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SENATE BILL

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO WATER; ENACTING THE REGIONAL WATER SYSTEM
RESILIENCY ACT; AUTHORIZING THE CREATION OF REGIONAL UTILITY
AUTHORITIES; PROVIDING THE POWERS AND DUTIES OF AUTHORITIES;
PROVIDING THE POWERS AND DUTIES OF BOARDS OF DIRECTORS;
AUTHORIZING THE ISSUANCE OF BONDS; PROVIDING FOR THE TRANSFER
OF ASSETS, LIABILITIES AND WATER RIGHTS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Regional Water System Resiliency Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Regional Water System Resiliency Act:

A. "authority" means a regional utility authority
established pursuant to the Regional Water System Resiliency
Act;

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- 1 B. "board" means the board of directors of an
2 authority;
- 3 C. "director" means a director of a board;
- 4 D. "dissolved entity" means an entity that
5 transfers its assets and liabilities to an authority and
6 subsequently goes through a legal dissolution;
- 7 E. "entity" means a public utility providing water
8 or wastewater services;
- 9 F. "founding entity" means one of the original
10 entities that established the authority;
- 11 G. "joining entity" means an entity that joins an
12 authority after the authority is established;
- 13 H. "member" means a property owner receiving
14 services from an authority; and
- 15 I. "service area" means the area to be served
16 within the legal boundaries of an authority.

17 SECTION 3. [NEW MATERIAL] CREATION OF AUTHORITY--MERGER
18 WITH AUTHORITY--SERVICE AREA.--

- 19 A. An authority is a political subdivision of the
20 state.
- 21 B. Two or more entities may create an authority.
- 22 C. Each founding or joining entity shall adopt a
23 resolution signifying its intention to establish or join an
24 authority. A founding or joining entity shall not adopt a
25 resolution until notice of a public hearing has been given and

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1 a minimum of two public hearings have been held, in which
2 proposed articles of incorporation and bylaws were available
3 for public viewing and comment. Public notice shall adhere to
4 the requirements of the Open Meetings Act.

5 D. The resolution shall state:

6 (1) the proposed name and purpose of the
7 authority;

8 (2) the proposed service area of the
9 authority; and

10 (3) the lead founding entity of the authority
11 that shall act as the interim registered agent until the
12 authority is established.

13 E. Upon adoption of the resolutions in accordance
14 with Subsection C of this section, the founding entities shall
15 draw up the articles of incorporation and bylaws. The founding
16 entities shall file the articles of incorporation and bylaws
17 with the secretary of state, who shall certify the articles of
18 incorporation and record the articles of incorporation and
19 bylaws. The articles of incorporation and bylaws are effective
20 upon filing.

21 F. The issuance of a certificate of incorporation
22 by the secretary of state shall establish the authority.

23 G. A founding, joining or dissolved entity shall
24 transfer to the authority all assets and liabilities pertaining
25 to or owned by the entity, except that an authority shall not

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1 assume an entity's liabilities, fines or penalties incurred
2 from a violation of applicable federal or state laws or any
3 rules or regulations issued thereunder.

4 H. An authority's initial service area shall
5 consist of the founding entities' existing place of use on file
6 with and approved by the state engineer.

7 I. When an entity joins an authority, the joining
8 entity's place of use on file with and approved by the state
9 engineer shall become part of the authority's service area.

10 J. An authority shall file a plat with the state
11 engineer and in the property records of the county or counties
12 where the service area is located that designates the
13 authority's initial service area and any subsequent amendments.

14 K. When a founding or joining entity transfers a
15 water right to an authority, the authority shall file a change
16 of ownership form with the state engineer and shall apply to
17 the state engineer to combine and commingle the transferred
18 right with the authority's existing water rights.

19 SECTION 4. [NEW MATERIAL] ARTICLES OF INCORPORATION.--

20 A. The articles of incorporation of an authority
21 shall recite in the caption that they are executed pursuant to
22 the Regional Water System Resiliency Act, shall be signed and
23 acknowledged by each of the founding entities and shall state:

- 24 (1) the name of the authority;
25 (2) the address of the authority's principal

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1 office;

2 (3) the names and addresses of the founding
3 entities;

4 (4) the names and addresses of the persons who
5 constitute the first board;

6 (5) a plat or legal description of the
7 boundaries of the authority's service area with such certainty
8 as to enable a property owner to determine whether the owner's
9 property is within the authority's service area; and

10 (6) any provisions not inconsistent with the
11 Regional Water System Resiliency Act deemed necessary or
12 advisable for the conduct of the authority's business and
13 affairs.

