

**THIS DOCUMENT CONTAINS AN INITIAL DRAFT OF DISCUSSION IDEAS
FOR A POSSIBLE NEW ACT ON COUNTY ORGANIZATION.**

YOUR INPUT IS WELCOMED.

The following Articles in Chapter 4 are repealed or recompiled and the relevant provisions modernized and restated below:

Article 36: Miscellaneous Powers of Counties

Article 37: County Ordinances

Article 44: Salaries and Provisions Applicable to More Than One Office

Article 45: Accounts and Claims Against Counties

Article 46: Suits By and Against Counties

Article 36A

General Provisions and Definitions

1 **Section 4-36A-1. Book.**

Several records are required to be kept in books. This provides a universal modernization.

2 As used in Chapter 4, NMSA 1978, "book" includes a digital or electronic
3 equivalent.

History: [New Material]

4 **Section 4-36A-2. Chief Deputy.**

 Defining Chief Deputy here means we don't have to keep saying "including the Undersheriff".

5 As used in Chapter 4, NMSA 1978, "chief deputy" means the principal deputy
6 appointed by an independently elected county official, and includes the undersheriff.

History: [New Material]

7 **Section 4-36A-3. County.**

 Trivia: Why do we call it a "county"? Because in medieval days it was ruled over by a Count!

8 As used in Chapter 4, NMSA 1978, "county" means a political subdivision of
9 the state established by law to provide local government services in a defined
10 geographic territory, except for those local government services provided by a
11 municipality within its area of incorporation, and to exercise those powers granted to
12 counties by the constitution, statutes or other applicable law, and includes a
13 combined city and county corporation, incorporated county, urban county or single
14 urban government.

History: [New Material]

15 **Section 4-36A-4. County Administrative Rule.**

 This allows a way to regulate matters outside of county government without getting law
enforcement involved, such as fees paid for various services.

16 As used in Chapter 4, NMSA 1978, "county administrative rule" means a rule,
17 procedure, condition or requirement of ongoing or continuing application that governs
18 the public's access to, use of or requirements to interface with county programs,
19 services, facilities, property or resources owned, leased, operated, managed or

20 administered by the county, but that does not establish civil or criminal penalties and
21 is subordinate to any ordinance.

History: [New Material]

22 **Section 4-36A-5. County Commission.**

All three terms are used in the statutes, but they refer to the same corporate body.

23 As used in Chapter 4, NMSA 1978, "county commission" or "commission"
24 means the board of county commissioners of a county.

History: [New Material]

25 **Section 4-36A-6. County Elected Official.**

This encompasses each person in an elected position, regardless of how they got there.

26 As used in Chapter 4, NMSA 1978, "county elected official" means each county
27 commissioner and each independently elected county official. The term includes those
28 officials who attained the position by appointment or ascension.

History: [New Material]

29 **Section 4-36A-7. County Department.**

County Departments are under the supervisory control of the County Manager.

30 As used in Chapter 4, NMSA 1978, "county department" means an
31 administrative section of county government under the direction of the county
32 manager, if appointed, a department head, and includes but is not limited to finance,
33 information technology, maintenance, personnel, purchasing, property and roads.

History: [New Material]

34 **Section 4-36A-8. County Office.**

County Offices are under the supervisory control of an Independently Elected Official.

35 As used in Chapter 4, NMSA 1978, "county office", when used in the context of
36 an administrative section of county government, means the office administered by an
37 independently elected county official.

History: [New Material]

38 **Section 4-36A-9. County Official Instrument.**

A catch-all term for official things passed by the commission.

39 As used in Chapter 4, NMSA 1978, "county official instrument" means an
40 ordinance, county policy, county administrative rule, resolution and special statutory
41 instrument.

History: [New Material]

42 **Section 4-36A-10. County Personnel Policy.**

This regulates the conduct of employees throughout the County.

43 As used in Chapter 4, NMSA 1978, "county personnel policy" means a county
44 policy that defines the relationship between the county and its employees that
45 manages and directs the behavior, processes, and responsibilities of employees to
46 ensure consistency, fairness and compliance with employment laws, including
47 recruitment, training, compensation, and conduct.

History: [New Material]

48 **Section 4-36A-11. County Policy.**

Policies are internal to the operation of County government for which an employee can be held accountable.

49 As used in Chapter 4, NMSA 1978, "county policy" means a standard or
50 directive of ongoing or continuing application that governs internal operations,
51 administration, personnel, fiscal controls, records, technology, risk management,
52 ethics, compliance or matters applicable to the operation of county government for
53 which a violation by an employee may result in disciplinary action, but that does not
54 regulate the conduct of the general public.

History: [New Material]

55 **Section 4-36A-12. Disqualifying Workplace Act.**

These are no bueno, will get you written up, and may get you fired!

56 As used in Chapter 4, NMSA 1978, "disqualifying workplace act" means
57 violation of any of the following contrary to a workplace policy or a local, state or
58 federal law concerning:

59 (1) discrimination, harassment, sexual harassment,
60 retaliation, hostile work environment and workplace violence;

61 (2) threats, intimidation, bullying or abusive conduct toward
62 county employees, officials, contractors or members of the public;

63 (3) conflicts of interest, nepotism, gifts, misuse of public
64 property, fraud, waste and abuse;

65 (4) the state Governmental Conduct Act and, when applicable,
66 the federal Hatch Act;

- 67 (5) public records, records retention, information security and
68 protected information;
- 69 (6) workplace safety and security;
- 70 (7) drug-free workplace requirements;
- 71 (8) use of county vehicles, equipment, technology and
72 facilities; and
- 73 (9) travel, per diem, reimbursement, procurement and
74 financial controls.

History: [New Material]

75 **Section 4-36A-13. Emergency.**

This definition matches the one used in the Open Meetings Act.

76 As used in Chapter 4, NMSA 1978, "emergency" means unforeseen
77 circumstances that, if not addressed immediately by the commission, will likely result
78 in injury or damage to persons or property or substantial financial loss to the county
79 government.

History: [New Material]

80 **Section 4-36A-14. Hiring and Due Process Policies.**

This is the core of a merit system in a personnel policy.

81 As used in Chapter 4, NMSA 1978, "hiring and due process policies" means
82 county personnel policies governing:

- 83 (1) recruitment, competitive hiring, selection and promotion;
- 84 (2) disciplinary action;

- 85 (3) grievance and appeal rights relating to disciplinary action,
86 demotion, suspension or discharge;
- 87 (4) probationary periods;
- 88 (5) classified or merit-system status;
- 89 (6) just-cause employment protections;
- 90 (7) seniority rights; and
- 91 (8) layoff and recall protections.

History: [New Material]

92 **Section 4-36A-15. Independently Elected County Official.**

A slightly long and awkward phrase because I couldn't use the campus term GDIs.

93 As used in Chapter 4, NMSA 1978, "independently elected county official"
94 means the county assessor, county clerk, county probate judge, county sheriff or
95 county treasurer; provided that when referencing those officials who may appoint a
96 chief deputy, the term does not include the probate judge. The term includes those
97 officials who attained the position by appointment or ascension.

History: [New Material]

98 **Section 4-36A-16. Ordinance.**

This is for laws external to County government for which a person can be held accountable.

99 As used in Chapter 4, NMSA 1978, "ordinance" means a commission legislative
100 act that establishes, amends or repeals a county law of general and continuing effect
101 within the county's jurisdiction, applicable to the public or to a class of persons,
102 property, conduct or geographic area, adopted under statutory authority and
103 enforceable by the county through authorized civil, criminal or administrative

104 remedies, and does not regulate the internal operations of county government nor the
105 conduct of its employees.

History: [New Material]

106 **Section 4-36A-17. Proclamation.**

Because everyone wants to declare a special day or honor seniors and veterans.

107 As used in Chapter 4, NMSA 1978, "proclamation" means a ceremonial
108 declaration that recognizes, honors, celebrates, commemorates or raises public
109 awareness of a person, event, cause, achievement or matter of community
110 importance, but that does not establish policy, enact law or create legal rights, duties
111 or penalties.

History: [New Material]

112 **Section 4-36A-18. Resolution.**

We won't be using these as often, but they are needed for one-off actions.

113 As used in Chapter 4, NMSA 1978, "resolution" means an action, decision,
114 approval, authorization, finding, direction, position or administrative decision on a
115 particular matter of county business or within the responsibility of county
116 government, including a single action that is not of ongoing or continuing application,
117 and shall not amend, repeal, supersede or conflict with any ordinance nor amend or
118 repeal a county policy or a county administrative rule.

History: [New Material]

119 **Section 4-36A-19. Special Statutory Instrument.**

No matter how much we try to modernize, there are ancient procedures in the law.

120 As used in Chapter 4, NMSA 1978, "special statutory instrument" means an
121 order, notice, certificate, declaration or other instrument required or authorized by
122 statute or other controlling law for a specific purpose and whose application is not
123 that of an ordinance, county policy, county administrative rule or resolution.

