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YOUR INPUT IS WELCOMED.

ARTICLE 38

Board of County Commissioners

Section 4-38-1. Exercise of county powers.

No amendment proposed.

The powers of a county as a body politic and corporate shall be exercised by a board of county commissioners.

History: Laws 1876, ch. 1, § 3; C.L. 1884, § 334; C.L. 1897, § 653; Code 1915, § 1188; C.S. 1929, § 33-4201; 1941 Comp., § 15-3501; 1953 Comp., § 15-37-1.

Section 4-38-2. Commission Members; term, number, quorum.

In A, clarifies 4 year terms; in B, makes applicable to population of 100K or fewer; in C, provides option for greater than 100K; in D, provides option for greater than 300K; in E, provides the process to increase; and in F, provides the process when a change in numbers happens. Brought over the substantive provisions of Section 4-38-6. Also, quorum is embedded in the Open Meetings Act, so not needed here.

A. All county commissioners shall be elected at a general election. The election of commissioners shall be staggered so that a full term of office of no more than a quorum of commissioners begins in the same year. The term of office is four years.

B. The board of county commissioners of any county having a population of one hundred thousand or fewer, as shown by the most recent federal decennial census, shall consist of either three or five qualified electors [~~who shall be elected according to law. For a three-member board, two members constitute a quorum for the purpose of transacting business. For a five-member board, three members constitute a quorum for the purpose of transacting business~~].

[~~B.~~]C. The board of county commissioners of any county having a population of more than one hundred thousand, as shown by the most recent federal decennial census, [~~and having a final, full assessed valuation in excess of seventy-five million dollars ($75,000,000)~~] shall consist of either five or seven qualified electors [~~who shall be elected according to law~~].

D. The board of county commissioners of an H class county and any county having a population of more than three hundred thousand as shown by the most recent federal decennial census shall consist of five, seven, or nine qualified electors.

E. The board of county commissioners of a three-member commission may, by unanimous vote, adopt an ordinance to increase the size of the board of county commissioners to five members. A board of county commissioners with five or more members may change the size of the board of county commissioners by adopting an ordinance or amending the county charter, if the county has a charter. If single-member districts are required by law or provided for in the charter amendment or ordinance adopted pursuant to this section, the county shall be divided by the incumbent board of county commissioners into new county commission districts, and one county commissioner shall reside within and be elected from each county commission district.

F. In those counties where there is a change in the number of qualified electors on the board of county commissioners, the secretary of state shall designate by lottery the terms for each county commission district including those commissioners that shall serve an initial term of two years.

G. Quorum for the purpose of transacting business consists of:

(1) for a three member board, two members;

(2) for a five member board, three members;

(3) for a seven member board, four members; and

(4) for a nine member board, five members.

History: Laws 1876, ch. 1, § 8; C.L. 1884, § 339; C.L. 1897, § 658; Code 1915, § 1189; C.S. 1929, § 33-4202; 1941 Comp., § 15-3502; 1953 Comp., § 15-37-2; Laws 1974, ch. 21, § 1; 2002, ch. 61, § 1.

Section 4-38-3. Residence in districts; period for districting; election at large.

Removed redistricting standards, which are now contained in Article 3 of the Election Code.

A. A county having a population greater than thirteen thousand, according to the most recent federal decennial census, shall be divided by the board of county commissioners into as many [~~compact~~] single-member districts as there are board members to be elected. [~~The districts shall be as equal in population as possible and numbered respectively to correspond to the number of board members.~~] One commissioner shall be elected from each district by the voters of the district and shall be a resident of the district from which [~~he is~~] elected. If a commissioner permanently removes [~~his~~] residence from or maintains no residence in the district from which [~~he was~~] elected or appointed, [~~he~~] the commissioner shall be deemed to have resigned. The division of the county into single-member districts shall be made once immediately following each federal decennial census.

B. An H class county or a county having a population of thirteen thousand or fewer according to the most recent federal decennial census, may be divided by the board of county commissioners into single-member districts. If the county is districted, the districts shall be [~~as equal in population as possible and~~] numbered respectively to correspond to the number of board members. A commissioner shall be a resident of the district from which [~~he is~~] elected. If a commissioner permanently removes [~~his~~] residence from or maintains no residence in the district from which [~~he was~~] elected or appointed, [~~he~~] the commissioner shall be deemed to have resigned. The division of the county into single-member districts shall be made once immediately following each federal decennial census.

C. The board of county commissioners in a county with only three board members may require either that:

(1) commissioners shall be elected from each district by the voters of the whole county; or

(2) each commissioner shall be elected by the voters of the district from which that commissioner is running for office.

History: Laws 1876, ch. 1, § 10; 1880, ch. 19, § 1; C.L. 1884, § 341; C.L. 1897, § 660; Code 1915, § 1190; C.S. 1929, § 33-4203; 1941 Comp., § 15-3503; 1953 Comp., § 15-37-3; Laws 1959, ch. 106, § 1; 1961, ch. 27, § 1; 1974, ch. 21, § 2; 1985, ch. 204, § 1; 1987, ch. 290, § 1; 1991 (1st S.S.), ch. 5, § 1; 2002, ch. 61, § 2.

[~~Section 4-38-6. Election; term.~~]

REPEALED. The content of this Section is now in Section 4-38-2.

[~~A. In each county all county commissioners shall be elected to serve four-year terms, subject to the provisions of Subsection B of this section.~~

~~B. In those counties that consist of a three-member board of county commissioners, the secretary of state shall designate by lottery the terms for each county commission district, which shall elect two county commissioners for terms of four years and one county commissioner for a term of two years. The terms for two commissioners shall expire in the same year.~~

~~C. In those counties that, prior to 1992, have not had four-year terms for elected officials, the assessor, sheriff and probate judge shall be elected to four-year terms and the treasurer and clerk shall be elected to two-year terms in the 1994 general election; thereafter, all elected officials shall be elected for terms of four years. The terms of the assessor, sheriff and probate judge shall expire in the same year, and the terms of the treasurer and clerk shall expire in the same year.~~]

History: Laws 1899, ch. 30, § 1; Code 1915, § 1191; C.S. 1929, § 33-4204; 1941 Comp., § 15-3504; 1953 Comp., § 15-37-4; Laws 1974, ch. 21, § 5; 1983, ch. 126, § 3; 1993, ch. 119, § 1.

Section 4-38-8. Meetings.

No amendment proposed.

The board of county commissioners shall meet, after notice as required by law for meetings of public bodies, at the county seat of each county at quarterly meetings in January, April, July and October in each year and at such other times within the prescribed county as in the opinion of the board the public interests may require. Meetings other than quarterly meetings may be held in the municipality with the largest population concentration in the county, and meetings concerning matters of local interest only may be held in the community affected. All meetings shall be held in a public building owned be [by] the state, county or public schools.

History: Laws 1876, ch. 1, § 11; C.L. 1884, § 343; C.L. 1897, § 662; Code 1915, § 1194; C.S. 1929, § 33-4208; 1941 Comp., § 15-3507; 1953 Comp., § 15-37-7; Laws 1975, ch. 30, § 1; 1981, ch. 81, § 1.

Section 4-38-10. [~~Chairman~~] County Commission Officers.

Adds a Vice Chair to the officers to be elected, and provides for permanent and temporary succession.

A. The county commission shall select [~~a chairman in a manner and for a term provided by county ordinance~~] from among their number a chair and vice chair at the first meeting of the calendar year, unless the commission has designated by ordinance a different time for the election of officers.

B. [~~In the absence of a county ordinance providing for the chairman's selection and term, the county commissioners shall, at the first meeting of each year choose one of their number chairman, who shall~~] The commission chair shall preside at [~~that meeting and~~] all [~~other~~] meetings, if present[~~; but~~]. In case of [~~his~~] the chair's absence from any meeting, [~~and~~] the vice chair shall preside. If the chair and vice chair are absent and quorum exists, the members present shall choose one of their number as temporary [~~chairman~~] chair.

C. In the event the position of county commission chair is vacated for any reason, the vice chair shall become commission chair. In the event the position of county commission vice chair is vacated for any reason, the members shall select from among their number a vice chair.

History: Laws 1876, ch. 1, § 17; C.L. 1884, § 348; C.L. 1897, § 667; Code 1915, § 1196; C.S. 1929, § 33-4210; 1941 Comp., § 15-3509; 1953 Comp., § 15-37-9; 1990, ch. 13, § 1.

Section 4-38-11. [~~Chairman; powers and duties~~] Commission chair; powers and duties.

Clarifies the powers during a meeting, and a fallback to the vice chair for signing orders on the county treasury.

A. The [~~chairman of said board~~] commission chair, or any commissioner while presiding at a commission meeting, shall have power to administer oaths to any person concerning any matter submitted to the board or connected with their powers and duties [~~and he~~].

B. The commission chair, or the vice chair if the chair is unavailable, shall sign all orders on the county treasury. The commission chair may designate in writing another commissioner to sign orders on the county treasury.

History: Laws 1876, ch. 1, § 18; C.L. 1884, § 349; C.L. 1897, § 668; Code 1915, § 1197; C.S. 1929, § 33-4211; 1941 Comp., § 15-3510; 1953 Comp., § 15-37-10.

Section 4-38-11.1. H class counties; officials.

This brings in the relevant part of Section 4-44-14 and preserves the ability of H-Class to have full or part time independently electeds.

The commission of an H class county, however denominated, shall designate by county charter or policy whether each of the offices of county assessor, county clerk, county sheriff and county treasurer is part time or full time; provided that a change in that designation shall not take effect until the first day of the term of an elected county official who takes office after the change in designation is approved.

History: [New Material].

Section 4-38-12. Seal; sessions to be public; rules and regulations.

Updated the language, recognizing that under OMA, certain sessions may not be public.

Every board of county commissioners shall have a seal, [~~or scroll until a seal can be procured,~~] and may alter the same at pleasure. [~~Their sessions~~] Commission meetings shall be public [~~with open doors, and~~], except as provided by law. All persons conducting themselves in an orderly manner may attend their meetings[~~, and they~~] The commission may establish rules [~~and regulations~~] to govern the transaction of their business.

History: Laws 1876, ch. 1, § 16; C.L. 1884, § 347; C.L. 1897, § 666; Code 1915, § 1198; C.S. 1929, § 33-4212; 1941 Comp., § 15-3511; 1953 Comp., § 15-37-11.

Section 4-38-13. Powers; property belonging to county.

Brought in language from 4-38-18.

The commission shall oversee the care of the county property and the management of the interest of the county in all cases where no other provision is made by law. The board of county commissioners shall have power at any session to make such orders concerning the property belonging to the county as they may deem expedient.

History: Laws 1876, ch. 1, § 14(1); C.L. 1884, § 345(1); C.L. 1897, § 664(1); Code 1915, § 1199; C.S. 1929, § 33-4213; 1941 Comp., § 15-3512; 1953 Comp., § 15-37-12.

Section 4-38-13.1. County equipment and property; permitted uses.

No amendment proposed.

A. Notwithstanding any other provision of law, the board of county commissioners of any county except a class A county may contract for the use of county equipment or property for the benefit of community ditch associations, mutual domestic water associations or other public entities providing services to significant groups of county residents, which services could legally be provided by a governmental entity. In granting this permission, the board shall specifically describe the equipment or property to be used and the entity on whose behalf it will be used.

B. A board of county commissioners may contract for the use of county buildings for the benefit of nonprofit organizations demonstrating a consistent history of service to sick and indigent persons in the county, which service could legally be expected to be provided by a governmental entity, at rates these organizations can be reasonably expected to pay while maintaining their full service commitment to their respective constituencies. These contracts shall set forth the respective value of services being provided to county residents and the relative value of the use of property provided by the county. A contract entered into pursuant to this subsection is exempt from the Procurement Code pursuant to Section 13-1-98.2 NMSA 1978.

