

AN ACT

RELATING TO WATER AND SANITATION DISTRICTS; CLARIFYING SOURCES OF REVENUE TO BE USED IN REPAYMENT OF BONDS; PROVIDING FOR DISCLOSURE OF CERTAIN TAXPAYER INFORMATION TO A WATER AND SANITATION DISTRICT; REQUIRING DISTRICT CONFIDENTIALITY OF TAXPAYER INFORMATION RECEIVED; ALLOWING A REVIEW OF RATES BY THE DISTRICT COURT ON THE RECORD; CLARIFYING LANGUAGE.

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

Section 1. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.--It is unlawful for an employee of the department or a former employee of the department to reveal to an individual other than another employee of the department information contained in the return of a taxpayer made pursuant to a law subject to administration and enforcement under the provisions of the Tax Administration Act or any other information about a taxpayer acquired as a result of the employee's employment by the department and not available from public sources, except:

A. to an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the information for tax purposes only and that the receiving state has enacted

a confidentiality statute similar to this section to which the representative is subject;

B. to a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of the information;

C. to the multistate tax commission, the federation of tax administrators or their authorized representatives; provided that the information is used for tax purposes only and is disclosed by the multistate tax commission or the federation of tax administrators only to states that have met the requirements of Subsection A of this section;

D. to another jurisdiction pursuant to an international fuel tax agreement; provided that the information is used for tax purposes only;

E. to a district court, an appellate court or a federal court:

(1) in response to an order thereof in an action relating to taxes or an action for tax fraud or any other crime that may affect taxes due to the state to which the state is a party and in which the information sought is about a taxpayer who is party to the action and is material to the inquiry, in which case only that information may be required to be produced in court and admitted in evidence

subject to court order protecting the confidentiality of the information and no more;

(2) in an action in which the department is attempting to enforce an act with which the department is charged or to collect a tax; or

(3) in any matter in which the department is a party and the taxpayer has put the taxpayer's own liability for taxes at issue, in which case only that information regarding the taxpayer who is party to the action may be produced, but this shall not prevent the disclosure of department policy or interpretation of law arising from circumstances of a taxpayer who is not a party;

F. to the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this subsection shall be construed to require any employee to testify in a judicial proceeding except as provided in Subsection E of this section;

G. information obtained through the administration of a law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that release of that information is not otherwise prohibited by law;

H. in a manner, for statistical purposes, that the information revealed is not identified as applicable to an individual taxpayer;

I. with reference to information concerning the tax on tobacco imposed by the Cigarette Tax Act to a committee of the legislature for a valid legislative purpose or to the attorney general for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;

J. to a transferee, assignee, buyer or lessor of a liquor license, the amount and basis of an unpaid assessment of tax for which the transferor, assignor, seller or lessee is liable;

K. to a purchaser of a business as provided in Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis of an unpaid assessment of tax for which the purchaser's seller is liable;

L. to a municipality of this state upon its request for a period specified by that municipality within the twelve months preceding the request for the information by that municipality:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary

and the municipality may agree; and

(2) information indicating whether persons shown on a list of businesses located within that municipality furnished by the municipality have reported gross receipts to the department but have not reported gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality.

The employees of municipalities receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than other employees of the municipality in question or the department;

M. to the commissioner of public lands for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts; the commissioner of public lands and employees of the commissioner are subject to the same provisions regarding confidentiality of information as employees of the department;

N. the department shall furnish, upon request by the child support enforcement division of the human services department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance. The child

support enforcement division personnel shall use such information only for the purpose of enforcing the support liability of the absent parents and shall not use the information or disclose it for any other purpose; the child support enforcement division and its employees are subject to the provisions of this section with respect to any information acquired from the department;

O. the department shall furnish to the department of information technology, by electronic media, a database containing New Mexico personal income tax filers by county, which shall be updated quarterly. The database information shall be used only for the purpose of producing the random jury list for the selection of petit or grand jurors for the state courts pursuant to Section 38-5-3 NMSA 1978. The database shall not contain any financial information. If any information in the database is revealed by an employee of the administrative office of the courts or the department of information technology to individuals other than employees of the administrative office of the courts, the state courts, the department of information technology or the department, the employee shall be subject to the penalty provisions of Section 7-1-76 NMSA 1978;

