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DISCUSSION DRAFT

AN ACT

RELATING TO SPECIAL DISTRICTS; PROVIDING FOR THE CREATION OF A REGIONAL UTILITY AUTHORITY; ESTABLISHING POWERS AND DUTIES; ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. SHORT TITLE.--This act may be cited as the "Regional Utility Authority Act".

Section 2. PURPOSE OF REGIONAL UTILITY AUTHORITY.--A regional utility authority may be created for the purpose of:

A. purchasing, acquiring, operating, establishing or constructing waterworks to supply and treat water for domestic, commercial and industrial purposes by any available means to persons within and without the boundary of the authority;

B. purchasing, acquiring, establishing, operating or constructing wastewater systems for the collection, treatment and disposal of sewage, or for the

1 management of decentralized or on-site wastewater disposal systems; or

2 C. planning, developing, managing, maintaining or coordinating the
3 development of regional water and wastewater facilities; and

4 D. infrastructure development of renewable energy projects that are
5 integral to the operation and maintenance of the authority's facilities or any
6 combination or parts thereof.

7

8 **Section 3. DEFINITIONS.--** As used in this Act:

9 A. "authority" means a regional water and wastewater authority that is
10 established pursuant to the Regional Utility Authority Act; and

11 B. "board" means the board of directors of an authority.

12 C. "service area" is a legal description of the boundaries of the
13 authority or the territory to be included in it, with such certainty as to enable a property
14 owner to determine whether or not his property is within the authority.

15

16 **Section 4. REGIONAL UTILITY AUTHORITY--CREATION.—**

17 Whenever the officers of an entity organized under any of the following statutes:

- 18 1. 73-21-1 NMSA 1978 (Water and Sanitation District)
- 19 2. 3-28-1 NMSA 1978 (Water and Natural Gas Association)
- 20 3. 73-5-1 NMSA 1978 (Water Users' Association)
- 21 4. 53-8-1 NMSA 1978 (Nonprofit Corporation)
- 22 5. 5-11-1 NMSA 1978 (Public Improvement District)
- 23 6. 62-2-1 NMSA 1978 (Investor-owned Waterworks)
- 24 7. 53-11-1 NMSA 1978 (Investor-owned Utility)
- 25 8. 53-4-1 NMSA 1978 (Cooperative Association)
- 26 9. 3-29-1 NMSA 1978 (Mutual Domestic Community Water
27 Association)

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Counties, Tribes or other such corporate entity that provides water and/or wastewater service desire to organize into a regional authority under this chapter, shall file an application for incorporation as an authority with the Secretary of State. The officers of the entity or the entities shall designate a lead entity to create and submit the application and otherwise serve as the registered agent. The application shall consist of the following:

A. Resolution of intent.—The entity(es) shall individually adopt a resolution signifying their intention to incorporate. No such resolution shall be adopted until after a public meeting has been held, the notice of which shall be given at least 30 days before the meeting and in the same manner as provided in subsection (B) for the giving of notice of the adoption of the resolution. The resolution shall state:

1. Name and purpose of authority.
2. Service area of the authority.
3. Member entities of authority
4. Lead entity of the authority to act as registered agent

B. General notice of adopted resolution.--If the resolution is adopted, the officers of such entity(es) shall cause a notice of such resolution to be published at least one time in the legal periodical of the county or counties in which the authority is to be organized and at least one time in a newspaper published and in general circulation in such county or counties. The notice shall contain a brief statement of the substance of the resolution, including the substance of the articles making reference to this chapter. The notice shall state that on a day certain, not less than three days after publication of the notice, articles of incorporation of the proposed authority shall be filed with the Secretary of State. No entity shall be required to make any other publication of the resolution under the provisions of existing law.

1 C. **Filing articles of incorporation.**--On or before the day specified in the
2 notice required under Section I.B, the registered agent shall file with the Secretary of
3 State articles of incorporation. The articles of incorporation shall set forth:

