

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 550

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

AN ACT

RELATING TO SPECIAL DISTRICTS; ENACTING THE REGIONAL WATER
UTILITY AUTHORITY ACT; PROVIDING FOR THE CREATION OF
AUTHORITIES; PROVIDING FOR A BOARD OF DIRECTORS; AUTHORIZING
JOINT POWERS AGREEMENTS; PROVIDING FOR TRANSFER OF ASSETS AND
LIABILITIES; ALLOWING FOR FEES, CHARGES, RATES AND TOLLS;
AUTHORIZING THE ISSUANCE OF REVENUE BONDS; PROVIDING FOR LIENS
AND FORECLOSURES; ALLOWING REGULATION OF WATER USE AND DOMESTIC
WELLS; GRANTING EMINENT DOMAIN POWER AND THE POWER TO OWN,
IMPROVE AND DISPOSE OF PROPERTY; GRANTING EXCLUSIVE RIGHT TO
PROVIDE SERVICE; REQUIRING MANDATORY HOOK-UPS TO AUTHORITY
FACILITIES WITHIN THE SERVICE AREA OF THE AUTHORITY;
DETERMINING PUBLIC REGULATION COMMISSION JURISDICTION;
PROVIDING FOR THE INVESTIGATION OF VIOLATIONS OF THE REGIONAL
WATER UTILITY AUTHORITY ACT; PRESCRIBING PENALTIES.

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

2 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
3 cited as the "Regional Water Utility Authority Act".

4 SECTION 2. [NEW MATERIAL] PURPOSE OF REGIONAL WATER
5 UTILITY AUTHORITY.--A regional water utility authority may be
6 created for the purposes of:

7 A. purchasing, acquiring, establishing or
8 constructing waterworks to supply water for domestic,
9 commercial and industrial purposes by any available means to
10 persons within and without the boundaries of the authority;

11 B. purchasing, acquiring, establishing or
12 constructing wastewater systems for the treatment and disposal
13 of sewage or for the management of decentralized or on-site
14 wastewater disposal systems;

15 C. planning, developing, managing, maintaining or
16 coordinating regional water and wastewater facilities;

17 D. infrastructure development of renewable energy
18 projects that are integral to the operation and maintenance of
19 the authority's facilities; and

20 E. implementing storm water management strategies
21 to control flooding and erosion and to control water pollution.

22 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
23 Regional Water Utility Authority Act:

24 A. "authority" means a regional water utility
25 authority that is established pursuant to the Regional Water

1 Utility Authority Act and is incorporated pursuant to the laws
2 of New Mexico;

3 B. "board" means the board of directors of an
4 authority;

5 C. "director" means a member of the board;

6 D. "entity" means a political subdivision,
7 corporate entity or tribal government;

8 E. "member" means a natural person who owns
9 property within the service area and who is provided services
10 by the authority and is responsible for paying for those
11 services;

12 F. "qualified elector" means a registered voter who
13 lives within the service area of the authority and is qualified
14 to vote;

15 G. "regional entity" means an entity that has
16 resulted from the merger of two or more entities, the
17 acquisition of an entity by one or more entities or an entity
18 created by a joint powers agreement; and

19 H. "service area" means a legal description of the
20 boundaries of the authority, with such certainty as to enable a
21 property owner to determine whether or not the owner's property
22 is within the authority's boundary.

23 SECTION 4. [NEW MATERIAL] REGIONAL WATER UTILITY
24 AUTHORITY--CREATION--ARTICLES OF INCORPORATION--BYLAWS--
25 OFFICERS--MEMBERS.--

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1 A. A regional entity or two or more entities may
2 organize a "regional water utility authority" as provided in
3 the Regional Water Utility Authority Act.

4 B. Each incorporating entity shall individually
5 adopt a resolution signifying its intention to organize an
6 authority. The resolution shall not be adopted until after a
7 public hearing has been held. Notice of the public hearing,
8 including the date, time and place of the hearing and the
9 resolution proposed to be adopted, shall be published in a
10 newspaper of general circulation within the service area of the
11 proposed authority at least once thirty days prior to the
12 hearing date and mailed at least thirty days prior to the
13 hearing date to all persons who have requested advance notice
14 of hearing. The public hearing notice shall also be published
15 prominently on the entity's official web site, if there is one.

16 C. The resolution shall state the:
17 (1) name and purpose of the authority;
18 (2) service area of the authority;
19 (3) composition of the authority, whether a
20 membership or qualified elector organization; and
21 (4) lead entity of the authority to act as
22 registered agent.