14 B. The articles of incorporation shall be submitted
15 to the secretary of state for filing within thirty days of
16 signing the articles of incorporation.

17 SECTION 5. [NEW MATERIAL] AUTHORITY POWERS AND DUTIES.--

18 A. An authority may provide for water and
19 wastewater services, road improvements for the protection of
20 the authority's infrastructure, renewable energy projects or
21 other projects that are integral to the operation and
22 maintenance of the authority's facilities.

23 B. An authority may:

24 (1) own, regulate, supervise and operate the
25 authority's facilities; and

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1 (2) assess a standby charge for the privilege
2 of connecting a property to the authority's service at a future
3 date if the property line is within three hundred feet of the
4 authority's service lines and that property line is located
5 within the boundaries of the authority.

6 C. An authority shall:

7 (1) establish rates and impose assessments,
8 fees and charges and take action necessary for the enforcement
9 thereof;

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

14 (3) shut off, after notice, unauthorized
15 connections, illegal connections or a connection for which
16 charges are delinquent in payment;

17 (4) enter into contracts for services with
18 private entities, the state, municipalities, counties, the
19 federal government or other public bodies to carry out the
20 purposes of the Regional Water System Resiliency Act;

21 (5) enter into joint powers agreements with
22 other governmental entities;

23 (6) acquire and dispose of real property,
24 personal property or rights or way;

25 (7) hire and retain agents, employees and

1 consultants;

2 (8) adopt and use a governmental seal;

3 (9) sue, be sued and be a party to suits,
4 actions and proceedings;

5 (10) receive grants, secure debt and issue
6 revenue bonds for the development and improvement of
7 infrastructure projects;

8 (11) subsume powers held by an entity forming
9 or joining the authority; and

10 (12) have and exercise all rights and powers
11 necessary, incidental to or implied from the specific powers
12 granted in this section.

13 D. Land grants and Indian nations, tribes and
14 pueblos may connect to the infrastructure of an authority for
15 wastewater services or for delivery of water owned or leased by
16 the land grant or the Indian nation, tribe or pueblo in
17 exchange for a right-of-way agreement with the authority.

18 E. An agency or department that has promulgated
19 rules that are applicable to an authority may, in its
20 discretion or upon a petition of twenty-five percent of the
21 members of the authority, investigate as the agency or
22 department deems necessary to ensure the authority's compliance
23 with all applicable statutes, rules, regulations and reporting
24 requirements.

25 F. An authority is not subject to the jurisdiction

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1 of the public regulation commission or the provisions of the
2 Public Utility Act.

3 SECTION 6. [NEW MATERIAL] BOARD--CREATION--POWERS--
4 DUTIES.--

5 A. An authority shall be governed by a board of
6 directors. The board shall conduct elections pursuant to the
7 Local Election Act and in accordance with the Election Code.
8 The initial board shall establish the boundaries and the number
9 of electoral districts within two years of the creation of the
10 authority. The board may provide for redistricting in its
11 governance document upon any change in the authority's
12 boundary.

13 B. The initial and subsequent boards shall have
14 representation from each of the founding and joining entities.
15 Each director, at the time of election, shall reside within the
16 electoral district of the authority from which that director is
17 elected. The elected board shall serve staggered terms to be
18 established in the governance document developed by the initial
19 board. The directors of the initial board shall serve until
20 their successors are elected and qualified. The board shall
21 choose among its directors a chair, secretary and treasurer.

22 C. All powers, privileges and duties vested in or
23 imposed upon an authority shall be exercised and performed by
24 the board; provided that the board may delegate its powers by
25 resolution to an officer or agent of the board, with the

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1 exception of the following:

2 (1) adoption of board rules, policies and
3 procedures;

4 (2) ratification of acquisition of property;

5 (3) initiation or continuation of legal
6 action, except that initiation and filing of liens for unpaid
7 rates and charges and suits for payment thereof and
8 discontinuance of service for failure to pay such rates and
9 charges may be delegated;

10 (4) establishment of fees, tolls, rates or
11 charges; and

12 (5) issuance of revenue bonds.

