

1 AN ACT
2 RELATING TO WATER; ENACTING THE REGIONAL WATER SYSTEM
3 RESILIENCY ACT; AUTHORIZING THE CREATION OF REGIONAL UTILITY
4 AUTHORITIES; PROVIDING THE POWERS AND DUTIES OF AUTHORITIES;
5 PROVIDING THE POWERS AND DUTIES OF BOARDS OF DIRECTORS;
6 AUTHORIZING THE ISSUANCE OF BONDS; PROVIDING FOR THE TRANSFER
7 OF ASSETS, LIABILITIES AND WATER RIGHTS.

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

10 SECTION 1. SHORT TITLE.--This act may be cited as the
11 "Regional Water System Resiliency Act".

12 SECTION 2. DEFINITIONS.--As used in the Regional Water
13 System Resiliency Act:

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

17 B. "board" means the board of directors of an
18 authority;

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

20 D. "dissolved entity" means an entity that
21 transfers its assets and liabilities to an authority and
22 subsequently goes through a legal dissolution;

23 E. "entity" means a public utility providing water
24 or wastewater services;

25 F. "founding entity" means one of the original

1 entities that established the authority;

2 G. "joining entity" means an entity that joins an
3 authority after the authority is established;

4 H. "member" means a property owner receiving
5 services from an authority; and

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

8 SECTION 3. CREATION OF AUTHORITY--MERGER WITH
9 AUTHORITY--SERVICE AREA.--

10 A. An authority is a political subdivision of the
11 state.

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

13 C. Each founding or joining entity shall adopt a
14 resolution signifying its intention to establish or join an
15 authority. A founding or joining entity shall not adopt a
16 resolution until notice of a public hearing has been given
17 and a minimum of two public hearings have been held, in which
18 proposed articles of incorporation and bylaws were available
19 for public viewing and comment. Public notice shall adhere
20 to the requirements of the Open Meetings Act.

21 D. The resolution shall state:

22 (1) the proposed name and purpose of the
23 authority;

24 (2) the proposed service area of the
25 authority; and

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

4 E. Upon adoption of the resolutions in accordance
5 with Subsection C of this section, the founding entities
6 shall execute the articles of incorporation and bylaws. The
7 founding entities shall file the articles of incorporation
8 and bylaws with the secretary of state. The articles of
9 incorporation and bylaws are effective upon filing unless a
10 different date is provided in the articles of incorporation.
11 Amendments to the articles of incorporation or bylaws shall
12 not become effective unless filed with the secretary of
13 state. No corporate report shall be required of an
14 incorporated authority.

15 F. The issuance of a certificate of incorporation
16 by the secretary of state shall establish the authority.

17 G. A founding, joining or dissolved entity shall
18 transfer to the authority all assets and liabilities
19 pertaining to or owned by the entity. Prior to transferring
20 any compliance liability, a compliance schedule that
21 addresses the liability shall be developed and approved by
22 the authority and relevant state or federal agencies.

23 H. An authority's initial service area shall
24 consist of the founding entities' existing place of use on
25 file with and approved by the state engineer, but shall not

1 encroach upon the service area of an existing non-joining
2 entity.

3 I. When an entity joins an authority, the joining
4 entity's place of use on file with and approved by the state
5 engineer shall become part of the authority's service area,
6 but shall not encroach upon the service area of an existing
7 non-joining entity.

8 J. An authority shall file a plat with the state
9 engineer and in the property records of the county or
10 counties where the service area is located that designates
11 the authority's initial service area and any subsequent
12 amendments.

13 K. When a founding or joining entity transfers a
14 water right to an authority, the authority shall file a
15 change of ownership form with the state engineer and shall
16 apply to the state engineer to change the place of use or
17 point of diversion of the transferred right.

18 SECTION 4. ARTICLES OF INCORPORATION.--The articles of
19 incorporation of an authority shall recite in the caption
20 that they are executed pursuant to the Regional Water System
21 Resiliency Act, shall be signed and acknowledged by each of
22 the founding entities and shall state:

23 A. the name of the authority;

24 B. the address of the authority's principal
25 office;

1 C. the names and addresses of the founding
2 entities;

3 D. the names and addresses of the persons who
4 constitute the first board;

5 E. a plat or legal description of the boundaries
6 of the authority's service area with such certainty as to
7 enable a property owner to determine whether the owner's
8 property is within the authority's service area; and

9 F. any provisions not inconsistent with the
10 Regional Water System Resiliency Act deemed necessary or
11 advisable for the conduct of the authority's business and
12 affairs.

13 SECTION 5. AUTHORITY POWERS AND DUTIES.--

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

19 B. An authority may:

20 (1) own, regulate, supervise and operate the
21 authority's facilities;

22 (2) assess a one-time fee for the privilege
23 of connecting a property to the authority's service at a
24 future date if the property line is within three hundred feet
25 of the authority's service lines and that property line is

1 located within the boundaries of the authority;

2 (3) establish rates and impose assessments,
3 fees and charges and take action necessary for the
4 enforcement thereof;

5 (4) acquire, from a willing seller, hold and
6 use water rights in an amount necessary to meet the
7 authority's reasonable needs not to exceed forty years
8 pursuant to Section 72-1-9 NMSA 1978;

9 (5) shut off, after notice, unauthorized
10 connections, illegal connections or a connection for which
11 charges are delinquent in payment;

12 (6) enter into contracts for services with
13 governmental entities, including local, state and federal
14 entities, Indian nations, tribes or pueblos or private
15 entities, to carry out the purposes of the Regional Water
16 System Resiliency Act;

17 (7) enter into joint powers agreements with
18 other governmental entities;

19 (8) acquire and dispose of real property,
20 personal property or rights of way;

21 (9) hire and retain agents, employees and
22 consultants;

23 (10) adopt and use a governmental seal;

24 (11) sue, be sued and be a party to suits,
25 actions and proceedings;

1 (12) receive grants, secure debt and issue
2 revenue bonds for the development and improvement of
3 infrastructure projects;

4 (13) subsume powers held by an entity
5 forming or joining the authority; and

6 (14) have and exercise all rights and powers
7 necessary, incidental to or implied from the specific powers
8 granted in this section.

