

1 SENATE BILL 550

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Phil A. Griego and Tomás E. Salazar

5  
6  
7  
8  
9  
10 AN ACT

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

.198069.1

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

underscoring material = new  
[bracketed material] = delete

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

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--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 by any available means 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;

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

F. advancing technologies to reduce solid waste disposal by increasing recycling and reuse, aiming to eliminate

underscored material = new  
[bracketed material] = delete

1 illegal waste disposal and making solid waste disposal  
2 accessible to residents of the service area.

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

5 A. "authority" means a regional water utility  
6 authority that is established pursuant to the Regional Water  
7 Utility Authority Act and is incorporated pursuant to the laws  
8 of New Mexico;

9 B. "board" means the board of directors of an  
10 authority;

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

12 D. "entity" means a political subdivision,  
13 corporate entity or tribal government that provides water or  
14 wastewater services;

15 E. "member" means a natural person who owns  
16 property within the service area and who is provided services  
17 by the authority and is responsible for paying for those  
18 services;

19 F. "qualified elector" means a registered voter who  
20 lives within the service area of the authority and is qualified  
21 to vote; and

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

.198069.1

1           SECTION 4.   [NEW MATERIAL] REGIONAL WATER UTILITY

2   AUTHORITY--CREATION--ARTICLES OF INCORPORATION--BYLAWS--  
3   OFFICERS--MEMBERS.--

4           A.   Two or more entities may organize a "regional  
5   water utility authority" as provided in the Regional Water  
6   Utility Authority Act.

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

19           C.   The resolution shall state the:

- 20                   (1) name and purpose of the authority;  
21                   (2) service area of the authority;  
22                   (3) composition of the authority, whether a  
23   membership or qualified elector organization; and  
24                   (4) lead entity of the authority to act as  
25   registered agent.

.198069.1

underscoring material = new  
[bracketed material] = delete

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

- 5                   (1) the name of the authority;
- 6                   (2) a statement that the authority is formed  
7 pursuant to the Regional Water Utility Authority Act;
- 8                   (3) the purpose of the authority;
- 9                   (4) copies of the adopted resolutions and  
10 proof of publication of the notices required pursuant to this  
11 section;
- 12                   (5) the names of the incorporating entities,  
13 together with the names and addresses of their officers;
- 14                   (6) an accurate map or plat that shows the  
15 boundary of the service area proposed to be incorporated;
- 16                   (7) the names and officers of the registered  
17 agent and a statement executed by an authorized officer of the  
18 registered agent in which the officer acknowledges the entity's  
19 acceptance of the appointment as registered agent by the filing  
20 as the authority's registered agent; and
- 21                   (8) a copy of the authority's bylaws.

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

- 23                   (1) whether the organization is a membership  
24 organization, made up of members who are being served by the  
25 authority, or a qualified elector organization, made up of

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

1 qualified electors of the service area region who may  
2 participate in authority elections;

3 (2) if a membership organization, how  
4 membership and land ownership are determined;

5 (3) the establishment and organization of the  
6 board;

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

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

12 (6) voting requirements for action by the  
13 board;

14 (7) a merger plan for the transfer,  
15 disposition or assumption of all assets and liabilities to the  
16 authority;

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

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

23 F. The bylaws of the authority may be amended  
24 during a regular meeting of the board by a vote of the majority  
25 of the directors. The amended bylaws shall be filed, recorded

.198069.1

underscored material = new  
[bracketed material] = delete

1 and certified by the secretary of state. The amended bylaws  
2 shall be effective upon filing with the secretary of state,  
3 unless a later date is otherwise provided in the bylaws, and  
4 supersede all other bylaws.

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

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

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

.198069.1

underscored material = new  
[bracketed material] = delete

1 with the secretary of state.

