

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE HEALTH, GOVERNMENT AND INDIAN AFFAIRS COMMITTEE  
SUBSTITUTE FOR HOUSE BILL 489

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

AN ACT

RELATING TO PUBLIC UTILITIES; PERMITTING THE ADOPTION AND  
ENFORCEMENT OF ORDINANCES BY THE ALBUQUERQUE-BERNALILLO COUNTY  
WATER UTILITY 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. 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 council. The county members  
shall be three county commissioners appointed by the Bernalillo

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

16 B. The authority:

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

21 (2) is granted all powers necessary and  
22 appropriate to carry out and effectuate its public and  
23 corporate purposes, including the authority to adopt:

24 (a) procedural rules; and

25 (b) ordinances not inconsistent with the

1 laws of New Mexico for the purposes of: 1) complying with  
 2 applicable provisions of the federal Clean Water Act; and 2)  
 3 enforcing the ordinances by prosecution in the metropolitan  
 4 courts and, upon conviction, the imposition of, for each  
 5 violation of an industrial user wastewater pretreatment  
 6 ordinance as required by the United States environmental  
 7 protection agency, a fine of not more than one thousand dollars  
 8 (\$1,000) a day and for each violation of any other ordinance, a  
 9 fine of not more than five hundred dollars (\$500) or  
 10 imprisonment for not more than ninety days or both; and

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

14 C. The authority may acquire, maintain, contract  
 15 for, condemn or protect water and wastewater facilities. The  
 16 city of Albuquerque and Bernalillo county may delegate any  
 17 additional power or duty conferred by Sections 3-27-2 and  
 18 3-27-3 NMSA 1978 to the authority to exercise and administer.

19 D. In exercising its power to acquire, maintain,  
 20 contract for or condemn water and wastewater facilities, the  
 21 authority shall not act so as to physically isolate and make  
 22 nonviable any portion of the water or wastewater facilities,  
 23 within or outside of Bernalillo county.

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

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1 F. For the purposes of acquiring, maintaining,  
2 contracting for, condemning or protecting water and wastewater  
3 facilities, the jurisdiction of the authority extends within  
4 and outside of the boundaries of Bernalillo county to the  
5 territory physically occupied by the water and wastewater  
6 facilities and to privately owned water and wastewater  
7 facilities interconnected to the utility system. The authority  
8 may:

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

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

15 (3) acquire, maintain, contract for or condemn  
16 for use as part of the utility system privately owned water and  
17 wastewater facilities used for the collection, treatment and  
18 disposal of wastewater of the authority or its customers.

19 G. The authority is subject to:

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

23 (2) the provisions of the Eminent Domain Code;  
24 and

25 (3) the provisions of Chapter 72 NMSA 1978

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1 regarding any change to the point of diversion or the place or  
2 purpose of use of any water right to any place selected by the  
3 authority in order to make the water available to the  
4 authority.

5 H. The authority is liable to the condemnee  
6 pursuant to the provisions of the Eminent Domain Code for the  
7 value of a water right as well as the market value of real  
8 property to which the water right is appurtenant if:

9 (1) the authority condemns water rights,  
10 either within or outside of the boundaries of Bernalillo county  
11 that are appurtenant to real property that has been in active  
12 agricultural operation; and

13 (2) the condemnation of the water right by the  
14 authority requires the permanent retirement from agricultural  
15 operation of some or all of the real property to which the  
16 water rights are appurtenant.

17 I. The authority is not subject to the jurisdiction  
18 of or approval from the public regulation commission. The  
19 authority is not subject to the provisions of the Public  
20 Utility Act. The authority is granted a water use planning  
21 period not to exceed forty years as set forth in Section 72-1-9  
22 NMSA 1978.

23 J. The city of Albuquerque or Bernalillo county  
24 may, by ordinance or resolution, grant the authority a  
25 franchise for the operation, construction and maintenance of

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1 the utility system and for the use and rental of rights of way  
2 in exchange for consideration.

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

22 (1) may have interest, appreciated principal  
23 value or any part thereof payable at intervals or at maturity  
24 as the authority determines;

25 (2) may be subject to prior redemption at the

1 authority's option at such time and upon such terms and  
2 conditions with or without the payment of a premium as  
3 determined by the authority;

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

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

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

13 (6) may be sold at a public or negotiated  
14 sale.

15 L. The bonds authorized by the authority and their  
16 income shall be exempt from all taxation by the state or its  
17 political subdivisions.

18 M. The members of the board of directors of the  
19 authority may adopt a resolution declaring the necessity for  
20 the issuance of utility system revenue bonds or other  
21 obligations and may authorize the issuance of utility system  
22 revenue bonds or other obligations by an affirmative vote of a  
23 majority of all members of the board of directors of the  
24 authority. Utility system revenue bonds and the resolution  
25 authorizing their issuance shall not be subject to the approval

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1 of the public regulation commission pursuant to Section 3-23-3  
2 NMSA 1978 or subject to voter approval pursuant to Section  
3 3-23-2 NMSA 1978.

4 N. Except for the purpose of refunding previous  
5 utility system revenue bond issues, the authority may not sell  
6 utility system revenue bonds payable from pledged revenues  
7 after the expiration of three years from the date of the  
8 resolution authorizing their issuance. Any period of time  
9 during which a utility system revenue bond is in litigation  
10 shall not count toward the determination of the expiration date  
11 of that issue."