



The Legislature
of the
State of New Mexico

49th Legislature, 2nd Session

LAWS 2010

CHAPTER 39

HOUSE BILL 15, as amended

Introduced by

REPRESENTATIVE ANNA CROOK

REPRESENTATIVE KEITH J. GARDNER



FOR THE WATER AND NATURAL
RESOURCES COMMITTEE

CHAPTER 39

AN ACT

1
2 RELATING TO SPECIAL DISTRICTS; CREATING THE EASTERN NEW MEXICO
3 WATER UTILITY AUTHORITY; ESTABLISHING POWERS AND DUTIES;
4 PROVIDING FOR BONDING AUTHORITY; TRANSFERRING THE ASSETS AND
5 LIABILITIES OF THE EASTERN NEW MEXICO RURAL WATER AUTHORITY.
6

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

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

10 Section 2. FINDINGS AND PURPOSE.--

11 A. The legislature finds that:

12 (1) consistent with the goals of the
13 statewide water plan, water systems should be planned for and
14 constructed on a regional basis, in that regional water
15 systems are able to take advantage of economies of scale;

16 (2) the costs of designing, purchasing,
17 constructing, rehabilitating, renovating, improving,
18 equipping, furnishing, operating and maintaining regional
19 water systems have increased to a level that local financial
20 resources are inadequate to meet all of the costs and that
21 federal funding is crucial to complete a large scale water
22 supply project in eastern new Mexico; and

23 (3) a water utility authority is necessary
24 in eastern New Mexico to provide an organized structure to
25 work with state, local and federal agencies to complete a

1 water delivery system from the Ute Reservoir to local
2 governments.

3 B. The purposes of the Eastern New Mexico Water
4 Utility Authority Act are:

5 (1) to create a water utility authority to
6 develop and construct a water delivery system based on a
7 funding formula whereby up to seventy-five percent of the
8 overall capital cost of the system is to be paid for by the
9 federal government, fifteen percent is to be paid for by the
10 state of New Mexico and ten percent is to be paid for by the
11 local governments that have the power to appoint members to
12 the board of the authority; and

13 (2) to create an authority that will deliver
14 water to the local governments within the boundaries of the
15 authority but that will not compete with local governments for
16 rights to deliver water to ultimate end-users.

17 Section 3. DEFINITIONS.--As used in the Eastern New
18 Mexico Water Utility Authority Act:

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

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

23 Section 4. EASTERN NEW MEXICO WATER UTILITY AUTHORITY--
24 CREATED.--

25 A. The "eastern New Mexico water utility

1 authority" is created coextensive with the boundaries of Curry
2 and Roosevelt counties and the territory physically occupied
3 by the water facilities of the authority to plan, design,
4 develop, purchase, acquire, own, operate, establish, construct
5 and maintain the eastern New Mexico rural water system
6 pipelines and waterworks to supply water for domestic,
7 commercial, non-irrigated agricultural and industrial purposes
8 by any available means to persons within and without the
9 boundaries of the authority.

10 B. The eastern New Mexico water utility authority
11 is created for the benefit of the seven members of the eastern
12 New Mexico rural water authority, including Curry county, the
13 city of Clovis, the city of Portales, the city of Texico, the
14 town of Melrose, the town of Elida and the village of Grady.

15 Section 5. BOARD--APPOINTMENT--TERMS.--

16 A. The board shall consist of seven members, each
17 of whom shall reside within the boundaries of the authority,
18 appointed as follows:

19 (1) three board members appointed by the
20 Clovis city commission for a term of two years; provided,
21 however, that two of the initial members shall be appointed
22 for a term of one year for the purpose of having a staggered
23 board;

24 (2) two board members appointed by the
25 Portales city council for a term of two years; provided,

1 however, that one of the initial members shall be appointed
2 for a term of one year for the purpose of having a staggered
3 board;

4 (3) one board member appointed for a term of
5 two years by the Curry county commission; and

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

8 (a) the Texico city council;

9 (b) the Melrose village council;

10 (c) the Elida village council; and

11 (d) the Grady village council.

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

15 Section 6. BOARD--POWERS--DUTIES.--

16 A. All powers, privileges and duties vested in or
17 imposed upon the authority shall be exercised and performed by
18 the board; provided that the board may delegate its powers by
19 resolution to an officer or agent of the board, with the
20 exception of the following powers:

21 (1) adoption of board rules, policies and
22 procedures;

23 (2) ratification of acquisition of property;

24 (3) initiation or continuation of legal
25 action, except that initiation and filing of liens for unpaid

1 rates and charges and suits for payment thereof and
2 discontinuance of service for failure to pay such rates and
3 charges may be delegated;

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

6 (5) issuance of revenue bonds.

