HOUSE BILL 4

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

INTRODUCED BY

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AN ACT

RELATING TO ECONOMIC DEVELOPMENT; ENACTING THE HYDROGEN HUB DEVELOPMENT ACT; PROVIDING FOR THE DESIGNATION OF HYDROGEN HUBS; ALLOWING PUBLIC PARTNERS TO ENTER INTO PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS TO FACILITATE DEVELOPMENT OF HYDROGEN HUB PROJECTS; CREATING THE HYDROGEN HUB DEVELOPMENT BOARD AND SPECIFYING POWERS; ESTABLISHING CRITERIA FOR APPROVAL OF HYDROGEN HUB PROJECTS; CREATING THE HYDROGEN HUB PROJECT FUND; AUTHORIZING GRANTS, LOANS AND REVENUE BONDS; SPECIFYING POWERS AND DUTIES OF THE NEW MEXICO FINANCE AUTHORITY; REQUIRING REPORTS; CREATING THE HYDROGEN PRODUCTION AND ENERGY GENERATION INCOME TAX CREDIT, THE HYDROGEN PRODUCTION AND ENERGY GENERATION CORPORATE INCOME TAX CREDIT AND GROSS RECEIPTS AND COMPENSATING TAX DEDUCTIONS FOR HYDROGEN-RELATED SALES AND USE; SPECIFYING ADDITIONAL DUTIES OF THE DEPARTMENT OF ENVIRONMENT; ADDING AN EXEMPTION TO THE PROCUREMENT CODE; AMENDING .221299.16GLG
DEFINITIONS IN THE RURAL ELECTRIC COOPERATIVE ACT AND THE RENEWABLE ENERGY ACT; DECLARING AN EMERGENCY.

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

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

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

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

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

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

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

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

D. "clean hydrogen electric generation facility" means an electric power generation facility located in New Mexico that uses one hundred percent hydrogen to generate energy.
electricity, whose electrical output can be controlled to aid
in balancing electric supply and demand and emits no more than
three hundred seventy-five pounds of carbon dioxide equivalent
per megawatt hour;

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

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

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

H. "hydrogen hub" means a distinct geographic area
approved by the board pursuant to Subsection C of Section 6 of
the Hydrogen Hub Development Act within which proposed hydrogen
hub projects may be approved for grants or loans;

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

J. "permanent sequestration of carbon dioxide"
means carbon dioxide injected pursuant to a monitoring and
verification plan approved pursuant to Code of Federal
Regulations Title 40, chapter 1, Subchapter C, Part 98, Subpart RR as follows:

(1) prior to January 1, 2030, any source category defined in Code of Federal Regulations Title 40, chapter 1, Subchapter C, Part 98, Subpart RR, Section 98.440; and

(2) on or after January 1, 2030, any source category defined in Code of Federal Regulations Title 40, chapter 1, Subchapter C, Part 98, Subpart RR, Section 98.440, Paragraphs (a) and (b), excluding any well or group of wells where a carbon dioxide stream is being injected in subsurface geologic formations to enhance the recovery of oil or natural gas;

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

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

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

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

O. "responsibly sourced gas" means gas used or
purchased to produce hydrogen that either:

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

(2) in the absence of a federal standard, is
certified as a responsibly sourced gas by an independent
organization with the nationally recognized expertise to
provide such certification and such independent organization
and certification are approved by the department of
environment;

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

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

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

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

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

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

(a) renewable energy sources; or

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

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

(3) access within a four-hour travel period to a railroad line providing access to major markets on the west coast, gulf coast and east coast;
(4) reasonable access to a regional power grid suitable for the export of power generated by a hydrogen hub project;

(5) suitability for the use of renewable energy sources such as solar energy and wind power, including access to open land, sufficient to produce at least fifty percent of the power needed at the proposed hydrogen hub;

(6) geologic suitability and capacity for the permanent sequestration of carbon dioxide produced at the proposed hydrogen hub;

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

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

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

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

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

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

(13) availability of a public partner capable of coordinating development activities within the proposed hydrogen hub;

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

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

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

(b) the Public Improvement District Act;

(c) the Tax Increment for Development Act;

(d) the Industrial Revenue Bond Act;

(e) the Local Economic Development Act;

(f) the Renewable Energy Financing District Act; and

(g) the Infrastructure Development Zone Act.

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

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

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

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

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

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

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

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

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

D. A public-private partnership agreement shall:
(1) define the roles and responsibilities of the public partners and the private partners;

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

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

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

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

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

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

(8) address how the public partners and the private partners will share management and the risks of the hydrogen hub project;
(9) provide that, in the event of an uncured default, the public partner may:

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

   (b) terminate the public-private partnership and exercise any other rights and remedies that may be available;

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

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

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

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

E. A public-private partnership agreement for a
hydrogen hub project shall not become effective until it is approved by the board pursuant to Subsection D of Section 6 of the Hydrogen Hub Development Act.

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

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

B. The board is composed of:

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

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

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

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

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

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

(7) five public members appointed by the New Mexico legislative council who shall have experience in architecture, the technology and analysis of reductions in greenhouse gas emissions, the development and related
engineering of hydrogen hub projects, project finance, public
finance or bond and finance law.

