

1 AN ACT
2 RELATING TO MUNICIPALITIES; AMENDING SECTIONS OF THE
3 MUNICIPAL CODE; CLARIFYING THE GOVERNING LAW OF MAYOR-COUNCIL
4 FORMS OF GOVERNMENT; PROVIDING PROCEDURES FOR FILLING
5 VACANCIES; PROVIDING PROCEDURES FOR THE APPOINTMENT OF
6 OFFICIALS AND VOTING ON MATTERS BEFORE A GOVERNING BODY;
7 CLARIFYING MAYORAL AUTHORITY, POWERS AND DUTIES; PROVIDING
8 PROCEDURES FOR THE NOMINATION AND APPOINTMENT OF EMPLOYEES
9 AND OFFICIALS; CODIFYING THE MAYOR AND GOVERNING BODY'S LACK
10 OF AUTHORITY OVER JUDICIAL BRANCH AFFAIRS; REQUIRING
11 ORGANIZATIONAL MEETINGS; PROVIDING THAT APPOINTED MEMBERS OF
12 A GOVERNING BODY ARE NOT SUBJECT TO MERIT-SYSTEM ORDINANCES;
13 REQUIRING MEMBERS OF A GOVERNING BODY TO RECUSE THEMSELVES
14 FROM VOTING WHEN TRUE OR PERCEIVED CONFLICTS OF INTEREST
15 EXIST; SPECIFYING PROCEDURES FOR SUCH RECUSALS; REMOVING THE
16 REQUIREMENT THAT SPECIAL ELECTIONS OCCUR WITHIN NINETY DAYS
17 OF THE ADOPTION OF AN ORDINANCE TO CHANGE THE NUMBER OF
18 MEMBERS OF A GOVERNING BODY OR TRUSTEES OR SUCH A PETITION;
19 AMENDING THE POWERS AND DUTIES OF A GOVERNING BODY; AMENDING
20 THE POWERS OF A COMMISSION IN A COMMISSION-MANAGER FORM OF
21 GOVERNMENT.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

24 SECTION 1. Section 3-11-1 NMSA 1978 (being Laws 1965,
25 Chapter 300, Section 14-10-1) is amended to read:

1 "3-11-1. APPLICABILITY.--

2 A. The provisions of Sections 3-11-1 through
3 3-11-7 NMSA 1978 are applicable only to those municipalities
4 governed under the mayor-council form of government and that
5 have not elected to be governed under the commission-manager
6 form of government.

7 B. In the event that a home rule municipality has
8 adopted procedures in the municipality's charter that
9 conflict with the provisions of Chapter 3, Article 11 or 12
10 NMSA 1978, the municipality's charter shall govern."

11 SECTION 2. Section 3-11-2 NMSA 1978 (being Laws 1965,
12 Chapter 300, Section 14-10-2) is amended to read:

13 "3-11-2. MAYOR--VACATED OFFICE--APPOINTMENT BY
14 GOVERNING BODY.--In case of the death, disability,
15 resignation or change of residence from the municipality of
16 the mayor, the governing body shall appoint a qualified
17 elector to fill the vacancy of the office of the mayor by a
18 majority vote of the members of the governing body that are
19 present; provided that:

20 A. the governing body shall vote at the next
21 meeting immediately following the vacancy to fill the vacancy
22 if the vacancy has not been filled within fifteen days after
23 the vacancy occurred; and provided further that so long as
24 the vacancy remains unfilled, the item shall be included on
25 each subsequent governing body meeting agenda until the

1 vacancy is filled;

2 B. the qualified elector appointed to fill the
3 vacancy shall serve until the next regular local election or
4 municipal officer election, whichever is applicable, when a
5 qualified elector shall be elected to fill the remaining
6 unexpired term, if any; and

7 C. a resigning mayor shall not select a nominee or
8 be involved in the appointment of a successor to fill a
9 vacancy in the office of mayor."

10 SECTION 3. Section 3-11-3 NMSA 1978 (being Laws 1965,
11 Chapter 300, Section 14-10-3) is amended to read:

12 "3-11-3. MAYOR--PRESIDING OFFICER OF GOVERNING BODY--
13 LIMITATION ON VOTE--QUORUM.--

14 A. The mayor of a municipality is the presiding
15 officer of the governing body and shall constitute a member
16 of the governing body for purposes of determining whether a
17 quorum exists.

18 B. In all municipalities, the mayor shall vote
19 only when there is a tie vote between members of a governing
20 body; provided that the mayor is vested with the authority to
21 break a tie vote in all circumstances, including matters
22 requiring an affirmative vote of a supermajority of members
23 of the governing body.

