

1 SENATE BILL 204

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

4 Richard C. Martinez

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10 AN ACT

11 RELATING TO SPECIAL DISTRICTS; ENACTING THE REGIONAL WATER
12 UTILITY AUTHORITY ACT; PROVIDING FOR THE CREATION OF
13 AUTHORITIES; PROVIDING FOR A BOARD OF DIRECTORS; PROVIDING
14 POWERS AND DUTIES OF THE AUTHORITY AND BOARD; AUTHORIZING JOINT
15 POWERS AGREEMENTS; PROVIDING FOR TRANSFER OF ASSETS AND
16 LIABILITIES; ALLOWING FOR FEES, CHARGES, RATES AND TOLLS;
17 PROVIDING FOR ELECTIONS; AUTHORIZING THE ISSUANCE OF REVENUE
18 BONDS; PROVIDING FOR LIENS AND FORECLOSURES; ALLOWING
19 REGULATION OF WATER USE AND DOMESTIC WELLS; GRANTING EMINENT
20 DOMAIN POWER AND THE POWER TO OWN, IMPROVE AND DISPOSE OF
21 PROPERTY; GRANTING EXCLUSIVE RIGHT TO PROVIDE SERVICE;
22 REQUIRING MANDATORY HOOK-UPS TO AUTHORITY FACILITIES WITHIN THE
23 SERVICE AREA OF THE AUTHORITY; EXCEPTING AUTHORITIES FROM
24 PUBLIC REGULATION COMMISSION JURISDICTION; AMENDING A SECTION
25 OF LAW PERTAINING TO DOMESTIC WELL PERMITS; PRESCRIBING CIVIL

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1 PENALTIES.

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

4 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
5 through 31 of this act may be cited as the "Regional Water
6 Utility Authority Act".

7 SECTION 2. [NEW MATERIAL] PURPOSE OF REGIONAL WATER
8 UTILITY AUTHORITY.--A regional water utility authority may be
9 created for the purposes of:

10 A. purchasing, acquiring, establishing or
11 constructing waterworks to supply water for domestic,
12 commercial and industrial purposes by any available means to
13 persons within and without the boundaries of the authority;

14 B. purchasing, acquiring, establishing or
15 constructing wastewater systems for the treatment and disposal
16 of sewage or for the management of decentralized or on-site
17 wastewater disposal systems;

18 C. planning, developing, managing, maintaining or
19 coordinating regional water and wastewater facilities;

20 D. infrastructure development of renewable energy
21 projects that are integral to the operation and maintenance of
22 the authority's facilities; and

23 E. implementing storm water management strategies
24 to control flooding and erosion and to minimize water
25 pollution.

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1 SECTION 3. ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the
2 Regional Water Utility Authority Act:

3 A. "address" means:

4 (1) the mailing address and the street
5 address, if within a municipality; or

6 (2) the mailing address and a rural route
7 number and box number, if any, or the geographical location,
8 using well-known landmarks, if outside a municipality;

9 B. "authority" means a regional water utility
10 authority that is established pursuant to the Regional Water
11 Utility Authority Act and is incorporated pursuant to the laws
12 of New Mexico;

13 C. "authority member" means a natural person who
14 owns property within the service area and who is provided
15 services by the authority and is responsible for paying for
16 those services;

17 D. "board" means the board of directors of an
18 authority;

19 E. "director" means a member of the board;

20 F. "entity" means a political subdivision,
21 municipal corporation or tribal government;

22 G. "incorporating entity" means an entity that is
23 one of the original incorporators of an authority;

24 H. "member entity" means an entity that is part of
25 the authority, whether an incorporating entity or an entity

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1 that joins the authority after incorporation;

2 I. "qualified elector" means a registered voter who
3 lives within the service area of the authority and is qualified
4 to vote;

5 J. "regional entity" means an entity that has
6 resulted from the merger of two or more entities, the
7 acquisition of an entity by one or more entities or an entity
8 created by a joint powers agreement; and

9 K. "service area" means a legal description of the
10 boundaries of the authority, with such certainty as to enable a
11 property owner to determine whether or not the owner's property
12 is within the authority's boundary.

13 SECTION 4. [NEW MATERIAL] REGIONAL WATER UTILITY
14 AUTHORITY--CREATION--ARTICLES OF INCORPORATION--BYLAWS--
15 OFFICERS--MEMBERS.--

16 A. A regional entity or two or more entities may
17 organize a "regional water utility authority" as provided in
18 the Regional Water Utility Authority Act.

19 B. Each incorporating entity shall individually
20 adopt a resolution signifying its intention to organize an
21 authority. The resolution shall not be adopted until after a
22 public hearing has been held by each entity. Each
23 incorporating entity shall approve the adoption of the
24 resolution in accordance with its ordinances or other governing
25 documents. Notice of the public hearing, including the date,

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1 time and place of the hearing and the resolution proposed to be
2 adopted, shall be published in a newspaper of general
3 circulation within the service area of the proposed authority
4 at least once thirty days prior to the hearing date and mailed
5 at least thirty days prior to the hearing date to all persons
6 who have requested advance notice of hearing and, if the
7 authority is to be a membership organization, to all property
8 owners within the proposed service area. The public hearing
9 notice shall also be published prominently on the entity's
10 official website, if there is one.

11 C. The resolution shall state the:

- 12 (1) proposed name and purpose of the
13 authority;
- 14 (2) perpetual existence of the authority;
- 15 (3) proposed service area of the authority;
- 16 (4) composition of the authority, whether a
17 membership or qualified elector organization; and
- 18 (5) lead member entity of the authority to act
19 as registered agent.

