

# Sanitary Projects Act

## **3-29-1. Sanitary Projects Act; short title.**

Chapter 3, Article 29 NMSA 1978 may be cited as the "Sanitary Projects Act".

## **3-29-2. Definitions.**

As used in the Sanitary Projects Act [3-29-1 NMSA 1978]:

- A. "community" means a rural unincorporated community and includes a combination of two or more rural unincorporated communities when they have been combined for the purposes set forth in the Sanitary Projects Act;
- B. "association" includes an association or mutual domestic water consumers association organized under Laws 1947, Chapter 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52, as well as any association organized under the provisions of the Sanitary Projects Act;
- C. "department" means the department of environment;
- D. "member" or "membership" means a person who has paid the appropriate fees and has been issued a certificate as required by association bylaws;
- E. "person" means a single residence or property owner, as determined by the rules adopted by the association's board of directors; and
- F. "project" means a water supply or reuse, storm drainage or wastewater facility owned, constructed or operated by an association.

## **3-29-3. Purpose of act.**

The purpose of the Sanitary Projects Act [3-29-1 NMSA 1978] is to improve the public health of rural communities in New Mexico by providing for the establishment and maintenance of a political subdivision of the state that is empowered by the state to receive public funds for acquisition, construction and improvement of water supply, reuse, storm drainage and wastewater facilities in communities, and to operate and maintain such facilities for the public good.

#### **3-29-4. Projects.**

Plans, specifications and contracts for each project, as appropriate, shall be prepared by a practicing professional engineer licensed under the Engineering and Surveying Practice Act [61-23-1 NMSA 1978] and selected by the association in accordance with the provisions of the Procurement Code [13-1-28 NMSA 1978].

#### **3-29-5. Restrictions on forming an association.**

A. A new association shall not be formed under the Sanitary Projects Act [3-29-1 NMSA 1978] by original incorporation after January 1, 2000, and a new association shall not be formed by reorganization after January 1, 2000, unless the preceding entity was in existence on January 1, 2000, if the service area of either association includes property contiguous to an incorporated municipality or an unincorporated area currently served by a municipality or by a water and sanitation district. The restrictions on forming an association set forth in this subsection shall not apply if the contiguous incorporated municipality or water and sanitation district does not provide the services or cannot provide the services to be provided by the association at or below the cost proposed by the association.

B. An association shall not construct with state funds a project required in order to allow creation of a subdivision under the provisions of the Land Subdivision Act [47-5-1 NMSA 1978], the New Mexico Subdivision Act or Section 47-5-9 NMSA 1978; however, an association may construct a project serving a previously approved subdivision in the service area of the association.

C. After July 1, 2006, a new association shall not be formed as a capital stock corporation.

#### **3-29-6. Board of directors; powers and duties.**

A. The board of directors of each association shall be responsible for the acquisition or purchase of all property, rights of way, equipment and materials as may be necessary for the completion of a project. The directors shall act on behalf of the association and as its agents. The association, acting through its board of directors, may exercise the right of eminent domain to take and acquire the necessary property or rights of way for the construction, maintenance and operation of water and sewer lines and related facilities, but such property and rights of way shall in all cases be so located as to do the least damage to private and public property consistent with proper use and economical construction. Such property or rights of way shall be acquired in the manner provided by the Eminent Domain Code [42A-1-1 NMSA 1978]. In accordance with Sections 42A-1-8 through 42A-1-12 NMSA 1978, engineers, surveyors and other persons under contract with the board for the purposes of the project shall have the right to enter upon property

of the state, its political subdivisions, private persons and private and public corporations for the purpose of making necessary surveys and examinations for selecting and locating suitable routes for water and sewer lines and facilities.

B. The board of directors of the association may set and, from time to time, increase or adjust assessments, water and sewer rates, tolls or charges for services or facilities furnished or made available by the association. The assessments, tolls and charges may include:

- (1) membership fees;
- (2) a base monthly service fee for each active connection delivering water;
- (3) a base monthly service fee for each inactive connection;
- (4) a standby charge for the privilege of connecting into the association's water service at some date in the future;
- (5) assessments based on the volume of water delivered;
- (6) a connection charge; and
- (7) an assessment necessary to cover the cost of extending either water or sewer service.