History: [New Material]

County Governance and Administration Act

124 **Section 4-37A-1. Short Title.**

This Act brings together all the provisions relevant to the basic structure of Counties.

125 This act may be cited as the "County Governance and Administration Act."

History: [New Material].

126 **Section 4-37A-2 Classification of Counties.**

Combines and lays out clean the surviving relevant parts of previous Sections 4-44-1, 4-44-2, 4-44-3 and 4-44-14, which were originally used to set legislative limits on county salaries.

127 A. The counties of the state are classified as follows:

128 (1) a class "A" county is any county with a population of one
129 hundred thousand persons or more as determined by the most current annual
130 population data or estimate available from the United States census bureau,
131 regardless of its final, full assessed valuation or size of its defined geographic
132 territory;

133 (2) a class "B, high valuation" county is any county with:

134 (a) a final, full assessed valuation of three hundred
135 million dollars or more as determined by the finally fixed assessed valuation for the
136 preceding year,

137 (b) a population of fewer than one hundred thousand
138 persons as determined by the most current annual population data or estimate
139 available from the United States census bureau, and

140 (c) a defined geographic territory of two hundred square
141 miles or more;

142 (3) a class "B, intermediate valuation" county is any county
143 with:

144 (a) a final, full assessed valuation of less than three
145 hundred million dollars as determined by the finally fixed assessed valuation for the
146 preceding year,

147 (b) a population of fewer than one hundred thousand
148 persons as determined by the most current annual population data or estimate
149 available from the United States census bureau, and

150 (c) a defined geographic territory of two hundred square
151 miles or more; and

152 (4) a class "H" county is any county with a defined geographic
153 territory of less than 200 square miles, regardless of its final, full assessed valuation
154 or its most current annual population data.

155 B. The secretary of finance and administration shall biennially
156 determine the classification of counties as provided for in Subsection A of this section.
157 The classification shall be determined no later than the first day of May of each even-
158 numbered year, upon which the secretary shall post the biennial classification of
159 counties and shall notify the board of county commissioners of each county as to its
160 county's classification.

History: [New Material].

161 **Section 4-37A-3. County Seat; County Offices.**

Modernizes the relevant portions of previous Section 4-44-33.

162 A. The commission of each county shall establish and maintain the
163 headquarters of county government at the county seat of that county and the county
164 office for each independently elected county official shall also be established and
165 maintained at the county seat of that county.

166 B. The expense of establishing, maintaining and operating the
167 headquarters of county government and each county office shall be provided for by
168 the commission from the general fund of the county.

169 C. Nothing in this section prohibits the commission from
170 establishing additional locations in the county or independently elected officials
171 establishing or maintaining additional locations for the transaction of county
172 business in other locations within the county, provided that the expense of
173 establishing, maintaining and operating such additional locations are included in the
174 county budget and paid for from the general fund of the county.

History: [New Material].

175 **Section 4-37A-4. County Elected Officials; Oath of**
176 **Officer.**

Updates and modernizes the relevant portions of previous Sections 4-41-3 and 10-1-13. Works in conjunction with next section, Vacancy in Office. Clarifies that all Oaths of Officer need to be filed with the County Clerk before entering into the duties of office (for which no fee is charged pursuant to Section 41-8-17).

177 A. Prior to entering into and taking the duties of the office of a
178 county elected official, each person shall take an oath of officer, which shall be
179 reduced to writing, signed and filed with the county clerk. The oath of officer is
180 required by Article 20, Section 1 of the constitution of New Mexico and prescribed in
181 Sections 14-14-1 through 14-13-3 NMSA 1978.

182 B. A person elected to the office of a county elected official may take
183 the oath of officer at any time following the issuance of a certificate of election,
184 provided the person shall not enter into the office elected until the term of office to
185 which the person was elected has begun and the oath of officer is filed with the county
186 clerk. A person re-elected to the same office shall file a new oath of officer before
187 entering into the new term of office.

188 C. Upon a vacancy in the office of a county elected official:

189 (1) if the position is filled by appointment, the person receiving
190 the appointment shall, following the appointment, file the oath of officer with the
191 county clerk before entering into the duties of the office; and

192 (2) if the position is filled by ascension of a chief deputy, the
193 oath of officer of the chief deputy shall qualify the person to enter into the duties of

194 office, provided that before the official appoints a new chief deputy, the official shall
195 file with the county clerk an oath of officer for the office the official now holds.

196 **Section 4-37A-5. County Elected Officials; Vacancy In**
197 **Office; Temporary Absence or Incapacitation.**

This sets out in one place what happens when there is a vacancy in any county elected office and provides for ascension to office by a chief deputy. Also addresses situations where an elected is temporarily unable to carry out their duties. Replaces previous Section 10-3-3.

198 A. In the event a vacancy occurs in an office of county commissioner,
199 the vacancy shall be filled by appointment by the governor as provided in Article 20,
200 Section 4 of the state constitution. The gubernatorial appointment entitles the
201 appointed commissioner to serve until December 31 following the next general
202 election.

203 B. In the event a vacancy occurs in the office of probate judge, the
204 board of county commissioners shall fill the vacancy by appointment, and the
205 appointee shall be entitled to hold the office until the end of the unexpired term of
206 office.

207 C. In the event a vacancy occurs in the office of county assessor,
208 county clerk, county sheriff or county treasurer, the vacancy shall be filled by
209 ascension of the chief deputy in that office, who shall be entitled to hold the office
210 until the end of the unexpired term of office. If there is no chief deputy in that office
211 when the vacancy occurs, the board of county commissioners shall fill the vacancy by
212 appointment, and the appointee shall be entitled to hold the office until the end of the
213 unexpired term of office.

214 D. In the event a county assessor, county clerk, county sheriff or
215 county treasurer is incapacitated or otherwise absent from the office and unable
216 temporarily to carry out the duties of the office, the chief deputy shall perform the
217 duties of the county officer until such time as the county officer returns or vacates the
218 office. If there is no chief deputy in that office or the chief deputy is also absent from
219 the office and unable temporarily to carry out the duties of office, the duties of the
220 office shall be performed by an employee previously designated in writing by the
221 elected official, if there is one, or if not, by the highest ranking person in the office,
222 until such time as the elected official or chief deputy return or the elected official
223 vacates the office.

224 E. In a Class A County where an elected official has appointed two
225 chief deputies, the appointing official shall designate in writing which of the two chief
226 deputies has priority in succession in the event of a vacancy in office or the appointing
227 official is incapacitated or otherwise absent from the office and unable temporarily to
228 carry out the duties of the office. The second chief deputy in priority ascends to the
229 office or performs the duties of the office if the first chief deputy is unavailable or
230 unable to do so.

History: [New Material].

231 **Section 4-37A-6. County Elected Officials; Bond.**

Updates and modernizes the relevant portions of previous Section 10-1-13. The bond requirement is antiquated and predates modern liability insurance, but is scattered throughout the statutes.

232 A. The county shall purchase and maintain from the general fund
233 an official bond for each county elected officer, whether serving by election,

234 appointment or ascension. The county shall provide for individual bonds for each
235 office or may purchase a blanket bond covering county officers and employees. Proof
236 of the bond shall be filed with the county clerk. The amount of the bond shall be in
237 the amount of:

238	county commissioner	\$ 50,000
239	county assessor	50,000
240	county clerk	100,000
241	county probate judge	50,000
242	county sheriff	250,000
243	county treasurer	500,000.

244 B. No later than September 1 of each odd-numbered year, the
245 secretary of the department of finance and administration shall adjust the required
246 amounts of the bonds for those offices whose term is set to begin January 1 of the
247 following year. The adjustment shall be based on the change since the beginning of
248 the last term of office in the consumer price index for all urban consumers, United
249 States city average for all items, published by the United States department of labor.
250 The secretary shall post the adjusted amounts and shall notify the board of county
251 commissioners of each county as to the amount of each bond for the new term of office.

252 C. Within thirty days of a determination that a county elected
253 official is not bondable, the county commission shall by resolution declare the position
254 vacant; provided that the official may file a writ in the district court to block action

255 by the commission on the resolution, as long as the official provides under oath prima
256 facia evidence of being bondable at the time the writ is filed.

History: [New Material].

257 **Section 4-37A-7. County Elected Officials; Devotion Of**
258 **Time And Attention.**

This is new and emphasizes the duty to the voters upon entering into a county elected position.

259 A. Commissioners, independently elected officials and their chief
260 deputies shall devote the time, attention and effort reasonably necessary to faithfully
261 discharge the duties of the office and to ensure that the mission, services and
262 responsibilities assigned to the office by law are fulfilled.

263 B. County elected officials and chief deputies are responsible for
264 ensuring faithful execution of the duties imposed upon the county elected official by
265 constitution, statute, and other applicable law. The official may delegate tasks to
266 deputies, employees, or other authorized personnel, but delegation does not relieve
267 the county elected official of ultimate responsibility for the official's duties.

