HOUSE COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 228

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; ENACTING THE HYDROGEN HUB DEVELOPMENT ACT; PROVIDING FOR THE DESIGNATION OF HYDROGEN HUBS; ALLOWING PUBLIC PARTNERS TO ENTER INTO PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS TO FACILITATE DEVELOPMENT OF HYDROGEN HUB PROJECTS; CREATING THE HYDROGEN HUB DEVELOPMENT BOARD AND SPECIFYING POWERS; ESTABLISHING CRITERIA FOR APPROVAL OF HYDROGEN HUB PROJECTS; CREATING THE HYDROGEN HUB PROJECT FUND; AUTHORIZING GRANTS, LOANS AND REVENUE BONDS; SPECIFYING POWERS AND DUTIES OF THE NEW MEXICO FINANCE AUTHORITY; REQUIRING REPORTS; ADDING AN EXEMPTION TO THE PROCUREMENT CODE; AMENDING DEFINITIONS IN THE RURAL ELECTRIC COOPERATIVE ACT AND THE RENEWABLE ENERGY ACT; DECLARING AN EMERGENCY.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 14 of this act may be cited as the "Hydrogen Hub Development Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Hydrogen Hub Development Act:

A. "apprenticeship program" means an apprenticeship program registered pursuant to the Apprenticeship Assistance Act;

B. "authority" means the New Mexico finance authority;

C. "board" means the hydrogen hub development board;

D. "carbon intensity" means the quantity of carbon dioxide equivalent emitted as determined through a life cycle analysis as expressed in kilograms of carbon dioxide equivalent per kilogram of hydrogen produced;

E. "clean hydrogen" means whichever of the following results in the lower carbon intensity:

(1) hydrogen produced with a carbon intensity equal to or less than two kilograms of carbon dioxide equivalent per kilogram of hydrogen produced; or

(2) hydrogen meeting the standards for clean hydrogen developed pursuant to Section 822 of the federal Energy Policy Act of 2005, as that section may be amended or renumbered;

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F. "clean hydrogen electric generation facility" means "clean hydrogen electric generation facility" as defined in the Renewable Energy Act;

G. "construction costs" means actual expenditures for the development and construction of a hydrogen hub project, including permitting; site characterization and assessment; engineering; design; carbon dioxide capture, treatment, compression, transportation and sequestration; site and equipment acquisition; raw materials; and fuel supply development used directly and exclusively in the facility;

H. "decarbonization" means the elimination of carbon or other greenhouse gas emissions;

I. "greenhouse gas emissions" means the release into the atmosphere of any gas, including carbon dioxide and methane but excluding water vapor, that contributes to climate change through the trapping of heat in the atmosphere;

J. "GREET model" means the greenhouse gases, regulated emissions and energy use in technologies model developed by Argonne national laboratory or a successor model;

K. "hard-to-decarbonize industry" means an industry for which there are not yet easily adopted, cost-effective alternative technologies to eliminate greenhouse gas emissions;

L. "hydrogen hub" means a distinct geographic area approved by the board pursuant to Subsection C of Section 6 of the Hydrogen Hub Development Act within which proposed hydrogen

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hub projects may be approved for grants or loans;

M. "hydrogen hub project" means a project creating or modifying infrastructure relating to the generation of power and the production, storage, transport and consumption of hydrogen, including the conversion of methane, natural gas or water and the sequestration of carbon dioxide;

N. "life cycle analysis" means, for hydrogen produced from methane, including feedstock extraction, agricultural waste, biomass or municipal solid waste, or from any other source, including water or wastewater, the quantity of greenhouse gas emissions through the point of hydrogen production, including all stages of production and distribution, from feedstock generation through the delivery and use of the finished fuel or other product for hydrogen production, as determined under the most recent GREET model and certified by an independent third-party entity that is qualified to verify life cycle analyses, as determined by the department of environment;

O. "permanent sequestration of carbon dioxide" means carbon dioxide injected using a well permitted pursuant to Code of Federal Regulations, Title 40, chapter 2, Subchapter D, Part 146, Subpart H, or an equivalent or more stringent state program, and that complies with a monitoring and verification plan approved pursuant to Code of Federal Regulations Title 40, chapter 1, Subchapter C, Part 98, Subpart

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RR, Section 98.440, Paragraphs (a) and (b), excluding any well or group of wells where a carbon dioxide stream is being injected in subsurface geologic formations to enhance the recovery of oil or natural gas;

P. "private partner" means an individual, a foreign or domestic corporation, a general partnership, a limited liability company, a limited partnership, a joint venture, a business trust, a public benefit corporation, a nonprofit entity or other private business entity or combination thereof;

Q. "public partner" means the state and its branches, agencies, departments, boards, instrumentalities or institutions and all political subdivisions of the state and their agencies, instrumentalities and institutions, including a department, an agency, an institution of higher education, a board or a commission;

