

HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 175

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

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 SPECIAL DISTRICTS; ENACTING THE REGIONAL WATER UTILITY AUTHORITY ACT; PROVIDING FOR THE CREATION OF REGIONAL WATER UTILITY AUTHORITIES; PROVIDING POWERS AND DUTIES; PROVIDING REGIONAL WATER UTILITY AUTHORITIES WITH A FORTY-YEAR WATER PLANNING PERIOD.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through HJC→17 16←HJC of this act may be cited as the "Regional Water Utility Authority Act".

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

A. "address" means a mailing address:

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

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

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

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

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

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

F. "entity" means a municipality, inter-municipal agency, county, incorporated county, mutual domestic water consumers association as defined by the Sanitary Projects Act, sanitation district, water and sanitation district or any similar district, recognized Indian nation, tribe or pueblo or other agency created pursuant to a joint powers agreement acting on behalf of one of the foregoing or an existing utility

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authority, including a cooperative, investor-owned utility or other form of a public utility;

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

H. "joining entity" means an entity that is part of an authority, whether an incorporating entity or an entity that joins the authority after incorporation; HJC→and←HJC

HJC→I. "non-joining provider" means a public water or wastewater utility that is not a joining entity; and←HJC

HJC→I. J.←HJC "service area" means the area in which an authority HJC→provides is authorized to provide←HJC water or wastewater services HJC→in accordance with the Regional Water Utility Authority Act←HJC.

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

A. HJC→owning,←HJC planning, developing, managing, maintaining or coordinating regional water and wastewater facilities;

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

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

D. developing infrastructure for renewable energy

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projects that are integral to the operation and maintenance of an authority's facilities.

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

A. One or more entities HJC→with proven managerial, financial and technical capacity to own and operate the facilities of an authority←HJC may create an authority as provided in the Regional Water Utility Authority Act.

B. Each incorporating entity shall individually adopt a resolution signifying its intention to create an authority. The resolution shall not be adopted by an incorporating entity until the incorporating entity has:

- (1) completed the dissolution and merger process as established in its incorporation documents; and
- (2) given reasonable notice of a public hearing and the public hearing has been held.

C. The resolution shall state the:

- (1) proposed name and purpose of the authority;
- (2) perpetual existence of the authority;
- (3) proposed service area, described with such specificity as to enable a property owner to determine whether the owner's property is within the service area;
- (4) composition of the authority; and
- (5) lead joining entity to act as registered

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agent.

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

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

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

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

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

A. An authority is a body politic and corporate and

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a political subdivision of the state, subject to all statutory requirements of the state. In addition to other powers granted to an authority pursuant to the Regional Water Utility Authority Act, an authority may:

- (1) have perpetual existence;
- (2) sue and be sued and be a party to suits, actions or proceedings;
- (3) borrow money, receive grants or pledge or otherwise encumber the revenues or receipts of the authority or mortgage the property of the authority as security for any of the obligations of the authority;
- (4) establish rates and impose assessments, fees or charges for the delivery and collection of services rendered and take action necessary for the enforcement of those rates, assessments, fees or charges;
- (5) acquire from a willing seller and hold water rights in an amount necessary to meet its reasonable needs not to exceed forty years pursuant to Section 72-1-9 NMSA 1978;
- (6) shut off, after notice, unauthorized and illegal connections or delinquent connections;
- (7) acquire and dispose of real property, personal property or rights of way;
- (8) condemn property pursuant to the Eminent Domain Code as a last resort and only as necessary to acquire

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property or rights of way for the construction, maintenance or operation of water or sewer lines or related facilities;

HJC→provided that an authority shall not condemn property owned by a non-joining provider;←HJC

(9) place a lien on property for unpaid assessments, charges or fees and enforce the lien in the manner provided in Section HJC→16 15←HJC of the Regional Water Utility Authority Act;

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

(11) construct, establish and maintain facilities;

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

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

HJC→(12) for health and sanitary purposes, compel the connection of inhabited property within the service area if the authority's services are available within four hundred feet of the property line; provided that an authority is responsible for assuming the cost of making the services available up to the property line; and←HJC

HJC→(14) (13)←HJC have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this section; provided that the

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specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of the Regional Water Utility Authority Act.