P. with respect to the tax on gasoline imposed by the Gasoline Tax Act, the department shall make available for public inspection at monthly intervals a report covering the

number of gallons of gasoline and ethanol blended fuels received and deducted and the amount of tax paid by each person required to file a gasoline tax return or pay gasoline tax in the state of New Mexico;

Q. the identity of a rack operator, importer, blender, supplier or distributor and the number of gallons reported on returns required under the Gasoline Tax Act, Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a rack operator, importer, blender, distributor or supplier, but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act;

R. the department shall release upon request only the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers to the New Mexico department of agriculture, the employees of which are thereby subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than employees of either the New Mexico department of agriculture or the department;

S. the department shall answer all inquiries concerning whether a person is or is not a registered taxpayer for tax programs that require registration, but nothing in this subsection shall be construed to allow the department to answer inquiries concerning whether a person has filed a tax

return;

T. upon request of a municipality or county of this state, the department shall permit officials or employees of the municipality or county to inspect the records of the department pertaining to an increase or decrease to a distribution or transfer made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease. The municipal or county officials or employees receiving information provided in this subsection shall not reveal that information to any person other than another employee of the municipality or the county, the department or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties. Information provided pursuant to provisions of this subsection that is revealed other than as provided in this subsection shall subject the person revealing the information to the penalty contained in Section 7-1-76 NMSA 1978;

U. to a county of this state that has in effect a local option gross receipts tax imposed by the county upon its request for a period specified by that county within the twelve months preceding the request for the information by that county:

(1) the names, taxpayer identification

numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a countywide basis or only for the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the county may agree;

(2) in the case of a local option gross receipts tax imposed by a county on a countywide basis, information indicating whether persons shown on a list of businesses located within the county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a countywide basis; and

(3) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of incorporated municipalities, information indicating whether persons on a list of businesses located in that county outside of the incorporated municipalities but within that county furnished by the county have reported gross receipts to the department

but have not reported gross receipts for that county outside of the incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by the county only on persons engaging in business in that county outside of the incorporated municipalities.

The officers and employees of counties receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if the information is revealed to individuals other than other officers or employees of the county in question or the department;

V. to authorized representatives of an Indian nation, tribe or pueblo, the territory of which is located wholly or partially within New Mexico, pursuant to the terms of a reciprocal agreement entered into with the Indian nation, tribe or pueblo for the exchange of that information for tax purposes only; provided that the Indian nation, tribe or pueblo has enacted a confidentiality statute similar to this section;

W. information with respect to the taxes or tax acts administered pursuant to Subsection B of Section 7-1-2 NMSA 1978, except that:

(1) information for or relating to a period prior to July 1, 1985 with respect to Sections 7-25-1 through

7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only to a committee of the legislature for a valid legislative purpose;

(2) except as provided in Paragraph (3) of this subsection, contracts and other agreements between the taxpayer and other parties and the proprietary information contained in those contracts and agreements shall not be released without the consent of all parties to the contract or agreement; and

(3) audit workpapers and the proprietary information contained in the workpapers shall not be released except to:

(a) the minerals management service of the United States department of the interior, if production occurred on federal land;

(b) a person having a legal interest in the property that is subject to the audit;

(c) a purchaser of products severed from a property subject to the audit; or

(d) the authorized representative of any of the persons in Subparagraphs (a) through (c) of this paragraph. This paragraph does not prohibit the release of proprietary information contained in the workpapers that is also available from returns or from other sources not subject to the provisions of this section;

X. information with respect to the taxes, surtaxes, advance payments or tax acts administered pursuant to Subsection C of Section 7-1-2 NMSA 1978;

Y. to the public regulation commission, information with respect to the Corporate Income and Franchise Tax Act required to enable the commission to carry out its duties;

Z. to the state racing commission, information with respect to the state, municipal and county gross receipts taxes paid by racetracks;

