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HOUSE BILL 38

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO LOCAL GOVERNMENT; PRECLUDING THE ALBUQUERQUE-
BERNALILLO COUNTY WATER UTILITY AUTHORITY FROM ACQUIRING WATER
RIGHTS APPURTENANT TO IRRIGABLE LAND.

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

SECTION 1. Section 72-1-10 NMSA 1978 (being Laws 2003,
Chapter 437, Section 1, as amended) is amended to read:

"72-1-10. WATER UTILITY AUTHORITY--CREATED--MEMBERSHIP--
ADMINISTRATION OF UTILITY.--

A. The "Albuquerque-Bernalillo county water utility
authority" is created. The membership of the board of
directors of the authority shall consist of seven members. The
municipal members shall be the mayor and three city councilors
appointed by the Albuquerque city council. The county members
shall be three county commissioners appointed by the Bernalillo

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1 county board of county commissioners. A city councilor member
2 shall designate another city councilor to serve in the member's
3 absence. A county commissioner member shall designate another
4 county commissioner to serve in the member's absence. The
5 mayor shall designate the chief executive officer of the
6 municipality, a city councilor or a county commissioner to
7 serve in the mayor's absence. City councilors shall serve one-
8 year terms at the city council president's discretion. County
9 commissioners shall serve one-year terms at the county
10 commission [~~chairman's~~] chair's discretion. The authority is
11 subject to the state Procurement Code and other applicable
12 state laws. The authority is a public body politic and
13 corporate, separate and apart from the city of Albuquerque and
14 Bernalillo county. The authority is a political subdivision of
15 the state.

16 B. The authority:

17 (1) shall set policy and regulate, supervise
18 and administer the water and wastewater utility of Albuquerque
19 and Bernalillo county, including the determination and
20 imposition of rates for services;

21 (2) is granted all powers necessary and
22 appropriate to carry out and effectuate its public and
23 corporate purposes, including the authority to adopt procedural
24 rules; and

25 (3) is authorized to use city or county

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1 procurement processes or to contract with the city or county to
2 further its public and corporate purposes.

3 C. The authority may acquire, maintain, contract
4 for, condemn or protect water and wastewater facilities. The
5 city of Albuquerque and Bernalillo county may delegate any
6 additional power or duty conferred by Sections 3-27-2 and
7 3-27-3 NMSA 1978 to the authority to exercise and administer.

8 D. In exercising its power to acquire, maintain,
9 contract for or condemn water and wastewater facilities, the
10 authority shall not act so as to physically isolate and make
11 nonviable any portion of the water or wastewater facilities,
12 within or outside of Bernalillo county.

13 E. The authority may adopt resolutions and rules
14 necessary to exert the power conferred by this section.

15 F. For the purposes of acquiring, maintaining,
16 contracting for, condemning or protecting water and wastewater
17 facilities, the jurisdiction of the authority extends within
18 and outside of the boundaries of Bernalillo county to the
19 territory physically occupied by the water and wastewater
20 facilities and to privately owned water and wastewater
21 facilities interconnected to the utility system. The authority
22 may:

23 (1) acquire, maintain, contract for or condemn
24 facilities for the collection, treatment and disposal of
25 wastewater;

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1 (2) condemn private property for the
2 construction, maintenance and operation of wastewater
3 facilities; and

4 (3) acquire, maintain, contract for or condemn
5 for use as part of the utility system privately owned water and
6 wastewater facilities used for the collection, treatment and
7 disposal of wastewater of the authority or its customers.

8 G. The authority is subject to:

9 (1) the limitations imposed by Section 72-1-9
10 NMSA 1978 regarding water rights obtained or water rights
11 condemned pursuant to a water development plan;

12 (2) the provisions of the Eminent Domain Code;
13 and

14 (3) the provisions of Chapter 72 NMSA 1978
15 regarding any change to the point of diversion or the place or
16 purpose of use of any water right to any place selected by the
17 authority in order to make the water available to the
18 authority.

19 H. The authority ~~[is liable to the condemnee~~
20 ~~pursuant to the provisions of the Eminent Domain Code for the~~
21 ~~value of a water right as well as the market value of real~~
22 ~~property to which the water right is appurtenant if:~~

23 ~~(1) the authority condemns water rights,~~
24 ~~either within or outside of the boundaries of Bernalillo county~~
25 ~~that are appurtenant to real property that has been in active~~

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1 ~~agricultural operation; and~~

2 ~~(2) the condemnation of the water right by the~~
3 ~~authority requires the permanent retirement from agricultural~~
4 ~~operation of some or all of the real property to which the~~
5 ~~water rights are appurtenant] shall not obtain or condemn water~~
6 ~~rights that are appurtenant to irrigable land within the Rio~~
7 ~~Grande basin.~~

8 I. The authority is not subject to the jurisdiction
9 of or approval from the public regulation commission. The
10 authority is not subject to the provisions of the Public
11 Utility Act. The authority is granted a water use planning
12 period not to exceed forty years as set forth in Section 72-1-9
13 NMSA 1978.

14 J. The city of Albuquerque or Bernalillo county
15 may, by ordinance or resolution, grant the authority a
16 franchise for the operation, construction and maintenance of
17 the utility system and for the use and rental of rights of way
18 in exchange for consideration.

19 K. The authority may issue utility system revenue
20 bonds and obligations pursuant to the Public Securities Short-
21 Term Interest Rate Act for acquiring real and personal property
22 needed for the utility system and for extending, enlarging,
23 renovating, repairing or otherwise improving water facilities
24 and wastewater facilities or for any combination of these
25 purposes. The authority may issue revenue anticipation notes

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1 with maturities not exceeding thirteen months upon terms
2 approved by the board of directors. The authority may pledge
3 irrevocably net revenues from the operation of the utility
4 system for payment of the principal, premiums and interest on
5 the revenue bonds or other obligations. It is unlawful to
6 divert, use or expend money received from the issuance of
7 utility system revenue bonds for any purpose other than the
8 purpose for which the utility system revenue bonds were issued.
9 Obligations, including bond anticipation notes, issued pursuant
10 to the Public Securities Short-Term Interest Rate Act shall be
11 sold pursuant to the terms of that act. Utility system revenue
12 bonds:

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

16 (2) may be subject to prior redemption at the
17 authority's option at such time and upon such terms and
18 conditions with or without the payment of a premium as
19 determined by the authority;

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

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

25 (5) shall be sold for cash at above or below

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1 par and at a price that results in a net effective interest
2 rate that does not exceed the maximum permitted by the Public
3 Securities Act; and

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

6 L. The bonds authorized by the authority and their
7 income shall be exempt from all taxation by the state or its
8 political subdivisions.

9 M. The members of the board of directors of the
10 authority may adopt a resolution declaring the necessity for
11 the issuance of utility system revenue bonds or other
12 obligations and may authorize the issuance of utility system
13 revenue bonds or other obligations by an affirmative vote of a
14 majority of all members of the board of directors of the
15 authority. Utility system revenue bonds and the resolution
16 authorizing their issuance shall not be subject to the approval
17 of the public regulation commission pursuant to Section 3-23-3
18 NMSA 1978 or subject to voter approval pursuant to Section
19 3-23-2 NMSA 1978.

20 N. Except for the purpose of refunding previous
21 utility system revenue bond issues, the authority may not sell
22 utility system revenue bonds payable from pledged revenues
23 after the expiration of three years from the date of the
24 resolution authorizing their issuance. Any period of time
25 during which a utility system revenue bond is in litigation

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1 shall not count toward the determination of the expiration date
2 of that issue."

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