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HOUSE BILL 221

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

John L. Zimmerman

AN ACT

RELATING TO WATER UTILITIES; AMENDING THE SANITARY PROJECTS
ACT; ALLOWING CERTAIN RENTERS TO BECOME MEMBERS OF WATER
UTILITIES THAT ARE GOVERNED BY THE SANITARY PROJECTS ACT;
CHANGING PETITION REQUIREMENTS FOR REQUESTS TO INVESTIGATE THE
OPERATIONS OF THOSE UTILITIES; MAKING CERTAIN WATER UTILITIES
WITH TWO THOUSAND OR MORE MEMBERS SUBJECT TO THE PUBLIC UTILITY
ACT.

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

SECTION 1. A new section of the Sanitary Projects Act is
enacted to read:

"~~[NEW MATERIAL]~~ ASSOCIATIONS SUBJECT TO THE PUBLIC UTILITY
ACT.--An association that is governed by the provisions of the
Sanitary Projects Act and that has two thousand or more members
shall be subject to the jurisdiction of the public regulation

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1 commission and to the provisions of the Public Utility Act, in
2 addition to the provisions of the Sanitary Projects Act."

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

5 "3-29-2. DEFINITIONS.--As used in the Sanitary Projects
6 Act:

7 A. "community" means a rural unincorporated
8 community and includes a combination of two or more rural
9 unincorporated communities when they have been combined for the
10 purposes set forth in the Sanitary Projects Act;

11 B. "association" includes an association or mutual
12 domestic water consumers association organized under Laws 1947,
13 Chapter 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52, as
14 well as any association organized under the provisions of the
15 Sanitary Projects Act;

16 C. "department" means the department of
17 environment;

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

21 E. "person" means a single residence or property
22 owner, as determined by the rules adopted by the association's
23 board of directors; and an individual who rents or leases a
24 residence served by the association and who is billed for
25 service by the association; provided that the individual is not

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1 otherwise a qualified member of the association; and

2 F. "project" means a water supply or reuse, storm
3 drainage or wastewater facility owned, constructed or operated
4 by an association."

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

7 "3-29-7. DEPARTMENT POWERS.--

8 A. Insofar as the department deems it necessary for
9 the purpose of the Sanitary Projects Act, the department may
10 recommend agreements, covenants or rules in regard to
11 operation, maintenance and permanent use of water supply,
12 reclamation, storm drainage and wastewater facilities.

13 B. The department may:

14 (1) conduct periodic reviews of the operation
15 of the association;

16 (2) require the association to submit
17 information to the department;

18 (3) require submittal of financial reports
19 required pursuant to the Audit Act;

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

22 (5) after a hearing, intervene in the
23 operation and management with full powers, including the power
24 to set and collect assessments from members of the association,
25 to set and collect service charges and use the same for the

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1 proper operation and management of the association; and

2 (6) appoint and delegate authority to a
3 representative to oversee operation of the association for a
4 specified period.

5 C. The department may in its discretion or shall,
6 upon a petition of the lesser of twenty-five percent or fifty
7 of the members of the association, conduct investigations as it
8 deems necessary to determine if the association is being
9 operated and managed in the best interests of all the members
10 of the association.

11 D. Whenever the department determines that an
12 association violated or is violating the Sanitary Projects Act
13 or a rule adopted pursuant to that act, the department may:

14 (1) issue a compliance order requiring
15 compliance immediately or within a specified time period, or
16 both; or

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

19 E. A compliance order shall state with reasonable
20 specificity the nature of the violation.

21 F. If an association fails to take corrective
22 actions within the time specified in a compliance order, the
23 department may assess a civil penalty of not more than two
24 hundred fifty dollars (\$250) for each day of continued
25 noncompliance with the compliance order.

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1 G. Any compliance order issued by the department
2 pursuant to this section shall become final unless, no later
3 than thirty days after the compliance order is served, any
4 association named in the compliance order submits a written
5 request to the department for a public hearing. The department
6 shall conduct a public hearing within ninety days after receipt
7 of a request.

8 H. The department may appoint an independent
9 hearing officer to preside over any public hearing held
10 pursuant to Subsection G of this section. The hearing officer
11 shall:

12 (1) make and preserve a complete record of the
13 proceedings; and

14 (2) forward to the department a report that
15 includes recommendations, if recommendations are requested by
16 the department.

17 I. The department shall consider the findings of
18 the independent hearing officer and, based on the evidence
19 presented at the hearing, the department shall make a final
20 decision regarding the compliance order.

21 J. In connection with any proceeding under this
22 section, the department may:

23 (1) adopt rules for discovery and hearing
24 procedures; and

25 (2) issue subpoenas for the attendance and

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1 testimony of witnesses and for relevant papers, books and
2 documents.

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

5 SECTION 4. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2015.

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