AA. upon request of a corporation authorized to be formed under the Educational Assistance Act, the department shall furnish the last known address and the date of that address of every person certified to the department as an absent obligor of an educational debt due and owed to the corporation or that the corporation has lawfully contracted to collect. The corporation and its officers and employees shall use that information only to enforce the educational debt obligation of the absent obligors and shall not disclose that information or use it for any other purpose;

BB. a decision and order made by a hearing officer pursuant to Section 7-1-24 NMSA 1978 with respect to a protest filed with the secretary on or after July 1, 1993;

CC. information required by a provision of the Tax Administration Act to be made available to the public by the

department;

DD. upon request by the Bernalillo county metropolitan court, the department shall furnish the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

EE. upon request by a magistrate court, the department shall furnish the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

FF. to the national tax administration agencies of Mexico and Canada; provided the agency receiving the information has entered into a written agreement with the department to use the information for tax purposes only and is subject to a confidentiality statute similar to this section;

GG. to a district attorney, a state district court grand jury or federal grand jury for an investigation of or proceeding related to an alleged criminal violation of the tax laws;

HH. to a third party subject to a subpoena or levy issued pursuant to the provisions of the Tax Administration Act, the identity of the taxpayer involved, the taxes or tax

acts involved and the nature of the proceeding;

II. to the gaming control board, tax returns of license applicants and their affiliates as provided in Subsection E of Section 60-2E-14 NMSA 1978;

JJ. any written ruling on questions of evidence or procedure made by a hearing officer pursuant to Section 7-1-24 NMSA 1978; provided that the name and identification number of the taxpayer requesting the ruling shall not be disclosed;

KK. to representatives of the workers' compensation administration, authorized by the director of the workers' compensation administration for this purpose, to facilitate the identification of taxpayers that are delinquent or noncompliant in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA 1978;

LL. to the secretary of workforce solutions or the secretary's delegate for use in enforcement of unemployment insurance collections pursuant to the terms of a reciprocal agreement entered into with the secretary of workforce solutions for exchange of information; the secretary of workforce solutions and employees of the workforce solutions department are subject to the provisions regarding confidentiality of information contained in the Tax Administration Act;

MM. information that the department is authorized by the Tax Administration Act to release to a local body that

licenses professions or occupations pursuant to Chapter 36, Article 2 NMSA 1978 or Chapter 61 NMSA 1978;

NN. upon request for inspection by the public pursuant to Section 7-1-29 NMSA 1978, the department shall furnish the taxpayer name, refund or credit amount, tax program or business tax credit and the date the refund or credit was issued; nothing in this subsection shall be construed to require the release of information that would violate an agreement between the state and the federal internal revenue service for sharing of information or any provision or rule of the federal Internal Revenue Code to which a state is subject; and

OO. to a water and sanitation district of this state that has in effect a water and sanitation gross receipts tax imposed by the water and sanitation district upon its request for a period specified by that water and sanitation district within the twelve months preceding the request for the information by that water and sanitation district:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that water and sanitation district; the department may also release the information described in this paragraph quarterly or upon any other periodic basis to which the secretary and the district agree; and

(2) information indicating whether the persons shown on a list of businesses within the water and sanitation district have reported gross receipts to the department but have not reported gross receipts for that water and sanitation district.

The officers and employees of water and sanitation districts receiving information as provided in this subsection shall be subject to the penalty in Section 7-1-76 NMSA 1978 if the information is revealed to persons other than officers or employees of the district in question or the department."