C. The board of directors of the association may place a lien on property to which services have been extended in the amount of all outstanding assessments, charges and fees associated with the services. The board of directors may enforce the lien in a manner provided by the laws of the state. In the event the board of directors is forced to enforce the lien in a court of competent jurisdiction in New Mexico, the board of directors shall be entitled to recover all costs and attorney fees.

D. After notice is given, the board of directors of the association shall shut off unauthorized connections, illegal connections or a connection for which charges are delinquent in payment. The board of directors may file suit in a court of competent jurisdiction to recover costs associated with an unauthorized or illegal connection or delinquent connection, including the cost of water delivered, charges for facility connection and disconnection, damages and attorney fees.

E. The board of directors of the association shall prescribe and enforce rules for the connection to and disconnection from properties of facilities of the association.

F. Each member of the board of directors of the association shall complete training, as determined by rules of the department.

**3-29-7. Department powers.**

- A. Insofar as the department deems it necessary for the purpose of the Sanitary Projects Act [3-29-1 NMSA 1978], the department may recommend agreements, covenants or rules in regard to operation, maintenance and permanent use of water supply, reclamation, storm drainage and wastewater facilities.
- B. The department may:
- (1) conduct periodic reviews of the operation of the association;
  - (2) require the association to submit information to the department;
  - (3) require submittal of financial reports required pursuant to the Audit Act [12-6-1 NMSA 1978];
  - (4) review and require changes to the rate-setting analysis described in Section 3-29-12 NMSA 1978;
  - (5) after a hearing, intervene in the operation and management with full powers, including the power to set and collect assessments from members of the association, to set and collect service charges and use the same for the proper operation and management of the association; and
  - (6) appoint and delegate authority to a representative to oversee operation of the association for a specified period.
- C. The department may in its discretion or shall, upon a petition of twenty-five percent of the members of the association, conduct investigations as it deems necessary to determine if the association is being operated and managed in the best interests of all the members of the association.
- D. Whenever the department determines that an association violated or is violating the Sanitary Projects Act or a rule adopted pursuant to that act, the department may:
- (1) issue a compliance order requiring compliance immediately or within a specified time period, or both; or
  - (2) commence a civil action in district court for appropriate relief, including injunctive relief.
- E. A compliance order shall state with reasonable specificity the nature of the violation.
- F. If an association fails to take corrective actions within the time specified in a compliance order, the department may assess a civil penalty of not more than two

hundred fifty dollars (\$250) for each day of continued noncompliance with the compliance order.

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

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

- (1) make and preserve a complete record of the proceedings; and
- (2) forward to the department a report that includes recommendations, if recommendations are requested by the department.

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

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

- (1) adopt rules for discovery and hearing procedures; and
- (2) issue subpoenas for the attendance and testimony of witnesses and for relevant papers, books and documents.

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

**3-29-8. Repealed.**

**3-29-9. Rules.**

For the purposes of the Sanitary Projects Act [3-29-1 NMSA 1978], the department may perform such acts and prescribe such rules as are deemed necessary to carry out its provisions. Rules shall be drafted in consultation with representatives of the associations.

**3-29-10. Repealed.**

### **3-29-11. Membership.**

All persons within a community who participate or desire to participate in any project may become members of an association upon complying with the rules and regulations prescribed by the board of directors of the association, such rules and regulations to meet with the approval of the department. Any person or persons who did not participate in an original project shall be admitted to membership in an association upon payment to the association of a reasonable fee as determined by the board of directors and the department.

### **3-29-12. Local administration of association; board of directors.**

A. The local administration of the association and the operation and maintenance of the project shall be carried out in each community by a board of directors composed of an odd number of at least three members. Members of the board of directors shall:

- (1) be elected annually or as specified in the bylaws of the association;
- (2) be members in good standing of the association; and
- (3) serve staggered terms of up to four years to ensure that terms will end in different election years.