History: 1978 Comp., § 4-38-13.1, enacted by Laws 1984, ch. 43, § 1; 2005, ch. 96, § 2; 2009, ch. 155, § 1.

[~~Section 4-38-13.2. Legislative findings; community value.~~]

REPEALED. This section should have been a proclamation (or memorial in legislative-speak).

[~~The legislature finds that without the daily contributions and efforts of the thousands of worthwhile nonprofit organizations dedicated to serving sick and indigent persons in communities throughout New Mexico, the state would be inundated with constant requests for health, human and social services that it does not have revenue or resources to provide. The legislature finds that it is in the best interests of that population, as well as for all residents and taxpayers, that consideration be extended as real value recognition of the indispensable part these services contribute to the fabric of life in New Mexico.~~]

[~~Section 4-38-14. County appropriation for state fair authorized.~~]

REPEALED. Not needed in statute.

[~~That the county commissioners in each respective county of the state may, for the purpose of aiding their county in displaying its products or potential products at the New Mexico state fair in Albuquerque, appropriate and expend out of the general fund of such county a sum not exceeding $1,000 annually.~~]

History: 1941 Comp., § 15-3512a, enacted by Laws 1951, ch. 88, § 1; 1953 Comp., § 15-37-13.

[~~Section 4-38-15. Agent of county having charge of county exhibit at state fair; appointment.~~]

REPEALED. Not needed in statute.

[~~That said county commissioners may appoint a qualified and suitable person to have charge of said county exhibits and to represent their county at the New~~

~~Mexico state fair, and may if necessary compensate said agent for such services out of said appropriation.~~]

History: 1941 Comp., § 15-3512b, enacted by Laws 1951, ch. 88, § 2; 1953 Comp., § 15-37-14.

[~~Section 4-38-16. Accounts; county buildings; taxation.~~]

REPEALED. Not needed; this authority exists in other laws. Also, very disjointed.

[~~To examine and settle all accounts of the receipts and expenses of the county, and to examine and settle, and allow all accounts chargeable against the county, and when so settled they may issue county orders therefor as provided by law.~~

~~To build and keep in repair all county buildings, and in case there are no county buildings, to provide suitable rooms for county purposes.~~

~~To apportion and order the collection of taxes by law.~~]

History: Laws 1876, ch. 1, § 14(2-4); C.L. 1884, § 345(2-4); C.L. 1897, § 664(2-4); Code 1915, § 1200; C.S. 1929, § 33-4214; 1941 Comp., § 15-3513; 1953 Comp., § 15-37-15.

[~~Section 4-38-17. Tax levy for county general purposes; allocation.~~]

REPEALED. Not needed. This also resides in the tax laws.

[~~Boards of county commissioners are authorized to levy a tax on all taxable property in the county for general county purposes, including salaries and expenses of county officers, deputies and employees, subject to maximum rates provided by law. Proceeds of the tax shall be allocated to appropriate funds, budgeted and expended as provided by law.~~]

History: 1953 Comp., § 15-37-15.1, enacted by Laws 1973, ch. 4, § 10.

Section 4-38-17.1. Tax levies authorization; procedures; health purposes.

Removed the limitation in Subsection D. Makes this available to all Counties.

A. A board of county commissioners may adopt a resolution to submit to the qualified electors of the county the question of whether a property tax at a rate not to exceed the rate specified in the resolution should be imposed upon the net taxable value of property allocated to the county under the Property Tax Code for the purpose of providing health care to sick and indigent persons in the county.

B. The resolution shall specify the rate of the proposed tax, which shall not exceed one dollar fifty cents ($1.50) on each one thousand dollars ($1,000) of net taxable value of property allocated to the county under the Property Tax Code and shall:

(1) specify the date of the election at which the question of imposition of the tax to the qualified electors of the county shall be held, which may be a general election or a special election called for that purpose, except that the election may not be held on the same ballot as an election held pursuant to Section 4-48B-15 NMSA 1978; and

(2) limit the imposition of the proposed tax to no more than eight years.

C. The question shall be voted upon as a separate question and shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. Upon certification, copies of the election shall be mailed immediately to the department of finance and administration and the taxation and revenue department.

D. [~~For purposes of this section, "county" means a class B county with a population of no less than forty-one thousand and no more than forty-five thousand according to the last federal decennial census.~~

~~E.~~] The mill levy authorized in this section is not subject to the rate limitation provisions of Section 7-37-7.1 NMSA 1978 and shall not be used to meet a county's obligations pursuant to Section 27-10-4 NMSA 1978.

History: Laws 2004, ch. 113, § 1; 2005, ch. 89, § 1.

[~~Section 4-38-18. Management in general.~~]

REPEALED. This is inherent in 4-38-1.

[~~To~~ represent the county and have the care of the county property and the management of the interest of the county in all cases where no other provision is made by law.]

History: Laws 1876, ch. 1, § 14(5); C.L. 1884, § 345(5); C.L. 1897, § 664(5); Code 1915, § 1201; C.S. 1929, § 33-4215; 1941 Comp., § 15-3514; 1953 Comp., § 15-37-16.

Section 4-38-24. Powers over highways.

Brought in language from 4-38-25 and 4-38-26

A. The board of county commissioners of each county shall have the power to lay out, alter or discontinue any county road [~~running through one or more precincts or townships~~] in such county and to perform such other duties respecting roads as may be required by law.

B. The commission may order and direct the construction of bridges and provide appropriate funds therefor.

C. The commission in the unincorporated county seats of this state shall have the same powers that are possessed by the boards of trustees and city council in the incorporated towns and cities of New Mexico with reference to the care, opening, altering, changing and grading of roads and streets in their respective county seats, and with reference to the laying of sidewalks and taking care of the same in such county seat.

History: Laws 1876, ch. 1, § 14(7); C.L. 1884, § 345(7); C.L. 1897, § 664(7); Code 1915, § 1203; C.S. 1929, § 33-4217; 1941 Comp., § 15-3520; 1953 Comp., § 15-37-22; 2011, ch. 137, § 108.

[~~Section 4-38-25. Bridges.~~]

REPEALED. Incorporated into 4-38-24.

[~~They may order and direct the construction of bridges and provide and appropriate funds therefor.~~]

History: Laws 1876, ch. 1, § 14(11); C.L. 1884, § 345(11); C.L. 1897, § 664(11); Code 1915, § 1205; C.S. 1929, § 33-4219; 1941 Comp., § 15-3521; 1953 Comp., § 15-37-23.

[~~Section 4-38-26. Streets in unincorporated county seats.~~]

REPEALED. Incorporated into 4-38-24.

[~~The boards of county commissioners in the unincorporated county seats of this state shall have the same powers that were possessed by the boards of trustees and city council in the incorporated towns and cities of New Mexico, on March 7, 1897, with reference to the care, opening, altering, changing and grading of roads and streets in their respective county seats, and with reference to the laying of sidewalks~~

~~and taking care of the same in such county seat: provided, that the county shall not pay any of the expenses in making such improvements or changes.~~]

History: Laws 1897, ch. 30, § 1; C.L. 1897, § 664(13); Code 1915, § 1206; C.S. 1929, § 33-4220; 1941 Comp., § 15-3522; 1953 Comp., § 15-37-24.

Section 4-38-27. Receipts and expenditures; publication of report.

Aligned the report to the fiscal year, and had the report posted on the website instead of publishing.

The boards of county commissioners of their respective counties at their regular meeting in [~~January~~] September in each year shall cause to be prepared a statement of the receipts and expenditures of such county during the [~~year~~] immediately preceding fiscal year, setting forth the amount of money received from taxes, from licenses and all other sources; setting forth also the amount expended and the particular objects for which in each case every sum of money has been expended; and such statement signed by the [~~chairman~~] commission chair and county clerk shall be [~~published~~] posted on the county website.

History: Laws 1876, ch. 1, § 26; C.L. 1884, § 357; C.L. 1897, § 675; Code 1915, § 1211; C.S. 1929, § 33-4225; 1941 Comp., § 15-3524; 1953 Comp., § 15-37-26.

[~~Section 4-38-28. Payments without authority; liability of commissioners.~~]

REPEALED. This only allows recovery for $5,000. There are more modern penalties in law.

[~~All moneys, county warrants or other indebtedness paid out or ordered to be paid out by any of the said county commissioners before mentioned, without authority of law, each and every county commissioner so doing shall be liable for and to the county for the amount so by them paid out without authority of law and all the costs~~

~~and expenses incurred in the recovery of such money, which amount shall be collected and recovered in a suit before the district court, and upon the said bond, in the same manner as other actions.~~]

History: Laws 1887, ch. 8, § 2; C.L. 1897, § 697; Code 1915, § 1215; C.S. 1929, § 33-4229; 1941 Comp., § 15-3525; 1953 Comp., § 15-37-27.

Section 4-38-29. Approving unauthorized account; penalty; recovery of money.

Struck the vote to approve part, since that is an official action; struck the civil liability part since that is covered in Section 4-38-28, above.

Any county commissioner who shall [~~vote to approve any account, or~~] order any money paid to any officer or individual, except as provided by law, shall be deemed guilty of a misdemeanor[~~, and upon conviction thereof shall be fined in a sum not exceeding five hundred dollars, and the money so illegally ordered to be paid shall be recovered in a suit brought in the name of the county on his official bond~~].

History: Laws 1897, ch. 60, § 15 [14]; C.L. 1897, § 867(14); Code 1915, § 1216; C.S. 1929, § 33-4230; 1941 Comp., § 15-3526; 1953 Comp., § 15-37-28.

[~~Section 4-38-30. Neglect of duty; penalty.~~]

REPEALED. The penalty of $25 to $100 is no longer the deterrent it was in 1876.

[~~If any one of the commissioners shall refuse or neglect to perform any of the duties which are or shall be required by law of him as a member of the board of county commissioners without any just cause therefor, he shall for each offense be fined in a sum not less than twenty-five dollars [($25.00)] nor more than one hundred dollars [($100)] on conviction in the district court.~~]

History: Laws 1876, ch. 1, § 27; C.L. 1884, § 358; C.L. 1897, § 676; Code 1915, § 1212; C.S. 1929, § 33-4226; 1941 Comp., § 15-3527; 1953 Comp., § 15-37-29.

Section 4-38-38. [~~Creation of~~] County Advisory Boards.

This revives the County Advisory Board and makes it an option for any County.

A. [~~There is created~~] A county advisory board may be created in each county [~~of the fourth and fifth class~~]. An advisory board is created in a county upon the presentation to the chair of the county commission of a written request for a county advisory board signed by at least four of the elected officials in the county. Once created, the county advisory board may be dissolved upon a vote of four members of the county advisory board, provided at least two years have passed since the creation of the board. Following dissolution of a county advisory board, a new county advisory board may be created at any time.

B. The board shall consist of [~~the~~] a county [~~commissioners, the county treasurer,~~] commissioner and the county assessor, [~~sheriff and~~] county clerk, county probate judge, county sheriff, and county treasurer. The commission shall designate its member at the commission's organizational meeting each year.

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

C. The advisory board shall meet at least semi-annually and may meet more frequently as necessary to encourage cooperation among county elected officials or to address matters affecting the administration of county government.

D. A majority of the advisory board may invite the county manager or the county attorney to a meeting of the advisory board, and the county manager or county attorney shall attend the meeting and participate in a discussion with the advisory board.

E. The advisory board is advisory in nature. It shall not exercise the authority of the commission, the county manager or any elected county official. If the advisory board meets to develop public policy or to create recommendations to be considered by the county commission, such meetings shall be held in accordance with the provisions of the Open Meetings Act. Should a quorum of the county commission be present at any meeting of the advisory board, such meeting shall be held in accordance with the provisions of the Open Meetings Act.

