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HOUSE BILL 175

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Tomás E. Salazar and Peter Wirth

AN ACT

RELATING TO SPECIAL DISTRICTS; ENACTING THE REGIONAL WATER
UTILITY AUTHORITY ACT; PROVIDING FOR THE CREATION OF REGIONAL
WATER UTILITY AUTHORITIES; PROVIDING POWERS AND DUTIES;
PROVIDING BONDING AUTHORITY; ALLOWING REGULATION OF WATER USE
AND DOMESTIC WELLS; AMENDING A SECTION OF THE NMSA 1978
PERTAINING TO DOMESTIC WELL PERMITS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 27 of this act may be cited as the "Regional Water
Utility Authority Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Regional Water Utility Authority Act:

A. "address" means a mailing address:

(1) and street address, if within a

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1 municipality; or

2 (2) and a rural route number and box number,
3 if any, or the geographical location, using well-known
4 landmarks, if outside a municipality;

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

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

12 E. "eligible elector" means a registered voter who
13 is a customer of the authority and a property owner within the
14 authority's service area;

15 F. "entity" means a municipality, inter-municipal
16 agency, county, incorporated county, mutual domestic water
17 consumers association as defined by the Sanitary Projects Act,
18 sanitation district, water and sanitation district or any
19 similar district, recognized Indian nation, tribe or pueblo or
20 other agency created pursuant to a joint powers agreement
21 acting on behalf of one of the foregoing;

22 G. "incorporating entity" means an entity that is
23 one of the original incorporators of an authority;

24 H. "joining entity" means an entity that is part of
25 an authority, whether an incorporating entity or an entity that

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1 joins the authority after incorporation; and

2 I. "service area" means the area in which an
3 authority provides water or wastewater services.

4 SECTION 3. [NEW MATERIAL] PURPOSE OF REGIONAL WATER
5 UTILITY AUTHORITY.--An authority may be created for the
6 purposes of:

7 A. planning, developing, managing, maintaining or
8 coordinating regional water and wastewater facilities;

9 B. purchasing, acquiring, establishing or
10 constructing waterworks to supply water for domestic,
11 commercial or industrial purposes to persons within and without
12 the boundaries of the authority;

13 C. purchasing, acquiring, establishing or
14 constructing wastewater systems for the treatment and disposal
15 of sewage or for the management of decentralized or on-site
16 wastewater disposal systems; or

17 D. developing infrastructure for renewable energy
18 projects that are integral to the operation and maintenance of
19 an authority's facilities.

20 SECTION 4. [NEW MATERIAL] AUTHORITY--CREATION--ARTICLES
21 OF INCORPORATION--BYLAWS.--

22 A. Two or more entities may create an authority as
23 provided in the Regional Water Utility Authority Act. An
24 authority shall not be created unless it has at least fifteen
25 connections or serves a population of at least twenty-five

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1 people.

2 B. Each incorporating entity shall individually
3 adopt a resolution signifying its intention to create an
4 authority. The resolution shall not be adopted until
5 reasonable notice of a public hearing has been given and the
6 public hearing has been held.

7 C. The resolution shall state the:

8 (1) proposed name and purpose of the
9 authority;

10 (2) perpetual existence of the authority;

11 (3) proposed service area, described with such
12 specificity as to enable a property owner to determine whether
13 the owner's property is within the service area;

14 (4) composition of the authority; and

15 (5) lead joining entity to act as registered
16 agent.

17 D. Upon adoption of a resolution by each
18 incorporating entity, the incorporating entities shall draw up
19 articles of incorporation and bylaws and file them with the
20 secretary of state. Amended bylaws shall be filed, recorded
21 and certified by the secretary of state and shall be effective
22 upon filing. Amended bylaws supersede all other bylaws upon
23 the effective date of the amended bylaws.

24 E. Upon the issuance of a certificate of
25 incorporation by the secretary of state, the corporate

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1 existence of an authority shall begin, except as against the
2 state in a proceeding to cancel or revoke the certificate of
3 incorporation or for involuntary dissolution of an authority.

4 SECTION 5. [NEW MATERIAL] ENTITIES MERGING AFTER
5 INCORPORATION.--If an entity chooses to merge into an authority
6 after that authority has been incorporated, the entity shall
7 adopt a resolution signifying its intention to merge into the
8 authority and submit the resolution to the board.

