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AN ACT

RELATING TO SPECIAL DISTRICTS; CREATING THE ELECTRIC
GENERATING FACILITY ECONOMIC DISTRICT ACT; ALLOWING FOR THE
FORMATION OF AN ELECTRIC GENERATING FACILITY ECONOMIC
DISTRICT AND AN AUTHORITY TO GOVERN A DISTRICT; PROVIDING
POWERS AND DUTIES; CREATING THE ELECTRIC GENERATING FACILITY
ECONOMIC DISTRICT GROSS RECEIPTS TAX TO PAY REVENUE BONDS
ISSUED PURSUANT TO THE ELECTRIC GENERATING FACILITY ECONOMIC
DISTRICT ACT; DECLARING AN EMERGENCY.

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

SECTION 1. SHORT TITLE.--Sections 1 through 11 of this
act may be cited as the "Electric Generating Facility
Economic District Act".

SECTION 2. DEFINITIONS.--As used in the Electric
Generating Facility Economic District Act:

A. "authority" means the governing body of a
district; and

B. "district" means an electric generating
facility economic district governed by an authority.

SECTION 3. CREATION OF A DISTRICT.--A county may form a
district:

A. the initial boundaries of which lie within the
jurisdiction of the county; and

B. that includes an operating coal-fueled electric

1 generating facility that is owned by a non-investor-owned
2 electric utility or a coal-fueled electric generating
3 facility that is owned by a non-investor-owned electric
4 utility and has been or is in the process of being retired.

5 SECTION 4. CREATION OF AN AUTHORITY--MEMBERS--TERMS--
6 QUALIFICATIONS.--

7 A. A county that forms a district shall create an
8 authority to govern the district that consists of five
9 members. The governing body of the county shall appoint
10 authority members.

11 B. The terms of the authority members shall be
12 staggered. Of the members initially appointed, that number
13 of members closest to, but not more than, one-half of the
14 membership shall serve for two years. The term of all other
15 members shall be four years. If additional counties become
16 part of the authority pursuant to Subsection E of this
17 section, the additional authority members shall be appointed
18 in a similar manner so that they shall serve staggered
19 four-year terms.

20 C. An authority member shall not serve more than
21 two consecutive four-year terms on the authority. A member
22 who has served two consecutive four-year terms on the
23 authority shall not serve another term until after four years
24 following the second term have elapsed.

25 D. The authority shall include a non-voting member

1 appointed by the governor who shall serve at the pleasure of
2 the governor for a two-year term.

3 E. The authority shall, for the period ending
4 December 31, 2020, authorize a county that borders the county
5 that created the district within twenty miles of a qualifying
6 electric generating facility to become part of the authority.
7 Any additional county that becomes part of the district shall
8 appoint four additional members to the authority.

9 F. An elected official shall not serve as an
10 authority member nor influence or attempt to influence any
11 action of an authority member. Authority members shall
12 receive per diem and mileage as provided in the Per Diem and
13 Mileage Act and shall receive no other compensation,
14 perquisite or allowance. An authority member shall post a
15 surety bond for the faithful performance of the member's
16 duties pursuant to the Surety Bond Act.

17 G. Before appointing a person as an authority
18 member, the governing body of a county shall first determine
19 that the person has:

20 (1) experience in energy development
21 business, economic development, finance, commercial real
22 estate investment or accounting or possesses other
23 qualifications that the governing body determines are
24 necessary or appropriate for carrying out the duties of the
25 authority but does not have at the time of appointment and

1 will not have during service as an authority member
2 employment or a contract with an energy development business;
3 and

4 (2) no direct substantial conflict of
5 interest in the business or operation of the authority.

6 H. An authority member shall resign from the
7 authority if a matter to be voted on poses a conflict of
8 interest for the member. Authority members and employees of
9 the authority shall be governed by the provisions of the
10 Governmental Conduct Act. An authority member or employee of
11 the authority shall not:

12 (1) acquire a financial interest in a new or
13 existing business venture or business property if the member
14 or employee believes or has reason to believe that the
15 financial interest will be directly affected by an official
16 act conducted in that membership or employment capacity;

17 (2) use confidential information acquired by
18 virtue of membership on or employment by the authority for
19 the member's or employee's or another person's private gain;
20 or

21 (3) as a person with a financial or other
22 interest in a business that is party to a contract, enter
23 into a contract with the authority without there being public
24 notice of the contract, a competitive bidding process for
25 entry into the contract and full disclosure of that financial

1 or other interest.

