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SENATE BILL 384

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO WATER AND SANITATION DISTRICTS; CLARIFYING SOURCES OF REVENUE TO BE USED IN REPAYMENT OF BONDS; PROVIDING FOR DISCLOSURE OF CERTAIN TAXPAYER INFORMATION TO A WATER AND SANITATION DISTRICT; REQUIRING DISTRICT CONFIDENTIALITY OF TAXPAYER INFORMATION RECEIVED; ALLOWING A REVIEW OF RATES BY THE DISTRICT COURT ON THE RECORD; CLARIFYING LANGUAGE.

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

Section 1. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.--It is unlawful for an employee of the department or a former employee of the department to reveal to an individual other than another employee of the department information contained in the return of a taxpayer made pursuant

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1 to a law subject to administration and enforcement under the
2 provisions of the Tax Administration Act or any other
3 information about a taxpayer acquired as a result of the
4 employee's employment by the department and not available from
5 public sources, except:

6 A. to an authorized representative of another
7 state; provided that the receiving state has entered into a
8 written agreement with the department to use the information
9 for tax purposes only and that the receiving state has enacted
10 a confidentiality statute similar to this section to which the
11 representative is subject;

12 B. to a representative of the secretary of the
13 treasury or the secretary's delegate pursuant to the terms of a
14 reciprocal agreement entered into with the federal government
15 for exchange of the information;

16 C. to the multistate tax commission, the federation
17 of tax administrators or their authorized representatives;
18 provided that the information is used for tax purposes only and
19 is disclosed by the multistate tax commission or the federation
20 of tax administrators only to states that have met the
21 requirements of Subsection A of this section;

22 D. to another jurisdiction pursuant to an
23 international fuel tax agreement; provided that the information
24 is used for tax purposes only;

25 E. to a district court, an appellate court or a

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1 federal court:

2 (1) in response to an order thereof in an
3 action relating to taxes or an action for tax fraud or any
4 other crime that may affect taxes due to the state to which the
5 state is a party and in which the information sought is about a
6 taxpayer who is party to the action and is material to the
7 inquiry, in which case only that information may be required to
8 be produced in court and admitted in evidence subject to court
9 order protecting the confidentiality of the information and no
10 more;

11 (2) in an action in which the department is
12 attempting to enforce an act with which the department is
13 charged or to collect a tax; or

14 (3) in any matter in which the department is a
15 party and the taxpayer has put the taxpayer's own liability for
16 taxes at issue, in which case only that information regarding
17 the taxpayer who is party to the action may be produced, but
18 this shall not prevent the disclosure of department policy or
19 interpretation of law arising from circumstances of a taxpayer
20 who is not a party;

21 F. to the taxpayer or to the taxpayer's authorized
22 representative; provided, however, that nothing in this
23 subsection shall be construed to require any employee to
24 testify in a judicial proceeding except as provided in
25 Subsection E of this section;

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1 G. information obtained through the administration
2 of a law not subject to administration and enforcement under
3 the provisions of the Tax Administration Act to the extent that
4 release of that information is not otherwise prohibited by law;

5 H. in a manner, for statistical purposes, that the
6 information revealed is not identified as applicable to an
7 individual taxpayer;

8 I. with reference to information concerning the tax
9 on tobacco imposed by [~~Sections 7-12-1 through 7-12-13, 7-12-15~~
10 ~~and 7-12-17 NMSA 1978~~] the Cigarette Tax Act to a committee of
11 the legislature for a valid legislative purpose or to the
12 attorney general for purposes of Section 6-4-13 NMSA 1978 and
13 the master settlement agreement defined in Section 6-4-12 NMSA
14 1978;

15 J. to a transferee, assignee, buyer or lessor of a
16 liquor license, the amount and basis of an unpaid assessment of
17 tax for which the transferor, assignor, seller or lessee is
18 liable;

19 K. to a purchaser of a business as provided in
20 Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis
21 of an unpaid assessment of tax for which the purchaser's seller
22 is liable;

23 L. to a municipality of this state upon its request
24 for a period specified by that municipality within the twelve
25 months preceding the request for the information by that

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1 municipality:

2 (1) the names, taxpayer identification numbers
3 and addresses of registered gross receipts taxpayers reporting
4 gross receipts for that municipality under the Gross Receipts
5 and Compensating Tax Act or a local option gross receipts tax
6 imposed by that municipality. The department may also release
7 the information described in this paragraph quarterly or upon
8 such other periodic basis as the secretary and the municipality
9 may agree; and

10 (2) information indicating whether persons
11 shown on a list of businesses located within that municipality
12 furnished by the municipality have reported gross receipts to
13 the department but have not reported gross receipts for that
14 municipality under the Gross Receipts and Compensating Tax Act
15 or a local option gross receipts tax imposed by that
16 municipality.

17 The employees of municipalities receiving information as
18 provided in this subsection shall be subject to the penalty
19 contained in Section 7-1-76 NMSA 1978 if that information is
20 revealed to individuals other than other employees of the
21 municipality in question or the department;

22 M. to the commissioner of public lands for use in
23 auditing that pertains to rentals, royalties, fees and other
24 payments due the state under land sale, land lease or other
25 land use contracts; the commissioner of public lands and

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1 employees of the commissioner are subject to the same
2 provisions regarding confidentiality of information as
3 employees of the department;

4 N. the department shall furnish, upon request by
5 the child support enforcement division of the human services
6 department, the last known address with date of all names
7 certified to the department as being absent parents of children
8 receiving public financial assistance. The child support
9 enforcement division personnel shall use such information only
10 for the purpose of enforcing the support liability of the
11 absent parents and shall not use the information or disclose it
12 for any other purpose; the child support enforcement division
13 and its employees are subject to the provisions of this section
14 with respect to any information acquired from the department;

