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HOUSE BILL 293

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

James Roger Madalena

AN ACT

RELATING TO FLOOD CONTROL; AMENDING THE EASTERN SANDOVAL COUNTY  
ARROYO FLOOD CONTROL ACT TO PROVIDE FOR THE ELECTION OF  
DIRECTORS FROM SINGLE-MEMBER DISTRICTS.

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

**SECTION 1.** Section 72-20-4 NMSA 1978 (being Laws 2007,  
Chapter 99, Section 4) is amended to read:

"72-20-4. DEFINITIONS.--Except where the context  
otherwise requires, as used in the Eastern Sandoval County  
Arroyo Flood Control Act:

A. "acquisition" or "acquire" means the opening,  
laying out, establishment, purchase, construction, securing,  
installation, reconstruction, lease, gift, grant from the  
federal government, any public body or person, endowment,  
bequest, devise, condemnation, transfer, assignment, option to

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1 purchase, other contract or other acquirement, or any  
2 combination thereof, of facilities, other property, any project  
3 or an interest therein authorized by the Eastern Sandoval  
4 County Arroyo Flood Control Act;

5 B. "authority" means the eastern Sandoval county  
6 arroyo flood control authority;

7 C. "board" means the board of directors of the  
8 authority;

9 D. "chair" means the chair of the board and  
10 president of the authority;

11 E. "condemnation" or "condemn" means the  
12 acquisition by the exercise of the power of eminent domain of  
13 property for any facilities, other property, project or an  
14 interest therein authorized by the Eastern Sandoval County  
15 Arroyo Flood Control Act. The authority may exercise in the  
16 state the power of eminent domain, either within or without the  
17 authority and, in the manner provided by law for the  
18 condemnation of private property for public use, may take any  
19 property necessary to carry out any of the objects or purposes  
20 of the Eastern Sandoval County Arroyo Flood Control Act. In  
21 the event the construction of any facility or project  
22 authorized by the Eastern Sandoval County Arroyo Flood Control  
23 Act, or any part thereof, makes necessary the removal and  
24 relocation of any public utilities, whether on private or  
25 public right of way, the authority shall reimburse the owner of

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1 the public utility facility for the expense of removal and  
2 relocation, including the cost of any necessary land or rights  
3 in land;

4 F. "cost" or "cost of the project", or words of  
5 similar import, means all, or any part designated by the board,  
6 of the cost of any facilities, project or interest therein  
7 being acquired and of all or any property, rights, easements,  
8 privileges, agreements and franchises deemed by the authority  
9 to be necessary or useful and convenient therefor or in  
10 connection therewith, which cost, at the option of the board,  
11 may include all or any part of the incidental costs pertaining  
12 to the project, including without limiting the generality of  
13 the foregoing, preliminary expenses advanced by any  
14 municipality or other public body from funds available for use  
15 therefor in the making of surveys, preliminary plans, estimates  
16 of cost, other preliminaries, the costs of appraising,  
17 printing, employing engineers, architects, fiscal agents,  
18 attorneys at law, clerical help, other agents or employees, the  
19 costs of capitalizing interest or any discount on securities,  
20 of inspection, of any administrative, operating and other  
21 expenses of the authority prior to the levy and collection of  
22 taxes, and of reserves for working capital, operation,  
23 maintenance or replacement expenses or for payment or security  
24 of principal of or interest on any securities, the costs of  
25 making, publishing, posting, mailing and otherwise giving any

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1 notice in connection with the project, the taking of options,  
2 the issuance of securities, the filing or recordation of  
3 instruments, the levy and collection of taxes and installments  
4 thereof, the costs of reimbursements by the authority to any  
5 public body, the federal government or any person of any money  
6 theretofore expended for or in connection with any facility or  
7 project and all other expenses necessary or desirable and  
8 appertaining to any project, as estimated or otherwise  
9 ascertained by the board;