2 I. The governing body that appoints an authority
3 member may remove the member if the governing body determines
4 that the member has:

5 (1) neglected or refused to perform an
6 official duty;

7 (2) violated the policies or procedures
8 adopted by the authority; or

9 (3) developed a direct, substantial conflict
10 of interest in the business of the authority.

11 SECTION 5. AUTHORITY--POWERS--DUTIES.--

12 A. An authority is a political subdivision of the
13 state that may, in accordance with law and to effectuate the
14 purposes of the district it governs:

15 (1) have perpetual existence;

16 (2) sue and be sued;

17 (3) adopt bylaws, policies and procedures;

18 (4) employ a director, who may employ staff
19 as necessary to administer the authority;

20 (5) fix the time and place of meetings and
21 the method of providing notice of the meetings;

22 (6) make and pass orders and resolutions
23 necessary for governing and managing the authority and
24 executing the powers of the authority;

25 (7) adopt and use a seal;

1 (8) create and define the duties of advisory
2 committees;

3 (9) enter into contracts and agreements;

4 (10) borrow money and issue bonds;

5 (11) pledge all or a portion of its revenue
6 to the payment of its bonds;

7 (12) issue refunding revenue bonds to
8 refinance, pay or discharge all or part of its outstanding
9 revenue bonds;

10 (13) impose liens;

11 (14) acquire, dispose of or encumber real or
12 personal property or interests in real or personal property,
13 including leases and easements;

14 (15) manage the land and property
15 constituting and associated with the authority within the
16 district, including by imposing rental charges and fees for
17 the use of that land and property;

18 (16) sell, transfer or convey real or
19 personal property or interests in real or personal property
20 acquired by the authority;

21 (17) alter the boundaries of the district
22 with the approval of the counties that are part of the
23 district;

24 (18) establish standards and long-term
25 development plans;

1 (19) apply to a public or private source for
2 a loan, grant, guarantee or other type of financial
3 assistance; and

4 (20) exercise the rights and powers
5 necessary or incidental to or implied by the specific powers
6 granted by this section.

7 B. An authority shall:

8 (1) govern the district;

9 (2) adopt rules to govern its conduct,
10 including standards and procedures for calling emergency
11 meetings and a conflicts-of-interest policy;

12 (3) use district property to create jobs and
13 foster economic development in all areas it deems appropriate
14 and in the public welfare; and

15 (4) comply with all applicable state and
16 federal laws, ordinances or rules enacted by the county
17 having jurisdiction over the district's land or real
18 property.

19 **SECTION 6. REVENUE BONDS--EXEMPTION FROM TAXATION.--**The
20 bonds authorized by the Electric Generating Facility Economic
21 District Act, the income from those bonds, mortgages or other
22 security instruments executed as security for those bonds,
23 lease agreements authorized by the Electric Generating
24 Facility Economic District Act and revenue derived from a
25 lease or sale by an authority are exempt from taxation by the

1 state and its subdivisions.

2 SECTION 7. BONDING AUTHORITY.--

3 A. An authority may issue revenue bonds for the
4 purpose of constructing, purchasing, improving, remodeling,
5 furnishing or equipping any necessary buildings, structures,
6 roads or other infrastructure of the district.

7 B. An authority may pledge irrevocably any or all
8 of the revenue received by the district to the payment of the
9 interest on and principal of revenue bonds for any of the
10 purposes authorized in the Electric Generating Facility
11 Economic District Act.

12 C. Revenues in excess of the annual principal and
13 interest due on revenue bonds secured by a pledge of revenue
14 may be accumulated in a debt service reserve account. The
15 authority may appoint a commercial bank trust department to
16 act as paying agent or trustee of the revenues and to
17 administer the payment of principal of and interest on the
18 bonds.

19 D. Except as otherwise provided in the Electric
20 Generating Facility Economic District Act, revenue bonds:

21 (1) may have interest, principal value or
22 any part thereof payable at intervals or at maturity as may
23 be determined by the authority;

24 (2) may be subject to a prior redemption at
25 the district's option at a time and upon terms and

1 conditions, with or without the payment of a premium, as
2 determined by the authority;

3 (3) may mature at any time not exceeding
4 thirty years after the date of issuance;

5 (4) may be serial in form and maturity, may
6 consist of one bond payable at one time or in installments or
7 may be in another form determined by the authority;

8 (5) shall be sold for cash at, above or
9 below par and at a price that results in a net effective
10 interest rate that does not exceed the maximum permitted by
11 the Public Securities Act and the Public Securities Short-
12 Term Interest Rate Act; and

13 (6) may be sold at public or negotiated
14 sale.

