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HOUSE BILL 861

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

INTRODUCED BY

Anna M. Crook

AN ACT

RELATING TO SPECIAL DISTRICTS; CREATING THE EASTERN NEW MEXICO
WATER UTILITY AUTHORITY; ESTABLISHING POWERS AND DUTIES;
PROVIDING FOR BONDING AUTHORITY; TRANSFERRING THE ASSETS AND
LIABILITIES OF EXISTING WATER OR WASTEWATER SERVICE PROVIDERS.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Eastern New Mexico Water Utility Authority Act".

Section 2. DEFINITIONS.--As used in the Eastern New
Mexico Water Utility Authority Act:

A. "authority" means the eastern New Mexico water
utility authority; and

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

Section 3. EASTERN NEW MEXICO WATER UTILITY AUTHORITY--

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1 CREATED--PURPOSE.--

2 A. The "eastern New Mexico water utility authority"
3 is created coextensive with the boundaries of Curry and
4 Roosevelt counties and the territory physically occupied by the
5 water and wastewater facilities of the authority to:

6 (1) plan, design, develop, purchase, acquire,
7 own, operate, establish, construct and maintain the eastern New
8 Mexico rural water system pipelines or waterworks to supply
9 water for domestic, commercial, non-irrigated agricultural and
10 industrial purposes by any available means to persons within
11 and without the boundary of the authority; and

12 (2) plan, design, develop, purchase, acquire,
13 own, operate, establish, construct and maintain a wastewater
14 system for the treatment and disposal of sewage by any
15 available means for persons within and without the boundary of
16 the authority.

17 B. The eastern New Mexico water utility authority
18 is created for the benefit of the eight members of the Ute
19 Reservoir water commission, including Curry county, Roosevelt
20 county, the city of Clovis, the city of Portales, the city of
21 Texico, the town of Melrose, the town of Elida and the village
22 of Grady.

23 Section 4. BOARD--APPOINTMENT--TERMS.--

24 A. The board shall consist of seven members, each
25 of whom shall be an elected official residing within the

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1 boundaries of the authority, appointed as follows:

2 (1) three members appointed by the Clovis city
3 commission for a term of two years; provided, however, that two
4 of the initial members shall be appointed for a term of one
5 year for the purpose of having a staggered board;

6 (2) two members appointed by the Portales city
7 council for a term of two years; provided, however, that one of
8 the initial members shall be appointed for a term of one year
9 for the purpose of having a staggered board;

10 (3) one member appointed for a term of two
11 years by the Curry county commission; and

12 (4) one member appointed for a term of one
13 year on a rotating basis and in the following order by:

14 (a) the Texico city council;

15 (b) the Melrose village council;

16 (c) the Elida village council; and

17 (d) the Grady village council.

18 B. A vacancy occurring by other than expiration of
19 a term shall be filled in the same manner as the original
20 appointment, but only for the unexpired term.

21 Section 5. BOARD--POWERS--DUTIES.--

22 A. All powers, privileges and duties vested in or
23 imposed upon the authority shall be exercised and performed by
24 the board; provided that the board may delegate its powers by
25 resolution to an officer or agent of the board, with the

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1 exception of the following powers:

2 (1) adoption of board rules, policies and
3 procedures;

4 (2) ratification of acquisition of property;

5 (3) initiation or continuation of legal
6 action, except that initiation and filing of liens for unpaid
7 rates and charges and suits for payment thereof and
8 discontinuance of service for failure to pay such rates and
9 charges, may be delegated;

10 (4) establishment of fees, tolls, rates or
11 charges; and

12 (5) issuance of revenue bonds.

13 B. Actions of the board shall be effective upon
14 resolution passed by a majority of members present; provided,
15 however, that the non-delegable powers and duties provided in
16 Subsection A of this section shall only be effective upon
17 resolution passed by a supermajority of five members of the
18 board.

19 C. The board shall promulgate and adhere to rules,
20 policies and procedures that govern its conduct.

21 D. A member of the board having a financial
22 interest or possible interest in the outcome of any policy,
23 decision or determination before the board shall be
24 disqualified from voting on the issue. A member's status as a
25 ratepayer or customer of the authority shall not be deemed to

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1 constitute a financial interest or possible interest for the
2 purposes of this section.

