

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 1

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

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

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:

.224614.3AIC February 21, 2023 (3:51pm)

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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;

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

C. "director" means a director of a board;

D. "dissolved entity" means an entity that transfers its assets and liabilities to an authority and subsequently goes through a legal dissolution;

E. "entity" means a public utility providing water or wastewater services;

F. "founding entity" means one of the original entities that established the authority;

G. "joining entity" means an entity that joins an authority after the authority is established;

H. "member" means a property owner receiving services from an authority; and

I. "service area" means the area to be served within the legal boundaries of an authority.

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

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A. An authority is a political subdivision of the state.

B. Two or more entities may create an authority.

C. Each founding or joining entity shall adopt a resolution signifying its intention to establish or join an authority. A founding or joining entity shall not adopt a resolution until notice of a public hearing has been given and a minimum of two public hearings have been held, in which proposed articles of incorporation and bylaws were available for public viewing and comment. Public notice shall adhere to the requirements of the Open Meetings Act.

D. The resolution shall state:

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

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

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

E. Upon adoption of the resolutions in accordance with Subsection C of this section, the founding entities shall execute the articles of incorporation and bylaws. The founding entities shall file the articles of incorporation and bylaws with the secretary of state. The articles of incorporation and bylaws are effective upon filing unless a different date is

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provided in the articles of incorporation. Amendments to the articles of incorporation or bylaws shall not become effective unless filed with the secretary of state. No corporate report shall be required of an incorporated authority.

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

G. A founding, joining or dissolved entity shall transfer to the authority all assets and liabilities pertaining to or owned by the entity. Prior to transferring any compliance liability, a compliance schedule that addresses the liability shall be developed and approved by the authority and relevant state or federal agencies.

H. An authority's initial service area shall consist of the founding entities' existing place of use on file with and approved by the state engineer, but shall not encroach upon the service area of an existing non-joining entity.

I. When an entity joins an authority, the joining entity's place of use on file with and approved by the state engineer shall become part of the authority's service area, but shall not encroach upon the service area of an existing non-joining entity.

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

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K. When a founding or joining entity transfers a water right to an authority, the authority shall file a change of ownership form with the state engineer and shall ~~HAWC~~ **apply to the state engineer to** ~~HAWC~~ change the place of use or point of diversion of the transferred right.

SECTION 4. [NEW MATERIAL] ARTICLES OF INCORPORATION.--The articles of incorporation of an authority shall recite in the caption that they are executed pursuant to the Regional Water System Resiliency Act, shall be signed and acknowledged by each of the founding entities and shall state:

- A. the name of the authority;
- B. the address of the authority's principal office;
- C. the names and addresses of the founding entities;
- D. the names and addresses of the persons who constitute the first board;
- E. a plat or legal description of the boundaries of the authority's service area with such certainty as to enable a property owner to determine whether the owner's property is within the authority's service area; and
- F. any provisions not inconsistent with the Regional Water System Resiliency Act deemed necessary or advisable for the conduct of the authority's business and affairs.

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

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

B. An authority may:

(1) own, regulate, supervise and operate the authority's facilities; Hf11→and←Hf11

(2) assess a one-time fee for the privilege of connecting a property to the authority's service at a future date if the property line is within three hundred feet of the authority's service lines and that property line is located within the boundaries of the authority Hf11→.←Hf11

Hf11→;←Hf11

Hf11→~~C. An authority shall:~~←Hf11

Hf11→(1)←Hf11 Hf11→(3)←Hf11 establish rates and impose assessments, fees and charges and take action necessary for the enforcement thereof;

Hf11→(2)←Hf11 Hf11→(4)←Hf11 acquire, from a willing seller, hold and use water rights in an amount necessary to meet the authority's reasonable needs not to exceed forty years pursuant to Section 72-1-9 NMSA 1978;

Hf11→(3)←Hf11 Hf11→(5)←Hf11 shut off, after notice, unauthorized connections, illegal connections or a

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connection for which charges are delinquent in payment;

Hf11→(4)←Hf11 Hf11→(6)←Hf11 enter into contracts for services with governmental entities, including local, state and federal entities, Indian nations, tribes or pueblos or private entities, to carry out the purposes of the Regional Water System Resiliency Act;

Hf11→(5)←Hf11 Hf11→(7)←Hf11 enter into joint powers agreements with other governmental entities;

