subject to the improvement district property tax or the governing body determines to be appropriate, without following the procedures or meeting the requirements of the Procurement Code or the requirements of Sections 6-15-1 through 6-15-22 NMSA 1978.

§ 3-33-15. Improvement district; notice of preliminary hearing

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

- (1) the time and place when the governing body will hold a preliminary hearing on the proposed improvement;
- (2) the estimated cost of the improvement;
- (3) the boundary of the improvement district;
- (4) the route of the improvement by streets or location of the improvements;
- (5) the location of the proposed improvement;
- (6) a description of each property to be assessed or against which an improvement district property tax is to be imposed;
- (7) the estimated amount of the assessment against or improvement district property tax to be imposed upon

each tract or parcel of land; and

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

B. If the owners are found within the county, the notices shall be personally served on them at least thirty days prior to the day of the hearing. The notice shall also be published in a newspaper published in the municipality once each week for four successive weeks. The last publication shall be at least three days before the day of the preliminary hearing.

§ 3-33-16. Improvement district; preliminary hearing; protest; action of the governing body; appeal to district court

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

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

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

(3) the benefits of the improvement; or

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

B. The governing body shall not assess the tract or parcel of land an amount greater than the actual benefit to the tract or parcel of land by reason of the enhanced value of the tract or parcel of land as a result of the improvement as ascertained at the hearing. The governing body may allow a fair price, based on its current value, as a set-off against any assessment against a tract or parcel of land if the owner has improved the tract or parcel of land in such a manner that the improvement may be made part of the proposed improvement.

C. At the hearing, the governing body may:

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

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

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

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or

(4) recess the hearing.

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

§ 3-33-17. Improvement district; municipalities under 25,000; levy and collection of assessments prior to commencing improvement; special fund; misuse; penalty

A. Whenever the governing body of a municipality having a population of less than twenty-five thousand persons:

(1) elects to order the construction of a street as authorized in Sections 3-33-1 through 3-33-43 NMSA 1978;

(2) uses municipally owned or leased equipment to construct the street; and

(3) determines what portion of the estimated cost of the construction shall be paid by tract or parcel of land benefited or to be benefited by the construction, the assessment may be levied and the installments collected prior to the commencement of work and as work progresses according to the terms of payment fixed by the governing body.

B. The construction shall commence within sixty days after the payment of the first installment of the assessment and be diligently prosecuted so that the construction is completed within one year from the date of commencement. At the end of the one year period, any tract or parcel of land that has not received the benefits provided by this section shall be released of any lien assessed against the tract or parcel of land by reason of this section and all assessment money collected from each owner of a tract or parcel of land so assessed and not benefited shall be returned.

C. All assessment money collected under this section shall be held by the municipal treasurer in a special account as a separate fund and used only for constructing the improvement, including the purchasing or leasing of necessary equipment. The use of the special fund for any purpose other than that required under this section by any public official, treasurer or member of the governing body is prohibited and is a felony punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the penitentiary for not more than two years or by both fine and imprisonment in the discretion of the court.

§ 3-33-18. Improvement district; advertising for bids; municipality may do work; contribution by governmental agency

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A. If a continuous area proposed to be improved on any one street exceeds five hundred feet in length, the governing body, before using municipal equipment and employees to construct the improvement, shall advertise for bids for the construction of the improvement and award the contract for the construction of the improvement to the lowest responsible bidder; provided, however, a municipality may construct the improvement using the same specifications upon which bids were requested if:

(1) the municipality can guarantee to construct the improvement for an amount less than the lowest bid amount and not assess the benefiting tracts or parcels of land an amount in excess of the lowest responsible bid if a bid is received; or

(2) the municipality receives no bids for the construction of the improvement.

B. A municipality using municipally owned or leased equipment and municipal employees in constructing an improvement may cooperate with another governmental agency which contributes money, labor or a portion of the cost of materials towards completion of the improvement.

§ 3-33-19. Notice of bid; acceptance of bid

A. After the governing body creates an improvement district, the governing body may proceed as authorized in Section 3-33-17 or 3-33-18 NMSA 1978, or call for sealed bids on the proposed improvement. The notice of the call for bids shall be made in accordance with the provisions of Section 13-1-11 NMSA 1978.