R. "public-private partnership" means an arrangement between one or more public partners and one or more private partners for the development of a hydrogen hub project pursuant to the Hydrogen Hub Development Act;

S. "public-private partnership agreement" means a contract between one or more public partners and one or more private partners in connection with the development of a hydrogen hub project;

T. "responsibly sourced gas" means gas used or purchased to produce hydrogen that satisfies the more stringent

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of either:

(1) the standard for methane gas allowed to be used in hydrogen hub projects as promulgated by the federal government pursuant to Title 8 of the federal Energy Policy Act of 2005; or

(2) certification by a qualified independent organization with nationally recognized expertise to provide such certification, so long as such certification ensures using a verifiable audit trail, based in part on field measurements, that the production and transport of such gas achieves at least ninety-nine percent gas capture and meets applicable state or federal air quality emissions control requirements, and the organization has been approved by the energy, minerals and natural resources department;

U. "revenue" means all revenue, income, earnings, user fees, lease payments or other service payments that support the development of a hydrogen hub project, including money received as a grant or otherwise from the federal government, a public partner or any agency or instrumentality of the federal government; and

V. "user fees" means rates, fees or other charges imposed by the public partner or the private partner for use of all or part of a hydrogen hub project.

SECTION 3. [NEW MATERIAL] HYDROGEN HUBS--DESIGNATION--CRITERIA.--

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A. A private partner or a public partner may propose a specific geographic area for designation as a hydrogen hub pursuant to Subsection C of Section 6 of the Hydrogen Hub Development Act.

B. A proposed hydrogen hub shall meet as many of the following criteria as feasible at the time of designation:

(1) reasonable access to the fuel source needed to support a proposed hydrogen hub project using:

(a) renewable energy sources; or

(b) a natural gas pipeline or natural gas or methane gas generator within twenty-five miles of the proposed hydrogen hub and with a volume of responsibly sourced gas sufficient to supply one hundred fifty percent of the volume necessary to support a proposed hydrogen hub project;

(2) access within a four-hour travel period to a designated federal interstate highway or other four-lane vehicular highway;

(3) access within a four-hour travel period to a railroad line providing access to major markets on the west coast, gulf coast and east coast;

(4) reasonable access to a regional power grid suitable for the export of power generated by a hydrogen hub project;

(5) suitability for the use of renewable energy sources such as solar energy and wind power, including

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access to open land, sufficient to produce at least fifty percent of the power needed at the proposed hydrogen hub;

(6) geologic suitability and capacity in proposed sequestration strata for the permanent sequestration of carbon dioxide produced at the proposed hydrogen hub, including demonstration that such sequestration will not interfere with other approved operations in the same or other geographic strata;

(7) existing infrastructure suitable for redevelopment through a hydrogen hub project;

(8) existing or proposed infrastructure for the use of hydrogen generated though a hydrogen hub project;

(9) availability of a qualified labor pool, including reemployment of displaced energy transition personnel;

(10) feasibility of the establishment of a facility to facilitate the transfer of technology necessary for the implementation of hydrogen hub projects;

(11) beneficial impact on economically disadvantaged and distressed communities, including those impacted by the closure of coal and other fossil fuel industries;

(12) feasibility of suitable evacuation plans for hydrogen hub projects that generate power;

(13) availability of a public partner capable

of coordinating development activities within the proposed hydrogen hub;

(14) potential for participation in a regional or multistate effort to develop hydrogen-related industries; and

(15) ability to use state economic development incentive programs for hydrogen hub projects, including:

(a) improvement districts pursuant to Chapter 3, Article 33 NMSA 1978;

(b) the Public Improvement District Act;

(c) the Tax Increment for Development Act;

(d) the Industrial Revenue Bond Act;

(e) the Local Economic Development Act;

(f) the Renewable Energy Financing District Act; and

(g) the Infrastructure Development Zone Act.

SECTION 4. [NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS--APPROVAL REQUIREMENTS--RESTRICTIONS.--

A. To provide economic and administrative efficiencies in connection with the development of hydrogen hub projects, a public partner is authorized to enter into public-private partnership agreements.

B. Prior to entering into negotiations regarding

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the use of a public-private partnership agreement as a method of implementing a proposed hydrogen hub project, the public partner shall publish in a newspaper of general circulation its interest in considering such an agreement, and such publication shall include a description of the scope of the proposed hydrogen hub project.

C. Prior to entering into a public-private partnership agreement, a public partner shall:

(1) undertake a cost-benefit analysis of a public-private partnership hydrogen hub project in comparison with a traditional public partner-managed project;

(2) demonstrate the potential of the proposed hydrogen hub project to reduce carbon emissions, especially in hard-to-decarbonize industries;

(3) conduct a public hearing relating to the proposed public-private partnership held in accordance with the Open Meetings Act;

(4) demonstrate that the proposed hydrogen hub project serves an important public purpose and fulfills an important public need; and

(5) demonstrate that the proposed hydrogen hub project will comply with applicable state and federal law.

