

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 413

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Doreen Y. Gallegos

AN ACT

RELATING TO SPECIAL DISTRICTS; AMENDING A SECTION OF THE NMSA 1978; PROVIDING THAT WATER RIGHTS MAY BE COMBINED OR COMMINGLED AMONG MERGING COMPONENTS OF THE LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY; PROVIDING FOR UTILITY CHARGES OF THE LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY AS A LIEN AGAINST PROPERTY SERVED.

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

**SECTION 1.** Section 73-26-1 NMSA 1978 (being Laws 2009, Chapter 100, Section 1) is amended to read:

"73-26-1. 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

.199393.1

underscoring material = new  
~~[bracketed material] = delete~~

underscoring material = new  
~~[bracketed material]~~ = delete

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

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

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

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

.199393.1

underscoring material = new  
~~[bracketed material] = delete~~

1 elects to merge into the authority, the merger [~~shall~~] may  
2 include the combining and commingling of water rights with the  
3 authority, and the authority's service area shall be amended to  
4 include that entity's place of use and shall be filed with the  
5 state engineer. The authority's initial service area and any  
6 subsequent amendments to its service area shall be designated  
7 in a plat filed in the public records of Dona Ana county.

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

13 F. The authority shall exercise all powers allowed  
14 pursuant to law, including:

15 (1) regulating, supervising and operating the  
16 authority's facilities;

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

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

.199393.1

underscored material = new  
[bracketed material] = delete

1 (4) acquiring, from a willing seller only,  
2 holding and using water rights in an amount necessary to meet  
3 its reasonable needs not to exceed forty years pursuant to  
4 Section 72-1-9 NMSA 1978;

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

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

12 (7) entering into joint powers agreements with  
13 other governmental entities;

14 (8) acquiring and disposing of real property,  
15 personal property and rights of way;

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

20 (10) hiring and retaining agents, employees  
21 and consultants, as needed;

22 (11) adopting and using a governmental seal;

23 (12) placing a lien on property for unpaid  
24 assessments, charges and fees and enforcing the lien in a  
25 manner pursuant to ~~law~~ this section;

.199393.1

1 (13) suing and being sued and being a party to  
2 suits, actions and proceedings; and

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

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

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

12 (a) conduct periodic reviews of the  
13 operation of the authority;

14 (b) require the authority to submit  
15 information to the department;

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

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

25 (2) applicable rules and regulations of the

underscoring material = new  
~~[bracketed material]~~ = delete

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

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

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

.199393.1

underscoring material = new  
~~[bracketed material] = delete~~

1 utility system revenue bonds:

2 (1) may have interest, appreciated principal  
3 value or any part thereof payable at intervals or at maturity  
4 as the authority determines;

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

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

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

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

18 (6) may be sold at a public or negotiated  
19 sale.

20 J. The authority's board of directors may adopt a  
21 resolution declaring the necessity for the issuance of utility  
22 system revenue bonds or other obligations and may authorize the  
23 issuance of utility system revenue bonds or other obligations  
24 by an affirmative vote of a majority of all members of the  
25 authority's board of directors. Utility revenue bonds and the

.199393.1

underscored material = new  
~~[bracketed material] = delete~~

1 resolution authorizing their issuance shall be subject to voter  
2 approval with oversight from the department of finance and  
3 administration and the New Mexico finance authority. The bonds  
4 authorized by the authority and their income shall be exempt  
5 from taxation by the state and its political subdivisions.

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

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

.199393.1



underscored material = new  
[bracketed material] = delete

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

9 M. If the authority places a lien on property for  
10 nonpayment of money owed, the authority shall file in the  
11 office of the county clerk a notice of lien, which shall  
12 include:

13 (1) identification of the outstanding debt to  
14 the authority;

15 (2) the fact that a lien is established;

16 (3) the general purpose of the lien;

17 (4) the name of the owner of the property  
18 against which the lien is established as determined from the  
19 records of the county assessor;

20 (5) a description of the property against  
21 which the lien is established;

22 (6) the amount of the lien; and

23 (7) if the lien is for more than one period of  
24 time, the date for which the lien is established.

