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SENATE BILL 641

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Leonard Lee Rawson

AN ACT

RELATING TO PUBLIC UTILITIES; REQUIRING APPROVAL OF THE PUBLIC
REGULATION COMMISSION FOR THE CONDEMNATION BY A MUNICIPALITY
OF ELECTRIC FACILITIES LOCATED OUTSIDE THE BOUNDARY OF THE
MUNICIPALITY; AMENDING THE NMSA 1978.

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

Section 1. Section 3-23-3 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-22-3, as amended) is amended to read:

"3-23-3. MUNICIPAL UTILITY--APPROVAL OF [~~NEW MEXICO~~]
PUBLIC [~~UTILITY~~] REGULATION COMMISSION. --

A. If the acquisition of a utility is to be
financed from funds received from the issuance and sale of
revenue bonds, the price of the acquisition of the utility
shall be approved by the [~~New Mexico~~] public [~~utility~~]
regulation commission, and the commission shall require:

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1 (1) a determination by appraisal or otherwise
2 of the true value of the utility to be purchased; or

3 (2) an engineer's estimate of the cost of the
4 utility to be constructed.

5 B. No revenue bonds shall be issued for the
6 acquisition of such a utility until the [~~New Mexico~~] public
7 [~~utility~~] regulation commission has approved the issue and its
8 amount, date of issuance, maturity, rate of interest and
9 general provisions.

10 C. The provisions of Subsections A and B of this
11 section shall not apply to the condemnation by a municipality
12 having a population of twenty-five thousand or more persons
13 according to the 1990 federal decennial census of electricity
14 facilities as authorized by Chapter 3, Article 24 NMSA 1978,
15 unless the facilities are located outside the municipality's
16 boundary, sewer facilities as authorized by Chapter 3, Article
17 26 NMSA 1978 or water facilities as authorized by Chapter 3,
18 Article 27 NMSA 1978. "

19 Section 2. Section 3-24-1 NMSA 1978 (being Laws 1965,
20 Chapter 300, Section 14-23-1, as amended) is amended to read:

21 "3-24-1. ELECTRIC UTILITY--MUNICIPALITY MAY ACQUIRE AND
22 OPERATE--CERTAIN MUNICIPALITIES MAY ACQUIRE BY CONTRACT OR
23 CONDEMNATION-- APPROVAL REQUIRED FOR CERTAIN CONDEMNATION . --

24 A. [~~Any~~] A municipality may, by ordinance,
25 acquire, operate and maintain an electric utility for the

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1 generation and distribution of electricity to persons residing
2 within its service area. The service area of a municipality
3 includes:

- 4 (1) territory within the municipality;
- 5 (2) territory within five miles of the
6 boundary of the municipality in the case of [any] a
7 municipality heretofore acquiring or operating [any] a
8 municipal electric utility or part thereof in the territory
9 within five miles of the boundary of the municipality;

10 (3) the sale of electricity to the United
11 States government, the state of New Mexico or any department
12 or agency of these governments; and

13 (4) as further provided in Section 3-24-8
14 NMSA 1978.

15 B. No municipality may sell electric power and
16 energy on a retail basis except as provided in Subsection A of
17 this section.

18 C. The acquisition of [any] an electric utility
19 facility beyond the municipal boundary shall be financed only
20 by the sale of revenue bonds.

21 D. [Any] A municipality that owns a generating
22 facility or an interest in a jointly owned generating facility
23 may sell surplus electric power and energy on a wholesale
24 basis either within or outside its service area. [Any] A
25 contract or agreement to sell surplus electric power and

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1 energy may be entered into on a public bid basis, a
2 competitive basis or a negotiated basis, as the municipality
3 may determine; provided, however, that subject to the sale or
4 other interchange of power and energy with a joint participant
5 or a co-member of a power pool necessary or convenient to the
6 economical operation of a generating facility or a jointly
7 owned generating facility or contractual requirements of a
8 power pool in which the municipality is a member, such surplus
9 electric power and energy shall be subject to a preference
10 right to purchase by:

11 (1) first, municipalities that own electric
12 facilities on July 1, 1979;

13 (2) second, public electric utilities,
14 investor-owned utilities and electric cooperatives subject to
15 general or limited regulation by the [~~New Mexico~~] public
16 [~~utility~~] regulation commission and the United States of
17 America or any of its departments or agencies; and

18 (3) any other person or entity.

