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SENATE BILL 424

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

H. Diane Snyder

AN ACT

RELATING TO SANITARY PROJECTS; AMENDING THE SANITARY PROJECTS
ACT WITH REGARD TO ASSOCIATIONS; AMENDING, REPEALING AND
ENACTING SECTIONS OF THE NMSA 1978 RELATING TO FUNDING SANITARY
PROJECTS; 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]~~ purposes set forth in
the Sanitary Projects Act;

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

5 C. "department" means the department of
6 environment; ~~and~~

7 ~~D. "fund" means the sanitary projects fund;~~

8 D. "member" or "membership" means a person who has
9 paid the appropriate fees and has been issued a certificate as
10 required by association bylaws;

11 E. "project" means any water supply or reclamation,
12 storm drainage or wastewater facility owned, constructed or
13 operated by an association; and

14 F. "person" means a single residence or property
15 owner, as determined by the rules and regulations adopted by
16 the association's board of directors."

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

19 "3-29-3. PURPOSE OF ACT [~~STATEMENT OF POLICY~~].--The
20 purpose of the Sanitary Projects Act is to improve the public
21 health of [~~the people of~~] rural communities in New Mexico
22 [~~through a program which will provide for the installation of~~
23 ~~sanitary domestic water facilities, sewage works or both and~~
24 ~~thus eliminate present hazardous practices and conditions. It~~
25 ~~is, therefore, declared to be the policy of the legislature to~~

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1 ~~assist in providing facilities for the development of adequate,~~
2 ~~sanitary domestic water supplies, sewage works or both,~~
3 ~~together with all parts and appurtenances as may be needed to~~
4 ~~provide domestic water supplies, sewage works or both in rural~~
5 ~~unincorporated communities] by providing for the establishment~~
6 and maintenance of a political subdivision of the state that is
7 empowered by the state to receive public funds for acquisition,
8 construction and improvement of water supply, storm drainage
9 and wastewater facilities in communities, and to operate and
10 maintain such facilities for the public good."

11 Section 3. Section 3-29-4 NMSA 1978 (being Laws 1965,
12 Chapter 300, Section 14-28-4, as amended) is amended to read:

13 "3-29-4. PROJECTS [~~ASSOCIATIONS--AID OF DEPARTMENT--~~
14 ~~ENGINEER--PAYMENT FOR CONSTRUCTION]~~.--[~~In order to effectuate~~
15 ~~this policy and to promote the general health and welfare of~~
16 ~~the rural communities of New Mexico, the department is~~
17 ~~empowered and directed and shall be provided financial~~
18 ~~assistance to carry out the legislative intent from the fund~~
19 ~~and to formulate and keep current a program of projects for~~
20 ~~construction in said communities. The projects to be included~~
21 ~~within such program shall be located or determined by the board~~
22 ~~of directors of the association which shall be created in each~~
23 ~~community participating in the program for the sponsoring and~~
24 ~~maintenance of such project, acting upon recommendations from~~
25 ~~and subject to the approval of the department.] Plans,~~

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1 specifications and contracts [~~as specified in Section 14-28-5~~
2 ~~NMSA 1953~~] for each project shall be prepared by a [~~licensed~~]
3 practicing professional engineer licensed under the Engineering
4 and Surveying Practice Act, and selected by the association
5 [~~and approved by the department for each project~~] in accordance
6 with the provisions of [~~Sections 67-21-29 through 67-21-53 NMSA~~
7 ~~1953~~] the Procurement Code. The engineer shall also supervise
8 the construction and installation of the project and shall act
9 as coordinator and mediator between the contractor awarded the
10 contract and the association concerned. [~~The services of the~~
11 ~~engineer shall be secured by the association with the approval~~
12 ~~of the department except that if a project is of such small~~
13 ~~scale as not to be economically feasible to contract for~~
14 ~~engineering services, the department may furnish a licensed~~
15 ~~professional engineer from within the department to furnish~~
16 ~~such services. Reimbursement for services so rendered shall be~~
17 ~~made out of the fund, subject to the approval of the president~~
18 ~~of the association concerned as their agent and also subject to~~
19 ~~the approval of the department. Payment shall be made in two~~
20 ~~installments: one to cover the cost of preparing the plans,~~
21 ~~specifications and contract documents; the final payment to be~~
22 ~~made upon completion of the project to cover the cost of~~
23 ~~supervising the construction and installation. After approval~~
24 ~~of the plans, specifications and contract documents, the state~~
25 ~~purchasing agent shall call for and receive bids for~~

