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SENATE BILL 962

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO SPECIAL DISTRICTS; CREATING WATER AND SANITATION
DISTRICT AUTHORITY TO IMPOSE A GROSS RECEIPTS TAX; PROVIDING
FOR VOTER APPROVAL; PROVIDING FOR COLLECTION, ADMINISTRATION,
ENFORCEMENT AND DISTRIBUTION OF THE TAX; ALLOWING THE
ESTABLISHMENT OF ELECTORAL DISTRICTS FOR WATER AND SANITATION
DISTRICTS; PROVIDING FOR DISTRICT BOARD POWERS AND DUTIES;
REQUIRING DISCLOSURE OF FINANCIAL INTERESTS AND CONFLICTS OF
INTEREST BY BOARD MEMBERS; DEFINING THE SERVICE AREA OF A
DISTRICT; CHANGING THE PURPOSES OF A DISTRICT; PROVIDING FOR
DEFINITIONS; ALLOWING COMPENSATION OF BOARD MEMBERS;
ESTABLISHING THE TERMS OF BOARD MEMBERS; PROVIDING PROCEDURES
FOR INCREASING THE NUMBER OF BOARD MEMBERS TO FIVE; PROVIDING
PROCEDURES BY WHICH LANDOWNERS AND CERTAIN ENTITIES MAY JOIN A
DISTRICT; PROVIDING EXCEPTIONS TO THE COMMUNITY SERVICE
DISTRICT ACT; REQUIRING VOTER APPROVAL OF SALE OF DISTRICT

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1 WATER AND WASTEWATER FACILITIES; CHANGING REPORTING
2 REQUIREMENTS OF A DISTRICT; INCLUDING WATER AND SANITATION
3 DISTRICTS IN SECTION 72-1-9 NMSA 1978 (BEING LAWS 1985, CHAPTER
4 198, SECTION 1, AS AMENDED); AMENDING, REPEALING AND ENACTING
5 SECTIONS OF THE WATER AND SANITATION DISTRICT ACT; MAKING AN
6 APPROPRIATION.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 Section 1. A new section of the Water and Sanitation
10 District Act is enacted to read:

11 "[NEW MATERIAL] DEFINITION--GROSS RECEIPTS.--As used in
12 the Water and Sanitation District Act:

13 A. "gross receipts" means the total amount of money
14 or the value of other consideration received from selling
15 property in a district, from leasing property employed in a
16 district, from selling services performed outside a district,
17 the product of which is initially used in a district, or from
18 performing services in a district. In an exchange in which the
19 money or other consideration received does not represent the
20 value of the property or service exchanged, "gross receipts"
21 means the reasonable value of the property or service
22 exchanged;

23 B. "gross receipts" includes:

24 (1) any receipts from sales of tangible
25 personal property handled on consignment;

1 (2) the total commissions or fees derived from
2 the business of buying, selling or promoting the purchase, sale
3 or lease, as an agent or broker on a commission or fee basis,
4 of any property, service, stock, bond or security;

5 (3) amounts paid by members of any cooperative
6 association or similar organization for sales or leases of
7 personal property or performance of services by such
8 organization;

9 (4) amounts received from transmitting
10 messages or conversations by persons providing telephone or
11 telegraph services;

12 (5) amounts received by a New Mexico florist
13 from the sale of flowers, plants or other products that are
14 customarily sold by florists where the sale is made pursuant to
15 orders placed with the New Mexico florist that are filled and
16 delivered outside New Mexico by an out-of-state florist; and

17 (6) the receipts of a home service provider
18 from providing mobile telecommunications services to customers
19 whose place of primary use is in a district if:

20 (a) the mobile telecommunications
21 services originate and terminate in the same state, regardless
22 of where the services originate, terminate or pass through; and

23 (b) the charges for mobile
24 telecommunications services are billed by or for a customer's
25 home service provider and are deemed provided by the home

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1 service provider. For the purposes of this section, "home
2 service provider", "mobile telecommunications services",
3 "customer" and "place of primary use" have the meanings given
4 in the federal Mobile Telecommunications Sourcing Act; and

5 C. "gross receipts" excludes:

- 6 (1) cash discounts allowed and taken;
7 (2) New Mexico gross receipts tax,
8 governmental gross receipts tax and leased vehicle gross
9 receipts tax payable on transactions for the reporting period;
10 (3) taxes imposed pursuant to the provisions
11 of any local option gross receipts tax that is payable on
12 transactions for the reporting period;
13 (4) any gross receipts or sales taxes imposed
14 by an Indian nation, tribe or pueblo; provided that the tax is
15 approved, if approval is required by federal law or regulation,
16 by the secretary of the interior of the United States; and
17 provided further that the gross receipts or sales tax imposed
18 by the Indian nation, tribe or pueblo provides a reciprocal
19 exclusion for gross receipts, sales or gross receipts-based
20 excise taxes imposed by the state or its political
21 subdivisions;
22 (5) a water and sanitation district gross
23 receipts tax;
24 (6) any type of time-price differential;
25 (7) amounts received solely on behalf of

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1 another in a disclosed agency capacity; and

2 (8) amounts received by a New Mexico florist
3 from the sale of flowers, plants or other products that are
4 customarily sold by florists where the sale is made pursuant to
5 orders placed with an out-of-state florist for filling and
6 delivery in New Mexico by a New Mexico florist."

7 Section 2. A new section of the Water and Sanitation
8 District Act is enacted to read:

9 "[NEW MATERIAL] GROSS RECEIPTS--CERTAIN CONTRACTS.--When
10 the sale of property or service is made under any type of
11 charge, conditional or time-sales contract or the leasing of
12 property is made under a leasing contract, the seller or lessor
13 may elect to treat all receipts, excluding any type of time-
14 price differential, under such contracts as gross receipts as
15 and when the payments are actually received. If the seller or
16 lessor transfers the seller's or lessor's interest in any such
17 contract to a third person, the seller or lessor shall pay the
18 gross receipts tax upon the full sale or leasing contract
19 amount, excluding any type of time-price differential."

20 Section 3. A new section of the Water and Sanitation
21 District Act is enacted to read:

22 "[NEW MATERIAL] WATER AND SANITATION DISTRICT GROSS
23 RECEIPTS TAX--AUTHORITY TO IMPOSE--USE OF PROCEEDS.--

24 A. A board may impose by resolution an excise tax
25 not to exceed a rate of twenty-five hundredths percent of the

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1 gross receipts of any person engaging in business within the
2 board's district for the privilege of engaging in business in
3 that district. The excise tax imposed may be referred to as
4 the "water and sanitation district gross receipts tax".

5 B. A board shall use the proceeds from the water
6 and sanitation district gross receipts tax to:

7 (1) purchase, acquire, establish and construct
8 waterworks to supply water for domestic, commercial and
9 industrial purposes by any available means to persons within
10 and without the boundaries of the board's district;

11 (2) purchase, acquire, establish and construct
12 sanitary sewers or a system or systems of sewage, garbage or
13 refuse disposal;

14 (3) purchase, acquire, establish and construct
15 streets and street improvements, including, without limitation,
16 grades, regrades, gravel, oiling, surfacing, macadamizing,
17 paving, crosswalks, sidewalks, driveway approaches, curbs,
18 gutters, culverts, drains, sewers, manholes, inlets, outlets,
19 retaining walls, bridges, overpasses, tunnels, underpasses,
20 approaches, artificial lights and lighting equipment, parkways,
21 grade separators, traffic separators and traffic control
22 equipment and all appurtenances and incidentals or any
23 combination thereof, including real and other property;

24 (4) establish or construct park and
25 recreational improvements; and

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1 (5) pay revenue bonds issued pursuant to the
2 Water and Sanitation District Act.

3 C. A resolution by a board to impose the water and
4 sanitation district gross receipts tax shall not go into effect
5 until after an election is held on the question of imposing the
6 tax for the purpose for which the revenue is dedicated and the
7 majority of the voters in the board's district vote in favor of
8 imposing the tax. The board shall adopt a resolution calling
9 for an election within seventy-five days of the date the
10 resolution to impose the tax is adopted. The question shall be
11 submitted to the voters of the board's district as a separate
12 question at a general election or at a special election called
13 for that purpose by the board. A special election shall be
14 called, conducted and canvassed in substantially the same
15 manner as provided by law for general elections. If the
16 majority of the voters voting on the question approve the
17 question of imposing the water and sanitation district gross
18 receipts tax, the board's resolution to impose the tax shall
19 become effective. If the question of imposing the water and
20 sanitation district gross receipts tax fails, the governing
21 body shall not again propose the imposition of the tax for a
22 period of one year from the date of the election."

23 Section 4. A new section of the Water and Sanitation
24 District Act is enacted to read:

25 "[NEW MATERIAL] WATER AND SANITATION DISTRICT GROSS

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1 RECEIPTS TAX--LEVY AND COLLECTION.--To levy and collect the
2 water and sanitation district gross receipts tax, a board
3 shall, in each year, determine the amount of money necessary to
4 be raised by the tax in that board's district. The board shall
5 consider other sources of revenue of the district and fix a
6 water and sanitation district gross receipts tax rate in
7 accordance with the Water and Sanitation District Act that,
8 with other revenues, will raise the amount required by the
9 district annually to supply funds to purchase, acquire,
10 establish and construct the works and equipment of the
11 district. The board shall, on or before July 1 of each year,
12 certify to the taxation and revenue department the water and
13 sanitation district gross receipts tax rate fixed for the
14 board's district."

