

1 SENATE BILL 438

2 **46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

3 INTRODUCED BY

4 Manny M. Aragon

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10 AN ACT

11 RELATING TO LOCAL GOVERNMENT; ENACTING THE ALBUQUERQUE-
12 BERNALILLO COUNTY WATER UTILITY AUTHORITY ACT; CREATING THE
13 AUTHORITY AS A POLITICAL SUBDIVISION OF THE STATE; PROVIDING
14 POWERS AND DUTIES; PROVIDING FOR THE SETTING OF RATES;
15 PROVIDING FOR THE ISSUANCE OF REVENUE BONDS AND REFUNDING
16 BONDS; PROVIDING FOR FEES; EXEMPTING THE AUTHORITY FROM THE
17 PROCUREMENT CODE, THE PUBLIC UTILITY ACT AND REGULATION BY THE
18 PUBLIC REGULATION COMMISSION; PROVIDING FOR RETIREMENT BENEFITS
19 FOR AUTHORITY EMPLOYEES; PROVIDING THAT THE BOARD OF DIRECTORS
20 OF THE ALBUQUERQUE-BERNALILLO COUNTY WATER UTILITY AUTHORITY
21 SHALL SERVE AS THE BOARD OF DIRECTORS OF THE ALBUQUERQUE
22 METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY; PROVIDING THAT THE
23 BOARD OF COMMISSIONERS FOR BERNALILLO COUNTY MAY LEVY TAXES
24 PURSUANT TO THE ARROYO FLOOD CONTROL ACT; AMENDING AND
25 REPEALING CERTAIN SECTIONS OF THE ARROYO FLOOD CONTROL ACT;

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1 RECONCILING MULTIPLE AMENDMENTS TO SECTION 13-1-98 NMSA 1978
2 (BEING LAWS 1984, CHAPTER 65, SECTION 71, AS AMENDED BY LAWS
3 2001, CHAPTER 291, SECTION 8 AND BY LAWS 2001, CHAPTER 292,
4 SECTION 3 AND BY LAWS 2001, CHAPTER 305, SECTION 28 AND ALSO BY
5 LAWS 2001, CHAPTER 312, SECTION 13).

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

8 Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
9 through 22 of this act may be cited as the "Albuquerque-
10 Bernalillo County Water Utility Authority Act".

11 Section 2. [NEW MATERIAL] LEGISLATIVE DECLARATION.--It is
12 hereby declared as a matter of legislative determination that:

13 A. the organization of the authority created
14 pursuant to the Albuquerque-Bernalillo County Water Utility
15 Authority Act having the purposes, powers, duties, privileges,
16 immunities, rights, liabilities and disabilities provided in
17 that act will serve a public use and will promote the health,
18 safety, prosperity, security and general welfare of the
19 inhabitants of Albuquerque and Bernalillo county and of the
20 state;

21 B. the acquisition, improvement, maintenance and
22 operation of a utility system authorized in the Albuquerque-
23 Bernalillo County Water Utility Authority Act is in the public
24 interest and constitutes a part of the established and
25 permanent policy of the state;

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1 C. the authority organized pursuant to the
2 Albuquerque-Bernalillo County Water Utility Authority Act shall
3 be a body corporate and politic and a political subdivision of
4 the state;

5 D. the utility system authorized and directed to be
6 acquired will be of special benefit to the property within the
7 boundaries of the authority;

8 E. a general law cannot be made applicable to the
9 designated utility system and the provisions in the
10 Albuquerque-Bernalillo County Water Utility Authority Act
11 appertaining to the utility system because of a number of
12 atypical and special conditions concerning them; and

13 F. for the accomplishment of these purposes, the
14 provisions of the Albuquerque-Bernalillo County Water Utility
15 Authority Act shall be broadly construed.

16 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
17 Albuquerque-Bernalillo County Water Utility Authority Act:

18 A. "authority" means the Albuquerque-Bernalillo
19 county water utility authority; and

20 B. "utility system" means the Albuquerque-
21 Bernalillo water and wastewater system consisting of all
22 properties, real, personal, mixed or otherwise, now owned or
23 hereafter acquired by Albuquerque, Bernalillo county or the
24 authority through purchase, construction, condemnation or
25 otherwise, including all extensions, enlargements and

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1 improvements of or to the water and wastewater system and used
2 in connection therewith or relating thereto, and any other
3 related activity or enterprise of Albuquerque, Bernalillo
4 county or the authority designated by the authority as part of
5 the water and wastewater system, wherever situated.

6 Section 4. [NEW MATERIAL] CREATION OF AUTHORITY--OBJECTS
7 AND PURPOSES--MEMBERSHIP--VACANCIES.--

8 A. The "Albuquerque-Bernalillo county water utility
9 authority" is created. The authority shall set policy,
10 administer, regulate and supervise the utility system,
11 including determining and imposing rates for services.

12 B. The board of directors of the authority is
13 composed of the mayor of Albuquerque, three city councilors and
14 three county commissioners, who serve ex officio.

15 C. The board of directors of the authority shall
16 also serve as the board of directors of the Albuquerque
17 metropolitan arroyo flood control authority and shall perform
18 those duties required of the board pursuant to the provisions
19 of the Arroyo Flood Control Act.

20 D. City council members shall serve one-year terms
21 at the discretion of the city council president. County
22 commission members shall serve one-year terms at the discretion
23 of the county commission chairman.

24 E. A vacancy on the authority by a city council or
25 county commission member shall be filled by appointment by the

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1 appropriate appointing authority. A vacancy on the authority
2 by the mayor member shall be filled in accordance with the city
3 charter.

4 F. The authority shall annually elect a chairman,
5 who shall preside at meetings. In the absence of the chairman,
6 the authority may appoint any other member to preside.

7 Section 5. [NEW MATERIAL] POLITICAL SUBDIVISION.--The
8 authority is a public body politic and corporate, separate and
9 apart from the municipality or the county. The authority is a
10 political subdivision of the state.

11 Section 6. [NEW MATERIAL] AUTHORITY--POWERS AND DUTIES.--
12 The authority is granted all powers necessary and appropriate
13 to carry out and effectuate its public and corporate purposes,
14 including the following powers to:

15 A. sue or be sued;

16 B. adopt and alter an official seal;

17 C. make and alter bylaws for its organization and
18 internal management and to adopt such rules as are necessary
19 and appropriate to implement the provisions of the Albuquerque-
20 Bernalillo County Water Utility Authority Act;

21 D. make, enter into and enforce contracts and
22 leases;

23 E. acquire and hold property, both real and
24 personal, and acquire, construct, operate and maintain
25 buildings, improvement and facilities;

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1 F. establish rates for services provided by the
2 authority, under contract to the authority or otherwise under
3 the control of the authority and offered through the utility
4 system, including amounts that the authority determines to be
5 reasonable and consistent with amounts received by private
6 enterprise in the operation of similar facilities;

7 G. apply for and accept grants, gifts, donations,
8 bequests and devises;

9 H. appoint officers, agents and employees,
10 prescribe their duties and qualifications and fix their
11 compensation;

12 I. contract for consultants and such other persons
13 as it deems necessary, including operators for all or any
14 portion of the utility system and under such terms and
15 conditions as may be established by the authority in any
16 agreement relating to such contract operators;

17 J. adopt a procurement system;

18 K. make plans and conduct studies;

19 L. condemn real and personal property for public
20 use;

21 M. issue revenue bonds in accordance with the
22 provisions of the Albuquerque-Bernalillo County Water Utility
23 Authority Act;