20 D. Upon adoption of the resolution, the
21 incorporating entities shall draw up articles of incorporation
22 and bylaws and file them with the secretary of state. The
23 articles of incorporation shall set forth:

- 24 (1) the name of the authority;
- 25 (2) a statement that the authority is formed

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1 pursuant to the Regional Water Utility Authority Act;

2 (3) the purpose of the authority;

3 (4) copies of the adopted resolutions and
4 proof of publication of the notices required pursuant to this
5 section;

6 (5) the names of the incorporating entities,
7 together with the names and addresses of the authority's
8 officers;

9 (6) an accurate map or plat that shows the
10 boundary of the service area proposed to be incorporated;

11 (7) a statement executed, by resolution, by
12 one of the incorporating entities acknowledging acceptance of
13 the appointment as registered agent; and

14 (8) a copy of the authority's bylaws.

15 E. An original of the articles of incorporation and
16 a statement executed by the designated registered agent
17 acknowledging acceptance of the appointment as registered
18 agent, if the agent is an individual, or a statement executed
19 by an authorized officer of a member entity that is the
20 designated registered agent in which the officer acknowledges
21 the member entity's acceptance of the appointment as registered
22 agent, if the agent is a member entity, shall be delivered to
23 the secretary of state. If the secretary of state finds that
24 the articles of incorporation and the statement conform to law,
25 the secretary of state shall, when all fees have been paid:

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1 (1) endorse on the original and copy the word
2 "filed" and the month, day and year of the filing thereof;

3 (2) file the original and the statement in the
4 secretary of state's office; and

5 (3) issue a certificate of incorporation to
6 which is affixed a file-stamped copy of the articles of
7 incorporation.

8 F. The certificate of incorporation, together with
9 the file-stamped copy of the articles of incorporation affixed
10 to it, shall be returned by the secretary of state to the
11 incorporating entities or their registered agent.

12 G. The bylaws of the authority shall provide for:

13 (1) whether the organization is a membership
14 organization, made up of authority members who are being served
15 by the authority, or a qualified elector organization, made up
16 of qualified electors of the service area region who may
17 participate in the authority elections;

18 (2) a membership definition to include land
19 ownership determination;

20 (3) the establishment and organization of the
21 board;

22 (4) the manner of the appointment or election,
23 term of service and qualifications, if any, of the directors
24 and the procedure for filling vacancies;

25 (5) officers of the authority, the manner of

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1 their appointment or election and their duties;

2 (6) voting requirements for action by the
3 board;

4 (7) if a membership organization, how persons
5 who are not authority members and who do not live within the
6 service area of the authority may petition for water or
7 wastewater services to be provided by the authority;

8 (8) a merger plan for the mandatory transfer,
9 disposition or assumption of all assets and liabilities of the
10 member entities;

11 (9) the process by which the bylaws are
12 amended; and

13 (10) any other matter required by the Regional
14 Water Utility Authority Act or the board to be included.

15 H. Amended bylaws shall be filed, recorded and
16 certified by the secretary of state and shall be effective upon
17 filing with the secretary of state. Amended bylaws supersede
18 all other bylaws upon the effective date of the amended bylaws.

19 I. Upon the issuance of a certificate of
20 incorporation by the secretary of state, the corporate
21 existence of the authority shall begin. The certificate of
22 incorporation shall be conclusive evidence that all conditions
23 precedent required to be performed by the incorporators have
24 been complied with and that the authority has been incorporated
25 under the Regional Water Utility Authority Act, except as

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1 against the state in a proceeding to cancel or revoke the
2 certificate of incorporation or for involuntary dissolutions of
3 the authority.

4 SECTION 5. [NEW MATERIAL] ENTITIES MERGING AFTER
5 INCORPORATION.--If an entity chooses to merge into an authority
6 after that authority has been incorporated, the entity shall
7 adopt a resolution signifying its intention to merge into the
8 authority and submit the resolution to the board. The
9 resolution shall be adopted as provided in Section 4 of the
10 Regional Water Utility Authority Act. The board shall vote on
11 accepting the entity, and, if the motion carries, the authority
12 shall file its articles of merger with the secretary of state
13 and other agencies as applicable. The transfer and assumption
14 of assets and liabilities for merging entities shall take place
15 as established in Section 14 of the Regional Water Utility
16 Authority Act.

17 SECTION 6. [NEW MATERIAL] REGIONAL AUTHORITIES CREATED BY
18 JOINT POWERS AGREEMENTS--REORGANIZATION.--The Regional Water
19 Utility Authority Act does not apply to or affect a regional
20 authority established pursuant to the Joint Powers Agreements
21 Act; provided that such regional authority may reorganize as an
22 authority pursuant to the Regional Water Utility Authority Act
23 by affirmative written resolution of its board and by filing a
24 copy of its joint powers agreement and its articles of
25 incorporation and bylaws with the secretary of state. The

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1 board of the reorganized authority may amend its articles of
2 incorporation or bylaws by affirmative resolution of the board
3 and by filing the amended articles or bylaws with the secretary
4 of state. The bylaws shall provide how the reorganized
5 authority shall transfer, dispose of or assume the assets and
6 liabilities of its member entities as provided in Section 14 of
7 the Regional Water Utility Authority Act.

8 SECTION 7. [NEW MATERIAL] AUTHORITIES INCORPORATED UNDER
9 SPECIAL ACT--LAWS APPLICABLE--PETITION FOR REORGANIZATION--
10 ELECTION.--

11 A. An authority incorporated by special act
12 previous to the effective date of the Regional Water Utility
13 Authority Act that chooses to retain such organization and
14 governance shall, in the enforcement of the powers or the
15 exercise of the duties conferred by the special act, proceed in
16 all respects as provided by the special act.

17 B. An authority incorporated under a special act
18 may abandon its organization and organize itself under the
19 provisions of the Regional Water Utility Authority Act.

20 C. After holding a public hearing, the board of
21 directors of an authority organized under a special act may
22 vote to place the question on a ballot for vote of its
23 membership at a regular or special election.

