

73-20-25. Short title.

Sections 73-20-25 through 73-20-48 NMSA 1978 may be cited as the "Soil and Water Conservation District Act".

History: 1953 Comp., § 45-5-42, enacted by Laws 1965, ch. 137, § 1; 1973, ch. 324, § 1; 1977, ch. 254, § 56; 2003, ch. 88, § 1.

The 2003 amendment, effective June 20, 2003, substituted "73-20-25 through 73-20-48 NMSA 1978" for "45-5-42 through 45-5-64 NMAA 1953, as amended by this and subsequent amendments" near the beginning of the section.

73-20-26. Legislative determination; purpose of act.

A. Considered and resolved by legislative determination, it is declared that:

(1) the land, waters and other natural resources are the basic physical assets of New Mexico, and their preservation and development are necessary to protect and promote the health and general welfare of the people of the state;

(2) the improper use of land and related natural resources, soil erosion and water loss result in economic waste in New Mexico through the deterioration of the state's natural resources; and

(3) appropriate corrective and conservation practices and programs must be encouraged and executed in New Mexico to conserve and develop beneficially the soil, water and other natural resources of the state.

B. It is declared to be the policy of the legislature and the purpose of the Soil and Water Conservation District Act [73-20-25 NMSA 1978] to:

(1) control and prevent soil erosion;

(2) prevent floodwater and sediment damage;

(3) further the conservation, development, beneficial application and proper disposal of water;

(4) promote the use of impounded water for recreation, propagation of fish and wildlife, irrigation and for urban and industrial needs; and

(5) by the application of these measures, conserve and develop the natural resources of the state, provide for flood control, preserve wildlife, protect the tax base and promote the health, safety and general welfare of the people of New Mexico.

History: 1953 Comp., § 45-5-43, enacted by Laws 1965, ch. 137, § 2.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 3 C.J.S. Agriculture § 9; 94 C.J.S. Waters § 229.

73-20-27. Definitions.

As used in the Soil and Water Conservation District Act [73-20-25 NMSA 1978]:

- A. "district" means a soil and water conservation district as described in Section 73-20-44 NMSA 1978;
- B. "supervisor" means a member of the governing body of a district;
- C. "commission" means the soil and water conservation commission;
- D. "agencies of the United States" includes the natural resources conservation service of the United States department of agriculture;
- E. "landowner" includes resident and nonresident owners of natural resources;
- F. "due notice" means the publication or broadcasting of the appropriate information by newspapers of general circulation and, if appropriate, broadcast stations licensed by the federal communications commission, or by other means that meet the requirements of the Open Meetings Act [10-15-1.1 NMSA 1978]. If print or broadcast media do not service the affected geographical area, due notice may be given by posting the appropriate information in notice form in six conspicuous public places where it is customary to post notices concerning county or municipal affairs within the affected geographical area;
- G. "department" means the New Mexico department of agriculture;
- H. "director" means the director of the department;
- I. "natural resources" includes land, except for the oil, gas and other minerals underlying the land; soil; water; air; vegetation; trees; wildlife; natural beauty; scenery; open space; and human resources, when appropriate;
- J. "board of regents" means the board of regents of New Mexico state university; and
- K. "registered voter" means a person who is registered to vote in New Mexico pursuant to the provisions of the Election Code [1-1-1 NMSA 1978].

History: 1953 Comp., § 45-5-44, enacted by Laws 1965, ch. 137, § 3; 1973, ch. 324, § 2; 1977, ch. 254, § 57; 1987, ch. 234, § 78; 1997, ch. 137, § 3; 2003, ch. 88, § 2.

The 1987 amendment, effective July 1, 1987, in Subsection G, substituted "the forestry division of the energy, minerals and natural resources department" for "the soil and water conservation division"; added Subsection I; and made a minor language change in Subsection H.

The 1997 amendment, effective July 1, 1997, in Subsection A, inserted "which is"; in Subsection D, substituted "natural resources conservation service" for "soil and conservation service"; rewrote Subsection G; added Subsection H; redesignated former Subsection H as Subsection I; deleted former Subsection I, defining "Secretary"; and added Subsection J.

The 2003 amendment, effective June 20, 2003, substituted "as described in Section 73-20-44 NMSA

1978" for "which is a governmental subdivision of the state, a public body corporate and politic; organized for the purposes, granted the powers and subject to the restrictions of the Soil and Water Conservation District Act" at the end of Subsection A; deleted "'committee' or" at the beginning of Subsection C; deleted "as defined in the Soil and Water Conservation District Act" at the end of Subsection E; in Subsection F, inserted "or broadcasting" following "publication" near the beginning, substituted "by newspapers of general circulation and, if appropriate, broadcast stations licensed by the federal communications commission, or by other means that meet the requirements of the Open Meetings Act. If print of broadcast media do" for "in notice form in a newspaper or other written medium of general circulation within the affected geographical area at least twice, with a period of ten or more days intervening between the first and last publication. If a newspaper of general circulation or other written medium of general circulation does" near the middle; in Subsection I, inserted "air" following "water" and "wildlife" following "trees" near the middle and substituted "when" for "are included where" near the end; inserted "of regents" following "board" near the beginning of Subsection J; and inserted present Subsection K.

73-20-28. Soil and water conservation commission members.

There is created a "soil and water conservation commission" to be composed of seven appointed members and five ex-officio members. The seven appointed members shall be selected by and serve at the pleasure of the governor. Six of the appointed members shall be supervisors and shall be selected and appointed from a panel of three candidates from each region, compiled by the districts of each region and presented by the president of the New Mexico association of conservation districts. One appointed member shall be selected at large and shall be a person interested and active in the conservation or development of natural resources in New Mexico. The five ex-officio members shall serve without vote and shall include:

- A. the governor or his designee;
- B. the associate director of the cooperative extension service of New Mexico state university or his designee;
- C. the associate director of the agricultural experiment station of New Mexico state university or his designee;
- D. the state conservationist of the natural resources conservation service of the United States department of agriculture or his designee; and
- E. the president of the New Mexico association of conservation districts or his designee.

History: 1953 Comp., § 45-5-45, enacted by Laws 1965, ch. 137, § 4; 1973, ch. 324, § 3; 1977, ch. 254, § 58; 2003, ch. 88, § 3.

The 2003 amendment, effective June 20, 2003, in the first paragraph substituted "appointed" for "continuing" in the first sentence, substituted "appointed" for "continuing commission" in the second sentence, substituted "of the appointed" for "continuing committee" following "Six", deleted "district" following "members shall be", substituted "New Mexico" for "state" following "president of the", and deleted "soil and water" following "association of" in the third sentence, substituted "appointed" for "continuing commission" in the fourth sentence, and deleted "commission" following "ex-officio" in the fifth sentence; deleted "state" following "director of the" near the middle of Subsection B; deleted "state"

following "director of the" near the middle of Subsection C; substituted "of the natural resources" for "soil" following "conservationist" near the beginning of Subsection D; and, in Subsection E, substituted "New Mexico" for "state" near the beginning, and deleted "soil and water" following "association of" near the middle.

