

1 HOUSE BILL 137

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO UTILITIES; ENACTING THE CLEAN ELECTRIFICATION ACT;  
12 ALLOWING UTILITIES AND COOPERATIVES TO PROVIDE BENEFICIAL AND  
13 LOW-INCOME ELECTRIFICATION; REQUIRING PUBLIC UTILITIES,  
14 MUNICIPAL UTILITIES AND RURAL ELECTRIC COOPERATIVES TO REDUCE  
15 CARBON DIOXIDE EMISSIONS FROM ELECTRICITY GENERATION OVER TIME;  
16 PRESCRIBING DEADLINES AND REQUIREMENTS; ALLOWING THE CREATION  
17 OF CLEAN ELECTRICITY CREDITS; ESTABLISHING COMPLIANCE  
18 PROCEDURES; ESTABLISHING FEES; CREATING A PENALTY; ALLOWING  
19 VARIANCES; AMENDING THE STATE AIR QUALITY PERMIT FUND; MAKING  
20 AN APPROPRIATION.

21  
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

23 SECTION 1. A new section of Chapter 62 NMSA 1978 is  
24 enacted to read:

25 "[NEW MATERIAL] SHORT TITLE.--Sections 1 through 8 of this  
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1 act may be cited as the "Clean Electrification Act"."

2 SECTION 2. A new section of Chapter 62 NMSA 1978 is  
3 enacted to read:

4 "[NEW MATERIAL] DEFINITIONS.--As used in the Clean  
5 Electrification Act:

6 A. "base period emissions" means the average annual  
7 metric tons of carbon dioxide that a utility or cooperative  
8 caused to be emitted into the atmosphere from its dedicated  
9 generation during the three-calendar-year period of 2018 to  
10 2020; provided that for a utility that has received approval of  
11 a financing order pursuant to the Energy Transition Act, "base  
12 period emissions" means the utility's average New Mexico load  
13 during the three-calendar-year period of 2018 to 2020  
14 multiplied by two-tenths metric tons per megawatt-hour. The  
15 operation of any dedicated generation that reduces methane  
16 emitted into the atmosphere in an amount equal to at least  
17 one-tenth of the metric tons of carbon dioxide that the  
18 generation emitted into the atmosphere shall be deemed to not  
19 emit any carbon dioxide;

20 B. "beneficial and low-income electrification"  
21 means the conversion or development of a building use or  
22 industrial process from one that does, or economically could,  
23 consume fossil-fueled energy to one that uses electric energy,  
24 or the provision of electricity to existing low-income and  
25 indigenous New Mexico households without electricity service;

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1 C. "clean electricity credit" or "credit" means an  
2 instrument in a physical or electronic format approved by the  
3 secretary that represents each metric ton of emissions that is  
4 less than one per megawatt-hour produced from dedicated  
5 generation;

6 D. "commission" means the public regulation  
7 commission;

8 E. "compliance period" means a three-calendar-year  
9 period, with the first period being the years 2022 through  
10 2024;

11 F. "cooperative" means a rural electric cooperative  
12 organized pursuant to the Rural Electric Cooperative Act;

13 G. "dedicated generation" means electricity  
14 production capacity that is owned by, or assigned for a period  
15 of twenty-four months or longer to, a utility or cooperative to  
16 serve its New Mexico load; provided that if a utility's or  
17 cooperative's electricity production capacity produces:

18 (1) more energy in a year than the utility's  
19 or cooperative's New Mexico load, "dedicated generation" means  
20 the sum of:

21 (a) the utility's or cooperative's  
22 renewable generation capacity; and

23 (b) the utility's or cooperative's  
24 non-renewable generation capacity, uniformly scaled down by the  
25 ratio of the utility's or cooperative's New Mexico load minus  
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1 the amount of energy produced by renewable generation capacity  
2 to the amount of energy produced from the non-renewable  
3 generation capacity; and

