

1 SENATE BILL 509

2 54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

3 INTRODUCED BY

4 Peter Wirth and Tomás E. Salazar

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10 AN ACT

11 RELATING TO SPECIAL DISTRICTS; ENACTING THE REGIONAL WATER
12 UTILITY AUTHORITY ACT; PROVIDING FOR THE CREATION OF REGIONAL
13 WATER UTILITY AUTHORITIES; PROVIDING POWERS AND DUTIES;
14 PROVIDING REGIONAL WATER UTILITY AUTHORITIES WITH A FORTY-YEAR
15 WATER PLANNING PERIOD.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
19 through 17 of this act may be cited as the "Regional Water
20 Utility Authority Act".

21 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
22 Regional Water Utility Authority Act:

23 A. "address" means a mailing address:

24 (1) and street address, if within a
25 municipality; or

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1 (2) and a rural route number and box number,
2 if any, or the geographical location, using well-known
3 landmarks, if outside a municipality;

4 B. "authority" means a regional water utility
5 authority that is established pursuant to the Regional Water
6 Utility Authority Act and is incorporated pursuant to the laws
7 of New Mexico;

8 C. "board" means the board of directors of an
9 authority;

10 D. "director" means a member of the board;

11 E. "eligible elector" means a registered voter who
12 is a customer of the authority and a resident and property
13 owner within the authority's service area;

14 F. "entity" means a municipality, inter-municipal
15 agency, county, incorporated county, mutual domestic water
16 consumers association as defined by the Sanitary Projects Act,
17 sanitation district, water and sanitation district or any
18 similar district, recognized Indian nation, tribe or pueblo or
19 other agency created pursuant to a joint powers agreement
20 acting on behalf of one of the foregoing or an existing utility
21 authority, including a cooperative, investor-owned utility or
22 other form of a public utility;

23 G. "incorporating entity" means an entity that is
24 one of the original incorporators of an authority;

25 H. "joining entity" means an entity that is part of

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1 an authority, whether an incorporating entity or an entity that
2 joins the authority after incorporation; and

3 I. "service area" means the area in which an
4 authority provides water or wastewater services.

5 SECTION 3. [NEW MATERIAL] PURPOSE OF REGIONAL WATER
6 UTILITY AUTHORITY.--An authority may be created for the
7 purposes of:

8 A. planning, developing, managing, maintaining or
9 coordinating regional water and wastewater facilities;

10 B. purchasing, acquiring, establishing or
11 constructing waterworks to supply water for domestic,
12 commercial or industrial purposes to persons within and without
13 the boundaries of the authority;

14 C. purchasing, acquiring, establishing or
15 constructing wastewater systems for the treatment and disposal
16 of sewage or for the management of decentralized or on-site
17 wastewater disposal systems; or

18 D. developing infrastructure for renewable energy
19 projects that are integral to the operation and maintenance of
20 an authority's facilities.

21 SECTION 4. [NEW MATERIAL] AUTHORITY--CREATION--ARTICLES
22 OF INCORPORATION--BYLAWS.--

23 A. One or more entities may create an authority as
24 provided in the Regional Water Utility Authority Act.

25 B. Each incorporating entity shall individually

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1 adopt a resolution signifying its intention to create an
2 authority. The resolution shall not be adopted by an
3 incorporating entity until the incorporating entity has:

4 (1) completed the dissolution and merger
5 process as established in its incorporation documents; and

6 (2) given reasonable notice of a public
7 hearing and the public hearing has been held.

8 C. The resolution shall state the:

9 (1) proposed name and purpose of the
10 authority;

11 (2) perpetual existence of the authority;

12 (3) proposed service area, described with such
13 specificity as to enable a property owner to determine whether
14 the owner's property is within the service area;

15 (4) composition of the authority; and

16 (5) lead joining entity to act as registered
17 agent.

18 D. Upon adoption of a resolution by each
19 incorporating entity, the incorporating entities shall draw up
20 articles of incorporation and bylaws and file them with the
21 secretary of state. Amended bylaws shall be filed, recorded
22 and certified by the secretary of state and shall be effective
23 upon filing. Amended bylaws supersede all other bylaws upon
24 the effective date of the amended bylaws.

25 E. Upon the issuance of a certificate of

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1 incorporation by the secretary of state, the corporate
2 existence of an authority shall begin, and the incorporating
3 entity shall be dissolved, except as against the state in a
4 proceeding to cancel or revoke the certificate of incorporation
5 or for involuntary dissolution of an authority.