D. A public-private partnership agreement shall:

(1) define the roles and responsibilities of the public partners and the private partners;

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(2) provide clawback or recapture provisions that protect the public investment in the event of a default on the agreement;

(3) provide a finance plan detailing the financial contributions and obligations of the public and private partners;

(4) require a private partner to provide, or cause to be provided, performance and payment bonds as required pursuant to Section 13-4-18 NMSA 1978;

(5) require a private partner to provide guarantees, letters of credit or other acceptable forms of security, the amount of which may be less than one hundred percent of the value of the contract involved based on the determination of the public partner, or for public-private partnership agreements requiring board approval, based on the determination by the board;

(6) specify how revenue will be collected, accounted for and audited;

(7) specify how debts incurred on behalf of the public partner or private partner will be repaid;

(8) address how the public partners and the private partners will share management and the risks of the hydrogen hub project;

(9) provide that, in the event of an uncured default, the public partner may:

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(a) elect to take over the hydrogen hub project, including the succession of all right, title and interest in the hydrogen hub project, subject to any liens on revenue previously granted by the private partner; and

(b) terminate the public-private partnership and exercise any other rights and remedies that may be available, where such right to terminate may also be exercised by the board if the board finds it is in the public interest to do so;

(10) specify the term of the public-private partnership agreement, which shall not exceed thirty years;

(11) limit a private partner from seeking injunctive or other equitable relief to in any way restrict a public partner from developing, constructing or maintaining a hydrogen hub project, except that the public-private partnership agreement may provide for reasonable compensation to the private partner for the adverse effect resulting from development, construction, operation and maintenance of another hydrogen hub project of the public partner;

(12) provide for the protection of proprietary information of the private partner; and

(13) provide provisions for termination of the public-private partnership agreement, including the cessation of the powers and duties of the private partner.

E. A public-private partnership agreement for a

hydrogen hub project shall not become effective until it is approved by the board pursuant to Subsection D of Section 6 of the Hydrogen Hub Development Act.

SECTION 5. [NEW MATERIAL] HYDROGEN HUB DEVELOPMENT BOARD--CREATED--MEMBERSHIP.--

A. The "hydrogen hub development board" is created. The department of environment shall provide necessary administrative services to the board.

B. The board is composed of:

(1) the secretary of economic development or the secretary's designee;

(2) the secretary of finance and administration or the secretary's designee;

(3) the secretary of energy, minerals and natural resources or the secretary's designee;

(4) the secretary of environment or the secretary's designee;

(5) the secretary of taxation and revenue or the secretary's designee;

(6) the chief executive officer of the authority or the chief executive officer's designee; and

(7) five public members appointed by the New Mexico legislative council who shall have experience in architecture, the technology and analysis of reductions in greenhouse gas emissions, the development and related

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engineering of hydrogen hub projects, project finance, public finance or bond and finance law.

C. The public members appointed initially shall draw lots for staggered terms in such a way that two members shall serve for six years, two members shall serve for four years and one member shall serve for two years. Thereafter, the public members shall serve for six-year terms. A vacancy in a term of a public member of the board shall be filled by the New Mexico legislative council for the remainder of the original term.

D. The members shall select a chair, who shall be a public member and who shall serve a term of two years.

E. Members who are not public employees are entitled to per diem and mileage as provided in the Per Diem and Mileage Act but shall receive no other compensation, perquisite or allowance.

F. A member of the board shall not participate in or influence a decision by the board in which that member has a conflict of interest, pecuniary interest or other disqualifying interest respecting a public-private partnership agreement or a hydrogen hub project that is considered by the board. All members of the board shall certify annually and in writing compliance with this subsection.

SECTION 6. [NEW MATERIAL] HYDROGEN HUB DEVELOPMENT BOARD--POWERS--DUTIES.--The board has the following powers and

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duties:

A. meet quarterly and at such other times as deemed necessary by the chair;

B. develop forms of applications for approval of public-private partnerships;

C. review and approve, modify or disapprove specific geographic areas to be designated as hydrogen hubs;

D. review and approve or disapprove proposed public-private partnership agreements for a hydrogen hub project;

E. modify or terminate existing approvals or designations for failure to meet the requirements of the Hydrogen Hub Development Act;

F. certify the need for the issuance of revenue bonds and refunding bonds by the authority;

G. adopt and promulgate rules establishing the application process and criteria for the approval of public-private partnership agreements in accordance with the provisions of the State Rules Act;

H. approve or disapprove applications for grants or loans from the hydrogen hub project fund for hydrogen hub projects;

I. consult with state agencies, including the taxation and revenue department, the department of environment or the energy, minerals and natural resources department, on

technical issues relevant to the board's consideration of an application;

J. request updates to any technical information, including any annual certification, provided in connection with an approved application or designation; and

K. take all other action necessary to implement the Hydrogen Hub Development Act, including entering into joint powers agreements and retaining legal counsel and experts when appropriate.