Section 2. Section 73-21-4 NMSA 1978 (being Laws 1943, Chapter 80, Section 3, as amended) is amended to read:

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

A. "board" means the board of directors of a district;

B. "district" means a water and sanitation district that is established pursuant to the Water and Sanitation District Act and that is either entirely within or partly within and partly without one or more counties, provided those parts or parcels of the district lying in two or more counties are contiguous with one another, and further provided, a district created pursuant to a petition signed by the board of county commissioners of a county shall be entirely within that county;

C. "fee-for-service system" means a garbage or refuse collection system established by a district to fully implement the purposes for which the district is created and for which a service is offered, a fee is established by the board and the fee is paid by the customers of the district;

D. "proponents and opponents" means residents or nonresidents of a district who pay or are liable for paying rates, tolls, fees and charges assessed by that district;

E. "publication" means giving notice once a week for three consecutive weeks in at least one newspaper of general circulation in the county in which all or the major portion of the district is located; however, it is not necessary that publication be made on the same day of the week in each of the three weeks, but not less than fourteen days, excluding the day of first publication, shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication;

F. "sewage system" includes all constructions for collection, transportation, pumping, treatment and final disposition of sewage;

G. "taxpaying elector of a district", "qualified elector" or "elector" means a person who is registered to vote in any precinct in the state and who:

(1) is a resident of the district;

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

(3) is a nonresident of the district who either has paid or incurred a general tax liability on real property within the district in the twelve months immediately preceding a designated time or event or who is purchasing real property within the district under a real estate contract where a property tax has been paid or incurred on the real property in the twelve months immediately preceding a designated time or event; and

H. "utility" means a water system, sewer system or other fee-for-service system implemented by the district."

Section 3. Section 73-21-14 NMSA 1978 (being Laws 1943, Chapter 80, Section 13, as amended) is amended to read:

"73-21-14. ELECTIONS.--

A. In any district, except a district created pursuant to a petition signed by the chair of the board of county commissioners of a county, on the second Tuesday of January in the second calendar year after the organization of the district and on the second Tuesday of January every second year thereafter, there shall be elected by the taxpaying electors of the district one member of the board to serve for a term of six years, except that if the district elects to adopt four-year terms, the member shall serve for a term of

four years.

B. In any district created pursuant to a petition signed by the chair of the board of county commissioners of a county, one year after the organization of the district and every second year thereafter, there shall be elected by the taxpaying electors of the district at least two, but no more than three, members of the board to serve for a term of two years.

C. Not later than thirty days before any election pursuant to Subsection A or B of this section, nominations may be filed with the secretary of the board, and, if a nominee does not withdraw the nominee's name before the first publication of the notice of election, the name shall be placed on the ballot. The board shall provide for holding such election and shall appoint judges to conduct it. The secretary of the district shall give notice of election by publication and shall arrange such other details in connection with the election as the board may direct. If within ninety days prior to a board election, the district publishes materials that describe the qualifications, experience and accomplishments of incumbents, equal space shall be made available without charge for similar information provided by opponents seeking a position on the board. The returns of the election shall be certified to and shall be canvassed and declared by the board. The candidate receiving the most votes

shall be elected. Any new member of the board shall qualify in the same manner as members of the first board qualify."

Section 4. Section 73-21-28 NMSA 1978 (being Laws 1943, Chapter 80, Section 25) is amended to read:

"73-21-28. BOARD RESOLUTION--INDEBTEDNESS--ELECTION.-- Whenever the board shall, by resolution, determine that the interest of the district and the public interest or necessity demand the acquisition, construction, installation or completion of any works or other improvements or facilities, or the making of any contract with the United States or other persons or corporations, to carry out the objects or purposes of the district, requiring the creation of a general obligation indebtedness of five thousand dollars (\$5,000) or more, secured by property tax revenue from within the district, the board shall order the submission of the proposition of issuing the obligations or bonds or creating other indebtedness to the qualified taxpaying electors of the district at an election held for that purpose. Any such election may be held separately or may be consolidated or held concurrently with any other election authorized by the Water and Sanitation District Act. The declaration of public interest or necessity required in this section and the provision for the holding of the election may be included within one and the same resolution. The resolution, in addition to the declaration of public interest or necessity,

shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the amount of principal of the indebtedness to be incurred and the maximum rate of interest to be paid on the indebtedness. The resolution shall also fix the date upon which the election shall be held and the manner of holding it and the method of voting for or against the incurring of the proposed indebtedness. The resolution shall also fix the compensation to be paid the officers of the election and shall designate the polling place and shall appoint, for each polling place, from the electors of the district, the officers of the election consisting of three judges, one of whom shall act as clerk."