23 D. Upon adoption of the resolution, the
24 incorporating entities shall draw up articles of incorporation
25 and bylaws and file them with the secretary of state. The

1 articles of incorporation shall set forth:

2 (1) the name of the authority;

3 (2) a statement that the authority is formed
4 pursuant to the Regional Water Utility Authority Act;

5 (3) the purpose of the authority;

6 (4) copies of the adopted resolutions and
7 proof of publication of the notices required pursuant to this
8 section;

9 (5) the names of the incorporating entities,
10 together with the names and addresses of their officers;

11 (6) an accurate map or plat that shows the
12 boundary of the service area proposed to be incorporated;

13 (7) the names and officers of the registered
14 agent and a statement executed by an authorized officer of the
15 registered agent in which the officer acknowledges the entity's
16 acceptance of the appointment as registered agent by the filing
17 as the authority's registered agent; and

18 (8) a copy of the authority's bylaws.

19 E. The bylaws of the authority shall provide for:

20 (1) whether the organization is a membership
21 organization, made up of members who are being served by the
22 authority, or a qualified elector organization, made up of
23 qualified electors of the service area region who may
24 participate in authority elections;

25 (2) if a membership organization, how

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1 membership and land ownership are determined;

2 (3) the establishment and organization of the
3 board;

4 (4) the manner of the appointment or election,
5 term of service and qualifications, if any, of the directors
6 and the procedure for filling vacancies;

7 (5) officers of the authority, the manner of
8 their appointment or election and their duties;

9 (6) voting requirements for action by the
10 board;

11 (7) a merger plan for the transfer,
12 disposition or assumption of all assets and liabilities to the
13 authority;

14 (8) if a membership organization, how persons
15 who are not members and who do not live within the service area
16 of the authority may petition for water or wastewater services
17 to be provided by the authority; and

18 (9) any other matter required by the Regional
19 Water Utility Authority Act or the board to be included.

20 F. The bylaws of the authority may be amended
21 during a regular meeting of the board by a vote of the majority
22 of the directors. The amended bylaws shall be filed, recorded
23 and certified by the secretary of state. The amended bylaws
24 shall be effective upon filing with the secretary of state,
25 unless a later date is otherwise provided in the bylaws, and

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1 supersede all other bylaws.

2 G. When all required information has been submitted
3 and all proper fees and charges have been paid, the secretary
4 of state shall issue a certificate of incorporation to which
5 shall be attached a copy of the approved articles.

6 H. Upon the issuance of a certificate of
7 incorporation by the secretary of state, the corporate
8 existence of the authority shall begin. The certificate of
9 incorporation shall be conclusive evidence of the fact that the
10 authority has been incorporated, but proceedings may be
11 instituted by the state to dissolve an authority that was
12 formed without substantial compliance with the provisions of
13 this section.

14 SECTION 5. [NEW MATERIAL] ENTITIES MERGING AFTER
15 INCORPORATION.--If an entity chooses to merge into an authority
16 after the authority has been incorporated, the entity shall
17 adopt a resolution signifying its intention to merge into the
18 authority and submit the resolution to the board. The
19 resolution shall be adopted as provided in Section 4 of the
20 Regional Water Utility Authority Act. The board shall vote on
21 accepting the entity, and, if the motion carries, the authority
22 shall update its articles of incorporation and file the change
23 with the secretary of state.

24 SECTION 6. [NEW MATERIAL] REGIONAL AUTHORITIES CREATED BY
25 JOINT POWERS AGREEMENTS--REORGANIZATION.--The Regional Water

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1 Utility Authority Act does not apply to or affect a regional
2 authority established pursuant to the Joint Powers Agreements
3 Act; provided that an authority created pursuant to the Joint
4 Powers Agreements Act may reorganize as an authority under the
5 Regional Water Utility Authority Act by affirmative written
6 resolution of its board and by filing a copy of its joint
7 powers agreement with the secretary of state, and such actions
8 shall be deemed sufficient to satisfy the requirements for
9 creation and organization of the authority pursuant to the
10 Regional Water Utility Authority Act. The joint powers
11 agreement shall constitute articles of incorporation and bylaws
12 of the reorganized authority. Terms of the joint powers
13 agreement for establishment and organization of the board and
14 setting forth the powers and duties of the authority and its
15 designated service areas shall be recognized as terms of the
16 articles of incorporation and bylaws of the reorganized
17 authority. The board of the reorganized authority may amend
18 its articles of incorporation or bylaws by affirmative
19 resolution of the board and by filing the amended articles or
20 bylaws with the secretary of state. As provided in Paragraph
21 (1) of Subsection A of Section 7 of the Regional Water Utility
22 Authority Act, in addition to other powers granted under that
23 act, the reorganized authority shall have perpetual existence.