15 O. the department shall furnish to the [~~information~~
16 ~~systems division of the general services~~] department of of
17 information technology, by electronic media, a database
18 containing New Mexico personal income tax filers by county,
19 which shall be updated quarterly. The database information
20 shall be used only for the purpose of producing the random jury
21 list for the selection of petit or grand jurors for the state
22 courts pursuant to Section 38-5-3 NMSA 1978. The database
23 shall not contain any financial information. If any
24 information in the database is revealed by an employee of the
25 administrative office of the courts or the department of

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1 information [~~systems division~~] technology to individuals other
2 than employees of the administrative office of the courts, the
3 state courts, the department of information [~~systems division~~]
4 technology or the department, the employee shall be subject to
5 the penalty provisions of Section 7-1-76 NMSA 1978;

6 P. with respect to the tax on gasoline imposed by
7 the Gasoline Tax Act, the department shall make available for
8 public inspection at monthly intervals a report covering the
9 number of gallons of gasoline and ethanol blended fuels
10 received and deducted and the amount of tax paid by each person
11 required to file a gasoline tax return or pay gasoline tax in
12 the state of New Mexico;

13 Q. the identity of a rack operator, importer,
14 blender, supplier or distributor and the number of gallons
15 reported on returns required under the Gasoline Tax Act,
16 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a
17 rack operator, importer, blender, distributor or supplier, but
18 only when it is necessary to enable the department to carry out
19 its duties under the Gasoline Tax Act, the Special Fuels
20 Supplier Tax Act or the Alternative Fuel Tax Act;

21 R. the department shall release upon request only
22 the names and addresses of all gasoline or special fuel
23 distributors, wholesalers and retailers to the New Mexico
24 department of agriculture, the employees of which are thereby
25 subject to the penalty contained in Section 7-1-76 NMSA 1978 if

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1 that information is revealed to individuals other than
2 employees of either the New Mexico department of agriculture or
3 the department;

4 S. the department shall answer all inquiries
5 concerning whether a person is or is not a registered taxpayer
6 for tax programs that require registration, but nothing in this
7 subsection shall be construed to allow the department to answer
8 inquiries concerning whether a person has filed a tax return;

9 T. upon request of a municipality or county of this
10 state, the department shall permit officials or employees of
11 the municipality or county to inspect the records of the
12 department pertaining to an increase or decrease to a
13 distribution or transfer made pursuant to Section 7-1-6.15 NMSA
14 1978 for the purpose of reviewing the basis for the increase or
15 decrease. The municipal or county officials or employees
16 receiving information provided in this subsection shall not
17 reveal that information to any person other than another
18 employee of the municipality or the county, the department or a
19 district court, an appellate court or a federal court in a
20 proceeding relating to a disputed distribution and in which
21 both the state and the municipality or county are parties.
22 Information provided pursuant to provisions of this subsection
23 that is revealed other than as provided in this subsection
24 shall subject the person revealing the information to the
25 penalty contained in Section 7-1-76 NMSA 1978;

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1 U. to a county of this state that has in effect a
2 local option gross receipts tax imposed by the county upon its
3 request for a period specified by that county within the twelve
4 months preceding the request for the information by that
5 county:

6 (1) the names, taxpayer identification numbers
7 and addresses of registered gross receipts taxpayers reporting
8 gross receipts either for that county in the case of a local
9 option gross receipts tax imposed on a countywide basis or only
10 for the areas of that county outside of any incorporated
11 municipalities within that county in the case of a county local
12 option gross receipts tax imposed only in areas of the county
13 outside of any incorporated municipalities. The department may
14 also release the information described in this paragraph
15 quarterly or upon such other periodic basis as the secretary
16 and the county may agree;

17 (2) in the case of a local option gross
18 receipts tax imposed by a county on a countywide basis,
19 information indicating whether persons shown on a list of
20 businesses located within the county furnished by the county
21 have reported gross receipts to the department but have not
22 reported gross receipts for that county under the Gross
23 Receipts and Compensating Tax Act or a local option gross
24 receipts tax imposed by that county on a countywide basis; and

25 (3) in the case of a local option gross

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1 receipts tax imposed by a county only on persons engaging in
2 business in that area of the county outside of incorporated
3 municipalities, information indicating whether persons on a
4 list of businesses located in that county outside of the
5 incorporated municipalities but within that county furnished by
6 the county have reported gross receipts to the department but
7 have not reported gross receipts for that county outside of the
8 incorporated municipalities within that county under the Gross
9 Receipts and Compensating Tax Act or a local option gross
10 receipts tax imposed by the county only on persons engaging in
11 business in that county outside of the incorporated
12 municipalities.

13 The officers and employees of counties receiving
14 information as provided in this subsection shall be subject to
15 the penalty contained in Section 7-1-76 NMSA 1978 if the
16 information is revealed to individuals other than other
17 officers or employees of the county in question or the
18 department;

19 V. to authorized representatives of an Indian
20 nation, tribe or pueblo, the territory of which is located
21 wholly or partially within New Mexico, pursuant to the terms of
22 a reciprocal agreement entered into with the Indian nation,
23 tribe or pueblo for the exchange of that information for tax
24 purposes only; provided that the Indian nation, tribe or pueblo
25 has enacted a confidentiality statute similar to this section;

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1 W. information with respect to the taxes or tax
2 acts administered pursuant to Subsection B of Section 7-1-2
3 NMSA 1978, except that:

4 (1) information for or relating to a period
5 prior to July 1, 1985 with respect to Sections 7-25-1 through
6 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only
7 to a committee of the legislature for a valid legislative
8 purpose;

