

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
SENATE BILL 655

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

AN ACT

RELATING TO POWER GENERATION; CREATING A PROGRAM TO CERTIFY
RENEWABLE ENERGY FACILITIES; REQUIRING RECORDING OF RENEWABLE
ENERGY PRODUCED; ENACTING THE RENEWABLE ENERGY CERTIFICATION
ACT.

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

Section 1. SHORT TITLE. -- This act may be cited as the
"Renewable Energy Certification Act".

Section 2. FINDINGS AND PURPOSES. --

A. The legislature finds that:

(1) consumers are seeking sources from which
to purchase renewable energy;

(2) renewable energy facilities are entering
the market;

(3) as the state proceeds with deregulation

1 of utilities, consumers will need a means of identifying
2 legitimate sources of renewable energy;

3 (4) it is necessary to set the stage for the
4 trading of renewable energy units; and

5 (5) it is in the best interest of the state
6 to establish a program that will certify renewable energy
7 units produced and sold in New Mexico and register the state's
8 renewable energy facilities.

9 B. The purposes of the Renewable Energy
10 Certification Act are to:

11 (1) establish a renewable energy
12 certification program;

13 (2) require certification of renewable energy
14 generating facilities so that the public can be certain they
15 are obtaining power generated from a renewable energy source;

16 (3) monitor and record the production of
17 renewable energy generated within the state; and

18 (4) encourage the development of a renewable
19 energy generation sector in the state.

20 Section 3. DEFINITIONS.--As used in the Renewable Energy
21 Certification Act:

22 A. "account" means a renewable energy unit account
23 maintained by the director for the purpose of tracking a
24 program participant's renewable energy unit production;

25 B. "applicant" means a power generation facility

1 for which certification is being sought;

2 C. "certification" means a determination by the
3 director that a power generation facility meets the criteria
4 to be a part of the program and may be identified as a
5 renewable energy facility;

6 D. "competitive supplier" means a person offering
7 competitive service to customers purchasing electricity in the
8 state whether directly or as an intermediary or agent of the
9 seller or purchaser;

10 E. "director" means the director of the
11 environmental protection division of the department of
12 environment or his designee;

13 F. "designated representative" means a natural
14 person authorized by the owners or operators of a renewable
15 energy facility to register that facility, only for the
16 purposes of the Renewable Energy Certification Act, with the
17 director. A designated representative shall have the
18 authority to represent and legally bind the owners and
19 operators of the renewable energy facility in all matters
20 pertaining to the program;

21 G. "large producer" means a renewable energy
22 facility that is rated to generate more than ten kilowatts of
23 power;

24 H. "program" means the renewable energy
25 certification program that involves recording by the director

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1 of renewable energy units generated within the state;

2 I. "power generation facility" means a facility
3 that generates electric power by use of any energy source
4 available to it;

5 J. "renewable energy facility" means a power
6 generation facility located in New Mexico using renewable
7 energy resources to generate electric power, including all
8 installed renewable generation in New Mexico prior to the
9 effective date of the Renewable Energy Certification Act;

10 K. "renewable energy generator" means a person who
11 generates electric power in New Mexico using a renewable
12 energy resource;

13 L. "renewable energy resource" means sun, wind,
14 hydropower, a geothermal energy source, land fill gas,
15 anaerobically digested waste biomass or fuel cells that are
16 not fossil fueled; "renewable energy resource" does not mean
17 fossil fuel or nuclear energy;

18 M. "renewable energy technology" means a
19 technology that exclusively relies on a renewable energy
20 resource to generate power;

21 N. "renewable energy unit" means a block of one
22 megawatt hour of power that is physically metered and verified
23 in New Mexico and that is generated by a renewable energy
24 facility; and

25 O. "small producer" means a renewable energy

1 facility that is rated to generate ten kilowatts of power or
 2 less.

3 Section 4. CERTIFICATION REQUIRED. --No competitive
 4 supplier may sell power in the state that is identified as
 5 being generated from renewable energy resources unless that
 6 competitive supplier is certified pursuant to the provisions
 7 of the Renewable Energy Certification Act. No person may sell
 8 power identified as being generated from renewable energy
 9 resources to New Mexico unless the power sold is certified by
 10 the authoritative entity in the state in which the power is
 11 generated as having been generated from a renewable energy
 12 resource meeting the definition of renewable energy resource
 13 set forth in the Renewable Energy Certification Act.

14 Section 5. ELIGIBLE FACILITIES. --Renewable energy
 15 generators who may participate in the program are small
 16 producers, producers of aggregated small amounts of renewable
 17 energy units, producers of large amounts of renewable energy
 18 units and any other producers of wholesale or retail renewable
 19 energy units. A competitive supplier may aggregate blocks of
 20 electricity from eligible renewable energy generators in order
 21 to constitute a renewable energy unit.