24 SECTION 7. [NEW MATERIAL] AUTHORITY--POWERS AND DUTIES.--

25 A. An authority is a body politic and corporate and

1 a political subdivision of the state, subject to all statutory
2 requirements of the state. In addition to other powers granted
3 to the authority pursuant to the Regional Water Utility
4 Authority Act, the authority may:

5 (1) have perpetual existence;

6 (2) sue and be sued and be a party to suits,
7 actions and proceedings;

8 (3) borrow money, receive grants, issue bonds
9 in accordance with the provisions of that act and pledge or
10 otherwise encumber the revenues or receipts of the authority or
11 mortgage the property of the authority as security for any of
12 the obligations of the authority;

13 (4) establish rates and impose assessments,
14 fees and charges, and take action necessary for the enforcement
15 of those rates, assessments, fees and charges, for the delivery
16 of and collection of water and wastewater services or for other
17 services or facilities operated or made available by the
18 authority in accordance with a rate analysis compliant with the
19 authority's financial plan and asset management plan that
20 provides for reserve funds for future improvements and
21 replacement of the authority's infrastructure;

22 (5) assess a standby charge for the privilege
23 of connection into the authority's service at some date in the
24 future if the property line is within four hundred feet of the
25 authority's service lines and the property line is located

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1 within the service area of the authority; provided that this
2 paragraph applies to new connections after the effective date
3 of the Regional Water Utility Authority Act;

4 (6) acquire from a willing seller and hold
5 water rights pursuant to a permit issued in accordance with
6 Section 72-1-9 NMSA 1978;

7 (7) shut off, after notice, unauthorized and
8 illegal connections or connections for which charges, fees,
9 assessments or other charges are delinquent, and file suit in a
10 court of competent jurisdiction to recover costs associated
11 with an unauthorized, illegal or delinquent connection,
12 including the cost of water delivered, charges for connection
13 and disconnection, damages and attorney fees;

14 (8) acquire and dispose of real property,
15 personal property and rights of way;

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

20 (10) place a lien on property for unpaid
21 assessments, charges and fees and enforce the lien in the
22 manner provided in Section 13 of the Regional Water Utility
23 Authority Act until paid;

24 (11) participate in regional water planning;

25 (12) wherever applicable, promulgate an on-

1 site wastewater management plan;

2 (13) construct, establish and maintain
3 facilities across or along any public street or highway and
4 through any vacant public lands and construct works and
5 establish and maintain facilities across any stream of water or
6 watercourse, all in accordance with applicable state and
7 federal permitting authority;

8 (14) compel the connection of a homeowner's
9 water or wastewater system to the authority's water or
10 wastewater system as provided in Section 11 of the Regional
11 Water Utility Authority Act;

12 (15) compel the connection of any new
13 development that lies partially or wholly within the service
14 area of the authority to the authority's water or wastewater
15 system pursuant to the authority's existing line extension
16 policy;

17 (16) prohibit the owners of inhabited property
18 within the service area of the authority who are connected to
19 the authority to disconnect from the authority's water or
20 wastewater system, as applicable; and

21 (17) have and exercise all rights and powers
22 necessary or incidental to or implied from the specific powers
23 granted in this section; provided that such specific powers
24 shall not be considered as a limitation upon any power
25 necessary or appropriate to carry out the purposes and intent

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1 of the Regional Water Utility Authority Act.

2 B. All powers, privileges and duties vested in or
3 imposed upon an authority shall be exercised and performed by
4 the board.

5 SECTION 8. [NEW MATERIAL] SERVICE AREA--EXCLUSIVE RIGHT
6 TO PROVIDE SERVICE.--

7 A. An authority has the exclusive right to provide
8 water and wastewater services within the service area served by
9 that authority; provided that:

10 (1) a person providing water or wastewater
11 services to customers within the authority's service area as of
12 the date the authority is incorporated may continue to serve
13 those customers who were served as of that date; and

14 (2) an extension of water or wastewater
15 service by a person described in Paragraph (1) of this
16 subsection that is planned and fully funded as of the date the
17 authority is incorporated and is completed within eighteen
18 months of that date shall be excluded from the authority's
19 service area.

20 B. The authority's service area and place of use
21 documents, as approved by the state engineer, shall be filed
22 with the office of the state engineer and with the county clerk
23 in each of the counties within the authority's service area.

24 C. The initial authority's service area and any
25 subsequent additions or subtractions of territory shall be

1 designated in a plat filed with the state engineer and the
 2 county clerk in each of the counties within the authority's
 3 service area.

4 D. The authority's service area shall consist of
 5 the founding entities' existing place of use approved by and on
 6 file with the state engineer and shall be filed in the public
 7 records of the county clerks of the counties of the founding
 8 entities. An application shall be filed with the state
 9 engineer to combine and commingle water rights and to combine
 10 the existing entities' place of use into the authority's
 11 service area. In the event that another entity elects to merge
 12 into the authority, the authority's service area shall be
 13 amended to include that entity's place of use and shall be
 14 filed with the state engineer. The authority's initial service
 15 area and any subsequent amendments to its service area shall be
 16 designated in a plat filed in the public records of the county
 17 clerks of counties of the founding entities. If the service
 18 area of the merging entity is contiguous with the service area
 19 of the authority, the merger shall include the combining and
 20 commingling of water rights with the authority.

