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Watershed District Act (Effective July 1, 2003)

73-20-1. Short title. (1957)

This act may be cited as the "Watershed District Act."

History: 1953 Comp., §§ 45-5-19, enacted by Laws 1957, ch. 210, §§ 1.

73-20-2. Definitions. (1977)

As used in the Watershed District Act [73-20-1 NMSA 1978]:

A. "directors" means directors of the watershed districts; and

B. "supervisors" means supervisors of soil and water conservation district or districts in which the watershed district is located.

History: 1953 Comp., §§ 45-5-20, enacted by Laws 1957, ch. 210, §§ 2; 1973, ch. 332, §§ 1; 1977, ch. 254, §§ 45.

73-20-3. Purpose of act. (1957)

The purpose of the Watershed District Act [73-20-1 NMSA 1978] is to secure the federal assistance provided in Public Law 566 of the 83rd congress, and amendatory legislation, for New Mexico in its program to further the conservation, development, utilization, flood prevention and disposal of water, and thereby preserve and protect New Mexico's land and water resources.

History: 1953 Comp., §§ 45-5-21, enacted by Laws 1957, ch. 210, §§ 3.

73-20-4. Watershed districts; formation. (1977)

Watershed districts may be formed as subdistricts of soil and water conservation districts in a watershed area, as provided in the Watershed District Act [73-20-1 NMSA 1978], for the purpose of developing and executing plans and programs relating to any phase of conservation of water, or of water usage, including water-based recreation, flood prevention, flood control, erosion prevention and control of erosion, and floodwater and sediment damages.

History: 1953 Comp., §§ 45-5-22, enacted by Laws 1957, ch. 210, §§ 4; 1965, ch. 84, §§ 1; 1973, ch. 332, §§ 2; 1977, ch. 254, §§ 46.

73-20-5. Area. (1977)

The land area embraced in districts must be contiguous and must lie within a well-defined watershed area or subwatershed areas. The districts may embrace lands lying in one or more soil and water conservation districts, or lands lying partly within and partly outside a soil and water conservation district.

History: 1953 Comp., §§ 45-5-23, enacted by Laws 1957, ch. 210, §§ 5; 1973, ch. 332, §§ 3; 1977, ch. 254, §§ 47.

73-20-6. Petitions. (2003)

When fifty or more landowners within a proposed watershed district, or twenty percent of the landowners within the proposed district, whichever is less, desire to form a watershed district, they shall file a petition with the board of supervisors. The petition shall define the boundaries of the proposed district, the number of acres of land involved, reasons for requesting creation of the district, the proposed name for the watershed district and other information pertinent to the proposal. In the event of a challenge to the validity of signatures on a petition, the burden of proof shall be on the sponsors of the petition.

History: 1953 Comp., §§ 45-5-24, enacted by Laws 1957, ch. 210, §§ 6; 1975, ch. 294, §§ 1; 2003, ch. 228, §§ 1.

73-20-7. Presentation of petitions. (1977)

If the proposed watershed district lies in more than one soil and water conservation district, the petition may be presented to the board of supervisors of any one of such districts and the supervisors of all such districts shall act as a joint board of supervisors in the formation and supervision of such a watershed district.

History: 1953 Comp., §§ 45-5-25, enacted by Laws 1957, ch. 210, §§ 7; 1973, ch. 332, §§ 4; 1977, ch. 254, §§ 48.

73-20-8. Hearing; notice. (1975)

A. Within thirty days after the petition has been filed with the board of supervisors, it shall cause due notice to be given by publication for three consecutive weeks, once a week on the same day of each week, immediately prior to the action in a newspaper of general circulation in the area, and, if no newspaper of general circulation exists, shall post in not less than eight public places within the area, notice of a hearing upon the practicability and feasibility of creating the district. In addition to the publication provided for in this subsection, absentee landowners shall be notified by first class mail if their whereabouts can be ascertained by reasonably diligent search. All interested parties shall have the right to attend such hearing and be heard. If it shall appear at

the hearing that other lands should be included or that lands included in the petition should be excluded, the board of supervisors may permit such inclusion or exclusion.

