

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 47

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

AN ACT

RELATING TO PUBLIC UTILITIES; ENACTING THE ENERGY REDEVELOPMENT
BOND ACT; AUTHORIZING CERTAIN UTILITIES TO ISSUE BONDS PURSUANT
TO A FINANCING ORDER ISSUED BY THE PUBLIC REGULATION
COMMISSION; PROVIDING PROCEDURES FOR REHEARING AND JUDICIAL
REVIEW; PROVIDING LIMITS ON THE JURISDICTION OF THE COMMISSION;
CREATING SECURITY INTERESTS IN CERTAIN PROPERTY; PROVIDING FOR
THE PERFECTION OF INTERESTS IN CERTAIN PROPERTY; EXEMPTING
ENERGY REDEVELOPMENT CHARGES FROM FRANCHISE AND CERTAIN OTHER
GOVERNMENT FEES; PROVIDING FOR NONIMPAIRMENT OF ENERGY
REDEVELOPMENT CHARGES AND BONDS; REQUIRING CERTAIN UTILITIES'
TOTAL RETAIL SALES TO BE COMPRISED OF A CERTAIN AMOUNT OF
QUALIFYING CLEAN ENERGY RESOURCES; REQUIRING CERTAIN UTILITIES
TO TRANSFER A PORTION OF BOND PROCEEDS TO A COUNTY WHERE A
GENERATING FACILITY IS BEING ABANDONED; PROVIDING FOR CONFLICTS
IN LAW; PROVIDING THAT ACTIONS TAKEN PURSUANT TO THE ENERGY

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1 REDEVELOPMENT BOND ACT SHALL NOT BE INVALIDATED IF THE ACT IS
2 HELD INVALID.

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

5 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
6 cited as the "Energy Redevelopment Bond Act".

7 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
8 Energy Redevelopment Bond Act:

9 A. "abandoned facility" means a qualifying
10 generating facility that, if operated by a qualifying utility
11 on the effective date of the Energy Redevelopment Bond Act, may
12 resume generating electricity after abandonment if that
13 generation emits less than eight hundred forty-five pounds of
14 carbon dioxide per megawatt-hour;

15 B. "adjustment mechanism" means a formula-based
16 calculation used to make adjustments to the amount of the
17 energy redevelopment charges that are necessary to correct for
18 any over-collection or under-collection of the energy
19 redevelopment charges and to provide for the timely and
20 complete payment of scheduled principal and interest on the
21 energy redevelopment bonds and the payment and recovery of
22 other financing costs in accordance with the financing order;

23 C. "ancillary agreement" means a bond, insurance
24 policy, letter of credit, reserve account, surety bond,
25 interest rate lock or swap arrangement, hedging arrangement,

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1 liquidity or credit support arrangement or other similar
2 agreement or arrangement entered into in connection with the
3 issuance of an energy redevelopment bond that is designed to
4 promote the credit quality and marketability of the bond or to
5 mitigate the risk of an increase in interest rates;

6 D. "assignee" means a person or legal entity to
7 which an interest in energy redevelopment property is sold,
8 assigned, transferred or conveyed, other than as security, and
9 any successor to or subsequent assignee of such a person or
10 legal entity;

11 E. "bondholder" means a holder or owner of an
12 energy redevelopment bond;

13 F. "commission" means the public regulation
14 commission;

15 G. "credit rating" means the investment rating for
16 the unsecured debt obligations of a qualifying utility as
17 published by at least one nationally recognized statistical
18 rating organization as recognized by the United States
19 securities and exchange commission;

20 H. "energy redevelopment bond" means a bond,
21 debenture, note, certificate of participation, certificate of
22 beneficial interest, certificate of ownership or other
23 evidences of indebtedness or ownership that is issued by a
24 qualifying utility or an assignee pursuant to a financing
25 order, the proceeds of which are used directly or indirectly to

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1 recover, finance or refinance energy redevelopment costs and
2 financing costs that are secured by or payable from energy
3 redevelopment property and that are non-recourse to the
4 qualifying utility;

5 I. "energy redevelopment charge" means a non-
6 bypassable charge paid by all customers of a qualifying utility
7 for the recovery of energy redevelopment costs and financing
8 costs and collected by a qualifying utility or a collection
9 agent;

10 J. "energy redevelopment costs" means costs
11 incurred or expected to be incurred by a qualifying utility
12 that are caused by the abandonment of or associated with
13 qualifying generating facilities, that:

14 (1) includes:

15 (a) costs relating to regulatory assets
16 and reasonable and prudent costs associated with or attributed
17 to decommissioning the qualifying utility's share of
18 reclamation of mines that provide coal to qualifying generating
19 facilities, contract termination fees, engineering work,
20 severance pay, job training and local economic transition fund
21 payments pursuant to Section 19 of the Energy Redevelopment
22 Bond Act;

23 (b) any reasonable and prudent
24 demolition or similar cost that exceeds the salvage value of
25 the property and any other reasonable and prudent cost that has

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1 been incurred or will be incurred by the qualifying utility
2 relating to the qualifying generating facilities that have not
3 been fully recovered at the time of abandonment;

4 (c) costs that have been allowed to be
5 recovered from customers, either by commission approval or by
6 the commission not disapproving recovery from customers, by the
7 effective date of the Energy Redevelopment Bond Act; provided
8 that such costs have been included in the cost of service
9 applied for by the qualifying utility in a general rate case
10 and the commission did not expressly reserve cost recovery for
11 a future proceeding;

12 (d) reasonable and prudent preliminary
13 costs associated with activities that are incurred prior to the
14 issuance of a financing order and that are to be reimbursed
15 from the proceeds of energy redevelopment bonds;

16 (e) reasonable and prudent capital
17 investments that, considering the proposed abandonment date,
18 are necessary to operate and maintain the qualifying generating
19 facility in good working condition, according to good utility
20 practice, until the facility is abandoned; and

21 (f) the undepreciated investment in
22 property that is being abandoned; and

23 (2) does not include:

24 (a) the costs of investing in
25 replacement power resources;

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1 (b) the costs of complying with
2 Subsection E of Section 10 of the Energy Redevelopment Bond
3 Act;

4 (c) any costs lawfully disallowed or
5 limited by the commission prior to the effective date of the
6 Energy Redevelopment Bond Act; or

7 (d) any monetary penalty, fine or
8 forfeiture assessed against a qualifying utility by a
9 government agency or court under a federal or state statute,
10 rule or regulation;

11 K. "energy redevelopment property" means:

12 (1) the rights and interests of a qualifying
13 utility or an assignee under a financing order, including the
14 right to impose, charge, collect and receive energy
15 redevelopment charges in the amount necessary to provide for
16 the full payment and recovery of all energy redevelopment costs
17 and financing costs identified in the financing order as costs
18 to be financed by energy redevelopment bonds and to obtain
19 adjustments to the charges as provided in Section 5 of the
20 Energy Redevelopment Bond Act, and any interest in such rights
21 and interests; and

22 (2) all revenues, receipts, collections,
23 rights to payment, payments, money, claims or other proceeds
24 arising from the rights and interests specified in Paragraph
25 (1) of this subsection;