21 SECTION 9. [NEW MATERIAL] ACCEPTANCE OF ASSETS AND
 22 LIABILITIES OF EXISTING WATER SERVICE PROVIDERS--ACQUISITION OF
 23 WATER RIGHTS.--

24 A. An authority may accept a transfer of water or
 25 wastewater service assets and liabilities of an entity that

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1 joins the authority upon the request, and following the legal
2 dissolution, of that entity, subject to any other statutory
3 requirements for dissolution and transfer.

4 B. Upon the transfer of the assets and liabilities
5 to the authority, the area within the boundaries of the
6 authority serviced by the dissolved entity shall become part of
7 the authority's service area.

8 C. When a water right is included in the assets and
9 liabilities of an entity that are transferred to the authority,
10 or upon the acquisition of a water right by the authority, the
11 authority shall file a change of ownership form with the state
12 engineer.

13 SECTION 10. [NEW MATERIAL] AUTHORITY MAY REGULATE WATER
14 USE AND DOMESTIC WELLS.--

15 A. To prevent waste and to conserve the supply of
16 water, the board may by resolution regulate and restrict the
17 use of the authority's water within the authority's service
18 area.

19 B. The authority has jurisdiction over new domestic
20 water wells within the authority's service area.

21 C. The authority may, by resolution, restrict the
22 drilling of new domestic water wells, except for property zoned
23 agricultural, if the property line of the applicant is within
24 three hundred feet of the authority's water distribution lines.

25 D. The authority may deny authorization for a new

1 domestic water well permit if the total cost of extending the
2 authority's water distribution line, meter and hook-up is at or
3 less than the total cost of drilling a new domestic well and
4 installing a pump and meter.

5 E. If the authority fails to authorize the drilling
6 of a new domestic water well, it shall provide domestic water
7 service to the property within ninety days pursuant to the
8 authority's customary charges and rate schedules.

9 F. The authority shall file with the state engineer
10 its resolution restricting the drilling of new domestic water
11 wells.

12 G. An applicant for a domestic water well located
13 within the service area of an authority with a new domestic
14 water well drilling policy shall obtain a permit to drill the
15 well from the authority subsequent to the state engineer's
16 approval.

17 H. The authority shall act upon a new domestic
18 water well permit application within thirty days of receipt of
19 the request.

20 I. The authority shall notify the state engineer of
21 all permit denials for domestic well authorization.

22 J. An applicant may appeal the decision of the
23 authority to the district court in the judicial district in
24 which the authority is located.

25 K. Nothing in this section shall limit the

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1 authority of the state engineer to administer water rights as
2 provided by law.

3 L. The state engineer shall not be liable for
4 actions taken in accordance with the authority's resolution
5 authorizing restriction of domestic well drilling within the
6 service area of the authority.

7 M. For the purpose of preserving and protecting
8 water resources and to provide an assured water supply for the
9 community, the authority may require within its service area:

10 (1) site development standards to conserve
11 water and minimize water loss;

12 (2) low water use landscaping and plant
13 materials;

14 (3) nonagricultural residential and commercial
15 water use limitations; or

16 (4) recycling and reuse of water.

17 N. The provisions of this section shall be
18 implemented consistent with state engineer rules.

19 SECTION 11. [NEW MATERIAL] HEALTH AND SAFETY--ON-SITE
20 WASTEWATER TREATMENT SYSTEMS--COMPLIANCE WITH RULES.--

21 A. For health and sanitary purposes, the board has
22 the power to compel the owners of inhabited property within the
23 service area of the authority to connect their property with
24 the water or wastewater system of the authority. Upon failure
25 to connect within ninety days after written notice by the

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1 board, the board may cause the connection to be made and a lien
 2 to be filed against the property for the expense incurred in
 3 making the connection; provided, however, that no owner shall
 4 be compelled to connect the owner's property with such system
 5 unless a service line is brought by the authority to a point
 6 within four hundred feet of the nearest lot line.

7 B. For health and sanitary purposes, the board has
 8 the power to compel compliance with its rules and standards
 9 that are no less stringent than those adopted by the department
 10 of environment, relating to design, installation, maintenance,
 11 repair and removal of on-site wastewater treatment systems.

12 SECTION 12. [NEW MATERIAL] OVERSIGHT BY STATE AGENCIES.--

13 A. In addition to all statutory requirements of the
 14 state, the authority shall be specifically subject to the:

15 (1) applicable rules of the department of
 16 environment, and, in its discretion, the department may:

17 (a) conduct periodic reviews of the
 18 operations of the authority;

19 (b) require the authority to submit
 20 information to the department; and

21 (c) upon the department's discretion or
 22 upon a petition of twenty-five percent of the customers of the
 23 authority, conduct an investigation as it deems necessary to
 24 ensure the authority's compliance with all applicable statutes,
 25 rules and reporting requirements; or

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1 (2) applicable rules of the department of
2 finance and administration or the local government division of
3 that department.