4 (2) less energy in a year than the utility's  
5 or cooperative's New Mexico load, the shortfall is deemed to be  
6 provided from dedicated generation with an emission rate equal  
7 to the purchased power emission rate;

8 H. "department" means the department of  
9 environment;

10 I. "emissions" means carbon dioxide emitted into  
11 the atmosphere;

12 J. "market development" means financial incentives  
13 or technical assistance provided to the developer, builder,  
14 owner or resident of a home, apartment building, commercial  
15 building, government building or industrial facility or to an  
16 equipment distributor, installer or manufacturer to further the  
17 deployment of beneficial and low-income electrification  
18 technologies and solutions, including facilities to  
19 electrically charge transportation vehicles;

20 K. "New Mexico load" means the megawatt-hours of  
21 electricity during a year that a utility or cooperative sells  
22 to its New Mexico retail customers plus the amount of energy  
23 lost from transmission lines, distribution lines and energy  
24 storage operations, plus the amount of energy stored at the end  
25 of the year and minus the amount of energy stored at the

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1 beginning of the year and minus load that has renewable energy  
2 assigned to serve a particular customer; provided that the  
3 utility verifies that the particular customer has or will  
4 retain the associated renewable energy certificates and will  
5 not use them for compliance with a law or regulation in any  
6 jurisdiction;

7 L. "purchased power emission rate" means the  
8 combustion output emission rate, in metric tons of carbon  
9 dioxide per megawatt-hour, identified in the United States  
10 environmental protection agency's emissions and generation  
11 resource integrated database reports for the North American  
12 electric reliability council subregion from which the power was  
13 procured; provided that, if the reports are unavailable for the  
14 period during which the power was procured, or if there exists  
15 a better approximation of the average emission rate from  
16 combustion methods of producing electricity in the applicable  
17 subregion, "purchased power emission rate" means the emission  
18 rate that best represents the emissions from combustion sources  
19 of electricity production in the applicable subregion, as  
20 determined by the department;

21 M. "reference emission rate" means one metric ton  
22 of carbon dioxide per megawatt-hour of produced electricity;

23 N. "secretary" means the secretary of environment;  
24 and

25 O. "utility" means an electric public utility as

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1 defined in Subsection G of 62-3-3 NMSA 1978 and a municipal  
2 electric utility as defined in Subsection H of Section 3-1-2  
3 NMSA 1978."

4 SECTION 3. A new section of Chapter 62 NMSA 1978 is  
5 enacted to read:

6 "[NEW MATERIAL] CLEAN ELECTRICITY REQUIREMENTS.--

7 A. A utility or cooperative shall make reasonable  
8 and consistent progress over time to reduce the emissions from  
9 its dedicated generation as follows:

10 (1) a utility shall emit no more than  
11 ninety-two percent of its base period emissions in 2022 and  
12 shall reduce its emissions by an amount equal to an additional  
13 four percent of its base period emissions each year thereafter  
14 until January 1, 2045. For calendar year 2045 and thereafter,  
15 emissions shall remain fixed at zero; and

16 (2) a cooperative shall emit no more than its  
17 base period emissions in 2022 and ninety-six percent of its  
18 base period emissions in 2023 and shall reduce its emissions by  
19 an amount equal to an additional four percent each year until  
20 January 1, 2039, after which it shall reduce its emissions by  
21 an amount equal to an additional three percent of its base  
22 period emissions each year until January 1, 2050. For calendar  
23 year 2050 and thereafter, emissions shall remain fixed at zero.

24 B. To demonstrate compliance with the requirements  
25 of Subsection A of this section, a utility or cooperative shall

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1 retire a number of credits, the amount of which is calculated  
2 annually, equal to the reference emission rate multiplied by  
3 the utility's or cooperative's New Mexico load for that year,  
4 less the number of metric tons of its base period emissions  
5 reduced as specified for that year under Subsection A of this  
6 section as applicable. At the end of each compliance period, a  
7 utility or cooperative shall retire the cumulative credits  
8 required for each year of that period, plus any deficiency  
9 amount required by Subsection E of Section 6 of the Clean  
10 Electrification Act. If in any year the calculated number of  
11 credits to retire is a negative number, that amount shall be  
12 deemed to be zero.