9 (2) except as provided in Paragraph (3) of
10 this subsection, contracts and other agreements between the
11 taxpayer and other parties and the proprietary information
12 contained in those contracts and agreements shall not be
13 released without the consent of all parties to the contract or
14 agreement; and

15 (3) audit workpapers and the proprietary
16 information contained in the workpapers shall not be released
17 except to:

18 (a) the minerals management service of
19 the United States department of the interior, if production
20 occurred on federal land;

21 (b) a person having a legal interest in
22 the property that is subject to the audit;

23 (c) a purchaser of products severed from
24 a property subject to the audit; or

25 (d) the authorized representative of any

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1 of the persons in Subparagraphs (a) through (c) of this
2 paragraph. This paragraph does not prohibit the release of
3 proprietary information contained in the workpapers that is
4 also available from returns or from other sources not subject
5 to the provisions of this section;

6 X. information with respect to the taxes, surtaxes,
7 advance payments or tax acts administered pursuant to
8 Subsection C of Section 7-1-2 NMSA 1978;

9 Y. to the public regulation commission, information
10 with respect to the Corporate Income and Franchise Tax Act
11 required to enable the commission to carry out its duties;

12 Z. to the state racing commission, information with
13 respect to the state, municipal and county gross receipts taxes
14 paid by racetracks;

15 AA. upon request of a corporation authorized to be
16 formed under the Educational Assistance Act, the department
17 shall furnish the last known address and the date of that
18 address of every person certified to the department as an
19 absent obligor of an educational debt due and owed to the
20 corporation or that the corporation has lawfully contracted to
21 collect. The corporation and its officers and employees shall
22 use that information only to enforce the educational debt
23 obligation of the absent obligors and shall not disclose that
24 information or use it for any other purpose;

25 BB. a decision and order made by a hearing officer

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1 pursuant to Section 7-1-24 NMSA 1978 with respect to a protest
2 filed with the secretary on or after July 1, 1993;

3 CC. information required by a provision of the Tax
4 Administration Act to be made available to the public by the
5 department;

6 DD. upon request by the Bernalillo county
7 metropolitan court, the department shall furnish the last known
8 address and the date of that address for every person the court
9 certifies to the department as a person who owes fines, fees or
10 costs to the court or who has failed to appear pursuant to a
11 court order or a promise to appear;

12 EE. upon request by a magistrate court, the
13 department shall furnish the last known address and the date of
14 that address for every person the court certifies to the
15 department as a person who owes fines, fees or costs to the
16 court or who has failed to appear pursuant to a court order or
17 a promise to appear;

18 FF. to the national tax administration agencies of
19 Mexico and Canada; provided the agency receiving the
20 information has entered into a written agreement with the
21 department to use the information for tax purposes only and is
22 subject to a confidentiality statute similar to this section;

23 GG. to a district attorney, a state district court
24 grand jury or federal grand jury for an investigation of or
25 proceeding related to an alleged criminal violation of the tax

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1 laws;

2 HH. to a third party subject to a subpoena or levy
3 issued pursuant to the provisions of the Tax Administration
4 Act, the identity of the taxpayer involved, the taxes or tax
5 acts involved and the nature of the proceeding;

6 II. to the gaming control board, tax returns of
7 license applicants and their affiliates as provided in
8 Subsection E of Section 60-2E-14 NMSA 1978;

9 JJ. any written ruling on questions of evidence or
10 procedure made by a hearing officer pursuant to Section 7-1-24
11 NMSA 1978; provided that the name and identification number of
12 the taxpayer requesting the ruling shall not be disclosed;

13 KK. to representatives of the workers' compensation
14 administration, authorized by the director of the workers'
15 compensation administration for this purpose, to facilitate the
16 identification of taxpayers that are delinquent or noncompliant
17 in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA
18 1978;

19 LL. to the secretary of [~~labor~~] workforce solutions
20 or the secretary's delegate for use in enforcement of
21 unemployment insurance collections pursuant to the terms of a
22 reciprocal agreement entered into with the secretary of [~~labor~~]
23 workforce solutions for exchange of information; the secretary
24 of [~~labor~~] workforce solutions and employees of the [~~labor~~]
25 workforce solutions department are subject to the provisions

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1 regarding confidentiality of information contained in the Tax
2 Administration Act;

3 MM. information that the department is authorized
4 by the Tax Administration Act to release to a local body that
5 licenses professions or occupations pursuant to Chapter 36,
6 Article 2 NMSA 1978 or Chapter 61 NMSA 1978; [~~and~~]

7 NN. upon request for inspection by the public
8 pursuant to Section 7-1-29 NMSA 1978, the department shall
9 furnish the taxpayer name, refund or credit amount, tax program
10 or business tax credit and the date the refund or credit was
11 issued; nothing in this subsection shall be construed to
12 require the release of information that would violate an
13 agreement between the state and the federal internal revenue
14 service for sharing of information or any provision or rule of
15 the federal Internal Revenue Code to which a state is subject;
16 and

17 OO. to a water and sanitation district of this
18 state that has in effect a water and sanitation gross receipts
19 tax imposed by the water and sanitation district upon its
20 request for a period specified by that water and sanitation
21 district within the twelve months preceding the request for the
22 information by that water and sanitation district:

23 (1) the names, taxpayer identification numbers
24 and addresses of registered gross receipts taxpayers reporting
25 gross receipts for that water and sanitation district; the

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1 department may also release the information described in this
2 paragraph quarterly or upon any other periodic basis to which
3 the secretary and the district agree; and

4 (2) information indicating whether the persons
5 shown on a list of businesses within the water and sanitation
6 district have reported gross receipts to the department but
7 have not reported gross receipts for that water and sanitation
8 district.