24 D. If a majority of the votes cast on the question
25 of reorganizing an authority incorporated by a special act

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1 favors reorganizing the authority under the Regional Water
2 Utility Authority Act, the governing body shall, within
3 fourteen days after the results of the election reorganizing
4 the authority under that act have been canvassed and certified,
5 adopt an election resolution calling for the development and
6 adoption of a governance document and election of directors to
7 establish the reorganized authority. The authority shall
8 continue to operate under its special act until an election has
9 been called, conducted and canvassed in the manner provided in
10 its special act.

11 E. The staggering of terms of board members from
12 the special act entity may continue until the next regular
13 election.

14 SECTION 8. [NEW MATERIAL] AUTHORITY--POWERS AND DUTIES.--

15 A. An authority is a body politic and corporate and
16 a political subdivision of the state, subject to all statutory
17 requirements of the state. In addition to other powers granted
18 to the authority pursuant to the Regional Water Utility
19 Authority Act, the authority may:

- 20 (1) have perpetual existence;
- 21 (2) sue and be sued and be a party to suits,
22 actions and proceedings;
- 23 (3) borrow money, receive grants, issue bonds
24 in accordance with the provisions of the Regional Water Utility
25 Authority Act and pledge or otherwise encumber the revenues or

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1 receipts of the authority or mortgage the property of the
2 authority as security for any of the obligations of the
3 authority;

4 (4) establish rates and impose assessments,
5 fees and charges, and take action necessary for the enforcement
6 of those rates, assessments, fees and charges, for the delivery
7 of and collection of water and wastewater services or for other
8 services or facilities operated or made available by the
9 authority in accordance with a rate analysis compliant with the
10 authority's financial plan that provides for reserve funds for
11 future improvements and replacement of the authority's
12 infrastructure;

13 (5) assess a standby charge for the privilege
14 of connection into the authority's service at some date in the
15 future if the property line is within four hundred feet of the
16 authority's service lines and the property line is located
17 within the service area of the authority; provided that this
18 paragraph applies to new connections after the effective date
19 of the Regional Water Utility Authority Act;

20 (6) acquire from a willing seller and hold
21 water rights pursuant to a permit issued in accordance with
22 Section 72-1-9 NMSA 1978;

23 (7) shut off, after notice, unauthorized and
24 illegal connections or connections for which charges, fees,
25 assessments or other charges are delinquent, and file suit in a

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1 court of competent jurisdiction to recover costs associated
2 with an unauthorized, illegal or delinquent connection,
3 including the cost of water delivered, charges for connection
4 and disconnection, damages and attorney fees;

5 (8) acquire and dispose of real property,
6 personal property and rights of way;

7 (9) condemn property pursuant to the Eminent
8 Domain Code as the last resort and only for the purposes of
9 construction, maintenance and operations of the authority's
10 infrastructure;

11 (10) place a lien on property for unpaid
12 assessments, charges and fees and enforce the lien in the
13 manner provided in Section 17 of the Regional Water Utility
14 Authority Act until paid;

15 (11) participate in regional water planning;

16 (12) wherever applicable, promulgate an
17 on-site wastewater management plan;

18 (13) construct, establish and maintain
19 facilities across or along any public street or highway and
20 through any vacant public lands and construct works and
21 establish and maintain facilities across any stream of water or
22 watercourse, all in accordance with applicable state and
23 federal permitting authority;

24 (14) compel the connection of a homeowner's
25 water or wastewater system to the authority's water or

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1 wastewater system as provided in Section 16 of the Regional
2 Water Utility Authority Act;

3 (15) compel the connection of any new
4 development that lies partially or wholly within the service
5 area of the authority to the authority's water or wastewater
6 system pursuant to the authority's existing line extension
7 policy;

8 (16) prohibit the owners of inhabited property
9 within the service area of the authority who are connected to
10 the authority to disconnect from the authority's water or
11 wastewater system, as applicable; and

12 (17) have and exercise all rights and powers
13 necessary or incidental to or implied from the specific powers
14 granted in this section; provided that such specific powers
15 shall not be considered as a limitation upon any power
16 necessary or appropriate to carry out the purposes and intent
17 of the Regional Water Utility Authority Act.

18 B. The authority shall contract with a third-party
19 financial expert to perform a rate analysis. The board shall
20 establish a rate study advisory committee composed of authority
21 members, employees and directors. The committee shall oversee
22 the development and implementation of the rate analysis,
23 including reserves, planned capital improvements and budget
24 forecasts.

25 C. All powers, privileges and duties vested in or

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1 imposed upon an authority shall be exercised and performed by
2 the board.

3 SECTION 9. [NEW MATERIAL] BOARD--APPOINTMENT--
4 ELECTION--VACANCIES--REMOVAL OR SUSPENSION.--

5 A. The authority shall be governed by a board of
6 directors consisting of an odd number of at least three
7 directors who reside within the service area of the authority
8 and are in good standing with the authority.

9 B. The initial board shall be appointed by the
10 incorporating entities of the authority. The appointed
11 directors shall serve until their successors are elected at the
12 next general election and qualified. An appointed director may
13 run for election.

14 C. The bylaws shall specify whether directors run
15 at-large or within districts. If directors are elected from
16 districts, they shall live in the district from which they are
17 elected. Terms of elected directors shall be staggered
18 four-year terms beginning on January 1 of the year following
19 their election; provided that those chosen at the first general
20 election after the creation of the authority shall immediately
21 classify themselves by lot, so that at least one director
22 serves a two-year term and at least two directors serve a
23 four-year term; thereafter, the terms shall be four years.
24 After serving two terms, directors shall be ineligible to hold
25 a director's position until one full term has intervened.