10 G. "director" means a member of the board;

11 H. "disposal" or "dispose" means the sale,  
12 destruction, razing, loan, lease, gift, grant, transfer,  
13 assignment, mortgage, option to sell, other contract or other  
14 disposition, or any combination thereof, of facilities, other  
15 property, any project or an interest therein authorized by the  
16 Eastern Sandoval County Arroyo Flood Control Act;

17 I. "engineer" means any engineer in the permanent  
18 employ of the authority or any independent competent engineer  
19 or firm of such engineers employed by the authority in  
20 connection with any facility, property, project or power  
21 authorized by the Eastern Sandoval County Arroyo Flood Control  
22 Act;

23 J. "equipment" or "equip" means the furnishing of  
24 all necessary or desirable, related or appurtenant, facilities,  
25 or any combination thereof, appertaining to any facilities,

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1 property, project or interest therein authorized by the Eastern  
2 Sandoval County Arroyo Flood Control Act;

3 K. "facility" means any of the water facilities,  
4 sewer facilities or other property appertaining to the flood  
5 control system of the authority;

6 L. "federal government" means the United States or  
7 any agency, instrumentality or corporation thereof;

8 M. "federal securities" means the bills,  
9 certificates of indebtedness, notes or bonds that are direct  
10 obligations of, or the principal and interest of which  
11 obligations are unconditionally guaranteed by, the United  
12 States;

13 N. "governing body" means the city council, city  
14 commission, board of commissioners, board of trustees, board of  
15 directors or other legislative body of the public body  
16 proceeding under the Eastern Sandoval County Arroyo Flood  
17 Control Act, in which body the legislative powers of the public  
18 body are vested;

19 O. "improvement" or "improve" means the extension,  
20 widening, lengthening, betterment, alteration, reconstruction,  
21 repair or other improvement, or any combination thereof of  
22 facilities, other property, project or any interest therein  
23 authorized by the Eastern Sandoval County Arroyo Flood Control  
24 Act;

25 P. "mailed notice" or notice by "mail" means the

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1 giving by the engineer, secretary or any deputy thereof, as  
2 determined by the board, of any designated written or printed  
3 notice addressed to the last known owner of each tract of real  
4 property in question or other designated person at the last  
5 known address, by deposit, at least ten days prior to the  
6 designated hearing or other time or event, in the United States  
7 mail, postage prepaid, as first-class mail. In the absence of  
8 fraud, the failure to mail any such notice shall not invalidate  
9 any proceedings under the Eastern Sandoval County Arroyo Flood  
10 Control Act. The names and addresses of those property owners  
11 shall be obtained from the records of the county assessor or  
12 from such other source as the secretary or the engineer deems  
13 reliable. Any list of such names and addresses may be revised  
14 from time to time, but such a list need not be revised more  
15 frequently than at twelve-month intervals. Any mailing of any  
16 notice required shall be verified by the affidavit or  
17 certificate of the engineer, secretary, deputy or other person  
18 mailing the notice, which verification shall be retained in the  
19 records of the authority at least until all taxes and  
20 securities appertaining thereto have been paid in full or any  
21 claim is barred by a statute of limitations;

22 Q. "municipality" means any incorporated city, town  
23 or village in the state, whether incorporated or governed under  
24 a general act, special legislative act or special charter of  
25 any type. "Municipal" pertains to municipality;

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1           R. "person" means any human being, association,  
2 partnership, firm or corporation, excluding a public body and  
3 excluding the federal government;

4           S. "president" means the president of the authority  
5 and the chair of the board;

6           T. "project" means any structure, facility,  
7 undertaking or system that the authority is authorized to  
8 acquire, improve, equip, maintain or operate. A project may  
9 consist of all kinds of personal and real property. A project  
10 shall appertain to the flood control system that the authority  
11 is authorized and directed to provide within and without the  
12 authority's boundaries;

