

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 438

**47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

INTRODUCED BY

Andy Nuñez

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

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]~~ a 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;

.159134.3

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

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

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

8           ~~D. "fund" means the sanitary projects fund]~~

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

12           E. "person" means a single residence or property  
13 owner, as determined by the rules adopted by the association's  
14 board of directors; and

15           F. "project" means a water supply or reclamation,  
16 storm drainage or wastewater facility owned, constructed or  
17 operated by an association."

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

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

.159134.3

underscored material = new  
[bracketed material] = delete

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

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

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

.159134.3

underscored material = new  
[bracketed material] = delete

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

.159134.3

underscored material = new  
[bracketed material] = delete

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

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

11 "3-29-5. ~~[PREREQUISITE FOR INITIATING A PROJECT]~~  
12 RESTRICTIONS ON FORMING AN ASSOCIATION.--

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

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

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

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

24 ~~(4) agree to contribute all unskilled labor~~  
25 ~~and such skilled labor as is available and desirable and shall~~

.159134.3

underscoring material = new  
[bracketed material] = delete

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

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

19 [~~C. No~~] B. An association [~~may~~] shall not  
20 construct with state funds a project required in order to allow  
21 creation of a subdivision under the provisions of the Land  
22 Subdivision Act, the New Mexico Subdivision Act or Section  
23 47-5-9 NMSA 1978; however, an association may construct a  
24 project serving a previously approved subdivision in the  
25 service area of the association.

.159134.3

underscored material = new  
[bracketed material] = delete

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

.159134.3

underscored material = new  
[bracketed material] = delete

1 ~~single contract covering one project.~~

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

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

14 C. After July 1, 2006, a new association shall not  
15 be formed as a capital stock corporation."

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

18 "3-29-6. BOARD OF DIRECTORS--POWERS AND DUTIES.--

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

.159134.3



underscored material = new  
[bracketed material] = delete

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

22 B. The board of directors of the association may  
23 set and, from time to time, increase or adjust assessments,  
24 water and sewer rates, tolls or charges for services or  
25 facilities furnished or made available by the association. The

.159134.3

underscored material = new  
[bracketed material] = delete

1 assessments, tolls and charges may include:

2 (1) membership fees;

3 (2) a base monthly service fee for each active  
4 connection delivering water;

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

7 (4) a standby charge for the privilege of  
8 connecting into the association's water service at some date in  
9 the future;

10 (5) assessments based on the volume of water  
11 delivered;

12 (6) a connection charge; and

13 (7) an assessment necessary to cover the cost  
14 of extending either water or sewer service.

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

24 D. After notice is given, the board of directors of  
25 the association shall shut off unauthorized connections,

.159134.3

underscored material = new  
[bracketed material] = delete

1 illegal connections or a connection for which charges are  
2 delinquent in payment. The board of directors may file suit in  
3 a court of competent jurisdiction to recover costs associated  
4 with an unauthorized or illegal connection or delinquent  
5 connection, including the cost of water delivered, charges for  
6 facility connection and disconnection, damages and attorney  
7 fees.

8 E. The board of directors of the association shall  
9 prescribe and enforce rules for the connection to and  
10 disconnection from properties of facilities of the association.

11 F. Each member of the board of directors of the  
12 association shall complete training, as determined by rules of  
13 the department."

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 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~~] covenants or rules in regard to operation,  
23 maintenance and permanent use of [~~such lands, water or~~  
24 ~~facilities benefited by a domestic water supply, sewers or~~  
25 ~~treatment plant or any of them; provided that the water~~

.159134.3

underscored material = new  
[bracketed material] = delete

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

5 ~~(2) contributions in cash by the association~~  
6 ~~in addition to the contract for labor, materials or services as~~  
7 ~~specified in Section 3-29-5 NMSA 1978; provided that the~~  
8 ~~association's contribution shall always equal or exceed one-~~  
9 ~~third of the total state cost; and~~