- 4
- 5 1. The name of the authority;
- 6 2. A statement that the authority is formed under this chapter;
- 7 3. Purpose of the authority;
- 8 4. Adopted resolutions and proof of publication of the notices
9 required under Section B;
- 10 5. The names of the incorporating entities together with the names
11 and addresses of their officers;
- 12 6. an accurate map or plat that shows the boundary of the service
13 area proposed to be incorporated;
- 14 7. Name and officers of the registered agent and a statement
15 executed by an authorized officer of an entity in which the
16 officer acknowledges the entity's acceptance of the appointment
17 by the filing association as its registered agent;
- 18 8. Establishment and organization of the board in which all
19 legislative power of the authority is vested;
- 20 9. Manner of the appointment, term of service and qualifications, if
21 any, of the directors and the procedure for filling vacancies;
- 22 10. Officers of the authority, the manner of their appointment and
23 their duties; voting requirements for action by the board;
- 24 11. A merger plan for the transfer, disposition or assumption of all
25 assets and liabilities to the authority; and
- 26 12. Any other matter which shall be determined in accordance with
27 the provisions of this chapter.
- 28

29 D. **Certification of incorporation.**—Within 30 days of filing, the
30 Secretary of State shall review the articles of incorporation and if he finds that they

1 conform to law, he shall, but not prior to the day specified in the notice published in
2 accordance with Section I.B, open the articles of incorporation to public review and
3 comment for 30 days. If, upon closure of the public comment period, the Secretary of
4 State finds within those comments no valid objection or protest, shall endorse his
5 approval of the articles and, when all proper fees and charges have been paid, shall file
6 the articles and issue a certificate of incorporation to which shall be attached a copy of
7 the approved articles. Upon the issuance of a certificate of incorporation by the
8 Secretary of State, the corporate existence of the authority shall begin. The certificate
9 of incorporation shall be conclusive evidence of the fact that the authority has been
10 incorporated, but proceedings may be instituted by State to dissolve an authority which
11 was formed without substantial compliance with the provisions of this section.
12

13 **E. Certification of officers.**--When an authority has been organized and
14 its officers elected, its secretary shall certify to the Secretary of State the names and
15 addresses of its officers as well as the principal office of the authority. Any change in
16 the location of the principal office shall likewise be certified to the Secretary of State
17 within ten days after such change. An authority created under the laws of State and
18 existing at the time this chapter is enacted, in addition to powers granted or conferred
19 upon the authority, shall possess all the powers provided under this chapter.
20

21 **F. Qualified electors.** – The founding entities will define in their articles
22 of incorporation their composition (qualified elector or membership based).
23

24 **G. Board of directors** --The regional entity shall be governed by a board
25 of directors. The board shall be made up of an odd number of at least three directors
26 who should reside within the boundaries of the authority and are in good standing.
27

28 **H. Entities Joining Later**—If any entity as described in Section 4 elects to
29 join a duly incorporated authority, the entity shall individually adopt a resolution
30 signifying its intention to join and submit such resolution to the officers of the

1 authority. No such resolution shall be adopted until after a public meeting has been
2 held, the notice of which shall be given at least 30 days before the meeting and in the
3 same manner as provided in subsection 4.B for the giving of notice of the adoption of
4 the resolution. The resolution shall state:

- 5 1. The entity's intention to join the authority under this chapter;
- 6 2. The name and purpose of the authority;
- 7 3. Statement that the entity accepts the articles of incorporation of
8 the Authority;
- 9 4. An accurate plat or map showing any amendment to the
10 authority's service area, if any, occasioned by the joining of the
11 entity;
- 12 5. A plan of dissolution, if applicable, of the entity after joining the
13 authority; and
- 14 6. A merger plan for the transfer and assumption of all assets and
15 liabilities to the authority.

16 Once the authority receives the resolution, it shall update its articles of incorporation
17 and file such updated articles with the Secretary of State. Within 30 days of filing, the
18 Secretary of State shall review the updated articles of incorporation and if he finds that
19 they conform to law, he shall, but not prior to the day specified in the notice published
20 in accordance with Section I.B, open the articles of incorporation to public review and
21 comment for 30 days. If, upon closure of the public comment period, the Secretary of
22 State finds within those comments no valid objection or protest, the Secretary shall
23 endorse his approval of the articles.

24 Board representation of the newly joined entity will occur through election or
25 redistricting process. The authority board may choose to appoint a representative of
26 the newly merged entity on advisory role in the meantime.