24 N. bill and collect any and all fees based on usage
25 and the rates set by the authority and establish a procedure

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1 for the resolution of disputed fees;

2 O. determine eligibility of customers within the
3 service territory of the authority;

4 P. impose conditions on the use of any facility or
5 the utility system;

6 Q. suspend authorization to use the utility system
7 for nonpayment or failure to abide by any rule of the
8 authority;

9 R. adopt ordinances or resolutions necessary to
10 carry out the purposes of the Albuquerque-Bernalillo County
11 Water Utility Authority Act;

12 S. pledge the net revenues of the utility system to
13 the payment of any revenue bonds authorized to be issued and to
14 make such covenants as are necessary or advisable with respect
15 to any revenue bonds;

16 T. adopt an annual budget; and

17 U. obtain necessary public liability and property
18 insurance coverage.

19 Section 7. [NEW MATERIAL] JURISDICTION OVER WATER
20 FACILITIES AND SOURCE--METHODS OF ACQUISITION--PROCEEDINGS.--

21 A. For purposes of acquiring, maintaining,
22 contracting for, condemning or protecting its water facilities
23 and water from pollution, the jurisdiction of the authority
24 extends within and without the boundaries of Bernalillo county
25 to:

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1 (1) all territory occupied by the water
2 facilities;

3 (2) all reservoirs, streams and other sources
4 supplying the reservoirs and streams; and

5 (3) five miles above the point from which the
6 water is taken.

7 B. In exercising its jurisdiction to acquire,
8 maintain, contract for or condemn, the authority shall not act
9 so as to physically isolate and make nonviable any portion of
10 the water facilities within or without Bernalillo county. The
11 authority may adopt any resolution or rule necessary to carry
12 out the power conferred by this section.

13 C. The authority, within and without the Bernalillo
14 county boundary, may:

15 (1) acquire, contract for or condemn:

16 (a) springs;

17 (b) wells;

18 (c) water rights;

19 (d) other water supplies; and

20 (e) right of way or other necessary

21 ownership for the acquisition of water facilities;

22 (2) acquire, maintain, contract for or condemn
23 for use privately owned water facilities used or to be used for
24 the furnishing and supply of water; and

25 (3) change the place of diversion of any water

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1 to any place selected by the authority in order to make the
2 water available to the authority.

3 D. Proceedings to obtain any condemnation
4 authorized in the Albuquerque-Bernalillo County Water Utility
5 Authority Act shall be in the manner provided by law.

6 Section 8. [NEW MATERIAL] JURISDICTION OVER WASTEWATER
7 FACILITIES--METHODS OF ACQUISITION--PROCEEDINGS.--

8 A. For purposes of acquiring, maintaining,
9 contracting for, condemning or protecting its wastewater
10 facilities, the jurisdiction of the authority extends within
11 and without the boundaries of Bernalillo county to the
12 territory occupied by the wastewater facilities and to
13 privately owned wastewater facilities interconnected to the
14 utility system.

15 B. In exercising its jurisdiction to acquire,
16 maintain, contract for or condemn, the authority shall not act
17 so as to physically isolate and make nonviable any portion of
18 the wastewater facilities within or without Bernalillo county.
19 The authority may adopt any resolution or rule necessary to
20 carry out the power conferred by this section.

21 C. The authority, within and without the Bernalillo
22 county boundary, 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 a part of the utility system privately owned
6 wastewater facilities used or to be used for the collection,
7 treatment and disposal of wastewater of the authority or its
8 customers.

9 D. Proceedings to obtain any condemnation
10 authorized in the Albuquerque-Bernalillo County Water Utility
11 Authority Act shall be in the manner provided by law.

12 Section 9. [NEW MATERIAL] AUTHORITY NOT SUBJECT TO PUBLIC
13 REGULATION COMMISSION JURISDICTION--EXEMPT FROM PUBLIC UTILITY
14 ACT--FORTY-YEAR WATER USE PLANNING.--

15 A. The authority is not subject to the jurisdiction
16 or any approvals of the public regulation commission or the
17 terms and provisions of the Public Utility Act.

18 B. The authority has the right to a water use
19 planning period not to exceed forty years pursuant to Section
20 72-1-9 NMSA 1978.

21 Section 10. [NEW MATERIAL] DEVELOPMENT FEES.--The
22 authority may impose any fee a municipality or county may
23 impose in accordance with the Development Fees Act.

24 Section 11. [NEW MATERIAL] FRANCHISE AUTHORITY.--
25 Albuquerque or Bernalillo county may grant, by ordinance or

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1 resolution, a franchise to the authority for the operation,
2 construction and maintenance of the utility system and for the
3 use and rental of Albuquerque or Bernalillo county right of
4 way. In exchange for granting a franchise, Albuquerque or
5 Bernalillo county may exact consideration in the form of a
6 franchise fee equal to some percentage of the authority's gross
7 revenue or net earnings or some other negotiated consideration.

8 Section 12. [NEW MATERIAL] UTILITY SYSTEM REVENUE BONDS--
9 AUTHORITY TO ISSUE--PLEDGE OF REVENUES--LIMITATION ON TIME OF
10 ISSUANCE.--

11 A. Utility system revenue bonds may be issued by
12 the authority for acquiring real and personal property needed
13 for the utility system, including water rights, for extending,
14 enlarging, bettering, repairing or otherwise improving the
15 utility system or for any combination of those purposes. The
16 authority may pledge irrevocably any or all of the net revenues
17 from the operation of the utility system for payment of the
18 interest on and principal of the revenue bonds.

19 B. Except for the purpose of refunding previous
20 utility system revenue bond issues, the authority may not sell
21 utility system revenue bonds payable from pledged revenues
22 after the expiration of two years from the date of the
23 resolution authorizing the issuance of the bonds. However, any
24 period of time during which a particular revenue bond issue is
25 in litigation shall not be counted in determining the

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1 expiration date of that issue.

2 C. Nothing in the Albuquerque-Bernalillo County
3 Water Utility Authority Act shall be deemed to impair revenue
4 bonds or other obligations payable from the net revenues of the
5 water and wastewater system previously issued or incurred by
6 Albuquerque. The authority shall not impair the rights of any
7 holders of bonds or other obligations payable from the net
8 revenues of the utility system previously issued or incurred by
9 Albuquerque.

10 D. If required by the terms, covenants and
11 provisions of revenue bonds or other obligations previously
12 issued by Albuquerque, all additional bonds or other
13 obligations issued or incurred by the authority pursuant to the
14 Albuquerque-Bernalillo County Water Utility Authority Act shall
15 contain any required terms, covenants or provisions required to
16 avoid impairment of the previously issued or incurred bonds or
17 other obligations.

18 Section 13. [NEW MATERIAL] USE OF PROCEEDS OF UTILITY
19 SYSTEM REVENUE BOND ISSUE.--It is unlawful to divert, use or
20 expend any money received from the issuance of utility system
21 revenue bonds for any purpose other than the purpose for which
22 the utility system revenue bonds were issued.

