

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; PROVIDING POWERS AND DUTIES OF THE AUTHORITY AND BOARD; AUTHORIZING JOINT POWERS AGREEMENTS; PROVIDING FOR TRANSFER OF ASSETS AND LIABILITIES; ALLOWING FOR FEES, CHARGES, RATES AND TOLLS; PROVIDING FOR ELECTIONS; 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; COMPEL CONNECTION TO AUTHORITY FACILITIES WITHIN THE SERVICE AREA OF THE AUTHORITY; EXCEPTING AUTHORITIES FROM PUBLIC REGULATION COMMISSION JURISDICTION; AMENDING A SECTION OF LAW PERTAINING TO DOMESTIC WELL PERMITS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 31 of this act may be cited as the "Regional Water Utility Authority Act".

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

- A. purchasing, acquiring, establishing or constructing waterworks to supply water for domestic, commercial and industrial purposes to persons within and without the boundaries of the authority;
- B. purchasing, acquiring, establishing or constructing wastewater systems for the treatment and disposal of sewage or for the management of decentralized or on-site wastewater disposal systems;
- C. planning, developing, managing, maintaining or coordinating regional water and wastewater facilities;
- D. infrastructure development of renewable energy projects that are integral to the operation and maintenance of the authority's facilities; and

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

- A. "address" means:
 - (1) the mailing address and the street address, if within a municipality; or
 - (2) the mailing address and a rural route number and box number, if any, or the geographical location, using well-known landmarks, if outside a municipality;
- B. "authority" means a regional water utility authority that is established pursuant to the Regional Water Utility Authority Act and is incorporated pursuant to the laws of New Mexico;
- C. "authority member" means a natural person who owns property within the service area and who is provided services by the authority and is responsible for paying for those services;
- D. "board" means the board of directors of an authority;
- E. "director" means a member of the board;
- F. "entity" means a political subdivision, municipal corporation or tribal government;
- G. "incorporating entity" means an entity that is one of the original incorporators of an authority;
- H. "member entity" means an entity that is part of the authority, whether an incorporating entity or an entity that joins the authority after incorporation;
- I. "qualified elector" means a registered voter who lives within the service area of the authority and is qualified to vote;

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

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

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

A. A regional entity or two or more entities may organize a "regional water utility authority" as provided in the Regional Water Utility Authority Act. An authority shall not be created unless it will have at least fifteen connections or serve a population of at least twenty-five people.

B. Each incorporating entity shall individually adopt a resolution signifying its intention to organize an authority. The resolution shall not be adopted until after a public hearing has been held by each entity and an election has been held on the question of participating in an authority, if applicable. Each incorporating entity shall approve the adoption of the resolution in accordance with its governing documents. Notice of the public hearing, including the date, time and place of the hearing and the resolution proposed to be adopted, shall be published in a newspaper of general circulation within the proposed service area of the proposed authority at least once thirty days prior to the hearing date, posted in public places within the proposed service area of the proposed authority and mailed at least thirty days prior to the hearing date to all persons who have requested advance notice of hearing and to all property owners within the proposed service area. The public hearing notice shall also be published prominently on the entity's official website, if there is one.

C. The resolution shall state the:

- (1) proposed name and purpose of the authority;
- (2) perpetual existence of the authority;
- (3) proposed service area of the authority;
- (4) composition of the authority, whether a membership or qualified elector organization;

and

- (5) lead member entity of the authority to act as registered agent.

D. Upon adoption of the resolution, the incorporating entities shall draw up articles of incorporation and bylaws and file them with the secretary of state. The articles of incorporation shall set forth:

- (1) the name of the authority;
- (2) a statement that the authority is formed pursuant to the Regional Water Utility Authority Act;
- (3) the purpose of the authority;
- (4) copies of the adopted resolutions and proof of publication of the notices required pursuant to this section;
- (5) the names of the incorporating entities, together with the names and addresses of the authority's officers;
- (6) an accurate map or plat that shows the boundary of the service area proposed to be incorporated;
- (7) a statement executed, by resolution, by one of the incorporating entities acknowledging acceptance of the appointment as registered agent; and
- (8) a copy of the authority's bylaws.

