

## **History of the SPA**

Enacted in 1947 for the installation of sanitary domestic water facilities to “eliminate the present hazardous practices involved in the use of ditch water.” \$20,000 was appropriated for the purpose of the Act to be overseen by the predecessor of NMED.

Act updated in 1957 and \$150,000 appropriated, but each projects limited to \$12,000.

### **Pros and Cons**

- Simple to form
- Eligible for public money
- Provide water and wastewater service
- Provide a form of local government
- Run by Heroic Volunteer BOD, but with limited expertise in business, water, and engineering
- Powers very limited
- Serves only members with no defined service area
- Cannot force people to join or stay

## **SPA 2006 Changes of Note**

- Clearly defined as political subdivision of the State
- Flexibility for number and term of BOD
- BOD may exercise Eminent Domain without NMED approval
- BOD shall shut off water for non-payment and complete BOD training.
- NMED may issue compliance order and assess civil penalty of up to \$250/day
- BOD shall establish fees based on rate setting analysis
- Certificate & Bylaws must be filed with PRC and include dissolution as public body
- Minimum requirements for Bylaws
- BOD must file member accountability report with NMED by July 1st – Open Meeting Act resolution and financial statement
- Provisions for mergers added
- Cooperatives & Non-Profit Corporations Can Easily Convert
- 2000 law change allow Cooperatives formed under 53-4 & Non-Profit Corporations formed under 53-8 to convert to mutual domestics.
- Must file certificate of association with PRC.
- Requires majority of vote of a quorum of members after 15 day notice.
- Conversion allows access to public money, but requires observance of Public Meetings Act, Public Records Act, etc

## **New Mexico Article 29 — Sanitary Projects, 3-29-1 through 3-29-21.**

- [Section 3-29-1 — Sanitary Projects Act; short title.](#)
- [Section 3-29-2 — Definitions.](#)
- [Section 3-29-3 — Purpose of act.](#)
- [Section 3-29-4 — Projects.](#)
- [Section 3-29-5 — Restrictions on forming an association.](#)
- [Section 3-29-6 — Board of directors; powers and duties.](#)
- [Section 3-29-7 — Department powers.](#)
- [Section 3-29-8 — Repeal.](#)
- [Section 3-29-9 — Rules.](#)
- [Section 3-29-10 — Repeal.](#)
- [Section 3-29-11 — Membership.](#)
- [Section 3-29-12 — Local administration of association; board of directors.](#)
- [Section 3-29-13 — Existing associations.](#)
- [Section 3-29-14 — Existing water systems or water rights unaffected.](#)
- [Section 3-29-15 — Association constitutes a public body corporate.](#)
- [Section 3-29-16 — Certificate of association.](#)
- [Section 3-29-17 — Filing of certificate and bylaws.](#)
- [Section 3-29-17.1 — Registered office and registered agent.](#)
- [Section 3-29-17.2 — Change of registered office or registered agent.](#)
- [Section 3-29-17.3 — Service of process on association.](#)
- [Section 3-29-17.4 — Annual report.](#)
- [Section 3-29-17.5 — Filing of annual report; supplemental report; extension of time; penalty.](#)
- [Section 3-29-18 — Repeal.](#)
- [Section 3-29-19 — Amendment of certificate of association and bylaws; method.](#)
- [Section 3-29-19.1 — Bylaws.](#)
- [Section 3-29-20 — Reorganization of cooperative associations and nonprofit corporations pursuant to the Sanitary Projects Act.](#)
- [Section 3-29-20.1 — Merger of two or more associations into one association.](#)
- [Section 3-29-21 — Exemptions from Special District Procedures Act provisions.](#)

## **Mutual Domestic and Governmental Gross Receipt Tax (GGRT)**

Section 7-9-4.3 NMSA states that "political subdivisions" are governmental units and need only collect GGRT - the state tax of 5%. Anything above that is the local portion and Mutual Domestic are not required to collect it. You may refer to your CRS-1 Filer Kit, Instructions for Columns A through H. In Column A you would enter "GGRT" and in Column C enter "55-055" as government agencies. Those items that you have collected tax on in the past would still be subject to tax now, except at the lower rate. This does not apply to engineering consultants and contractors and others who collect local GRT and report to Tax & Rev for the work they perform. It has been suggested for those MDWCAs that have not been operating in this fashion, that they could start effective March 6 when the bill was signed and collect only GGRT from then forward.

The relevant section is -

7-9-4.3. Imposition and rate of tax; denomination as "governmental gross receipts tax".

