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SENATE BILL 422

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

INTRODUCED BY

Manny M. Aragon

AN ACT

RELATING TO LOCAL GOVERNMENT; ENACTING THE ALBUQUERQUE-
BERNALILLO COUNTY WATER UTILITY AUTHORITY ACT; CREATING THE
AUTHORITY AS A POLITICAL SUBDIVISION OF THE STATE; PROVIDING
POWERS AND DUTIES; PROVIDING FOR THE SETTING OF RATES;
PROVIDING FOR THE ISSUANCE OF REVENUE BONDS AND REFUNDING
BONDS; PROVIDING FOR FEES; EXEMPTING THE AUTHORITY FROM THE
PROCUREMENT CODE, THE PUBLIC UTILITY ACT AND REGULATION BY THE
PUBLIC REGULATION COMMISSION; PROVIDING FOR RETIREMENT BENEFITS
FOR AUTHORITY EMPLOYEES; RECONCILING MULTIPLE AMENDMENTS TO
SECTION 13-1-98 NMSA 1978 (BEING LAWS 1984, CHAPTER 65, SECTION
71, AS AMENDED BY LAWS 2001, CHAPTER 291, SECTION 8 AND BY LAWS
2001, CHAPTER 292, SECTION 3 AND BY LAWS 2001, CHAPTER 305,
SECTION 28 AND ALSO BY LAWS 2001, CHAPTER 312, SECTION 13).

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

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

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

6 A. the organization of the authority created
7 pursuant to the Albuquerque-Bernalillo County Water Utility
8 Authority Act having the purposes, powers, duties, privileges,
9 immunities, rights, liabilities and disabilities provided in
10 that act will serve a public use and will promote the health,
11 safety, prosperity, security and general welfare of the
12 inhabitants of Albuquerque and Bernalillo county and of the
13 state;

14 B. the acquisition, improvement, maintenance and
15 operation of a utility system authorized in the Albuquerque-
16 Bernalillo County Water Utility Authority Act is in the public
17 interest and constitutes a part of the established and
18 permanent policy of the state;

19 C. the authority organized pursuant to the
20 Albuquerque-Bernalillo County Water Utility Authority Act shall
21 be a body corporate and politic and a political subdivision of
22 the state;

23 D. the utility system authorized and directed to be
24 acquired will be of special benefit to the property within the
25 boundaries of the authority;

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1 E. a general law cannot be made applicable to the
2 designated utility system and the provisions in the
3 Albuquerque-Bernalillo County Water Utility Authority Act
4 appertaining to the utility system because of a number of
5 atypical and special conditions concerning them; and

6 F. for the accomplishment of these purposes, the
7 provisions of the Albuquerque-Bernalillo County Water Utility
8 Authority Act shall be broadly construed.

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

11 A. "authority" means the Albuquerque-Bernalillo
12 county water utility authority; and

13 B. "utility system" means the Albuquerque-
14 Bernalillo water and wastewater system consisting of all
15 properties, real, personal, mixed or otherwise, now owned or
16 hereafter acquired by Albuquerque, Bernalillo county or the
17 authority through purchase, construction, condemnation or
18 otherwise, including all extensions, enlargements and
19 improvements of or to the water and wastewater system and used
20 in connection therewith or relating thereto, and any other
21 related activity or enterprise of Albuquerque, Bernalillo
22 county or the authority designated by the authority as part of
23 the water and wastewater system, wherever situated.

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

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1 A. The "Albuquerque-Bernalillo county water utility
2 authority" is created. The authority shall set policy,
3 administer, regulate and supervise the utility system,
4 including determining and imposing rates for services.

5 B. The board of directors of the authority is
6 composed of the mayor of Albuquerque, three city councilors and
7 three county commissioners, who serve ex officio.

8 C. City council members shall serve one-year terms
9 at the discretion of the city council president. County
10 commission members shall serve one-year terms at the discretion
11 of the county commission chairman.

12 D. A vacancy on the authority by a city council or
13 county commission member shall be filled by appointment by the
14 appropriate appointing authority. A vacancy on the authority
15 by the mayor member shall be filled in accordance with the city
16 charter.

17 E. The authority shall annually elect a chairman,
18 who shall preside at meetings. In the absence of the chairman,
19 the authority may appoint any other member to preside.

20 Section 5. [NEW MATERIAL] POLITICAL SUBDIVISION.--The
21 authority is a public body politic and corporate, separate and
22 apart from the municipality or the county. The authority is a
23 political subdivision of the state.