E. An original of the articles of incorporation and a statement executed by the designated registered agent acknowledging acceptance of the appointment as registered agent, if the agent is an individual, or a statement executed by an authorized officer of a member entity that is the designated registered agent in which the officer acknowledges the member entity's acceptance of the appointment as registered agent, if the agent is a member entity, shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation and the statement conform to law, the secretary of state shall, when all fees have been paid:

- (1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;
- (2) file the original and the statement in the secretary of state's office; and

(3) issue a certificate of incorporation to which is affixed a file-stamped copy of the articles of incorporation.

F. The certificate of incorporation, together with the file-stamped copy of the articles of incorporation affixed to it, shall be returned by the secretary of state to the incorporating entities or their registered agent.

G. The bylaws of the authority shall provide for:

- (1) whether the organization is a membership organization, made up of authority members who are being served by the authority, or a qualified elector organization, made up of qualified electors of the service area region who may participate in the authority elections;
- (2) a membership definition to include land ownership determination;
- (3) the establishment and organization of the board;
- (4) the manner of the appointment or election, term of service and qualifications, if any, of the directors and the procedure for filling vacancies;
- (5) officers of the authority, the manner of their appointment or election and their duties;
- (6) voting requirements for action by the board;
- (7) if a membership organization, how persons who are not authority members and who do not live within the service area of the authority may petition for water or wastewater services to be provided by the authority;
- (8) a merger plan for the mandatory transfer, disposition or assumption of all assets and liabilities of the member entities;
- (9) the process by which the bylaws are amended; and
- (10) any other matter required by the Regional Water Utility Authority Act or the board to be included.

H. Amended bylaws shall be filed, recorded and certified by the secretary of state and shall be effective upon filing with the secretary of state. Amended bylaws supersede all other bylaws upon the effective date of the amended bylaws.

I. Upon the issuance of a certificate of incorporation by the secretary of state, the corporate existence of the authority shall begin. The certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the authority has been incorporated under the Regional Water Utility Authority Act, except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolutions of the authority.

SECTION 5. [NEW MATERIAL] ENTITIES MERGING AFTER INCORPORATION.--If an entity chooses to merge into an authority after that authority has been incorporated, the entity shall adopt a resolution signifying its intention to merge into the authority and submit the resolution to the board. The resolution shall be adopted as provided in Section 4 of the Regional Water Utility Authority Act. The board shall vote on accepting the entity, and, if the motion carries, the authority shall file its articles of merger with the secretary of state and other agencies as applicable. The transfer and assumption of assets and liabilities for merging entities shall take place as established in Section 14 of the Regional Water Utility Authority Act.

SECTION 6. [NEW MATERIAL] REGIONAL AUTHORITIES CREATED BY JOINT POWERS AGREEMENTS--REORGANIZATION.--The Regional Water Utility Authority Act does not apply to or affect a regional authority established pursuant to the Joint Powers Agreements Act; provided that such regional authority may reorganize as an authority pursuant to the Regional Water Utility Authority Act by affirmative written resolution of its board and by filing a copy of its joint powers agreement and its articles of incorporation and bylaws with the secretary of state. The board of the reorganized authority may amend its articles of incorporation or bylaws by affirmative resolution of the board and by filing the amended articles or bylaws with the secretary of state. The bylaws shall provide how the reorganized authority shall transfer, dispose of or assume the assets and liabilities of its member entities as provided in Section 14 of the Regional Water Utility Authority Act.

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

A. An authority incorporated by special act previous to the effective date of the Regional Water Utility Authority Act that chooses to retain such organization and governance shall, in the enforcement of

the powers or the exercise of the duties conferred by the special act, proceed in all respects as provided by the special act.

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

C. After holding a public hearing, the board of directors of an authority organized under a special act may vote to place the question on a ballot for vote of its membership at a regular or special election.

