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SENATE BILL 731

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO DISTRICTS; CHANGING CERTAIN PROVISIONS IN THE
WATER AND SANITATION DISTRICT ACT.

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

Section 1. Section 73-21-9 NMSA 1978 (being Laws 1943,
Chapter 80, Section 8, as amended) is amended to read:

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

A. On the day fixed for the hearing or at an
adjournment of it, the court shall ascertain from the tax
rolls of the county in which the district is located or into
which it extends, from the last official registry list and
from any other evidence which may be adduced, the total number
of taxpaying electors [~~residing within the proposed~~] of the
district.

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

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

24 D. In determining whether or not the petition for
25 the creation of a water and sanitation district shall be

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1 granted, the district court shall consult and request an
2 opinion from:

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

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

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

15 (1) the proposed water and sewage
16 improvements cannot conform with the state regulations;

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

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

22 (4) the boundaries of the proposed district
23 contain land that has no actual or impending need for the
24 water and sewage improvements or cannot be reasonably expected
25 to utilize the water and sewage improvements, unless the land

1 is otherwise required to be included in the proposed district
2 by rule or regulation of a federal agency.

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

21 G. The election shall be held and conducted as
22 nearly as possible in the same manner as general elections in
23 this state. No special registration for the election is
24 required, but for the purpose of determining qualifications of
25 electors, the judges may use the last official registry lists

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1 of electors residing in the district, and, in addition, they
2 may require the execution of an affidavit concerning the
3 qualifications of any elector.

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

14 I. The judges of election shall certify the
15 returns of the election to the district court having
16 jurisdiction. If a majority of the votes cast at the election
17 are in favor of the organization, the district court shall
18 declare the district organized and give it a corporate name by
19 which, in all proceedings, it shall thereafter be known, and
20 designate the first board of directors elected, except that a
21 district created pursuant to a petition signed by the chairman
22 of the board of county commissioners of a county shall appoint
23 the first board of directors as provided in Section 73-21-15.1
24 NMSA 1978. Thereupon the district shall be a governmental
25 subdivision of the state, except a district created pursuant

. 135676. 1

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1 to a petition signed by the chairman of the board of county
2 commissioners of a county, which district shall be a
3 subdivision of the county. Every district shall be a body
4 corporate with all the powers of a public or quasi-municipal
5 corporation.

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

17 Section 2. Section 73-21-15.1 NMSA 1978 (being Laws
18 1985, Chapter 155, Section 8) is amended to read:

19 "73-21-15.1. BOARD--DISTRICT CREATED BY A BOARD OF
20 COUNTY COMMISSIONERS.--Notwithstanding any other provision of
21 the Water and Sanitation District Act relating to election of
22 the board, all members of the first board of any district
23 created pursuant to a petition signed by the chairman of the
24 board of county commissioners of a county shall be appointed
25 by the board of county commissioners. The board shall consist

. 135676. 1

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