SECTION 7. [NEW MATERIAL] HYDROGEN HUB PROJECTS--CRITERIA FOR APPROVAL.--

A. If the proposed hydrogen hub project generates hydrogen, the board shall approve a proposed public-private partnership agreement only if it finds the proposed project:

(1) is a clean hydrogen electric generation facility or will generate or use only clean hydrogen;

(2) provides for the permanent sequestration of carbon dioxide created in the production of hydrogen by the proposed hydrogen hub project, either by the creator of the carbon dioxide or by a purchaser of the carbon dioxide; and

(3) provides certification that methane gas produced or purchased, regardless of the source, for the generation of hydrogen is responsibly sourced gas.

B. If the proposed hydrogen hub project generates hydrogen, in deciding whether to approve a proposed

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public-private partnership agreement for a hydrogen hub project, in addition to the criteria set forth in Subsection C of this section, the board shall consider at least the following criteria:

(1) whether hydrogen is a cost-effective decarbonization solution for the proposed hydrogen hub project;

(2) the cost of alternative decarbonization technologies;

(3) the net environmental impact of the proposed hydrogen hub project, including the potential for cost-effective decarbonization of electric generation, industrial manufacturing and transportation and the impact on fresh water reserves; and

(4) the opportunities for the proposed hydrogen hub project to participate in a regional energy or power market.

C. For all proposed hydrogen hub projects, in deciding whether to approve a proposed public-private partnership agreement for a hydrogen hub project, the board shall consider at least the following criteria:

(1) the technological feasibility of the proposed hydrogen hub project and the ability of the private partners and public partners to successfully implement the proposed hydrogen hub project;

(2) the projected time frame for completion of

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the proposed hydrogen hub project;

(3) the impact of the proposed hydrogen hub project on the local employment base and on an economically distressed community;

(4) subject to the availability of qualified applicants, whether the construction of a proposed hydrogen hub project with construction costs greater than ten million dollars ($10,000,000) shall employ apprentices from an apprenticeship program during the construction phase of a project at a minimum level of the following percentages of all persons employed for the project:

(a) ten percent for projects for which on-site construction commences beginning on or after January 1, 2023 and prior to January 1, 2024;

(b) seventeen and one-half percent for projects for which on-site construction commences beginning on or after January 1, 2024 and prior to January 1, 2025; and

(c) twenty-five percent for projects for which on-site construction commences beginning on or after January 1, 2025;

(5) the projected impact of the proposed hydrogen hub project on the taxable revenue for the state and relevant municipalities and counties;

(6) the financial feasibility of the proposed hydrogen hub project, including the cost of the hydrogen hub

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project, the projected financial income from the proposed hydrogen hub project and the public-private partnership's ability to leverage grants or loans from the state;

(7) the potential qualification of the proposed hydrogen hub project for state and federal grants, loans and tax incentives;

(8) the possibility of state investment in the proposed hydrogen hub project pursuant to Section 7-27-5.15 NMSA 1978; and

(9) the opportunities for the proposed hydrogen hub project to participate in a regional hydrogen hub.

D. For the purposes of Paragraph (4) of Subsection C of this section, the workforce solutions department shall adopt rules requiring applicable apprenticeship programs to encourage diversity among participants, include participation by those underrepresented in the industry associated with the apprenticeship program and include participation from disadvantaged communities.

SECTION 8. [NEW MATERIAL] NEW MEXICO FINANCE AUTHORITY--DUTIES.--The authority shall:

A. provide staff support to the board for the financial analysis of proposed hydrogen hub projects;

B. administer the hydrogen hub project fund;

C. develop forms of grant and loan applications for hydrogen hub projects seeking funds from the hydrogen hub

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project fund;

D. make grants and loans from the hydrogen hub project fund for applications that have been approved by the board pursuant to Subsection H of Section 6 of the Hydrogen Hub Development Act;

E. adopt and promulgate rules as necessary relating to the issuance of bonds for hydrogen hub projects;

F. upon certification by the board, issue revenue bonds and refunding bonds in accordance with the provisions of the Hydrogen Hub Development Act;

G. fix, revise from time to time, charge and collect fees and other charges in connection with making grants and loans from the hydrogen hub project fund;

H. be compensated from the hydrogen hub project fund for administrative and reimbursable costs in connection with the authority's support of the board and administration of the hydrogen hub project fund; and

I. take all other action necessary to implement the Hydrogen Hub Development Act, including entering into joint powers agreements with other agencies.