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1 ~~construction of the project and shall award the bid as provided~~
2 ~~by law. The state reserves the right to reject any and all~~
3 ~~bids. Payment to contractors from state funds shall be made as~~
4 ~~follows: forty percent of the bid price may be paid upon fifty~~
5 ~~percent completion of the project; the final payment of sixty~~
6 ~~percent shall be made upon completion of the project and final~~
7 ~~testing and acceptance.]"~~

8 Section 4. Section 3-29-5 NMSA 1978 (being Laws 1965,
9 Chapter 300, Section 14-28-5, as amended) is amended to read:

10 "3-29-5. [~~PREREQUISITE FOR INITIATING A PROJECT~~]

11 RESTRICTIONS ON FORMING AN ASSOCIATION.--

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

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

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

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

23 (4) ~~agree to contribute all unskilled labor~~
24 ~~and such skilled labor as is available and desirable and shall~~
25 ~~further agree to contribute local materials such as sand,~~

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

5 ~~B.]~~ A. No new association shall be formed under the
6 Sanitary Projects Act by original incorporation after January
7 1, 2000, and no new association shall be formed by
8 reorganization after January 1, 2000, unless the predecessor
9 entity was in existence on January 1, 2000, if the service area
10 of either association includes property contiguous to an
11 incorporated municipality or an unincorporated area currently
12 served by a municipality. The restrictions on forming an
13 association set forth in this subsection shall not apply if the
14 contiguous incorporated municipality does not provide the
15 services or cannot provide the services to be provided by the
16 association at or below the cost proposed by the association.

17 ~~[G.]~~ B. No association may construct a project
18 required in order to allow creation of a subdivision under the
19 provisions of the Land Subdivision Act, the New Mexico
20 Subdivision Act or Section 47-5-9 NMSA 1978; however, an
21 association may construct a project serving a previously
22 approved subdivision in the service area of the association.

23 ~~[D.]~~ ~~After the association has been formed and a~~
24 ~~practicing professional engineer has been engaged to handle the~~
25 ~~plans, specifications and contract documents for the job, the~~

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1 ~~engineer shall list separately the balance of all labor,~~
2 ~~materials and equipment and other items that are to be paid for~~
3 ~~from state funds and that are necessary to ensure the~~
4 ~~completion of an operating project, aside from the detailed~~
5 ~~estimates covering labor and material contributions by the~~
6 ~~association. Cost estimates shall be provided for all items~~
7 ~~listed in the mutual contract and the totals shall indicate the~~
8 ~~cost of the project to the state and also the estimated~~
9 ~~equivalent total cost the association is contributing.~~
10 ~~Projects shall not be approved unless the estimated equivalent~~
11 ~~total cost the association is contributing is equal to or~~
12 ~~exceeds one-third of the total estimated state cost for a~~
13 ~~completed job. Associations may contribute financial~~
14 ~~assistance in addition to the contributions of labor or~~
15 ~~materials as specified in this subsection in order to reach~~
16 ~~their one-third contribution or to provide for completion of a~~
17 ~~project not completely financed by the provisions of the~~
18 ~~Sanitary Projects Act. Should an association enter into a loan~~
19 ~~agreement with the farmers home administration or its successor~~
20 ~~agency, the department may deposit the amount of any grant-in-~~
21 ~~aid with the farmers home administration or its successor~~
22 ~~agency for the purpose of cooperating in the financing of a~~
23 ~~single contract covering one project.~~

24 ~~E. After the department has been satisfied that the~~
25 ~~prerequisites specified in Subsection B of this section have~~

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1 ~~been complied with, the association shall be eligible for a~~
2 ~~grant-in-aid from the fund.~~

3 ~~F. Prior to approval of project plans and~~
4 ~~specifications by the department, such plans and specifications~~
5 ~~shall be submitted to and reviewed by the local government~~
6 ~~division of the department of finance and administration for~~
7 ~~conformity to countywide water and sewer plans. Approval of~~
8 ~~the plans by the local government division shall be a~~
9 ~~prerequisite to approval of the plans, specifications and~~
10 ~~contract documents by the department.]~~