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1 **Section 5. POWERS AND RESPONSIBILITIES OF AN AUTHORITY.--**

2 An authority is a body politic and corporate, and a political subdivision of the state,
3 subject to all statutory requirements thereof. An authority may exercise all legislative
4 powers and perform all functions not expressly denied by general law or by this
5 Regional Water and Wastewater Authority Act. In addition to other powers granted to
6 the authority pursuant to the Regional Water and Wastewater Authority Act, the
7 authority shall:

8 A. have perpetual existence;

9 B. borrow money, receive grants, issue bonds in accordance with the
10 provisions of this act and pledge or otherwise encumber the revenues or
11 receipts of the authority or mortgage the property of the authority as security for
12 any of the obligations of the authority;

13 C. regulate, supervise and operate the authority's facilities;

14 D. establish rates and impose assessments, fees and charges and take
15 action necessary for the enforcement thereof, for the delivery of and collection
16 of water and wastewater services or for other services or facilities operated or
17 made available by the authority in accordance with a rate analysis compliant
18 with the authority's financial plan and asset management plan which provides
19 for reserve funds for future improvements and replacement of the authority's
20 infrastructure.

21 E. assess a standby charge for the privilege of connection into the
22 authority's service at some date in the future if the property line is within three
23 hundred feet of the authority's service lines and the property line is located
24 within the boundaries of the authority. This section applies to new connections
25 after the effective date of this act;

26 F. acquire, from a willing seller only, hold and use water rights in an
27 amount necessary to meet its reasonable needs not to exceed forty years

1 pursuant to Section 72-1-9 NMSA 1978;

2 G. shut off, after notice, unauthorized and illegal connections or
3 connections for which charges, fees, assessments or other charges are
4 delinquent, and file suit in a court of competent jurisdiction to recover costs
5 associated with an unauthorized, illegal or delinquent connection, including the
6 cost of water delivered, charges for connection and disconnection, damages and
7 attorney's fees;

8 H. enter into contracts for services with private entities, the state,
9 municipalities, counties and the federal government and other public bodies to
10 further its public purposes;

11 I. enter into joint powers agreements with other governmental entities;

12 J. acquire and dispose of real property, personal property and rights of
13 way;

14 K. condemn property pursuant to the Eminent Domain Code as the last
15 resort and only for the purposes of construction, maintenance and operations of
16 the authority's infrastructure;

17 L. hire and retain agents, employees and consultants, as needed;

18 M. adopt and utilize a governmental seal;

19 N. place a lien on property for unpaid assessments, charges and fees and
20 enforce the lien in the manner pursuant to this section until paid, all rates, tolls
21 or charges constitute a perpetual lien on and against the property served, and
22 any such lien may be foreclosed in the same manner as provided by the laws of
23 New Mexico for the foreclosure of real estate mortgages and shall not be
24 subject to any limitations period, statutory or otherwise;

25 O. sue and be sued and be a party to suits, actions and proceedings;

26 P. develop, adopt, amend and file with the Secretary of State a
27 governance document where it establishes the authority powers and its process

1 to implement them;

2 Q. refund any bonded indebtedness or revenue bonds of the authority;

3 R. undertake regional water planning, alone or in coordination with
4 other regional water and/or wastewater service providers, including water plans
5 as set forth in 72-1-9 NMSA 1978;

6 S. wherever applicable, promulgate an on-site wastewater management
7 plan. For health and sanitary purposes, the board shall have the power to
8 compel compliance with regulations and standards, no less stringent than those
9 adopted by the department of the environment, relating to design, installation,
10 maintenance, repair and removal of on-site wastewater treatment systems;

11 T. construct ,establish and maintain facilities across or along any public
12 street or highway and through any vacant public lands which are the property of
13 the state; construct works and establish and maintain facilities across any
14 stream of water or watercourse; all in accordance with applicable state and
15 federal permitting authority;

16 U. for health and sanitary purposes, the authority shall have the power
17 to compel the owners of inhabited property within the territory of an authority
18 to connect their property with the water or wastewater system of the authority,
19 and, upon failure so to connect within ninety days after written notice by the
20 board, the board may cause the connection to be made and a lien to be filed
21 against the property for the expense incurred in making the connection;
22 provided, however, that no owner shall be compelled to connect the owner's
23 property with such system unless a service line is brought by the authority to a
24 point within four hundred feet of the nearest lot line; and to compel the
25 connection of any new development that lies partially or wholly within the
26 service area of the authority to the authority's water or wastewater system
27 pursuant to the authority's existing line extension policy; and the power to

1 prohibit the owners of the owners of inhabited property within the territory of
2 an authority and who are connected to the authority to disconnect from the
3 authority.

4 V. have and exercise all rights and powers necessary or incidental to or
5 implied from the specific powers granted in this section. Such specific powers
6 shall not be considered as a limitation upon any power necessary or appropriate
7 to carry out the purposes and intent of the Regional Utility Authority Act.

