

Proposed
HOUSE COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 220

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

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
AMENDING THE RURAL ELECTRIC COOPERATIVE ACT AND THE RENEWABLE
ENERGY ACT TO INCLUDE NATURAL GAS UTILIZING COMBINED CYCLE
TECHNOLOGY IN THE DEFINITION OF "RENEWABLE ENERGY RESOURCE";
AMENDING THE AIR QUALITY CONTROL ACT; CHANGING THE DATE ON
WHICH STANDARDS OF PERFORMANCE THAT LIMIT CARBON DIOXIDE
EMISSIONS FROM CERTAIN ELECTRIC GENERATING FACILITY SOURCES
WILL APPLY FROM JANUARY 1, 2023 TO JANUARY 1, 2025; DECLARING
AN EMERGENCY.

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

SECTION 1. 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:

underscored material = new
~~[bracketed material]~~ = delete

1 A. "energy efficiency" means measures, including
2 energy conservation measures, or programs that target consumer
3 behavior, equipment or devices to result in a decrease in
4 consumption of electricity without reducing the amount or
5 quality of energy services;

6 B. "renewable energy" means electric energy
7 generated by use of renewable energy resources and delivered to
8 a rural electric cooperative;

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

14 D. "renewable energy resource" means electric or
15 useful thermal energy:

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

19 (a) solar, wind, ~~[and]~~ geothermal and
20 natural gas utilizing combined cycle technology;

21 (b) hydropower facilities brought in
22 service on or after July 1, 2007;

23 (c) other hydropower facilities
24 supplying no greater than the amount of energy from hydropower
25 facilities that were part of an energy supply portfolio prior

1 to July 1, 2007;

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

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

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

16 (2) except for natural gas utilizing combined
17 cycle technology, does not include electric energy generated by
18 use of fossil fuel or nuclear energy;

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

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underscored material = new
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1 F. "zero carbon resource" means an electricity
2 generation resource:

3 (1) that emits no carbon dioxide into the
4 atmosphere; or

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

9 G. "zero carbon resource standard" means providing
10 New Mexico rural electric cooperative retail customers with
11 electricity generated from one hundred percent zero carbon
12 resources."

13 SECTION 2. Section 62-16-3 NMSA 1978 (being Laws 2004,
14 Chapter 65, Section 3, as amended) is amended to read:

15 "62-16-3. DEFINITIONS.--As used in the Renewable Energy
16 Act:

17 A. "commission" means the public regulation
18 commission;

19 B. "energy storage" means batteries or other means
20 by which energy can be retained and delivered as electricity
21 for use at a later time;

22 C. "municipality" means a municipal corporation,
23 organized under the laws of the state, and H class counties;

24 D. "public utility" means an entity certified by
25 the commission to provide retail electric service in New Mexico

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1 pursuant to the Public Utility Act but does not include rural
 2 electric cooperatives;

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

8 F. "renewable energy" means electric energy
 9 generated by use of renewable energy resources and delivered to
 10 a public utility;

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

16 H. "renewable energy resource" means the following
 17 energy resources, with or without energy storage:

18 (1) solar, wind, ~~[and]~~ geothermal and natural
 19 gas utilizing combined cycle technology;

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

22 (3) biomass resources, limited to agriculture
 23 or animal waste, small diameter timber, not to exceed eight
 24 inches, salt cedar and other phreatophyte or woody vegetation
 25 removed from river basins or watersheds in New Mexico; provided

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underscored material = new
 [bracketed material] = delete

1 that these resources are from facilities certified by the
2 energy, minerals and natural resources department to:

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

5 (b) have zero life cycle carbon
6 emissions; and

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

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

11 (5) landfill gas and anaerobically digested
12 waste biogas;

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

17 J. "renewable purchased power agreement" means an
18 agreement that binds an entity generating power from renewable
19 energy resources to provide power at a specified price and
20 binds the purchaser to that price;

21 K. "zero carbon resource" means an electricity
22 generation resource:

23 (1) that emits no carbon dioxide into the
24 atmosphere; or

25 (2) that reduces methane emitted into the

1 atmosphere in an amount equal to no less than one-tenth of the
2 tons of carbon dioxide emitted into the atmosphere, as a result
3 of electricity production; and

4 L. "zero carbon resource standard" means providing
5 New Mexico public utility customers with electricity generated
6 from one hundred percent zero carbon resources."

