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ANALYSIS OF CONSTITUTIONAL PROVISIONS
AFFECTING PUBLIC WELFARE IN THE STATE OF
NEW MEXICO

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PREFACE

This bulletin is one of a series presenting State constitutional provisions affecting public welfare, prepared to supplement the State by State digests of public welfare laws so as to provide in abstract form the basis for the public welfare services of the several States.

The provisions quoted are those concerned directly with public welfare administration and such others as may substantially affect a public welfare program, even though only indirectly related. It would be impossible to consider within the limits of this study every remotely connected constitutional provision. The indirectly related provisions included, therefore, have been restricted to those concerning finance, legislation, and the methods of constitutional amendment.

An attempt has been made, by a careful selection of the most recent cases decided by the highest courts of the States, to indicate wherever possible how these provisions have been construed. These cases are included in footnotes appended to the constitutional provisions shown.

It is hoped that these abstracts will be useful to those interested in public welfare questions in indicating how State and local public welfare administration may be affected by constitutional powers and limitations.

ANALYSIS OF CONSTITUTIONAL PROVISIONS AFFECTING
PUBLIC WELFARE IN NEW MEXICO

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New Mexico

ANALYSIS OF CONSTITUTIONAL PROVISIONS AFFECTING
PUBLIC WELFARE IN NEW MEXICO¹

I. Incidence of Responsibility for Welfare Program

A. * * * the Miners' Hospital of New Mexico at Raton, the New Mexico Insane Asylum at Las Vegas, and the New Mexico Reform School at Springer, are hereby confirmed as state institutions.²

B. The legislature shall enact suitable laws for the regulation of the employment of children.³

C. No appropriation shall be made for charitable, educational or other benevolent purpose to any person, corporation, association or community not under the absolute control of the state, but the legislature may, in its discretion, make appropriations for the charitable institutions and hospitals for the maintenance of which annual appropriations were made by the Legislative Assembly of nineteen hundred and nine.⁴

¹Constitution (1911), with all amendments to May 1, 1937.

Constitutional citations are taken from the Constitution of the State of New Mexico (1936), prepared under the supervision of the Secretary of State.

"* * * the constitutions of the several states, unlike the federal constitution, are not grants of power. On the contrary, they are limitations on the legislative powers of the states. * * * the legislative powers of the states are very general and very indefinite, * * *; and the generally accepted doctrine is that they may pass any acts that are not expressly, or by necessary implication, inhibited by their own constitutions or by the federal constitution." It was held that debt limitations were not grants of, but limitations upon, the power of the Legislature. State ex rel. Capitol Addition Building Commission vs. Connelly, 39 N. M. 312, 46 P. (2d) 1097, 1102 (1935).

It has been stated that the term "police power" of the State is "the name given to that inherent sovereignty which it is the right and duty of the government or its agents to exercise, whenever public policy in a broad sense demands, for the benefit of society at large, regulations to guard its morals, safety, health, order, or to insure, in any respect, such economic conditions as an advancing civilization of a highly complex character requires." State vs. Brooken, 19 N. M. 404, 143 P. 479, 481 (1914).

²Constitution, Art. XIV, Sec. 1.

³Constitution, Art. XX, Sec. 10.

⁴Constitution, Art. IV, Sec. 31.

An act authorizing the several counties to appropriate money to a county fair association, to be used for premiums on agricultural exhibits, was held to contravene this section since the association was not under the absolute control of the State. Harrington vs. Atteberry, 21 N. M. 50, 153 P. 1041 (1916).