For the privilege of engaging in certain activities by governments, there is imposed on every agency, institution, instrumentality or political subdivision of the state, except any school district and any entity licensed by the department of health that is principally engaged in providing health care services, an excise tax of five percent of governmental gross receipts. The tax imposed by this section shall be referred to as the "governmental gross receipts tax".

The New Mexico Department of Taxation & Revenue website contains the state statutes as well as information regarding workshops that are held around the state. Mr. Phillip Salazar, Director Audit & Compliance highly recommends attending these workshops to learn specifics and encourages calls to the local offices should there be any questions. His number is 505-827-0357. The workshop information is: <http://www.state.nm.us/tax/oos/2006crswrkshps.pdf> and the general page for public events and publication is: [http://www.state.nm.us/tax/trd\\_pubs.htm](http://www.state.nm.us/tax/trd_pubs.htm).

As Political Subdivisions, Mutual Domestic Water Associations are considered governmental entities and qualify for type 9 Non-taxable Transaction Certificates (NTTCs), which can be executed to sellers by Mutual Domestic for the purchase of tangible personal property tax free. Sellers are allowed a deduction to their taxable gross receipts if they are in receipt of a properly executed type 9 or have documentation demonstrating proof of payment by a governmental agency. Sellers cannot accept type 9's and are liable for gross receipts tax on the sale of services and construction services or material to a governmental agency. For help on obtaining type 9 certificates, MDWCAs can contact Betty Kulp in Santa Fe at 505-827-0036.

## **Procurement and Disclosure of Campaign Contributions**

This legislation (SB 344 - below) applies to non-competitive bid situations, such as engineering, sole source, and small purchase. In these instances the service provider must file the disclosure form. With regard to the solicitation of engineering or architect services, the form must accompany the response to the request for proposals (RFP) prior to any contract negotiations.

Ch. 81

S.B. No. 344

### **PROCUREMENT--DISCLOSURE OF CAMPAIGN CONTRIBUTIONS**

AN ACT RELATING TO PROCUREMENT; REQUIRING DISCLOSURE OF CAMPAIGN CONTRIBUTIONS BY PROSPECTIVE CONTRACTORS FOR CERTAIN CONTRACTS ENTERED INTO PURSUANT TO THE PROCUREMENT CODE; PROHIBITING CAMPAIGN CONTRIBUTIONS OR GIVING OTHER THINGS OF VALUE DURING THE PROCUREMENT PROCESS FOR CERTAIN CONTRACTS.

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

Section 1. A new section of the Procurement Code is enacted to read:

"CAMPAIGN CONTRIBUTION DISCLOSURE AND PROHIBITION.--

A. This section applies to prospective contractors with the state or a local public body.

B. A prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period.

C. The disclosure shall indicate the date, the amount, the nature and the purpose of the contribution. The disclosure statement shall be on a form developed and made available electronically by the department of finance and administration to all state agencies and local public bodies. The form shall be filed with the state agency or local public body as part of the competitive sealed proposal, or in the case of a sole source or small purchase contract, on the date on which the contractor signs the contract.

## Sanitary Projects Act Updates

D. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

E. No campaign contribution or other thing of value shall be given by a prospective contractor or a family member or representative of the prospective contractor to an applicable public official or the applicable public official's employees during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.

F. A solicitation or proposed award for a proposed contract shall be canceled or a contract that is executed is void if:

(1) a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or

(2) a prospective contractor or family member or representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process.

G. As used in this section:

(1) "applicable public official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal;