B. After advertising for bids, the municipality may make minor alterations or changes in the plans and specifications to correct errors or omissions in the original plans and specifications.

C. The governing body shall award the contract to the lowest responsible bidder unless the governing body:

(1) elects to construct the improvement as authorized in Section 3-33-17 or 3-33-18 NMSA 1978; or

(2) rejects all bids submitted for the construction of the improvement. Such bids shall be rejected in the following manner:

(a) if less than three bids are received, the purchase may be made without bids at the best documented obtainable price; or

(b) if three or more bids are received, the municipality may reject any or all bids but shall readvertise and accept new bids; and

(c) if no new bids are received or if all new bids are rejected, the rejection shall be accompanied by a writ-

ten statement of the governing body declaring the reasons for such rejection and the municipality may then purchase the required items on the open market at the best documented price.

§ 3-33-20. Improvement district; assessment of railroad property

The governing body may assess the property of any railroad or street railroad which occupies or abuts any street the whole cost of the improvement between or under the rails or tracks and two feet on each side of the rail or track of the railroad or street railroad. The assessment shall be levied as other assessments are levied and shall constitute a lien coequal with the lien of other taxes and prior and superior to all other liens, claims and titles, and which may be enforced by sale of the railroad or street railroad property or by suit against the owner of the railroad or street railroad.

§ 3-33-21. Improvement district; assessment roll; notice of assessment hearing

A. After the contract has been awarded and the governing body determines the total cost of the improvement to the municipality, the governing body shall determine what portion of the total cost of the improvement shall be assessed against the benefited tract or parcel of land. The assessment, including the cost of the improvement at an intersection, shall not exceed the estimated benefit to the tract or parcel of land assessed.

B. With the engineer, the governing body shall prepare and cause to be filed in the office of the municipal clerk an assessment roll containing, among other things:

(1) the name of the last-known owner of the tract or parcel of land to be assessed, or if his name is unknown, state "unknown";

(2) a description of the tract or parcel of land to be assessed; and

(3) the amount of the assessment against each tract or parcel of land.

C. After the filing of the assessment roll, the governing body shall, by resolution, set a time and place for the assessment hearing when an owner may object to the amount of the assessment.

D. Not more than thirty days nor less than ten days before the day of the hearing, the municipal clerk, his deputy or the engineer shall mail the notice of the hearing on the assessment roll to the owner of the tract or parcel of land being assessed the cost of the improvement at his last known address. The name and address of the owner of each tract of land shall be obtained from the records of the county assessor or any other source the municipal clerk or engineer deems reliable. Proof of the mailing is to be made by affidavit of the municipal clerk, his deputy, or the engineer, which shall be filed in the office of the municipal clerk. Failure to mail any notice shall not invalidate any of the proceedings authorized in Sections 3-33-1 through 3-33-43 NMSA 1978. The notice of the hearing shall also be published once each week for three consecutive weeks and the

last publication shall be at least one week prior to the day of the hearing. Such service by publication shall be verified by an affidavit of the publisher which is to be filed in the office of the municipal clerk.

§ 3-33-22. Improvement district; filing of objections; assessment hearing; action of the governing body; appeal to district court

A. Not later than three days before the date of the hearing on the assessment roll, an owner of a tract or parcel of land that is listed on the assessment roll may file his specific objections in writing with the municipal clerk. Unless presented as required in this section, an objection to the regularity, validity and correctness of:

- (1) the proceedings;
- (2) the assessment roll;
- (3) each assessment contained on the assessment roll; or
- (4) the amount of the assessment levied against each tract or parcel of land, is deemed waived.

B. At the hearing, the governing body shall hear all objections that have been filed as provided in this section and may recess the hearing and, by resolution, revise, correct, confirm or set aside an assessment and order another assessment be made de novo.

