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SENATE BILL 623

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

INTRODUCED BY

Elizabeth "Liz" Stefanics

AN ACT

RELATING TO THE NEW MEXICO RENEWABLE ENERGY TRANSMISSION
AUTHORITY; PROVIDING FOR FUNDING OF OPERATING COSTS THROUGH THE
PUBLIC PROJECT REVOLVING FUND; AMENDING THE POWERS OF THE NEW
MEXICO FINANCE AUTHORITY AND THE NEW MEXICO RENEWABLE ENERGY
TRANSMISSION AUTHORITY.

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

SECTION 1. Section 6-21-5 NMSA 1978 (being Laws 1992,
Chapter 61, Section 5, as amended) is amended to read:

"6-21-5. POWERS OF THE AUTHORITY.--The authority is
granted all powers necessary and appropriate to carry out and
effectuate its public and corporate purposes, including the
following powers:

- A. to sue or be sued;
- B. to adopt and alter an official seal;

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1 C. to make and alter bylaws for its organization
2 and internal management and to adopt, subject to the review and
3 approval of the New Mexico finance authority oversight
4 committee, such rules as are necessary and appropriate to
5 implement the provisions of the New Mexico Finance Authority
6 Act;

7 D. to appoint officers, agents and employees,
8 prescribe their duties and qualifications and fix their
9 compensation;

10 E. to make, enter into and enforce all contracts,
11 agreements and other instruments necessary, convenient or
12 desirable in the exercise of the authority's powers and
13 functions and for the purposes of the New Mexico Finance
14 Authority Act;

15 F. to acquire, construct, hold, improve, grant
16 mortgages of, accept mortgages of, sell, lease, convey or
17 dispose of real and personal property for its public purposes;

18 G. to acquire, construct or improve real property,
19 buildings and facilities for lease and to pledge rentals and
20 other income received from such leases to the payment of bonds;

21 H. to make loans, leases and purchase securities
22 and contract to make loans, leases and purchase securities;

23 I. to make grants to qualified entities to finance
24 public projects; provided that such grants are not made from
25 the public project revolving fund;

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1 J. to procure insurance to secure payment on any
2 loan, lease or purchase payments owed to the authority by a
3 qualified entity in such amounts and from such insurers,
4 including the federal government, as it may deem necessary or
5 desirable and to pay any premiums for such insurance;

6 K. to fix, revise from time to time, charge and
7 collect fees and other charges in connection with the making of
8 loans, leases and any other services rendered by the authority;

9 L. to accept, administer, hold and use all funds
10 made available to the authority from any sources;

11 M. to borrow money and to issue bonds and provide
12 for the rights of the holders of the bonds;

13 N. to establish and maintain reserve and sinking
14 fund accounts to insure against and have funds available for
15 maintenance of other debt service accounts;

16 O. to invest and reinvest its funds and to take and
17 hold property as security for the investment of such funds as
18 provided in the New Mexico Finance Authority Act;

19 P. to employ attorneys, accountants, underwriters,
20 financial advisers, trustees, paying agents, architects,
21 engineers, contractors and such other advisers, consultants and
22 agents as may be necessary and to fix and pay their
23 compensation;

24 Q. to apply for and accept gifts or grants of
25 property, funds, services or aid in any form from the United

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1 States, any unit of government or any person and to comply,
2 subject to the provisions of the New Mexico Finance Authority
3 Act, with the terms and conditions of the gifts or grants;

4 R. to maintain an office at any place in the state
5 it may determine;

6 S. subject to any agreement with bondholders, to:

7 (1) renegotiate any loan, lease or agreement;

8 (2) consent to any modification of the terms
9 of any loan, lease or agreement; and

10 (3) purchase bonds, which may upon purchase be
11 canceled; [~~and~~]

12 T. to ensure that sufficient funding exists for the
13 operations of the New Mexico renewable energy transmission
14 authority and, to the extent necessary, fund the New Mexico
15 renewable energy transmission authority's operating costs
16 through the public project revolving fund; and

17 [~~F.~~] U. to do any and all things necessary or
18 convenient to carry out its purposes and exercise the powers
19 given and granted in the New Mexico Finance Authority Act."