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

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

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

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

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

A. meet quarterly and at such other times as deemed necessary by the chair;
B. develop forms of applications for approval of public-private partnerships;
C. review and approve, modify or disapprove specific geographic areas to be designated as hydrogen hubs;
D. review and approve or disapprove proposed public-private partnership agreements for a hydrogen hub project;
E. certify the need for the issuance of revenue bonds and refunding bonds by the authority;
F. adopt and promulgate rules establishing the application process and criteria for the approval of public-private partnership agreements in accordance with the provisions of the State Rules Act;
G. approve or disapprove applications for grants or loans from the hydrogen hub project fund for hydrogen hub projects; and
H. take all other action necessary to implement the Hydrogen Hub Development Act, including entering into joint powers agreements and retaining legal counsel and experts when appropriate.

SECTION 7. [NEW MATERIAL] HYDROGEN HUB PROJECTS--CRITERIA FOR APPROVAL.--
A. If the proposed hydrogen hub project generates hydrogen, the board shall approve a proposed public-private partnership agreement only if it finds the proposed project:

1. is a clean hydrogen electric generation facility or will generate or use only clean hydrogen;
2. provides for the permanent sequestration of carbon dioxide created in the production of hydrogen by the proposed hydrogen hub project, either by the creator of the carbon dioxide or by a purchaser of the carbon dioxide; and
3. provides certification that methane gas produced or purchased for the generation of hydrogen is responsibly sourced gas.

B. If the proposed hydrogen hub project generates hydrogen, in deciding whether to approve a proposed public-private partnership agreement for a hydrogen hub project, in addition to the criteria set forth in Subsection C of this section, the board shall consider at least the following criteria:

1. whether hydrogen is a cost-effective decarbonization solution for the proposed hydrogen hub project;
2. the cost of alternative decarbonization technologies;
3. the net environmental impact of the proposed hydrogen hub project, including the potential for cost-effective decarbonization of electric generation,
industrial manufacturing and transportation and the impact on fresh water reserves; and

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

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

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

(2) the projected time frame for completion of the proposed hydrogen hub project;

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

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

(5) the financial feasibility of the proposed hydrogen hub project, including the cost of the hydrogen hub project, the projected financial income from the proposed hydrogen hub project and the public-private partnership's
ability to leverage grants or loans from the state;

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

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

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

SECTION 8. [NEW MATERIAL] NEW MEXICO FINANCE AUTHORITY--

DUTIES.--The authority shall:

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

B. administer the hydrogen hub project fund;

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

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

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

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

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

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

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

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

    A. The "hydrogen hub project fund" is created
within the authority. The fund consists of appropriations,
payments of principal and interest on loans made from the fund,
income from investment of the fund and any other money
distributed or otherwise allocated to the fund. Balances in
the fund at the end of any fiscal year shall not revert to the
general fund. The fund may consist of such subaccounts as the
authority deems necessary to carry out the purposes of the
fund.

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

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

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

(2) the public partner certifies to the board that the public partner has taken all action necessary to approve the public-private partnership agreement and that the public-private partnership agreement contains all terms and conditions required by Subsection D of Section 4 of the Hydrogen Hub Development Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) declares the necessity for issuing revenue bonds;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. Refunding bonds:

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

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

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

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

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

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

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

A. hydrogen hubs and hydrogen hub projects approved by the board;
B. a description of the businesses and industries participating in each approved hydrogen hub and hydrogen hub project;

C. grant and loan applications approved by the board;

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

E. the status of the hydrogen hub project fund;

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

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

SECTION 14. [NEW MATERIAL] CUMULATIVE AUTHORITY.--The Hydrogen Hub Development Act shall be deemed to provide an additional and alternative method for the doing of things authorized by that act and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing; provided that the issuance of bonds pursuant to the provisions of the Hydrogen Hub Development Act need not comply with the requirements of any other law applicable to the issuance of bonds, except the Public Securities Act, the Public Securities Short-Term Interest Rate Act and the Public Securities Limitation of Action Act, which acts shall apply.

SECTION 15. A new section of the Income Tax Act is
enacted to read:

"[NEW MATERIAL] HYDROGEN PRODUCTION AND ENERGY GENERATION INCOME TAX CREDIT.--

A. For taxable years prior to January 1, 2032, a taxpayer who is not a dependent of another taxpayer and who holds an interest in a carbon-negative hydrogen production facility, a clean hydrogen production facility, a qualified hydrogen production facility or a hydrogen electric generating facility may apply for, and the department may allow, a tax credit against the taxpayer's tax liability pursuant to the Income Tax Act pursuant to the provisions of this section. The tax credit provided by this section may be referred to as the "hydrogen production and energy generation income tax credit".

B. The tax credit provided by this section shall not be claimed in addition to the renewable energy production tax credit pursuant to Section 7-2-18.18 NMSA 1978. A taxpayer may claim a tax credit pursuant to only one paragraph of Subsection C of this section or one paragraph of Subsection D of this section.