2 SECTION 6. [NEW MATERIAL] AUTHORITY--POWERS AND DUTIES.--

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

8 (1) have perpetual existence;

9 (2) sue and be sued and be a party to suits,  
10 actions and proceedings;

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

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

25 (5) assess a standby charge for the privilege



underscoring material = new  
[bracketed material] = delete

1 of connection into the authority's service at some date in the  
2 future if the property line is within four hundred feet of the  
3 authority's service lines and the property line is located  
4 within the service area of the authority; provided that this  
5 paragraph applies to new connections after the effective date  
6 of the Regional Water Utility Authority Act;

7 (6) acquire, from a willing seller only, hold  
8 and use water rights in an amount necessary to meet its  
9 reasonable needs not to exceed forty years pursuant to Section  
10 72-1-9 NMSA 1978;

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

18 (8) acquire and dispose of real property,  
19 personal property and rights of way;

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

24 (10) place a lien on property for unpaid  
25 assessments, charges and fees and enforce the lien in the

.198069.1

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

1 manner provided in Section 16 of the Regional Water Utility  
2 Authority Act until paid.

3 (11) undertake regional water planning, alone  
4 or in coordination with other regional water or wastewater  
5 service providers, including water plans as set forth in  
6 Section 72-1-9 NMSA 1978;

7 (12) wherever applicable, promulgate an on-  
8 site wastewater management plan;

9 (13) construct, establish and maintain  
10 facilities across or along any public street or highway and  
11 through any vacant public lands and construct works and  
12 establish and maintain facilities across any stream of water or  
13 watercourse, all in accordance with applicable state and  
14 federal permitting authority;

15 (14) compel the connection of a homeowner's  
16 water or wastewater system to the authority's water or  
17 wastewater system as provided in Section 14 of the Regional  
18 Water Utility Authority Act;

19 (15) compel the connection of any new  
20 development that lies partially or wholly within the service  
21 area of the authority to the authority's water or wastewater  
22 system pursuant to the authority's existing line extension  
23 policy;

24 (16) prohibit the owners of inhabited property  
25 within the service area of the authority who are connected to

.198069.1

underscored material = new  
[bracketed material] = delete

1 the authority to disconnect from the authority's water or  
2 wastewater system, as applicable; and

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

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

12 SECTION 7. [NEW MATERIAL] BOARD--APPOINTMENT--ELECTION--  
13 VACANCIES--REMOVAL OR SUSPENSION.--

14 A. The authority shall be governed by a board of  
15 directors. The board consists of an odd number of at least  
16 three directors who reside within the service area of the  
17 authority and are in good standing with the authority. The  
18 bylaws may specify a greater number of directors.

19 B. The initial board shall be appointed by the  
20 founding entities of the authority. The appointed members  
21 shall serve until their successors are elected at the next  
22 general election and qualified. An appointed director may run  
23 for election.

24 C. The bylaws shall specify whether directors run  
25 at-large or within districts. If directors are elected from

.198069.1

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

1 districts, they shall live in the district from which they are  
2 elected. Terms of elected directors shall be staggered four-  
3 year terms beginning on January 1 of the year following their  
4 election; provided that those chosen at the first general  
5 election after the creation of the authority shall immediately  
6 classify themselves by lot, so that at least one director  
7 serves a two-year term and at least two directors serve a four-  
8 year term; thereafter, the terms shall be four years. After  
9 serving two terms, directors shall be ineligible to hold a  
10 director's position until one full term has intervened.

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

18 (1) a redistricting shall be effective at the  
19 next following general election; and

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

25 E. Elections shall be called, conducted and

.198069.1

underscored material = new  
[bracketed material] = delete

1 canvassed as general elections and regular authority elections  
2 shall be held with the general election.

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

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

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

21 SECTION 8. [NEW MATERIAL] BOARD--ORGANIZATION--  
22 OFFICERS.--

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

.198069.1

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

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

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

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

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

.198069.1

underscored material = new  
[bracketed material] = delete

1 directors, officers and employees.

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

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

16 SECTION 9. [NEW MATERIAL] BOARD--POWERS--DUTIES.--

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

- 22 (1) adoption of board policies and procedures;
- 23 (2) ratification of acquisition of property;
- 24 (3) initiation or continuation of legal  
25 action;

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

1 (4) establishment of policies regarding fees,  
2 tolls, rates or charges; and

3 (5) issuance of bonds.

