

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 185

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO SPECIAL DISTRICTS; ENACTING A SECTION OF THE NMSA
1978 TO PROVIDE FOR THE CREATION OF THE LOWER RIO GRANDE PUBLIC
WATER WORKS AUTHORITY; PROVIDING FOR POWERS AND DUTIES OF THE
AUTHORITY.

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

Section 1. A new section of Chapter 73 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] LOWER RIO GRANDE PUBLIC WATER WORKS
AUTHORITY.--

A. The "Lower Rio Grande public water works
authority" is created. The authority is a political
subdivision of the state and shall be an independent public
body. The authority is composed of Berino mutual domestic
water consumers and mutual sewage works association, Desert

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1 Sands mutual domestic water consumers association, La Mesa
2 mutual domestic water consumers association, Mesquite mutual
3 domestic water consumers and mutual sewage works association
4 and Vado mutual domestic water consumers association, all
5 serving unincorporated communities within Dona Ana county. The
6 voting community membership of the five founding entities have
7 approved by resolution the development of the authority.

8 B. The authority may adopt rules and resolutions,
9 governance policies and procedures necessary to exercise the
10 powers conferred pursuant to this section.

11 C. All functions, appropriations, money, records
12 and equipment and all personal property and real property,
13 including water rights, easements, permits and infrastructure,
14 as well as all encumbrances, debts and liabilities pertaining
15 to or owned by the founding entities shall be transferred to
16 the authority.

17 D. The authority's service area shall consist of
18 the founding entities' existing place of use on file with and
19 approved by the state engineer and shall be filed in the public
20 records of Dona Ana county. An application shall be filed with
21 the state engineer to combine and commingle water rights and to
22 combine the existing entities' place of use into the
23 authority's service area. In the event that another entity
24 elects to merge into the authority, the merger shall include
25 the combining and commingling of water rights with the

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1 authority, and the authority's service area shall be amended to
2 include that entity's place of use and shall be filed with the
3 state engineer. The authority's initial service area and any
4 subsequent amendments to its service area shall be designated
5 in a plat filed in the public records of Dona Ana county.

6 E. The authority may provide for water and
7 wastewater services, road improvements for the protection of
8 the authority's infrastructure or renewable energy projects
9 that are integral to the operation and maintenance of the
10 authority's facilities or any combination or parts thereof.

11 F. The authority shall exercise all powers allowed
12 pursuant to law, including:

13 (1) regulating, supervising and operating the
14 authority's facilities;

15 (2) establishing rates and imposing
16 assessments, fees and charges and taking action necessary for
17 the enforcement thereof;

18 (3) assessing a standby charge for the
19 privilege of connection into the authority's service at some
20 date in the future if the property line is within three hundred
21 feet of the authority's service lines and the property line is
22 located within the boundaries of the authority. This section
23 applies to new connections after the enactment of this act;

24 (4) acquiring, from a willing seller only,
25 holding and using water rights in an amount necessary to meet

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1 its reasonable needs not to exceed forty years pursuant to
2 Section 72-1-9 NMSA 1978;

3 (5) shutting off, after notice, unauthorized
4 connections, illegal connections or a connection for which
5 charges are delinquent in payment;

6 (6) entering into contracts for services with
7 private entities, the state, municipalities, counties and the
8 federal government and other public bodies to further its
9 public purposes;

10 (7) entering into joint powers agreements with
11 other governmental entities;

12 (8) acquiring and disposing of real property,
13 personal property and rights of way;

14 (9) condemning property pursuant to the
15 Eminent Domain Code as the last resort and only for the
16 purposes of construction, maintenance and operations of the
17 authority's infrastructure;

18 (10) hiring and retaining agents, employees
19 and consultants, as needed;

20 (11) adopting and using a governmental seal;

21 (12) placing a lien on property for unpaid
22 assessments, charges and fees and enforcing the lien in a
23 manner pursuant to law;

24 (13) suing and being sued and being a party to
25 suits, actions and proceedings; and

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1 (14) having and exercising all rights and
2 powers necessary, incidental to or implied from the specific
3 powers granted in this section.