Appropriations. — Laws 2003, ch. 319, § 1, effective June 20, 2003, authorizes the secretary of finance and administration to draw from the general fund operating reserve up to \$972,000 as necessary in fiscal year 2004 to match federal funds for water conservation and natural resource restoration technical assistance in accordance with an agreement entered into between the United States department of agriculture's natural resources conservation service and the soil and water conservation commission. Upon certification by the soil and water conservation commission that federal money has been made available to the state for the purposes specified in the agreement and that state money is ready for expenditure, the secretary of finance and administration shall release the money to the board of regents of New Mexico state university for expenditure in fiscal year 2004 for the soil and water conservation districts. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund operating reserve.

73-20-29. Selection of commission chairman; quorum; compensation; function.

A. Upon the appointment of seven members by the governor, the commission shall organize and designate a chairman, who shall serve at the pleasure of the commission.

B. In the performance of commission functions, a majority of the appointed members shall constitute a quorum; the concurrence of a quorum majority shall be required to carry or to determine any matter of commission business.

C. Members of the commission shall receive no compensation for their services but shall be entitled to be reimbursed in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 NMSA 1978].

History: 1953 Comp., § 45-5-46, enacted by Laws 1965, ch. 137, § 5; 1977, ch. 254, § 59; 2003, ch. 88, § 4.

The 2003 amendment, effective June 20, 2003, in Subsection A deleted "continuing commission" following "seven" near the beginning, and deleted "shall select and" following "majority of the" near the middle; substituted "appointed" for "continuing commission" near the middle of Subsection B; and deleted "for actual expenses incurred" following "to be reimbursed" near the middle of Subsection C.

ANNOTATIONS

Determination of quorum. — The rule generally is to the effect that a quorum is a certain number of the members of a body who are entitled to vote. The determination of the number for a quorum should be made on the basis of the ex-officio membership as well as the regular membership. 1959-60 Op. Att'y Gen. No. 60-13.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Irrigation § 61.

94 C.J.S. Waters § 320.

73-20-30. Repealed.

Repeals. — Laws 1987, ch. 234, § 84 repeals 73-20-30 NMSA 1978, as enacted by Laws 1977, ch. 254, § 60, relating to creation of the soil and water conservation division and the appointment of a director, effective July 1, 1987. For provisions of the former section, see the 1978 original pamphlet. For present comparable provisions, see 9-5A-3 and 9-5A-7 NMSA 1978.

73-20-31. Powers and duties of department and commission.

A. The supervising officer of any state agency or post-secondary educational institution shall, within the limitations of his budget and the demands of his agency or institution, assign staff or personnel, render special reports and undertake surveys or studies pertaining to soil and water conservation for the commission and the department as requested.

B. The department, with the advice of the commission, shall:

- (1) assist districts in the development of district soil and water conservation programs and, from such programs, develop a soil and water conservation program for the state;
- (2) provide information for supervisors concerning the experience and activities of all districts and facilitate the exchange of experience and advice among districts;
- (3) promote cooperation between districts and, by advice and consultation, assist in the coordination of district programs;
- (4) secure and maintain the cooperation and assistance of state and federal agencies and seek to secure and maintain the cooperation and assistance of national, state and local organizations and groups interested or active in natural resources conservation and development;
- (5) disseminate information throughout the state concerning district activities and programs; and
- (6) encourage and, within budget limitations, render assistance to district activities and facilitate and encourage the formation of new districts in areas where district organization is desirable.

C. The commission may:

- (1) advise the department and the board of regents concerning any matter that in its opinion has a significant impact on or otherwise substantially affects soil and water conservation; and
- (2) promulgate rules to carry out the provisions of the Soil and Water Conservation District Act [73-20-25 NMSA 1978].

History: 1953 Comp., § 45-5-47, enacted by Laws 1978, ch. 175, § 1; 1987, ch. 234, § 79; 1997, ch. 137, § 4; 2003, ch. 88, § 5.

Repeals and reenactments. — Laws 1977, ch. 254, § 61, repealed a former 45-5-47, 1953 Comp.,

relating to the powers and duties of the former soil and water conservation commission, and enacted former § 45-5-47, 1953 Comp.

Laws 1978, ch. 175, § 1, repealed former 45-5-47, 1953 Comp. (former 73-20-31 NMSA 1978), relating to powers and duties of the soil and water conservation division, and enacted a new 73-20-31 NMSA 1978.

The 1987 amendment, effective July 1, 1987, deleted former Subsections A and B, concerning adoption of the seal, keeping of records, personnel, surety bonds and delegation of authority relating to the soil and water conservation division; redesignated former Subsection C as present Subsection A; in Subsection A, inserted "soil and water conservation bureau of the" preceding "division"; deleted former Subsection D, concerning rules and regulations; redesignated former Subsection E as present Subsection B; in Subsection B, in the opening clause substituted "secretary, with the advice of the commission shall" for "division shall as directed by the commission"; deleted former Subsection F, relating to the purchase and leasing of equipment and other personal property; added present Subsection C; and made minor language changes throughout the section.

The 1997 amendment, effective July 1, 1997, in Subsection A, substituted "studies pertaining to soil and water conservation for the commission and the department" for "studies for the soil and water conservation bureau of the division and for the commission"; in Subsection B, substituted "department" for "secretary" in the introductory language; and, in Subsection C, substituted "department and the board" for "secretary".

The 2003 amendment, effective June 20, 2003, in Subsection A inserted "post-secondary educational" following "agency or" near the beginning, deleted "of learning" following "institution" near the beginning, and deleted "or detail" following "assign" near the middle; deleted "district" following "information for" near the beginning of Paragraph B(2); deleted "aid and" following "render" near the beginning of Paragraph B(6); and rewrote Subsection C.

ANNOTATIONS

Sale of personal property of district. — Unless the provisions of 13-6-2 NMSA 1978 are complied with, personal property of a soil conservation district (now soil and water conservation district) cannot be sold, regardless of how or from whom acquired, without first obtaining approval of the state board of finance. 1963-64 Op. Att'y Gen. No. 63-125.

Financial aid to districts by division limited. — If the commission directs the division to assist the districts in paying for their audits, then the division must, within its budgetary limits, render financial aid to the districts; in the absence of a commission directive, the division may not provide financial assistance to the districts for the audits. 1980 Op. Att'y Gen. No. 80-19.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81A C.J.S. States § 138.

73-20-32. Additional duties of department.

In addition to all other powers and duties of the department, it shall:

A. upon request and within budget limitations, provide land-use planning assistance in the areas of terrain management consisting of flood control, drainage, erosion and measures required for adapting proposed development to existing soil characteristics and topography; and

B. with the advice of the commission, divide the state into six soil and water conservation regions and assign each of the currently created soil and water conservation districts or those created in the future to one of the six geographical regions. Division and assignment may be amended from time to time with the advice of the commission as the boundaries of the districts alter or other conditions warrant.

History: 1953 Comp., § 45-5-47.1, enacted by Laws 1973, ch. 324, § 4; 1977, ch. 254, § 62; 1997, ch. 137, § 5.

The 1997 amendment, effective July 1, 1997, substituted "department" for "division" in the section heading and in the introductory language and, in Subsection B, substituted "advice" for "approval" and "currently" for "presently" in the first sentence and "advice" for "consent" in the second sentence.

73-20-33. Soil and water conservation districts; creation.