Section 5. Section 73-21-36 NMSA 1978 (being Laws 1951, Chapter 195, Section 1) is amended to read:

"73-21-36. ACQUISITION, CONSTRUCTION OR IMPROVEMENT OF SYSTEMS--JOINT REVENUE BONDS.--

A. Whenever the board of a district shall, by resolution, determine that interest or necessity requires the acquisition, construction, repair, extension, improvement or betterment of a water system, sewer system or other fee-for-service system, districts are authorized to issue revenue bonds or obtain loans, payable solely out of the net income, to be derived from the operation of a publicly owned water

system or sewer system or from services rendered by the district for a fee, and to pledge, irrevocably, the income to the payment of the bonds.

B. The proceeds of the bonds are to be used solely for the purchasing, acquiring, constructing and making of necessary improvements, extensions, repairs and betterments of the water system, sewer system or other fee-for-service system for the purchase and acquiring of wells, cisterns, reservoirs or other sources of water supply and pumping plants, sewage disposal plants or other machinery necessary for the operation of those facilities and the land and real estate upon which those facilities are situated or to be situated.

C. Joint revenue bonds may be issued for the acquisition, construction, extension, enlargement or betterment of a joint water system and joint sewer system or other joint fee-for-service system and the income of one or more of the utilities may be pledged to secure the repayment of the joint bonds."

Section 6. Section 73-21-37 NMSA 1978 (being Laws 1951, Chapter 195, Section 2, as amended) is amended to read:

"73-21-37. INTEREST--MATURITY--FORM--METHOD OF SALE.--

A. Revenue bonds issued under the provisions of the Water and Sanitation District Act shall bear interest at not to exceed six percent per year, payable annually or semiannually, shall be payable at the option of the district,

at the end of ten years from the date thereof; and due by their terms in not more than twenty years from date hereof; as determined by the district, shall be serial in form and maturity and numbered from one upward, consecutively, or may consist of one bond payable, at one time or in installments, and shall be sold for cash, at not less than par, and at either public or private sale.

B. All prior revenue bond issues of districts where one bond was issued in lieu of multiple bonds are validated."

Section 7. Section 73-21-38 NMSA 1978 (being Laws 1951, Chapter 195, Section 3) is amended to read:

"73-21-38. REVENUE BOND ISSUANCE.--The board of a district issuing revenue bonds under the provisions of the Water and Sanitation District Act may authorize the issuance of the bonds by resolution adopted by the affirmative vote of two-thirds of all the members of the board at a regular or special meeting called for that purpose. At the meeting, the necessity of the issuance of the revenue bonds shall be declared and, when issued, shall be signed by the president of the board and attested by its secretary, with the seal of the district affixed to the bonds."

Section 8. Section 73-21-39 NMSA 1978 (being Laws 1951, Chapter 195, Section 4) is amended to read:

"73-21-39. BONDS COLLECTIBLE FROM OPERATING REVENUES.--

It is declared that revenue bonds, issued under the provisions of the Water and Sanitation District Act, except for those general obligation bonds described in Section 73-21-43 NMSA 1978, shall not be considered to be general obligations of the district issuing them and shall be collectible only out of the net revenues derived from the operation of the water or sewer system, or joint water and sewer systems or from services rendered by the district for a fee, whose income is so pledged. Each of the bonds of any issue of revenue bonds issued under the provisions of the Water and Sanitation District Act, with the exception of general obligation bonds, shall recite on its face that it is payable and collectible solely from the revenues derived from the operations of the water or sewer system or joint water and sewer system or from the services rendered by the district for a fee, the income of which is so pledged, and that the holders of the bonds shall not look to any general or other fund for the payment of principal and interest of the obligation."