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

6 (1) adopt, amend or repeal bylaws that  
7 establish the authority's powers and its process to implement  
8 those powers pursuant to that act and file the bylaws and  
9 changes with the secretary of state;

10 (2) adopt and use a seal;

11 (3) fix the time and place of meetings and the  
12 method of providing notice of the meetings;

13 (4) make and pass orders and resolutions  
14 necessary for the government and management of the affairs of  
15 the authority and the execution of the powers vested in the  
16 authority;

17 (5) maintain offices at a place as the board  
18 may designate;

19 (6) appoint, hire and retain employees,  
20 agents, engineers, attorneys, accountants, financial advisers,  
21 investment bankers and other consultants;

22 (7) enter into contracts for goods and  
23 services to further its public purposes and other contracts and  
24 agreements to implement the provisions of the Regional Water  
25 Utility Authority Act;

.198069.1



underscored material = new  
[bracketed material] = delete

1 (8) enter into joint powers agreements with  
2 other governmental entities; and

3 (9) regulate, supervise and operate the  
4 authority's facilities.

5 C. In addition to other duties imposed on the board  
6 by the provisions of the Regional Water Utility Authority Act,  
7 the board shall promulgate and adhere to policies and  
8 procedures that govern its conduct in accordance with state law  
9 and provide meaningful opportunities for public input. These  
10 policies shall include standards and procedures for calling  
11 emergency meetings.

12 SECTION 10. [NEW MATERIAL] CONFLICTS OF INTEREST.--No  
13 director or officer, employee or agent of the authority shall  
14 be interested in any contract or transaction with the authority  
15 except in an official representative capacity.

16 SECTION 11. [NEW MATERIAL] SERVICE AREA--EXCLUSIVE RIGHT  
17 TO PROVIDE SERVICE.--

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

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

25 (2) an extension of water or wastewater

underscoring material = new  
[bracketed material] = delete

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

6 B. The authority's service area and place of use  
7 documents, as approved by the state engineer, shall be filed  
8 with the office of the state engineer and with the county clerk  
9 in each of the counties within the authority's service area.

10 C. The initial authority's service area and any  
11 subsequent additions or subtractions of territory shall be  
12 designated in a plat filed with the state engineer and the  
13 county clerk in each of the counties within the authority's  
14 service area.

15 SECTION 12. [NEW MATERIAL] ACCEPTANCE OF ASSETS AND  
16 LIABILITIES OF EXISTING WATER SERVICE PROVIDERS--ACQUISITION OF  
17 WATER RIGHTS.--

18 A. An authority may accept a transfer of water or  
19 wastewater service assets and liabilities of an entity that  
20 joins the authority upon the request, and following the legal  
21 dissolution, of that entity, subject to any other statutory  
22 requirements for dissolution and transfer.

23 B. Upon the transfer of the assets and liabilities  
24 to the authority, the area within the boundaries of the  
25 authority serviced by the dissolved entity shall become part of

.198069.1

underscored material = new  
[bracketed material] = delete

1 the authority's service area.

2 C. When a water right is included in the assets and  
3 liabilities of an entity that are transferred to the authority,  
4 or upon the acquisition of a water right by the authority, the  
5 authority shall file a change of ownership form with the state  
6 engineer.

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

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

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

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

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

23 E. If the authority fails to authorize the drilling  
24 of a new domestic water well, it shall provide domestic water  
25 service to the property within ninety days pursuant to the

.198069.1

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

1 authority's customary charges and rate schedules.

2 F. The authority shall file with the state engineer  
3 its resolution restricting the drilling of new domestic water  
4 wells.

5 G. An applicant for a domestic water well located  
6 within the service area of an authority with a new domestic  
7 water well drilling policy shall obtain a permit to drill the  
8 well from the authority subsequent to the state engineer's  
9 approval.

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

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

15 J. An applicant may appeal the decision of the  
16 authority to the district court in the judicial district in  
17 which the authority is located.

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

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

25 M. For the purpose of preserving and protecting

.198069.1

underscored material = new  
[bracketed material] = delete

1 water resources and to provide an assured water supply for the  
2 community, the authority may require within its service area:

3 (1) site development standards to conserve  
4 water and minimize water loss;

5 (2) water harvesting and storage;

6 (3) low water use landscaping and plant  
7 materials;

8 (4) nonagricultural residential and commercial  
9 water use limitations; or

10 (5) recycling and reuse of water.