13 C. For calculating base period emissions, the  
14 purchased power emission rate for the period closest to 2019  
15 shall be used."

16 SECTION 4. A new section of Chapter 62 NMSA 1978 is  
17 enacted to read:

18 "[NEW MATERIAL] BENEFICIAL AND LOW-INCOME  
19 ELECTRIFICATION.--

20 A. An investor-owned utility or cooperative that is  
21 in compliance with the Clean Electrification Act may undertake  
22 projects and provide market development and customer incentives  
23 to electrify energy usage in buildings and industrial processes  
24 within the utility's or cooperative's service territory.

25 B. The reasonable and prudent costs of the

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1 expenditures and investments of beneficial and low-income  
2 electrification shall be recoverable through a commission-  
3 approved tariff rider or in base rates. Projects that qualify  
4 for approval and rate recovery shall provide for improved  
5 utilization of electricity transmission and distribution  
6 systems, or shall be shown to reduce carbon dioxide or methane  
7 emitted into the atmosphere in amounts exceeding what would  
8 occur during the lifetime of the proposed project, in the  
9 absence of the project.

10 C. Investor-owned utility projects that provide  
11 electricity to existing low-income and indigenous households  
12 without electricity service shall be allowed an additional one  
13 hundred basis point return on equity for those project  
14 investments. The one dollar (\$1.00) per credit fee required by  
15 Subsection A of Section 6 of the Clean Electrification Act  
16 shall be waived for one year for a cooperative or municipal  
17 utility that electrifies at least one hundred existing low-  
18 income or indigenous households in the prior year.

19 D. On or before July 1, 2022, and thereafter upon  
20 request by the commission but no more frequently than every two  
21 years, a utility or cooperative shall file with the commission  
22 a plan to undertake beneficial and low-income electrification  
23 projects and an application to develop projects pursuant to  
24 that plan. When considering applications for approval, the  
25 commission shall consider whether the projects reasonably

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1 satisfy the criteria for beneficial or low-income  
2 electrification projects and the reasonableness and prudence of  
3 undertaking such projects."

4 SECTION 5. A new section of Chapter 62 NMSA 1978 is  
5 enacted to read:

6 "[NEW MATERIAL] CLEAN ELECTRICITY CREDITS.--

7 A. By June 1 of each year beginning in 2023, the  
8 secretary shall approve and certify the creation of credits  
9 associated with the prior calendar year's emissions from a  
10 utility's or cooperative's dedicated generation.

11 B. The number of credits certified shall equal the  
12 megawatt-hours produced from the dedicated generation in a year  
13 multiplied by the difference of one minus the emission rate of  
14 that generation, in metric tons per megawatt-hour; provided  
15 that:

16 (1) dedicated generation shall be deemed to  
17 have zero emissions if its operation reduces metric tons of  
18 methane emitted into the atmosphere by an amount equal to no  
19 less than one-tenth of the metric tons of emissions from that  
20 generation;

21 (2) dedicated generation with an emission rate  
22 that cannot be verified to the satisfaction of the secretary  
23 shall be deemed to have an emission rate equal to the purchased  
24 power emission rate; and

25 (3) dedicated generation that is provided

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1 renewable energy certificates associated with its electricity  
2 production shall be considered to have zero emissions in the  
3 base period emissions determination and in the provision of  
4 credits during a compliance period if the renewable energy  
5 certificates associated with that production are or will be  
6 retired by the utility or cooperative to which the generation  
7 is dedicated.