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

E. The staggering of terms of board members from the special act entity may continue until the next regular election.

SECTION 8. [NEW MATERIAL] AUTHORITY--POWERS AND DUTIES.—

A. An authority is a body politic and corporate and a political subdivision of the state, subject to all statutory requirements of the state. In addition to other powers granted to the authority pursuant to the Regional Water Utility Authority Act, the authority may:

- (1) have perpetual existence;
- (2) sue and be sued and be a party to suits, actions and proceedings;
- (3) borrow money, receive grants, issue bonds in accordance with the provisions of the Regional Water Utility Authority Act and pledge or otherwise encumber the revenues or receipts of the authority or mortgage the property of the authority as security for any of the obligations of the authority;
- (4) establish rates and impose assessments, fees and charges, and take action necessary for the enforcement of those rates, assessments, fees and charges, for the delivery of and collection of water and wastewater services or for other services or facilities operated or made available by the authority in accordance with a rate analysis compliant with the authority's financial plan that provides for reserve funds for future improvements and replacement of the authority's infrastructure;
- (5) acquire from a willing seller and hold water rights pursuant to a permit issued in accordance with Section 72-1-9 NMSA 1978;
- (6) shut off, after notice, unauthorized and illegal connections or connections for which charges, fees, assessments or other charges are delinquent, and file suit in a court of competent jurisdiction to recover costs associated with an unauthorized, illegal or delinquent connection, including the cost of water delivered, charges for connection and disconnection, damages and attorney fees;
- (7) acquire and dispose of real property, personal property and rights of way;
- (8) as a last resort, exercise the right of eminent domain to take and acquire the necessary property or rights of way for the construction, maintenance and operation of water and sewer lines and related facilities, but such acquisition of property and rights of way shall in all cases be so located as to do the least damage to private and public property consistent with proper use and economical construction within the service area;
- (9) place a lien on property for unpaid assessments, charges and fees and enforce the lien in the manner provided in Section 17 of the Regional Water Utility Authority Act until paid;
- (10) wherever applicable and for the purpose of protecting ground water sources, promulgate an on-site wastewater management plan;
- (11) construct, establish and maintain facilities across or along any public street or highway and through any vacant public lands and construct works and establish and maintain facilities across any stream of water or watercourse, all in accordance with applicable state and federal permitting authority;
- (12) compel the connection of a homeowner's water or wastewater system to the authority's water or wastewater system as provided in Section 16 of the Regional Water Utility Authority Act;

(13) compel the connection of any new development within the service area of the authority to the authority's water or wastewater system pursuant to the authority's existing line extension policy; and

(14) have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this section; provided that such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of the Regional Water Utility Authority Act.

B. The authority shall contract with a third-party financial expert to perform a rate analysis. The board shall establish a rate study advisory committee composed of authority members, employees and directors. The committee shall oversee the development and implementation of the rate analysis, including reserves, planned capital improvements and budget forecasts.

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

SECTION 9. [NEW MATERIAL] BOARD--APPOINTMENT--ELECTION--VACANCIES--REMOVAL OR SUSPENSION.--

A. The authority shall be governed by a board of directors consisting of an odd number of at least three directors who reside within the service area of the authority and are in good standing with the authority.

B. The initial board shall be appointed by the incorporating entities of the authority. The appointed directors shall serve until their successors are elected at the next general election and qualified. An appointed director may run for election.

C. The bylaws shall specify whether directors run at-large or within districts. If directors are elected from districts, they shall live in the district from which they are elected. Terms of elected directors shall be staggered four-year terms beginning on January 1 of the year following their election; provided that those chosen at the first general election after the creation of the authority shall immediately classify themselves by lot, so that at least one director serves a two-year term and at least two directors serve a four-year term; thereafter, the terms shall be four years. After serving two terms, directors shall be ineligible to hold a director's position until one full term has intervened.

D. For an authority that has director districts, as soon as feasible after each federal decennial census, the board shall assess the existing districts to determine if the districts remain as equal in population as is practicable and, if necessary, shall redistrict the authority into districts that remain as compact and as equal in population as is practicable; provided that:

(1) a redistricting shall be effective upon finalization of the redistricting plan and shall be applied to the director seats eligible for election at the next following general election; and

(2) an incumbent director whose residence is redistricted out of the district represented by the director shall serve until the next general election, at which an authority member or a qualified elector who resides within the district shall be elected to fill the unexpired term.

