

1 SENATE BILL 372

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 William E. Sharer

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10 AN ACT

11 RELATING TO MUNICIPALITIES; ADDING STORM WATER FACILITIES TO
12 THE DEFINITION OF "MUNICIPAL UTILITY" IN THE MUNICIPAL CODE;
13 AUTHORIZING MUNICIPALITIES TO ACQUIRE FACILITIES AND CHARGE A
14 FEE OR ADVANCE PAYMENT FOR STORM WATER SERVICE.

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

17 SECTION 1. A new section of Chapter 3 NMSA 1978 is
18 enacted to read:

19 "[NEW MATERIAL] STORM WATER MUNICIPAL UTILITY--AUTHORITY
20 TO ACQUIRE FACILITIES AND PROVIDE SERVICE--FEE.--

21 A. A municipality may, by ordinance, acquire,
22 operate and maintain a municipal utility to provide for storm
23 water service for the collection, treatment, storage or
24 disposal of storm water.

25 B. A municipality may require each person owning or

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1 controlling real property in the municipality to pay a just and
2 reasonable fee for the storm water service."

3 SECTION 2. Section 3-1-2 NMSA 1978 (being Laws 1965,
4 Chapter 300, Section 14-1-2, as amended) is amended to read:

5 "3-1-2. DEFINITIONS.--As used in the Municipal Code:

6 A. "acquire" or "acquisition" means purchase,
7 construct, accept or any combination of purchasing,
8 constructing or accepting;

9 B. "business" means any person, occupation,
10 profession, trade, pursuit, corporation, institution,
11 establishment, utility, article, commodity or device engaged in
12 making a profit, but does not include an employee;

13 C. "census" means any enumeration of population of
14 a municipality conducted under the direction of the government
15 of the United States, the state of New Mexico or the
16 municipality;

17 D. "county" means the county in which the
18 municipality or land is situated;

19 E. "district court" means the district court of the
20 district in which the municipality or land is situated;

21 F. "governing body" means the city council or city
22 commission of a city, the board of trustees of a town or
23 village, the council of incorporated counties and the board of
24 county commissioners of H class counties;

25 G. "municipal" or "municipality" means any

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1 incorporated city, town or village, whether incorporated under
2 general act, special act or special charter, incorporated
3 counties and H class counties;

4 H. "municipal utility" means sewer facilities,
5 water facilities, gas facilities, electric facilities, storm
6 water facilities, generating facilities or any interest in
7 jointly owned generating facilities owned by a municipality and
8 serving the public. A municipality that owns both electric
9 facilities and any interest in jointly owned generating
10 facilities may, by ordinance, designate such interest in
11 jointly owned generating facilities as part of its electric
12 facilities. Generating facilities shall be considered as part
13 of a municipality's electric facilities unless the municipality
14 designates, by ordinance, the generating facilities as a
15 separate municipal utility, such designation being conclusive
16 subject to any existing property rights or contract rights;

17 I. "public ground" means any real property owned or
18 leased by a municipality;

19 J. "publish" or "publication" means printing in a
20 newspaper that maintains an office in the municipality and is
21 of general circulation within the municipality or, if such
22 newspaper is a nondaily paper that will not be circulated to
23 the public in time to meet publication requirements or if there
24 is no newspaper that maintains an office in the municipality
25 and is of general circulation within the municipality, then

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1 "publish" or "publication" means posting in six public places
2 within the municipality on the first day that publication is
3 required in a newspaper that maintains an office in the
4 municipality and is of general circulation within the
5 municipality. One of the public places where posting shall be
6 made is the office of the municipal clerk, who shall maintain
7 the posting during the length of time necessary to comply with
8 the provisions relating to the number of times publication is
9 required in a newspaper of general circulation within the
10 municipality. The municipal clerk may, in addition to posting,
11 publish one or more times in a newspaper of general circulation
12 in the municipality;

13 K. "qualified elector" means any person who is a
14 resident of the municipality and is registered to vote under
15 the provisions of the Election Code. Persons who would
16 otherwise be qualified electors if land on which they reside is
17 annexed to a municipality shall be deemed to be qualified
18 electors:

19 (1) upon the effective date of the municipal
20 ordinance effectuating the terms of the annexation as certified
21 by the board of arbitration pursuant to Section 3-7-10 NMSA
22 1978;

23 (2) upon thirty days after the filing of an
24 order of annexation by the municipal boundary commission
25 pursuant to Sections 3-7-15 and 3-7-16 NMSA 1978 if no appeal