268 C. A pattern of neglect of assigned duties, failure to supervise or
269 failure to ensure legally required services are provided may constitute grounds for
270 removal pursuant to the Removal of Local Officers Act, recall pursuant to the Recall
271 Act, or other remedy as provided by law.

History: [New Material].

272 **Section 4-37A-8. County Elected Official Compensation;**
273 **Chief Deputies.**

Has the county elected and chief deputy compensation adopted during the budget process instead of December when people are more focused on holiday get togethers and family visits. Allows an option for cost of living adjustments during the term of office.

274 A. Pursuant to Article 10, Section 1 of the constitution of New
275 Mexico, the salary of county elected officials is established by the board of county
276 commissioners. The commission shall by county policy set the salary for new terms of
277 office of county elected officials at any time prior to the conclusion of the annual
278 budget process for the fiscal year in which the new terms begin.

279 B. Provided such county policy is adopted before a term of office
280 begins, the county elected official salary policy may include a cost of living adjustment
281 for each year of a term of office tied to:

282 (1) the average increase in compensation provided to all
283 county employees in each year during the term of office, or

284 (2) the most recent full year change in the consumer price
285 index for all urban consumers, United States city average for all items, published by
286 the United States department of labor.

287 C. The salary for each chief deputy position shall be in an amount
288 no less than ninety percent of the salary earned by the appointing independently
289 elected county official; provided that if the chief deputy previously held the office of
290 the appointing official, the salary shall be in an amount no less than ninety-five
291 percent of the salary earned by the appointing official.

292 D. Elected officials are eligible to receive pension, health and other
293 benefits in the same manner or under the same conditions as provided to employees
294 of the county.

History: [New Material]

295 **Section 4-37A-9. Mediation Of Disputes Required.**

Can we please just get along? If not, then we need to at least talk to each other.

296 A. Before the commission, any county elected official or the county
297 manager files a civil action against the commission, any county elected official or the
298 county manager concerning the authority, budget, personnel, administration,
299 operation or legal duties of a county office, the parties shall first attempt mediation.

300 B. A demand for mediation shall be made in writing and shall
301 identify:

302 (1) the parties to the dispute;

303 (2) the nature of the dispute;

304 (3) the relief requested;

305 (4) the legal or factual basis for the position of the party
306 demanding mediation; and

307 (5) whether expedited review is requested.

308 C. Mediation shall commence within thirty days after the written
309 demand for mediation unless the parties agree to a later date.

310 D. The cost of mediation shall be paid by the county unless the
311 parties agree otherwise or a court orders otherwise.

312 E. A party satisfies the mediation requirement of this section if:

313 (1) the parties participate in mediation and no agreement is
314 reached;

315 (2) another party refuses to participate in mediation; or

316 (3) mediation does not occur within forty-five days after the
317 written request for mediation despite the demanding party's good-faith effort to
318 mediate unless the parties have agreed in writing to a later date.

319 F. A civil action may be filed before mediation only if immediate
320 judicial relief is necessary to prevent expiration of a limitations period, loss of
321 jurisdiction, unlawful expenditure of public funds, violation of state or federal law,
322 substantial impairment of a statutory duty, destruction of records, workplace
323 violence, irreparable injury or immediate harm to persons or property. If a party files
324 a civil action before mediation, the court may require mediation after issuing any
325 temporary, preliminary or emergency relief the court determines appropriate.

326 G. An agreement reached through mediation shall be reduced to
327 writing and, if the agreement requires action by the commission, shall be presented
328 to the commission for approval in an open meeting, provided such agreement does
329 not violate any provision of state or federal law.

330 H. Failure of the commission, a county elected official or the county
331 manager to attempt mediation pursuant to the provisions this section before filing a
332 civil action as required by this section shall be cause to dismiss the suit until such
333 time as mediation has first been attempted.

334 I. Nothing in this section limits the ability of the commission, a
335 county elected official or county manager to report suspected criminal conduct, fraud,
336 waste, abuse, discrimination, harassment, retaliation, workplace violence, ethics
337 violations or violations of state or federal law to an appropriate law enforcement
338 agency, regulatory agency, insurer, auditor or oversight body.

History: [New Material].

339 **Section 4-37A-10. County Elected Officials Advisory**
340 **Board.**

This was dormant in statute for 4th & 5th class Counties, and here made applicable to all Counties to create a forum for the electeds where they can talk things out.

341 A. There is created in each county a county elected officials advisory
342 board. The advisory board consists of the county assessor, county clerk, county
343 probate judge, county sheriff and county treasurer.

344 B. The county elected officials advisory board shall encourage
345 cooperation among independently elected county officials, the commission, the county
346 manager and the county attorney. The advisory board shall attempt to bring about
347 informal resolution or mediation when one or more county elected officials, the
348 commission or the county manager fail or neglect to cooperate in exercising their
349 duties and the lack of cooperation becomes detrimental to the efficiency of county
350 government.

351 C. The commission or a subset of the commission shall meet at least
352 semi-annually with the advisory board. The advisory board may meet more
353 frequently with or without the commission as necessary to encourage cooperation

354 among county elected officials or to address matters affecting the administration of
355 county government. Any meeting of the advisory board that includes a quorum of the
356 county commission shall be held in accordance with the provisions of the Open
357 Meetings Act.

358 D. The advisory board may invite the county manager or the county
359 attorney to a meeting of the advisory board, and the county manager or county
360 attorney shall attend the meeting and participate in a discussion with the advisory
361 board.

362 E. The advisory board is advisory in nature. It shall not exercise the
363 authority of the commission, the county manager or an independently elected county
364 official. If the advisory board meets to discuss or develop public policy or to create
365 recommendations to the commission which will be adopted in a county official
366 instrument, then such meetings shall be held in accordance with the provisions of the
367 Open Meetings Act.

History: [New Material].

368 **Section 4-37A-11. Independently Elected County**
369 **Officials; Administration of County Office.**

Brings into statute the clear provisions of case law regarding Independently Electeds and the
privileges and limitations for administration of their offices. See Board of County Comm'rs v.
Padilla, 1990-NMCA-125 (Note: Parts of that decision are unresolved and not laid out here.)

370 A. Each independently elected county official is the administrator of
371 that official's county office and has authority to direct, supervise and control the work
372 of that office.

373 B. The authority of an independently elected county official includes
374 the authority to:

- 375 (1) perform the duties assigned to the office by law;
- 376 (2) supervise, assign, direct and review the work of employees
377 assigned to the office;
- 378 (3) determine the manner in which the office will perform its
379 statutory duties, subject to law, the county budget and countywide policies;
- 380 (4) hire persons to carry out the duties and responsibilities of
381 the office, subject to the requirements of applicable county personnel policies and
382 collective bargaining agreements, as well as state and federal law; and
- 383 (5) recommend salaries for persons employed to carry out the
384 duties and responsibilities of the office.

385 C. An independently elected county official and the official's office
386 remain subject to:

- 387 (1) the county budget;
- 388 (2) applicable county policies, including those related to
389 personnel, fiscal controls, procurement requirements and financial reporting;
- 390 (3) applicable collective bargaining agreements; and
- 391 (4) laws governing local government operations, including
392 public records, governmental conduct, conflicts of interest, civil rights, workplace
393 safety and wage and hour requirements.

History: [New Material].

394 **Section 4-37A-12. Independently Elected County**
395 **Officials; Appointment Of Chief Deputy.**

This is new and provides clear rules for Chief Deputies, including being qualified to take office in case of a vacancy and who may not be selected, as well as accountability if they're creating liability for the County. Allows an option for a second Chief Deputy in Class A counties.

396 A. The county assessor, county clerk, county sheriff and county
397 treasurer may each appoint one chief deputy, provided that in a Class A County, the
398 commission may by policy authorize the appointment of a second chief deputy.

399 B. An independently elected county official has sole discretion to
400 select and appoint the person who will serve as chief deputy, provided that:

401 (1) the person must satisfy the same legal qualifications
402 required of the independently elected county official making the appointment;

403 (2) a person who has been terminated after an investigation
404 resulting in a workplace finding or has a civil adjudication or criminal conviction for
405 any disqualifying workplace act is ineligible to serve as chief deputy until at least five
406 years have passed since the termination, entry of the civil adjudication or the later of
407 a criminal conviction, release from detention, parole or probation; and

408 (3) a person who has been removed from any elected office or
409 who resigned in lieu of facing removal proceedings is ineligible to serve as chief
410 deputy until at least five years have passed following the removal or resignation.

411 C. A person appointed chief deputy by an independently elected
412 county official enters into office upon being sworn in and filing a signed oath of officer
413 with the county clerk; provided that at the beginning of a term of office an

414 independently elected county official and chief deputy may be sworn in at the same
415 time and file their oaths of officer together.

416 D. A chief deputy serves at the pleasure of the independently elected
417 county official who appointed the chief deputy. A chief deputy is an at-will,
418 unclassified, exempt and confidential employee of the county. No county policy, merit
419 system, collective bargaining agreement or administrative practice shall convert a
420 chief deputy into a classified, merit-system, just-cause or non-at-will employee.