15 Section 5. A new section of the Water and Sanitation
16 District Act is enacted to read:

17 "[NEW MATERIAL] WATER AND SANITATION DISTRICT GROSS
18 RECEIPTS TAX--COLLECTION BY TAXATION AND REVENUE DEPARTMENT--
19 APPLICABLE EXEMPTIONS AND DEDUCTIONS--DISTRIBUTION OF
20 PROCEEDS.--

21 A. The taxation and revenue department shall
22 collect the water and sanitation district gross receipts tax at
23 the rate certified by the district pursuant to the Water and
24 Sanitation District Act in the same manner and at the same time
25 it collects the state gross receipts tax. The exemptions and

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1 deductions applied to gross receipts for the purpose of
2 determining the gross receipts tax due pursuant to the Gross
3 Receipts and Compensating Tax Act apply to gross receipts for
4 the purpose of determining the water and sanitation district
5 gross receipts tax due pursuant to the Water and Sanitation
6 District Act.

7 B. The taxation and revenue department shall
8 distribute to each district for which it is collecting the
9 water and sanitation district gross receipts tax the amount of
10 the tax collected for the district less any disbursements for
11 tax credits, refunds and the payment of interest applicable to
12 the water and sanitation district gross receipts tax imposed by
13 the district. Transfer of the tax to a district shall be made
14 within the month following the month in which the tax is
15 collected."

16 Section 6. A new section of the Water and Sanitation
17 District Act is enacted to read:

18 "[NEW MATERIAL] WATER AND SANITATION DISTRICT GROSS
19 RECEIPTS TAX--ADMINISTRATION.--

20 A. The taxation and revenue department shall
21 interpret Sections 1 through 5 of this 2007 act.

22 B. The taxation and revenue department shall
23 administer and enforce the collection of the water and
24 sanitation district gross receipts tax, and the Tax
25 Administration Act applies to the administration and

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1 enforcement of the tax."

2 Section 7. A new section of the Water and Sanitation
3 District Act is enacted to read:

4 "[NEW MATERIAL] BOARD ELECTORAL DISTRICTS--CREATION--
5 REDISTRICTING.--

6 A. A district may, upon its own motion, or shall,
7 upon petition to the board by two-thirds of the voters of the
8 district, choose to elect its board members on a districted
9 basis. The boundaries of electoral districts shall be
10 established so that each electoral district contains, as nearly
11 as possible, substantially the same population based on the
12 most recent federal decennial census.

13 B. Redistricting of a districted board shall be
14 required within two years following a federal decennial census
15 showing a disparity of greater than ten percent between the
16 populations of any two electoral districts. In addition, the
17 board may at its discretion provide for redistricting upon a
18 change in the district's boundaries that results in a
19 significant increase or decrease in the population of an
20 electoral district.

21 C. Members of a districted board shall be elected
22 for staggered terms of either four or six years. At the next
23 scheduled board election following the adoption of the
24 resolution to district, the voters of each electoral district
25 shall elect a representative to the board. Following the

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1 election, board members shall classify themselves by lot to
2 establish staggered terms such that no more than three board
3 members' terms will expire in one year. Thereafter, members
4 shall serve four-year terms or six-year terms, as the case may
5 be."

6 Section 8. A new section of the Water and Sanitation
7 District Act is enacted to read:

8 "[NEW MATERIAL] BOARD--DELEGATION OF POWER--CONFLICT OF
9 INTEREST--DISCLOSURE OF FINANCIAL INTERESTS.--

10 A. All powers, privileges and duties vested in or
11 imposed upon the district shall be exercised and performed by
12 the board. The board may delegate its powers by resolution to
13 an officer or agent of the board, with the exception of the
14 following:

15 (1) adoption of board policies and procedures;

16 (2) ratification of acquisition of property;

17 (3) initiation or continuation of legal

18 action, except that initiation and filing of liens for unpaid
19 rates and charges, suits for payment thereof and discontinuance
20 of service for failure to pay such rates and charges may be
21 delegated;

22 (4) establishment of policies regarding fees,
23 tolls, rates or charges; and

24 (5) issuance of bonds.

25 B. The board shall promulgate and adhere to

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1 policies and procedures that govern its conduct.

2 C. A member of the board having a financial
3 interest or possible interest in the outcome of any policy,
4 decision or determination before the board shall, within a
5 reasonable time after the interest becomes apparent and in no
6 case later than at the time of the taking of a vote on the
7 issue in which that member has a financial interest or possible
8 interest, disclose to each of the other members of the board
9 the nature of the financial interest or possible interest in
10 the issue, and the disclosure shall be recorded in the minutes
11 book of the board; provided, however, that a member's status as
12 a taxpayer, ratepayer or customer of the district shall not be
13 deemed to constitute a financial interest or possible interest
14 for the purposes of this section.

15 D. Disclosure of financial interest or possible
16 interest on any issue coming before the board shall not
17 disqualify a member of the board from voting on the issue,
18 unless:

19 (1) a majority of the remaining members of the
20 board determines that the member who discloses a financial
21 interest or possible interest should not in propriety vote on
22 the issue; or

23 (2) the member having a financial interest or
24 possible interest in the issue voluntarily disqualifies the
25 member's self."

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1 Section 9. A new section of the Water and Sanitation
2 District Act is enacted to read:

3 "[NEW MATERIAL] SERVICE AREA.--Except for those areas that
4 are annexed by a municipality after July 1, 2007 and that are
5 within the service area of a district, a district shall not
6 provide water or wastewater services within the boundaries of
7 any municipality, nor shall any district provide service to
8 municipal water or wastewater service customers that are served
9 by the municipality on or before July 1, 2007 and that are
10 located outside the boundaries of the municipality, except upon
11 the specific written consent of the municipality for the
12 district to provide such service."

13 Section 10. Section 73-21-3 NMSA 1978 (being Laws 1943,
14 Chapter 80, Section 2, as amended) is amended to read:

15 "73-21-3. PURPOSE OF WATER AND SANITATION DISTRICTS.--
16 Water and sanitation districts may be created for the purpose
17 of:

18 A. purchasing, acquiring, establishing, operating
19 or constructing waterworks to supply water for domestic,
20 commercial, [~~and~~] fire protection or industrial purposes by any
21 available means to persons within and without the boundaries of
22 the district. For this purpose, any district has the power to
23 extend its water lines outside the boundaries of the district
24 for the purpose of securing a source of water supply or for the
25 purpose of supplying the water to any lands of the United

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1 States, New Mexico or Indian reservations for use by any
2 person, firm or corporation;

3 B. purchasing, acquiring, establishing, operating
4 or constructing sanitary sewers, on-site wastewater management
5 systems or a system of sewage treatment and disposal, garbage
6 or refuse disposal and recycling;

7 C. purchasing, acquiring, establishing or
8 constructing streets and street improvements, including without
9 limitation grades, regrades, gravel, oiling, surfacing,
10 macadamizing, paving, crosswalks, sidewalks, driveway
11 approaches, curbs, gutters, culverts, drains, sewers, manholes,
12 inlets, outlets, retaining walls, bridges, overpasses, tunnels,
13 underpasses, approaches, artificial lights and lighting
14 equipment, parkways, grade separators, traffic separators and
15 traffic-control equipment and all appurtenances and incidentals
16 or any combination of them, including real and other property
17 for them;

18 D. establishing or constructing park and
19 recreational improvements;

20 E. purchasing, acquiring, establishing,
21 constructing or operating other public facilities or economic
22 development projects; [~~or~~]

23 F. managing on-site wastewater treatment systems
24 for the health and welfare of residents;

25 G. adopting and implementing economic development

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1 plans; or

2 [F-] H. all of the improvements in Subsections A
3 through [E] G of this section or any combination of them within
4 or without the district."

5 Section 11. Section 73-21-4 NMSA 1978 (being Laws 1943,
6 Chapter 80, Section 3, as amended) is amended to read:

7 "73-21-4. DEFINITIONS.--As used in the Water and
8 Sanitation District Act:

9 [~~A. "sewage disposal" includes all constructions
10 for collection, transportation, pumping, treatment and final
11 disposition of sewage;~~]

12 A. "board" means the board of directors of a
13 district;

14 B. "commission" means a county special district
15 commission, convened in accordance with the Special District
16 Procedures Act, of the county or counties in which the lands of
17 a proposed district lie;

18 [~~B-] C. "district" means a water and sanitation
19 district that is established pursuant to [that act and that is
20 either entirely within or partly within and partly without one
21 or more counties, provided those parts or parcels of the
22 district lying in two or more counties are contiguous with one
23 another, and further provided, a district created pursuant to a
24 petition signed by the board of county commissioners of a
25 county shall be entirely within that county] the Water and~~

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1 Sanitation District Act;

2 ~~[G. "board" means the board of directors of a~~
3 ~~district;~~

4 ~~D. "taxpaying elector of a district", "qualified~~
5 ~~elector" or "elector" means a person registered to vote in any~~
6 ~~precinct in the state, who:~~

7 ~~(1) is a resident of the district;~~

8 ~~(2) is a nonresident of the district who pays,~~
9 ~~or will be liable for paying, rates, tolls or charges set by~~
10 ~~the board; or~~

11 ~~(3) is a nonresident of the district who~~
12 ~~either has paid or incurred a general tax liability on real~~
13 ~~property within the district in the twelve months immediately~~
14 ~~preceding a designated time or event or who is purchasing real~~
15 ~~property within the district under a real estate contract where~~
16 ~~a property tax has been paid or incurred on the real property~~
17 ~~in the twelve months immediately preceding a designated time or~~
18 ~~event; and]~~

19 D. "electoral district" means a subdivision of a
20 district from which a board member is elected by the voters who
21 are residents of that subdivision;

22 E. "publication" means giving notice once a week
23 for three consecutive weeks in at least one newspaper of
24 general circulation in the county in which all or the major
25 portion of the district is located. It is not necessary that

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1 publication be made on the same day of the week in each of the
2 three weeks, but not less than fourteen days, excluding the day
3 of first publication, shall intervene between the first
4 publication and the last publication, and publication shall be
5 complete on the date of the last publication;

6 F. "service area" means the area within the
7 boundaries and the area within one mile of the boundaries of a
8 district;

9 G. "sewage disposal" includes constructions for
10 collection, transportation, pumping, treatment and final
11 disposition of sewage; and

12 H. "voter" means a qualified elector who is
13 registered to vote in general elections in a precinct in the
14 district and is a resident or taxpayer of the district."

