

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

AN ACT

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

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

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

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

A. The "Lower Rio Grande public water works authority" is created. The authority is a political subdivision of the state and shall be an independent public body. The authority is composed of Berino mutual domestic water consumers and mutual sewage works association, Desert Sands mutual domestic water consumers association, La Mesa mutual domestic water consumers association, Mesquite mutual domestic water consumers and mutual sewage works association and Vado mutual domestic water consumers association, all serving unincorporated communities within Dona Ana county. The voting community membership of the five founding entities have approved by resolution the development of the authority.

1           B. The authority may adopt rules and resolutions,  
2 governance policies and procedures necessary to exercise the  
3 powers conferred pursuant to this section.

4           C. All functions, appropriations, money, records  
5 and equipment and all personal property and real property,  
6 including water rights, easements, permits and  
7 infrastructure, as well as all encumbrances, debts and  
8 liabilities pertaining to or owned by the founding entities  
9 shall be transferred to the authority.

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

1 by application filed with the state engineer.

2 E. The authority may provide for water and  
3 wastewater services, road improvements for the protection of  
4 the authority's infrastructure or renewable energy projects  
5 that are integral to the operation and maintenance of the  
6 authority's facilities or any combination or parts thereof.

7 F. The authority shall exercise all powers allowed  
8 pursuant to law, including:

9 (1) regulating, supervising and operating  
10 the authority's facilities;

11 (2) establishing rates and imposing  
12 assessments, fees and charges and taking action necessary for  
13 the enforcement thereof;

14 (3) assessing a standby charge for the  
15 privilege of connection into the authority's service at some  
16 date in the future if the property line is within three  
17 hundred feet of the authority's service lines and the  
18 property line is located within the boundaries of the  
19 authority. This section applies to new connections after the  
20 enactment of this act;

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

25 (5) shutting off, after notice, unauthorized

1 connections, illegal connections or a connection for which  
2 charges are delinquent in payment;

3 (6) entering into contracts for services  
4 with private entities, the state, municipalities, counties  
5 and the federal government and other public bodies to further  
6 its public purposes;

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

9 (8) acquiring and disposing of real  
10 property, personal property and rights of way;

11 (9) condemning property pursuant to the  
12 Eminent Domain Code as the last resort and only for the  
13 purposes of construction, maintenance and operations of the  
14 authority's infrastructure;

15 (10) hiring and retaining agents, employees  
16 and consultants, as needed;

17 (11) adopting and using a governmental seal;

18 (12) placing a lien on property for unpaid  
19 assessments, charges and fees and enforcing the lien in a  
20 manner pursuant to this section;

21 (13) suing and being sued and being a party  
22 to suits, actions and proceedings; and

23 (14) having and exercising all rights and  
24 powers necessary, incidental to or implied from the specific  
25 powers granted in this section.

1           G. As a political subdivision of the state and a  
2 member-owned community water system, the authority shall be  
3 subject to the:

4                   (1) applicable rules and regulations of the  
5 department of environment, and in its discretion the  
6 department may:

7                           (a) conduct periodic reviews of the  
8 operation of the authority;

9                           (b) require the authority to submit  
10 information to the department;

11                           (c) upon department of environment  
12 discretion or upon a petition of twenty-five percent of the  
13 members of the authority, conduct an investigation as it  
14 deems necessary to ensure the authority's compliance with all  
15 applicable statutes, rules, regulations and reporting  
16 requirements; and

17                           (d) after a hearing, set and collect  
18 rates and fees and use the same for the proper operation and  
19 management of the authority;

20                   (2) applicable rules and regulations of the  
21 department of finance and administration, local government  
22 division and budget and finance bureau;

23                           (3) Open Meetings Act;

24                           (4) Inspection of Public Records Act;

25                           (5) Audit Act;

1 (6) Procurement Code;  
2 (7) Governmental Conduct Act;  
3 (8) special election procedures pursuant to  
4 Chapter 1, Article 24 NMSA 1978;  
5 (9) Chapter 72 NMSA 1978; and  
6 (10) applicable rules and regulations of the  
7 state engineer.

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

12 I. The authority may issue utility system revenue  
13 bonds and obligations for acquiring real and personal  
14 property needed for the utility system and for extending,  
15 enlarging, renovating, repairing or otherwise improving its  
16 facilities. The authority may issue revenue anticipation  
17 notes with maturities and terms to be approved by the board  
18 of directors of the authority. The authority may pledge  
19 irrevocably net revenues from the operation of the utility  
20 system for payment of the principal, premiums and interest on  
21 the bonds. The utility system revenue bonds:

22 (1) may have interest, appreciated principal  
23 value or any part thereof payable at intervals or at maturity  
24 as the authority determines;

25 (2) may be subject to prior redemption at

1 the authority's option at such time and upon such terms and  
2 conditions, with or without the payment of a premium, as  
3 determined by the authority;

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

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

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

13 (6) may be sold at a public or negotiated  
14 sale.