C. For a facility located within a hydrogen hub created pursuant to the Hydrogen Hub Development Act, the amount of the tax credit shall equal the cost of producing hydrogen in New Mexico but shall not exceed the following amounts per kilogram of the first seventeen million kilograms of the hydrogen fuel produced by the qualified hydrogen fuel or
hydrogen resource generator in the taxable year:

(1) for the production of hydrogen for a hydrogen electric generating facility, thirty cents ($0.30) per kilogram;

(2) for the production of hydrogen by a carbon-negative hydrogen production facility, thirty cents ($0.30) per kilogram;

(3) for the production of hydrogen by a clean hydrogen production facility, twenty cents ($0.20) per kilogram; and

(4) for the production of hydrogen by a qualified hydrogen production facility, ten cents ($0.10) per kilogram.

D. For a facility not located within a hydrogen hub created pursuant to the Hydrogen Hub Development Act, the amount of the tax credit shall equal the cost of producing hydrogen in New Mexico but shall not exceed the following amounts per kilogram of the first seventeen million kilograms of the hydrogen fuel produced by the qualified hydrogen fuel or hydrogen resource generator in the taxable year:

(1) for the production of hydrogen for a hydrogen electric generating facility, fifteen cents ($0.15) per kilogram;

(2) for the production of hydrogen by a carbon-negative hydrogen production facility, fifteen cents
1 ($.15) per kilogram;
2
3 (3) for the production of hydrogen by a clean
4 hydrogen production facility, ten cents ($.10) per kilogram;
5 and
6
7 (4) for the production of hydrogen by a
8 qualified hydrogen production facility, five cents ($.05) per
9 kilogram.
10
11 E. A taxpayer eligible for a hydrogen fuel
12 production and energy generation income tax credit shall be
13 eligible for the credit for five consecutive taxable years,
14 beginning on the date the qualified hydrogen fuel or hydrogen
15 resource generator begins producing hydrogen. Any portion of
16 the tax credit that remains unused at the end of the taxpayer's
17 taxable year may be carried forward for a maximum of five
18 consecutive taxable years.
19
20 F. A taxpayer who seeks to claim a tax credit
21 provided by this section shall apply for a certificate of
22 eligibility from the department of environment on forms and in
23 the manner prescribed by that department. The taxpayer shall
24 include with the application an administrative fee, as
determined by the department of environment, to cover the
25 reasonable costs of that department to determine whether the
26 facility meets the requirements of this section.
27
28 G. Within one hundred twenty days of receiving a
29 completed application, the department of environment shall
issue a certificate of eligibility stating whether the taxpayer
is eligible to claim the tax credit provided by this section.

H. The department of environment shall adopt rules
establishing procedures to provide certification of the tax
credit provided by this section.

I. To receive a tax credit provided by this
section, a taxpayer shall apply to the department on forms and
in the manner prescribed by the department. The application
shall include a certificate of eligibility issued by the
department of environment pursuant to this section.

J. That portion of a tax credit that exceeds a
taxpayer's tax liability in the taxable year in which the
credit is claimed shall not be refunded but may be carried
forward for a maximum of seven consecutive taxable years.

K. Married individuals filing separate returns for
a taxable year for which they could have filed a joint return
may each claim only one-half of a tax credit that would have
been claimed on a joint return.

L. A taxpayer may be allocated the right to claim a
tax credit provided by this section in proportion to the
taxpayer's ownership interest if the taxpayer owns an interest
in a business entity that is taxed for federal income tax
purposes as a partnership or limited liability company and that
business entity has met all of the requirements to be eligible
for the credit. The total credit claimed by all members of the
partnership or limited liability company shall not exceed the allowable amount of credit pursuant to this section.

M. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the taxation and revenue department in a manner required by that department.

N. The taxation and revenue department and the department of environment shall compile an annual report on the tax credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The departments shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

O. As used in this section:

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

2. "carbon-negative hydrogen" means hydrogen produced with a carbon intensity less than zero kilograms of carbon dioxide equivalent per kilogram of hydrogen produced;

3. "carbon-negative hydrogen production facility" means a facility located in New Mexico that begins construction prior to January 1, 2035 and produces carbon-
negative hydrogen;

(4) "clean hydrogen" means whichever of the following results in the lower carbon intensity:

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

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

(5) "clean hydrogen production facility" means a facility located in New Mexico that begins construction prior to January 1, 2033 and produces clean hydrogen;

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

(7) "hydrogen" means the gaseous chemical element whose atomic number is one, can condense into a liquid or combine with other elements to form a solid or other liquids or gases and is measured in kilograms; provided that energy units, heating values or other forms of measurement of hydrogen shall be converted to mass and expressed in kilograms;

(8) "hydrogen electric generating facility" means a facility located in New Mexico that begins construction prior to January 1, 2033, that uses hydrogen to generate
electricity and emits no more than three hundred seventy-five pounds of carbon dioxide per megawatt hour of produced electricity;

(9) "interest in a carbon-negative hydrogen production facility, a clean hydrogen production facility, a qualified hydrogen production facility or a hydrogen electric generating facility" means title to a carbon-negative hydrogen production facility, a clean hydrogen production facility, a qualified hydrogen production facility or a hydrogen electric generating facility; a leasehold interest in such facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in such facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in such facility;

(10) "life cycle analysis" means:

(a) for hydrogen produced from methane derived from oil or natural gas operations, the quantity of greenhouse gas emissions through the point of hydrogen production, as determined under the most recent GREET model and certified by a third-party entity that is qualified to verify life cycle analysis, as determined by the department of environment;
(b) for hydrogen produced from natural
gas from a regulated utility, the quantity of greenhouse gas
emissions produced at the site of production as determined
under the most recent GREET model and certified by a third-
party entity that is qualified to verify life cycle analysis,
as determined by the department of environment; or

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

(11) "permanent sequestration of carbon
dioxide" means carbon dioxide injected pursuant to a monitoring
and verification plan approved pursuant to Code of Federal
Regulations Title 40, chapter 1, Subchapter C, Part 98, Subpart
RR as follows:

(a) prior to January 1, 2030, any source
category defined in Code of Federal Regulations Title 40,
chapter 1, Subchapter C, Part 98, Subpart RR, Section 98.440;
and

  (b) on or after January 1, 2030, any
source category defined in Code of Federal Regulations Title
40, chapter 1, Subchapter C, Part 98, Subpart RR, Section
98.440, Paragraphs (a) and (b), excluding any well or group of
wells where a carbon dioxide stream is being injected in
subsurface geologic formations to enhance the recovery of oil
or natural gas;

(12) "qualified hydrogen" means:

  (a) prior to July 1, 2028, hydrogen
produced with a carbon intensity equal to or less than four
kilograms and greater than two kilograms of carbon dioxide
equivalent per kilogram of hydrogen produced; and

  (b) beginning on July 1, 2028, hydrogen
produced with a carbon intensity equal to or less than three
kilograms and greater than two kilograms of carbon dioxide
equivalent per kilogram of hydrogen produced;

(13) "qualified hydrogen fuel or hydrogen
resource generator" means a producer of clean hydrogen or a
clean hydrogen production facility that:

  (a) provides for the permanent
sequestration of carbon dioxide created in the production of
clean hydrogen by the hydrogen fuel or hydrogen resource
generator, either by the creator of the carbon dioxide or by a
purchaser of the carbon dioxide; and
(b) provides certification that methane gas produced or purchased for the generation of hydrogen is responsibly sourced gas;

(14) "qualified hydrogen production facility" means a facility located in New Mexico that produces qualified hydrogen and that begins construction prior to January 1, 2031; and

(15) "responsibly sourced gas" means gas used or purchased to produce hydrogen that either:

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

(b) in the absence of a federal standard, is certified as a responsibly sourced gas by an independent organization with the nationally recognized expertise to provide such certification and such independent organization and certification are approved by the department of environment."

SECTION 16. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"[NEW MATERIAL] HYDROGEN PRODUCTION AND ENERGY GENERATION CORPORATE INCOME TAX CREDIT.--

A. For taxable years prior to January 1, 2032, a taxpayer that holds an interest in a carbon-negative hydrogen
production facility, a clean hydrogen production facility, a qualified hydrogen production facility or a hydrogen electric generating facility may apply for, and the department may allow, a tax credit against the taxpayer's tax liability pursuant to the Corporate Income and Franchise Tax Act pursuant to the provisions of this section. The tax credit provided by this section may be referred to as the "hydrogen production and energy generation corporate income tax credit".

B. The tax credit provided by this section shall not be claimed in addition to the renewable energy production tax credit pursuant to Section 7-2A-19 NMSA 1978. A taxpayer may claim a tax credit pursuant to only one paragraph of Subsection C of this section or one paragraph of Subsection D of this section.

C. For a facility located within a hydrogen hub created pursuant to the Hydrogen Hub Development Act, the amount of the tax credit shall equal the cost of producing hydrogen in New Mexico but shall not exceed the following amounts per kilogram of the first seventeen million kilograms of the hydrogen fuel produced by the qualified hydrogen fuel or hydrogen resource generator in the taxable year:

(1) for the production of hydrogen for a hydrogen electric generating facility, thirty cents ($0.30) per kilogram;

(2) for the production of hydrogen by a
carbon-negative hydrogen production facility, thirty cents ($0.30) per kilogram;

(3) for the production of hydrogen by a clean hydrogen production facility, twenty cents ($0.20) per kilogram; and

(4) for the production of hydrogen by a qualified hydrogen production facility, ten cents ($0.10) per kilogram.

D. For a facility not located within a hydrogen hub created pursuant to the Hydrogen Hub Development Act, the amount of the tax credit shall equal the cost of producing hydrogen in New Mexico but shall not exceed the following amounts per kilogram of the first seventeen million kilograms of the hydrogen fuel produced by the qualified hydrogen fuel or hydrogen resource generator in the taxable year:

(1) for the production of hydrogen for a hydrogen electric generating facility, fifteen cents ($0.15) per kilogram;

(2) for the production of hydrogen by a carbon-negative hydrogen production facility, fifteen cents ($0.15) per kilogram;

(3) for the production of hydrogen by a clean hydrogen production facility, ten cents ($0.10) per kilogram; and

(4) for the production of hydrogen by a
qualified hydrogen production facility, five cents ($0.05) per kilogram.