Hf11→(6)←Hf11 Hf11→(8)←Hf11 acquire and dispose of real property, personal property or rights of way;

Hf11→(7)←Hf11 Hf11→(9)←Hf11 hire and retain agents, employees and consultants;

Hf11→(8)←Hf11 Hf11→(10)←Hf11 adopt and use a governmental seal;

Hf11→(9)←Hf11 Hf11→(11)←Hf11 sue, be sued and be a party to suits, actions and proceedings;

Hf11→(10)←Hf11 Hf11→(12)←Hf11 receive grants, secure debt and issue revenue bonds for the development and improvement of infrastructure projects;

Hf11→(11)←Hf11 Hf11→(13)←Hf11 subsume powers held by an entity forming or joining the authority; and

Hf11→(12)←Hf11 Hf11→(14)←Hf11 have and exercise all rights and powers necessary, incidental to or implied from the specific powers granted in this section.

Hf11→D.←Hf11 Hf11→C.←Hf11 An agency or department

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

Hfll→E.←Hfll Hfll→D.←Hfll An authority is not subject to the jurisdiction of the public regulation commission or the provisions of the Public Utility Act.

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

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

B. The initial HAWC→and subsequent boards←HAWC HAWC→board←HAWC shall have representation from each of the founding and joining entities. Each director shall reside within the electoral district of the authority from which that director is elected. The elected board shall serve staggered

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terms to be established in the governance document developed by the initial board. The directors of the initial board shall serve until their successors are elected and qualified. The board shall choose among its directors a chair, secretary and treasurer.

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

- (1) adoption of board policies and procedures;
- (2) ratification of acquisition of property;
- (3) initiation or continuation of legal

action, except that initiation and filing of liens for unpaid rates and charges and suits for payment thereof and discontinuance of service for failure to pay such rates and charges may be delegated;

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

- (5) issuance of revenue bonds.

D. Meetings of the board shall be held at least quarterly or at the call of the chair. A majority of the directors of the board constitutes a quorum for the transaction of any business. Except as provided in Subsection E of this section, the board shall only take action upon the affirmative

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vote of at least a majority of the board present. A vacancy in the membership of the board shall not impair the right of a quorum to exercise all rights and perform all duties of the board.

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

F. The board shall promulgate and adhere to policies and procedures for its conduct.

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

H. The board may:

- (1) adopt, amend and repeal bylaws;
- (2) maintain offices at a place designated by the board; and
- (3) employ an executive director who may employ staff.

I. The board shall:

- (1) fix the time and place of meetings and the method of providing notice of the meetings in accordance with

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the Open Meetings Act;

(2) promulgate orders, resolutions, policies and procedures necessary for the governance and management of the affairs of the authority and the execution of the powers vested in the authority;

(3) establish usage classifications;

(4) fix and from time to time uniformly increase or decrease utility rates, fees or other charges for services delivered or facilities operated or made available by the authority, subject to the following conditions:

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

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

(c) after giving notice in accordance with an authority's policies and procedures, the board shall shut off or discontinue service for unauthorized connections, illegal connections or connections for which rates, tolls or other charges are delinquent in payment. The board may file

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suit in a court of competent jurisdiction to recover costs associated with an unauthorized, illegal or delinquent connection, including the cost of water delivered, charges for connection and disconnection and damages. Attorney fees shall be awarded to the prevailing party; and

(5) adopt an operating budget that supports the full cost of operation, maintenance and replacement as established by an asset management plan and a rate-setting analysis. The operating budget shall be subject to the approval of the department of finance and administration.

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

- A. a political subdivision of the state;
- B. a water and sanitation district established pursuant to the Water and Sanitation District Act;
- C. a water and natural gas association established pursuant to Chapter 3, Article 28 NMSA 1978;
- D. a water users' association established pursuant to Chapter 73, Article 5 NMSA 1978;
- E. a corporation organized pursuant to the

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Nonprofit Corporation Act or Business Corporation Act;

F. a public improvement district established pursuant to the Public Improvement District Act;

G. a municipal or county utility;

H. a company established pursuant to Chapter 62, Article 2 NMSA 1978;

I. an association established pursuant to the Cooperative Association Act that has reorganized as a public entity;

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; or

K. an authority created pursuant to the Regional Water System Resiliency Act.

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

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