SECTION 9. [NEW MATERIAL] HYDROGEN HUB PROJECT FUND CREATED--STUDY GRANTS--INFRASTRUCTURE LOANS.--

A. The "hydrogen hub project fund" is created within the authority. The fund consists of appropriations, payments of principal and interest on loans made from the fund,

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income from investment of the fund and any other money distributed or otherwise allocated to the fund. Balances in the fund at the end of any fiscal year shall not revert to the general fund. The fund may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund.

B. Money in the hydrogen hub project fund may be used to make grants of up to two hundred fifty thousand dollars ($250,000) to a public partner for the purposes of studying the costs and benefits of entering into a public-private partnership for a proposed hydrogen hub project. A private partner shall provide funds that match or exceed the public partner's monetary obligation for the cost of the study, as required by the authority.

C. Money in the hydrogen hub project fund may be used to provide grants and loans for financing a hydrogen hub project through a public-private partnership agreement; provided that:

(1) the private partner shall provide funds that match or exceed the public partner's monetary obligation for the public-private partnership agreement, as provided by rule; and

(2) the public partner certifies to the board that the public partner has taken all action necessary to approve the public-private partnership agreement and that the

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public-private partnership agreement contains all terms and conditions required by Subsection D of Section 4 of the Hydrogen Hub Development Act.

D. Money in the hydrogen hub project fund may be used pursuant to Subsections B and C of this section only for grants or loans to a public partner for a hydrogen hub project.

E. Money in the hydrogen hub project fund may be used for grants or loans to an Indian nation, tribe or pueblo that has entered into a partnership with a private partner for the development of a hydrogen hub project only if:

(1) the agreement between the Indian nation, tribe or pueblo and the private partner is approved by the board; and

(2) the grant or loan application is approved by the board.

F. Money in the hydrogen hub project fund may be used for administrative and reimbursable costs incurred by the board, the department of environment and the authority, subject to the legislative appropriation process.

SECTION 10. [NEW MATERIAL] REVENUE BONDING AUTHORITY.--

A. Upon certification of the board, the authority may issue revenue bonds, the pledged revenues for which shall be fees, charges, lease payments, installment sale payments or other revenue sources of a hydrogen hub project for any one or more of the purposes authorized by the Hydrogen Hub Development

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B. The authority may pledge irrevocably any or all of the revenue received by the authority to the payment of the interest on and principal of revenue bonds for any of the purposes authorized in the Hydrogen Hub Development Act.

C. In addition to the pledge of revenues to the payment of revenue bonds, the authority may grant a mortgage on a hydrogen hub project that has been solely financed by revenue bonds to the bondholders or a trustee for the benefit of the holders of revenue bonds.

D. Revenue in excess of the annual principal and interest due on revenue bonds secured by a pledged revenue may be accumulated in a debt service reserve account. The authority may appoint a commercial bank trust department to act as paying agent or trustee of the revenue and to administer the payment of principal of and interest on the revenue bonds.

E. Except as otherwise provided in the Hydrogen Hub Development Act, revenue bonds:

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

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

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

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

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

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

F. At a regular or special meeting, the authority may, upon receipt of a certification from the board, adopt a resolution that:

(1) declares the necessity for issuing revenue bonds;

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

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

SECTION 11. [NEW MATERIAL] REFUNDING BOND AUTHORITY.--

A. Upon certification of the board, the authority may issue refunding bonds for the purpose of refinancing, paying and discharging all or any part of outstanding bonds for

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the:

(1) acceleration, deceleration or other modification of the payment of the outstanding bonds, including any capitalization of any interest thereon in arrears or about to become due for any period not exceeding two years from the date of the refunding bonds;

(2) reduction of interest costs or effecting other economies; or

(3) modification or elimination of restrictive contractual limitations pertaining to the issuance of additional bonds or concerning the outstanding bonds or hydrogen hub project relating to the outstanding bonds.

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

C. In addition to the pledge of revenue to the payment of refunding bonds, the authority may grant a mortgage on a hydrogen hub project that has been solely financed by revenue bonds to the bondholders or a trustee for the benefit of the holders of the bonds.

D. Refunding bonds may be issued separately or in combination in one series or more.

E. Refunding bonds shall be authorized by resolution. Bonds that are refunded shall be paid at maturity

or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

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

G. The proceeds of refunding bonds, including accrued interest and premiums appertaining to the sale of refunding bonds, shall be immediately applied to the retirement of the bonds being refunded or placed in escrow in a commercial bank or trust company that possesses and exercises trust powers and that is a member of the federal deposit insurance corporation.

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

I. Refunding bonds:

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

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

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

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

J. At a regular or special meeting, the authority may adopt a resolution by majority vote to authorize the issuance of the refunding bonds.

SECTION 12. [NEW MATERIAL] BONDS NOT OBLIGATION OF STATE.--All bonds or other obligations issued pursuant to the Hydrogen Hub Development Act are payable solely from the revenue of the authority that may be pledged to the payment of such obligations, and the bonds or other obligations shall not create an obligation, debt or liability of the state or of its political subdivisions. No breach of any pledge, obligation or

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agreement of the authority shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state or of its political subdivisions.