8 W. enforce liens on property in the following manner:

9 1. If the authority places a lien on property for nonpayment of
10 money owed, the authority shall file in the office of the county clerk a
11 notice of lien that shall include:

12 (a) identification of the outstanding debt to the authority;

13 (b) the fact that a lien is established;

14 (c) the general purpose of the lien;

15 (d) the name of the owner of the property against which
16 the lien is established as determined from the records of the
17 county assessor;

18 (e) a description of the property against which the lien is
19 established;

20 (f) the amount of the lien; and

21 (g) if the lien is for more than one period of time, the
22 date for which the lien is established.

23 2. A lien for multiple charges or assessments on a property
24 owner may be included in the same notice of lien, and it shall not be
25 necessary to file separate liens against the separate properties. The lien
26 shall be attested in the name of the authority. The principal amount of
27 any lien imposed for a charge or assessment shall bear interest at the

1 rate of twelve percent per year from the date of filing the notice of lien
2 unless otherwise provided by law.

3 3. After the filing of the notice of lien in the office of the county
4 clerk, the authority shall have a lien upon the property described in the
5 notice of lien. The filing of the notice of lien shall be notice to all the
6 world of the existence of the lien and of the contents of the notice of
7 lien. No such lien shall affect the title or rights to or in any real estate,
8 of any purchaser, mortgagee in good faith or judgment lien creditor,
9 without knowledge of the existence of such lien, unless the notice of
10 lien is filed in accordance with this section in the office of the county
11 clerk of the county in which the real estate is situated. All authority
12 liens shall be first and prior liens on the property subject only to the lien
13 of general state and county taxes. The authority may release a lien
14 against any specific property by:

15 (a) entering and signing a receipt of payment upon the
16 notice of lien filed in the office of the county clerk; or

17 (b) issuing a separate receipt that recites that payment of
18 the lien with any accrued interest and penalty has been made.

19 4. The authority may, in a single suit, foreclose the liens against
20 all persons named in the notice of liens or against the property if the
21 owners are unknown. The complaint filed by the authority in the
22 applicable judicial district court shall:

23 (a) expressly name each defendant, if known;

24 (b) describe the property against which the lien is
25 established; and

26 (c) set forth the amount of the lien.

27 5. The judgment or decree rendered in said cause shall be

1 several against the named defendants and against the several properties
2 for the amounts decreed to be due by each. A lien against real estate
3 may be foreclosed in the same manner that mortgages or other liens
4 against real estate are foreclosed with like rights of redemption. At the
5 trial of any case foreclosing any lien, the recitals of the lien or other
6 evidence of indebtedness shall be received in evidence as prima facie
7 true. In the foreclosure of any lien created by the authority, reasonable
8 attorney fees shall be taxed by the court as part of the costs.

9 6. The authority shall prepare and sign a notice of foreclosure,
10 which will also bear the signature and mailing address of an attorney
11 representing the authority. The proceeds of the sale of the property by
12 the authority pursuant to a foreclosure sale on a lien shall be applied as
13 follows:

14 (a) first, to the payment of costs in giving notice of the
15 sale and of conducting the sale;

16 (b) second, to the indebtedness claimed under the lien
17 and thence to ad valorem taxes and other special assessments
18 having a lien of the property that are coequal with the lien; and

19 (c) third, after all such costs, liens, assessments and taxes
20 are paid, to the former owner, mortgage holder or other parties
21 having an interest in the tract or parcel, upon such person
22 providing satisfactory proof to the court of such interest and
23 upon approval of the court.

24 X. In order to prevent waste and to conserve the supply of water, the authority may by
25 ordinance regulate and restrict the use of water.

26
27 Y. Jurisdiction over new domestic water wells within the authority's service area.

28 a. the authority may, by resolution ordinance, restrict the drilling of new
29 domestic water wells, except for property zoned agricultural, if the property