History: 1953 Comp., § 15-37-37, enacted by Laws 1959, ch. 239, § 1.

Section 4-38-38.1. Mediation Of Disputes Required.

This creates a mediation requirement before any lawsuits among county elected officials or the manager.

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

B. A demand for mediation shall be made in writing and shall be filed with the county attorney. The demand shall identify:

(1) the parties to the dispute;

(2) the nature of the dispute;

(3) the relief requested;

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

(5) whether expedited review is requested.

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

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

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

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

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

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

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

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

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

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

History: [New Material].

[Section 4-38-39. Duties of board.]

REPEALED. The modern County Advisory Board is in Section 4-38-38, above.

[The board shall meet with the county commissioners and advise them on ~~all~~ matters concerning the offices of county officials and on ~~all~~ matters concerning administration of public matters of the county. ~~Each member of the board shall familiarize himself with all matters of a public nature in his respective county, and each member of the advisory board shall make suggestions and recommendations for more efficient administration of county finances, county government or any other function of the county.~~ The advisory board shall encourage cooperation between various county officials and bring about mediation when ~~several~~ county officials fail or neglect to cooperate in exercising their duties whenever the lack of cooperation becomes detrimental to the efficiency of county government.]

History: 1953 Comp., § 15-37-38, enacted by Laws 1959, ch. 239, § 2.

[~~Section 4-38-40. Executive committee.~~]

REPEALED. The modern County Advisory Board is in Section 4-38-38, above.

[~~The county treasurer, county assessor and county clerk are ex officio the executive committee of the county advisory board.~~]

History: 1953 Comp., § 15-37-39, enacted by Laws 1959, ch. 239, § 3.

[~~Section 4-38-41. Terms of members.~~]

REPEALED. The modern County Advisory Board is in Section 4-38-38, above.

[~~Terms of members of the county advisory boards in fourth and fifth class counties begin June 15, 1959, and expire with each member's term of elective county office. Terms of successors shall begin and expire with each member's term of elective county office.~~]

History: 1953 Comp., § 15-37-40, enacted by Laws 1959, ch. 239, § 4.

[~~Section 4-38-42. Salary; members of advisory board.~~]

REPEALED. The modern County Advisory Board is in Section 4-38-38, above.

[~~In addition to salaries received as elective county officers, each member of a county advisory board, except the county commissioners, shall receive six hundred dollars ($600) a year, plus three hundred dollars ($300) additional for deputies. Each county commissioner shall receive three hundred dollars ($300) a year; provided, that~~

~~only so much of the salaries of each member of the board shall be allowed as the county's valuation will raise for the salary funds within the twenty mill limitation.~~]

History: 1953 Comp., § 15-37-41, enacted by Laws 1959, ch. 239, § 5.

ARTICLE 39

County Assessor

Section 4-39-1.1 County assessor; election; duties.

Intro section for Assessors establishing term, when elected, and basic duties.

(NOTE: All Assessors will now be elected in the same year; those currently off cycle will receive an extra two years on their current term.)

A. A county assessor shall be elected at each general election at which the governor is elected. The term of office is four years.

B. The county assessor is the chief valuation officer of the county with duties as defined in the Property Tax Code [Chapter7, Articles 35 through 38, NMSA 1978].

C. It is the county assessor's duty to identify, list, classify, and value taxable property within the county for property tax purposes, in accordance with the Property Tax Code and rules and orders issued by the state property tax division of the department of taxation & revenue. The assessor is responsible for keeping property valuations current and correct by maintaining assessment records, adding new property and improvements, adjusting values when required by law, and applying special statutory valuation rules. The assessor also prepares reports concerning valuation activity and the county's valuation program.

History: [New Material]

Section 4-39-2. Courses in property valuation and property tax administration authorized; issuance of certificates.

No changes proposed.

The taxation and revenue department, in cooperation with the international association of assessing officers and the real estate appraisers board, may establish four grades of courses in the field of property valuation and property tax administration. The courses shall be graded in order of increasing difficulty and shall be administered by the department. Persons completing a course and passing an examination on a particular grade of property valuation and property tax administration shall be issued an appraiser's certificate of an appropriate grade. A person shall not be issued an appraiser's certificate of a particular grade unless the person has been issued an appraiser's certificate for each one of the lesser grades. The appraiser's certificates shall be denominated "Appraiser 1", "Appraiser 2", "Appraiser 3" and "Appraiser 4" and shall be granted in order of difficulty of the course and examination completed. The "Appraiser 4" certificate shall be granted for completion of the most difficult course. County assessors or appraisers who have been granted an "Appraiser 4" certificate shall be designated "New Mexico certified appraiser" and shall be provided by the taxation and revenue department with a certificate granting this designation.

History: 1953 Comp., § 15-38-1.1, enacted by Laws 1978, ch. 47, § 1; 1995, ch. 12, § 2; 2005, ch. 118, § 1.

Section 4-39-3. Qualifications for appraiser's certificates.

No changes proposed.

The taxation and revenue department, in cooperation and in keeping with the standards of the international association of assessing officers and the real estate appraisers board, shall establish the qualifications that are prerequisite to the issuance of each grade of appraiser's certificate.

History: 1953 Comp., § 15-38-1.2, enacted by Laws 1969, ch. 269, § 2; 1973, ch. 258, § 139; 1974, ch. 92, § 1; 1977, ch. 249, § 25; 1995, ch. 12, § 3; 2005, ch. 118, § 2.

Section 4-39-4. Additional compensation to assessors.

Striking reference to statutory limitations on salaries, which no longer exist.

In addition to the salaries provided for county assessors [~~in Sections 4-44-4 through 4-44-5 NMSA 1978~~], county assessors may receive additional cumulative increments up to:

A. an additional seven hundred fifty dollars ($750) a year for holding an "Appraiser 1" certificate;

B. an additional one thousand seven hundred fifty dollars ($1,750) a year for holding an "Appraiser 2" certificate;

C. an additional three thousand dollars ($3,000) a year for holding an "Appraiser 3" certificate; and

D. an additional three thousand five hundred dollars ($3,500) a year for holding an "Appraiser 4" certificate.

History: 1953 Comp., § 15-38-1.3, enacted by Laws 1969, ch. 269, § 3; 1977, ch. 138, § 1; 2023, ch. 119, § 1.

Section 4-39-5. Additional compensation to certain certified employees in appraiser offices.

No changes proposed.

A board of county commissioners may provide additional cumulative increments to the salary of employees in the office of the assessor as an incentive for obtaining greater qualification levels up to the following amounts:

A. an additional seven hundred fifty dollars ($750) a year for holding an "Appraiser 1" certificate;

B. an additional one thousand seven hundred fifty dollars ($1,750) a year for holding an "Appraiser 2" certificate;

C. an additional three thousand dollars ($3,000) a year for holding an "Appraiser 3" certificate; and

D. an additional three thousand five hundred dollars ($3,500) a year for holding an "Appraiser 4" certificate.

History: 1953 Comp., § 15-38-1.4, enacted by Laws 1977, ch. 138, § 2; 2015, ch. 78, § 1; 2023, ch. 119, § 2.

Section 4-39-6. Assessors; removal proceedings against; secretary of taxation and revenue may cause to be instituted; district attorney; attorney general.

No changes proposed.

A. The secretary of taxation and revenue may, if grounds appear therefor, cause removal proceedings to be instituted against any assessor by the district attorney for the county for which the assessor was elected, or by the attorney general, in the manner provided by law for the institution and prosecution of removal proceedings against public officers by district attorneys.

B. The secretary of taxation and revenue shall cause removal proceedings to be instituted under Subsection A of this section against any assessor whose functions have been suspended under Section 7-35-6 NMSA 1978 when any suspension under that section continues without interruption for a period of more than sixty days.

C. Nothing in this section shall be construed to repeal or limit any provisions of law relating to the liability of assessors as such or as public officers to fine, imprisonment or removal from office for failure, refusal or neglect to discharge any duty imposed upon them by law, but shall be in addition to them.

History: 1953 Comp., § 15-38-7, enacted by Laws 1955, ch. 176, § 5; 1973, ch. 258, § 140; 1977, ch. 249, § 26; 1995, ch. 12, § 4.

ARTICLE 40

County Clerk

Section 4-40-1.1 County Clerk; election; duties.

Intro section for Clerks establishing term, when elected, and basic duties.

(NOTE: All Clerks will now be elected in the same year; those currently off cycle will receive an extra two years on their current term.)

A. A county clerk shall be elected at each general election at which the president is elected. The term of office is four years.

B. The county clerk is the chief election officer of the county with duties as defined in the Election Code.

C. The county clerk is the recorder of property records for the county with duties defined in Chapter 14, Articles 8, 9, 9A, and 10 NMSA 1978.

D. The county clerk issues marriage licenses to persons seeking to solemnize a marriage with duties defined in Chapter 40, Article 1 NMSA 1978.

E. The county clerk is the clerk of the probate court, unless otherwise provided by county ordinance as provided for in Section 34-7-22 NMSA 1978, with duties defined in Chapter 34, Article 7, NMSA 1978 and the Probate Code.

F. The county clerk is the ex-officio clerk of the board of county commissioners with duties defined in NMSA 1978, Section 4-40-3.

G. The county clerk has other duties as defined in this article and may have other duties in the various counties as determined by county official.

History: [New Material].

[~~Section 4-40-2. County clerk; bond.~~]

REPEALED. Section 10-1-13 already deals with all County electeds and their bonds.

[~~The county clerk of each county shall, before entering upon the duties of his office and within ten days after the first day of January following his election, execute a bond to the state of New Mexico, in the penal sum of ten thousand dollars [($10,000)], with sufficient sureties, to be approved by the judge of the district court of said county, conditioned that he will well and faithfully perform all of his duties as such county clerk during his term of office.~~]

History: Laws 1901, ch. 35, §§ 1, 2; Code 1915, § 1441; Laws 1919, ch. 10, § 1; C.S. 1929, § 34-425; 1941 Comp., § 15-3702; 1953 Comp., § 15-39-2.

Section 4-40-3. Duties; ex-officio clerk of board of county commissioners.

Incorporated the relevant provisions of Sections 4-40-4.

A. The county clerk [~~shall be~~] is ex-officio clerk of the board of county commissioners, shall attend the sessions of the board in person or by deputy, keep the seals, records and papers of said board of county commissioners and keep a record of the proceedings of said board in a book as required by law, under the direction of the county commissioners.

B. It is the general duty of the clerk of the board of commissioners to:

(1) record in a book to be provided for that purpose all proceedings of the board of county commissioners;

(2) keep the minutes and record the vote of each commissioner on any question submitted to the board as required by the Open Meetings Act; and

(3) preserve and file all matters acted upon by the board and make such available to the public as required by the Inspection of Public Records Act.

History: Laws 1876, ch. 1, § 19; C.L. 1884, § 350; C.L. 1897, § 678; Code 1915, § 1235; C.S. 1929, § 33-4301; 1941 Comp., § 15-3704; 1953 Comp., § 15-39-4.

[~~Section 4-40-4. Duties as clerk of county commissioners.~~]

REPEALED. Relevant duties remaining with the Clerk moved to Section 4-40-3. Moved the duty to sign all order to the Treasurer.