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1 L. "energy redevelopment revenues" means all
2 revenues, receipts, collections, claims, rights to payments,
3 payments, money or other proceeds arising from energy
4 redevelopment property and collected by a qualifying utility or
5 other collection agent that is attributable to an energy
6 redevelopment charge;

7 M. "financing cost" means the reasonable and
8 prudent costs incurred by the qualifying utility or an assignee
9 to issue, service, repay or refinance energy redevelopment
10 bonds, whether incurred or paid on issuance of the bonds or
11 over the life of the bonds, and approved for recovery by the
12 commission in a financing order. "Financing cost" includes:

13 (1) principal, interest, acquisition,
14 defeasance and redemption premiums that are payable on energy
15 redevelopment bonds;

16 (2) any payment required under an ancillary
17 agreement and any amount required to fund or replenish a
18 reserve account or other account established under any
19 indenture, ancillary agreement or other financing document
20 relating to the energy redevelopment bonds;

21 (3) any costs related to issuing, supporting,
22 repaying, servicing and refunding energy redevelopment bonds or
23 the application for a financing order, including servicing fees
24 and expenses, accounting and auditing fees and expenses,
25 trustee fees and expenses, legal fees and expenses,

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1 administrative fees and expenses, consulting fees and expenses,
2 placement and underwriting fees and expenses, printing and
3 edgarizing fees, capitalized interest, rating agency fees,
4 government registration fees and stock exchange listing and
5 compliance and filing fees;

6 (4) any costs incurred to obtain modifications
7 of or amendments to any indenture, financing agreement,
8 security agreement or similar agreement or instrument relating
9 to any existing secured or unsecured obligation of a qualifying
10 utility or an affiliate of a qualifying utility, or any costs
11 incurred by or allocated to a qualifying utility to obtain any
12 consent, release, waiver or approval from any holder of such an
13 obligation, that are necessary to be incurred to permit a
14 qualifying utility to issue or cause the issuance of energy
15 redevelopment bonds;

16 (5) any taxes, fees, charges or other
17 assessments imposed on energy redevelopment revenues;

18 (6) any other costs and charges approved by
19 the commission for inclusion in an energy redevelopment charge;
20 and

21 (7) any other related costs that are approved
22 for recovery in the financing order;

23 N. "financing order" means an order of the
24 commission that:

25 (1) authorizes the issuance of energy

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1 redevelopment bonds;

2 (2) authorizes the imposition, collection and
3 periodic adjustments of the energy redevelopment charge; and

4 (3) creates energy redevelopment property;

5 O. "financing parties" means:

6 (1) a trustee, collateral agent or other
7 person acting for the benefit of a bondholder; and

8 (2) a party to an ancillary agreement or the
9 energy redevelopment bonds, the rights and obligations of which
10 relate to or depend upon the existence of energy redevelopment
11 property, the enforcement and priority of a security interest
12 in energy redevelopment property or the timely collection and
13 payment of energy redevelopment revenues;

14 P. "financing statement" means "financing
15 statement" as defined in the Uniform Commercial Code-Secured
16 Transactions;

17 Q. "non-bypassable" means that the payment of an
18 energy redevelopment charge may not be avoided by an electric
19 service customer located within a utility service area and
20 shall be paid by the customer that receives electric delivery
21 service from the qualifying utility imposing the charge for as
22 long as the energy redevelopment bonds secured by the charge
23 are outstanding and the related financing costs have not been
24 recovered in full;

25 R. "non-utility affiliate" means, with respect to

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1 any qualifying utility, a person that:

2 (1) is an "affiliated interest", as that term
3 is used in the Public Utility Act, of a qualifying utility; and

4 (2) is not a "public utility", as that term is
5 used in the Public Utility Act, that provides retail utility
6 service to customers in the state;

7 S. "qualifying clean energy resources" means wind,
8 solar and geothermal energy with renewable energy certificates
9 that are retired by the qualifying utility;

10 T. "qualifying generating facility" means a coal-
11 fired electric generating facility located in New Mexico, which
12 may be composed of multiple generating units, that:

13 (1) has been granted a certificate of public
14 convenience and necessity and has generated electric energy for
15 ultimate sale to utility customers in the state before the
16 effective date of this section and for which abandonment
17 authority is granted after December 31, 2017; and

18 (2) is owned or leased, in whole or in part,
19 by a qualifying utility;

20 U. "qualifying utility" means a public utility
21 pursuant to Paragraph (1) of Subsection G of Section 62-3-3
22 NMSA 1978 that owns or leases all or a portion of a qualifying
23 generating facility and its successor or assignees;

24 V. "replacement power" means four hundred fifty
25 megawatts of nameplate capacity identified by the qualifying

1 utility;

2 W. "termination statement" means "termination
3 statement" as defined in the Uniform Commercial Code-Secured
4 Transactions;

5 X. "traditional utility financing mechanism" means
6 a return on investment at the qualifying utility's weighted
7 average cost of capital; and

8 Y. "utility service area" means:

9 (1) the geographic area of the state in which
10 a qualifying utility provides electric delivery service to
11 customers at the time of issuance of a financing order; and

12 (2) for as long as energy redevelopment bonds
13 issued pursuant to a financing order are outstanding and the
14 related energy redevelopment costs and financing costs have not
15 been recovered in full, any additions to or enlargements of the
16 geographic area, whether or not approved by the commission in a
17 formal proceeding.

18 SECTION 3. [NEW MATERIAL] FINANCING ORDER--APPLICATION.--

19 A. A qualifying utility may apply to the commission
20 for a financing order pursuant to this section. To obtain a
21 financing order, a qualifying utility shall obtain approval to
22 abandon a qualifying generating facility pursuant to Section
23 62-9-5 NMSA 1978. The application for the financing order may
24 be filed as part of the application for approval to abandon a
25 qualifying generating facility. The application may include a

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1 request for the issuance of certificates of public convenience
2 and necessity pursuant to Section 62-9-1 NMSA 1978 for some or
3 all of any power supply resources that may be needed to replace
4 the power supplied by the qualifying generating facilities for
5 which abandonment authority is requested. The qualifying
6 utility, or the commission, may defer an application for
7 certificates of public convenience and necessity to a separate
8 proceeding provided that the application identifies potential
9 adequate replacement power resources that would be available at
10 the time the replacement power is needed to serve customers.

