

ARTICLE 63

Business Improvement Districts

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3-63-1. Short title. (1988)

This act [3-63-1 to 3-63-16 NMSA 1978] may be cited as the "Business Improvement District Act".

History: Laws 1988, ch. 32, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 94 et seq.; 70A Am. Jur. 2d Special or Local Assessments § 5 et seq.

63 C.J.S. Municipal Corporations § 1290 et seq.; 64 Municipal Corporations §§ 1902, 1905 et seq.

3-63-2. Purpose of act. (1999)

The purpose of the Business Improvement District Act [3-63-1 NMSA 1978] is to:

- A. promote and restore the economic vitality of areas within municipalities by allowing the establishment of business improvement districts with the powers to provide for the administration and financing of additional and extended services to businesses within business improvement districts;
- B. finance local improvements within those districts; and
- C. provide municipalities and entrepreneurs a more flexible and proactive vehicle to collaborate in the revitalization efforts of their downtowns, commercial districts and central business districts.

History: Laws 1988, ch. 32, § 2; 1999, ch. 204, § 1.

The 1999 amendment, effective April 6, 1999, added the subsection designations and added Subsection C.

3-63-3. Definitions. (1988)

As used in the Business Improvement District Act [3-63-1 to 3-63-16 NMSA 1978]:

- A. "business" means a fixed place of business within an incorporated municipality where one or more persons are employed or engaged in the purchase, sale, provision or manufacturing of commodities, products or services, and includes the ownership of unoccupied real property that is held for commercial investment purposes, for sale or for lease;
- B. "council" means the governing body of the incorporated municipality within which the district is found;
- C. "district" means an entity having a contiguous area of clearly defined boundaries within an incorporated municipality in which at least three-quarters of the area is zoned and used for business or mixed commercial or retail use, that is established pursuant to the Business Improvement District Act in which the improvements are to be constructed and upon which the business improvement benefit fee for the costs of the improvements is to be imposed;
- D. "improvement" means any one or any combination of services or projects in one or more locations authorized pursuant to the Business Improvement District Act;

E. "management committee" means the district management committee as established pursuant to the Business Improvement District Act;

F. "planning group" means a group appointed by the council to prepare the proposed district plans as provided in the Business Improvement District Act; and

G. "real property" means real property that is used to engage in the purchase, sale, provision or manufacturing of commodities, products or services and unoccupied real property that is held for commercial investment purposes, for sale or for lease.

History: Laws 1988, ch. 32, § 3.

3-63-4. District creation; purpose; improvement; authority. (1988)

A district may be created pursuant to the Business Improvement District Act [3-63-1 to 3-63-16 NMSA 1978] to provide services that shall attempt to restore or promote the economic vitality of the district and the general welfare of the incorporated municipality.

History: Laws 1988, ch. 32, § 4.

3-63-5. District; authority; creation. (1999)

A. A district shall assess a business improvement benefit fee on any real property or business located within the district.

B. A district shall include any real property or business that benefits by the improvements set out in the business improvement district plan and that is located within the district's geographic boundaries.

C. The district benefit fee assessment schedule shall not include:

- (1) governmentally owned real property;
- (2) residential real property; or
- (3) real property owned by a nonprofit corporation.

D. A district may be created by petition of real property owners or by petition of business owners in a proposed district after notice and public hearing.

History: Laws 1988, ch. 32, § 5; 1999, ch. 204, § 2.

The 1999 amendment, effective April 6, 1999, deleted former Subsection A, which read "A district shall include, for the purpose of a business improvement benefit fee, all real property which is determined to be benefited by the improvements specified in the business improvement district plan, exclusive of any real property owned by the state or the United States or any of its agencies or instrumentalities"; added present Subsections A to C, and redesignated the subsequent subsection accordingly; and, in Subsection D, inserted "or by petition of business owners".