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

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

- 15 (1) have perpetual existence;
- 16 (2) sue and be sued and be a party to suits,
17 actions or proceedings;
- 18 (3) borrow money, receive grants, issue bonds
19 in accordance with the provisions of the Regional Water Utility
20 Authority Act or pledge or otherwise encumber the revenues or
21 receipts of the authority or mortgage the property of the
22 authority as security for any of the obligations of the
23 authority;
- 24 (4) establish rates and impose assessments,
25 fees or charges for the delivery and collection of services

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1 rendered and take action necessary for the enforcement of those
2 rates, assessments, fees or charges;

3 (5) acquire from a willing seller and hold
4 water rights in an amount necessary to meet its reasonable
5 needs not to exceed forty years pursuant to Section 72-1-9 NMSA
6 1978;

7 (6) shut off, after notice, unauthorized and
8 illegal connections or delinquent connections;

9 (7) acquire and dispose of real property,
10 personal property or rights of way;

11 (8) condemn property pursuant to the Eminent
12 Domain Code as a last resort and only as necessary to acquire
13 property or rights of way for the construction, maintenance or
14 operation of water or sewer lines or related facilities;

15 (9) place a lien on property for unpaid
16 assessments, charges or fees and enforce the lien in the manner
17 provided in Section 16 of the Regional Water Utility Authority
18 Act;

19 (10) for the purpose of protecting ground
20 water sources, promulgate an on-site wastewater management
21 plan;

22 (11) construct, establish and maintain
23 facilities;

24 (12) compel the connection of existing or new
25 development within the service area pursuant to the authority's

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1 existing line-extension policy;

2 (13) compel connection to the services of the
3 authority for health and sanitary purposes pursuant to Section
4 14 of the Regional Water Utility Authority Act; and

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

11 B. The authority shall contract with a third-party
12 financial expert to perform rate analyses no less than every
13 five years.

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

17 SECTION 7. [NEW MATERIAL] BOARD--APPOINTMENT--DISTRICTS--
18 ELECTION.--

19 A. An authority shall be governed by a board. The
20 directors of the initial board shall consist of at least three
21 directors appointed by the incorporating entities and shall be
22 composed of, at a minimum, a president, secretary and
23 treasurer. If an authority is incorporated in an even-numbered
24 year, the initial directors shall serve a term of three years;
25 and, if an authority is incorporated in an odd-numbered year,

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1 the initial directors shall serve a term of four years. The
2 terms of the initial directors shall end on December 31 of the
3 odd-numbered year in which their successors are elected.

4 B. The succeeding board shall be elected by
5 districts. Each director, at the time of election, shall
6 reside within the electoral district of the authority from
7 which that director is elected.

8 C. Terms of elected directors shall be staggered
9 four-year terms beginning on January 1 of the year following
10 their election; provided that those chosen at the first
11 election shall immediately classify themselves by lot, so that
12 at least one director serves a two-year term and at least two
13 directors serve a four-year term; thereafter the terms shall be
14 four years.

15 D. The boundaries and the number of electoral
16 districts shall be established by the initial board within two
17 years of the creation of the authority. The board may in the
18 authority's bylaws provide for redistricting upon any change in
19 the authority's service area. After each federal decennial
20 census, the board shall determine if the districts' populations
21 remain the same or if redistricting is necessary to ensure as
22 close as practicable equal representation of the authority's
23 service area on the board.

24 E. After an authority has been incorporated for at
25 least eight years, the board may amend the authority's bylaws

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1 to allow board member candidates to run at-large rather than by
2 district.

3 F. Elections shall be conducted in accordance with
4 the election procedures of the Local Election Act. An
5 authority shall provide the clerks of the counties within the
6 authority's service area with the voting list for the
7 authority. Only eligible electors shall vote in an election.

8 SECTION 8. [NEW MATERIAL] BOARD--POWERS--DUTIES--
9 DELEGATION.--

10 A. The board may delegate its powers by resolution
11 to an officer, employee or agent of the authority, with the
12 exception of the following:

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

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

- 22 (1) adopt, amend or repeal bylaws and file the
23 bylaws and amendments with the secretary of state;
24 (2) adopt and use a seal;
25 (3) fix the time and place of meetings and the

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1 method of providing notice of the meetings in accordance with
2 the Open Meetings Act;

3 (4) make and pass orders or resolutions
4 necessary for the government and management of the affairs of
5 the authority and the execution of the powers vested in the
6 authority;

7 (5) maintain offices at a place as the board
8 may designate;

9 (6) appoint, hire and retain employees,
10 agents, engineers, attorneys, accountants, financial advisers,
11 investment bankers or other consultants;

12 (7) enter into contracts for goods or services
13 to further its public purposes and other contracts and
14 agreements to implement the provisions of the Regional Water
15 Utility Authority Act;

16 (8) enter into legal agreements with other
17 governmental entities; and

18 (9) regulate, supervise and operate the
19 authority's facilities.