Section 9. Section 73-21-40 NMSA 1978 (being Laws 1951, Chapter 195, Section 5, as amended) is amended to read:

"73-21-40. RATES--BONDHOLDERS' REMEDY AND TAXPAYER ELECTOR.--The board of each district issuing revenue bonds under the provisions of the Water and Sanitation District Act shall establish rates or fees for services rendered by the district utility systems to create an income sufficient to pay

all reasonable expenses of operation and create a net revenue that shall be sufficient to pay interest coupons on the revenue bonds, as they mature, and to provide a sinking fund that shall be adequate to discharge the bonds when they mature. It is a board's duty to maintain the rates and fees continuously until the bonds issued by that board have been fully liquidated. In the event of a board's failure or refusal to do as required by this section, all the members of the board are subject to the penalties provided in Section 73-21-42 NMSA 1978, and any bondholder or a number of taxpayer electors of the district amounting to twenty-five persons or five percent of the electors, whichever is less, has the right to apply to the district court of the county where a district is located for a mandatory order requiring the establishment by a board of rates or fees that shall be adequate to meet the requirements of that act."

Section 10. Section 73-21-41 NMSA 1978 (being Laws 1951, Chapter 195, Section 6) is amended to read:

"73-21-41. RESTRICTED USE OF BOND FUNDS.--Whenever under the provisions of the laws of this state a district obtains money or credits from the issuance of its bonds or other evidence of indebtedness for the purpose of the purchase, construction or extension or repair of district utilities in the district, it shall be unlawful to divert, use or expend any of the money or credits in the purchase,

construction or extension or repair of any other water, sewer or fee-for-service system or for any purpose other than that for which the money or credits were obtained."

Section 11. Section 73-21-42 NMSA 1978 (being Laws 1951, Chapter 195, Section 7) is amended to read:

"73-21-42. VIOLATIONS--PENALTIES.--The members of any board and any officer or agent of any district violating the provisions of the Water and Sanitation District Act shall be deemed guilty of a misdemeanor and upon conviction in the district court shall be subject to a fine not to exceed five hundred dollars (\$500) or by imprisonment in the county jail not to exceed six months or both in the discretion of the court trying the case."

Section 12. Section 73-21-43 NMSA 1978 (being Laws 1963, Chapter 261, Section 8) is amended to read:

"73-21-43. VALIDATION--EXISTING DISTRICTS.--All districts previously created under the provisions of the Water and Sanitation District Act and all proceedings previously taken by the districts, including any elections that may have been held in the districts on the question of the issuance of bonds and that have carried, are validated, ratified and confirmed. Where district bonds have been previously approved by the voters but not yet issued, the bonds may be issued under the provisions of the Water and Sanitation District Act, and where the bonds are to be general obligations of the

issuing district, the bonds shall be payable from taxes to be levied on all taxable property in the district as required by the Water and Sanitation District Act. All bonds approved by the voters and to be issued shall, when issued, constitute valid obligations of the districts in accordance with their terms."

Section 13. Section 73-21-44 NMSA 1978 (being Laws 1967, Chapter 187, Section 2) is amended to read:

"73-21-44. SALE OF SYSTEM--ESCROW OF PROCEEDS.--A district may sell or otherwise dispose of all or any part of its water facilities, sewer facilities or both, including both real and personal property, without an election. A sale or other disposition of district facilities shall be authorized by resolution adopted by the affirmative vote of not less than a majority of all members of the board. A district may immediately apply the proceeds derived from the sale or other disposition of its facilities to the retirement of outstanding bonds or place the proceeds in escrow in a commercial bank or trust company, either a state or national banking institution that possesses and is exercising trust powers, that is located within New Mexico and that is a member of the federal deposit insurance corporation, to be applied to the payment of any outstanding bonds upon their presentation for payment. Any escrow is not necessarily limited to proceeds of the sale or other disposal, but may include other money available for its

purpose. Any proceeds in escrow, pending use pursuant to the provisions of this section, may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States or any other legal investment. The proceeds and investments in escrow, together with any interest to be derived from the investment, shall be used only to pay charges of the escrow agent, which are expressly made payable from the escrow, and to pay as many bonds as possible as they become due at their respective maturities or due at a designated prior redemption date in connection with which the board shall exercise a prior redemption option. A purchaser of any facilities that may be sold or otherwise disposed of shall in no manner be responsible for the application of the proceeds by the district or any of its officers, agents or employees. Nothing in this section shall be construed as changing or modifying any contractual agreement or covenant concerning any outstanding bonds as may be provided in the proceedings authorizing any outstanding bonds or otherwise appertaining to them."