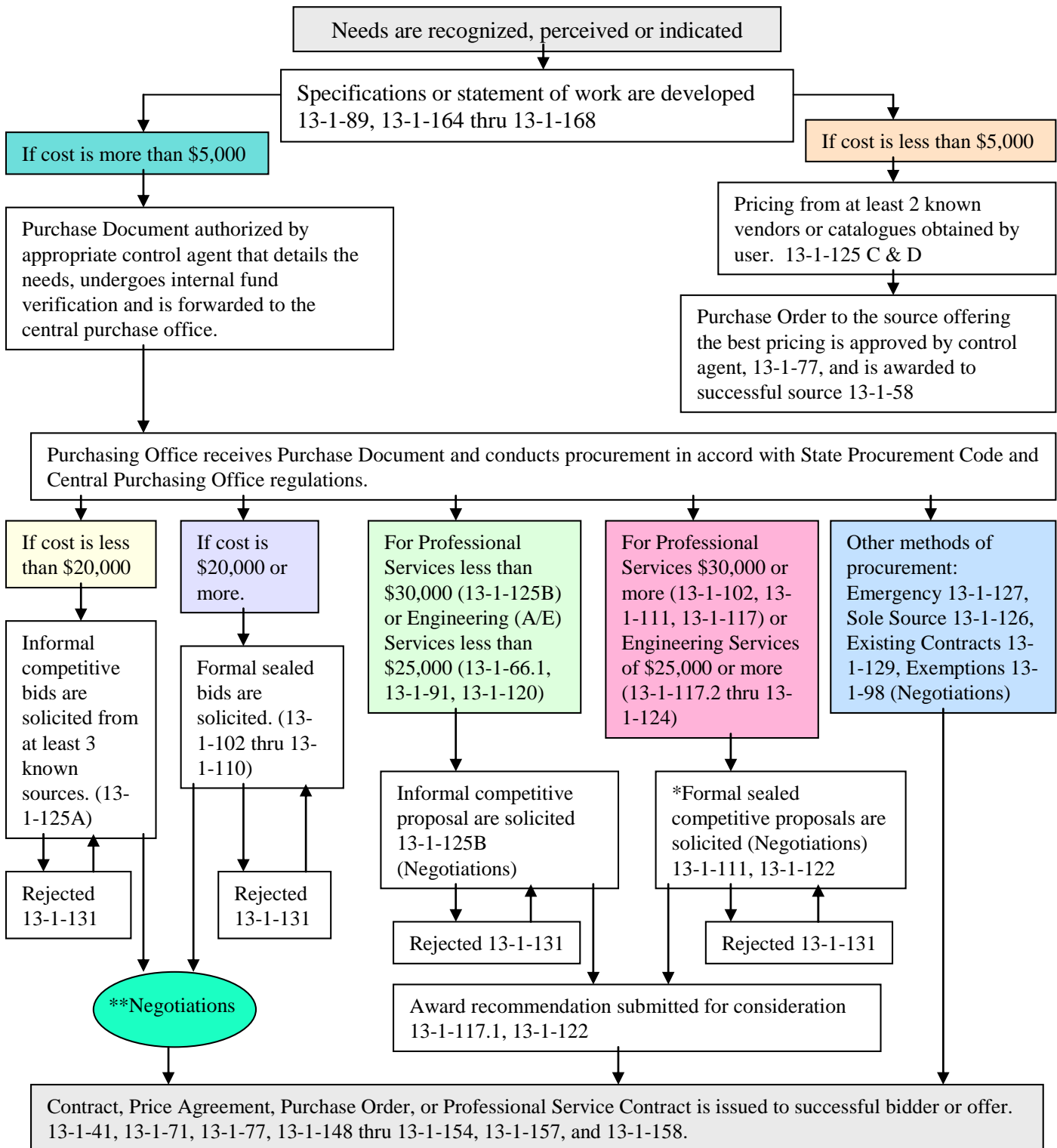
(2) "family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law;

(3) "pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals;

(4) "prospective contractor" means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or small purchase contract; and

(5) "representative of the prospective contractor" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor."

## NEW MEXICO PURCHASING PROCESS per NMSA 1978



\* A request for Proposal for Procurement of items of Tangible Personal Property and Non-Professional Services (not construction) requires a determination 13-1-76

\*\* If no bids are received or if all bids are rejected after two successive identical bid attempts, then items or services may be procured by negotiations 13-1-131.

If low bid exceeds budgeted funds by less than 10%, negotiation with low bidder may be conducted to reduce costs to stay within project funds 13-1-105.

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 12 SANITARY PROJECTS**  
**PART 2 BOARD OF DIRECTOR TRAINING REQUIREMENTS – NEW MEXICO ENVIRONMENT DEPARTMENT**

**20.12.2.1 ISSUING AGENCY:** New Mexico Environment Department.

**20.12.2.2 AUTHORITY:** This Part is adopted pursuant to Sections 3-29-6 and 3-29-9 NMSA 1978.

**20.12.2.3 SCOPE:** This Part governs the training required of members of the board of directors of mutual domestic associations pursuant to the Sanitary Projects Act, Sections 3-29-1 through 3-29-20 NMSA 1978.

**20.12.2.4 DURATION:** Permanent.

**20.12.2.5 EFFECTIVE DATE:** \_\_\_\_\_, 2008.

**20.12.2.6 PURPOSE:** The purposes of this Part are:

**A.** to standardize the requirement for training and provide minimum criteria for training of members of the board of directors of mutual domestic associations pursuant to the Act;

**B.** to encourage board members to seek additional training to better understand their roles and responsibilities pursuant to the Act; and

**C.** to encourage technical assistance providers to develop training courses and provide guidelines for the content of those courses.