24 C. A member of a governing body presiding as the
25 mayor pro tem shall retain the ability to vote as a member of

1 the governing body but shall not vote as a mayor in the event
2 of a tie vote as provided pursuant to Subsection B of this
3 section."

4 SECTION 4. Section 3-11-4 NMSA 1978 (being Laws 1965,
5 Chapter 300, Section 14-10-4) is amended to read:

6 "3-11-4. MAYOR--CHIEF EXECUTIVE OFFICER--POWERS.--The
7 mayor is the chief executive officer and shall:

8 A. enforce the ordinances and regulations of the
9 municipality;

10 B. exercise within the municipality the authority,
11 indirectly through the use of police personnel, to suppress
12 disorders and keep the peace; and

13 C. perform other duties compatible with the
14 mayor's office that the governing body may require; provided
15 that such performance is in accordance with state law or the
16 municipality's charter."

17 SECTION 5. Section 3-11-5 NMSA 1978 (being Laws 1965,
18 Chapter 300, Section 14-10-5, as amended) is amended to read:

19 "3-11-5. ORGANIZATIONAL MEETING--MAYOR--APPOINTMENT OF
20 OFFICERS AFTER ELECTION.--

21 A. After each regular local election or municipal
22 officer election, the governing body shall hold an
23 organizational meeting no earlier than fifteen days but no
24 later than twenty-one days after the newly elected officials
25 begin their terms. Such a meeting may constitute a special

1 meeting or a regular meeting of the governing body.

2 B. At the organizational meeting of the governing
3 body, the mayor shall submit, for confirmation by the
4 governing body, the names of persons who shall fill the
5 appointive offices of the municipality.

6 C. The failure of the mayor to nominate an
7 appointee to the governing body for appointment to office at
8 the organizational meeting does not preclude the mayor from
9 doing so at a subsequent meeting. If the governing body
10 fails to confirm any person as an appointive official of the
11 municipality, the mayor at the next regular meeting of the
12 governing body may submit the name of a previous nominee or
13 another person to fill the appointed office of the
14 municipality. Failure to fill a vacant office shall not
15 constitute malfeasance of an elected official.

16 D. Any person holding an appointed office at the
17 time of the regular local election or municipal officer
18 election shall continue in that office until the person's
19 successor has been appointed and is qualified."

20 SECTION 6. Section 3-11-6 NMSA 1978 (being Laws 1965,
21 Chapter 300, Section 14-10-6) is amended to read:

22 "3-11-6. MAYOR--AUTHORITY TO APPOINT, SUPERVISE AND
23 DISCHARGE EMPLOYEES.--

24 A. Subject to the approval of a majority vote of
25 all members of the governing body, the mayor shall:

1 (1) appoint all officers and employees
2 except those holding elective office; and

3 (2) designate an employee to perform any
4 service authorized by the governing body.

5 B. The mayor may appoint temporary employees as
6 required for the proper administration of municipal affairs.
7 The employee shall serve only until the next regular meeting
8 of the governing body at which a quorum is present. The
9 temporary employment shall cease, and the employee shall not
10 be reappointed unless appointment is confirmed by the
11 governing body. A temporary employee is entitled to usual,
12 ordinary and reasonable compensation for services rendered to
13 the municipality.

14 C. Only the mayor shall:

15 (1) supervise the employees of the
16 municipality;

17 (2) examine the grounds of reasonable
18 complaint made against any employee; and

19 (3) cause any violations or neglect of the
20 employees' duties to be corrected promptly or reported to the
21 proper authority for correction and punishment.

22 D. Subject to the limitation of a merit system
23 ordinance of the municipality:

24 (1) the governing body may discharge an
25 appointed official or employee by a majority vote of all the

1 members of the governing body; and

2 (2) the mayor may discharge an appointed
3 official or employee upon the approval of a majority vote of
4 all the members of the governing body.

5 E. The mayor may suspend an appointed official or
6 employee until the next regular meeting of the governing
7 body, at which time the suspension shall be approved or
8 disapproved by a majority vote of all the members of the
9 governing body. If the suspension of the appointed official
10 or employee is disapproved by the governing body, the
11 suspended appointed official or employee shall be paid the
12 compensation that the appointed official or employee was
13 entitled to receive during the time of the suspension.

14 F. Any appointed official or employee who is
15 discharged shall:

16 (1) upon the official's or employee's
17 request, be given, by the mayor in writing, a list of reasons
18 for the discharge; and

19 (2) be paid any vacation pay that may have
20 accrued, subject to the limitations of a merit system
21 ordinance.