E. Elections shall be called, conducted and canvassed as general elections and regular authority elections shall be held with the general election.

F. The board shall call the election by resolution adopted at least one hundred eighty days prior to the election. The resolution shall recite the objects and purposes of the election and the date upon which the election will be held. The secretary of the authority shall provide to the county clerks of the counties within the service area with the voting list for the authority and such supplies and assistance as necessary to conduct the elections authorized by the Regional Water Utility Authority Act.

G. Vacancies on the board shall be filled by appointment by a majority of the remaining directors for the remainder of the unexpired term or until a successor is elected at the next general election and qualified to fulfill the remainder of a term.

H. A director may be removed from office pursuant to the procedures of Chapter 10, Article 4 NMSA 1978 or suspended pursuant to the procedures of Chapter 10, Article 5 NMSA 1978.

SECTION 10. [NEW MATERIAL] BOARD--ORGANIZATION--OFFICERS.--

A. Directors shall take the oath of office and along with the surety bonds required by Chapter 10, Article 2 NMSA 1978, file those documents with the secretary of state. The authority may provide for a

blanket bond for all directors, officers and employees of the authority. The board shall determine the amount of good and sufficient surety required for directors, officers and employees, conditioned on the faithful performance of all of the duties of the person's office, without fraud, deceit or oppression, and the accounting for all money and property coming into the person's hands and the prompt and faithful payment of all money and the delivering of all property coming into the person's custody or control belonging to the authority or the person's successors in office. Premiums on all bonds provided for in this subsection shall be paid by the authority, and all such bonds shall be kept on file in the secretary of state's office.

B. The board shall elect its chair and other officers it deems necessary, including a secretary and treasurer. The secretary and treasurer may be one person and need not be a director.

C. The secretary shall keep a record of all of the board's proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts, which shall be open to inspection to all members of the public.

D. The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the authority, in permanent records. The authority may provide a higher bond for the treasurer than for other directors, officers and employees.

E. Directors shall receive no compensation for their services as a director, officer, engineer, attorney, employee or other agent of the authority. Directors may receive a stipend for service on the board and may receive per diem and mileage for attendance at meetings outside of the service area.

F. The board shall meet once each month at a time and place within the service area of the authority to be designated by the board. Special meetings may be held as often as the needs of the authority require on notice to each director and to authority members. No business of the board shall be transacted except at a regular or special meeting at which at least a majority of directors are present. Any action of the board requires the affirmative vote of a majority of the directors present and voting.

SECTION 11. [NEW MATERIAL] BOARD--POWERS--DUTIES.--

A. All powers, privileges and duties vested in or imposed upon the authority shall be exercised and performed by the board. The board may delegate its powers by resolution to an officer, employee or agent of the board, with the exception of the following:

- (1) adoption of board policies and procedures;
- (2) ratification of acquisition of property;
- (3) initiation or continuation of legal action;
- (4) establishment of policies regarding fees, tolls, rates or charges; and
- (5) issuance of bonds.

B. In addition to all other powers conferred by the Regional Water Utility Authority Act, the board may:

- (1) adopt, amend or repeal bylaws that establish the authority's powers and its process to implement those powers pursuant to the Regional Water Utility Authority Act and file the bylaws and changes with the secretary of state;
- (2) adopt and use a seal;
- (3) fix the time and place of meetings and the method of providing notice of the meetings;
- (4) make and pass orders and resolutions necessary for the government and management of the affairs of the authority and the execution of the powers vested in the authority;
- (5) maintain offices at a place as the board may designate;
- (6) appoint, hire and retain employees and agents, engineers, attorneys, accountants, financial advisers, investment bankers and other consultants;
- (7) enter into contracts for goods and services to further its public purposes and other contracts and agreements to implement the provisions of the Regional Water Utility Authority Act;
- (8) enter into legal agreements with other governmental entities; and
- (9) regulate, supervise and operate the authority's facilities.