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

22 "6-21-6. PUBLIC PROJECT REVOLVING FUND--PURPOSE--
23 ADMINISTRATION.--

24 A. The "public project revolving fund" is created
25 within the authority. The fund shall be administered by the

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1 authority as a separate account, but may consist of such
2 subaccounts as the authority deems necessary to carry out the
3 purposes of the fund. The authority may establish procedures
4 and adopt rules as required to administer the fund in
5 accordance with the New Mexico Finance Authority Act.

6 B. Except as otherwise provided in the New Mexico
7 Finance Authority Act, money from payments of principal of and
8 interest on loans and payments of principal of and interest on
9 securities held by the authority for public projects authorized
10 specifically by law shall be deposited in the public project
11 revolving fund. The fund shall also consist of any other money
12 appropriated, distributed or otherwise allocated to the fund
13 for the purpose of financing public projects authorized
14 specifically by law.

15 C. Except as otherwise provided in Subsection D of
16 this section, money appropriated to pay administrative costs,
17 money available for administrative costs from other sources and
18 money from payments of interest on loans or securities held by
19 the authority, including payments of interest on loans and
20 securities held by the authority for public projects authorized
21 specifically by law, that represents payments for
22 administrative costs shall not be deposited in the public
23 project revolving fund and shall be deposited in a separate
24 account of the authority and may be used by the authority to
25 meet administrative costs of the authority.

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1 D. Except as otherwise provided in the New Mexico
2 Finance Authority Act, money in the public project revolving
3 fund is appropriated to the authority to pay the reasonably
4 necessary costs of originating and servicing loans, grants or
5 securities funded by the fund and to make loans or grants;
6 ~~[and]~~ to purchase or sell securities to assist qualified
7 entities in financing public projects in accordance with the
8 New Mexico Finance Authority Act and pursuant to specific
9 authorization by law for each project; and to fund the
10 operations of the New Mexico renewable energy transmission
11 authority.

12 E. Money in the public project revolving fund not
13 needed for immediate disbursement, including money held in
14 reserve, may be deposited with the state treasurer for
15 short-term investment pursuant to Section 6-10-10.1 NMSA 1978
16 or may be invested in direct and general obligations of or
17 obligations fully and unconditionally guaranteed by the United
18 States, obligations issued by agencies of the United States,
19 obligations of this state or any political subdivision of the
20 state, interest-bearing time deposits, commercial paper issued
21 by corporations organized and operating in the United States
22 and rated "prime" quality by a national rating service, other
23 investments permitted by Section 6-10-10 NMSA 1978 or as
24 otherwise provided by the trust indenture or bond resolution,
25 if money is pledged for or secures payment of bonds issued by

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1 the authority.

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

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

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

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

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1 public project revolving fund after issuance of bonds by the
2 authority.

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

13 K. Money on deposit in the public project revolving
14 fund may be used to capitalize other financing programs of the
15 authority authorized by law, either directly or from proceeds
16 of bonds issued by the authority and secured by money in the
17 public project revolving fund."

18 SECTION 3. Section 62-16A-4 NMSA 1978 (being Laws 2007,
19 Chapter 3, Section 4) is amended to read:

20 "62-16A-4. AUTHORITY--DUTIES AND POWERS.--

21 A. The authority shall:

22 (1) do any and all things necessary or proper
23 to accomplish the purposes of the New Mexico Renewable Energy
24 Transmission Authority Act;

25 (2) hire an executive director and such other

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1 employees or other agents as it deems necessary for the
2 performance of its powers and duties, including consultants,
3 financial advisors and legal advisors, and prescribe the powers
4 and duties and fix the compensation of the employees and
5 agents. The executive director of the authority shall direct
6 the affairs and business of the authority, subject to the
7 policies, control and direction of the authority; ~~and~~

8 (3) maintain such records and accounts of
9 revenues and expenditures as required by the state auditor.
10 The state auditor or the state auditor's designee shall conduct
11 an annual financial and legal compliance audit of the accounts
12 of the authority and file copies with the governor and the
13 legislature; and

14 (4) if funding is needed for the operational
15 costs of the authority, annually submit an operating budget to
16 the New Mexico finance authority and work with the New Mexico
17 finance authority to ensure that the authority's operating
18 costs, to the extent necessary, are sufficiently provided for
19 from the public project revolving fund each fiscal year.