A. Twenty-five landowners whose land lies within the exterior limits of a geographical area proposed to be organized into a district may petition the commission for the organization of a district. The petition shall state:

- (1) the proposed district name;
- (2) the need for the proposed district and the manner in which it would be in the interest of the public health, safety and welfare;
- (3) by accurate description, supplemented and depicted by an accurate map, the geographical area proposed to be organized into a district; and
- (4) a request that:
 - (a) the commission define the boundaries of the proposed district;
 - (b) a referendum be held within the boundaries submitting to the voters' determination the question of creating the district; and
 - (c) if a majority of votes cast are in favor of creating the district, the commission subsequently declare the proposed district be created.

B. If any portion of the same geographical area is described in more than one petition, the commission may consolidate petitions in the manner it deems expedient.

C. 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.

D. Within thirty days next succeeding the filing of a petition, the commission shall cause due notice to be given to all affected persons of a hearing scheduled to determine the necessity and desirability of the proposed district and to determine district boundaries, the propriety of the petition and any other relevant questions. All affected or interested persons may attend a commission hearing and shall have the right to be heard. If, upon hearing, it is determined to be desirable to include in a proposed district lands not contemplated by the petition, the hearing

shall adjourn, an amended petition shall be required and due notice shall be given to all affected persons.

E. The commission shall determine, at the conclusion of a hearing, whether a proposed district is necessary and desirable. In making its determination of the necessity of a proposed district and in defining district boundaries, the commission shall consider:

- (1) the need for the proposed district and its probable effect upon the public health, safety and welfare;
- (2) the topography and composition of soils comprising the area of the proposed district;
- (3) the distribution of erosion within the proposed district and within surrounding lands;
- (4) the prevailing land-use practices; and
- (5) the probable effect of the proposed district upon, and its relation to, watersheds, agriculturally productive lands and other extant or proposed districts.

F. The findings of the commission and its final determination shall not be limited solely to an evaluation of the facts adduced at the hearing or those set forth in a petition, but shall be predicated upon all reliable information available to the commission, including reports, studies and other authoritative publications.

G. If the commission finds that a proposed district is necessary and desirable, it shall approve the petition, enter and record its final determination and define the district by legal description. If the commission finds no need for a proposed district, it shall deny the petition and enter and record its final determination. A geographical area or a substantial portion of it may not be the subject of a petition submitted for consideration by the commission more than one time in any calendar year.

History: 1953 Comp., § 45-5-48, enacted by Laws 1965, ch. 137, § 7; 1977, ch. 254, § 63; 2003, ch. 88, § 6.

The 2003 amendment, effective June 20, 2003, deleted "soil and water conservation" following "organized into a" near the middle of Subsection A; inserted "if a majority of votes cast are in favor of creating the district" at the beginning of Subparagraph A(4)(c); added present Subsection C and redesignated the subsequent paragraphs accordingly; in present Subsection D deleted "Owners of land lying within the geographical area described for the proposed district and owners of land which is being considered for addition to or inclusion in a proposed or extant district shall be given due notice of hearing; and" near the middle, and substituted "affected person" for "owners of land proposed to be included in the new district" at the end; substituted "of the proposed district" for "to be affected" at the end of present Paragraph E(2); and substituted "the proposed district" for "land to be affected" near the end of present Paragraph E(3).

ANNOTATIONS

Separate political subdivision. — Soil conservation district (now soil and water conservation district) properly organized under laws of state is separate political subdivision thereof. 1955-56 Op. Att'y Gen. No. 6465.

Benefits available to all landowners. — Landowner does not join soil and conservation district; upon its formation, benefits thereof are available to all owners of land located within boundaries of district, whether such owners have joined said district or not. 1966 Op. Att'y Gen. No. 66-48.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters §§ 318, 319.

73-20-34. Soil and water conservation districts; creation; referendum.

A. When a final determination of the commission that a proposed district is necessary and desirable has been entered and recorded, the commission shall then determine whether the operation of the district is administratively practicable. To assist in this determination, the commission shall call for a referendum on the proposed district within the geographical boundaries of the district as defined by the commission, to be conducted on the next succeeding first Tuesday in May, if practicable. All registered voters residing within the proposed district shall be eligible to vote.

B. The commission shall:

- (1) provide for due notice of a referendum within a proposed district;
- (2) confirm eligibility of registered voters; and
- (3) adopt and publish rules to govern the orderly conduct of a referendum.

C. A referendum may not be held during an interval when valid rules adopted and published by the commission are not in effect.

D. The proposal shall be presented to the voters on ballots that define, in general terms and by legal description, the area encompassed within the proposed district.

E. Informalities or irregularities in the conduct of a referendum shall have no effect upon its result if due notice requirements have been substantially complied with and balloting has been fairly conducted in substantial compliance with the rules adopted and published by the commission.

F. The commission shall publish referendum results and make a final determination of whether the proposed district is administratively practicable; provided, however, in the event that approval of the proposed district is not carried by a majority of votes cast in a referendum, the commission shall deny the petition and shall enter and record its order.

History: 1953 Comp., § 45-5-49, enacted by Laws 1965, ch. 137, § 8; 1977, ch. 254, § 64; 2003, ch. 88, § 7; 2005, ch. 141, § 1.

The 2003 amendment, effective June 20, 2003, in Subsection A deleted "within a reasonable time" following "the commission shall" near the beginning of the second sentence, inserted "to be conducted on

the next succeeding first Tuesday in February if practicable" at the end of the second sentence, and substituted "registered voters residing" for "owners of land lying" near the beginning of the third sentence; rewrote the provisions of former Subsection B describing the ballot to be presented to the voters and designated those provisions as present Subsection D and redesignated subsequent paragraphs accordingly and inserted present Subsection C; deleted former Subsection D regarding considerations for the commission in determining the administrative practicability of proposed districts; and deleted "of referendum" following "due notice" near the middle of present Subsection E.

The 2005 amendment, effective July 1, 2005, changed the date of the referendum of a proposed district from February to May in Subsection A.

ANNOTATIONS

Benefits available to all landowners. — Landowner does not join soil and conservation district; upon formation thereof, benefits of soil and water conservation district are available to all owners of land located within boundaries of district, whether such owners have joined said district or not. 1966 Op. Att'y Gen. No. 66-48.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 319.

73-20-35. Soil and water conservation districts; organization.

A. Upon the determination that a proposed district is necessary and administratively practicable, the commission shall appoint two interim supervisors who reside within the district who shall be the governing body of the district until an election of supervisors is held. The two interim supervisors shall present to the secretary of state their verified application, stating:

- (1) a recital of the proceedings conducted;
- (2) that all proceedings were undertaken lawfully and in accordance with the provisions of the Soil and Water Conservation District Act [73-20-25 NMSA 1978];
- (3) the name of the proposed district and its geographical boundaries;
- (4) the name and official residence of each applicant together with a certified copy of each appointment evidencing the applicant's right to office; and
- (5) the designation of the principal office of the supervisors of the district.

B. The verified application of the two district interim supervisors shall be accompanied by certified copies of the commission's recorded orders of determination that the proposed district is necessary and is administratively practicable.

