

1 SENATE BILL 170

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO ECONOMIC DEVELOPMENT; REVISING DEFINITIONS IN THE
12 NEW MEXICO FINANCE AUTHORITY ACT; AMENDING PERMITTED USES FOR
13 MONEY IN THE PUBLIC PROJECT REVOLVING FUND; REVISING ECONOMIC
14 DEVELOPMENT RATES FOR GAS AND ELECTRIC UTILITIES; PROVIDING FOR
15 EXPEDITED RATEMAKING ORDERS.
16

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

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

20 "6-21-3. DEFINITIONS.--As used in the New Mexico Finance
21 Authority Act:

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

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

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

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

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

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

11 E. "public project" means the acquisition,
12 construction, improvement, alteration or reconstruction of
13 assets of a long-term capital nature by a qualified entity,
14 including land; buildings; water rights; water, sewerage and
15 waste disposal systems; streets; housing; airports; municipal
16 utilities; electric utilities; public recreational facilities;
17 public transportation systems; parking facilities; and
18 machinery, furniture and equipment. "Public project" includes
19 all proposed expenditures related to the entire undertaking.
20 "Public project" also includes the acquisition, construction or
21 improvement of real property, buildings, facilities and other
22 assets by the authority for the purpose of leasing the
23 property;

24 F. "qualified entity" means the state or an agency
25 or institution of the state or a county, municipality, school

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1 district, two-year public post-secondary educational
2 institution, charter school, land grant corporation, acequia
3 association, public improvement district, federally chartered
4 college located in New Mexico, intercommunity water or natural
5 gas supply association or corporation, special water, drainage,
6 irrigation or conservancy district or other special district
7 created pursuant to law, rural electric cooperative pursuant to
8 the Rural Electric Cooperative Act, nonprofit foundation or
9 other support organization affiliated with a public university,
10 college or other higher educational institution located in New
11 Mexico, including a university research park corporation, a
12 nonprofit housing developer, an Indian nation, tribe or pueblo
13 located wholly or partially in New Mexico, including a
14 political subdivision or a wholly owned enterprise of an Indian
15 nation, tribe or pueblo or a consortium of those Indian
16 entities or a consortium of any two or more qualified entities
17 created pursuant to law; and

18 G. "security" or "securities", unless the context
19 indicates otherwise, means bonds, notes or other evidence of
20 indebtedness issued by a qualified entity or leases or
21 certificates or other evidence of participation in the lessor's
22 interest in and rights under a lease with a qualified entity
23 and that are payable from taxes, revenues, rates, charges,
24 assessments or user fees or from the proceeds of funding or
25 refunding bonds, notes or other evidence of indebtedness of a

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1 qualified entity or from certificates or evidence of
2 participation in a lease with a qualified entity."

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

5 "6-21-6. PUBLIC PROJECT REVOLVING FUND--PURPOSE--
6 ADMINISTRATION.--

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

14 B. Except as otherwise provided in the New Mexico
15 Finance Authority Act, money from payments of principal of and
16 interest on loans and payments of principal of and interest on
17 securities held by the authority for public projects
18 [~~authorized specifically by law~~] shall be deposited in the
19 public project revolving fund. The fund shall also consist of
20 any other money appropriated, distributed or otherwise
21 allocated to the fund for the purpose of financing public
22 projects [~~authorized specifically by law~~].

23 C. Money appropriated to pay administrative costs,
24 money available for administrative costs from other sources and
25 money from payments of interest on loans or securities held by

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1 the authority, including payments of interest on loans and
2 securities held by the authority for public projects,
3 ~~[authorized specifically by law]~~ that represents payments for
4 administrative costs shall not be deposited in the public
5 project revolving fund and shall be deposited in a separate
6 account of the authority and may be used by the authority to
7 meet administrative costs of the authority.

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

17 E. Money in the public project revolving fund not
18 needed for immediate disbursement, including money held in
19 reserve, may be deposited with the state treasurer for short-
20 term investment pursuant to Section 6-10-10.1 NMSA 1978 or may
21 be invested in direct and general obligations of or obligations
22 fully and unconditionally guaranteed by the United States,
23 obligations issued by agencies of the United States,
24 obligations of this state or any political subdivision of the
25 state, interest-bearing time deposits, commercial paper issued

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1 by corporations organized and operating in the United States
2 and rated "prime" quality by a national rating service, other
3 investments permitted by Section 6-10-10 NMSA 1978 or as
4 otherwise provided by the trust indenture or bond resolution,
5 if money is pledged for or secures payment of bonds issued by
6 the authority.