25 N. A lien for multiple charges or assessments on a

.199393.1

underscored material = new  
[bracketed material] = delete

1 property owner may be included in the same notice of lien, and  
2 it shall not be necessary to file separate liens against the  
3 separate properties. The lien shall be attested in the name of  
4 the authority. The principal amount of any lien imposed for a  
5 charge or assessment shall bear interest at the rate of twelve  
6 percent per year from the date of filing the notice of lien  
7 unless otherwise provided by law.

8           0. After the filing of the notice of lien in the  
9 office of the county clerk, the authority shall have a lien  
10 upon the property described in the notice of lien. The filing  
11 of the notice of lien shall be notice to all the world of the  
12 existence of the lien and of the contents of the notice of  
13 lien. No such lien shall affect the title or rights to or in  
14 any real estate, of any purchaser, mortgagee in good faith or  
15 judgment lien creditor, without knowledge of the existence of  
16 such lien, unless the notice of lien is filed in accordance  
17 with this section in the office of the county clerk of the  
18 county in which the real estate is situated. All authority  
19 liens shall be first and prior liens on the property subject  
20 only to the lien of general state and county taxes. The  
21 authority may release a lien against any specific property by:

22                   (1) entering and signing a receipt of payment  
23 upon the notice of lien filed in the office of the county  
24 clerk; or

25                   (2) issuing a separate receipt that recites

.199393.1

underscored material = new  
[bracketed material] = delete

1 that payment of the lien with any accrued interest and penalty  
2 has been made.

3 P. The authority may, in a single suit, foreclose  
4 the liens against all persons named in the notice of liens or  
5 against the property if the owners are unknown. The complaint  
6 filed by the authority in the third judicial district court  
7 shall:

8 (1) expressly name each defendant, if known;

9 (2) describe the property against which the  
10 lien is established; and

11 (3) set forth the amount of the lien.

12 Q. The judgment or decree rendered in said cause  
13 shall be several against the named defendants and against the  
14 several properties for the amounts decreed to be due by each.  
15 A lien against real estate may be foreclosed in the same manner  
16 that mortgages or other liens against real estate are  
17 foreclosed with like rights of redemption. At the trial of any  
18 case foreclosing any lien, the recitals of the lien or other  
19 evidence of indebtedness shall be received in evidence as prima  
20 facie true. In the foreclosure of any lien created by the  
21 authority, reasonable attorney fees shall be taxed by the court  
22 as part of the costs.

23 R. The authority shall prepare and sign a notice of  
24 foreclosure, which shall also bear the signature and mailing  
25 address of an attorney representing the authority. The

.199393.1

underscored material = new  
[bracketed material] = delete

1 proceeds of the sale of the property by the authority pursuant  
2 to a foreclosure sale on a lien shall be applied as follows:

3 (1) first, to the payment of costs in giving  
4 notice of the sale and of conducting the sale;

5 (2) second, to the indebtedness claimed under  
6 the lien and thence to ad valorem taxes and other special  
7 assessments having a lien of the property that are coequal with  
8 the lien; and

9 (3) third, after all such costs, liens,  
10 assessments and taxes are paid, to the former owner, mortgage  
11 holder or other parties having an interest in the tract or  
12 parcel, upon such person providing satisfactory proof to the  
13 court of such interest and upon approval of the court.

14 ~~[M-]~~ S. As used in this section, "public water  
15 works authority" means a utility organized as a political  
16 subdivision of the state for the purposes of constructing  
17 infrastructure and furnishing water and wastewater services for  
18 domestic, commercial or industrial uses, road improvements for  
19 the protection of the authority's infrastructure and renewable  
20 energy projects; and entering into agreements with other  
21 entities for the provision of other services, including but not  
22 limited to water conservation and reclamation, source water  
23 protection, drainage, flood control, solid waste, planning and  
24 zoning."