C. The secretary of state, upon finding the application and its supporting attachments are in substantial compliance with the provisions of this section, shall receive, file and record the application in an appropriate book of record and issue to the applicants, under state seal, a certificate of organization of the district. From the date of issuance of the certificate of organization by the secretary of state, the district shall be a governmental subdivision of the state. In any action or proceeding relating to a district or an act of the district, the certificate of

organization of the district shall be admissible in evidence as proof of its contents.

D. If the secretary of state finds the name of a proposed district to be the same as or substantially similar to the name of an existing organized district, he shall certify the fact to the commission. The commission shall, with the assistance of the interim supervisors, select and submit a new name to the secretary of state.

History: 1953 Comp., § 45-5-50, enacted by Laws 1965, ch. 137, § 9; 1977, ch. 254, § 65; 2003, ch. 88, § 8.

The 2003 amendment, effective June 20, 2003, inserted "who reside" following "interim supervisors" near the middle of Subsection A; designated the former last paragraph of Subsection A as present Subsection B and redesignated the subsequent paragraphs accordingly; in present Subsection C, deleted "he shall make and" following "record and" near the middle and substituted "a governmental" for "an agency and" following "district shall be" near the middle; and deleted "appointed district" following "assistance of the" near the end of Subsection D.

ANNOTATIONS

Separate political subdivision. — Soil conservation district (now soil and water conservation district), properly organized under laws of state, is separate political subdivision thereof. 1955-56 Op. Att'y Gen. No. 6465.

Benefits available to all landowners. — Landowner does not join soil and conservation district upon formation thereof; benefits of soil and water conservation district are available to all owners of land located within boundaries of district, whether such owners have joined said district or not. 1966 Op. Att'y Gen. No. 66-48.

District not subject to licensing. — Former contractor's license board had no authority to license water or soil conservation district in New Mexico. 1966 Op. Att'y Gen. No. 66-48.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 319.

73-20-36. Soil and water conservation districts; modification of existing districts.

A. Unless otherwise provided by this section, petitions to modify the boundaries of an existing district shall be subject to the same requirements for notice, hearing, determination of necessity and desirability, referendum and determination of administrative practicability as are required for petitions for the organization of a district pursuant to the Soil and Water Conservation District Act [73-20-25 to NMSA 1978].

B. Petitions for including additional land within an existing organized district, signed by twenty-five registered voters residing in the district or within the boundaries of the additional land proposed to be included or signed by two thirds of the owners of the additional land proposed to be included, whichever is less, may be filed with the commission. If the petition is signed by two thirds or more of the owners of the additional land proposed to be included in the district, the commission may enter its determinations without hearing or referendum. The

commission shall advise the department of all petitions filed pursuant to this section.

C. Petitions for severing land from the defined geographical area of an existing organized district, or for its severance and inclusion within another existing organized district, signed by twenty-five registered voters residing in the district or within the boundaries of the land proposed to be severed or signed by two thirds of the owners of the land proposed to be severed, whichever is greater, may be filed with the commission. If the petition is signed by two thirds or more of the owners of the land to be severed or is submitted by the board of supervisors of each district affected, the commission may enter its determinations without hearing or referendum.

D. Petitions for consolidating two or more districts or for separating an existing district into two or more districts may be filed with the commission by the board of supervisors of each district affected. After due notice, a public hearing shall be held in each district affected. If petitions have been filed pursuant to this subsection and approved as provided in the Soil and Water Conservation District Act [73-20-25 to NMSA 1978], it shall not be necessary to obtain the consent of the registered voters within the districts prior to the consolidation or division.

E. The commission shall give written notice to the secretary of state of any modification in the defined geographical area of an existing district; the notice of modification shall describe and portray by map the modified geographical area. The secretary of state shall note, file and record each modification and shall issue, under state seal, a certificate of reorganization to each district affected. Certificates of reorganization shall have the same effect as the certificates they supersede.

F. The commission shall supervise reorganization of the affairs of the district when boundaries are modified.

G. In the event a supervisor of a district is disqualified from holding office by the modification of the district, the supervisor shall be deemed to have resigned and a successor shall be appointed to serve the unexpired term by the commission.

History: 1953 Comp., § 45-5-51, enacted by Laws 1978, ch. 85, § 1; 1997, ch. 137, § 6; 2003, ch. 88, § 9.

Repeals and reenactments. — Laws 1978, ch. 85, § 1, repeals 45-5-51, 1953 Comp. (former 73-20-36 NMSA 1978), relating to modification of existing natural resource conservation districts, and enacts the above section. See 12-2A-14 NMSA 1978 for repeals and reenactments.

The 1997 amendment, effective July 1, 1997, substituted "department" for "division" throughout the section; in Subsection A, added the last sentence; in Subsection C, substituted "as provided in the Soil and Water Conservation District Act" for "as herein provided" in the last sentence; in Subsection E, substituted "board" for "commission" at the end of the last sentence; and made a minor stylistic change.

The 2003 amendment, effective June 20, 2003, inserted present Subsection A and redesignated the subsequent paragraphs accordingly; in Subsection B, inserted "signed by twenty-five registered voters residing in the district or within the boundaries of the additional land proposed to be included or signed by two thirds of the owners of the additional land proposed to be included, whichever is less" following "organized district" near the beginning and substituted "commission" for "department and shall be treated

in the same manner as petitions for the creation of a proposed district" at the end of the first sentence; in Subsection C, inserted "signed by twenty-five registered voters residing in the district or within the boundaries of the land proposed to be severed or signed by two thirds of the owners of the land proposed to be severed, whichever is greater" following "organized district" near the middle, and substituted "commission" for "department and may be treated in the same manner as petitions for the creation of a proposed district" at the end of the first sentence; in Subsection D, deleted "and no action can be taken without the majority approval of the voters present at the hearing" at the end of the first sentence, and substituted "registered voters" for "landowners" near the end of the second sentence; deleted "organized" following "existing" near the beginning of Subsection E; added Subsection F and redesignated former Subsection E as present Subsection G; and substituted "commission" for "remaining supervisors of the district. In the event two or more supervisors are disqualified from holding office by the modification of a district, their successors shall be appointed to serve the unexpired terms by the board" at the end of Subsection G.

73-20-37. District supervisors; election and appointment; new districts.

A. The governing body of a district shall be composed of five supervisors who shall be residents of the district and shall be elected; provided, however, two additional supervisors may be appointed to the governing body of each district by the commission in accordance with the provisions of the Soil and Water Conservation District Act [73-20-25 NMSA 1978]. Four elected supervisor positions of each district shall be filled by landowners within the defined geographical area of their district. One elected supervisor position shall be designated supervisor-at-large and the supervisor filling that position may serve the district without landowner qualification.

B. Unless a different time is prescribed by the commission, within thirty days following the issuance of a certificate of organization to the two interim supervisors of a district, declarations of candidacy for supervisors of the district may be filed with the commission. The commission shall give due notice of election for the offices of five district supervisors. All registered voters residing within the district shall be eligible to vote. The commission shall adopt and prescribe regulations governing the conduct of the election, shall determine voter eligibility and shall supervise the election and publish its results. The districts shall bear the expenses of elections; however, the commission shall bear the expenses of the first election of a newly organized district.