20 C. The board shall promulgate and adhere to
21 policies and procedures that govern its conduct in accordance
22 with state law and that provide meaningful opportunities for
23 public input. The policies shall include standards and
24 procedures for calling emergency meetings.

25 SECTION 9. [NEW MATERIAL] CONFLICTS OF INTEREST.--A

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1 director, officer, employee or agent of the authority shall not
2 be interested in any contract or transaction with the authority
3 except as in an official representative capacity of the
4 authority.

5 SECTION 10. [NEW MATERIAL] OVERSIGHT BY STATE AGENCIES.--

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

10 B. An authority is subject to the provisions of:

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

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

19 A. An authority has the exclusive right to provide
20 water and wastewater services within its service area and may
21 extend services to entities outside of its service area by
22 contract; provided that:

- 23 (1) a person providing water or wastewater
24 services to customers within an authority's service area as of
25 the date the authority is incorporated may continue to serve

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1 those customers who were served as of that date; and

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

8 B. Upon the incorporation of an authority, the
9 authority shall:

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

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

24 C. Additions or subtractions to the authority's
25 initial service area shall be designated in an amended plat

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1 filed with the county clerk of each of the counties in which
2 the authority's service area is located.

3 SECTION 12. [NEW MATERIAL] ACCEPTANCE OF ASSETS AND
4 LIABILITIES.--An authority shall accept a transfer of services,
5 assets and liabilities of a joining entity following the legal
6 dissolution of that entity and subject to any and all statutory
7 requirements for dissolution and transfer.

8 SECTION 13. [NEW MATERIAL] REGULATION OF WATER USE AND
9 DOMESTIC WELLS.--

10 A. To protect, preserve and prevent waste, conserve
11 water and guarantee the supply to its customers, an authority
12 may by resolution of the board regulate and restrict the use of
13 domestic water within the authority's service area.

14 B. An authority may by resolution of the board
15 restrict the drilling of new domestic water wells within four
16 hundred feet of the authority's water distribution lines,
17 except for property that is zoned agricultural, if the total
18 cost of extending the authority's water distribution line,
19 meter and hookup is at or less than the estimated total cost of
20 drilling a new domestic well and installing a pump and meter.

21 C. An authority shall file with the state engineer
22 the board's resolution restricting the drilling of new domestic
23 water wells.

24 D. If an authority fails to authorize the drilling
25 of a new domestic water well, it shall provide domestic water

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1 service to the property within ninety days pursuant to the
2 authority's customary charges and rate schedules.

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

9 F. An authority shall act upon a new domestic water
10 well permit application within thirty days of receipt of the
11 request.

12 G. An authority shall notify the state engineer of
13 all permit denials for domestic well authorization.

14 H. An applicant may appeal the decision of an
15 authority to the district court in the judicial district in
16 which the authority is located.

17 I. Nothing in this section shall limit the
18 authority of the state engineer to administer water rights as
19 provided by law, and the provisions of this section shall be
20 implemented consistent with the rules of the state engineer.

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

25 K. An authority shall adopt a water conservation

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1 plan within its service area.

2 SECTION 14. [NEW MATERIAL] HEALTH AND SAFETY--ON-SITE
3 WASTEWATER TREATMENT SYSTEMS.--For health and sanitary
4 purposes, the board may, by resolution, exercise the power to
5 compel owners of inhabited property within four hundred feet of
6 the authority's service area to connect to the services of the
7 authority.

8 SECTION 15. [NEW MATERIAL] FILING OF ANNUAL REPORT--
9 INITIAL REPORT--SUPPLEMENTAL REPORT.--

10 A. An authority shall file with the secretary of
11 state an annual report setting forth:

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

14 (2) the address of the authority's registered
15 office and the name and address of its registered agent;

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

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

20 B. The annual report shall be signed and sworn to
21 by any two of an authority's directors or officers. If an
22 authority is in the hands of a receiver or trustee, the report
23 shall be executed on behalf of the authority by the receiver or
24 trustee. A copy of the report shall be maintained at an
25 authority's principal place of business as contained in the

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1 report and shall be made available to the general public for
2 inspection during regular business hours.

3 C. The annual report shall be delivered to the
4 secretary of state on or before the fifteenth day of the fifth
5 month following the end of an authority's taxable year, except
6 that an authority's first annual report shall be filed within
7 thirty days of the date on which its certificate of
8 incorporation or its certificate of authority was issued by the
9 secretary of state.

10 D. If the information required to be reported
11 pursuant to Subsection A of this section materially changes
12 after the filing of an annual report, an authority shall file a
13 supplemental report with the secretary of state.