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1 D. For an authority that has director districts, as
2 soon as feasible after each federal decennial census, the board
3 shall assess the existing districts to determine if the
4 districts remain as equal in population as is practicable and,
5 if necessary, shall redistrict the authority into districts
6 that remain as compact and as equal in population as is
7 practicable; provided that:

8 (1) a redistricting shall be effective upon
9 finalization of the redistricting plan and shall be applied to
10 the director seats eligible for election at the next following
11 general election; and

12 (2) an incumbent director whose residence is
13 redistricted out of the district represented by the director
14 shall serve until the next general election, at which an
15 authority member or a qualified elector who resides within the
16 district shall be elected to fill the unexpired term.

17 E. Elections shall be called, conducted and
18 canvassed as general elections and regular authority elections
19 shall be held with the general election.

20 F. The board shall call the election by resolution
21 adopted at least one hundred eighty days prior to the election.
22 The resolution shall recite the objects and purposes of the
23 election and the date upon which the election will be held.
24 The secretary of the authority shall provide to the county
25 clerks of the counties within the service area with the voting

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1 list for the authority and such supplies and assistance as
2 necessary to conduct the elections authorized by the Regional
3 Water Utility Authority Act.

4 G. Vacancies on the board shall be filled by
5 appointment by a majority of the remaining directors for the
6 remainder of the unexpired term or until a successor is elected
7 at the next general election and qualified to fulfill the
8 remainder of a term.

9 H. A director may be removed from office pursuant
10 to the procedures of Chapter 10, Article 4 NMSA 1978 or
11 suspended pursuant to the procedures of Chapter 10, Article 5
12 NMSA 1978.

13 SECTION 10. [NEW MATERIAL] BOARD--ORGANIZATION--
14 OFFICERS.--

15 A. Directors shall take the oath of office and
16 along with the surety bonds required by Chapter 10, Article 2
17 NMSA 1978, file those documents with the secretary of state.
18 The authority may provide for a blanket bond for all directors,
19 officers and employees of the authority. The board shall
20 determine the amount of good and sufficient surety required for
21 directors, officers and employees, conditioned on the faithful
22 performance of all of the duties of the person's office,
23 without fraud, deceit or oppression, and the accounting for all
24 money and property coming into the person's hands and the
25 prompt and faithful payment of all money and the delivering of

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1 all property coming into the person's custody or control
2 belonging to the authority or the person's successors in
3 office. Premiums on all bonds provided for in this subsection
4 shall be paid by the authority, and all such bonds shall be
5 kept on file in the secretary of state's office.

6 B. The board shall elect its chair and other
7 officers it deems necessary, including a secretary and
8 treasurer. The secretary and treasurer may be one person and
9 need not be a director.

10 C. The secretary shall keep a record of all of the
11 board's proceedings, minutes of all meetings, certificates,
12 contracts, bonds given by employees and all corporate acts,
13 which shall be open to inspection to all members of the public.

14 D. The treasurer shall keep strict and accurate
15 accounts of all money received by and disbursed for and on
16 behalf of the authority, in permanent records. The authority
17 may provide a higher bond for the treasurer than for other
18 directors, officers and employees.

19 E. Directors shall receive no compensation for
20 their services as a director, officer, engineer, attorney,
21 employee or other agent of the authority. Directors may
22 receive a stipend for service on the board and may receive per
23 diem and mileage for attendance at meetings outside of the
24 service area.

25 F. The board shall meet once each month at a time

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1 and place within the service area of the authority to be
2 designated by the board. Special meetings may be held as often
3 as the needs of the authority require on notice to each
4 director and to authority members. No business of the board
5 shall be transacted except at a regular or special meeting at
6 which at least a majority of directors are present. Any action
7 of the board requires the affirmative vote of a majority of the
8 directors present and voting.

9 SECTION 11. [NEW MATERIAL] BOARD--POWERS--DUTIES.--

10 A. All powers, privileges and duties vested in or
11 imposed upon the authority shall be exercised and performed by
12 the board. The board may delegate its powers by resolution to
13 an officer, employee or agent of the board, with the exception
14 of the following:

- 15 (1) adoption of board policies and procedures;
16 (2) ratification of acquisition of property;
17 (3) initiation or continuation of legal
18 action;
19 (4) establishment of policies regarding fees,
20 tolls, rates or charges; and
21 (5) issuance of bonds.

22 B. In addition to all other powers conferred by the
23 Regional Water Utility Authority Act, the board may:

- 24 (1) adopt, amend or repeal bylaws that
25 establish the authority's powers and its process to implement

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1 those powers pursuant to the Regional Water Utility Authority
2 Act and file the bylaws and changes with the secretary of
3 state;

4 (2) adopt and use a seal;

5 (3) fix the time and place of meetings and the
6 method of providing notice of the meetings;

7 (4) make and pass orders and resolutions
8 necessary for the government and management of the affairs of
9 the authority and the execution of the powers vested in the
10 authority;

11 (5) maintain offices at a place as the board
12 may designate;

13 (6) appoint, hire and retain employees and
14 agents, engineers, attorneys, accountants, financial advisers,
15 investment bankers and other consultants;

16 (7) enter into contracts for goods and
17 services to further its public purposes and other contracts and
18 agreements to implement the provisions of the Regional Water
19 Utility Authority Act;

20 (8) enter into legal agreements with other
21 governmental entities; and

22 (9) regulate, supervise and operate the
23 authority's facilities.

24 C. In addition to other duties imposed on the board
25 by the provisions of the Regional Water Utility Authority Act,

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1 the board shall promulgate and adhere to policies and
2 procedures that govern its conduct in accordance with state law
3 and provide meaningful opportunities for public input. These
4 policies shall include standards and procedures for calling
5 emergency meetings.

6 SECTION 12. [NEW MATERIAL] CONFLICTS OF INTEREST.--No
7 director or officer, employee or agent of the authority shall
8 be interested in any contract or transaction with the authority
9 except in an official representative capacity.