E. A taxpayer eligible for a hydrogen fuel production and energy generation income tax credit shall be eligible for the credit for five consecutive taxable years, beginning on the date the qualified hydrogen fuel or hydrogen resource generator begins producing hydrogen. Any portion of the tax credit that remains unused at the end of the taxpayer's taxable year may be carried forward for a maximum of five consecutive taxable years.

F. A taxpayer that seeks to claim a tax credit provided by this section shall apply for a certificate of eligibility from the department of environment on forms and in the manner prescribed by that department. The taxpayer shall include with the application an administrative fee, as determined by the department of environment, to cover the reasonable costs of that department to determine whether the facility meets the requirements of this section.

G. Within one hundred twenty days of receiving a completed application, the department of environment shall issue a certificate of eligibility stating whether the taxpayer is eligible to claim the tax credit provided by this section.

H. The department of environment shall adopt rules establishing procedures to provide certification of the tax credit provided by this section.
I. To receive a tax credit provided by this section, a taxpayer shall apply to the department on forms and in the manner prescribed by the department. The application shall include a certificate of eligibility issued by the department of environment pursuant to this section.

J. That portion of a tax credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed shall not be refunded but may be carried forward for a maximum of seven consecutive taxable years.

K. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the taxation and revenue department in a manner required by that department.

L. The taxation and revenue department and the department of environment shall compile an annual report on the tax credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The departments shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

M. As used in this section:

(1) "carbon intensity" means the quantity of carbon dioxide equivalent emitted as determined through a life cycle analysis as expressed in kilograms of carbon dioxide.

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equivalent per kilogram of hydrogen produced;

(2) "carbon-negative hydrogen" means hydrogen produced with a carbon intensity less than zero kilograms of carbon dioxide equivalent per kilogram of hydrogen produced;

(3) "carbon-negative hydrogen production facility" means a facility located in New Mexico that begins construction prior to January 1, 2035 and produces carbon-negative hydrogen;

(4) "clean hydrogen" means whichever of the following results in the lower carbon intensity:

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

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

(5) "clean hydrogen production facility" means a facility located in New Mexico that begins construction prior to January 1, 2033 and produces clean hydrogen;

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

(7) "hydrogen" means the gaseous chemical element whose atomic number is one, can condense to a liquid or...
combine with other elements to form a solid or other liquids or gases and is measured in kilograms; provided that energy units, heating values or other forms of measurement of hydrogen shall be converted to mass and expressed in kilograms;

(8) "hydrogen electric generating facility" means a facility located in New Mexico that begins construction prior to January 1, 2033, that uses hydrogen to generate electricity and emits no more than three hundred seventy-five pounds of carbon dioxide per megawatt hour of produced electricity;

(9) "interest in a carbon-negative hydrogen production facility, a clean hydrogen production facility, a qualified hydrogen production facility or a hydrogen electric generating facility" means title to a carbon-negative hydrogen production facility, clean hydrogen production facility, qualified hydrogen production facility or hydrogen electric generating facility; a leasehold interest in such facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in such facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in such facility;

(10) "life cycle analysis" means:
(a) for hydrogen produced from methane
derived from oil or natural gas operations, the quantity of
greenhouse gas emissions through the point of hydrogen
production as determined under the most recent GREET model and
certified by a third-party entity that is qualified to verify
life cycle analysis, as determined by the department of
environment;

(b) for hydrogen produced from natural
gas from a regulated utility, the quantity of greenhouse gas
emissions produced at the site of production, as determined by
the most recent GREET model and certified by a third-party
entity that is qualified to verify life cycle analysis, as
determined by the department of environment; or

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

(11) "permanent sequestration of carbon
dioxide" means carbon dioxide injected pursuant to a monitoring
and verification plan approved pursuant to Code of Federal
Regulations Title 40, chapter 1, Subchapter C, Part 98, Subpart
RR as follows:

(a) prior to January 1, 2030, any source
category defined in Code of Federal Regulations Title 40,
chapter 1, Subchapter C, Part 98, Subpart RR, Section 98.440;
and

(b) on or after January 1, 2030, any
source category defined in Code of Federal Regulations Title
40, chapter 1, Subchapter C, Part 98, Subpart RR, Section
98.440, Paragraphs (a) and (b), excluding any well or group of
wells where a carbon dioxide stream is being injected in
subsurface geologic formations to enhance the recovery of oil
or natural gas;

(12) "qualified hydrogen" means:

(a) prior to July 1, 2028, hydrogen
produced with a carbon intensity equal to or less than four
kilograms and greater than two kilograms of carbon dioxide
equivalent per kilogram of hydrogen produced; and

(b) beginning on July 1, 2028, hydrogen
produced with a carbon intensity equal to or less than three
kilograms and greater than two kilograms of carbon dioxide
equivalent per kilogram of hydrogen produced;

(13) "qualified hydrogen fuel or hydrogen

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resource generator" means a producer of clean hydrogen or a clean hydrogen production facility that:

(a) provides for the permanent sequestration of carbon dioxide created in the production of clean hydrogen by the hydrogen fuel or hydrogen resource generator, either by the creator of the carbon dioxide or by a purchaser of the carbon dioxide; and