9 The officers and employees of water and sanitation
10 districts receiving information as provided in this subsection
11 shall be subject to the penalty in Section 7-1-76 NMSA 1978 if
12 the information is revealed to persons other than officers or
13 employees of the district in question or the department."

14 Section 2. Section 73-21-4 NMSA 1978 (being Laws 1943,
15 Chapter 80, Section 3, as amended) is amended to read:

16 "73-21-4. DEFINITIONS.--As used in the Water and
17 Sanitation District Act:

18 ~~A. "sewage disposal" includes all constructions~~
19 ~~for collection, transportation, pumping, treatment and final~~
20 ~~disposition of sewage;~~

21 ~~B. "district" means a water and sanitation district~~
22 ~~that is established pursuant to that act and that is either~~
23 ~~entirely within or partly within and partly without one or more~~
24 ~~counties, provided those parts or parcels of the district lying~~
25 ~~in two or more counties are contiguous with one another, and~~

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1 ~~further provided, a district created pursuant to a petition~~
2 ~~signed by the board of county commissioners of a county shall~~
3 ~~be entirely within that county;~~

4 ~~G. "board" means the board of directors of a~~
5 ~~district;~~

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

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

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

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

21 ~~E. "publication" means once a week for three~~
22 ~~consecutive weeks in at least one newspaper of general~~
23 ~~circulation in the county in which all or the major portion of~~
24 ~~the district is located. It is not necessary that publication~~
25 ~~be made on the same day of the week in each of the three weeks,~~

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1 ~~but not less than fourteen days, excluding the day of first~~
2 ~~publication, shall intervene between the first publication and~~
3 ~~the last publication, and publication shall be complete on the~~
4 ~~date of the last publication.]~~

5 A. "board" means the board of directors of a
6 district;

7 B. "district" means a water and sanitation district
8 that is established pursuant to the Water and Sanitation
9 District Act and that is either entirely within or partly
10 within and partly without one or more counties, provided those
11 parts or parcels of the district lying in two or more counties
12 are contiguous with one another, and further provided, a
13 district created pursuant to a petition signed by the board of
14 county commissioners of a county shall be entirely within that
15 county;

16 C. "fee-for-service system" means a garbage or
17 refuse collection system, a recycling system or any other
18 system established by a district to fully implement the
19 purposes for which the district is created and for which a
20 service is offered, a fee is established by the board and the
21 fee is paid by the customers of the district;

22 D. "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; however, it is not

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

6 E. "sewage system" includes all constructions for
7 collection, transportation, pumping, treatment and final
8 disposition of sewage;

9 F. "taxpaying elector of a district", "qualified
10 elector" or "elector" means a person who is registered to vote
11 in any precinct in the state and who:

12 (1) is a resident of the district;

13 (2) is a nonresident of the district who pays,
14 or will be liable for paying, rates, tolls or charges set by
15 the board; or

16 (3) is a nonresident of the district who
17 either has paid or incurred a general tax liability on real
18 property within the district in the twelve months immediately
19 preceding a designated time or event or who is purchasing real
20 property within the district under a real estate contract where
21 a property tax has been paid or incurred on the real property
22 in the twelve months immediately preceding a designated time or
23 event; and

24 G. "utility" means a water system, sewer system or
25 other fee-for-service system implemented by the district."

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1 Section 3. Section 73-21-28 NMSA 1978 (being Laws 1943,
2 Chapter 80, Section 25) is amended to read:

3 "73-21-28. BOARD RESOLUTION--INDEBTEDNESS--ELECTION.--

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

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

14 Section 4. Section 73-21-36 NMSA 1978 (being Laws 1951,
15 Chapter 195, Section 1) is amended to read:

16 "73-21-36. ACQUISITION, CONSTRUCTION OR IMPROVEMENT OF
17 SYSTEMS--JOINT REVENUE BONDS.--

18 A. Whenever the board of [~~directors of any water~~
19 ~~and sanitation~~] a district shall, by resolution, determine that
20 [~~the~~] interest or necessity [~~demand~~] requires the acquisition,
21 construction, repair, extension, improvement or betterment of
22 [~~any~~] a water [~~or~~] system, sewer system [~~water and sanitation~~]
23 or other fee-for-service system, districts are [~~hereby~~]
24 authorized to make and issue revenue bonds or loans, payable
25 solely out of the net income, to be derived from the operation

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1 of a publicly owned water system or sewer ~~[systems]~~ system or
2 from services rendered by the district for a fee, and to
3 pledge, irrevocably, ~~[such]~~ the income to the payment ~~[thereof]~~
4 of the bonds.

5 B. The proceeds ~~[thereof]~~ of the bonds are to be
6 used solely for the purchasing, acquiring, constructing and
7 ~~[of]~~ making of necessary improvements, extensions, repairs and
8 betterments of ~~[said]~~ the water ~~[and]~~ system, sewer system or
9 other fee-for-service system for the purchase and acquiring of
10 wells, cisterns, reservoirs or other sources of water supply
11 and pumping plants, sewage disposal plants or other machinery
12 necessary for the operation ~~[thereof]~~ of those facilities and
13 the land and real estate upon which ~~[the same]~~ those facilities
14 are situated or to be situated. ~~[Provided, however, that]~~

15 C. Joint revenue bonds may be issued for the
16 acquisition, construction, extension, enlargement or betterment
17 of a joint water ~~[and]~~ system and joint sewer system or other
18 joint fee-for-service system and the income of ~~[either or both]~~
19 one or more of ~~[such]~~ the utilities may be pledged to secure
20 the repayment of ~~[such]~~ the joint bonds."

