

AN ACT

RELATING TO SANITARY PROJECTS ASSOCIATIONS; CHANGING THE PREREQUISITES FOR INITIATING A PROJECT; CHANGING THE APPROVAL REQUIRED FOR AN ASSOCIATION TO BECOME INDEBTED OR TO ISSUE BONDS; ALLOWING COOPERATIVE ASSOCIATIONS AND NONPROFIT CORPORATIONS TO REORGANIZE UNDER THE SANITARY PROJECTS ACT; DECLARING AN EMERGENCY.

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

Section 1. Section 3-29-2 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-28-2, as amended) is amended to read:

"3-29-2. DEFINITIONS.--As used in the Sanitary Projects Act:

A. "community" means any rural unincorporated community and includes a combination of two or more rural unincorporated communities when they have been combined for the purpose of securing the benefits of the Sanitary Projects Act;

B. "association" includes any association organized under Laws 1947, Chapter 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52, as well as any association organized under the provisions of the Sanitary Projects Act;

C. "department" means the department of environment; and

D. "fund" means the sanitary projects fund."

Section 2. Section 3-29-5 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-28-5, as amended) is amended to

read:

"3-29-5. PREREQUISITE FOR INITIATING A PROJECT.--

A. As a prerequisite to initiating a project, it shall be necessary for the sponsors of each project to submit a written proposal to the department that shall:

(1) state the number of families in the association and that all rights of way needed can and will be obtained by the association;

(2) make formal application to the department for a grant-in-aid from the fund;

(3) agree to assist the engineer engaged to prepare the plans and specifications in every reasonable way; and

(4) agree to contribute all unskilled labor and such skilled labor as is available and desirable and shall further agree to contribute local materials such as sand, gravel, stone, timbers, vigas, adobes and other materials that it is feasible and desirable to obtain locally. They shall further agree to finish the project on or before the date specified at the time the contracts are awarded.

B. No new association shall be formed under the Sanitary Projects Act by original incorporation after January 1, 2000, and no new association shall be formed by reorganization after January 1, 2000, unless the predecessor entity was in existence on January 1, 2000, if the service area of either association includes property contiguous to an incorporated municipality. The restrictions on forming

an association set forth in this subsection shall not apply if the contiguous incorporated municipality does not provide the services or cannot provide the services to be provided by the association at or below the cost proposed by the association.

C. No association may construct a project required in order to allow creation of a subdivision under the provisions of the Land Subdivision Act, the New Mexico Subdivision Act or Section 47-5-9 NMSA 1978; however, an association may construct a project serving a previously approved subdivision in the service area of the association.

D. After the association has been formed and a practicing professional engineer has been engaged to handle the plans, specifications and contract documents for the job, the engineer shall list separately the balance of all labor, materials and equipment and other items that are to be paid for from state funds and that are necessary to ensure the completion of an operating project, aside from the detailed estimates covering labor and material contributions by the association. Cost estimates shall be provided for all items listed in the mutual contract and the totals shall indicate the cost of the project to the state and also the estimated equivalent total cost the association is contributing. Projects shall not be approved unless the estimated equivalent total cost the association is contributing is equal to or exceeds one-third of the total estimated state cost for a completed job. Associations may contribute financial assistance in addition to the

contributions of labor or materials as specified in this subsection in order to reach their one-third contribution or to provide for completion of a project not completely financed by the provisions of the Sanitary Projects Act. Should an association enter into a loan agreement with the farmers home administration or its successor agency, the department may deposit the amount of any grant-in-aid with the farmers home administration or its successor agency for the purpose of cooperating in the financing of a single contract covering one project.

E. After the department has been satisfied that the prerequisites specified in Subsection B of this section have been complied with, the association shall be eligible for a grant-in-aid from the fund.

F. Prior to approval of project plans and specifications by the department, such plans and specifications shall be submitted to and reviewed by the local government division of the department of finance and administration for conformity to countywide water and sewer plans. Approval of the plans by the local government division shall be a prerequisite to approval of the plans, specifications and contract documents by the department."

Section 3. Section 3-29-15 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-28-15, as amended) is amended to read:

"3-29-15. ASSOCIATION CONSTITUTES BODY CORPORATE--
DEBTS--ISSUANCE OF BONDS.--

A. Upon the filing of each certificate and copy

thereof as provided in Section 3-29-17 NMSA 1978, the persons so associating, their successors and those who may thereafter become members of the association constitute a body corporate by the name set forth in the certificate and by such name may sue and be sued, have capacity to make contracts, acquire, hold, enjoy, dispose of and convey property real and personal and do any other act or thing necessary or proper for carrying out the purposes of their organization.

B. Associations shall have power to become indebted or issue bonds in a form approved by the attorney general for expansion and improvement of the association's facilities by pledging future income from service charges. Such indebtedness by an association is contingent upon approval by the department and the department of finance and administration and upon a proper showing by the association to both departments that the indebtedness is for necessary refinancing, refunding, expansion or improvement purposes and that the financial condition and future income of the association warrant approval of such indebtedness or issuance of bonds by the association. No association has power to become indebted or issue bonds of any kind other than as permitted by this section."

Section 4. A new section of the Sanitary Projects Act is enacted to read:

"REORGANIZATION OF COOPERATIVE ASSOCIATIONS AND
NONPROFIT CORPORATIONS PURSUANT TO THE SANITARY PROJECTS
ACT.--

A. Cooperative associations formed pursuant to Sections 53-4-1 through 53-4-45 NMSA 1978 and nonprofit corporations formed under the Nonprofit Corporation Act may reorganize under the Sanitary Projects Act upon approval of the reorganization by a two-thirds' vote of the directors of the cooperative association or nonprofit corporation. Notice of the meeting to consider the reorganization and a copy of the proposed certificate of association shall be sent at least fifteen days prior to such meeting by the cooperative association to each member at his last known address and by the nonprofit corporation to each member, if any, at his last known address. Upon approval of the reorganization by the two-thirds' vote of the directors, the cooperative association or the nonprofit corporation shall execute a certificate of association pursuant to Sections 3-29-16 and 3-29-17 NMSA 1978. The certificate of association shall state that it supersedes the articles of incorporation and all amendments to the articles of incorporation of the cooperative association or the nonprofit corporation.

B. Duplicate originals of the certificate of association shall be filed with the public regulation commission. One duplicate original of the certificate of association shall be returned to the association.

C. The certificate of association is effective upon filing and supersedes the articles of incorporation and all amendments to the articles of incorporation of the prior cooperative association or nonprofit corporation. The association shall:

(1) be the surviving entity, and the separate existence of the prior cooperative association or nonprofit corporation shall cease;

(2) have all of the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of an association organized pursuant to the Sanitary Projects Act;

(3) possess all the rights, privileges, immunities and franchises of the prior cooperative association or nonprofit corporation. All property, real, personal and mixed; all debts due on whatever account; all other choses in action; and all and every other interest of or belonging to or due to the prior cooperative association or nonprofit corporation shall be taken and deemed to be transferred to and vested in the association without further act or deed. The title to any real estate, or any interest therein, vested in the prior cooperative association or nonprofit corporation shall not revert or be in any way impaired by reason of the reorganization; and

(4) be liable for all the liabilities and obligations of the prior cooperative association or nonprofit corporation, and any claim existing or action or proceeding pending by or against the cooperative association or nonprofit corporation may be prosecuted as if the reorganization had not taken place or the new association may be substituted in its place. Neither the rights of creditors nor any liens upon the property of the cooperative association or nonprofit corporation shall be impaired by

the reorganization."

Section 5. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 6. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. _____