[~~It shall be the general duty of the clerk of the board of commissioners:~~

~~A. to record in a book to be provided for that purpose all proceedings of the board;~~

~~B. to make regular entries of all their resolutions and decisions in all questions concerning the raising of money;~~

~~C. to record the vote of each commissioner on any question submitted to the board if required by any member;~~

~~D. to sign all orders issued by the board for the payment of money, and to record in a book to be provided for that purpose, the receipts of the county treasurer of the receipts and expenditures of the county;~~

~~E. to preserve and file all accounts acted upon by the board with their action thereon, and he shall perform such special duties as are required by law.~~]

History: Laws 1876, ch. 1, § 29; C.L. 1884, § 360; C.L. 1897, § 679; Code 1915, § 1236; C.S. 1929, § 33-4302; 1941 Comp., § 15-3705; 1953 Comp., § 15-39-5.

Section 4-40-5. County clerk; duty regarding accounts.

No changes recommended. Will be moved to the Treasurer's Article in a future bill.

It shall be the duty of the county clerk to designate upon every account, which shall be audited and approved and allowed by the board of county commissioners, the amount so allowed.

History: Laws 1876, ch. 1, § 30; C.L. 1884, § 361; C.L. 1897, § 680; Code 1915, § 1237; C.S. 1929, § 33-4303; 1941 Comp., § 15-3706; 1953 Comp., § 15-39-6; 2011, ch. 134, § 1.

Section 4-40-6. Duties as to orders for money.

No changes recommended. Will be moved to the Treasurer's Article in a future bill.

Such clerk shall not sign or issue any county order unless ordered by the board of commissioners authorizing the same; and every such order shall be numbered, and the date, amount and number of the same and the name of the person to whom it is issued shall be entered in a book kept by him in his office for that purpose.

History: Laws 1876, ch. 1, § 31; C.L. 1884, § 362; C.L. 1897, § 681; Code 1915, § 1238; C.S. 1929, § 33-4304; 1941 Comp., § 15-3707; 1953 Comp., § 15-39-7.

Section 4-40-7. Newspaper subscriptions.

Clean-up. Also, incorporated the provisions of Section 4-40-8, 4-40-9, and 4-40-10 into this section.

A. The county [~~clerks of the several counties of this state are hereby authorized and~~] clerk is required to subscribe [~~for such,~~] to one copy of each [~~of newspapers as are~~] newspaper printed and [~~published in their respective counties~~] circulated in the county.

B. The county clerk shall preserve every copy of each newspaper printed and circulated in the county, and from time to time cause the newspapers to be properly preserved and kept in the county clerk's office for the use of the courts, when needed, and of visitors in and inhabitants of the county, who shall have access free of charge at all times during the regular hours of the county clerk's office.

C. The subscription price of each newspaper subscribed and the binding or digitizing of the newspapers shall be paid out of the general fund of the county.

D. In order to more permanently preserve valuable historical source material of state and local history and upon the approval of the county commission, the county clerk may make long-term or indefinite loans of newspapers not in current demand to public libraries within the county or to libraries of state institutions or agencies.

E. A newspaper that has been digitized may be archived or destroyed at a time and in a manner as determined by the county clerk; provided that the county clerk shall use one of the destruction methods approved by the state records administrator for destruction of public records.

F. Any person who shall, without lawful authorization, willfully destroy, mutilate or deface any newspaper kept by the county clerk or on loan by the county shall be deemed guilty of a misdemeanor.

History: Laws 1889, ch. 49, § 1; C.L. 1897, § 768; Code 1915, § 1241; C.S. 1929, § 33-4307; 1941 Comp., § 15-3708; 1953 Comp., § 15-39-8.

[~~Section 4-40-8. To keep file of newspapers.~~]

REPEALED. Substantive provisions moved to 4-40-7.

[~~It shall be the duty of each county clerk to receive and preserve every copy of the paper or papers so subscribed for and from time to time cause the same to be~~

~~properly arranged and bound in volumes of convenient size and in a substantial manner, and said volumes, when bound, shall be kept in his office for the use of the courts, when needed, of strangers and the inhabitants of the county all of whom shall have access to the same at all times during office hours, free of charge. Provided, that in order to more permanently preserve and to make easily accessible valuable historical source material of state and local history, county clerks may upon the approval of the county commissioners make indefinite loans of the files of newspapers not in current demand, to libraries of state educational institutions, or to public libraries situated within the county. For his services in this behalf the county clerk shall receive the sum of ten dollars for each volume, and for the neglect of the duties hereby imposed shall forfeit the sum of fifty dollars, to be recovered with costs in a civil action before any court.~~]

History: Laws 1889, ch. 49, § 2; C.L. 1897, § 769; Code 1915, § 1242; C.S. 1929, § 33-4308; Laws 1941, ch. 132, § 1; 1941 Comp., § 15-3709; 1953 Comp., § 15-39-9.

[~~Section 4-40-9. Newspapers; payment of expenses.~~]

REPEALED. Substantive provisions moved to 4-40-7, above.

[~~The subscription price of such paper or papers, and the binding of the several volumes thereof, shall be paid out of the general fund of the county in the same manner as other charges are audited and allowed from such fund by the respective boards of county commissioners.~~]

History: Laws 1889, ch. 49, § 3; C.L. 1897, § 770; Code 1915, § 1243; C.S. 1929, § 33-4309; 1941 Comp., § 15-3710; 1953 Comp., § 15-39-10.

[~~Section 4-40-10. Newspapers; abstraction, mutilation or destruction; penalty.~~]

REPEALED. Substantive provisions moved to 4-40-7, above.

[~~Any person who shall willfully abstract, destroy, mutilate or deface any number or volume of such newspapers purchased in pursuance of Sections 4-40-7 and 4-40-8 NMSA 1978, shall be deemed guilty of a misdemeanor, and shall be fined in a sum not exceeding five hundred dollars, or imprisonment in the county jail not more than six months, or both by such fine and imprisonment in the discretion of the court.~~]

History: Laws 1889, ch. 49, § 4; C.L. 1897, § 771; Code 1915, § 1244; C.S. 1929, § 33-4310; 1941 Comp., § 15-3711; 1953 Comp., § 15-39-11.

ARTICLE 41

County Sheriff

Section 4-41-2. County sheriff; election; Duties.

Intro section for Sheriffs establishing term, when elected, and basic duties.

(NOTE: All Sheriffs will now be elected in the same year; those currently off cycle will receive an extra two years on their current term.)

A. A county sheriff shall be elected at each general election at which the governor is elected. The term of office is four years.

B. The county sheriff is the chief law enforcement officer of the county.

C. The sheriff oversees the work of the county sheriff's office to ensure that offenders are apprehended, committed to jail and required to appear in court to answer charges. The sheriff [~~shall be~~] is the conservator of the peace within [~~his~~] the county[~~; shall suppress assaults and batteries, and apprehend and commit to jail, all felons and traitors, and cause all offenders to keep the peace and to appear at the next term of the court and answer such charges as may be preferred against them.~~], protects the public and conducts such public safety and law enforcement duties as may be provided by law.

History: Kearny Code, Sheriffs, § 4; C.L. 1865, ch. 99, § 3; C.L. 1884, § 398; C.L. 1897, § 734; Code 1915, § 1260; C.S. 1929, § 33-4416; 1941 Comp., § 15-3802; 1953 Comp., § 15-40-2.

[~~Section 4-41-3. Failure to execute bond and oath; performing duties; penalty.~~

There is a general statute for bonds, Section 10-1-13.

Plus, the County Sheriff hasn't been the Ex-Officio County Collector since 1897!

~~Any person who shall enter upon or attempt to execute any official duty as sheriff or as ex-officio collector, without having first executed and filed his official bond and oath of office as above required, shall be deemed guilty of a misdemeanor, and upon conviction in the district court, shall be fined in any sum not exceeding three hundred dollars, in the discretion of the court.~~]

History: Laws 1876, ch. 16, § 5; C.L. 1884, § 386; C.L. 1897, § 724; Code 1915, § 1250; C.S. 1929, § 33-4406; 1941 Comp., § 15-3806; 1953 Comp., § 15-40-6.

[~~Section 4-41-4. Exercising powers after removal; penalty.~~

Impersonating a police officer is a felony these days, so we don't need this statute any more.

~~If any such sheriff, after being removed as provided by law, shall attempt to exercise any of the rights or powers of said office, or shall fail or refuse to turn over the office to the person appointed to succeed him, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in the district court, shall be punished by a fine not exceeding three hundred dollars, or by imprisonment not exceeding three months, in the discretion of the court before which the cause may be tried.~~]

History: Laws 1876, ch. 16, § 9; C.L. 1884, § 390; C.L. 1897, § 727; Code 1915, § 1252; C.S. 1929, § 33-4408; 1941 Comp., § 15-3808; 1953 Comp., § 15-40-8.

Section 4-41-5. Deputy sheriffs; appointment and term; merit system.

No changes proposed.

The sheriffs in all the counties of this state shall have power to appoint deputies, who shall remain in office at the pleasure of such sheriffs; except that in counties which have established a merit system by ordinance, the provisions of the ordinance shall control the demotion and discharge of deputies and other employees of the sheriff's office, except for one under-sheriff and an executive secretary, both of whom shall hold exempt positions.

History: Laws 1855-1856, ch. 2, § 1; C.L. 1865, ch. 99, § 9; C.L. 1884, § 401; C.L. 1897, § 737; Code 1915, § 1255; C.S. 1929, § 33-4411; 1941 Comp., § 15-3809; 1953 Comp., § 15-40-9; Laws 1975, ch. 11, § 3.

Section 4-41-6. Counties authorized to establish merit systems for deputies and personnel in the county sheriff's office.

No changes proposed.

Each county is authorized and empowered to establish by ordinance a merit system for the hiring, promotion, discharge and general regulation of the deputies and the employees of the county sheriff's office. The ordinance may, in the discretion of the board of county commissioners, provide for the classification of deputies and other employees and their probationary periods, service ratings, pay scales and ranges, the number of hours of work per week and the methods of employment, promotion, demotion and discharge of such deputies and employees within the limits provided by law.

History: 1953 Comp., § 15-40-9.1, enacted by Laws 1975, ch. 11, § 1.

Section 4-41-7. Provisions of merit system constitute part of employment contract.

No changes proposed.

In all cases of employment by county sheriffs of deputies, clerks and other personnel to positions covered by the merit system subsequent to the passage of an ordinance establishing a merit system, the contract of employment between the deputy or employee and the sheriff shall be considered to contain the provisions of the ordinance and all regulations issued pursuant thereto. The provisions of an ordinance and all regulations issued pursuant thereto shall become part of the contract of employment between the sheriff and all employees of the sheriff's office in positions covered by the merit system when the employment relationship exists at the time of the passage of the ordinance, unless the employee files with the county clerk, within ten days of the passage of the ordinance, a declaration stating that the employee does not desire to have the provisions of the ordinance, together with the regulations issued pursuant thereto, included as a part of his contract of employment.

History: 1953 Comp., § 15-40-9.2, enacted by Laws 1975, ch. 11, § 2.

[~~Section 4-41-8. Deputy sheriff; qualifications; character; revocation of commission.~~]

Outdated language. Plus, we don’t want a district judge determining the character of Deputies.

[~~No person who may be under indictment or may be generally known as a notorious bad character, or as a disturber of the peace shall be eligible to serve as a deputy sheriff, and sheriffs are hereby prohibited from issuing commissions to such~~

~~persons as deputy sheriffs, and it is hereby made the duty of the judge of the district court upon complaint being made that the provisions of this section have been violated to investigate the same, and if found to be true, such judge of the district court is hereby given authority to revoke any such commission given by any sheriff contrary to the provisions of this section.~~]

History: Laws 1905, ch. 120, § 1; Code 1915, § 1257; C.S. 1929, § 33-4413; 1941 Comp., § 15-3810; 1953 Comp., § 15-40-10.

Section 4-41-9. Powers of deputy sheriff.

No changes proposed.

