

Regional Water Sustainability Act- working document 10-17-2022

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Regional Water Sustainability Act" under which Regional Water Utility Authorities are created.

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Regional Water Sustainability Act:

A. "authority" means a regional utility authority established pursuant to the Regional Water Sustainability Act and incorporated under the laws of this state;

B. "entity" means a public utility providing water or wastewater services;

C. "service area" means the area to be served within the territorial boundaries of an authority.

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

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

F. "incorporating entity" means an entity that is one of the original incorporators of an authority;

G. "member entity" means an entity that is part of the authority, whether an incorporating entity or an entity that joins the authority after incorporation;

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

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

J. "service area" means a legal description of the boundaries of the authority

SECTION 3. [NEW MATERIAL] CREATION OF AUTHORITIES.--

A. Upon the adoption of an ordinance or resolution by the governing body of a local government, political subdivision of the state, water district or upon a decision by a state or

federal agency, two or more entities may organize a "regional water utility authority" as provided in the REGIONAL WATER SUSTAINABILITY ACT. An authority shall be created by public water and wastewater utilities.

B. Each incorporating entity shall individually adopt a resolution signifying its intention to organize an authority. The resolution shall not be adopted until notice of a public hearing has been given and a minimum of two public hearings have been held. Public notice shall adhere to the requirements of the Open Meetings Act.

C. The resolution shall state the:

(1) proposed name and purpose of the authority;

(3) proposed service area of the authority;

(4) to be established by as a qualified elector organization; and

(5) the lead member entity of the authority to act as the interim registered agent until such time as the authority is established.

D. Upon adoption of the resolution, the incorporating entities shall draw up articles of incorporation and bylaws and file them with the secretary of state. Amended bylaws shall be filed, recorded and certified by the secretary of state and shall be effective upon filing. Amended bylaws supersede all other bylaws upon the effective date of the amended bylaws.

E. Upon the issuance of a certificate of incorporation by the secretary of state, the corporate existence of the authority shall begin except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolutions of the authority.

F. An authority is a political subdivision of the state and shall be an independent public body.

G. Two or more entities that have a combined capacity to provide utility services to at least twenty-five people or fifteen connections may elect to create an authority pursuant to an ordinance or resolution adopted by the local government or local governments where the entities are located.

H. An entity joining an authority shall transfer to the authority all assets and liabilities pertaining to or owned by the entity.

I. An 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 the county or counties where the service area is located. 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. If another entity elects to merge into an authority, the merger shall include the combining and commingling of water rights with the authority, and the 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 the county or counties where the service area is located.

SECTION 4. [NEW MATERIAL] ARTICLES OF INCORPORATION.--

A. The articles of incorporation of an authority shall recite in the caption that they are executed pursuant to the Regional Water Sustainability Act, shall be signed and acknowledged by each of the incorporators and shall state:

- (1) the name of the authority;
- (2) the address of its principal office;
- (3) the names and addresses of the incorporators;
- (4) the names and addresses of the persons who constitute its first board

of directors;

(5) a legal description of the boundaries of the authority's service area with such certainty as to enable a property owner to determine whether the owner's property is within the authority's service area; and

(5) any provisions not inconsistent with the Regional Water Sustainability Act deemed necessary or advisable for the conduct of its business and affairs.

B. The articles of incorporation shall be submitted to the secretary of state for filing within thirty days of the signing of the articles of incorporation.

SECTION 5. NEW MATERIAL POWERS AND DUTIES--RULEMAKING.--

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

B. 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 a future date 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 law;

(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.

(15) receiving grants, securing debt and issuing revenue bonds for the development and improvement of infrastructure projects.

C. 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) at the discretion of the department of environment or upon a petition of twenty-five percent of the members of the authority, investigate as the department 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.

D. An 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.

SECTION 6. [NEW MATERIAL] BOARD--CREATION--POWERS--DUTIES.--

A. The authority shall be governed by a board of directors. The directors of the initial board shall consist of five directors representing the founding entities. The directors of the initial board shall serve until their successors are elected. The initial board shall establish the boundaries and the number of electoral districts within two years of the creation of the authority. 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 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 election's bureau of a local government within which the authority is located.

B. All powers, privileges and duties vested in or imposed upon the authority shall be exercised and performed by the board; provided that the board may delegate its powers by resolution to an officer or agent of the board, except for the following powers:

- (1) adoption of board rules, policies and procedures;
- (2) ratification of acquisition of property;
- (3) initiation or continuation of legal action, except that initiation and filing of liens for unpaid rates and charges and suits for payment thereof and discontinuance of service for failure to pay such rates and charges may be delegated;
- (4) establishment of fees, tolls, rates or charges; and
- (5) issuance of revenue bonds.

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

D. The non-delegable powers and duties provided in Subsection A of this section shall only be effective upon resolution passed by a supermajority of four members of the board.

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

F. A member of the board having a financial interest or possible interest in the outcome of any policy, decision or determination before the board shall be disqualified from voting on the issue. A member's status as a ratepayer or customer of the authority shall not be deemed to constitute a financial interest or possible interest for the purposes of this section.

G. Subject to Subsections B through D of this section, the board may:

(1) adopt bylaws;

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

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

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

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

(6) establish user classifications;

(7) fix and from time to time increase or decrease utility rates, fees or other charges for services delivered or facilities operated or made available by the authority, subject to the following conditions:

(a) the rates, tolls, fees or charges shall be uniform;

(b) until paid, all rates, tolls, fees or charges constitute a perpetual lien on and against the property served, and the lien may be enforced as provided by the laws of New Mexico;

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

(d) after giving reasonable notice, the board shall shut off or discontinue service for unauthorized connections, illegal connections or connections for which

rates, tolls or other charges are delinquent in payment. The board may file suit in a court of competent jurisdiction to recover costs associated with an unauthorized, illegal or delinquent connection, including the cost of water delivered, charges for connection and disconnection, damages and attorney fees.

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

SECTION 7. NEW MATERIAL ACCEPTANCE OF ASSETS AND LIABILITIES OF EXISTING WATER SERVICE PROVIDERS--ACQUISITION OF WATER RIGHTS.--

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

(1) the Water and Sanitation District Act Sections 73-21-1 through 73-21-55;

(2) a water and natural gas association formed pursuant to Sections 3-28-1 through 3-28-22 NMSA 1978;

(3) a water users' association formed pursuant to Sections 73-5-1 through 73-5-9 NMSA 1978;

(4) the Nonprofit Corporation Act;

(5) the Public Improvement District Act;

(6) Municipal Water and Sewer Utilities

(7) County Water & Sewer Utilities

(8) Water Users' Association

(9) a corporation formed pursuant to Sections 62-2-1 through 62-2-22 NMSA 1978, the Business Corporation Act or the Cooperative Association Act; or

(10) an association or mutual domestic water consumers association organized pursuant to Laws 1947, Chapter 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52, as well as any association organized under the provisions of the Sanitary Projects Act.

B. Upon the transfer of the assets and liabilities of an entity listed in Subsection A of this section to the authority, the area within the boundaries of the authority serviced by the dissolved entity shall become part of the authority's service area.

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.