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AN ACT

RELATING TO WATER AND SANITATION DISTRICTS; PROVIDING
ADDITIONAL PURPOSES FOR DISTRICTS; CHANGING THE
QUALIFICATIONS OF DISTRICT ELECTORS; PROVIDING STANDARDS FOR
REVIEW OF DISTRICT RATES BY THE PUBLIC REGULATION COMMISSION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 73-21-2 NMSA 1978 (being Laws 1977,
Chapter 345, Section 1) is amended to read:

"73-21-2. SHORT TITLE.--Chapter 73, Article 21 NMSA
1978 may be cited as the "Water and Sanitation District
Act"."

Section 2. Section 73-21-3 NMSA 1978 (being Laws 1943,
Chapter 80, Section 2, as amended) is amended to read:

"73-21-3. PURPOSE OF WATER AND SANITATION DISTRICTS.--
Water and sanitation districts may be created for the purpose
of:

A. purchasing, acquiring, establishing or
constructing waterworks to supply water for domestic,
commercial and industrial purposes by any available means to
persons within and without the boundaries of the district.
For this purpose, any district has the power to extend its
water lines outside the boundaries of the district for the
purpose of securing a source of water supply or for the
purpose of supplying the water to any lands of the United

1 States, New Mexico or Indian reservations for use by any
2 person, firm or corporation;

3 B. purchasing, acquiring, establishing or
4 constructing sanitary sewers or a system of sewage disposal,
5 garbage or refuse disposal;

6 C. purchasing, acquiring, establishing or
7 constructing streets and street improvements, including
8 without limitation grades, regrades, gravel, oiling,
9 surfacing, macadamizing, paving, crosswalks, sidewalks,
10 driveway approaches, curbs, gutters, culverts, drains,
11 sewers, manholes, inlets, outlets, retaining walls, bridges,
12 overpasses, tunnels, underpasses, approaches, artificial
13 lights and lighting equipment, parkways, grade separators,
14 traffic separators and traffic-control equipment and all
15 appurtenances and incidentals or any combination of them,
16 including real and other property for them;

17 D. establishing or constructing park and
18 recreational improvements;

19 E. purchasing, acquiring, establishing,
20 constructing or operating other public facilities or economic
21 development projects; or

22 F. all of the improvements in Subsections A
23 through E of this section or any combination of them within
24 or without the district."

25 Section 3. Section 73-21-4 NMSA 1978 (being Laws 1943,

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1 Chapter 80, Section 3, as amended) is amended to read:

2 "73-21-4. DEFINITIONS.--As used in the Water and
3 Sanitation District Act:

4 A. "sewage disposal" includes all constructions
5 for collection, transportation, pumping, treatment and final
6 disposition of sewage;

7 B. "district" means a water and sanitation
8 district that is established pursuant to that act and that is
9 either entirely within or partly within and partly without
10 one or more counties, provided those parts or parcels of the
11 district lying in two or more counties are contiguous with
12 one another, and further provided, a district created
13 pursuant to a petition signed by the board of county
14 commissioners of a county shall be entirely within that
15 county;

16 C. "board" means the board of directors of a
17 district;

18 D. "taxpaying elector of a district", "qualified
19 elector" or "elector" means a person, registered to vote in
20 any precinct in the state, who:

21 (1) is a resident of the district;

22 (2) is a nonresident of the district who
23 pays, or will be liable for paying, rates, tolls or charges
24 set by the board; or

25 (3) is a nonresident of the district who

1 either has paid or incurred a general tax liability on real
2 property within the district in the twelve months immediately
3 preceding a designated time or event or who is purchasing
4 real property within the district under a real estate
5 contract where a property tax has been paid or incurred on
6 the real property in the twelve months immediately preceding
7 a designated time or event; and

8 E. "publication" means once a week for three
9 consecutive weeks in at least one newspaper of general
10 circulation in the county in which all or the major portion
11 of the district is located. It is not necessary that
12 publication be made on the same day of the week in each of
13 the three weeks, but not less than fourteen days, excluding
14 the day of first publication, shall intervene between the
15 first publication and the last publication, and publication
16 shall be complete on the date of the last publication."