- 1 line of the applicant is within three hundred feet of the municipal water
2 distribution lines and the property is located within the exterior boundaries of
3 the authority.
- 4 b. The authority may deny authorization for a new domestic water well permit
5 to an applicant if the total cost to the applicant of extending the authority's
6 water distribution line, meter and hook-up to the applicant's residence exceeds
7 the cost of drilling a new domestic water well.
- 8 c. If the authority fails to authorize the drilling of a new domestic water well, it
9 shall provide domestic water service within ninety days to the property owner
10 under the authority's customary charges and rate schedules.
- 11 d. The authority shall file with the state engineer its resolution restricting the
12 drilling of new domestic water wells.
- 13 e. An applicant for a domestic water well located within the exterior
14 boundaries of an authority with a new domestic water well drilling policy shall
15 obtain a permit to drill the well from the authority subsequent to the state
16 engineer's approval.
- 17 f. The authority through its domestic water well drilling authority shall act upon
18 a new domestic water well permit application within thirty days of receipt of
19 the request.
- 20 g. The authority shall notify the state engineer of all permit denials for
21 domestic well authorization.
- 22 h. An applicant may appeal the decision of the authority to the district court in
23 the county where the authority is located.
- 24 i. Nothing in this section shall limit the authority of the state engineer to
25 administer water rights as provided by law.
- 26 j. The state engineer shall not be liable for actions taken in accordance with by
27 resolution authorizing restriction of domestic well drilling within the exterior
28 boundaries of a qualified authority.

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- 31 Z. For the purpose of preserving and protecting water resources and to provide an
32 assured water supply for the community, the authority may require within its territory:
- 33 1. site development standards to conserve water and minimize water loss;
34 2. water harvesting and storage;
35 3. low water use landscaping and plant materials;
36 4. nonagricultural residential and commercial water use limitations; or
37 5. recycling and reuse of water.
- 38 6. The provisions of this section shall be implemented consistent with state
39 engineer rules.

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42 **Section 6. Oversight Powers** -- The authority shall be subject to the:

- 43 1. applicable rules and regulations of the department of the
44 environment, and in its discretion the department may:

1 (a). conduct periodic reviews of the operations of the
2 authority;
3 (b) require the authority to submit information to the
4 department; :
5 (c) upon department of environment discretion or upon a
6 petition of twenty-five (25) percent of the customers of
7 the authority, conduct an investigation as it deems
8 necessary to ensure the authority's compliance with all
9 applicable statutes, rules, regulations and reporting
10 requirements.

11 2. applicable rules and regulations of the department of finance and
12 administration, local government division and budget and
13 finance bureau;

14 A. Whenever the above agencies determine a violation, they
15 may:

16 (a) Issue a compliance order requiring compliance
17 immediately or within a specific time period, or both;
18 or

19 (b) Commence a civil action in district court for
20 appropriate relief, including injunctive relief.

21 B. A compliance order shall state with reasonable specificity
22 the nature of the violation.

23 C. If the authority fails to take corrective actions within the time
24 specified in the compliance order, the departments may assess a
25 civil penalty for each day of continued noncompliance with the
26 compliance order.

27 D. Any compliance order issued by the department pursuant to

1 this section shall become final unless specified, no later than
2 thirty days after the compliance order is served, any authority
3 named in the compliance order submits a written request to the
4 departments for public hearing within ninety days after receipt
5 of a request.

6 E. The departments may appoint an independent hearing officer
7 to preside over any public hearing held. The hearing officer
8 shall:

- 9 a) Make and preserve a complete record of the
10 proceedings; and
- 11 b) Forward to the departments a report that includes
12 recommendations, if recommendations are requested
13 by the departments.

14 E. The departments shall consider the findings of the
15 independent hearing officer and, based on the evidence
16 presented at the hearing, the departments shall make a final
17 decision regarding the compliance order.

18 F. In connection with any proceeding under this section, the
19 departments may:

- 20 (a) adopt rules for discovery and hearing procedures; and
- 21 (b) issue subpoenas for the attendance and testimony of
22 witnesses and for relevant paper, books and documents.

23 G. Penalties collected pursuant to this section shall be deposited
24 in the general fund.

- 25 3. Open Meetings Act;
- 26 4. Inspection of Public Records Act;
- 27 5. Audit Act

- 1 6. Procurement Code
- 2 7. Governmental Conduct Act; and
- 3 8. applicable rules and regulations of the state engineer.

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5 **Section 7. REGIONAL UTILITY AUTHORITY--TERRITORY AND**
6 **EXCLUSIVE RIGHT TO PROVIDE SERVICE--JOINING AN AUTHORITY--**
7 **COOPERATION WITH ADJOINING COUNTIES**

8 A. A regional utility authority shall have the exclusive right to provide
9 water and wastewater services within its service area; provided that:

10 1. any entity providing water or wastewater services as of the
11 effective date of the Act to customers or members within the authority's service
12 area may continue to serve such customers served as of that date, and

13 2. any extension of water or wastewater service by an entity
14 described in subsection 1 of this section, that is planned and fully funded as of
15 the date that the authority is created, and is completed within eighteen months
16 of the same date, shall likewise be excluded from the authority's service area.