13 D. Meetings of the board shall be held at least
14 quarterly or at the call of the chair. A majority of the
15 directors of the board constitutes a quorum for the transaction
16 of any business. Except as provided in Subsection E of this
17 section, the board shall only take action upon the affirmative
18 vote of at least a majority of a quorum present. A vacancy in
19 the membership of the board shall not impair the right of a
20 quorum to exercise all rights and perform all duties of the
21 board.

22 E. The non-delegable powers and duties provided in
23 Subsection C of this section are only effective upon resolution
24 passed by two-thirds of the directors of the board.

25 F. The board shall promulgate and adhere to rules,

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1 policies and procedures for its conduct.

2 G. The board may disqualify a director of the board
3 from voting on an issue when that director of the board has a
4 financial interest or possible interest in the outcome of any
5 policy, decision or determination before the board. A director
6 of the board's status as a member of the authority does not, by
7 itself, constitute a financial interest or possible interest
8 for the purposes of this section.

9 H. The board may:

- 10 (1) adopt, amend and repeal bylaws; and
11 (2) maintain offices at a place designated by
12 the board.

13 I. The board shall:

14 (1) fix the time and place of meetings and the
15 method of providing notice of the meetings in accordance with
16 the Open Meetings Act;

17 (2) promulgate orders, resolutions, policies
18 and rules necessary for the governance and management of the
19 affairs of the authority and the execution of the powers vested
20 in the authority;

21 (3) employ an executive director who may
22 employ and retain necessary staff;

23 (4) establish use classifications;

24 (5) fix and from time to time uniformly
25 increase or decrease utility rates, fees or other charges for

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1 services delivered or facilities operated or made available by
2 the authority, subject to the following conditions:

3 (a) until paid, all rates, fees or
4 charges constitute a perpetual lien subservient to a primary
5 mortgage lien on and against the property served, and the lien
6 may be foreclosed as provided by law;

7 (b) the board shall prescribe and
8 enforce rules by which properties shall be connected with and
9 disconnected from the facilities of the authority, including
10 the amount of notice required before disconnection and payment
11 plans to avoid discontinuing service to delinquent accounts;
12 and

13 (c) after giving notice in accordance
14 with an authority's rules, the board shall shut off or
15 discontinue service for unauthorized connections, illegal
16 connections or connections for which rates, tolls or other
17 charges are delinquent in payment. The board may file suit in
18 a court of competent jurisdiction to recover costs associated
19 with an unauthorized, illegal or delinquent connection,
20 including the cost of water delivered, charges for connection
21 and disconnection and damages. Attorney fees shall be awarded
22 to the prevailing party; and

23 (6) adopt an operating budget that supports
24 the full cost of operation, maintenance and replacement as
25 established by an asset management plan and a rate-setting

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1 analysis. The operating budget shall be subject to the
2 approval of the department of finance and administration.

3 SECTION 7. [NEW MATERIAL] ACCEPTANCE OF ASSETS AND
4 LIABILITIES OF DISSOLVED ENTITIES--ACQUISITION OF WATER
5 RIGHTS.--Subject to any other statutory requirements for
6 dissolution and transfer, an authority may accept a transfer of
7 assets and liabilities upon the request, and following the
8 legal dissolution, of an entity that provides water or sewer
9 services and is:

- 10 A. a political subdivision of the state;
- 11 B. a water and sanitation district established
12 pursuant to the Water and Sanitation District Act;
- 13 C. a water and natural gas association established
14 pursuant to Chapter 3, Article 28 NMSA 1978;
- 15 D. a water users' association established pursuant
16 to Chapter 73, Article 5 NMSA 1978;
- 17 E. a corporation organized pursuant to the
18 Nonprofit Corporation Act or Business Corporation Act;
- 19 F. a public improvement district established
20 pursuant to the Public Improvement District Act;
- 21 G. a municipal or county utility;
- 22 H. a company established pursuant to Chapter 62,
23 Article 2 NMSA 1978;
- 24 I. an association established pursuant to the
25 Cooperative Association Act that has reorganized as a public

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entity; or

J. an association or mutual domestic water consumers association organized under Laws 1947, Chapter 206, Laws 1949, Chapter 79 or Laws 1951, Chapter 52 or pursuant to the Sanitary Projects Act.

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.