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SENATE BILL 143

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY

Phillip A. Griego

FOR THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE

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

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1 Act;

2 B. [~~"associaton"~~] "association" includes any
3 association organized under Laws 1947, Chapter 206, Laws
4 1949, Chapter 79 or Laws 1951, Chapter 52, as well as any
5 association organized under the provisions of the Sanitary
6 Projects Act;

7 C. "department" means the [~~environmental~~
8 ~~improvement division of the health and environment~~]
9 department of environment; and

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

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

13 "3-29-5. PREREQUISITE FOR INITIATING A PROJECT.--

14 A. As a prerequisite to initiating a project, it
15 shall be necessary for the sponsors of each project to submit
16 a written proposal to the department [~~which~~] that shall:

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

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

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

25 (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

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1 sand, gravel, stone, timbers, vigas, adobes and other
2 materials ~~[which]~~ that it is feasible and desirable to obtain
3 locally. They shall further agree to finish the project on
4 or before the date specified at the time the contracts are
5 awarded.

6 ~~[B. The community must have been in existence for~~
7 ~~twenty-five years or longer prior to its application for~~
8 ~~benefits to qualify for benefits under the Sanitary Projects~~
9 ~~Act. Subdivisions adjacent to incorporated communities shall~~
10 ~~not be eligible for benefits.~~

11 ~~E.]~~ B. After the association has been formed and a
12 practicing professional engineer has been engaged to handle
13 the plans, specifications and contract documents for the job,
14 ~~[he]~~ the engineer shall list separately the balance of all
15 labor, materials and equipment and other items ~~[which]~~ that
16 are to be paid for ~~[out of]~~ from state funds and ~~[which]~~ that
17 are necessary to ~~[insure]~~ ensure the completion of an
18 operating project, aside from the detailed estimates covering
19 labor and material contributions by the association. Cost
20 estimates shall be provided for all items listed in the
21 mutual contract and the totals shall indicate the cost of the
22 project to the state and also the estimated equivalent total
23 cost the association is contributing. Projects ~~[will]~~ shall
24 not be approved unless the estimated equivalent total cost
25 the association is contributing is equal to or ~~[will exceed]~~
exceeds one-third of the total estimated state cost for a
completed job. Associations may contribute financial

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1 assistance in addition to the contributions of labor or
2 materials as specified [~~above~~] in this subsection in order to
3 reach their one-third contribution or to provide for
4 completion of a project not completely financed by the
5 provisions of the Sanitary Projects Act. Should an
6 association enter into a loan agreement with the farmers home
7 administration or its successor agency, the department may
8 deposit the amount of any grant-in-aid with the farmers home
9 administration or its successor agency for the purpose of
10 cooperating in the financing of a single contract covering
11 one project.

12 [~~D.~~] C. After the department has been satisfied
13 that the [~~above~~] prerequisites specified in Subsection B of
14 this section have been complied with, the association shall
15 be eligible for a grant-in-aid from the fund.

16 [~~E.~~] D. Prior to approval of project plans and
17 specifications by the department, such plans and
18 specifications shall be submitted to and reviewed by the
19 local government division of the department of finance and
20 administration for conformity to countywide water and sewer
21 plans. Approval of the plans by the local government
22 division shall be a prerequisite to approval of the plans,
23 specifications and contract documents by the department."

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

"3-29-15. ASSOCIATION CONSTITUTES BODY CORPORATE--

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1 DEBTS--ISSUANCE OF BONDS.--

2 A. Upon the filing of each certificate and copy
3 thereof as provided in Section [~~14-28-17 New Mexico Statutes~~
4 ~~Annotated, 1953 Compilation~~] 3-29-17 NMSA 1978, the persons
5 so associating, their successors and those who may thereafter
6 become members of the association constitute a body corporate
7 by the name set forth in the certificate and by such name may
8 sue and be sued, have capacity to make contracts, acquire,
9 hold, enjoy, dispose of and convey property real and personal
10 and do any other act or thing necessary or proper for
11 carrying out the purposes of their organization.

12 B. Associations shall have power to become
13 indebted or issue bonds in a form approved by the attorney
14 general for expansion and improvement of the association's
15 facilities by pledging future income from service charges.
16 Such indebtedness by an association is contingent upon
17 approval by the department [~~of public health~~] and the
18 department of finance and administration and upon a proper
19 showing by the association to [~~both departments~~] the
20 department that the indebtedness is for necessary
21 refinancing, refunding, expansion or improvement purposes and
22 that the financial condition and future income of the
23 association [~~warrants~~] warrant approval of such indebtedness
24 or issuance of bonds by the association. No association has
25 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

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1 is enacted to read:

2 " [NEW MATERIAL] REORGANIZATION OF COOPERATIVE
3 ASSOCIATIONS AND NONPROFIT CORPORATIONS PURSUANT TO THE
4 SANITARY PROJECTS ACT.--

5 A. Cooperative associations formed pursuant to
6 Sections 53-4-1 through 53-4-45 NMSA 1978 and nonprofit
7 corporations formed under the Nonprofit Corporation Act may
8 reorganize under the Sanitary Projects Act upon approval of
9 the reorganization by a two-thirds' vote of the directors of
10 the cooperative association or nonprofit corporation. Notice
11 of the meeting to consider the reorganization and a copy of
12 the proposed certificate of association shall be sent at
13 least fifteen days prior to such meeting by the cooperative
14 association to each member at his last known address and by
15 the nonprofit corporation to each member, if any, at his last
16 known address. Upon approval of the reorganization by the
17 two-thirds' vote of the directors, the cooperative
18 association or the nonprofit corporation shall execute a
19 certificate of association pursuant to Sections 3-29-16 and
20 3-29-17 NMSA 1978. The certificate of association shall
21 state that it supersedes the articles of incorporation and
22 all amendments to the articles of incorporation of the
23 cooperative association or the nonprofit corporation.

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

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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

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1 pending by or against the cooperative association or
2 nonprofit corporation may be prosecuted as if the
3 reorganization had not taken place or the new association may
4 be substituted in its place. Neither the rights of creditors
5 nor any liens upon the property of the cooperative
6 association or nonprofit corporation shall be impaired by the
7 reorganization."

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

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