421 E. A chief deputy is exempt from county hiring and due process
422 policies and, except as required by the appointing official, annual performance
423 evaluation requirements. A chief deputy remains subject to a background check as
424 may be required by county policy before or upon entering into office and is subject to
425 those county official instruments, state laws and federal laws regarding disqualifying
426 workplace acts while serving in office.

427 F. A chief deputy shall hold the position until the earlier of:

428 (1) termination by the appointing official;

429 (2) resignation, death or failure to maintain a required
430 qualification for the position;

431 (3) expiration of the term of the appointing official, unless
432 reappointed by the successor independently elected county official; or

433 (4) removal from office by resolution adopted by the
434 commission for willful commission of any disqualifying workplace act while serving

435 as chief deputy or for subscribing the oath of officer for chief deputy while ineligible
436 to serve pursuant to this section.

History: [New Material].

437 **Section 4-37A-13. County Commission; Appointment Of**
438 **County Manager.**

Lays out the duties and accountability for county managers, the disqualifiers for the position, and their responsibilities to all county elected officials. Replaces most of Section 4-38-19.

439 A. The commission may appoint a county manager. If a commission
440 declines to appoint a county manager or when a vacancy exists in the office of county
441 manager and no person is designated as an acting county manager, the commission
442 shall fulfil the duties that would otherwise be carried out by a county manager.

443 B. The county manager is responsible for overseeing or conducting
444 the lawful, efficient and effective business and day-to-day administration of the
445 county. The county manager shall aid and assist the commission and shall support
446 the duties and responsibilities of each county elected official and each county office.

447 C. The commission shall determine the qualifications required of a
448 county manager; provided that a person who has been terminated after an
449 investigation resulting in a workplace finding or has a civil adjudication or criminal
450 conviction for any disqualifying workplace act is ineligible to serve as county manager
451 until at least five years have passed since the termination, entry of the civil
452 adjudication or the later of a criminal conviction, release from detention, parole or
453 probation.

454 D. A county manager is exempt from county hiring and due process
455 policies. A county manager remains subject to a background check as may be
456 required by county policy before or upon entering into office and is subject to those
457 county policies, state law and federal law governing disqualifying workplace acts.

458 E. The county manager serves at the pleasure of the county
459 commission. A county manager is an at-will, unclassified, exempt and confidential
460 employee of the county. The commission retains sole authority to appoint, supervise,
461 evaluate, discipline, retain and terminate the county manager. No county policy,
462 merit system, collective bargaining agreement, administrative practice or
463 employment contract shall convert a county manager into a classified, merit-system,
464 just-cause or non-at-will employee.

History: [New Material].

465 **Section 4-37A-14. County Manager; Appointment Of**
466 **Deputy or Assistant County Managers.**

New material related to Deputy or Assistant County Managers.

467 A. The commission may provide by county policy for one or more
468 deputy or assistant county managers to be appointed by the county manager.

469 B. A deputy or assistant county manager is responsible for assisting
470 the county manager in the lawful, efficient and effective business and day-to-day
471 administration of county government within those responsibilities or departments
472 assigned by the county manager. Within such responsibilities, a deputy or assistant
473 county manager is responsible to the county manager, and through the county

474 manager to the commission, and shall also support the duties and responsibilities of
475 each county elected official and each county office.

476 C. Subject to a greater limitation that may be imposed by county
477 policy, a person who has been terminated after an investigation resulting in a
478 workplace finding or has a civil adjudication or criminal conviction for any
479 disqualifying workplace act is ineligible to serve as a deputy or assistant county
480 manager until at least five years have passed since the termination, entry of the civil
481 adjudication or the later of a criminal conviction, release from detention, parole or
482 probation.

483 D. A deputy or assistant county manager who, by county policy, is
484 exempt from county hiring and due process policies remains subject to a county
485 background check policy as may be required as may be required for general or
486 appointed employees. A deputy or assistance county manager is subject to those
487 county personnel policies, state law and federal law governing disqualifying
488 workplace acts.

489 E. A deputy or assistant county manager is a confidential employee
490 of the county. If county policy provides that the deputy or assistant county manager
491 is an at-will, unclassified and exempt employee, no merit system, collective
492 bargaining agreement, administrative practice or employment contract shall convert
493 a deputy or assistant county manager into a classified, merit-system, just-cause or
494 non-at-will employee.

History: [New Material].

495 **Section 4-37A-15. County Commission; Appointment Of**
496 **County Attorney.**

New material related to County Attorneys.

497 A. The commission may appoint a member of the bar to serve as
498 county attorney, either through contracted services or by employment.

499 B. The county attorney represents county government as an
500 institutional and organizational client while providing legal advice to the commission,
501 each county elected official, the county manager and other officers, employees, or
502 constituents of county government. The county attorney shall exercise independent
503 professional judgment to protect and advance the legal interests of county
504 government as the institutional and organizational client, notwithstanding the
505 preferences, directions or personal interests of the commission, a county elected
506 official, the county manager or any other officer, employee, department or constituent
507 of county government. This obligation may require the county attorney to identify
508 and advise when a position taken by, or an action of, the commission, a county elected
509 official, a county office, the county manager, including a deputy or assistant county
510 manager, a county department or an employee or contractor may be adverse to the
511 legal interests of county government.

512 C. If county attorney services are contracted, the contract may be
513 cancelled at any time, either for cause or for convenience, regardless of the specific
514 provisions of the contract. If the county attorney serves through employment, the
515 county attorney is an at-will, unclassified, exempt and confidential employee of the
516 county. No county policy, merit system, collective bargaining agreement,

517 administrative practice or employment contract shall convert an employed county
518 attorney into a classified, merit-system, just-cause or non-at-will employee.

History: [New Material].

519 **Section 4-37A-16. Deputy and Assistant County**
520 **Attorneys; Attorneys Assigned to Specific Offices or**
521 **Departments; Conflict Counsel.**

New material related to attorneys other than The County Attorney.

522 A. The commission may provide by county policy for one or more
523 deputy or assistant county attorneys to be appointed by the county attorney. In
524 addition, county attorney may recommend or approve the appointment of an attorney
525 for a specific county office or county department or to serve as conflict counsel.

526 B. Every person employed or retained to provide legal services for a
527 county represents the county government, while providing legal services to an official,
528 county office, county department or employee. Despite serving in an at-will position,
529 a person employed or retained to provide legal services for a county is required to
530 seek the best legal position for county government, notwithstanding the desires of or
531 orders from those within the county the attorney is assigned to provide legal services.
532 Such obligation may result in having to identify and advise when a position taken by
533 or the actions of the commission, a county elected official, a county office, a county
534 manager, including a deputy or assistant county manager, a county department or
535 an employee or contractor may be adverse to the legal interests of the county
536 government itself. When evaluating the actions and the performance of a county

537 attorney, the person evaluating shall become familiar with the relevant rules of
538 professional conduct for attorneys.

539 D. If employed, a person providing legal services to a county is
540 exempt from county hiring and due process policies. Whether employed or contracted,
541 a person providing legal services to a county remains subject to a background check
542 as may be required by county policy before or upon entering into an employment or
543 contractual relationship and those county policies, state law and federal law
544 governing disqualifying workplace acts while providing legal services to a county.

545 E. A person providing legal services to a county is subject to
546 termination for cause or convenience by the county attorney or the administrative
547 head of the county office or county department the person is assigned to provide legal
548 services; provided that a person providing legal services to a county may be removed
549 by resolution adopted by the commission for willful commission of any disqualifying
550 workplace act while providing legal services to the county or for accepting an
551 appointment while ineligible to serve pursuant to this section.

History: [New Material].

552 **Section 4-37A-17. County Funds; County General Fund.**

This new section incorporates the matters provided for in the previous Sections 4-38-14, 4-38-15, 4-38-16, 4-38-17, 4-44-15, and 4-44-31.

553 A. A "county general fund" is established in each county. The county
554 may create as many subaccounts within the general fund as necessary. Additional
555 county funds, including special revenue funds, shall be established as provided by

556 law or generally accepted accounting principles. Any such additional funds remain
557 under the control of the commission unless otherwise provided by law.

558 B. Money received from the following sources shall be deposited into
559 the county general fund unless designated by law to another county fund:

560 (1) property taxes distributed by the county treasurer for the
561 general administration of the county;

562 (2) gross receipts taxes distributed by the taxation and
563 revenue department dedicated to the general administration of the county or for a
564 dedicated purpose;

565 (3) monies received from any other source for the
566 administration of county government or a program within county government;

567 (4) fees received from services provided by the county;

568 (5) proceeds received from the sale of county assets;

569 (6) grants or capital outlay by the county from any source;

570 (7) reversions from other county funds or from unused monies
571 from grants offered by the county;

572 (8) interest earned on monies deposited in accounts owned by
573 the county;

574 (9) distributions of proceeds from the investment of county
575 funds;

576 (10) all other revenues received by the county.