13           U. "property" means real property and personal  
14 property;

15           V. "publication" or "publish" means publication in  
16 at least the one newspaper designated as the authority's  
17 official newspaper and published in the authority in the  
18 English language at least once a week and of general  
19 circulation in the authority. Except as otherwise specifically  
20 provided or necessarily implied, "publication" or "publish"  
21 also means publication for at least once a week for three  
22 consecutive weeks by three weekly insertions, the first  
23 publication being at least fifteen days prior to the designated  
24 time or event, unless otherwise so stated. It is not necessary  
25 that publication be made on the same day of the week in each of

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1 the three calendar weeks, but not less than fourteen days shall  
2 intervene between the first publication and the last  
3 publication, and publication shall be complete on the day of  
4 the last publication. Any publication required shall be  
5 verified by the affidavit of the publisher and filed with the  
6 secretary;

7 W. "public body" means the state or any agency,  
8 instrumentality or corporation thereof or any municipality,  
9 school district, other type of district or any other political  
10 subdivision of the state, excluding the authority and excluding  
11 the federal government;

12 X. "qualified elector" means a person qualified to  
13 vote in general elections in the state, who is a resident of  
14 the authority at the time of any election held under the  
15 provisions of the Eastern Sandoval County Arroyo Flood Control  
16 Act or at any other time in reference to which the term  
17 "qualified elector" is used;

18 Y. "real property" means:

- 19 (1) land, including land under water;  
20 (2) buildings, structures, fixtures and  
21 improvements on land;  
22 (3) any property appurtenant to or used in  
23 connection with land; and  
24 (4) every estate, interest, privilege,  
25 easement, franchise and right in land, legal or equitable,

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1 including without limiting the generality of the foregoing,  
2 rights of way, terms for years and liens, charges or  
3 encumbrances by way of judgment, mortgage or otherwise and the  
4 indebtedness secured by such liens;

5 Z. "secretary" means the secretary of the  
6 authority;

7 AA. "secretary of state" means the secretary of  
8 state of New Mexico;

9 BB. "securities" means any notes, warrants, bonds,  
10 temporary bonds or interim debentures or other obligations of  
11 the authority or any public body appertaining to any project or  
12 interest therein authorized by the Eastern Sandoval County  
13 Arroyo Flood Control Act;

14 CC. "sewer facilities" means any one or more of the  
15 various devices used in the collection, channeling, impounding  
16 or disposition of storm, flood or surface drainage waters,  
17 including all inlets, collection, drainage or disposal lines,  
18 canals, intercepting sewers, outfall sewers, all pumping, power  
19 and other equipment and appurtenances, all extensions,  
20 improvements, remodeling, additions and alterations thereof and  
21 any rights or interest in such sewer facilities;

22 DD. "sewer improvement" or "improve any sewer"  
23 means the acquisition, reacquisition, improvement,  
24 reimprovement or repair of any storm sewer or combination storm  
25 and sanitary sewer, including but not limited to collecting and

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1 intercepting sewer lines or mains, submains, trunks, laterals,  
2 outlets, ditches, ventilation stations, pumping facilities,  
3 ejector stations and all other appurtenances and machinery  
4 necessary, useful or convenient for the collection,  
5 transportation and disposal of storm water;

6 EE. "state" means the state of New Mexico or any  
7 agency, instrumentality or corporation thereof;

8 FF. "street" means any street, avenue, boulevard,  
9 alley, highway or other public right of way used for any  
10 vehicular traffic;

11 GG. "taxpaying elector" means a qualified elector  
12 of the authority who is an owner of real or personal property  
13 within the boundaries of the authority, which property is  
14 subject to general (ad valorem) taxation at the time of any  
15 election held under the provisions of the Eastern Sandoval  
16 County Arroyo Flood Control Act or at any other time in  
17 reference to which the term "taxpaying elector" is used. A  
18 person who is obligated to pay taxes under a contract to  
19 purchase real property in the authority shall be considered as  
20 such an owner. The ownership of any property subject to the  
21 payment of a specific ownership tax on a motor vehicle or  
22 trailer or of any other excise or property tax other than such  
23 taxes shall not constitute the ownership of property subject to  
24 general (ad valorem) taxation;

25 [~~GG.~~] HH. "taxes" means general (ad valorem) taxes

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1 pertaining to any project authorized by the Eastern Sandoval  
2 County Arroyo Flood Control Act; and

3 ~~[HH.]~~ II. "treasurer" means the treasurer of the  
4 authority."