7 B. Meetings of the board shall be held at the call
8 of the chair or whenever three members shall so request in
9 writing. A majority of members then serving constitutes a
10 quorum for the transaction of any business. Except as
11 provided in Subsection C of this section, the affirmative vote
12 of at least a majority of a quorum present shall be necessary
13 for any action to be taken by the board. A vacancy in the
14 membership of the board shall not impair the right of a quorum
15 to exercise all rights and perform all duties of the board.

16 C. The non-delegable powers and duties provided in
17 Subsection A of this section shall only be effective upon
18 resolution passed by a supermajority of five members of the
19 board.

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

22 E. A member of the board having a financial
23 interest or possible interest in the outcome of any policy,
24 decision or determination before the board shall be
25 disqualified from voting on the issue. A member's status as a

1 ratepayer or customer of the authority shall not be deemed to
2 constitute a financial interest or possible interest for the
3 purposes of this section.

4 F. Subject to Subsections B through D of this
5 section, the board may:

6 (1) adopt bylaws;

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

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

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

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

18 (6) establish user classifications;

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

24 (a) the rates, tolls or charges shall
25 be uniform for all counties and municipalities that have the

1 power to appoint a member to the board;

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

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

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

22 (e) the provisions of Subparagraphs (b)
23 and (c) of this paragraph are not applicable to counties and
24 municipalities that have the power to appoint a member to the
25 board; and

1 (8) adopt an operating budget that supports
2 the full cost of operation, maintenance and replacement as
3 established by an asset management plan and a rate-setting
4 analysis. The operating budget shall be subject to the
5 approval of the department of finance and administration.

6 Section 7. AUTHORITY--POWERS.--The authority is a body
7 politic and corporate and a political subdivision of the
8 state. The authority may:

9 A. sue and be sued;

10 B. enter into contracts;

11 C. borrow money and issue revenue bonds;

12 D. acquire, dispose of or encumber real and
13 personal property and any interest in them, including leases,
14 easements and water rights from a willing seller only;

15 E. design, develop, construct, operate, maintain,
16 purchase or contract for water systems and pipelines to
17 connect systems and sources with the authority's customers;

18 F. be allowed a water use planning period not to
19 exceed forty years and may hold water rights based on a water
20 development plan submitted to and approved by the state
21 engineer the implementation of which shall not exceed forty
22 years from the date of the application to change the place or
23 purpose of use of an acquired water right;

24 G. have and exercise the power of eminent domain
25 for the limited purpose of this subsection, within the

1 boundaries of the authority and in Quay county and in the
2 manner provided by law for the condemnation of private
3 property as the last resort for public use with just
4 compensation. The authority shall not acquire water rights
5 through eminent domain. The authority shall not take any
6 property unless it is necessary for rights of way and
7 easements and for the use and placement of facilities and
8 infrastructure elements, including pipelines, structures, pump
9 stations and related appurtenances;

10 H. construct and maintain works and establish and
11 maintain facilities across or along any public street or
12 highway and through any vacant public lands that are the
13 property of the state and construct works and establish and
14 maintain facilities across any stream of water or watercourse,
15 all in accordance with applicable state and federal permitting
16 authority;

17 I. have and exercise all rights and powers
18 necessary or incidental to or implied from the specific powers
19 granted in this section. Such specific powers shall not be
20 considered as a limitation upon any power necessary or
21 appropriate to carry out the purposes and intent of the
22 Eastern New Mexico Water Utility Authority Act; and

23 J. not have power or rights over any property,
24 infrastructure or operations of a county or municipality that
25 has the power to appoint a member to the board.

1 Section 8. ACCEPTANCE OF ASSETS AND LIABILITIES OF
2 EXISTING WATER SERVICE PROVIDERS--ACQUISITION OF WATER
3 RIGHTS.--

4 A. The authority may accept a transfer of assets
5 and liabilities upon the request, and following the legal
6 dissolution, of an entity that is listed below or formed
7 pursuant to one of the following statutes and that provides
8 water service, subject to any other statutory requirements for
9 such dissolution and transfer:

- 10 (1) the Water and Sanitation District Act;
- 11 (2) a water and natural gas association
12 formed pursuant to Sections 3-28-1 through 3-28-22 NMSA 1978;
- 13 (3) a water users' association formed
14 pursuant to Sections 73-5-1 through 73-5-9 NMSA 1978;
- 15 (4) the Nonprofit Corporation Act;
- 16 (5) the Public Improvement District Act;
- 17 (6) a corporation formed pursuant to
18 Sections 62-2-1 through 62-2-22 NMSA 1978, the Business
19 Corporation Act or the Cooperative Association Act; or
- 20 (7) an association or mutual domestic water
21 consumers association organized pursuant to Laws 1947, Chapter
22 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52, as well
23 as any association organized under the provisions of the
24 Sanitary Projects Act.