4 B. Whenever the department of environment or the
5 department of finance and administration determines a violation
6 of its respective rules, it may:

7 (1) issue a compliance order requiring
8 compliance immediately or within a specific time period, or
9 both; or

10 (2) commence a civil action in district court
11 for appropriate relief, including injunctive relief.

12 C. A compliance order shall state with reasonable
13 specificity the nature of the violation.

14 D. If the authority fails to take corrective action
15 within the time specified in the compliance order, the
16 department may assess a civil penalty for each day of continued
17 noncompliance with the compliance order, for an amount
18 determined by the department.

19 E. A compliance order issued by a department
20 pursuant to this section shall become final no later than
21 thirty days after the compliance order is served unless
22 otherwise specified or unless an authority named in the
23 compliance order submits a written request to the department
24 for public hearing within ninety days after receipt of a
25 request.

1 F. The department may appoint an independent
2 hearing officer to preside over a public hearing. The hearing
3 officer shall:

4 (1) make and preserve a complete record of the
5 proceedings; and

6 (2) forward to the department a report that
7 includes recommendations, if recommendations are requested by
8 the department.

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

13 H. In connection with any proceeding pursuant to
14 this section, the department may:

15 (1) adopt rules for discovery and hearing
16 procedures; and

17 (2) issue subpoenas for the attendance and
18 testimony of witnesses and for relevant papers, books and
19 documents.

20 I. Penalties collected pursuant to this section
21 shall be deposited to the credit of the current school fund.

22 J. Every authority is subject to the provisions of
23 the:

24 (1) Open Meetings Act;

25 (2) Inspection of Public Records Act;

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- 1 (3) Audit Act;
- 2 (4) Procurement Code;
- 3 (5) Governmental Conduct Act; and
- 4 (6) applicable state engineer rules.

5 SECTION 13. [NEW MATERIAL] LIENS AND FORECLOSURE.--

6 A. All rates, tolls or charges constitute a
7 perpetual lien on and against the property served, and any such
8 lien may be foreclosed in the same manner as provided by the
9 laws of New Mexico for the foreclosure of real estate mortgages
10 and shall not be subject to any limitations period, statutory
11 or otherwise. The authority shall enforce liens on property as
12 provided in this section.

13 B. If the authority places a lien on property for
14 nonpayment of money owed, the authority shall file in the
15 office of the county clerk in the county in which the land is
16 situate a notice of lien that shall include:

- 17 (1) identification of the outstanding debt to
18 the authority;
- 19 (2) the fact that a lien is established;
- 20 (3) the general purpose of the lien;
- 21 (4) the name of the owner of the property
22 against which the lien is established as determined from the
23 records of the county assessor;
- 24 (5) a description of the property against
25 which the lien is established;

1 (6) the amount of the lien; and

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

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

12 D. After the filing of the notice of lien in the
13 office of the county clerk of the county in which the property
14 is situate, the authority shall have a lien upon the property
15 described in the notice of lien. The filing of the notice of
16 lien shall be notice to all the world of the existence of the
17 lien and of the contents of the notice of lien. The lien shall
18 not affect the title or rights to or in any real estate, of any
19 purchaser, mortgagee in good faith or judgment lien creditor
20 without knowledge of the existence of such lien, unless the
21 notice of lien is filed in accordance with this section in the
22 office of the county clerk.

23 E. All authority liens shall be first and prior
24 liens on the property subject only to the lien of general state
25 and county taxes. The authority may release a lien against any

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1 specific property by:

2 (1) entering and signing a receipt of payment
3 upon the notice of lien filed in the office of the county
4 clerk; or

5 (2) issuing a separate receipt that recites
6 that payment of the lien with any accrued interest and penalty
7 has been made.

8 F. The authority may, in a single suit, foreclose
9 the liens against all persons named in the notice of liens or
10 against the property if the owners are unknown. The complaint
11 filed by the authority in the applicable judicial district
12 court shall:

- 13 (1) expressly name each defendant, if known;
14 (2) describe the property against which the
15 lien is established; and
16 (3) set forth the amount of the lien.

17 G. The judgment or decree rendered in the cause
18 shall be against the named defendants and against the several
19 properties for the amounts decreed to be due by each.

20 H. A lien against real estate may be foreclosed in
21 the same manner that mortgages or other liens against real
22 estate are foreclosed with like rights of redemption. At the
23 trial of a case foreclosing a lien, the recitals of the lien or
24 other evidence of indebtedness shall be received in evidence as
25 prima facie true. In the foreclosure of a lien created by the

1 authority, reasonable attorney fees may be taxed by the court
2 as part of the costs in favor of the prevailing party.

