

**FORTY-NINTH LEGISLATURE
FIRST SESSION, 2009**

February 25, 2009

Mr. Speaker:

Your **TAXATION AND REVENUE COMMITTEE**, to whom has been referred

HOUSE BILL 563

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 10, between lines 15 and 16, insert the following new section:

"Section 5. Section 62-16A-2 NMSA 1978 (being Laws 2007, Chapter 3, Section 2) is amended to read:

"62-16A-2. DEFINITIONS.--As used in the New Mexico Renewable Energy Transmission Authority Act:

A. "acquire" means to obtain eligible facilities by lease, construction, reconstruction or purchase;

B. "authority" means the New Mexico renewable energy transmission authority;

C. "bonds" means renewable energy transmission bonds and includes notes, warrants, bonds, temporary bonds and anticipation notes issued by the authority;

D. "eligible facilities" means facilities to be financed or acquired by the authority, in which, within one year after beginning the transmission or storage of any electricity, and thereafter, at least thirty percent of the electric energy, as estimated by the authority, after due consideration to any existing power purchase, transmission or energy storage contracts, originates from renewable energy sources;

E. "facilities" means electric transmission and interconnected storage facilities and all related structures, properties and supporting infrastructure, including any interests therein;

**FORTY-NINTH LEGISLATURE
FIRST SESSION, 2009**

HTRC/HB 563

Page 2

F. "finance" or "financing" means the lending of bond proceeds by the authority to a public utility or other private person for the purpose of planning, acquiring, operating and maintaining eligible facilities in whole or in part by that public utility or other private person;

G. "project" means an undertaking by the authority to finance or plan, acquire, maintain and operate eligible facilities located in part or in whole within the state of New Mexico;

H. "public utility" means a public electric utility regulated by the public regulation commission pursuant to the Public Utility Act and municipal utilities exempt from public regulation commission regulation pursuant to Section 62-6-4 NMSA 1978 that own or operate facilities;

I. "renewable energy" means electric energy:

(1) generated by use of low- or zero-emissions generation technology with substantial long-term production potential; and

(2) generated by use of renewable energy resources that may include:

(a) solar, wind, hydropower and geothermal resources;

(b) fuel cells that are not fossil fueled; or

(c) biomass resources, such as agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas and anaerobically digested waste biomass; but

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

**FORTY-NINTH LEGISLATURE
FIRST SESSION, 2009**

HTRC/HB 563

Page 3

J. "storage" means energy storage technologies that convert, store and return electricity to help alleviate disparities between electricity supply and demand, to facilitate the dispatching of electricity or to increase economic return on the sale of electricity."".

2. Renumber the succeeding sections accordingly.

3. On page 13, between lines 21 and 22, insert the following new section:

"Section 7. Section 62-16A-4 NMSA 1978 (being Laws 2007, Chapter 3, Section 4) is amended to read:

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

A. The authority shall:

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

(2) hire an executive director and such other employees or other agents as it deems necessary for the performance of its powers and duties, including consultants, financial advisors and legal advisors, and prescribe the powers and duties and fix the compensation of the employees and agents. The executive director of the authority shall direct the affairs and business of the authority, subject to the policies, control and direction of the authority; and

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

**FORTY-NINTH LEGISLATURE
FIRST SESSION, 2009**

HTRC/HB 563

Page 4

B. The authority may:

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

(2) enter into contractual agreements with respect to one or more projects upon the terms and conditions the authority considers advisable;

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

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

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

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

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

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

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

**FORTY-NINTH LEGISLATURE
FIRST SESSION, 2009**

HTRC/HB 563

Page 5

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

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

(12) enter into contracts for the lease and operation by the authority of eligible facilities owned by a public utility or other private person;

(13) enter into contracts for leasing eligible facilities owned by the authority, provided that any revenue derived pursuant to the lease shall be deposited in the renewable energy transmission bonding fund;

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

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

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

(17) adopt such reasonable administrative and procedural rules as may be necessary or appropriate to carry out its powers and duties; and

(18) appear before state and federal regulatory commissions to advise against proposed action that could reduce renewable energy contracted by an eligible facility.

**FORTY-NINTH LEGISLATURE
FIRST SESSION, 2009**

HTRC/HB 563

Page 6

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

(1) the authority shall provide to each public utility and the public regulation commission and publish one time in a newspaper of general circulation in New Mexico and one time in a newspaper in the area where the eligible facilities are contemplated and on a publicly accessible web page maintained by the authority, an initial notice describing the project that the authority is contemplating, including a detailed description of the existing or anticipated renewable energy sources that justify the determination by the authority that the project facilities are eligible facilities. The description shall contain, at a minimum, the names of all persons that already are or will develop the renewable energy sources, all persons that will own the renewable energy sources and the peak output capacity, source type, location and anticipated connection date of the renewable energy sources;

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

**FORTY-NINTH LEGISLATURE
FIRST SESSION, 2009**

HTRC/HB 563

Page 7

(3) public utilities and other persons willing and able to provide money for, acquire, maintain and operate the eligible facilities described in the notice shall have the following time period to notify the authority of intention and ability to provide money for, acquire, maintain and operate the eligible facilities described in the notice:

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

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

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

D. In soliciting and entering into contracts for the transmission or storage of electricity, the authority and any person leasing or operating eligible facilities financed or acquired by the authority shall, if practical, give priority to those contracts that will transmit or store electricity to be sold and consumed in New Mexico. The authority shall deem the development of renewable energy resources in New Mexico to be a priority.

E. The authority and any eligible facilities acquired by the authority are not subject to the supervision, regulation,

**FORTY-NINTH LEGISLATURE
FIRST SESSION, 2009**

HTRC/HB 563

Page 8

control or jurisdiction of the public regulation commission; provided that nothing in this subsection shall be interpreted to allow a public utility to include the cost of using eligible facilities in its rate base without the approval of the public regulation commission.

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

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

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

(3) the facilities are owned or controlled for a period of not more than one hundred eighty days after termination of a lease or contract described in Paragraph (1) or (2) of this subsection or after the authority gains possession of the facilities following a breach of such a lease or contract or as a result of bankruptcy proceedings; or

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

G. A public utility subject to regulation of the public regulation commission pursuant to the Public Utility Act may recover the capital cost of a project undertaken pursuant to the New Mexico Renewable Energy Transmission Authority Act from its retail customers only if the project has received a certificate of public convenience and necessity from the public regulation commission. A municipal utility exempt from regulation of the public regulation commission may recover such costs only if the project has been approved by the governing body of the municipality. Costs associated with a project undertaken pursuant to the New Mexico Renewable Energy Transmission Authority Act are not recoverable from retail utility customers except to the extent the costs are

**FORTY-NINTH LEGISLATURE
FIRST SESSION, 2009**

HTRC/HB 563

Page 9

prudently incurred and the project is used and useful in serving those customers as determined by the public regulation commission."".

4. Renumber the succeeding sections accordingly.

5. On page 19, line 10, after "acquired", insert "and held by the authority".

6. On page 19, line 11, strike "made" and insert in lieu thereof "acquired by the authority" and after "derived", insert "by the authority".

Respectfully submitted,

Edward C. Sandoval, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

The roll call vote was 9 For 6 Against

Yes: 9

No: Arnold-Jones, Crook, Gardner, Gray, Strickler, Taylor

Excused: Lujan, B.

Absent: None

.177694.1

HB0563TR1.wpd