22 Section 6. CERTIFICATION PROGRAM --

23 A. The designated representative of a renewable
 24 energy facility may apply to the director for certification
 25 for the renewable energy facility.

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underscoring material = new
 [bracketed material] = delete

1 B. The application shall be submitted on a form
2 approved by the director and shall include the location,
3 owner, operator, renewable energy technology, renewable energy
4 resource and rated capacity of the power generation facility
5 and any additional information required by the director.

6 C. Within thirty days from the date on which the
7 director receives an application for certification of a
8 renewable energy facility, the director shall certify the
9 applicant as a renewable energy facility if he determines
10 that:

11 (1) the source of the energy generated is a
12 renewable energy resource;

13 (2) the power generation facility is capable
14 of generating one megawatt hour or more from the renewable
15 energy resource; and

16 (3) the energy generated from the power
17 generation facility is separately metered so that all power
18 delivered from it into a power transmission or distribution
19 line can be identified.

20 D. The director may make on-site visits to an
21 applicant or a certified renewable energy facility to inspect
22 its operation.

23 E. No power generation facility may be certified
24 by the director if it produces energy that is delivered into a
25 transmission system without separate metering to identify the

1 quantity of the renewable portion of energy generated and
2 transmitted.

3 F. The director may deny an application for a
4 power generation facility to be certified as a renewable
5 energy facility. If the director determines that the
6 applicant cannot be certified, he shall set forth in writing
7 the deficiencies that support his decision and provide for a
8 time period in which the deficiencies may be remedied.

9 G. The director may suspend or revoke a
10 certification for cause, which shall be set forth in writing,
11 allowing the certified renewable energy facility a specified
12 amount of time to remedy the cause for the suspension or
13 revocation of the certification.

14 H. The director shall develop a system to record
15 the power produced by certified renewable energy facilities in
16 renewable energy units and shall establish an account for each
17 certified renewable energy facility so that he can record the
18 renewable energy units produced and transmitted by the
19 facility.

20 I. During the period of time that a certified
21 renewable energy facility has its certification suspended or
22 revoked, the director shall not record the quantity of power
23 generated by the power generation facility.

24 J. The director shall develop a means to allow
25 competitive suppliers to aggregate amounts of power smaller

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1 than one megawatt hour from small producers to create a
2 renewable energy unit.

3 K. No fee shall be imposed by the director on an
4 applicant, renewable energy facility or a designated
5 representative to enable participation in any part of the
6 program.

7 L. The director shall adopt rules necessary to
8 implement the provisions of the Renewable Energy Certification
9 Act.

10 Section 7. PRODUCTION AND PUBLICATION OF INFORMATION ON
11 RENEWABLE ENERGY UNITS.--The director shall publish at least
12 annually for public information a list of certified renewable
13 energy facilities and provide an annual accounting of
14 renewable energy units produced in New Mexico.

15 Section 8. ENFORCEMENT--AUDITS--PENALTIES.--

16 A. The director may conduct audits on the power
17 produced, the method of production or any other facet of the
18 production of the renewable energy units recorded by him for
19 renewable energy facilities in the program whenever he
20 determines that a need for an audit exists.

21 B. The director may impose a fine of no less than
22 five hundred dollars (\$500) and no more than one hundred
23 thousand dollars (\$100,000) on the owner, operator or
24 designated representative of:

25 (1) an applicant for falsifying information

1 on an application;

2 (2) a certified renewable energy facility
3 for:

4 (a) misrepresenting information
5 provided to the director;

6 (b) altering the source of energy used
7 to produce the power generated so that the power generation
8 facility would not be able to retain its certification;

9 (c) reporting the same renewable energy
10 units multiple times; or

11 (d) including in its reporting of
12 renewable energy units energy generated by nonrenewable
13 sources; or

14 (3) any certified renewable energy facility
15 for substantial discrepancies in reporting of generation or
16 transmission discovered in an audit.

17 C. The director may impose a fine of no less than
18 five hundred dollars (\$500) and no more than one hundred
19 thousand dollars (\$100,000) on the owner, operator or
20 designated representative of a power generating facility:

21 (1) holding itself out to be a certified
22 renewable energy facility when it has not been certified by
23 the director; or

24 (2) misrepresenting power sold to residents
25 or businesses in the state as being generated from renewable

1 energy sources when the power has been generated from some
2 other energy source.

3 D. All fines paid pursuant to this section shall
4 be deposited in the current school fund. All other money
5 collected by the director pursuant to the Renewable Energy
6 Certification Act shall be deposited in the general fund.

7 E. Disputes arising from denial of certification
8 or an audit, penalty or other enforcement action may be
9 appealed to the secretary of environment. Appeals from a
10 decision of the secretary pursuant to the Renewable Energy
11 Certification Act shall be filed with the district court in
12 the district in which the renewable energy facility is located
13 or in the district court of Santa Fe county.