20 B. The authority may:

21 (1) make and execute agreements, contracts and
22 other instruments necessary or convenient in the exercise of
23 its powers and functions with any person or governmental
24 agency;

25 (2) enter into contractual agreements with

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1 respect to one or more projects upon the terms and conditions
2 the authority considers advisable;

3 (3) utilize the services of executive
4 departments of the state upon mutually agreeable terms and
5 conditions;

6 (4) enter into partnerships with public or
7 private entities;

8 (5) identify and establish corridors for the
9 transmission of electricity within the state;

10 (6) through participation in appropriate
11 regional transmission forums, coordinate, investigate, plan,
12 prioritize and negotiate with entities within and outside the
13 state for the establishment of interstate transmission
14 corridors;

15 (7) pursuant to Subsection C of this section,
16 finance or plan, acquire, maintain and operate eligible
17 facilities necessary or useful for the accomplishment of the
18 purposes of the New Mexico Renewable Energy Transmission
19 Authority Act;

20 (8) pursuant to the provisions of the Eminent
21 Domain Code, exercise the power of eminent domain for acquiring
22 property or rights of way for public use if needed for projects
23 if such action does not involve taking utility property or does
24 not materially diminish electric service reliability of the
25 transmission system in New Mexico, as determined by the public

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1 regulation commission;

2 [~~(9)~~] receive by gift, grant, donation or
3 otherwise, any sum of money, aid or assistance from the United
4 States, the state of New Mexico, any other state, any political
5 subdivision or any other public or private entity;

6 ~~(10)~~] (9) for any project, provide information
7 and training to employees of the project regarding any unique
8 hazards that may be posed by the project, as well as training
9 in safety work practices and emergency procedures;

10 [~~(11)~~] (10) issue bonds pursuant to the New
11 Mexico Renewable Energy Transmission Authority Act as necessary
12 to undertake a project;

13 [~~(12)~~] (11) enter into contracts for the lease
14 and operation by the authority of eligible facilities owned by
15 a public utility or other private person;

16 [~~(13)~~] (12) enter into contracts for leasing
17 eligible facilities owned by the authority; provided that any
18 revenue derived pursuant to the lease shall be deposited in the
19 renewable energy transmission bonding fund;

20 [~~(14)~~] (13) collect payments of reasonable
21 rates, fees, interest or other charges from persons using
22 eligible facilities to finance eligible facilities and for
23 other services rendered by the authority; provided that any
24 revenue derived from payments made to the authority shall be
25 deposited in the renewable energy transmission bonding fund;

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1 [~~(15)~~] (14) borrow money necessary to carry
2 out the purposes of the New Mexico Renewable Energy
3 Transmission Authority Act and mortgage and pledge any leases,
4 loans or contracts executed and delivered by the authority;

5 [~~(16)~~] (15) sue and be sued; and

6 [~~(17)~~] (16) adopt such reasonable
7 administrative and procedural rules as may be necessary or
8 appropriate to carry out its powers and duties.

9 C. Except as provided in this subsection, the
10 authority shall not enter into any project if public utilities
11 or other private persons are performing the acts, are
12 constructing or have constructed the facilities, or are
13 providing the services contemplated by the authority, and are
14 willing to provide funds for and own new infrastructure to meet
15 an identified need and market. Before entering into a project,
16 the following procedures shall be implemented:

17 (1) the authority shall provide to each public
18 utility and the public regulation commission and publish one
19 time in a newspaper of general circulation in New Mexico and
20 one time in a newspaper in the area where the eligible
21 facilities are contemplated and on a publicly accessible web
22 page maintained by the authority, an initial notice describing
23 the project that the authority is contemplating, including a
24 detailed description of the existing or anticipated renewable
25 energy sources that justify the determination by the authority

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1 that the project facilities are eligible facilities. The
2 description shall contain, at a minimum, the names of all
3 persons that already are developing or will develop the
4 renewable energy sources, all persons that will own the
5 renewable energy sources and the peak output capacity, source
6 type, location and anticipated connection date of the renewable
7 energy sources;