3-63-6. Creation by petition. (1999)

A. Whenever ten or more business owners comprising at least fifty-one percent of the total business owners in the proposed district or whenever five or more real property owners comprising at least fifty-one percent of the total real property owners in the proposed district, exclusive of any real property owned by the United States or the state or any of its political subdivisions, petition the council in writing to create a district, the council shall refer the petition to a planning group to prepare a plan pursuant to the provisions of the Business Improvement District Act [3-63-1 NMSA 1978] to implement the creation of the district. The plans shall:

- (1) state the purpose for the creation of the district;
- (2) describe in general terms the real property to be included in the district;
- (3) provide an assessment plat of the area to be included in the district showing an estimate of the benefits to such real property and an amount estimated to be assessed against each parcel of real property;
- (4) provide such other information as the council deems necessary for the proper evaluation of the plan;
- (5) in the case of a petition brought by a majority of business owners within a proposed district, describe in general terms both the real property and the businesses included in the district; and
- (6) in the case of a petition brought by a majority of business owners within a proposed district, provide a formula to be used to assess businesses in the district for the business improvement benefit fee to be collected along with the municipal property tax.

B. After the completion of the plan, the planning group shall have the municipal clerk give notice of a hearing on the proposed plan.

C. If after the hearing the planning group recommends to the council the creation of the district as proposed or amended, the council may adopt by ordinance the proposed district requested by petition and as described by the plan.

History: Laws 1988, ch. 32, § 6; 1999, ch. 204, § 3.

The 1999 amendment, effective April 6, 1999, rewrote the introductory paragraph and added Paragraphs A(5) and A(6).

3-63-7. Ordinance creating the district. (1999)

The ordinance to create a district shall include:

- A. a list of improvements to be provided by the district;
- B. the amount of benefit estimated to be conferred on each tract or parcel of real property;
- C. a description of the real property or businesses to be assessed a business improvement benefit fee;
- D. the assessment method to be used to finance the improvements of the district;
- E. the amount of the assessment to be imposed on each real property owner; and
- F. the terms of members, method of appointment and duties of the management committee for the district.

History: Laws 1988, ch. 32, § 7; 1999, ch. 204, § 4.

The 1999 amendment, effective April 6, 1999, inserted "or businesses" in Subsection C.

3-63-8. Repealed. (1999)

Repeals. — Laws 1999, ch. 204, § 8 repeals 3-63-8 NMSA 1978, as enacted by Laws 1988, ch. 32, § 8, relating to petitions to oppose the creation of a business improvement district, effective April 6, 1999. For provisions of former section, see 1995 Replacement Pamphlet.

3-63-9. Planning group. (1988)

Upon the initiation of a proposed district, the council shall appoint a planning group consisting of not more than five members, not less than one of which shall be a business owner and not less than two of which shall be real property owners, subject to the assessment, located within the proposed district.

History: Laws 1988, ch. 32, § 9.

3-63-10. Notice and hearing. (1999)

A. The notice of public hearing required by the Business Improvement District Act [3-63-1 NMSA 1978] shall contain:

- (1) the time and place where the planning committee will hold a hearing on the proposed district and improvements;
- (2) the estimated cost of improvements;
- (3) the boundary of the district; and
- (4) the recommended formula or the preliminary estimate of assessment of a business improvement benefit fee against each tract or parcel of real property or business.

B. The notice of the public hearing shall be mailed to the affected real property owners or business owners in the proposed district at least thirty days prior to the date of the hearing. In addition, notice shall be published once each week for two successive weeks in a newspaper of general circulation in the municipality in which the proposed district lies. The last publication shall be at least three days before the date of the hearing.

C. Any citizen, business owner or real property owner affected by the proposed district shall be given opportunity to appear at the public hearing and present his views on the creation of the district as outlined in the preliminary plan.

D. Upon completion of the hearing, the planning group shall present its recommendation on the creation of the proposed district. If the recommendation is against the creation of the district, the council may not adopt an ordinance creating the district.

History: Laws 1988, ch. 32, § 10; 1999, ch. 204, § 5.

The 1999 amendment, effective April 6, 1999, inserted "the recommended formula or" and "or business" in Paragraph A(4); in Subsection B, inserted "or business owners" in the first sentence and substituted "two successive weeks" for "four successive weeks" in the second sentence; and, in Subsection C, inserted "business owner".