15 E. At a regular or special meeting, the authority
16 may adopt a resolution that:

17 (1) declares the necessity for issuing
18 revenue bonds;

19 (2) authorizes the issuance of revenue bonds
20 by an affirmative vote of a majority of all the members of
21 the authority; and

22 (3) designates the sources of revenues to be
23 pledged to the repayment of the revenue bonds.

24 **SECTION 8. REFUNDING BONDS.--**

25 A. An authority that has issued bonds in

1 accordance with the Electric Generating Facility Economic
2 District Act may issue refunding bonds for the purpose of
3 refinancing, paying and discharging all or any part of
4 outstanding bonds for the:

5 (1) acceleration, deceleration or other
6 modification of the payment of the outstanding bonds,
7 including, without limitation, any capitalization of any
8 interest thereon in arrears or about to become due for any
9 period not exceeding two years from the date of the refunding
10 bonds;

11 (2) purpose of reducing interest costs or
12 effecting other economies; or

13 (3) purpose of modifying or eliminating
14 restrictive contractual limitations:

15 (a) pertaining to the issuance of
16 additional bonds; or

17 (b) concerning the outstanding bonds or
18 facilities relating to the outstanding bonds.

19 B. An authority may pledge irrevocably for the
20 payment of interest, principal and premium, if any, on
21 refunding bonds the appropriate pledged revenues, which may
22 be pledged to an original issue of bonds.

23 C. Refunding bonds may be issued separately or in
24 combination in one series or more.

25 D. Refunding bonds shall be authorized by

1 resolution. Bonds that are refunded shall be paid at
2 maturity or on any permitted prior redemption date in the
3 amounts, at the time and places and, if called prior to
4 maturity, in accordance with any applicable notice
5 provisions, all as provided in the proceedings authorizing
6 the issuance of the refunded bonds or otherwise appertaining
7 thereto, except for any such bond that is voluntarily
8 surrendered for exchange or payment by the holder or owner.

9 E. The principal amount of the refunding bonds may
10 exceed the principal amount of the refunded bonds and may
11 also be less than or the same as the principal amount of the
12 bonds being refunded if provision is duly and sufficiently
13 made for the payment of the refunded bonds.

14 F. The proceeds of refunding bonds, including
15 accrued interest and premiums appertaining to the sale of
16 refunding bonds, shall be immediately applied to the
17 retirement of the bonds being refunded or placed in escrow in
18 a commercial bank or trust company that possesses and
19 exercises trust powers and that is a member of the federal
20 deposit insurance corporation. The proceeds shall be applied
21 to the principal of, interest on and any prior redemption
22 premium due in connection with the bonds being refunded;
23 provided that the refunding bond proceeds, including accrued
24 interest and premiums appertaining to a sale of refunding
25 bonds, may be applied to the establishment and maintenance of

1 a reserve fund and to the payment of expenses incidental to
2 the refunding and the issuance of the refunding bonds, the
3 interest on those bonds and the principal of those bonds, or
4 both interest and principal as the authority determines.

5 This section does not require the establishment of an escrow
6 if the refunded bonds and the amounts necessary to retire the
7 refunded bonds within that time are deposited with the paying
8 agent for the refunded bonds. Any such escrow shall not
9 necessarily be limited to proceeds of refunding bonds but may
10 include other money available for its purpose. Proceeds in
11 escrow pending such use may be invested or reinvested in
12 bills, certificates of indebtedness, notes or bonds that are
13 direct obligations of, or the principal and interest of which
14 obligations are unconditionally guaranteed by, the United
15 States or in certificates of deposit of banks that are
16 members of the federal deposit insurance corporation;
17 provided that the par value of the certificates of deposit is
18 collateralized by a pledge of obligations or by a pledge of
19 payment that is unconditionally guaranteed by the United
20 States; and further provided that the par value of those
21 obligations is at least seventy-five percent of the par value
22 of the certificates of deposit. Such proceeds and
23 investments in escrow, together with any interest or other
24 income to be derived from any such investment, shall be in an
25 amount at all times sufficient as to principal, interest, any

1 prior redemption premium due and any charges of the escrow
2 agent payable therefrom to pay the bonds being refunded as
3 they become due at their respective maturities or at any
4 designated prior redemption date or dates in connection with
5 which the district shall exercise a prior redemption option.
6 A purchaser of a refunding bond issued is not responsible for
7 the application of the proceeds by the district or any of its
8 officers, agents or employees.