577 C. Expenditures from the county general fund shall be expended:

- 578 (1) to provide for the general administration of county
579 government;
- 580 (2) to ensure the proper operation of each county office;
- 581 (3) to build and keep in repair all county buildings or to
582 provide suitable locations for county purposes;
- 583 (4) as appropriations to other county funds;
- 584 (5) in a manner consistent with the requirements of restricted
585 funds;
- 586 (6) for grants offered by the county where permitted by law;
- 587 (7) to promote the people, activities and natural resources of
588 the county;
- 589 (8) to provide for the health, safety and welfare of the county.

590 D. The commission is authorized to levy a tax on all taxable property
591 in the county for general county purposes, including salaries and expenses of county
592 officers, deputies and employees, subject to maximum rates provided by state law.
593 Proceeds of the tax shall be allocated to appropriate funds, budgeted and expended
594 as provided by law.

595 E. Expenditures from the county general fund shall be determined
596 by the commission through the adoption of the county budget following the annual
597 county budgeting process. Expenditures from the county general fund shall be
598 disbursed exclusively for public purposes and only in accordance with the approved
599 county budget.

History: [New Material].

600 **Section 4-37A-18. County Funds; Independently Elected**
601 **County Official Funds.**

This Act provides a dedicated fund for each Independently Elected County Official. Previously only the Assessors and the Clerks had one.

602 A. There is created in each county a fund for each independently
603 elected county official to support the duties and responsibilities of the official's county
604 office in the manners specified in Sections 4-37A-19 through 4-37A-24 NMSA 1978.

605 B. Money received from the following sources shall be deposited into
606 each fund, in addition to funding sources specific to each fund:

607 (1) county general fund or other moneys appropriated by the
608 board of county commissioners to that specific fund;

609 (2) interest earned on the monies deposited in that specific
610 fund;

611 (3) proceeds from the disposition of assets originally
612 purchased from that specific fund; and

613 (4) grants or capital outlay funds received by a county for that
614 purposes specific to that independently elected county official or the official's county
615 office from any source and not designated to any other county fund.

616 C. Expenditures from each fund are restricted to the following
617 purposes, except for expenditures authorized provided for a specific fund or as
618 otherwise restricted for a specific fund:

619 (1) to acquire vehicles to support the duties and
620 responsibilities of the independently elected county official's county office and for
621 supplies, training and maintenance for such vehicles;

622 (2) for technical assistance or for training associated with the
623 duties and responsibilities of the independently elected county official's county office
624 and for dues to organizations supporting the duties and responsibilities of the
625 independently elected county official and the official's county office; and

626 (3) for travel supporting the duties and responsibilities of the
627 official's county office by the independently elected county official and the official's
628 staff.

629 D. In any county where the balance of an independently elected
630 county official's fund exceeds three times the average unrestricted expenditure from
631 the fund over the previous three years, the official may make grants to other
632 independently elected county officials' funds in the official's county or in another
633 county, subject to requirements by the department of finance and administration for
634 intergovernmental transfer of funds. When making grants pursuant to this
635 subsection, the balance of the grantor's fund shall not fall below less than twice the
636 average unrestricted expenditure of that fund over the previous three years.

637 E. Expenditures from each independently elected county official's
638 fund shall be determined by the independently elected county official. During the
639 annual county budgeting process the independently elected county official shall
640 prepare a report to the commission detailing the source of funds deposited into the

641 official's fund, the use of funds in the previous fiscal year, the remaining balances in
642 the fund and the projected use of funds in the following fiscal year. Balances at the
643 end of a fiscal year shall remain in each independently elected county official's fund
644 and not revert to the county general fund. A county may adopt a county policy
645 providing for reversions to the general fund when the unrestricted balance of an
646 independently elected county official's fund exceeds four times the average
647 unrestricted expenditure of that fund over the previous three years and the official
648 has not encumbered or designated the funds for a specific use permitted by the
649 official's fund.

History: [New Material].

650 **Section 4-37A-19. County Funds; County Assessor**
651 **Property Valuation Fund.**

This section lays out in detail which was oblique in Section 7-38-38.1.

652 A. There is created in each county a "county assessor property
653 valuation fund".

654 B. Money received from the following sources shall be deposited into
655 the county assessor property valuation fund:

656 (1) sources provided for in Section 4-37A-18 NMSA 1978; and

657 (2) funds designated as an administrative charge pursuant to

658 Section 7-38-38.1 NMSA 1978.

659 C. Expenditures from the county assessor property valuation fund
660 may be expended only:

661 (1) in the manner provided for in Section 4-37A-18 NMSA
662 1978;

663 (2) to acquire equipment or software and services in support of
664 a property valuation program presented annually by the county assessor and
665 approved by the board of county commissioners, provided such expenditure is
666 consistent with this subsection, and for supplies, training and maintenance for such
667 equipment or software;

668 (3) for payment of additional compensation to the assessor and
669 to certified appraiser employees in the assessor's office pursuant to Sections 4-39-4
670 and 4-39-5 NMSA 1978 and as authorized by county policy; and

671 (4) for payment of contractors and employees only while
672 engaged in revaluation of properties, provided that no more than fifty percent of the
673 previous year's receipts from the Section 7-38-38.1 NMSA 1978 administrative charge
674 may be used for such purpose.

History: [New Material].

675 **Section 4-37A-20. County Funds; County Clerk Election**
676 **Administration Fund.**

This is a new fund which will aid in accounting for a county's election costs.

677 A. A "county clerk election administration fund" is established in
678 each county.

679 B. Money received from the following sources shall be deposited into
680 the county clerk election administration fund:

681 (1) sources provided for in Section 4-37A-18 NMSA 1978;

682 (2) grants and reimbursements from the secretary of state for
683 election expenses;

684 (3) money received from the state or a local public body for the
685 costs of conducting a special election; and

686 (4) filing fees and other fees paid related to elections.

687 C. Expenditures from the county clerk election administration fund
688 may be expended only:

689 (1) in the manner provided for in Section 4-37A-18 NMSA
690 1978; and

691 (2) for purposes relating to the administration of elections
692 pursuant to the provisions of the Election Code.

History: [New Material].

693 **Section 4-37A-21. County Funds; County Clerk Recording**
694 **And Filing Fund.**

This lays out in greater detail the provisions of the previous Section 14-8-12.2.

695 A. A "county clerk recording and filing fund" is established in each
696 county.

697 B. Money received from the following sources shall be deposited into
698 the county clerk recording and filing fund, provided that any money received
699 specifically for election purposes shall instead be deposited in the County Clerk's
700 Election Administration Fund:

701 (1) sources provided for in Section 4-37A-18 NMSA 1978;

702 (2) recording fees paid pursuant to Section 14-8-15 NMSA
703 1978; and

704 (3) marriage license fees paid pursuant to Section 40-1-11
705 NMSA 1978.

706 C. Expenditures from the county clerk recording and filing fund may
707 be expended only:

708 (1) in the manner provided for in Section 4-37A-18 NMSA
709 1978; and

710 (2) to acquire recording, redaction and archiving equipment,
711 software and services and for supplies, training and maintenance for such equipment,
712 provided that equipment, software and services acquired pursuant to this paragraph
713 may be used for other duties and responsibilities in the county clerk's office as long
714 as the primary purpose of the equipment is recordation, redaction and archiving.

History: [New Material].

715 **Section 4-37A-22. County Funds; County Probate Court**
716 **Fund.**

This is a new fund and will require an amendment to Section 34-7-22.

717 A. There is created in each county a "county probate court fund".

718 B. Money received from the following sources shall be deposited into
719 the county probate court fund:

720 (1) sources provided for in Section 4-37A-18 NMSA 1978; and

721 (2) probate court fees paid pursuant to Section 34-7-22 NMSA
722 1978.

723 C. Expenditures from the county probate court fund may be
724 expended only:

725 (1) in the manner provided for in Section 4-37A-18 NMSA
726 1978; and

727 (2) to acquire equipment, software and services related to
728 processing of probate court cases and for supplies, training and maintenance for such
729 equipment, provided that equipment, software and services.

History: [New Material].

730 **Section 4-37A-23. County Funds; County Sheriff Law and**
731 **Order Fund.**

This is a new organization for many of the monies that pass through to the Sheriff's Office.