21 Section 5. Section 73-21-37 NMSA 1978 (being Laws 1951,
22 Chapter 195, Section 2, as amended) is amended to read:

23 "73-21-37. INTEREST--MATURITY--FORM--METHOD OF SALE.--

24 A. Revenue bonds issued under the provisions of
25 ~~[this]~~ the Water and Sanitation District Act shall bear

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1 interest at not to exceed six percent per [~~annum~~] year, payable
2 annually or semiannually, shall be payable at the option of
3 [~~such water and sanitation~~] the district, at the end of ten
4 years from the date thereof; and due by their terms in not more
5 than twenty years from date hereof; as determined by the [~~water~~
6 ~~and sanitation~~] district, shall be serial in form and maturity
7 and numbered from one upward, consecutively, or may consist of
8 one bond payable, at one time or in installments, and shall be
9 sold for cash, at not less than par, and at either public or
10 private sale.

11 B. All prior revenue bond issues of [~~water and~~
12 ~~sanitation~~] districts where one bond was issued in lieu of
13 multiple bonds are [~~hereby~~] validated."

14 Section 6. Section 73-21-38 NMSA 1978 (being Laws 1951,
15 Chapter 195, Section 3) is amended to read:

16 "73-21-38. REVENUE BOND ISSUANCE.--The board of
17 [~~directors of any water and sanitation~~] a district issuing
18 revenue bonds under the provisions of [~~this~~] the Water and
19 Sanitation District Act may authorize the issuance [~~thereof~~] of
20 the bonds by resolution adopted by the affirmative vote of two-
21 thirds of all [~~of~~] the members of [~~such~~] the board [~~of~~
22 ~~directors~~] at a regular or special meeting called for that
23 purpose [~~wherein~~]. At the meeting, the necessity [~~thereof~~] of
24 the issuance of the revenue bonds shall be declared and, when
25 issued, shall be signed by the president of [~~said~~] the board

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1 ~~[of directors]~~ and attested by ~~[the]~~ its secretary ~~[thereof]~~,
2 with the seal of ~~[such]~~ the district affixed ~~[thereto]~~ to the
3 bonds."

4 Section 7. Section 73-21-39 NMSA 1978 (being Laws 1951,
5 Chapter 195, Section 4) is amended to read:

6 "73-21-39. BONDS COLLECTIBLE FROM OPERATING REVENUES.--It
7 is ~~[hereby]~~ declared that revenue bonds, issued under the
8 provisions of ~~[this]~~ the Water and Sanitation District Act,
9 except for those general obligation bonds described in Section
10 73-21-43 NMSA 1978, shall not be considered ~~[or held]~~ to be
11 general obligations of the ~~[water and sanitation]~~ district
12 issuing them and shall be collectible only out of the net
13 revenues derived from the operation of the water or sewer
14 system, or joint water and sewer systems or from services
15 rendered by the district for a fee, whose income is so pledged
16 ~~[and]~~. Each of the bonds of any issue of revenue bonds ~~[so]~~
17 issued under the provisions of ~~[this act]~~ the Water and
18 Sanitation District Act, with the exception of general
19 obligation bonds, shall recite on its face that it is payable
20 and collectible solely from the revenues derived from the
21 operations of the water or sewer system or joint water and
22 sewer system or from the services rendered by the district for
23 a fee, the income of which is so pledged, and that the holders
24 ~~[thereof may]~~ of the bonds shall not look to any general or
25 other fund for the payment of principal and interest of ~~[such]~~

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1 the obligation."

2 Section 8. Section 73-21-40 NMSA 1978 (being Laws 1951,
3 Chapter 195, Section 5, as amended) is amended to read:

4 "73-21-40. RATES--BONDHOLDERS' REMEDY AND TAXPAYER
5 ELECTOR.--~~[It is made mandatory upon boards of directors]~~ The
6 board of ~~[water and sanitation districts]~~ each district issuing
7 ~~[water and sewer]~~ revenue bonds under the provisions of the
8 Water and Sanitation District Act ~~[to]~~ shall establish ~~[such]~~
9 rates or fees for services rendered by the ~~[water or sewer~~
10 ~~system or joint water and sewer system as will]~~ district
11 utility systems to create an income sufficient to pay all
12 reasonable expenses of operation and create a net revenue
13 ~~[which]~~ that shall be sufficient to pay interest coupons on the
14 revenue bonds, as they mature, and to provide a sinking fund
15 ~~[which]~~ that shall be adequate to discharge the bonds ~~[as and]~~
16 when they mature. It is ~~[their]~~ a board's duty to maintain the
17 rates and fees continuously until the ~~[bond issue has]~~ bonds
18 issued by that board have been fully liquidated. In the event
19 of ~~[their]~~ a board's failure or refusal ~~[to]~~ to do as required
20 by this section, all the members of the ~~[boards of directors]~~
21 board are ~~[liable]~~ subject to the penalties provided in Section
22 73-21-42 NMSA 1978, and any bondholder or a number of taxpayer
23 electors of the district amounting to twenty-five persons or
24 five percent of the electors, whichever is less, has the right
25 to apply to the district court of the county where a ~~[water and~~

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1 ~~sanitation~~] district is located for a mandatory order requiring
2 the establishment by a board [~~of directors~~] of rates [~~which~~] or
3 fees that shall be adequate to meet the requirements of that
4 act."

5 Section 9. Section 73-21-41 NMSA 1978 (being Laws 1951,
6 Chapter 195, Section 6) is amended to read:

7 "73-21-41. RESTRICTED USE OF BOND FUNDS.--Whenever under
8 the provisions of the laws of this state [~~any water or~~
9 ~~sanitation~~] a district [~~shall obtain, or has obtained, any~~
10 ~~moneys~~] obtains money or credits [~~by means of~~] from the [~~issue~~]
11 issuance of its bonds or other evidence of indebtedness for the
12 purpose of the purchase, construction or extension or repair of
13 [~~any water or sewer system or joint water and sewer system~~]
14 district utilities in [~~said water and sanitation~~] the district,
15 it shall be unlawful to divert, use or expend any of [~~said~~] the
16 money or credits in the purchase, construction or extension or
17 repair of any other water [~~or~~], sewer or fee-for-service system
18 or for any purpose other than that for which the [~~same was or~~
19 ~~shall be~~] money or credits were obtained."