Section 14. Section 73-21-45 NMSA 1978 (being Laws 1967, Chapter 187, Section 3) is amended to read:

"73-21-45. REFUNDING BONDS.--

A. Any bonds issued by any district may be refunded

in the name of the district issuing the bonds being refunded without an election by the district issuing them or any successor bonds.

B. The issuance of refunding bonds shall be to:

(1) refund, pay and discharge all or any part of the outstanding bonds, including any interest on the bonds in arrears or about to become due within three years from the date of the refunding bonds;

(2) avoid or terminate any default in the payment of interest on and principal of the bonds to reduce interest costs or effect other economies; or

(3) modify or eliminate restrictive contractual limitations appertaining to the issuance of refunding bonds or for any combination of the purposes permitted by the provisions of this section.

C. Refunding bonds shall be authorized by a resolution adopted by the affirmative vote of not less than a majority of all members of the board. Any bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the times and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise appertaining to the bonds being refunded, except for any bonds that are voluntarily

surrendered for exchange or payment by the holder. Refunding bonds may be delivered in exchange for the outstanding bonds refunded or may be sold at either public or private sale. The provisions of the Community Service District Act shall not apply to any refunding bonds of any district."

Section 15. Section 73-21-46 NMSA 1978 (being Laws 1967, Chapter 187, Section 4) is amended to read:

"73-21-46. LIMITATIONS UPON ISSUANCE.--No bonds shall be refunded under the Water and Sanitation District Act unless the bonds either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds, or unless the holders of them voluntarily surrender them for exchange or payment. Provision shall be made for paying the bonds refunded within that period of time. Interest on bonds may be increased, but it may not be increased to a rate exceeding six percent a year. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds, but only to the extent that any costs incidental to the refunding bonds or any interest on the bonds refunded in arrears or about to become due within three years from the date of the refunding bonds, or both the incidental costs and interest, are capitalized with the proceeds of refunding bonds. The principal amount of the refunding bonds may also exceed the principal amount of the refunded bonds if the aggregate principal and interest

costs of the refunding bonds do not exceed the unaccrued costs of the bonds refunded. The principal amount of the refunding bonds may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds."

Section 16. Section 73-21-47 NMSA 1978 (being Laws 1967, Chapter 187, Section 5) is amended to read:

"73-21-47. PROCEEDS OF REFUNDING BONDS.--

A. The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company, either a state or national banking institution that possesses and is exercising trust powers, that is located within New Mexico and that is a member of the federal deposit insurance corporation, to be applied to the payment of the bonds being refunded upon their presentation for payment; provided, to the extent any incidental expenses have been capitalized, that the refunding bond proceeds may be used to defray such expenses; and any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest on them and the principal of them, or both interest and principal, or may be deposited in a reserve as the board may determine.

B. Nothing in this section requires the

establishment of an escrow account if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amount necessary to retire the refunded bonds within that time is deposited with the paying agent for the refunded bonds.

C. An escrow account shall not be limited to proceeds of refunding bonds but may include other money available for the account's purpose. Any proceeds in escrow may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States.

D. The proceeds and investments in escrow, together with any interest derived from the investment of the escrow account, shall be sufficient to pay principal, interest, any prior redemption premium due and any charges of the escrow agent payable from the escrow account and to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date on which the board shall exercise a prior redemption option.

E. Any purchaser of any refunding bond issued pursuant to the Water and Sanitation District Act is not responsible for the application of the refunding bond proceeds by the district or any of its officers, agents or employees."

Section 17. Section 73-21-48 NMSA 1978 (being Laws 1967,

Chapter 187, Section 6) is amended to read:

"73-21-48. REFUNDING BONDS--DETAIL--FORM.--Refunding bonds shall bear interest payable annually or semiannually, and the refunding bonds shall be due and payable either as term or serial bonds as determined by the board; provided that no refunding bond shall mature more than twenty-five years from the date of the refunding bond. The form and terms of the refunding bonds, including provisions for their payment and redemption, shall be determined by the board. If the board so determines in the authorizing resolution, the refunding bonds may be redeemable prior to maturity without or with the payment of a premium, which may be in any amount determined by the board."

