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HOUSE BILL 551

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Mimi Stewart

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; PROVIDING FOR A WATER USE PLANNING PERIOD OF ONE HUNDRED YEARS.

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

Section 1. Section 72-1-9 NMSA 1978 (being Laws 1985, Chapter 198, Section 1, as amended) is amended to read:

"72-1-9. MUNICIPAL, COUNTY, MEMBER-OWNED COMMUNITY WATER SYSTEMS, SCHOOL DISTRICT AND STATE UNIVERSITY WATER DEVELOPMENT PLANS--PRESERVATION OF MUNICIPAL, COUNTY AND STATE UNIVERSITY WATER SUPPLIES.--

A. It is recognized by the state that it promotes the public welfare and the conservation of water within the state for municipalities, counties, school districts, state universities, member-owned community water systems, special water users' associations and public utilities supplying water

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1 to municipalities or counties to plan for the reasonable  
2 development and use of water resources. [~~The state further~~  
3 ~~recognizes the state engineer's administrative policy of not~~  
4 ~~allowing municipalities, member-owned community water systems,~~  
5 ~~counties and state universities to acquire and hold unused~~  
6 ~~water rights in an amount greater than their reasonable needs~~  
7 ~~within forty years.~~]

8 B. Municipalities, counties, school districts,  
9 state universities, member-owned community water systems,  
10 special water users' associations and public utilities  
11 supplying water to municipalities or counties shall be  
12 allowed a water use planning period not to exceed [~~forty~~] one  
13 hundred years, and water rights for municipalities, counties,  
14 school districts, state universities, member-owned community  
15 water systems, special water users' associations and public  
16 utilities supplying water to such municipalities or counties  
17 shall be based upon a water development plan, the  
18 implementation of which shall not exceed a [~~forty-year~~] one-  
19 hundred-year period from the date of the application for an  
20 appropriation or a change of place or purpose of use,  
21 pursuant to a water development plan or for preservation of a  
22 municipal, county, school district, member-owned community  
23 water system or state university water supply for reasonably  
24 projected additional needs within [~~forty~~] one hundred years."

25 Section 2. Section 72-1-10 NMSA 1978 (being Laws 2003,

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1 Chapter 437, Section 1, as amended) is amended to read:

2 "72-1-10. WATER UTILITY AUTHORITY--CREATED--  
3 MEMBERSHIP--ADMINISTRATION OF UTILITY.--

4 A. The "Albuquerque-Bernalillo county water  
5 utility authority" is created. The membership of the board  
6 of directors of the authority shall consist of seven members.  
7 The municipal members shall be the mayor and three city  
8 councilors appointed by the Albuquerque city council. The  
9 county members shall be three county commissioners appointed  
10 by the Bernalillo county board of county commissioners. A  
11 city councilor member shall designate another city councilor  
12 to serve in the member's absence. A county commissioner  
13 member shall designate another county commissioner to serve  
14 in the member's absence. The mayor shall designate the chief  
15 executive officer of the municipality, a city councilor or a  
16 county commissioner to serve in the mayor's absence. City  
17 councilors shall serve one-year terms at the city council  
18 president's discretion. County commissioners shall serve  
19 one-year terms at the county commission [~~chairman's~~] chair's  
20 discretion. The authority is subject to the state  
21 Procurement Code and other applicable state laws. The  
22 authority is a public body politic and corporate, separate  
23 and apart from the city of Albuquerque and Bernalillo county.  
24 The authority is a political subdivision of the state.

25 B. The authority:

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1 (1) shall set policy and regulate, supervise  
2 and administer the water and wastewater utility of  
3 Albuquerque and Bernalillo county, including the  
4 determination and imposition of rates for services;

5 (2) is granted all powers necessary and  
6 appropriate to carry out and effectuate its public and  
7 corporate purposes, including the authority to adopt  
8 procedural rules; and

9 (3) is authorized to use city or county  
10 procurement processes or to contract with the city or county  
11 to further its public and corporate purposes.

