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HOUSE BILL 859

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Daniel P. Silva

AN ACT

RELATING TO LOCAL GOVERNMENT; DELINEATING THE POWERS AND DUTIES
OF THE ALBUQUERQUE-BERNALILLO COUNTY WATER UTILITY AUTHORITY;
AMENDING A SECTION OF THE NMSA 1978.

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) 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. 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
~~[and the mayor and]~~ appointed by the Albuquerque city council.
The county members shall be three county commissioners

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1 appointed by the Bernalillo county board of county
2 commissioners. A city councilor member shall designate another
3 city councilor to serve in the member's absence. A county
4 commissioner member shall designate another county commissioner
5 to serve in the member's absence. The mayor shall designate
6 the chief executive officer of the municipality, a city
7 councilor or a county commissioner to serve in the mayor's
8 absence. City councilors shall serve one-year terms at the
9 city council president's discretion. County commissioners
10 shall serve one-year terms at the county commission chairman's
11 discretion. The authority [~~is a joint agency of the two~~
12 ~~governments and~~] is subject to the state Procurement Code and
13 other applicable state laws. The authority is a public body
14 politic and corporate, separate and apart from the city of
15 Albuquerque and Bernalillo county. The authority is a
16 political subdivision of the state.

17 B. The authority:

18 (1) shall set policy and regulate, supervise
19 and administer the water and wastewater utility of Albuquerque
20 and Bernalillo county, including the determination and
21 imposition of rates for services;

22 (2) is granted all powers necessary and
23 appropriate to carry out and effectuate its public and
24 corporate purposes, including the authority to adopt procedural
25 rules; and

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

4 ~~[G. All money received from rates, bonds or other~~
5 ~~sources shall be held in one or more accounts separate from~~
6 ~~other governmental accounts of the city or county.~~

7 ~~D. All functions, appropriations, money, records,~~
8 ~~equipment and other real and personal property pertaining to~~
9 ~~the Albuquerque water and wastewater utility shall be~~
10 ~~transferred to the Albuquerque-Bernalillo water utility~~
11 ~~authority. Debts of the Albuquerque water and wastewater~~
12 ~~utility shall be debts of the Albuquerque-Bernalillo water~~
13 ~~utility authority. The authority shall not impair the rights~~
14 ~~of any bondholders of outstanding bonds of the Albuquerque~~
15 ~~water and wastewater utility. If there are outstanding bonds~~
16 ~~for which property taxes have been pledged, the authority~~
17 ~~shall issue revenue bonds to refund the bonds pledged by~~
18 ~~property taxes. All contractual obligations of the~~
19 ~~Albuquerque water and wastewater utility shall be binding on~~
20 ~~the authority. The public regulation commission shall audit~~
21 ~~the Albuquerque water and wastewater utility prior to the~~
22 ~~transfer of money, assets and debts to the Albuquerque-~~
23 ~~Bernalillo water utility authority.]~~

24 C. The authority may acquire, maintain, contract
25 for, condemn or protect water and wastewater facilities. The

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1 city of Albuquerque and Bernalillo county may delegate any
2 additional power or duty conferred by Sections 3-27-2 and
3 3-27-3 NMSA 1978 to the authority to exercise and administer.

4 D. In exercising its power to acquire, maintain,
5 contract for or condemn water and wastewater facilities, the
6 authority shall not act so as to physically isolate and make
7 nonviable any portion of the water or wastewater facilities,
8 within or outside of Bernalillo county.

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

11 F. For the purposes of acquiring, maintaining,
12 contracting for, condemning or protecting water and
13 wastewater facilities, the jurisdiction of the authority
14 extends within and outside of the boundaries of Bernalillo
15 county to the territory physically occupied by the water and
16 wastewater facilities and to privately owned water and
17 wastewater facilities interconnected to the utility system.

18 The authority may:

19 (1) acquire, maintain, contract for or
20 condemn facilities for the collection, treatment and disposal
21 of wastewater;

22 (2) condemn private property for the
23 construction, maintenance and operation of wastewater
24 facilities; and

25 (3) acquire, maintain, contract for or

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1 condemn for use as part of the utility system privately owned
2 water and wastewater facilities used for the collection,
3 treatment and disposal of wastewater of the authority or its
4 customers.

5 G. The authority is subject to:

6 (1) the limitations imposed by Section
7 72-1-9 NMSA 1978 regarding water rights obtained or water
8 rights condemned pursuant to a water development plan; and

9 (2) the provisions of the Eminent Domain
10 Code.

11 H. 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
17 county that are appurtenant to real property that has been in
18 active agricultural operation; and

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

23 I. 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

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

4 J. The city of Albuquerque or Bernalillo county
5 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
8 way in exchange for consideration.

9 K. The authority may issue utility system revenue
10 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
15 of these purposes. The authority may issue revenue
16 anticipation notes with maturities not exceeding thirteen
17 months upon terms approved by the board of directors. The
18 authority may pledge irrevocably net revenues from the
19 operation of the utility system for payment of the principal,
20 premiums and interest on the revenue bonds or other
21 obligations. It is unlawful to divert, use or expend money
22 received from the issuance of utility system revenue bonds
23 for any purpose other than the purpose for which the utility
24 system revenue bonds were issued. Obligations, including
25 bond anticipation notes, issued pursuant to the Public

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1 Securities Short-Term Interest Rate Act shall be sold
2 pursuant to the terms of that act. Utility system revenue
3 bonds:

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

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

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

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

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

21 (6) may be sold at a public or negotiated
22 sale.

23 L. The bonds authorized by the authority and
24 their income shall be exempt from all taxation by the state
25 or its political subdivisions.

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

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

20 Section 2. TEMPORARY DIVISION.--All functions,
21 appropriations, money, records, equipment and other real and
22 personal property pertaining to the Albuquerque water and
23 wastewater utility not transferred pursuant to Section
24 72-1-10 NMSA 1978 prior to the effective date of this act
25 shall be transferred to the Albuquerque-Bernalillo county

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water utility authority.

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