II. Financial Powers and Limitations

A. Taxation and Assessments⁵

(1) State

(a) Taxes levied upon tangible property shall be in proportion to the value thereof, and taxes shall be equal and uniform upon subjects of taxation of the same class.⁶

(b) Taxes levied upon real or personal property for state revenue shall not exceed four mills annually on each dollar of the assessed valuation thereof except for the support of the educational, penal and charitable institutions of the state, payment of the state debt and interest thereon; and the total annual tax levy upon such property for all state purposes exclusive of necessary levies for the state debt shall not exceed ten mills; Provided, however, that taxes levied upon real or personal tangible property for all purposes, except special levies on specific classes of property and except necessary levies for public debt, shall not exceed twenty mills annually on each dollar of the assessed valuation thereof, but laws may be passed authorizing additional taxes to be levied outside of such limitation when approved by at least a majority of the electors of the taxing district voting on such proposition.⁷

⁵"The power of taxation is inherent in the state, and may generally be exercised through its Legislature without let or hindrance except insofar as limited by the Constitution." The Legislature was held to have power to levy excise taxes since this power was not denied in the Constitution. *Lujan vs. Triangle Oil Company*, 38 N. M. 543, 37 P. (2d) 797 (1934).

⁶Constitution, Art. VIII, Sec. 1, as amended 1914.

Under this section if a tax is for a State purpose, it must be uniform throughout the State, but if a tax is for a county purpose, it need be uniform only within the county. *Love vs. Dunnaway*, 28 N. M. 557, 215 P. 822 (1923).

A personal property tax statute, which provided that automobiles should be assessed at their list price for the first 3 years, that 25 percent of the list price should be deducted after the third year, and that 50 percent of the list price should be deducted after the fifth year, was held not to violate the uniformity provision of this section. The court stated that tax systems could only approximate uniformity and that this classification was not so arbitrary and unreasonable that it could not be sustained. *State ex rel. Taylor vs. Mirabal*, 33 N. M. 553, 273 P. 928 (1928).

It has been held that this section applies only to tangible property taxes and not to other forms of taxation. A tax levied upon the production of oil was held to be an excise tax rather than a property tax and so was not subject to the uniformity requirement of this section. *Flynn, Welch, and Yates, Incorporated vs. State Tax Commission*, 38 N. M. 131, 28 P. (2d) 889 (1934).

A tax of 5 cents per gallon on gasoline sold within the State was held to be an excise tax and not a property tax. *George E. Breece Lumber Company vs. Mirabal*, 34 N. M. 643, 287 P. 699 (1930).

An inheritance tax was held to be a succession tax, or a tax upon the right or privilege to succeed to the property of the deceased, and not a tax on tangible property. *State vs. Gomez*, 34 N. M. 250, 280 P. 251 (1929).

⁷Constitution, Art. VIII, Sec. 2, as amended 1933.

This section does not apply to excise taxes. *Lujan vs. Triangle Oil Company*, 38 N. M. 543, 37 P. (2d) 797 (1934). Excise taxes include all taxes except property and poll taxes. *Flynn, Welch, and Yates, Incorporated vs. State Tax Commission*, 38 N. M. 131, 28 P. (2d) 889 (1934).

An act providing for a tax of 3 mills on the dollar for the construction and maintenance of county roads was held not to be a tax for "State revenue" because it

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(1) State—Continued

(c) The legislature shall not pass local or special laws in any of the following cases: * * * the assessment or collection of taxes or extending the time of collection thereof;⁸ * * *

(2) Counties and Other Local Units

No provision.⁹

B. Exemptions

(1) The property of the United States, the State and all the Counties, Towns, Cities and School Districts, and other municipal corporations, public libraries, community ditches and all laterals thereof, all church property, all property used for educational or charitable purposes, all cemeteries not used or held for private or corporate profit, and all bonds of the State of New Mexico, and of the counties, municipalities and districts thereof, shall be exempt from taxation.¹⁰

was levied for a county rather than a State purpose, and so the limitations of this section did not apply. *State vs. Red River Valley Company*, 28 N. M. 94, 206 P. 695 (1922).

⁸Constitution, Art. IV, Sec. 24.

This section was held not to prohibit the enactment of a special law levying a tax for the construction of a State road running through two counties. The Supreme Court stated that under this section provisions for "assessment and collection" of taxes must be enacted by general law, but that taxes might be levied by special laws. *Borrowdale vs. Board of County Commissioners of Socorro County*, 23 N. M. 1, 163 P. 721 (1917).

⁹A municipality can only exercise those powers which are granted by the Legislature, either in express terms or by necessary implication. So the power to tax must be granted by the Legislature. *Barker vs. State ex rel. Napoleon*, 39 N. M. 434, 49 P. (2d) 246 (1935).