11 C. After July 1, 2004, no new association may be
12 formed as a capital stock corporation."

13 Section 5. Section 3-29-6 NMSA 1978 (being Laws 1965,
14 Chapter 300, Section 14-28-6, as amended) is amended to read:

15 "3-29-6. BOARD OF DIRECTORS--DUTIES AND
16 RESPONSIBILITIES.--

17 A. The board of directors of each association shall
18 be responsible for the [~~acquiring~~] acquisition or purchase of
19 all property, rights of way, equipment and materials as may be
20 necessary for the completion of [~~the~~] a project. The directors
21 [~~acting in~~] shall act on behalf of the association and as its
22 agents. The association, acting through its board of
23 directors, [~~with the approval of the environmental improvement~~
24 ~~division~~] may exercise the right of eminent domain to take and
25 acquire the necessary property or rights of way for the

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1 construction, maintenance and operation of water and sewer
2 lines and related facilities, but such property and rights of
3 way shall in all cases be so located as to do the least damage
4 to private and public property consistent with proper use and
5 economical construction. Such property or rights of way shall
6 be acquired in the manner provided by the Eminent Domain Code.
7 In accordance with Sections 42A-1-8 through 42A-1-12 NMSA 1978,
8 engineers, surveyors and other persons under contract with the
9 board for the purposes of the project shall have the right to
10 enter upon property of the state, its political subdivisions,
11 private persons and private and public corporations for the
12 purpose of making necessary surveys and examinations for
13 selecting and locating suitable routes for water and sewer
14 lines and facilities. [~~Payments for such services, purchases
15 and other purposes as are necessary shall be made from the fund
16 upon voucher drawn by the secretary-treasurer of an
17 association, approved by the division and supported by warrant
18 of the department of finance and administration drawn upon the
19 state treasury.~~]

20 B. The board of the association shall have the
21 power to set and, from time to time, increase or adjust
22 assessments, water and sewer rates, tolls or charges for
23 services or facilities furnished or made available by the
24 association. The assessments, tolls and charges include:

25 (1) a base monthly service fee for each active

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1 connection delivering water;

2 (2) a base monthly service fee for each
3 inactive connection;

4 (3) a standby charge for the privilege of
5 connecting into the association's water service at some date in
6 the future;

7 (4) assessments based on the volume of water
8 delivered;

9 (5) a connection charge; and

10 (6) an assessment necessary to cover the cost
11 of extending either water or sewer service.

12 C. The board of directors of the association may
13 place a lien on any property to which any services have been
14 extended in the amount of all outstanding assessments, charges
15 and fees associated with such services. The board may enforce
16 the lien in any manner provided by the laws of the state. In
17 the event the board is forced to enforce the lien in any court
18 of competent jurisdiction in New Mexico, the board shall be
19 entitled to recover all costs and attorney fees.

20 D. The board of directors of the association shall
21 shut off unauthorized connections, illegal connections or any
22 connection for which charges are delinquent in payment. The
23 board may file suit in any court of competent jurisdiction to
24 recover costs associated with any unauthorized or illegal
25 connection or delinquent connection, including the cost of

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1 water delivered, charges for facility connection and
2 disconnection, damages and attorney fees.

3 E. The board of directors of the association shall
4 prescribe and enforce rules and regulations for the connection
5 to and disconnection from properties of facilities of the
6 association.

7 F. Each member of the board of directors of the
8 association should complete a minimum of eight hours of
9 training, as determined by the department, within one year of
10 election to the board. The training shall include applicable
11 laws and regulations, such as the Open Meetings Act, Inspection
12 of Public Records Act, Audit Act, Procurement Code, Sanitary
13 Projects Act and rate setting."

14 Section 6. Section 3-29-7 NMSA 1978 (being Laws 1965,
15 Chapter 300, Section 14-28-7, as amended) is amended to read:

16 "3-29-7. ~~[CONDITIONS DEPARTMENT MAY REQUIRE BEFORE~~
17 ~~EXTENDING BENEFITS]~~ DEPARTMENT RECOMMENDATIONS AND POWERS.--

18 A. Insofar as the department deems it necessary for
19 the purpose of the Sanitary Projects Act, the department may
20 ~~[as a condition to extending benefits under its provisions to~~
21 ~~any community or group of individuals]~~ recommend ~~[(1)]~~
22 agreements, ~~[or]~~ or rules in regard to operation,
23 maintenance and permanent use of ~~[such lands, water or~~
24 ~~facilities benefited by such domestic water supply, sewers or~~
25 ~~treatment plant or any of them; provided that the water~~