24 Section 6. [NEW MATERIAL] AUTHORITY--POWERS AND DUTIES.--
25 The authority is granted all powers necessary and appropriate

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1 to carry out and effectuate its public and corporate purposes,
2 including the following powers to:

3 A. sue or be sued;

4 B. adopt and alter an official seal;

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

9 D. make, enter into and enforce contracts and
10 leases;

11 E. acquire and hold property, both real and
12 personal, and acquire, construct, operate and maintain
13 buildings, improvement and facilities;

14 F. establish rates for services provided by the
15 authority, under contract to the authority or otherwise under
16 the control of the authority and offered through the utility
17 system, including amounts that the authority determines to be
18 reasonable and consistent with amounts received by private
19 enterprise in the operation of similar facilities;

20 G. apply for and accept grants, gifts, donations,
21 bequests and devises;

22 H. appoint officers, agents and employees,
23 prescribe their duties and qualifications and fix their
24 compensation;

25 I. contract for consultants and such other persons

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- 1 as it deems necessary, including operators for all or any
2 portion of the utility system and under such terms and
3 conditions as may be established by the authority in any
4 agreement relating to such contract operators;
- 5 J. adopt a procurement system;
- 6 K. make plans and conduct studies;
- 7 L. condemn real and personal property for public
8 use;
- 9 M. issue revenue bonds in accordance with the
10 provisions of the Albuquerque-Bernalillo County Water Utility
11 Authority Act;
- 12 N. bill and collect any and all fees based on usage
13 and the rates set by the authority and establish a procedure
14 for the resolution of disputed fees;
- 15 O. determine eligibility of customers within the
16 service territory of the authority;
- 17 P. impose conditions on the use of any facility or
18 the utility system;
- 19 Q. suspend authorization to use the utility system
20 for nonpayment or failure to abide by any rule of the
21 authority;
- 22 R. adopt ordinances or resolutions necessary to
23 carry out the purposes of the Albuquerque-Bernalillo County
24 Water Utility Authority Act;
- 25 S. pledge the net revenues of the utility system to

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1 the payment of any revenue bonds authorized to be issued and to
2 make such covenants as are necessary or advisable with respect
3 to any revenue bonds;

4 T. adopt an annual budget; and

5 U. obtain necessary public liability and property
6 insurance coverage.

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

9 A. For purposes of acquiring, maintaining,
10 contracting for, condemning or protecting its water facilities
11 and water from pollution, the jurisdiction of the authority
12 extends within and without the boundaries of Bernalillo county
13 to:

14 (1) all territory occupied by the water
15 facilities;

16 (2) all reservoirs, streams and other sources
17 supplying the reservoirs and streams; and

18 (3) five miles above the point from which the
19 water is taken.

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

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1 C. The authority, within and without the Bernalillo
2 county boundary, may:

- 3 (1) acquire, contract for or condemn:
4 (a) springs;
5 (b) wells;
6 (c) water rights;
7 (d) other water supplies; and
8 (e) right of way or other necessary
9 ownership for the acquisition of water facilities;
10 (2) acquire, maintain, contract for or condemn
11 for use privately owned water facilities used or to be used for
12 the furnishing and supply of water; and
13 (3) change the place of diversion of any water
14 to any place selected by the authority in order to make the
15 water available to the authority.

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

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

21 A. For purposes of acquiring, maintaining,
22 contracting for, condemning or protecting its wastewater
23 facilities, the jurisdiction of the authority extends within
24 and without the boundaries of Bernalillo county to the
25 territory occupied by the wastewater facilities and to

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1 privately owned wastewater facilities interconnected to the
2 utility system.

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

9 C. The authority, within and without the Bernalillo
10 county boundary, may:

11 (1) acquire, maintain, contract for or condemn
12 facilities for the collection, treatment and disposal of
13 wastewater;

14 (2) condemn private property for the
15 construction, maintenance and operation of wastewater
16 facilities; and

17 (3) acquire, maintain, contract for or condemn
18 for use as a part of the utility system privately owned
19 wastewater facilities used or to be used for the collection,
20 treatment and disposal of wastewater of the authority or its
21 customers.

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

25 Section 9. [NEW MATERIAL] AUTHORITY NOT SUBJECT TO PUBLIC

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1 REGULATION COMMISSION JURISDICTION--EXEMPT FROM PUBLIC UTILITY
2 ACT--FORTY-YEAR WATER USE PLANNING.--

3 A. The authority is not subject to the jurisdiction
4 or any approvals of the public regulation commission or the
5 terms and provisions of the Public Utility Act.