732 A. There is created in each county a "county sheriff law and order
733 fund".

734 B. Money received from the following sources shall be deposited into
735 the county sheriff law and order fund:

736 (1) sources provided for in Section 4-37A-18 NMSA 1978;

737 (2) funds received from the state law enforcement protection
738 fund pursuant to Chapter 29, Article 13, NMSA 1978;

739 (3) process fees paid for document service by the sheriff's office
740 pursuant to Section 4-41-16 NMSA 1978;

741 (4) proceeds from providing law enforcement presence for
742 special event or community security pursuant to a program established by county
743 policy; and

744 (5) funds received as a result of a cooperative law enforcement
745 agreement with another local state or federal government or agency;

746 C. Expenditures from the county sheriff law and order fund may be
747 expended only:

748 (1) in the manner provided for in Section 4-37A-18 NMSA
749 1978; and

750 (2) to acquire equipment or software and services related to
751 the duties and responsibilities of the county sheriff's office and for supplies, training
752 and maintenance for such equipment or software;

753 (3) in a manner permitted for law enforcement protection fund
754 uses, for those monies received from such fund;

755 (4) in a manner consistent with the grant requirements for
756 other restricted monies received by the sheriff; and

757 (5) to acquire weapons and gear associated with the regular
758 duties in the sheriff's office and for supplies, training and maintenance of such
759 weapons and gear.

History: [New Material].

760 **Section 4-37A-24. County Funds; County Treasurer**
761 **Investment Return Fund.**

This is a new fund and gives a greater incentive for Treasurers to increase the returns on investments.

762 A. There is created in each county a "county treasurer investment
763 return fund".

764 B. Money received from the following sources shall be deposited into
765 the county treasurer investment return fund:

766 (1) sources provided for in Section 4-37A-18 NMSA 1978;

767 (2) funds designated as an administrative charge pursuant to
768 Section 4-43-14 NMSA 1978; and

769 (3) funds designated as allowable administrative charges
770 pursuant to state or federal law or lawful county administrative instruments.

771 C. Expenditures from the county treasurer investment return fund
772 may be expended only:

773 (1) in the manner provided for in Section 4-37A-18 NMSA
774 1978; and

775 (2) to acquire equipment or software and services related to
776 the duties and responsibilities of the treasurer's office and for supplies, training and
777 maintenance for such equipment or software.

History: [New Material].

778 **Section 4-37A-25. Lawsuits By or Against a County.**

This is a modernization of the former 4-46-1.

779 A. In all suits or proceedings against a county no party shall be
780 named except the board of county commissioners or a county elected official as
781 provided in this section.

782 B. In all suits or proceedings by or against a county, except as
783 provided by this section, the name in which the county shall sue or be sued shall be
784 the board of county commissioners of the county of

785 C. An independently elected county official may sue in the name of
786 the official's office to enforce the duties and responsibilities of the official's office,
787 provided that such suit may not seek damages unless also filed in the name of the
788 board of county commissioners.

789 D. A county elected official shall sue in the name of the official's office
790 when filing a suit seeking specific performance to protect the privileges or
791 responsibilities of the official's office.

792 E. A suit alleging a county elected official has acted beyond the
793 privileges or responsibilities of the official's office and seeking only specific
794 performance, shall name as the defendant that county elected official and shall not
795 name the board of county commissioners.

796 F. A suit filed related to the official duties of any independently
797 county elected official which does not seek damages nor attempts to invalidate any
798 county legal instrument shall name that independently elected county official and
799 shall not name the board of county commissioners.

History: [New Material].

800 **Section 4-37A-26. Compensation; Fees; Financial**
801 **Accountability.**

This section lays out the relevant portions of Sections 4-44-21, 4-44-29, and 4-44-32.

802 A. No county elected official or employee shall accept any salary,
803 compensation, allowance, fees or emoluments for service to the county in any form
804 whatsoever other than as allowed by county policy and as limited by state or federal
805 law.

806 B. Every county elected official and employee shall collect each fee
807 as prescribed by county administrative rule or law in advance of the services for which
808 the fee is set, unless other allowed by law, and the fee for each service shall be
809 accounted for and deposited in the county treasury as provided in a county legal
810 instrument or law.

811 C. A county elected official or employee who willfully violates the
812 provisions of Subsections A or B of this section is guilty of embezzlement.

813 D. In addition to any other penalty provided for by law, a county
814 elected official convicted of violating this section shall be summarily removed from
815 office by the court imposing sentence.

History: [New Material].

816 **Section 4-37A-27. County Elected Official; Resolution to**
817 **Petition for Removal.**

This section allows the commission to weigh in on a process already allowed under the Removal of Local Officials Act.

818 A. A county elected official may be removed from office by the district
819 court pursuant to the procedures provided in the Removal of Local Officers Act,
820 Chapter 10, Article 4 NMSA 1978.

821 B. At a regular meeting, the commission may consider a resolution
822 introduced at the previous regular meeting requesting the district attorney present
823 an accusation or otherwise commence proceedings pursuant to the Removal of Local
824 Officers Act.

825 C. A resolution adopted pursuant to Subsection B of this section
826 shall:

827 (1) identify the independently county elected official who is the
828 subject of the proposed removal proceeding;

829 (2) state with particularity the acts, omissions, conditions or
830 course of conduct alleged to constitute a violation of a specific provision within the
831 Removal of Local Officers Act; and

832 (5) state why less restrictive corrective measures are
833 inadequate to protect the public interest.

834 D. Before adopting a resolution pursuant to Subsection B of this
835 section, the commission shall:

836 (1) provide the county elected official written notice of the
837 proposed resolution and the alleged basis for removal;

838 (2) provide the county elected official a reasonable opportunity
839 to respond in writing and in a public meeting of the commission;

840 (3) refer the matter to mediation unless immediate judicial
841 action is necessary to prevent substantial impairment of a statutory duty, unlawful
842 expenditure of public funds, destruction of public records, violation of state or federal
843 law or immediate harm to persons or property; and

844 (4) consider whether remedial action, technical assistance,
845 training, outside administrative support or mediation would reasonably address the
846 alleged incompetence without seeking removal.

847 E. Removal shall not be sought for any one of the following:
848 (1) mere error in judgment;
849 (2) an isolated mistake in administration;
850 (3) a good-faith dispute concerning the meaning or application
851 of law;
852 (4) a policy disagreement;
853 (5) a budget disagreement;
854 (6) a personality conflict;
855 (7) disagreement with the official's management style;
856 (8) the official's lawful protection of the independence,
857 authority, budget or operation of the office;
858 (9) lack of a qualification not required by law for the office; or
859 (10) conduct occurring during a prior term of office, except to
860 the extent that current facts and circumstances during the present term
861 independently establish cause for removal.

862 F. The county elected official sought to be removed shall be entitled
863 to representation by the risk management division of the general services
864 department.

865 G. The commission's adoption of a resolution under this section does
866 not suspend or remove the county elected official and does not diminish the official's
867 authority.

868 H. Nothing in this section limits the authority of a grand jury,
869 district attorney, attorney general or other person authorized by law to initiate a
870 removal proceeding, quo warranto proceeding, criminal proceeding, civil action or
871 other lawful proceeding in the absence of the resolution adopted by the commission.

872 I. Nothing in this section authorizes the commission or the county
873 manager to remove, suspend or discipline a county elected official.

History: [New Material].

County Official Instruments Act

874 **Section 4-37B-1. Short Title.**

This Act lays out in one place the process for adoption of Ordinances, County Policies, County Administrative Rules, Proclamations and Special Statutory Instruments.

875 This act may be cited as the "County Official Instruments Act."

History: [New Material].

876 **Section 4-37B-2. County Ordinances; General** 877 **Provisions.**

This bring in the provisions of previous Sections 4-37-1, 4-37-2, 4-37-3, 4-37-4.

878 A. A county ordinance shall be used when the county intends to
879 enact, amend or repeal a county law of general or continuing effect that is necessary
880 and proper to provide for the safety, preserve the health, promote the prosperity and
881 improve the order, comfort and convenience of any county or its inhabitants and that
882 is not inconsistent with statutory or constitutional limitations placed on counties. A
883 county shall not pass an ordinance on a topic where a state statute regulates the
884 matter or provides a penalty, except where permitted by such statute.

885 B. A county ordinance is effective within the geographic territory of
886 the county, including privately owned land or land owned by the United States, the
887 state or any political subdivision of the state; provided, however, that a county
888 ordinance is not effective within the exterior boundaries of an incorporated
889 municipality other than on property owned or leased by the county unless the
890 municipality adopts a municipal ordinance to permit a county ordinance to be
891 effective within its boundaries. County ordinances are effective throughout the
892 geographic territory of an incorporated county and a combined city and county
893 corporation.

894 C. A county ordinance that carries a criminal penalty or civil penalty
895 assessment may be enforced in a court of competent jurisdiction in the county.
896 Enforcement is commenced by the issuance of a citation charging the violation. Where
897 appropriate, enforcement may be commenced using the uniform traffic citation
898 adopted by the state taxation and revenue department. A citation may be issued by
899 any peace officer commissioned by the county sheriff. A citation may also be issued
900 by any employee of the county whose job title is authorized in the ordinance to enforce
901 an ordinance.

902 D. A county ordinance which carries a criminal penalty or a civil
903 penalty assessment shall not exceed a fine of five hundred dollars (\$500) or, in the
904 case of a criminal penalty, imprisonment for no more than ninety days in addition to
905 a fine; except that a county may enact and enforce an ordinance that imposes a:

906 (1) fine of no more than one thousand dollars (\$1,000) for
907 discarding or disposing of refuse, litter or garbage on public or private property in
908 any manner other than by disposing it in an authorized landfill;

909 (2) fine of no more than five thousand dollars (\$5,000) for the
910 improper or illegal disposal of hazardous materials or waste in any manner other
911 than as provided for in the Hazardous Waste Act; or

912 (3) penalty as otherwise provided by state law.