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1 ~~supplies developed shall not in any case be used for irrigation~~
2 ~~of commercial crops or for stock-watering of animals being~~
3 ~~raised for commercial purposes. The liquid effluent from~~
4 ~~sewage plants shall not be used for the irrigation of truck~~
5 ~~crops or fruits, and livestock shall not have access to sewage~~
6 ~~plant effluents;~~

7 ~~(2) contributions in cash by the said~~
8 ~~association in addition to the contract for labor, materials or~~
9 ~~services as specified heretofore; provided that the~~
10 ~~association's contribution shall always equal or exceed one-~~
11 ~~third of the total state cost; and~~

12 ~~(3) that the state cooperate and contribute~~
13 ~~financial aid according to the following schedules:~~

14 ~~(a) a maximum of seven thousand dollars~~
15 ~~(\$7,000) for each water project or for each sewer project where~~
16 ~~twenty-eight dwelling units or less are to be served; provided~~
17 ~~that no association shall be formed which shall not provide~~
18 ~~service for at least ten domestic dwelling units; and~~

19 ~~(b) two hundred fifty dollars (\$250) per~~
20 ~~dwelling unit where more than twenty-eight dwelling units are~~
21 ~~to be served; provided that the total allowable maximum state~~
22 ~~expenditure for each water project or for each sewer project~~
23 ~~shall not exceed twelve thousand dollars (\$12,000).~~

24 ~~B. A requisite to securing such allocation of funds~~
25 ~~upon a department recommendation shall be that the individuals~~

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1 ~~either collectively or individually in an association shall~~
2 ~~agree to provide proper sewage disposal facilities for the~~
3 ~~sanitary removal of potentially harmful material classified as~~
4 ~~sewage which shall be occasioned by the installation of running~~
5 ~~water facilities. Associations shall be eligible for~~
6 ~~construction grants as provided for in the Federal Water~~
7 ~~Pollution Control Law (P.L. 660, 84th Congress, as amended).~~

8 ~~C. No privy, cesspool, septic tank or other means~~
9 ~~of sewage disposal or treatment shall be located within one~~
10 ~~hundred fifty feet of any well, spring or other source of~~
11 ~~domestic water supply created under the provisions of the~~
12 ~~Sanitary Projects Act.~~

13 ~~D.] water supply, reclamation, storm drainage and~~
14 ~~wastewater facilities.~~

15 ~~B.~~ The department may in its discretion and shall
16 upon the petition [~~or~~] of twenty-five percent of the [~~users of~~
17 ~~a project~~] members of the association hold a hearing and make a
18 determination as to whether [~~a sanitary project~~] the
19 association is being operated and managed in the best interest
20 of all [~~local citizens~~] members of the association. If the
21 department after a hearing determines that [~~a project~~] an
22 association is not being operated or managed in the best
23 interests of the [~~local citizens~~] members, the department may
24 intervene in the operation and management with full powers,
25 including the power to set and collect assessments from members

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1 of the association, to set and collect service charges and use
2 the same for the proper operation and management of the
3 ~~[project]~~ association. The department may appoint a
4 representative to oversee operation of the association for a
5 specified period. The department representative shall have the
6 full powers of the department regarding operation and
7 management of the association.

8 C. The department may conduct periodic reviews of
9 the operation of the association, may require submittal of
10 audits required pursuant to the Audit Act and may require that
11 each member of the board of directors complete eight hours of
12 training as described in Section 3-29-6 NMSA 1978."

13 Section 7. Section 3-29-9 NMSA 1978 (being Laws 1965,
14 Chapter 300, Section 14-28-9) is amended to read:

15 "3-29-9. RULES AND REGULATIONS~~[COOPERATION AND ASSISTANCE~~
16 ~~BY FEDERAL AND STATE AGENCIES]~~.--For the purposes of the
17 Sanitary Projects Act, the department may ~~[A.]~~ perform such
18 acts and prescribe such rules and regulations as are deemed
19 necessary to carry out its provisions, insofar as the public
20 health is involved ~~[and~~

21 ~~B. secure the cooperation and technical assistance~~
22 ~~of any federal or state agency and further may request that~~
23 ~~geological surveys be made by the state engineer to determine~~
24 ~~the feasibility of developing water supplies for specific~~
25 ~~projects]."~~