3 E. Subject to Subsections B and C of this section,
4 the board may:

5 (1) adopt bylaws;

6 (2) fix the time and place of meetings and the
7 method of providing notice of the meetings in accordance with
8 the Open Meetings Act;

9 (3) promulgate orders, resolutions, policies
10 and rules necessary for the governance and management of the
11 affairs of the authority and the execution of the powers vested
12 in the authority;

13 (4) maintain offices at a place as the board
14 may designate;

15 (5) employ a director who may employ and
16 retain necessary staff;

17 (6) establish user classifications; and

18 (7) fix and from time to time increase or
19 decrease water and sewer rates, fees or other charges for water
20 delivery, wastewater disposal or other related services or
21 facilities operated or made available by the authority, subject
22 to the following conditions:

23 (a) the rates, tolls or charges shall be
24 uniform for all counties and municipalities that have the power
25 to appoint a member to the board or that are members of the Ute

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1 Reservoir water commission;

2 (b) until paid, all rates, tolls or
3 charges constitute a perpetual lien on and against the property
4 served, and any such lien may be foreclosed in the same manner
5 as provided by the laws of New Mexico for the foreclosure of
6 real estate mortgages and shall not be subject to any
7 limitations period, statutory or otherwise;

8 (c) the board shall prescribe and
9 enforce rules by which properties shall be connected with and
10 disconnected from the facilities of the authority, including
11 payment plans to avoid discontinuing service to delinquent
12 accounts;

13 (d) after giving reasonable notice, the
14 board shall shut off or discontinue service for unauthorized
15 connections, illegal connections or connections for which
16 rates, tolls or other charges are delinquent in payment. The
17 board may file suit in a court of competent jurisdiction to
18 recover costs associated with an unauthorized, illegal or
19 delinquent connection, including the cost of water delivered,
20 charges for connection and disconnection, damages and attorney
21 fees; and

22 (e) for health and sanitary purposes,
23 the board may compel the owners: 1) of inhabited property
24 within the territory of the authority to connect their property
25 with the water system of the authority. Upon a failure to

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1 connect within sixty days after written notice by the board,
2 the board may cause the connection to be made and a lien to be
3 filed against the property for the expense incurred in making
4 the connection; provided, however, that no owner shall be
5 compelled to connect the owner's property with such system
6 unless a service line is brought by the authority to a point
7 within four hundred feet of the nearest lot line; and 2) of any
8 new development that lies partially or wholly within the
9 service area of the authority to connect their property to the
10 authority's water or wastewater system pursuant to the
11 authority's existing line extension policy.

12 Section 6. AUTHORITY--POWERS.--The authority is a body
13 politic and corporate and a political subdivision of the state.
14 The authority may:

- 15 A. sue and be sued;
- 16 B. enter into contracts;
- 17 C. borrow money and issue revenue bonds;
- 18 D. acquire, dispose of or encumber real and
19 personal property and any interest in them, including leases,
20 easements and water rights;
- 21 E. design, develop, construct, operate, maintain,
22 purchase or contract for water systems and pipelines to connect
23 systems and sources with the authority's customers;
- 24 F. collect, treat and recover wastewater and apply
25 for and receive return flow credits for such activity;

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1 G. undertake regional water and wastewater
2 planning, alone or with other water or wastewater service
3 providers and develop water plans pursuant to Section 72-1-9
4 NMSA 1978;

5 H. promulgate an on-site wastewater management
6 plan;

7 I. promulgate and enforce rules and standards
8 relating to design, installation, maintenance, repair and
9 removal of on-site wastewater treatment systems and that are
10 consistent with and no less stringent than any adopted by the
11 department of environment;

12 J. have and exercise the power of eminent domain
13 for the limited purpose of this subsection, within and without
14 the boundaries of the authority and in the manner provided by
15 law for the condemnation of private property for public use
16 with just compensation. The authority shall not take any
17 property unless it is necessary for rights of way and easements
18 and for the use and placement of facilities and infrastructure
19 elements, including pipelines, structures, pump stations and
20 related appurtenances;