6 B. The authority has the right to a water use
7 planning period not to exceed forty years pursuant to Section
8 72-1-9 NMSA 1978.

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

12 Section 11. [NEW MATERIAL] FRANCHISE AUTHORITY.--
13 Albuquerque or Bernalillo county may grant, by ordinance or
14 resolution, a franchise to the authority for the operation,
15 construction and maintenance of the utility system and for the
16 use and rental of Albuquerque or Bernalillo county right of
17 way. In exchange for granting a franchise, Albuquerque or
18 Bernalillo county may exact consideration in the form of a
19 franchise fee equal to some percentage of the authority's gross
20 revenue or net earnings or some other negotiated consideration.

21 Section 12. [NEW MATERIAL] UTILITY SYSTEM REVENUE BONDS--
22 AUTHORITY TO ISSUE--PLEDGE OF REVENUES--LIMITATION ON TIME OF
23 ISSUANCE.--

24 A. Utility system revenue bonds may be issued by
25 the authority for acquiring real and personal property needed

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1 for the utility system, including water rights, for extending,
2 enlarging, bettering, repairing or otherwise improving the
3 utility system or for any combination of those purposes. The
4 authority may pledge irrevocably any or all of the net revenues
5 from the operation of the utility system for payment of the
6 interest on and principal of the revenue bonds.

7 B. Except for the purpose of refunding previous
8 utility system revenue bond issues, the authority may not sell
9 utility system revenue bonds payable from pledged revenues
10 after the expiration of two years from the date of the
11 resolution authorizing the issuance of the bonds. However, any
12 period of time during which a particular revenue bond issue is
13 in litigation shall not be counted in determining the
14 expiration date of that issue.

15 C. Nothing in the Albuquerque-Bernalillo County
16 Water Utility Authority Act shall be deemed to impair revenue
17 bonds or other obligations payable from the net revenues of the
18 water and wastewater system previously issued or incurred by
19 Albuquerque. The authority shall not impair the rights of any
20 holders of bonds or other obligations payable from the net
21 revenues of the utility system previously issued or incurred by
22 Albuquerque.

23 D. If required by the terms, covenants and
24 provisions of revenue bonds or other obligations previously
25 issued by Albuquerque, all additional bonds or other

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1 obligations issued or incurred by the authority pursuant to the
2 Albuquerque-Bernalillo County Water Utility Authority Act shall
3 contain any required terms, covenants or provisions required to
4 avoid impairment of the previously issued or incurred bonds or
5 other obligations.

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

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

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

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

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

22 D. may be serial in form and maturity or may
23 consist of one bond payable at one time or in installments or
24 may be in such other form as may be determined by the
25 authority;

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

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

6 Section 15. [NEW MATERIAL] EXEMPTION FROM TAXATION.--The
7 bonds authorized by the Albuquerque-Bernalillo County Water
8 Utility Authority Act and the income from the bonds shall be
9 exempt from all taxation by the state or any political
10 subdivision of the state.

11 Section 16. [NEW MATERIAL] RESOLUTION AUTHORIZING REVENUE
12 BONDS.--

13 A. At a regular or special meeting called for the
14 purpose of issuing utility system revenue bonds, the authority
15 may adopt a resolution that:

16 (1) declares the necessity for issuing utility
17 system revenue bonds; and

18 (2) authorizes the issuance of utility system
19 revenue bonds by an affirmative vote of two-thirds of all
20 members of the authority.

21 B. Utility system revenue bonds and the resolution
22 authorizing their issuance shall not be subject to the approval
23 of the public regulation commission pursuant to Section 3-23-3
24 NMSA 1978 or subject to voter approval pursuant to Section
25 3-23-2 NMSA 1978.

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

3 A. Utility system revenue bonds or utility system
4 refunding revenue bonds issued as authorized in the
5 Albuquerque-Bernalillo County Water Utility Authority Act are:

6 (1) not general obligations of Albuquerque or
7 Bernalillo county; and

8 (2) collectible only from the pledged revenues
9 of the utility system, and each bond shall state that it is
10 payable solely from the pledged revenues of the utility system
11 and that the bondholders may not look to the state or any other
12 political subdivision of the state to fund the payment of the
13 interest and principal of the bond.

