

SENATE BILL 170

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

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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 ECONOMIC DEVELOPMENT; REVISING DEFINITIONS IN THE NEW MEXICO FINANCE AUTHORITY ACT; AMENDING PERMITTED USES FOR MONEY IN THE PUBLIC PROJECT REVOLVING FUND; REVISING ECONOMIC DEVELOPMENT RATES FOR GAS AND ELECTRIC UTILITIES; PROVIDING FOR EXPEDITED RATEMAKING ORDERS.

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

SECTION 1. Section 6-21-3 NMSA 1978 (being Laws 1992, Chapter 61, Section 3, as amended) is amended to read:

.229185.5SAAIC February 19, 2025 (4:37pm)

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"6-21-3. DEFINITIONS.--As used in the New Mexico Finance Authority Act:

A. "authority" means the New Mexico finance authority;

B. "bond" means any bonds, notes, certificates of participation or other evidence of indebtedness;

C. "bondholder" or "holder" means a person who is the owner of a bond, whether registered or not;

D. "emergency public project" means a public project:

(1) made necessary by an unforeseen occurrence or circumstance threatening the public health, safety or welfare; and

(2) requiring the immediate expenditure of money that is not within the available financial resources of the qualified entity as determined by the authority;

E. "public project" means the acquisition, construction, improvement, alteration or reconstruction of assets of a long-term capital nature by a qualified entity, including land; buildings; water rights; water, sewerage and waste disposal systems; streets; housing; airports; municipal utilities; STBTC→~~electric utilities~~←STBTC public recreational facilities; public transportation systems; parking facilities; and machinery, furniture and equipment. "Public project" includes all proposed expenditures related to the entire

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undertaking. "Public project" also includes the acquisition, construction or improvement of real property, buildings, facilities and other assets by the authority for the purpose of leasing the property;

F. "qualified entity" means the state or an agency or institution of the state or a county, municipality, school district, two-year public post-secondary educational institution, charter school, land grant corporation, acequia association, public improvement district, federally chartered college located in New Mexico, intercommunity water or natural gas supply association or corporation, special water, drainage, irrigation or conservancy district or other special district created pursuant to law, rural electric cooperative pursuant to the Rural Electric Cooperative Act, nonprofit foundation or other support organization affiliated with a public university, college or other higher educational institution located in New Mexico, including a university research park corporation, a nonprofit housing developer, an Indian nation, tribe or pueblo located wholly or partially in New Mexico, including a political subdivision or a wholly owned enterprise of an Indian nation, tribe or pueblo or a consortium of those Indian entities or a consortium of any two or more qualified entities created pursuant to law; and

G. "security" or "securities", unless the context indicates otherwise, means bonds, notes or other evidence of

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indebtedness issued by a qualified entity or leases or certificates or other evidence of participation in the lessor's interest in and rights under a lease with a qualified entity and that are payable from taxes, revenues, rates, charges, assessments or user fees or from the proceeds of funding or refunding bonds, notes or other evidence of indebtedness of a qualified entity or from certificates or evidence of participation in a lease with a qualified entity."

SECTION 2. Section 6-21-6 NMSA 1978 (being Laws 1992, Chapter 61, Section 6, as amended) is amended to read:

"6-21-6. PUBLIC PROJECT REVOLVING FUND--PURPOSE--
ADMINISTRATION.--

A. The "public project revolving fund" is created within the authority. The fund shall be administered by the authority as a separate account, but may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund. The authority may establish procedures and adopt rules as required to administer the fund in accordance with the New Mexico Finance Authority Act.

B. Except as otherwise provided in the New Mexico Finance Authority Act, money from payments of principal of and interest on loans and payments of principal of and interest on securities held by the authority for public projects [authorized specifically by law] shall be deposited in the public project revolving fund. The fund shall also consist of

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any other money appropriated, distributed or otherwise allocated to the fund for the purpose of financing public projects [~~authorized specifically by law~~].