Deputies are authorized to discharge all the duties that belong to the office of sheriff that may be placed under their charge by their principals, with the same effect as though they were executed by the respective sheriffs. If there is a vacancy in the office of sheriff, the highest-ranking deputy sheriff or under-sheriff, who is qualified to hold the office of sheriff, shall exercise the powers of sheriff until a sheriff is appointed and qualified.

History: Laws 1855-1856, ch. 2, § 3; C.L. 1865, ch. 99, § 11; C.L. 1884, § 403; C.L. 1897, § 740; Code 1915, § 1259; C.S. 1929, § 33-4415; 1941 Comp., § 15-3811; 1953 Comp., § 15-40-11; 1978 Comp., § 4-41-9, 2017, ch. 56, § 1.

Section 4-41-10. Right to carry arms; deputies; appointment.

No changes proposed.

All sheriffs shall at all times be considered as in the discharge of their duties and be allowed to carry arms on their persons. On the appointment of any regular or permanent deputy sheriff, it shall be the duty of the sheriff to file one notice of the appointment in the office of the county clerk of the sheriff's county and one notice of the appointment in the office of the clerk of the district court of that county, and each of the sheriff's deputies shall file an oath of office in the office of the county clerk. Any sheriff is hereby authorized at any time to appoint respectable and orderly persons as special deputies to serve any particular order, writ or process or when in the opinion of any sheriff the appointment of special deputies is necessary and required for the purpose of preserving the peace, and it shall not be necessary to give or file any notice of such special appointment; however, the provision authorizing the carrying of concealed arms shall not apply to such persons. Provided, no person shall be eligible to appointment as a deputy sheriff unless the person is a citizen of the United States of America. There shall be no additional fees or per diem paid by the counties for any additional deputies other than as provided by law.

History: Laws 1891, ch. 63, § 4; C.L. 1897, § 738; Laws 1901, ch. 5, § 1; Code 1915, § 1258; C.S. 1929, § 33-4414; 1941 Comp., § 15-3812; 1953 Comp., § 15-40-12; 1983, ch. 182, § 1; 2006, ch. 30, § 1.

Section 4-41-10.1. Right to carry concealed arms.

No changes proposed.

Notwithstanding anything contained herein to the contrary, only fully certified sheriffs and full-time certified deputy sheriffs shall be allowed to carry concealed arms.

History: Laws 1983, ch. 182, § 2.

Section 4-41-12. Entering other counties; powers.

This is a Repeal and Replace of a previously-unamended 1868 statute.

[~~The various sheriffs of the several counties of this state shall have the right to enter any county of this state, or any part of this state, for the purpose of arresting~~

~~any person charged with crime, whether the county so entered be the same to which the sheriff so entering was elected or not; and the deputies of said sheriffs shall have the same power as is conferred on the sheriffs, and any sheriff entering any county as above mentioned, shall have the same power to call out the power of said county to aid him, as is conferred on sheriffs in their own counties.~~]

A. A sheriff or sheriff's deputy may enter another county of this state to:

(1) follow, locate, detain or arrest a person whom the sheriff or sheriff's deputy reasonably suspects has committed a crime in the sheriff's county; or

(2) investigate a crime committed, or reasonably believed to have been committed, in the sheriff's county.

B. A sheriff or sheriff's deputy who enters another county pursuant to Subsection A of this section shall notify the sheriff of the county entered before entering the other county unless exigent circumstances require entry before notice can be given and prior notification would substantially impair the sheriff's or sheriff's deputy's ability to carry out the purpose authorized by Subsection A of this section, in which case notification shall be given as soon as practicable.

C. A sheriff or sheriff's deputy acting pursuant to this section has the same authority in the county entered as the sheriff or sheriff's deputy has in the sheriff's own county, but only for the purpose authorized by Subsection A of this section.

D. The provisions of this section do not apply to a sheriff or deputy sheriff who is cross-commissioned by the sheriff of another county and is operating pursuant to the terms of the cross-commission.

History: Laws 1868-1869, ch. 33, § 1; C.L. 1884, § 395; C.L. 1897, § 731; Code 1915, § 1262; C.S. 1929, § 33-4418; 1941 Comp., § 15-3814; 1953 Comp., § 15-40-14.

[~~Section 4-41-11. Injuries to sheriff or deputy while making arrest; medical expenses; limitation.~~]

REPEALED. We have worker's comp now, and $500 won't even pay for aspirin from a hospital.

[~~Whenever any sheriff or deputy sheriff has been or may be hereafter wounded or injured while in pursuit of or attempting to arrest any person accused of any crime in this state, and shall make affidavit fully setting forth the facts of his said wounding or injury, and shall also make affidavit that he is a poor person and that he is unable to pay for proper medical or surgical attention, or that his family is unable to do so for him or furnish support for himself or family, and said affidavit shall be supported by the affidavit of two disinterested freeholders of the county, not more than one of whom shall be from the same precinct, then upon the presenting of said affidavits to the board of county commissioners of the county wherein said sheriff or deputy sheriff was an officer at the time of his said injury or wounding, they may allow from the county treasury a sum of money, which to them shall seem reasonable, to be used for the benefit of said wounded or injured officer for medical or surgical attention or for the removal of said officer to some hospital or for the immediate relief of his family: provided, that no such sum or sums of money shall altogether exceed five hundred dollars.~~]

History: Laws 1889, ch. 104, § 1; C.L. 1897, § 742; Code 1915, § 1261; C.S. 1929, § 33-4417; 1941 Comp., § 15-3813; 1953 Comp., § 15-40-13.

[~~Section 4-41-11.1. Qualifications; waiver.~~]

REPEALED. Section 29-7-8, on which this is based, was repealed in 1993. This has been inoperative ever since.

[~~A. Court security officers of county sheriff departments of class A counties shall meet all the prerequisites for permanent appointment as peace officers as stated in Section 29-7-8 NMSA 1978 [repealed].~~

~~B. All court security officers provided for pursuant to Subsection A of this section shall be commissioned as peace officers with full powers and responsibilities while within the confines of the county courthouse or as otherwise specified by the court.~~

~~C. Court security officers employed by county sheriff departments of class A counties on January 1, 1977 shall be exempted from the provisions of Subsection A of this section.~~]

History: Laws 1981, ch. 82, § 1.

[~~Section 4-41-13. Execution of process of probate court; attendance.~~]

REPEALED. Substantive intent incorporated into 4-41-16.

[~~It is hereby made the duty of the sheriffs of the several counties of this state to serve and execute all process directed to them by said judges of probate in their respective counties, and shall be subject to fine and amercement as provided by law for the neglect or refusal to discharge the duties required of them; and it is hereby~~

~~made the duty of the sheriff of each county, or his deputy, to attend the probate court of his county, under the direction of the judge thereof.~~]

History: Laws 1887, ch. 66, § 2; C.L. 1897, § 753; Code 1915, § 1264; C.S. 1929, § 33-4420; 1941 Comp., § 15-3815; 1953 Comp., § 15-40-15.

[~~Section 4-41-14. Sheriff to serve and execute process and orders of magistrate and municipal courts.~~]

REPEALED. Substantive intent incorporated into 4-41-16.

[~~The sheriff or his deputy shall serve and execute, according to law:~~

~~A. all process, writs and orders directed to him by the judges of the magistrate courts; and~~

~~B. criminal process directed to him by the municipal judge of any incorporated municipality in the state if the criminal process arises out of a charge of violation of a municipal ordinance prohibiting driving while under the influence of intoxicating liquor or drugs and if the municipal judge from whose court the process has issued has made satisfactory arrangements with the sheriff for payment for the services to be rendered.~~]

History: 1953 Comp., § 15-40-15.1, enacted by Laws 1975, ch. 242, § 1; 1988, ch. 88, § 2.

Section 4-41-15. Service of court documents; [~~Fees; payment in advance~~].

Incorporates service of process and fees from 4-41-16.

A. The sheriffs of this state shall be allowed not more than forty dollars ($40.00) for serving every writ, citation, order, subpoena or summons; provided that no fee shall be charged to the state or any state agency, the sheriff's county, or to a party upon order of a judge specific to a case.

B. The party at whose application any civil writ, subpoena or process, except execution, is issued, shall pay in advance[~~, if so demanded by the sheriff,~~] the fees allowed by law for such services.

History: Laws 1895, ch. 35, § 3; C.L. 1897, § 1801; Code 1915, § 1268; C.S. 1929, § 33-4424; 1941 Comp., § 15-3817; 1953 Comp., § 15-40-17.

Section 4-41-16. [~~Fees;~~] Attendance on courts; sessions of county commissioners; hearing before judges.

Narrows this section to attendance at sessions of the court and of the county commission, each upon request.. Brings in relevant portions of previous Sections 4-41-13 and 4-41-14.

[~~A. The sheriffs of this state shall be allowed, except from the state or any state agency, the following fees and compensations:~~

~~(1) for serving every writ, citation, order, subpoena or summons, not more than forty dollars ($40.00);~~

~~(2) for every writ of capias or attachment for each defendant, six dollars ($6.00);~~

~~(3) for taking and returning every bond required by law, five dollars ($5.00);~~

~~(4) for levying every execution and return of same, six dollars ($6.00);~~

~~(5) for making, executing and delivering every sheriff's deed, to be paid by the purchaser, six dollars ($6.00);~~

~~(6) for every return of non est inventus, fifty cents ($.50); and~~

~~(7) for making every return of any process, order, summons, citation or decree of any court, two dollars ($2.00).~~

~~No sheriff shall collect more than one of the fees listed in this subsection, regardless of how many documents may be served upon one or more individuals, when those documents are served at the same time and at the same location.~~

~~B. In the service of any subpoena or summons for witnesses, the sheriff shall be allowed compensation of one dollar ($1.00) for each of the witnesses so summoned by the sheriff, notwithstanding that the name of the witness may appear in but one copy of the subpoena or summons.~~

~~C.~~] It is the duty of the sheriffs of the state to attend:

(1) the sessions of [~~every~~] the district, [~~court~~] magistrate and probate courts in their county, when requested by a judge[~~, which attendance shall be paid in the manner now provided by law~~]; and

(2) [~~all sessions of the probate court and~~] sessions of the boards of county commissioners, [~~which attendance shall be paid sheriffs out of the general county funds of the county in which the services were rendered; and~~

~~(3) at the trial or hearing before magistrates in felony cases, where the arrest is made by the sheriff, either with or without a warrant, which attendance shall be paid as provided in this section out of the general county funds; but sheriffs shall not be allowed any compensation for attending at the trial of any misdemeanor case before any magistrate unless a sheriff made the arrest in the misdemeanor case~~] when requested by a county commissioner~~.~~

History: Laws 1895, ch. 35, § 1; C.L. 1897, § 1799; Laws 1907, ch. 19, § 1; 1909, ch. 16, § 1; Code 1915, § 1266; C.S. 1929, § 33-4422; 1941 Comp., § 15-3818; 1953 Comp., § 15-40-18; Laws 1959, ch. 270, § 1; 1976, ch. 51, § 1; 1977, ch. 94, § 1; 1980, ch. 42, § 1; 1985, ch. 120, § 1; 1987, ch. 300, § 1; 1996, ch. 43, § 1; 2008, ch. 65, § 1.

Section 4-41-17. Executions; commissions and expenses.

No changes proposed.

For commissions for receiving or paying moneys on executions, where lands, goods or chattels have been levied upon, advertised and sold, four per centum on the first five hundred dollars ($500), and two percent on all sums above that; also the actual expenses incurred in taking care of any such goods or chattels so levied upon, between the day of levy and sale; and one-half of said commission, when the money has been paid without making levy or sale.