14 B. The bonds shall be executed by the chairman of
15 the authority and may be authenticated by the secretary of the
16 authority or any public or private transfer agent or registrar,
17 or its successor, named or otherwise designated by the
18 authority. The bonds may be executed as provided under the
19 Uniform Facsimile Signature of Public Officials Act.

20 Section 18. [NEW MATERIAL] UTILITY SYSTEM REVENUE BONDS--
21 MANDATORY RATES FOR THE UTILITY SYSTEM--MANDAMUS--IMPAIRMENT OF
22 PAYMENT.--

23 A. The authority shall establish rates for services
24 rendered by the utility system to provide revenue sufficient to
25 meet the following requirements, and such rates shall remain in

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1 effect until the bond issue is liquidated:

2 (1) pay all reasonable expenses of operation
3 of the utility system;

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

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

8 B. In the event the authority fails or refuses to
9 establish rates for the utility system as required in this
10 section, any bondholder may apply to the district court for a
11 mandatory order requiring the authority to establish rates that
12 will provide revenues adequate to meet the requirements of this
13 section.

14 C. Any law, ordinance or resolution that authorizes
15 the pledge of any or all of the pledged utility system revenues
16 to the payment of any utility system revenue bonds issued
17 pursuant to the Albuquerque-Bernalillo County Water Utility
18 Authority Act or that affects the pledged revenues of the
19 utility system, or any law supplemental to or otherwise
20 appertaining to that act, shall not be repealed or amended or
21 otherwise directly or indirectly modified in such a manner as
22 to impair adversely any such outstanding revenue bonds, unless
23 the outstanding revenue bonds have been discharged in full or
24 provision has been fully made for payment of the bonds.

25 Section 19. [NEW MATERIAL] UTILITY SYSTEM REVENUE BONDS--

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1 REFUNDING AUTHORIZATION.--

2 A. The authority may issue refunding revenue bonds
3 for the purpose of refinancing, paying and discharging all or
4 any part of outstanding utility system bonds and outstanding
5 bonds or other obligations payable from the net revenues of the
6 utility system previously issued or incurred by Albuquerque.

7 B. The authority may pledge irrevocably for the
8 payment of interest and principal on refunding bonds the
9 pledged revenues of the utility system.

10 C. Bonds for refunding and bonds for any purpose
11 permitted by the Albuquerque-Bernalillo County Water Utility
12 Authority Act may be issued separately or issued in combination
13 in one series or more.

14 Section 20. [NEW MATERIAL] UTILITY SYSTEM REFUNDING
15 REVENUE BONDS--ESCROW--DETAIL.--

16 A. Utility system refunding revenue bonds issued
17 pursuant to the Albuquerque-Bernalillo County Water Utility
18 Authority Act shall be authorized by resolution. Any bonds
19 that are refunded pursuant to the provisions of this section
20 shall be paid at maturity or on any permitted prior redemption
21 date in the amounts, at the time and places and, if called
22 prior to maturity, in accordance with any applicable notice
23 provisions, all as provided in the proceedings authorizing the
24 issuance of the refunded bonds or otherwise appertaining to the
25 bonds, except for any such bond that is voluntarily surrendered

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1 for exchange or payment by the holder or owner.

2 B. Provision shall be made for paying the bonds
3 refunded at the time or times provided in Subsection A of this
4 section. The principal amount of the refunding bonds may
5 exceed the principal amount of the refunded bonds and may also
6 be less than or the same as the principal amount of the bonds
7 being refunded so long as provision is duly and sufficiently
8 made for the payment of the refunded bonds.

9 C. The proceeds of refunding bonds, including any
10 accrued interest and premium appertaining to the sale of
11 refunding bonds, shall either be immediately applied to the
12 retirement of the bonds being refunded or be placed in escrow
13 in a commercial bank or trust company, which possesses and is
14 exercising trust powers and which is a member of the federal
15 deposit insurance corporation, to be applied to the payment of
16 the principal of, interest on and any prior redemption premium
17 due in connection with the bonds being refunded; provided that
18 such refunding bond proceeds, including any accrued interest
19 and any premium appertaining to a sale of refunding bonds, may
20 be applied to the establishment and maintenance of a reserve
21 fund and to the payment of expenses incidental to the refunding
22 and the issuance of the refunding bonds, the interest on the
23 bonds and the principal of the bonds or both interest and
24 principal as the authority may determine. Nothing in this
25 section requires the establishment of an escrow if the refunded