11 N. The provisions of this section shall be  
12 implemented consistent with state engineer rules.

13 SECTION 14. [NEW MATERIAL] HEALTH AND SAFETY--ON-SITE  
14 WASTEWATER TREATMENT SYSTEMS--COMPLIANCE WITH RULES.--

15 A. For health and sanitary purposes, the board has  
16 the power to compel the owners of inhabited property within the  
17 service area of the authority to connect their property with  
18 the water or wastewater system of the authority. Upon failure  
19 to connect within ninety days after written notice by the  
20 board, the board may cause the connection to be made and a lien  
21 to be filed against the property for the expense incurred in  
22 making the connection; provided, however, that no owner shall  
23 be compelled to connect the owner's property with such system  
24 unless a service line is brought by the authority to a point  
25 within four hundred feet of the nearest lot line.

.198069.1

underscored material = new  
[bracketed material] = delete

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

6           SECTION 15. [NEW MATERIAL] OVERSIGHT BY STATE AGENCIES.--

7           A. An authority is subject to the applicable rules  
8 of the department of environment, and the department may  
9 conduct periodic reviews of the operations of an authority and  
10 require an authority to submit information to the department.  
11 The department of environment, on its own discretion or upon a  
12 petition of twenty-five percent of the authority's membership  
13 or twenty-five percent of the qualified electors in the service  
14 area, shall conduct an investigation as it deems necessary to  
15 ensure the authority is in compliance with all applicable  
16 statutes, rules and reporting requirements.

17           B. Whenever the department of environment  
18 determines a violation, it may:

19                   (1) issue a compliance order requiring  
20 compliance immediately or within a specific time, or both; or

21                   (2) commence a civil action in the district  
22 court for appropriate relief, including injunctive relief.

23           C. A compliance order shall state with reasonable  
24 specificity the nature of the violation.

25           D. If the authority fails to take corrective

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

1 actions within the time specified in the compliance order, the  
2 department may assess a civil penalty of two hundred fifty  
3 dollars (\$250) for each day of continued noncompliance.

4 E. A compliance order issued by the department  
5 shall become final unless specified no later than thirty days  
6 after the compliance order is served, and the authority may  
7 submit a written request to the department for a public hearing  
8 within ninety days after receipt of the order.

9 F. The department may appoint an independent  
10 hearing officer to preside over a public hearing held pursuant  
11 to this section. The hearing officer shall:

12 (1) make and preserve a complete record of the  
13 proceedings; and

14 (2) forward to the department a report that  
15 includes findings and recommendations, if recommendations are  
16 requested by the department.

17 G. The department shall consider the findings of  
18 the hearing officer and, based on the evidence presented at the  
19 hearing, shall make a final decision regarding the compliance  
20 order.

21 H. In connection with a hearing under this section,  
22 the department may:

23 (1) adopt rules of discovery and hearing  
24 procedures; and

25 (2) issue subpoenas for the attendance and

underscored material = new  
[bracketed material] = delete

1 testimony of witnesses and the production of relevant papers,  
2 books and other documents.

3 I. Civil penalties collected pursuant to this  
4 section shall be deposited to the credit of the current school  
5 fund as provided in Article 12, Section 4 of the constitution  
6 of New Mexico.

7 SECTION 16. [NEW MATERIAL] LIENS AND FORECLOSURE.--

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

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

19 (1) identification of the outstanding debt to  
20 the authority;

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

22 (3) the general purpose of the lien;

23 (4) the name of the owner of the property  
24 against which the lien is established as determined from the  
25 records of the county assessor;

.198069.1



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

1 (5) a description of the property against  
2 which the lien is established;

3 (6) the amount of the lien; and

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

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

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

25 E. All authority liens shall be first and prior

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

1 liens on the property subject only to the lien of general state  
2 and county taxes. The authority may release a lien against any  
3 specific property by:

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

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

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

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

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

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

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

22 H. A lien against real estate may be foreclosed in  
23 the same manner that mortgages or other liens against real  
24 estate are foreclosed with like rights of redemption. At the  
25 trial of a case foreclosing a lien, the recitals of the lien or

underscored material = new  
[bracketed material] = delete

1 other evidence of indebtedness shall be received in evidence as  
2 prima facie true. In the foreclosure of a lien created by the  
3 authority, reasonable attorney fees shall be taxed by the court  
4 as part of the costs.