(b) provides certification that methane gas produced or purchased for the generation of hydrogen is responsibly sourced gas;

(14) "qualified hydrogen production facility" means a facility located in New Mexico that produces qualified hydrogen and that begins construction prior to January 1, 2031; and

(15) "responsibly sourced gas" means gas used or purchased to produce hydrogen that either:

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

(b) in the absence of a federal standard, is certified as a responsibly sourced gas by an independent organization with the nationally recognized expertise to provide such certification and such independent organization and certification are approved by the department.
SECTION 17. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"[NEW MATERIAL] DEDUCTIONS--GROSS RECEIPTS--COMPENSATING TAX--HYDROGEN-RELATED SALES AND USE.--

A. For taxable years prior to January 1, 2032, one hundred percent of the receipts from selling carbon-negative hydrogen may be deducted from gross receipts.

B. For taxable years prior to January 1, 2032, sixty-six percent of the receipts from selling clean hydrogen may be deducted from gross receipts.

C. For taxable years prior to January 1, 2032, thirty-three percent of the receipts from selling qualified hydrogen may be deducted from gross receipts.

D. For taxable years prior to January 1, 2032, receipts from selling tangible personal property installed as part of, or services rendered in connection with, constructing and equipping a hydrogen refueling station may be deducted from gross receipts.

E. For taxable years prior to January 1, 2032, receipts from selling hydrogen-fueled vehicles may be deducted from gross receipts.

F. For taxable years prior to January 1, 2032, receipts from selling tangible personal property installed as part of a system used for the distribution of hydrogen may be
deducted from gross receipts.

G. The following amount of receipts from selling or leasing tangible personal property or selling services that are construction plant costs to a person who holds an interest in a carbon-negative hydrogen production facility, a clean hydrogen production facility, a qualified hydrogen production facility or a hydrogen electric generating facility may be deducted from gross receipts if the holder of the interest delivers an appropriate nontaxable transaction certificate to the seller or lessor or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978:

(1) in regard to a carbon-negative hydrogen production facility or a hydrogen electric generating facility, one hundred percent;

(2) in regard to a clean hydrogen production facility, sixty-six percent; and

(3) in regard to a qualified hydrogen production facility, thirty-three percent.

H. Prior to July 1, 2032, the value of tangible personal property installed as part of, or services rendered in connection with, constructing and equipping a hydrogen refueling station may be deducted in computing compensating tax due.

I. Prior to July 1, 2032, the value of hydrogen-fueled vehicles may be deducted in computing compensating tax
J. Prior to July 1, 2032, the value of tangible personal property installed as part of a system used for the distribution of hydrogen may be deducted in computing compensating tax due.

K. The following values of construction plant costs purchased by a person who holds an interest in a carbon-negative hydrogen production facility, a clean hydrogen production facility, a qualified hydrogen production facility or a hydrogen electric generating facility may be deducted in computing the compensating tax due:

   (1) in regard to a carbon-negative hydrogen production facility or a hydrogen electric generating facility, one hundred percent;
   (2) in regard to a clean hydrogen production facility, sixty-six percent; and
   (3) in regard to a qualified hydrogen production facility, thirty-three percent.

L. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

M. The department shall compile an annual report on the deductions provided by this section that shall include the number of taxpayers that claimed each deduction, the aggregate amount of deductions claimed and any other information.
necessary to evaluate the effectiveness of the deduction. The
department shall present the annual report to the revenue
stabilization and tax policy committee and the legislative
finance committee with an analysis of the effectiveness and
cost of the deductions.

N. As used in this section:

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

(2) "carbon-negative hydrogen" means hydrogen
produced with a carbon intensity equal to or less than zero
kilograms of carbon dioxide equivalent per kilogram of hydrogen
produced;

(3) "carbon-negative hydrogen production
facility" means a facility located in New Mexico that produces
carbon-negative hydrogen and begins constriction prior to
January 1, 2035;

(4) "clean hydrogen" means whichever of the
following results in the lower carbon intensity:

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

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

(5) "clean hydrogen production facility" means a facility located in New Mexico that produces clean hydrogen and begins construction prior to January 1, 2033;

(6) "construction plant costs" means actual expenditures for the development and construction of a carbon-negative hydrogen production facility, a clean hydrogen production facility, a qualified hydrogen production facility or a hydrogen electric generating facility, including permitting; site characterization and assessment; engineering; design; carbon dioxide capture, treatment, compression, transportation and sequestration; site and equipment acquisition; raw materials; and fuel supply development used directly and exclusively in the facility;

(7) "hydrogen electric generating facility" means a facility located in New Mexico that begins construction prior to January 1, 2033, that uses hydrogen to generate electricity and emits no more than three hundred seventy-five pounds of carbon dioxide per megawatt hour of produced electricity;

(8) "hydrogen-fueled vehicle" means a bus, commercial motor vehicle, off-highway motor vehicle, railroad train, recreational vehicle, road tractor, school bus, special
mobile equipment, tank vehicle, truck or truck tractor, as those terms are defined in the Motor Vehicle Code, that is fueled by hydrogen;

(9) "hydrogen refueling station" means a refueling station that supplies hydrogen suitable for use as a fuel in hydrogen-fueled vehicles;