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1 bonds become due and payable within one year from the date of
2 the refunding bonds and if the amounts necessary to retire the
3 refunded bonds within that time are deposited with the paying
4 agent for the refunded bonds. Any such escrow shall not
5 necessarily be limited to proceeds of refunding bonds but may
6 include other money available for its purpose. Any proceeds in
7 escrow pending such use may be invested or reinvested in bills,
8 certificates of indebtedness, notes or bonds that are direct
9 obligations of or the principal and interest of which
10 obligations are unconditionally guaranteed by the United States
11 of America or in certificates of deposit of banks that are
12 members of the federal deposit insurance corporation, the par
13 value of which certificates of deposit is collateralized by a
14 pledge of obligations of or the payment of which is
15 unconditionally guaranteed by the United States of America, the
16 par value of which obligations is at least seventy-five percent
17 of the par value of the certificates of deposit. Such proceeds
18 and investments in escrow together with any interest or other
19 income to be derived from any such investment shall be in an
20 amount at all times sufficient as to principal, interest, any
21 prior redemption premium due and any charges of the escrow
22 agent payable therefrom to pay the bonds being refunded as they
23 become due at their respective maturities or due at any
24 designated prior redemption date or dates in connection with
25 which the authority shall exercise a prior redemption option.

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1 Any purchaser of any refunding bond is in no manner responsible
2 for the application of the proceeds thereof by the authority or
3 any of its officers, agents or employees.

4 D. Refunding bonds may bear such additional terms
5 and provisions as may be determined by the authority and the
6 refunding bonds are not subject to the provisions of any other
7 statute except as may be provided in the Albuquerque-Bernalillo
8 County Water Utility Authority Act.

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

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

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

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

20 D. may be serial in form and maturity or may
21 consist of a single bond payable in one or more installments or
22 may be in such other form as may be determined by the
23 authority; and

24 E. shall be exchanged for the bonds and any matured
25 unpaid interest being refunded at not less than par or sold at

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1 public or negotiated sale at, above or below par and at a price
2 that results in a net effective interest rate that does not
3 exceed the maximum permitted by the Public Securities Act.

4 Section 22. [NEW MATERIAL] UTILITY SYSTEM REFUNDING
5 REVENUE BONDS--RESOLUTION.--At any regular or special meeting
6 called for the purpose of issuing utility system refunding
7 revenue bonds, the authority by a majority vote of all the
8 members of the authority may adopt a resolution authorizing the
9 issuance of the refunding revenue bonds.

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

12 "5-8-2. DEFINITIONS.--As used in the Development Fees
13 Act:

14 A. "affordable housing" means any housing
15 development built to benefit those whose income is at or below
16 eighty percent of the area median income and who will pay no
17 more than thirty percent of their gross monthly income towards
18 such housing;

19 B. "approved land use assumptions" means land use
20 assumptions adopted originally or as amended under the
21 Development Fees Act;

22 C. "assessment" means a determination of the amount
23 of an impact fee;

24 D. "capital improvement" means any of the following
25 facilities that have a life expectancy of ten or more years and

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1 are owned and operated by or on behalf of a municipality or
2 county:

3 (1) water supply, treatment and distribution
4 facilities; wastewater collection and treatment facilities; and
5 storm water, drainage and flood control facilities;

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

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

13 (4) parks, recreational areas, open space
14 trails and related areas and facilities;

15 E. "capital improvements plan" means a plan
16 required by the Development Fees Act that identifies capital
17 improvements or facility expansion for which impact fees may be
18 assessed;

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

20 G. "facility expansion" means the expansion of the
21 capacity of an existing facility that serves the same function
22 as an otherwise necessary new capital improvement, in order
23 that the existing facility may serve new development. [~~The~~
24 ~~term~~] "Facility expansion" does not include the repair,
25 maintenance, modernization or expansion of an existing facility

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1 to better serve existing development, including schools and
2 related facilities;

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

6 I. "impact fee" means a charge or assessment
7 imposed by a municipality or county on new development in order
8 to generate revenue for funding or recouping the costs of
9 capital improvements or facility expansions necessitated by and
10 attributable to the new development. [~~The term~~] "Impact fee"
11 includes amortized charges, lump-sum charges, capital recovery
12 fees, contributions in aid of construction, development fees
13 and any other fee that functions as described by this
14 definition. [~~The term~~] "Impact fee" does not include hook-up
15 fees, dedication of rights of way or easements or construction
16 or dedication of on-site water distribution, wastewater
17 collection or drainage facilities or streets, sidewalks or
18 curbs if the dedication or construction is required by a
19 previously adopted valid ordinance or regulation and is
20 necessitated by and attributable to the new development;

