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SENATE BILL 91

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO LOCAL GOVERNMENT; ENACTING THE WATER CATCHMENT SYSTEM FINANCING DISTRICT ACT; AUTHORIZING MUNICIPALITIES AND COUNTIES TO CREATE WATER CATCHMENT FINANCING DISTRICTS; AUTHORIZING THE IMPOSITION OF SPECIAL ASSESSMENTS ON REAL PROPERTY; AUTHORIZING ISSUANCE OF SPECIAL ASSESSMENT BONDS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Water Catchment System Financing District Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Water Catchment System Financing District Act:

A. "county" means any county, including an H class county;

B. "debt service" means the principal of, interest on and premium, if any, on the bonds, when due, whether at

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1 maturity or prior redemption and fees and costs of agents
2 necessary to handle the bonds and the costs of credit
3 enhancement or liquidity support;

4 C. "district" means a water catchment financing
5 district formed pursuant to the Water Catchment System
6 Financing District Act by a municipality or by a county in an
7 unincorporated area or in an incorporated area with the
8 municipality's consent;

9 D. "district board" means the board of directors of
10 the district, which shall be composed of the members of the
11 governing body of the municipality or county in which the
12 district is located, or, at the option of the governing body,
13 by five directors appointed by the governing body as provided
14 in Section 8 of the Water Catchment System Financing District
15 Act. The board shall serve until replaced by elected
16 directors, which shall occur no later than six years after the
17 date on which the resolution establishing the district is
18 enacted;

19 E. "election" means an election held in compliance
20 with the provisions of the Water Catchment System Financing
21 District Act;

22 F. "governing body" means the body or board that by
23 law is constituted as the governing body of the municipality or
24 county in which the district is located;

25 G. "municipality" means an incorporated city,

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1 village or town;

2 H. "owner" means the person listed as the owner of
3 real property in the district on the current property tax
4 assessment roll;

5 I. "special assessment" means a levy imposed
6 against real property within a district; and

7 J. "water catchment improvement" means a system
8 that is designed and constructed to capture water runoff from
9 the roof of a building and to store the water for use on the
10 property in lieu of water supplied by a water company or other
11 source to maintain landscaping, trees or gardens or for other
12 outdoor use on the property.

13 SECTION 3. [NEW MATERIAL] WATER CATCHMENT SYSTEM
14 FINANCING DISTRICTS AUTHORIZED.--

15 A. A governing body of a municipality or county may
16 form a district for the purpose of encouraging, accommodating
17 and financing water catchment improvements on property within
18 the municipality or county. A district shall include only
19 property for which an owner executes an agreement consenting to
20 the inclusion of the property within the district and to the
21 imposition of a special assessment on the property for the
22 purpose of financing water catchment systems.

23 B. A district formed by a municipality shall be
24 wholly within the boundaries of the municipality. A district
25 formed by a county shall be wholly within the boundaries of the

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1 county and shall be in the unincorporated area of the county,
2 or may include an incorporated area with the municipality's
3 consent. A district may include contiguous and noncontiguous
4 property.

5 C. Except as otherwise provided in this section, a
6 district shall be a political subdivision of the state,
7 separate and apart from the municipality or county.

8 SECTION 4. [NEW MATERIAL] RESOLUTION DECLARING INTENTION
9 TO FORM A DISTRICT.--

10 A. A governing body may adopt a resolution
11 declaring its intention to form a district. The resolution
12 shall state the following:

13 (1) the purposes for which the district is to
14 be formed;

15 (2) that the district shall include only
16 property for which the owner has agreed to the inclusion of the
17 property within the district and that inclusion of property may
18 occur subsequent to the adoption of the resolution forming the
19 district;

20 (3) the process by which an owner can execute
21 an agreement to include property in the district;

22 (4) a description of the specific types of
23 water catchment improvements that will be eligible for the
24 financing provided pursuant to the Water Catchment System
25 Financing District Act;

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1 (5) that inclusion of property in the district
2 will result in the imposition of special assessments on the
3 property to pay the costs of the approved water catchment
4 improvements, financing and administrative fees;

5 (6) the method of calculating the amount of
6 the special assessment and the manner of collection of the
7 special assessment;

8 (7) that standards and requirements will be
9 set by the district board for water catchment systems to be
10 installed on property in the district;

11 (8) a reference to the Water Catchment System
12 Financing District Act; and

13 (9) that the district will be governed by a
14 district board composed of the members of the governing body or
15 by five directors to be appointed by the governing body.

16 B. The resolution shall direct that a hearing on
17 formation of the district be scheduled and that notice be
18 published as required for public hearings of the governing
19 body.