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

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

16 H. Money on deposit in the public project revolving
17 fund may be used to acquire securities or to make loans to
18 qualified entities in connection with the small loan program.
19 As used in this subsection, "small loan program" means the
20 program of the authority designed to provide financing for
21 public projects in amounts not to exceed one million dollars
22 (\$1,000,000) per project. A public project financed pursuant
23 to the small loan program shall not require specific
24 authorization by law.

25 I. Money on deposit in the public project

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1 revolving fund may be designated as a reserve for any bonds
2 issued by the authority, including bonds payable from sources
3 other than the public project revolving fund, and the authority
4 may covenant in any bond resolution or trust indenture to
5 maintain and replenish the reserve from money deposited in the
6 public project revolving fund after issuance of bonds by the
7 authority.

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

18 K. Money on deposit in the public project revolving
19 fund may be used to capitalize other financing programs of the
20 authority authorized by law, either directly or from proceeds
21 of bonds issued by the authority and secured by money in the
22 public project revolving fund.

23 L. After June 30, 2035, only public projects
24 referenced in Subsection D of this section that are
25 specifically authorized by law shall be eligible for funding

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1 from the public project revolving fund."

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

4 "62-6-26. ECONOMIC DEVELOPMENT RATES FOR GAS AND ELECTRIC
5 UTILITIES--AUTHORIZATION.--

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

18 B. The commission may approve or otherwise allow to
19 become effective applications from utilities or persons subject
20 to regulation pursuant to Subsection B of Section 62-6-4 NMSA
21 1978 and filings by cooperative utilities pursuant to Section
22 62-8-7 NMSA 1978 for economic development rates and rates
23 designed to retain load for gas and electric utility customers.
24 For purposes of this section and Section 62-8-6 NMSA 1978,
25 economic development rates and rates designed to retain load

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1 are rates set at a level lower than the corresponding service
2 rate for which a customer would otherwise qualify.

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

15 D. Economic development rates may be approved or
16 otherwise allowed to become effective for electric utilities or
17 persons subject to regulation pursuant to Subsection B of
18 Section 62-6-4 NMSA 1978 or filings by cooperative utilities
19 pursuant to Section 62-8-7 NMSA 1978 that do not meet the
20 qualifications of Subsection C of this section; provided that
21 the following conditions are met:

22 (1) economic development rates approved under
23 this subsection shall not be lower than the incremental cost of
24 providing service to the economic development rate customer as
25 determined by the commission. As used in this subsection,

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1 "economic development rate customer" means a customer that
2 directly benefits from the economic development rate
3 established pursuant to this subsection; and

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

10 E. To attract, enable the growth of and retain
11 commercial and industrial businesses capable of enhancing the
12 local and state economy, the commission shall allow public
13 utilities to recover prudent and reasonable costs incurred by a
14 public utility for the ongoing development, construction or
15 maintenance of owned or contracted resources for economic
16 development projects that provide incremental capacity, or
17 serve incremental load growth, within the economic development
18 project's service area. For economic development projects
19 implemented after the effective date of this 2025 act, the
20 reasonable costs of economic development projects shall be
21 recoverable in rates through a rate rider, base rates or a
22 combination thereof, when the associated equipment and
23 facilities begin serving the new load associated with the
24 economic development project or the utility demonstrates that
25 the economic development project provides benefits to existing

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1 customers. A public utility shall be allowed to defer costs
2 incurred for economic development projects that are not
3 included in rates to a regulatory asset. Notwithstanding the
4 time lines in Subsection C of Section 62-9-1 NMSA 1978, the
5 commission shall review a public utility's application for an
6 economic development project and issue a final order approving,
7 modifying or denying the application within six months of the
8 application filing date; provided, however, that the commission
9 may extend the time for granting approval for an additional
10 three months for good cause shown. All projects shall be
11 certified by the economic development department and approved
12 by the commission prior to a ten-year sunset of this section.
13 All projects approved by the commission pursuant to this
14 section shall be allowed to be fully constructed even if the
15 full construction of the required facilities takes place after
16 this section has been discontinued.

17 F. The economic development department shall
18 certify whether the economic development project will support
19 reasonably anticipated economic development within the state.
20 The department shall issue a certification letter within sixty
21 days of a request from a public utility or project developer,
22 and the certification letter shall be included in a public
23 utility's application filed pursuant to Subsection E of this
24 section.