The rate of property taxation which may be imposed within all local units has been limited by the Legislature. *Compiled Statutes (1929)*, Secs. 141-1001.

¹⁰Constitution, Art. VIII, Sec. 3.

"The power of taxation is inherent in the state, and may generally be exercised through its Legislature without let or hinderance, except insofar as limited by the Constitution, and the state likewise has the reciprocal power of exempting from taxation, except as limited by the Constitution."

The Supreme Court held that all the exemptions mentioned in the Constitution refer only to property taxation and that when dealing with other forms of taxation, the Legislature is free to make such exemptions as it, in its reasonable discretion, sees fit. *Asplund vs. Alarid*, 29 N. M. 129, 219 P. 786 (1923).

Under the clause of this section "the property of the United States, the State and all the Counties, Towns, Cities and School Districts, and other municipal corporations, * * * shall be exempt from taxation," ownership is the sole test to be employed in determining what property shall be exempt. *Ibid.*

Under the clause "public libraries, community ditches and all laterals thereof, all church property, all property used for educational or charitable purposes, all cemeteries not used or held for private or corporate profit, * * * shall be exempt from taxation," use of the property is the sole test to be employed in determining what property shall be exempt. *Ibid.*

II. Financial Powers and Limitations—Continued

B. Exemptions—Continued

(2) The legislature may exempt from taxation property of each head of a family to the amount of two hundred dollars, and the property of every honorably discharged soldier, sailor, marine and army nurse, and the widow of every soldier, sailor or marine, who served in the armed forces of the United States at any time during the period in which the United States was regularly and officially engaged in any war, in the sum of two thousand dollars.¹¹ * * *

(3) Lands held in large tracts shall not be assessed for taxation at any lower value per acre than lands of the same character * * * held in smaller tracts. The plowing of land shall not be considered as adding value thereto for the purpose of taxation.¹²

(4) The people inhabiting this state do agree and declare * * * that the lands and other property belonging to citizens of the United States residing without this state shall never be taxed at a higher rate than the lands and other property belonging to residents thereof; that no taxes shall be imposed by this state upon the lands or property therein belonging to or which may hereafter be acquired by the United States or reserved for its use;¹³ * * *.

C. Borrowing and Use of Credit

(1) State

(a) The state may borrow money not exceeding the sum of two hundred thousand dollars in the aggregate to meet casual deficits

A dwelling house rented by a church and the proceeds turned over to the church was held not exempt from taxation, since under this section, only such church property as is used for church purposes as distinguished from property the income from which is used for church purposes is exempt. *Church of the Holy Faith vs. State Tax Commission*, 39 N. M. 403, 48 P. (2d) 777 (1935).

Property of an Elk's Lodge, used primarily as a lodge home and as a center for carrying on its charitable and benevolent activities, was held to be used for a "charitable" purpose within the meaning of this section. *Albuquerque Lodge, No. 461 B.P.O.E. vs. Tierney*, 39 N. M. 135, 42 P. (2d) 206 (1935).

A sorority chapter house, used primarily as a dormitory and boarding house for university students, was held not to be used for an "educational" purpose within the meaning of this section and so was not exempt from taxation. *Albuquerque Alumnae Association of Kappa Kappa Gamma Fraternity vs. Tierney*, 37 N. M. 156, 20 P. (2d) 287 (1933).

Special assessments, levied on the basis of benefits by a drainage district on the property of a county, were held not to be "taxes" within the meaning of this section, and therefore the county property was not entitled to an exemption. *Lake Arthur Drainage District vs. Board of Commissioners*, 29 N. M. 219, 222 P. 389 (1924).

¹¹ Constitution, Art. VIII, Sec. 5, as amended 1922.

Under this section the Legislature was held authorized to grant both the \$200 and \$2,000 exemption to an individual if he was both the head of a family and a soldier. *Asplund vs. Alarid*, 29 N. M. 129, 219 P. 786 (1923).

¹² Constitution, Art. VIII, Sec. 6.

¹³ Constitution, Art. XXI, Sec. 2.

