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SENATE BILL 110

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Joseph Cervantes

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO SPECIAL DISTRICTS; AMENDING A SECTION OF THE NMSA  
1978; PROVIDING THAT WATER RIGHTS SHALL BE COMBINED AND  
COMMINGLED AMONG CONTIGUOUS MERGING COMPONENTS OF THE LOWER RIO  
GRANDE PUBLIC WATER WORKS AUTHORITY; PROVIDING FOR UTILITY  
CHARGES OF THE LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY AS  
A LIEN AGAINST PROPERTY SERVED.

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

**SECTION 1.** Section 73-26-1 NMSA 1978 (being Laws 2009,  
Chapter 100, Section 1) is amended to read:

"73-26-1. LOWER RIO GRANDE PUBLIC WATER WORKS  
AUTHORITY.--

A. The "Lower Rio Grande public water works  
authority" is created. The authority is a political  
subdivision of the state and shall be an independent public

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1 body. The authority is composed of Berino mutual domestic  
2 water consumers and mutual sewage works association, Desert  
3 Sands mutual domestic water consumers association, La Mesa  
4 mutual domestic water consumers association, Mesquite mutual  
5 domestic water consumers and mutual sewage works association  
6 and Vado mutual domestic water consumers association, all  
7 serving unincorporated communities within Dona Ana county. The  
8 voting community membership of the five founding entities have  
9 approved by resolution the development of the authority.

10 B. The authority may adopt rules and resolutions,  
11 governance policies and procedures necessary to exercise the  
12 powers conferred pursuant to this section.

13 C. All functions, appropriations, money, records  
14 and equipment and all personal property and real property,  
15 including water rights, easements, permits and infrastructure,  
16 as well as all encumbrances, debts and liabilities pertaining  
17 to or owned by the founding entities shall be transferred to  
18 the authority.

19 D. The authority's service area shall consist of  
20 the founding entities' existing place of use on file with and  
21 approved by the state engineer and shall be filed in the public  
22 records of Dona Ana county. An application shall be filed with  
23 the state engineer to combine and commingle water rights and to  
24 combine the existing entities' place of use into the  
25 authority's service area. In the event that another entity

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1 elects to merge into the authority, [~~the merger shall include~~  
2 ~~the combining and commingling of water rights with the~~  
3 ~~authority, and]~~ the authority's service area shall be amended  
4 to include that entity's place of use and shall be filed with  
5 the state engineer. The authority's initial service area and  
6 any subsequent amendments to its service area shall be  
7 designated in a plat filed in the public records of Dona Ana  
8 county. If the service area of the merging entity is  
9 contiguous with the service area of the authority, the merger  
10 shall include the combining and commingling of water rights  
11 with the authority by application filed with the state  
12 engineer.

13 E. The authority may provide for water and  
14 wastewater services, road improvements for the protection of  
15 the authority's infrastructure or renewable energy projects  
16 that are integral to the operation and maintenance of the  
17 authority's facilities or any combination or parts thereof.

18 F. The authority shall exercise all powers allowed  
19 pursuant to law, including:

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

22 (2) establishing rates and imposing  
23 assessments, fees and charges and taking action necessary for  
24 the enforcement thereof;

25 (3) assessing a standby charge for the

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1 privilege of connection into the authority's service at some  
2 date in the future if the property line is within three hundred  
3 feet of the authority's service lines and the property line is  
4 located within the boundaries of the authority. This section  
5 applies to new connections after the enactment of this act;

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

10 (5) shutting off, after notice, unauthorized  
11 connections, illegal connections or a connection for which  
12 charges are delinquent in payment;

13 (6) entering into contracts for services with  
14 private entities, the state, municipalities, counties and the  
15 federal government and other public bodies to further its  
16 public purposes;

17 (7) entering into joint powers agreements with  
18 other governmental entities;

19 (8) acquiring and disposing of real property,  
20 personal property and rights of way;

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

25 (10) hiring and retaining agents, employees

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1 and consultants, as needed;

2 (11) adopting and using a governmental seal;

3 (12) placing a lien on property for unpaid  
4 assessments, charges and fees and enforcing the lien in a  
5 manner pursuant to ~~[law]~~ this section;

6 (13) suing and being sued and being a party to  
7 suits, actions and proceedings; and

8 (14) having and exercising all rights and  
9 powers necessary, incidental to or implied from the specific  
10 powers granted in this section.

11 G. As a political subdivision of the state and a  
12 member-owned community water system, the authority shall be  
13 subject to the:

14 (1) applicable rules and regulations of the  
15 department of environment, and in its discretion the department  
16 may:

17 (a) conduct periodic reviews of the  
18 operation of the authority;

19 (b) require the authority to submit  
20 information to the department;

21 (c) upon department of environment  
22 discretion or upon a petition of twenty-five percent of the  
23 members of the authority, conduct an investigation as it deems  
24 necessary to ensure the authority's compliance with all  
25 applicable statutes, rules, regulations and reporting

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1 requirements; and

2 (d) after a hearing, set and collect  
3 rates and fees and use the same for the proper operation and  
4 management of the authority;

5 (2) applicable rules and regulations of the  
6 department of finance and administration, local government  
7 division and budget and finance bureau;

8 (3) Open Meetings Act;

9 (4) Inspection of Public Records Act;

10 (5) Audit Act;

11 (6) Procurement Code;

12 (7) Governmental Conduct Act;

13 (8) special election procedures pursuant to  
14 Chapter 1, Article 24 NMSA 1978;

15 (9) Chapter 72 NMSA 1978; and

16 (10) applicable rules and regulations of the  
17 state engineer.

