The Legislature

of the

State of New Mexico

53rd Legislature, 1st Session

LAWS 2017

CHAPTER 124

SENATE BILL 110, as amended

Introduced by

SENATOR JOSEPH CERVANTES

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

CHAPTER 124

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.

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

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

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

by application filed with the state engineer.

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

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

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

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

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

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

(5) shutting off, after notice, unauthorized

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

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

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

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

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

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

(11) adopting and using a governmental seal;

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

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

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

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

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

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

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

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

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

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

(3) Open Meetings Act;

(4) Inspection of Public Records Act;

(5) Audit Act;

(6) Procurement Code;

(7) Governmental Conduct Act;

(8) special election procedures pursuant to Chapter 1, Article 24 NMSA 1978;

(9) Chapter 72 NMSA 1978; and

(10) applicable rules and regulations of the state engineer.

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

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

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

(2) may be subject to prior redemption at

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

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

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

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

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

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

its political subdivisions.

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

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

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

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

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

(2) the fact that a lien is established;

(3) the general purpose of the lien;

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

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

(6) the amount of the lien; and

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

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

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

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

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

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

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

(1) expressly name each defendant, if known;

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

(3) set forth the amount of the lien.

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

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

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

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

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

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

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

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

John A. Sanchez, President
Senate

Lenore M. Naranjo, Chief Clerk
Senate

Brian Egolf, Speaker
House of Representatives

Lisa M. Ortiz McCutcheon, Chief Clerk
House of Representatives

Approved by me this 6th day of April, 2017

Governor Susana Martinez
State of New Mexico