15 Section 12. Section 73-21-6 NMSA 1978 (being Laws 1943,
16 Chapter 80, Section 5, as amended) is amended to read:

17 "73-21-6. PETITION.--

18 A. The organization of a district shall be
19 initiated:

20 (1) by a petition filed in the office of the
21 clerk of the court vested with jurisdiction in a county in
22 which all or part of the real property in the proposed district
23 is situated. The petition shall be signed by not less than
24 twenty-five percent of the [~~taxpaying electors~~] voters of the
25 district, none of whom shall be an officer, director or

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1 shareholder of any business entity with an economic interest in
2 the subdivision and sale of land within the district [~~provided~~
3 ~~that at the option of a county and~~]; or

4 (2) after adoption of a resolution by the
5 county authorizing the filing of a petition, that county may
6 file a petition [~~which~~] that shall be signed by the [~~chairman~~]
7 chair of the board of county commissioners. The petition and
8 all other instruments relating to the formation of [~~such~~
9 ~~districts~~] a district shall be filed with the county clerk of
10 the county in which all or [~~the major~~] a portion of the
11 proposed district is located.

12 B. The petition shall set forth:

13 (1) the name of the proposed district
14 consisting of a chosen name preceding the words "water and
15 sanitation district";

16 (2) a general description of the improvements
17 to be constructed or installed within and for the district;

18 (3) the estimated overall cost of the proposed
19 improvements to be constructed or installed within and for the
20 district;

21 (4) an estimated timetable for the completion
22 of all intended improvements;

23 (5) the need for the creation of the district
24 and the construction or installation of improvements, stating
25 the nature and extent of the anticipated use of the

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1 improvements by persons [~~presently~~] currently residing on land
2 within the district and the nature and extent of the
3 anticipated use of the improvements due to future development;

4 (6) a general description of the boundaries of
5 the district or the territory to be included in it, with such
6 certainty as to enable a property owner to determine whether or
7 not [~~his~~] the owner's property is within the district; and

8 [~~(7) the salary, if any, that the members of~~
9 ~~the board shall receive for their services; provided, however,~~
10 ~~that no member of the board shall receive a salary in excess of~~
11 ~~five dollars (\$5.00) per day for each day while in actual~~
12 ~~attendance upon his duties; and~~

13 ~~(8)]~~ (7) a request for the organization of the
14 district.

15 C. No petition with the requisite signatures shall
16 be [~~declared void~~] rejected on account of alleged defects, but
17 the court may at any time permit the petition to be amended to
18 conform to the facts by correcting any errors in the
19 description of the territory or in any other particular.
20 Similar petitions or duplicate copies of the same petition for
21 the organization of the same district may be filed and shall
22 together be regarded as one petition. All such petitions filed
23 prior to the hearing on the first petition filed shall be
24 considered by the court the same as though filed with the first
25 petition placed on file."

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1 Section 13. Section 73-21-8 NMSA 1978 (being Laws 1943,
2 Chapter 80, Section 7, as amended) is amended to read:

3 "73-21-8. NOTICE OF HEARING ON PETITION.--Upon approval
4 of the [~~county special district~~] commission as provided in the
5 Special District Procedures Act, where applicable, the court
6 shall fix a place and time, not less than twenty days nor more
7 than forty days after receipt of the decision of the [~~county~~
8 ~~special district~~] commission, for a hearing [~~thereon~~], and
9 [~~thereupon~~] the clerk of the court shall cause notice by
10 publication to be made of the pendency of the petition and of
11 the time and place of the hearing [~~thereon~~]. The clerk of the
12 court shall also forthwith cause a copy of the notice to be
13 mailed by United States registered mail to the board of county
14 commissioners of each of the several counties and shall notify
15 the state engineer, attorney general and [~~the health and social~~
16 ~~services~~] department of environment of the hearing to be held
17 for the creation of the district by mailing notice addressed to
18 [~~the same, such~~] them. The notice [~~to~~] shall be deposited in
19 the mail not less than ten days prior to the date set for the
20 hearing, and the state engineer, attorney general and [~~the~~
21 ~~health and social services~~] department of environment may
22 appear and be heard at the hearings."

23 Section 14. Section 73-21-9 NMSA 1978 (being Laws 1943,
24 Chapter 80, Section 8, as amended) is amended to read:

25 "73-21-9. HEARING ON PETITIONS--ELECTION FOR ORGANIZATION

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1 AND OFFICERS.--

2 A. On or before the day fixed for the hearing or at
3 an adjournment of it, the court shall [~~ascertain from the tax~~
4 ~~rolls of the county in which the district is located or into~~
5 ~~which it extends, from the last official registry list and from~~
6 ~~any other evidence that may be adduced, the total number of~~
7 ~~taxpaying electors~~] obtain from the county clerk a list of the
8 voters of the proposed district.

9 B. If the court finds that no petition has been
10 signed and presented in conformity with the Water and
11 Sanitation District Act, or that the material facts are not as
12 set forth in the petition filed, it shall dismiss the
13 proceedings and adjudge the costs against the signers of the
14 petition or, if applicable, the board of county commissioners
15 of a county, in the proportion as it deems just and equitable.
16 No appeal or suit of error shall lie from an order dismissing
17 the proceedings; but nothing in that act shall prevent the
18 filing of a subsequent petition for similar improvements or for
19 a similar district, and the right to renew the [~~proceeding~~]
20 petition is expressly granted and authorized.

21 C. At any time after the filing of the petition for
22 the organization of a district and before the day fixed for the
23 hearing on it, the owner of any taxable property within the
24 proposed district may file a petition with the court stating
25 reasons why the property should not be included in the district

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1 and requesting that the property be excluded from it. The
2 petition shall be signed by the owner and verified and shall
3 describe the property sought to be excluded. The court shall
4 hear the petition and all objections to it at the time of the
5 hearing on the petition for organization and shall determine
6 whether the property should be excluded or included in the
7 district.

8 D. In determining whether or not the petition for
9 the creation of a [~~water and sanitation~~] district shall be
10 granted, the district court shall consult and request an
11 opinion from:

12 (1) the state engineer to determine whether
13 the proposed district has adequate water rights to implement
14 the proposed improvements; and

15 (2) the [~~environmental improvement division of~~
16 ~~the~~] department of environment to determine, as to the
17 technological feasibility of the proposed improvements, whether
18 the water proposed to be supplied is of an acceptable quality
19 to conform with the state regulations and whether the liquid
20 and solid waste disposal proposals can conform with state
21 regulations.

22 E. The court may deny the petition or may order the
23 petition to be modified if the court, after hearing on the
24 petition, finds that:

25 (1) the proposed water and sewage improvements

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1 cannot conform with the state regulations;

2 (2) the water and [~~sewage~~] wastewater system
3 improvements cannot be implemented within a reasonable time
4 taking into consideration applications for state and federal
5 grants;

6 (3) there is lacking an actual or impending
7 need for the water and [~~sewage~~] wastewater system improvements
8 proposed; or

9 (4) the boundaries of the proposed district
10 contain land that has no actual or impending need for the water
11 and [~~sewage~~] wastewater system improvements or cannot be
12 reasonably expected to utilize the water and [~~sewage~~]
13 wastewater system improvements, unless the land is otherwise
14 required to be included in the proposed district by rule or
15 regulation of a federal agency.

16 F. Upon the hearing, if it appears that a petition
17 for the organization of a district has been properly signed and
18 presented and that the allegations of the petition are true,
19 the court shall order that the question of the organization of
20 the district be submitted to the [~~taxpaying electors~~] voters of
21 the proposed district as set forth in the petition, as the
22 boundaries were modified by the court in determining that only
23 property to be benefited by the proposed improvements should be
24 included within the boundaries of the district, at an election
25 to be held for that purpose [~~and~~]. The order shall designate

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1 one or more polling places within the proposed district and,
2 for each polling place so designated, shall appoint three
3 [~~taxpaying electors~~] voters of the district as judges of the
4 election and two [~~taxpaying electors~~] voters of the district as
5 clerks of the election. The clerk of the court having
6 jurisdiction shall give published notice of the time and place
7 of an election to be held in the district not less than twenty
8 days after the first publication of the notice.

9 G. The election shall be held and conducted as
10 nearly as possible in the same manner as general elections in
11 this state. No special registration for the election is
12 required, but for the purpose of determining qualifications of
13 electors, the judges may use official records, and, in
14 addition, they may require the execution of an affidavit
15 concerning the qualifications of any elector.