913 E. A county ordinance that adopts technical codes may be enforced
914 through the filing of a complaint in any court of competent jurisdiction in the county.
915 A county ordinance that adopts a technical code may require enforcement through an
916 administrative procedure adopted by the county before proceeding to enforcement or
917 appeal in a court of competent jurisdiction, provided that the administrative
918 procedure process need not be observed when immediate public health or safety
919 concerns warrant an immediate court action. Nothing in this subsection shall restrict
920 the ability of a person to pursue mandamus when the circumstances warrant such
921 action.

922 F. County ordinances that are compiled and published are law and
923 may be judicially noticed as such. County ordinances that are not compiled and
924 published may be received in evidence without further proof when presented showing
925 that the ordinance has been recorded by the county clerk after final passage by the
926 commission.

927 G. As used in this section, "technical code" means a building,
928 construction, fire, life-safety, electrical, plumbing, mechanical, energy, property
929 maintenance or similar technical code adopted by a county by ordinance to establish
930 standards for public health or safety.

History: [New Material].

931 **Section 4-37B-3. County Ordinances; Procedure For**
932 **Adoption.**

This section de-couples Counties from the Municipal process for adopting ordinances.

933 A. A proposed county ordinance shall be introduced at a public
934 meeting of the board of county commissioners. The proposed ordinance shall be
935 identified by title and general subject matter.

936 B. After introduction and before final adoption of a proposed
937 ordinance, the county shall post notice of the proposed ordinance in a conspicuous
938 place on the county website and make the notice available for public inspection at the
939 county clerk's office. The notice shall include the:

940 (1) title and general subject matter of the proposed ordinance;

941 (2) text of the proposed ordinance, including any amendments
942 proposed to an existing ordinance or the text to be repealed when repealing an
943 existing ordinance;

944 (3) the deadline for submitting written comments and how
945 comments may be submitted; and

946 (4) date, time and place of the meeting at which the board of
947 county commissioners will consider final adoption of the proposed ordinance.

948 C. The board of county commissioners shall hold a hearing to receive
949 input on the proposed ordinance. The public hearing shall be held on a day after the
950 day the proposed ordinance is introduced and before the day the proposed ordinance
951 is considered for final adoption. In addition the board of county commissioners shall
952 establish a process to receive written comments on the proposed ordinance during the
953 time when the proposed ordinance is posted on the county website. At the meeting at
954 which final adoption is considered, the board of county commissioners shall allow
955 public comment on the proposed ordinance before taking final action.

956 D. At least fourteen days must pass between introduction and final
957 adoption. An ordinance is adopted if a majority of all members of the board of county
958 commissioners vote in favor of adoption. The vote of each commissioner on the
959 ordinance shall be recorded in the minutes.

960 E. After adoption, the ordinance shall be signed by the chair of the
961 board of county commissioners and attested by the county clerk. The county clerk
962 shall record the ordinance in a book kept for recording and maintaining county official
963 instruments. The adopted ordinance shall also be posted on the county website.

964 F. An ordinance shall take effect five days after the ordinance is
965 recorded by the county clerk and following posting on the county website, unless a
966 later effective date is provided in the ordinance or is required by law.

967 G. The timelines in this section shall not apply to an ordinance
968 adopted in response to an emergency declared by the board of county commissioners
969 to be an immediate danger to the public peace, health and safety of persons or

970 property in the county. An ordinance adopted in response to an emergency takes
971 effect immediately upon being recorded by the county clerk. Within ten days of taking
972 action on an ordinance dealing with an emergency, the public body shall report to the
973 attorney general's office the action taken and the circumstances creating the
974 emergency. Within ninety days of taking action on an ordinance dealing with an
975 emergency, the commission shall follow the normal timelines in this section for
976 adoption of an ordinance. If the commission fails to follow the normal procedures for
977 adoption of an ordinance, the ordinance is automatically repealed ninety days after
978 it was adopted. An ordinance initially adopted pursuant to this Subsection may not
979 be readopted using the emergency procedures unless at least one year has passed
980 since the previous emergency adoption and there is a separate occurrence of an
981 emergency.

982 H. This section does not apply to an ordinance for which a different
983 procedure is required by the constitution of New Mexico, state statute, federal law or
984 other controlling law other than a county charter or county official instrument. If
985 another law other than a county charter or county official instrument requires a
986 different notice, hearing, publication, filing, recording, approval or effective-date
987 procedure, the county shall comply with that law.

History: [New Material].

988 **Section 4-37B-4. County Policies; General Provisions.**

The use of County Policies under this Act are described here and applicable in all County Offices.

989 A. A county policy shall be used when the county intends to adopt a
990 rule or standard of ongoing or continuing effect governing the internal operations of
991 county government for which a violation will subject an employee to disciplinary
992 action and due process procedures.

993 B. The commission adopts a county policy pursuant to the
994 procedures of this act that are generally applicable to county offices and county
995 departments. The commission may adopt an office-specific policy upon the
996 recommendation of the independently elected county official who administers that
997 office. The commission may adopt a department-specific policy upon the
998 recommendation of the county manager, provided that the county manager may
999 delegate the responsibility of making the recommendation to the applicable
1000 department head.

1001 C. Each independently elected county official shall abide by and
1002 enforce generally applicable county policies, including personnel policies. Each
1003 independently elected county official shall abide by and enforce any collective
1004 bargaining agreement applicable to the official's county office.

1005 D. If the commission determines that an independently elected
1006 county official has refused or failed to abide by or enforce a county policy or a collective
1007 bargaining agreement applicable to the official's county office, the commission may,
1008 by resolution, authorize the county manager to enforce the specific policies or

1009 collective bargaining agreement provisions the official is refusing or failing to abide
1010 by or enforce within that office on behalf of the county until such time as the
1011 independently elected official agrees to abide by and enforce such policies or collective
1012 bargaining agreement provisions.

1013 E. Before adopting a resolution pursuant to Subsection D of this
1014 section, the county manager shall:

1015 (1) provide written notice to the independently elected county
1016 official and the official's chief deputy identifying the county policy or collective
1017 bargaining agreement provision alleged to have been violated or not enforced;

1018 (2) provide the independently elected county official a
1019 reasonable opportunity to cure the refusal or failure; and

1020 (3) provide the independently elected county official an
1021 opportunity to meet with the manager or the commission to resolve the dispute
1022 informally.

1023 F. The county manager shall not use authority granted under this
1024 section to:

1025 (1) direct the statutory duties of the independently elected
1026 county official;

1027 (2) control the official's exercise of discretion under law;

1028 (3) remove, discipline or supervise the independently elected
1029 county official;

1030 (4) appoint or remove a chief deputy;

1031 (5) direct law enforcement decisions, tax assessment decisions,
1032 election administration decisions, recording decisions, probate judicial decisions or
1033 treasury decisions committed by law to the independently elected county official;

1034 (6) direct the investment, deposit or safekeeping of county
1035 funds in a manner inconsistent with law governing the county treasurer and county
1036 board of finance; or

1037 (7) otherwise interfere with the lawful performance of the
1038 office.

History: [New Material].

1039 **Section 4-37B-5. County Policies; Procedure For**
1040 **Adoption.**

In this Act, County Policies have consequences, and as a result, require a process to adopt.

1041 A. A proposed county policy shall be introduced at a public meeting
1042 of the board of county commissioners. The proposed county policy shall be identified
1043 by title and general subject matter.

1044 B. Before the board of county commissioners adopts a proposed
1045 county policy, the county manager shall ensure that a notice of the proposed policy
1046 is:

1047 (1) posted in a conspicuous place on the county website; and

1048 (2) sent to affected county employees and departments.

1049 C. After introduction and before final adoption of a proposed county
1050 policy, the county shall post notice of the proposed county policy in a conspicuous
1051 place on the county website. The notice shall include the:

1052 (1) title and general subject matter of the proposed county
1053 policy;

1054 (2) text of the proposed county policy, including any
1055 amendments proposed to an existing county policy or the text to be repealed when
1056 repealing an existing county policy;

1057 (3) the deadline for submitting written comments and how
1058 comments may be submitted; and

1059 (4) date, time and place of the meeting at which the board of
1060 county commissioners will consider final adoption of the proposed county policy.

1061 D. The board of county commissioners shall establish a process to
1062 receive written comments on the proposed county policy during the time when the
1063 proposed county policy is posted on the county website. At the meeting at which final
1064 adoption is considered, the board of county commissioners shall allow public comment
1065 on the proposed county policy before taking final action.

1066 E. At least fourteen days must pass between introduction and final
1067 adoption. A county policy is adopted if a majority of all members of the board of county
1068 commissioners vote in favor of adoption. The vote of each commissioner on the
1069 ordinance shall be recorded in the minutes.