10 SECTION 13. [NEW MATERIAL] SERVICE AREA--EXCLUSIVE RIGHT
11 TO PROVIDE SERVICE.--

12 A. An authority has the exclusive right to provide
13 water and wastewater services within the service area served by
14 that authority; provided that:

15 (1) a person providing water or wastewater
16 services to customers within the authority's service area as of
17 the date the authority is incorporated may continue to serve
18 those customers who were served as of that date; and

19 (2) an extension of water or wastewater
20 service by a person described in Paragraph (1) of this
21 subsection that is planned and fully funded as of the date the
22 authority is incorporated and is completed within eighteen
23 months of that date shall be excluded from the authority's
24 service area.

25 B. The authority's service-area and place-of-use

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1 documents, as approved by the state engineer, shall be filed
2 with the office of the state engineer and with the county clerk
3 in each of the counties within the authority's service area.

4 C. The initial authority's service area and any
5 subsequent additions or subtractions of territory shall be
6 designated in a plat filed with the state engineer and the
7 county clerk in each of the counties within the authority's
8 service area.

9 D. The authority's service area shall consist of
10 the incorporating entities' existing place of use approved by
11 and on file with the state engineer and shall be filed in the
12 public records of the county clerks of the counties of the
13 incorporating entities. An application shall be filed with the
14 state engineer to combine and commingle water rights and to
15 combine the incorporating entities' place of use into the
16 authority's service area. In the event that another entity
17 elects to merge into the authority, the authority's service
18 area shall be amended to include that member entity's place of
19 use and shall be filed with the state engineer. The
20 authority's initial service area and any subsequent amendments
21 to its service area shall be designated in a plat filed in the
22 public records of the county clerks of counties of the
23 incorporating entities. If the service area of the merging
24 entity is contiguous with the service area of the authority,
25 the merger shall include the combining and commingling of water

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1 rights with the authority.

2 SECTION 14. [NEW MATERIAL] ACCEPTANCE OF ASSETS AND
3 LIABILITIES OF EXISTING WATER SERVICE PROVIDERS--ACQUISITION OF
4 WATER RIGHTS.--

5 A. An authority shall accept a transfer of water or
6 wastewater service assets and liabilities of a member entity
7 following the legal dissolution of that entity and subject to
8 any other statutory requirements for dissolution and transfer.
9 Upon the transfer of the assets and liabilities to the
10 authority, the area within the boundaries of the authority
11 serviced by the dissolved entity shall become part of the
12 authority's service area.

13 B. When a water right is included in the assets and
14 liabilities of a member entity that are transferred to the
15 authority, or upon the acquisition of a water right by the
16 authority, the authority shall file a change of ownership form
17 with the state engineer.

18 SECTION 15. [NEW MATERIAL] AUTHORITY MAY REGULATE WATER
19 USE AND DOMESTIC WELLS.--

20 A. To prevent waste and to conserve the supply of
21 water, the board may by resolution regulate and restrict the
22 use of the authority's water within the authority's service
23 area.

24 B. The authority has jurisdiction over new domestic
25 water wells within the authority's service area.

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1 C. The authority may, by resolution, restrict the
2 drilling of new domestic water wells, except for property zoned
3 agricultural, if the property line of the applicant is within
4 four hundred feet of the authority's water distribution lines.

5 D. The authority may deny authorization for a new
6 domestic water well permit if the total cost of extending the
7 authority's water distribution line, meter and hook-up is at or
8 less than the estimated total cost of drilling a new domestic
9 well and installing a pump and meter.

10 E. If the authority fails to authorize the drilling
11 of a new domestic water well, it shall provide domestic water
12 service to the property within ninety days pursuant to the
13 authority's customary charges and rate schedules.

14 F. The authority shall file with the state engineer
15 its resolution restricting the drilling of new domestic water
16 wells.

17 G. An applicant for a domestic water well located
18 within the service area of an authority with a new domestic
19 water well drilling policy shall obtain a permit to drill the
20 well from the authority subsequent to the state engineer's
21 approval.

22 H. The authority shall act upon a new domestic
23 water well permit application within thirty days of receipt of
24 the request.

25 I. The authority shall notify the state engineer of

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1 all permit denials for domestic well authorization.

2 J. An applicant may appeal the decision of the
3 authority to the district court in the judicial district in
4 which the authority is located.

5 K. Nothing in this section shall limit the
6 authority of the state engineer to administer water rights as
7 provided by law.

8 L. The state engineer shall not be liable for
9 actions taken in accordance with the authority's resolution
10 authorizing restriction of domestic well drilling within the
11 service area of the authority.

12 M. For the purpose of preserving and protecting
13 water resources and to provide an assured water supply for the
14 community, the authority may require within its service area:

15 (1) site development standards to conserve
16 water and minimize water loss;

17 (2) low water use landscaping and plant
18 materials;

19 (3) nonagricultural residential and commercial
20 water use limitations; or

21 (4) recycling and reuse of water.

22 N. The provisions of this section shall be
23 implemented consistent with state engineer rules.

24 SECTION 16. [NEW MATERIAL] HEALTH AND SAFETY--ON-SITE
25 WASTEWATER TREATMENT SYSTEMS--COMPLIANCE WITH RULES.--

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1 A. For health and sanitary purposes, the board has
2 the power to compel the owners of inhabited property within the
3 service area of the authority to connect their property with
4 the water or wastewater system of the authority. Upon failure
5 to connect within ninety days after written notice by the
6 board, the board may cause the connection to be made and a lien
7 to be filed against the property for the expense incurred in
8 making the connection; provided, however, that no owner shall
9 be compelled to connect the owner's property with such system
10 unless a service line is brought by the authority to a point
11 within four hundred feet of the nearest lot line.

12 B. For health and sanitary purposes, the board has
13 the power to compel compliance with its rules and standards
14 that are no less stringent than those adopted by the department
15 of environment relating to design, installation, maintenance,
16 repair and removal of on-site wastewater treatment systems.