C. The governing body by ordinance shall, by reference to the assessment roll as so modified, if modified, and as confirmed by the resolution, levy the assessments contained in the assessment roll. The assessments may be levied in stages if preliminary liens are established pursuant to Section 3-33-11 NMSA 1978. The decision, resolution and ordinance of the governing body is:

- (1) a final determination of the regularity, validity and correctness of:
 - (a) the proceedings;
 - (b) the assessment roll;
 - (c) each assessment contained on the assessment roll; and
 - (d) the amount of the assessment levied against each tract or parcel of land; and
- (2) conclusive upon the owners of the tract or parcel of land assessed.

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D. An owner who has filed an objection as provided in this section may commence an appeal in district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

§ 3-33-23. Improvement district; assessments; terms of payment; liens

A. The governing body may, by ordinance:

(1) establish the time and terms of paying the assessment or installments on the assessment, including but not limited to any provision for differing optional time periods over which installments of assessments for the same district may be paid and, at the discretion of the governing body, differing interest rates on such assessments that are payable over different time periods; provided that in the situation where the governing body provides for such optional time periods for payment of assessment installments, the ordinance shall set a limit on the time during which the affected property owner must select one of the specified options in writing and shall provide that failure to so select one of the options within the time limit conclusively establishes the selection of a specific option designated in the ordinance;

(2) set any rate or rates of interest upon deferred payments of the assessment or provide for setting, by resolution, of the rate or rates of interest upon deferred payments after sale of bonds or assignable certificates as provided in Section 3-33-24 NMSA 1978, which shall commence from the date of publication or posting of the ordinance levying the assessment; provided that the same interest rate shall be set for assessments that are payable over the same time period; and provided further that no rate or rates of interest in excess of twelve percent a year upon such deferred payments of the assessment shall become effective unless the state board of finance or any successor thereof at any time approves a higher interest rate or rates in writing based upon the determination of the state board of finance that the higher rate is reasonable under existing or anticipated bond market conditions, which approval shall be conclusive;

(3) fix penalties to be charged for delinquent payment of an assessment;

(4) establish procedures and standards for an adjustment of assessment in order to allow transfer of a parcel free of an assessment lien, accommodate subdivision of an assessed parcel or accommodate property line corrections and adjustments without changing the original payment schedule, the priority or original amount of the assessment. Such an adjustment of assessment may allow the owner of the original tract of land to pay off any pro rata share of the assessment lien in advance of the schedule of payments. The procedures and standards may also provide for the method of assessment on the newly created parcels to vary from the method of assessment used on the original tract; and

(5) provide for the payment of any assessments levied pursuant to Chapter 3, Article 33 NMSA 1978 from other funds received by any owner of a tract or parcel in an improvement district in a location also intended by the governing body for the stimulation of manufacturing, industrial, commercial or business development pursuant to Section 3-33-4.1.

B. After the publication or posting of the ordinance levying an assessment as provided in Section 3-33-22 NMSA 1978, the assessment together with any interest or penalty accruing to the assessment is a lien upon the tract or parcel of land so assessed. Such a lien is coequal with the lien for general ad valorem taxes and the lien of other improvement districts and is superior to all other liens, claims and titles. Unmatured installments are not deemed to be within the terms of any general covenant or warranty. All purchasers, mortgagees or encumbrancers of a tract or parcel of land so assessed shall hold the tract or parcel of land subject to the lien so created unless the assessment lien is adjusted pursuant to this section.

C. Within sixty days after the publication or posting of the ordinance ratifying an assessment roll and levying the assessments, the municipal clerk shall prepare, sign, attest with the municipal seal and record in the office of the county clerk a claim of lien for any unpaid amount due and assessed against a tract or parcel of land.

D. Any tract or parcel so assessed shall not be relieved from the assessment or lien by the sale of the tract or parcel of land for general taxes or any other assessment, subject to the provisions of Section 3-33-30 NMSA 1978. The statute of limitations shall not begin to run against an assessment until after the last installment of the assessment becomes due.

E. The fact that an improvement is omitted for any benefited tract or parcel of land does not invalidate a lien or assessment made against any other tract or parcel of land.

§ 3-33-24. Improvement district; authority to issue bonds or assignable certificates

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

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

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

B. The assignable certificates shall:

(1) declare the liability of the owner of the tract or parcel of land so assessed or the liability of the tract or parcel of land so assessed for payment of the assessment, interest and penalties;

- (2) fix the terms and conditions of the certificates; and
- (3) accurately describe the tract or parcel of land covered by the certificate.