B. If it appears upon the hearing that it may be desirable to include within the proposed district, territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of a further hearing shall be given throughout the entire area considered for inclusion in the district and a further hearing shall be held. After final hearing, if the board of supervisors determines, upon the facts presented at the hearing and upon other available information, that there is need, in the interest of the public health, safety and welfare for such a district to function in the territory considered, it shall make and record the determination and shall define by metes and bounds or by legal subdivisions, the boundaries of the district.

C. If the board determines after the hearing that it is not feasible for such district to function in the territory considered, it shall make and record the determination and shall deny the petition.

History: 1953 Comp., §§ 45-5-26, enacted by Laws 1957, ch. 210, §§ 8; 1961, ch. 233, §§ 1; 1975, ch. 294, §§ 2.

73-20-9. Referendum. (1975)

After the board of supervisors has made and recorded a determination that there is need, in the interest of the public health, safety and welfare, for creation of the proposed watershed district, it shall consider the question whether the operation of a district within the proposed boundaries with the powers conferred upon such districts in Section 73-20-13 NMSA 1978 is administratively practicable and feasible. To assist the board of supervisors in this determination, the board shall, within a reasonable time after entry of the finding that there is need for the organization of the district and the determination of the boundaries of the district, hold a referendum within the proposed district upon the proposition of the creation of the district. Due notice of the referendum shall be given as provided in Section 73-20-8 NMSA 1978, except that, notice sent to absentee landowners shall also inform them of their right to request a ballot. Such notice shall state the date of holding the referendum, the hours of opening and closing the polls and shall designate one or more places within the proposed district as polling places. The board shall appoint a polling superintendent and other necessary polling officers giving equal representation to the proponents and opponents of the question involved. Ballots shall be sent to all absentee landowners upon request and they may vote by return ballot by first class mail.

History: 1953 Comp., §§ 45-5-27, enacted by Laws 1957, ch. 210, §§ 9; 1975, ch. 294, §§ 3.

73-20-10. Ballots. (2003)

The question to be voted on shall be submitted by ballots that define the boundaries of the proposed district as determined by the board of supervisors. Only owners of lands lying within the boundaries of the territory, as determined by the board, shall be eligible to vote in the referendum.

History: 1953 Comp., §§ 45-5-28, enacted by Laws 1957, ch. 210, §§ 10; 2003, ch. 228, §§ 2.

73-20-11. Votes; results. (2003)

The votes shall be counted by the election officers at the close of the polls and report of the results along with the ballots delivered to the polling superintendent, who shall certify the results to the board of supervisors. If a majority of the votes cast favor creation of the district, the board of supervisors shall certify the results to the county clerk in the county involved. Upon proper recording of the action, the watershed district shall be duly created. After recording, the certification shall be filed with the New Mexico department of agriculture.

History: 1953 Comp., §§ 45-5-29, enacted by Laws 1957, ch. 210, §§ 11; 1973, ch. 332, §§ 5; 1977, ch. 254, §§ 49; 1987, ch. 234, §§ 74; 2003, ch. 228, §§ 3.

73-20-12. Directors; election. (2003)

A. Within thirty days after a watershed district is created, the board of supervisors of the soil and water conservation district involved shall cause an election to be held for the election of a board of directors of the watershed district. The board shall consist of five members. The first board shall determine by lot from among its membership two members to serve terms of two years, two members to serve terms of three years and one member to serve a term of four years. Thereafter, as these initial terms expire, their replacements shall be elected for terms of four years.

Vacancies occurring before the expiration of a term shall be filled by the remaining members of the board for the unexpired term. Two or more vacancies occurring simultaneously shall be filled by appointment by the board of supervisors. The board of directors shall, under the supervision of the board of supervisors, be the governing body of the watershed district.

B. If the territory embraced within a watershed district lies within more than one soil and water conservation district, each additional soil and water conservation district having a minority of the land involved in the watershed shall be entitled to elect three additional directors. These additional directors after their election shall determine by lot one of their number to serve a term of two years, one a term of three years and one a term of four years. Thereafter, their successors shall be elected for terms of four years. The representatives of each of these minority districts shall fill vacancies in the district's membership for the unexpired term.