17 SECTION 17. [NEW MATERIAL] LIENS AND FORECLOSURE.--

18 A. All rates, tolls or charges constitute a
19 perpetual lien on and against the property served, and any such
20 lien may be foreclosed in the same manner as provided by law
21 for the foreclosure of real estate mortgages and shall not be
22 subject to any limitations period, statutory or otherwise. The
23 authority shall enforce liens on property as provided in this
24 section.

25 B. If the authority places a lien on property for

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1 nonpayment of money owed, the authority shall file in the
2 office of the county clerk in the county in which the land is
3 situated a notice of lien that shall include:

4 (1) identification of the outstanding debt to
5 the authority;

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

7 (3) the general purpose of the lien;

8 (4) the name of the owner of the property
9 against which the lien is established as determined from the
10 records of the county assessor;

11 (5) a description of the property against
12 which the lien is established;

13 (6) the amount of the lien; and

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

16 C. A lien for multiple charges or assessments on a
17 property owner may be included in the same notice of lien, and
18 it shall not be necessary to file separate liens against the
19 separate properties. The lien shall be attested in the name of
20 the authority. The principal amount of any lien imposed for a
21 charge or assessment shall bear interest at the rate of twelve
22 percent per year from the date of filing the notice of lien
23 unless otherwise provided by law.

24 D. After the filing of the notice of lien in the
25 office of the county clerk of the county in which the property

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1 is situated, the authority shall have a lien upon the property
2 described in the notice of lien. The filing of the notice of
3 lien shall be notice to all the world of the existence of the
4 lien and of the contents of the notice of lien. The lien shall
5 not affect the title or rights to or in any real estate of any
6 purchaser, mortgagee in good faith or judgment lien creditor
7 without knowledge of the existence of such lien, unless the
8 notice of lien is filed in accordance with this section in the
9 office of the county clerk.

10 E. All authority liens shall be first and prior
11 liens on the property subject only to the lien of general state
12 and county taxes. The authority may release a lien against any
13 specific property by:

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

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

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

25 (1) expressly name each defendant, if known;

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1 (2) describe the property against which the
2 lien is established; and

3 (3) set forth the amount of the lien.

4 G. The judgment or decree rendered in the cause
5 shall be against the named defendants and against the several
6 properties for the amounts decreed to be due by each.

7 H. A lien against real estate may be foreclosed in
8 the same manner that mortgages or other liens against real
9 estate are foreclosed with like rights of redemption. At the
10 trial of a case foreclosing a lien, the recitals of the lien or
11 other evidence of indebtedness shall be received in evidence as
12 prima facie true. In the foreclosure of a lien created by the
13 authority, reasonable attorney fees may be taxed by the court
14 as part of the costs in favor of the prevailing party.

15 I. The authority shall prepare and sign a notice of
16 foreclosure, which shall also bear the signature and mailing
17 address of an attorney representing the authority. The
18 proceeds of the sale of the property by the authority pursuant
19 to a foreclosure sale on a lien shall be applied as follows:

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

22 (2) second, to the indebtedness claimed under
23 the lien for general state, county and ad valorem taxes;

24 (3) third, to the indebtedness claimed under
25 the lien of the authority;

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

3 (5) fifth, after all such costs, liens,
4 assessments and taxes are paid, to the former owner, mortgage
5 holder or other parties having an interest in the tract or
6 parcel, upon such person providing satisfactory proof to the
7 court of such interest and upon approval of the court.

8 SECTION 18. [NEW MATERIAL] ANNUAL REPORT.--

9 A. The authority shall file with the secretary of
10 state, within the time prescribed by the Regional Water Utility
11 Authority Act, an annual report setting forth:

12 (1) the name of the authority and the laws
13 under which it is incorporated;

14 (2) the address of the registered office of
15 the authority and the name and address of its registered agent;

16 (3) a brief statement of the character of the
17 affairs that the authority is actually conducting; and

18 (4) the names and respective addresses of the
19 directors and officers of the authority.

20 B. The report shall be signed and sworn to by any
21 two of its directors or officers. If the authority is in the
22 hands of a receiver or trustee, the report shall be executed on
23 behalf of the authority by the receiver or trustee. A copy of
24 the report shall be maintained at the authority's principal
25 place of business as contained in the report and shall be made

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1 available to the general public for inspection during regular
2 business hours.

3 SECTION 19. [NEW MATERIAL] FILING OF ANNUAL REPORT--
4 INITIAL REPORT--SUPPLEMENTAL REPORT--EXTENSION OF TIME.--

5 A. The annual report of an authority shall be
6 delivered to the secretary of state on or before the fifteenth
7 day of the fifth month following the end of its taxable year,
8 except that the first annual report of an authority shall be
9 filed within thirty days of the date on which its certificate
10 of incorporation or its certificate of authority was issued by
11 the secretary of state.

12 B. A supplemental report shall be filed with the
13 secretary of state within thirty days if, after the filing of
14 the annual report, a change is made in:

- 15 (1) the name of the authority;
- 16 (2) the mailing address, street address or the
17 geographical location of the authority's registered office and
18 the name or address of the registered agent upon whom process
19 against the authority may be served;

20 (3) the name or address of any of the
21 directors or officers of the authority or the date when the
22 term of office of each expires; or

23 (4) the authority's principal place of
24 business within the state.

25 C. Proof to the satisfaction of the secretary of

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1 state that prior to the due date of any report required by
2 Subsection A or B of this section, the report was:

3 (1) deposited in the United States mail in a
4 sealed envelope, properly addressed, with postage prepaid; or

5 (2) sent electronically from an authority
6 computer.