C. In addition to other duties imposed on the board by the provisions of the Regional Water Utility Authority Act, the board shall promulgate and adhere to policies and procedures that govern its

conduct in accordance with state law and provide meaningful opportunities for public input. These policies shall include standards and procedures for calling emergency meetings.

SECTION 12. [NEW MATERIAL] CONFLICTS OF INTEREST.—No director or officer, employee or agent of the authority shall be interested in any contract or transaction with the authority except in an official representative capacity.

SECTION 13. [NEW MATERIAL] SERVICE AREA--EXCLUSIVE RIGHT TO PROVIDE SERVICE.--

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

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

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

B. Upon the incorporation of the authority, the authority shall:

(1) file a plat designating the authority's initial service area with the county clerk of each of the counties in which the authority's service area is located; and

(2) file a change of ownership form with the state engineer pursuant to Section 72-1-2.1 NMSA 1978 reflecting the change in ownership of the water rights of the incorporating entities. Upon the filing of the change of ownership form with the state engineer, the place of use of the authority's water rights shall be deemed to be the authority's service area. If the service areas of the incorporating entities are contiguous, the authority and the incorporating entities shall file an application with the state engineer to combine and commingle the water rights of the incorporating entities.

C. Any subsequent additions or subtractions to the authority's initial service area shall be designated in an amended plat filed with the county clerk of each of the counties in which the authority's service area is located.

D. If another entity subsequently elects to merge into the authority, the authority shall:

(1) file an amended plat designating its new service area with the county clerk of each of the counties in which the authority's new service area is located; and

(2) file a change of ownership form with the state engineer pursuant to Section 72-1-2.1 NMSA 1978 reflecting the change in ownership of the water rights of the merging entity. Upon the filing of the change of ownership form with the state engineer, the place of use of the authority's water rights shall be deemed to be the authority's service area. If the service areas of the authority and the merging entity are contiguous, the authority and the merging entity shall file an application with the state engineer to combine and commingle their respective water rights.

SECTION 14. [NEW MATERIAL] ACCEPTANCE OF ASSETS AND LIABILITIES OF EXISTING WATER SERVICE PROVIDERS--ACQUISITION OF WATER RIGHTS.--

A. An authority shall accept a transfer of water or wastewater service assets and liabilities of a member entity following the legal dissolution of that entity and subject to any other statutory requirements for dissolution and transfer. Upon the transfer of the assets and liabilities to the authority, the area within the boundaries of the authority serviced by the dissolved entity shall become part of the authority's service area.

B. When a water right is included in the assets and liabilities of a member entity that are transferred to the authority, or upon the acquisition of a water right by the authority, the authority shall file a change of ownership form with the state engineer.

SECTION 15. [NEW MATERIAL] AUTHORITY MAY REGULATE WATER USE AND DOMESTIC WELLS.--

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

B. The authority may, by resolution, restrict the drilling of new domestic water wells, except for property zoned agricultural, if the property line of the applicant is within four hundred feet of the authority's water distribution lines.

C. The authority may deny authorization for a new domestic water well permit if the total cost of extending the authority's water distribution line, meter and hook-up is at or less than the estimated total cost of drilling a new domestic well and installing a pump and meter.

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

E. The authority shall file with the state engineer its resolution restricting the drilling of new domestic water wells.

F. An applicant for a domestic water well located within the service area of an authority that has adopted a resolution pursuant to Subsection B of this section shall obtain a permit to drill the well from the authority subsequent to the issuance of a domestic well permit by the state engineer pursuant to Section 72-12-1.1 NMSA 1978.

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

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

I. An applicant may appeal the decision of the authority to the district court in the judicial district in which the authority is located.

J. Nothing in this section shall limit the authority of the state engineer to administer water rights as provided by law.

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

L. For the purpose of preserving and protecting water resources and to provide an assured water supply for the community, the authority may adopt a water conservation plan within its service area.

