

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 1

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO WATER; ENACTING THE REGIONAL WATER SYSTEM
RESILIENCY ACT; AUTHORIZING THE CREATION OF REGIONAL UTILITY
AUTHORITIES; PROVIDING THE POWERS AND DUTIES OF AUTHORITIES;
PROVIDING THE POWERS AND DUTIES OF BOARDS OF DIRECTORS;
AUTHORIZING THE ISSUANCE OF BONDS; PROVIDING FOR THE TRANSFER
OF ASSETS, LIABILITIES AND WATER RIGHTS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Regional Water System Resiliency Act".

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

A. "authority" means a regional utility authority
established pursuant to the Regional Water System Resiliency
Act;

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1 B. "board" means the board of directors of an
2 authority;

3 C. "director" means a director of a board;

4 D. "dissolved entity" means an entity that
5 transfers its assets and liabilities to an authority and
6 subsequently goes through a legal dissolution;

7 E. "entity" means a public utility providing water
8 or wastewater services;

9 F. "founding entity" means one of the original
10 entities that established the authority;

11 G. "joining entity" means an entity that joins an
12 authority after the authority is established;

13 H. "member" means a property owner receiving
14 services from an authority; and

15 I. "service area" means the area to be served
16 within the legal boundaries of an authority.

17 SECTION 3. [NEW MATERIAL] CREATION OF AUTHORITY--MERGER
18 WITH AUTHORITY--SERVICE AREA.--

19 A. An authority is a political subdivision of the
20 state.

21 B. Two or more entities may create an authority.

22 C. Each founding or joining entity shall adopt a
23 resolution signifying its intention to establish or join an
24 authority. A founding or joining entity shall not adopt a
25 resolution until notice of a public hearing has been given and

1 a minimum of two public hearings have been held, in which
2 proposed articles of incorporation and bylaws were available
3 for public viewing and comment. Public notice shall adhere to
4 the requirements of the Open Meetings Act.

5 D. The resolution shall state:

6 (1) the proposed name and purpose of the
7 authority;

8 (2) the proposed service area of the
9 authority; and

10 (3) the lead founding entity of the authority
11 that shall act as the interim registered agent until the
12 authority is established.

13 E. Upon adoption of the resolutions in accordance
14 with Subsection C of this section, the founding entities shall
15 execute the articles of incorporation and bylaws. The founding
16 entities shall file the articles of incorporation and bylaws
17 with the secretary of state. The articles of incorporation and
18 bylaws are effective upon filing unless a different date is
19 provided in the articles of incorporation. Amendments to the
20 articles of incorporation or bylaws shall not become effective
21 unless filed with the secretary of state. No corporate report
22 shall be required of an incorporated authority.

23 F. The issuance of a certificate of incorporation
24 by the secretary of state shall establish the authority.

25 G. A founding, joining or dissolved entity shall

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1 transfer to the authority all assets and liabilities pertaining
2 to or owned by the entity. Prior to transferring any
3 compliance liability, a compliance schedule that addresses the
4 liability shall be developed and approved by the authority and
5 relevant state or federal agencies.

6 H. An authority's initial service area shall
7 consist of the founding entities' existing place of use on file
8 with and approved by the state engineer, but shall not encroach
9 upon the service area of an existing non-joining entity.

10 I. When an entity joins an authority, the joining
11 entity's place of use on file with and approved by the state
12 engineer shall become part of the authority's service area, but
13 shall not encroach upon the service area of an existing
14 non-joining entity.

15 J. An authority shall file a plat with the state
16 engineer and in the property records of the county or counties
17 where the service area is located that designates the
18 authority's initial service area and any subsequent amendments.

19 K. When a founding or joining entity transfers a
20 water right to an authority, the authority shall file a change
21 of ownership form with the state engineer and shall change the
22 place of use or point of diversion of the transferred right.