8 C. The secretary may authorize credits to be sold  
9 or otherwise transferred; provided that the authorization does  
10 not result in increased emissions over time and is otherwise  
11 consistent with the protection of public health, safety and the  
12 environment in New Mexico communities. Credits shall not  
13 expire and may be used at any time unless and until they are  
14 retired for compliance with the Clean Electrification Act or  
15 another law or rule requiring carbon dioxide reductions in  
16 another jurisdiction or sector of the economy. Credits shall  
17 not be used for compliance more than once. The secretary may  
18 allow credits, allowances or other instruments from another  
19 jurisdiction or economic sector that has a program to require  
20 comparable reductions of emissions over time and that accepts  
21 credits into its program to be certified and used for  
22 compliance with the Clean Electrification Act; provided that  
23 the use of credits, allowances or other instruments from  
24 another jurisdiction or economic sector shall not result in  
25 increased emissions over time and shall be otherwise consistent

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1 with the protection of public health, safety and the  
2 environment in New Mexico communities.

3 D. The department shall establish and maintain a  
4 secure and verifiable system for creating, accounting, tracking  
5 and retiring credits. The secretary may use a third party, or a  
6 regional or national system, to satisfy the requirements of  
7 this subsection."

8 SECTION 6. A new section of Chapter 62 NMSA 1978 is  
9 enacted to read:

10 "[NEW MATERIAL] COMPLIANCE PROCEDURES--FEES.--

11 A. On or before January 1, 2022, a utility or  
12 cooperative shall file with the department a verified statement  
13 of its base period emissions along with supporting  
14 documentation and other information as the secretary may  
15 require. A fee of one dollar (\$1.00) per metric ton of  
16 approved base period emissions shall be paid to the department.  
17 Unless the department determines within thirty days that the  
18 statement may be incorrect, it shall be deemed approved. If a  
19 statement is not deemed approved, the department shall  
20 determine by June 15, 2022 the appropriate base period  
21 emissions for the utility or cooperative, and the fee shall be  
22 paid within seven days of approval. Once established, the  
23 determination of base period emissions shall not be changed.

24 B. On or before July 1 of each calendar year  
25 commencing in 2023, a utility or cooperative shall file with  
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1 the department a verified statement of its entitlement to, and  
2 reconciliation of, clean electricity credits for the prior  
3 calendar year. The statement shall be accompanied by  
4 supporting documentation that includes the utility's or  
5 cooperative's production and emissions from its dedicated  
6 generation, an accounting and reconciliation of all credits  
7 that the utility or cooperative has been provided, has  
8 transferred, has banked and has retired for compliance at the  
9 conclusion of the last calendar year and additional information  
10 as the secretary may require.

11 C. Unless the secretary determines that the  
12 statement of entitlement and reconciliation may be incorrect,  
13 the secretary shall within sixty days of the filing provide the  
14 requested number of credits in the format proposed by the  
15 utility or cooperative, or another format as determined by the  
16 secretary. If the secretary determines that further inquiry is  
17 appropriate, the secretary shall determine the correct number  
18 of reconciled credits and shall provide by October 1 of that  
19 same year the correct number of additional clean electricity  
20 credits to which the utility or cooperative is entitled. A fee  
21 of one dollar (\$1.00) for each credit provided shall be paid to  
22 the department by the utility or cooperative receiving credits  
23 within thirty days of issuance.

24 D. On or before July 1, 2025 for compliance in the  
25 2022 through 2024 period, and every three years thereafter for

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1 compliance during the next three-year period, a utility or a  
2 cooperative shall file an application certifying to the  
3 department that it will retire the requisite number of clean  
4 electricity credits. This certification shall include verified  
5 information and documentation necessary for the department to  
6 determine that the correct number of credits will be retired  
7 and that the renewable energy certificates associated with  
8 dedicated generation from renewable energy have been or will be  
9 retired by the utility or cooperative. The department shall  
10 within thirty days of the application approve and require the  
11 retirement of sufficient clean electricity credits to establish  
12 compliance with the Clean Electrification Act.