23 Section 14. [NEW MATERIAL] UTILITY SYSTEM REVENUE BONDS--
24 TERMS.--Utility system revenue bonds:

25 A. may have interest, appreciated principal value

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1 or any part thereof payable at intervals or at maturity as may
2 be determined by the authority;

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

7 C. may mature at any time or times not exceeding
8 fifty years after the date of issuance;

9 D. may be serial in form and maturity or may
10 consist of one bond payable at one time or in installments or
11 may be in such other form as may be determined by the
12 authority;

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

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

18 Section 15. [NEW MATERIAL] EXEMPTION FROM TAXATION.--The
19 bonds authorized by the Albuquerque-Bernalillo County Water
20 Utility Authority Act and the income from the bonds shall be
21 exempt from all taxation by the state or any political
22 subdivision of the state.

23 Section 16. [NEW MATERIAL] RESOLUTION AUTHORIZING REVENUE
24 BONDS.--

25 A. At a regular or special meeting called for the

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1 purpose of issuing utility system revenue bonds, the authority
2 may adopt a resolution that:

3 (1) declares the necessity for issuing utility
4 system revenue bonds; and

5 (2) authorizes the issuance of utility system
6 revenue bonds by an affirmative vote of two-thirds of all
7 members of the authority.

8 B. Utility system revenue bonds and the resolution
9 authorizing their issuance shall not be subject to the approval
10 of the public regulation commission pursuant to Section 3-23-3
11 NMSA 1978 or subject to voter approval pursuant to Section
12 3-23-2 NMSA 1978.

13 Section 17. [NEW MATERIAL] UTILITY SYSTEM REVENUE BONDS
14 NOT GENERAL OBLIGATIONS--AUTHENTICATION.--

15 A. Utility system revenue bonds or utility system
16 refunding revenue bonds issued as authorized in the
17 Albuquerque-Bernalillo County Water Utility Authority Act are:

18 (1) not general obligations of Albuquerque or
19 Bernalillo county; and

20 (2) collectible only from the pledged revenues
21 of the utility system, and each bond shall state that it is
22 payable solely from the pledged revenues of the utility system
23 and that the bondholders may not look to the state or any other
24 political subdivision of the state to fund the payment of the
25 interest and principal of the bond.

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1 B. The bonds shall be executed by the chairman of
2 the authority and may be authenticated by the secretary of the
3 authority or any public or private transfer agent or registrar,
4 or its successor, named or otherwise designated by the
5 authority. The bonds may be executed as provided under the
6 Uniform Facsimile Signature of Public Officials Act.

7 Section 18. [NEW MATERIAL] UTILITY SYSTEM REVENUE BONDS--
8 MANDATORY RATES FOR THE UTILITY SYSTEM--MANDAMUS--IMPAIRMENT OF
9 PAYMENT.--

10 A. The authority shall establish rates for services
11 rendered by the utility system to provide revenue sufficient to
12 meet the following requirements, and such rates shall remain in
13 effect until the bond issue is liquidated:

14 (1) pay all reasonable expenses of operation
15 of the utility system;

16 (2) pay all interest on the utility system
17 revenue bonds as it comes due; and

18 (3) provide a sinking fund adequate to
19 discharge the revenue bonds as they mature.

20 B. In the event the authority fails or refuses to
21 establish rates for the utility system as required in this
22 section, any bondholder may apply to the district court for a
23 mandatory order requiring the authority to establish rates that
24 will provide revenues adequate to meet the requirements of this
25 section.

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1 C. Any law, ordinance or resolution that authorizes
2 the pledge of any or all of the pledged utility system revenues
3 to the payment of any utility system revenue bonds issued
4 pursuant to the Albuquerque-Bernalillo County Water Utility
5 Authority Act or that affects the pledged revenues of the
6 utility system, or any law supplemental to or otherwise
7 appertaining to that act, shall not be repealed or amended or
8 otherwise directly or indirectly modified in such a manner as
9 to impair adversely any such outstanding revenue bonds, unless
10 the outstanding revenue bonds have been discharged in full or
11 provision has been fully made for payment of the bonds.

12 Section 19. [NEW MATERIAL] UTILITY SYSTEM REVENUE BONDS--
13 REFUNDING AUTHORIZATION.--

14 A. The authority may issue refunding revenue bonds
15 for the purpose of refinancing, paying and discharging all or
16 any part of outstanding utility system bonds and outstanding
17 bonds or other obligations payable from the net revenues of the
18 utility system previously issued or incurred by Albuquerque.

19 B. The authority may pledge irrevocably for the
20 payment of interest and principal on refunding bonds the
21 pledged revenues of the utility system.

22 C. Bonds for refunding and bonds for any purpose
23 permitted by the Albuquerque-Bernalillo County Water Utility
24 Authority Act may be issued separately or issued in combination
25 in one series or more.

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1 Section 20. [NEW MATERIAL] UTILITY SYSTEM REFUNDING
2 REVENUE BONDS--ESCROW--DETAIL.--

3 A. Utility system refunding revenue bonds issued
4 pursuant to the Albuquerque-Bernalillo County Water Utility
5 Authority Act shall be authorized by resolution. Any bonds
6 that are refunded pursuant to the provisions of this section
7 shall be paid at maturity or on any permitted prior redemption
8 date in the amounts, at the time and places and, if called
9 prior to maturity, in accordance with any applicable notice
10 provisions, all as provided in the proceedings authorizing the
11 issuance of the refunded bonds or otherwise appertaining to the
12 bonds, except for any such bond that is voluntarily surrendered
13 for exchange or payment by the holder or owner.

14 B. Provision shall be made for paying the bonds
15 refunded at the time or times provided in Subsection A of this
16 section. The principal amount of the refunding bonds may
17 exceed the principal amount of the refunded bonds and may also
18 be less than or the same as the principal amount of the bonds
19 being refunded so long as provision is duly and sufficiently
20 made for the payment of the refunded bonds.

21 C. The proceeds of refunding bonds, including any
22 accrued interest and premium appertaining to the sale of
23 refunding bonds, shall either be immediately applied to the
24 retirement of the bonds being refunded or be placed in escrow
25 in a commercial bank or trust company, which possesses and is

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

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1 pledge of obligations of or the payment of which is
2 unconditionally guaranteed by the United States of America, the
3 par value of which obligations is at least seventy-five percent
4 of the par value of the certificates of deposit. Such proceeds
5 and investments in escrow together with any interest or other
6 income to be derived from any such investment shall be in an
7 amount at all times sufficient as to principal, interest, any
8 prior redemption premium due and any charges of the escrow
9 agent payable therefrom to pay the bonds being refunded as they
10 become due at their respective maturities or due at any
11 designated prior redemption date or dates in connection with
12 which the authority shall exercise a prior redemption option.
13 Any purchaser of any refunding bond is in no manner responsible
14 for the application of the proceeds thereof by the authority or
15 any of its officers, agents or employees.

16 D. Refunding bonds may bear such additional terms
17 and provisions as may be determined by the authority and the
18 refunding bonds are not subject to the provisions of any other
19 statute except as may be provided in the Albuquerque-Bernalillo
20 County Water Utility Authority Act.

21 Section 21. [NEW MATERIAL] UTILITY SYSTEM REFUNDING
22 REVENUE BONDS--TERMS.--Utility system refunding revenue bonds:

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

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

5 C. may mature at any time or times not exceeding
6 fifty years after the date of issuance;

7 D. may be serial in form and maturity or may
8 consist of a single bond payable in one or more installments or
9 may be in such other form as may be determined by the
10 authority; and

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

16 Section 22. [NEW MATERIAL] UTILITY SYSTEM REFUNDING
17 REVENUE BONDS--RESOLUTION.--At any regular or special meeting
18 called for the purpose of issuing utility system refunding
19 revenue bonds, the authority by a majority vote of all the
20 members of the authority may adopt a resolution authorizing the
21 issuance of the refunding revenue bonds.