7 D. If the secretary of state finds that the report
8 conforms to the requirements, the secretary of state shall file
9 it. If the secretary of state finds that it does not conform
10 to the requirements, the secretary of state shall promptly
11 return the report to the authority for any necessary
12 corrections, in which event the penalties prescribed for
13 failure to file the report within the time provided shall not
14 apply, if the report is corrected to conform to the
15 requirements and returned to the secretary of state within
16 thirty days from the date on which it was mailed to the
17 authority by the secretary of state.

18 E. Upon application by the authority and for good
19 cause shown, the secretary of state may extend, for no more
20 than a total of twelve months, the date on which a required
21 report must be filed or the date on which the payment of any
22 fee is required, but no extension shall prevent the accrual of
23 interest as otherwise provided by law.

24 F. Nothing in this section prevents the collection
25 of a fee or penalty due upon the failure of any authority to

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1 submit the required report.

2 G. No annual or supplemental report required to be
3 filed pursuant to this section shall be deemed to have been
4 filed if the fees accompanying the report have been paid and
5 the payment was not honored.

6 SECTION 20. [NEW MATERIAL] OVERSIGHT BY STATE AGENCIES.--

7 A. In addition to all statutory requirements of the
8 state, an authority shall be specifically subject to the
9 applicable rules of the department of environment, the state
10 engineer and the department of finance and administration.

11 B. Every authority is subject to the provisions of
12 the:

- 13 (1) Open Meetings Act;
- 14 (2) Inspection of Public Records Act;
- 15 (3) Audit Act;
- 16 (4) Procurement Code;
- 17 (5) Governmental Conduct Act; and
- 18 (6) other applicable state laws.

19 SECTION 21. [NEW MATERIAL] REVENUE BONDS--AUTHORITY TO
20 ISSUE--PLEDGE OF REVENUES--LIMITATION ON TIME OF ISSUANCE.--

21 A. Revenue bonds may be issued by the authority for
22 acquiring real and personal property needed for an authority
23 project, including the purchase of water rights; planning,
24 designing, constructing, extending, enlarging, bettering,
25 repairing or otherwise improving a water or wastewater project;

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1 or for any combination of those purposes. The authority may
2 pledge irrevocably any or all of the net revenues from the
3 operation of the water or wastewater system for payment of the
4 interest on and principal of the revenue bonds.

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

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

16 D. If required by the terms, covenants and
17 provisions of revenue bonds or other obligations previously
18 issued by the authority or its member entities, all additional
19 bonds or other obligations issued or incurred by the authority
20 pursuant to the Regional Water Utility Authority Act shall
21 contain any required terms, covenants or provisions required to
22 avoid impairment of the previously issued or incurred bonds or
23 other obligations.

24 SECTION 22. [NEW MATERIAL] REVENUE BONDS--TERMS.--Revenue
25 bonds:

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

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

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

11 D. may be serial in form and maturity or may
12 consist of one bond payable at one time or in installments or
13 may be in such other form as may be determined by the
14 authority;

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

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

20 **SECTION 23. [NEW MATERIAL] EXEMPTION FROM TAXATION.--**The
21 bonds authorized by the Regional Water Utility Authority Act
22 and the income from the bonds shall be exempt from all taxation
23 by the state or any political subdivision of the state.

24 **SECTION 24. [NEW MATERIAL] RESOLUTION AUTHORIZING REVENUE**
25 **BONDS.--**

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

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

6 (2) authorizes the issuance of revenue bonds
7 by an affirmative vote of two-thirds of all directors.

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

11 SECTION 25. [NEW MATERIAL] REVENUE BONDS NOT GENERAL
12 OBLIGATIONS--AUTHENTICATION.--

13 A. Revenue bonds or refunding revenue bonds issued
14 as authorized in the Regional Water Utility Authority Act are:

15 (1) not general obligations of the state or a
16 political subdivision of the state; and

17 (2) collectible only from the pledged revenue
18 of the services provided by the authority, and each bond shall
19 state that it is payable solely from the pledged revenue of the
20 services provided by the authority and that the bondholders may
21 not look to any other fund of the state or political
22 subdivision of the state for the payment of the interest and
23 principal of the bond.

24 B. The bonds shall be executed by the chair of the
25 board and may be authenticated by the secretary of the board or

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1 any public or private transfer agent or registrar or its
2 successor, which shall be named or otherwise designated by the
3 board. The bonds may be executed as provided under the Uniform
4 Facsimile Signature of Public Officials Act.

5 SECTION 26. [NEW MATERIAL] REVENUE BONDS--MANDATORY RATES
6 FOR THE WATER OR WASTEWATER SYSTEM--MANDAMUS--IMPAIRMENT OF
7 PAYMENT.--

8 A. The authority shall establish rates for water or
9 wastewater services rendered by the authority to provide
10 revenue sufficient to meet the following requirements, and such
11 rates shall remain in effect until the bond issue is
12 liquidated. Revenue shall be sufficient to:

13 (1) pay all reasonable expenses of operation
14 of the water or wastewater system;

15 (2) pay all interest and principal on the
16 water or wastewater system revenue bonds as they come due; and

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

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

25 C. A law that authorizes the pledge of any or all

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1 of the pledged water or wastewater system revenue to the
2 payment of revenue bonds issued pursuant to the Regional Water
3 Utility Authority Act or that affects the pledged revenue of
4 the water or wastewater system, or any law supplemental to or
5 otherwise appertaining to that act, shall not be repealed or
6 amended or otherwise directly or indirectly modified in such a
7 manner as to impair adversely any such outstanding revenue
8 bonds, unless the outstanding revenue bonds have been
9 discharged in full or provision has been fully made for payment
10 of the bonds.

11 D. As a condition or covenant in connection with
12 the issuance of any revenue bonds authorized by the Regional
13 Water Utility Authority Act, an authority may pledge and agree
14 to impose rates higher than those required by the provisions of
15 this section.