C. The bonds shall:

- (1) recite the terms and conditions for their issuance;
- (2) be payable from money collected from the preliminary assessment lien authorized in Section 3-33-11 NMSA 1978 and, if so payable, also payable from the proceeds of bonds payable from the final assessment lien authorized in Section 3-33-22 NMSA 1978; or
- (3) be payable from the money collected from the assessments authorized in Section 3-33-22 NMSA 1978; provided that if assessments are made payable over more than one period of time as permitted by Section 3-33-23 NMSA 1978, specified portions of the bonds may be payable from money collected from those assessments payable over that period of time that generally corresponds to the period of time over which such specified portions of the bonds are payable; and
- (4) bear a rate or rates of interest that shall not exceed the rate of interest on the deferred installments of the assessments or, if more than one rate of interest is specified for assessments as permitted by Section 3-33-23 NMSA 1978, on that portion of the deferred installments of assessments from which that specified portion of the bonds may be payable. Payment of the bonds issued for the construction of a project described in Subsection A of Section 3-33-3 NMSA 1978 may be supplemented from gasoline tax money in the street improvement fund authorized by Section 3-34-1 NMSA 1978 on or before a date not more than twelve months after the last deferred installment of an assessment is due from the owner of a tract or parcel of land so assessed.

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

- (1) in payment of the municipality's proportion of the cost of the improvement;
- (2) in payment of the proportionate cost if the improvement is done in cooperation with another governmental agency;
- (3) in payment of the construction of the improvement done under contract; or
- (4) in reimbursement to the municipality if the municipality constructed the improvement with municipally owned or leased equipment and municipal employees.

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

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

§ 3-33-25. Improvement district; rights of negotiable bondholders or assignable certificate holders

A. If the governing body fails or refuses to foreclose and sell a tract or parcel of land for the delinquent assessment or installment of the assessment as required in Section 3-33-26 NMSA 1978, any holder of a bond or assignable certificate secured by the assessment may foreclose the assessment lien on such delinquent property in the manner provided by law for the foreclosure of mortgages on real estate.

B. Any person holding two or more assignable certificates issued as authorized in Section 3-33-24 NMSA 1978 may sue in the same action on all tracts or parcels of land described in the certificate to enforce the lien against the tract or parcel of land described in the certificate unless the assessment lien has been adjusted pursuant to Section 3-33-23 NMSA 1978.

C. Whenever a governing body, board of county commissioners or local board of education is delinquent in the payment of an assessment, the holder of any assignable certificate issued against the tract or parcel of land of the municipality, county or school district has the rights and remedies for the collection of the assessment as are given by law for the collection of judgments against municipalities, counties and school districts.

§ 3-33-26. Improvement district; additional duties imposed on municipality

A. Whenever an improvement district has been created and bonds or assignable certificates have been issued to finance the improvement, a municipality shall:

- (1) act as agent for the collection of the assessments;
- (2) collect the assessments when due;
- (3) act as trustee for the benefit of the holders of the bonds or assignable certificates;
- (4) annually prepare a statement that shall:
 - (a) be available for inspection in the office of the municipal treasurer;
 - (b) reflect the financial condition of the improvement district; and

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(c) list all the delinquencies existing at that time; and

(5) institute proceedings to foreclose the assessment lien against any tract or parcel of land that is delinquent in the payment of the assessment or installment of an assessment for a period of more than one year.

B. If more than one improvement district is created, the money from assessments in each district shall be kept in a separate fund and used for the payment of principal and interest of the bonds or assignable certificates outstanding against that improvement district.

§ 3-33-27. Improvement district; acceptance of deed in lieu of foreclosure

In lieu of the foreclosure of a lien against any tract or parcel of land which is delinquent in the payment of an assessment or installment of an assessment for a period of more than one year, a municipality may accept a deed to the property subject to the lien if the owner of the property tenders the deed to the municipality.

