

1 SENATE BILL 543

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

3 INTRODUCED BY

4 Linda M. Lopez

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10 AN ACT

11 RELATING TO THE ALBUQUERQUE-BERNALILLO COUNTY WATER UTILITY
12 AUTHORITY; PROVIDING FOR AN ELECTED BOARD OF DIRECTORS;
13 ESTABLISHING PROCEDURES FOR THE ELECTION OF THE BOARD OF
14 DIRECTORS.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 72-1-10 NMSA 1978 (being Laws 2003,
18 Chapter 437, Section 1, as amended) is amended to read:

19 "72-1-10. WATER UTILITY AUTHORITY--CREATED--
20 MEMBERSHIP--ADMINISTRATION OF UTILITY.--

21 A. The "Albuquerque-Bernalillo county water utility
22 authority" is created. Until December 31, 2020, the membership
23 of the board of directors of the authority shall consist of
24 seven members. The municipal members shall be the mayor and
25 three city councilors appointed by the Albuquerque city

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1 council. The county members shall be three county
2 commissioners appointed by the Bernalillo county board of
3 county commissioners. A city councilor member shall designate
4 another city councilor to serve in the member's absence. A
5 county commissioner member shall designate another county
6 commissioner to serve in the member's absence. The mayor shall
7 designate the chief executive officer of the municipality, a
8 city councilor or a county commissioner to serve in the mayor's
9 absence. City councilors shall serve one-year terms at the
10 city council president's discretion. County commissioners
11 shall serve one-year terms at the county commission
12 [~~chairman's~~] chair's discretion.

13 B. Following the general election of 2020, the
14 board of directors shall consist of five directors elected from
15 the same five districts from which the Bernalillo county board
16 of county commissioners are elected. Each director shall
17 reside within the district from which that director is elected.
18 The elected board of directors shall serve staggered four-year
19 terms that begin on January 1 of the year following the
20 directors' election; provided that the members elected in 2020
21 shall, by lot, select three districts from which the directors
22 shall serve for terms of four years and two districts from
23 which the directors shall serve for terms of two years.
24 Thereafter, all directors shall serve four-year terms.
25 Directors are entitled to receive per diem and mileage in

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1 accordance with the provisions of the Per Diem and Mileage Act.

2 C. The authority is subject to the state
3 Procurement Code and other applicable state laws. The
4 authority is a public body politic and corporate, separate and
5 apart from the city of Albuquerque and Bernalillo county. The
6 authority is a political subdivision of the state.

7 ~~[B-]~~ D. The authority:

8 (1) shall set policy and regulate, supervise
9 and administer the water and wastewater utility of Albuquerque
10 and Bernalillo county, including the determination and
11 imposition of rates for services;

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

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

19 ~~[G-]~~ E. The authority may acquire, maintain,
20 contract for, condemn or protect water and wastewater
21 facilities. The city of Albuquerque and Bernalillo county may
22 delegate any additional power or duty conferred by Sections
23 3-27-2 and 3-27-3 NMSA 1978 to the authority to exercise and
24 administer.

25 ~~[D-]~~ F. In exercising its power to acquire,

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1 maintain, contract for or condemn water and wastewater
2 facilities, the authority shall not act so as to physically
3 isolate and make nonviable any portion of the water or
4 wastewater facilities, within or outside of Bernalillo county.

5 ~~[E-]~~ G. The authority may adopt resolutions and
6 rules necessary to exert the power conferred by this section.

7 ~~[F-]~~ H. For the purposes of acquiring, maintaining,
8 contracting for, condemning or protecting water and wastewater
9 facilities, the jurisdiction of the authority extends within
10 and outside of the boundaries of Bernalillo county to the
11 territory physically occupied by the water and wastewater
12 facilities and to privately owned water and wastewater
13 facilities interconnected to the utility system. The authority
14 may:

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

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

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

25 ~~[G-]~~ I. The authority is subject to:

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

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

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

11 [~~H.~~] J. The authority is liable to the condemnee
12 pursuant to the provisions of the Eminent Domain Code for the
13 value of a water right as well as the market value of real
14 property to which the water right is appurtenant if:

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

19 (2) the condemnation of the water right by the
20 authority requires the permanent retirement from agricultural
21 operation of some or all of the real property to which the
22 water rights are appurtenant.

23 [~~F.~~] K. The authority is not subject to the
24 jurisdiction of or approval from the public regulation
25 commission. The authority is not subject to the provisions of

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1 the Public Utility Act. The authority is granted a water use
2 planning period not to exceed forty years as set forth in
3 Section 72-1-9 NMSA 1978.

4 ~~[J-]~~ L. The city of Albuquerque or Bernalillo
5 county may, by ordinance or resolution, grant the authority a
6 franchise for the operation, construction and maintenance of
7 the utility system and for the use and rental of rights of way
8 in exchange for consideration.

9 ~~[K-]~~ M. The authority may issue utility system
10 revenue bonds and obligations pursuant to the Public Securities
11 Short-Term Interest Rate Act for acquiring real and personal
12 property needed for the utility system and for extending,
13 enlarging, renovating, repairing or otherwise improving water
14 facilities and wastewater facilities or for any combination of
15 these purposes. The authority may issue revenue anticipation
16 notes with maturities not exceeding thirteen months upon terms
17 approved by the board of directors. The authority may pledge
18 irrevocably net revenues from the operation of the utility
19 system for payment of the principal, premiums and interest on
20 the revenue bonds or other obligations. It is unlawful to
21 divert, use or expend money received from the issuance of
22 utility system revenue bonds for any purpose other than the
23 purpose for which the utility system revenue bonds were issued.
24 Obligations, including bond anticipation notes, issued pursuant
25 to the Public Securities Short-Term Interest Rate Act shall be

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1 sold pursuant to the terms of that act. Utility system revenue
2 bonds:

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

6 (2) may be subject to prior redemption at the
7 authority's option at such time and upon such terms and
8 conditions with or without the payment of a premium as
9 determined by the authority;

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

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

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

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

21 [~~H.~~] N. The bonds authorized by the authority and
22 their income shall be exempt from all taxation by the state or
23 its political subdivisions.

24 [~~M.~~] O. The members of the board of directors of
25 the authority may adopt a resolution declaring the necessity

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1 for the issuance of utility system revenue bonds or other
2 obligations and may authorize the issuance of utility system
3 revenue bonds or other obligations by an affirmative vote of a
4 majority of all members of the board of directors of the
5 authority. Utility system revenue bonds and the resolution
6 authorizing their issuance shall not be subject to the approval
7 of the public regulation commission pursuant to Section 3-23-3
8 NMSA 1978 or subject to voter approval pursuant to Section
9 3-23-2 NMSA 1978.

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