17 B. The authority's service area shall consist of the founding entities
18 possessing existing place of use on file with and approved by the state engineer and
19 shall be filed in the public records of the county where the majority of the authority
20 service area will located.

21 C. The initial authority's service area and any subsequent amendments
22 to it shall be designated in a plat filed in the public records of the county where the
23 majority of the authority is located.

24 **Section 8. REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF**
25 **REVENUES--LIMITATION ON TIME OF ISSUANCE.--**

26 A. Revenue bonds may be issued by the authority for acquiring real and
27 personal property needed for an authority project, including the purchase of water

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

6 B. Except for the purpose of refunding previous revenue bond issues,
7 the authority may not sell revenue bonds payable from pledged revenues after the
8 expiration of two years from the date of the resolution authorizing the issuance of the
9 bonds. However, any period of time during which a particular revenue bond issue is in
10 litigation shall not be counted in determining the expiration date of that issue.

11 C. The authority shall not impair the rights of any holders of bonds or
12 other obligations payable from the net revenues of the water or wastewater system
13 previously issued or incurred by the authority. D. If required by the terms, covenants
14 and provisions of revenue bonds or other obligations previously issued by the
15 authority, all additional bonds or other obligations issued or incurred by the authority
16 pursuant to the Regional Water and Wastewater Authority Act shall contain any
17 required terms, covenants or provisions required to avoid impairment of the previously
18 issued or incurred bonds or other obligations.

19 **Section 9. USE OF PROCEEDS OF REVENUE BOND ISSUE.--**It is
20 unlawful to divert, use or expend any money received from the issuance of revenue
21 bonds for any purpose other than the purpose for which the revenue bonds were
22 issued.

23 **Section 10. REVENUE BONDS--TERMS.--**Revenue bonds:

24 A. may have interest, appreciated principal value or any part thereof
25 payable at intervals or at maturity as may be determined by the authority;

26 B. may be subject to prior redemption at the authority's option at such
27 time or times and upon such terms and conditions with or without the payment of such

1 premium or premiums as may be determined by the authority;

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

4 D. may be serial in form and maturity or may consist of one bond
5 payable at one time or in installments or may be in such other form as may be
6 determined by the authority;

7 E. shall be sold for cash at above or below par and at a price that results
8 in a net effective interest rate that does not exceed the maximum permitted by the
9 Public Securities Act; and

10 F. may be sold at public or negotiated sale.

11 **Section 11. EXEMPTION FROM TAXATION.**--The bonds authorized by
12 the Regional Water and Wastewater Authority Act and the income from the bonds
13 shall be exempt from all taxation by the state or any political subdivision of the state.

14 **Section 12. RESOLUTION AUTHORIZING REVENUE BONDS.**--

15 A. At a regular or special meeting called for the purpose of issuing
16 revenue bonds, the authority may adopt a resolution that:

17 (1) declares the necessity for issuing revenue bonds; and

18 (2) authorizes the issuance of revenue bonds by an affirmative
19 vote of a majority of all members of the authority.

20 B. Revenue bonds and the resolution authorizing their issuance shall be
21 subject to approval by the state board of finance.

22 **Section 13. REVENUE BONDS NOT GENERAL OBLIGATIONS.**--

23 **AUTHENTICATION.**--

24 A. Revenue bonds or refunding revenue bonds issued as authorized in
25 the Regional Water and Wastewater Authority Act are:

26 (1) not general obligations of the state or other political
27 subdivision of the state; and

1 (2) collectible only from the pledged revenues of the water or
2 wastewater system, and each bond shall state that it is payable solely from the pledged
3 revenues of the water or wastewater system and that the bondholders may not look to
4 any other fund of the state or political subdivision of the state for the payment of the
5 interest and principal of the bond.

6 B. The bonds shall be executed by the chairperson of the board and
7 may be authenticated by the secretary of the board or any public or private transfer
8 agent or registrar or its successor, which shall be named or otherwise designated by the
9 board. The bonds may be executed as provided under the Uniform Facsimile Signature
10 of Public Officials Act.