17 Section 4. Section 73-21-9 NMSA 1978 (being Laws 1943,
18 Chapter 80, Section 8, as amended) is amended to read:

19 "73-21-9. HEARING ON PETITIONS--ELECTION FOR
20 ORGANIZATION AND OFFICERS.--

21 A. On the day fixed for the hearing or at an
22 adjournment of it, the court shall ascertain from the tax
23 rolls of the county in which the district is located or into
24 which it extends, from the last official registry list and
25 from any other evidence that may be adduced, the total number

1 of taxpaying electors of the proposed district.

2 B. If the court finds that no petition has been
3 signed and presented in conformity with the Water and
4 Sanitation District Act, or that the material facts are not
5 as set forth in the petition filed, it shall dismiss the
6 proceedings and adjudge the costs against the signers of the
7 petition or, if applicable, the board of county commissioners
8 of a county, in the proportion as it deems just and
9 equitable. No appeal or suit of error shall lie from an
10 order dismissing the proceedings; but nothing in that act
11 shall prevent the filing of a subsequent petition for similar
12 improvements or for a similar district, and the right to
13 renew the proceeding is expressly granted and authorized.

14 C. At any time after the filing of the petition
15 for the organization of a district and before the day fixed
16 for the hearing on it, the owner of any taxable property
17 within the proposed district may file a petition with the
18 court stating reasons why the property should not be included
19 in the district and requesting that the property be excluded
20 from it. The petition shall be verified and shall describe
21 the property sought to be excluded. The court shall hear the
22 petition and all objections to it at the time of the hearing
23 on the petition for organization and shall determine whether
24 the property should be excluded or included in the district.

25 D. In determining whether or not the petition for

1 the creation of a water and sanitation district shall be
2 granted, the district court shall consult and request an
3 opinion from:

4 (1) the state engineer to determine whether
5 the proposed district has adequate water rights to implement
6 the proposed improvements; and

7 (2) the environmental improvement division
8 of the department of environment to determine, as to the
9 technological feasibility of the proposed improvements,
10 whether the water proposed to be supplied is of an acceptable
11 quality to conform with the state regulations and whether the
12 liquid and solid waste disposal proposals can conform with
13 state regulations.

14 E. The court may deny the petition or may order
15 the petition to be modified, if the court, after hearing on
16 the petition, finds that:

17 (1) the proposed water and sewage
18 improvements cannot conform with the state regulations;

19 (2) the water and sewage improvements cannot
20 be implemented within a reasonable time taking into
21 consideration applications for state and federal grants;

22 (3) there is lacking an actual or impending
23 need for the water and sewage improvements proposed; or

24 (4) the boundaries of the proposed district
25 contain land that has no actual or impending need for the

1 water and sewage improvements or cannot be reasonably
2 expected to utilize the water and sewage improvements, unless
3 the land is otherwise required to be included in the proposed
4 district by rule or regulation of a federal agency.

5 F. Upon the hearing, if it appears that a petition
6 for the organization of a district has been properly signed
7 and presented and that the allegations of the petition are
8 true, the court shall order that the question of the
9 organization of the district be submitted to the taxpaying
10 electors of the district as set forth in the petition, as the
11 boundaries were modified by the court in determining that
12 only property to be benefited by the proposed improvements
13 should be included within the boundaries of the district, at
14 an election to be held for that purpose, and the order shall
15 designate one or more polling places within the district, and
16 for each polling place so designated, shall appoint three
17 taxpaying electors of the district as judges of the election
18 and two taxpaying electors of the district as clerks of the
19 election. The clerk of the court having jurisdiction shall
20 give published notice of the time and place of an election to
21 be held in the district not less than twenty days after the
22 first publication of the notice.

23 G. The election shall be held and conducted as
24 nearly as possible in the same manner as general elections in
25 this state. No special registration for the election is

1 required, but for the purpose of determining qualifications
2 of electors, the judges may use official records, and, in
3 addition, they may require the execution of an affidavit
4 concerning the qualifications of any elector.