22 Section 23. Section 5-8-2 NMSA 1978 (being Laws 1993,
23 Chapter 122, Section 2) is amended to read:

24 "5-8-2. DEFINITIONS.--As used in the Development Fees
25 Act:

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1 A. "affordable housing" means any housing
2 development built to benefit those whose income is at or below
3 eighty percent of the area median income and who will pay no
4 more than thirty percent of their gross monthly income towards
5 such housing;

6 B. "approved land use assumptions" means land use
7 assumptions adopted originally or as amended under the
8 Development Fees Act;

9 C. "assessment" means a determination of the amount
10 of an impact fee;

11 D. "capital improvement" means any of the following
12 facilities that have a life expectancy of ten or more years and
13 are owned and operated by or on behalf of a municipality or
14 county:

15 (1) water supply, treatment and distribution
16 facilities; wastewater collection and treatment facilities; and
17 storm water, drainage and flood control facilities;

18 (2) roadway facilities located within the
19 service area, including roads, bridges, bike and pedestrian
20 trails, bus bays, rights of way, traffic signals, landscaping
21 and any local components of state and federal highways;

22 (3) buildings for fire, police and rescue and
23 essential equipment costing ten thousand dollars (\$10,000) or
24 more and having a life expectancy of ten years or more; and

25 (4) parks, recreational areas, open space

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1 trails and related areas and facilities;

2 E. "capital improvements plan" means a plan
3 required by the Development Fees Act that identifies capital
4 improvements or facility expansion for which impact fees may be
5 assessed;

6 F. "county" means a county of any classification;

7 G. "facility expansion" means the expansion of the
8 capacity of an existing facility that serves the same function
9 as an otherwise necessary new capital improvement, in order
10 that the existing facility may serve new development. [~~The~~
11 ~~term~~] "Facility expansion" does not include the repair,
12 maintenance, modernization or expansion of an existing facility
13 to better serve existing development, including schools and
14 related facilities;

15 H. "hook-up fee" means a reasonable fee for
16 connection of a service line to an existing gas, water, sewer
17 or municipal or county utility;

18 I. "impact fee" means a charge or assessment
19 imposed by a municipality or county on new development in order
20 to generate revenue for funding or recouping the costs of
21 capital improvements or facility expansions necessitated by and
22 attributable to the new development. [~~The term~~] "Impact fee"
23 includes amortized charges, lump-sum charges, capital recovery
24 fees, contributions in aid of construction, development fees
25 and any other fee that functions as described by this

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1 definition. [~~The term~~] "Impact fee" does not include hook-up
2 fees, dedication of rights of way or easements or construction
3 or dedication of on-site water distribution, wastewater
4 collection or drainage facilities or streets, sidewalks or
5 curbs if the dedication or construction is required by a
6 previously adopted valid ordinance or regulation and is
7 necessitated by and attributable to the new development;

8 J. "land use assumptions" includes a description of
9 the service area and projections of changes in land uses,
10 densities, intensities and population in the service area over
11 at least a five-year period;

12 K. "municipality" means any incorporated city, town
13 or village, whether incorporated under general act, special act
14 or special charter; [~~and~~] H class counties, including any home
15 rule municipality or H class county chartered under the
16 provisions of Article 10, Section 6 of the constitution of New
17 Mexico; and the Albuquerque-Bernalillo county water utility
18 authority;

19 L. "new development" means the subdivision of land;
20 reconstruction, redevelopment, conversion, structural
21 alteration, relocation or enlargement of any structure; or any
22 use or extension of the use of land; any of which increases the
23 number of service units;

24 M. "qualified professional" means a professional
25 engineer, surveyor, financial analyst or planner providing

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1 services within the scope of his license, education or
2 experience;

3 N. "roadway facilities" means arterial or collector
4 streets or roads that have been designated on an officially
5 adopted roadway plan of the municipality or county, including
6 bridges, bike and pedestrian trails, bus bays, rights of way,
7 traffic signals, landscaping and any local components of state
8 or federal highways;

9 O. "service area" means the area within the
10 corporate boundaries or extraterritorial jurisdiction of a
11 municipality or the boundaries of a county to be served by the
12 capital improvements or facility expansions specified in the
13 capital improvements plan designated on the basis of sound
14 planning and engineering standards; and

15 P. "service unit" means a standardized measure of
16 consumption, use, generation or discharge attributable to an
17 individual unit of development calculated in accordance with
18 generally accepted engineering or planning standards for a
19 particular category of capital improvements or facility
20 expansions."

21 Section 24. Section 10-11-122 NMSA 1978 (being Laws 1987,
22 Chapter 253, Section 122) is amended to read:

23 "10-11-122. PUBLIC EMPLOYER AFFILIATION.--

24 A. A public employer who is an affiliated public
25 employer on the effective date of the Public Employees

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1 Retirement Act shall continue to be an affiliated public
2 employer.

3 B. A public employer who is not an affiliated
4 public employer on the effective date of ~~[that]~~ the Public
5 Employees Retirement Act may become an affiliated public
6 employer by resolution or ordinance adopted by its governing
7 body. Affiliation shall be effective the first day of the
8 month following completion of each of the following
9 requirements:

10 (1) the public employer files a certified copy
11 of the resolution or ordinance with the association; and

12 (2) the public employer furnishes the
13 association with all information requested by the association.

14 C. An affiliated public employer may adopt a
15 coverage plan by resolution or ordinance of its governing body,
16 unless a procedure for adopting the change is otherwise
17 provided in the Public Employees Retirement Act. The change
18 shall be effective the first day of the month following
19 completion of each of the following requirements:

20 (1) the public employer files a certified copy
21 of the resolution or ordinance with the association; and

22 (2) the public employer furnishes the
23 association with all information requested by the association.

24 D. An affiliated public employer that is created by
25 the merger of two or more affiliated public employers,

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1 designation of a group of employees from two or more affiliated
2 public employers or by a joint powers agreement between two or
3 more affiliated public employers shall adopt the coverage plan
4 that provides the highest pension applicable to the affiliated
5 public employers or the designated group that they employ.

6 Affiliation shall be effective the first day of the month
7 following completion of each of the following requirements:

8 (1) the public employer files a certified copy
9 of the resolution or ordinance with the association; and

10 (2) the public employer furnishes the
11 association with all information requested by the association."