1070 F. After adoption, the county policy shall be signed by the chair of
1071 the board of county commissioners and attested by the county clerk. The county clerk
1072 shall record the county policy in a book kept for recording and maintaining county

1073 official instruments. The adopted county policy shall also be posted on the county
1074 website.

1075 G. A county policy shall take effect five days after the county policy
1076 is recorded by the county clerk and following posting on the county website, unless a
1077 later effective date is provided in the county policy or is required by law.

1078 H. The timelines in this section shall not apply to a policy adopted in
1079 response to an emergency declared by the board of county commissioners to be an
1080 immediate danger to the public peace, health and safety of persons or property in the
1081 county. A policy adopted in response to an emergency takes effect immediately upon
1082 being recorded by the county clerk. Within ninety days of taking action on a policy
1083 dealing with an emergency, the commission shall follow the normal timelines in this
1084 section for adoption of a policy. If the commission fails to follow the normal
1085 procedures for adoption of a policy, the policy is automatically repealed ninety days
1086 after it was adopted. A policy initially adopted pursuant to this Subsection may not
1087 be readopted using the emergency procedures unless at least one year has passed
1088 since the previous emergency adoption and there is a separate occurrence of an
1089 emergency.

1090 I. A county policy shall not regulate the conduct of the general
1091 public and shall not establish civil or criminal penalties.

History: [New Material].

1092 **Section 4-37B-6. County Administrative Rules;**
1093 **Procedure For Adoption.**

County Administrative rules regulate the interactions of the public with County Government.

1094 A. A county administrative rule shall be used when the county
1095 intends to adopt a rule, procedure, condition or requirement of ongoing or continuing
1096 application governing the public’s access to, use of or requirements to interface with
1097 county programs, services, facilities, property or resources, including fees charged to
1098 the public where the exact fee is not set by statute or ordinance. A county
1099 administrative rule is subordinate to an ordinance. If a county administrative rule
1100 conflicts with an ordinance, the ordinance controls.

1101 B. A proposed county administrative rule shall be introduced at a
1102 public meeting of the board of county commissioners. The proposed county
1103 administrative rule shall be identified by title and general subject matter.

1104 C. Before the board of county commissioners adopts a proposed
1105 county administrative rule, the county manager shall ensure that a notice of the
1106 proposed county administrative rule is:

- 1107 (1) posted in a conspicuous place on the county website; and
- 1108 (2) sent to persons or organizations known to the county
1109 manager, county office or county department to be directly affected by the proposed
1110 county administrative rule.

1111 D. The board of county commissioners shall establish a process to
1112 receive written comments on the proposed county administrative rule during the time
1113 when the proposed county administrative rule is posted on the county website. At the

1114 meeting at which final adoption is considered, the board of county commissioners
1115 shall allow public comment on the proposed county administrative rule before taking
1116 final action.

1117 E. At least fourteen days must pass between introduction and final
1118 adoption. A county administrative rule is adopted if a majority of all members of the
1119 board of county commissioners vote in favor of adoption. The vote of each
1120 commissioner on the ordinance shall be recorded in the minutes.

1121 F. After adoption, the county administrative rule shall be signed by
1122 the chair of the board of county commissioners and attested by the county clerk. The
1123 county clerk shall record the county administrative rule in a book kept for recording
1124 and maintaining county official instruments. The adopted county policy shall also be
1125 posted on the county website.

1126 G. A county policy shall take effect five days after the county policy
1127 is recorded by the county clerk and following posting on the county website, unless a
1128 later effective date is provided in the county policy or is required by law.

1129 H. The timelines in this section shall not apply to a county
1130 administrative rule adopted in response to an emergency declared by the board of
1131 county commissioners to be an immediate danger to the public peace, health and
1132 safety of persons or property in the county. A county administrative rule adopted in
1133 response to an emergency takes effect immediately upon being recorded by the county
1134 clerk. Within ninety days of taking action on a county administrative rule dealing
1135 with an emergency, the commission shall follow the normal timelines in this section

1136 for adoption of a county administrative rule. If the commission fails to follow the
1137 normal procedures for adoption of a county administrative rule, the county
1138 administrative rule is automatically repealed ninety days after it was adopted. A
1139 county administrative rule initially adopted pursuant to this Subsection may not be
1140 readopted using the emergency procedures unless at least one year has passed since
1141 the previous emergency adoption and there is a separate occurrence of an emergency.

1142 I. A county administrative rule shall not conflict with an ordinance
1143 and shall not establish civil or criminal penalties.

History: [New Material].

1144 **Section 4-37B-7. Resolutions.**

Resolutions under this Act are not for adopting procedures of ongoing or continuing application.

1145 A. A resolution shall be used for an action, decision, approval,
1146 authorization, finding, direction, position or administrative decision on a particular
1147 matter of county business that is not an ordinance, policy, county administrative rule,
1148 proclamation or special statutory instrument.

1149 B. A proposed resolution may be presented, considered, amended
1150 and adopted at the same public meeting.

1151 C. A resolution is adopted if a majority of members of the board of
1152 county commissioners present vote in favor of adoption.

1153 D. A resolution shall not amend, repeal, supersede or conflict with
1154 an ordinance, county policy or county administrative rule; provided that the county

1155 commission may by resolution create a one-time exception to a county policy or a
1156 county administrative rule if:

1157 (1) the exception does not conflict with an ordinance, statute
1158 or other controlling law;

1159 (2) the exception is limited to a particular matter, person,
1160 transaction, event or circumstance;

1161 (3) the exception does not amend or repeal the county policy or
1162 county administrative rule; and

1163 (4) the board of county commissioners states the reason for the
1164 exception in the resolution.

History: [New Material].

1165 **Section 4-37B-8. Proclamations.**

Proclamations are ceremonial in nature, so the rules are relaxed.

1166 A. A proclamation shall be used only for ceremonial, honorary,
1167 commemorative or awareness purposes.

1168 B. A proclamation may be proposed, considered, amended and
1169 adopted at the same public meeting.

1170 C. A proclamation shall not establish a policy or county
1171 administrative rule, enact law, authorize expenditure of county funds, create legal
1172 rights or duties or establish civil, criminal or administrative penalties.

1173 D. A proclamation is adopted if a majority of the members of the
1174 board of county commissioners present vote in favor of adoption.

History: [New Material].

1175 **Section 4-37B-9. Standard Operating Procedures.**

SOPs do not need Commission approval and is how the detail or work is described.

1176 A. An independently elected official, the county manager and, where
1177 authorized by a county manager, the department head of a county department may
1178 promulgate and utilize standard operating procedures as needed to provide for
1179 consistent operations within the county, to ensure fair treatment and protection of
1180 the public as well as staff, and to implement staff training and best practices in each
1181 county office and county department.

1182 B. Standard operating procedures shall not conflict with any
1183 ordinance, county policy or county administrative rule, nor any state or federal law.

1184 C. Standard operating procedures are not subject to approval of a
1185 commission and are not considered a county official instrument.

History: [New Material].

1186 **Section 4-37B-10. Special Statutory Instruments.**

This provides a catch-all in case we missed something weird.

1187 A. If a statute or other controlling law requires or authorizes the
1188 county to act by order, notice, certificate, declaration or other special statutory
1189 instrument not otherwise defined in the County Official Instruments Act, the county
1190 shall use and process for that instrument in the manner required by the statute or
1191 other controlling law. An example of a special statutory instrument is an election
1192 proclamation, which may be passed on its own or combined with an election
1193 resolution.

1194 B. Nothing in the County Official Instruments Act shall be
1195 construed to alter, limit or replace a procedure, form, filing requirement, publication
1196 requirement, posting requirement, recording requirement, deadline, approval
1197 requirement or legal effect prescribed by statute or other controlling law.

History: [New Material].

1198 **Section 4-37B-11. County Official Instruments; General**
1199 **Rules Of Construction; Savings Clause.**

This ensures we do not have to re-pass everything and re-categorizes existing ordinances and policies.

1200 A. The form of a county instrument shall be determined by the
1201 substance and legal effect of the action rather than by the title assigned to the
1202 instrument. When a statute or rule references a particular county legal instrument
1203 for adoption by a commission, the form of instrument passed shall be the consistent
1204 with the provisions of the County Legal Instruments Act, regardless of the language
1205 in the statute or rule.

1206 B. County legal instruments adopted, issued or approved before the
1207 effective date of the County Legal Instruments Act shall, on the effective date of the
1208 Act, be converted to appropriate county legal instrument without further action by
1209 the commission and regardless of the procedure used for adoption, issuance or
1210 approval.

1211 C. Nothing in the County Official Instruments Act shall be
1212 construed to impair the validity of an ordinance, resolution, policy, county

1213 administrative rule, proclamation or special statutory instrument adopted, issued or
1214 approved before the effective date of the County Official Instruments Act.

History: [New Material].

1215