C. Money appropriated to pay administrative costs, money available for administrative costs from other sources and money from payments of interest on loans or securities held by the authority, including payments of interest on loans and securities held by the authority for public projects, [~~authorized specifically by law~~] that represents payments for administrative costs shall not be deposited in the public project revolving fund and shall be deposited in a separate account of the authority and may be used by the authority to meet administrative costs of the authority.

D. Except as otherwise provided in the New Mexico Finance Authority Act, money in the public project revolving fund is appropriated to the authority to pay the reasonably necessary costs of originating and servicing loans, grants or securities funded by the fund and to make loans or grants and to purchase or sell securities to assist qualified entities in financing public projects in accordance with the New Mexico Finance Authority Act [~~and pursuant to specific authorization by law for each project~~].

E. Money in the public project revolving fund not needed for immediate disbursement, including money held in reserve, may be deposited with the state treasurer for short-

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term investment pursuant to Section 6-10-10.1 NMSA 1978 or may be invested in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, obligations of this state or any political subdivision of the state, interest-bearing time deposits, commercial paper issued by corporations organized and operating in the United States and rated "prime" quality by a national rating service, other investments permitted by Section 6-10-10 NMSA 1978 or as otherwise provided by the trust indenture or bond resolution, if money is pledged for or secures payment of bonds issued by the authority.

F. The authority shall establish fiscal controls and accounting procedures that are sufficient to assure proper accounting for public project revolving fund payments, disbursements and balances.

G. Money on deposit in the public project revolving fund may be used to make interim loans for a term not exceeding two years to qualified entities for the purpose of providing interim financing for any project approved or funded by the legislature.

H. Money on deposit in the public project revolving fund may be used to acquire securities or to make loans to qualified entities in connection with the small loan program. As used in this subsection, "small loan program" means the

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program of the authority designed to provide financing for public projects in amounts not to exceed one million dollars (\$1,000,000) per project. A public project financed pursuant to the small loan program shall not require specific authorization by law.

I. Money on deposit in the public project revolving fund may be designated as a reserve for any bonds issued by the authority, including bonds payable from sources other than the public project revolving fund, and the authority may covenant in any bond resolution or trust indenture to maintain and replenish the reserve from money deposited in the public project revolving fund after issuance of bonds by the authority.

J. Money on deposit in the public project revolving fund may be used to purchase bonds issued by the authority, which are payable from any designated source of revenues or collateral. Purchasing and holding the bonds in the public project revolving fund shall not, as a matter of law, result in cancellation or merger of the bonds notwithstanding the fact that the authority as the issuer of the bonds is obligated to make the required debt service payments and the public project revolving fund held by the authority is entitled to receive the required debt service payments.

K. Money on deposit in the public project revolving fund may be used to capitalize other financing programs of the

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authority authorized by law, either directly or from proceeds of bonds issued by the authority and secured by money in the public project revolving fund.

L. After June 30, 2035, only public projects referenced in Subsection D of this section that are specifically authorized by law shall be eligible for funding from the public project revolving fund."

SECTION 3. Section 62-6-26 NMSA 1978 (being Laws 1989, Chapter 5, Section 1, as amended) is amended to read:

"62-6-26. ECONOMIC DEVELOPMENT RATES FOR GAS AND ELECTRIC UTILITIES--AUTHORIZATION.--

A. The commission may approve or otherwise allow to become effective, as provided in Subsection B of this section, applications from utilities or persons subject to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 or filings by cooperative utilities pursuant to Section 62-8-7 NMSA 1978, as appropriate, for special rates or tariffs in order to prevent the loss of customers, to encourage customers to expand present facilities and operations in New Mexico and to attract new customers where necessary or appropriate to promote economic development in New Mexico. Any such special rates or tariffs shall be designed so as to recover at least the incremental cost of providing service to such customers.

B. The commission may approve or otherwise allow to become effective applications from utilities or persons subject

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to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 and filings by cooperative utilities pursuant to Section 62-8-7 NMSA 1978 for economic development rates and rates designed to retain load for gas and electric utility customers. For purposes of this section and Section 62-8-6 NMSA 1978, economic development rates and rates designed to retain load are rates set at a level lower than the corresponding service rate for which a customer would otherwise qualify.