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

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

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

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

21 SECTION 17. [NEW MATERIAL] REVENUE BONDS--AUTHORITY TO  
22 ISSUE--PLEDGE OF REVENUES--LIMITATION ON TIME OF ISSUANCE.--

23 A. Revenue bonds may be issued by the authority for  
24 acquiring real and personal property needed for an authority  
25 project, including the purchase of water rights; for extending,

.198069.1

underscored material = new  
[bracketed material] = delete

1 enlarging, bettering, repairing or otherwise improving a water  
2 or wastewater project; or for any combination of those  
3 purposes. The authority may pledge irrevocably any or all of  
4 the net revenues from the operation of the water or wastewater  
5 system for payment of the interest on and principal of the  
6 revenue bonds.

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

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

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

25 SECTION 18. [NEW MATERIAL] REVENUE BONDS--TERMS.--Revenue

.198069.1

underscored material = new  
[bracketed material] = delete

1 bonds:

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

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

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

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

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

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

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

25 SECTION 20. [NEW MATERIAL] RESOLUTION AUTHORIZING REVENUE

.198069.1

underscored material = new  
[bracketed material] = delete

1 BONDS.--

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

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

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

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

12 SECTION 21. [NEW MATERIAL] REVENUE BONDS NOT GENERAL  
13 OBLIGATIONS--AUTHENTICATION.--

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

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

18 (2) collectible only from the pledged revenue  
19 of the water or wastewater system, and each bond shall state  
20 that it is payable solely from the pledged revenue of the water  
21 or wastewater system and that the bondholders may not look to  
22 any other fund of the state or political subdivision of the  
23 state for the payment of the interest and principal of the  
24 bond.

25 B. The bonds shall be executed by the chair of the

underscored material = new  
[bracketed material] = delete

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

6 SECTION 22. [NEW MATERIAL] REVENUE BONDS--MANDATORY RATES  
7 FOR THE WATER OR WASTEWATER SYSTEM--MANDAMUS--IMPAIRMENT OF  
8 PAYMENT.--

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

14 (1) pay all reasonable expenses of operation  
15 of the water or wastewater system;

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

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

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

underscored material = new  
[bracketed material] = delete

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

12           **SECTION 23. [NEW MATERIAL] REVENUE BONDS--REFUNDING**  
13 **AUTHORIZATION.--**

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

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

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



1           SECTION 24.   ~~[NEW MATERIAL]~~ REFUNDING BONDS--ESCROW--

2   DETAIL.--

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

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

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

.198069.1

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

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

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

.198069.1

underscored material = new  
[bracketed material] = delete

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

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

21 SECTION 25. [NEW MATERIAL] REFUNDING REVENUE BONDS--  
22 TERMS.--Refunding revenue bonds:

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

.198069.1

underscored material = new  
[bracketed material] = delete

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

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

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

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

16           **SECTION 26. [NEW MATERIAL] REFUNDING REVENUE BONDS--**  
17 **RESOLUTION.--**At any regular or special meeting called for the  
18 purpose of issuing refunding revenue bonds, the board by a two-  
19 thirds vote of all the members of the authority may adopt a  
20 resolution authorizing the issuance of the refunding revenue  
21 bonds.

22           **SECTION 27. [NEW MATERIAL] USE OF PROCEEDS OF REVENUE**  
23 **BONDS--PROHIBITION.--**It is unlawful to divert, use or expend  
24 any money received from the issuance of revenue bonds for any  
25 purpose other than the purpose for which the revenue bonds were

.198069.1

underscored material = new  
[bracketed material] = delete

1 issued.

2 SECTION 28. [NEW MATERIAL] PUBLIC REGULATION COMMISSION  
3 JURISDICTION.--

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

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

15 SECTION 29. EFFECTIVE DATE.--The effective date of the  
16 provisions of this act is July 1, 2015.