21 J. "land use assumptions" includes a description of
22 the service area and projections of changes in land uses,
23 densities, intensities and population in the service area over
24 at least a five-year period;

25 K. "municipality" means any incorporated city, town

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1 or village, whether incorporated under general act, special act
2 or special charter; ~~and~~ H class counties, including any home
3 rule municipality or H class county chartered under the
4 provisions of Article 10, Section 6 of the constitution of New
5 Mexico; and the Albuquerque-Bernalillo county water utility
6 authority;

7 L. "new development" means the subdivision of land;
8 reconstruction, redevelopment, conversion, structural
9 alteration, relocation or enlargement of any structure; or any
10 use or extension of the use of land; any of which increases the
11 number of service units;

12 M. "qualified professional" means a professional
13 engineer, surveyor, financial analyst or planner providing
14 services within the scope of his license, education or
15 experience;

16 N. "roadway facilities" means arterial or collector
17 streets or roads that have been designated on an officially
18 adopted roadway plan of the municipality or county, including
19 bridges, bike and pedestrian trails, bus bays, rights of way,
20 traffic signals, landscaping and any local components of state
21 or federal highways;

22 O. "service area" means the area within the
23 corporate boundaries or extraterritorial jurisdiction of a
24 municipality or the boundaries of a county to be served by the
25 capital improvements or facility expansions specified in the

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1 capital improvements plan designated on the basis of sound
2 planning and engineering standards; and

3 P. "service unit" means a standardized measure of
4 consumption, use, generation or discharge attributable to an
5 individual unit of development calculated in accordance with
6 generally accepted engineering or planning standards for a
7 particular category of capital improvements or facility
8 expansions."

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

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

12 A. A public employer who is an affiliated public
13 employer on the effective date of the Public Employees
14 Retirement Act shall continue to be an affiliated public
15 employer.

16 B. A public employer who is not an affiliated
17 public employer on the effective date of ~~[that]~~ the Public
18 Employees Retirement Act may become an affiliated public
19 employer by resolution or ordinance adopted by its governing
20 body. Affiliation shall be effective the first day of the
21 month following completion of each of the following
22 requirements:

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

25 (2) the public employer furnishes the

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1 association with all information requested by the association.

2 C. An affiliated public employer may adopt a
3 coverage plan by resolution or ordinance of its governing body,
4 unless a procedure for adopting the change is otherwise
5 provided in the Public Employees Retirement Act. The change
6 shall be effective the first day of the month following
7 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 D. An affiliated public employer that is created by
13 the merger of two or more affiliated public employers,
14 designation of a group of employees from two or more affiliated
15 public employers or by a joint powers agreement between two or
16 more affiliated public employers shall adopt the coverage plan
17 that provides the highest pension applicable to the affiliated
18 public employers or the designated group that they employ.

19 Affiliation shall be effective the first day of the month
20 following completion of each of the following requirements:

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

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

25 Section 25. Section 13-1-98 NMSA 1978 (being Laws 1984,

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1 Chapter 65, Section 71, as amended by Laws 2001, Chapter 291,
2 Section 8 and by Laws 2001, Chapter 292, Section 3 and by Laws
3 2001, Chapter 305, Section 28 and also by Laws 2001, Chapter
4 312, Section 13) is amended to read:

5 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The
6 provisions of the Procurement Code shall not apply to:

7 A. procurement of items of tangible personal
8 property or services by a state agency or a local public body
9 from a state agency, a local public body or external
10 procurement unit except as otherwise provided in Sections
11 13-1-135 through 13-1-137 NMSA 1978;

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

14 C. printing and duplicating contracts involving
15 materials that are required to be filed in connection with
16 proceedings before administrative agencies or state or federal
17 courts;

18 D. purchases of publicly provided or publicly
19 regulated gas, electricity, water, sewer and refuse collection
20 services;

21 E. purchases of books and periodicals from the
22 publishers or copyright holders thereof;

23 F. travel or shipping by common carrier or by
24 private conveyance or to meals and lodging;

25 G. purchase of livestock at auction rings or to the

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1 procurement of animals to be used for research and
2 experimentation or exhibit;