11 **Section 14. REVENUE BONDS--MANDATORY RATES FOR THE**
12 **WATER OR WASTEWATER SYSTEM--MANDAMUS--IMPAIRMENT OF**
13 **PAYMENT.--**

14 A. The authority shall establish rates for services rendered by the water
15 or wastewater system to provide revenue sufficient to meet the following requirements,
16 and such rates shall remain in effect until the bond issue is liquidated. Revenue shall
17 be sufficient to:

18 (1) pay all reasonable expenses of operation of the water or
19 wastewater system;

20 (2) pay all interest on the water or wastewater system revenue
21 bonds as it comes due; and

22 (3) provide a sinking fund adequate to discharge the revenue
23 bonds as they mature.

24 (4) establish a reserve fund necessary for the operation and
25 improvements of the authority to include:

26 a. capital improvement reserve;

27 b. operating and maintenance reserve;

- 1 c. emergency reserve;
- 2 d. debt reserve; and
- 3 e other reserves as identified.

4 B. In the event the authority fails or refuses to establish rates for the
5 water or wastewater system as required in this section, any bondholder may apply to
6 the district court for a mandatory order requiring the authority to establish rates that
7 will provide revenues adequate to meet the requirements of this section.

8 C. Any law that authorizes the pledge of any or all of the pledged water
9 or wastewater system revenues to the payment of any revenue bonds issued pursuant to
10 the Regional Water and Wastewater Authority Act or that affects the pledged revenues
11 of the water or wastewater system, or any law supplemental to or otherwise
12 appertaining to that act, shall not be repealed or amended or otherwise directly or
13 indirectly modified in such a manner as to impair adversely any such outstanding
14 revenue bonds, unless the outstanding revenue bonds have been discharged in full or
15 provision has been fully made for payment of the bonds.

16 **Section 15. REVENUE BONDS--REFUNDING AUTHORIZATION.--**

17 A. The authority may issue refunding revenue bonds for the purpose of
18 refinancing, paying and discharging all or any part of outstanding bonds or other
19 obligations payable from the net revenues of the water or wastewater system
20 previously issued or incurred by the authority.

21 B. The authority may pledge irrevocably for the payment of interest and
22 principal on refunding bonds the pledged revenues of the water or wastewater system.

23 C. Bonds for refunding and bonds for any purpose permitted by the
24 Regional Water and Wastewater Authority Act may be issued separately or issued in
25 combination in one series or more.

26 **Section 16. REFUNDING BONDS--ESCROW--DETAIL.--**

27 A. Refunding bonds issued pursuant to the Regional Water and

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

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

13 C. The proceeds of refunding bonds, including any accrued interest and
14 premium appertaining to the sale of refunding bonds, shall either be immediately
15 applied to the retirement of the bonds being refunded or be placed in escrow in a
16 commercial bank or trust company, which possesses and is exercising trust powers and
17 which is a member of the federal deposit insurance corporation, to be applied to the
18 payment of the principal of, interest on and any prior redemption premium due in
19 connection with the bonds being refunded; provided that such refunding bond
20 proceeds, including any accrued interest and any premium appertaining to a sale of
21 refunding bonds, may be applied to the establishment and maintenance of a reserve
22 fund and to the payment of expenses incidental to the refunding and the issuance of the
23 refunding bonds, the interest on the bonds and the principal of the bonds or both
24 interest and principal as the authority may determine. Nothing in this section requires
25 the establishment of an escrow if the refunded bonds become due and payable within
26 one year from the date of the refunding bonds and if the amounts necessary to retire the
27 refunded bonds within that time are deposited with the paying agent for the refunded

1 bonds. Any such escrow shall not necessarily be limited to proceeds of refunding
2 bonds but may include other money available for its purpose. Any proceeds in escrow
3 pending such use may be invested or reinvested in bills, certificates of indebtedness,
4 notes or bonds that are direct obligations of or the principal and interest of which
5 obligations are unconditionally guaranteed by the United States of America or in
6 certificates of deposit of banks that are members of the federal deposit insurance
7 corporation, the par value of which certificates of deposit is collateralized by a pledge
8 of obligations of or the payment of which is unconditionally guaranteed by the United
9 States of America, the par value of which obligations is at least seventy-five percent of
10 the par value of the certificates of deposit. Such proceeds and investments in escrow
11 together with any interest or other income to be derived from any such investment shall
12 be in an amount at all times sufficient as to principal, interest, any prior redemption
13 premium due and any charges of the escrow agent payable therefrom to pay the bonds
14 being refunded as they become due at their respective maturities or due at any
15 designated prior redemption date or dates in connection with which the authority shall
16 exercise a prior redemption option. Any purchaser of any refunding bond is in no
17 manner responsible for the application of the proceeds thereof by the authority or any
18 of its officers, agents or employees.