8 (2) any person with an interest that may be
9 affected by the proposed project shall have thirty days from
10 the date of the last publication of the initial notice to
11 challenge, in writing, the determination by the authority that
12 the facilities are eligible facilities. If a challenge is
13 received by the authority within the thirty days, the authority
14 shall hold a public hearing no sooner than thirty days after
15 receiving the challenge and after a minimum of two weeks notice
16 in the same newspapers and web page in which the initial notice
17 was given. Following the public hearing, the authority shall
18 make a final determination of eligibility and give notice of
19 the determination pursuant to Section 39-3-1.1 NMSA 1978. Any
20 person or governmental entity participating in the hearing may
21 appeal the final determination by filing a notice of appeal
22 with the district court pursuant to Section 39-3-1.1 NMSA 1978;

23 (3) public utilities and other persons willing
24 and able to provide money for, acquire, maintain and operate
25 the eligible facilities described in the notice shall have the

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1 following time period to notify the authority of intention and
2 ability to provide money for, acquire, maintain and operate the
3 eligible facilities described in the notice:

4 (a) within ninety days of the date of
5 the last publication of the initial notice if no challenge is
6 received pursuant to Paragraph (2) of this subsection; or

7 (b) within ninety days of the date of
8 the notice of determination if a challenge is received pursuant
9 to Paragraph (2) of this subsection; and

10 (4) in the absence of notification by a public
11 utility or other person pursuant to Paragraph (3) of this
12 subsection, or if a person, having given notice of intention to
13 provide money for, acquire, maintain and operate the eligible
14 facilities contemplated by the authority, fails to make a good
15 faith effort to commence the same within twelve months from the
16 date of notification by the authority of its intention, the
17 authority may proceed to finance or plan, acquire, maintain and
18 operate the eligible facilities originally contemplated;
19 provided that a person that, within the time required, has made
20 necessary applications to acquire federal, state, local or
21 private permits, certificates or other approvals necessary to
22 acquire the eligible facilities shall be deemed to have
23 commenced the same as long as the person diligently pursues the
24 permits, certificates or other approvals.

25 D. In soliciting and entering into contracts for

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1 the transmission or storage of electricity, the authority and
2 any person leasing or operating eligible facilities financed or
3 acquired by the authority shall, if practical, give priority to
4 those contracts that will transmit or store electricity to be
5 sold and consumed in New Mexico.

6 E. The authority and any eligible facilities
7 acquired by the authority are not subject to the supervision,
8 regulation, control or jurisdiction of the public regulation
9 commission; provided that nothing in this subsection shall be
10 interpreted to allow a public utility to include the cost of
11 using eligible facilities in its rate base without the approval
12 of the public regulation commission.

13 F. In exercising its powers and duties, the
14 authority shall not own or control facilities unless:

15 (1) the facilities are leased to or held for
16 lease or sale to a public utility or such other person approved
17 by the public regulation commission;

18 (2) the operation, maintenance and use of the
19 facilities are vested by lease or other contract in a public
20 utility or such other person approved by the public regulation
21 commission;

22 (3) the facilities are owned or controlled for
23 a period of not more than one hundred eighty days after
24 termination of a lease or contract described in Paragraph (1)
25 or (2) of this subsection or after the authority gains

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1 possession of the facilities following a breach of such a lease
2 or contract or as a result of bankruptcy proceedings; or

3 (4) the facilities do not affect in-state
4 retail rates or electric service reliability.

5 G. A public utility subject to regulation of the
6 public regulation commission pursuant to the Public Utility Act
7 may recover the capital cost of a project undertaken pursuant
8 to the New Mexico Renewable Energy Transmission Authority Act
9 from its retail customers only if the project has received a
10 certificate of public convenience and necessity from the public
11 regulation commission. A municipal utility exempt from
12 regulation of the public regulation commission may recover such
13 costs only if the project has been approved by the governing
14 body of the municipality. Costs associated with a project
15 undertaken pursuant to the New Mexico Renewable Energy
16 Transmission Authority Act are not recoverable from retail
17 utility customers except to the extent the costs are prudently
18 incurred and the project is used and useful in serving those
19 customers as determined by the public regulation commission."