C. In the first election of supervisors to serve a newly organized district, two supervisors shall be elected for terms of four years and three supervisors shall be elected for terms of two years. Thereafter, each elected supervisor shall serve a term of four years and shall continue in office until his successor has been elected or appointed and has completed an oath of office. Oaths of office may not be completed prior to July 1 after an election. A vacant unexpired term of the office of an elected supervisor shall be filled by appointment by the remaining supervisors of the district. Two or more vacant unexpired terms occurring simultaneously in the same district shall be filled by appointment by the commission.

D. Appointed interim supervisors may continue to serve as appointed supervisors at the pleasure of the commission or until their successors are otherwise appointed.

History: 1953 Comp., § 45-5-52, enacted by Laws 1965, ch. 137, § 11; 1973, ch. 324, § 6; 1977, ch. 254, § 67; 1997, ch. 137, § 7; 2003, ch. 88, § 10.

The 1997 amendment, effective July 1, 1997, substituted "board" for "commission" throughout the section; in Subsection A, substituted "four of whom" for "who" and deleted "one from each zone" following "shall be elected" in the first sentence, added the second and third sentences, deleted the former last two sentences, which read "Four elected supervisors of each district shall be owners of land within the defined geographical area of their district. One elected supervisor shall be designated supervisor at large and may serve without qualification"; in Subsection B, substituted "department" for "division" in the first sentence and for "commission" in the third sentence, inserted "with the advice of the commission" and deleted "shall bear the expense of the election" following "supervise the election" in the next-to-last sentence, and added the last sentence; and made minor stylistic changes.

The 2003 amendment, effective June 20, 2003, in Subsection A, inserted "residents of the district and shall be" following "who shall be" near the beginning, inserted "the supervisor filling that position" following "supervisor-at-large and" near the middle of the third sentence and redesignated the fourth and fifth sentences as part of Subsection C; in Subsection B, substituted "declarations of candidacy" for "nominating petitions proposing candidates" near the beginning, substituted "commission" for "department. Nominating petitions shall be signed by no fewer than ten owners of land situate within the district; landowners shall not be restricted in the number of nominating petitions they may subscribe" following "filed with the" near the middle, substituted "registered voters residing" for "owners of land situate" near the beginning of the fourth sentence, deleted "board, with the advice of the" near the beginning of the fifth sentence, and inserted "however, the commission shall bear the expenses of the first election of a newly organized district" at the end; in Subsection C, substituted "four years and three" for "one year; two" following "terms of" near the middle of the first sentence, deleted "and the supervisor-at-large shall be elected for a term of three years" at the end of the first sentence and substituted "four" for "three" following "a term of" near the beginning of the second sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 320.

73-20-38. District supervisors; election and appointment; organized districts.

A. Successors to supervisors whose terms end in a calendar year shall be elected on the first Tuesday in May of that year. Elections shall be called, conducted and returned in accordance with rules adopted and prescribed by the commission.

B. A canvassing board appointed by the commission shall determine the results of a district election, shall certify and publish the results and shall give the commission notice of its canvass within seven days of its completion. A canvass is considered complete when all challenges have been resolved to the satisfaction of the canvassing board.

C. Rules adopted and published by the commission and the election provisions of the Soil and Water Conservation District Act [73-20-25 NMSA 1978] shall be exclusive in the conduct of district elections. The commission may adopt and publish rules to carry out the provisions of the Soil and Water Conservation District Act.

D. By June 15 of each year, the district supervisors may submit to the commission a list of persons interested in the district and who by experience or training are qualified to serve as

supervisors. The commission may appoint from the list submitted, or at will, two persons to serve as supervisors if it is the determination of the commission that the appointments are necessary or desirable and would benefit or facilitate the work and functions of the district. In the event a list is not submitted to the commission by the supervisors by June 15, the commission may appoint at will two supervisors qualified to serve by training or experience. Appointed supervisors shall serve at the pleasure of the commission and shall have the same powers and perform the same duties as elected supervisors. Successors to appointed supervisors, or replacement-appointed supervisors in the event of vacancy, shall be appointed by the commission from a list of candidates or at will in accordance with the provisions of this subsection.

History: 1953 Comp., § 45-5-53, enacted by Laws 1965, ch. 137, § 12; 1973, ch. 324, § 7; 1977, ch. 254, § 68; 1997, ch. 137, § 8; 2003, ch. 88, § 11; 2005, ch. 141, § 2.

The 1997 amendment, effective July 1, 1997, in Subsection A, substituted "December 15" for "November 1" in the first sentence and "board" for "commission" in the last sentence; in Subsection B, substituted "department" for "commission" in the second sentence; in Subsection D, substituted "by the board, with the advice of the commission" for "by the soil and water conservation commission" in the first sentence and rewrote the second sentence; and, in Subsection E, substituted "department" for "division" in two places and "board" for "commission" in two places and inserted "board, with the advice of the" in three places.

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 2005 amendment, effective July 1, 2005, changed the date of election of supervisors from February to May in Subsection A.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 320.

73-20-39. Election of supervisors; district zones.

In adopting and publishing rules for the election of supervisors and the registration of district voters, the commission may, to ensure proper representation of district voters and to facilitate district functions, provide for the geographic zoning of a district. The commission shall provide for the proper and equitable representation for each faction geographically zoned in the district. If a district is divided, or if two or more districts are consolidated, the commission shall provide for the geographic zoning of the resulting district or districts within thirty days after the secretary of state issues the certificate of organization for each new district.

History: 1953 Comp., § 45-5-54, enacted by Laws 1965, ch. 137, § 13; 1973, ch. 324, § 8; 1977, ch. 254, § 69; 2003, ch. 88, § 12.

The 2003 amendment, effective June 20, 2003, deleted "district" from the section heading; substituted "publishing" for "promulgating" near the beginning of the section, deleted "district" following "election of" near the beginning of the section and substituted "voters" for "landowners" near the middle of the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 320.

73-20-40. Selection of supervisor chairman; quorum; compensation.

Within a reasonable time after each district election and after newly elected supervisors have completed the oath of office, the supervisors of a district shall organize and shall designate a chairman who shall be a supervisor and who shall serve at the pleasure of the supervisors. In the performance of district functions, a majority of supervisors shall constitute a quorum; the concurrence of the quorum majority shall be required to carry or to determine any matter of district business. Supervisors shall not receive compensation for their services but shall be entitled to be reimbursed in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 NMSA 1978]. Supervisors may purchase group health insurance benefits for themselves and their dependents pursuant to the Group Benefits Act [10-7B-1 NMSA 1978] and pursuant to the rules and procedures set forth by that act and the risk management division of the general services department.

History: 1953 Comp., § 45-5-55, enacted by Laws 1965, ch. 137, § 14; 1973, ch. 324, § 9; 2003, ch. 88, § 13; 2006, ch. 88, § 4.

The 2003 amendment, effective June 20, 2003, deleted "district" from the section heading; substituted "district" for "annual" near the beginning of the section, inserted "and after newly elected supervisors have completed the oath of office" following "election" near the beginning of the section and deleted "for actual expenses incurred" following "reimbursed" near the end of the section.

The 2006 amendment, effective July 1, 2006, added the last sentence of the section to provide that supervisors may purchase group health insurance for themselves and their dependents.

73-20-41. Powers and duties of supervisors.

A. Supervisors may employ a secretary and other agents, employees and technical or professional experts as they require and may determine qualifications, compensation and duties applicable to any agent, employee or expert engaged.