History: Laws 1895, ch. 35, § 2; C.L. 1897, § 1800; Code 1915, § 1267; C.S. 1929, § 33-4423; 1941 Comp., § 15-3819; 1953 Comp., § 15-40-19.

[~~Section 4-41-18. Fees; service of jury venire.~~]

REPEALED. These fees are no longer charged.

~~The sheriff shall receive ten dollars for the service of any jury venire, and shall be paid the regular rates of mileage hereinafter provided, for each mile actually and necessarily traveled in serving said jury venire.~~]

History: Laws 1895, ch. 35, § 4; C.L. 1897, § 1802; Code 1915, § 1269; C.S. 1929, § 33-4425; 1941 Comp., § 15-3820; 1953 Comp., § 15-40-20.

[~~Section 4-41-19. County peace officers and constables; mileage; conditions.~~]

REPEALED. Sheriffs and their Deputies should not be using their private vehicles when on duty.

[~~A. Peace officers and constables shall be allowed mileage or the distance actually and necessarily traveled by privately owned conveyance in serving any judicial process.~~

~~B. In serving any jury venire, a sheriff, deputy sheriff, constables [constable] or other county peace officer shall charge for the actual mileage traveled and necessary in providing service of jury venire.~~

~~C. If more than one peace officer or constable travels in one privately owned conveyance in the performance of official business, only the officer owning the conveyance used shall be reimbursed.~~]

History: 1953 Comp., § 15-40-21.1, enacted by Laws 1961, ch. 253, § 2; 1963, ch. 9, § 1.

[~~Section 4-41-20. Sheriffs, deputy sheriffs and other county peace officers; public transportation; reimbursement.]~~

REPEALED. This is better covered through the Per Diem and Mileage Act.

[~~Whenever a sheriff, deputy sheriff or other county peace officer utilizes public transportation in the performance of any official business within or without the state he shall be reimbursed for the actual cost of the fare and shall not be paid mileage. The mode of public transportation used shall be the most economical possible, considering all the expenses and circumstances.~~]

History: 1953 Comp., § 15-40-21.2, enacted by Laws 1961, ch. 253, § 3.

[~~Section 4-41-21. More than one subpoena, summons or prisoner; no extra charge.~~]

REPEALED. Not sure to whom the Sheriff is charging for mileage, since an official vehicle should be used.

[~~It is distinctly provided that when more than one subpoena or summons or service is made or performed upon more than one person in the same town or place, or when more than one prisoner is conducted from one place to another, the sheriff shall not charge more nor receive any mileage in excess of that which he would be~~

~~entitled to for serving one subpoena in such place, or conducting one prisoner from one place to another: and provided, further, that in service of subpoena or summons in more than one town or place along the same route, the sheriff shall not be entitled to any greater mileage than that of the most distant point actually and necessarily traveled to in the discharge of his duties, with the additional mileage earned in actual and necessary travel from, and in returning to, the place of departure from any general route as aforesaid.~~]

History: Laws 1895, ch. 35, § 6; C.L. 1897, § 1804; Code 1915, § 1272; C.S. 1929, § 33-4428; 1941 Comp., § 15-3822; 1953 Comp., § 15-40-22.

[~~Section 4-41-22. Other fees.~~]

REPEALED. This section is superfluous and not necessary.

[~~For all other services and expenses, except those mentioned in this article, the sheriff shall receive the fees and compensation fixed by law for such services and expenses.~~]

Section 4-41-23. Sheriffs, deputy sheriffs and guards; [~~expenses incurred in serving process and certain other official business~~] extradition; per diem.

Recompiled from Section 4-44-18.

[~~A. Sheriffs, their deputies and guards shall be paid per diem expenses at the rate authorized in the Per Diem and Mileage Act by the counties on behalf of which expenses are incurred in:~~

~~(1) service of criminal process issued out of the supreme court or district court;~~

~~(2) service of criminal process issued out of a magistrate court when the issuance is approved in writing by the district attorney or his assistants;~~

~~(3) service of civil process issued by the district court; and~~

~~(4) attempting to discover or arrest a person charged with a felony if written authorization is obtained from the district judge.~~

~~B. Expenses authorized pursuant to this section shall be paid on the rendition of sworn accounts filed in the county clerk's office and approved by the board of county commissioners and the district judge.~~

~~C.~~] Sheriffs, their deputies and guards shall be paid per diem and mileage expenses at the rate authorized in the Per Diem and Mileage Act for extraditing prisoners from without the state and for transporting persons committed by a court to a state institution or required to be returned by order of the court from a state institution to the county of commitment. Subject to appropriation by the legislature, the county shall be reimbursed by the state for the per diem, costs for mileage and other necessary travel expenses incurred pursuant to this subsection by submitting claims for reimbursement to the department of finance and administration in accordance with the department's regulations. Notwithstanding the provisions of this subsection, a single county shall not receive more than fifty percent of the total amount of money allocated to all counties as reimbursement.

History: 1953 Comp., § 15-43-11.1, enacted by Laws 1961, ch. 253, § 4; 1973, ch. 364, § 1; 2003, ch. 219, § 1.

Section 4-41-24. Prisoners; feeding in transit.

Recompiled from Section 4-44-20.

A. The county sheriffs shall be reimbursed for the actual expense incurred for the care and feeding of prisoners in transit. Reimbursement shall not be made pursuant to this section without proof of actual expenses incurred by a sheriff or his delegate. The reimbursement for any prisoner shall not exceed the rate set by the Per Diem and Mileage Act.

B. Subject to appropriation by the legislature, a county shall be reimbursed by the state for the actual expenses incurred for the care and feeding of prisoners in transit. Notwithstanding the provisions of this subsection, a single county shall not receive more than fifty percent of the total amount of money allocated to all counties as reimbursement.

History: 1953 Comp., § 15-43-14.2, enacted by Laws 1961, ch. 253, § 8; 1977, ch. 107, § 2; 1983, ch. 181, § 2; 2003, ch. 219, § 2.

ARTICLE 43

County Treasurer

Section 4-43-1.1. County treasurer; election; duties.

Intro section for Treasurers establishing term, when elected, and basic duties.

(NOTE: All Treasurers will now be elected in the same year; those currently off cycle will receive an extra two years on their current term.)

A. A county treasurer shall be elected at each general election at which the president is elected. The term of office is four years.

B. The county treasurer is the chief investment officer of the county, subject to the advice and consent of the county board of finance.

C. The county treasurer is the ex-officio collector in the county and possesses all the powers and duties provided by law for county collectors.

D. The county treasurer is responsible for receiving, safeguarding, investing, accounting for, and disbursing county funds as authorized by law, and for administering the collection of property taxes within the county. The county treasurer delivers property tax bills, collects current and delinquent taxes, penalties, and interest, distributes tax revenues to the county and other taxing entities, keeps required records of receipts and distributions, and serves as the custodian of public monies deposited in qualified financial institutions according to state law.

History: [New Material]

Section 4-43-2. [~~Duties~~] Treasurer responsibilities.

Brought in language from Section 4-43-3 for new Subsection B.

Added a new Subsection C with modernized language.

A. The county treasurer shall keep:

[~~A.~~] (1) account of all money received and disbursed;

[~~B.~~] (2) regular accounts of all checks and warrants drawn on the treasury and paid; and

[~~C.~~] (3) the books, papers and money pertaining to his office ready for inspection by the board of county commissioners at all times.

B. The county treasurer is responsible for the custody, collection, deposit, reconciliation, investment, accounting and security of all public funds received, held, administered or disbursed by the county, regardless of whether such funds exist as legal tender, negotiable instruments or electronic funds.

History: Kearny Code, Treas. Dept., §§ 10, 11; Laws 1851-1852, p. 170; C.L. 1865, ch. 21, §§ 6, 7; 1865, ch. 102, §§ 17, 18; C.L. 1884, §§ 408A, 408B; C.L. 1897, § 746; Code 1915, § 1279; C.S. 1929, § 33-4503; 1941 Comp., § 15-4003; 1953 Comp., § 15-42-3; Laws 1967, ch. 238, § 5; 2001, ch. 147, § 1.

[~~Section 4-43-3. Ex-officio collectors.~~]

REPEALED. This language is incorporated into Section 4-43-2.

[~~The treasurers of the several counties are ex-officio collectors for their respective counties and have all the powers and duties provided by law for county collectors.~~]

History: Laws 1897, ch. 60, § 7; C.L. 1897, § 867(7); Code 1915, § 1280; C.S. 1929, § 33-4504; 1941 Comp., § 15-4004; 1953 Comp., § 15-42-4; Laws 1967, ch. 238, § 6.

Section 4-43-4. Settlement of accounts upon turning over office to successor; duty of county commissioners.

No changes proposed.

When a county collector goes out of office he shall make a full and complete settlement with the board of county commissioners, and deliver up in the presence of the county clerk all books, papers, money and all other property appertaining to the office, to his successor, taking his receipt therefor. The board of county commissioners shall make a statement, so far as state revenue is concerned, to the state auditor, showing all charges for whatsoever purposes which have been created against the collector during his term of office, and all credits that have been made, and other unfinished business charged over to his successor, and the amount of money paid over to his successor, showing to what year and to what accounts the amount so paid over belongs. They shall also see that the books of the collector are correctly balanced before passing into the possession of the collector-elect.

History: Laws 1882, ch. 62, § 95; C.L. 1884, § 2900; C.L. 1897, § 4108; Code 1915, § 1283; C.S. 1929, § 33-4506; 1941 Comp., § 15-4005; 1953 Comp., § 15-42-5.

Section 4-43-5. County treasurer; receipts; accounts of officers.

Recompiled this from Section 4-44-30 (Article 44 is repealed under this Act); clean-up.

The county treasurer shall issue proper receipts for all monies paid [~~over to him under the requirements of this act~~] in the treasurer’s office, and shall keep an accurate account thereof in proper books of entry to be kept in [~~his~~] the treasurer's office. The official accounts of all county officers shall be subject to inspection and audit, and shall be inspected and audited, by the officer authorized by law to audit the accounts of such officer.

History: Laws 1915, ch. 12, § 11; C.S. 1929, § 33-3211; 1941 Comp., § 15-4116; 1953 Comp., § 15-43-19.

Section 4-43-6. Bank contracts; financial vendor agreements; financial software.

New section regarding Treasurer's concurrence when procuring financial software.

Any contract, purchase, or agreement to obtain or procure a financial system, payment processer, software or digital platform for a county that affects the custody, collection, deposit, reconciliation, investment, accounting and security of public funds shall require the written concurrence of the county treasurer.

History: [New Material]

Section 4-43-7. Discontinued coin or currency.

New section regarding when the U.S. stops minting coins or currency (like the penny).

A. Whenever a coin or currency is discontinued by the United States and a county treasurer is not able to procure such coin or currency and the lack of such coin or currency inhibits the ability to provide exact change when a person pays a bill in the office of the treasurer, the treasurer shall round up any bill to be paid using United States coin or currency to the nearest coin or currency still being minted by the Unted States.

B. A county treasurer shall post notice in the office and on the county website when implementing this section.

C. Nothing in this section permits a rounding up when payments are made by electronic means or digital payment method.

History: [New Material]

ARTICLE 44

[~~Salaries and~~] Provisions Applicable to More Than One County Office

Section 4-44-1. Classification [~~for salary purposes~~] of counties.

No changes to classifications. Updated county classification language to include B-High, B-Intermediate, and Class-H. Removed references to salaries.