13 E. If a utility or cooperative possesses an  
14 insufficient number of credits for retirement at the end of a  
15 compliance period, the utility or cooperative shall satisfy one  
16 hundred twenty-five percent of that deficiency on or before  
17 July 1 of the year following the end of the next three-year  
18 compliance period. After notice and hearing, the department  
19 shall assess a penalty of one hundred dollars (\$100) per  
20 deficient credit, paid to the department within thirty days of  
21 the assessment, for any deficiency persisting beyond a second  
22 consecutive compliance period.

23 F. The department may undertake audits or other  
24 oversight procedures to ensure compliance with the Clean  
25 Electrification Act. The attorney general shall seek a court

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1 order to enforce the Clean Electrification Act and any  
2 applicable penalties upon request by the department.

3 G. Fees collected by the department pursuant to  
4 this section shall be deposited in the state air quality permit  
5 fund. A utility or cooperative may recover fees paid to the  
6 department through a commission-approved monthly tariff rider  
7 designed to recover those fees over a period of twelve months  
8 or through base rates."

9 SECTION 7. A new section of Chapter 62 NMSA 1978 is  
10 enacted to read:

11 "[NEW MATERIAL] OTHER LAWS AND REGULATIONS.--The Clean  
12 Electrification Act does not diminish or otherwise affect a  
13 utility's or cooperative's obligation to comply with any other  
14 law or rule, unless that law or rule so provides. If a federal  
15 law or regulation requires earlier or greater emission  
16 reductions than required by the Clean Electrification Act, the  
17 department shall adjust the emission reduction requirements of  
18 the Clean Electrification Act to conform to the federal law or  
19 regulation."

20 SECTION 8. A new section of Chapter 62 NMSA 1978 is  
21 enacted to read:

22 "[NEW MATERIAL] VARIANCES.--A utility or cooperative may  
23 request from the department a variance from compliance with the  
24 requirements of the Clean Electrification Act. Applications  
25 shall be in writing and shall state the reason for the variance

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1 request, identify each section of the Clean Electrification Act  
2 for which a variance is requested, describe the effect the  
3 variance will have on compliance with the Clean Electrification  
4 Act and describe why the variance would be a reasonable  
5 alternative to the Clean Electrification Act's requirements.  
6 In consultation with the commission, the department may grant a  
7 requested variance if it determines that the variance is  
8 required to preserve the reliability or affordability of  
9 electricity service in New Mexico and those factors outweigh  
10 any harm to public health, safety or the environment caused by  
11 noncompliance. A variance granted by the department shall be  
12 of the shortest duration, consistent with the protection of  
13 public health, safety and the environment and the preservation  
14 of affordable and reliable electricity service."

15 SECTION 9. Section 74-2-15 NMSA 1978 (being Laws 1992,  
16 Chapter 20, Section 18) is amended to read:

17 "74-2-15. STATE AIR QUALITY PERMIT FUND.--

18 A. There is created in the state treasury the  
19 "state air quality permit fund" to be administered by the  
20 department. All fees collected by the department pursuant to  
21 Section 74-2-7 NMSA 1978 and the Clean Electrification Act  
22 shall be deposited in the state air quality permit fund. Any  
23 unexpended or unencumbered balance remaining at the end of a  
24 fiscal year shall not revert to the general fund.

25 B. Money in the state air quality permit fund is

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1 appropriated to the department for the purpose of [~~paying the~~  
2 ~~reasonable costs of~~]:

3 (1) reviewing and acting upon any application  
4 for a permit;

5 (2) if the owner or operator receives a  
6 permit, implementing and enforcing the terms and conditions of  
7 such permit not including any court costs or other costs  
8 associated with any enforcement action;

9 (3) emissions and ambient monitoring;

10 (4) preparing generally applicable regulations  
11 or guidance;

12 (5) modeling, analysis and demonstrations;

13 [~~and~~]

14 (6) preparing inventories and tracking  
15 emissions; and

16 (7) regulating air pollution, including carbon  
17 dioxide and criteria pollutants."

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