B. The board of directors shall choose among its members a president, a vice president and a secretary-treasurer or a secretary and a treasurer.

C. Funds sufficient to provide for proper operation and maintenance of the association shall be identified through a rate-setting analysis that will ensure enough revenue to cover yearly expenses and emergencies, a reserve fund for non-major capital items and equitable pay for staff. The rate-setting analysis may be reviewed and changed if necessary on a yearly basis, and the funds shall be obtained by the association by a monthly assessment against the users of the facilities, the assessment to be determined by the board of directors.

D. The board of directors of the association shall have power to do all things necessary in the local administration of any project subject to the provisions of the Sanitary Projects Act [3-29-1 NMSA 1978].

### **3-29-13. Existing associations.**

Associations organized under the provisions of Laws 1947, Chapter 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52 shall have the same powers and duties as associations organized under the provisions of the Sanitary Projects Act [3-29-1 NMSA

1978]; provided that the articles of incorporation shall be amended in accordance with the provisions of Section 3-29-19 NMSA 1978.

**3-29-14. Existing water systems or water rights unaffected.**

The provisions of the Sanitary Projects Act [Chapter 3, Article 29 NMSA 1978] shall not in any way affect any water systems or water rights under existing law.

**3-29-15. Association constitutes a public body corporate.**

Upon the filing of each certificate and copy thereof as provided in Section 3-29-17 NMSA 1978, the persons so associating, their successors and those who may thereafter become members of the association constitute a public body corporate by the name set forth in the certificate and by such name may sue and be sued, have capacity to make contracts, acquire, hold, enjoy, dispose of and convey property real and personal, accept grants and donations, borrow money, incur indebtedness, impose fees and assessments and do any other act or thing necessary or proper for carrying out the purposes of their organization.

**3-29-16. Certificate of association.**

- A. The members of an association shall execute a certificate setting forth:
- (1) the name of the association;
  - (2) the name of the individuals organizing the association;
  - (3) the location of the principal office of the association in this state;
  - (4) the objects and purposes of the association;
  - (5) the address of the initial registered office of the association and the name of the initial registered agent at that address;
  - (6) the plan and manner of acquiring membership and of providing funds or means for the acquisition, construction, improvement and maintenance of its work and for its necessary expenses;
  - (7) the duration of existence of the association, which may be perpetual;
  - (8) the number and manner of electing the board of directors of the association and the length of the terms that the directors will serve;

(9) the definition of a member of the association and the voting rights associated with the membership; and

(10) the manner of dissolution of the association as a public body.

B. Pursuant to the registered agent requirement of Paragraph (5) of Subsection A of this section, there shall be attached to the certificate a statement executed by the registered agent in which the agent acknowledges acceptance of the appointment by the filing association, if the agent is an individual, or a statement executed by an authorized officer of a corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent, if the agent is a corporation.

C. The certificate or any amendment thereof made as provided in Section 3-29-19 NMSA 1978 may also contain provisions not inconsistent with the Sanitary Projects Act [3-29-1 NMSA 1978] or other law of this state that the organizers may choose to insert for the regulation and conduct of the business and affairs of the association. There shall accompany each certificate a list to show the total number of members of the association and the total number of dwelling units served by the association at the time of filing.

### **3-29-17. Filing of certificate and bylaws.**

The certificate of association and bylaws shall be acknowledged as required for deeds of real estate and shall be filed in the office of the public regulation commission. A copy of the certificate, duly certified by the commission or county clerk, shall be evidence in all courts and places.

#### **3-29-17.1. Registered office and registered agent.**

An association shall have and continuously maintain in the state:

A. a registered office, which may be the same as its principal office; and

B. a registered agent that may be:

(1) an individual resident in the state whose business office is identical with the registered office of the association;

(2) a for-profit or not-for-profit domestic corporation having an office identical with the registered office of the association; or

(3) a for-profit or not-for-profit foreign corporation authorized to transact business or conduct affairs in New Mexico and having an office identical with the registered office of the corporation.