22 G. Neither the mayor nor the governing body shall
23 supervise, hire, discipline or terminate any employee,
24 personnel or judge of the judicial branch.

25 H. Appointed members shall not be subject to a

merit system ordinance."

SECTION 7. Section 3-11-7 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-10-7) is amended to read:

"3-11-7. ADDITIONAL POWERS OF MAYOR.--The mayor shall sign all commissions, licenses and permits granted by the governing body and other acts that the law or ordinances may require, or the commissions, licenses and permits may be authenticated as authorized pursuant to the:

A. Uniform Facsimile Signature of Public Officials Act;

B. Uniform Electronic Transactions Act; and

C. Electronic Authentication of Documents Act."

SECTION 8. Section 3-12-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-11-1, as amended) is amended to read:

"3-12-1. VACANCY ON GOVERNING BODY--APPOINTMENT--PROCEDURES.--

A. A vacancy on the governing body of a mayor-council municipality shall be filled by appointment of a qualified elector by the mayor of the municipality, with the advice, the consent and a majority vote of the members of the governing body that are present; provided that the governing body shall vote at the next meeting immediately following the vacancy to fill the vacancy if the vacancy has not been filled within fifteen days after the vacancy occurred; and provided further that so long as the vacancy remains

1 unfilled, the item shall be included on each subsequent
2 governing body meeting agenda until the vacancy is filled.

3 B. A qualified elector appointed to fill a vacancy
4 on the governing body shall serve until the next regular
5 local election or municipal officer election, whichever is
6 applicable, at which time a qualified elector shall be
7 elected to fill the remaining unexpired term, if any."

8 SECTION 9. Section 3-12-2 NMSA 1978 (being Laws 1965,
9 Chapter 300, Section 14-11-2, as amended) is amended to read:

10 "3-12-2. GOVERNING BODY--CORPORATE AUTHORITY--
11 LEGISLATIVE BODY--MEMBERS OF A GOVERNING BODY AND BOARDS OF
12 TRUSTEES--QUORUM--RECUSAL.--

13 A. The corporate authority of a municipality is
14 vested in the governing body that shall constitute the
15 legislative branch of the municipality and shall not perform
16 any executive functions except those functions assigned to it
17 by law.

18 B. A majority of the members of the governing body
19 currently serving is a quorum for the purpose of transacting
20 business. All members of the governing body present at a
21 meeting are counted toward a quorum.

22 C. Unless otherwise provided by law, a question
23 before the governing body shall be decided by a majority vote
24 of the members present.

25 D. A member of a governing body shall recuse the

1 member's self from a vote only when a true or perceived
2 conflict of interest exists regarding an item currently being
3 deliberated by the governing body. Upon the recusal at such
4 meeting, the governing body member shall state the conflict
5 of interest on the record and then leave the meeting room
6 until deliberation on that item has concluded. A recusal or
7 abstention of a governing body member is counted as a vote
8 neither for nor against a question before the governing body.

9 E. The governing body of a municipality having a
10 mayor-council form of government is the governing body or
11 board of trustees whose members are the mayor and not less
12 than four or more than ten members of the governing body or
13 trustees. Any governing body of more than six members of the
14 governing body or trustees may provide by ordinance for the
15 election of two members of the governing body or trustees for
16 each ward or district or create or abolish wards or districts
17 or alter the boundary of existing wards or districts;
18 provided that only one member of the governing body or
19 trustee shall be elected from a ward or district at any one
20 election.

21 F. In those municipalities with a mayor-council
22 form of government, when there is a requirement that a
23 certain fraction or percentage of the members of the entire
24 governing body or of all the members of the governing body or
25 of the entire membership of the governing body or other

1 similar language other than the requirement of a simple
2 majority vote for the measure, the mayor shall not be counted
3 in determining the actual number of votes needed but shall
4 vote to break a tie vote as provided in Section 3-11-3 NMSA
5 1978, unless the mayor has declared a conflict of interest.

6 G. The governing body of a municipality may
7 redistrict the municipality whenever redistricting is
8 warranted. Upon petition signed by qualified electors equal
9 in number to the votes cast for the member of the governing
10 body or trustee receiving the greatest number of votes at the
11 last regular municipal election, the governing body of the
12 municipality shall redistrict the municipality."

13 SECTION 10. Section 3-12-2.1 NMSA 1978 (being Laws
14 1981, Chapter 198, Section 1, as amended) is amended to read:

15 "3-12-2.1. GOVERNING BODY--MAYOR-COUNCIL--CHANGE IN
16 NUMBER OF MEMBERS.--

17 A. The number of members of the governing body or
18 board of trustees of a municipality having a mayor-council
19 form of government may be changed as set forth in this
20 section; provided such number shall not be less than or more
21 than that number specified in Subsection E of Section 3-12-2
22 NMSA 1978.