21 K. construct and maintain works and establish and
22 maintain facilities across or along any public street or
23 highway and through any vacant public lands that are the
24 property of the state and construct works and establish and
25 maintain facilities across any stream of water or watercourse,

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1 all in accordance with applicable state and federal permitting
2 authority; and

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

9 Section 7. ACCEPTANCE OF ASSETS AND LIABILITIES OF
10 EXISTING WATER AND WASTEWATER SERVICE PROVIDERS.--

11 A. The authority may accept a transfer of assets
12 and liabilities upon the request, and following the legal
13 dissolution, of an entity that is listed below or formed
14 pursuant to one of the following statutes and that provides
15 water or wastewater service, subject to any other statutory
16 requirements for such dissolution and transfer:

- 17 (1) the Water and Sanitation District Act;
18 (2) a water and natural gas association formed
19 pursuant to Sections 3-28-1 through 3-28-22 NMSA 1978;
20 (3) a water users' association formed pursuant
21 to Sections 73-5-1 through 73-5-9 NMSA 1978;
22 (4) the Nonprofit Corporation Act;
23 (5) the Public Improvement District Act;
24 (6) a corporation formed pursuant to Sections
25 62-2-1 through 62-2-22 NMSA 1978, the Business Corporation Act

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1 or the Cooperative Association Act; or

2 (7) an association or mutual domestic water
3 consumers association organized pursuant to Laws 1947, Chapter
4 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52, as well as
5 any association organized under the provisions of the Sanitary
6 Projects Act.

7 B. Upon the transfer of the assets and liabilities
8 of an entity listed in Subsection A of this section to the
9 authority, the area serviced by the dissolved entity shall
10 become part of the authority's service area.

11 Section 8. REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF
12 REVENUES--LIMITATION ON TIME OF ISSUANCE.--

13 A. Revenue bonds may be issued by the authority:

14 (1) for acquiring real and personal property
15 needed for an authority project, including the purchase of
16 water rights;

17 (2) for constructing, extending, enlarging,
18 bettering, repairing, equipping or otherwise improving a water
19 or wastewater project;

20 (3) for establishing or increasing reasonable
21 reserve or sinking funds to secure the payment of the bonds;

22 (4) to pay costs of issuance of the bonds;

23 (5) to refund revenue bonds; or

24 (6) for any combination of those purposes.

25 B. The authority may pledge irrevocably any or all

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1 of the net revenues from the operation of the water or
2 wastewater system for payment of the interest on and principal
3 of the revenue bonds.

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

11 D. The authority shall not impair the rights of any
12 holders of bonds or other obligations payable from the net
13 revenues of the water or wastewater system previously issued or
14 incurred by the authority.

15 E. If required by the terms, covenants and
16 provisions of revenue bonds or other obligations previously
17 issued by the authority, all additional bonds or other
18 obligations issued or incurred by the authority pursuant to the
19 Eastern New Mexico Water Utility Authority Act shall contain
20 any required terms, covenants or provisions necessary to avoid
21 impairment of the previously issued or incurred bonds or other
22 obligations.

23 Section 9. USE OF PROCEEDS OF REVENUE BOND ISSUE.--It is
24 unlawful to divert, use or expend any money received from the
25 issuance of revenue bonds for any purpose other than the

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1 purpose for which the revenue bonds were issued.

2 Section 10. REVENUE BONDS--TERMS.--Revenue bonds:

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

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

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

12 D. may be serial in form and maturity or may
13 consist of one bond payable at one time or in installments or
14 may be in such other form as may be determined by the
15 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 11. EXEMPTION FROM TAXATION.--The bonds
22 authorized by the Eastern New Mexico Water Utility Authority
23 Act and the income from the bonds shall be exempt from all
24 taxation by the state or any political subdivision of the
25 state.

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1 Section 12. RESOLUTION AUTHORIZING REVENUE BONDS.--At a
2 regular or special meeting called for the purpose of issuing
3 revenue bonds, the board may, by an affirmative vote of a
4 supermajority of five members of the board, adopt a resolution
5 that authorizes the issuance of revenue bonds.