25 B. Upon the transfer of the assets and liabilities

1 of an entity listed in Subsection A of this section to the
2 authority, the area within the boundaries of the authority
3 serviced by the dissolved entity shall become part of the
4 authority's service area.

5 C. When a water right is included in the assets
6 and liabilities of an entity listed in Subsection A of this
7 section that are transferred to the authority, or upon the
8 acquisition of a water right by the authority, the authority
9 shall file a change of ownership form with the state engineer
10 and shall apply to the state engineer to combine and commingle
11 the transferred or acquired water right with the authority's
12 existing water rights and contract rights to water.

13 Section 9. REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF
14 REVENUES--LIMITATION ON TIME OF ISSUANCE.--

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

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

19 (2) for constructing, extending, enlarging,
20 bettering, repairing, equipping or otherwise improving a water
21 project;

22 (3) for establishing or increasing
23 reasonable reserve or sinking funds to secure the payment of
24 the bonds;

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

1 (5) to refund revenue bonds; or

2 (6) for any combination of those purposes.

3 B. The authority may pledge irrevocably any or all
4 of the net revenues from the operation of its water system for
5 payment of the interest on and principal of the revenue bonds.

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

14 D. The authority shall not impair the rights of
15 any holders of bonds or other obligations payable from the net
16 revenues of the water system previously issued or incurred by
17 the authority.

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

1 Section 10. USE OF PROCEEDS OF REVENUE BOND ISSUE.--It
2 is unlawful to divert, use or expend any money received from
3 the issuance of revenue bonds for any purpose other than the
4 purpose for which the revenue bonds were issued.

5 Section 11. REVENUE BONDS--TERMS.--Revenue bonds:

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

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

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

15 D. may be serial in form and maturity or may
16 consist of one bond payable at one time or in installments or
17 may be in such other form as may be determined by the
18 authority;

19 E. shall be sold for cash at above or below par
20 and at a price that results in a net effective interest rate
21 that does not exceed the maximum permitted by the Public
22 Securities Act; and

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

24 Section 12. EXEMPTION FROM TAXATION.--The bonds
25 authorized by the Eastern New Mexico Water Utility Authority

1 Act and the income from the bonds shall be exempt from all
2 taxation by the state or any political subdivision of the
3 state.

4 Section 13. RESOLUTION AUTHORIZING REVENUE BONDS.--At a
5 regular or special meeting called for the purpose of issuing
6 revenue bonds, the board may, by an affirmative vote of a
7 supermajority of five members of the board, adopt a resolution
8 that authorizes the issuance of revenue bonds.

9 Section 14. REVENUE BONDS NOT GENERAL OBLIGATIONS--
10 AUTHENTICATION.--

11 A. Revenue bonds or refunding revenue bonds issued
12 as authorized in the Eastern New Mexico Water Utility
13 Authority Act are:

14 (1) not general obligations of the state or
15 other political subdivision of the state; and

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

22 B. The bonds shall be executed by the chairperson
23 of the board and may be authenticated by the secretary of the
24 board or any public or private transfer agent or registrar or
25 its successor that shall be named or otherwise designated by

1 the board. The bonds may be executed as provided under the
2 Uniform Facsimile Signature of Public Officials Act.

3 Section 15. REVENUE BONDS--MANDATORY RATES FOR THE
4 WATER SYSTEM--MANDAMUS--IMPAIRMENT OF PAYMENT.--

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

9 Revenue shall be sufficient to:

10 (1) pay all reasonable expenses of operation
11 of the water system;

12 (2) pay all interest on the water system
13 revenue bonds as it comes due;

14 (3) provide a sinking fund adequate to
15 discharge the revenue bonds as they mature; and

16 (4) provide a capital fund for system
17 improvements and replacements.

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

25 C. Any law that authorizes the pledge of any or

1 all of the pledged water system net revenues to the payment of
2 any revenue bonds issued pursuant to the Eastern New Mexico
3 Water Utility Authority Act or that affects the pledged net
4 revenues of the water 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
10 payment of the bonds.

11 Section 16. BONDS--REFUNDING AUTHORIZATION.--

12 A. At any regular or special meeting called for
13 the purpose of issuing refunding bonds, the board by a
14 supermajority of five members of the board may adopt a
15 resolution authorizing the issuance of the refunding bonds.

16 B. The authority may issue refunding bonds for the
17 purpose of refinancing, paying and discharging all or any part
18 of outstanding bonds or other obligations payable from the net
19 revenues of the water system previously issued or incurred by
20 the authority.

21 C. The authority may pledge irrevocably for the
22 payment of interest and principal on refunding bonds the
23 pledged net revenues of the water system.