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1 Section 8. Section 3-29-12 NMSA 1978 (being Laws 1965,
2 Chapter 300, Section 14-28-12, as amended) is amended to read:

3 "3-29-12. LOCAL ADMINISTRATION OF PROJECTS--BOARD OF
4 DIRECTORS--~~[TERMS]~~.--

5 A. The local administration of ~~[any project]~~ the
6 association and the operation and maintenance of the
7 ~~[completed]~~ project shall be carried out in each community by a
8 board of directors composed of ~~[five]~~ an odd number of at least
9 three members. Members of the board of directors shall be
10 elected ~~[biennially]~~ annually or as specified in the bylaws
11 from the membership of the association for staggered terms of
12 up to four years ~~[each, except that in the first election,~~
13 ~~which shall be held in 1970 the elected directors shall draw~~
14 ~~lots so that two of the directors shall serve first terms of~~
15 ~~two years each, after which the positions of the two directors~~
16 ~~ending in 1972 shall be filled by the election of two successor~~
17 ~~directors for full four-year terms. The purpose of the two-~~
18 ~~year first terms is to provide for a system of staggered four-~~
19 ~~year terms so that three directors will be elected in one year~~
20 ~~and two years later the other two directors shall be elected]~~
21 starting in 2005. The purpose of the staggered terms is to
22 ensure that terms will end in different election years.

23 B. The board of directors shall choose among its
24 members a president, a vice president and a secretary-treasurer
25 or a secretary and a treasurer.

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1 C. ~~[The board of directors shall appoint a foreman~~
2 ~~to care for and regulate the association project or projects.]~~
3 Funds ~~[in an amount]~~ sufficient to provide for proper operation
4 and maintenance of the association shall be identified through
5 a rate-setting analysis that will ensure enough revenue to
6 cover yearly expenses and emergencies, a reserve fund for non-
7 major capital items and equitable pay for staff. The rate-
8 setting analysis may be reviewed and changed if necessary on a
9 yearly basis and shall be obtained by the association by a
10 monthly assessment against the users of the facilities, ~~[said]~~
11 the assessment to be determined by the board of directors.

12 D. The board of directors of the association shall
13 have power to do all things necessary in the local
14 administration of any project subject to the provisions of the
15 Sanitary Projects Act.

16 ~~[E. The department shall require that an~~
17 ~~association shall be formed and a board of directors chosen~~
18 ~~before any community may participate in any benefits.]"~~

19 Section 9. Section 3-29-13 NMSA 1978 (being Laws 1965,
20 Chapter 300, Section 14-28-13) is amended to read:

21 "3-29-13. EXISTING ASSOCIATIONS ~~[ELIGIBLE FOR ADDITIONAL~~
22 ~~BENEFITS]~~.--Associations organized under the provisions of Laws
23 1947, Chapter 206, Laws 1949, Chapter 79 or Laws 1951, Chapter
24 52 shall have the same powers and duties as associations
25 organized under the provisions of the Sanitary Projects Act and

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1 shall be eligible [~~for benefits for construction of sewers and~~
2 ~~treatment plants~~] to construct, operate and maintain a project
3 without [~~the necessity for~~] organizing a new association;
4 provided that the articles of incorporation shall be amended in
5 accordance with the provisions of Section [~~14-28-19 New Mexico~~
6 ~~Statutes Annotated, 1953 Compilation~~] 3-29-19 NMSA 1978."

7 Section 10. Section 3-29-15 NMSA 1978 (being Laws 1965,
8 Chapter 300, Section 14-28-15, as amended) is amended to read:

9 "3-29-15. ASSOCIATION CONSTITUTES A PUBLIC BODY
10 CORPORATE[~~DEBTS--ISSUANCE OF BONDS~~].--[~~A.~~] Upon the filing of
11 each certificate and copy thereof as provided in Section
12 3-29-17 NMSA 1978, the persons so associating, their successors
13 and those who may thereafter become members of the association
14 constitute a public body corporate by the name set forth in the
15 certificate and by such name may sue and be sued, have capacity
16 to make contracts, acquire, hold, enjoy, dispose of and convey
17 property real and personal, accept grants and donations, borrow
18 money, incur indebtedness, impose fees and assessments and do
19 any other act or thing necessary or proper for carrying out the
20 purposes of their organization.