**20.12.2.7 DEFINITIONS:** As used in this Part:

**A.** “Act” means the Sanitary Projects Act, Sections 3-29-1 through 3-29-20 NMSA 1978.

**B.** “Department” means the New Mexico Environment Department.

**C.** “board of directors” or “board members” means the directors elected by the mutual domestic association in accordance with its certificate of association and/or bylaws and responsible for the administration, operation, and maintenance of the association.

**D.** “mutual domestic association” means an association organized under the provisions of the Act.

**E.** “technical service provider” means any individual, business, learning institution, or entity to include the Department that provides assistance in the form of Department approved training to any mutual domestic association.

**F.** “Secretary” means the Secretary of the New Mexico Environment Department,

the Secretary's designee, or any person who properly assumes the role of the Secretary in the event of the Secretary's recusal or disqualification.

**20.12.2.8 POWERS AND DUTIES OF DEPARTMENT AND SECRETARY:**

**A.** Department: The Department shall exercise all powers and duties prescribed under this Part.

**B.** Secretary: The Secretary shall have the authority to take all measures necessary to review and approve specific training course content developed by the Department or a technical service provider and act on behalf of the Department.

**20.12.2.9 INITIAL AND CONTINUING TRAINING TOPICS**

**A.** The following topics are the minimum required subject areas for initial training of mutual domestic board of director members:

<b>Required Board Training Topics</b>
Responsibilities of Governing Bodies (Certificate of Association, Bylaws, Election Procedures and Governmental Conduct Act)
Sanitary Projects Act
Safe Drinking Water Act and New Mexico Drinking Water Regulations
New Mexico Operator Certification Requirements
Open Meetings Act
Inspection of Public Records Act
State Audit Act and Audit Rule 2005
State Procurement Code
Office of the State Engineer Reports and Requirements
Basic Accounting, Budgeting, and Rate Setting

**B.** The Department shall maintain a list of approved courses for continuing training.

**20.12.2.10 APPLICATION OF TRAINING REQUIREMENTS:**

**A.** Board members shall complete a minimum of twelve hours of initial training:

(1) Within two years of election or appointment to a board of directors and shall complete a minimum of six (6) hours of training within the first year; and

(2) Within two years of re-election, or appointment to a board of directors after interruption in service on a board greater than four years and shall complete a minimum of six (6) hours completed the first year.

**B.** To maintain certification after completion of the initial training, board members must complete a total number of credits equivalent to two hours of continuing training during each year of their elected or appointed term. Any board member may carry up to six (6) hours of



excess credits earned over to the next compliance year(s) within the board member's term of office. Excess credits may not be carried over to a board member's subsequent term of office.

**20.12.2.11 TRACKING AND RECORDATION OF INITIAL AND CONTINUING TRAINING:**

**A.** Mutual domestic associations shall track and record the required and continuing training received by members of their board of directors, including the following information:

- (1) Course title and content shall be recorded for each board member.
- (2) Total course hours shall be recorded for each board member.
- (3) Date, location and provider of the training shall be recorded for each board member

**B.** Mutual domestic associations shall submit to the Department a certificate of compliance with the requirement for board training as part of the Member Accountability Report required by the Act demonstrating compliance of each board member with the requirements for the initial and continuing training.

**C.** At the conclusion of any training, a certificate of completion shall be issued to the board member by the technical service provider or entity providing the training that documents the date and location of training, course title and description, total hours of training for each topic, name of the trainer or trainers.

**D.** Technical service providers will submit to the Department a summary of each training event including the date(s) and location(s) of training, course title and description, total hours of training for each topic, name of the trainer or trainers, and a list of attendees that successfully completed the training and the water system they represent. The information reported to the Department shall be in an electronic format as directed by the Department.

**20.12.2.12 APPROVAL OF COURSE CONTENT:**

**A.** The Department shall approve in writing all training courses and associated credit hours intended to comply with this Part.

**B.** Technical service providers shall submit proposed training to the Secretary for approval at least thirty (30) days in advance of any proposed class. Proposals will include a description of course content and time allotted to each topic, and total course credit hours.

**C.** Each initial course shall consist of all or some of the topics listed in Subsection A of Section 20.12.2.9 NMAC above.

**D.** Each continuing training course shall be approved by the Department

**20.12.2.13 EFFECTIVE COMPLIANCE DATE:**

**A.** This Part shall become effective twelve (12) months after promulgated.

**B.** Training approved by the Department and attended by mutual domestic board members in the twelve (12) months prior to the promulgation of this Part shall be credited to board members toward compliance with the requirements of this Part.