5 **SECTION 2.** Section 72-20-6 NMSA 1978 (being Laws 2007,  
6 Chapter 99, Section 6) is amended to read:

7 "72-20-6. BOUNDARIES OF AUTHORITY.--The boundaries of the  
8 authority are as follows: a portion of southern Sandoval  
9 county bounded on the east by a line following the eastern  
10 boundary of range 5 east of the New Mexico principal meridian,  
11 on the south by the Pueblo of Sandia and the Cibola national  
12 forest, on the west by the Rio Grande and on the north by a  
13 line following the northern boundary of township 13 north of  
14 the New Mexico principal meridian. The boundary of the  
15 ~~[district]~~ authority is more particularly described as follows:  
16 beginning at the southeast corner of projected section 1,  
17 township 12 north, range 5 east of the New Mexico principal  
18 meridian, that point also being the southeast corner of herein  
19 described boundary; thence proceeding in a westerly direction  
20 along a line coincident with the northern boundary of the  
21 Cibola national forest and of the Pueblo of Sandia to a point  
22 along the west bank of the Rio Grande within projected section  
23 1, township 12 north, range 3 east of the New Mexico principal  
24 meridian; thence in a northeasterly direction along the west  
25 bank of the Rio Grande to a point in the northwest corner of

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1 section 1, township 13 north, range 4 east of the New Mexico  
2 principal meridian; thence east along a line following the  
3 northern boundary of township 13 north of the New Mexico  
4 principal meridian for approximately seven miles to a point in  
5 the northeast corner of section 1, township 13 north, range 5  
6 east of the New Mexico principal meridian; thence in a  
7 southerly direction approximately seven miles to the southeast  
8 corner of projected section 1, township 12 north, range 5 east  
9 of the New Mexico principal meridian, which point is the  
10 southeast corner and point of beginning of the district. All  
11 lands held in trust or ownership by the federal government or  
12 an Indian pueblo located within the boundaries identified in  
13 this section shall be excluded from the authority of the  
14 authority."

15 SECTION 3. Section 72-20-10 NMSA 1978 (being Laws 2007,  
16 Chapter 99, Section 10) is amended to read:

17 "72-20-10. ELECTION OF OFFICERS--DISTRICTS.--~~[At the time~~  
18 ~~that a proposal to incur debt is first submitted to the~~  
19 ~~qualified electors or at the first general election next~~  
20 ~~following the effective date of the Eastern Sandoval County~~  
21 ~~Arroyo Flood Control Act, whichever occurs first, the qualified~~  
22 ~~electors of the authority shall elect five qualified directors,~~  
23 ~~two to serve a term ending January 1, 2011, two to serve a term~~  
24 ~~ending January 1, 2013 and one to serve a term ending January~~  
25 ~~1, 2015. At the first election, the five candidates receiving~~

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1 ~~the highest number of votes shall be elected as directors. The~~  
2 ~~terms of the directors shall be determined by lot at their~~  
3 ~~organizational meeting. At each general election thereafter,~~  
4 ~~the qualified electors of the authority shall elect similarly~~  
5 ~~one or two qualified electors as directors to serve six-year~~  
6 ~~terms as directors and as successors to the directors whose~~  
7 ~~terms end on the first day of January next following each such~~  
8 ~~election. Nothing in the Eastern Sandoval County Arroyo Flood~~  
9 ~~Control Act shall be construed as preventing a qualified~~  
10 ~~elector of the authority from being elected or reelected as a~~  
11 ~~director to succeed himself. If there is only one vacancy on~~  
12 ~~the board, the candidate receiving the highest number of votes~~  
13 ~~shall be elected as director. If there are two vacancies on~~  
14 ~~the board, the candidate receiving the highest number of votes~~  
15 ~~shall be elected as director. If there are two vacancies on~~  
16 ~~the board, the candidate receiving the highest number of votes~~  
17 ~~and the candidate receiving the next highest number of votes~~  
18 ~~shall be elected as directors.]~~