M. The provisions of this section shall be implemented consistent with state engineer rules.

SECTION 16. [NEW MATERIAL] HEALTH AND SAFETY--ON-SITE WASTEWATER

TREATMENT SYSTEMS.--For health and sanitary purposes, the authority board may exercise, by resolution, the powers to require the owners of inhabited property within the service area of the authority to connect their property with the water or wastewater system of the authority. Should the original incorporation documents of the authority not include these powers, the board shall amend the bylaws in accordance with Section 4. H. A policy clearly stating the process shall be approved by two thirds of the board at a regular meeting.

SECTION 17. [NEW MATERIAL] LIENS AND FORECLOSURE.-

A. If the authority places a lien on property for nonpayment of money owed, the authority shall file in the office of the county clerk of the county or counties in which the property is located a notice of lien, which shall include:

- (1) identification of the outstanding debt to the authority;
- (2) the fact that a lien is established;
- (3) the general purpose of the lien;
- (4) the name of the owner of the property against which the lien is established as determined from the records of the county assessor;
- (5) a description of the property against which the lien is established;
- (6) the amount of the lien; and
- (7) if the lien is for more than one period of time, the date for which the lien is established.

B. A lien for multiple charges or assessments on a property owner may be included in the same notice of lien, and it shall not be necessary to file separate liens against the separate properties. The lien shall be attested in the name of the authority. The principal amount of any lien imposed for a charge or

assessment shall bear interest at the rate of twelve percent per year from the date of filing the notice of lien unless otherwise provided by law.

C. After the filing of the notice of lien in the office of the county clerk, the authority shall have a lien upon the property described in the notice of lien. The filing of the notice of lien shall be notice to all the world of the existence of the lien and of the contents of the notice of lien. No such lien shall affect the title or rights to or in any real estate, of any purchaser, mortgagee in good faith or judgment lien creditor, without knowledge of the existence of such lien, unless the notice of lien is filed in accordance with this section in the office of the county clerk of the county in which the real estate is situated. All authority liens shall be first and prior liens on the property subject only to the lien of federal, state and county taxes. The authority may release a lien against any specific property by:

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

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

D. The authority may, in a single suit, foreclose the liens against all persons named in the notice of liens or against the property if the owners are unknown. The complaint filed shall:

(1) expressly name each defendant, if known;

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

(3) set forth the amount of the lien.

E. The judgment or decree rendered in said cause shall be several against the named defendants and against the several properties for the amounts decreed to be due by each. A lien against real estate may be foreclosed in the same manner that mortgages or other liens against real estate are foreclosed with like rights of redemption. In the foreclosure of any lien created by the authority, reasonable attorney fees may be ordered by the court as part of the costs in favor of the prevailing party.

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

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

(2) second, to the indebtedness claimed under a lien on the property for federal, state, county, municipal or ad valorem taxes;

(3) third, to the indebtedness claimed under the lien of the authority;

(4) fourth, to all other special assessments having a lien on the property; and

(5) fifth, after all such costs, liens, assessments and taxes are paid, to the former owner, mortgage holder or parties having an interest in the tract or parcel, upon such persons providing satisfactory proof to the court of such interest and upon approval of the court.

SECTION 18. [NEW MATERIAL] ANNUAL REPORT.--

A. The authority shall file with the secretary of state, within the time prescribed by the Regional Water Utility Authority Act, an annual report setting forth:

(1) the name of the authority and the laws under which it is incorporated;

(2) the address of the registered office of the authority and the name and address of its registered agent;

(3) a brief statement of the character of the affairs that the authority is actually conducting; and

(4) the names and respective addresses of the directors and officers of the authority.

B. The report shall be signed and sworn to by any two of its directors or officers. If the authority is in the hands of a receiver or trustee, the report shall be executed on behalf of the authority by the receiver or trustee. A copy of the report shall be maintained at the authority's principal place of business as contained in the report and shall be made available to the general public for inspection during regular business hours.

