

1 SENATE BILL 550

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

3 INTRODUCED BY

4 Phil A. Griego

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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.

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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

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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.

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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.

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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;

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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;

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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

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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

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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

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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

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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.

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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

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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

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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;

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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

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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

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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,

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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

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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

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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

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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.

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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

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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

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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;

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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

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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.