6 Section 13. REVENUE BONDS NOT GENERAL OBLIGATIONS--
7 AUTHENTICATION.--

8 A. Revenue bonds or refunding revenue bonds issued
9 as authorized in the Eastern New Mexico Water Utility Authority
10 Act are:

11 (1) not general obligations of the state or
12 other political subdivision of the state; and

13 (2) collectible only from the pledged net
14 revenues of the water or wastewater system, and each bond shall
15 state that it is payable solely from the pledged net revenues
16 of the water or wastewater system and that the bondholders
17 shall not look to any other fund of the state or political
18 subdivision of the state for the payment of the interest and
19 principal of the bond.

20 B. The bonds shall be executed by the chairperson
21 of the board and may be authenticated by the secretary of the
22 board or any public or private transfer agent or registrar or
23 its successor that shall be named or otherwise designated by
24 the board. The bonds may be executed as provided under the
25 Uniform Facsimile Signature of Public Officials Act.

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1 Section 14. REVENUE BONDS--MANDATORY RATES FOR THE WATER
2 OR WASTEWATER SYSTEM--MANDAMUS--IMPAIRMENT OF PAYMENT.--

3 A. The authority shall establish rates for services
4 rendered by the water or wastewater system to provide revenue
5 sufficient to meet the following requirements, and such rates
6 shall remain in effect until the bond issue is liquidated.

7 Revenue shall be sufficient to:

8 (1) pay all reasonable expenses of operation
9 of the water or wastewater system;

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

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

14 B. In the event the authority fails or refuses to
15 establish rates for the water or wastewater system as required
16 in this section, any bondholder may apply to the district court
17 or courts within which jurisdiction the system is located for a
18 mandatory order requiring the authority to establish rates that
19 will provide revenues adequate to meet the requirements of this
20 section.

21 C. Any law that authorizes the pledge of any or all
22 of the pledged water or wastewater system net revenues to the
23 payment of any revenue bonds issued pursuant to the Eastern New
24 Mexico Water Utility Authority Act or that affects the pledged
25 net revenues of the water or wastewater system, or any law

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1 supplemental to or otherwise appertaining to that act, shall
2 not be repealed or amended or otherwise directly or indirectly
3 modified in such a manner as to impair adversely any such
4 outstanding revenue bonds, unless the outstanding revenue bonds
5 have been discharged in full or provision has been fully made
6 for payment of the bonds.

7 Section 15. BONDS--REFUNDING AUTHORIZATION.--

8 A. At any regular or special meeting called for the
9 purpose of issuing refunding bonds, the board by a
10 supermajority of five members of the board may adopt a
11 resolution authorizing the issuance of the refunding bonds.

12 B. The authority may issue refunding bonds for the
13 purpose of refinancing, paying and discharging all or any part
14 of outstanding bonds or other obligations payable from the net
15 revenues of the water or wastewater system previously issued or
16 incurred by the authority.

17 C. The authority may pledge irrevocably for the
18 payment of interest and principal on refunding bonds the
19 pledged net revenues of the water or wastewater system.

20 D. Bonds for refunding and bonds for any purpose
21 permitted by the Eastern New Mexico Water Utility Authority Act
22 may be issued separately or issued in combination in one series
23 or more.

24 Section 16. REFUNDING BONDS--TERMS.--Refunding bonds:

25 A. may have interest, appreciated principal value

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1 or any part thereof payable at intervals or at maturity as may
2 be determined by the authority;

3 B. may be subject to prior redemption at the
4 authority's option at such time or times and upon such terms
5 and conditions with or without the payment of premium or
6 premiums as may be determined by the authority;

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

9 D. may be serial in form and maturity or may
10 consist of a single bond payable in one or more installments or
11 may be in such other form as may be determined by the
12 authority; and

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

18 Section 17. REFUNDING BONDS--ESCROW.--

19 A. Refunding bonds issued pursuant to the Eastern
20 New Mexico Water Utility Authority Act shall be authorized by
21 resolution of the authority. Any bonds that are refunded under
22 the provisions of this section shall be paid at maturity or on
23 any permitted prior redemption date in the amounts, at the time
24 and places and, if called prior to maturity, in accordance with
25 any applicable notice provisions, all as provided in the

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1 proceedings authorizing the issuance of the refunded bonds or
2 otherwise pertaining thereto, except for any such bond that is
3 voluntarily surrendered for exchange or payment by the holder
4 or owner.