§ 3-33-28. Improvement district; foreclosure; trustee may purchase at foreclosure of liens; contents of bid

Any delinquent assessment has the effect of a mortgage and shall be foreclosed and sold in the manner provided by law for the foreclosure of mortgages on real estate. In any action seeking the foreclosure of a lien against any tract or parcel of land assessed by a municipality for the construction of any project after either or both assignable certificates or bonds have been issued, if there is no other purchaser for the tract or parcel of land having a delinquent assessment, the municipality, as trustee of the fund from which the assignable certificates or bonds are to be paid, may:

A. purchase the tract or parcel of land sold at the foreclosure sale; and

B. bid, in lieu of cash, the full amount of the assessment, interest, penalties, attorneys' fees and costs found by the court to be due and payable under the ordinance creating the lien and any cost taxed by the court in the foreclosure proceedings against the property ordered sold.

§ 3-33-29. Improvement district; title subject to redemption vests in trustee

Upon the acceptance or purchase of the tract or parcel of land as provided in Section 3-33-27 or 3-33-28 NMSA 1978, title to the tract or parcel of land, subject to the right of redemption provided by Subsection A of Section 3-33-30 NMSA 1978, vests in the trustee of the fund from which the assignable certificates or bonds are payable.

§ 3-33-30. Improvement district; private or public sale of property; redemption period; disposition of proceeds

A. No real property shall be sold by the trustee to satisfy a delinquent assessment until at least fifteen days after the date of the order, judgment or decree of the court, within which time the owner of the tract or parcel of land may pay off the decree and avoid the sale. Any real estate sold under any order, judgment or decree of court to satisfy the lien may be redeemed at any time within one year of the date of sale by the owner or mortgage holder or other person having an interest, or their assigns by repaying to the purchaser or his assign the amount paid with interest from the date of purchase at the rate of twelve percent per year.

B. After expiration of the fifteen-day period, the trustee may sell the property at a public or private sale subject to the right of redemption, and, if not paid from the proceeds of the sale, subject to the indebtedness claimed under the lien, ad valorem taxes and other special assessments having a lien on the property that is coequal with the lien for ad valorem taxes.

C. The proceeds of the sale of the foreclosed tract or parcel of land at either a private sale or a public sale shall be applied as follows:

- (1) first, to the payment of costs in giving notice of the sale and conducting the sale;
- (2) second, to costs and fees taxed against the tract or parcel of land in the foreclosure proceedings;
- (3) third, on a pro rata basis, to indebtedness claimed under the lien and to ad valorem taxes and other special assessments having a lien on the property that are coequal with the ad valorem taxes; and
- (4) fourth, after all such costs, liens and assessments are paid to the former owner, mortgage holder or other parties having an interest in the tract or parcel, upon such persons providing satisfactory proof to the court of an interest and upon approval of the court.

D. Receipts for the satisfaction of the indebtedness claimed under the lien shall be paid into the proper improvement district fund for payment of the interest and the bonds or assignable certificates.

E. In case of the sale of any tract or parcel of land subject to more than one delinquent assessment, such remaining proceeds shall be distributed into the proper improvement district funds for such payment pro rata based upon the total unpaid amount due each such district.

§ 3-33-31. Improvement district; assessment funds; expenditures; misuse; penalties

A. All money received by the municipality from any special assessment or assessment within an improvement district shall be held in a special fund and used to:

- (1) pay the cost of the improvement for which the assessment was made;

(2) reimburse the municipality for any work performed by the municipality in constructing the improvement and for administrative costs associated with the improvement district; or

(3) pay the interest and principal due on any outstanding bonds or assignable certificates.

B. Any person who uses money in an improvement district fund other than as provided in this section is guilty of a felony and shall be punished by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the state penitentiary for not more than two years or by both such fine and imprisonment in the discretion of the court.