6 F. Within thirty days of incorporation, an
7 authority shall notify all regulatory and funding agencies of
8 its existence by providing a copy of the authority's
9 certificate of incorporation and registered agent information
10 to the agencies.

11 SECTION 5. [NEW MATERIAL] ENTITIES MERGING AFTER
12 INCORPORATION.--If an entity chooses to merge into an authority
13 after that authority has been incorporated, the entity shall
14 adopt a resolution signifying its intention to merge into the
15 authority and submit the resolution to the board along with a
16 merger plan outlining the process and time line to merge assets
17 and liabilities.

18 SECTION 6. [NEW MATERIAL] AUTHORITY--POWERS AND DUTIES.--

19 A. An authority is a body politic and corporate and
20 a political subdivision of the state, subject to all statutory
21 requirements of the state. In addition to other powers granted
22 to an authority pursuant to the Regional Water Utility
23 Authority Act, an authority may:

- 24 (1) have perpetual existence;
25 (2) sue and be sued and be a party to suits,

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1 actions or proceedings;

2 (3) borrow money, receive grants or pledge or
3 otherwise encumber the revenues or receipts of the authority or
4 mortgage the property of the authority as security for any of
5 the obligations of the authority;

6 (4) establish rates and impose assessments,
7 fees or charges for the delivery and collection of services
8 rendered and take action necessary for the enforcement of those
9 rates, assessments, fees or charges;

10 (5) acquire from a willing seller and hold
11 water rights in an amount necessary to meet its reasonable
12 needs not to exceed forty years pursuant to Section 72-1-9 NMSA
13 1978;

14 (6) shut off, after notice, unauthorized and
15 illegal connections or delinquent connections;

16 (7) acquire and dispose of real property,
17 personal property or rights of way;

18 (8) condemn property pursuant to the Eminent
19 Domain Code as a last resort and only as necessary to acquire
20 property or rights of way for the construction, maintenance or
21 operation of water or sewer lines or related facilities;

22 (9) place a lien on property for unpaid
23 assessments, charges or fees and enforce the lien in the manner
24 provided in Section 16 of the Regional Water Utility Authority
25 Act;

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1 (10) for the purpose of protecting ground
2 water sources, promulgate an on-site wastewater management
3 plan;

4 (11) construct, establish and maintain
5 facilities;

6 (12) compel the connection of existing or new
7 development within the service area pursuant to the authority's
8 existing line-extension policy;

9 (13) compel connection to the services of the
10 authority for health and sanitary purposes pursuant to Section
11 14 of the Regional Water Utility Authority Act; and

12 (14) have and exercise all rights and powers
13 necessary or incidental to or implied from the specific powers
14 granted in this section; provided that the specific powers
15 shall not be considered as a limitation upon any power
16 necessary or appropriate to carry out the purposes and intent
17 of the Regional Water Utility Authority Act.

18 B. All powers, privileges and duties vested in or
19 imposed upon the authority shall be exercised and performed by
20 the board.

21 SECTION 7. [NEW MATERIAL] BOARD--APPOINTMENT--DISTRICTS--
22 ELECTION.--

23 A. An authority shall be governed by a board. The
24 directors of the initial board shall consist of at least three
25 directors appointed by the incorporating entities and shall be

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1 composed of, at a minimum, a president, secretary and
2 treasurer. If an authority is incorporated in an even-numbered
3 year, the initial directors shall serve a term of three years;
4 and, if an authority is incorporated in an odd-numbered year,
5 the initial directors shall serve a term of four years. The
6 terms of the initial directors shall end on December 31 of the
7 odd-numbered year in which their successors are elected.

8 B. The succeeding board shall be elected by
9 districts. Each director, at the time of election, shall
10 reside within the electoral district of the authority from
11 which that director is elected.

12 C. Terms of elected directors shall be staggered
13 four-year terms beginning on January 1 of the year following
14 their election; provided that those chosen at the first
15 election shall immediately classify themselves by lot, so that
16 at least one director serves a two-year term and at least two
17 directors serve a four-year term; thereafter the terms shall be
18 four years.

19 D. The boundaries and the number of electoral
20 districts shall be established by the initial board within two
21 years of the creation of the authority. The board may in the
22 authority's bylaws provide for redistricting upon any change in
23 the authority's service area. After each federal decennial
24 census, the board shall determine if the districts' populations
25 remain the same or if redistricting is necessary to ensure as

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1 close as practicable equal representation of the authority's
2 service area on the board.

