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SENATE BILL 609

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Gerald Ortiz y Pino

AN ACT

RELATING TO THE ALBUQUERQUE-BERNALILLO COUNTY WATER UTILITY  
AUTHORITY; PROVIDING FOR AN ELECTED BOARD OF DIRECTORS;  
ESTABLISHING PROCEDURES FOR THE ELECTION OF THE BOARD OF  
DIRECTORS.

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

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

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

A. The "Albuquerque-Bernalillo county water utility  
authority" is created. Until January 15, 2017, the membership  
of the board of directors of the authority shall consist of  
seven members. The municipal members shall be the mayor and  
three city councilors appointed by the Albuquerque city

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1 council. The county members shall be three county  
2 commissioners appointed by the Bernalillo county board of  
3 county commissioners. A city councilor member shall designate  
4 another city councilor to serve in the member's absence. A  
5 county commissioner member shall designate another county  
6 commissioner to serve in the member's absence. The mayor shall  
7 designate the chief executive officer of the municipality, a  
8 city councilor or a county commissioner to serve in the mayor's  
9 absence. City councilors shall serve one-year terms at the  
10 city council president's discretion. County commissioners  
11 shall serve one-year terms at the county commission  
12 [~~chairman's~~] chair's discretion.

13 B. Following the general election of 2016, the  
14 board of directors shall consist of five directors elected from  
15 the same five districts from which the Bernalillo county board  
16 of county commissioners are elected. Each director shall  
17 reside within the district from which that director is elected.  
18 The elected board of directors shall serve staggered four-year  
19 terms that begin on January 1 of the year following the  
20 directors' election; provided that the members elected in 2016  
21 shall, by lot, select three districts from which the directors  
22 shall serve for terms of four years and two districts from  
23 which the directors shall serve for terms of two years.  
24 Thereafter, all directors shall serve four-year terms.  
25 Directors are entitled to receive per diem and mileage in

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1 accordance with the provisions of the Per Diem and Mileage Act.

2           C. The authority is subject to the state  
3 Procurement Code and other applicable state laws. The  
4 authority is a public body politic and corporate, separate and  
5 apart from the city of Albuquerque and Bernalillo county. The  
6 authority is a political subdivision of the state.

7           ~~[B.]~~ D. The authority:

8                   (1) shall set policy and regulate, supervise  
9 and administer the water and wastewater utility of Albuquerque  
10 and Bernalillo county, including the determination and  
11 imposition of rates for services;

12                   (2) is granted all powers necessary and  
13 appropriate to carry out and effectuate its public and  
14 corporate purposes, including the authority to adopt procedural  
15 rules; and

16                   (3) is authorized to use city or county  
17 procurement processes or to contract with the city or county to  
18 further its public and corporate purposes.

19           ~~[G.]~~ E. The authority may acquire, maintain,  
20 contract for, condemn or protect water and wastewater  
21 facilities. The city of Albuquerque and Bernalillo county may  
22 delegate any additional power or duty conferred by ~~[Sections]~~  
23 Section 3-27-2 ~~[and 3-27-3]~~ NMSA 1978 to the authority to  
24 exercise and administer.

25           ~~[D.]~~ F. In exercising its power to acquire,

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1 maintain, contract for or condemn water and wastewater  
2 facilities, the authority shall not act so as to physically  
3 isolate and make nonviable any portion of the water or  
4 wastewater facilities, within or outside of Bernalillo county.

5 ~~[E-]~~ G. The authority may adopt resolutions and  
6 rules necessary to exert the power conferred by this section.

7 ~~[F-]~~ H. For the purposes of acquiring, maintaining,  
8 contracting for, condemning or protecting water and wastewater  
9 facilities, the jurisdiction of the authority extends within  
10 and outside of the boundaries of Bernalillo county to the  
11 territory physically occupied by the water and wastewater  
12 facilities and to privately owned water and wastewater  
13 facilities interconnected to the utility system. The authority  
14 may:

15 (1) acquire, maintain, contract for or condemn  
16 facilities for the collection, treatment and disposal of  
17 wastewater;

18 (2) condemn private property for the  
19 construction, maintenance and operation of wastewater  
20 facilities; and

21 (3) acquire, maintain, contract for or condemn  
22 for use as part of the utility system privately owned water and  
23 wastewater facilities used for the collection, treatment and  
24 disposal of wastewater of the authority or its customers.

25 ~~[G-]~~ I. The authority is subject to:

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

4 (2) the provisions of the Eminent Domain Code;  
5 and

6 (3) the provisions of Chapter 72 NMSA 1978  
7 regarding any change to the point of diversion or the place or  
8 purpose of use of any water right to any place selected by the  
9 authority in order to make the water available to the  
10 authority.

11 [~~H.~~] J. The authority is liable to the condemnee  
12 pursuant to the provisions of the Eminent Domain Code for the  
13 value of a water right as well as the market value of real  
14 property to which the water right is appurtenant if:

15 (1) the authority condemns water rights,  
16 either within or outside of the boundaries of Bernalillo county  
17 that are appurtenant to real property that has been in active  
18 agricultural operation; and

19 (2) the condemnation of the water right by the  
20 authority requires the permanent retirement from agricultural  
21 operation of some or all of the real property to which the  
22 water rights are appurtenant.

23 [~~I.~~] K. The authority is not subject to the  
24 jurisdiction of or approval from the public regulation  
25 commission. The authority is not subject to the provisions of

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1 the Public Utility Act. The authority is granted a water use  
2 planning period not to exceed forty years as set forth in  
3 Section 72-1-9 NMSA 1978.

4 ~~[J-]~~ L. The city of Albuquerque or Bernalillo  
5 county may, by ordinance or resolution, grant the authority a  
6 franchise for the operation, construction and maintenance of  
7 the utility system and for the use and rental of rights of way  
8 in exchange for consideration.

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

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1 sold pursuant to the terms of that act. Utility system revenue  
2 bonds:

3 (1) may have interest, appreciated principal  
4 value or any part thereof payable at intervals or at maturity  
5 as the authority determines;

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

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

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

15 (5) shall be sold for cash at, above or below  
16 par and at a price that results in a net effective interest  
17 rate that does not exceed the maximum permitted by the Public  
18 Securities Act; and

19 (6) may be sold at a public or negotiated  
20 sale.

21 [~~H.~~] N. The bonds authorized by the authority and  
22 their income shall be exempt from all taxation by the state or  
23 its political subdivisions.

24 [~~M.~~] O. The members of the board of directors of  
25 the authority may adopt a resolution declaring the necessity

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1 for the issuance of utility system revenue bonds or other  
2 obligations and may authorize the issuance of utility system  
3 revenue bonds or other obligations by an affirmative vote of a  
4 majority of all members of the board of directors of the  
5 authority. Utility system revenue bonds and the resolution  
6 authorizing their issuance shall not be subject to the approval  
7 of the public regulation commission pursuant to Section 3-23-3  
8 NMSA 1978 or subject to voter approval pursuant to Section  
9 3-23-2 NMSA 1978.

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