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

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

A. An authority shall be governed by a board. The directors of the initial board shall consist of at least three directors appointed by the incorporating entities and shall be composed of, at a minimum, a president, secretary and treasurer. If an authority is incorporated in an even-numbered year, the initial directors shall serve a term of three years; and, if an authority is incorporated in an odd-numbered year, the initial directors shall serve a term of four years. The terms of the initial directors shall end on December 31 of the odd-numbered year in which their successors are elected.

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

C. Terms of elected directors shall be staggered four-year terms beginning on January 1 of the year following their election; provided that those chosen at the first

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election shall immediately classify themselves by lot, so that at least one director serves a two-year term and at least two directors serve a four-year term; thereafter the terms shall be four years.

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

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

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

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

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

- (1) adoption of board policies and procedures;

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- (2) ratification of acquisition of property;
- (3) initiation or continuation of legal action; and
- (4) establishment of policies regarding fees, tolls, rates or charges.

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

- (1) adopt, amend or repeal bylaws and file the bylaws and amendments with the secretary of state;
- (2) adopt and use a seal;
- (3) fix the time and place of meetings and the method of providing notice of the meetings in accordance with the Open Meetings Act;
- (4) make and pass orders or resolutions necessary for the government and management of the affairs of the authority and the execution of the powers vested in the authority;
- (5) maintain offices at a place as the board may designate;
- (6) appoint, hire and retain employees, agents, engineers, attorneys, accountants, financial advisers, investment bankers or other consultants;
- (7) enter into contracts for goods or services to further its public purposes and other contracts and agreements to implement the provisions of the Regional Water

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Utility Authority Act;

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

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

C. The board shall promulgate and adhere to policies and procedures that govern its conduct in accordance with state law and that provide meaningful opportunities for public input. The policies shall include standards and procedures for calling emergency meetings.

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

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

A. In addition to all statutory requirements of the state, an authority shall be specifically subject to the applicable rules of the state engineer; the department of finance and administration; and the department of environment HJC→, ~~including rules implementing the federal Safe Drinking Water Act, the federal Clean Water Act and the Utility Operator Certification Act~~←HJC.

B. An authority is subject to the provisions of:

- (1) the Open Meetings Act;
- (2) the Inspection of Public Records Act;
- (3) the Audit Act;

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- (4) the Procurement Code;
- (5) the Governmental Conduct Act; and
- (6) other applicable state laws.

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

A. An authority has the exclusive right to provide water and wastewater services within its service area and may HJC→~~extend~~ provide←HJC services HJC→, by contract←HJC to entities outside of its service area HJC→~~by contract~~←HJC; provided that:

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

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

HJC→(2) the service area of an authority shall not extend more than five miles beyond the authority's water service distribution or wastewater facilities, excluding extensions from time to time into areas contiguous to the service area or encroachments into areas within five miles of

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the water service distribution or wastewater facilities operated by a non-joining provider; and

(3) an authority's exclusive right to provide water or wastewater services within the service area shall not prevent an entity entitled to a forty-year planning protection under Section 72-1-9 NMSA 1978 from providing water and wastewater services within the entity's place of use that is on file with the state engineer. ←HJC

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

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

(2) file a change of ownership form with the state engineer pursuant to Section 72-1-2.1 NMSA 1978 reflecting the change in ownership of the water rights of the incorporating entities. Upon the recording of the change of ownership form with the clerk of the county in which the water rights are located, the place of use of the incorporating entities' water rights shall be deemed to be the authority's water rights place of use. If the HJC →~~service areas~~ places of use ←HJC of the incorporating entities will be combined, the authority and the incorporating entities shall file an application with the state engineer to combine and commingle the water rights of the incorporating entities.

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

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the authority's service area is located.

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

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

HJC→~~SECTION 14. [NEW MATERIAL] HEALTH AND SAFETY--ON-SITE WASTEWATER TREATMENT SYSTEMS.--For health and sanitary purposes, the board may, by resolution, exercise the power to compel owners of inhabited property within four hundred feet of the authority's service area to connect to the services of the authority.~~←HJC

SECTION HJC→~~15.~~ 14.←HJC [NEW MATERIAL] FILING OF ANNUAL REPORT-- INITIAL REPORT--SUPPLEMENTAL REPORT.--

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

- (1) the name of the authority and the laws under which it is incorporated;
- (2) the address of the authority's registered

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office and the name and address of its registered agent;

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

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

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

C. The annual report shall be delivered to the secretary of state on or before the fifteenth day of the fifth month following the end of an authority's taxable year, except that an authority's first annual report shall be filed within thirty days of the date on which its certificate of incorporation or its certificate of authority was issued by the secretary of state.