5 H. At the election, the taxpaying electors of the
6 district shall vote for or against the organization of the
7 district, and if in favor thereof, shall vote for three
8 taxpaying electors of the district who shall constitute the
9 board of directors of the district, one to act until the
10 first biennial election, one until two years and one until
11 four years after the election, except that at the election in
12 a county where the petition for the district was signed by
13 the chairman of the board of county commissioners, the
14 taxpaying electors of the district shall vote only for or
15 against the organization of the district.

16 I. The judges of election shall certify the
17 returns of the election to the district court having
18 jurisdiction. If a majority of the votes cast at the
19 election are in favor of the organization, the district court
20 shall declare the district organized and give it a corporate
21 name by which, in all proceedings, it shall thereafter be
22 known, and designate the first board of directors elected,
23 except that a district created pursuant to a petition signed
24 by the chairman of the board of county commissioners of a
25 county shall appoint the first board of directors as provided

1 in Section 73-21-15.1 NMSA 1978. Thereupon the district
2 shall be a governmental subdivision of the state, except a
3 district created pursuant to a petition signed by the
4 chairman of the board of county commissioners of a county,
5 which district shall be a subdivision of the county. Every
6 district shall be a body corporate with all the powers of a
7 public or quasi-municipal corporation.

8 J. If an order is entered establishing the
9 district, the order is final and no appeal or writ of error
10 shall lie therefrom, and the entry of the order shall finally
11 and conclusively establish the regular organization of the
12 district against all persons except the state, in an action
13 in the nature of a writ of quo warranto, commenced by the
14 attorney general within thirty days after the decree
15 declaring the district organized. The organization of the
16 district shall not be directly or collaterally questioned in
17 any suit, action or proceeding except as expressly authorized
18 in the Water and Sanitation District Act."

19 Section 5. Section 73-21-15.1 NMSA 1978 (being Laws
20 1985, Chapter 155, Section 8) is amended to read:

21 "73-21-15.1. BOARD--DISTRICT CREATED BY A BOARD OF
22 COUNTY COMMISSIONERS.--Notwithstanding any other provision of
23 the Water and Sanitation District Act relating to election of
24 the board, all members of the first board of any district
25 created pursuant to a petition signed by the chairman of the

1 board of county commissioners of a county shall be appointed
2 by the board of county commissioners. The board shall
3 consist of five directors who are taxpaying electors of the
4 district appointed for staggered terms so that the terms of
5 two directors expire in one year and the terms of three
6 directors expire in two years. Thereafter, all directors
7 shall be elected to two-year terms pursuant to the provisions
8 of the Water and Sanitation District Act. Any director
9 appointed by any board of county commissioners shall be
10 eligible for election, provided that no member of a board
11 shall serve more than two consecutive terms."

12 Section 6. Section 73-21-55 NMSA 1978 (being Laws 1985,
13 Chapter 166, Section 3, as amended) is amended to read:

14 "73-21-55. DISTRICTS NOT SUBJECT TO UTILITY LAWS--
15 OPTION TO SUBMIT TO REGULATION.--

16 A. No district organized under the provisions of
17 the Water and Sanitation District Act is subject to the
18 jurisdiction of the public regulation commission or the terms
19 and provisions of the Public Utility Act, except as provided
20 in Subsections B and C of this section.

21 B. Any district organized under the provisions of
22 the Water and Sanitation District Act may elect by resolution
23 adopted by its board of directors to become subject to the
24 jurisdiction of the public regulation commission and to the
25 terms and provisions of the Public Utility Act; provided,

1 however, that in no event shall Sections 62-9-1 through
2 62-9-7 NMSA 1978 apply to any district making such an
3 election.

4 C. If the board of directors has not elected to
5 become subject to the jurisdiction of the public regulation
6 commission as provided for in Subsection B of this section, it
7 shall nevertheless file with the commission any rates, tolls
8 and charges proposed by the board, which shall be subject to
9 approval by the commission if twenty-five of the taxpaying
10 electors of the district or five percent of the taxpaying
11 electors of the district, whichever is less, file a petition
12 protesting the rates, tolls or charges with the commission
13 within thirty days after the board proposes the rates. Upon
14 the filing of such a petition, the commission shall hold a
15 hearing pursuant to rules that it shall promulgate to
16 implement this subsection."_____

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