3-63-11. Management committee; creation; duties. (1999)

- A. The council, upon adoption of an ordinance creating a district, shall appoint a management committee that shall be responsible for the operation of the district in one of the following manners:
- (1) the council shall appoint an existing downtown, community or central business district revitalization nonprofit corporation that operates within the boundaries of the district, to administer and implement the business improvement district plan; or
  - (2) the council shall appoint a management committee to administer and implement the business improvement district plan from nominees submitted by the owners of businesses and the owners of real property located in the district.
- B. The management committee shall prepare and file annually with the council for its review and approval a budget and progress report for the district.
- C. The management committee shall administer all improvements within the district.
- D. The management committee shall recommend the annual assessment to be made by the council.
- E. The management committee shall file annually with the council a report of the district activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expenses as of the end of the fiscal year and the benefits of the district's program to the real property and business owners of the district.
- F. The management committee shall be a nonprofit corporation created pursuant to the Nonprofit Corporation Act [53-8-1 NMSA 1978].

History: Laws 1988, ch. 32, § 11; 1999, ch. 204, § 6.

The 1999 amendment, effective April 6, 1999, rewrote Subsection A, which formerly read "If the council adopts the ordinance creating the district, the council shall appoint a management committee from lists of names submitted by local area owners of businesses and owners of real property located in the district. The management committee shall be responsible for the operation of the district", and deleted "Chapter 53, Article 8 NMSA 1978" preceding "the Nonprofit Corporation Act" in Subsection F.

#### 3-63-12. Issuance and sale of bonds. (1988)

- A. An incorporated municipality shall have power to issue business improvement district revenue bonds from time to time in its discretion to finance the undertaking of any improvement within a district or the exercise of any power, authorized or delegated under the Business Improvement District Act [3-63-1 to 3-63-16 NMSA 1978], including but not limited to the issuance of bonds to pay the costs of installation, acquisition, construction or reconstruction of any public facility within the district's area of operation. An incorporated municipality shall also have power to issue refunding bonds for the payment or retirement of bonds previously issued by it pursuant to the Business Improvement District Act. These bonds shall be made payable as to both principal and interest solely from the income, proceeds, revenues and funds of the incorporated municipality derived from or held in connection with its undertakings and carrying out of authorized improvements within a district or activities under the Business Improvement District Act. Payment of these bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant or contribution from the federal government or other source in aid of any improvements within a district under the Business Improvement District Act and by a mortgage or pledge of any of the real property acquired within a district or otherwise pursuant to the authority granted by the Business Improvement District Act.
- B. Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds. Bonds issued under the provisions of the Business Improvement District Act are declared to be issued for an essential public and governmental purpose and the bonds and interest and income from them shall be exempted from all taxes.
- C. Bonds issued under this section shall be authorized by ordinance of the council if the authorization and planned issuance of the bonds was included in an improvement approved by the council and may be issued in one or more series and shall bear a date or dates, be payable upon demand or mature at a time or times, bear interest at a rate or rates not exceeding the legally authorized rate, be in a denomination or denominations, be in the form provided by the

Supplemental Public Securities Act [6-14-8 to 6-14-11 NMSA 1978] as to registration, have rank or priority, be executed in a manner, be payable in a medium of payment at a place or places, be subject to the terms of redemption, with or without premium, be secured in a manner and have the other characteristics as may be provided by the resolution or trust indenture or mortgage issued pursuant thereto.

D. The bonds or any portion of the bonds may be sold at not less than par at public sales held after notice published prior to the sale in a newspaper having a general circulation in the area of operation and in any other medium of publication as the council may determine. The bonds may be exchanged for other bonds on the basis of par. The bonds may be sold to the federal government or to the state at private sale at not less than par, and, in the event less than all of the authorized principal amount of the bonds is sold to the federal government or to the state, the balance may be sold at private sale at not less than par at an interest cost to the incorporated municipality of not to exceed the interest cost to the incorporated municipality of the portion of the bonds sold to the federal government.