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(1) State—Continued

or failure in revenue, or for necessary expenses. The state may also contract debts to suppress insurrection and to provide for the public defense.¹⁴

(b) No debt other than those specified in the preceding section [par. (a) p. 4] shall be contracted by or on behalf of this state, unless authorized by law for some specified work or object; which law shall provide for an annual tax levy sufficient to pay the interest and to provide a sinking fund to pay the principal of such debt within fifty years from the time of the contracting thereof. No such law shall take effect until it shall have been submitted to the qualified electors of the state and have received a majority of all the votes cast thereon at a general election, * * *. No debt shall be so created if the total indebtedness of the state, exclusive of the debts of the territory, and the several counties thereof, assumed by the state, would thereby be made to exceed one per centum of the assessed valuation of all the property subject to taxation in the state as shown by the preceding general assessment.¹⁵

(c) Laws enacted by the Fifth Legislature authorizing the issue or sale of State Highway Bonds for the purpose of providing funds for the construction and improvement of State Highways and to enable the State to meet and secure allotments of Federal Funds to aid in construction and improvements of roads, and laws so enacted authorizing the issue and sale of State Highway Debentures to anticipate the collection of revenues from motor vehicle licenses and other revenues provided by law

¹⁴Constitution, Art. IX, Sec. 7.

¹⁵Constitution, Art. IX, Sec. 8.

See par. (c), above for provisions relative to issuance of State highway bonds which may exceed this 1-percent limitation.

The power of the Legislature to incur indebtedness is plenary except insofar as it is limited by the Constitution. The constitutional provisions in regard to indebtedness are not grants of power, but rather limitations upon the exercise of power. The Legislature is free to incur types of indebtedness not denied in the Constitution. The term "debt" as used in this section means "a debt pledging for its repayment the general faith and credit of the state * * * and contemplating the levy of a general property tax as the source of funds with which to retire the same." Consequently, the Legislature has plenary power to incur indebtedness secured by excise taxes. It was held that debentures, the proceeds of which were to be used to construct an addition to the State capitol and which were to be payable out of a tax levied upon the filing of civil actions, were not "debts" within the meaning of this section. State ex rel. Capitol Addition Building Commission vs. Connelly, 39 N. M. 312, 46 P. (2d) 1097 (1935).

Excise taxes include all types of taxes except property and poll taxes. Flynn, Welch, and Yates, Incorporated vs. State Tax Commission, 38 N. M. 131, 28 P. (2d) 889 (1934).

Bonds to be issued by the State University of New Mexico and payable out of the income of the University were held not to be obligations of the State and so were not subject to the requirements of this section. State vs. Regents of University of New Mexico, 32 N. M. 428, 258 P. 571 (1927).

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(1) State—Continued

for the State Road Fund, shall take effect without submitting them to the electors * * * and notwithstanding that the total indebtedness * * * may thereby temporarily exceed one per centum of the assessed valuation of all property subject to taxation in the state. Provided, that the total amount of such State Highway Bonds payable from proceeds of taxes levied on property outstanding at any time shall not exceed two million dollars. The legislature shall not enact any law which will decrease the amount of the annual revenues pledged for the payment of State Highway Debentures or which will divert any of such revenues to any other purpose so long as any of the said debentures * * * remain unpaid.¹⁶

(d) Nothing in this article shall be construed to prohibit the issue of bonds for the purpose of paying or refunding any valid state, county, district or municipal bonds and it shall not be necessary to submit the question of the issue of such bonds to a vote as herein provided.¹⁷

(e) Any money borrowed by the state, or any county, district or municipality thereof, shall be applied to the purpose for which it was obtained, or to repay such loan, and to no other purpose whatever.¹⁸

(f) Neither the state, nor any county, school district, or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation, or in aid of any private enterprise for the construction of any railroad; provided nothing herein shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons.¹⁹

(2) Counties and Other Local Units

(a) No county, city, town or village shall ever become indebted to an amount in the aggregate, including existing indebtedness, exceeding four per centum on the value of the taxable property within such county, city, town or village, as shown by the last preceding

¹⁶ Constitution, Art. IX, Sec. 16, adopted 1922.

