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SENATE BILL 392

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

INTRODUCED BY

Joseph Cervantes

AN ACT

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

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

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

"73-26-1. LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY.--

A. The "Lower Rio Grande public water works authority" is created. The authority is a political subdivision of the state and shall be an independent public

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (11) adopting and using a governmental seal;

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

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

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

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

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

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

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

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

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

25 (2) applicable rules and regulations of the

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

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

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

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1 utility system revenue bonds:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (3) the general purpose of the lien;

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

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

22 (6) the amount of the lien; and

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

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

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

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

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

25 (2) issuing a separate receipt that recites

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

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

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

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

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

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

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

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

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

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

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

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