§ 3-33-32. Transfer of improvement district funds

The governing body may transfer to the general fund of the municipality any money obtained from the levy of an assessment for an improvement district if:

A. bonds or assignable certificates were issued to finance the improvement;

B. the proceeds of the bonds or assignable certificates were spent for the improvement;

C. the assessments were levied and collected for the payment of the bonds or assignable certificates; and

D. either the bondholders or assignable certificate holders are barred by the statute of limitations or a court judgment or decree from collecting the indebtedness; or

E. the bonded indebtedness or assignable certificates have been paid.

§ 3-33-33. Improvement district; reassessment after voiding of assessments; procedure

A. It is the purpose of Sections 3-33-33 through 3-33-37 NMSA 1978 to:

(1) charge the cost of any improvement payable by the tract or parcel of land benefited by the improvement by making a reassessment for the cost of the improvement; and

(2) permit the making of a reassessment when an original assessment is declared void or the enforcement of the original assessment is refused by a court.

B. Whenever any assessment for improvements is declared void or unenforceable, either directly or indirectly, by a decision of any court for any cause whatever, the governing body shall reassess the tracts or parcels of

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land which are benefited or will be benefited by the improvement to the extent of the proportionate share of the cost of the improvement of each tract or parcel of land together with accrued interest.

C. The reassessment roll shall be prepared, a hearing held on the reassessment roll and a final determination of the reassessment made by the governing body; all to be conducted in the manner provided in Sections 3-33-21 through 3-33-23 NMSA 1978 for the original assessment.

§ 3-33-34. Improvement district; reassessment; defects waived; credit for previous payment

A. The fact that:

(1) the contract has been let;

(2) an improvement has been wholly or partially constructed;

(3) an omission, failure or neglect of the governing body or municipal officer to comply with the requirements of Sections 3-33-1 through 3-33-23 NMSA 1978; or

(4) any other matter whatsoever connected with the improvement or initial assessment is invalid, shall not invalidate or in any way effect the making of a reassessment as authorized in Section 3-33-33 NMSA 1978, and charging the benefited tract or parcel of land the cost of the improvement.

B. When the reassessment is complete, any money paid on the former attempted assessment against a tract or parcel of land shall be credited to the tract or parcel of land in partial or whole payment of the reassessment.

§ 3-33-35. Improvement district; notice of appeal; appeal to district court

After an owner has filed a written objection with the municipal clerk to a reassessment as provided in Section 3-33-22 NMSA 1978 and the governing body has determined the reassessment, an owner of a tract or parcel of land that is reassessed may file a notice of appeal to the district court. The appeal shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

§ 3-33-36. Improvement district; payment of reassessment; continuing proceedings to collect assessment

A. The governing body shall enforce payment of the reassessment of the tract or parcel of land benefiting from an improvement in the manner provided in Chapter 3, Article 33 NMSA 1978 for the enforcement of the original assessment.

B. If for any reason a reassessment is held to be invalid or uncollectible, the governing body shall continue to reassess the tract or parcel of land as provided in Sections 3-33-33 through 3-33-37 NMSA 1978 until the benefited tract or parcel of land has paid the cost of any improvement chargeable to the benefited tract or parcel of land.

§ 3-33-37. Improvement district; appeal of reassessment; procedure exclusive

A. The rights and remedies granted in Section 3-33-22 NMSA 1978, to any owner who objects, contests or appeals the amount, correctness, regularity or validity of the reassessment:

(1) are declared to exclude any other right, remedy, suit or action either at law or in equity which might otherwise be available; and

(2) do afford the owner a sufficient day in court for the redressing of all rights and grievances that he may have in connection with the reassessment.

B. Any person who fails to file an objection to a reassessment in the manner provided in Section 3-33-22 NMSA 1978, or fails to appeal to the district court in the manner provided in Section 3-33-35 NMSA 1978, is forever absolutely barred from objecting to or contesting the amount, correctness, regularity or validity of the reassessment.

§ 3-33-38. Improvement district; application of reassessment fund to outstanding indebtedness

A. Whenever a municipality has:

(1) issued bonds or assignable certificates to obtain money to pay for an improvement that has been constructed; and

(2) reassessed the tract or parcel of land benefiting from the improvement as provided in Sections 3-33-32 through 3-33-35 NMSA 1978, the municipality shall apply all money received from the payment of the reassessment to the payment of the bonds or assignable certificates.

B. Bonds or assignable certificates that have been issued to obtain money to pay for any improvement that has been constructed are:

(1) valid and binding obligations of the municipality; and

(2) payable from the payments received from any reassessment that shall be levied until all obligations of indebtedness of the improvement have been paid in full.