E. In case any of the public officials of the incorporated municipality whose signatures appear on any bonds or coupons issued under the Business Improvement District Act shall cease to be public officials before the delivery of the bonds, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officials had remained in office until delivery. Any bonds issued pursuant to the Business Improvement District Act shall be fully negotiable.

F. In any suit, action or proceeding involving the validity or enforceability of any bond issued under the Business Improvement District Act or the security therefore, any bond reciting in substance that it has been issued by the incorporated municipality in connection with authorized improvements within a district shall be conclusively deemed to have been issued for that purpose, and the project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of the Business Improvement District Act.

History: Laws 1988, ch. 32, § 12.

3-63-13. Annual assessment; special account. (1999)

A. The council, upon recommendation of the management committee, may annually assess a business improvement benefit fee as defined by the ordinance upon all real property owners and business owners, exclusive of any real property owned by the United States or the state or any of its political subdivisions located within the district. The council may make reasonable classifications regarding real property owners located within the district. The annual assessment may be based on the amount of space used for business purposes, street front footage, building or land square footage or such other factors or combination of factors as shall be deemed reasonable. The annual assessment shall be in addition to any other incorporated municipal-imposed license fees or other taxes, fees or other charges assessed or levied for the general benefit and use of the incorporated municipality.

B. All money received by the municipality from the district assessment shall be held in a special account for the benefit of the district.

C. In the case of a district that was created by a majority of real property owners, the amount owed by a commercial tenant shall be proportional to the square footage of space that the tenant rents but shall not be more than seventy-five percent of the total business improvement benefit fee assessed on the property. The property owner shall pay at least twenty-five percent of the business improvement benefit fee.

D. In the case of a district that was created by a majority of businesses, the business improvement benefit fee shall be collected at the same time that the real property owner's property taxes are collected. Businesses shall be assessed for one hundred percent of the business fee assessed to the property.

History: Laws 1988, ch. 32, § 13; 1999, ch. 204, § 7.

The 1999 amendment, effective April 6, 1999, inserted "and business owners" in the first sentence of Subsection A and added Subsections C and D.

3-63-14. Assessments; terms of payment; liens; foreclosure. (1988)

A. The council shall by ordinance:

(1) establish the time and terms of paying the business improvement benefit fee or installments on the fee;

- (2) set any rate or rates of interest upon deferred payments of the fee, which shall commence from the last date of publication of the ordinance ratifying the assessment;
- (3) fix penalties to be charged for delinquent payment of an assessment;
- (4) establish procedures and guidelines for the classification of property for the fee;
- (5) set a reasonable charge to recover the municipality's expense for the assessment, collection and administration of the fee; and
- (6) provide for the control and investment and order the expenditure of all money pertaining to the district.

B. The same interest rate shall be set for fees which are payable over the same time period. No rate or rates of interest in excess of twelve percent a year upon such deferred payments of the fee shall become effective unless the state board of finance or any successor thereof at any time approves a higher interest rate 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.

C. After the publication of the ordinance ratifying the assessment, as provided in the Business Improvement District Act [3-63-1 to 3-63-16 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 real property taxes and the lien of other improvement districts and 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.

D. Within sixty days after the publication of the assessment roll for a district, 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.

E. 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.

History: Laws 1988, ch. 32, § 14.

3-63-15. District review. (1988)

The council shall review each district every five years, and prior to the issuance of business improvement district revenue bonds other than those issued or committed during the first five-year period, to determine whether the district should remain in existence. If a majority of the council decides that the purpose for which the district was created has been served and that it is in the best interest for the district, the council shall terminate the district's status by ordinance or resolution and record this with the municipal clerk. If upon termination of a district's status there is an outstanding revenue bond obligation, the municipality shall continue to assess the business improvement benefit fee for the life of the outstanding bond.

History: Laws 1988, ch. 32, § 15.

3-63-16. Business improvement benefit fee distribution. (1988)

The business improvement benefit fee shall be distributed to the management committee on an annual basis pursuant to rules and guidelines established by the council and in accordance with the approved budget of the management committee.

History: Laws 1988, ch. 32, § 16.