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

12 ~~(a) a maximum of seven thousand dollars~~  
13 ~~(\$7,000) for each water project or for each sewer project where~~  
14 ~~twenty-eight or fewer dwelling units are to be served; provided~~  
15 ~~that no association shall be formed that shall not provide~~  
16 ~~service for at least ten domestic dwelling units; and~~

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

22 ~~B. A requisite to securing such allocation of funds~~  
23 ~~upon a department recommendation shall be that the individuals~~  
24 ~~either collectively or individually in an association shall~~  
25 ~~agree to provide proper sewage disposal facilities for the~~

.159134.3

underscored material = new  
[bracketed material] = delete

1 ~~sanitary removal of potentially harmful material classified as~~  
2 ~~sewage, which shall be occasioned by the installation of~~  
3 ~~running water facilities. Associations shall be eligible for~~  
4 ~~construction grants as provided for in the Federal Water~~  
5 ~~Pollution Control Act.~~

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

11 D. ~~The department may in its discretion and shall~~  
12 ~~upon the petition of twenty-five percent of the users of a~~  
13 ~~project hold a hearing and make a determination as to whether~~  
14 ~~a sanitary project is being operated and managed in the best~~  
15 ~~interest of all local citizens. If the department, after a~~  
16 ~~hearing, determines that a project is not being operated or~~  
17 ~~managed in the best interests of the local citizens, the~~  
18 ~~department may intervene in the operation and management with~~  
19 ~~full powers, including the power to set and collect~~  
20 ~~assessments from members of the association, and use the same~~  
21 ~~for the proper operation and management of the project] water~~  
22 ~~supply, reclamation, storm drainage and wastewater~~  
23 ~~facilities.~~

24 B. The department may:

25 (1) conduct periodic reviews of the

underscoring material = new  
[bracketed material] = delete

1 operation of the association;

2 (2) require the association to submit  
3 information to the department;

4 (3) require submittal of financial reports  
5 required pursuant to the Audit Act;

6 (4) review and require changes to the rate-  
7 setting analysis described in Section 3-29-12 NMSA 1978;

8 (5) after a hearing, intervene in the  
9 operation and management with full powers, including the  
10 power to set and collect assessments from members of the  
11 association, to set and collect service charges and use the  
12 same for the proper operation and management of the  
13 association; and

14 (6) appoint and delegate authority to a  
15 representative to oversee operation of the association for a  
16 specified period.

17 C. The department may in its discretion or shall,  
18 upon a petition of twenty-five percent of the members of the  
19 association, conduct investigations as it deems necessary to  
20 determine if the association is being operated and managed in  
21 the best interests of all the members of the association.

22 D. Whenever the department determines that a  
23 person violated or is violating the Sanitary Projects Act or  
24 a rule adopted pursuant to that act, the department may:

25 (1) issue a compliance order requiring

.159134.3

underscored material = new  
[bracketed material] = delete

1 compliance immediately or within a specified time period, or  
2 both; or

3 (2) commence a civil action in district  
4 court for appropriate relief, including injunctive relief.

5 E. A compliance order shall state with reasonable  
6 specificity the nature of the violation.

7 F. If a person fails to take corrective actions  
8 within the time specified in a compliance order, the  
9 department may assess a civil penalty of not more than two  
10 hundred fifty dollars (\$250) for each day of continued  
11 noncompliance with the compliance order.

12 G. Any compliance order issued by the department  
13 pursuant to this section shall become final unless, no later  
14 than thirty days after the compliance order is served, any  
15 person named in the compliance order submits a written  
16 request to the department for a public hearing. The  
17 department shall conduct a public hearing within ninety days  
18 after receipt of a request.

19 H. The department may appoint an independent  
20 hearing officer to preside over any public hearing held  
21 pursuant to Subsection G of this section. The hearing  
22 officer shall:

23 (1) make and preserve a complete record of  
24 the proceedings; and

25 (2) forward to the department a report that

underscored material = new  
[bracketed material] = delete

1 includes recommendations, if recommendations are requested by  
2 the department.