7 SECTION 3. Section 74-2-5 NMSA 1978 (being Laws 1967,
8 Chapter 277, Section 5, as amended) is amended to read:

9 "74-2-5. DUTIES AND POWERS--ENVIRONMENTAL IMPROVEMENT
10 BOARD--LOCAL BOARD.--

11 A. The environmental improvement board or the local
12 board shall prevent or abate air pollution.

13 B. The environmental improvement board or the local
14 board shall:

15 (1) adopt, promulgate, publish, amend and
16 repeal rules and standards consistent with the Air Quality
17 Control Act to attain and maintain national ambient air quality
18 standards and prevent or abate air pollution, including:

19 (a) rules prescribing air standards
20 within the geographic area of the environmental improvement
21 board's jurisdiction or the local board's jurisdiction or any
22 part thereof; and

23 (b) standards of performance that limit
24 carbon dioxide emissions to no more than one thousand one
25 hundred pounds per megawatt-hour on and after January 1, [2023]

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1 2025 for a new or existing source that is an electric
2 generating facility with an original installed capacity
3 exceeding three hundred megawatts and that uses coal as a fuel
4 source; and

5 (2) adopt a plan for the regulation, control,
6 prevention or abatement of air pollution, recognizing the
7 differences, needs, requirements and conditions within the
8 geographic area of the environmental improvement board's
9 jurisdiction or the local board's jurisdiction or any part
10 thereof.

11 C. If the environmental improvement board or the
12 local board determines that emissions from sources within the
13 environmental improvement board's jurisdiction or the local
14 board's jurisdiction cause or contribute to ozone
15 concentrations in excess of ninety-five percent of the primary
16 national ambient air quality standard for ozone promulgated
17 pursuant to the federal act, the environmental improvement
18 board or the local board shall adopt a plan, including rules,
19 to control emissions of oxides of nitrogen and volatile organic
20 compounds to provide for attainment and maintenance of the
21 standard. Rules adopted pursuant to this subsection shall be
22 limited to sources of emissions within the area of the state
23 where the ozone concentrations exceed ninety-five percent of
24 the primary national ambient air quality standard.

25 D. Rules adopted by the environmental improvement

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1 board or the local board may:

2 (1) include rules to protect visibility in
 3 mandatory class I areas to prevent significant deterioration of
 4 air quality and to achieve national ambient air quality
 5 standards in nonattainment areas; provided that the rules shall
 6 be at least as stringent as required by the federal act and
 7 federal regulations pertaining to visibility protection in
 8 mandatory class I areas, pertaining to prevention of
 9 significant deterioration and pertaining to nonattainment
 10 areas;

11 (2) prescribe standards of performance for
 12 sources and emission standards for hazardous air pollutants
 13 that shall be at least as stringent as required by federal
 14 standards of performance;

15 (3) include rules governing emissions from
 16 solid waste incinerators that shall be at least as stringent as
 17 any applicable federal emission limitations;

18 (4) include rules requiring the installation
 19 of control technology for mercury emissions that removes the
 20 greater of what is achievable with best available control
 21 technology or ninety percent of the mercury from the input fuel
 22 for all coal-fired power plants, except for coal-fired power
 23 plants constructed and generating electric power and energy
 24 before July 1, 2007;

25 (5) require notice to the department or the

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1 local agency of the intent to introduce or permit the
2 introduction of an air contaminant into the air within the
3 geographical area of the environmental improvement board's
4 jurisdiction or the local board's jurisdiction; and

5 (6) require any person emitting any air
6 contaminant to:

7 (a) install, use and maintain emission
8 monitoring devices;

9 (b) sample emissions in accordance with
10 methods and at locations and intervals as may be prescribed by
11 the environmental improvement board or the local board;

12 (c) establish and maintain records of
13 the nature and amount of emissions;

14 (d) submit reports regarding the nature
15 and amounts of emissions and the performance of emission
16 control devices; and

17 (e) provide any other reasonable
18 information relating to the emission of air contaminants.

19 E. Any rule adopted pursuant to this section shall
20 be at least as stringent as federal law, if any, relating to
21 control of motor vehicle emissions.

22 F. In making its rules, the environmental
23 improvement board or the local board shall give weight it deems
24 appropriate to all facts and circumstances, including:

25 (1) character and degree of injury to or

1 interference with health, welfare, visibility and property;

2 (2) the public interest, including the social
3 and economic value of the sources and subjects of air
4 contaminants; and

5 (3) technical practicability and economic
6 reasonableness of reducing or eliminating air contaminants from
7 the sources involved and previous experience with equipment and
8 methods available to control the air contaminants involved.

9 G. Before the environmental improvement board or
10 local board adopts a rule that is more stringent than the
11 federal act or federal regulations, or that applies to sources
12 not subject to regulation pursuant to the federal act or
13 regulations, the environmental improvement board or local board
14 shall make a determination, based on substantial evidence and
15 after notice and public hearing, that the proposed rule will be
16 more protective of public health and the environment."

17 **SECTION 4. EMERGENCY.**--It is necessary for the public
18 peace, health and safety that this act take effect immediately.