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SENATE BILL 177

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Mary Jane Garcia

AN ACT

**RELATING TO UTILITIES; PROHIBITING ENCROACHMENT INTO AREA
SERVED BY CERTAIN UTILITIES.**

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

Section 1. COMMUNITY WATER AND SEWER SERVICE

**ASSOCIATIONS RECEIVING FINANCIAL ASSISTANCE--SERVICE AREA--
PROHIBITION OF ENCROACHMENT INTO SERVICE AREA--REMEDIES. --**

**A. During the period an association remains
indebted to a state agency or instrumentality pursuant to a
state financial assistance program, or a period during which a
state agency or instrumentality has a security interest in the
property of the association pursuant to a state financial
assistance program, its service or area served shall not be
curtailed or limited by the following actions, and the actions
are prohibited:**

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1 (1) the annexation of area or extension of
2 political subdivision boundaries that includes all or part of
3 the area served by the association;

4 (2) the granting of a franchise or a
5 certificate of public convenience and necessity to another
6 utility to provide a service identical or similar to that
7 provided by the association in the area served by the
8 association;

9 (3) imposition of a requirement for the
10 association to obtain a franchise because of actions described
11 in Paragraph (1) of this subsection; or

12 (4) the extension or offering of services by
13 another utility identical to those of the association in the
14 area served by the association whether or not the services are
15 extended or offered pursuant to a franchise or certificate
16 granted pursuant to Paragraph (2) of this subsection.

17 B. An association may bring an action in the
18 district court of the county in which the area served by the
19 association is located to:

20 (1) enjoin a violation of the provisions of
21 Subsection A of this section; or

22 (2) recover damages caused the association by
23 a utility violating the provisions of Paragraph (4) of
24 Subsection A of this section, and if the violating utility did
25 not extend or offer the services pursuant to a franchise or

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1 certificate granted pursuant to Paragraph (2) of Subsection A
2 of this section, the amount of damages recovered shall be
3 tripled.

4 C. In any action brought pursuant to Subsection B
5 of this section, an association that is successful in
6 obtaining relief shall be awarded reasonable attorney fees and
7 costs of the action.

8 D. As used in this section:

9 (1) "association" means an entity created
10 pursuant to state law for the purpose of providing water or
11 liquid waste disposal services, or both, to rural residents of
12 unincorporated communities;

13 (2) "state financial assistance program"
14 means an activity authorized by state law to be carried out by
15 a state agency or instrumentality in which loans or grants of
16 state funds are made to an association for the purpose of
17 financing the provision of water or liquid waste disposal
18 services in whole or in part to rural residents of
19 unincorporated communities; and

20 (3) "utility" means an entity, whether or not
21 regulated as a public utility pursuant to state law, that has
22 authority to provide water or liquid waste disposal services
23 to the public.