

HOUSE BILL 38

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Miguel P. Garcia

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO LOCAL GOVERNMENT; PRECLUDING THE ALBUQUERQUE-
BERNALILLO COUNTY WATER UTILITY AUTHORITY FROM
HAWC→**ACQUIRING**←HAWC HAWC→**CONDEMNING**←HAWC WATER RIGHTS
APPURTENANT TO IRRIGABLE LAND.

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.--

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

B. The authority:

(1) shall set policy and regulate, supervise and administer the water and wastewater utility of Albuquerque and Bernalillo county, including the determination and

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imposition of rates for services;

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

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

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

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

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

F. For the purposes of acquiring, maintaining, contracting for, condemning or protecting water and wastewater facilities, the jurisdiction of the authority extends within and outside of the boundaries of Bernalillo county to the territory physically occupied by the water and wastewater

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facilities and to privately owned water and wastewater facilities interconnected to the utility system. The authority may:

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

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

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

G. The authority is subject to:

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

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

(3) the provisions of Chapter 72 NMSA 1978 regarding any change to the point of diversion or the place or purpose of use of any water right to any place selected by the authority in order to make the water available to the authority.

H. The authority [~~is liable to the condemnee~~

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~~pursuant to the provisions of the Eminent Domain Code for the value of a water right as well as the market value of real property to which the water right is appurtenant if:~~

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

~~(2) the condemnation of the water right by the authority requires the permanent retirement from agricultural operation of some or all of the real property to which the water rights are appurtenant]~~ shall not HAWC→**obtain or**←HAWC condemn water rights that are appurtenant to irrigable land within the HAWC→**Rio Grande basin**←HAWC HAWC→**territory drained by the Rio Grande between the United States gaging station at Otowi bridge and the gaging station below Elephant Butte dam**←HAWC.

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

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

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

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

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

(2) may be subject to prior redemption at the

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

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

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

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

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

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

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

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

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