It was held that the provision of this section "laws so enacted authorizing the issue and sale of State Highway Debentures to anticipate the collection of revenues" referred to any such laws which might be passed by any Legislature and not only to laws enacted by the Fifth Legislature. State vs. Graham, 32 N. M. 485, 259 P. 623 (1927).

¹⁷ Constitution, Art. IX, Sec. 15.

¹⁸ Constitution, Art. IX, Sec. 9.

¹⁹ Constitution, Art. IX, Sec. 14.

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(2) Counties and Other Local Units—Continued

assessment for state or county taxes; and all bonds or obligations issued in excess of such amount shall be void, provided, that any city, town or village may contract debts in excess of such limitation for the construction or purchase of a system of supplying water, or of a sewer system, for such city, town or village.²⁰

(b) No county shall borrow money except for the purpose of erecting necessary public buildings or construction or repairing public roads and bridges, and in such cases only after the proposition to create such debt shall have been submitted to the qualified electors of the county who paid a property tax therein during the preceding year and approved by a majority of those voting thereon. No bonds issued for such purpose shall run for more than fifty years.²¹

(c) No city, town or village shall contract any debt except by an ordinance which shall be irreparable [irrepealable] until the indebtedness therein provided for shall have been fully paid or discharged, and which shall specify the purposes to which the funds to be raised shall be applied and which shall provide for the levy of a tax, not exceeding twelve mills on the dollar upon all taxable property within such city, town or village, sufficient to pay the interest on, and to extinguish the principal of, such debt within fifty years. The proceeds of such tax shall be applied only to the payment of such interest and principal. No such debt shall be created unless the question of incurring

²⁰Constitution, Art. IX, Sec. 13.

In a case holding that State debentures, payable out of an excise tax on the filing of civil actions, were not "debts" within the meaning of the debt limitation sections of the Constitution the Supreme Court stated that the debt limitation sections of the Constitution, Art. IX, Secs. 8, 10, 11, 12, and 13 (see p. 5, par. (b) and footnote 15; p. 6, par. (a); pars. (b) and (c) above, and footnotes 20 and 21 below; p. 8, par. (d) and footnotes 22 and 23) refer only to those debts payable out of general property taxation. Further, that since the State Constitution is a limitation upon the exercise of, rather than a grant of, power, the respective governmental units might contract debts payable out of other sources of revenue without reference to these sections. State ex rel. Capitol Addition Building Commission vs. Connelly, 39 N. M. 312, 46 P. (2d) 1097 (1935).

The proviso of this section was held to be an independent provision, and under it the limitation on the amount of tax levy provided for in Sec. 12 (see par. (c), above) did not apply to indebtedness incurred for supplying water or for a sewer system for a municipality. Lannigan vs. Town of Gallup, 17 N. M. 627, 131 P. 997 (1913).

²¹Constitution, Art. IX, Sec. 10.

This section applies only to "debts" payable out of property taxation. State ex rel. Capitol Addition Building Commission vs. Connelly, 39 N. M. 312, 46 P. (2d) 1097 (1935). See p. 6, footnote 19.

Under its constitutional authority to create new counties, it was held that the Legislature might do all things necessary to enable a new county to function, and that this could include the authorization of borrowing by the new county for objects other than those set out in this section. State vs. Southern Pacific Company, 34 N. M. 306, 281 P. 29 (1929).

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(2) Counties and Other Local Units—Continued

the same shall, at a regular election for * * * officers of such city, town or village, have been submitted to a vote of such qualified electors thereof as have paid a property tax therein during the preceding year and a majority of those voting on the question, * * * shall have voted in favor of creating such a debt.²²

(d) No school district shall borrow money, except for the purpose of erecting and furnishing school buildings or purchasing school grounds, and in such cases only when the proposition to create the debt shall have been submitted to a vote of such qualified electors of the district as are owners of real estate within such school district, and a majority of those voting on the question shall have voted in favor of creating such debt. No school district shall ever become indebted in an amount exceeding six per centum on the assessed valuation of the taxable property within such school district,²³ * * *.