Section 18. Section 73-21-49 NMSA 1978 (being Laws 1967, Chapter 187, Section 7) is amended to read:

"73-21-49. COMBINATION OF ISSUES.--Bonds for refunding one or more issues originally authorized for one or more purposes and bonds for any other purpose authorized in the Water and Sanitation District Act may be issued separately or issued in combination in one series or more by any district. Bonds payable solely from revenues of any utility or combination of utilities of the district shall not be refunded by general obligation bonds that are payable from general ad valorem property taxes unless authorized at an election as provided in the Water and Sanitation District Act."

Section 19. Section 73-21-55 NMSA 1978 (being Laws 1985, Chapter 166, Section 3, as amended) is amended to read:

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

A. Any district organized under the provisions of the Water and Sanitation District Act may elect by resolution adopted by its board of directors to become subject to the jurisdiction of the public regulation commission and to the terms and provisions of the Public Utility Act; provided, however, that in no event shall Sections 62-9-1 through 62-9-7 NMSA 1978 apply to any district making such an election.

B. If the board has not elected to become subject to the jurisdiction of the public regulation commission:

(1) at least thirty days after publication of a notice of the board's intention to adjust rates, tolls, fees or charges, the board shall conduct a public hearing on the proposed resolution, at which time, after hearing proponents and opponents, the board may reject, amend or adopt the resolution adjusting the rates, tolls, fees or charges;

(2) within thirty days after publication of the resolution adjusting rates, tolls, fees or charges, the new rates, tolls, fees or charges may be appealed by a taxpaying elector to the district court of the county in which the district is located; and

(3) the district court shall consider the petition to overturn the adjustments, based on the record of the board hearing in which the resolution was adopted, under the court's rules governing review by a district court of administrative decisions or orders.

C. If the board of any district located in a class A county with a population according to the 2000 federal decennial census of more than one hundred twenty-five thousand and less than one hundred thirty-five thousand has not elected to become subject to the jurisdiction of the public regulation commission:

(1) at least thirty days after publication of a notice of the board's intention to adjust rates, tolls, fees or charges, the board shall conduct a public hearing on the proposed resolution;

(2) at the expense of the board, the board shall appoint a hearing officer to conduct the public hearing to be chosen from a list of hearing officers provided by the commission, and shall engage a court reporter to record the hearing and produce a verbatim written record of the hearing;

(3) the board's hearing officer shall:

(a) hear proponents and opponents of the proposal;

(b) issue a decision rejecting, amending or adopting the resolution adjusting the rates, tolls, fees or

charges; and

(c) within thirty days following the hearing, file the decision with the board;

(4) within seven days of receipt of the decision, the board shall mail a copy of the decision to each proponent and opponent who appeared at the hearing or who requested a written copy of the decision, and the board shall post the decision on the district's web site;

(5) the board shall pay all expenses of the public hearing and may charge a reasonable fee for production of copies of the record; provided that any citizen has the right to obtain a copy of the record on payment of the fee;

(6) within twenty days following the board's mailing of the decision of the hearing officer, the decision may be appealed to the board by a taxpaying elector;

(7) within thirty days of receipt of an appeal of the hearing officer's decision, the board shall, based on a review of the record of the first public hearing, reject, approve or amend the decision of the hearing officer and shall mail a copy of the board's decision within seven days to each proponent and opponent who appeared at the hearing or who requested a written copy of the decision, and the board shall post the decision on the district's web site;

(8) within thirty days following mailing of the board's decision, a taxpaying elector may appeal the decision

of the board to the district court of the county in which the district is located; and

(9) the district court shall consider the petition to overturn the adjustments, based on the record certified by the court reporter of the public hearing and the decision of the board, under the court's rules governing review by a district court of administrative decisions or orders."