C. Except as provided in Subsection D of this section, economic development rates shall be approved or otherwise allowed to become effective for an electric utility or persons subject to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 or filings by cooperative utilities pursuant to Section 62-8-7 NMSA 1978 only when the utility or the substantially full requirements supplier of the utility has excess capacity. For purposes of this section, "excess capacity" means the amount of electric generating and purchased power capacity available to the utility or such supplier that is greater than the utility's or such supplier's peak load plus a fixed percentage reserve margin set by the commission.

D. Economic development rates may be approved or otherwise allowed to become effective for electric utilities or persons subject to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 or filings by cooperative utilities pursuant to Section 62-8-7 NMSA 1978 that do not meet the

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qualifications of Subsection C of this section; provided that the following conditions are met:

(1) economic development rates approved under this subsection shall not be lower than the incremental cost of providing service to the economic development rate customer as determined by the commission. As used in this subsection, "economic development rate customer" means a customer that directly benefits from the economic development rate established pursuant to this subsection; and

(2) an economic development rate approved for any customer under this subsection shall last no longer than four years, except that the commission may approve the rate for up to twelve additional months if it finds that the additional period is necessary to attract a particular economic development rate customer to New Mexico.

E. To attract, enable the growth of and retain commercial and industrial businesses capable of enhancing the local and state economy, the commission shall allow public utilities to recover prudent and reasonable costs incurred by a public utility for the ongoing development, construction or maintenance of owned or contracted resources for economic development projects that provide incremental capacity, or serve incremental load growth, within the economic development project's service area. For economic development projects implemented after the effective date of this 2025 act, the

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reasonable costs of economic development projects shall be recoverable in rates through a rate rider, base rates or a combination thereof, when the associated equipment and facilities begin serving the new load associated with the economic development project or the utility demonstrates that the economic development project provides benefits to existing customers. A public utility shall be allowed to defer costs incurred for economic development projects that are not included in rates to a regulatory asset. Notwithstanding the time lines in Subsection C of Section 62-9-1 NMSA 1978, the commission shall review a public utility's application for an economic development project and issue a final order approving, modifying or denying the application within six months of the application filing date; provided, however, that the commission may extend the time for granting approval for an additional three months for good cause shown. All projects shall be certified by the economic development department and approved by the commission prior to a ten-year sunset of this section. All projects approved by the commission pursuant to this section shall be allowed to be fully constructed even if the full construction of the required facilities takes place after this section has been discontinued.

F. The economic development department shall certify whether the economic development project will support reasonably anticipated economic development within the state.

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The department shall issue a certification letter within sixty days of a request from a public utility or project developer, and the certification letter shall be included in a public utility's application filed pursuant to Subsection E of this section.

[E-] G. For purposes of this section:

(1) "economic development project" means the construction or modification of new or existing electric generation facilities, energy storage facilities, transmission and distribution facilities, zero-carbon resources as defined in Subsection K of Section 62-16-3 NMSA 1978, alternative fuel facilities, energy efficiency programs, renewable energy and fuel cell facilities, recycled energy or other technologies necessary to serve reasonably anticipated new load and that have been certified by the economic development department pursuant to Subsection F of this section;

(2) "incremental capacity" means the increase in capacity attributable to new or expanded facilities up to ten percent of STBTC→a public utility's total system←STBTC peak load per calendar year;

(3) "incremental cost" at a minimum shall include all additional costs incurred to serve the economic development rate customer that would not otherwise have been incurred to serve other customers, fuel and purchased power costs, costs recoverable from customers pursuant to the

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Renewable Energy Act and the Efficient Use of Energy Act and the direct costs of facilities necessary to provide service to the customer. The commission shall not impute to the electric utility revenues that would have been received from the economic development rate or load retention customer if they had been provided service under the corresponding rate for which they would have otherwise qualified;

(4) "incremental load growth" means the increase in forecasted load attributable to commercial and industrial growth or electrification of utility customer infrastructure; and

(5) "recycled energy" means energy produced by a generation unit that converts the otherwise lost energy from exhaust stacks or pipes to electricity without combustion of additional fossil fuel."