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1 is filed or, if an appeal is filed, upon the filing of a
2 nonappealable court order effectuating the annexation; or

3 (3) upon thirty days after the filing of an
4 ordinance pursuant to Section 3-7-17 NMSA 1978 if no appeal is
5 filed or, if an appeal is filed, upon the filing of a
6 nonappealable court order effectuating the annexation;

7 L. "revenue producing project" means any
8 municipally owned self-liquidating projects that furnish public
9 services to a municipality and its ~~[citizens]~~ residents,
10 including but not necessarily limited to public buildings;
11 facilities and equipment for the collection or disposal of
12 trash, refuse or garbage; swimming pools; golf courses and
13 other recreational facilities; cemeteries or mausoleums or
14 both; airports; off-street parking garages; and transportation
15 centers, which may include but are not limited to office
16 facilities and customary terminal facilities for airlines,
17 trains, monorails, subways, intercity and intracity buses and
18 taxicabs. "Revenue producing project" does not mean a
19 municipal utility as defined in Subsection H of this section;

20 M. "street" means any thoroughfare that can
21 accommodate pedestrian or vehicular traffic, is open to the
22 public and is under the control of the municipality;

23 N. "warrant" means a warrant, check or other
24 negotiable instrument issued by a municipality in payment for
25 goods or services acquired by the municipality or for the

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1 payment of a debt incurred by the municipality;

2 O. "mayor" means the chief executive officer of
3 municipalities having the mayor-council form of government. In
4 municipalities having other forms of government, the presiding
5 officer of the governing body and the official head of the
6 government, without executive powers, may be designated mayor
7 by the governing body. Wherever the Municipal Code requires an
8 act to be performed by the mayor with the consent of the
9 governing body, in municipalities not having the mayor-council
10 form of government, the act shall be performed by the governing
11 body;

12 P. "generating facility" means any facility located
13 within or outside the state necessary or incidental to the
14 generation or production of electric power and energy by any
15 means and includes:

16 (1) any facility necessary or incidental to
17 the acquisition of fuel of any kind for the production of
18 electric power and energy, including the acquisition of fuel
19 deposits, the extraction of fuel from natural deposits, the
20 conversion of fuel for use in another form, the burning of fuel
21 in place and the transportation and storage of such fuel; and

22 (2) any facility necessary or incidental to
23 the transfer of the electric power and energy to the
24 municipality, including without limitation step-down
25 substations or other facilities used to reduce the voltage in a

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1 transmission line in order that electric power and energy may
2 be distributed by the municipality to its retail customers;

3 Q. "jointly owned generating facility" means any
4 generating facility in which a municipality owns any undivided
5 or other interest, including without limitation any right to
6 entitlement or capacity; and

7 R. "joint participant" means any municipality in
8 New Mexico or any other state; any public entity incorporated
9 under the laws of any other state having the power to enter
10 into the type of transaction contemplated by the Municipal
11 Electric Generation Act; the state of New Mexico; the United
12 States; Indian tribes; and any public electric utility,
13 investor-owned electric utility or electric cooperative subject
14 to general or limited regulation by the public regulation
15 commission or a similar commission of any other state."

16 SECTION 3. Section 3-23-1 NMSA 1978 (being Laws 1965,
17 Chapter 300, Section 14-22-1, as amended) is amended to read:

18 "3-23-1. MUNICIPAL UTILITY--SERVICE CHARGES--DEPOSITS--
19 DISCONTINUANCE OF WATER SERVICE FOR NONPAYMENT OF CHARGES--
20 SUPPLEMENTAL METHOD.--

21 A. A municipality, including an entity established
22 pursuant to Section 72-1-10 NMSA 1978, may require a reasonable
23 payment in advance or a reasonable deposit for water,
24 electricity, gas, sewer service, geothermal energy, refuse
25 collection service, [ø] street maintenance or storm water

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1 service.

2 B. If payment of any price, rent, fee or other
3 charge for water, sewer service, refuse collection or street
4 maintenance is not made within thirty days from the date the
5 payment is due, the water service may be discontinued and shall
6 not be again supplied to the person liable for the payment
7 until the arrears with interest and penalties have been fully
8 paid.

9 C. The provisions of this section are intended to
10 afford an additional method of enforcing payment of charges for
11 water, sewer service, refuse collection, ~~[or]~~ street
12 maintenance or storm water service furnished by the
13 municipality."