3 I. The department shall consider the findings of  
4 the independent hearing officer and, based on the evidence  
5 presented at the hearing, the department shall make a final  
6 decision regarding the compliance order.

7 J. In connection with any proceeding under this  
8 section, the department may:

9 (1) adopt rules for discovery and hearing  
10 procedures; and

11 (2) issue subpoenas for the attendance and  
12 testimony of witnesses and for relevant papers, books and  
13 documents.

14 K. Penalties collected pursuant to this section  
15 shall be deposited in the general fund."

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

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

24 ~~B. secure the cooperation and technical~~  
25 ~~assistance of any federal or state agency and further may~~

.159134.3



underscored material = new  
[bracketed material] = delete

1 ~~request that geological surveys be made by the state engineer~~  
2 ~~to determine the feasibility of developing water supplies for~~  
3 ~~specific projects]~~ Rules shall be drafted in consultation  
4 with representatives of the associations."

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

8 "3-29-12. LOCAL ADMINISTRATION OF [PROJECTS]  
9 ASSOCIATION--BOARD OF DIRECTORS [TERMS].--

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

.159134.3

underscored material = new  
[bracketed material] = delete

1                   (1) be elected annually or as specified in  
2 the bylaws of the association;

3                   (2) be members in good standing of the  
4 association; and

5                   (3) serve staggered terms of up to four  
6 years to ensure that terms will end in different election  
7 years.

8                   B. The board of directors shall choose among its  
9 members a president, a vice president and a secretary-  
10 treasurer or a secretary and a treasurer.

11                   C. ~~[The board of directors shall appoint a~~  
12 ~~foreman to care for and regulate the association project or~~  
13 ~~projects.]~~ Funds ~~[in an amount]~~ sufficient to provide for  
14 proper operation and maintenance of the association shall be  
15 identified through a rate-setting analysis that will ensure  
16 enough revenue to cover yearly expenses and emergencies, a  
17 reserve fund for non-major capital items and equitable pay  
18 for staff. The rate-setting analysis may be reviewed and  
19 changed if necessary on a yearly basis, and the funds shall  
20 be obtained by the association by a monthly assessment  
21 against the users of the facilities, ~~[said]~~ the assessment to  
22 be determined by the board of directors.

23                   D. The board of directors of the association  
24 shall have power to do all things necessary in the local  
25 administration of any project subject to the provisions of

.159134.3

underscored material = new  
[bracketed material] = delete

1 the Sanitary Projects Act.

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

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

7 "3-29-13. EXISTING ASSOCIATIONS [~~ELIGIBLE FOR~~  
8 ~~ADDITIONAL BENEFITS~~].--Associations organized under the  
9 provisions of Laws 1947, Chapter 206, Laws 1949, Chapter 79  
10 or Laws 1951, Chapter 52 shall have the same powers and  
11 duties as associations organized under the provisions of the  
12 Sanitary Projects Act [~~and shall be eligible for benefits for~~  
13 ~~construction of sewers and treatment plants without the~~  
14 ~~necessity for organizing a new association~~]; provided that  
15 the articles of incorporation shall be amended in accordance  
16 with the provisions of Section [~~14-28-19 New Mexico Statutes~~  
17 ~~Annotated, 1953 Compilation~~] 3-29-19 NMSA 1978."

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

21 "3-29-15. ASSOCIATION CONSTITUTES A PUBLIC BODY  
22 CORPORATE [~~DEBTS--ISSUANCE OF BONDS~~].--[~~A.~~] Upon the filing  
23 of each certificate and copy thereof as provided in Section  
24 3-29-17 NMSA 1978, the persons so associating, their  
25 successors and those who may thereafter become members of the

.159134.3

underscored material = new  
[bracketed material] = delete

1 association constitute a public body corporate by the name  
2 set forth in the certificate and by such name may sue and be  
3 sued, have capacity to make contracts, acquire, hold, enjoy,  
4 dispose of and convey property real and personal, accept  
5 grants and donations, borrow money, incur indebtedness,  
6 impose fees and assessments and do any other act or thing  
7 necessary or proper for carrying out the purposes of their  
8 organization.