11 B. An application for a financing order shall
12 include:

13 (1) evidence that the applicant is a
14 qualifying utility and that the coal-fired facilities to which
15 a financing order would apply meet the requirements of
16 qualifying generating facilities and abandoned facilities;

17 (2) a description of the qualifying generating
18 facility that the qualifying utility proposes to abandon or for
19 which abandonment authority was granted after December 31,
20 2017;

21 (3) an estimate of the energy redevelopment
22 costs associated with the abandonment of the qualifying
23 generating facility described in the application;

24 (4) the amount of the energy redevelopment
25 costs the qualifying utility proposes to finance through the

1 issuance of one or more series of energy redevelopment bonds;

2 (5) an estimate of the financing costs
 3 associated with each series of energy redevelopment bonds
 4 proposed to be issued;

5 (6) an estimate of the amount of the energy
 6 redevelopment charges necessary to recover the energy
 7 redevelopment costs and financing costs the qualifying utility
 8 proposes to finance through the issuance of energy
 9 redevelopment bonds and the proposed calculation thereof, which
 10 estimate and calculation should take into account the estimated
 11 date of issuance and estimated principal amount of each series
 12 of energy redevelopment bonds proposed to be issued;

13 (7) a proposed methodology for allocating the
 14 energy redevelopment costs among customer classes;

15 (8) a description of the proposed adjustment
 16 mechanism;

17 (9) an estimate, based on current market
 18 conditions, of the cost savings on a net present value basis
 19 over the proposed term of the energy redevelopment bonds to the
 20 customers of the qualifying utility expected to result from the
 21 financing of the energy redevelopment costs with energy
 22 redevelopment bonds as compared to the use of traditional
 23 utility financing mechanisms;

24 (10) an estimate of the date on which the
 25 energy redevelopment bonds are expected to be issued and the

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1 expected term over which the financing costs associated with
2 the issuance are expected to be recovered or, if the bonds are
3 expected to be issued in more than one series, the estimated
4 issuance date and expected term for each bond issuance;
5 provided that the maximum term for each bond issuance shall be
6 no longer than twenty-five years;

7 (11) identification of plans to sell, assign,
8 transfer or convey, other than as a security, interest in
9 energy redevelopment property, including identification of
10 assignees;

11 (12) identification of ancillary agreements
12 that may be necessary or appropriate;

13 (13) a description of a proposed ratemaking
14 process to reconcile any difference between the projected
15 pretax costs included in the amount of energy redevelopment
16 costs financed by energy redevelopment bonds and the final
17 pretax energy redevelopment costs incurred by the qualifying
18 utility. The proposed ratemaking process shall include
19 evidence as to the reasons for costs that exceed the projected
20 costs financed by the energy redevelopment bonds and provide
21 for:

22 (a) the recovery of reasonable and
23 prudent energy redevelopment costs actually incurred by the
24 qualifying utility that exceed the projected costs financed by
25 the energy redevelopment bonds; or

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1 (b) the refund to customers of the
 2 projected costs financed by energy redevelopment bonds that
 3 exceed the actual energy redevelopment costs incurred by the
 4 qualifying utility; and

5 (14) any other information reasonably required
 6 by the commission to determine whether a financing order should
 7 be issued and if approval to abandon a qualifying generating
 8 facility or if any requests for certificates of public
 9 convenience and necessity should be granted.

10 C. Notice of an application for a financing order
 11 shall be given to the parties of record in the qualifying
 12 utility's most recent general rate case and published in
 13 newspapers of general circulation in the qualifying utility's
 14 service area in the state and in the county in the state in
 15 which the qualifying generating facility proposed to be
 16 abandoned is located and as otherwise may be ordered by the
 17 commission.

18 SECTION 4. [NEW MATERIAL] FINANCING ORDER--ISSUANCE--
 19 TERMS OF BONDS--NON-UTILITY AFFILIATE REQUIREMENTS--REPORTS TO
 20 COMMISSION.--

21 A. The commission may approve an application for a
 22 financing order without a formal hearing if no protest
 23 establishing good cause for a formal hearing is filed within
 24 thirty days of the date when notice is given of the filing of
 25 the application for the financing order. The commission shall

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1 issue an order granting or denying the application for a
2 financing order and the final order on an accompanying
3 application of the qualifying utility for approval to abandon
4 the qualifying generating facility within six months from the
5 date the application for the financing order is filed with the
6 commission. For good cause shown, the commission may extend
7 the time for issuing the order for an additional three months.

8 B. Failure to issue an order within the time
9 prescribed by Subsection A of this section shall be deemed
10 approval of the application as filed, including approval to
11 abandon the qualifying generating facility, if abandonment
12 approval was requested in, consolidated or joined with the
13 application for the financing order pursuant to this
14 subsection. The commission chair or the chair's designee
15 shall, within two days after expiration of the time prescribed
16 by this subsection, issue an order declaring that the
17 abandonment and application for a financing order has been
18 approved by operation of law.

19 C. If an application for a financing order is
20 accompanied by a request for issuance of a certificate of
21 public convenience and necessity for replacement power
22 resources, this section provides an alternative time frame to
23 the time frame provided in Subsection C of Section 62-9-1 NMSA
24 1978 and the time frame specified in this section shall govern,
25 unless the request has been deferred to a separate proceeding

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1 pursuant to Subsection A of Section 3 of the Energy
 2 Redevelopment Bond Act.

3 D. The issuance of a financing order shall be the
 4 only approval required for the authority granted in the
 5 financing order.

6 E. The commission shall issue a financing order if
 7 the commission finds that the:

8 (1) applicant is a qualifying utility and that
 9 the facility being abandoned is a qualifying generating
 10 facility and an abandoned facility;

11 (2) proposed issuance of energy redevelopment
 12 bonds will result in cost savings to customers of the
 13 qualifying utility on a net present value basis over the
 14 projected term of the energy redevelopment bonds compared to
 15 the use of traditional utility financing mechanisms; provided
 16 that, in calculating the comparison, the commission shall not:

17 (a) exclude recovery of any energy
 18 redevelopment costs in estimating the amount of costs to
 19 customers associated with traditional utility financing
 20 mechanisms; or

21 (b) include the costs of complying with
 22 Subsection E of Section 10 of the Energy Redevelopment Bond
 23 Act;

24 (3) estimate of the energy redevelopment
 25 charges necessary to recover the energy redevelopment costs and

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1 the financing costs the qualifying utility proposes to be
2 financed by energy redevelopment bonds and the proposed
3 calculation thereof are reasonable;

4 (4) proposed methodology for allocating the
5 energy redevelopment costs among customer classes is
6 reasonable;

7 (5) proposed adjustment mechanism is
8 reasonable and complies with Section 5 of the Energy
9 Redevelopment Bond Act;

10 (6) proposed ratemaking process to reconcile
11 any difference between the projected pretax costs included in
12 the amount of energy redevelopment costs financed by energy
13 redevelopment bonds and the final pretax energy redevelopment
14 costs incurred by the qualifying utility is reasonable and does
15 not affect the amount of the energy redevelopment bonds
16 proposed to be issued or the proposed energy redevelopment
17 charges; and

18 (7) term of the energy redevelopment bonds is
19 sufficient to secure the highest bond rating possible.

20 F. If the commission determines that the findings
21 specified in Subsection E of this section cannot be made, the
22 commission shall determine what changes in the application
23 would allow the findings to be made and provide the qualifying
24 utility with the opportunity to amend the qualifying utility's
25 proposal in the manner that allows the commission to make the

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1 findings.