16 SECTION 27. [NEW MATERIAL] REVENUE BONDS--REFUNDING
17 AUTHORIZATION.--

18 A. The authority may issue refunding revenue bonds
19 to refinance, pay and discharge all or any part of outstanding
20 bonds or other obligations payable from the net revenues of the
21 water or wastewater system previously issued or incurred by the
22 authority.

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

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1 C. Bonds for refunding and bonds for any purpose
2 allowed by the Regional Water Utility Authority Act may be
3 issued separately or issued in combination in one series or
4 more.

5 **SECTION 28. [NEW MATERIAL] REFUNDING BONDS--ESCROW--**
6 **DETAIL.--**

7 A. Refunding bonds issued pursuant to the Regional
8 Water Utility Authority Act shall be authorized by resolution.
9 Any bonds that are refunded pursuant to the provisions of this
10 section shall be paid at maturity or on any permitted prior
11 redemption date in the amounts, at the times and places and, if
12 called prior to maturity, in accordance with applicable notice
13 provisions, all as provided in the proceedings authorizing the
14 issuance of the refunded bonds or otherwise appertaining to the
15 bonds, except for any such bond that is voluntarily surrendered
16 for exchange or payment by the holder or owner.

17 B. Provision shall be made for paying the bonds
18 refunded at the time or times provided in Subsection A of this
19 section. The principal amount of the refunding bonds may
20 exceed the principal amount of the refunded bonds and may also
21 be less than or the same as the principal amount of the bonds
22 being refunded so long as provision is duly and sufficiently
23 made for the payment of the refunded bonds.

24 C. The proceeds of refunding bonds, including any
25 accrued interest and premium appertaining to the sale of

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1 refunding bonds, shall either be immediately applied to the
2 retirement of the bonds being refunded or be placed in escrow
3 in a commercial bank or trust company that possesses and is
4 exercising trust powers and that is a member of the federal
5 deposit insurance corporation, to be applied to the payment of
6 the principal of, interest on and any prior redemption premium
7 due in connection with the bonds being refunded; provided that
8 such refunding bond proceeds, including any accrued interest
9 and any premium appertaining to a sale of refunding bonds, may
10 be applied to the establishment and maintenance of a reserve
11 fund and to the payment of expenses incidental to the refunding
12 and the issuance of the refunding bonds, the interest on the
13 bonds and the principal of the bonds or both interest and
14 principal as the authority may determine.

15 D. Nothing in this section requires the
16 establishment of an escrow if the refunded bonds become due and
17 payable within one year from the date of the refunding bonds
18 and if the amounts necessary to retire the refunded bonds
19 within that time are deposited with the paying agent for the
20 refunded bonds. Such escrow shall not necessarily be limited
21 to proceeds of refunding bonds but may include other money
22 available for its purpose. Any proceeds in escrow pending such
23 use may be invested or reinvested in bills, certificates of
24 indebtedness, notes or bonds that are direct obligations of or
25 the principal and interest of which obligations are

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1 unconditionally guaranteed by the United States of America or
2 in certificates of deposit of banks that are members of the
3 federal deposit insurance corporation, the par value of which
4 certificates of deposit is collateralized by a pledge of
5 obligations of or the payment of which is unconditionally
6 guaranteed by the United States of America, the par value of
7 which obligations is at least seventy-five percent of the par
8 value of the certificates of deposit. Such proceeds and
9 investments in escrow together with any interest or other
10 income to be derived from any such investment shall be in an
11 amount at all times sufficient as to principal, interest, any
12 prior redemption premium due and any charges of the escrow
13 agent payable therefrom to pay the bonds being refunded as they
14 become due at their respective maturities or due at any
15 designated prior redemption date or dates in connection with
16 which the authority shall exercise a prior redemption option.
17 A purchaser of a refunding bond is in no manner responsible for
18 the application of the proceeds of the bonds by the authority
19 or any of its officers, employees or agents.

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

25 SECTION 29. [NEW MATERIAL] REFUNDING REVENUE BONDS--

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1 TERMS.--Refunding revenue bonds:

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

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

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

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

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

20 SECTION 30. [NEW MATERIAL] REFUNDING REVENUE BONDS--
21 RESOLUTION.--At any regular or special meeting called for the
22 purpose of issuing refunding revenue bonds, the board by a two-
23 thirds' vote of all of the authority members of the authority
24 may adopt a resolution authorizing the issuance of the
25 refunding revenue bonds.

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1 SECTION 31. ~~[NEW MATERIAL]~~ PUBLIC REGULATION COMMISSION--
2 NO JURISDICTION.--An authority organized under the provisions
3 of the Regional Water Utility Authority Act is not subject to
4 the jurisdiction of the public regulation commission or the
5 terms and provisions of the Public Utility Act.

6 SECTION 32. Section 72-12-1.1 NMSA 1978 (being Laws 2003,
7 Chapter 298, Section 2) is amended to read:

8 "72-12-1.1. UNDERGROUND WATERS--DOMESTIC USE--PERMIT.--
9 Except as otherwise provided in this section, a person [~~firm or~~
10 ~~corporation~~] desiring to use public underground waters
11 described in this section for irrigation of not to exceed one
12 acre of noncommercial trees, lawn or garden or for household or
13 other domestic use shall make application to the state engineer
14 for a well on a form to be prescribed by the state engineer.
15 Upon the filing of each application describing the use applied
16 for, the state engineer shall issue a permit to the applicant
17 to use the underground waters applied for; provided that:

18 A. permits for domestic water use within
19 municipalities shall be conditioned to require the permittee to
20 comply with all applicable municipal ordinances enacted
21 pursuant to Chapter 3, Article 53 NMSA 1978; and

22 B. permits for domestic water use within regional
23 water utility authorities shall be conditioned to require the
24 permittee to comply with the Regional Water Utility Authority
25 Act and other applicable laws."

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SECTION 33. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2016.