16 H. At the election, the [~~taxpaying electors~~] voters
17 of the proposed district shall vote for or against the
18 organization of the district [~~and if in favor thereof~~]. The
19 voters shall also vote for [~~three taxpaying~~] five qualified
20 electors of the district, who shall constitute the board of
21 directors of the district, [~~one~~] two or, if terms are for four
22 years, three to act until the first biennial election, [~~one~~]
23 two until [~~two years and one until four years after~~] the
24 subsequent biennial election and, if terms are for six years,
25 one until the third biennial election, except that at the

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1 election in a county where the petition for the district was
2 signed by the [~~chairman~~] chair of the board of county
3 commissioners, the [~~taxpaying electors~~] voters of the district
4 shall vote only for or against the organization of the
5 district. The distribution of partial terms shall be
6 determined by lot after the election.

7 I. The judges of the election shall certify the
8 returns of the election to the district court having
9 jurisdiction. If a majority of the votes cast at the election
10 [~~are~~] is in favor of the organization, the district court shall
11 declare the district organized and give it a corporate name, by
12 which in all proceedings it shall thereafter be known, and
13 designate the first board of directors elected, except that a
14 district created pursuant to a petition signed by the
15 [~~chairman~~] chair of the board of county commissioners of a
16 county shall appoint the first board of directors as provided
17 in Section 73-21-15.1 NMSA 1978. The district court clerk
18 shall publish notice of the declaration of organization once in
19 a newspaper of general circulation in the county or counties
20 where the district is located. Thereupon the district shall be
21 a governmental subdivision of the state, except a district
22 created pursuant to a petition signed by the [~~chairman~~] chair
23 of the board of county commissioners of a county, which
24 district shall be a subdivision of the county. Every district
25 shall be a body corporate with all the powers of a public or

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1 quasi-municipal corporation.

2 J. If an order is entered establishing the
3 district, the order is final and no appeal or writ of error
4 shall lie therefrom, and the entry of the order shall finally
5 and conclusively establish the regular organization of the
6 district against all persons except the state, in an action in
7 the nature of a writ of quo warranto, commenced by the attorney
8 general within thirty days after the decree declaring the
9 district organized. The organization of the district shall not
10 be directly or collaterally questioned in any suit, action or
11 proceeding except as expressly authorized in the Water and
12 Sanitation District Act."

13 Section 15. Section 73-21-10 NMSA 1978 (being Laws 1943,
14 Chapter 80, Section 9) is amended to read:

15 "73-21-10. FILING DECREE.--Within thirty days after the
16 [~~said~~] district has been declared a corporation by the court,
17 the clerk of the court shall transmit to the county clerk [~~and~~
18 ~~recorder~~] in each of the counties in which the district [~~or a~~
19 ~~part thereof may be or extend~~] lies copies of the findings and
20 the decree of the court incorporating [~~said~~] the district.
21 [~~The same~~] They shall be filed in the same manner as articles
22 of incorporation are now required to be filed under the general
23 laws concerning corporations [~~and~~]. The county clerk [~~and~~
24 ~~recorder~~] in each county shall receive a fee of one dollar
25 (\$1.00) for filing and preserving [~~the same~~] them."

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1 Section 16. Section 73-21-12 NMSA 1978 (being Laws 1943,
2 Chapter 80, Section 11) is amended to read:

3 "73-21-12. ORGANIZATION OF BOARD--MEETINGS--~~[VACANCIES--~~
4 ~~ELECTION OF OFFICERS]~~ COMPENSATION--TRAINING--REMOVAL.--

5 A. After taking oath [~~and filing bonds~~], the board
6 shall choose one of its members as [~~chairman~~] chair of the
7 board and president of the district and shall elect a secretary
8 and a treasurer of the board and of the district, who may or
9 may not be members of the board. The secretary and treasurer
10 may be one person. [~~Such~~]

11 B. The board shall adopt a seal and the secretary
12 shall keep in a well-bound book a record of all its
13 proceedings, minutes of all meetings, certificates, contracts,
14 bonds given by employees and all corporate acts, which shall be
15 open to inspection of all owners of real property in the
16 district, as well as to all other interested parties.

17 C. The treasurer shall keep strict and accurate
18 accounts of all money received by and disbursed for and on
19 behalf of the district in permanent records. [~~He~~] The
20 treasurer shall file with the county clerk [~~of court~~], at the
21 expense of the district, a corporate fidelity bond in an amount
22 not less than [~~(\$5,000)~~] ten thousand dollars (\$10,000),
23 conditioned on the faithful performance of the duties of [~~his~~]
24 office.

25 D. The members of the board shall serve without

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1 compensation unless [~~otherwise provided by the petition and~~
2 ~~order creating the district. Members shall be allowed their~~
3 ~~actual and necessary expenses incurred in performance of their~~
4 ~~duties]~~ the majority of the board members institute a
5 compensation policy; provided that the annual compensation of
6 board members shall not exceed fifty percent of the statutory
7 salary for county commissioners of the county in which the
8 majority of the lands of the district lie.

9 E. Each member of the board shall complete board
10 member training as determined by rules of the department of
11 environment.

12 F. The court having jurisdiction of the district
13 shall have the power to remove directors for cause shown on
14 petition, notice and hearing."

15 Section 17. Section 73-21-13 NMSA 1978 (being Laws 1943,
16 Chapter 80, Section 12, as amended) is amended to read:

17 "73-21-13. MEETINGS.--The board shall meet at least once
18 each month at a time and place to be designated by the board.
19 Special meetings may be held as often as the needs of the
20 district require on notice to each member of the board. A
21 majority of the board shall constitute a quorum at any meeting.
22 Any vacancy on a board elected by [~~taxpaying electors~~] voters
23 of the district shall be filled by appointment by the remaining
24 members or member of the board, the appointee to act until the
25 next biennial election, when the vacancy shall be filled by

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1 election. Any vacancy on a board appointed by a board of
2 county commissioners shall be filled in the same manner as
3 original appointments, in accordance with Section
4 73-21-15.1 NMSA 1978, the appointee to act until the end of the
5 term of the member creating the vacancy. If the board or a
6 board of county commissioners fails to fill any vacancy within
7 thirty days after it occurs, the court having jurisdiction
8 shall fill the vacancy."

9 Section 18. Section 73-21-14 NMSA 1978 (being Laws 1943,
10 Chapter 80, Section 13, as amended) is amended to read:

11 "73-21-14. ELECTIONS.--

12 A. In any district, except a district created
13 pursuant to a petition signed by the [~~chairman~~] chair of the
14 board of county commissioners of a county, on the second
15 Tuesday of January in the second calendar year after the
16 organization of the district and on the second Tuesday of
17 January every second year thereafter, there shall be elected by
18 the [~~taxpaying electors~~] voters of the district one, [~~member~~]
19 two or three members of the board, as needed, to replace board
20 members whose terms have expired, to serve for a term of six
21 years, except that if the district elects to adopt four-year
22 terms, the member shall serve for a term of four years.

23 B. In any district created pursuant to a petition
24 signed by the [~~chairman~~] chair of the board of county
25 commissioners of a county, [~~one year~~] two years after the

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1 organization of the district and every second year thereafter,
2 there shall be elected by the [~~taxpaying electors~~] voters of
3 the district at least two, but no more than three, members of
4 the board to serve for a term of [~~two~~] four years.

5 C. Not later than thirty days before any election
6 pursuant to [~~Subsections~~] Subsection A or B of this section,
7 nominations may be filed with the secretary of the board, and,
8 if a nominee does not withdraw [~~his~~] the nominee's name before
9 the first publication of the notice of election, [~~his~~] the name
10 shall be placed on the ballot. The board shall provide for
11 holding [~~such~~] the election and shall appoint judges to conduct
12 it. The secretary of the district shall give notice of
13 election by publication and shall arrange [~~such~~] other details
14 in connection [~~therewith~~] to it as the board may direct. The
15 returns of the election shall be certified [~~to~~] by the election
16 judges and shall be canvassed and declared by the board. The
17 [~~candidate~~] candidates receiving the most votes shall be
18 elected. [~~Any new member of the board shall qualify in the~~
19 ~~same manner as members of the first board qualify.~~"]

20 Section 19. Section 73-21-15 NMSA 1978 (being Laws 1977,
21 Chapter 326, Section 2, as amended) is amended to read:

22 "73-21-15. BOARD INCREASE--SPECIAL ELECTION.--

23 A. In any district where [~~members of the~~] a three-
24 member board [~~are~~] is elected by the [~~taxpaying electors~~]
25 voters of the district [~~within six months of July 1, 1981~~], the

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1 board may, upon its own motion, or [~~upon petition to the board~~]
2 shall, if petitioned by two-thirds of the [~~qualified electors~~]
3 voters of the district, [~~shall~~] call a special election for the
4 purpose of deciding the question of whether to increase the
5 membership of the board to five members.