3 I. The authority shall prepare and sign a notice of
4 foreclosure, which shall also bear the signature and mailing
5 address of an attorney representing the authority. The
6 proceeds of the sale of the property by the authority pursuant
7 to a foreclosure sale on a lien shall be applied as follows:

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

10 (2) second, to the indebtedness claimed under
11 the lien and thence to ad valorem taxes and other special
12 assessments having a lien of the property that are coequal with
13 the lien; and

14 (3) third, after all such costs, liens,
15 assessments and taxes are paid, to the former owner, mortgage
16 holder or other parties having an interest in the tract or
17 parcel, upon such person providing satisfactory proof to the
18 court of such interest and upon approval of the court.

19 SECTION 14. [NEW MATERIAL] REVENUE BONDS--AUTHORITY TO
20 ISSUE--PLEDGE OF REVENUES--LIMITATION ON TIME OF ISSUANCE.--

21 A. Revenue bonds may be issued by the authority for
22 acquiring real and personal property needed for an authority
23 project, including the purchase of water rights; for extending,
24 enlarging, bettering, repairing or otherwise improving a water
25 or wastewater project; or for any combination of those

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1 purposes. The authority may pledge irrevocably any or all of
2 the net revenues from the operation of the water or wastewater
3 system for payment of the interest on and principal of the
4 revenue bonds.

5 B. Except for the purpose of refunding previous
6 revenue bond issues, the authority shall not sell revenue bonds
7 payable from pledged revenues after the expiration of two years
8 from the date of the resolution authorizing the issuance of the
9 bonds. However, any period of time during which a particular
10 revenue bond issue is in litigation shall not be counted in
11 determining the expiration date of that issue.

12 C. The authority shall not impair the rights of any
13 holders of bonds or other obligations payable from the net
14 revenues of the water or wastewater system previously issued or
15 incurred by the authority.

16 D. If required by the terms, covenants and
17 provisions of revenue bonds or other obligations previously
18 issued by the authority, all additional bonds or other
19 obligations issued or incurred by the authority pursuant to the
20 Regional Water Utility Authority Act shall contain any required
21 terms, covenants or provisions required to avoid impairment of
22 the previously issued or incurred bonds or other obligations.

23 SECTION 15. [NEW MATERIAL] REVENUE BONDS--TERMS.--Revenue
24 bonds:

25 A. may have interest, appreciated principal value

1 or any part of interest and appreciated principal value payable
 2 at intervals or at maturity as may be determined by the
 3 authority;

4 B. may be subject to prior redemption at the
 5 authority's option at such time or times and upon such terms
 6 and conditions with or without the payment of such premium or
 7 premiums as may be determined by the authority;

8 C. may mature at any time or times not exceeding
 9 forty years after the date of issuance;

10 D. may be serial in form and maturity or may
 11 consist of one bond payable at one time or in installments or
 12 may be in such other form as may be determined by the
 13 authority;

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

18 F. may be sold at public or negotiated sale.

19 SECTION 16. [NEW MATERIAL] EXEMPTION FROM TAXATION.--The
 20 bonds authorized by the Regional Water Utility Authority Act
 21 and the income from the bonds shall be exempt from all taxation
 22 by the state or any political subdivision of the state.

23 SECTION 17. [NEW MATERIAL] RESOLUTION AUTHORIZING REVENUE
 24 BONDS.--

25 A. At a regular or special meeting called for the

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1 purpose of issuing revenue bonds, the authority may adopt a
2 resolution that:

3 (1) declares the necessity for issuing revenue
4 bonds; and

5 (2) authorizes the issuance of revenue bonds
6 by an affirmative vote of two-thirds of all directors.

7 B. Revenue bonds and the resolution authorizing
8 their issuance shall be subject to approval by the state board
9 of finance.

10 SECTION 18. [NEW MATERIAL] REVENUE BONDS NOT GENERAL
11 OBLIGATIONS--AUTHENTICATION.--

12 A. Revenue bonds or refunding revenue bonds issued
13 as authorized in the Regional Water Utility Authority Act are:

14 (1) not general obligations of the state or a
15 political subdivision of the state; and

16 (2) collectible only from the pledged revenue
17 of the services provided by the authority, and each bond shall
18 state that it is payable solely from the pledged revenue of the
19 services provided by the authority and that the bondholders may
20 not look to any other fund of the state or political
21 subdivision of the state for the payment of the interest and
22 principal of the bond.

23 B. The bonds shall be executed by the chair of the
24 board and may be authenticated by the secretary of the board or
25 any public or private transfer agent or registrar or its

1 successor, which shall be named or otherwise designated by the
 2 board. The bonds may be executed as provided under the Uniform
 3 Facsimile Signature of Public Officials Act.