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

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

.159134.3

1 "3-29-16. CERTIFICATE OF ASSOCIATION.--

2 A. The members of an association shall execute a  
3 certificate setting forth:

4 (1) the name of the association;

5 (2) the name of the [~~incorporators~~]  
6 individuals organizing the association;

7 (3) the location of the principal office of  
8 the association in this state;

9 (4) the objects and purposes of the  
10 association;

11 (5) the address of the initial registered  
12 office of the association and the name of the initial  
13 registered agent at that address;

14 (6) [~~the amount of capital stock and number~~  
15 ~~and denomination of the shares or, if the incorporators do~~  
16 ~~not desire to issue shares of stock~~] the plan and manner of  
17 acquiring membership and of providing funds or means for the  
18 acquisition, construction, improvement and maintenance of its  
19 work and for its necessary expenses;

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

22 (7) the duration of existence of the  
23 association, which may be perpetual;

24 (8) the number and manner of electing the  
25 board of directors of the association and the length of the

.159134.3

underscored material = new  
[bracketed material] = delete

1 terms that the directors will serve;

2 (9) the definition of a member of the  
3 association and the voting rights associated with the  
4 membership; and

5 (10) the manner of dissolution of the  
6 association as a public body.

7 B. Pursuant to the registered agent requirement  
8 of Paragraph (5) of Subsection A of this section, there shall  
9 be attached to the certificate a statement executed by the  
10 registered agent in which the agent acknowledges acceptance  
11 of the appointment by the filing association, if the agent is  
12 an individual, or a statement executed by an authorized  
13 officer of a corporation in which the officer acknowledges  
14 the corporation's acceptance of the appointment by the filing  
15 association as its registered agent, if the agent is a  
16 corporation.

17 C. The certificate or any amendment thereof made  
18 as provided in Section 3-29-19 NMSA 1978 may also contain  
19 provisions not inconsistent with the Sanitary Projects Act or  
20 other law of this state that the ~~[incorporators]~~ organizers  
21 may choose to insert for the regulation and conduct of the  
22 business and affairs of the association. There shall  
23 accompany each certificate a list ~~[of the names of all~~  
24 ~~members of the association, the list]~~ to ~~[also]~~ show the  
25 total number of members of the association and the total

.159134.3

underscored material = new  
[bracketed material] = delete

1 number of dwelling units [~~that can be~~] served [~~if the project~~  
2 ~~is completed~~] by the association at the time of filing."

3 Section 12. Section 3-29-17 NMSA 1978 (being Laws 1965,  
4 Chapter 300, Section 14-28-17, as amended) is amended to  
5 read:

6 "3-29-17. FILING OF CERTIFICATE AND BYLAWS.--The  
7 certificate of association and bylaws shall be acknowledged  
8 as required for deeds of real estate and shall be filed in  
9 the office of the public regulation commission. A copy of  
10 the certificate, duly certified by the commission or county  
11 clerk, shall be evidence in all courts and places."

12 Section 13. Section 3-29-17.4 NMSA 1978 (being Laws  
13 2001, Chapter 200, Section 7) is amended to read:

14 "3-29-17.4. ANNUAL REPORT.--

15 A. An association shall file, within the time  
16 prescribed by the Sanitary Projects Act, on forms prescribed  
17 and furnished by the public regulation commission to the  
18 association not less than thirty days prior to the date the  
19 report is due, an annual report setting forth:

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

22 (2) the address of the registered office of  
23 the association in the state and the name of its registered  
24 agent in this state at that address;

25 (3) a brief statement of the character of

.159134.3

underscored material = new  
[bracketed material] = delete

1 the affairs that the association is actually conducting; and

2 (4) the names and respective addresses of  
3 the directors and officers of the association.