9 C. An agency or department that has promulgated
10 rules that are applicable to an authority may, in its
11 discretion or upon a petition of twenty-five percent of the
12 members of the authority, investigate as the agency or
13 department deems necessary to ensure the authority's
14 compliance with all applicable statutes, rules, regulations
15 and reporting requirements.

16 D. An authority is not subject to the jurisdiction
17 of the public regulation commission or the provisions of the
18 Public Utility Act.

19 SECTION 6. BOARD--CREATION--POWERS--DUTIES.--

20 A. An authority shall be governed by a board of
21 directors. The board shall conduct elections pursuant to the
22 Local Election Act and in accordance with the Election Code.
23 The initial board shall establish the boundaries and the
24 number of electoral districts within two years of the
25 creation of the authority. The board may provide for

1 redistricting in its governance document upon any change in
2 the authority's boundary. The terms of office for directors
3 shall be four years.

4 B. The initial board shall have representation
5 from each of the founding and joining entities. Each
6 director shall reside within the electoral district of the
7 authority from which that director is elected. The elected
8 board shall serve staggered terms to be established in the
9 governance document developed by the initial board. The
10 directors of the initial board shall serve until their
11 successors are elected and qualified. The board shall choose
12 among its directors a chair, secretary and treasurer.

13 C. All powers, privileges and duties vested in or
14 imposed upon an authority shall be exercised and performed by
15 the board; provided that the board may delegate its powers by
16 resolution to an officer or agent of the board, with the
17 exception of the following:

- 18 (1) adoption of board policies and
19 procedures;
- 20 (2) ratification of acquisition of property;
- 21 (3) initiation or continuation of legal
22 action, except that initiation and filing of liens for unpaid
23 rates and charges and suits for payment thereof and
24 discontinuance of service for failure to pay such rates and
25 charges may be delegated;

1 (4) establishment of fees, tolls, rates or
2 charges; and

3 (5) issuance of revenue bonds.

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

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

17 F. The board shall promulgate and adhere to
18 policies and procedures for its conduct.

19 G. The board may disqualify a director of the
20 board from voting on an issue when that director of the board
21 has a financial interest or possible interest in the outcome
22 of any policy, decision or determination before the board. A
23 director of the board's status as a member of the authority
24 does not, by itself, constitute a financial interest or
25 possible interest for the purposes of this section.

1 H. The board may:

2 (1) adopt, amend and repeal bylaws;

3 (2) maintain offices at a place designated
4 by the board; and

5 (3) employ an executive director who may
6 employ staff.

7 I. The board shall:

8 (1) fix the time and place of meetings and
9 the method of providing notice of the meetings in accordance
10 with the Open Meetings Act;

11 (2) promulgate orders, resolutions, policies
12 and procedures necessary for the governance and management of
13 the affairs of the authority and the execution of the powers
14 vested in the authority;

15 (3) establish usage classifications;

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

20 (a) until paid, all rates, fees or
21 charges constitute a lien subservient to a primary mortgage
22 lien on and against the property served, and the lien may be
23 enforced as provided by law;

24 (b) the board shall prescribe and
25 enforce policies and procedures by which properties shall be

1 connected with and disconnected from the facilities of the
2 authority, including the amount of notice required before
3 disconnection and payment plans to avoid discontinuing
4 service to delinquent accounts; and

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

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

20 SECTION 7. ACCEPTANCE OF ASSETS AND
21 LIABILITIES OF DISSOLVED ENTITIES--ACQUISITION OF WATER
22 RIGHTS.--Subject to any other statutory requirements for
23 dissolution and transfer, an authority may accept a transfer
24 of assets and liabilities upon the request, and the legal
25 dissolution, of an entity that provides water or sewer

1 services and is:

2 A. a political subdivision of the state;

3 B. a water and sanitation district established
4 pursuant to the Water and Sanitation District Act;

5 C. a water and natural gas association established
6 pursuant to Chapter 3, Article 28 NMSA 1978;

7 D. a water users' association established pursuant
8 to Chapter 73, Article 5 NMSA 1978;

9 E. a corporation organized pursuant to the
10 Nonprofit Corporation Act or Business Corporation Act;

11 F. a public improvement district established
12 pursuant to the Public Improvement District Act;

13 G. a municipal or county utility;

14 H. a company established pursuant to Chapter 62,
15 Article 2 NMSA 1978;

16 I. an association established pursuant to the
17 Cooperative Association Act that has reorganized as a public
18 entity;

19 J. an association or mutual domestic water
20 consumers association organized under Laws 1947, Chapter 206,
21 Laws 1949, Chapter 79 or Laws 1951, Chapter 52 or pursuant to
22 the Sanitary Projects Act; or

23 K. an authority created pursuant to the
24 Regional Water System Resiliency Act.

25 SECTION 8. EFFECTIVE DATE.--The effective date of the

