



SPONSOR:

BILL: _____

**AMEND STATUTE/S REGARDING MUNICIPAL LIENS TO ALLOW
COUNTIES THE SAME AUTHORITY AS MUNICIPALITIES**

NMSA 1978, § 4-37-1 (1975) provides that “[a]ll counties are granted the same powers as municipalities except for those powers that are inconsistent with statutory or constitutional limitations placed on counties.” While the municipal lien statutes, NMSA 1978, §§ 3-36-1 through 7, are not inconsistent with statutory or constitutional limitations placed on counties, the statutes contains language indicating that only municipalities use them. A few minor changes that specifically allow government entities other than municipal clerks to use municipal liens would give counties an additional method to clean nuisance property or demolish unsafe buildings that does not require the filing of a district court case seeking an injunction that may take more than a year to adjudicate. Once the injunction is obtained, the property owner is granted additional time to bring the property into compliance with applicable ordinances. If the property owner fails to bring the property into compliance, then the county must seek an additional order before seeking bids to perform the cleanup or demolition work. Finally, after the work is completed, the county must go to court again to seek the lien for the costs of cleanup or demolition.

If counties had the explicit authority to place liens on nuisance premises or unsafe buildings for which the county incurred expenses to clean up or demolish, they could more effectively address these public safety concerns. Unsafe buildings could be demolished in a matter of weeks, not years. Under the municipal lien statutes, municipalities have the explicit authority to clean properties or demolish unsafe buildings, and place liens for the costs, following adopted ordinances without the need for court action. Amending the municipal lien act to grant counties the same authority as municipalities would allow for more efficient code enforcement and drastically reduce the time needed for addressing nuisance properties.

The passage of the proposed amendments would remove the doubt that currently exists as to whether counties possess the authority to use the municipal lien statutes to clean nuisance properties and demolish unsafe buildings and allow counties to respond timely to nuisances and unsafe buildings that present immediate threats to the safety of the public.

Current statute language regarding municipal liens:

3-36-1. Municipal lien; filing with county clerk; contents of lien; interest on principal amount of utility [lien]

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CONTINUATION PAGE 2, AMEND STATUTE/S REGARDING MUNICIPAL LIENS TO ALLOW COUNTIES THE SAME AUTHORITY AS MUNICIPALITIES

A. The municipal clerk shall file in the office of the county clerk any notice of lien created by ordinance or under authority of law. The notice of lien shall include:

- (1) The number of the ordinance under which the lien is established;
- (2) The fact that a lien is established;
- (3) The general purpose of the lien;
- (4) The name of the owner of the property against which the lien is established as determined from the records of the county assessor;
- (5) A description of the property against which the lien is established;
- (6) The amount of the lien; and
- (7) If the lien is for more than one period of time, the date for which the lien is established.

B. A lien for charges or assessments which are provided for or fixed by any one ordinance or under authority of law may be included in the same notice of lien, and it shall not be necessary to file separate liens against the separate properties. The lien shall be attested in the name of the municipal clerk under the seal of the municipality.

C. The principal amount of any lien imposed for a municipal utility charge or assessment shall bear interest at the rate of twelve percent per year from the date of filing the notice of the lien unless otherwise provided by law.

3-36-2. Effect of filing notice of lien

After the filing of the notice of the lien in the office of the county clerk, the municipality shall have a lien upon the property described in the notice of lien. The filing of the notice of the lien shall be notice to all the world of the existence of the lien and of the contents of the notice of lien. No such lien shall affect the title or rights to or in any real estate, of any purchaser, mortgagee in good faith or judgment lien creditor, without knowledge of the existence of such lien, unless the notice of the lien is filed in accordance with Section 3-36-1 NMSA 1978 in the office of the county clerk of the county in which the real estate affected thereby is situated. All municipal liens filed in conformity with Sections 3-36-1 through 3-36-6 NMSA 1978 shall be first and prior liens on the property subject only to the lien of general state and county taxes.