4 B. The report shall be signed and sworn to by  
5 [~~any~~] two of the members of the association. If the  
6 association is in the hands of a receiver or trustee, the  
7 report shall be executed on behalf of the association by the  
8 receiver or trustee. A copy of the report shall be  
9 maintained at the association's principal place of business  
10 as contained in the report and shall be made available to the  
11 general public for inspection during regular business hours."

12 Section 14. Section 3-29-17.5 NMSA 1978 (being Laws  
13 2001, Chapter 200, Section 8) is amended to read:

14 "3-29-17.5. FILING OF ANNUAL REPORT--SUPPLEMENTAL  
15 REPORT--EXTENSION OF TIME--PENALTY.--

16 A. The annual report of the association shall be  
17 delivered to the public regulation commission on or before  
18 the fifteenth day of the fifth month following the end of its  
19 [~~taxable~~] fiscal year.

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

24 (1) the name of the association;

25 (2) the mailing address, street address or

.159134.3



underscored material = new  
[bracketed material] = delete

1 the geographical location of the association's registered  
2 office in this state and the name of the agent upon whom  
3 process against the association may be served; or

4 (3) the character of the association's  
5 business and its principal place of business within [~~or~~  
6 ~~without~~] the state.

7 C. Proof to the satisfaction of the public  
8 regulation commission that, prior to the due date of [~~any~~] a  
9 report required by [~~Subsections A or B of~~] this section, the  
10 report was deposited in the United States mail in a sealed  
11 envelope, properly addressed, with postage prepaid, shall be  
12 deemed compliance with the requirements of this section. If  
13 the commission finds that the report conforms to the  
14 requirements of the Sanitary Projects Act, it shall file the  
15 report. If the commission finds that it does not conform, it  
16 shall promptly return the report to the association for [~~any~~]  
17 necessary corrections. The penalties prescribed for failure  
18 to file the report within the time provided shall not apply  
19 if the report is corrected to conform to the requirements of  
20 the Sanitary Projects Act and returned to the commission  
21 within thirty days from the date on which it was mailed to  
22 the association by the commission.

23 D. The public regulation commission may, upon  
24 application by the association and for good cause shown,  
25 extend, for no more than a total of twelve months, the date

.159134.3

underscoring material = new  
[bracketed material] = delete

1 on which [~~any return~~] an annual report required by the  
2 provisions of the Sanitary Projects Act must be filed or the  
3 date on which the payment of [~~any~~] a fee is required. The  
4 commission shall, when an extension of time has been granted  
5 an association under the [~~United States~~] federal Internal  
6 Revenue Code of 1986 for the time in which to file a return,  
7 grant the association the same extension of time to file the  
8 required [~~return~~] annual report and to pay the required fees,  
9 provided that a copy of the approved federal extension of  
10 time is attached to the association's report, and provided  
11 further that no such extension shall prevent the accrual of  
12 interest as otherwise provided by law.

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

16 F. [~~No~~] An annual or supplemental report required  
17 to be filed under this section shall not be deemed to have  
18 been filed if the fees accompanying the report have been paid  
19 by check and the check is dishonored upon presentation.

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

24 H. An association shall file with the department  
25 a member accountability report that shall include:

.159134.3

underscoring material = new  
[bracketed material] = delete

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

3                   (2) a copy of the Open Meetings Act  
4 resolution stating what notice for a public meeting is  
5 reasonable. The report shall be signed and sworn to as to  
6 accuracy and completeness by all members of the board of  
7 directors of the association. A statement shall be included  
8 in the consumer confidence report required for water systems  
9 that the member accountability report is available to the  
10 public upon request. The member accountability report shall  
11 be filed with the department with the consumer confidence  
12 report no later than July 1 of each year."