SECTION 19. [NEW MATERIAL] FILING OF ANNUAL REPORT-- INITIAL REPORT-- SUPPLEMENTAL REPORT--EXTENSION OF TIME.--

A. The annual report of an authority shall be delivered to the secretary of state on or before the fifteenth day of the fifth month following the end of its taxable year, except that the first annual report of

an authority shall be filed within thirty days of the date on which its certificate of incorporation or its certificate of authority was issued by the secretary of state.

B. A supplemental report shall be filed with the secretary of state within thirty days if, after the filing of the annual report, a change is made in:

- (1) the name of the authority;
- (2) the mailing address, street address or the geographical location of the authority's registered office and the name or address of the registered agent upon whom process against the authority may be served;
- (3) the name or address of any of the directors or officers of the authority or the date when the term of office of each expires; or
- (4) the authority's principal place of business within the state.

C. Proof to the satisfaction of the secretary of state that prior to the due date of any report required by Subsection A or B of this section, the report was:

- (1) deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid; or
- (2) sent electronically from an authority computer.

D. If the secretary of state finds that the report conforms to the requirements, the secretary of state shall file it. If the secretary of state finds that it does not conform to the requirements, the secretary of state shall promptly return the report to the authority for any necessary corrections, in which event the penalties prescribed for failure to file the report within the time provided shall not apply, if the report is corrected to conform to the requirements and returned to the secretary of state within thirty days from the date on which it was mailed to the authority by the secretary of state.

E. Upon application by the authority and for good cause shown, the secretary of state may extend, for no more than a total of twelve months, the date on which a required report must be filed or the date on which the payment of any fee is required, but no extension shall prevent the accrual of interest as otherwise provided by law.

F. Nothing in this section prevents the collection of a fee or penalty due upon the failure of any authority to submit the required report.

G. No annual or supplemental report required to be filed pursuant to this section shall be deemed to have been filed if the fees accompanying the report have been paid and the payment was not honored.

SECTION 20. [NEW MATERIAL] OVERSIGHT BY STATE AGENCIES.--

A. In addition to all statutory requirements of the state, an authority shall be specifically subject to the applicable rules of the department of environment, the state engineer and the department of finance and administration.

B. Every authority is subject to the provisions of the:

- (1) Open Meetings Act;
- (2) Inspection of Public Records Act;
- (3) Audit Act;
- (4) Procurement Code;
- (5) Governmental Conduct Act; and
- (6) other applicable state laws.

SECTION 21. [NEW MATERIAL] REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF REVENUES--LIMITATION ON TIME OF ISSUANCE.--

A. Revenue bonds may be issued by the authority for acquiring real and personal property needed for an authority project, including the purchase of water rights; planning, designing, constructing, extending, enlarging, bettering, repairing or otherwise improving a water or wastewater project; or for any combination of those purposes. The authority may pledge irrevocably any or all of the net revenues from the operation of the water or wastewater system for payment of the interest on and principal of the revenue bonds.

B. Except for the purpose of refunding previous revenue bond issues, the authority shall not sell revenue bonds payable from pledged revenues after the expiration of two years from the date of the

resolution authorizing the issuance of the bonds. However, any period of time during which a particular revenue bond issue is in litigation shall not be counted in determining the expiration date of that issue.

C. The authority shall not impair the rights of any holders of bonds or other obligations payable from the net revenues of the water or wastewater system previously issued or incurred by the authority or its member entities.

D. If required by the terms, covenants and provisions of revenue bonds or other obligations previously issued by the authority or its member entities, all additional bonds or other obligations issued or incurred by the authority pursuant to the Regional Water Utility Authority Act shall contain any required terms, covenants or provisions required to avoid impairment of the previously issued or incurred bonds or other obligations.

SECTION 22. [NEW MATERIAL] REVENUE BONDS--TERMS.—Revenue bonds:

A. may have interest, appreciated principal value or any part of interest and appreciated principal value payable at intervals or at maturity as may be determined by the authority;

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

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

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

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

F. may be sold at public or negotiated sale.

SECTION 23. [NEW MATERIAL] EXEMPTION FROM TAXATION.—The bonds authorized by the Regional Water Utility Authority Act and the income from the bonds shall be exempt from all taxation by the state or any political subdivision of the state.