24 D. Bonds for refunding and bonds for any purpose
25 permitted by the Eastern New Mexico Water Utility Authority

1 Act may be issued separately or issued in combination in one
2 series or more.

3 Section 17. REFUNDING BONDS--TERMS.--Refunding bonds:

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

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

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

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

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

23 Section 18. REFUNDING BONDS--ESCROW.--

24 A. Refunding bonds issued pursuant to the Eastern
25 New Mexico Water Utility Authority Act shall be authorized by

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1 resolution of the authority. Any bonds that are refunded
2 under the provisions of this section shall be paid at maturity
3 or on any permitted prior redemption date in the amounts, at
4 the time and places and, if called prior to maturity, in
5 accordance with any applicable notice provisions, all as
6 provided in the proceedings authorizing the issuance of the
7 refunded bonds or otherwise pertaining thereto, except for any
8 such bond that is voluntarily surrendered for exchange or
9 payment by the holder or owner.

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

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

1 such refunding bond proceeds, including any accrued interest
2 and any premium pertaining to a sale of refunding bonds, may
3 be applied to the establishment and maintenance of a reserve
4 fund and to the payment of expenses incidental to the
5 refunding and the issuance of the refunding bonds, the
6 interest thereon, the principal thereof or both interest and
7 principal as the authority may determine. Nothing in this
8 section requires the establishment of an escrow if the
9 refunded bonds become due and payable within one year from the
10 date of the refunding bonds and if the amounts necessary to
11 retire the refunded bonds within that time are deposited with
12 the paying agent for the refunded bonds. Any such escrow
13 shall not necessarily be limited to proceeds of refunding
14 bonds but may include other money available for its purpose.
15 Any proceeds in escrow pending such use may be invested or
16 reinvested in bills, certificates of indebtedness, notes or
17 bonds that are direct obligations of or the principal and
18 interest of which obligations are unconditionally guaranteed
19 by the United States or in certificates of deposit of banks
20 that are members of the federal deposit insurance corporation.
21 Such proceeds and investments in escrow, together with any
22 interest or other income to be derived from any such
23 investment, shall be in an amount at all times sufficient as
24 to principal, interest, any prior redemption premium due and
25 any charges of the escrow agent payable to pay the bonds being

1 refunded as they become due at their respective maturities or
2 due at any designated prior redemption date in connection with
3 which the authority shall exercise a prior redemption option.
4 Any purchaser of any refunding bond issued under the Eastern
5 New Mexico Water Utility Authority Act is in no manner
6 responsible for the application of the proceeds by the
7 authority or any of its officers, agents or employees.

8 D. Refunding bonds may bear such additional terms
9 and provisions as may be determined by the authority subject
10 to the limitations in this section.

11 Section 19. PUBLIC REGULATION COMMISSION AND STATE
12 ENGINEER JURISDICTION.--

13 A. The authority is not subject to the
14 jurisdiction of the public regulation commission or the terms
15 and provisions of the Public Utility Act except as provided in
16 Subsection B of this section.

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

23 C. The authority shall be subject to the rules and
24 regulations of the state engineer and the applicable articles
25 of Chapter 72 NMSA 1978.

1 Section 20. TEMPORARY PROVISION.--All functions,
2 appropriations, money, records, contracts, equipment and other
3 real and personal property pertaining to the eastern New
4 Mexico rural water authority shall be transferred to the
5 eastern New Mexico water utility authority. Debts of the
6 eastern New Mexico rural water authority shall be debts of the
7 eastern New Mexico water utility authority. The eastern New
8 Mexico water utility authority shall not impair the rights of
9 any bondholders of outstanding bonds of the eastern New Mexico
10 rural water authority. All contractual obligations of the
11 eastern New Mexico rural water authority and the counties and
12 municipalities that have the power to appoint a member to the
13 board of directors of the eastern New Mexico water utility
14 authority shall be binding on the eastern New Mexico water
15 utility authority. The public regulation commission shall
16 audit the eastern New Mexico rural water authority prior to
17 the transfer of money, assets and debts to the eastern New
18 Mexico water utility authority.

19 Section 21. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2010. _____



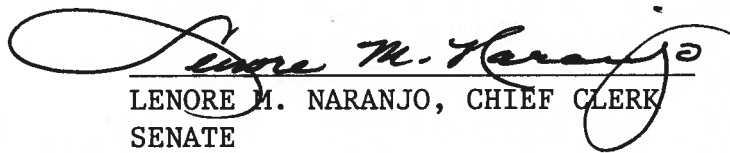
BEN LUJAN, SPEAKER
HOUSE OF REPRESENTATIVES



STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES



DIANE D. DENISH, PRESIDENT
SENATE



LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this 8th day of March, 2010



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