6 B. If [~~at the special election~~] a majority of the
7 [~~qualified electors vote~~] voters votes in favor of the
8 proposal, the board shall appoint two members who shall serve
9 until the next regularly scheduled election of the district,
10 when the two appointed positions shall be filled by election.
11 [~~Of the two new board vacancies, one person shall be elected~~
12 ~~for a term of two years and one person shall be elected for a~~
13 ~~term of four years. The successors of these two board members~~
14 ~~shall be elected for four-year terms.] The newly elected board
15 members shall classify themselves by lot to establish staggered
16 terms such that the terms of no more than three members of the
17 board will expire in one year. Thereafter, all members shall
18 serve terms of four years or six years, as the case may be."~~

19 Section 20. Section 73-21-15.1 NMSA 1978 (being Laws
20 1985, Chapter 155, Section 8, as amended) is amended to read:

21 "73-21-15.1. BOARD--DISTRICT CREATED BY A BOARD OF COUNTY
22 COMMISSIONERS.--Notwithstanding any other provision of the
23 Water and Sanitation District Act relating to election of the
24 board, all members of the first board of any district created
25 pursuant to a petition signed by the [~~chairman~~] chair of the

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1 board of county commissioners of a county on or after July 1,
2 2007 shall be appointed by the board of county commissioners.
3 The board shall consist of five directors who are [~~taxpaying~~]
4 qualified electors of the district appointed for staggered
5 terms so that the terms of two directors expire in [~~one-year~~]
6 two years and the terms of three directors expire in [~~two~~] four
7 years. Thereafter, all directors shall be elected to [~~two-~~
8 ~~year~~] four-year terms pursuant to the provisions of the Water
9 and Sanitation District Act. Any director appointed by any
10 board of county commissioners shall be eligible for election,
11 provided that no member of a board shall serve more than two
12 consecutive terms."

13 Section 21. Section 73-21-16 NMSA 1978 (being Laws 1943,
14 Chapter 80, Section 14, as amended) is amended to read:

15 "73-21-16. GENERAL POWERS.--For and on behalf of the
16 district, the board shall have the following powers:

- 17 A. to have perpetual existence;
- 18 B. to have and use a corporate seal;
- 19 C. to sue and be sued and be a party to suits,
20 actions and proceedings;
- 21 D. except as otherwise provided in the Water and
22 Sanitation District Act, to enter into contracts and agreements
23 affecting the affairs of the district, including contracts with
24 the United States and any of its agencies or instrumentalities.
25 Except in cases in which a district will receive aid from a

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1 governmental agency, a notice shall be published for bids on
2 all construction contracts for work or material or both
3 involving an expense of five thousand dollars (\$5,000) or more.
4 The district may reject any and all bids, and if it appears
5 that the district can perform the work or secure material for
6 less than the lowest bid, it may proceed to do so;

7 E. to borrow money and incur indebtedness and
8 evidence the indebtedness by certificates, notes or debentures
9 and to issue bonds in accordance with the provisions of [~~that~~
10 the Water and Sanitation District Act];

11 F. to acquire, dispose of and encumber real and
12 personal property, water rights, water and sewer works,
13 wastewater management systems and plants and any interest in
14 them, including leases and easements;

15 G. to refund any bonded indebtedness or revenue
16 bonds of the district without an election in accordance with
17 the provisions of [~~that~~] the Water and Sanitation District Act;

18 H. to have the management, control and supervision
19 of all the business and affairs of the district and the
20 construction, installation, operation and maintenance of
21 district improvements;

22 I. to hire and retain agents, employees, engineers
23 and attorneys;

24 J. to have and exercise the power of eminent domain
25 and dominant eminent domain and, in the manner provided by law

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1 for the condemnation of private property for public use, to
2 take any property necessary to the exercise of the powers
3 granted in [~~that~~] the Water and Sanitation District Act, both
4 within and without the district;

5 K. to construct and maintain works and establish
6 and maintain facilities across or along any public street or
7 highway and in, upon or over any vacant public lands, which
8 public lands are now or may become the property of the state,
9 and to construct works and establish and maintain facilities
10 across any stream of water or watercourse; provided, however,
11 that the district shall promptly restore any such street or
12 highway to its former state of usefulness as nearly as may be
13 possible and shall not use the street or highway in [~~such~~] a
14 manner as to completely or unnecessarily impair its usefulness;

15 L. to assess and plan for the maintenance and
16 replacement of the district's infrastructure and material
17 assets, assess and plan for the protection of the quality and
18 quantity of the district's water supply, project and plan for
19 future demand for the district's services and develop and file
20 with the state engineer forty-year water plans in accordance
21 with Section 72-1-9 NMSA 1978;

22 M. to promulgate an on-site wastewater treatment
23 plan and, for health and sanitary purposes, compel compliance
24 with regulations and standards relating to the design,
25 installation, maintenance, repair and removal of on-site

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1 wastewater treatment systems;

2 [~~E.~~] N. to fix and from time to time to increase or
3 decrease water and [~~sewer~~] wastewater rates, tolls or charges
4 for services or facilities furnished or made available by the
5 district, including [~~without limiting the generality of the~~
6 ~~foregoing~~] standby charges for both water and [~~sewers~~]
7 wastewater systems and rates to encourage conservation, and to
8 pledge that revenue for the payment of any indebtedness of the
9 district. Until paid, all rates, tolls or charges constitute a
10 perpetual lien on and against the property served, and any such
11 lien may be foreclosed in the same manner as provided by the
12 laws of New Mexico for the foreclosure of real estate mortgages
13 and shall not be subject to any limitation period, statutory or
14 otherwise. The board shall shut off or discontinue service for
15 delinquencies in the payment of the rates, tolls or charges or
16 in the payment of taxes levied pursuant to the Water and
17 Sanitation District Act and prescribe and enforce rules and
18 regulations for the connection with and the disconnection from
19 properties of the facilities of the district. For health and
20 sanitary purposes, the board shall have the power to compel:

21 (1) the owners of inhabited property within [~~a~~
22 ~~sanitation~~] the district to connect their property with the
23 [~~sewer~~] water or wastewater system of the district, and, upon a
24 failure so to connect within sixty days after written notice by
25 the board, the board may cause the connection to be made and a

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1 lien to be filed against the property for the expense incurred
2 in making the connection; provided, however, that no owner
3 shall be compelled to connect [~~his~~] the owner's property with
4 ~~[such]~~ the system unless a service line is brought by the
5 district to a point within four hundred feet of [~~his dwelling~~
6 ~~place~~] the owner's nearest lot line; and

7 (2) a developer of a new subdivision to
8 connect the subdivision to the district's water or wastewater
9 system pursuant to the district's line extension policy;

10 O. to provide, exclusively, within the service area
11 of the district, any and all water and wastewater services;
12 provided that any entity providing water or wastewater services
13 as of July 1, 2007 to members or customers within the
14 district's or municipality's service area may continue to serve
15 its members or customers served on that date;

16 P. to provide for the collection and disposal of
17 garbage and refuse in any manner deemed suitable by the
18 district, including:

19 (1) appointing or contracting with a refuse
20 collector and prescribing the duties and compensation of a
21 refuse collector;

22 (2) requiring each person owning or
23 controlling real property within the district boundaries and
24 connected to the district water or wastewater system to pay a
25 reasonable fee for the collection and disposal of refuse

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1 whether or not the refuse collection service is used by the
2 person; and

3 (3) determining if the district or the refuse
4 collector shall collect the fee for the collection and disposal
5 of refuse and prescribing the manner of collection;

6 Q. to provide, upon request, water or wastewater
7 services outside of the district's service area;

8 ~~[M.]~~ R. to adopt and amend rules and bylaws not in
9 conflict with the constitution and laws of the state for
10 carrying on the business, objects and affairs of the board and
11 of the district, ~~[and]~~ including a conflict of interest policy
12 and a code of conduct for the board;

13 S. to conduct all district elections with
14 assistance from the clerk of the county in which a majority of
15 the area of the district lies, or at the board's option, have
16 the clerk conduct any district election; and

17 ~~[N.]~~ T. to have and exercise all rights and powers
18 necessary or incidental to or implied from the specific powers
19 granted in this section. Such specific powers shall not be
20 considered as a limitation upon any power necessary or
21 appropriate to carry out the purposes and intent of ~~[that]~~ the
22 Water and Sanitation District Act."

23 Section 22. Section 73-21-18 NMSA 1978 (being Laws 1943,
24 Chapter 80, Section 16, as amended) is amended to read:

25 "73-21-18. LEVY AND COLLECTION OF TAXES.--To levy and

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1 collect taxes, the board shall in each year determine the
2 amount of money necessary to be raised by taxation, taking into
3 consideration other sources of revenue of the district, and
4 shall fix a rate of levy [~~which~~] that, when levied upon every
5 dollar of assessed valuation of taxable property within the
6 district and with other revenues, will raise the amount
7 required by the district annually to supply funds for paying
8 expenses of organization and the costs of [~~construction~~]
9 constructing, operating and maintaining the works and equipment
10 of the district, and promptly to pay in full, when due, all
11 interest on and principal of bonds and other obligations of the
12 district [~~and~~]. In the event of accruing defaults or
13 deficiencies, an additional levy may be made as provided in
14 Section [~~75-18-17 New Mexico Statutes Annotated, 1953~~
15 ~~Compilation~~] 73-21-19 NMSA 1978. The board shall, on or before
16 [~~October 1~~] July 1 of each year, certify to the board of county
17 commissioners of each county having land within the district
18 [~~or having a portion of its territory within the district~~] the
19 rate so fixed with directions that at the time and in the
20 manner required by law for levying of taxes for county
21 purposes, the board of county commissioners shall levy the tax
22 upon the assessed valuation of all taxable property within the
23 district, in addition to other taxes as may be levied by the
24 board of county commissioners, at the rate so fixed and
25 determined."