2 G. A financing order shall include the following
3 provisions:

4 (1) approval for the qualifying utility to
5 issue energy redevelopment bonds as requested in the
6 application, to use energy redevelopment bonds to finance the
7 maximum amount of the energy redevelopment costs as requested
8 in the application and to use the proceeds thereof as provided
9 in Subsection A of Section 10 of the Energy Redevelopment Bond
10 Act;

11 (2) approval for the qualifying utility to
12 recover the financing costs requested in the application
13 through energy redevelopment charges, subject to the
14 application of the adjustment mechanism as provided in Section
15 5 of the Energy Redevelopment Bond Act, until the energy
16 redevelopment bonds issued pursuant to the financing order and
17 the financing costs related to those bonds are paid in full;

18 (3) approval for the qualifying utility to
19 impose a non-bypassable energy redevelopment charge as a
20 separate line item on its customer bills;

21 (4) approval of an adjustment mechanism;

22 (5) a description of the energy redevelopment
23 property that is created by the financing order and that may be
24 used to pay, and secure the payment of, the energy
25 redevelopment bonds and financing costs authorized to be issued

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1 in the financing order;

2 (6) approval of the energy redevelopment
3 charges necessary to recover the energy redevelopment costs and
4 the financing costs the qualifying utility would have in
5 issuing energy redevelopment bonds and the proposed calculation
6 thereof;

7 (7) approval of the allocation of the energy
8 redevelopment costs among customer classes;

9 (8) approval to enter into ancillary
10 agreements as necessary or appropriate;

11 (9) approval of any plans for selling,
12 assigning, transferring or conveying, other than as a security,
13 an interest in energy redevelopment property; and

14 (10) approval of a proposed ratemaking and
15 rate adjustment process to reconcile any difference between the
16 projected pretax costs included in the amount of energy
17 redevelopment costs financed by energy redevelopment bonds and
18 the final pretax energy redevelopment costs incurred by the
19 qualifying utility, which shall not affect the amount of the
20 energy redevelopment bonds proposed to be issued or the
21 proposed energy redevelopment charges. The ratemaking process
22 approved shall require evidence as to the reasons for costs
23 that exceed the projected costs financed by the energy
24 redevelopment bonds and provide for:

25 (a) the recovery of reasonable and

1 prudent energy redevelopment costs actually incurred by the
2 qualifying utility that exceed the projected costs financed by
3 the energy redevelopment bonds; or

4 (b) the refund to customers of the
5 projected costs financed by energy redevelopment bonds that
6 exceed the actual energy redevelopment costs incurred by the
7 qualifying utility.

8 H. A financing order may provide that the creation
9 of energy redevelopment property shall be simultaneous with the
10 sale of the energy redevelopment property to an assignee as
11 provided in the application and the pledge of the energy
12 redevelopment property to secure energy redevelopment bonds.

13 I. A financing order may authorize the qualifying
14 utility to issue more than one series of energy redevelopment
15 bonds for a maximum term of no more than twenty-five years for
16 each series. With such authorization, the qualifying utility
17 shall not subsequently be required to secure a separate
18 financing order for each issuance of energy redevelopment bonds
19 or for each scheduled activity associated with abandonment of
20 the qualifying generating facility, such as decommissioning
21 activities.

22 J. The commission may require, as a condition to
23 the effectiveness of the financing order and in every
24 circumstance subject to the limitations set forth in Subsection
25 A of Section 6 of the Energy Redevelopment Bond Act, that,

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1 during any period in which energy redevelopment bonds issued
2 pursuant to the financing order are outstanding, an assignee
3 that is a non-utility affiliate and issues energy redevelopment
4 bonds will provide in the affiliate's articles of
5 incorporation, partnership agreement or operating agreement, as
6 applicable, that in order for a person to file a voluntary
7 bankruptcy petition on behalf of that assignee, the prior
8 unanimous consent of the directors, partners or managers, as
9 applicable, shall be required. Any such provision shall
10 constitute a legal, valid and binding agreement of the
11 shareholders, partners or members, as applicable, of the
12 assignee and is enforceable against such shareholders, partners
13 or members.

14 K. A financing order may require the qualifying
15 utility to file with the commission a periodic report showing
16 the receipt and disbursement of proceeds of energy
17 redevelopment bonds. A financing order may authorize the staff
18 of the commission to review and audit the books and records of
19 the qualifying utility, and an assignee that is a non-utility
20 affiliate and issues energy redevelopment bonds, relating to
21 the receipt and disbursement of proceeds of energy
22 redevelopment bonds. The provisions of this subsection shall
23 not be construed to limit the authority of the commission to
24 investigate the practices of the qualifying utility or to audit
25 the books and records of the qualifying utility.

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1 SECTION 5. [NEW MATERIAL] ADJUSTMENT MECHANISM--REPORTS
 2 TO COMMISSION--HEARING PROCEDURES.--

3 A. If the commission issues a financing order, the
 4 commission shall periodically approve the use of the adjustment
 5 mechanism approved in the financing order to correct for any
 6 over-collection or under-collection of the energy redevelopment
 7 charges and to provide for timely payment of scheduled
 8 principal of and interest on the energy redevelopment bonds and
 9 the payment and recovery of other financing costs in accordance
 10 with the financing order. Except as provided in Subsection B
 11 of this section, the qualifying utility shall file at least
 12 semiannually, or more frequently as provided in the financing
 13 order:

14 (1) a calculation estimating whether the
 15 existing energy redevelopment charge is sufficient to provide
 16 for timely payment of scheduled principal of and interest on
 17 the energy redevelopment bonds and the payment and recovery of
 18 other financing costs in accordance with the financing order or
 19 if either an over-collection or under-collection is projected;
 20 and

21 (2) a calculation showing the adjustment to
 22 the energy redevelopment charge to correct for any over-
 23 collection or under-collection.

24 B. The qualifying utility shall file the
 25 calculations described in Subsection A of this section at least

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1 quarterly during the two-year period preceding the final
2 maturity date of the energy redevelopment bonds.

3 C. The adjustment mechanism shall remain in effect
4 until the energy redevelopment bonds and all financing costs
5 have been fully paid and recovered, and any under-collection is
6 recovered from customers and any over-collection is returned to
7 customers.

8 D. On the same day the qualifying utility files
9 with the commission its calculation of the adjustment to the
10 energy redevelopment charge, the qualifying utility shall cause
11 a copy of the filing to be served on the parties of record in
12 the case in which the financing order was issued.

13 E. An adjustment to the energy redevelopment charge
14 filed by the qualifying utility shall be deemed approved
15 without hearing thirty days after filing the adjustment unless:

16 (1) no later than twenty days from the date
17 the qualifying utility filed the calculation of the adjustment,
18 the staff of the commission notifies the commission of a
19 potential mathematical error in the adjustment; provided that
20 the notice identifies the mathematical error with specificity;
21 and

22 (2) the commission determines, after due
23 consideration of notice from the staff of the commission, that
24 good cause exists to suspend the operation of the adjustment,
25 pending hearing on the mathematical error in the adjustment;

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1 provided that the suspension shall not exceed sixty days from
2 the date the qualifying utility filed the calculation of the
3 adjustment. For purposes of this paragraph, "good cause" means
4 that the calculation of the adjustment is unlikely to provide
5 for timely payment of scheduled principal of and interest on
6 the energy redevelopment bonds and the payment and recovery of
7 other financing costs in accordance with the financing order.

