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HOUSE BILL 185

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Joseph Cervantes

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO SPECIAL DISTRICTS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978 TO PROVIDE FOR THE CREATION OF THE LOWER RIO GRANDE PUBLIC WORKS AUTHORITY; PROVIDING FOR POWERS AND DUTIES OF THE AUTHORITY.

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

Section 1. A new section of Chapter 73 NMSA 1978 is enacted to read:

"[NEW MATERIAL] LOWER RIO GRANDE PUBLIC WORKS AUTHORITY.--

A. The "Lower Rio Grande public works authority" is created. The authority is a political subdivision of the state and shall be an independent public body. The authority is composed of Berino mutual domestic water consumers and mutual sewage works association, Desert Sands mutual domestic water consumers association, La Mesa mutual domestic water consumers

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1 association, Mesquite mutual domestic water consumers and
2 mutual sewage works association and Vado mutual domestic water
3 consumers association, all serving unincorporated communities
4 within Dona Ana county.

5 B. The authority may adopt rules and resolutions,
6 governance policies and procedures necessary to exercise the
7 powers conferred pursuant to this section.

8 C. All functions, appropriations, money, records
9 and equipment and all personal property and real property,
10 including water rights, easements, permits and infrastructure,
11 as well as all encumbrances, debts and liabilities pertaining
12 to or owned by the founding entities shall be transferred to
13 the authority.

14 D. The authority shall declare a service area
15 consisting of the founding entities' service areas, and the
16 authority may amend its service area as additional members join
17 the authority. The authority's service area shall be
18 designated on a plat filed in the public records of Dona Ana
19 county.

20 E. The authority may provide for water and
21 wastewater services, road improvements or renewable energy
22 projects that are integral to the operation and maintenance of
23 the authority's facilities or any combination or parts thereof.

24 F. The authority may exercise all powers allowed
25 pursuant to law, including:

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

3 (2) establishing rates and imposing
4 assessments, fees and charges and taking action necessary for
5 the enforcement thereof;

6 (3) implementing water conservation and source
7 water protection, including adopting rules and regulations
8 relating to the drilling of domestic wells within the
9 authority's service area pursuant to Sections 3-53-1.1 and
10 72-12-1.1 NMSA 1978;

11 (4) acquiring, holding and using water rights
12 in an amount necessary to meet its reasonable needs within
13 forty years;

14 (5) shutting off, after notice, unauthorized
15 connections, illegal connections or a connection for which
16 charges are delinquent in payment;

17 (6) entering into contracts with private
18 entities, the state, municipalities, counties and the federal
19 government and other public bodies to further its public
20 purposes;

21 (7) entering into joint powers agreements with
22 other governmental entities relating to providing public
23 services;

24 (8) acquiring property and services and
25 maintaining and operating its facilities;

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1 (9) condemning property pursuant to the
2 Eminent Domain Code;

3 (10) hiring and retaining agents, employees
4 and consultants, as needed;

5 (11) adopting and using a governmental seal;

6 (12) placing a lien on property for unpaid
7 assessments, charges and fees and enforcing the lien in a
8 manner pursuant to law;

9 (13) suing and being sued and being a party to
10 suits, actions and proceedings; and

11 (14) having and exercising all rights and
12 powers necessary, incidental to or implied from the specific
13 powers granted in this section.

14 G. The authority shall be subject to the:

15 (1) Open Meetings Act and Inspection of Public
16 Records Act;

17 (2) Audit Act; and

18 (3) Procurement Code.

19 H. The authority shall not be subject to the
20 jurisdiction of the public regulation commission, the
21 provisions of the Public Utility Act, the requirements and
22 review set forth in the Special District Procedures Act or, in
23 the case of constructing publicly funded utility and public
24 works projects, the zoning or planning jurisdiction or
25 authority of any municipality or county.

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1 I. The authority may issue utility system revenue
2 bonds and obligations for acquiring real and personal property
3 needed for the utility system and for extending, enlarging,
4 renovating, repairing or otherwise improving its facilities.
5 The authority may issue revenue anticipation notes with
6 maturities and terms to be approved by the board of directors
7 of the authority. The authority may pledge irrevocably net
8 revenues from the operation of the utility system for payment
9 of the principal, premiums and interest on the bonds. The
10 utility system revenue bonds:

11 (1) may have interest, appreciated principal
12 value or any part thereof payable at intervals or at maturity
13 as the authority determines;

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

18 (3) may mature at any time not exceeding fifty
19 years after the date of issuance;

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

23 (5) shall be sold for cash at, above or below
24 par and at a price that results in a net effective interest
25 rate that does not exceed the maximum permitted by the Public

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1 Securities Act; and

2 (6) may be sold at a public or negotiated
3 sale.