SECTION 13. [NEW MATERIAL] REPORT.--By December 1, 2022, and by December 1 of each year thereafter, the board shall provide a report to the governor and the New Mexico finance authority oversight committee regarding:

A. hydrogen hubs and hydrogen hub projects approved by the board;

B. a description of the businesses and industries participating in each approved hydrogen hub and hydrogen hub project;

C. grant and loan applications approved by the board;

D. public-private partnership agreements approved by the board;

E. the status of the hydrogen hub project fund;

F. any certifications for the issuance of revenue or refunding bonds made by the board to the authority; and

G. any recommended changes to the Hydrogen Hub Development Act.

SECTION 14. [NEW MATERIAL] CUMULATIVE AUTHORITY.--The Hydrogen Hub Development Act shall be deemed to provide an additional and alternative method for the doing of things authorized by that act and shall be regarded as supplemental

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and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing; provided that the issuance of bonds pursuant to the provisions of the Hydrogen Hub Development Act need not comply with the requirements of any other law applicable to the issuance of bonds, except the Public Securities Act, the Public Securities Short-Term Interest Rate Act and the Public Securities Limitation of Action Act, which acts shall apply.

SECTION 15. Section 13-1-98 NMSA 1978 (being Laws 1984, Chapter 65, Section 71, as amended by Laws 2019, Chapter 48, Section 13 and by Laws 2019, Chapter 63, Section 1) is amended to read:

"13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The provisions of the Procurement Code shall not apply to:

A. procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;

B. procurement of tangible personal property or services for the governor's mansion and grounds;

C. printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;

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D. purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;

E. purchases of books, periodicals and training materials in printed or electronic format from the publishers or copyright holders thereof and purchases of print, digital or electronic format library materials by public, school and state libraries for access by the public;

F. travel or shipping by common carrier or by private conveyance or to meals and lodging;

G. purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibit;

H. contracts with businesses for public school transportation services;

I. procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to rules adopted by the corrections industries commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;

J. purchases not exceeding ten thousand dollars ($10,000) consisting of magazine subscriptions, web-based or electronic subscriptions, conference registration fees and

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other similar purchases where prepayments are required;

K. municipalities having adopted home rule charters and having enacted their own purchasing ordinances;

L. the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;

M. contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;

N. contracts for maintenance of grounds and facilities at highway rest stops and other employment opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into by state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps;

O. contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;

P. contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

Q. contracts with professional entertainers;

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R. contracts and expenditures for legal subscription and research services and litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts;

S. contracts for service relating to the design, engineering, financing, construction and acquisition of public improvements undertaken in improvement districts pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and in county improvement districts pursuant to Subsection L of Section 4-55A-12.1 NMSA 1978;

T. works of art for museums or for display in public buildings or places;

U. contracts entered into by a local public body with a person, firm, organization, corporation or association or a state educational institution named in Article 12, Section 11 of the constitution of New Mexico for the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978, lease or operation of a county hospital pursuant to the Hospital Funding Act or operation and maintenance of a hospital pursuant to the Special Hospital District Act;

V. purchases of advertising in all media, including radio, television, print and electronic;

W. purchases of promotional goods intended for

resale by the tourism department;

X. procurement of printing, publishing and distribution services for materials produced and intended for resale by the cultural affairs department;

Y. procurement by or through the public education department from the federal department of education relating to parent training and information centers designed to increase parent participation, projects and initiatives designed to improve outcomes for students with disabilities and other projects and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act; provided that the exemption applies only to procurement of services not to exceed two hundred thousand dollars ($200,000);

Z. procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act;

AA. purchases of products or services for eligible persons with disabilities pursuant to the federal Rehabilitation Act of 1973;

BB. procurement, by either the department of health or Grant county or both, of tangible personal property, services or construction that are exempt from the Procurement Code pursuant to Section 9-7-6.5 NMSA 1978;

CC. contracts for investment advisory services,

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investment management services or other investment-related services entered into by the educational retirement board, the state investment officer or the retirement board created pursuant to the Public Employees Retirement Act;

DD. the purchase for resale by the state fair commission of feed and other items necessary for the upkeep of livestock;

EE. contracts entered into by the crime victims reparation commission to distribute federal grants to assist victims of crime, including grants from the federal Victims of Crime Act of 1984 and the federal Violence Against Women Act of 1994;

FF. procurement by or through the early childhood education and care department of early pre-kindergarten and pre-kindergarten services purchased pursuant to the Pre-Kindergarten Act;

GG. procurement of services of commissioned advertising sales representatives for New Mexico magazine; [~~and~~]

HH. agreements and contracts entered into pursuant to the Hydrogen Hub Development Act; and

[~~HH.~~] II. procurements exempt from the Procurement Code as otherwise provided by law."