**3-29-17.2. Change of registered office or registered agent.**

A. An association may change its registered office or its registered agent, or both, by filing in the office of the public regulation commission a statement that includes:

- (1) the name of the association;
- (2) the address of its registered office;
- (3) if the address of the association's registered office is changed, the address to which the registered office is changed;
- (4) the name of its registered agent;
- (5) if the association's registered agent is changed:
  - (a) the name of its successor registered agent; and
  - (b) if the successor registered agent is an individual, a statement executed by the successor registered agent acknowledging his acceptance of the appointment by the filing association as its registered agent; or
  - (c) if the successor registered agent is a corporation, an affidavit executed by the president or vice president of the corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent;
- (6) a statement that the address of the association's registered office and the address of the office of its registered agent, as changed, will be identical; and
- (7) a statement that the change was authorized by resolution duly adopted by its board of directors.

B. The statement made pursuant to the provisions of Subsection A of this section shall be executed by the association by any two members and delivered to the public regulation commission. If the commission finds that the statement conforms to the provisions of the Sanitary Projects Act [3-29-1 NMSA 1978], it shall file the statement in the office of the commission. The change of address of the registered office, or the appointment of a new registered agent, or both, shall become effective upon filing of the statement required by this section.

C. A registered agent of an association may resign as agent upon filing a written notice thereof, executed in duplicate, with the public regulation commission. The commission shall mail a copy immediately to the association in care of an officer, who is not the resigning registered agent, at the address of the officer as shown by the most recent

annual report of the association. The appointment of the agent shall terminate upon the expiration of thirty days after receipt of the notice by the commission.

### **3-29-17.3. Service of process on association.**

The registered agent appointed by an association shall be an agent of the association upon whom any process, notice or demand required or permitted by law to be served upon the association may be served. Nothing in this section limits or affects the right for process, notice or demand to be served upon an association in any other manner permitted by law.

### **3-29-17.4. Annual report.**

A. An association shall file, within the time prescribed by the Sanitary Projects Act [3-29-1 NMSA 1978], on forms prescribed and furnished by the public regulation commission to the association not less than thirty days prior to the date the report is due, an annual report setting forth:

- (1) the name of the association;
- (2) the address of the registered office of the association in the state and the name of its registered agent in this state at that address;
- (3) a brief statement of the character of the affairs that the association is actually conducting; and
- (4) the names and respective addresses of the directors and officers of the association.

B. The report shall be signed and sworn to by two of the members of the association. If the association is in the hands of a receiver or trustee, the report shall be executed on behalf of the association by the receiver or trustee. A copy of the report shall be maintained at the association's principal place of business as contained in the report and shall be made available to the general public for inspection during regular business hours.

### **3-29-17.5. Filing of annual report; supplemental report; extension of time; penalty.**

A. The annual report of the association shall be delivered to the public regulation commission on or before the fifteenth day of the fifth month following the end of its fiscal year.

B. A supplemental report shall be filed by the association with the public regulation commission, if, within thirty days after the filing of the annual report required under the Sanitary Projects Act [3-29-1 NMSA 1978], a change is made in:

- (1) the name of the association;
- (2) the mailing address, street address or the geographical location of the association's registered office in this state and the name of the agent upon whom process against the association may be served; or
- (3) the character of the association's business and its principal place of business within the state.

C. Proof to the satisfaction of the public regulation commission that, prior to the due date of a report required by this section, the report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed compliance with the requirements of this section. If the commission finds that the report conforms to the requirements of the Sanitary Projects Act, it shall file the report. If the commission finds that it does not conform, it shall promptly return the report to the association for necessary corrections. The penalties prescribed for failure to file the report within the time provided shall not apply if the report is corrected to conform to the requirements of the Sanitary Projects Act and returned to the commission within thirty days from the date on which it was mailed to the association by the commission.