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1 Section 23. Section 73-21-23 NMSA 1978 (being Laws 1943,
2 Chapter 80, Section 21) is amended to read:

3 "73-21-23. INCLUSION OF ADDITIONAL LAND.--

4 A. The boundaries of any district organized under
5 the provisions of [~~this~~] the Water and Sanitation District Act
6 may be changed in the manner [~~herein~~] prescribed in that act,
7 but the change of boundaries of the district shall not impair
8 or affect its organization or its rights in or to property or
9 any of its rights or privileges [~~whatsoever~~]; nor shall it
10 affect or impair or discharge any contract, obligation, lien or
11 charge for or upon which it might be liable or chargeable had
12 any [~~such~~] change of boundaries not been made.

13 B. The owners of real property may file with the
14 board a petition, in writing, [~~praying that such real property~~
15 ~~be included~~] requesting inclusion in the district. The
16 petition shall [~~describe the property owned by the petitioners,~~
17 ~~and such petition shall be deemed to give assent of the~~
18 ~~petitioners to the inclusion in said district of the property~~
19 ~~described in the petition, and such petition must be~~
20 ~~acknowledged in the same manner that conveyances of land are~~
21 ~~required to be acknowledged~~]:

22 (1) seek inclusion of territory contiguous
23 with the district;

24 (2) be signed by the owners of a majority of
25 the number of acres in the territory proposed for inclusion;

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1 and

2 (3) be accompanied by a map that shows the
3 external boundary of the territory proposed for inclusion and
4 the relationship of the territory to the existing boundary of
5 the district.

6 C. The secretary of the board shall cause notice of
7 filing of [~~such~~] the petition to be given and published in the
8 county in which the property is situated, which notice shall
9 state the filing of [~~such~~] the petition, names of petitioners,
10 descriptions of lands mentioned and the [~~prayer~~] request of
11 [~~said~~] the petitioners, giving notice to all persons interested
12 to appear at the office of the board at the time named in
13 [~~said~~] the notice and show cause in writing, if any [~~they~~
14 ~~have~~], why the petition should not be granted. The board
15 shall, at the time and place mentioned or at [~~such~~] the time
16 [~~or times~~] at which the hearing may be adjourned, proceed to
17 hear the petition and all objections [~~thereto~~] to it presented
18 in writing by any person showing cause why [~~said~~] the petition
19 should not be granted. The failure of any person interested to
20 show cause in writing shall be deemed [~~and held and taken~~] as
21 an assent on [~~his~~] the person's part to the inclusion of [~~such~~]
22 the lands in the district as [~~prayed for~~] requested in the
23 petition. If the petition is granted, the board shall make [~~an~~
24 ~~order~~] a resolution to that effect and file [~~same~~] it with the
25 county clerk [~~of the court~~], and [~~upon order of the court said~~]

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1 the property shall be included in the district.

2 D. Within thirty days after the filing of the
3 resolution with the county clerk, any person owning land within
4 the territory newly included in the district may appeal to the
5 district court questioning the validity of the inclusion. If
6 no appeal to the district court is filed within thirty days
7 after the filing of the resolution with the county clerk, or if
8 the court renders judgment in favor of the district, the
9 inclusion is final.

10 E. An entity formed pursuant to any one of the
11 following statutes shall, upon a majority vote of its board of
12 directors and subject to the approval of the district board,
13 have the authority, subject to other statutory requirements, to
14 transfer its assets to a district:

- 15 (1) the Water and Sanitation District Act;
- 16 (2) Chapter 3, Article 28 NMSA 1978;
- 17 (3) Chapter 73, Article 5 NMSA 1978;
- 18 (4) the Nonprofit Corporation Act;
- 19 (5) the Public Improvement District Act;
- 20 (6) the Public Utility Act; or
- 21 (7) the Business Corporation Act.

22 F. Cooperative associations formed pursuant to
23 Sections 53-4-1 through 53-4-45 NMSA 1978 and mutual domestic
24 water associations formed pursuant to the Sanitary Projects Act
25 may transfer their assets to a district upon approval of the

1 transfer by a majority vote of a quorum of the members of the
2 association or nonprofit corporation, subject to approval of
3 the transfer by the district board. Notice of the meeting to
4 consider the transfer shall be sent at least fifteen days prior
5 to the meeting by the association to each member at the
6 member's last known address and by the nonprofit corporation to
7 each member, if any, at the member's last known address.

8 G. The board may initiate proceedings to include
9 territory contiguous with the district by petitioning the
10 municipal boundary commission for an order of annexation in
11 accordance with the provisions of Sections 3-7-11 through
12 3-7-16 NMSA 1978."

13 Section 24. Section 73-21-24 NMSA 1978 (being Laws 1943,
14 Chapter 80, Section 22) is amended to read:

15 "73-21-24. EXCLUSION FROM DISTRICT.--The owner [~~of~~
16 ~~owners~~] in fee of any real property constituting a portion of
17 the district may file with the board a petition [~~praying~~]
18 requesting that such lands be excluded [~~and taken~~] from [~~said~~]
19 the district. Petitions shall describe the property [~~which~~]
20 that the petitioners desire to have excluded. [~~Such~~] The
21 petition [~~must~~] shall be acknowledged in the same manner and
22 form as required in case of a conveyance of land and be
23 accompanied by a deposit of money sufficient to pay all costs
24 of the exclusion proceedings. The secretary of the board shall
25 cause a notice of filing of [~~such~~] the petition to be published

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1 in the county in which [~~said~~] the property or the major portion
2 [~~thereof~~] of it is located. The notice shall state the filing
3 of [~~such~~] the petition, the names of petitioners, description
4 of the property mentioned in [~~said~~] the petition and the
5 [~~prayer~~] request of [~~said~~] the petitioners [~~and it~~]. The
6 notice shall notify all persons interested to appear at the
7 office of [~~said~~] the board at the time named in [~~said~~] the
8 notice, showing cause in writing, if any [~~they have~~], why
9 [~~said~~] the petition should not be granted. The board at the
10 time and place mentioned in the notice or at the time [~~or~~
11 ~~times~~] at which the hearing of [~~said~~] the petition may be
12 adjourned shall proceed to hear the petition and all objections
13 [~~thereto~~] to it presented in writing by any person showing
14 cause [~~as aforesaid~~] why the [~~prayer~~] request of the petition
15 should not be granted. The filing of [~~such~~] the petition shall
16 be deemed [~~and taken~~] as an assent by each [~~and all such~~
17 ~~petitioners~~] petitioner to the exclusion from the district of
18 the property mentioned in the petition or any part [~~thereof~~] of
19 it. The board, if it deems it not [~~for~~] in the best interests
20 of the district that the property or portion of it mentioned in
21 the petition [~~or portion thereof, shall~~] be excluded from the
22 district, shall order that [~~said~~] the petition be denied [~~but~~].
23 If [~~it~~] the board deems it [~~for~~] in the best [~~interest~~]
24 interests of the district that the property or some portion of
25 it mentioned in the petition [~~or some portion thereof~~] be

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1 excluded from the district, then the board may order the
2 property or some portion of it mentioned in the petition [~~or~~
3 ~~some portion thereof~~] excluded from the district. Upon
4 allowance of [~~such~~] the petition, the board shall file a
5 certified copy of the order of the board making [~~such~~] the
6 change with the county clerk [~~of the court~~], and [~~upon order of~~
7 ~~the court said~~] the property shall be excluded from the
8 district."

9 Section 25. Section 73-21-26 NMSA 1978 (being Laws 1943,
10 Chapter 80, Section 24, as amended) is amended to read:

11 "73-21-26. GENERAL OBLIGATION BONDS--INTEREST--FORM.--To
12 carry out the purposes of the Water and Sanitation District
13 Act, the board may issue general obligation bonds of the
14 district upon approval of the majority of the [~~taxpaying~~
15 ~~electors~~] voters of the district voting on the question. The
16 bonds shall bear interest payable semiannually and shall be due
17 and payable serially, either annually or semiannually,
18 commencing not later than three years and extending not more
19 than twenty years from date of issue. The form and terms of
20 the bonds, including provisions for their payment and
21 redemption, shall be determined by the board. If the board so
22 determines, the bonds may be redeemable prior to maturity upon
23 payment of a premium, not exceeding three percent of the
24 principal thereof. The bonds, except for bonds issued in book
25 entry or similar form without the delivery of physical

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1 securities, shall be executed in the name of and on behalf of
2 the district and signed by the [~~chairman~~] chair of the board,
3 with the seal of the district affixed [~~thereto~~] to the bonds,
4 and attested to by the secretary of the board. The bonds shall
5 be sold and shall be in such denominations as the board
6 determines, and the bonds and the attached coupons, if any,
7 shall be payable to the bearer or registered as to principal or
8 as to principal and interest. Interest coupons, if any, shall
9 bear the original or facsimile signature of the [~~chairman~~]
10 chair of the board."

11 Section 26. Section 73-21-27 NMSA 1978 (being Laws 1977,
12 Chapter 345, Section 9) is amended to read:

13 "73-21-27. COMMUNITY SERVICE DISTRICT ACT PROVISIONS
14 APPLY.--With respect to the issuance of any negotiable
15 securities representing an indebtedness of the [~~water and~~
16 ~~sanitation~~] district, the provisions and procedures [~~set forth~~
17 ~~in~~] of the Community Service District Act shall apply;
18 provided, however, that the tax rate limitation of Section
19 4-54-4 NMSA 1978 shall not apply to any district located in a
20 class B, class C or first class county unless the limitation is
21 imposed pursuant to the rate limitation provisions of Section
22 7-37-7.1 NMSA 1978."