3 E. After an authority has been incorporated for at
4 least eight years, the board may amend the authority's bylaws
5 to allow board member candidates to run at-large rather than by
6 district.

7 F. Elections shall be conducted in accordance with
8 the election procedures of the Local Election Act. An
9 authority shall provide the clerks of the counties within the
10 authority's service area with the voting list for the
11 authority. Only eligible electors shall vote in an election.

12 SECTION 8. [NEW MATERIAL] BOARD--POWERS--DUTIES--
13 DELEGATION.--

14 A. The board may delegate its powers by resolution
15 to an officer, employee or agent of the authority, with the
16 exception of the following:

- 17 (1) adoption of board policies and procedures;
18 (2) ratification of acquisition of property;
19 (3) initiation or continuation of legal
20 action; and
21 (4) establishment of policies regarding fees,
22 tolls, rates or charges.

23 B. In addition to all other powers conferred by the
24 Regional Water Utility Authority Act, the board may:

- 25 (1) adopt, amend or repeal bylaws and file the

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1 bylaws and amendments with the secretary of state;

2 (2) adopt and use a seal;

3 (3) fix the time and place of meetings and the
4 method of providing notice of the meetings in accordance with
5 the Open Meetings Act;

6 (4) make and pass orders or resolutions
7 necessary for the government and management of the affairs of
8 the authority and the execution of the powers vested in the
9 authority;

10 (5) maintain offices at a place as the board
11 may designate;

12 (6) appoint, hire and retain employees,
13 agents, engineers, attorneys, accountants, financial advisers,
14 investment bankers or other consultants;

15 (7) enter into contracts for goods or services
16 to further its public purposes and other contracts and
17 agreements to implement the provisions of the Regional Water
18 Utility Authority Act;

19 (8) enter into legal agreements with other
20 governmental entities; and

21 (9) regulate, supervise and operate the
22 authority's facilities in accordance with applicable state and
23 federal regulations.

24 C. The board shall promulgate and adhere to
25 policies and procedures that govern its conduct in accordance

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1 with state law and that provide meaningful opportunities for
2 public input. The policies shall include standards and
3 procedures for calling emergency meetings.

4 SECTION 9. [NEW MATERIAL] CONFLICTS OF INTEREST.--A
5 director, officer, employee or agent of the authority shall not
6 be interested in any contract or transaction with the authority
7 except as in an official representative capacity of the
8 authority.

9 SECTION 10. [NEW MATERIAL] OVERSIGHT BY STATE AGENCIES.--

10 A. In addition to all statutory requirements of the
11 state, an authority shall be specifically subject to the
12 applicable rules of the state engineer; the department of
13 finance and administration; and the department of environment,
14 including rules implementing the federal Safe Drinking Water
15 Act, the federal Clean Water Act and the Utility Operator
16 Certification Act.

- 17 B. An authority is subject to the provisions of:
- 18 (1) the Open Meetings Act;
 - 19 (2) the Inspection of Public Records Act;
 - 20 (3) the Audit Act;
 - 21 (4) the Procurement Code;
 - 22 (5) the Governmental Conduct Act; and
 - 23 (6) other applicable state laws.

24 SECTION 11. [NEW MATERIAL] SERVICE AREA--EXCLUSIVE RIGHT
25 TO PROVIDE SERVICE--EXCEPTIONS.--

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1 A. An authority has the exclusive right to provide
2 water and wastewater services within its service area and may
3 extend services to entities outside of its service area by
4 contract; provided that:

5 (1) a public or non-public entity providing
6 services to customers within an authority's service area as of
7 the date the authority is incorporated may continue to serve
8 those customers who were served as of that date; and

9 (2) an extension of water or wastewater
10 services by a public or non-public entity described in
11 Paragraph (1) of this subsection that is planned and fully
12 funded as of the date an authority is incorporated and is
13 completed within eighteen months of that date shall be excluded
14 from the authority's service area.

15 B. Upon the incorporation of an authority, the
16 authority shall:

17 (1) file a plat designating the authority's
18 initial service area with the county clerk of each of the
19 counties in which the service area is located; and

20 (2) file a change of ownership form with the
21 state engineer pursuant to Section 72-1-2.1 NMSA 1978
22 reflecting the change in ownership of the water rights of the
23 incorporating entities. Upon the recording of the change of
24 ownership form with the clerk of the county in which the water
25 rights are located, the place of use of the incorporating

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1 entities' water rights shall be deemed to be the authority's
2 water rights place of use. If the service areas of the
3 incorporating entities will be combined, the authority and the
4 incorporating entities shall file an application with the state
5 engineer to combine and commingle the water rights of the
6 incorporating entities.