4 SECTION 19. [NEW MATERIAL] REVENUE BONDS--MANDATORY RATES
 5 FOR THE WATER OR WASTEWATER SYSTEM--MANDAMUS--IMPAIRMENT OF
 6 PAYMENT.--

7 A. The authority shall establish rates for water or
 8 wastewater services rendered by the authority to provide
 9 revenue sufficient to meet the following requirements, and such
 10 rates shall remain in effect until the bond issue is
 11 liquidated. Revenue shall be sufficient to:

12 (1) pay all reasonable expenses of operation
 13 of the water or wastewater system;

14 (2) pay all interest and principal on the
 15 water or wastewater system revenue bonds as they come due; and

16 (3) provide a sinking fund adequate to
 17 discharge the revenue bonds as they mature.

18 B. In the event the authority fails or refuses to
 19 establish rates for the water or wastewater system as required
 20 in this section, any bondholder may apply to the district court
 21 for a mandatory order requiring the authority to establish
 22 rates that will provide revenues adequate to meet the
 23 requirements of this section.

24 C. A law that authorizes the pledge of any or all
 25 of the pledged water or wastewater system revenue to the

underscored material = new
 [bracketed material] = delete

1 payment of revenue bonds issued pursuant to the Regional Water
2 Utility Authority Act or that affects the pledged revenue of
3 the water or wastewater system, or any law supplemental to or
4 otherwise appertaining to that act, shall not be repealed or
5 amended or otherwise directly or indirectly modified in such a
6 manner as to impair adversely any such outstanding revenue
7 bonds, unless the outstanding revenue bonds have been
8 discharged in full or provision has been fully made for payment
9 of the bonds.

10 SECTION 20. [NEW MATERIAL] REVENUE BONDS--REFUNDING
11 AUTHORIZATION.--

12 A. The authority may issue refunding revenue bonds
13 for the purpose of refinancing, paying and discharging all or
14 any part of outstanding bonds or other obligations payable from
15 the net revenues of the water or wastewater system previously
16 issued or incurred by the authority.

17 B. The authority may pledge irrevocably for the
18 payment of interest and principal on refunding bonds the
19 pledged revenues of the water or wastewater system.

20 C. Bonds for refunding and bonds for any purpose
21 permitted by the Regional Water Utility Authority Act may be
22 issued separately or issued in combination in one series or
23 more.

24 SECTION 21. [NEW MATERIAL] REFUNDING BONDS--ESCROW--
25 DETAIL.--

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1 A. Refunding bonds issued pursuant to the Regional
2 Water Utility Authority Act shall be authorized by resolution.
3 Any bonds that are refunded pursuant to the provisions of this
4 section shall be paid at maturity or on any permitted prior
5 redemption date in the amounts, at the times and places and, if
6 called prior to maturity, in accordance with applicable notice
7 provisions, all as provided in the proceedings authorizing the
8 issuance of the refunded bonds or otherwise appertaining to the
9 bonds, except for any such bond that is voluntarily surrendered
10 for exchange or payment by the holder or owner.

11 B. Provision shall be made for paying the bonds
12 refunded at the time or times provided in Subsection A of this
13 section. The principal amount of the refunding bonds may
14 exceed the principal amount of the refunded bonds and may also
15 be less than or the same as the principal amount of the bonds
16 being refunded so long as provision is duly and sufficiently
17 made for the payment of the refunded bonds.

18 C. The proceeds of refunding bonds, including any
19 accrued interest and premium appertaining to the sale of
20 refunding bonds, shall either be immediately applied to the
21 retirement of the bonds being refunded or be placed in escrow
22 in a commercial bank or trust company that possesses and is
23 exercising trust powers and that is a member of the federal
24 deposit insurance corporation, to be applied to the payment of
25 the principal of, interest on and any prior redemption premium

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1 due in connection with the bonds being refunded; provided that
2 such refunding bond proceeds, including any accrued interest
3 and any premium appertaining to a sale of refunding bonds, may
4 be applied to the establishment and maintenance of a reserve
5 fund and to the payment of expenses incidental to the refunding
6 and the issuance of the refunding bonds, the interest on the
7 bonds and the principal of the bonds or both interest and
8 principal as the authority may determine.

9 D. Nothing in this section requires the
10 establishment of an escrow if the refunded bonds become due and
11 payable within one year from the date of the refunding bonds
12 and if the amounts necessary to retire the refunded bonds
13 within that time are deposited with the paying agent for the
14 refunded bonds. Such escrow shall not necessarily be limited
15 to proceeds of refunding bonds but may include other money
16 available for its purpose. Any proceeds in escrow pending such
17 use may be invested or reinvested in bills, certificates of
18 indebtedness, notes or bonds that are direct obligations of or
19 the principal and interest of which obligations are
20 unconditionally guaranteed by the United States of America or
21 in certificates of deposit of banks that are members of the
22 federal deposit insurance corporation, the par value of which
23 certificates of deposit is collateralized by a pledge of
24 obligations of or the payment of which is unconditionally
25 guaranteed by the United States of America, the par value of