A. [~~For the purpose of fixing salaries of county officers,~~] The [~~several~~] counties of the state[~~, except "H" class counties,~~] are classified as follows:

(1) [~~those~~] a class “A” county is any county having a [~~final, full assessed valuation of over seventy-five million dollars ($75,000,000) and a~~] population of one hundred thousand persons or more as determined by the most current annual population data or estimate available from the United States census bureau, [~~as class "A" counties; and~~] regardless of its final, full assessed valuation or size of its defined geographic territory;

(2) [~~those having~~] a class "B, high valuation" county is any county with:

(a) a final, full assessed valuation of [~~over seventy-five~~] three hundred million dollars [~~($75,000,000)~~] ($300,000,000) or more [~~and~~]

(b) a population of [~~less~~] fewer than one hundred thousand persons as determined by the most current annual population data or estimate available from the United States census bureau[~~, as class "B" counties~~], and

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

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

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

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

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

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

B. The assessed valuation for each year is the full valuation as finally fixed for that year.

History: 1953 Comp., § 15-43-1, enacted by Laws 1957, ch. 196, § 1; 2009, ch. 224, § 1; 2013, ch. 188, § 1; 2018, ch. 78, § 1.

Section 4-44-2. Biennial determination of classification.

Clean-up.

[~~From and after January 1, 1962,~~] The classification of counties shall be fixed and governed by the assessed valuation as finally fixed for the preceding year.

Provided, one hundred twenty days [~~after January 1, 1962 and one hundred twenty days~~] from January 1 of each [~~second year thereafter~~] even-numbered year, the classification shall be determined by the secretary of finance and administration from the assessed valuation of each county as finally fixed for the preceding year, and the secretary of finance and administration upon making the determination shall notify the board of county commissioners of each county of the class within which each of the counties of this state falls according to the classification, and the classification as so fixed and determined by the secretary of finance and administration shall govern the salaries of the county officers for two years beginning July 1 of the year the classification is determined.

History: Laws 1915, ch. 12, § 19; 1923, ch. 49, § 1; C.S. 1929, § 33-3219; 1941 Comp., § 15-4102; Laws 1953, ch. 83, § 1; 1953, ch. 117, § 2; 1953 Comp., § 15-43-2; Laws 1961, ch. 184, § 1; 1977, ch. 247, § 143; 2009, ch. 224, § 2.

[~~Section 4-44-3. Establishment of H class counties.~~]

REPEALED. This was incorporated into Section 4-44-1.

[~~There is hereby created and established a further and additional classification of counties in New Mexico, which shall be and are hereby declared to be and are described as H class counties. Any county which covers an area of not more than 200 square miles shall be a county of the H class.~~]

History: 1953 Comp., § 15-43-3.1, enacted by Laws 1955, ch. 4, § 1; 1985, ch. 62, § 1.

[~~Section 4-44-4. Class A counties; salaries.~~]

REPEALED. Per the new Constitutional provision in Article 10, Section 1, the Legislature no longer sets County Elected salaries.

[~~The annual salaries of elected officers of a class A county shall not exceed, for:~~

~~A. county commissioners, thirty-nine thousand one hundred six dollars ($39,106) each;~~

~~B. treasurer, eighty-six thousand six hundred twenty-six dollars ($86,626);~~

~~C. assessor, eighty-six thousand six hundred twenty-six dollars ($86,626);~~

~~D. sheriff, ninety thousand three hundred thirty-eight dollars ($90,338);~~

~~E. county clerk, eighty-six thousand six hundred twenty-six dollars ($86,626); and~~

~~F. probate judge, thirty-eight thousand one hundred fourteen dollars ($38,114).~~]

History: 1953 Comp., § 15-43-4, enacted by Laws 1957, ch. 196, § 2; 1959, ch. 262, § 1; 1961, ch. 247, § 1; 1965, ch. 236; § 1; 1969, ch. 219, § 3; 1970, ch. 83, § 1; 1973, ch. 380, § 1; 1974, ch. 70, § 1; 1976 (S.S.), ch. 14, § 1; 1978, ch. 191, § 1; 1980, ch. 135, § 1; 1982, ch. 39, § 1; 1986, ch. 67, § 1; 1990, ch. 82, § 1; 1994, ch. 38, § 1; 1998, ch. 11, § 1; 2002, ch. 79, § 1; 2006, ch. 87, § 1; 2011, ch. 56, § 16; 2013, ch. 188, § 2; 2018, ch. 78, § 2.

[~~Section 4-44-4.1. Class B counties; high valuation; salaries.~~]

REPEALED. Per the new Constitutional provision in Article 10, Section 1, the Legislature no longer sets County Elected salaries.

[~~The annual salaries of elected officers of a class B county with an assessed valuation of over three hundred million dollars ($300,000,000) shall not exceed, for:~~

~~A. county commissioners, thirty thousand one hundred ninety-six dollars ($30,196) each;~~

~~B. treasurer, seventy-five thousand seven hundred thirty-three dollars ($75,733);~~

~~C. assessor, seventy-five thousand seven hundred thirty-three dollars ($75,733);~~

~~D. sheriff, seventy-eight thousand nine hundred fifty-two dollars ($78,952);~~

~~E. county clerk, seventy-five thousand seven hundred thirty-three dollars ($75,733); and~~

~~F. probate judge, twenty-six thousand four hundred eighty-two dollars ($26,482).~~]

History: 1978 Comp., § 4-44-4.1, enacted by Laws 1986, ch. 67, § 2; 1990, ch. 82, § 2; 1994, ch. 38, § 2; 1998, ch. 11, § 2; 2002, ch. 79, § 2; 2006, ch. 87, § 2; 2011, ch. 56, § 17; 2013, ch. 188, § 3; 2018, ch. 78, § 3.

[~~Section 4-44-5. Class B counties; intermediate valuation; salaries.~~]

REPEALED. Per the new Constitutional provision in Article 10, Section 1, the Legislature no longer sets County Elected salaries.

[~~The annual salaries of elected officers of a class B county with an assessed valuation of over seventy-five million dollars ($75,000,000) but under three hundred million dollars ($300,000,000) shall not exceed, for:~~

~~A. county commissioners, twenty-one thousand five hundred thirty-four dollars ($21,534) each;~~

~~B. treasurer, sixty-four thousand eight hundred forty-four dollars ($64,844);~~

~~C. assessor, sixty-four thousand eight hundred forty-four dollars ($64,844);~~

~~D. sheriff, sixty-seven thousand eight hundred fourteen dollars ($67,814);~~

~~E. county clerk, sixty-four thousand eight hundred forty-four dollars ($64,844); and~~

~~F. probate judge, fifteen thousand ninety-eight dollars ($15,098).~~]

History: 1953 Comp., § 15-43-4.1, enacted by Laws 1957, ch. 196, § 3; 1959, ch. 262, § 2; 1961, ch. 116, § 1; 1965, ch. 236, § 2; 1969, ch. 219, § 4; 1970, ch. 83, § 2; 1973, ch. 380, § 2; 1976 (S.S.), ch. 14, § 2; 1978, ch. 191, § 2; 1980, ch. 135, § 2; 1981, ch. 14, § 3; 1982, ch. 39, § 2; 1986, ch. 67, § 3; 1990, ch. 82, § 3; 1994, ch. 38, § 3; 1998, ch. 11, § 3; 2002, ch. 79, § 3; 2006, ch. 87, § 3; 2011, ch. 56, § 18; 2013, ch. 188, § 4; 2018, ch. 78, § 4.

[~~Section 4-44-12.3. Legislative intent; uniform salary changes.~~]

REPEALED. Per the new Constitutional provision in Article 10, Section 1, the Legislature no longer sets County Elected salaries.

[~~A. The intent of the legislature when increasing the maximum salaries of elected county officials is to provide for equitable salary increases.~~

~~B. The majority of a board of county commissioners may provide for salary increases for elected county officials; however, a salary increase shall not take effect until the first day of the term of an elected county official who takes office after the date that salary increase is approved.~~]

History: 1978 Comp., § 4-44-12.3, enacted by Laws 1991, ch. 91, § 1; 1999, ch. 228, § 1; 2013, ch. 188, § 6; 2018, ch. 78, § 5.

[Section ~~4-44-14~~. H class counties; ~~salaries~~.]

The surviving part of this, Subsection C, is in new 38-11-1. The rest is now unconstitutional.

[~~A. The annual salaries of elected or appointed part-time officers of an H class county shall not exceed, for:~~

~~(1) county commissioners, fifteen thousand eight hundred forty-four dollars ($15,844) each;~~

~~(2) treasurer, seven thousand nine hundred twenty-two dollars ($7,922);~~

~~(3) assessor, seven thousand nine hundred twenty-two dollars ($7,922);~~

~~(4) sheriff, seven thousand nine hundred twenty-two dollars ($7,922);~~

~~(5) county clerk, seven thousand nine hundred twenty-two dollars ($7,922); and~~

~~(6) probate judge, four thousand six hundred thirty-six dollars ($4,636).~~

~~B. The annual salaries of elected or appointed full-time officers of an H class county shall not exceed, for:~~

~~(1) treasurer, seventy-five thousand seven hundred thirty-three dollars ($75,733);~~

~~(2) assessor, seventy-five thousand seven hundred thirty-three dollars ($75,733);~~

~~(3) sheriff, seventy-eight thousand nine hundred fifty-two dollars ($78,952); and~~

~~(4) county clerk, seventy-five thousand seven hundred thirty-three dollars ($75,733).~~

~~C. The governing body of an H class county shall designate by whether each of the offices of treasurer, assessor, sheriff and county clerk is part time or full time; however, a change in that designation shall not take effect until the first day of the term of an elected county official who takes office after the change in designation is approved.~~]

History: 1953 Comp., § 15-43-5.1, enacted by Laws 1955, ch. 4, § 2; 1959, ch. 47, § 1; 1969, ch. 219, § 12; 1974, ch. 24, § 1; 1998, ch. 11, § 7; 2002, ch. 79, § 7; 2006, ch. 87, § 7; 2013, ch. 188, § 7; 2016, ch. 36, § 1; 2018, ch. 78, § 6.

ARTICLE 46

Suits by and Against Counties

Section 4-46-1. Name for purpose of suit.

These amendments: (1) Allow county elected official to sue or be sued in their official capacity, as already happens, and (2) Protect county employees from being named in lawsuits.

A. All suits or proceedings by or against a county, the name in which the county shall sue or be sued shall be the board of county commissioners or a county elected official acting in an official capacity, as provided in this section. No suit or proceeding by or against the county may name a person employed by the county.

B. In all suits or proceedings by or against a county seeking monetary damages, attempting to invalidate an ordinance, or not specific to a county elected official acting in an official capacity, the name in which the county shall sue or be sued shall be the board of county commissioners of the county of . . . .

C. In all suits or proceedings by or against a county elected official acting in an official capacity, the name in which the county shall sue or be sued shall be the name of that county elected official acting in an official capacity. Such suit or proceeding need not name the board of county commissioners, provided the suit or proceeding does not seek monetary damages from the county nor attempts to invalidate a county ordinance. As used in this subsection,

(1) "county elected official" includes an official appointed to an office subject to election, and

(2) "damages" does not include a refund or interest.

History: Laws 1876, ch. 1, § 4; C.L. 1884, § 335; C.L. 1897, § 654; Code 1915, § 1152; C.S. 1929, § 33-3701; 1941 Comp., § 15-4301; 1953 Comp., § 15-45-1.

CHAPTER 7

Taxation

ARTICLE 2C

Tax Credit Intercept Program

Section 7-2C-2. Purpose.

Adds under the Tax Intercept Program collection of delinquent mobile home taxes.