23 Section 27. Section 73-21-28 NMSA 1978 (being Laws 1943,
24 Chapter 80, Section 25) is amended to read:

25 "73-21-28. BOARD RESOLUTION--INDEBTEDNESS--ELECTION.--

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1 Whenever [~~any~~] the board shall, by resolution, determine that
2 the interest of [~~said~~] the district and the public interest or
3 necessity demand the acquisition, construction, installation or
4 completion of any works or other improvements or facilities, or
5 the making of any contract with the United States or other
6 persons or corporations, to carry out the objects or purposes
7 of [~~said~~] the district [~~requiring the creation of an~~
8 ~~indebtedness of (\$5,000) or more, said board shall order the~~
9 ~~submission of the proposition of]~~ by issuing [~~such obligations~~
10 ~~or]~~ general obligation bonds or creating other indebtedness
11 that will be a general obligation of the district, the question
12 of whether to enter into indebtedness shall be presented to the
13 [~~qualified taxpaying electors~~] voters of the district at an
14 election held for that purpose. [~~Any such~~] The election may be
15 held separately or may be consolidated or held concurrently
16 with any other election authorized by [~~this~~] the Water and
17 Sanitation District Act. The declaration of public interest or
18 necessity [~~herein~~] required in this section and the provision
19 for the holding of [~~such~~] the election may be included within
20 [~~one and~~] the same resolution [~~which~~]. The resolution, in
21 addition to [~~such~~] the declaration of public interest or
22 necessity, shall recite the objects and purposes for which the
23 indebtedness is proposed to be incurred, the estimated cost of
24 the works or improvements, as the case may be, the amount of
25 principal of the indebtedness to be incurred [~~therefor~~] and the

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1 maximum rate of interest to be paid on [~~such~~] the indebtedness.
2 [~~Such~~] The resolution shall also fix the date upon which [~~such~~]
3 the election shall be held and the manner of holding the [~~same~~]
4 election and the method of voting for or against the incurring
5 of the proposed indebtedness. [~~Such~~] The resolution shall also
6 fix the compensation to be paid the officers of the election
7 and shall designate the polling place or places and shall
8 appoint, for each polling place, from the [~~electors~~] voters of
9 the district, the officers of [~~such~~] the election consisting of
10 three judges, one of whom shall act as clerk."

11 Section 28. Section 73-21-30 NMSA 1978 (being Laws 1943,
12 Chapter 80, Section 27) is amended to read:

13 "73-21-30. CONDUCT OF GENERAL OBLIGATION BOND ELECTION
14 [~~CANVASS OF RETURNS~~].--The election board or boards shall
15 conduct the general obligation bond election in the manner
16 prescribed by law for the holding of general elections and
17 shall make their returns to the secretary of the district. At
18 any regular or special meeting of the board held within five
19 days following the date of [~~such~~] the election, the returns
20 [~~thereof~~] shall be canvassed and the results [~~thereof~~]
21 declared."

22 Section 29. Section 73-21-31 NMSA 1978 (being Laws 1943,
23 Chapter 80, Section 28) is amended to read:

24 "73-21-31. EFFECT OF ELECTION--SUBSEQUENT ELECTIONS.--In
25 the event that it [~~shall appear~~] appears from [~~said~~] the

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1 returns that a majority of [~~said qualified taxpaying electors~~]
2 the voters of the district who [~~shall~~] have voted on any
3 proposition submitted [~~hereunder~~] under the provisions of the
4 Water and Sanitation District Act at [~~such~~] the election voted
5 in favor of [~~such~~] the proposition, the district shall
6 [~~thereupon~~] then be authorized to incur [~~such~~] the indebtedness
7 or the obligations, enter into [~~such~~] the contract or issue and
8 sell [~~such~~] the general obligation bonds of the district, as
9 the case may be, [~~all~~] for the purpose [~~or purposes~~] and object
10 [~~or objects~~] provided for in the proposition submitted
11 [~~hereunder~~] under the provisions of that act and in the
12 resolution [~~therefor~~] for them and in the amount so provided
13 and at a rate of interest not exceeding the rate of interest
14 recited in [~~such~~] the resolution. Submission of the
15 proposition of incurring such [~~obligations or bonded or other~~]
16 general obligation bond indebtedness at [~~such~~] an election
17 shall not prevent or prohibit submission of [~~the same~~] it or
18 other propositions at subsequent [~~election or~~] elections called
19 for [~~such~~] that purpose."

20 Section 30. Section 73-21-36 NMSA 1978 (being Laws 1951,
21 Chapter 195, Section 1) is amended to read:

22 "73-21-36. ACQUISITION, CONSTRUCTION OR IMPROVEMENT OF
23 SYSTEMS--JOINT REVENUE BONDS.--Whenever the board of [~~directors~~
24 ~~of any water and sanitation~~] a district shall, by resolution,
25 determine that [~~the~~] public interest or necessity [~~demand~~]

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1 demands the acquisition, construction, repair, extension,
2 improvement or betterment of [~~any~~] a water or [~~sewer~~]
3 wastewater system, [~~water and sanitation~~] districts are
4 [~~hereby~~] authorized to make and issue revenue bonds, payable
5 solely out of the net income, to be derived from the operation
6 of publicly owned water or [~~sewer~~] wastewater systems and to
7 pledge, irrevocably, [~~such~~] the income to the payment [~~thereof~~]
8 of the bonds, the proceeds [~~thereof~~] of them to be used solely
9 for the purchasing, acquiring, constructing and [~~of~~] making of
10 necessary improvements, extensions, repairs and betterments of
11 [~~said~~] the water and [~~sewer~~] wastewater system or for the
12 purchase and acquiring of wells, cisterns, reservoirs or other
13 sources of water supply and pumping plants, sewage disposal
14 plants or other machinery necessary for the operation [~~thereof~~]
15 of them and the land and real estate upon which [~~the same~~] they
16 are situated or to be situated. [~~Provided, however, that~~]
17 Joint revenue bonds may be issued for the acquisition,
18 construction, extension, enlargement or betterment of a joint
19 water and [~~sewer~~] wastewater system, and the income of either
20 or both of [~~such~~] the utilities may be pledged to secure the
21 repayment of [~~such~~] the joint bonds."

22 Section 31. Section 73-21-38 NMSA 1978 (being Laws 1951,
23 Chapter 195, Section 3) is amended to read:

24 "73-21-38. REVENUE BOND ISSUANCE.--The board of
25 [~~directors of any water and sanitation~~] a district issuing

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1 revenue bonds, under the provisions of [~~this~~] the Water and
2 Sanitation District Act, may authorize the issuance [~~thereof~~]
3 of the bonds by resolution adopted by the affirmative vote of
4 [~~two-thirds~~] a majority of all of the members of [~~such~~] the
5 board [~~of directors~~] at a regular or special meeting called for
6 that purpose [~~wherein~~]. At the meeting, the necessity
7 [~~thereof~~] of the issuance of the revenue bonds shall be
8 declared and, when issued, shall be signed by the president of
9 [~~said~~] the board [~~of directors~~], attested by [~~the~~] its
10 secretary [~~thereof~~], with the seal of [~~such~~] the district
11 affixed [~~thereto~~] to the bonds."

12 Section 32. Section 73-21-39 NMSA 1978 (being Laws 1951,
13 Chapter 195, Section 4) is amended to read:

14 "73-21-39. BONDS COLLECTIBLE FROM OPERATING REVENUES.--
15 [~~It is hereby declared that~~] Revenue bonds issued under the
16 provisions of [~~this~~] the Water and Sanitation District Act
17 shall not be considered [~~or held~~] to be general obligations of
18 the [~~water and sanitation~~] district issuing them and shall be
19 collectible only out of the net revenues derived from the
20 operation of the water or [~~sewer~~] wastewater system, or joint
21 water and [~~sewer~~] wastewater systems, whose income is so
22 pledged [~~and~~]. Each of the bonds of any issue of revenue bonds
23 so issued under the provisions of [~~this~~] that act shall recite
24 on its face that it is payable and collectible solely from the
25 revenues derived from the operations of the water or [~~sewer~~]

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1 wastewater system or joint water and [~~sewer~~] wastewater system,
2 the income of which is so pledged, and that the holders
3 [~~thereof~~] of them may not look to any general or other fund for
4 the payment of principal and interest of [~~such~~] the
5 obligation."

6 Section 33. Section 73-21-40 NMSA 1978 (being Laws 1951,
7 Chapter 195, Section 5, as amended) is amended to read:

8 "73-21-40. RATES--BONDHOLDERS' REMEDY AND [~~TAXPAYER~~
9 ~~ELECTOR~~] VOTER.--~~[It is made mandatory upon]~~ Boards of
10 [~~directors of water and sanitation~~] districts issuing water and
11 [~~sewer~~] wastewater revenue bonds under the provisions of the
12 Water and Sanitation District Act [~~to~~] shall establish such
13 rates for services rendered by the water or [~~sewer~~] wastewater
14 system or joint water and [~~sewer~~] wastewater system as will
15 create an income sufficient to pay all reasonable expenses of
16 operation and create a net revenue [~~which~~] that shall be
17 sufficient to pay interest coupons on the revenue bonds, as
18 they mature, and [~~to~~] shall provide a sinking fund [~~which shall~~
19 ~~be~~] that is adequate to discharge the bonds as and when they
20 mature. It is their duty to maintain the rates continuously
21 until the bond issue has been fully liquidated. In the event
22 of their failure or refusal [~~so~~] to do so, all the members of
23 the boards [~~of directors~~] are liable to the penalties provided
24 in Section 73-21-42 NMSA 1978, and any bondholder or a number
25 of [~~taxpayer electors~~] voters of the district amounting to

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1 twenty-five persons or five percent of the [~~electors~~] voters,
2 whichever is less, has the right to apply to the district court
3 of the county where a water and sanitation district is located
4 for a mandatory order requiring the establishment by a board
5 [~~of directors~~] of rates [~~which~~] that shall be adequate to meet
6 the requirements of that act."