SECTION 16. Section 62-15-37 NMSA 1978 (being Laws 2007, Chapter 4, Section 4, as amended) is amended to read:

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"62-15-37. DEFINITIONS--ENERGY EFFICIENCY--RENEWABLE ENERGY.--As used in the Rural Electric Cooperative Act:

A. "carbon intensity" means the quantity of all greenhouse gases emitted from hydrogen production, in carbon dioxide equivalent, measured at the point specified in Subsection B of this section, as determined under the most recent GREET model and certified by a third-party entity that is qualified to verify such analyses, as determined by the department of environment;

B. "clean hydrogen" for purposes of this section refers to hydrogen produced subject to the following requirements:

(1) through December 31, 2034:

(a) the carbon intensity of such hydrogen, measured at the point of production, shall not exceed one and one-half kilograms of carbon dioxide equivalent per kilogram of hydrogen;

(b) all upstream natural gas emissions associated with any methane gas used for the generation of such hydrogen shall be one percent or less by volume of all gas used; and

(c) for purposes of compliance with the limits above, producers may account for overcompliance in either Subparagraph (a) or (b) of this paragraph to address undercompliance with a limit in the other, and such adjustments

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shall be made on a carbon equivalent basis;

(2) from January 1, 2035 through December 31, 2044:

(a) the carbon intensity of such hydrogen, measured at the point of production, shall not exceed one kilogram of carbon dioxide equivalent per kilogram of hydrogen;

(b) all upstream natural gas emissions associated with any methane gas used for the generation of such hydrogen shall be six-tenths of one percent or less by volume of all gas used; and

(c) for purposes of compliance with the limits above, producers may account for overcompliance in either Subparagraph (a) or (b) of this paragraph to address undercompliance with a limit in the other, and such adjustments shall be made on a carbon equivalent basis; and

(3) on and after January 1, 2045, the carbon intensity of all such hydrogen shall not exceed zero kilograms of carbon dioxide equivalent per kilogram of hydrogen, and in no event shall any methane used to generate such hydrogen exceed the upstream natural gas emission limits identified in Subparagraph (b) of Paragraph (2) of this subsection;

C. "clean hydrogen electric generation facility" means an electric power generation facility located in New Mexico whose electrical output can be controlled to aid in

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balancing electric supply and that uses one hundred percent clean hydrogen to generate electricity;

[~~A.~~] D. "energy efficiency" means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices to result in a decrease in consumption of electricity without reducing the amount or quality of energy services;

E. "GREET model" means the greenhouse gases, regulated emissions and energy use in technologies model developed by Argonne national laboratory or a successor model;

[~~B.~~] F. "renewable energy" means electric energy generated by use of renewable energy resources and delivered to a rural electric cooperative;

[~~C.~~] G. "renewable energy certificate" means a certificate or other record, in a format approved by the public regulation commission, that represents all the environmental attributes from one megawatt-hour of electricity generated from renewable energy;

[~~D.~~] H. "renewable energy resource" means electric or useful thermal energy:

(1) generated by use of the following energy resources, with or without energy storage and delivered to a rural electric cooperative:

(a) solar, wind and geothermal;

(b) hydropower facilities brought in

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service on or after July 1, 2007;

(c) other hydropower facilities supplying no greater than the amount of energy from hydropower facilities that were part of an energy supply portfolio prior to July 1, 2007;

(d) fuel cells that do not use fossil fuels to create electricity;

(e) biomass resources, limited to agriculture or animal waste, small diameter timber, not to exceed eight inches, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico; provided that these resources are from facilities certified by the energy, minerals and natural resources department to: 1) be of appropriate scale to have sustainable feedstock in the near vicinity; 2) have zero life cycle carbon emissions; and 3) meet scientifically determined restoration, sustainability and soil nutrient principles; and

(f) landfill gas and anaerobically digested waste biomass; and

(2) does not include electric energy generated by use of fossil fuel or nuclear energy;

[~~E.~~] I. "useful thermal energy" means renewable energy delivered from a source that can be metered and that is delivered in the state to an end user in the form of direct heat, steam or hot water or other thermal form that is used for

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heating, cooling, humidity control, process use or other valid end-use energy requirements and for which fossil fuel or electricity would otherwise be consumed;

[~~F.~~] J. "zero carbon resource" means an electricity generation resource:

(1) that emits no carbon dioxide into the atmosphere; [~~or~~]

(2) that reduces methane emitted into the atmosphere in an amount equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere, as a result of electricity production; or

(3) is a clean hydrogen electric generation facility; and

[~~G.~~] K. "zero carbon resource standard" means providing New Mexico rural electric cooperative retail customers with electricity generated from one hundred percent zero carbon resources."