B. Supervisors shall require and provide for the execution of a corporate surety bond in suitable penal sum for and to cover any person entrusted with the care or disposition of district funds or property.

C. Supervisors may delegate their powers to one or more supervisors or to one or more district employees, agents or experts.

D. Supervisors shall call upon the county clerk of a county within which all or a part of the district lands are located for advice and assistance with conduct of elections and referenda.

E. Supervisors may call upon the district attorney of the judicial district within which all or a part of the district lands may be situate for legal services required by the district. Supervisors may invite the legislative body of any municipality or county within, near or comprising a part of

the district to designate a representative to advise and consult with the supervisors on matters affecting property, water distribution or other matters of interest to the municipality or county.

F. Supervisors are authorized to adopt and publish rules necessary for the proper execution of district duties and activities. The supervisors shall:

(1) keep a full and accurate record of all district proceedings and of all resolutions, rules and orders issued or adopted;

(2) provide for and submit to an annual financial audit pursuant to the Audit Act [12-6-1 NMSA 1978] if the district's annual revenue is five hundred thousand dollars (\$500,000) or more;

(3) provide for a financial report, according to rules for financial reporting that are established by the state auditor, in lieu of the requirement to submit to an annual financial audit pursuant to the Audit Act if the district's annual revenue is less than five hundred thousand dollars (\$500,000);

(4) furnish to the commission a complete report of district proceedings and activities during each fiscal year, including a financial report;

(5) furnish or make available to the commission, upon request, district files and copies of rules, orders, contracts, forms and other documents adopted or employed in conducting district activities; and

(6) call and give due notice of at least one regular meeting of the supervisors each month of the calendar year, unless otherwise approved by the commission.

G. Supervisors and district employees are public employees for the purposes of the Tort Claims Act [41-4-1 NMSA 1978] and shall be provided all insurance and self-insurance coverage provided by the risk management division of the general services department.

History: 1953 Comp., § 45-5-56, enacted by Laws 1965, ch. 137, § 15; 1977, ch. 254, § 70; 1981, ch. 337, § 2; 1997, ch. 137, § 9; 2003, ch. 88, § 14; 2009, ch. 204, § 1.

The 1997 amendment, effective July 1, 1997, in Subsection C, substituted "department" for "division" in Paragraphs (3) and (4) and "December 15" for "November 1" in Paragraph (5).

The 2003 amendment, effective June 20, 2003, deleted "district" from the section heading; deleted "District" preceding "Supervisor" throughout the section; rewrote former Subsection A to create present Subsections A, B and C; added present Subsection D and redesignated former Subsections B and C as present Subsections E and F; and added present Subsection G.

The 2009 amendment, effective June 19, 2009, in Paragraph (2) of Subsection F, after "provide for", deleted "and submit to an annual audit of district accounts and receipts and disbursements, in the event district receipts total more than five thousand dollars (\$5,000) annually" and added the remainder of the sentence; and added Paragraph (3) of Subsection F.

ANNOTATIONS

State auditor and conservation district supervisors have statutory duty to audit district. — Both the state auditor and the soil and water conservation district supervisors have an express statutory duty to have district financial affairs audited; the primary responsibility for having the audits performed should be borne by the district supervisors, but the ultimate responsibility lies with the state auditor, who is responsible for ensuring that every agency's financial records are examined and audited. 1980 Op. Att'y Gen. No. 80-19.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 320.

73-20-42. Removal of supervisors.

A supervisor may be removed from office by the commission if it appears to the commission, after reasonable notice and impartial hearing, that the supervisor is guilty of misfeasance or malfeasance in office. The office of a supervisor who has missed three consecutive regular meetings of the supervisors may be declared vacant by majority vote of the remaining supervisors. The office of a supervisor who has missed four consecutive regular meetings of the supervisors shall be declared vacant and his successor shall be elected or appointed as in [the] case of any other vacancy.

History: 1953 Comp., § 45-5-57, enacted by Laws 1965, ch. 137, § 16; 1977, ch. 254, § 71; 2003, ch. 88, § 15.

Bracketed material. — The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

The 2003 amendment, effective June 20, 2003, deleted "district" from the section heading; deleted "district" following "A" at the beginning of the section; substituted "The office of a supervisor who has missed three consecutive regular meetings of the supervisors may be declared vacant by majority vote of the remaining supervisors. The office of a supervisor who has missed four consecutive regular meetings of the supervisors shall be declared vacant" for "A district supervisor who fails to attend three consecutive meetings of district supervisors without reasonable or acceptable excuse shall be deemed to have resigned" following "malfeasance in office." near the end of the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 320.

73-20-43. Perpetuation of districts; continuity of commission and supervisors.

Soil conservation districts created and organized under the provisions of the Soil Conservation District Law [repealed], and continued as soil and water conservation districts created and delineated by the Soil and Water Conservation District Act [73-20-25 NMSA 1978], and continued as natural resource districts created and delineated by the Natural Resource Conservation District Act are perpetuated and shall continue to exist as soil and water conservation districts created and delineated by the Soil and Water Conservation District Act. Members of the state soil conservation committee and supervisors of state soil conservation districts which were perpetuated in office and continued to serve as members of the state soil and water conservation committee and as supervisors of soil and water conservation districts,

respectively, until their successors were elected and appointed in accordance with the provisions of the Soil and Water Conservation District Act, and were perpetuated in office and continued to serve as members of the state natural resource conservation commission and as supervisors of natural resource conservation districts respectively, until their successors were elected and appointed in accordance with the provisions of the Natural Resource Conservation District Act, are perpetuated in office and shall continue to serve as members of the soil and water conservation commission and as supervisors of soil and water conservation districts, respectively, until their successors are elected and appointed in accordance with the provisions of the Soil and Water Conservation District Act.

History: 1953 Comp., § 45-5-58, enacted by Laws 1965, ch. 137, § 17; 1973, ch. 324, § 10; 1977, ch. 254, § 72.

Soil Conservation District Law. — The Soil Conservation District Law, referred to in this section, was repealed by Laws 1965, Chapter 137, which enacted a "Soil and Water Conservation District Act."

73-20-44. Districts; description; general powers of districts.