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1 which obligations is at least seventy-five percent of the par
 2 value of the certificates of deposit. Such proceeds and
 3 investments in escrow together with any interest or other
 4 income to be derived from any such investment shall be in an
 5 amount at all times sufficient as to principal, interest, any
 6 prior redemption premium due and any charges of the escrow
 7 agent payable therefrom to pay the bonds being refunded as they
 8 become due at their respective maturities or due at any
 9 designated prior redemption date or dates in connection with
 10 which the authority shall exercise a prior redemption option.
 11 A purchaser of a refunding bond is in no manner responsible for
 12 the application of the proceeds of the bonds by the authority
 13 or any of its officers, employees or agents.

14 E. Refunding bonds may bear such additional terms
 15 and provisions as may be determined by the authority, and the
 16 refunding bonds are not subject to the provisions of any other
 17 statute except as may be incorporated by reference in the
 18 Regional Water Utility Authority Act.

19 SECTION 22. [NEW MATERIAL] REFUNDING REVENUE BONDS--
 20 TERMS.--Refunding revenue bonds:

21 A. may have interest, appreciated principal value
 22 or any part thereof payable at intervals or at maturity as may
 23 be determined by the authority;

24 B. may be subject to prior redemption at the
 25 authority's option at such time or times and upon such terms

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1 and conditions with or without the payment of premium or
2 premiums as may be determined by the authority;

3 C. may mature at any time or times not exceeding
4 forty years after the date of issuance;

5 D. may be serial in form and maturity or may
6 consist of a single bond payable in one or more installments or
7 may be in such other form as may be determined by the
8 authority; and

9 E. shall be exchanged for the bonds and any matured
10 unpaid interest being refunded at not less than par or sold at
11 public or negotiated sale at, above or below par and at a price
12 that results in a net effective interest rate that does not
13 exceed the maximum permitted by the Public Securities Act.

14 SECTION 23. [NEW MATERIAL] REFUNDING REVENUE BONDS--
15 RESOLUTION.--At any regular or special meeting called for the
16 purpose of issuing refunding revenue bonds, the board by a two-
17 thirds' vote of all the members of the authority may adopt a
18 resolution authorizing the issuance of the refunding revenue
19 bonds.

20 SECTION 24. [NEW MATERIAL] USE OF PROCEEDS OF REVENUE
21 BONDS--PROHIBITION.--It is unlawful to divert, use or expend
22 any money received from the issuance of revenue bonds for any
23 purpose other than the purpose for which the revenue bonds were
24 issued.

25 SECTION 25. [NEW MATERIAL] AUTHORITIES INCORPORATED UNDER
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1 SPECIAL ACT--LAWS APPLICABLE.--An authority incorporated by
 2 special act previous to the effective date of the Regional
 3 Water Utility Authority Act that chooses to retain such
 4 organization and governance shall, in the enforcement of the
 5 powers or the exercise of the duties conferred by the special
 6 act, proceed in all respects as provided by the special act.

7 SECTION 26. [NEW MATERIAL] AUTHORITIES INCORPORATED UNDER
 8 SPECIAL ACT--PETITION FOR REORGANIZATION--ELECTION.--

9 A. An authority incorporated under a special act
 10 may abandon its organization and organize itself under the
 11 provisions of the Regional Water Utility Authority Act.

12 B. After holding a public hearing, the board of
 13 directors may vote to place the question on a ballot for vote
 14 of their membership at a regular or special election.

15 C. If a majority of the votes cast on the question
 16 of reorganizing an authority incorporated by a special act
 17 favors reorganizing the authority under the Regional Water
 18 Utility Act, the governing body shall, within fourteen days
 19 after the results of the election reorganizing the authority
 20 under that act have been canvassed and certified, adopt an
 21 election resolution calling for the development and adoption of
 22 a governance document and election of directors to establish
 23 the reorganized authority. The authority shall continue to
 24 operate under its special act until an election has been
 25 called, conducted and canvassed in the manner provided in its

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1 special act.

2 D. The staggering of terms from the special act
3 entity may continue until the next regular election.

4 SECTION 27. [NEW MATERIAL] PUBLIC REGULATION COMMISSION
5 JURISDICTION.--

6 A. An authority organized under the provisions of
7 the Regional Water Utility Authority Act is not subject to the
8 jurisdiction of the public regulation commission or the terms
9 and provisions of the Public Utility Act except as provided in
10 this section.

11 B. The authority may elect by resolution adopted by
12 the board to become subject to the jurisdiction of the public
13 regulation commission and to the terms and provisions of the
14 Public Utility Act; provided, however, that in no event shall
15 Sections 62-9-1 through 62-9-7 NMSA 1978 apply to an authority
16 making such an election.

17 SECTION 28. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2015.