20 SECTION 5. [NEW MATERIAL] HEARING--FORMATION OF A
21 DISTRICT.--

22 A. At the hearing on formation of a district, the
23 governing body shall accept and pass on written and oral
24 testimony and evidence presented in support of or in opposition
25 to the formation of the district. After hearing the written

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1 and oral testimony, the governing body shall determine whether
2 the district should be formed based on the interests,
3 convenience or necessity of the owners in the proposed district
4 and the citizens of the municipality or county in which the
5 proposed district would be located.

6 B. If the governing body determines that the
7 district should be formed, it shall adopt an ordinance ordering
8 that the district be formed and identifying the method by which
9 owners can execute agreements to have their property included
10 in the district. The ordinance shall state that the district
11 shall be governed by a district board consisting of members of
12 the governing body, or, upon determination of the governing
13 body, by five directors appointed by the governing body. The
14 ordinance shall state that one or more resolutions shall be
15 adopted by the district board to identify the property to be
16 included in the district and the special assessment to be
17 imposed on that property.

18 C. The governing body shall cause a copy of the
19 ordinance ordering formation of the district to be delivered to
20 the county assessor and county treasurer of the county in which
21 the district is located, the taxation and revenue department
22 and the local government division of the department of finance
23 and administration.

24 D. Subsequent to the formation of the district,
25 property may be included in the district by execution of an

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1 agreement by the owner and the district board agreeing to the
2 inclusion of the property and the imposition of a special
3 assessment on the property and the district board shall adopt a
4 resolution to this effect. The district shall deliver a copy
5 of the resolution to the county assessor and county treasurer
6 of the county in which the district is located. A copy of the
7 resolution and a description of the property included in the
8 district shall be recorded with the county clerk of the county
9 in which the district is located.

10 SECTION 6. [NEW MATERIAL] SPECIAL ASSESSMENT--LIEN
11 CREATED.--

12 A. The district board may impose a special
13 assessment on property within the district to facilitate the
14 financing of water catchment improvements to the property. The
15 special assessment shall be sufficient in the case of each
16 property to pay the costs of financing the water catchment
17 improvements, including the costs of bond issuance, debt
18 service and the administrative costs of the district and the
19 municipality or county in which the district is located.

20 B. The special assessment shall be levied and
21 collected at the same time and in the same manner as property
22 taxes are levied and collected, except to the extent that the
23 district board has provided for other imposition and collection
24 procedures. Money derived from the imposition of the special
25 assessment shall be kept separately from other funds of the

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1 governing body.

2 C. A special assessment shall constitute a lien on
3 the property, which shall be effective during the period in
4 which the assessment is imposed and shall have priority over
5 all other liens except liens for ad valorem property taxes.

6 D. The obligation to pay the special assessment may
7 be prepaid and permanently satisfied, and the district board
8 shall specify the conditions under which this may be achieved.

9 SECTION 7. [NEW MATERIAL] SPECIAL ASSESSMENT BONDS.--

10 A. A district may issue one or more series of
11 special assessment bonds to provide money for water catchment
12 improvements to property in the district, and the bonds may be
13 payable from the special assessments levied pursuant to one or
14 more assessment resolutions.

15 B. For any special assessment bonds issued pursuant
16 to the Water Catchment System Financing District Act, the
17 district board shall prescribe the denominations of the bonds,
18 the principal amount of each issue and the form of the bonds
19 and shall establish the maturities, which shall not exceed
20 twenty years, interest payment dates and interest rates,
21 whether fixed or variable, not exceeding the maximum rate
22 stated in the resolution of the district board. The bonds may
23 be sold by competitive bid or negotiated sale for public or
24 private offering at, below or above par. The proceeds of the
25 bonds shall be deposited with the treasurer, or with a trustee

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1 or agent designated by the district board, to the credit of the
2 district to be withdrawn for the purposes provided by the Water
3 Catchment System Financing District Act. Pending that use, the
4 proceeds may be invested as determined by the district. The
5 bonds shall be made payable as to both principal and interest
6 solely from revenues of the district, shall specify the
7 revenues pledged for such purposes and shall contain such other
8 terms, conditions, covenants and agreements as the district
9 board deems proper.

10 C. No holder of special assessment bonds issued
11 pursuant to the Water Catchment System Financing District Act
12 may compel any exercise of the taxing power of the district,
13 municipality or county to pay the bonds or the interest on the
14 bonds. Special assessment bonds issued pursuant to that act
15 are not a debt or general obligation of the county or the
16 municipality in which the district is located, nor is the
17 payment of special assessment bonds enforceable out of any
18 money other than the revenue pledged to the payment of the
19 bonds.