12 Section 25. Section 13-1-98 NMSA 1978 (being Laws 1984,
13 Chapter 65, Section 71, as amended by Laws 2001, Chapter 291,
14 Section 8 and by Laws 2001, Chapter 292, Section 3 and by Laws
15 2001, Chapter 305, Section 28 and also by Laws 2001, Chapter
16 312, Section 13) is amended to read:

17 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The
18 provisions of the Procurement Code shall not apply to:

19 A. procurement of items of tangible personal
20 property or services by a state agency or a local public body
21 from a state agency, a local public body or external
22 procurement unit except as otherwise provided in Sections
23 13-1-135 through 13-1-137 NMSA 1978;

24 B. procurement of tangible personal property or
25 services for the governor's mansion and grounds;

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1 C. printing and duplicating contracts involving
2 materials that are required to be filed in connection with
3 proceedings before administrative agencies or state or federal
4 courts;

5 D. purchases of publicly provided or publicly
6 regulated gas, electricity, water, sewer and refuse collection
7 services;

8 E. purchases of books and periodicals from the
9 publishers or copyright holders thereof;

10 F. travel or shipping by common carrier or by
11 private conveyance or to meals and lodging;

12 G. purchase of livestock at auction rings or to the
13 procurement of animals to be used for research and
14 experimentation or exhibit;

15 H. contracts with businesses for public school
16 transportation services;

17 I. procurement of tangible personal property or
18 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,
19 by the corrections industries division of the corrections
20 department pursuant to regulations adopted by the corrections
21 commission, which shall be reviewed by the purchasing division
22 of the general services department prior to adoption;

23 J. minor purchases not exceeding five thousand
24 dollars (\$5,000) consisting of magazine subscriptions,
25 conference registration fees and other similar purchases where

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1 prepayments are required;

2 K. municipalities having adopted home rule charters
3 and having enacted their own purchasing ordinances;

4 L. the Albuquerque-Bernalillo county water utility
5 authority having enacted its own purchasing ordinance;

6 [~~H.~~] M. the issuance, sale and delivery of public
7 securities pursuant to the applicable authorizing statute, with
8 the exception of bond attorneys and general financial
9 consultants;

10 [~~M.~~] N. contracts entered into by a local public
11 body with a private independent contractor for the operation,
12 or provision and operation, of a jail pursuant to Sections
13 33-3-26 and 33-3-27 NMSA 1978;

14 [~~N.~~] O. contracts for maintenance of grounds and
15 facilities at highway rest stops and other employment
16 opportunities, excluding those intended for the direct care and
17 support of persons with handicaps, entered into by state
18 agencies with private, nonprofit, independent contractors who
19 provide services to persons with handicaps;

20 [~~O.~~] P. contracts and expenditures for services or
21 items of tangible personal property to be paid or compensated
22 by money or other property transferred to New Mexico law
23 enforcement agencies by the United States department of justice
24 drug enforcement administration;

25 [~~P.~~] Q. contracts for retirement and other benefits

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1 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

2 [Q-] R. contracts with professional entertainers;

3 [R-] S. contracts and expenditures for litigation
4 expenses in connection with proceedings before administrative
5 agencies or state or federal courts, including experts,
6 mediators, court reporters, process servers and witness fees,
7 but not including attorney contracts; [~~and~~

8 S-] T. contracts for service relating to the
9 design, engineering, financing, construction and acquisition of
10 public improvements undertaken in improvement districts
11 pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and in
12 county improvement districts pursuant to Subsection L of
13 Section 4-55A-12.1 NMSA 1978;

14 U. works of art for museums or for display in
15 public buildings or places; and

16 V. contracts entered into by a local public body
17 with a person, firm, organization, corporation, association or
18 a state educational institution named in Article 12, Section 11
19 of the constitution of New Mexico for the operation and
20 maintenance of a hospital pursuant to Chapter 3, Article 44
21 NMSA 1978, for the lease or operation of a county hospital
22 pursuant to the Hospital Funding Act or for the operation and
23 maintenance of a hospital pursuant to the Special Hospital
24 District Act."

25 Section 26. Section 62-3-3 NMSA 1978 (being Laws 1967,

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1 Chapter 96, Section 3, as amended) is amended to read:

2 "62-3-3. DEFINITIONS.--Unless otherwise specified, when
3 used in the Public Utility Act:

4 A. "affiliated interest" means a person who
5 directly or indirectly, through one or more intermediaries,
6 controls or is controlled by or is under common control with a
7 public utility. Control includes instances where a person is
8 an officer, director, partner, trustee or person of similar
9 status or function or owns directly or indirectly or has a
10 beneficial interest in ten percent or more of any class of
11 securities of a person;

12 B. "commission" means the public regulation
13 commission;

14 C. "commissioner" means a member of the commission;

15 D. "municipality" means a municipal corporation
16 organized under the laws of the state, ~~and~~ H-class counties
17 and the Albuquerque-Bernalillo county water utility authority;

18 E. "person" means an individual, firm, partnership,
19 company, rural electric cooperative organized under Laws 1937,
20 Chapter 100 or the Rural Electric Cooperative Act, corporation
21 or lessee, trustee or receiver appointed by any court.

22 "Person" does not mean a class A county as described in Section
23 4-36-10 NMSA 1978 or a class B county as described in Section
24 4-36-8 NMSA 1978. "Person" does not mean a municipality as
25 defined in this section unless the municipality has elected to

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1 come within the terms of the Public Utility Act as provided in
2 Section 62-6-5 NMSA 1978. In the absence of voluntary election
3 by a municipality to come within the provisions of the Public
4 Utility Act, the municipality shall be expressly excluded from
5 the operation of that act and from the operation of all its
6 provisions, and no such municipality shall for any purpose be
7 considered a public utility;

8 F. "securities" means stock, stock certificates,
9 bonds, notes, debentures, mortgages or deeds of trust or other
10 evidences of indebtedness issued, executed or assumed by a
11 utility;

12 G. "public utility" or "utility" means every person
13 not engaged solely in interstate business and, except as stated
14 in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own,
15 operate, lease or control:

16 (1) any plant, property or facility for the
17 generation, transmission or distribution, sale or furnishing to
18 or for the public of electricity for light, heat or power or
19 other uses;

20 (2) any plant, property or facility for the
21 manufacture, storage, distribution, sale or furnishing to or
22 for the public of natural or manufactured gas or mixed or
23 liquefied petroleum gas for light, heat or power or other uses;
24 but the term "public utility" or "utility" shall not include
25 any plant, property or facility used for or in connection with

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1 the business of the manufacture, storage, distribution, sale or
2 furnishing of liquefied petroleum gas in enclosed containers or
3 tank truck for use by others than consumers who receive their
4 supply through any pipeline system operating under municipal
5 authority or franchise and distributing to the public;

6 (3) any plant, property or facility for the
7 supplying, storage, distribution or furnishing to or for the
8 public of water for manufacturing, municipal, domestic or other
9 uses; provided, however, nothing contained in this paragraph
10 shall be construed to apply to irrigation systems, the chief or
11 principal business of which is to supply water for the purpose
12 of irrigation;

13 (4) any plant, property or facility for the
14 production, transmission, conveyance, delivery or furnishing to
15 or for the public of steam for heat or power or other uses; or

16 (5) any plant, property or facility for the
17 supplying and furnishing to or for the public of sanitary
18 sewers for transmission and disposal of sewage produced by
19 manufacturing, municipal, domestic or other uses; provided that
20 the terms "public utility" or "utility" as used in the Public
21 Utility Act do not include any utility owned or operated by a
22 class A county as described in Section 4-36-10 NMSA 1978 either
23 directly or through a corporation owned by or under contract
24 with such a county;

25 H. "rate" means every rate, tariff, charge or other

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1 compensation for utility service rendered or to be rendered by
2 a utility and every rule, regulation, practice, act,
3 requirement or privilege in any way relating to such rate,
4 tariff, charge or other compensation and any schedule or tariff
5 or part of a schedule or tariff thereof;

6 I. "renewable energy" means electrical energy
7 generated by means of a low- or zero-emission generation
8 technology that has substantial long-term production potential
9 and may include, without limitation, solar, wind, hydropower,
10 geothermal, landfill gas, anaerobically digested waste biomass
11 or fuel cells that are not fossil fueled. "Renewable energy"
12 does not include fossil fuel or nuclear energy;

13 J. "service" or "service regulation" means every
14 rule, regulation, practice, act or requirement relating to the
15 service or facility of a utility;