15 J. The authority's board of directors may adopt a  
16 resolution declaring the necessity for the issuance of  
17 utility system revenue bonds or other obligations and may  
18 authorize the issuance of utility system revenue bonds or  
19 other obligations by an affirmative vote of a majority of all  
20 members of the authority's board of directors. Utility  
21 revenue bonds and the resolution authorizing their issuance  
22 shall be subject to voter approval with oversight from the  
23 department of finance and administration and the New Mexico  
24 finance authority. The bonds authorized by the authority and  
25 their income shall be exempt from taxation by the state and

1 its political subdivisions.

2 K. Except for the purpose of refunding previous  
3 utility system revenue bond issues, the authority shall not  
4 sell utility system revenue bonds payable from pledged  
5 revenues after the expiration of three years from the date of  
6 the resolution authorizing their issuance. Any period of  
7 time during which a utility system revenue bond is in  
8 litigation shall not count toward the determination of the  
9 expiration date of that issue.

10 L. The authority shall be governed by a board of  
11 directors. The directors of the initial board shall consist  
12 of five directors representing each of the founding entities.  
13 The directors of the initial board shall serve until their  
14 successors are elected. After the terms of the initial  
15 directors are completed, the succeeding board of directors  
16 shall be elected by districts from a minimum of five and a  
17 maximum of seven electoral districts. Each director, at the  
18 time of election, shall reside within the electoral district  
19 of the authority from which that member is elected. The  
20 boundaries and the number of electoral districts shall be  
21 established by the initial board within two years of the  
22 creation of the authority. The board may in its governance  
23 document provide for redistricting upon any change in the  
24 authority's boundary. The elected board of directors shall  
25 serve staggered terms to be established in the governance

1 document developed by the initial board. Elections shall be  
2 conducted in accordance with the special election procedures  
3 pursuant to Chapter 1, Article 24 NMSA 1978 and may be  
4 conducted by the Dona Ana county elections bureau.

5 M. If the authority places a lien on property for  
6 nonpayment of money owed, the authority shall file in the  
7 office of the county clerk of the county or counties in which  
8 the property is located a notice of lien, which shall  
9 include:

10 (1) identification of the outstanding debt  
11 to the authority;

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

13 (3) the general purpose of the lien;

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

17 (5) a description of the property against  
18 which the lien is established;

19 (6) the amount of the lien; and

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

22 N. A lien for multiple charges or assessments on a  
23 property owner may be included in the same notice of lien,  
24 and it shall not be necessary to file separate liens against  
25 the separate properties. The lien shall be attested in the

1 name of the authority. The principal amount of any lien  
2 imposed for a charge or assessment shall bear interest at the  
3 rate of twelve percent per year from the date of filing the  
4 notice of lien unless otherwise provided by law.

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

20 (1) entering and signing a receipt of  
21 payment upon the notice of lien filed in the office of the  
22 county clerk; or

23 (2) issuing a separate receipt that recites  
24 that payment of the lien with any accrued interest and  
25 penalty has been made.

1           P. The authority may, in a single suit, foreclose  
2 the liens against all persons named in the notice of liens or  
3 against the property if the owners are unknown. The  
4 complaint filed shall:

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

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

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

9           Q. The judgment or decree rendered in said cause  
10 shall be several against the named defendants and against the  
11 several properties for the amounts decreed to be due by each.  
12 A lien against real estate may be foreclosed in the same  
13 manner that mortgages or other liens against real estate are  
14 foreclosed with like rights of redemption. In the  
15 foreclosure of any lien created by the authority, reasonable  
16 attorney fees may be ordered by the court as part of the  
17 costs in favor of the prevailing party.

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

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

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

4                   (3) third, to the indebtedness claimed under  
5 the lien of the authority;

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

8                   (5) fifth, after all such costs, liens,  
9 assessments and taxes are paid, to the former owner, mortgage  
10 holder or parties having an interest in the tract or parcel,  
11 upon such persons providing satisfactory proof to the court  
12 of such interest and upon approval of the court.

13                   S. As used in this section, "public water works  
14 authority" means a utility organized as a political  
15 subdivision of the state for the purposes of constructing  
16 infrastructure and furnishing water and wastewater services  
17 for domestic, commercial or industrial uses, road improvements  
18 for the protection of the authority's infrastructure and  
19 renewable energy projects; and entering into agreements with  
20 other entities for the provision of other services, including  
21 water conservation and reclamation, source water protection,  
22 drainage, flood control, solid waste, planning and zoning."       

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25