D. The public regulation commission may, upon application by the association and for good cause shown, extend, for no more than a total of twelve months, the date on which an annual report required by the provisions of the Sanitary Projects Act must be filed or the date on which the payment of a fee is required. The commission shall, when an extension of time has been granted an association under the federal Internal Revenue Code of 1986 for the time in which to file a return, grant the association the same extension of time to file the required annual report and to pay the required fees, provided that a copy of the approved federal extension of time is attached to the association's report, and provided further that no such extension shall prevent the accrual of interest as otherwise provided by law.

E. Nothing contained in this section prevents the collection of a fee or penalty due upon the failure of an association to submit the required report.

F. An annual or supplemental report required to be filed under this section shall not be deemed to have been filed if the fees accompanying the report have been paid by check and the check is dishonored upon presentation.

G. An association that fails or refuses to file a report for a year within the time prescribed by the Sanitary Projects Act is subject to a penalty of ten dollars (\$10.00) to be assessed by the public regulation commission.

H. An association shall file with the department a member accountability report that shall include:

(1) a financial statement prepared in accordance with generally accepted accounting principles; and

(2) a copy of the Open Meetings Act [10-15-1.1 NMSA 1978] resolution stating what notice for a public meeting is reasonable. The report shall be signed and sworn to as to accuracy and completeness by all members of the board of directors of the association. A statement shall be included in the consumer confidence report required for water systems that the member accountability report is available to the public upon request. The member accountability report shall be filed with the department with the consumer confidence report no later than July 1 of each year.

### **3-29-18. Repealed.**

### **3-29-19. Amendment of certificate of association and bylaws; method.**

Every association may make such amendment, change or alteration to its certificate of association or bylaws as may be desired not inconsistent with the Sanitary Projects Act [3-29-1 NMSA 1978] or other law of this state by a resolution adopted by a vote of a majority of the members present at any regular or special meeting duly held upon such notice as the bylaws provide. A certified copy of such resolution with the affidavit of the president and secretary that the resolution was duly adopted by a majority vote of the members at a meeting held in accordance with the provisions of this section shall be filed and recorded as provided for filing and recording the original certificate of association and bylaws, and thereupon the certificate of association and bylaws shall be deemed to be amended accordingly, and a copy of such certificate of amendment certified by the public regulation commission or the county clerk shall be accepted as evidence of each change or amendment in all courts and places.

#### **3-29-19.1. Bylaws.**

A. Members shall adopt bylaws by no less than a majority vote of a quorum of the membership of the association setting forth:

- (1) the name of the association;
- (2) the requirement of an association seal;
- (3) the fiscal year of the association;
- (4) guidelines for membership, which shall include the sentence "Membership shall not be denied because of the applicant's race, color, creed, national origin or sex.";

(5) guidelines for meetings of the membership, which shall include the date or time period of a membership meeting, required notice of a meeting, establishment of a quorum and the order of business to be conducted at a meeting of the membership;

(6) the functions of the board of directors, including a conflict of interest policy for the board;

(7) the duties of officers of the board of directors; and

(8) provisions for the board of directors to establish rules to govern the day-to-day operations of the project, including a code of conduct for staff and provisions to establish an annual budget, rate structure, assessments and reserve funds.

B. The bylaws, or any amendment thereof made as provided in Section 3-29-19 NMSA 1978, may also contain provisions not inconsistent with the Sanitary Projects Act [3-29-1 NMSA 1978] or other law of this state that the organizers may choose to insert for the regulation and conduct of the business and affairs of the association.