23 SECTION 4. [NEW MATERIAL] ARTICLES OF INCORPORATION.--The
24 articles of incorporation of an authority shall recite in the
25 caption that they are executed pursuant to the Regional Water

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1 System Resiliency Act, shall be signed and acknowledged by each
2 of the founding entities and shall state:

- 3 A. the name of the authority;
- 4 B. the address of the authority's principal office;
- 5 C. the names and addresses of the founding
6 entities;
- 7 D. the names and addresses of the persons who
8 constitute the first board;
- 9 E. a plat or legal description of the boundaries of
10 the authority's service area with such certainty as to enable a
11 property owner to determine whether the owner's property is
12 within the authority's service area; and
- 13 F. any provisions not inconsistent with the
14 Regional Water System Resiliency Act deemed necessary or
15 advisable for the conduct of the authority's business and
16 affairs.

17 SECTION 5. [NEW MATERIAL] AUTHORITY POWERS AND DUTIES.--

18 A. An authority may provide for water and
19 wastewater services, road improvements for the protection of
20 the authority's infrastructure, renewable energy projects or
21 other projects that are integral to the operation and
22 maintenance of the authority's facilities.

23 B. An authority may:
24 (1) own, regulate, supervise and operate the
25 authority's facilities; and

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1 (2) assess a one-time fee for the privilege of
2 connecting a property to the authority's service at a future
3 date if the property line is within three hundred feet of the
4 authority's service lines and that property line is located
5 within the boundaries of the authority.

6 C. An authority shall:

7 (1) establish rates and impose assessments,
8 fees and charges and take action necessary for the enforcement
9 thereof;

10 (2) acquire, from a willing seller, hold and
11 use water rights in an amount necessary to meet the authority's
12 reasonable needs not to exceed forty years pursuant to Section
13 72-1-9 NMSA 1978;

14 (3) shut off, after notice, unauthorized
15 connections, illegal connections or a connection for which
16 charges are delinquent in payment;

17 (4) enter into contracts for services with
18 governmental entities, including local, state and federal
19 entities, Indian nations, tribes or pueblos or private
20 entities, to carry out the purposes of the Regional Water
21 System Resiliency Act;

22 (5) enter into joint powers agreements with
23 other governmental entities;

24 (6) acquire and dispose of real property,
25 personal property or rights of way;

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1 (7) hire and retain agents, employees and
2 consultants;

3 (8) adopt and use a governmental seal;

4 (9) sue, be sued and be a party to suits,
5 actions and proceedings;

6 (10) receive grants, secure debt and issue
7 revenue bonds for the development and improvement of
8 infrastructure projects;

9 (11) subsume powers held by an entity forming
10 or joining the authority; and

11 (12) have and exercise all rights and powers
12 necessary, incidental to or implied from the specific powers
13 granted in this section.

14 D. An agency or department that has promulgated
15 rules that are applicable to an authority may, in its
16 discretion or upon a petition of twenty-five percent of the
17 members of the authority, investigate as the agency or
18 department deems necessary to ensure the authority's compliance
19 with all applicable statutes, rules, regulations and reporting
20 requirements.

21 E. An authority is not subject to the jurisdiction
22 of the public regulation commission or the provisions of the
23 Public Utility Act.

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

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1 A. An authority shall be governed by a board of
2 directors. The board shall conduct elections pursuant to the
3 Local Election Act and in accordance with the Election Code.
4 The initial board shall establish the boundaries and the number
5 of electoral districts within two years of the creation of the
6 authority. The board may provide for redistricting in its
7 governance document upon any change in the authority's
8 boundary. The terms of office for directors shall be four
9 years.

10 B. The initial and subsequent boards shall have
11 representation from each of the founding and joining entities.
12 Each director shall reside within the electoral district of the
13 authority from which that director is elected. The elected
14 board shall serve staggered terms to be established in the
15 governance document developed by the initial board. The
16 directors of the initial board shall serve until their
17 successors are elected and qualified. The board shall choose
18 among its directors a chair, secretary and treasurer.

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

- 24 (1) adoption of board policies and procedures;
- 25 (2) ratification of acquisition of property;

1 (3) initiation or continuation of legal
2 action, except that initiation and filing of liens for unpaid
3 rates and charges and suits for payment thereof and
4 discontinuance of service for failure to pay such rates and
5 charges may be delegated;

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

8 (5) issuance of revenue bonds.