16 K. "Class I transaction" means the sale, lease or
17 provision of real property, water rights or other goods or
18 services by an affiliated interest to a public utility with
19 which it is affiliated or by a public utility to its affiliated
20 interest;

21 L. "Class II transaction" means:

22 (1) the formation after May 19, 1982 of a
23 corporate subsidiary by a public utility or a public utility
24 holding company by a public utility or its affiliated interest;

25 (2) the direct acquisition of the voting

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1 securities or other direct ownership interests of a person by a
2 public utility if such acquisition would make the utility the
3 owner of ten percent or more of the voting securities or other
4 direct ownership interests of that person;

5 (3) the agreement by a public utility to
6 purchase securities or other ownership interest of a person
7 other than a nonprofit corporation, contribute additional
8 equity to, acquire additional equity interest in or pay or
9 guarantee any bonds, notes, debentures, deeds of trust or other
10 evidence of indebtedness of any such person; provided, however,
11 that a public utility may honor all agreements entered into by
12 such utility prior to May 19, 1982; or

13 (4) the divestiture by a public utility of any
14 affiliated interest that is a corporate subsidiary of the
15 public utility;

16 M. "corporate subsidiary" means any person ten
17 percent or more of whose voting securities or other ownership
18 interests are directly owned by a public utility; and

19 N. "public utility holding company" means an
20 affiliated interest that controls a public utility through the
21 direct or indirect ownership of voting securities of that
22 public utility."

23 Section 27. Section 72-16-8 NMSA 1978 (being Laws 1963,
24 Chapter 311, Section 8) is amended to read:

25 "72-16-8. BOARD OF DIRECTORS.--The governing body of the

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1 authority [~~hereby created~~] is [~~a board of directors consisting~~
2 ~~of five qualified electors of the authority~~] the board of
3 directors of the Albuquerque-Bernalillo county water utility
4 authority. All powers, rights, privileges and duties vested in
5 or imposed upon the Albuquerque metropolitan arroyo food
6 control authority are exercised and performed by and through
7 the board of directors; provided that the exercise of any [~~and~~
8 ~~all~~] executive, administrative and ministerial powers may be,
9 by the board, delegated and redelegated to officers and em-
10 ployees of the authority. [~~Except for the first directors~~
11 ~~appointed as hereinafter provided and except for any director~~
12 ~~chosen to fill an unexpired term, the term of each director~~
13 ~~commences on the first day of January next following a general~~
14 ~~election in the state and runs for six years. Each director,~~
15 ~~subject to said exceptions, shall serve such a six-year term~~
16 ~~ending on the first day of January next following a general~~
17 ~~election, and each director shall serve until his successor has~~
18 ~~been duly chosen and qualified.]"~~

19 Section 28. Section 72-16-22 NMSA 1978 (being Laws 1963,
20 Chapter 311, Section 22, as amended) is amended to read:

21 "72-16-22. ADDITIONAL POWERS OF THE AUTHORITY.--The
22 authority may exercise the following duties, privileges,
23 immunities, rights, liabilities and disabilities appertaining
24 to a public body politic and corporate and constituting a
25 quasi-municipal corporation and political subdivision of the

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1 state established as an instrumentality exercising public and
2 essential governmental and proprietary functions to provide for
3 the public health, safety and general welfare:

4 A. perpetual existence and succession;

5 B. adopt, have and use a corporate seal and alter
6 the same at pleasure;

7 C. sue and be sued and be a party to suits, actions
8 and proceedings;

9 D. commence, maintain, intervene in, defend,
10 compromise, terminate by settlement or otherwise, and otherwise
11 participate in, and assume the cost and expense of, any and all
12 actions and proceedings now or hereafter begun and appertaining
13 to the authority, its board, its officers, agents or employees,
14 or any of the authority's duties, privileges, immunities,
15 rights, liabilities and disabilities, or the authority's flood
16 control system, other property of the authority or any project;

17 E. enter into contracts and agreements, including
18 but not limited to contracts with the federal government, the
19 state and any other public body;

20 F. borrow money and issue securities evidencing any
21 loan to or amount due by the authority, provide for and secure
22 the payment of any securities and the rights of the holders
23 thereof, and purchase, hold and dispose of securities, as
24 hereinafter provided;

25 G. refund any loan or obligation of the authority

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1 and issue refunding securities to evidence such loan or
2 obligation without any election;

3 H. purchase, trade, exchange, encumber and
4 otherwise acquire, maintain and dispose of property and
5 interests therein;

6 I. ~~[levy and cause to be collected]~~ pursuant to
7 Section 72-16-26 NMSA 1978, certify a rate for general (ad
8 valorem) taxes on all property subject to property taxation
9 within the authority; provided that the total tax levy,
10 excluding any levy for the payment of any debt of the authority
11 authorized pursuant to the Arroyo Flood Control Act, for any
12 fiscal year shall not exceed an aggregate total of fifty cents
13 (\$.50), or any lower amount required by operation of the rate
14 limitation provisions of Section 7-37-7.1 NMSA 1978 upon this
15 tax levy, for each one thousand dollars (\$1,000) of net taxable
16 value, as that term is defined in the Property Tax Code, ~~[by~~
17 ~~certifying]~~ on or before the fifteenth day of July in each year
18 in which the board ~~[determines]~~ desires to levy a tax, to the
19 board of county commissioners of Bernalillo county, or by such
20 other date as the laws of the state may prescribe. ~~[to such~~
21 ~~other body having authority to levy taxes within each county~~
22 ~~wherein the authority has any territory, the rate so fixed,~~
23 ~~with directions that]~~ At the time and in the manner required by
24 law for levying taxes for other purposes, ~~[such body having~~
25 ~~authority to levy taxes shall]~~ the board of county

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1 commissioners may, pursuant to Section 72-16-26 NMSA 1978, levy
2 the tax upon the net taxable value of all property subject to
3 property taxation within the authority, in addition to such
4 other taxes as may be levied by such body, as provided in
5 Sections 72-16-23 through 72-16-27 NMSA 1978. No taxes may be
6 levied and collected for any purpose, or any contract made,
7 until a bond issue has been submitted to and approved by the
8 taxpaying electors as hereinafter provided;

9 J. hire and retain officers, agents, employees,
10 engineers, attorneys and any other persons, permanent or
11 temporary, necessary or desirable to effect the purposes
12 hereof, defray any expenses incurred thereby in connection with
13 the authority, and acquire office space, equipment, services,
14 supplies, fire and extended coverage insurance, use and
15 occupancy insurance, [~~workmen's~~] workers' compensation
16 insurance, property damage insurance, public liability
17 insurance for the authority and its officers, agents and
18 employees, and other types of insurance, as the board may
19 determine; provided, however, that no provision herein
20 authorizing the acquisition of insurance shall be construed as
21 waiving any immunity of the authority or any director, officer
22 or agent thereof and otherwise existing under the laws of the
23 state;

24 K. condemn property for public use;

25 L. acquire, improve, equip, hold, operate, maintain

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1 and dispose of a flood control system, storm sewer facilities,
2 project and appurtenant works, or any interest therein, wholly
3 within the authority, or partially within and partially without
4 the authority, and wholly within, wholly without or partially
5 within and partially without any public body all or any part of
6 the area of which is situated within the authority;