12 C. The authority may acquire, maintain, contract  
13 for, condemn or protect water and wastewater facilities. The  
14 city of Albuquerque and Bernalillo county may delegate any  
15 additional power or duty conferred by Sections 3-27-2 and  
16 3-27-3 NMSA 1978 to the authority to exercise and administer.

17 D. In exercising its power to acquire, maintain,  
18 contract for or condemn water and wastewater facilities, the  
19 authority shall not act so as to physically isolate and make  
20 nonviable any portion of the water or wastewater facilities,  
21 within or outside of Bernalillo county.

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

24 F. For the purposes of acquiring, maintaining,  
25 contracting for, condemning or protecting water and

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1 wastewater facilities, the jurisdiction of the authority  
2 extends within and outside of the boundaries of Bernalillo  
3 county to the territory physically occupied by the water and  
4 wastewater facilities and to privately owned water and  
5 wastewater facilities interconnected to the utility system.

6 The authority may:

7 (1) acquire, maintain, contract for or  
8 condemn facilities for the collection, treatment and disposal  
9 of wastewater;

10 (2) condemn private property for the  
11 construction, maintenance and operation of wastewater  
12 facilities; and

13 (3) acquire, maintain, contract for or  
14 condemn for use as part of the utility system privately owned  
15 water and wastewater facilities used for the collection,  
16 treatment and disposal of wastewater of the authority or its  
17 customers.

18 G. The authority is subject to:

19 (1) the limitations imposed by Section  
20 72-1-9 NMSA 1978 regarding water rights obtained or water  
21 rights condemned pursuant to a water development plan;

22 (2) the provisions of the Eminent Domain  
23 Code; and

24 (3) the provisions of Chapter 72 NMSA 1978  
25 regarding any change to the point of diversion or the place

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1 or purpose of use of any water right to any place selected by  
2 the authority in order to make the water available to the  
3 authority.

4 H. The authority is liable to the condemnee  
5 pursuant to the provisions of the Eminent Domain Code for the  
6 value of a water right as well as the market value of real  
7 property to which the water right is appurtenant if:

8 (1) the authority condemns water rights,  
9 either within or outside of the boundaries of Bernalillo  
10 county that are appurtenant to real property that has been in  
11 active agricultural operation; and

12 (2) the condemnation of the water right by  
13 the authority requires the permanent retirement from  
14 agricultural operation of some or all of the real property to  
15 which the water rights are appurtenant.

16 I. The authority is not subject to the  
17 jurisdiction of or approval from the public regulation  
18 commission. The authority is not subject to the provisions  
19 of the Public Utility Act. The authority is granted a water  
20 use planning period not to exceed [~~forty~~] one hundred years  
21 as set forth in Section 72-1-9 NMSA 1978.

22 J. The city of Albuquerque or Bernalillo county  
23 may, by ordinance or resolution, grant the authority a  
24 franchise for the operation, construction and maintenance of  
25 the utility system and for the use and rental of rights of

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1 way in exchange for consideration.

2 K. The authority may issue utility system revenue  
3 bonds and obligations pursuant to the Public Securities  
4 Short-Term Interest Rate Act for acquiring real and personal  
5 property needed for the utility system and for extending,  
6 enlarging, renovating, repairing or otherwise improving water  
7 facilities and wastewater facilities or for any combination  
8 of these purposes. The authority may issue revenue  
9 anticipation notes with maturities not exceeding thirteen  
10 months upon terms approved by the board of directors. The  
11 authority may pledge irrevocably net revenues from the  
12 operation of the utility system for payment of the principal,  
13 premiums and interest on the revenue bonds or other  
14 obligations. It is unlawful to divert, use or expend money  
15 received from the issuance of utility system revenue bonds  
16 for any purpose other than the purpose for which the utility  
17 system revenue bonds were issued. Obligations, including  
18 bond anticipation notes, issued pursuant to the Public  
19 Securities Short-Term Interest Rate Act shall be sold  
20 pursuant to the terms of that act. Utility system revenue  
21 bonds:

22 (1) may have interest, appreciated principal  
23 value or any part thereof payable at intervals or at maturity  
24 as the authority determines;

25 (2) may be subject to prior redemption at

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1 the authority's option at such time and upon such terms and  
2 conditions with or without the payment of a premium as  
3 determined by the authority;

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

6 (4) may be serial in form and maturity or  
7 may consist of one bond payable at one time or in  
8 installments or may be in another form as determined by the  
9 authority;

10 (5) shall be sold for cash at above or below  
11 par and at a price that results in a net effective interest  
12 rate that does not exceed the maximum permitted by the Public  
13 Securities Act; and

14 (6) may be sold at a public or negotiated  
15 sale.

16 L. The bonds authorized by the authority and  
17 their income shall be exempt from all taxation by the state  
18 or its political subdivisions.

19 M. The members of the board of directors of the  
20 authority may adopt a resolution declaring the necessity for  
21 the issuance of utility system revenue bonds or other  
22 obligations and may authorize the issuance of utility system  
23 revenue bonds or other obligations by an affirmative vote of  
24 a majority of all members of the board of directors of the  
25 authority. Utility revenue bonds and the resolution

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1 authorizing their issuance shall not be subject to the  
2 approval of the public regulation commission pursuant to  
3 Section 3-23-3 NMSA 1978 or subject to voter approval  
4 pursuant to Section 3-23-2 NMSA 1978.

5 N. Except for the purpose of refunding previous  
6 utility system revenue bond issues, the authority may not  
7 sell utility system revenue bonds payable from pledged  
8 revenues after the expiration of three years from the date of  
9 the resolution authorizing their issuance. Any period of  
10 time during which a utility system revenue bond is in  
11 litigation shall not count toward the determination of the  
12 expiration date of that issue."

13 Section 3. Section 72-6-3 NMSA 1978 (being Laws 1967,  
14 Chapter 100, Section 3, as amended) is amended to read:

15 "72-6-3. OWNER MAY LEASE USE OF WATER.--

16 A. An owner may lease to any person all or any  
17 part of the water use due [~~him~~] the owner under [~~his~~] the  
18 owner's water right, and the owner's water right shall not be  
19 affected by the lease of the use. The use to which the owner  
20 is entitled under [~~his~~] the owner's right shall, during the  
21 exercise of the lease, be reduced by the amount of water so  
22 leased. Upon termination of the lease, the water use and  
23 location of use subject to the lease shall revert to the  
24 owner's original use and location of use.

25 B. The lease may be effective for immediate use

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1 of water or may be effective for future use of the water  
2 covered by the lease; however, the lease shall not be  
3 effective to cumulate water from year to year or to  
4 substantially enlarge the use of the water in such manner  
5 that it would injure other water users. The lease shall not  
6 toll any forfeiture of water rights for nonuse, and the owner  
7 shall not, by reason of the lease, escape the forfeiture for  
8 nonuse prescribed by law; provided, however, that the state  
9 engineer shall notify both the owner and the lessee of  
10 declaration of ~~[nonuser]~~ nonuse as provided in Sections  
11 72-5-28 and 72-12-8 NMSA 1978. The initial or any renewal  
12 term of a lease of water use shall not exceed ten years,  
13 except as provided in Subsection C of this section.

14 C. A water use may be leased for ~~[forty]~~ one  
15 hundred years by municipalities, counties, state  
16 universities, special water users' associations, public  
17 utilities supplying water to municipalities or counties and  
18 member-owned community water systems as lessee and shall be  
19 entitled to the protection of the ~~[forty-year]~~ one-hundred-  
20 year water use planning period as provided in Section 72-1-9  
21 NMSA 1978. A water use deriving from an acequia or community  
22 ditch organized pursuant to Chapter 73, Article 2 or 3 NMSA  
23 1978, whether owned by a water right owner under the acequia  
24 or community ditch or by the acequia or community ditch, may  
25 be leased for a term not to exceed ten years."

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