5 B. Provision shall be made for paying the bonds
6 refunded at the time provided in this section. The principal
7 amount of the refunding bonds may exceed the principal amount
8 of the refunded bonds and may also be less than or the same as
9 the principal amount of the bonds being refunded; provided that
10 provision is duly and sufficiently made for payment of the
11 refunded bonds.

12 C. The proceeds of refunding bonds, including any
13 accrued interest and premium pertaining to the sale of
14 refunding bonds, shall either be immediately applied to the
15 retirement of the bonds being refunded or be placed in escrow
16 in a commercial bank or trust company that possesses and is
17 exercising trust powers and that is a member of the federal
18 deposit insurance corporation, to be applied to the payment of
19 the principal of, interest on and any prior redemption premium
20 due in connection with the bonds being refunded; provided that
21 such refunding bond proceeds, including any accrued interest
22 and any premium pertaining to a sale of refunding bonds, may be
23 applied to the establishment and maintenance of a reserve fund
24 and to the payment of expenses incidental to the refunding and
25 the issuance of the refunding bonds, the interest thereon, the

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1 principal thereof or both interest and principal as the
2 authority may determine. Nothing in this section requires the
3 establishment of an escrow if the refunded bonds become due and
4 payable within one year from the date of the refunding bonds
5 and if the amounts necessary to retire the refunded bonds
6 within that time are deposited with the paying agent for the
7 refunded bonds. Any such escrow shall not necessarily be
8 limited to proceeds of refunding bonds but may include other
9 money available for its purpose. Any proceeds in escrow
10 pending such use may be invested or reinvested in bills,
11 certificates of indebtedness, notes or bonds that are direct
12 obligations of or the principal and interest of which
13 obligations are unconditionally guaranteed by the United States
14 or in certificates of deposit of banks that are members of the
15 federal deposit insurance corporation. Such proceeds and
16 investments in escrow, together with any interest or other
17 income to be derived from any such investment, shall be in an
18 amount at all times sufficient as to principal, interest, any
19 prior redemption premium due and any charges of the escrow
20 agent payable to pay the bonds being refunded as they become
21 due at their respective maturities or due at any designated
22 prior redemption date in connection with which the authority
23 shall exercise a prior redemption option. Any purchaser of any
24 refunding bond issued under the Eastern New Mexico Water
25 Utility Authority Act is in no manner responsible for the

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1 application of the proceeds by the authority or any of its
2 officers, agents or employees.

3 D. Refunding bonds may bear such additional terms
4 and provisions as may be determined by the authority subject to
5 the limitations in this section.

6 Section 18. PUBLIC REGULATION COMMISSION JURISDICTION.--

7 A. The authority is not subject to the jurisdiction
8 of the public regulation commission or the terms and provisions
9 of the Public Utility Act except as provided in Subsection B of
10 this section.

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

17 Section 19. TEMPORARY PROVISION.--All functions,
18 appropriations, money, records, contracts, equipment and other
19 real and personal property pertaining to the eastern New Mexico
20 rural water authority shall be transferred to the eastern New
21 Mexico water utility authority. Debts of the eastern New
22 Mexico rural water authority shall be debts of the Eastern New
23 Mexico water utility authority. The eastern New Mexico water
24 utility authority shall not impair the rights of any
25 bondholders of outstanding bonds of the eastern New Mexico

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1 rural water authority. All contractual obligations of the
2 eastern New Mexico rural water authority, the counties and
3 municipalities that have the power to appoint a member to the
4 board of directors of the eastern New Mexico water utility
5 authority and the members of the Ute Reservoir water commission
6 shall be binding on the eastern New Mexico water utility
7 authority. The public regulation commission shall audit the
8 eastern New Mexico rural water authority prior to the transfer
9 of money, assets and debts to the eastern New Mexico water
10 utility authority.

11 Section 20. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1 of the year next following
13 authorization at the federal level of the eastern New Mexico
14 rural water system and notification by the Clovis city
15 commission to the New Mexico compilation commission.

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