8 F. If the commission determines that a hearing is
9 necessary, the commission shall hold a hearing on the challenge
10 within forty days of the date the qualifying utility filed the
11 calculation of the adjustment. The hearing shall be limited to
12 determining whether there is any mathematical error in the
13 calculation of the adjustment. If the commission determines
14 that the calculation of the adjustment is mathematically in
15 error, the commission shall issue an order that rejects the
16 adjustment and that determines the mathematically correct
17 calculation. The qualifying utility shall be authorized to
18 adjust the energy redevelopment charge in accordance with the
19 commission's calculation within five days from issuance of the
20 order. If the commission does not issue an order rejecting the
21 adjustment with a determination of the mathematically corrected
22 calculation within sixty days from the date the qualifying
23 utility filed the adjustment, the adjustment to the energy
24 redevelopment charge shall be deemed approved.

25 G. No adjustment pursuant to this section, and no

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1 proceeding held pursuant to this section, shall affect the
2 irrevocability of the financing order pursuant to Section 6 of
3 the Energy Redevelopment Bond Act.

4 SECTION 6. [NEW MATERIAL] FINANCING ORDER--
5 IRREVOCABILITY--AMENDMENTS.--

6 A. A financing order is irrevocable and the
7 commission shall not reduce, impair, postpone or terminate the
8 energy redevelopment charges approved in the financing order,
9 the energy redevelopment property or the collection or recovery
10 of energy redevelopment revenues.

11 B. A financing order may be amended on or after the
12 date of issuance of energy redevelopment bonds authorized by
13 the financing order at the request of the qualifying utility to
14 commence a proceeding and issue an amended financing order
15 that:

16 (1) provides for refinancing, retiring or
17 refunding all or a portion of an outstanding series of energy
18 redevelopment bonds issued pursuant to the original financing
19 order if the commission includes in the amended financing order
20 the findings and requirements specified in Subsections E and G
21 of Section 4 of the Energy Redevelopment Bond Act;

22 (2) adjusts the amount of energy redevelopment
23 costs to be financed by energy redevelopment bonds that have
24 not yet been issued to reflect updated estimated or actual
25 costs that differ from costs estimated at the time of the

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1 initial financing order; and

2 (3) is subject to the limitations set forth in
3 Subsection A of this section.

4 C. No change in the credit rating of a qualifying
5 utility from the credit rating at the time of issuance of a
6 financing order shall impair the irrevocability of a financing
7 order.

8 SECTION 7. [NEW MATERIAL] AGGRIEVED PARTIES--REQUEST FOR
9 REHEARING--JUDICIAL REVIEW--PRECEDENCE OVER OTHER CASES.--

10 A. A financing order is a final order of the
11 commission. A party aggrieved by the issuance of a financing
12 order may apply to the commission for a rehearing in accordance
13 with Section 62-10-16 NMSA 1978; provided that such application
14 shall be due no later than ten calendar days after issuance of
15 the financing order. An application for rehearing shall be
16 deemed denied if not acted upon by the commission within ten
17 calendar days after the filing of the application.

18 B. An aggrieved party may file a notice of appeal
19 with the supreme court in accordance with Section 62-11-1 NMSA
20 1978; provided that such notice shall be due no later than ten
21 calendar days after denial of an application for rehearing or,
22 if rehearing is not applied for, no later than ten calendar
23 days after issuance of the financing order. The supreme court
24 shall proceed to hear and determine the appeal as expeditiously
25 as practicable and give the action precedence over all other

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1 civil cases.

2 SECTION 8. [NEW MATERIAL] CONDITIONS THAT KEEP FINANCING
3 ORDERS IN EFFECT AND ENERGY REDEVELOPMENT CHARGES IMPOSED.--

4 A. A financing order shall remain in effect until
5 the energy redevelopment bonds issued pursuant to the financing
6 order have been paid in full and all financing costs relating
7 to the energy redevelopment bonds have been paid in full.

8 B. A financing order shall remain in effect and
9 unabated notwithstanding the bankruptcy, reorganization or
10 insolvency of the qualifying utility or any non-utility
11 affiliate or the commencement of any judicial or non-judicial
12 proceeding for bankruptcy or for appointment of a receiver.

13 C. If energy redevelopment bonds issued pursuant to
14 a financing order are outstanding and the related energy
15 redevelopment costs and financing costs have not been paid in
16 full, the energy redevelopment charges authorized to be imposed
17 in the financing order shall be a part of all customer bills
18 and be collected by the qualifying utility or its successors or
19 assignees, or a collection agent, in full through a non-
20 bypassable charge that is a separate line item on customer
21 bills and separate and apart from the qualifying utility's base
22 rates. The charge shall be paid by all customers:

23 (1) receiving transmission, distribution or
24 any other service from the qualifying utility under
25 commission-approved rate schedules or special contracts; and

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1 (2) who acquire electricity from an
2 alternative or subsequent electricity supplier in the utility
3 service area, to the extent that such acquisition is permitted
4 by New Mexico law.

5 SECTION 9. [NEW MATERIAL] LIMITATIONS ON JURISDICTION OF
6 COMMISSION.--

7 A. If the commission issues a financing order, the
8 commission shall not, in exercising its powers and carrying out
9 its duties regarding regulation and ratemaking, consider energy
10 redevelopment bonds issued pursuant to the financing order to
11 be the debt of the qualifying utility; the energy redevelopment
12 charges paid under the financing order to be revenue of the
13 qualifying utility; or the energy redevelopment costs to be
14 financed by energy redevelopment bonds or financing costs
15 specified in the financing order to be the costs of the
16 qualifying utility. Reasonable actions taken by a qualifying
17 utility to comply with the financing order shall be deemed to
18 be just and reasonable for ratemaking purposes; provided that,
19 subject to the limitations set forth in Section 6 of the Energy
20 Redevelopment Bond Act, nothing in this subsection shall:

21 (1) affect the authority of the commission to
22 apply the adjustment mechanism as provided in Section 5 of the
23 Energy Redevelopment Bond Act;

24 (2) prevent or preclude the commission from
25 investigating the compliance of a qualifying utility with the

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1 terms and conditions of a financing order and requiring
2 compliance therewith;

3 (3) prevent or preclude the commission from
4 imposing regulatory sanctions against a qualifying utility for
5 failure to comply with the terms and conditions of a financing
6 order or the requirements of the Energy Redevelopment Bond Act;
7 or

8 (4) prevent or preclude the commission from
9 including the qualifying utility's investment in replacement
10 power resources in the qualifying utility's cost of service.

11 B. The commission shall not order or otherwise
12 require, directly or indirectly, a qualifying utility to issue
13 energy redevelopment bonds to finance any costs associated with
14 abandonment of a qualifying generating facility. The
15 commission shall not use a qualifying utility's decision not to
16 issue energy redevelopment bonds as a basis to refuse to allow
17 a qualifying utility to recover energy redevelopment costs in
18 an otherwise permissible fashion, or as a basis to refuse or
19 condition authorization to issue securities pursuant to
20 Sections 62-6-6 and 62-6-7 NMSA 1978.

21 SECTION 10. [NEW MATERIAL] QUALIFYING UTILITY--DUTIES.--

22 A. A qualifying utility shall use the proceeds of
23 the issuance of energy redevelopment bonds for paying energy
24 redevelopment costs, payments required pursuant to Section 19
25 of the Energy Redevelopment Bond Act, financing costs, to

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1 acquire utility-owned replacement resources and investments in
2 other public utility property for inclusion in the qualifying
3 utility's rate base and other utility purposes.