23 B. The members of a governing body may adopt an
24 ordinance that increases or decreases the number of members
25 of the governing body or trustees and call an election on

1 that question in accordance with the Election Code.

2 C. The governing body of the municipality shall
3 adopt an election resolution calling an election on the
4 question of approving or disapproving a change in the number
5 of members of a governing body or trustees if there is filed
6 with the municipal clerk a petition requesting an election on
7 such a change and the petition is signed by at least five
8 percent of the number of registered voters of the
9 municipality. The petition shall specify the number of
10 members of the governing body in addition to the mayor that
11 shall constitute the governing body of the municipality. The
12 petition shall be validated by the municipal clerk by
13 verification that it contains the required number of
14 signatures of registered voters. The election resolution
15 shall be adopted within thirty days after the petition is
16 verified by the municipal clerk.

17 D. A special election to approve or disapprove a
18 change in the number of members of the governing body or
19 trustees shall be held at the first available election in
20 which the question can be placed on the ballot in accordance
21 with the provisions of the Election Code. The municipality
22 shall pay for the cost of the election.

23 E. If at an election called pursuant to this
24 section a majority of the registered voters voting on the
25 question of changing the number of members of the governing

1 body or trustees vote in favor of such change, all members of
2 the governing body or trustees shall serve until their
3 current term of office expires. At each of the subsequent
4 two regular municipal elections, one-half of the newly
5 required number of members of the governing body or trustees
6 shall be elected.

7 F. If a majority of the registered voters voting
8 on the question of changing the number of members of the
9 governing body or trustees disapproves or approves of such
10 change, then such change in the number of members shall not
11 be considered again for a period of four years from the date
12 of the election."

13 SECTION 11. Section 3-12-3 NMSA 1978 (being Laws 1965,
14 Chapter 300, Section 14-11-3, as amended) is amended to read:

15 "3-12-3. GOVERNING BODY--POWERS AND DUTIES.--

16 A. The governing body of a municipality having a
17 mayor-council form of government shall:

18 (1) elect one of its members to act as mayor
19 pro tem in the absence of the mayor;

20 (2) possess all powers granted by law and
21 other municipal powers not conferred by law or ordinance on
22 another officer of the municipality;

23 (3) manage and control the finances and all
24 property, real and personal, belonging to the municipality;

25 (4) determine the time and place of holding

1 its meetings, which shall be open to the public;

2 (5) determine and adopt the rules of its own
3 proceedings at an organizational meeting;

4 (6) keep minutes of its proceedings, which
5 shall be open to examination by any citizen;

6 (7) adopt rules and regulations necessary to
7 effect the powers granted municipalities;

8 (8) prescribe the compensation and fees to
9 be paid municipal officers and employees;

10 (9) prescribe the powers and duties of those
11 officers whose terms of office or powers and duties are not
12 defined by law and impose additional powers and duties upon
13 those officers whose powers and duties are prescribed by law;
14 and

15 (10) have the authority to cross-commission
16 public safety officers by resolution; provided that the
17 resolution shall be renewed at each subsequent meeting of the
18 governing body as necessary.

19 B. The governing body of a municipality having a
20 mayor-council form of government may:

21 (1) remit the fine of any person convicted
22 of a violation of a municipal ordinance; and

23 (2) compel the attendance of absent members
24 in such manner and under such penalties as it deems
25 desirable.

1 C. The mayor or a majority of the members of the
2 governing body may call special meetings by notice to each
3 member of the governing body, personally served or left at
4 the member's usual place of residence; provided that such
5 meetings shall be in accordance with the Open Meetings Act."

6 **SECTION 12.** Section 3-14-12 NMSA 1978 (being Laws 1965,
7 Chapter 300, Section 14-13-12) is amended to read:

8 "3-14-12. POWERS VESTED IN COMMISSION--DUTIES OF
9 COMMISSION.--

10 A. All powers of the municipality are vested in
11 the commission. The commission shall:

12 (1) pass all ordinances and other measures
13 conducive to the welfare of the municipality;

14 (2) perform all acts required for the
15 general welfare of the municipality;

16 (3) in addition to the office of manager,
17 create all offices necessary for the proper carrying on of
18 the work of the municipality; and

19 (4) have the authority to cross-commission
20 public safety officers by resolution; provided that the
21 resolution shall be renewed at each subsequent meeting of the
22 commission as necessary.

23 B. The commission shall appoint a manager and
24 shall hold the manager responsible for the proper and
25 efficient administration of the municipal government."