7 C. Additions or subtractions to the authority's
8 initial service area shall be designated in an amended plat
9 filed with the county clerk of each of the counties in which
10 the authority's service area is located.

11 SECTION 12. [NEW MATERIAL] ACCEPTANCE OF ASSETS AND
12 LIABILITIES.--An authority shall accept a transfer of services,
13 assets and liabilities of a joining entity following the legal
14 dissolution of that entity and subject to any and all statutory
15 requirements for dissolution, transfer and assumption of all
16 assets and liabilities in accordance with an approved merger
17 plan.

18 SECTION 13. [NEW MATERIAL] WATER CONSERVATION PLAN.--To
19 protect and preserve its water resources, prevent waste and
20 guarantee the supply to its customers, an authority may by
21 resolution adopt a water conservation plan.

22 SECTION 14. [NEW MATERIAL] HEALTH AND SAFETY--ON-SITE
23 WASTEWATER TREATMENT SYSTEMS.--For health and sanitary
24 purposes, the board may, by resolution, exercise the power to
25 compel owners of inhabited property within four hundred feet of

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1 the authority's service area to connect to the services of the
2 authority.

3 SECTION 15. [NEW MATERIAL] FILING OF ANNUAL REPORT--
4 INITIAL REPORT--SUPPLEMENTAL REPORT.--

5 A. An authority shall file with the secretary of
6 state an annual report setting forth:

7 (1) the name of the authority and the laws
8 under which it is incorporated;

9 (2) the address of the authority's registered
10 office and the name and address of its registered agent;

11 (3) a brief statement of the character of the
12 affairs that the authority is actually conducting; and

13 (4) the names and addresses of the directors
14 and officers of the authority.

15 B. The annual report shall be signed and sworn to
16 by any two of an authority's directors or officers. If an
17 authority is in the hands of a receiver or trustee, the report
18 shall be executed on behalf of the authority by the receiver or
19 trustee. A copy of the report shall be maintained at an
20 authority's principal place of business as contained in the
21 report and shall be made available to the general public for
22 inspection during regular business hours.

23 C. The annual report shall be delivered to the
24 secretary of state on or before the fifteenth day of the fifth
25 month following the end of an authority's taxable year, except

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1 that an authority's first annual report shall be filed within
2 thirty days of the date on which its certificate of
3 incorporation or its certificate of authority was issued by the
4 secretary of state.

5 D. If the information required to be reported
6 pursuant to Subsection A of this section materially changes
7 after the filing of an annual report, an authority shall file a
8 supplemental report with the secretary of state.

9 SECTION 16. [NEW MATERIAL] LIENS AND FORECLOSURE.--

10 A. If an authority places a lien on property for
11 nonpayment of money owed, the authority shall file in the
12 office of the county clerk of the county or counties in which
13 the property is located a notice of lien, which shall include:

14 (1) identification of the outstanding debt to
15 the authority;

16 (2) the fact that a lien is established;

17 (3) the general purpose of the lien;

18 (4) the name of the owner of the property
19 against which the lien is established as determined from the
20 records of the county assessor;

21 (5) a description of the property against
22 which the lien is established;

23 (6) the amount of the lien; and

24 (7) if the lien is for more than one period of
25 time, the date for which the lien is established.

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1 B. A lien for multiple charges or assessments on a
2 property owner may be included in the same notice of lien, and
3 it shall not be necessary to file separate liens against the
4 separate properties owned by the same property owner. The lien
5 shall be attested in the name of the authority. The principal
6 amount of any lien imposed for a charge or assessment shall
7 bear interest at the rate of twelve percent per year from the
8 date of filing the notice of lien, unless otherwise provided by
9 law.

10 C. After the filing of the notice of lien in the
11 office of the county clerk, an authority shall have a lien upon
12 the property described in the notice of lien. The filing of
13 the notice of lien shall be notice to all the world of the
14 existence of the lien and of the contents of the notice of
15 lien. A lien shall not affect the title or rights to or in any
16 real estate, of any purchaser, mortgagee in good faith or
17 judgment lien creditor, without knowledge of the existence of
18 the lien, unless the notice of lien is filed in accordance with
19 this section in the office of the county clerk of the county in
20 which the property is situated. All authority liens shall be
21 first and prior liens on the property subject only to a lien of
22 federal, state or county taxes. An authority may release a
23 lien against any specific property by:

24 (1) entering and signing a receipt of payment
25 upon the notice of lien filed in the office of the county

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1 clerk; or

2 (2) issuing a separate receipt that recites
3 that payment of the lien with any accrued interest and penalty
4 has been made.