19 A. At each general election, directors shall be  
20 elected from single-member districts in which they reside. The  
21 board shall establish its initial single-member districts no  
22 later than December 31, 2011 and shall determine by lot the  
23 district from which directors shall be elected in the next  
24 three subsequent elections. The board shall ensure that the  
25 districts remain contiguous, compact and as equal in population

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1 as is practicable, assessing the existing districts following  
2 each federal decennial census to accomplish that objective. A  
3 redistricting shall be effective at the next following regular  
4 board election. Incumbent directors whose residences are  
5 redistricted out of their districts may serve out their term of  
6 office. If subsequent to the establishment of single-member  
7 districts a director no longer resides in the election district  
8 from which that director was elected, the director shall be  
9 deemed to have resigned and the vacancy created by the  
10 resignation shall be filled in the manner provided by Section  
11 72-20-12 NMSA 1978.

12 B. The qualified electors of the authority shall  
13 elect similarly one or two qualified electors as directors to  
14 serve six-year terms as directors and as successors to the  
15 directors whose terms end on the first day of January next  
16 following each election. Nothing in this section may be  
17 construed as preventing a qualified elector of the authority  
18 from any single-member district from being elected or reelected  
19 as a director to succeed that qualified elector."

20 SECTION 4. Section 72-20-11 NMSA 1978 (being Laws 2007,  
21 Chapter 99, Section 11) is amended to read:

22 "72-20-11. NOMINATION OF DIRECTORS.--Not later than  
23 forty-five days before a proposal to incur debt is first  
24 submitted to the ~~[qualified]~~ taxpaying electors or at the first  
25 general election next following ~~[the effective date of the~~

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1 ~~Eastern Sandoval County Arroyo Flood Control Act~~] March 30,  
2 2007, whichever occurs first, written nominations of any  
3 candidate as director may be filed with the secretary of the  
4 board. Each nomination of any candidate shall be signed by not  
5 less than fifty [~~qualified~~] taxpaying electors [~~regardless of~~  
6 ~~whether or not nominated therein~~], who reside within the  
7 district for which the candidate has been nominated, shall  
8 designate therein the name of the candidates thereby nominated  
9 and shall recite that the subscribers thereto are [~~qualified~~]  
10 taxpaying electors of the district for which the candidate is  
11 nominated and that the candidate or candidates designated  
12 therein are qualified electors of the authority [~~No written~~  
13 ~~nomination may designate more qualified electors as candidates~~  
14 ~~than there are vacancies~~] and reside within the district for  
15 which they are nominated. No [~~qualified~~] taxpaying elector may  
16 nominate more than one candidate for any vacancy. If a  
17 candidate does not withdraw the candidate's name before the  
18 [~~first publication of the notice of election~~] time established  
19 by the county for purposes of absentee ballots or as set forth  
20 in the Election Code, the candidate's name shall be placed on  
21 the ballot. For any election held after November 2008,  
22 nominations shall be made by qualified electors in accordance  
23 with the procedures and limitations of this section, except  
24 that such nominations shall be filed with the secretary of the  
25 board not later than the fourth Tuesday in June preceding the

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1 general election."

2 SECTION 5. Section 72-20-12 NMSA 1978 (being Laws 2007,  
3 Chapter 99, Section 12) is amended to read:

4 "72-20-12. FILLING VACANCIES ON THE BOARD.--Upon a  
5 vacancy occurring in the board by reason of death, change of  
6 residence or resignation or for any other reason, the governor  
7 shall appoint a qualified elector of the authority who resides  
8 within the district where the vacancy exists as successor to  
9 serve the unexpired term."

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