4 J. The authority's board of directors may adopt a
5 resolution declaring the necessity for the issuance of utility
6 system revenue bonds or other obligations and may authorize the
7 issuance of utility system revenue bonds or other obligations
8 by an affirmative vote of a majority of all members of the
9 authority's board of directors. Utility revenue bonds and the
10 resolution authorizing their issuance shall not be subject to
11 the approval of the public regulation commission pursuant to
12 Section 3-23-3 NMSA 1978 and shall not be subject to voter
13 approval pursuant to Section 3-23-2 NMSA 1978. The bonds
14 authorized by the authority and their income shall be exempt
15 from taxation by the state and its political subdivisions.

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

24 L. The authority shall be governed by a board of
25 directors. The directors of the initial board shall consist of

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1 five directors representing each of the founding entities. The
2 directors of the initial board shall serve until their
3 successors are elected. After the terms of the initial
4 directors are completed, the succeeding board of directors
5 shall be elected by districts from a minimum of five and a
6 maximum of seven electoral districts. Each director, at the
7 time of election, shall reside within the electoral district of
8 the authority from which that member is elected. The
9 boundaries and the number of electoral districts shall be
10 established by the initial board within two years of the
11 creation of the authority. The board may in its governance
12 document provide for redistricting upon any change in the
13 authority's boundary. The elected board of directors shall
14 serve staggered terms to be established in the governance
15 document developed by the initial board."

16 Section 2. Section 3-53-1.1 NMSA 1978 (being Laws 2001,
17 Chapter 207, Section 1) is amended to read:

18 "3-53-1.1. NEW DOMESTIC WATER WELLS--MUNICIPAL
19 AUTHORITY--PUBLIC WORKS AUTHORITY--

20 A. A municipality or a public works authority may,
21 by ordinance, restrict the drilling of new domestic water
22 wells, except for property zoned agricultural, if the property
23 line of the applicant is within three hundred feet of the
24 municipal or the public works authority water distribution
25 lines and the property is located within the exterior

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1 boundaries of the municipality or the public works authority.

2 B. No municipality or public works authority may
3 deny authorization for a new domestic water well permit to an
4 applicant if the total cost to the applicant of extending the
5 municipal or the public works authority water distribution
6 line, meter and hook-up to the applicant's residence exceeds
7 the cost of drilling a new domestic water well.

8 C. A municipality or a public works authority that
9 fails to authorize the drilling of a new domestic water well
10 shall provide domestic water service within ninety days to the
11 property owner under the municipal water provider's or the
12 public works authority's usual and customary charges and rate
13 schedules.

14 D. A municipality or a public works authority shall
15 file with the state engineer its municipal ordinance or its
16 resolution or rule restricting the drilling of new domestic
17 water wells.

18 E. An applicant for a domestic water well located
19 within the exterior boundaries of a municipality or a public
20 works authority with a new domestic water well drilling
21 ordinance shall obtain a permit to drill the well from the
22 municipality or the public works authority subsequent to the
23 state engineer's approval.

24 F. A municipality or a public works authority with
25 a domestic water well drilling ordinance or resolution or rule

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1 shall act upon a new domestic water well permit application
2 within thirty days of receipt of the request.

3 G. A municipality or a public works authority shall
4 notify the state engineer of all municipal or public works
5 authority permit denials for domestic well authorization.

6 H. An applicant may appeal the decision of the
7 municipality or the public works authority to the district
8 court in the county of the municipality or public works
9 authority.

10 I. Nothing in this section shall limit the
11 authority of the state engineer to administer water rights as
12 provided by law.

13 J. The state engineer shall not be liable for
14 actions taken in accordance with a municipal ordinance or a
15 public works authority policy authorizing restriction of
16 domestic well drilling within the exterior boundaries of a
17 qualified municipality or public works authority."

18 Section 3. Section 72-12-1.1 NMSA 1978 (being Laws 2003,
19 Chapter 298, Section 2) is amended to read:

20 "72-12-1.1. UNDERGROUND WATERS--DOMESTIC USE--PERMIT.--A
21 person, firm or corporation desiring to use public underground
22 waters described in this section for irrigation of not to
23 exceed one acre of noncommercial trees, lawn or garden or for
24 household or other domestic use shall make application to the
25 state engineer for a well on a form to be prescribed by the

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1 state engineer. Upon the filing of each application describing
2 the use applied for, the state engineer shall issue a permit to
3 the applicant to use the underground waters applied for;
4 provided that permits for domestic water use within
5 municipalities or within the jurisdiction of a public works
6 authority shall be conditioned to require the permittee to
7 comply with all applicable municipal ordinances enacted
8 pursuant to Chapter 3, Article 53 NMSA 1978 or all policies
9 adopted by the public works authority."

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