21 [~~B. Associations shall have power to become~~
22 ~~indebted or issue bonds in a form approved by the attorney~~
23 ~~general for expansion and improvement of the association's~~
24 ~~facilities by pledging future income from service charges.~~
25 ~~Such indebtedness by an association is contingent upon approval~~

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1 by the department and the department of finance and
2 administration and upon a proper showing by the association to
3 both departments that the indebtedness is for necessary
4 refinancing, refunding, expansion or improvement purposes and
5 that the financial condition and future income of the
6 association warrant approval of such indebtedness or issuance
7 of bonds by the association. No association has power to
8 become indebted or issue bonds of any kind other than as
9 permitted by this section.]"

10 Section 11. Section 3-29-16 NMSA 1978 (being Laws 1965,
11 Chapter 300, Section 14-28-16, as amended) is amended to read:

12 "3-29-16. CERTIFICATE OF ASSOCIATION.--

13 A. The members of an association shall execute a
14 certificate setting forth:

- 15 (1) the name of the association;
16 (2) the name of the ~~[incorporators]~~
17 individuals organizing the association;
18 (3) the location of the principal office of
19 the association in this state;
20 (4) the objects and purposes of the
21 association;
22 (5) the address of the initial registered
23 office of the association and the name of the initial
24 registered agent at that address;
25 (6) ~~[the amount of capital stock and number~~

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1 ~~and denomination of the shares or, if the incorporators do not~~
2 ~~desire to issue shares of stock]~~ the plan and manner of
3 acquiring membership and of providing funds or means for the
4 acquisition, construction, improvement and maintenance of its
5 work and for its necessary expenses;

6 [~~(7) the period, if any, delimited for the~~
7 ~~duration of the association; and]~~

8 (7) the duration of existence of the
9 association, which may be perpetual;

10 (8) the number and manner of electing the
11 board of directors of the association and the length of the
12 terms that the directors will serve;

13 (9) the definition of a member of the
14 association and the voting rights associated with the
15 membership; and

16 (10) the manner of dissolution of the
17 association as a public body.

18 B. Pursuant to the registered agent requirement of
19 Paragraph (5) of Subsection A of this section, there shall be
20 attached to the certificate a statement executed by the
21 registered agent in which the agent acknowledges acceptance of
22 the appointment by the filing association, if the agent is an
23 individual, or a statement executed by an authorized officer of
24 a corporation in which the officer acknowledges the
25 corporation's acceptance of the appointment by the filing

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1 association as its registered agent, if the agent is a
2 corporation.

3 C. The certificate or any amendment thereof made as
4 provided in Section 3-29-19 NMSA 1978 may also contain
5 provisions not inconsistent with the Sanitary Projects Act or
6 other law of this state that the [~~incorporators~~] organizers may
7 choose to insert for the regulation and conduct of the business
8 and affairs of the association. There shall accompany each
9 certificate a list [~~of the names of all members of the~~
10 ~~association, the list~~] to [~~also~~] show the total number of
11 members of the association and the total number of dwelling
12 units [~~that can be~~] served [~~if~~] by the project [~~is completed~~]
13 at the time of filing."

14 Section 12. A new Section 3-29-16.1 NMSA 1978 is enacted
15 to read:

16 "3-29-16.1. [NEW MATERIAL] BYLAWS.--

17 A. Members shall adopt bylaws by a majority vote of
18 the membership of the association setting forth:

- 19 (1) the name of the association;
20 (2) the requirement of an association seal;
21 (3) the fiscal year of the association;
22 (4) guidelines for membership, which shall
23 include the sentence "Membership shall not be denied because of
24 the applicant's race, color, creed, national origin or sex.";
25 (5) guidelines for meetings of the membership,

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1 which shall include the date or time period of a membership
2 meeting, required notice of a meeting, establishment of a
3 quorum and the order of business to be conducted at a meeting
4 of the membership;

5 (6) the functions of the board of directors
6 including a conflict of interest policy for the board;

7 (7) the duties of officers of the board of
8 directors;

9 (8) a description of the area of service; and

10 (9) provisions for the board of directors to
11 establish rules and regulations to govern the day-to-day
12 operations of the project, including a code of conduct for
13 staff and provisions to establish an annual budget, rate
14 structure, assessments and reserve funds.