19 E. Municipalities located within a class A county
20 and having a population of more than sixty thousand, but less
21 than one hundred thousand according to the 1990 federal
22 decennial census, may acquire, maintain, contract for and
23 condemn for use as a municipal utility privately owned
24 electric facilities used or to be used for the furnishing and
25 supply of electricity to the municipality or inhabitants

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[bracketed material] = delete

1 within its service area. The service area of a municipality
2 authorized to acquire, maintain, contract for or condemn
3 private facilities pursuant to this subsection includes
4 customers located in:

- 5 (1) territory within the municipality;
- 6 (2) territory within five miles of the
7 boundary of the municipality in the case of [any] a
8 municipality heretofore acquiring or operating [any] a
9 municipal electric utility or part thereof in the territory
10 within five miles of the boundary of the municipality;
- 11 (3) United States government-owned
12 installations, the state or any department or agency of these
13 governments; and
- 14 (4) as further provided in Section 3-24-8
15 NMSA 1978.

16 Condemnation of existing electric facilities located
17 outside of the municipality's boundary and used or to be used
18 for the furnishing and supply of electricity to the
19 municipality or inhabitants within its service area is subject
20 to the prior approval of the public regulation commission
21 based upon a finding that the intended condemnation is in the
22 public interest.

23 F. A municipality that acquires, maintains,
24 contracts for or condemns privately owned electric facilities
25 for use as a municipal utility pursuant to the provisions of

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1 Subsection E of this section shall:

2 (1) not use revenues earned from the electric
3 facilities for any purposes other than those directly related
4 to the furnishing and supply of electricity to the
5 municipality or inhabitants within the service area;

6 (2) not restrict use of the electric
7 facilities or distribution system to any person authorized to
8 use the facilities or distribution system pursuant to state
9 law; and

10 (3) adopt a shared payment policy for line
11 extensions, with public input, that is fair and equitable,
12 requiring reasonable contributions from the persons who will
13 directly benefit from the line extension and not imposing an
14 unreasonable burden on the municipality or inhabitants within
15 the service area that do not directly benefit from the line
16 extension.

17 G. Condemnation authorized in this section shall
18 be conducted in the manner of proceedings provided by the
19 Eminent Domain Code. "

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3 SB 641/a

4
5
6 March 11, 1999

7
8 Mr. President:

9
10 Your CONSERVATION COMMITTEE, to whom has been referred

11
12 SENATE BILL 641

13
14 has had it under consideration and reports same with
15 recommendation that it DO PASS, amended as follows:

16
17
18 1. On page 1, line 11, strike "PUBLIC" and insert in lieu
19 thereof "COUNTY".

20
21 2. On page 1, line 12, strike "REGULATION COMMISSION".

22
23 3. On page 5, line 20, strike "public regulation
24 commission" and all of lines 21 and 22 and insert in lieu
25 thereof "board of county commissioners of the county in which

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FIRST SESSI ON, 1999

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the facilities to be condemned are located.".,

and thence referred to the JUDI CIARY COMMI TTEE.

Respectfully submit ted,

Fernando R. Maci as, Chai rman

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FIRST SESSION, 1999

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SCONC/SB 641

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Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

No: None

Excused: Eisenstadt, Sanchez

Absent: None

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FIRST SESSION, 1999

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FIRST SESSI ON, 1999

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FORTY- FOURTH LEGI SLATURE
FIRST SESSI ON, 1999

March 17, 1999

Mr. Presi dent:

Your JUDI CIARY COMMI TTEE, to whom has been referred

SENATE BILL 641, as amended

has had it under consideration and reports same with
recomm~~endation~~ that it DO PASS.

Respectfully submi tted,

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FIRST SESSION, 1999

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Michael S. Sanchez, Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 3 For 2 Against

Yes: 3

No: McSorley, Sanchez

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Excused: Aragon, Davis, Tsosie

Absent: None

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FORTY- FOURTH LEGI SLATURE
FIRST SESSI ON, 1999

March 17, 1999

Mr. Presi dent:

Your JUDI CIARY COMMI TTEE, to whom has been referred

SENATE BILL 641, as amended

has had it under consideration and reports same with
recomm~~endation~~ that it DO PASS.

Respectfully submi tted,

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Michael S. Sanchez, Chai rman

Adopted _____ Not

Adopted _____

(Chi ef Clerk)

(Chi ef Clerk)

Date _____

The roll call vote was 3 For 2 Against

Yes: 3

No: McSorley, Sanchez

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FORTY-FOURTH LEGISLATURE
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Excused: Aragon, Davis, Tsosie

Absent: None

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underscored material = new
~~[bracketed material]~~ = delete