4 B. A qualifying utility for which a financing order
5 has been issued shall annually provide to its customers a
6 concise explanation of the energy redevelopment charges
7 approved in a financing order, as modified by subsequent
8 issuances of energy redevelopment bonds authorized under a
9 financing order, if any, and by the adjustment mechanism as
10 provided in Section 5 of the Energy Redevelopment Bond Act.
11 The explanations may be made by bill inserts, website
12 information or other appropriate means.

13 C. Energy redevelopment revenues shall be applied
14 solely to the repayment of energy redevelopment bonds and
15 financing costs.

16 D. The failure of a qualifying utility to apply the
17 proceeds of an issuance of energy redevelopment bonds in a
18 reasonable, prudent and appropriate manner, or otherwise comply
19 with any provision of the Energy Redevelopment Bond Act, shall
20 not invalidate, impair or affect a financing order, energy
21 redevelopment property, energy redevelopment charge or energy
22 redevelopment bonds; provided that, subject to the limitations
23 set forth in Section 6 of the Energy Redevelopment Bond Act,
24 nothing in this subsection shall prevent or preclude the
25 commission from imposing regulatory sanctions or other remedies

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1 allowed by law against a qualifying utility for failure to
2 comply with the terms and conditions of a financing order or
3 the requirements of the Energy Redevelopment Bond Act.

4 E. For a qualifying utility that receives approval
5 of a financing order and issues energy redevelopment bonds,
6 energy from qualifying clean energy resources shall comprise no
7 less than forty percent by January 1, 2025, and no less than
8 fifty percent by January 1, 2030 and thereafter, of the
9 qualifying utility's total retail sales to its customers. The
10 percent of energy from qualifying clean energy resources shall
11 be reported annually, and compliance shall be measured in 2025,
12 2030 and every three years thereafter. To comply with this
13 subsection, all renewable energy certificates associated with
14 that required energy shall be retired by the qualifying utility
15 to the extent the qualifying utility exceeds the requirement of
16 the Renewable Energy Act.

17 F. The qualifying utility shall file with the
18 commission a procurement plan designed to meet the requirements
19 of Subsection E of this section by no later than July 1, 2023.
20 If the commission finds that, in any given year, the cost at
21 the generator of energy from qualifying clean energy resources
22 to be procured or generated for purposes of compliance with
23 Subsection E of this section would exceed six cents (\$.06) per
24 kilowatt-hour, adjusted for inflation after 2022, on a
25 levelized cost basis, the qualifying utility shall not be

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1 required to incur the excess cost. The commission shall
2 approve a temporary adjustment to delay the requirements of
3 Subsection E of this section, until the qualifying utility is
4 able to meet the requirements within the cost limitation
5 provided in this subsection. Any commission-approved reduction
6 in the percentage for a given year shall not be required to be
7 made up in a future period.

8 G. A qualifying utility that procures or generates
9 electricity from qualifying clean energy resources pursuant to
10 Subsection E of this section shall recover the costs of
11 complying with that requirement through the qualifying
12 utility's fuel and purchased power cost adjustment clause.

13 H. Qualifying clean energy resources pursuant to
14 Subsection E of this section shall be identified and selected
15 through a competitive bidding process. The initial request for
16 proposal shall be issued on or after July 1, 2018 and prior to
17 January 1, 2023. Subsequent requests for proposals shall be
18 issued periodically, but no less frequently than every three
19 years prior to January 1, 2031.

20 I. Except for replacement power, and unless the
21 qualifying utility proposes a higher amount, the commission
22 shall require up to fifty percent of all qualified clean energy
23 resources be non-utility owned, and up to twenty-five percent
24 of any natural gas generation be non-utility owned, evaluated
25 in 2025 and 2030 based upon nameplate capacity, for resources

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1 procured after the effective date of the Energy Redevelopment
2 Bond Act.

3 J. If the commission finds that compliance with the
4 requirements of Subsection E of this section renders the
5 qualifying utility's existing generation uneconomic or
6 otherwise in excess of the amount of energy and capacity
7 necessary to serve load, that finding shall not be the basis
8 for the commission to disallow full recovery of any costs of,
9 or investments in, that generation.

10 SECTION 11. [NEW MATERIAL] ENERGY REDEVELOPMENT
11 PROPERTY--ENERGY REDEVELOPMENT REVENUES.--

12 A. Energy redevelopment property that is created in
13 a financing order shall constitute an existing, present
14 property right, notwithstanding the fact that the imposition
15 and collection of energy redevelopment charges depend on the
16 qualifying utility continuing to provide electric energy or
17 continuing to perform its servicing functions relating to the
18 collection of energy redevelopment charges or on the level of
19 future energy consumption. Energy redevelopment property shall
20 exist whether or not the energy redevelopment revenues have
21 been billed, have accrued or have been collected and
22 notwithstanding the fact that the value or amount of the energy
23 redevelopment property is dependent on the future provision of
24 service to customers by the qualifying utility.

25 B. All energy redevelopment property created in a

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1 financing order shall continue to exist until the energy
2 redevelopment bonds issued pursuant to a financing order are
3 paid in full and the financing costs relating to the bonds have
4 been paid in full.

5 C. All or any portion of energy redevelopment
6 property may be transferred, sold, conveyed or assigned to a
7 non-utility affiliate that is:

8 (1) wholly owned, directly or indirectly, by
9 the qualifying utility;

10 (2) created for the limited purposes of
11 acquiring, owning or administering energy redevelopment
12 property or issuing energy redevelopment bonds under the
13 financing order; or

14 (3) a combination of these purposes.

15 D. All or any portion of energy redevelopment
16 property may be pledged to secure the payment of energy
17 redevelopment bonds, amounts payable to financing parties and
18 bondholders, amounts payable under any ancillary agreement and
19 other financing costs.

20 E. The formation by a qualifying utility of a non-
21 utility affiliate for the limited purpose of acquiring, owning
22 or administering energy redevelopment property or issuing
23 energy redevelopment bonds pursuant to a financing order, or a
24 combination of these purposes, and any transfer, sale,
25 conveyance, assignment, grant of a security interest in or

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1 pledge of energy redevelopment property by a qualifying utility
2 to a non-utility affiliate, to the extent previously authorized
3 in a financing order, does not require any further approval of
4 the commission and shall not otherwise be subject to the rules
5 of the commission regarding class II transactions as defined by
6 Subsection L of Section 62-3-3 NMSA 1978.

7 F. If a qualifying utility defaults on any required
8 payment of energy redevelopment revenues, a court with
9 jurisdiction in the matter, on application by an interested
10 party and without limiting any other remedies available to the
11 applying party, shall order the sequestration and payment of
12 the energy redevelopment revenues for the benefit of
13 bondholders, any assignee and any financing parties. The order
14 shall remain in full force and effect notwithstanding any
15 bankruptcy, reorganization or other insolvency or receivership
16 proceedings with respect to the qualifying utility or any non-
17 utility affiliate.