20 Section 10. Section 73-21-42 NMSA 1978 (being Laws 1951,
21 Chapter 195, Section 7) is amended to read:

22 "73-21-42. VIOLATIONS--PENALTIES.--The members of any
23 board [~~of directors~~] and any officer or agent of any [~~water and~~
24 ~~sanitation~~] district violating the provisions of [~~this~~] the
25 Water and Sanitation District Act shall be deemed guilty of a

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1 misdemeanor and upon conviction [~~thereof~~] in the district court
2 shall be subject to a fine not to exceed five hundred dollars
3 [~~(\$500.00)~~] (\$500) or by imprisonment in the county jail not to
4 exceed six months or both in the discretion of the court trying
5 the case."

6 Section 11. Section 73-21-43 NMSA 1978 (being Laws 1963,
7 Chapter 261, Section 8) is amended to read:

8 "73-21-43. VALIDATION--EXISTING DISTRICTS.--All districts
9 [~~heretofore~~] previously created under the provisions of
10 [~~Section 75-18-1 through 75-18-39 New Mexico Statutes~~
11 ~~Annotated, 1953 Compilation]~~ the Water and Sanitation District
12 Act and all proceedings [~~heretofore~~] previously taken by [~~such~~]
13 the districts, including any elections [~~which~~] that may have
14 been held [~~therein~~] in the districts on the question of the
15 issuance of bonds and [~~which~~] that have carried, are validated,
16 ratified and confirmed. [~~Due investigation having been made,~~
17 ~~it is expressly found and recited that all property in such~~
18 ~~districts taxable for the payment of the bonds of such~~
19 ~~districts under the provisions of Sections 75-18-1 through~~
20 ~~75-18-39 New Mexico Statutes Annotated, 1953 Compilation will~~
21 ~~be adequately benefitted by the construction of the~~
22 ~~improvements and facilities to be acquired with the proceeds of~~
23 ~~such bonds.] Where [~~in any such~~] district bonds have been
24 [~~heretofore voted~~] previously approved by the voters but not
25 yet issued, [~~such~~] the bonds may be issued under the provisions~~

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1 of [~~Sections 75-18-1 through 75-18-19 New Mexico Statutes~~
2 ~~Annotated, 1953 Compilation~~] the Water and Sanitation District
3 Act, and where [~~such~~] the bonds are to be general obligations
4 of the issuing district, the bonds shall be payable from taxes
5 to be levied on all taxable property in [~~such~~] the district as
6 required by [~~Sections 75-18-1 through 75-18-19 New Mexico~~
7 ~~Statutes Annotated, 1953 Compilation and~~] the Water and
8 Sanitation District Act. All bonds [~~so voted~~] approved by the
9 voters and [~~hereafter~~] to be issued shall, when issued,
10 constitute valid [~~binding and enforceable~~] obligations of
11 [~~such~~] the districts in accordance with their terms."

12 Section 12. Section 73-21-44 NMSA 1978 (being Laws 1967,
13 Chapter 187, Section 2) is amended to read:

14 "73-21-44. SALE OF SYSTEM--ESCROW OF PROCEEDS.--[~~Any~~] A
15 district may sell or otherwise dispose of all or any part of
16 its water facilities, sewer facilities or both, including both
17 real and personal property, without an election. [~~Any such~~] A
18 sale or other disposition of district facilities shall be
19 authorized by resolution adopted by the affirmative vote of not
20 less than a majority of all members of the board. [~~Any~~] A
21 district may immediately apply the proceeds derived from [~~any~~
22 ~~such~~] the sale or other disposition of its facilities to the
23 retirement of [~~any~~] outstanding bonds or place [~~such~~] the
24 proceeds in escrow in a commercial bank or trust company,
25 either a state or national banking institution [~~which~~] that

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1 possesses and is exercising trust powers, [~~which~~] that is
2 located within New Mexico and [~~which~~] that is a member of the
3 federal deposit insurance corporation, to be applied to the
4 payment of any outstanding bonds upon their presentation
5 [~~therefor~~] for payment. Any [~~such~~] escrow is not necessarily
6 limited to proceeds of [~~such~~] the sale or other disposal, but
7 may include other [~~moneys~~] money available for its purpose.
8 Any proceeds in escrow, pending [~~such~~] use pursuant to the
9 provisions of this section, may be invested or reinvested in
10 bills, certificates of indebtedness, notes or bonds [~~which~~]
11 that are direct obligations of, or the principal and interest
12 of which obligations are unconditionally guaranteed by, the
13 United States or any other legal investment. [~~Such~~] The
14 proceeds and investments in escrow, together with any interest
15 to be derived from [~~any such~~] the investment, shall be used
16 only to pay [~~any~~] charges of the escrow agent, which are
17 expressly made payable from [~~such~~] the escrow, and to pay as
18 many bonds as possible as they become due at their respective
19 maturities or due at [~~any~~] a designated prior redemption date
20 [~~or dates~~] in connection with which the board shall exercise a
21 prior redemption option. [~~Any~~] A purchaser of any facilities
22 [~~which~~] that may be sold or otherwise disposed of shall in no
23 manner be responsible for the application of the proceeds
24 [~~thereof~~] by the district or any of its officers, agents or
25 employees. Nothing in this section shall be construed as

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1 changing or modifying any contractual agreement or covenant
2 concerning any outstanding bonds as may be provided in the
3 proceedings authorizing any outstanding bonds or otherwise
4 appertaining ~~[thereto]~~ to them."