19 D. Refunding bonds may bear such additional terms and provisions as
20 may be determined by the authority and the refunding bonds are not subject to the
21 provisions of any other statute except as may be incorporated by reference in the
22 Regional Water and Wastewater Authority Act.

23 **Section 17. REFUNDING REVENUE BONDS--TERMS.--**Refunding
24 revenue bonds:

25 A. may have interest, appreciated principal value or any part thereof
26 payable at intervals or at maturity as may be determined by the authority;

27 B. may be subject to prior redemption at the authority's option at such

1 time or times and upon such terms and conditions with or without the payment of
2 premium or premiums as may be determined by the authority;

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

5 D. may be serial in form and maturity or may consist of a single bond
6 payable in one or more installments or may be in such other form as may be
7 determined by the authority; and

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

12 **Section 18. REFUNDING REVENUE BONDS--RESOLUTION.**--At any
13 regular or special meeting called for the purpose of issuing refunding revenue bonds,
14 the board by a majority vote of all the customers of the authority may adopt a
15 resolution authorizing the issuance of the refunding revenue bonds.

16 **Section 19. GOVERNANCE DOCUMENT AMENDMENTS**

17 A. Amendments to the governance document shall be made during a
18 regular meeting held in accordance with the provisions the Open Meetings Act by a
19 vote of the majority of the board. The amended governance document shall be filed
20 and recorded and certified by the Secretary of State. The amended governance
21 documents of the authority shall become effective upon filing with the commission and
22 supersede any and all amendments.

23 **SECTION 20 AUTHORITIES INCORPORATED UNDER SPECIAL**
24 **ACT; LAWS APPLICABLE** -- Any authority incorporated or by special act previous
25 the date of this statute which chooses to retain such organization and governance, shall,

1 in the enforcement of the powers or the exercise of the duties conferred by the special
2 act, proceed in all respects as provided by the special act.

3 **SECTION 21. AUTHORITIES INCORPORATED UNDER SPECIAL**
4 **ACT; PETITION FOR REORGANIZATION; ELECTION** -- Any authority
5 incorporated under a special act may abandon its organization and organize itself under
6 the provisions of the general law relating to municipalities.

7 **A.** If a petition, signed by qualified electors of the authority equal in number to
8 not less than one eighth of the total number of qualified electors of the authority,
9 requests the governing body to submit to the qualified authority electors the question of
10 reorganizing the authority under the provisions of the this statute, the governing body
11 shall, within fourteen days after the petition is certified as valid, adopt an election
12 resolution calling for a special election in the manner provided in the authority's
13 special act on the question of reorganizing the authority under the provisions of this
14 statute. The election shall be held within sixty days after the date the election
15 resolution is adopted.

16 **B.** The petition shall describe the boundary of the authority as it would exist if
17 the authority incorporated by special act is reorganized under this statute. The qualified
18 electors, residing within the boundary of the authority as it would exist if the authority
19 incorporated by special act is reorganized, may vote in the election authorized in this
20 section.

21 **C.** Authorities incorporated under special act; special election; ballot.

22 At the special election on the question of reorganizing an authority incorporated under
23 a special act under this statute, the ballot shall read substantially as follows:

24 "For authority reorganization under this statute []

25 Against authority reorganization under this []. "

1 **D.** Authorities incorporated under special act; reorganization approved;
2 election for new officers; term of office.

3 **1.** If a majority of the votes cast on the question of reorganizing a authority
4 incorporated by a special act favor reorganizing the authority under this statute, the
5 governing body shall, within fourteen days after the results of the election reorganizing
6 the authority under this statute have been canvassed and certified, adopt an election
7 resolution calling for the development and adoption of a governance document and
8 election of directors to establish the reorganized authority. The authority shall continue
9 to operate under its special act until election shall be called, conducted and canvassed
10 in the manner provided in its special act.

11 **2.** The terms of office for one-half of the members of the governing body shall
12 be until the next regular authority election. The terms of office for the remaining one-
13 half of the governing body shall be until the second regular authority election is held.
14 The elected authority officers shall continue in office until their successors are elected
15 and qualified. The length of terms of the first members shall be determined by lot.

16

17 **Section 22. EFFECTIVE DATE.**--The effective date of the provisions of this
18 act is July 1, 2016.