18 G. Energy redevelopment property, energy
19 redevelopment revenues and the interests of an assignee,
20 bondholder or financing party in energy redevelopment property
21 and energy redevelopment revenues are not subject to set-off,
22 counterclaim, surcharge or defense by the qualifying utility or
23 any other person or in connection with the bankruptcy,
24 reorganization or other insolvency or receivership proceeding
25 of the qualifying utility, any non-utility affiliate or any

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1 other entity.

2 H. Any successor to a qualifying utility shall be
 3 bound by the requirements of the Energy Redevelopment Bond Act
 4 and shall perform and satisfy all obligations of, and have the
 5 same rights under a financing order as, the qualifying utility
 6 under the financing order in the same manner and to the same
 7 extent as the qualifying utility, including the obligation to
 8 collect and pay energy redevelopment revenues to the person
 9 entitled to receive the revenues.

10 SECTION 12. [NEW MATERIAL] SECURITY INTERESTS--
 11 APPLICABILITY OF OTHER ACTS--CREATION OF SECURITY INTEREST--
 12 ATTACHMENT ON FILING WITH SECRETARY OF STATE--PRIORITY OVER
 13 OTHER LIENS.--

14 A. Except as otherwise provided in this section,
 15 the creation, perfection and enforcement of a security interest
 16 in energy redevelopment property to secure the repayment of the
 17 principal of and interest on energy redevelopment bonds,
 18 amounts payable pursuant to an ancillary agreement and other
 19 financing costs are governed by this section. This section
 20 shall be deemed to provide alternatives to the provisions of
 21 the Uniform Commercial Code and Chapter 62, Article 13 of the
 22 Public Utility Act, which, to the extent the Uniform Commercial
 23 Code or that article is inconsistent with this section, are
 24 declared to be inapplicable to the Energy Redevelopment Bond
 25 Act.

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1 B. The description or indication of energy
2 redevelopment property in a transfer or security agreement and
3 a financing statement is sufficient only if the description or
4 indication refers to the Energy Redevelopment Bond Act and the
5 financing order creating the energy redevelopment property.
6 This section applies to all purported transfers of, and all
7 purported grants of liens on or security interests in, energy
8 redevelopment property.

9 C. A security interest in energy redevelopment
10 property is created, valid and binding at the later of the time
11 when:

12 (1) the financing order is issued;

13 (2) a security agreement is executed and
14 delivered; or

15 (3) value is received for the energy
16 redevelopment bonds.

17 D. The security interest attaches without any
18 physical delivery of collateral or other act and the lien of
19 the security interest shall be valid, binding and perfected
20 against all parties having claims of any kind in tort, contract
21 or otherwise against the person granting the security interest,
22 regardless of whether such parties have notice of the lien, on
23 the filing of a financing statement with the secretary of
24 state. The secretary of state shall maintain the financing
25 statement in the same manner and in the same recordkeeping

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1 system maintained for financing statements filed pursuant to
2 the Uniform Commercial Code-Secured Transactions. The filing
3 of a financing statement pursuant to this subsection shall be
4 governed by the provisions regarding the filing of financing
5 statements in that article; provided that financing statements
6 filed pursuant to this section shall be effective until a
7 termination statement is filed.

8 E. A security interest in energy redevelopment
9 property is a continuously perfected security interest and has
10 priority over any other lien, created by operation of law or
11 otherwise, that may subsequently attach to the energy
12 redevelopment property unless the holder of the security
13 interest has agreed in writing otherwise.

14 F. The priority of a security interest in energy
15 redevelopment property is not affected by the commingling of
16 energy redevelopment revenues with other funds. Any pledgee or
17 secured party shall have a perfected security interest in the
18 amount of all energy redevelopment revenues that are deposited
19 in any cash or deposit account of the qualifying utility in
20 which energy redevelopment revenues have been commingled with
21 other funds and any other security interest that may apply to
22 those funds shall be terminated when they are transferred to a
23 segregated account for the assignee or a financing party.

24 G. No order of the commission amending a financing
25 order pursuant to Subsection B of Section 6 of the Energy

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1 Redevelopment Bond Act, and no application of the adjustment
2 mechanism as provided in Section 5 of that act, will affect the
3 validity, perfection or priority of a security interest in or
4 transfer of energy redevelopment property.

5 SECTION 13. [NEW MATERIAL] SALE OF ENERGY REDEVELOPMENT
6 PROPERTY--PERFECTING INTERESTS--ABSOLUTE TRANSFER AND TRUE SALE
7 REQUIREMENTS.--

8 A. Any sale, assignment or transfer of energy
9 redevelopment property shall be an absolute transfer and true
10 sale of, and not a pledge of or secured transaction relating
11 to, the seller's right, title and interest in, to and under the
12 energy redevelopment property if the documents governing the
13 transaction expressly state that the transaction is a sale or
14 other absolute transfer. A transfer of an interest in energy
15 redevelopment property shall be created when:

16 (1) the financing order creating the energy
17 redevelopment property has become effective;

18 (2) the documents evidencing the transfer of
19 energy redevelopment property have been executed and delivered
20 to the assignee; and

21 (3) value is received.

22 B. On the filing of a financing statement with the
23 secretary of state pursuant to Section 12 of the Energy
24 Redevelopment Bond Act, a transfer of an interest in energy
25 redevelopment property shall be perfected against all third

1 persons, including any judicial lien or other lien creditors or
 2 any claims of the seller or creditors of the seller, other than
 3 creditors holding a prior security interest, ownership interest
 4 or assignment in the energy redevelopment property previously
 5 perfected in accordance with this section or Section 12 of the
 6 Energy Redevelopment Bond Act.

7 C. The characterization of the sale, assignment or
 8 transfer as an absolute transfer and true sale and the
 9 corresponding characterization of the property interest of the
 10 purchaser, shall not be affected or impaired by, among other
 11 things, the occurrence of any of the following factors:

12 (1) commingling of energy redevelopment
 13 revenues with other funds;

14 (2) the retention by the seller of:

15 (a) a partial or residual interest,
 16 including an equity interest, in the energy redevelopment
 17 property, whether direct or indirect, or whether subordinate or
 18 otherwise; or

19 (b) the right to recover costs
 20 associated with taxes or license fees imposed on the collection
 21 of energy redevelopment revenues;

22 (3) any recourse that the purchaser may have
 23 against the seller;

24 (4) any indemnification rights, obligations or
 25 repurchase rights made or provided by the seller;

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1 (5) the obligation of the seller to collect
2 energy redevelopment revenues on behalf of an assignee;

3 (6) the treatment of the sale, assignment or
4 transfer for tax, financial reporting or other purposes;

5 (7) any subsequent order of the commission
6 amending a financing order pursuant to Subsection B of Section
7 6 of the Energy Redevelopment Bond Act; or

8 (8) any use of an adjustment mechanism
9 approved in the financing order.

10 SECTION 14. [NEW MATERIAL] EXEMPTION FROM FEE

11 ASSESSMENTS.--The imposition, collection and receipt of an
12 energy redevelopment charge shall be exempt from an assessment
13 of a franchise fee imposed by a municipality, county or other
14 political subdivision of the state and inspection and
15 supervision fees assessed pursuant to the Public Utility Act.