A. The purpose of the Tax Refund Intercept Program Act is to comply with state and federal law:

(1) by enhancing the enforcement of child support and medical support obligations;

(2) to aid collection of outstanding debts owed for:

(a) overpayment of public assistance and overissuance of food stamps;

(b) overpayment of unemployment compensation benefits and nonpayment of contributions or payments in lieu of contributions or other amounts due under the Unemployment Compensation Law;

(c) nonpayment of reimbursements owed to the uninsured employers' fund under the Workers' Compensation Act; and

(d) nonpayment of the workers' compensation fee due under the Workers' Compensation Administration Act;

(3) to promote repayment of educational loans;

(4) to aid collection of fines, fees and costs owed to the district, magistrate and municipal courts;

(5) to aid collection of fines, fees and costs owed to the Bernalillo county metropolitan court; [~~and~~]

(6) to aid in the payment to the state investment officer of film production tax credit amounts owed to the state investment officer due to loans made against the credit pursuant to Subsection D of Section 7-27-5.26 NMSA 1978; and

(7) to aid in the collection of delinquent county ad valorem property taxes owed on manufactured homes.

B. Efforts to accomplish the purpose of the Tax Refund Intercept Program Act may be enhanced by establishing a system to collect debts, in particular, outstanding child support obligations, educational loans, amounts due under the Unemployment Compensation Law, the Workers' Compensation Act and the Workers' Compensation Administration Act, fines, fees and costs owed to the district, magistrate and municipal courts, film production tax credit amounts owed to the state investment officer and fines, fees and costs owed to the Bernalillo county metropolitan court, and delinquent mobile home property taxes owed to counties by setting off the amount of such debts against the state income tax refunds or film production tax credit amounts due the debtors.

History: Laws 1985, ch. 106, § 2; 1987, ch. 125, § 1; 1988, ch. 49, § 1; 1991, ch. 184, § 1; 1993, ch. 261, § 2; 1994, ch. 76, § 1; 1997, ch. 210, § 1; 2005, ch. 101, § 1; 2006, ch. 52, § 1; 2006, ch. 53, § 1.

ARTICLE 38

Administration and Enforcement of Property Taxes

Section 7-38-12. Property transfers; copies of documents to be furnished to assessor; penalty for violation.

Modernizes this section to provide for database access; strikes the misdemeanor.

A. Whenever a deed or real estate contract transferring an interest in real property is received by a county clerk for recording, a copy of the deed or real estate contract shall be [~~given~~] provided to the county assessor by the clerk.

B. [~~A county clerk who willfully fails to comply with this section is guilty of a petty misdemeanor, punishable in accordance with the Criminal Code.~~] A county clerk complies with the requirement of Subsection A of this section by delivering a copy of a deed or real estate contract transferring an interest in real property to the assessor or by providing the assessor with direct access to the county recording index.

History: Laws 1973, ch. 258, § 52; 1953 Comp., § 72-31-12; Laws 1974, ch. 92, § 8; 1982, ch. 28, § 9.

[~~Section 7-38-34. Board of county commissioners to order imposition of the tax.~~

Removes from the County Commission the obligation to hold a Special Meeting to impose a tax rate set by order of DFA.

~~Within five days of receipt of the property tax rate-setting order from the department of finance and administration, each board of county commissioners shall issue its written order imposing the tax at the rates set on the net taxable value of~~

~~property allocated to the appropriate governmental units. A copy of this order shall be delivered immediately to the county assessor.~~]

History: 1953 Comp., § 72-31-34, enacted by Laws 1973, ch. 258, § 74.

[~~Section 7-38-36.2. Procedures to delay the mailing of property tax bills for counties for which a property tax levy is imposed at the November 2019 or 2021 regular local election to put the question of imposing or renewing a levy before the voters.~~

This section was part of the implementation of the Local Election Act and was only valid through the 2021 tax year.

~~A. In 2019 and 2021:~~

~~(1) if a local government desires to impose or renew a property tax levy, the local government shall file a resolution with the county clerk and the local government division of the department of finance and administration no later than July 15 calling for the imposition or renewal of a property tax levy and indicate the local government's intent to place the question of imposing or renewing the property tax levy on the regular local election ballot in November;~~

~~(2) no later than September 1, and following the procedures provided in Section 7-38-33 NMSA 1978, the local government division of the department of finance and administration shall by written order set two property tax rates for the properties under the jurisdiction of the local governments that submitted a resolution pursuant to Paragraph (1) of this subsection. One set of rates shall assume that the question of the property tax levy will be approved by the voters, and a second set of rates shall assume that the question of the property tax levy will not be approved by the voters. A copy of the property tax rate-setting order with both~~

~~rates shall be sent to each board of county commissioners and each county assessor of each affected county and the taxation and revenue department within five days of the date the order is made;~~

~~(3) within five days of receiving the rate-setting order, the board of county commissioners of each affected county shall issue a written order imposing a tax at the rates set on the net taxable value of property allocated to the appropriate governmental units pursuant to Section 7-38-34 NMSA 1978 for both of the property tax rates set pursuant to Paragraph (2) of this subsection. The order shall provide notice of both rates. A copy of each order shall be delivered immediately to the county assessor;~~

~~(4) no later than October 1, and following the procedures provided in Section 7-38-35 NMSA 1978, the county assessor for each affected county shall prepare a property tax schedule for all property subject to property taxation in the county for both of the property tax rates set pursuant to Paragraph (2) of this subsection;~~

~~(5) pursuant to Section 7-38-36 NMSA 1978, the county assessor shall deliver a copy of the property tax schedule prepared pursuant to Paragraph (4) of this subsection to the county treasurer on October 1, with a notice that the property tax bill for those properties shall be mailed pursuant to Paragraph (6) of this subsection;~~

~~(6) after the regular local election is held in November and the voters have answered the question of the property tax levy, the county treasurer for~~

~~each affected county shall prepare and mail property tax bills no later than November 24, notwithstanding Section 7-38-36 NMSA 1978, reflecting the appropriate rate and amount due, to either the owner of the property or any person other than the owner to whom the tax bill is to be sent; and~~

~~(7) notwithstanding Section 7-38-38 NMSA 1978, the first installment of property taxes is due on December 6, and shall become delinquent if not paid within thirty days pursuant to Section 7-38-49 NMSA 1978.~~

~~B. As used in this section:~~

~~(1) "affected county" means a county within which a local government is situate that files a resolution indicating the local government's intent to place the question of imposing or renewing a property tax levy on the regular local election ballot in November 2019 or 2021 pursuant to Subsection A of this section; and~~

~~(2) "local government" means "local government" as that term is defined in the Local Election Act.~~]

History: Laws 2019, ch. 212, § 209.

Section 7-38-41. Property tax deposits; protested property taxes; [~~suspense fund;~~] refunds; interest.

Removes the requirement of keeping a separate suspense fund. Provides for crediting refunded amounts distributed to governmental units against future distributions.

A. [~~Each county treasurer shall establish a fund to be known as the "property tax suspense fund."~~] All property taxes paid to the county treasurer shall be deposited in interest-earning securities, accounts or deposits that are legal investments for county funds under the law and regulations of the department of finance and administration. The county treasurer shall keep records of interest earned by the investment of the fund prior to distribution to the appropriate governmental units or refunded to a taxpayer.

B. The county treasurer shall identity in the treasurer's records that portion of any property taxes paid to the county treasurer that is not admitted to be due and is the subject of a claim for refund [~~shall be deposited in this fund~~].

[~~B. The fund shall be invested in interest-earning securities, accounts or deposits that are legal investments for county funds under the law and regulations of the department of finance and administration. The county treasurer shall keep records of interest earned by the investment of the fund.~~

C. If a property owner's property taxes are reduced as a result of a decrease in value of the property taxed, a change in the classification, a change in the allocation of the value of the property to a particular governmental unit or granting of a claim for an exemption ordered by a court after a claim for refund, the portion of the property taxes in controversy found to be in excess of the amount legally due and paid shall be refunded by the county treasurer to the property owner. The refund shall be made within fifteen days after the county treasurer receives a copy of the final order relating to the protest. The amount of property taxes in controversy found to be legally due and paid shall be distributed to the appropriate governmental units in accordance with the distribution regulations of the department of finance and administration. All payments authorized under this section shall be made from the property tax suspense fund.

D. In addition to the payments authorized under Subsection C of this section, the county treasurer shall pay to the property owner and the governmental units their pro rata share of interest earned by the protested taxes computed by applying the earned interest rate of the fund to the principal amounts of refund and distribution for the period of time from the date of payment into the fund until a date not more than thirty days prior to the date the actual refund payment and distribution payment are made. Payments are considered made on the date a refund payment is mailed or delivered to the property owner and on the date a transfer occurs on the county treasurer's books showing a distribution payment.

E. [~~The department of finance and administration may authorize the transfer of any surplus interest accruing in the property tax suspense fund to the county general fund at the close of the fiscal year.~~] If a county treasurer previously distributed the receipts from property tax collections to a given governmental unit prior to becoming aware of a tax protest, no distribution payment and no pro rata share of interest earned payment shall be paid by the county treasurer to that governmental unit. If, as a result of a tax protest, amounts previously distributed to a given governmental unit result in an over-distribution to that governmental unit, the county treasurer shall keep records of such over-distributions and deduct such amounts from future distributions to that governmental unit.

History: 1953 Comp., § 72-31-41, enacted by Laws 1973, ch. 258, § 81; 1974, ch. 92, § 15; 1981, ch. 37, § 78.

Instruction Language at the End of the Bill

Temporary Provision – Adjustment of Terms of Office:

A. Pursuant to Article 20, Section 3 of the constitution of New Mexico, the legislature finds that the term adjustments provided for county assessors in Section # of this 2027 act, for county clerks in Section # of this 2027 act, for county sheriffs in Section # of this 2027 act and for county treasurers provided for in in Section # of this 2027 act are necessary to:

(1) align the election of all thirty-three assessors and sheriffs throughout the state to the year the governor is elected;

(2) align the election of all thirty-three clerks and treasurers throughout the state to the year the president is elected; and

(3) enable more effective training for assessors, clerks, sheriffs and treasurers.

B. The term of office of an assessor or sheriff that was set to expire on December 31, 2028 shall expire on December 31, 2030.

C. The term of office of a clerk or treasurer that was set to expire on December 31, 2030 shall expire on December 31, 2032.

Temporary Provision – Instruction to Compiler:

Chapter 4, Article 44 is renamed "Provisions Applicable to More Than One County Office".

Temporary Provision – Recompilations:

The following sections are move from one place in the statute to another as follows:

The following are moved from the County Commission Article to a new Article under Municipalities and Counties titled "Airports" since it deals with airports, including joint county-municipal operation of airports.

Section [~~4-38-31~~] 5-21-1. Establishment of airports.

Section [~~4-38-32~~] 5-21-2. Eminent domain power for acquiring airports.

Section [~~4-38-33~~] 5-21-3. Eminent domain power over land contiguous and adjacent to airport.

Section [~~4-38-34~~] 5-21-4. Joint county-municipal operation of airports.

Section [~~4-38-35~~] 5-21-5. Federal aid for airports; gifts.

Section [~~4-38-36~~] 5-21-6. Power to issue bonds for airports.

Section [~~4-38-37~~] 5-21-7. Procedure for issuing bonds for airports.

The following is moved from the Salaries and Provisions Applicable to More Than One Office Article to be under the Jails Article within Correctional Institutions, since it applies to Sheriffs, Detention Administrators, and Independent Contractors:

Section [~~4-44-19~~] 33-3-29. Prisoners; operating allowance; records and maintenance.

The following is moved from the Miscellaneous Powers of Counties Article to be under the Restrictions and Regulations Article within Timber, since it applies to holding the US Forest Service accountable for maintaining the national forests and will be more prominent there:

Section [~~4-36-11~~] 68-1-12. Findings; declaration of disaster; powers of county commissions.

Temporary Provision – Repeals:

The repeals laid out above will be listed here by statute number.

Effective Date:

The effective date of the provisions of this act is July 1, 2027.