9 D. Meetings of the board shall be held at least
10 quarterly or at the call of the chair. A majority of the
11 directors of the board constitutes a quorum for the transaction
12 of any business. Except as provided in Subsection E of this
13 section, the board shall only take action upon the affirmative
14 vote of at least a majority of the board present. A vacancy in
15 the membership of the board shall not impair the right of a
16 quorum to exercise all rights and perform all duties of the
17 board.

18 E. The non-delegable powers and duties provided in
19 Subsection C of this section are only effective upon resolution
20 passed by two-thirds of the directors of the board.

21 F. The board shall promulgate and adhere to
22 policies and procedures for its conduct.

23 G. The board may disqualify a director of the board
24 from voting on an issue when that director of the board has a
25 financial interest or possible interest in the outcome of any

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1 policy, decision or determination before the board. A director
2 of the board's status as a member of the authority does not, by
3 itself, constitute a financial interest or possible interest
4 for the purposes of this section.

5 H. The board may:

- 6 (1) adopt, amend and repeal bylaws;
7 (2) maintain offices at a place designated by
8 the board; and
9 (3) employ an executive director who may
10 employ staff.

11 I. The board shall:

12 (1) fix the time and place of meetings and the
13 method of providing notice of the meetings in accordance with
14 the Open Meetings Act;

15 (2) promulgate orders, resolutions, policies
16 and procedures necessary for the governance and management of
17 the affairs of the authority and the execution of the powers
18 vested in the authority;

19 (3) establish usage classifications;

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

24 (a) until paid, all rates, fees or
25 charges constitute a lien subservient to a primary mortgage

1 lien on and against the property served, and the lien may be
2 enforced as provided by law;

3 (b) the board shall prescribe and
4 enforce policies and procedures by which properties shall be
5 connected with and disconnected from the facilities of the
6 authority, including the amount of notice required before
7 disconnection and payment plans to avoid discontinuing service
8 to delinquent accounts; and

9 (c) after giving notice in accordance
10 with an authority's policies and procedures, the board shall
11 shut off or discontinue service for unauthorized connections,
12 illegal connections or connections for which rates, tolls or
13 other charges are delinquent in payment. The board may file
14 suit in a court of competent jurisdiction to recover costs
15 associated with an unauthorized, illegal or delinquent
16 connection, including the cost of water delivered, charges for
17 connection and disconnection and damages. Attorney fees shall
18 be awarded to the prevailing party; and

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

24 SECTION 7. [NEW MATERIAL] ACCEPTANCE OF ASSETS AND
25 LIABILITIES OF DISSOLVED ENTITIES--ACQUISITION OF WATER

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1 RIGHTS.--Subject to any other statutory requirements for
2 dissolution and transfer, an authority may accept a transfer of
3 assets and liabilities upon the request, and the legal
4 dissolution, of an entity that provides water or sewer services
5 and is:

- 6 A. a political subdivision of the state;
- 7 B. a water and sanitation district established
8 pursuant to the Water and Sanitation District Act;
- 9 C. a water and natural gas association established
10 pursuant to Chapter 3, Article 28 NMSA 1978;
- 11 D. a water users' association established pursuant
12 to Chapter 73, Article 5 NMSA 1978;
- 13 E. a corporation organized pursuant to the
14 Nonprofit Corporation Act or Business Corporation Act;
- 15 F. a public improvement district established
16 pursuant to the Public Improvement District Act;
- 17 G. a municipal or county utility;
- 18 H. a company established pursuant to Chapter 62,
19 Article 2 NMSA 1978;
- 20 I. an association established pursuant to the
21 Cooperative Association Act that has reorganized as a public
22 entity;
- 23 J. an association or mutual domestic water
24 consumers association organized under Laws 1947, Chapter 206,
25 Laws 1949, Chapter 79 or Laws 1951, Chapter 52 or pursuant to

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1 the Sanitary Projects Act; or

2 K. an authority created pursuant to the Regional
3 Water System Resiliency Act.

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

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