25 ~~[E.]~~ G. For purposes of this section:

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

11 (2) "incremental capacity" means the increase
12 in capacity attributable to new or expanded facilities up to
13 ten percent of peak load per calendar year;

14 (3) "incremental cost" at a minimum shall
15 include all additional costs incurred to serve the economic
16 development rate customer that would not otherwise have been
17 incurred to serve other customers, fuel and purchased power
18 costs, costs recoverable from customers pursuant to the
19 Renewable Energy Act and the Efficient Use of Energy Act and
20 the direct costs of facilities necessary to provide service to
21 the customer. The commission shall not impute to the electric
22 utility revenues that would have been received from the
23 economic development rate or load retention customer if they
24 had been provided service under the corresponding rate for
25 which they would have otherwise qualified;

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

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

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

11 "62-9-1. NEW CONSTRUCTION--RATEMAKING PRINCIPLES.--

12 A. No public utility shall begin the construction
13 or operation of any public utility plant or system or of any
14 extension of any plant or system without first obtaining from
15 the commission a certificate that public convenience and
16 necessity require or will require such construction or
17 operation. This section does not require a public utility to
18 secure a certificate for an extension within any municipality
19 or district within which it lawfully commenced operations
20 before June 13, 1941 or for an extension within or to territory
21 already served by it, necessary in the ordinary course of its
22 business, or for an extension into territory contiguous to that
23 already occupied by it and that is not receiving similar
24 service from another utility. If any public utility or mutual
25 domestic water consumer association in constructing or

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1 extending its line, plant or system unreasonably interferes or
2 is about to unreasonably interfere with the service or system
3 of any other public utility or mutual domestic water consumer
4 association rendering the same type of service, the commission,
5 on complaint of the public utility or mutual domestic water
6 consumer association claiming to be injuriously affected, may,
7 upon and pursuant to the applicable procedure provided in
8 Chapter 62, Article 10 NMSA 1978, and after giving due regard
9 to public convenience and necessity, including reasonable
10 service agreements between the utilities, make an order and
11 prescribe just and reasonable terms and conditions in harmony
12 with the Public Utility Act to provide for the construction,
13 development and extension, without unnecessary duplication and
14 economic waste.

15 B. If a certificate of public convenience and
16 necessity is required pursuant to this section for the
17 construction or extension of a generating plant or transmission
18 lines and associated facilities, a public utility may include
19 in the application for the certificate a request that the
20 commission determine the ratemaking principles and treatment
21 that will be applicable for the facilities that are the subject
22 of the application for the certificate. If such a request is
23 made, the commission shall, in the order granting the
24 certificate, set forth the ratemaking principles and treatment
25 that will be applicable to the public utility's stake in the

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1 certified facilities in all ratemaking proceedings on and after
2 such time as the facilities are placed in service. The
3 commission shall use the ratemaking principles and treatment
4 specified in the order in all proceedings in which the cost of
5 the public utility's stake in the certified facilities is
6 considered. If the commission later decertifies the
7 facilities, the commission shall apply the ratemaking
8 principles and treatment specified in the original
9 certification order to the costs associated with the facilities
10 that were incurred by the public utility prior to
11 decertification.

12 C. The commission may approve the application for
13 the certificate without a formal hearing if no protest is filed
14 within sixty days of the date that notice is given, pursuant to
15 commission order, that the application has been filed. The
16 commission shall issue its order granting or denying the
17 application within nine months from the date the application is
18 filed with the commission. Failure to issue its order within
19 nine months is deemed to be approval and final disposition of
20 the application; provided, however, that the commission may
21 extend the time for granting approval for an additional six
22 months for good cause shown.

23 D. Notwithstanding the time lines contained in
24 Subsection C of this section, for applications certified by the
25 economic development department pursuant to Subsection F of

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1 Section 62-6-26 NMSA 1978, the commission shall issue an order
2 granting or denying the application within six months from the
3 date the application is filed with the commission. Failure to
4 issue the commission's order within six months is deemed to be
5 approval and final disposition of the application; provided,
6 however, that the commission may extend the time for granting
7 approval for an additional three months for good cause shown.

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

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

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

18 (3) assist with ensuring grid reliability,
19 including transmission and distribution system stability, while
20 integrating sources of renewable energy into the grid;

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

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

25 (6) provide the public utility with the

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1 discretion, subject to applicable laws and rules, to operate,
2 maintain and control energy storage systems so as to ensure
3 reliable and efficient service to customers; and

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

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

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

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

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

14 (b) the Sanitary Projects Act."