3 H. contracts with businesses for public school
4 transportation services;

5 I. procurement of tangible personal property or
6 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,
7 by the corrections industries division of the corrections
8 department pursuant to regulations adopted by the corrections
9 commission, which shall be reviewed by the purchasing division
10 of the general services department prior to adoption;

11 J. minor purchases not exceeding five thousand
12 dollars (\$5,000) consisting of magazine subscriptions,
13 conference registration fees and other similar purchases where
14 prepayments are required;

15 K. municipalities having adopted home rule charters
16 and having enacted their own purchasing ordinances;

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

19 [~~H-~~] M. the issuance, sale and delivery of public
20 securities pursuant to the applicable authorizing statute, with
21 the exception of bond attorneys and general financial
22 consultants;

23 [~~M-~~] N. contracts entered into by a local public
24 body with a private independent contractor for the operation,
25 or provision and operation, of a jail pursuant to Sections

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1 33-3-26 and 33-3-27 NMSA 1978;

2 [N-] O. contracts for maintenance of grounds and
3 facilities at highway rest stops and other employment
4 opportunities, excluding those intended for the direct care and
5 support of persons with handicaps, entered into by state
6 agencies with private, nonprofit, independent contractors who
7 provide services to persons with handicaps;

8 [O-] P. contracts and expenditures for services or
9 items of tangible personal property to be paid or compensated
10 by money or other property transferred to New Mexico law
11 enforcement agencies by the United States department of justice
12 drug enforcement administration;

13 [P-] Q. contracts for retirement and other benefits
14 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

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

16 [R-] S. contracts and expenditures for litigation
17 expenses in connection with proceedings before administrative
18 agencies or state or federal courts, including experts,
19 mediators, court reporters, process servers and witness fees,
20 but not including attorney contracts; [~~and~~

21 [S-] T. contracts for service relating to the
22 design, engineering, financing, construction and acquisition of
23 public improvements undertaken in improvement districts
24 pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and in
25 county improvement districts pursuant to Subsection L of

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1 Section 4-55A-12.1 NMSA 1978;

2 U. works of art for museums or for display in
3 public buildings or places; and

4 V. contracts entered into by a local public body
5 with a person, firm, organization, corporation, association or
6 a state educational institution named in Article 12, Section 11
7 of the constitution of New Mexico for the operation and
8 maintenance of a hospital pursuant to Chapter 3, Article 44
9 NMSA 1978, for the lease or operation of a county hospital
10 pursuant to the Hospital Funding Act or for the operation and
11 maintenance of a hospital pursuant to the Special Hospital
12 District Act."

13 Section 26. Section 62-3-3 NMSA 1978 (being Laws 1967,
14 Chapter 96, Section 3, as amended) is amended to read:

15 "62-3-3. DEFINITIONS.--Unless otherwise specified, when
16 used in the Public Utility Act:

17 A. "affiliated interest" means a person who
18 directly or indirectly, through one or more intermediaries,
19 controls or is controlled by or is under common control with a
20 public utility. Control includes instances where a person is
21 an officer, director, partner, trustee or person of similar
22 status or function or owns directly or indirectly or has a
23 beneficial interest in ten percent or more of any class of
24 securities of a person;

25 B. "commission" means the public regulation

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1 commission;

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

3 D. "municipality" means a municipal corporation
4 organized under the laws of the state, [~~and~~] H-class counties
5 and the Albuquerque-Bernalillo county water utility authority;

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

10 "Person" does not mean a class A county as described in Section
11 4-36-10 NMSA 1978 or a class B county as described in Section
12 4-36-8 NMSA 1978. "Person" does not mean a municipality as
13 defined in this section unless the municipality has elected to
14 come within the terms of the Public Utility Act as provided in
15 Section 62-6-5 NMSA 1978. In the absence of voluntary election
16 by a municipality to come within the provisions of the Public
17 Utility Act, the municipality shall be expressly excluded from
18 the operation of that act and from the operation of all its
19 provisions, and no such municipality shall for any purpose be
20 considered a public utility;

21 F. "securities" means stock, stock certificates,
22 bonds, notes, debentures, mortgages or deeds of trust or other
23 evidences of indebtedness issued, executed or assumed by a
24 utility;

25 G. "public utility" or "utility" means every person

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1 not engaged solely in interstate business and, except as stated
2 in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own,
3 operate, lease or control:

4 (1) any plant, property or facility for the
5 generation, transmission or distribution, sale or furnishing to
6 or for the public of electricity for light, heat or power or
7 other uses;

8 (2) any plant, property or facility for the
9 manufacture, storage, distribution, sale or furnishing to or
10 for the public of natural or manufactured gas or mixed or
11 liquefied petroleum gas for light, heat or power or other uses;
12 but the term "public utility" or "utility" shall not include
13 any plant, property or facility used for or in connection with
14 the business of the manufacture, storage, distribution, sale or
15 furnishing of liquefied petroleum gas in enclosed containers or
16 tank truck for use by others than consumers who receive their
17 supply through any pipeline system operating under municipal
18 authority or franchise and distributing to the public;

19 (3) any plant, property or facility for the
20 supplying, storage, distribution or furnishing to or for the
21 public of water for manufacturing, municipal, domestic or other
22 uses; provided, however, nothing contained in this paragraph
23 shall be construed to apply to irrigation systems, the chief or
24 principal business of which is to supply water for the purpose
25 of irrigation;

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

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

13 H. "rate" means every rate, tariff, charge or other
14 compensation for utility service rendered or to be rendered by
15 a utility and every rule, regulation, practice, act,
16 requirement or privilege in any way relating to such rate,
17 tariff, charge or other compensation and any schedule or tariff
18 or part of a schedule or tariff thereof;

19 I. "renewable energy" means electrical energy
20 generated by means of a low- or zero-emission generation
21 technology that has substantial long-term production potential
22 and may include, without limitation, solar, wind, hydropower,
23 geothermal, landfill gas, anaerobically digested waste biomass
24 or fuel cells that are not fossil fueled. "Renewable energy"
25 does not include fossil fuel or nuclear energy;

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1 J. "service" or "service regulation" means every
2 rule, regulation, practice, act or requirement relating to the
3 service or facility of a utility;

4 K. "Class I transaction" means the sale, lease or
5 provision of real property, water rights or other goods or
6 services by an affiliated interest to a public utility with
7 which it is affiliated or by a public utility to its affiliated
8 interest;

9 L. "Class II transaction" means:

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

13 (2) the direct acquisition of the voting
14 securities or other direct ownership interests of a person by a
15 public utility if such acquisition would make the utility the
16 owner of ten percent or more of the voting securities or other
17 direct ownership interests of that person;

18 (3) the agreement by a public utility to
19 purchase securities or other ownership interest of a person
20 other than a nonprofit corporation, contribute additional
21 equity to, acquire additional equity interest in or pay or
22 guarantee any bonds, notes, debentures, deeds of trust or other
23 evidence of indebtedness of any such person; provided, however,
24 that a public utility may honor all agreements entered into by
25 such utility prior to May 19, 1982; or

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1 (4) the divestiture by a public utility of any
2 affiliated interest that is a corporate subsidiary of the
3 public utility;

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

7 N. "public utility holding company" means an
8 affiliated interest that controls a public utility through the
9 direct or indirect ownership of voting securities of that
10 public utility."

11 Section 27. TEMPORARY PROVISION--TRANSFER OF ASSETS--
12 VALIDATION OF PRIOR TRANSFER.--The transfer of all functions,
13 appropriations, money, records, equipment, other real and
14 personal property, including water rights, and all other assets
15 from Albuquerque to the Albuquerque-Bernalillo water utility
16 authority pursuant to Section 72-1-10 NMSA 1978 is validated
17 and confirmed. All functions, appropriations, money, records,
18 equipment, other real and personal property, including water
19 rights, and all other assets of the Albuquerque-Bernalillo
20 water utility authority created pursuant to Section 72-1-10
21 NMSA 1978 are transferred to the Albuquerque-Bernalillo county
22 water utility authority created pursuant to the Albuquerque-
23 Bernalillo County Water Utility Authority Act. All debts of
24 the Albuquerque-Bernalillo water utility authority created
25 pursuant to Section 72-1-10 NMSA 1978 or debts of Albuquerque

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1 or its water and wastewater utility pertaining to Albuquerque's
2 water and wastewater system shall be debts of the authority.
3 Any outstanding public securities of the Albuquerque water and
4 wastewater utility or the Albuquerque-Bernalillo water utility
5 authority are validated and confirmed in accordance with the
6 1988 Public Securities Validation Act.

7 Section 28. REPEAL.--Section 72-1-10 NMSA 1978 (being
8 Laws 2003, Chapter 437, Section 1) is repealed.

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