15 B. The bylaws, or any amendment thereof made as
16 provided in Section 3-29-19 NMSA 1978, may also contain any
17 provisions not inconsistent with the Sanitary Projects Act or
18 other law of this state that the organizers may choose to
19 insert for the regulation and conduct of the business and
20 affairs of the association."

21 Section 13. Section 3-29-17 NMSA 1978 (being Laws 1965,
22 Chapter 300, Section 14-28-17, as amended) is amended to read:

23 "3-29-17. FILING OF CERTIFICATE AND BYLAWS.--The
24 certificate of association and bylaws shall be acknowledged as
25 required for deeds of real estate and shall be filed in the

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1 office of the public regulation commission. A copy of the
2 certificate, duly certified by the commission or county clerk,
3 shall be evidence in all courts and places."

4 Section 14. Section 3-29-17.4 NMSA 1978 (being Laws 2001,
5 Chapter 200, Section 7) is amended to read:

6 "3-29-17.4. ANNUAL REPORT.--

7 A. An association shall file, within the time
8 prescribed by the Sanitary Projects Act, on forms prescribed
9 and furnished by the public regulation commission to the
10 association not less than thirty days prior to the date the
11 report is due, an annual report setting forth:

12 (1) the name of the association [~~and the state~~
13 ~~or country under the laws of which it is incorporated~~];

14 (2) the address of the registered office of
15 the association in the state and the name of its registered
16 agent in this state at that address;

17 (3) a brief statement of the character of the
18 affairs that the association is actually conducting; and

19 (4) the names and respective addresses of the
20 directors and officers of the association.

21 B. The report shall be signed and sworn to by any
22 two of the members of the association. If the association is
23 in the hands of a receiver or trustee, the report shall be
24 executed on behalf of the association by the receiver or
25 trustee. A copy of the report shall be maintained at the

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1 association's principal place of business as contained in the
2 report and shall be made available to the general public for
3 inspection during regular business hours."

4 Section 15. Section 3-29-17.5 NMSA 1978 (being Laws 2001,
5 Chapter 200, Section 8) is amended to read:

6 "3-29-17.5. FILING OF ANNUAL REPORT--SUPPLEMENTAL
7 REPORT--EXTENSION OF TIME--PENALTY.--

8 A. The annual report of the association shall be
9 delivered to the public regulation commission on or before the
10 fifteenth day of the fifth month following the end of its
11 [~~taxable~~] fiscal year.

12 B. A supplemental report shall be filed by the
13 association with the public regulation commission, if, within
14 thirty days after the filing of the annual report required
15 under the Sanitary Projects Act, a change is made in:

16 (1) the name of the association;

17 (2) the mailing address, street address or the
18 geographical location of the association's registered office in
19 this state and the name of the agent upon whom process against
20 the association may be served; or

21 (3) the character of the association's
22 business and its principal place of business within [~~or~~
23 ~~without~~] the state.

24 C. Proof to the satisfaction of the public
25 regulation commission that, prior to the due date of any report

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1 required by Subsections A or B of this section, the report was
2 deposited in the United States mail in a sealed envelope,
3 properly addressed, with postage prepaid, shall be deemed
4 compliance with the requirements of this section. If the
5 commission finds that the report conforms to the requirements
6 of the Sanitary Projects Act, it shall file the report. If the
7 commission finds that it does not conform, it shall promptly
8 return the report to the association for any necessary
9 corrections. The penalties prescribed for failure to file the
10 report within the time provided shall not apply if the report
11 is corrected to conform to the requirements of the Sanitary
12 Projects Act and returned to the commission within thirty days
13 from the date on which it was mailed to the association by the
14 commission.

15 D. The public regulation commission may, upon
16 application by the association and for good cause shown,
17 extend, for no more than a total of twelve months, the date on
18 which any [~~return~~] annual report required by the provisions of
19 the Sanitary Projects Act must be filed or the date on which
20 the payment of any fee is required. The commission shall, when
21 an extension of time has been granted an association under the
22 [~~United States~~] federal Internal Revenue Code of 1986 for the
23 time in which to file a return, grant the association the same
24 extension of time to file the required [~~return~~] annual report
25 and to pay the required fees, provided that a copy of the

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1 approved federal extension of time is attached to the
2 association's report, and provided further that no such
3 extension shall prevent the accrual of interest as otherwise
4 provided by law.

5 E. Nothing contained in this section prevents the
6 collection of a fee or penalty due upon the failure of an
7 association to submit the required report.