20 D. Pursuant to this section, the district may issue
21 and sell refunding bonds to refund any special assessment bonds
22 of the district authorized by the Water Catchment System
23 Financing District Act. Refunding bonds issued pursuant to
24 this section shall have a final maturity date no later than the
25 final maturity date of the bonds being refunded.

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1 SECTION 8. [NEW MATERIAL] APPOINTMENT OF DIRECTORS--
2 QUALIFICATIONS--TERMS--RESUMPTION OF GOVERNANCE BY THE
3 GOVERNING BODY.--

4 A. The governing body, at its option, may authorize
5 the appointment of a separate district board. In the case of
6 an appointed district board, the directors shall serve an
7 initial term of six years. If a vacancy occurs on the district
8 board because of death, resignation or the inability of a
9 director to discharge the duties of director, the governing
10 body shall appoint a director to fill the vacancy who shall
11 hold office for the remainder of the unexpired term until the
12 appointed director's successor is appointed or elected.

13 B. At the end of the appointed director's initial
14 term, the governing body shall resume governance of the
15 district as its board, or, at its option, shall hold an
16 election of directors by majority vote of the property owners
17 in the district pursuant to Section 9 of the Water Catchment
18 System Financing District Act.

19 SECTION 9. [NEW MATERIAL] NOTICE AND CONDUCT OF ELECTION
20 FOR DISTRICT BOARD.--

21 A. An election pursuant to the Water Catchment
22 System Financing District Act for the purpose of election of
23 directors of a district board shall be called by mailing
24 notices to the owners included in the district not less than
25 twenty days before the election. The property tax assessment

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1 rolls shall be used to determine the owners included in the
2 district. Notice shall also be published one time in a
3 newspaper of general circulation in the municipality or county.
4 The notice shall state the purpose of the election, the date of
5 the election, the place that the election will be held, the
6 hours that the polls will be open and provisions for voting by
7 mail.

8 B. Within thirty days after an election, the
9 district board shall meet and canvass the returns, determining
10 the number of votes properly cast. A majority of the votes
11 cast at the election shall be required for election of a member
12 to the district board.

13 SECTION 10. [NEW MATERIAL] POWERS AND DUTIES OF A
14 DISTRICT BOARD.--

15 A. The district board shall:

16 (1) establish guidelines and standards for
17 water catchment improvements to be made to property included in
18 the district;

19 (2) establish guidelines and procedures for an
20 owner to enter into an agreement with the district board to
21 include property in the district;

22 (3) establish guidelines for the documentation
23 required from an owner prior to property being included in the
24 district of the owner's contracts or agreements for purchase
25 and installation of water catchment improvements;

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1 (4) establish the amount of and impose special
2 assessments for the financing of the water catchment
3 improvements, including the costs of bond issuance, debt
4 service and administrative costs of the district and the
5 municipality or county in which the district is located; and

6 (5) enter into contracts, agreements and trust
7 indentures to obtain credit enhancement or liquidity support
8 for its bonds; and process the issuance, registration, transfer
9 and payment of its bonds and the disbursement and investment of
10 proceeds of the bonds.

11 B. The district board may enter into contracts to
12 carry out the purposes of the district on such terms and with
13 such persons as the board determines to be appropriate.

14 SECTION 11. [NEW MATERIAL] CHANGE IN A DISTRICT.--

15 A. At any time after adoption of a resolution
16 creating a district, property may be added to the district at
17 the request of an owner upon adoption of a resolution of the
18 district board.

19 B. Property may be deleted from the district only
20 upon request of the owner and adoption of a resolution of
21 intention to do so by the district board. Property within the
22 district that is subject to the lien of special assessments or
23 other charges imposed pursuant to the Water Catchment System
24 Financing District Act shall not be deleted from the district
25 while there are bonds outstanding that are payable by such

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1 special assessments or charges.

2 SECTION 12. [NEW MATERIAL] DISSOLUTION OF A DISTRICT.--

3 The district may be dissolved by the district board by a
4 resolution of the district board upon a determination that the
5 district has no outstanding bond obligations. The district
6 shall not be dissolved if any bonds of the district remain
7 outstanding unless an amount of money sufficient, together with
8 investment income thereon, to make all payments due on the
9 bonds, either at maturity or prior redemption, has been
10 deposited with a trustee or escrow agent and pledged to the
11 payment and redemption of the bonds. The district may continue
12 to operate after dissolution only as needed to collect money
13 and make payments on any outstanding bonds.