13               Section 15. Section 3-29-19 NMSA 1978 (being Laws 1965,  
14 Chapter 300, Section 14-28-19) is amended to read:

15               "3-29-19. AMENDMENT OF [~~ARTICLES OF INCORPORATION~~]  
16 CERTIFICATE OF ASSOCIATION AND BYLAWS--METHOD.--Every  
17 association may [~~change its name, increase or decrease its~~  
18 capital stock or membership, change the location of its  
19 principal office in this state, extend the period of its  
20 existence and] make such [~~other~~] amendment, change or  
21 alteration to its certificate of association or bylaws as may  
22 be desired not inconsistent with the Sanitary Projects Act or  
23 other law of this state by a resolution adopted by a vote of  
24 a majority of the members present at any regular or special  
25 meeting duly held upon such notice as the bylaws provide. A

.159134.3

underscored material = new  
[bracketed material] = delete

1 certified copy of such resolution with the affidavit of the  
2 president and secretary that [~~said~~] the resolution was duly  
3 adopted by a majority vote of [~~such shareholders or~~] the  
4 members at a meeting held in accordance with the provisions  
5 of this section shall be filed and recorded as provided for  
6 filing and recording the original certificate of  
7 [~~incorporation~~] association and bylaws, and thereupon the  
8 certificate of [~~incorporation~~] association and bylaws shall  
9 be deemed to be amended accordingly, and a copy of such  
10 certificate of amendment certified by the [~~state corporation~~]  
11 public regulation commission or the county clerk shall be  
12 accepted as evidence of each change or amendment in all  
13 courts and places."

14 Section 16. Section 3-29-20 NMSA 1978 (being Laws 2000,  
15 Chapter 56, Section 4) is amended to read:

16 "3-29-20. REORGANIZATION OF COOPERATIVE ASSOCIATIONS  
17 AND NONPROFIT CORPORATIONS PURSUANT TO THE SANITARY PROJECTS  
18 ACT.--

19 A. Cooperative associations formed pursuant to  
20 Sections 53-4-1 through 53-4-45 NMSA 1978 and nonprofit  
21 corporations formed under the Nonprofit Corporation Act may  
22 reorganize under the Sanitary Projects Act upon approval of  
23 the reorganization by a [~~two-thirds~~<sup>1</sup>] majority vote of [~~the~~  
24 ~~directors~~] a quorum of the members of a cooperative  
25 association or nonprofit corporation. Notice of the meeting

.159134.3

underscored material = new  
[bracketed material] = delete

1 to consider the reorganization and a copy of the proposed  
2 certificate of association shall be sent at least fifteen  
3 days prior to such meeting by the cooperative association to  
4 each member at ~~[his]~~ the member's last known address and by  
5 the nonprofit corporation to each member, if any, at ~~[his]~~  
6 the member's last known address. Upon approval of the  
7 reorganization by the ~~[two-thirds]~~ majority vote of ~~[the~~  
8 ~~directors]~~ a quorum of the members, the cooperative  
9 association or the nonprofit corporation shall execute a  
10 certificate of association pursuant to Sections 3-29-16 and  
11 3-29-17 NMSA 1978. The certificate of association shall  
12 state that it supersedes the articles of incorporation and  
13 all amendments to the articles of incorporation of the  
14 cooperative association or the nonprofit corporation.

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

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

24 (1) be the surviving entity, and the  
25 separate existence of the prior cooperative association or

.159134.3

underscoring material = new  
[bracketed material] = delete

1 nonprofit corporation shall cease;

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

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

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

.159134.3

underscored material = new  
[bracketed material] = delete

1 association or nonprofit corporation shall be impaired by the  
2 reorganization.