D. Other Income

All fines and forfeitures collected under general laws; the net proceeds of property that may come to the state by escheat; the rentals of all school lands and other lands granted to the state, the disposition of which is not otherwise provided for by the terms of the grant or by act of congress; and the income derived from the permanent school fund, shall constitute the current school fund of the state.²⁴ * * *

E. Appropriations and Expenditures

Except interest or other payments on the public debt, money shall be paid out of the treasury only upon appropriations made by the

²²Constitution, Art. IX, Sec. 12.

This section applies only to "debts" payable out of property taxation. State ex rel. Capitol Addition Building Commission vs. Connelly, 39 N. M. 312, 46 P. (2d) 1097 (1935). See p. 6, footnote 19.

Revenue bonds, the proceeds of which were to be used to improve and replace a municipal water works, and payable out of the revenues of the original plant plus the improvements, were held not to constitute a "debt" within the meaning of this section because the general credit of the city was not pledged. Seward vs. Bowers, 37 N. M. 385, 24 P. (2d) 253 (1933).

The limitation on the amount of tax levy in this section was held not to apply to indebtedness incurred for supplying water or for a sewer system for a municipality. Lannigan vs. Town of Gallup, 17 N. M. 627, 131 P. 997 (1913). See p. 7, footnote 20.

²³Constitution, Art. IX, Sec. 11, as amended 1933.

This section applies only to "debts" payable out of property taxation. State ex rel. Capitol Addition Building Commission vs. Connelly, 39 N. M. 312, 46 P. (2d) 1097 (1935). See p. 7, footnote 20.

²⁴Constitution, Art. XII, Sec. 4.

Art. XII, Sec. 2 of the Constitution provides that the permanent school fund shall consist of the proceeds of the sale of certain State lands, a portion of the

II. Financial Powers and Limitations—Continued

E. Appropriations and Expenditures—Continued

legislature. No money shall be paid therefrom except upon warrant drawn by the proper officer. Every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied.²⁵

III. Provisions Affecting Legislation

A. Regular Sessions of Legislature

The first session of the legislature shall begin at twelve o'clock, noon, on the day specified in the proclamation of the Governor. Subsequent sessions shall begin at twelve o'clock, noon, on the second Tuesday of January next after each general election. No regular session shall exceed sixty days,²⁶ * * *.

B. Special Sessions of Legislature

(1) Special sessions of the legislature may be called by the governor, but no business shall be transacted except such as relates to the objects specified in his proclamation.²⁷

(2) * * * no special session shall exceed thirty days.²⁸

C. Powers of Initiative and Referendum

(1) If this constitution be in any way so amended as to allow laws to be enacted by direct vote of the electors the laws which may be so enacted shall be only such as might be enacted by the legislature under the provisions of this constitution.²⁹

(2) * * * The people reserve the power to disapprove, suspend and annul any law enacted by the legislature, except general appropriation laws; laws providing for the preservation of the public peace, health or safety; for the payment of the public debt or interest thereon, or the creation of funding of the same, except as in the constitution otherwise provided; for the maintenance of the public schools or state institutions, and local or special laws. Petitions disapproving any law other than those above excepted, enacted at the last preceding session * * * shall be filed * * * not less than four months prior to the

proceeds of the sale of Federal lands within the State, and grants, gifts, or devises to the State whose purpose is not otherwise specified.

²⁵ Constitution, Art. IV, Sec. 30.

²⁶ Constitution, Art. IV, Sec. 5.

²⁷ Constitution, Art. IV, Sec. 6.

²⁸ Constitution, Art. IV, Sec. 5.

²⁹ Constitution, Art. XIX, Sec. 3.