C. The board of directors shall annually elect from its membership a chairman, secretary and treasurer. The treasurer shall execute an official bond for the faithful performance of the duties of his office to be approved by the board of directors. The bond shall be executed with at least three solvent personal sureties whose solvency shall exceed the amount of the bond, or by a surety company authorized to do business in this state, and shall be in an amount determined by the board of directors. If the treasurer is required to execute a surety company bond, the premium of the bond shall be paid by the board of directors.

D. The board of directors shall prepare and submit to the department of finance and administration such reports as it may require from among those required to be submitted by other political subdivisions.

E. Each person desiring to be a director of a watershed district shall file a nominating petition with the board of supervisors, signed by ten or more landowners within the watershed districts of the county involved, or, if less than fifty landowners are involved, a majority of such landowners. If the candidates nominated do not exceed the positions available, they shall be declared elected. No person shall be eligible to be a director of a watershed district who is not a landowner in the district in which he seeks election.

History: 1953 Comp., §§ 45-5-30, enacted by Laws 1957, ch. 210, §§ 12; 1973, ch. 332, §§ 6; 1977, ch. 254, §§ 50; 2003, ch. 228, §§ 4.

73-20-13. Authority. (2003)

Subject to the approval of the board of supervisors, the board of directors of a watershed district shall have power to:

A. levy an annual assessment on the real property within the district, within the limitations provided in Section 73-20-17 NMSA 1978, for administration, construction, operation and maintenance of works of improvement within and without the district as are required by the district in the performance of its functions;

B. acquire by purchase, gift, grant, bequest, devise or through condemnation proceedings in the manner provided in the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978] property or rights of way necessary for the exercise of any authorized function of the district; provided that no property or water rights shall be condemned for the purposes of recreation;

C. construct, improve, operate, contract for and maintain such structures as may be necessary for the performance of any function authorized by the Watershed District Act [73-20-1 NMSA 1978];

D. borrow money necessary for the purpose of acquiring rights of way and establishing, constructing, reconstructing, repairing, enlarging and maintaining the structures and improvements required by the district in the performance of its functions and repay these loans with the proceeds of the annual assessment provided for in Subsection A of this section or by the issuance, negotiation and sale of its bonds as provided in Section 73-20-14 NMSA 1978; and

E. receive and grant assistance and cooperate with counties, municipalities and state and federal agencies in carrying out the provisions of the Watershed District Act [73-20-1 NMSA 1978].

History: 1953 Comp., §§ 45-5-31, enacted by Laws 1957, ch. 210, §§ 13; 1961, ch. 233, §§ 2; 1965, ch. 84, §§ 2; 1975, ch. 294, §§ 4; 1981, ch. 125, §§ 59; 2003, ch. 228, §§ 5.

73-20-14. Bonds. (2003)

A. Bonds authorized by Section 73-20-13 NMSA 1978 shall not be issued until proposed by order or resolution of the board of directors, specifying the purpose for which the funds are to be used, and the proposed undertaking, the amount of bonds to be issued, the rate of interest they

are to bear and the amount of any necessary assessment levy in excess of the maximum authorized in Section 73-20-17 NMSA 1978 to establish a sinking fund for the liquidation of bonds as provided in Section 73-20-17 NMSA 1978. A copy of the order or resolution shall be certified to the board of supervisors.

B. The board of supervisors shall conduct a hearing on the proposal after notice given pursuant to Section 73-20-8 NMSA 1978. If it appears that the proposal is within the scope and purpose of the Watershed District Act [73-20-1 NMSA 1978] and meets all other requirements of the law, the proposal shall be submitted to the landowners of the district by referendum under supervision of the board of supervisors.

C. Provisions of Sections 73-20-8 through 73-20-11 NMSA 1978 as to notice, qualifications of voters and manner of holding referendum election in organizing a watershed district shall apply to the referendum held under this section.

D. If two-thirds of the landowners voting favor the proposal, the bonds may be issued.

History: 1953 Comp., §§ 45-5-32, enacted by Laws 1957, ch. 210, §§ 14; 1965, ch. 84, §§ 3; 1975, ch. 294, §§ 5; 2003, ch. 228, §§ 6.

