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HOUSE BILL 473

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Thomas A. Anderson

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; REMOVING CONDEMNATION AUTHORITY.

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, 2015, 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 2014, 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 2014
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 ~~[condem]~~ 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 3-7-2 ~~[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 or 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 or contract for [~~or~~
16 ~~condemn~~] facilities for the collection, treatment and disposal
17 of wastewater; and

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

21 ~~(3)]~~ (2) acquire, maintain or contract for [~~or~~
22 ~~condemn for~~] use as part of the utility system privately owned
23 water and wastewater facilities used for the collection,
24 treatment and disposal of wastewater of the authority or its
25 customers.

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

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

5 ~~[(2) the provisions of the Eminent Domain~~
6 ~~Code; and~~

7 ~~(3)]~~ (2) the provisions of Chapter 72 NMSA
8 1978 regarding any change to the point of diversion or the
9 place or purpose of use of any water right to any place
10 selected by the authority in order to make the water available
11 to the authority.

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

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

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

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

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

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

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

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1 to the Public Securities Short-Term Interest Rate Act shall be
2 sold 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 the
8 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 fifty
12 years after the date of issuance;

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

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

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

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

25 [~~M.~~] N. The members of the board of directors of

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

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