SECTION 17. Section 62-16-3 NMSA 1978 (being Laws 2004, Chapter 65, Section 3, as amended) is amended to read:

"62-16-3. DEFINITIONS.--As used in the Renewable Energy Act:

A. "carbon intensity" means the quantity of all greenhouse gases emitted from hydrogen production, in carbon dioxide equivalent, measured at the point specified in Subsection B of this section, as determined under the most

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recent GREET model and certified by a third-party entity that is qualified to verify such analyses, as determined by the department of environment;

B. "clean hydrogen" for purposes of this section refers to hydrogen produced subject to the following requirements:

(1) through December 31, 2034:

(a) the carbon intensity of such hydrogen, measured at the point of production, shall not exceed one and one-half kilograms of carbon dioxide equivalent per kilogram of hydrogen;

(b) all upstream natural gas emissions associated with any methane gas used for the generation of such hydrogen shall be one percent or less by volume of all gas used; and

(c) for purposes of compliance with the limits above, producers may account for overcompliance in either Subparagraph (a) or (b) of this paragraph to address undercompliance with a limit in the other, and such adjustments shall be made on a carbon equivalent basis;

(2) from January 1, 2035 through December 31, 2044:

(a) the carbon intensity of such hydrogen, measured at the point of production, shall not exceed one kilogram of carbon dioxide equivalent per kilogram of

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hydrogen;

(b) all upstream natural gas emissions associated with any methane gas used for the generation of such hydrogen shall be six-tenths of one percent or less by volume of all gas used; and

(c) for purposes of compliance with the limits above, producers may account for overcompliance in either Subparagraph (a) or (b) of this paragraph to address undercompliance with a limit in the other, and such adjustments shall be made on a carbon equivalent basis; and

(3) on and after January 1, 2045, the carbon intensity of all such hydrogen shall not exceed zero kilograms of carbon dioxide equivalent per kilogram of hydrogen, and in no event shall any methane used to generate such hydrogen exceed the upstream natural gas emission limits identified in Subparagraph (b) of Paragraph (2) of this subsection;

C. "clean hydrogen electric generation facility" means an electric power generation facility located in New Mexico whose electrical output can be controlled to aid in balancing electric supply and that uses one hundred percent clean hydrogen to generate electricity;

[~~A.~~] D. "commission" means the public regulation commission;

[~~B.~~] E. "energy storage" means batteries or other means by which energy can be retained and delivered as

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electricity for use at a later time;

F. "GREET model" means the greenhouse gases, regulated emissions and energy use in technologies model developed by Argonne national laboratory or a successor model;

[~~C.~~] G. "municipality" means a municipal corporation, organized under the laws of the state, and H class counties;

[~~D.~~] H. "public utility" means an entity certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act but does not include rural electric cooperatives;

[~~E.~~] I. "reasonable cost threshold" means an average annual levelized cost of sixty dollars ($60.00) per megawatt-hour at the point of interconnection of the renewable energy resource with the transmission system, adjusted for inflation after 2020;

[~~F.~~] J. "renewable energy" means electric energy generated by use of renewable energy resources and delivered to a public utility;

[~~G.~~] K. "renewable energy certificate" means a certificate or other record, in a format approved by the commission, that represents all the environmental attributes from one megawatt-hour of electricity generated from renewable energy;

[~~H.~~] L. "renewable energy resource" means the

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following energy resources, with or without energy storage:

(1) solar, wind and geothermal;

(2) hydropower facilities brought in service on or after July 1, 2007;

(3) biomass resources, limited to agriculture or animal waste, small diameter timber, not to exceed eight inches, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico; provided that these resources are from facilities certified by the energy, minerals and natural resources department to:

(a) be of appropriate scale to have sustainable feedstock in the near vicinity;

(b) have zero life cycle carbon emissions; and

(c) meet scientifically determined restoration, sustainability and soil nutrient principles;

(4) fuel cells that do not use fossil fuels to create electricity; and

(5) landfill gas and anaerobically digested waste biogas;

[~~I.~~] M. "renewable portfolio standard" means the minimum percentage of retail sales of electricity by a public utility to electric consumers in New Mexico that is required by the Renewable Energy Act to be from renewable energy;

[~~J.~~] N. "renewable purchased power agreement" means

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an agreement that binds an entity generating power from renewable energy resources to provide power at a specified price and binds the purchaser to that price;

[~~K.~~] O. "zero carbon resource" means an electricity generation resource:

(1) that emits no carbon dioxide into the atmosphere; [~~or~~]

(2) that reduces methane emitted into the atmosphere in an amount equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere, as a result of electricity production; or

(3) is a clean hydrogen electric generation facility; and

[~~L.~~] P. "zero carbon resource standard" means providing New Mexico public utility customers with electricity generated from one hundred percent zero carbon resources."

SECTION 18. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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