C. The department may prescribe by rule guidelines for bylaws and rules of an association.

**3-29-20. Reorganization of cooperative associations and nonprofit corporations pursuant to the Sanitary Projects Act.**

A. Cooperative associations formed pursuant to Sections 53-4-1 through 53-4-45 NMSA 1978 and nonprofit corporations formed under the Nonprofit Corporation Act [53-8-1 NMSA 1978] may reorganize under the Sanitary Projects Act [3-29-1 NMSA 1978] upon approval of the reorganization by a majority vote of a quorum of the members of a cooperative association or nonprofit corporation. Notice of the meeting to consider the reorganization and a copy of the proposed certificate of association shall be sent at least fifteen days prior to such meeting by the cooperative association to each member at the member's last known address and by the nonprofit corporation to each member, if any, at the member's last known address. Upon approval of the reorganization by the majority vote of a quorum of the members, the cooperative association or the nonprofit corporation shall execute a certificate of association pursuant to Sections 3-29-16 and 3-29-17 NMSA 1978. The certificate of association shall state that it supersedes the articles of incorporation and all amendments to the articles of incorporation of the cooperative association or the nonprofit corporation.

B. Duplicate originals of the certificate of association shall be filed with the public regulation commission. One duplicate original of the certificate of association shall be returned to the association.

C. The certificate of association is effective upon filing and supersedes the articles of incorporation and all amendments to the articles of incorporation of the prior cooperative association or nonprofit corporation. The association shall:

- (1) be the surviving entity, and the separate existence of the prior cooperative association or nonprofit corporation shall cease;
- (2) have all of the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of an association organized pursuant to the Sanitary Projects Act;
- (3) possess all the rights, privileges, immunities and franchises of the prior cooperative association or nonprofit corporation. All property, real, personal and mixed; all debts due on whatever account; all other choses in action; and all and every other interest of or belonging to or due to the prior cooperative association or nonprofit corporation shall be taken and deemed to be transferred to and vested in the association without further act or deed. The title to any real estate, or any interest therein, vested in the prior cooperative association or nonprofit corporation shall not revert or be in any way impaired by reason of the reorganization; and
- (4) be liable for all the liabilities and obligations of the prior cooperative association or nonprofit corporation, and any claim existing or action or proceeding pending by or against the cooperative association or nonprofit corporation may be prosecuted as if the reorganization had not taken place or the new association may be substituted in its place. Neither the rights of creditors nor any liens upon the property of the cooperative association or nonprofit corporation shall be impaired by the reorganization.

D. A cooperative association formed pursuant to the Cooperative Association Act [53-4-1.1 NMSA 1978] or nonprofit corporation formed pursuant to the Nonprofit Corporation Act [53-8-1 NMSA 1978] that reorganized under Subsection A of this section prior to June 30, 2006 may, within three years of the effective date of this 2006 act, reorganize pursuant to the act under which it had previously been organized upon approval of the reorganization by a two-thirds' vote of the directors of the association or corporation. Notice of the meeting to consider the reorganization and a copy of the proposed articles of incorporation shall be sent by the association or the corporation at least fifteen days prior to the meeting to each member at the member's last known address. Upon approval of the reorganization, the association or corporation shall execute articles of incorporation pursuant to Sections 53-4-5 and 53-4-6 or 53-8-31 and 53-8-32 NMSA 1978. The articles of incorporation shall state that they supersede the certificate of association or incorporation and all amendments thereto of the association or corporation and shall follow the filing procedures of Subsections B and C of this section.

### **3-29-20.1. Merger of two or more associations into one association.**

Upon approval by vote of a majority of a quorum of each membership, two or more associations may merge into one association pursuant to a plan of merger approved in the manner provided by this section. The board of directors of each association shall, by resolution adopted by each board, approve a plan of merger setting forth:

- A. the names of the associations proposing to merge, and the association into which they propose to merge, which is hereinafter designated as the "surviving association";
- B. the terms and conditions of the proposed merger, including transfer of assets and liabilities;
- C. the manner and basis of converting each association's obligations or other securities into the surviving association;
- D. a statement of any changes in the certificate of association of the surviving association to be affected by the merger; and
- E. other provisions with respect to the proposed merger as deemed necessary or desirable.

**3-29-21. Exemptions from Special District Procedures Act provisions.**

An association formed pursuant to the provisions of the Sanitary Projects Act [3-29-1 NMSA 1978] may be formed exclusively as provided in that act, and formation of the association shall be exempt from all review and requirements set forth in the Special District Procedures Act [4-53-1 NMSA 1978].