The Constitution has not been so amended. [Ed. note]

III. Provisions Affecting Legislation—Continued

C. Powers of Initiative and Referendum—Continued

next general election. Such petitions shall be signed by not less than ten per centum of the qualified electors of each of three-fourths of the counties and in the aggregate by not less than ten per centum of the qualified electors of the state, * * *. The question of the approval or rejection of such laws shall be submitted * * * to the electorate at the next general election; and if a majority of the legal votes cast thereon, and not less than forty per centum of the total number of legal votes cast at such general election, be cast for the rejection of such law, it shall be annulled * * *. If such petition or petitions be signed by not less than twenty-five per centum of the qualified electors under each of the foregoing conditions, and be filed with the secretary of state within ninety days after the adjournment of the session * * * at which such laws were enacted, the operation thereof shall be thereupon suspended and the question of its approval or rejection shall be likewise submitted to a vote at the next ensuing general election. If a majority of the votes cast thereon and not less than forty per centum of the total number of votes cast at such general election be cast for its rejection, it shall be thereby annulled;³⁰ * * *.

D. Legislative Enactment

(1) Laws shall go into effect ninety days after the adjournment of the legislature enacting them, except general appropriation laws, which shall go into effect immediately upon their passage and approval. Any act necessary for the preservation of the public peace, health or safety, shall take effect immediately * * * provided it be passed by two-thirds of each house and such necessity be stated in a separate section.³¹

³⁰Constitution, Art. IV, Sec. 1.

A referendum petition, though signed by at least 25 percent of the qualified electors and filed within 90 days after the adjournment of the Legislature, was held not to suspend a law which became effective immediately because of a legislative declaration of emergency. Such a legislative declaration was held conclusive on the court where the question of the suspensive effect of a referendum petition was involved. Such declaration, however, was held not conclusive on the court in determining whether a law was actually a safety measure and therefore exempt from referendum and repeal by the people. *Todd vs. Tierney*, 38 N. M. 15, 27 P. (2d) 991 (1933). See footnote 31, below.

³¹Constitution, Art IV, Sec. 23.

Under this section a legislative declaration of an emergency, was held final and conclusive on the court where the only question involved was the immediate or postponed effect of a statute. *Hutchens vs. Jackson*, 37 N. M. 325, 23 P. (2d) 355 (1933).

A legislative declaration was held not conclusive on the court where the right to the referendum was involved. *Todd vs. Tierney*, 38 N. M. 15, 27 P. (2d) 991 (1933). See footnote 30, above.

This section was held not to prevent the Legislature from fixing a period of more than 90 days before a law should become effective. *State ex rel. New Mexico State Bank vs. Montoya*, 22 N. M. 215, 160 P. 359 (1916).

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

(2) * * * No bill, except bills to provide for the public peace, health and safety, and codification or revision of the laws, shall become a law unless it has been printed, and read three different times in each house, not more than two of which readings shall be on the same day, and the third of which shall be in full.³²

(3) The subject of every bill shall be clearly expressed in its title, and no bill embracing more than one subject shall be passed except general appropriation bills and bills for the codification or revision of the laws; but if any subject is embraced in any act which is not expressed in its title, only so much of the act which is not so expressed shall be void. General appropriation bills shall embrace nothing but appropriations for the expense of the executive, legislative and judiciary departments, interest, sinking fund, payments on the public debt, public schools, and other expenses required by existing laws; * * *. All other appropriations shall be made by separate bills.³³

(4) No bill shall be passed except by a vote of a majority of the members present in each house,³⁴ * * *.

(5) No bill shall be introduced at any regular session of the Legislature subsequent to the forty-fifth legislative day, except the general appropriation bill, bills to provide for the current expenses of the government, and such bills as may be referred to the Legislature by the Governor by special message specifically setting forth the emergency or necessity requiring such legislation.³⁵

(6) Every bill passed by the legislature shall, before it becomes a law, be presented to the governor for approval. If he approve, he shall sign it, * * * otherwise, he shall return it to the house in

³² Constitution, Art. IV, Sec. 15.

Where a legislative act had been signed by the Speaker and President of the respective houses, approved by the Governor, and filed in the office of the Secretary of State, it was held that the court would not look beyond the statute on file to determine whether it had been read in full in each house. Kelly vs. Marron, 21 N. M. 239, 153 P. 282 (1915).

³³ Constitution, Art. IV, Sec. 16.