7 Section 34. Section 73-21-41 NMSA 1978 (being Laws 1951,
8 Chapter 195, Section 6) is amended to read:

9 "73-21-41. RESTRICTED USE OF BOND FUNDS.--Whenever under
10 the provisions of the laws of this state [~~any water or~~
11 ~~sanitation~~] a district shall obtain, or has obtained, any
12 [~~moneys~~] money or credits by means of the issue of its bonds or
13 other evidence of indebtedness for the purpose of the purchase,
14 construction or extension or repair of [~~any~~] a water or [~~sewer~~]
15 wastewater system or a joint water and [~~sewer~~] wastewater
16 system in [~~said water and sanitation~~] the district, it [~~shall~~
17 ~~be~~] is unlawful to divert, use or expend any of [~~said~~] the
18 money or credits in the purchase, construction or extension or
19 repair of any other water or [~~sewer~~] wastewater system or for
20 any purpose other than that for which [~~the same was~~] the money
21 or credits were or shall be obtained."

22 Section 35. Section 73-21-44 NMSA 1978 (being Laws 1967,
23 Chapter 187, Section 2) is amended to read:

24 "73-21-44. SALE OF SYSTEM--ESCROW OF PROCEEDS.--[~~Any~~] In
25 addition to the authority granted in Subsection E of Section

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1 73-21-23 NMSA 1978, a district may sell or otherwise dispose of
2 all or any part of its water facilities, [~~sewer~~] wastewater
3 facilities or both, including both real and personal property,
4 [~~without an election~~] upon approval of a two-thirds' majority
5 vote of the voters voting in a special election held in
6 accordance with the provisions of Sections 1-24-1 through
7 1-24-4 NMSA 1978 and called for the purpose of determining
8 whether to sell or otherwise dispose of the property. Any such
9 proposed sale or other disposition and the determination to
10 hold an election shall be authorized by resolution adopted by
11 the affirmative vote of not less than a majority of all members
12 of the board. [~~Any~~] A district may immediately apply the
13 proceeds derived from [~~any such~~] the sale or other disposition
14 of its facilities to the retirement of [~~any~~] outstanding bonds
15 or place [~~such~~] the proceeds in escrow in a commercial bank or
16 trust company, either a state or national banking institution
17 [~~which~~] that possesses and is exercising trust powers, [~~which~~]
18 that is located within New Mexico and [~~which~~] that is a member
19 of the federal deposit insurance corporation, to be applied to
20 the payment of any outstanding bonds upon their presentation
21 [~~therefor. Any such~~] for payment. The escrow is not
22 necessarily limited to proceeds of [~~such~~] the sale or other
23 disposal, but may include other [~~moneys~~] money available for
24 its purpose. Any proceeds in escrow, pending such use, may be
25 invested or reinvested in bills, certificates of indebtedness,

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1 notes or bonds ~~[which]~~ that are direct obligations of, or the
2 principal and interest of which obligations are unconditionally
3 guaranteed by, the United States or any other legal investment.
4 ~~[Such]~~ The proceeds and investments in escrow, together with
5 ~~[any]~~ interest to be derived from ~~[any such]~~ the investment,
6 shall be used only to pay ~~[any]~~ charges of the escrow agent,
7 which are expressly made payable from ~~[such]~~ the escrow, and to
8 pay as many bonds as possible as they become due at their
9 respective maturities or due at ~~[any]~~ a designated prior
10 redemption date ~~[or dates]~~ in connection with which the board
11 shall exercise a prior redemption option. ~~[Any]~~ A purchaser of
12 any facilities ~~[which]~~ that may be sold or otherwise disposed
13 of shall in no manner be responsible for the application of the
14 proceeds ~~[thereof]~~ of the sale by the district or any of its
15 officers, agents or employees. Nothing in this section shall
16 be construed as changing or modifying any contractual agreement
17 or covenant concerning any outstanding bonds as may be
18 provided in the proceedings authorizing any outstanding bonds
19 or otherwise appertaining ~~[thereto]~~ to them."

20 Section 36. Section 73-21-52 NMSA 1978 (being Laws 1977,
21 Chapter 345, Section 10) is amended to read:

22 "73-21-52. DUTIES OF LOCAL GOVERNMENT DIVISION.--The
23 local government division of the department of finance and
24 administration shall approve all budgets of ~~[water and~~
25 ~~sanitation]~~ districts and shall from time to time review fiscal

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1 policies of [~~such~~] the districts and report to the legislature
2 and the governor any actions or policies of the districts
3 deemed to be in violation of the law or the best interest of
4 the people of New Mexico. The district shall submit its
5 budget, including a revenue and expenditure analysis
6 encompassing expected costs of operation, maintenance and
7 replacement, annually to the local government division [~~its~~
8 ~~budget~~] for approval in the manner required by regulation of
9 the division. The district shall submit any other information
10 or data concerning the operation of the district as deemed
11 necessary by the local government division. Violation of the
12 provisions of this section by the board of any [~~water and~~
13 ~~sanitation~~] district or any officer [~~thereof~~] of it shall be
14 deemed cause for removal or suspension in the manner as
15 provided by law for county officers."

16 Section 37. Section 73-21-55 NMSA 1978 (being Laws 1985,
17 Chapter 166, Section 3, as amended) is amended to read:

18 "73-21-55. DISTRICTS NOT SUBJECT TO UTILITY LAWS--OPTION
19 TO SUBMIT TO REGULATION.--

20 A. No district organized under the provisions of
21 the Water and Sanitation District Act is subject to the
22 jurisdiction of the public regulation commission or the terms
23 and provisions of the Public Utility Act, except as provided in
24 [~~Subsections~~] Subsection B [~~and C~~] of this section.

25 B. Any district organized under the provisions of

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1 the Water and Sanitation District Act may elect by resolution
2 adopted by its board [~~of directors~~] to become subject to the
3 jurisdiction of the public regulation commission and to the
4 terms and provisions of the Public Utility Act; provided,
5 however, that in no event shall Sections 62-9-1 through
6 62-9-7 NMSA 1978 apply to any district making such an election.

7 ~~[G. If the board of directors has not elected to~~
8 ~~become subject to the jurisdiction of the public regulation~~
9 ~~commission as provided for in Subsection B of this section, it~~
10 ~~shall nevertheless file with the commission any rates, tolls~~
11 ~~and charges proposed by the board, which shall be subject to~~
12 ~~approval by the commission if twenty-five of the taxpaying~~
13 ~~electors of the district or five percent of the taxpaying~~
14 ~~electors of the district, whichever is less, file a petition~~
15 ~~protesting the rates, tolls or charges with the commission~~
16 ~~within thirty days after the board proposes the rates. Upon~~
17 ~~the filing of such a petition, the commission shall hold a~~
18 ~~hearing pursuant to rules that it shall promulgate to implement~~
19 ~~this subsection.]"~~

20 Section 38. Section 72-1-9 NMSA 1978 (being Laws 1985,
21 Chapter 198, Section 1, as amended) is amended to read:

22 "72-1-9. MUNICIPAL, COUNTY, WATER AND SANITATION
23 DISTRICTS, MEMBER-OWNED COMMUNITY WATER SYSTEMS, SCHOOL
24 DISTRICT AND STATE UNIVERSITY WATER DEVELOPMENT PLANS--
25 PRESERVATION OF MUNICIPAL, COUNTY AND STATE UNIVERSITY WATER

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1 SUPPLIES.--

2 A. It is recognized by the state that it promotes
3 the public welfare and the conservation of water within the
4 state for municipalities, counties, school districts, state
5 universities, member-owned community water systems, water and
6 sanitation districts, special water users' associations and
7 public utilities supplying water to municipalities or counties
8 to plan for the reasonable development and use of water
9 resources. The state further recognizes the state engineer's
10 administrative policy of not allowing municipalities, member-
11 owned community water systems, counties and state universities
12 to acquire and hold unused water rights in an amount greater
13 than their reasonable needs within forty years.

14 B. Municipalities, counties, school districts,
15 state universities, member-owned community water systems,
16 water and sanitation districts, special water users'
17 associations and public utilities supplying water to
18 municipalities or counties shall be allowed a water use
19 planning period not to exceed forty years, and water rights
20 for municipalities, counties, school districts, state
21 universities, member-owned community water systems, water and
22 sanitation districts, special water users' associations and
23 public utilities supplying water to such municipalities or
24 counties shall be based upon a water development plan the
25 implementation of which shall not exceed a forty-year period

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1 from the date of the application for an appropriation or a
2 change of place or purpose of use pursuant to a water
3 development plan or for preservation of a municipal, county,
4 school district, member-owned community water system, water
5 and sanitation district or state university water supply for
6 reasonably projected additional needs within forty years."

7 Section 39. REPEAL.--Section 73-21-11 NMSA 1978 (being
8 Laws 1943, Chapter 80, Section 10) is repealed.

9 Section 40. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2007.