A "soil and water conservation district", organized under or perpetuated by the provisions of the Soil and Water Conservation District Act [73-20-25 NMSA 1978], is a governmental subdivision of the state, a public body politic and corporate. By and through its supervisors, a district may:

A. conduct research, investigations and surveys treating soil erosion and floodwater and sediment damage, concerning the conservation, development, utilization and disposal of all waters and relating to control programs and public works necessary to facilitate conservation and development. To prevent duplication of research activities, district investigative programs shall be initiated in cooperation with a governmental unit, if any, conducting or charged with the conduct of research in the same or similar scientific field;

B. publish and disseminate research findings and preventive and control measures relating to resource conservation and development;

C. with the consent and cooperation of the landowner or the state or federal agency administering the land, conduct projects upon land within the district to demonstrate by example the methods by which soil and other natural resources may be conserved, by which soil erosion in the form of blowing and washing may be controlled or prevented and by which flood prevention and the conservation, development, utilization and disposal of water may be carried out; the projects may include, but shall not be limited to, engineering operations, methods of cultivation and variations in land use;

D. assist, contract with and render financial aid to district landowners and state or federal agencies administering land within the district that are engaged in erosion control and prevention projects, flood prevention works or the conservation, development, utilization and disposal of water within the district;

E. make available to district landowners, on such terms as the supervisors may prescribe, tools, machinery, equipment, fertilizer, seeds and other materials to assist the landowners in initiating and developing natural resource conservation and development projects;

F. develop comprehensive plans for natural resource conservation, development and utilization, including flood prevention, control and prevention of soil erosion and the development, utilization and disposal of water; the plans shall be detailed and shall specify as completely as possible the necessary or desirable acts, procedures, performances and avoidances to implement the plan, including engineering specifications, methods of cultivation, cropping programs, tilling practices and land use changes;

G. foster, publish and promote district natural resource development plans and their adoption and development by landowners within the district;

H. acquire or administer the project of any other governmental agency undertaken to provide for the conservation, development and utilization of natural resources within the district;

I. act as agent for any instrumentality or agency of the state or of the federal government in the acquisition, construction, operation or administration of a natural resource conservation, utilization or development project or program within the district; and

J. construct, improve, operate or maintain physical projects and structures necessary or convenient for the performance of any authorized district function.

History: 1953 Comp., § 45-5-59, enacted by Laws 1965, ch. 137, § 18; 2003, ch. 88, § 16.

The 2003 amendment, effective June 20, 2003, changed "Districts defined; general" to read "Districts; description; general" in the section heading; inserted "or federal" following "the state" near the beginning of Subsection C; inserted "or federal" following "the state" near the beginning of Subsection D; inserted "and utilization" following "development" near the beginning of Subsection F; and in Subsection H, deleted "soil conservation, erosion control, erosion prevention, flood prevention or" following "provide for" near the middle and substituted "of natural resources" for "or disposal of water" near the end.

ANNOTATIONS

Exemption from Procurement Code. — Soil and water conservation districts are not exempt from Public Purchases Act (now Procurement Code, 13-1-28 to 13-1-199 NMSA 1978). 1967 Op. Att'y Gen. No. 67-111.

Borrowing funds. — Since soil and water conservation districts are political subdivisions of this state they qualify as entities to which interstate stream commission can lend money, and such district is authorized to borrow funds from the commission. 1972 Op. Att'y Gen. No. 72-54.

Lending to members. — Soil and water conservation district may lend funds borrowed from interstate stream commission to its members. 1972 Op. Att'y Gen. No. 72-54.

Licensing law inapplicable. — Water or soil conservation district located anywhere in state may undertake any type of work authorized under Soil and Water Conservation District Act; former contractors' license board had no authority to license a water or soil conservation district. 1966 Op. Att'y

Gen. No. 66-48.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 94 C.J.S. Waters § 321.

73-20-45. Specific powers of districts.

A district, by and through its supervisors, is authorized to:

- A. sue and be sued in the name of the district;
- B. adopt an official seal;
- C. contract, convey and make and execute other instruments and documents necessary or convenient to the exercise of district powers;
- D. borrow money and otherwise contract indebtedness for the purposes of the district and, without limitation of the generality of the foregoing, borrow money and accept grants from the United States or from a corporation or agency created or designated by the United States and, in connection with any such loan or grant, enter into agreements as the United States or the corporation or agency may require; and issue its notes or obligations therefor and secure the payment thereof by mortgage, pledge or deed of trust of all or any of its property, assets, rights, privileges, licenses, rights-of-way, easements, revenues or income;
- E. option, as optionee and optioner, and acquire, in any manner, real and personal property or any right or interest in it;
- F. improve, rent, lease and sell district property or any interest in it;
- G. receive, invest and reinvest rents and income from district property and expend rents and income for district purposes; and
- H. accept contributions, gifts and donations and expend and utilize them to further district purposes.

History: 1953 Comp., § 45-5-60, enacted by Laws 1965, ch. 137, § 19; 2003, ch. 88, § 17.

The 2003 amendment, effective June 20, 2003, deleted "soil and water conservation" following "A" at the beginning of the section; and deleted "Neither the State Purchasing Act nor any other statute, except the Soil and Water Conservation District Act, shall apply to the acquisition, use or disposition of district property." at the end of Subsection H.

ANNOTATIONS

Public Purchases Act. — Soil and water conservation districts are not exempt from the Public Purchases Act (now Procurement Code, 13-1-28 to 13-1-199 NMSA 1978). 1967 Op. Att'y Gen. No. 67-111.

Repeal by implication. — Former Subsection H of this section is repealed by implication by the Public Purchases Act (now Procurement Code, 13-1-28 to 13-1-199 NMSA 1978) insofar as the two are repugnant. 1967 Op. Att'y Gen. No. 67-110.

Borrowing authorized. — Since soil and water conservation districts are political subdivisions of this state they qualify as entities to which interstate stream commission can lend money, and such district is authorized to borrow funds from the commission. 1972 Op. Att'y Gen. No. 72-54.

Soil and water conservation district may lend funds borrowed from interstate stream commission to its members. 1972 Op. Att'y Gen. No. 72-54.

Suit by subcontractors not authorized. — There was no statutory consent by state to suit against former soil conservation district by laborers or materialmen dealing with prime contractor rather than directly with district, and no such liability could be implied. 1957-58 Op. Att'y Gen. No. 58-148.

Contractor's creditors could not impose lien against former soil conservation district for contractor's debts. 1957-58 Op. Att'y Gen. No. 58-148.

Collection for work done. — District attorney was required to represent former soil conservation district in collecting for work done by district for members thereof. 1959-60 Op. Att'y Gen. No. 59-47.

73-20-46. District assessments.

A. In the event a district is unable to meet or bear the expense of the duties imposed upon it by the Soil and Water Conservation District Act [73-20-25 NMSA 1978], the supervisors may adopt a resolution that, to be effective, shall be approved by referendum in the district and that shall provide for an annual levy for a stated period of up to ten years in a stated amount not exceeding one dollar (\$1.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [7-35-1 NMSA 1978], of real property within the district, except that real property within incorporated cities and towns in the district may be excluded. The referendum held to approve or reject the resolution of the supervisors shall be conducted with appropriate ballot and in substantially the same manner as a referendum adopting and approving the creation of a proposed district. After the initial authorization is approved by referendum, the supervisors shall adopt a resolution in each following year authorizing the levy. To extend an assessment beyond the period of time originally authorized and approved by referendum, the supervisors shall adopt a new resolution and the district voters shall approve it in a referendum. The extension shall be for the same period of time as originally approved, but the rate of the tax may be different as long as it does not exceed one dollar (\$1.00) on each one thousand dollars (\$1,000) of net taxable value of real property within the district, except that real property within incorporated municipalities in the district may be excluded. If the district is indebted to the United States or the state or any of their respective agencies or instrumentalities, including the New Mexico finance authority, at the time of the expiration of the original authorization, the supervisors may renew the assessment by resolution for a period not to exceed the maturity date of the indebtedness, and no referendum for that renewal is necessary.

B. A resolution authorized under Subsection A of this section shall not be effective, and neither a referendum nor a levy is authorized, unless the resolution is submitted to and approved in writing by the commission.