In holding an act which levied a property tax on motor vehicles and trailers valid under this section, the Supreme Court stated that "while this provision is mandatory, yet it is to be given a liberal, and not a strict, construction. * * * To constitute duplicity of subject, an act must embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any legitimate connection with or relation to each other * * *. All that is necessary is that * * * all matters treated should fall under some one general idea, * * *." State vs. Mirabal, 33 N. M. 553, 273 P. 928 (1928).

This section was held not to apply to municipal ordinances. State ex rel. Ackerman vs. City of Carlsbad, 39 N. M. 352, 47 P. (2d) 865 (1935).

³⁴ Constitution, Art. IV, Sec. 17.

³⁵ Constitution, Art. IV, Sec. 19, as amended 1932.

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

which it originated, with his objections * * * and such bill shall not become a law unless thereafter approved by two-thirds of the members present and voting in each house * * *. Any bill not returned by the governor within three days, Sundays excepted, after being presented to him, shall become a law, whether signed by him or not, unless the legislature by adjournment prevent such return. Every bill presented to the governor during the last three days of the session shall be approved or disapproved by him within six days after the adjournment, * * *. Unless so approved and signed by him such bill shall not become a law. The governor may in like manner approve or disapprove any part or parts, item or items, of any bill appropriating money,³⁶ * * *.

(7) The legislature shall not pass local or special laws in any of the following cases: * * * the assessment or collection of taxes or extending the time of collection thereof; * * * exempting property from taxation; * * *. In every other case where a general law can be made applicable, no special laws shall be enacted.³⁷

IV. Constitutional Amendment or Revision

A. By Proposal of Legislature or People

Any amendment or amendments to this constitution may be proposed in either house * * * at any regular session thereof; and if a majority of all members elected to each of the two houses voting separately shall vote in favor thereof, such proposed amendment or amendments shall be entered on their respective journals with the yeas and nays thereon.

The secretary of state shall cause any such amendment or amendments to be published * * * for four consecutive weeks, * * * the last publication to be not more than two weeks prior to the election at which time said amendment or amendments shall be submitted to the electors of the state for their approval or rejection; and the said amendment or amendments shall be voted upon at the next regular election * * *

³⁶ Constitution, Art. IV, Sec. 22.

³⁷ Constitution, Art. IV, Sec. 24.

The provision of this section, that "in all cases where a general law can be made applicable, no special law shall be enacted," was held to have left a discretion with the Legislature to determine the cases in which special laws should be passed. *Scarborough vs. Wooten*, 23 N. M. 616, 170 P. 743 (1918).

The Legislature may make a "general" law applicable to only a certain class. The Legislature has a wide range of discretion in classifying the objects of legislation, and the law will still be considered "general" if the classification is practical and not arbitrary. A statute distinguishing between drainage districts formed prior to a certain date and those formed after it was held to be a "general" law, since the classification was reasonable. *Davy vs. McNeill*, 31 N. M. 7, 240 P. 482 (1925).

IV. Constitutional Amendment or Revision—Continued

A. By Proposal of Legislature or People—Continued

after the adjournment of said legislature, * * *. If the same be ratified by a majority of the electors voting thereon such amendment or amendments shall become part of this constitution. If two or more amendments are proposed, they shall be so submitted as to enable the electors to vote on each of them separately:³⁸ * * *.

B. By Constitutional Convention

Whenever, during the first twenty-five years after the adoption of this constitution, the legislature, by a three-fourths vote of the members elected to each house, or after the expiration of said period of twenty-five years, by a two-thirds vote of the members elected to each house, shall deem it necessary to call a convention to revise or amend this constitution, they shall submit the question of calling such convention to the electors at the next general election, and if a majority of the electors voting on such question * * * shall vote in favor of calling a convention the legislature shall, at the next session, provide by law for calling the same. Such convention shall consist of at least as many delegates as there are members of the house of representatives. The constitution adopted by such convention shall have no validity until it has been submitted to and ratified by the people.³⁹

³⁸ Constitution, Art. XIX, Sec. 1, as amended 1912.

Art. XIX, Sec. 5 of the Constitution states that the provisions of this section shall not be changed except through a general convention called to revise the Constitution.

³⁹ Constitution, Art. XIX, Sec. 2.