9 G. Refunding bonds may bear additional terms and
10 provisions as determined by the authority subject to the
11 limitations in this section relating to original bond issues.
12 Refunding bonds are not subject to the provisions of any
13 other statute.

14 H. Refunding bonds:

15 (1) may have interest, principal value or
16 any part thereof payable at intervals or at maturity, as
17 determined by the authority;

18 (2) may be subject to prior redemption at
19 the district's option at a time or times and upon terms and
20 conditions with or without payment of premium or premiums, as
21 determined by the authority;

22 (3) may be serial in form and maturity or
23 may consist of a single bond payable in one or more
24 installments or may be in another form, as determined by the
25 authority; and

1 (4) shall be exchanged for the bonds and any
2 matured unpaid interest being refunded at not less than par
3 or sold at public or negotiated sale at, above or below par
4 and at a price that results in a net effective interest rate
5 that does not exceed the maximum permitted by the Public
6 Securities Act.

7 I. At a regular or special meeting, an authority
8 may adopt a resolution by majority vote to authorize the
9 issuance of the refunding bonds.

10 SECTION 9. BONDS NOT OBLIGATION OF THE STATE OR A
11 COUNTY.--Except as otherwise provided in the Electric
12 Generating Facility Economic District Act, all bonds or other
13 obligations issued pursuant to that act are payable solely
14 from the revenues of the district that may be pledged to the
15 payment of such obligations, and the bonds or other
16 obligations shall not create an obligation, debt or liability
17 of the state or any other of its political subdivisions. No
18 breach of any pledge, obligation or agreement or a district
19 shall impose a pecuniary liability or a charge upon the
20 general credit or taxing power of the state or any other of
21 its political subdivisions.

22 SECTION 10. DISSOLUTION.--The governing body of the
23 county that formed the district and the governing bodies of
24 any counties that have become part of the district may, by
25 majority vote, agree to unwind and dissolve the district and

1 dismiss the authority members if they find the district is
2 not meeting the needs of the community in creating jobs or
3 fostering economic development. The assets and all debts and
4 obligations of the district shall be transferred to and
5 assumed by the counties as set forth in the unwinding or
6 dissolution agreement.

7 SECTION 11. LIMITATION OF APPLICABILITY.--No provision
8 of the Electric Generating Facility Economic District Act or
9 Section 12 of this 2020 act shall affect an operating
10 coal-fueled electric generating facility that is owned
11 by a non-investor-owned electric utility or a coal-fueled
12 electric generating facility that is owned by a
13 non-investor-owned electric utility and has been or is in the
14 process of being retired unless and to the extent the owner
15 of such a facility and any existing lienors to such a
16 facility agree in writing that such a facility may be
17 affected by the powers of the authority or the governing body
18 of a county.

19 SECTION 12. A new section of the County Local Option
20 Gross Receipts and Compensating Taxes Act is enacted to read:

21 "ELECTRIC GENERATING FACILITY ECONOMIC DISTRICT GROSS
22 RECEIPTS TAX--AUTHORITY TO IMPOSE--RATE--USE OF REVENUE.--

23 A. A majority of the members of the governing body
24 of a county within which a county electric generating
25 facility economic district is located and a bordering county

1 within twenty miles of a qualifying electric generating
2 facility may enact an ordinance imposing an excise tax of up
3 to one-fourth percent of the gross receipts of any person
4 engaging in business in the county or county area for the
5 privilege of engaging in business in the county or county
6 area. The tax authorized by this section may be referred to
7 as the "county electric generating facility economic district
8 gross receipts tax".

9 B. An ordinance imposing a county electric
10 generating facility economic district gross receipts tax
11 shall impose the tax in any number of increments of
12 one-thousandth percent; provided that the aggregate amount of
13 increments shall not exceed one-fourth percent.

14 C. The governing body, at the time of enacting an
15 ordinance imposing a county electric generating facility
16 economic district gross receipts tax, shall dedicate the
17 revenue only for the payment of the interest on and principal
18 of revenue bonds issued pursuant to the Electric Generating
19 Facility Economic District Act. Revenue from a county
20 electric generating facility economic district gross receipts
21 tax shall not be used for any other purpose."

22 SECTION 13. EMERGENCY.--It is necessary for the public
23 peace, health and safety that this act take effect
24 immediately. _____