7 M. pay or otherwise defray the cost of any project;

8 N. pay or otherwise defray and contract so to pay
9 or defray, for any term not exceeding fifty years, without an
10 election, except as hereinafter otherwise provided, the
11 principal of, any interest on, and any other charges
12 appertaining to, any securities or other obligations of the
13 federal government, any public body or person incurred in
14 connection with any such property so acquired by the authority;

15 O. establish and maintain facilities within or
16 without the authority, across or along any public street,
17 highway, bridge, viaduct or other public right of way, or in,
18 upon, under or over any vacant public lands, which public lands
19 are now, or may become, the property of the state, or across
20 any stream of water or water course, without first obtaining a
21 franchise from the municipality, county or other public body
22 having jurisdiction over the same; provided that the authority
23 shall cooperate with any public body having such jurisdiction,
24 shall promptly restore any such street, highway, bridge,
25 viaduct or other public right of way to its former state of

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1 usefulness as nearly as may be and shall not use the same in
2 such manner as to impair completely or unnecessarily the
3 usefulness thereof;

4 P. deposit any money of the authority, subject to
5 the limitations in Article 8, Section 4 of the constitution of
6 New Mexico, in any banking institution within or without the
7 state and secured in such manner and subject to such terms and
8 conditions as the board may determine, with or without the
9 payment of any interest on any such deposit;

10 Q. invest any surplus money in the authority
11 treasury, including such money in any sinking or reserve fund
12 established for the purpose of retiring any securities of the
13 authority, not required for the immediate necessities of the
14 authority, in its own securities or in federal securities, by
15 direct purchase of any issue of such securities, or part
16 thereof, at the original sale of the same, or by the subsequent
17 purchase of such securities;

18 R. sell any such securities thus purchased and
19 held, from time to time;

20 S. reinvest the proceeds of any such sale in other
21 securities of the authority or in federal securities, as
22 provided in Subsection Q of this section;

23 T. sell in season from time to time such securities
24 thus purchased and held, so that the proceeds may be applied to
25 the purposes for which the money with which such securities

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1 were originally purchased was placed in the treasury of the
2 authority;

3 U. accept contributions or loans from the federal
4 government for the purpose of financing the planning,
5 acquisition, improvement, equipment, maintenance and operation
6 of any enterprise in which the authority is authorized to
7 engage, and enter into contracts and cooperate with, and accept
8 cooperation and participation from, the federal government for
9 these purposes;

10 V. enter, without any election, into joint
11 operating or service contracts and agreements, acquisition,
12 improvement, equipment or disposal contracts or other
13 arrangements, for any term not exceeding fifty years, with the
14 federal government, any public body or any person concerning
15 storm sewer facilities, or any project, whether acquired by the
16 authority or by the federal government, any public body or any
17 person, and accept grants and contributions from the federal
18 government, any public body or any person in connection
19 therewith;

20 W. enter into and perform, without any election,
21 when determined by the board to be in the public interest and
22 necessary for the protection of the public health, contracts
23 and agreements, for any term not exceeding fifty years, with
24 the federal government, any public body or any person for the
25 provision and operation by the authority of storm sewer

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1 facilities;

2 X. enter into and perform, without any election,
3 contracts and agreements with the federal government, any
4 public body or any person for or concerning the planning,
5 construction, lease or other acquisition, improvement,
6 equipment, operation, maintenance, disposal and the financing
7 of any project, including but not necessarily limited to any
8 contract or agreement for any term not exceeding fifty years;

9 Y. enter upon any land, make surveys, borings,
10 soundings and examinations for the purposes of the authority,
11 and locate the necessary works of any project and roadways and
12 other rights of way appertaining to any project herein
13 authorized; acquire all property necessary or convenient for
14 the acquisition, improvement or equipment of such works;

15 Z. cooperate with and act in conjunction with the
16 state, or any of its engineers, officers, boards, commissions
17 or departments, or with the federal government or any of its
18 engineers, officers, boards, commissions or departments, or
19 with any other public body or any person in the acquisition,
20 improvement or equipment of any project for the controlling of
21 flood or storm waters of the authority, or for the protection
22 of life or property therein, or for any other works, acts or
23 purposes provided for herein, and adopt and carry out any
24 definite plan or system of work for any such purpose;

25 AA. cooperate with the federal government or any

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1 public body by an agreement therewith by which the authority
2 may:

3 (1) acquire and provide, without cost to the
4 operating entity, the land, easements and rights of way
5 necessary for the acquisition, improvement or equipment of the
6 flood control system or any project;

7 (2) hold and save harmless the cooperating
8 entity free from any claim for damages arising from the
9 acquisition, improvement, equipment, maintenance and operation
10 of the flood control system or any project;

11 (3) maintain and operate any project in
12 accordance with regulations prescribed by the cooperating
13 entity; and

14 (4) establish and enforce flood channel limits
15 and regulations, if any, satisfactory to the cooperating
16 entity;

17 BB. carry on technical and other investigations of
18 all kinds, make measurements, collect data and make analyses,
19 studies and inspections pertaining to control of floods, sewer
20 facilities and any project, both within and without the
21 authority, and for this purpose the authority has the right of
22 access through its authorized representative to all lands and
23 premises within the state;

24 CC. have the right to provide from revenues or
25 other available funds an adequate fund for the improvement and

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1 equipment of the authority's flood control system or of any
2 parts of the works and properties of the authority;

3 DD. prescribe and enforce reasonable rules and
4 regulations for the prevention of further encroachment upon
5 existing defined waterways, by their enlargement or other
6 modification, for additional waterway facilities to prevent
7 flooding;

8 EE. require any person desiring to make a
9 connection to any storm water drain or flood control facility
10 of the authority or to cause storm waters to be emptied into
11 any ditch, drain, canal, floodway or other appurtenant
12 structure of the authority firstly to make application to the
13 board to make the connection, to require the connection to be
14 made in such manner as the board may direct;

15 FF. refuse, if reasonably justified by the
16 circumstances, permission to make any connection designated in
17 Subsection DD or Subsection EE of this section;

18 GG. make and keep records in connection with any
19 project or otherwise concerning the authority;

20 HH. arbitrate any differences arising in connection
21 with any project or otherwise concerning the authority;

22 II. have the management, control and supervision of
23 all the business and affairs appertaining to any project herein
24 authorized, or otherwise concerning the authority, and of the
25 acquisition, improvement, equipment, operation and maintenance

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1 of any such project;

2 JJ. prescribe the duties of officers, agents,
3 employees and other persons and fix their compensation;
4 provided that the compensation of employees and officers shall
5 be established at prevailing rates of pay for equivalent work;

6 KK. enter into contracts of indemnity and guaranty,
7 in such form as may be approved by the board, relating to or
8 connected with the performance of any contract or agreement
9 which the authority is empowered to enter into under the
10 provisions hereof or of any other law of the state;

11 LL. provide, by any contract for any term not
12 exceeding fifty years, or otherwise, without an election:

13 (1) for the joint use of personnel, equipment
14 and facilities of the authority and any public body, including
15 without limitation public buildings constructed by or under the
16 supervision of the board of the authority or the governing body
17 of the public body concerned, upon such terms and agreements
18 and within such areas within the authority as may be
19 determined, for the promotion and protection of health,
20 comfort, safety, life, welfare and property of the inhabitants
21 of the authority and any such public body; and

22 (2) for the joint employment of clerks,
23 stenographers and other employees appertaining to any project,
24 now existing or hereafter established in the authority, upon
25 such terms and conditions as may be determined for the