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

A. At a regular or special meeting called for the purpose of issuing revenue bonds, the authority may adopt a resolution that:

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

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

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

SECTION 25. [NEW MATERIAL] REVENUE BONDS NOT GENERAL OBLIGATIONS--AUTHENTICATION.--

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

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

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

B. The bonds shall be executed by the chair of the board and may be authenticated by the secretary of the board or any public or private transfer agent or registrar or its successor, which shall be named or otherwise designated by the board. The bonds may be executed as provided under the Uniform Facsimile Signature of Public Officials Act.

SECTION 26. [NEW MATERIAL] REVENUE BONDS--MANDATORY RATES FOR THE WATER OR WASTEWATER SYSTEM--MANDAMUS--IMPAIRMENT OF PAYMENT.--

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

- (1) pay all reasonable expenses of operation of the water or wastewater system;
- (2) pay all interest and principal on the water or wastewater system revenue bonds as they come due; and (3) provide a sinking fund adequate to discharge the revenue bonds as they mature.

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

C. A law that authorizes the pledge of any or all of the pledged water or wastewater system revenue to the payment of revenue bonds issued pursuant to the Regional Water Utility Authority Act or that affects the pledged revenue of the water or wastewater system, or any law supplemental to or otherwise appertaining to that act, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless the outstanding revenue bonds have been discharged in full or provision has been fully made for payment of the bonds.

D. As a condition or covenant in connection with the issuance of any revenue bonds authorized by the Regional Water Utility Authority Act, an authority may pledge and agree to impose rates higher than those required by the provisions of this section.

SECTION 27. [NEW MATERIAL] REVENUE BONDS—REFUNDING AUTHORIZATION.--

A. The authority may issue refunding revenue bonds to refinance, pay and discharge all or any part of outstanding bonds or other obligations payable from the net revenues of the water or wastewater system previously issued or incurred by the authority.

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

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

SECTION 28. [NEW MATERIAL] REFUNDING BONDS--ESCROW-- DETAIL.--

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

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

C. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that such refunding bond proceeds, including any accrued interest and any premium appertaining to a sale of refunding bonds, may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest on the bonds and the principal of the bonds or both interest and principal as the authority may determine.

D. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds.

Such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available for its purpose. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of or the principal and interest of which obligations are unconditionally guaranteed by the United States of America or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of or the payment of which is unconditionally guaranteed by the United States of America, the par value of which obligations is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the authority shall exercise a prior redemption option. A purchaser of a refunding bond is in no manner responsible for the application of the proceeds of the bonds by the authority or any of its officers, employees or agents.

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

SECTION 29. [NEW MATERIAL] REFUNDING REVENUE BONDS-- TERMS.--Refunding revenue bonds:

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

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

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

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

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

SECTION 30. [NEW MATERIAL] REFUNDING REVENUE BONDS--RESOLUTION.--At any regular or special meeting called for the purpose of issuing refunding revenue bonds, the board by a two-thirds' vote of all of the authority members of the authority may adopt a resolution authorizing the issuance of the refunding revenue bonds.

SECTION 31. [NEW MATERIAL] PUBLIC REGULATION COMMISSION JURISDICTION.--

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

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

SECTION 32. Section 72-12-1.1 NMSA 1978 (being Laws 2003, Chapter 298, Section 2) is amended to read: "72-12-1.1. UNDERGROUND WATERS--DOMESTIC USE--PERMIT.—A person, firm or corporation desiring to use public underground waters described in this section for irrigation of not to exceed one acre of noncommercial trees, lawn or garden or for household or other domestic use shall make application to the state engineer for a well on a form to be prescribed by the state engineer. Upon the filing of each application describing the use applied for, the state engineer shall issue a permit to the applicant to use the underground waters applied for; provided that:

A. permits for domestic water use within municipalities shall be conditioned to require the permittee to comply with all applicable municipal ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978; and

B. permits for domestic water use within regional water utility authorities shall be conditioned to require the permittee to comply with all applicable resolutions promulgated by an authority pursuant to the Regional Water Utility Authority Act."

SECTION 33. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.