5 Section 13. Section 73-21-45 NMSA 1978 (being Laws 1967,
6 Chapter 187, Section 3) is amended to read:

7 "73-21-45. REFUNDING BONDS.--

8 A. Any bonds issued by any district may be refunded
9 in the name of the district issuing the bonds being refunded
10 without an election by the district issuing them or any
11 successor ~~[thereof, in the name of the district issuing the~~
12 ~~bonds being refunded, by]~~ bonds.

13 B. The issuance of refunding bonds shall be to:

14 (1) refund, pay and discharge all or any part of
15 ~~[such]~~ the outstanding bonds, including any interest on the
16 bonds in arrears or about to become due within three years from
17 the date of the refunding bonds; ~~[and for the purpose of~~
18 ~~avoiding or terminating]~~

19 (2) avoid or terminate any default in the
20 payment of interest on and principal of the bonds ~~[of reducing]~~
21 to reduce interest costs or ~~[effecting]~~ effect other economies;
22 or ~~[of modifying or eliminating]~~

23 (3) modify or eliminate restrictive contractual
24 limitations appertaining to the issuance of ~~[additional]~~
25 refunding bonds or ~~[to any system appertaining thereto or]~~ for

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1 any combination of the [~~foregoing~~] purposes permitted by the
2 provisions of this section.

3 C. Refunding bonds shall be authorized by a
4 resolution adopted by the affirmative vote of not less than a
5 majority of all members of the board. Any bonds [~~which~~] that
6 are refunded under the provisions of this section shall be paid
7 at maturity or on any permitted prior redemption date in the
8 amounts, at the times and places and, if called prior to
9 maturity, in accordance with any applicable notice provisions,
10 all as provided in the proceedings authorizing the issuance of
11 [~~said~~] the refunded bonds or otherwise appertaining [~~thereto~~]
12 to the bonds being refunded, except for any [~~such bond which~~
13 ~~is~~] bonds that are voluntarily surrendered for exchange or
14 payment by the holder. Refunding bonds may be delivered in
15 exchange for the outstanding bonds refunded or may be sold at
16 either public or private sale. The provisions of [~~Sections~~
17 ~~15-54-2 and 15-54-3 New Mexico Statutes Annotated, 1953~~
18 ~~Compilation, as hereafter amended from time to time~~] the
19 Community Service District Act shall not apply to any refunding
20 bonds of any district."

21 Section 14. Section 73-21-46 NMSA 1978 (being Laws 1967,
22 Chapter 187, Section 4) is amended to read:

23 "73-21-46. LIMITATIONS UPON ISSUANCE.--No bonds [~~may~~]
24 shall be refunded under [~~Sections 75-18-42 through 75-18-49 New~~
25 ~~Mexico Statutes Annotated, 1953 Compilation, as hereafter~~

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1 ~~amended from time to time~~ the Water and Sanitation District
2 Act unless [~~said~~] the bonds either mature or are callable for
3 prior redemption under their terms within ten years from the
4 date of issuance of the refunding bonds, or unless the holders
5 [~~thereof~~] of them voluntarily surrender them for exchange or
6 payment. Provision shall be made for paying the bonds refunded
7 within [~~said~~] that period of time. Interest on [~~any bond~~]
8 bonds may be increased, but it may not be increased to [~~any~~] a
9 rate [~~or rates~~] exceeding six percent a year. The principal
10 amount of the refunding bonds may exceed the principal amount
11 of the refunded bonds, but only to the extent that any costs
12 incidental to the refunding bonds or any interest on the bonds
13 refunded in arrears or about to become due within three years
14 from the date of the refunding bonds, or both [~~said~~] the
15 incidental costs and interest, are capitalized with the
16 proceeds of refunding bonds. The principal amount of the
17 refunding bonds may also exceed the principal amount of the
18 refunded bonds if the aggregate principal and interest costs of
19 the refunding bonds do not exceed [~~such~~] the unaccrued costs of
20 the bonds refunded. The principal amount of the refunding
21 bonds may also be less than or the same as the principal amount
22 of the bonds being refunded so long as provision is duly and
23 sufficiently made for the payment of the refunded bonds."

24 Section 15. Section 73-21-47 NMSA 1978 (being Laws 1967,
25 Chapter 187, Section 5) is amended to read:

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1 "73-21-47. PROCEEDS OF REFUNDING BONDS.--

2 A. The proceeds of refunding bonds shall either be
3 immediately applied to the retirement of the bonds being
4 refunded or be placed in escrow in a commercial bank or trust
5 company, either a state or national banking institution [~~which~~]
6 that possesses and is exercising trust powers, [~~which~~] that is
7 located within New Mexico and [~~which~~] that is a member of the
8 federal deposit insurance corporation, to be applied to the
9 payment of the bonds being refunded upon their presentation
10 [~~therefor~~] for payment; provided, to the extent any incidental
11 expenses have been capitalized, [~~such~~] that the refunding bond
12 proceeds may be used to defray such expenses; and any accrued
13 interest and any premium appertaining to a sale of refunding
14 bonds may be applied to the payment of the interest [~~thereon~~]
15 on them and the principal [~~thereof~~] of them, or both interest
16 and principal, or may be deposited in a reserve [~~therefor~~] as
17 the board may determine.

18 B. Nothing [~~herein~~] in this section requires the
19 establishment of an escrow account if the refunded bonds become
20 due and payable within one year from the date of the refunding
21 bonds and if the amount necessary to retire the refunded bonds
22 within that time is deposited with the paying agent for [~~said~~]
23 the refunded bonds.