4 G. As a political subdivision of the state and a
5 member-owned community water system, the authority shall be
6 subject to the:

7 (1) applicable rules and regulations of the
8 department of environment, and in its discretion the department
9 may:

10 (a) conduct periodic reviews of the
11 operation of the authority;

12 (b) require the authority to submit
13 information to the department;

14 (c) upon department of environment
15 discretion or upon a petition of twenty-five percent of the
16 members of the authority, conduct an investigation as it deems
17 necessary to ensure the authority's compliance with all
18 applicable statutes, rules, regulations and reporting
19 requirements; and

20 (d) after a hearing, set and collect
21 rates and fees and use the same for the proper operation and
22 management of the authority;

23 (2) applicable rules and regulations of the
24 department of finance and administration, local government
25 division and budget and finance bureau;

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- 1 (3) Open Meetings Act;
- 2 (4) Inspection of Public Records Act;
- 3 (5) Audit Act;
- 4 (6) Procurement Code;
- 5 (7) Governmental Conduct Act;
- 6 (8) special election procedures pursuant to
- 7 Chapter 1, Article 24 NMSA 1978;
- 8 (9) Chapter 72 NMSA 1978; and
- 9 (10) applicable rules and regulations of the
- 10 state engineer.

11 H. The authority is a political subdivision of the
12 state and a member-owned community water system and shall not
13 be subject to the jurisdiction of the public regulation
14 commission or the provisions of the Public Utility Act.

15 I. The authority may issue utility system revenue
16 bonds and obligations for acquiring real and personal property
17 needed for the utility system and for extending, enlarging,
18 renovating, repairing or otherwise improving its facilities.
19 The authority may issue revenue anticipation notes with
20 maturities and terms to be approved by the board of directors
21 of the authority. The authority may pledge irrevocably net
22 revenues from the operation of the utility system for payment
23 of the principal, premiums and interest on the bonds. The
24 utility system revenue bonds:

- 25 (1) may have interest, appreciated principal

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1 value or any part thereof payable at intervals or at maturity
2 as the authority determines;

3 (2) may be subject to prior redemption at the
4 authority's option at such time and upon such terms and
5 conditions, with or without the payment of a premium, as
6 determined by the authority;

7 (3) may mature at any time not exceeding forty
8 years after the date of issuance;

9 (4) may be serial in form and maturity, may
10 consist of one bond payable at one time or in installments or
11 may be in another form as determined by the authority;

12 (5) shall be sold for cash at, above or below
13 par and at a price that results in a net effective interest
14 rate that does not exceed the maximum permitted by the Public
15 Securities Act; and

16 (6) may be sold at a public or negotiated
17 sale.

18 J. The authority's board of directors may adopt a
19 resolution declaring the necessity for the issuance of utility
20 system revenue bonds or other obligations and may authorize the
21 issuance of utility system revenue bonds or other obligations
22 by an affirmative vote of a majority of all members of the
23 authority's board of directors. Utility revenue bonds and the
24 resolution authorizing their issuance shall be subject to voter
25 approval with oversight from the department of finance and

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1 administration and the New Mexico finance authority. The bonds
2 authorized by the authority and their income shall be exempt
3 from taxation by the state and its political subdivisions.

4 K. Except for the purpose of refunding previous
5 utility system revenue bond issues, the authority shall not
6 sell utility system revenue bonds payable from pledged revenues
7 after the expiration of three years from the date of the
8 resolution authorizing their issuance. Any period of time
9 during which a utility system revenue bond is in litigation
10 shall not count toward the determination of the expiration date
11 of that issue.

12 L. The authority shall be governed by a board of
13 directors. The directors of the initial board shall consist of
14 five directors representing each of the founding entities. The
15 directors of the initial board shall serve until their
16 successors are elected. After the terms of the initial
17 directors are completed, the succeeding board of directors
18 shall be elected by districts from a minimum of five and a
19 maximum of seven electoral districts. Each director, at the
20 time of election, shall reside within the electoral district of
21 the authority from which that member is elected. The
22 boundaries and the number of electoral districts shall be
23 established by the initial board within two years of the
24 creation of the authority. The board may in its governance
25 document provide for redistricting upon any change in the

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1 authority's boundary. The elected board of directors shall
2 serve staggered terms to be established in the governance
3 document developed by the initial board. Elections shall be
4 conducted in accordance with the special election procedures
5 pursuant to Chapter 1, Article 24 NMSA 1978 and may be
6 conducted by the Dona Ana county elections bureau.

7 M. As used in this section, "public water works
8 authority" means a utility organized as a political subdivision
9 of the state for the purposes of constructing infrastructure
10 and furnishing water and wastewater services for domestic,
11 commercial or industrial uses, road improvements for the
12 protection of the authority's infrastructure and renewable
13 energy projects; and entering into agreements with other
14 entities for the provision of other services, including but not
15 limited to water conservation and reclamation, source water
16 protection, drainage, flood control, solid waste, planning and
17 zoning."