SECTION 4. Section 62-9-1 NMSA 1978 (being Laws 1941, Chapter 84, Section 46, as amended) is amended to read:

"62-9-1. NEW CONSTRUCTION--RATEMAKING PRINCIPLES.--

A. No public utility shall begin the construction or operation of any public utility plant or system or of any extension of any plant or system without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction or operation. This section does not require a public utility to secure a certificate for an extension within any municipality

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or district within which it lawfully commenced operations before June 13, 1941 or for an extension within or to territory already served by it, necessary in the ordinary course of its business, or for an extension into territory contiguous to that already occupied by it and that is not receiving similar service from another utility. If any public utility or mutual domestic water consumer association in constructing or extending its line, plant or system unreasonably interferes or is about to unreasonably interfere with the service or system of any other public utility or mutual domestic water consumer association rendering the same type of service, the commission, on complaint of the public utility or mutual domestic water consumer association claiming to be injuriously affected, may, upon and pursuant to the applicable procedure provided in Chapter 62, Article 10 NMSA 1978, and after giving due regard to public convenience and necessity, including reasonable service agreements between the utilities, make an order and prescribe just and reasonable terms and conditions in harmony with the Public Utility Act to provide for the construction, development and extension, without unnecessary duplication and economic waste.

B. If a certificate of public convenience and necessity is required pursuant to this section for the construction or extension of a generating plant or transmission lines and associated facilities, a public utility may include

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in the application for the certificate a request that the commission determine the ratemaking principles and treatment that will be applicable for the facilities that are the subject of the application for the certificate. If such a request is made, the commission shall, in the order granting the certificate, set forth the ratemaking principles and treatment that will be applicable to the public utility's stake in the certified facilities in all ratemaking proceedings on and after such time as the facilities are placed in service. The commission shall use the ratemaking principles and treatment specified in the order in all proceedings in which the cost of the public utility's stake in the certified facilities is considered. If the commission later decertifies the facilities, the commission shall apply the ratemaking principles and treatment specified in the original certification order to the costs associated with the facilities that were incurred by the public utility prior to decertification.

C. The commission may approve the application for the certificate without a formal hearing if no protest is filed within sixty days of the date that notice is given, pursuant to commission order, that the application has been filed. The commission shall issue its order granting or denying the application within nine months from the date the application is filed with the commission. Failure to issue its order within

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nine months is deemed to be approval and final disposition of the application; provided, however, that the commission may extend the time for granting approval for an additional six months for good cause shown.

D. Notwithstanding the time lines contained in Subsection C of this section, for applications certified by the economic development department pursuant to Subsection F of Section 62-6-26 NMSA 1978, the commission shall issue an order granting or denying the application within six months from the date the application is filed with the commission. Failure to issue the commission's order within six months is deemed to be approval and final disposition of the application; provided, however, that the commission may extend the time for granting approval for an additional three months for good cause shown.

[D-] E. In an application for a certificate of public convenience and necessity for an energy storage system, the commission shall approve energy storage systems that:

(1) reduce costs to ratepayers by avoiding or deferring the need for investment in new generation and for upgrades to systems for the transmission and distribution of energy;

(2) reduce the use of fossil fuels for meeting demand during peak load periods and for providing ancillary services;

(3) assist with ensuring grid reliability,

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including transmission and distribution system stability, while integrating sources of renewable energy into the grid;

(4) support diversification of energy resources and enhance grid security;

(5) reduce greenhouse gases and other air pollutants resulting from power generation;

(6) provide the public utility with the discretion, subject to applicable laws and rules, to operate, maintain and control energy storage systems so as to ensure reliable and efficient service to customers; and

(7) are the most cost effective among feasible alternatives.

~~[E.]~~ F. As used in this section:

(1) "energy storage system" means methods and technologies used to store electricity; and

(2) "mutual domestic water consumer association" means an association created and organized pursuant to the provisions of:

(a) Laws 1947, Chapter 206; Laws 1949, Chapter 79; or Laws 1951, Chapter 52; or

(b) the Sanitary Projects Act."