24 [~~Any such~~] C. An escrow account shall not
25 [~~necessarily~~] be limited to proceeds of refunding bonds but may

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1 include other ~~[moneys]~~ money available for ~~[its]~~ the account's
2 purpose. Any proceeds in escrow ~~[pending such use]~~ may be
3 invested or reinvested in bills, certificates of indebtedness,
4 notes or bonds ~~[which]~~ that are direct obligations of, or the
5 principal and interest of which obligations are unconditionally
6 guaranteed by, the United States.

7 ~~[Such]~~ D. The proceeds and investments in escrow,
8 together with any interest derived from ~~[any such]~~ the
9 investment of the escrow account, shall be ~~[in an amount at all~~
10 ~~times]~~ sufficient ~~[as]~~ to pay principal, interest, any prior
11 redemption premium due and any charges of the escrow agent
12 payable ~~[therefrom]~~ from the escrow account and to pay the
13 bonds being refunded as they become due at their respective
14 maturities or due at any designated prior redemption date ~~[or~~
15 ~~dates in connection with]~~ on which the board shall exercise a
16 prior redemption option.

17 E. Any purchaser of any refunding bond issued ~~[under~~
18 ~~Sections 75-18-42 through 75-18-49 New Mexico Statutes~~
19 ~~Annotated, 1953 Compilation, as hereafter amended from time to~~
20 ~~time, shall in no manner be]~~ pursuant to the Water and
21 Sanitation District Act is not responsible for the application
22 of the refunding bond proceeds ~~[thereof]~~ by the district or any
23 of its officers, agents or employees."

24 Section 16. Section 73-21-48 NMSA 1978 (being Laws 1967,
25 Chapter 187, Section 6) is amended to read:

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1 "73-21-48. REFUNDING BONDS--DETAIL--FORM.--Refunding
2 bonds shall bear interest payable annually or semiannually, and
3 [~~such~~] the refunding bonds shall be due and payable either as
4 term or serial bonds as determined by the board; provided that
5 no refunding bond shall mature more than twenty-five years from
6 the date of [~~said~~] the refunding bond. The form and terms of
7 the refunding bonds, including provisions for their payment and
8 redemption, shall be determined by the board. If the board so
9 determines in the authorizing resolution, the refunding bonds
10 may be redeemable prior to maturity without or with the payment
11 of a premium, which may be in any amount determined by the
12 board."

13 Section 17. Section 73-21-49 NMSA 1978 (being Laws 1967,
14 Chapter 187, Section 7) is amended to read:

15 "73-21-49. COMBINATION OF ISSUES.--Bonds for refunding
16 one or more issues originally authorized for one or more
17 purposes and bonds for any other purpose [~~or purposes~~]
18 authorized in [~~Article 18 New Mexico Statutes Annotated, 1953~~
19 ~~Compilation~~] the Water and Sanitation District Act may be
20 issued separately or issued in combination in one series or
21 more by any district. Bonds payable solely from revenues of
22 any [~~water facilities or sewer facilities, or both, may~~]
23 utility or combination of utilities of the district shall not
24 be refunded by general obligation bonds [~~which~~] that are
25 payable from general ad valorem property taxes unless

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1 authorized at an election as provided in [~~Sections 75-18-25~~
2 ~~through 75-18-30 New Mexico Statutes Annotated, 1953~~
3 ~~Compilation, as hereafter amended from time to time~~] the Water
4 and Sanitation District Act."

5 Section 18. Section 73-21-55 NMSA 1978 (being Laws 1985,
6 Chapter 166, Section 3, as amended) is amended to read:

7 "73-21-55. DISTRICTS NOT SUBJECT TO UTILITY LAWS--OPTION
8 TO SUBMIT TO REGULATION.--

9 [~~A. No district organized under the provisions of the~~
10 ~~Water and Sanitation District Act is subject to the~~
11 ~~jurisdiction of the public regulation commission or the terms~~
12 ~~and provisions of the Public Utility Act except as provided in~~
13 ~~Subsections B and C of this section.~~

14 ~~B.]~~ A. Any district organized under the provisions of
15 the Water and Sanitation District Act may elect by resolution
16 adopted by its board of directors to become subject to the
17 jurisdiction of the public regulation commission and to the
18 terms and provisions of the Public Utility Act; provided,
19 however, that in no event shall Sections 62-9-1 through
20 62-9-7 NMSA 1978 apply to any district making such an election.

21 [~~C.]~~ B. If the board [~~of directors~~] has not elected
22 to become subject to the jurisdiction of the public regulation
23 commission as provided for in Subsection [~~B~~] A of this section,
24 [~~it shall nevertheless file with the commission any rates,~~
25 ~~tolls and charges proposed by the board, which shall be subject~~

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1 ~~to approval by the commission if twenty-five of the taxpaying~~
2 ~~electors of the district or five percent of the taxpaying~~
3 ~~electors of the district, whichever is less, file a petition~~
4 ~~protesting the rates, tolls or charges with the commission~~
5 ~~within thirty days after the board proposes the rates. Upon~~
6 ~~the filing of such a petition, the commission shall hold a~~
7 ~~hearing pursuant to rules that it shall promulgate to implement~~
8 ~~this subsection] any rates, tolls or charges adopted by~~
9 ~~resolution of the board, after publication of the resolution of~~
10 ~~the board, may be appealed if twenty-five electors of the~~
11 ~~district, or five percent of the electors of the district,~~
12 ~~whichever is less, file a petition to the district court of the~~
13 ~~county in which the district is located protesting the rates,~~
14 ~~tolls or charges within thirty days after the board adopts the~~
15 ~~resolution. The district court shall consider the petition on~~
16 ~~the record of the board hearing in which the resolution was~~
17 ~~adopted under its rules governing review by a district court of~~
18 ~~administrative decisions or orders."~~