73-20-15. Loans; repayments. (1986)

A. In addition to the borrowing of money by the issuance of bonds for the purposes set out in Section 73-20-13 NMSA 1978, the district may borrow money from the United States department of agriculture or any other federal agency if the loan can be repaid according to its terms by use of the levy authorized by Section 73-20-17 NMSA 1978 and the board of supervisors has so determined.

B. The district may also borrow money from the United States department of agriculture or any other federal agency and levy an assessment not to exceed five dollars (\$5.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], of property subject to taxation by the district, in addition to others authorized by the Watershed District Act [73-20-1 NMSA 1978], to repay the loan if the board of directors determines the rate of the levy required and:

- (1) secures the approval of the board of supervisors;
- (2) a referendum on the acceptance of the loan for specified purposes is held;
- (3) two-thirds of the landowners voting favor the proposal; and
- (4) the procedures of Sections 73-20-8 through 73-20-11 NMSA 1978 as to notice, qualifications of voters and manner of holding referendum election are followed in the referendum held under this section.

History: 1953 Comp., enacted by Laws 1961, ch. 233, §§ 3; 1975, ch. 294, §§ 6; 1986, ch. 32, §§ 37.

73-20-16. Per diem and mileage. (2003)

Members of the board of directors shall receive no salaries, but the members shall be entitled to be reimbursed in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: 1953 Comp., §§ 45-5-33, enacted by Laws 1957, ch. 210, §§ 15; 2003, ch. 228, §§ 7.

73-20-17. Budgets; tax levy; limitation. (2003)

Within the first quarter of each calendar year, the board of directors shall prepare an itemized budget of the funds needed for administration, construction, operation and maintenance of works of improvement. After approval of the budget by the board of supervisors, the board of directors shall, by order or resolution, levy an assessment sufficient to meet the budget, not to exceed five dollars (\$5.00), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the assessment authorized by this section, on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], of all real property subject to taxation within the district, except that the limit on assessments does not apply to any levy necessary to provide a sinking fund for retirement of bonds authorized by Section 73-20-13 NMSA 1978. A copy of the budget and order or resolution shall be certified to the county assessor of the county or counties involved and to the department of finance and administration by July 15 of each year.

History: 1953 Comp., §§ 45-5-34, enacted by Laws 1957, ch. 210, §§ 16; 1986, ch. 32, §§ 38; 2003, ch. 228, §§ 8.

73-20-18. Assessment lists. (2003)

A. The board of directors shall prepare a list of the landowners within the defined boundaries of the watershed district in each county involved showing the number of acres subject to assessment and deliver it to the county assessor of the county involved. The assessor shall indicate the information on the tax rolls.

B. The county assessor shall compute the assessment due the district from each landowner in accordance with the rate fixed by the board of directors and the value of the real property indicated on the tax roll. The computation shall be made on the regular tax bills in the manner as may be directed by regulation of the property tax division of the taxation and revenue department.

History: 1953 Comp., §§ 45-5-35, enacted by Laws 1957, ch. 210, §§ 17; 1977, ch. 249, §§ 28; 2003, ch. 228, §§ 9.

73-20-19. Collection of assessments. (1957)

A. The county treasurer shall collect the assessment due the district at the same time and in the same manner in which he collects the state and county ad valorem tax. The county treasurer shall retain a fee for collections of the assessment equal to four percent of the assessment collected or the actual cost, whichever is less.

B. Such assessments shall be subject to the same due and delinquency date, discounts, penalties and interest as are applied to the collection of ad valorem taxes.

History: 1953 Comp., §§ 45-5-36, enacted by Laws 1957, ch. 210, §§ 18.

73-20-20. Expenditures. (1977)

Assessment funds collected shall be transferred to and held by the treasurer of the watershed district for the specific purpose for which they have been collected. All expenditures of such funds shall be made by the board of directors upon order of the board, approved by the board of supervisors of the soil and water conservation district or districts involved.

History: 1953 Comp., §§ 45-5-37, enacted by Laws 1957, ch. 210, §§ 19; 1973, ch. 332, §§ 7; 1977, ch. 254, §§ 51.