16 SECTION 15. [NEW MATERIAL] ENERGY REDEVELOPMENT BONDS NOT

17 PUBLIC DEBT.--Energy redevelopment bonds issued pursuant to the
18 Energy Redevelopment Bond Act shall not constitute a debt or a
19 pledge of the faith and credit or taxing power of this state or
20 of any county, municipality or any other political subdivision
21 of this state. Bondholders shall have no right to have taxes
22 levied by the legislature or the taxing authority of any
23 county, municipality or other political subdivision of this
24 state for the payment of the principal of or interest on energy
25 redevelopment bonds. The issuance of energy redevelopment

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1 bonds does not, directly or indirectly or contingently,
 2 obligate the state or a political subdivision of the state to
 3 levy any tax or make any appropriation for payment of the
 4 principal of or interest on the bonds.

5 SECTION 16. [NEW MATERIAL] ENERGY REDEVELOPMENT BONDS AS
 6 LEGAL INVESTMENTS.--Energy redevelopment bonds shall be legal
 7 investments for all governmental units, permanent funds of the
 8 state, finance authorities, financial institutions, insurance
 9 companies, fiduciaries and other persons requiring statutory
 10 authority regarding legal investments.

11 SECTION 17. [NEW MATERIAL] STATE PLEDGE NOT TO IMPAIR.--

12 A. The state pledges to and agrees with the
 13 bondholders, any assignee and any financing parties that the
 14 state will not take or permit any action that impairs the value
 15 of energy redevelopment property or, except as allowed pursuant
 16 to Section 5 of the Energy Redevelopment Bond Act, reduce,
 17 alter or impair energy redevelopment charges that are imposed,
 18 collected and remitted for the benefit of the bondholders, any
 19 assignee and any financing parties, until all principal,
 20 interest and redemption premium in respect of energy
 21 redevelopment bonds, all financing costs and all amounts to be
 22 paid to an assignee or financing party under an ancillary
 23 agreement are paid and performed in full.

24 B. Any person who issues energy redevelopment bonds
 25 is permitted to include the pledge specified in Subsection A of

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1 this section in the energy redevelopment bonds, ancillary
2 agreements and documentation related to the issuance and
3 marketing of the energy redevelopment bonds.

4 SECTION 18. [NEW MATERIAL] LOCATION OF RESOURCE
5 REDEVELOPMENT AFTER ABANDONMENT.--

6 A. A qualifying utility shall, within five years
7 after abandonment of a qualifying generating facility, select
8 sites for needed utility-owned replacement power resources that
9 are located in the school district in New Mexico where the
10 abandoned facility is located unless replacement power
11 resources located there would adversely affect adequate system
12 reliability. Replacement power resources shall be identified
13 and selected through a competitive bidding process.

14 B. The commission shall grant certificates of
15 public convenience and necessity for replacement power
16 resources and allow reasonable cost recovery in rates, except
17 that the commission may determine that the particular resource
18 proposed by the qualifying utility should not be approved and
19 that, instead, an alternative utility-owned resource that meets
20 the provisions of Subsection A of this section should be
21 approved. The commission shall not disallow recovery of
22 reasonable costs necessary to comply with the locational
23 directives provided in Subsection A of this section.

24 C. In considering responses to requests for
25 proposals for utility-owned replacement power resources

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1 pursuant to this section, a qualifying utility shall inform
 2 prospective contractors and subcontractors that it promotes and
 3 encourages the use of workers residing in New Mexico to the
 4 greatest extent practicable and shall take that use into
 5 consideration in evaluating proposals.

6 **SECTION 19. [NEW MATERIAL] LOCAL ECONOMIC TRANSITION**

7 FUND.--On the closure and abandonment of a qualifying
 8 generating facility operated by a qualifying utility, the
 9 qualifying utility shall transfer five and four-tenths percent
 10 of the proceeds of energy redevelopment bonds issued prior to
 11 January 1, 2024, up to a maximum of nineteen million dollars
 12 (\$19,000,000), to the county in New Mexico where the qualifying
 13 generating facility being abandoned is located. The qualifying
 14 utility shall make the required payment to the county within
 15 ninety days of receipt of the bond proceeds. The county shall
 16 deposit the bond proceeds received from the qualifying utility
 17 in a separate local economic transition fund for the purpose of
 18 economic development and workforce development to mitigate
 19 potential adverse economic impacts on the community affected by
 20 the abandonment of the qualifying generating facility.

21 Expenditures from the local economic transition fund shall be
 22 made by the local governing body of the county, subject to the
 23 Open Meetings Act and the Inspection of Public Records Act.

24 **SECTION 20. [NEW MATERIAL] CHOICE OF LAW.--**The law

25 governing the validity, enforceability, attachment, perfection,

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1 priority and exercise of remedies with respect to the transfer
2 of an interest or right or creation of a security interest in
3 any energy redevelopment property, energy redevelopment charge
4 or financing order shall be the laws of the state of New Mexico
5 as set forth in the Energy Redevelopment Bond Act.

6 SECTION 21. [NEW MATERIAL] CONFLICTS.--In the event of
7 conflict between the Energy Redevelopment Bond Act and any
8 other law regarding the attachment, assignment or perfection,
9 or the effect of perfection, or priority of any security
10 interest in or transfer of energy redevelopment property, the
11 Energy Redevelopment Bond Act shall govern to the extent of the
12 conflict.

13 SECTION 22. [NEW MATERIAL] VALIDITY ON ACTIONS IF ACT
14 HELD INVALID.--Effective on the date that energy redevelopment
15 bonds are first issued under the Energy Redevelopment Bond Act,
16 if any provision of that act is held to be invalid or is
17 invalidated, superseded, replaced, repealed or expires for any
18 reason, that occurrence shall not affect the validity of any
19 action allowed pursuant to that act that is taken by the
20 commission, a qualifying utility, an assignee, a collection
21 agent, a financing party, a bondholder or a party to an
22 ancillary agreement and, to prevent the impairment of energy
23 redevelopment bonds issued or authorized in a financing order
24 issued pursuant to that act, any such action shall remain in
25 full force and effect with respect to all energy redevelopment

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1 bonds issued or authorized in a financing order issued pursuant
2 to that act before the date that such provision is held to be
3 invalid or is invalidated, superseded, replaced, repealed or
4 expires for any reason.

5 **SECTION 23. TEMPORARY PROVISION--PENDING APPLICATIONS.--**

6 If an application for approval to abandon a qualifying
7 generating facility is pending before the public regulation
8 commission on the effective date of this act, the qualifying
9 utility may file a separate application for a financing order
10 and the commission shall join or consolidate the application
11 for a financing order with the pending proceeding involving
12 abandonment of the qualifying generating facility. On such
13 joinder or consolidation, the time periods prescribed by
14 Subsection A of Section 4 of the Energy Redevelopment Bond Act
15 shall become applicable to the joined or consolidated case.

16 **SECTION 24. APPLICABILITY.--**The provisions of this act
17 shall not apply to a qualifying utility that makes an initial
18 application for a financing order more than twelve years after
19 the effective date of this act. This section shall not
20 preclude a qualifying utility for which the public regulation
21 commission has issued a financing order from applying to the
22 commission for a subsequent order amending the financing order
23 pursuant to Section 6 of the Energy Redevelopment Bond Act.