§ 3-33-39. Improvement district; definition of “bonds”; refunding improvement bonds; authority

A. As used in this section and in Sections 3-33-40 through 3-33-42 NMSA 1978, “bonds”, when not modified by the word “refunding”, includes assignable certificates.

B. The governing body may issue refunding improvement district bonds to refund all or any part of outstanding improvement district bonds. Refunding bonds may be issued:

(1) to change the payment schedule for the bonds;

(2) to fund principal and interest due on bonds that are in default, or for which there is not and, in the opinion of the governing body, will not be sufficient money available to pay the principal and interest when due;

(3) to reduce interest costs on the bonds or on the assessments providing security for the bonds or to provide other savings;

(4) to modify or eliminate restrictive or burdensome contractual [contractual] limitations concerning the bonds;

(5) to provide enhanced or substitute security for the bonds; or

(6) to provide for any other reasonable and necessary purpose or any combination of the foregoing purposes.

§ 3-33-40. Refunding bonds; escrow; detail

A. Refunding bonds issued pursuant to Sections 3-33-39 through 3-33-42 NMSA 1978 shall be authorized by ordinance. Any bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the ordinance authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provision shall be made for paying the refunded bonds at the time or times provided in Subsection A of this section.

C. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the refunded bonds or be placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the refunded bonds; provided that such refunding

bond proceeds, including any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest thereon and the principal thereof or both interest and principal as the municipality may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available for its purpose. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of or the principal and interest of which obligations are unconditionally guaranteed by the United States of America or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of or the payment of which is unconditionally guaranteed by the United States of America, the par value of which obligations is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the refunded bonds as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the municipality shall exercise a prior redemption option. Any purchaser of any refunding bond issued under Sections 3-33-39 through 3-33-42 NMSA 1978 is in no manner responsible for the application of the proceeds thereof by the municipality or any of its officers, agents or employees.

§ 3-33-41. Improvement district; ordinance for refunding bonds; conditions; sale or exchange

A. The ordinance authorizing the issuance of refunding bonds for an improvement district shall describe the:

- (1) details of the issue;
- (2) form of the refunding bonds and interest coupons, if any;
- (3) fund from which the principal and interest of the refunding bonds will be paid; and
- (4) manner in which the bonds are to be issued.

B. The refunding bonds may:

- (1) be issued in an amount less than, equal to or greater than the principal amount of improvement district bonds being refunded;
- (2) not bear a rate of interest greater than the rate of interest borne by the assessments providing security for

the refunding bonds if secured by assessments;

(3) become due and payable in regular numerical order;

(4) not be issued for a period of more than twenty years from the date of issuance; and

(5) be payable from substitute security or from the same funds that were applicable to the payment of the bonds being refunded.

C. The refunding bonds may be:

(1) sold at a public or private sale at a discount; or

(2) exchanged, dollar for dollar, for the improvement district bonds being refunded.

§ 3-33-42. Improvement district; payment of assessment for refunding bond; maximum term; interest; prepayment; liens

A. In connection with issuance of refunding bonds as provided in Sections 3-33-39 through 3-33-42 NMSA 1978, the governing body may, by ordinance, provide that any unpaid assessment and accrued interest on the assessment shall be paid in not more than twenty years with interest at a rate of interest not less than the rate borne by the refunding bonds and with the penalties as lawfully attached to the original assessment. The owner of a tract or parcel of land that is assessed may at any time pay the assessment in full with interest to the time of payment.

B. The assessment may be collected as provided in Section 3-33-23 NMSA 1978, and the refunding bonds may be secured and enforced as the original lien was established as provided in Section 3-33-23 NMSA 1978.

§ 3-33-43. Improvement district; construction of Sections 3-33-39 through 3-33-42 NMSA 1978

Nothing contained in Sections 3-33-39 through 3-33-42 NMSA 1978 shall be construed as:

A. increasing the burden or liability of any tract or parcel of land or the owner of any tract or parcel of land; or

B. except for issuance of the refunding bonds, creating any additional liability of the municipality.

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