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HOUSE BILL 242

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Bill McCamley

AN ACT

RELATING TO UTILITIES; AMENDING THE NEW MEXICO RENEWABLE ENERGY TRANSMISSION AUTHORITY ACT TO CLARIFY THE JURISDICTION OF THE PUBLIC REGULATION COMMISSION OVER PROJECTS ACQUIRED OR FINANCED BY THE NEW MEXICO RENEWABLE ENERGY TRANSMISSION AUTHORITY; CREATING THE RENEWABLE ENERGY TRANSMISSION AUTHORITY DEVELOPMENT FUND; MAKING AN APPROPRIATION.

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

**SECTION 1.** A new section of the New Mexico Renewable Energy Transmission Authority Act is enacted to read:

"[NEW MATERIAL] PURPOSE.--The purpose of the New Mexico Renewable Energy Transmission Authority Act is to facilitate the development of renewable energy resources in New Mexico by facilitating the development and construction of transmission to service renewable energy generation facilities. The focus

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1 of the New Mexico renewable energy transmission authority  
2 should primarily be on taking steps to develop and construct,  
3 or facilitate the development and construction of, eligible  
4 facilities through transmission corridors identified by the  
5 authority as priority corridors for development."

6 SECTION 2. A new section of the New Mexico Renewable  
7 Energy Transmission Authority Act is enacted to read:

8 "[NEW MATERIAL] RENEWABLE ENERGY TRANSMISSION AUTHORITY  
9 DEVELOPMENT FUND.--The "renewable energy transmission authority  
10 development fund" is created in the authority. The fund shall  
11 consist of money appropriated and transferred to the fund and  
12 any other contributions made to the fund from any source.  
13 Earnings from investment of the fund shall be credited to the  
14 fund. Money in the fund is appropriated to the authority for  
15 the purpose of developing a multi-year, statewide transmission  
16 upgrade program, including the identification of priority  
17 corridors for development by 2017 and, if determined necessary  
18 for continued operations by the authority, to the renewable  
19 energy transmission authority operational fund established in  
20 Section 62-16A-13 NMSA 1978 to fund the operations of the  
21 authority. Any unexpended or unencumbered balance remaining at  
22 the end of a fiscal year shall not revert. The authority is  
23 authorized to establish procedures required to administer the  
24 fund in accordance with the New Mexico Renewable Energy  
25 Transmission Authority Act and state law."

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

3           "62-16A-4. AUTHORITY--DUTIES AND POWERS.--

4           A. The authority shall:

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

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

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

22           B. The authority may:

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

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1 agency;

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

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

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

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

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

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

22 (8) pursuant to the provisions of the Eminent  
23 Domain Code, exercise the power of eminent domain for acquiring  
24 property or rights of way for public use if needed for projects  
25 if such action does not involve taking utility property [~~or~~

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1 ~~does not materially diminish electric service reliability of~~  
2 ~~the transmission system in New Mexico, as determined by the~~  
3 ~~public regulation commission] and the project for which~~  
4 ~~property or rights of way are acquired is constructed in~~  
5 ~~accordance with the standards established by the North American~~  
6 ~~electric reliability corporation, the western electricity~~  
7 ~~coordinating council and the incumbent utility in New Mexico;~~

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

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

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

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

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

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

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

11                   (16) sue and be sued; and

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

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

23                   (1) the authority shall provide to each public  
24 utility and the public regulation commission and publish one  
25 time in a newspaper of general circulation in New Mexico and

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1 one time in a newspaper in the area where the eligible  
2 facilities are contemplated and on a publicly accessible web  
3 page maintained by the authority, an initial notice describing  
4 the project that the authority is contemplating, including a  
5 detailed description of the existing or anticipated renewable  
6 energy sources that justify the determination by the authority  
7 that the project facilities are eligible facilities. The  
8 description shall contain, at a minimum, the names of all  
9 persons that already are or will develop the renewable energy  
10 sources, all persons that will own the renewable energy sources  
11 and the peak output capacity, source type, location and  
12 anticipated connection date of the renewable energy sources;

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

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1 appeal the final determination by filing a notice of appeal  
2 with the district court pursuant to Section 39-3-1.1 NMSA 1978;

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

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

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

15 (4) in the absence of notification by a public  
16 utility or other person pursuant to Paragraph (3) of this  
17 subsection, or if a person, having given notice of intention to  
18 provide money for, acquire, maintain and operate the eligible  
19 facilities contemplated by the authority, fails to make a good  
20 faith effort to commence the same within twelve months from the  
21 date of notification by the authority of its intention, the  
22 authority may proceed to finance or plan, acquire, maintain and  
23 operate the eligible facilities originally contemplated;  
24 provided that a person that, within the time required, has made  
25 necessary applications to acquire federal, state, local or

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1 private permits, certificates or other approvals necessary to  
2 acquire the eligible facilities shall be deemed to have  
3 commenced the same as long as the person diligently pursues the  
4 permits, certificates or other approvals.

5 D. In soliciting and entering into contracts for  
6 the transmission or storage of electricity, the authority and  
7 any person leasing or operating eligible facilities financed or  
8 acquired by the authority shall, if practical, give priority to  
9 those contracts that will transmit or store electricity to be  
10 sold and consumed in New Mexico.

11 E. The authority and any eligible facilities  
12 acquired or financed by the authority, and any facilities in  
13 transmission corridors identified by the authority as priority  
14 corridors for development, are not subject to the supervision,  
15 regulation, control or jurisdiction of the public regulation  
16 commission; provided that nothing in this subsection shall be  
17 interpreted to allow a public utility to include the cost of  
18 using eligible facilities in its rate base without the approval  
19 of the public regulation commission.

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

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

25 (2) the operation, maintenance and use of the

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1 facilities are vested by lease or other contract in a public  
2 utility or such other person approved by the public regulation  
3 commission;

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

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

12 G. A public utility subject to regulation of the  
13 public regulation commission pursuant to the Public Utility Act  
14 may recover the capital cost of a project undertaken pursuant  
15 to the New Mexico Renewable Energy Transmission Authority Act  
16 from its retail customers only if the project has received a  
17 certificate of public convenience and necessity from the public  
18 regulation commission. A municipal utility exempt from  
19 regulation of the public regulation commission may recover such  
20 costs only if the project has been approved by the governing  
21 body of the municipality. Costs associated with a project  
22 undertaken pursuant to the New Mexico Renewable Energy  
23 Transmission Authority Act are not recoverable from retail  
24 utility customers except to the extent the costs are prudently  
25 incurred and the project is used and useful in serving those

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1 customers as determined by the public regulation commission."

2 SECTION 4. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is July 1, 2013.

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