(10) "interest in a carbon-negative hydrogen production facility, a clean hydrogen production facility, a qualified hydrogen production facility or a hydrogen electric generating facility" means title to a carbon-negative hydrogen production facility, a clean hydrogen production facility, a qualified hydrogen production facility or a hydrogen electric generating facility; a leasehold interest in such facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in such facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in such facility;

(11) "qualified hydrogen" means:

(a) prior to July 1, 2028, hydrogen produced with a carbon intensity equal to or less than four kilograms and greater than two kilograms of carbon dioxide equivalent per kilogram of hydrogen produced; and
(b) beginning on July 1, 2028, hydrogen produced with a carbon intensity equal to or less than three kilograms and greater than two kilograms of carbon dioxide equivalent per kilogram of hydrogen produced;

(12) "qualified hydrogen production facility" means a facility located in New Mexico that produces qualified hydrogen and that begins construction prior to January 1, 2031; and

(13) "special mobile equipment" means "special mobile equipment" as defined in the Motor Vehicle Code."

SECTION 18. A new Section 9-7A-16 NMSA 1978 is enacted to read:

"9-7A-16. [NEW MATERIAL] DEPARTMENT ADDITIONAL DUTIES.--

A. The department of environment shall:

(1) conduct an evaluation of the use of hydrogen across various sectors of the economy as it relates to decarbonization in New Mexico;

(2) conduct an analysis of greenhouse gas emissions from hydrogen production, distribution and use in New Mexico;

(3) conduct an analysis of greenhouse gas emissions that are offset by the use of hydrogen in New Mexico; and

(4) evaluate the sectors of the economy in which hydrogen may be used, comparing the use of hydrogen to
the use of other technologies on a cost and emissions basis.

B. The department shall complete the tasks set forth in Subsection A of this section by no later than October 1, 2023 and shall submit a report containing the department's findings to the governor, the economic development department and the legislature by October 1, 2023.

C. No later than July 1, 2024, the department shall petition the environmental improvement board to promulgate rules that consider and address the implications for greenhouse gas emissions resulting from the generation and use of hydrogen in New Mexico."

SECTION 19. Section 13-1-98 NMSA 1978 (being Laws 1984, Chapter 65, Section 71, as amended by Laws 2019, Chapter 48, Section 13 and by Laws 2019, Chapter 63, Section 1) is amended to read:

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

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

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

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

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

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

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

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

H. contracts with businesses for public school
transportation services;

I. procurement of tangible personal property or
services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,
by the corrections industries division of the corrections
department pursuant to rules adopted by the corrections
industries commission, which shall be reviewed by the
purchasing division of the general services department prior to
adoption;
J. purchases not exceeding ten thousand dollars ($10,000) consisting of magazine subscriptions, web-based or electronic subscriptions, conference registration fees and other similar purchases where prepayments are required;

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

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

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

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

O. contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;
P. contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;
Q. contracts with professional entertainers;
R. contracts and expenditures for legal subscription and research services and litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts;
S. contracts for service relating to the design, engineering, financing, construction and acquisition of public improvements undertaken in improvement districts pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and in county improvement districts pursuant to Subsection L of Section 4-55A-12.1 NMSA 1978;
T. works of art for museums or for display in public buildings or places;
U. contracts entered into by a local public body with a person, firm, organization, corporation or association or a state educational institution named in Article 12, Section 11 of the constitution of New Mexico for the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978, lease or operation of a county hospital pursuant to the Hospital Funding Act or operation and maintenance of a hospital pursuant to the Special Hospital District Act;
V. purchases of advertising in all media, including radio, television, print and electronic;

W. purchases of promotional goods intended for resale by the tourism department;

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

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

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

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

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

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

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

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

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

GG. procurement of services of commissioned advertising sales representatives for New Mexico magazine;

and

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

[HH+] II. procurements exempt from the Procurement Code.
CODE AS OTHERWISE PROVIDED BY LAW.

SECTION 20. Section 62-15-37 NMSA 1978 (being Laws 2007, Chapter 4, Section 4, as amended) is amended to read:

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

A. "clean hydrogen electric generation facility" means an electric power generation facility located in New Mexico that uses one hundred percent hydrogen to generate electricity, whose electrical output can be controlled to aid in balancing electric supply and demand and emits no more than three hundred seventy-five pounds of carbon dioxide equivalent per megawatt hour and that:

(1) provides for the permanent sequestration of carbon dioxide created in the production of clean hydrogen by the hydrogen fuel or hydrogen resource generator, either by the creator of the carbon dioxide or by a purchaser of the carbon dioxide; and

(2) provides certification that methane gas produced or purchased for the generation of hydrogen is responsibly sourced gas;

B. "energy efficiency" means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices to result in a decrease in consumption of electricity without reducing the amount or quality of energy services;
C. "permanent sequestration of carbon dioxide"
means carbon dioxide injected pursuant to a monitoring and
verification plan approved pursuant to Code of Federal
Regulations Title 40, Chapter 1, Subchapter C, Part 98, Subpart RR as follows:

(1) prior to January 1, 2030, any source
category defined in Code of Federal Regulations Title 40,
Chapter 1, Subchapter C, Part 98, Subpart RR, Section 98.440;
and