C. In the event a resolution of the supervisors is adopted and approved in accordance with

the provisions of Subsection A of this section, the supervisors of the district shall certify by the fifteenth of July of each year to the county assessor of each county in which there is situate land subject to the district assessment:

- (1) a copy of the resolution of the supervisors;
- (2) the results of any referendum held in the year the certification is made; and
- (3) a list of landowners of the district and a description of the land owned by each that is subject to assessment.

D. A county assessor shall indicate the information on the tax schedules, compute the assessment and present the district assessment by regular tax bill.

E. The district assessment shall be collected by the county treasurer of each county in which taxable district land is situate in the same manner and at the same time that county ad valorem taxes are levied. The conditions, penalties and rates of interest applicable to county ad valorem taxation apply to the levy and collection of district assessments. A county treasurer shall be entitled to a collection fee equal to the actual costs of collection or four percent of the money collected from the levy of the district assessment, whichever is the lesser.

F. District funds, regardless of origin, shall be transferred to and held by the supervisors and shall be expended for district obligations and functions. The supervisors shall prepare an annual budget and submit it for approval to the commission and to the local government division of the department of finance and administration. All district funds shall be expended in accordance with the approved budgets.

G. In the event the supervisors of a district determine that there are or will be sufficient funds available for the operation of the district for any year for which an assessment is to be levied, they shall, by resolution, direct the assessor of each county in which taxable district land is situate, by July 15 of each year, to decrease the district assessment or to delete the district assessment reflected on the tax schedules.

H. Any levy authorized by the Soil and Water Conservation District Act and any loan or other indebtedness authorized by that act that will require a levy shall be based exclusively on or levied exclusively on the real property in the district, except that real property within incorporated cities and towns may be excluded.

History: 1953 Comp., § 45-5-61, enacted by Laws 1965, ch. 137, § 20; 1969, ch. 164, § 1; 1977, ch. 254, § 73; 1986, ch. 32, § 39; 1989, ch. 21, § 1; 1989, ch. 273, § 1; 1999, ch. 42, § 1; 2003, ch. 88, § 18; 2009, ch. 204, § 2.

Cross references. — For county assessor, see Chapter 4, Article 39 NMSA 1978.

For county treasurer, see Chapter 4, Article 43 NMSA 1978.

For local government division of the department of finance and administration, see 9-6-3 NMSA 1978.

For referendums creating soil and water conservation districts, see 73-20-34 NMSA 1978.

For the New Mexico finance authority, see 6-21-4 NMSA 1978.

The 1986 amendment, in Subsection A, substituted the language following "not exceeding" in the first sentence for "one mill per dollar of total taxable valuation of real property, except that real property within incorporated cities and towns in the district may be excluded" and inserted "by July 15 of each year" in the second sentence; in Subsection B, inserted "by the fifteenth of July of each year" in the introductory paragraph; in Subsections C, F, and G, substituted "tax schedules" for "tax rolls"; and, in Subsection H, substituted "by July 15 of each year" for "prior to that year's county ad valorem assessment".

1989 amendments. — Identical amendments to this section were enacted by Laws 1989, ch. 21, § 1 and Laws 1989, ch. 273, § 1, both effective June 16, 1989, which, in Subsection A, substituted "the supervisors may adopt a resolution which, to be effective, must be approved by referendum in the district, and which shall provide for annual levy for a stated period of up to ten years in a stated amount" for "the supervisors, by resolution, and the district by adoption of referendum, may levy an assessment" and substituted the last four sentences for "provided, however, an assessment shall not be levied unless, by July 15 of each year the resolution of the supervisors has been adopted and approved by a majority of the district landowners voting at the referendum"; added present Subsection B and redesignated subsequent subsections accordingly; and in Subsection C, substituted "approved in accordance with the provisions of Subsection A of this section" for "approved by the voters of the district at referendum" and present Paragraph (2) for the former paragraph, which read "the results of the referendum; and". The section is set out as amended by Laws 1989, ch. 273, § 1. See 12-1-8 NMSA 1978.

The 1999 amendment, effective March 16, 1999, inserted "including the New Mexico finance authority" in the last sentence of Subsection A; in Subsection B, deleted "soil and water conservation" following "writing by the" and deleted "created under Section 73-20-28 NMSA 1978" following "commission"; substituted "excluded" for "included" at the end of the first sentence in Subsection H; and made minor stylistic changes.

The 2003 amendment, effective June 20, 2003, deleted "district" following "resolution of the" near the end of Paragraph C(1); in Subsection F, deleted "assessment" following "District" at the beginning, deleted "district" preceding "supervisors" near the beginning and deleted "The supervisors shall prepare an annual budget and submit it for approval to the commission and to the local government division of the department of finance and administration." near the middle, inserted "the approved" following "in accordance with" near the end and deleted "approved by the commission and by the local government division of the department of finance and administration" at the end; and deleted "Owners of nonagricultural land may petition the district board of supervisors to delete their real property from the tax schedules, insofar as the district assessment is concerned; provided that these lands will not benefit from the operation of the district or the project for which the loan or levy is to be made." at the end of Subsection H.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "not exceeding one dollar (\$1.00)", deleted "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".

ANNOTATIONS

Sale of personal property of district. — Unless the provisions of 13-6-2 NMSA 1978 are complied with, personal property of a soil conservation district (now soil and water conservation district) cannot be

sold, regardless of how or from whom acquired, without first obtaining approval of the state board of finance. 1963-64 Op. Att'y Gen. No. 63-125.

Future levy. — Supervisors of district could adopt resolution calling for future assessment of a one mill tax to be levied in the event district was unable to repay money borrowed from interstate stream commission. 1972 Op. Att'y Gen. No. 72-54.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Irrigation §§ 70 to 72.

94 C.J.S. Waters §§ 332 to 337.

73-20-47. Cooperation between districts.

The supervisors of two or more soil and water conservation districts may cooperate with each other in the exercise of any district power.

History: 1953 Comp., § 45-5-62, enacted by Laws 1965, ch. 137, § 21.

73-20-48. State agencies to cooperate.

Agencies, instrumentalities and political subdivisions of this state having jurisdiction over or charged with the administration of public lands situate within the defined geographical area of any district shall cooperate to the fullest extent with the district's supervisors in effectuating district projects and programs. Supervisors shall have free access to enter and perform work upon state public lands lying within their districts; provided, however, supervisors shall not have unqualified access to state public lands that are subject to private dominion under lease or that are developed for, or devoted to, another public use. County clerks of the counties within which all or a part of the district lands are located shall provide advice and assistance with conduct of elections and referenda.

History: 1953 Comp., § 45-5-63, enacted by Laws 1965, ch. 137, § 22; 2003, ch. 88, § 19.

The 2003 amendment, effective June 20, 2003, deleted "district" preceding "supervisors" twice in the section; and inserted "County clerks of the counties within which all or a part of the district lands are located shall provide advice and assistance with conduct of elections and referenda." at the end of the section.

73-20-49. Repealed.

Repeals. — Laws 2003, ch. 88, § 20 repealed 73-20-49 NMSA 1978, as enacted by Laws 1965, ch. 137, § 23, relating to the dissolution of districts, effective June 20, 2003. For provisions of former section, see the 2002 NMSA 1978 on the New Mexico One Source of Law DVD.