

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 392

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

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 include~~  
2 ~~the combining and commingling of water rights with the~~  
3 ~~authority, and]~~ the authority's service area shall be amended  
4 to include that entity's place of use and shall be filed with  
5 the state engineer. The authority's initial service area and  
6 any subsequent amendments to its service area shall be  
7 designated in a plat filed in the public records of Dona Ana  
8 county. If the service area of the merging entity is  
9 contiguous with the service area of the authority, the merger  
10 shall include the combining and commingling of water rights  
11 with the authority.

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

17 F. The authority shall exercise all powers allowed  
18 pursuant to law, including:

19 (1) regulating, supervising and operating the  
20 authority's facilities;

21 (2) establishing rates and imposing  
22 assessments, fees and charges and taking action necessary for  
23 the enforcement thereof;

24 (3) assessing a standby charge for the  
25 privilege of connection into the authority's service at some

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1 date in the future if the property line is within three hundred  
2 feet of the authority's service lines and the property line is  
3 located within the boundaries of the authority. This section  
4 applies to new connections after the enactment of this act;

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

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

12 (6) entering into contracts for services with  
13 private entities, the state, municipalities, counties and the  
14 federal government and other public bodies to further its  
15 public purposes;

16 (7) entering into joint powers agreements with  
17 other governmental entities;

18 (8) acquiring and disposing of real property,  
19 personal property and rights of way;

20 (9) condemning property pursuant to the  
21 Eminent Domain Code as the last resort and only for the  
22 purposes of construction, maintenance and operations of the  
23 authority's infrastructure;

24 (10) hiring and retaining agents, employees  
25 and consultants, as needed;

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1 (11) adopting and using a governmental seal;

2 (12) placing a lien on property for unpaid  
3 assessments, charges and fees and enforcing the lien in a  
4 manner pursuant to ~~[law]~~ this section;

5 (13) suing and being sued and being a party to  
6 suits, actions and proceedings; and

7 (14) having and exercising all rights and  
8 powers necessary, incidental to or implied from the specific  
9 powers granted in this section.

10 G. As a political subdivision of the state and a  
11 member-owned community water system, the authority shall be  
12 subject to the:

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

16 (a) conduct periodic reviews of the  
17 operation of the authority;

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

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

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1 (d) after a hearing, set and collect  
2 rates and fees and use the same for the proper operation and  
3 management of the authority;

4 (2) applicable rules and regulations of the  
5 department of finance and administration, local government  
6 division and budget and finance bureau;

7 (3) Open Meetings Act;

8 (4) Inspection of Public Records Act;

9 (5) Audit Act;

10 (6) Procurement Code;

11 (7) Governmental Conduct Act;

12 (8) special election procedures pursuant to  
13 Chapter 1, Article 24 NMSA 1978;

14 (9) Chapter 72 NMSA 1978; and

15 (10) applicable rules and regulations of the  
16 state engineer.

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

21 I. The authority may issue utility system revenue  
22 bonds and obligations for acquiring real and personal property  
23 needed for the utility system and for extending, enlarging,  
24 renovating, repairing or otherwise improving its facilities.  
25 The authority may issue revenue anticipation notes with

1 maturities and terms to be approved by the board of directors  
2 of the authority. The authority may pledge irrevocably net  
3 revenues from the operation of the utility system for payment  
4 of the principal, premiums and interest on the bonds. The  
5 utility system revenue bonds:

6 (1) may have interest, appreciated principal  
7 value or any part thereof payable at intervals or at maturity  
8 as the authority determines;

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

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

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

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

22 (6) may be sold at a public or negotiated  
23 sale.

24 J. The authority's board of directors may adopt a  
25 resolution declaring the necessity for the issuance of utility

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1 system revenue bonds or other obligations and may authorize the  
2 issuance of utility system revenue bonds or other obligations  
3 by an affirmative vote of a majority of all members of the  
4 authority's board of directors. Utility revenue bonds and the  
5 resolution authorizing their issuance shall be subject to voter  
6 approval with oversight from the department of finance and  
7 administration and the New Mexico finance authority. The bonds  
8 authorized by the authority and their income shall be exempt  
9 from taxation by the state and its political subdivisions.

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

18 L. The authority shall be governed by a board of  
19 directors. The directors of the initial board shall consist of  
20 five directors representing each of the founding entities. The  
21 directors of the initial board shall serve until their  
22 successors are elected. After the terms of the initial  
23 directors are completed, the succeeding board of directors  
24 shall be elected by districts from a minimum of five and a  
25 maximum of seven electoral districts. Each director, at the



1 time of election, shall reside within the electoral district of  
2 the authority from which that member is elected. The  
3 boundaries and the number of electoral districts shall be  
4 established by the initial board within two years of the  
5 creation of the authority. The board may in its governance  
6 document provide for redistricting upon any change in the  
7 authority's boundary. The elected board of directors shall  
8 serve staggered terms to be established in the governance  
9 document developed by the initial board. Elections shall be  
10 conducted in accordance with the special election procedures  
11 pursuant to Chapter 1, Article 24 NMSA 1978 and may be  
12 conducted by the Dona Ana county elections bureau.

13 M. 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 a notice of lien, which shall  
16 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;

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

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

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

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

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

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

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

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

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

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1 address of an attorney representing the authority. The  
2 proceeds of the sale of the property by the authority pursuant  
3 to a foreclosure sale on a lien shall be applied as follows:

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

6 (2) second, to the indebtedness claimed under  
7 the lien for federal, state, county and ad valorem taxes;

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

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

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

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

1 protection, drainage, flood control, solid waste, planning and  
2 zoning."

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