(2) on or after January 1, 2030, any source
category defined in Code of Federal Regulations Title 40,
Chapter 1, Subchapter C, Part 98, Subpart RR, Section 98.440,
Paragraphs (a) and (b), excluding any well or group of wells
where a carbon dioxide stream is being injected in subsurface
deeologic formations to enhance the recovery of oil or natural
gas;

D. "renewable energy" means electric energy
generated by use of renewable energy resources and delivered to
a rural electric cooperative;

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

F. "renewable energy resource" means electric
or useful thermal energy:

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

(a) solar, wind and geothermal;
(b) hydropower facilities brought in service on or after July 1, 2007;
(c) other hydropower facilities supplying no greater than the amount of energy from hydropower facilities that were part of an energy supply portfolio prior to July 1, 2007;
(d) fuel cells that do not use fossil fuels to create electricity;
(e) biomass resources, limited to agriculture or animal waste, small diameter timber, not to exceed eight inches, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico; provided that these resources are from facilities certified by the energy, minerals and natural resources department to: 1) be of appropriate scale to have sustainable feedstock in the near vicinity; 2) have zero life cycle carbon emissions; and 3) meet scientifically determined restoration, sustainability and soil nutrient principles; and
(f) landfill gas and anaerobically digested waste biomass; and
(2) does not include electric energy generated by use of fossil fuel or nuclear energy;

G. "responsibly sourced gas" means gas used or purchased to produce hydrogen that either:

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

(2) in the absence of a federal standard, is certified as a responsibly sourced gas by an independent organization with nationally recognized expertise to provide such certification and such independent organization and certification are approved by the department of environment;

H. "useful thermal energy" means renewable energy delivered from a source that can be metered and that is delivered in the state to an end user in the form of direct heat, steam or hot water or other thermal form that is used for heating, cooling, humidity control, process use or other valid end-use energy requirements and for which fossil fuel or electricity would otherwise be consumed;

I. "zero carbon resource" means an electricity generation resource:

(1) that emits no carbon dioxide into the atmosphere; [♂♀]

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

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

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

SECTION 21. Section 62-16-3 NMSA 1978 (being Laws 2004, 
Chapter 65, Section 3, as amended) is amended to read: 

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

A. "clean hydrogen electric generation facility"

means an electric power generation facility located in New 
Mexico that uses one hundred percent hydrogen to generate 
electricity, whose electrical output can be controlled to aid 
in balancing electric supply and demand and emits no more than 
three hundred seventy-five pounds of carbon dioxide equivalent 
per megawatt hour and that:

(1) provides for the permanent sequestration 
of carbon dioxide created in the production of clean hydrogen 
by the hydrogen fuel or hydrogen resource generator, either by 
the creator of the carbon dioxide or by a purchaser of the 
carbon dioxide; and
(2) provides certification that methane gas produced or purchased for the generation of hydrogen is responsibly sourced gas;

[A-] B. "commission" means the public regulation commission;

[B-] C. "energy storage" means batteries or other means by which energy can be retained and delivered as electricity for use at a later time;

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

E. "permanent sequestration of carbon dioxide" means carbon dioxide injected pursuant to a monitoring and verification plan approved pursuant to Code of Federal Regulations Title 40, Chapter 1, Subchapter C, Part 98, Subpart RR as follows:

(1) prior to January 1, 2030, any source category defined in Code of Federal Regulations Title 40, Chapter 1, Subchapter C, Part 98, Subpart RR, Section 98.440; and

(2) on or after January 1, 2030, any source category defined in Code of Federal Regulations Title 40, Chapter 1, Subchapter C, Part 98, Subpart RR, Section 98.440, Paragraphs (a) and (b), excluding any well or group of wells where a carbon dioxide stream is being injected in subsurface.
geologic formations to enhance the recovery of oil or natural
gas;

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

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

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

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

[H. J.] "renewable energy resource" means the
following energy resources, with or without energy storage:

(1) solar, wind and geothermal;

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

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

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

(b) have zero life cycle carbon emissions; and

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

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

(5) landfill gas and anaerobically digested waste biogas;

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

[L. "renewable purchased power agreement" means an agreement that binds an entity generating power from renewable energy resources to provide power at a specified price and binds the purchaser to that price;]

M. "responsibly sourced gas" means gas used or purchased to produce hydrogen that either:
(1) meets the standard for methane gas allowed
to be used in hydrogen hub projects as promulgated by the
federal government pursuant to Title 8 of the federal Energy
Policy Act of 2005; or

(2) in the absence of a federal standard, is
certified as a responsibly sourced gas by an independent
organization with the nationally recognized expertise to
provide such certification and such independent organization
and certification are approved by the department of
environment:

[K. N.] "zero carbon resource" means an electricity
generation resource:
(1) that emits no carbon dioxide into the
atmosphere; [or]

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

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

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

SECTION 22. APPLICABILITY.--Sections 15 and 16 of this
act apply to taxable years beginning on or after January 1,
2022.

SECTION 23. EFFECTIVE DATE.--The effective date of the provisions of Section 17 of this act is July 1, 2022.

SECTION 24. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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