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

SECTION HJC → 16. 15. ← HJC [NEW MATERIAL] LIENS AND FORECLOSURE.--

A. If an authority places a lien on property for nonpayment of money owed, the authority shall file in the

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office of the county clerk of the county or counties in which the property is located a notice of lien, which shall include:

- (1) identification of the outstanding debt to the authority;
- (2) the fact that a lien is established;
- (3) the general purpose of the lien;
- (4) the name of the owner of the property against which the lien is established as determined from the records of the county assessor;
- (5) a description of the property against which the lien is established;
- (6) the amount of the lien; and
- (7) if the lien is for more than one period of time, the date for which the lien is established.

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

C. After the filing of the notice of lien in the office of the county clerk, an authority shall have a lien upon

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the property described in the notice of lien. The filing of the notice of lien shall be notice to all the world of the existence of the lien and of the contents of the notice of lien. A lien shall not affect the title or rights to or in any real estate, of any purchaser, mortgagee in good faith or judgment lien creditor, without knowledge of the existence of the lien, unless the notice of lien is filed in accordance with this section in the office of the county clerk of the county in which the property is situated. All authority liens shall be first and prior liens on the property subject only to a lien of federal, state or county taxes. An authority may release a lien against any specific property by:

(1) entering and signing a receipt of payment upon the notice of lien filed in the office of the county clerk; or

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

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

- (1) expressly name each defendant, if known;
- (2) describe the property against which the lien is established; and
- (3) set forth the amount of the lien.

E. A judgment or decree rendered in a suit to foreclose liens shall be several against the named defendants

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and against the several properties for the amounts decreed to be due by each. A lien against real estate may be foreclosed in the same manner that mortgages or other liens against real estate are foreclosed with like rights of redemption. In the foreclosure of any lien created by an authority, reasonable attorney fees may be ordered by the court as part of the costs in favor of the prevailing party.

F. An authority shall prepare and sign a notice of foreclosure, which shall also bear the signature and mailing address of an attorney representing the authority. The proceeds of the sale of the property by an authority pursuant to a foreclosure sale on a lien shall be applied as follows:

- (1) first, to the payment of costs in giving notice of the sale and of conducting the sale;
- (2) second, to the indebtedness claimed under a lien on the property for federal, state, county, municipal or ad valorem taxes;
- (3) third, to the indebtedness claimed under the lien of the authority;
- (4) fourth, to all other special assessments having a lien on the property; and
- (5) fifth, after all costs, liens, assessments and taxes are paid, to the former owner, mortgage holder or parties having an interest in the tract or parcel upon such persons providing satisfactory proof to the court of such

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interest and upon approval of the court.

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

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

B. An authority may elect by resolution adopted by the board to become subject to the jurisdiction of the public regulation commission and to the terms and provisions of the Public Utility Act; provided, however, that in no event shall Sections 62-9-1 through 62-9-7 NMSA 1978 apply to an authority making such an election.

HJC→C. If an authority or a non-joining provider files a complaint with the public regulation commission, the public regulation commission shall have jurisdiction to hear and resolve a dispute concerning the authorized service area of an authority but only to the extent the service area encroaches into an area served by an existing public-regulation-commission-regulated utility.←HJC

SECTION HJC→18. 17.←HJC Section 72-1-9 NMSA 1978 (being Laws 1985, Chapter 198, Section 1, as amended) is amended to read:

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

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

B. Municipalities, counties, school districts, state universities, member-owned community water systems, special water users' associations, regional water utility authorities and public utilities supplying water to municipalities or counties shall be allowed a water use planning period not to exceed forty years, and water rights for municipalities, counties, school districts, state universities, member-owned community water systems, special water users' associations, regional water utility authorities and public utilities supplying water to such municipalities or counties shall be based upon a water development plan the implementation of which shall not exceed a forty-year period

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from the date of the application for an appropriation or a change of place or purpose of use pursuant to a water development plan or for preservation of a municipal, county, school district, member-owned community water system, regional water utility authority or state university water supply for reasonably projected additional needs within forty years."

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

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