

HOUSE BILL 379

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Christine Chandler

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO WATER; ALLOWING ACEQUIAS AND COMMUNITY DITCHES TO OBTAIN A LIEN ON PROPERTY PURSUANT TO MAGISTRATE AND DISTRICT COURT JUDGMENTS.

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

SECTION 1. Section 73-2-26 NMSA 1978 (being Laws 1963, Chapter 29, Section 1, as amended) is amended to read:

"73-2-26. ACTIONS FOR COLLECTION OF ASSESSMENTS--LIEN.--

A. Whenever any person, after due notice, has failed to do [~~his~~] work or has failed to pay any amount

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assessed against ~~him~~ the person on any acequia or ditch, the mayordomo or superintendent of the acequia or ditch may bring a civil action for collection of the amount assessed. The magistrate courts and the district courts have concurrent jurisdiction in these actions and the actions may be brought in either forum at the election of the ditch officials. If the ditch officials engage the services of an attorney to assist in the collection of the assessments, the court shall charge the offending party with a reasonable amount for attorney fees incurred in the collection, if the ditch officials prevail in the action.

B. Any person who continues to take or use water from the acequia or ditch without paying the assessments and attorney fees as set by a judgment under this section shall pay a civil penalty for the benefit of the ditch or acequia of not more than two hundred dollars (\$200). The penalty may be recovered in an action by the ditch officials before the court in the county where the acequia or ditch is located.

C. A money judgment rendered in a magistrate court or district court under this section shall be a lien on the judgment debtor's property to which the water rights that incurred the fees or assessments are appurtenant. The lien shall be effective from the date of filing a certified copy of the judgment, if obtained from a magistrate court, or a transcript of the judgment, if obtained from a district court,

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in the office of the county clerk of the county in which the property is located; provided that a judgment shall not be filed with the county clerk pursuant to this subsection before the last day to appeal the judgment has expired HJC→HAWC→and any appeal filed in final←HAWC←HJC HJC→and until all appeals taken are exhausted←HJC. The acequia or community ditch officials shall provide written notice to the property owner that a lien has been placed on the property. When the judgment has been fully satisfied, SJC→~~it is the duty of~~←SJC the acequia or community ditch officials SJC→to←SJC SJC→shall←SJC file a release of lien in the office of the county clerk of the county in which the property is located SJC→within fifteen days←SJC. The cost of filing the release of lien shall be assessed against the judgment debtor and shall be collected before the release of lien is required to be filed. SJC→~~All liens pursuant to this section shall be first and prior liens on the property subject only to the lien of federal, state or county taxes.~~←SJC"