8 F. No annual or supplemental report required to be
9 filed under this section shall be deemed to have been filed if
10 the fees accompanying the report have been paid by check and
11 the check is dishonored upon presentation.

12 G. An association that fails or refuses to file a
13 report for a year within the time prescribed by the Sanitary
14 Projects Act is subject to a penalty of ten dollars (\$10.00) to
15 be assessed by the public regulation commission.

16 H. An association shall file a member
17 accountability report that shall include:

18 (1) a financial statement prepared in
19 accordance with generally accepted accounting principles; and

20 (2) a copy of the Open Meetings Act resolution
21 stating what notice for a public meeting is reasonable.

22 The report shall be signed and sworn to as to accuracy and
23 completeness by all members of the board of directors of the
24 association. A statement shall be included in the consumer
25 confidence report required for water systems that the member

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1 accountability report is available to the public upon request.
2 The member accountability report shall be filed with the
3 department with the consumer confidence report no later than
4 July 1 of each year."

5 Section 16. Section 3-29-19 NMSA 1978 (being Laws 1965,
6 Chapter 300, Section 14-28-19) is amended to read:

7 "3-29-19. AMENDMENT OF [~~ARTICLES OF INCORPORATION~~]
8 CERTIFICATE OF ASSOCIATION AND BYLAWS--METHOD.--Every
9 association may [~~change its name, increase or decrease its~~
10 ~~capital stock or membership, change the location of its~~
11 ~~principal office in this state, extend the period of its~~
12 ~~existence and~~] make such [~~other~~] amendment, change or
13 alteration as may be desired not inconsistent with the Sanitary
14 Projects Act or other law of this state by a resolution adopted
15 by a vote of a majority of the members present at any regular
16 or special meeting duly held upon such notice as the bylaws
17 provide. A certified copy of such resolution with the
18 affidavit of the president and secretary that [~~said~~] the
19 resolution was duly adopted by a majority vote of [~~such~~
20 ~~shareholders or~~] the members at a meeting held in accordance
21 with the provisions of this section shall be filed and recorded
22 as provided for filing and recording the original certificate
23 of [~~incorporation~~] association and bylaws, and thereupon the
24 certificate of [~~incorporation~~] association and bylaws shall be
25 deemed to be amended accordingly, and a copy of such

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1 certificate of amendment certified by the [~~state corporation~~]
2 public regulation commission or the county clerk shall be
3 accepted as evidence of each change or amendment in all courts
4 and places."

5 Section 17. A new Section 3-29-22 NMSA 1978 is enacted to
6 read:

7 "3-29-22. [NEW MATERIAL] EXEMPTIONS FROM SPECIAL DISTRICT
8 PROCEDURES ACT PROVISIONS.--An association formed pursuant to
9 the provisions of the Sanitary Projects Act may be formed
10 exclusively as provided in that act, and formation of the
11 association shall be exempt from all review and requirements
12 set forth in the Special Districts Procedures Act."

13 Section 18. A new Section 3-29-23 NMSA 1978 is enacted to
14 read:

15 "3-29-23. [NEW MATERIAL] MERGER OF TWO OR MORE
16 ASSOCIATIONS INTO ONE ASSOCIATION.--Two or more associations
17 may merge into one association pursuant to a plan of merger
18 approved in the manner provided in state law. The board of
19 directors of each association shall, by resolution adopted by
20 each board, approve a plan of merger setting forth:

21 A. the names of the associations proposing to
22 merge, and the associations into which they propose to merge
23 which is hereinafter designated as the "surviving association";

24 B. the terms and conditions of the proposed merger;

25 C. the manner and basis of converting each

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1 association into obligations or other securities of the
2 surviving association;

3 D. a statement of any changes in the articles of
4 incorporation of the surviving association to be affected by
5 the merger; and

6 E. other provisions with respect to the proposed
7 merger as deemed necessary or desirable."

8 Section 19. REPEAL.--Sections 3-29-8, 3-29-10 and 3-29-18
9 NMSA 1978 (being Laws 1965, Chapter 300, Sections 14-28-8,
10 14-28-10 and 14-28-18, as amended) are repealed.

11 Section 20. SEVERABILITY.--If any part or application of
12 this act is invalid, the remainder of its application to other
13 situations or persons shall not be affected.

14 Section 21. EMERGENCY.--It is necessary for the public
15 peace, health and safety that this act take effect immediately.