73-20-21. Addition of land. (2003)

A. Any one or more owners of land may petition the board of supervisors to have their lands added to a watershed district. The petition shall define the boundaries of the land desired to be annexed, the number of acres of land involved and other information pertinent to the proposal. When the boundary described embraces lands of others than the petitioners, the petition shall so state and shall be signed by twenty-five or more of the landowners in the territory described, if fifty or more such owners are involved, or by a majority if less than fifty landowners are involved.

B. Within thirty days after the petition is filed, the board shall cause due notice to be given as provided in Section 73-20-8 NMSA 1978 of a hearing on the petition. All interested parties shall have a right to attend the hearing and be heard. The board shall determine whether the lands described in the petition or any portion of them shall be included in the district. If all the landowners in the territory involved are not petitioners, a referendum shall be held within the territory as provided in Sections 73-20-8 through 73-20-11 NMSA 1978 before making a final determination. If it is determined that the land should be added, this fact shall be certified by the board of supervisors to the county clerk in the county involved. After recording, the certification shall be filed with the New Mexico department of agriculture.

History: 1953 Comp., §§ 45-5-38, enacted by Laws 1957, ch. 210, §§ 20; 1973, ch. 332, §§ 8; 1977, ch. 254, §§ 52; 1987, ch. 234, §§ 75; 2003, ch. 228, §§ 10.

73-20-22. Detaching land. (2003)

The owner or owners of land who have not been, are not and cannot be benefited by their inclusion in the watershed district may petition the board of supervisors to have the lands withdrawn. The petitions shall be filed with the board of supervisors and the board of directors and shall describe the lands and state the reasons why they should be withdrawn. A hearing shall be held within thirty days after the petition is received. Due notice of the hearing as provided in

Section 73-20-8 NMSA 1978 shall be given at least ten days before the hearing. If it is determined by the board of supervisors that the lands shall be withdrawn, the determination shall be certified to the county clerk of each county in which any portion of the lands lie. After recording, the certification shall be filed with the New Mexico department of agriculture.

History: 1953 Comp., §§ 45-5-39, enacted by Laws 1957, ch. 210, §§ 21; 1973, ch. 332, §§ 9; 1975, ch. 294, §§ 7; 1977, ch. 254, §§ 53; 1987, ch. 234, §§ 76; 2003, ch. 228, §§ 11.

73-20-23. Discontinuance of districts. (2003)

A. At any time after five years from the organization of a watershed district, twenty-five or more landowners within a district or, if less than fifty landowners are involved, a majority of the landowners in the district may file a petition with the board of supervisors and the board of directors requesting that the existence of the district be discontinued. The petition shall state the reasons for discontinuance and that all obligations of the district have been met.

B. After giving notice as defined in Section 73-20-8 NMSA 1978, the board of supervisors may conduct hearings on the petition as may be necessary to assist it in making a determination.

C. Within sixty days after petition is filed, a referendum shall be held under the supervision of the board of supervisors as provided in Section 73-20-14 NMSA 1978. No informalities in the conduct of the referendum or in any matters relating to the referendum shall invalidate it or its result if notice of the referendum has been given substantially as provided in Subsection B of this section.

D. If a majority of the votes cast in the referendum favor the discontinuance of the district and it is found that all obligations have been met, the board of supervisors shall make a determination that the watershed district shall be discontinued. A copy of the determination shall be certified by the clerk of the county involved for recording. After recording, the certification shall be filed with the New Mexico department of agriculture.

History: 1953 Comp., §§ 45-5-40, enacted by Laws 1957, ch. 210, §§ 22; 1973, ch. 332, §§ 10; 1975, ch. 294, §§ 8; 1977, ch. 254, §§ 54; 1987, ch. 234, §§ 77; 2003, ch. 228, §§ 12.

73-20-24. Supervision by courts. (1977)

If any supervising soil and water conservation district is discontinued, the district court of the county or counties involved shall serve in the same supervising capacity over the watershed district as the board of supervisors.

History: 1953 Comp., §§ 45-5-41, enacted by Laws 1957, ch. 210, §§ 23; 1973, ch. 332, §§ 11; 1977, ch. 254, §§ 55.