3 D. A cooperative association formed pursuant to  
4 the Cooperative Association Act or nonprofit corporation  
5 formed pursuant to the Nonprofit Corporation Act that  
6 reorganized under Subsection A of this section prior to June  
7 30, 2006 may, within three years of the effective date of  
8 this 2006 act, reorganize pursuant to the act under which it  
9 had previously been organized upon approval of the  
10 reorganization by a two-thirds' vote of the directors of the  
11 association or corporation. Notice of the meeting to  
12 consider the reorganization and a copy of the proposed  
13 articles of incorporation shall be sent by the association or  
14 the corporation at least fifteen days prior to the meeting to  
15 each member at the member's last known address. Upon  
16 approval of the reorganization, the association or  
17 corporation shall execute articles of incorporation pursuant  
18 to Sections 53-4-5 and 53-4-6 or 53-8-31 and 53-8-32 NMSA  
19 1978. The articles of incorporation shall state that they  
20 supersede the certificate of association or incorporation and  
21 all amendments thereto of the association or corporation and  
22 shall follow the filing procedures of Subsections B and C of  
23 this section."

24 Section 17. A new section of the Sanitary Projects Act  
25 is enacted to read:

.159134.3

1           "[NEW MATERIAL] BYLAWS.--

2           A. Members shall adopt bylaws by no less than a  
3 majority vote of a quorum of the membership of the  
4 association setting forth:

5                     (1) the name of the association;

6                     (2) the requirement of an association seal;

7                     (3) the fiscal year of the association;

8                     (4) guidelines for membership, which shall  
9 include the sentence "Membership shall not be denied because  
10 of the applicant's race, color, creed, national origin or  
11 sex.";

12                    (5) guidelines for meetings of the  
13 membership, which shall include the date or time period of a  
14 membership meeting, required notice of a meeting,  
15 establishment of a quorum and the order of business to be  
16 conducted at a meeting of the membership;

17                    (6) the functions of the board of directors,  
18 including a conflict of interest policy for the board;

19                    (7) the duties of officers of the board of  
20 directors; and

21                    (8) provisions for the board of directors to  
22 establish rules to govern the day-to-day operations of the  
23 project, including a code of conduct for staff and provisions  
24 to establish an annual budget, rate structure, assessments  
25 and reserve funds.

.159134.3



underscoring material = new  
[bracketed material] = delete

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

7           C. The department may prescribe by rule  
8 guidelines for bylaws and rules of an association."

9           Section 18. A new section of the Sanitary Projects Act  
10 is enacted to read:

11           "[NEW MATERIAL] EXEMPTIONS FROM SPECIAL DISTRICT  
12 PROCEDURES ACT PROVISIONS.--An association formed pursuant to  
13 the provisions of the Sanitary Projects Act may be formed  
14 exclusively as provided in that act, and formation of the  
15 association shall be exempt from all review and requirements  
16 set forth in the Special District Procedures Act."

17           Section 19. A new section of the Sanitary Projects Act  
18 is enacted to read:

19           "[NEW MATERIAL] MERGER OF TWO OR MORE ASSOCIATIONS INTO  
20 ONE ASSOCIATION.--Upon approval by vote of a majority of a  
21 quorum of each membership, two or more associations may merge  
22 into one association pursuant to a plan of merger approved in  
23 the manner provided by this section. The board of directors  
24 of each association shall, by resolution adopted by each  
25 board, approve a plan of merger setting forth:

.159134.3

underscored material = new  
~~[bracketed material] = delete~~

1           A. the names of the associations proposing to  
2 merge, and the association into which they propose to merge,  
3 which is hereinafter designated as the "surviving  
4 association";

5           B. the terms and conditions of the proposed  
6 merger, including transfer of assets and liabilities;

7           C. the manner and basis of converting each  
8 association's obligations or other securities into the  
9 surviving association;

10           D. a statement of any changes in the certificate  
11 of association of the surviving association to be affected by  
12 the merger; and

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

15           Section 20. REPEAL.--Sections 3-29-8, 3-29-10 and  
16 3-29-18 NMSA 1978 (being Laws 1965, Chapter 300, Sections  
17 14-28-8, 14-28-10 and 14-28-18, as amended) are repealed.

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