18 H. The authority is a political subdivision of the  
19 state and a member-owned community water system and shall not  
20 be subject to the jurisdiction of the public regulation  
21 commission or the provisions of the Public Utility Act.

22 I. The authority may issue utility system revenue  
23 bonds and obligations for acquiring real and personal property  
24 needed for the utility system and for extending, enlarging,  
25 renovating, repairing or otherwise improving its facilities.

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1 The authority may issue revenue anticipation notes with  
2 maturities and terms to be approved by the board of directors  
3 of the authority. The authority may pledge irrevocably net  
4 revenues from the operation of the utility system for payment  
5 of the principal, premiums and interest on the bonds. The  
6 utility system revenue bonds:

7 (1) may have interest, appreciated principal  
8 value or any part thereof payable at intervals or at maturity  
9 as the authority determines;

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

14 (3) may mature at any time not exceeding forty  
15 years after the date of issuance;

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

19 (5) shall be sold for cash at, above or below  
20 par and at a price that results in a net effective interest  
21 rate that does not exceed the maximum permitted by the Public  
22 Securities Act; and

23 (6) may be sold at a public or negotiated  
24 sale.

25 J. The authority's board of directors may adopt a

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1 resolution declaring the necessity for the issuance of utility  
2 system revenue bonds or other obligations and may authorize the  
3 issuance of utility system revenue bonds or other obligations  
4 by an affirmative vote of a majority of all members of the  
5 authority's board of directors. Utility revenue bonds and the  
6 resolution authorizing their issuance shall be subject to voter  
7 approval with oversight from the department of finance and  
8 administration and the New Mexico finance authority. The bonds  
9 authorized by the authority and their income shall be exempt  
10 from taxation by the state and its political subdivisions.

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

19 L. The authority shall be governed by a board of  
20 directors. The directors of the initial board shall consist of  
21 five directors representing each of the founding entities. The  
22 directors of the initial board shall serve until their  
23 successors are elected. After the terms of the initial  
24 directors are completed, the succeeding board of directors  
25 shall be elected by districts from a minimum of five and a

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1 maximum of seven electoral districts. Each director, at the  
2 time of election, shall reside within the electoral district of  
3 the authority from which that member is elected. The  
4 boundaries and the number of electoral districts shall be  
5 established by the initial board within two years of the  
6 creation of the authority. The board may in its governance  
7 document provide for redistricting upon any change in the  
8 authority's boundary. The elected board of directors shall  
9 serve staggered terms to be established in the governance  
10 document developed by the initial board. Elections shall be  
11 conducted in accordance with the special election procedures  
12 pursuant to Chapter 1, Article 24 NMSA 1978 and may be  
13 conducted by the Dona Ana county elections bureau.

14 M. If the authority places a lien on property for  
15 nonpayment of money owed, the authority shall file in the  
16 office of the county clerk a notice of lien, which shall  
17 include:

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

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

21 (3) the general purpose of the lien;

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

25 (5) a description of the property against

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1 which the lien is established;

2 (6) the amount of the lien; and

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

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

13 O. After the filing of the notice of lien in the  
14 office of the county clerk, the authority shall have a lien  
15 upon the property described in the notice of lien. The filing  
16 of the notice of lien shall be notice to all the world of the  
17 existence of the lien and of the contents of the notice of  
18 lien. No such lien shall affect the title or rights to or in  
19 any real estate, of any purchaser, mortgagee in good faith or  
20 judgment lien creditor, without knowledge of the existence of  
21 such lien, unless the notice of lien is filed in accordance  
22 with this section in the office of the county clerk of the  
23 county in which the real estate is situated. All authority  
24 liens shall be first and prior liens on the property subject  
25 only to the lien of federal, state and county taxes. The

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1 authority may release a lien against any specific property by:

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

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

8 P. The authority may, in a single suit, foreclose  
9 the liens against all persons named in the notice of liens or  
10 against the property if the owners are unknown. The complaint  
11 filed shall:

12 (1) expressly name each defendant, if known;  
13 (2) describe the property against which the  
14 lien is established; and  
15 (3) set forth the amount of the lien.

16 Q. The judgment or decree rendered in said cause  
17 shall be several against the named defendants and against the  
18 several properties for the amounts decreed to be due by each.  
19 A lien against real estate may be foreclosed in the same manner  
20 that mortgages or other liens against real estate are  
21 foreclosed with like rights of redemption. In the foreclosure  
22 of any lien created by the authority, reasonable attorney fees  
23 may be taxed by the court as part of the costs in favor of the  
24 prevailing party.

25 R. The authority shall prepare and sign a notice of

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

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

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

10 (3) third, to the indebtedness claimed under  
11 the lien of the authority;

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

14 (5) fifth, after all such costs, liens,  
15 assessments and taxes are paid, to the former owner, mortgage  
16 holder or parties having an interest in the tract or parcel,  
17 upon such persons providing satisfactory proof to the court of  
18 such interest and upon approval of the court.

19 ~~[M-]~~ S. As used in this section, "public water  
20 works authority" means a utility organized as a political  
21 subdivision of the state for the purposes of constructing  
22 infrastructure and furnishing water and wastewater services for  
23 domestic, commercial or industrial uses, road improvements for  
24 the protection of the authority's infrastructure and renewable  
25 energy projects; and entering into agreements with other

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1 entities for the provision of other services, including [~~but~~  
2 ~~not limited to~~] water conservation and reclamation, source  
3 water protection, drainage, flood control, solid waste,  
4 planning and zoning."

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