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1 equitable apportionment of the expenses therefrom resulting;

2 MM. obtain financial statements, appraisals,
3 economic feasibility reports and valuations of any type
4 appertaining to any project or any property pertaining thereto;

5 NN. adopt any resolution authorizing a project or
6 the issuance of securities, or both, or otherwise appertaining
7 thereto, or otherwise concerning the authority;

8 OO. make and execute a mortgage, deed of trust,
9 indenture or other trust instrument appertaining to a project
10 or to any securities herein authorized, or to both, except as
11 provided in Subsection PP of this section and in Section
12 72-16-54 NMSA 1978;

13 PP. make all contracts, execute all instruments and
14 do all things necessary or convenient in the exercise of the
15 powers granted herein, or in the performance of the authority's
16 covenants or duties, or in order to secure the payment of its
17 securities; provided, no encumbrance, mortgage or other pledge
18 of property, excluding any money, of the authority is created
19 thereby and provided no property, excluding money, of the
20 authority is liable to be forfeited or taken in payment of such
21 securities;

22 QQ. have and exercise all rights and powers
23 necessary or incidental to or implied from the specific powers
24 granted herein, which specific powers shall not be considered
25 as a limitation upon any power necessary or appropriate to

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1 carry out the purposes and intent hereof; and

2 RR. exercise all or any part or combination of the
3 powers herein granted."

4 Section 29. Section 72-16-24 NMSA 1978 (being Laws 1963,
5 Chapter 311, Section 24, as amended) is amended to read:

6 "72-16-24. LEVIES TO COVER DEFICIENCIES.--The board, in
7 certifying annual levies, shall take into account the maturing
8 indebtedness for the ensuing year as provided in its contracts,
9 maturing securities and interest on securities, and
10 deficiencies and defaults of prior years and shall make ample
11 provision for the payment thereof. In case the money produced
12 from such levies, together with other revenues of the
13 authority, is not sufficient punctually to pay the annual
14 installments of its contracts or securities, and interest
15 thereon, and to pay defaults and deficiencies, the board shall
16 [~~make~~] certify such additional levies of taxes as may be
17 necessary for such purposes, and notwithstanding any
18 limitations, except the limitation in Subsection I of Section
19 72-16-22 NMSA 1978, and any constitutional limitation, such
20 taxes shall, pursuant to Section 72-16-26 NMSA 1978, be made
21 and continue to be levied until the indebtedness of the
22 authority is fully paid."

23 Section 30. Section 72-16-25 NMSA 1978 (being Laws 1963,
24 Chapter 311, Section 25) is amended to read:

25 "72-16-25. SINKING FUND.--Whenever any indebtedness has
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1 been incurred by the authority, it [~~shall be~~] is lawful for the
2 board to [~~levy taxes~~] certify tax rates and to collect revenue
3 for the purpose of creating a reserve fund in such amount as
4 the board may determine, which may be used to meet the
5 obligations of the authority, for maintenance and operating
6 charges and depreciation, and to provide improvements for the
7 authority."

8 Section 31. Section 72-16-26 NMSA 1978 (being Laws 1963,
9 Chapter 311, Section 26, as amended) is amended to read:

10 "72-16-26. MANNER OF LEVYING AND COLLECTING TAXES.--[~~It~~
11 ~~is the duty of the body having authority to levy taxes within~~
12 ~~each county to levy the taxes provided in Subsection I of~~
13 ~~Section 72-16-22 NMSA 1978, and elsewhere in the Arroyo Flood~~
14 ~~Control Act.] The board of county commissioners for Bernalillo
15 county, upon the certification of a property tax rate by the
16 board, may, in its discretion, levy property taxes on property
17 in the district up to the rate certified; provided that the
18 board shall, at a minimum, levy taxes at a rate sufficient to
19 pay any principal and debt service due on any outstanding
20 indebtedness plus the amount required for any reserve. It is
21 the duty of all officials charged with collecting taxes to
22 collect such taxes at the time and in the form and manner and
23 with like interest and penalties as other general (ad valorem)
24 taxes are collected, and when collected, to pay the same to the
25 authority. The payment of such collection shall be made~~

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1 monthly to the treasurer of the authority and paid into the
2 depository thereof to the credit of the authority. All general
3 (ad valorem) taxes levied under that act, together with
4 interest thereon and penalties for default in payment thereof,
5 and all costs of collecting the same constitute until paid a
6 perpetual lien on and against the property taxed, and such lien
7 is on a parity with the tax lien of other general (ad valorem)
8 taxes."

9 Section 32. Section 72-16-28 NMSA 1978 (being Laws 1963,
10 Chapter 311, Section 28, as amended) is amended to read:

11 "72-16-28. ELECTIONS.--Each [~~biennial election of~~
12 ~~directors, each~~] election proposition to issue bonds and all
13 other elections shall be conducted at the time of the general
14 election under the direction of the Bernalillo county clerk and
15 in accordance with the election laws of New Mexico."

16 Section 33. TEMPORARY PROVISION--TRANSFER OF ASSETS--
17 VALIDATION OF PRIOR TRANSFER.--The transfer of all functions,
18 appropriations, money, records, equipment, other real and
19 personal property, including water rights, and all other assets
20 from Albuquerque to the Albuquerque-Bernalillo water utility
21 authority pursuant to Section 72-1-10 NMSA 1978 is validated
22 and confirmed. All functions, appropriations, money, records,
23 equipment, other real and personal property, including water
24 rights, and all other assets of the Albuquerque-Bernalillo
25 water utility authority created pursuant to Section 72-1-10

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1 NMSA 1978 are transferred to the Albuquerque-Bernalillo county
2 water utility authority created pursuant to the Albuquerque-
3 Bernalillo County Water Utility Authority Act. All debts of
4 the Albuquerque-Bernalillo water utility authority created
5 pursuant to Section 72-1-10 NMSA 1978 or debts of Albuquerque
6 or its water and wastewater utility pertaining to Albuquerque's
7 water and wastewater system shall be debts of the authority.
8 Any outstanding public securities of the Albuquerque water and
9 wastewater utility or the Albuquerque-Bernalillo water utility
10 authority are validated and confirmed in accordance with the
11 1988 Public Securities Validation Act.

12 Section 34. TEMPORARY PROVISION--TRANSFER BETWEEN
13 BOARDS.--On the effective date of this act:

14 A. all money, appropriations, records, furniture,
15 equipment, supplies and other property belonging to the board
16 of directors of the Albuquerque metropolitan arroyo flood
17 control authority existing before the effective date of this
18 act shall be the property of the board of directors of the
19 authority provided for in this act;

20 B. all existing contracts, agreements, bonds, loans
21 and other obligations in effect immediately before the
22 effective date of this act shall continue to be binding on the
23 Albuquerque metropolitan arroyo flood control authority and its
24 board;

25 C. all pending cases, legal actions, appeals and

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1 other legal proceedings and all pending administrative
2 proceedings that involve the Albuquerque metropolitan arroyo
3 flood control authority or its board shall be unaffected and
4 shall continue in the name of the authority or its board; and

5 D. all rules, orders and other official acts of the
6 Albuquerque metropolitan arroyo flood control authority or its
7 board shall continue in effect.

8 Section 35. REPEAL.--Sections 72-1-10 and 72-16-9 through
9 72-16-13 NMSA 1978 (being Laws 2003, Chapter 437, Section 1 and
10 Laws 1963, Chapter 311, Sections 9 through 13, as amended) are
11 repealed.