

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)**  
**Act 451 of 1994**

**324.4705 Sewage disposal and water supply districts; hearing; determination of no necessity; record; determination of necessity; referendum; rules; creation of authority; application; petitions to include additional territory; legal status of district; certificate.**

Sec. 4705. (1) If the department determines after the hearing that there is no need for a district to be formed in the territory considered at the hearing and that the operation of the district within the defined boundaries is not practicable and feasible from the standpoint of engineering, administration, and financing, the department shall make and record the determination and shall deny any petition filed with it.

(2) If the department has made and recorded a determination that in the interests of public health and welfare there is a need for the formation, organization, and functioning of a district in a particular territory and has defined the boundaries of the district, it shall consider the question of whether the operation of that district within the boundaries with the powers conferred upon districts in this part is desired by a majority of the electors within the boundaries of the district. To assist the department in the determination of this question, it is the duty of the department, within a reasonable time of entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries of the district, to order a referendum within the proposed district upon the proposition of the creation of the district and to order the municipalities affected to cause due notice of the referendum to be given. The department shall direct the officials in charge of the holding of elections in the local units of government included within the district to call a special election or to place the referendum on the ballot at the next general election to be held in all of the territory comprising the district. The question shall be submitted by ballots prepared by the department that shall succinctly describe the district proposed to be formed, the area in which it shall function, and in appropriate language require those voting on the proposition to vote for or against the creation of the district, in accordance with the requirements of law for the holding of referendums on state questions. Municipalities affected are responsible for the costs of the preparation of the ballots. Only electors who have property assessed for taxes within the boundaries of the district are eligible to vote in the referendum. Upon the completion of the referendum, the department shall publish the result of the referendum.

(3) The department shall pay all expenses for the issuance of the notice and the conduct of the hearings described in this section and shall supervise the conduct of the hearings. The referendum shall be held by the regular established election officials and any costs shall be borne by the affected municipalities. The department shall promulgate rules governing the conduct of the hearings.

(4) If the results of the referendum described in subsection (3) call for the formation of the proposed district, the department shall call a conference of all the officials of all of the municipalities within the boundaries of the proposed district and the department shall make every effort to encourage the municipalities to incorporate an authority for the purpose of constructing and operating a sewage disposal system or water supply system under the terms and authority vested in the municipalities pursuant to law. If after the expiration of 180 days from the holding of the conference or within an additional period as the department may consider necessary, the municipalities have not created an authority as provided in this part, the department shall make, file, and publish as provided in this part a determination creating the district as contained in the application and as approved by the referendum.

(5) Upon the making and filing of the determination as described in subsection (4), due notice shall be served and published and the department shall appoint 5 directors who, for the purpose of this part, are electors within the territory comprising the district and who shall comprise a temporary governing body of the district. The members of the temporary governing body shall hold office until the officers of the first permanent governing body have been elected and qualified.

(6) The district shall be a governmental subdivision of this state and a public body corporate when the appointed directors present to the secretary of state an application signed by them that sets forth all of the following:

(a) That a petition for the creation of the district was filed with the department pursuant to this part, that the proceedings specified in this part were taken, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body corporate under this part, and that the applicants are the temporary directors of the district.

(b) The name and official residence of each of the directors together with a certification of their appointment.

(c) The name which is proposed for the district.

(d) The location of the present office that has been selected for the district by the directors.

(7) The application shall be subscribed and sworn to by at least a majority of the directors before an officer

authorized by the laws of the state to administer oaths. The officer shall certify upon the application that he or she personally knows the directors and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a certified statement made by the department that a petition was filed, notice issued, and hearing held as required in this part; that the department determined that there is need in the interests of the public health and welfare for a district to function in the proposed territory; that the boundaries are defined; that notice was given and referendum held in the question of creation of the district; that the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of such a district; and that the department did determine that the operation of the proposed district is administratively practicable and feasible. In addition, the statement shall set forth the boundaries of the district.

(8) The secretary of state shall examine the application and statement and, if he or she finds that the name proposed for the district is not identical with any similar district of this state or so nearly identical as to lead to confusion or uncertainty, the secretary of state shall receive and file the application and statement and shall record them in an appropriate book of record in the office of the secretary of state. When the application and statement have been made, filed, and recorded as provided in this section, the district shall constitute a governmental subdivision of this state and a public body corporate. The secretary of state shall make and issue to the directors a certificate under the seal of the state of the due organization of the district and shall record such certificate with the application and statement.

(9) Petitions for including additional territory within a district may be filed with the department and the proceedings provided for in this part or petitions to organize a district shall be observed in the case of petitions for inclusion. The department shall prescribe the form for the petitions, which shall be as nearly as possible to the form prescribed in this part for petitions to organize a district. The petition shall be filed with the department and upon its receipt it shall be referred to the governing body of the district to be affected by the petition and if, after due consideration, the governing body determines against the inclusion of the additional territory, the petition shall be denied.

(10) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract, proceeding, or action of the district, the district shall be considered to be legally established in accordance with this part upon proof of the issuance of the certificate by the secretary of state. The certificate of the secretary of state shall be admissible in evidence in any suit, action, or proceeding described in this subsection and shall be proof of the filing and contents of the certificate.

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