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

15 A. If an authority places a lien on property for
16 nonpayment of money owed, the authority shall file in the
17 office of the county clerk of the county or counties in which
18 the property is located a notice of lien, which 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 B. 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 owned by the same property owner. The lien
10 shall be attested in the name of the authority. The principal
11 amount of any lien imposed for a charge or assessment shall
12 bear interest at the rate of twelve percent per year from the
13 date of filing the notice of lien, unless otherwise provided by
14 law.

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

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1 first and prior liens on the property subject only to a lien of
2 federal, state or county taxes. An authority may release a
3 lien against any 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 D. An authority may, in a single suit, foreclose
11 the liens against all persons named in a notice of liens or
12 against the property if the owners are unknown. The complaint
13 filed shall:

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

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

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

18 E. A judgment or decree rendered in a suit to
19 foreclose liens shall be several against the named defendants
20 and against the several properties for the amounts decreed to
21 be due by each. A lien against real estate may be foreclosed
22 in the same manner that mortgages or other liens against real
23 estate are foreclosed with like rights of redemption. In the
24 foreclosure of any lien created by an authority, reasonable
25 attorney fees may be ordered by the court as part of the costs

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1 in favor of the prevailing party.

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

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

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

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

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

16 (5) fifth, after all costs, liens, assessments
17 and taxes are paid, to the former owner, mortgage holder or
18 parties having an interest in the tract or parcel upon such
19 persons providing satisfactory proof to the court of such
20 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 an authority for
24 acquiring real and personal property needed for an authority
25 project, including the purchase of water rights; planning,

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

7 B. Except for the purpose of refunding previous
8 revenue bond issues, an 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. An 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 an authority or its member entities.

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

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1 SECTION 18. ~~[NEW MATERIAL]~~ REVENUE BONDS--TERMS.--Revenue
2 bonds:

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

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

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

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

16 E. shall be sold for cash at above or below par and
17 at a price that results in a net effective interest rate that
18 does not exceed the maximum permitted by the Public Securities
19 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, a board 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 services provided by an authority, and each bond shall
20 state that it is payable solely from the pledged revenue of the
21 services provided by the authority and that the bondholders may
22 not look to any other fund of the state or political
23 subdivision of the state for the payment of the interest and
24 principal of the 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 that 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. An 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 the
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 that an authority fails or refuses
21 to establish rates for the water or wastewater system as
22 required in this section, any bondholder may apply to the
23 district court for a mandatory order requiring the authority to
24 establish 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 adversely impair any outstanding revenue bonds,
9 unless the outstanding revenue bonds have been discharged in
10 full or provision has been fully made for payment of the bonds.

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

16 **SECTION 23. [NEW MATERIAL] REFUNDING REVENUE BONDS--**
17 **AUTHORIZATION.--**

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

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

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

5 **SECTION 24. [NEW MATERIAL] REFUNDING REVENUE BONDS--**
6 **TERMS.--**Refunding revenue bonds:

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

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

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

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

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

25 **SECTION 25. [NEW MATERIAL] REFUNDING BONDS--ESCROW--**

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1 DETAIL.--

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

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

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

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

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

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

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

20 SECTION 26. [NEW MATERIAL] REFUNDING REVENUE BONDS--
21 RESOLUTION.--At any regular or special meeting called for the
22 purpose of issuing refunding revenue bonds, the authority may
23 adopt a resolution authorizing the issuance of the refunding
24 revenue bonds by a two-thirds' vote of all directors.

25 SECTION 27. [NEW MATERIAL] PUBLIC REGULATION COMMISSION

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1 JURISDICTION.--

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

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

13 SECTION 28. Section 72-12-1.1 NMSA 1978 (being Laws 2003,
14 Chapter 298, Section 2) is amended to read:

15 "72-12-1.1. UNDERGROUND WATERS--DOMESTIC USE--PERMIT.--A
16 person [~~firm or corporation~~] desiring to use public underground
17 waters described in this section for irrigation of not to
18 exceed one acre of noncommercial trees, lawn or garden or for
19 household or other domestic use shall make application to the
20 state engineer for a well on a form to be prescribed by the
21 state engineer. Upon the filing of each application describing
22 the use applied for, the state engineer shall issue a permit to
23 the applicant to use the underground waters applied for;
24 provided that permits for domestic water use within:

25 A. municipalities shall be conditioned to require

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1 the permittee to comply with all applicable municipal
2 ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978;
3 and

4 B. regional water utility authorities shall be
5 conditioned to require the permittee to comply with all
6 applicable resolutions adopted by an authority pursuant to the
7 Regional Water Utility Authority Act."

8 SECTION 29. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2019.