5 D. An authority may, in a single suit, foreclose
6 the liens against all persons named in a notice of liens or
7 against the property if the owners are unknown. The complaint
8 filed shall:

9 (1) expressly name each defendant, if known;

10 (2) describe the property against which the
11 lien is established; and

12 (3) set forth the amount of the lien.

13 E. A judgment or decree rendered in a suit to
14 foreclose liens shall be several against the named defendants
15 and against the several properties for the amounts decreed to
16 be due by each. A lien against real estate may be foreclosed
17 in the same manner that mortgages or other liens against real
18 estate are foreclosed with like rights of redemption. In the
19 foreclosure of any lien created by an authority, reasonable
20 attorney fees may be ordered by the court as part of the costs
21 in favor of the prevailing party.

22 F. An authority shall prepare and sign a notice of
23 foreclosure, which shall also bear the signature and mailing
24 address of an attorney representing the authority. The
25 proceeds of the sale of the property by an authority pursuant

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1 to a foreclosure sale on a lien shall be applied as follows:

2 (1) first, to the payment of costs in giving
3 notice of the sale and of conducting the sale;

4 (2) second, to the indebtedness claimed under
5 a lien on the property for federal, state, county, municipal or
6 ad valorem taxes;

7 (3) third, to the indebtedness claimed under
8 the lien of the authority;

9 (4) fourth, to all other special assessments
10 having a lien on the property; and

11 (5) fifth, after all costs, liens, assessments
12 and taxes are paid, to the former owner, mortgage holder or
13 parties having an interest in the tract or parcel upon such
14 persons providing satisfactory proof to the court of such
15 interest and upon approval of the court.

16 SECTION 17. [NEW MATERIAL] PUBLIC REGULATION COMMISSION
17 JURISDICTION.--

18 A. An authority organized under the provisions of
19 the Regional Water Utility Authority Act is not subject to the
20 jurisdiction of the public regulation commission or the terms
21 and provisions of the Public Utility Act except as provided in
22 this section.

23 B. An authority may elect by resolution adopted by
24 the board to become subject to the jurisdiction of the public
25 regulation commission and to the terms and provisions of the

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1 Public Utility Act; provided, however, that in no event shall
2 Sections 62-9-1 through 62-9-7 NMSA 1978 apply to an authority
3 making such an election.

4 SECTION 18. Section 72-1-9 NMSA 1978 (being Laws 1985,
5 Chapter 198, Section 1, as amended) is amended to read:

6 "72-1-9. MUNICIPAL, COUNTY, MEMBER-OWNED COMMUNITY WATER
7 SYSTEMS, REGIONAL WATER UTILITY AUTHORITY, SCHOOL DISTRICT AND
8 STATE UNIVERSITY WATER DEVELOPMENT PLANS--PRESERVATION OF
9 MUNICIPAL, COUNTY AND STATE UNIVERSITY WATER SUPPLIES.--

10 A. It is recognized by the state that it promotes
11 the public welfare and the conservation of water within the
12 state for municipalities, counties, school districts, state
13 universities, member-owned community water systems, special
14 water users' associations, regional water utility authorities
15 and public utilities supplying water to municipalities or
16 counties to plan for the reasonable development and use of
17 water resources. The state further recognizes the state
18 engineer's administrative policy of not allowing
19 municipalities, member-owned community water systems, counties
20 and state universities to acquire and hold unused water rights
21 in an amount greater than their reasonable needs within forty
22 years.

23 B. Municipalities, counties, school districts,
24 state universities, member-owned community water systems,
25 special water users' associations, regional water utility

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1 authorities and public utilities supplying water to
2 municipalities or counties shall be allowed a water use
3 planning period not to exceed forty years, and water rights
4 for municipalities, counties, school districts, state
5 universities, member-owned community water systems, special
6 water users' associations, regional water utility authorities
7 and public utilities supplying water to such municipalities
8 or counties shall be based upon a water development plan the
9 implementation of which shall not exceed a forty-year period
10 from the date of the application for an appropriation or a
11 change of place or purpose of use pursuant to a water
12 development plan or for preservation of a municipal, county,
13 school district, member-owned community water system,
14 regional water utility authority or state university water
15 supply for reasonably projected additional needs within forty
16 years."

17 **SECTION 19. EFFECTIVE DATE.**--The effective date of the
18 provisions of this act is July 1, 2019.

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