

HOUSE BILL 8

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Patricia A. Lundstrom and Harry Garcia and Joseph L. Sanchez
and Eliseo Lee Alcon and D. Wonda Johnson

This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO SPECIAL DISTRICTS; CREATING THE ELECTRIC GENERATING FACILITY ECONOMIC DISTRICT ACT; ALLOWING FOR THE FORMATION OF AN ELECTRIC GENERATING FACILITY ECONOMIC DISTRICT AND AN AUTHORITY TO GOVERN A DISTRICT; PROVIDING POWERS AND DUTIES; CREATING THE ELECTRIC GENERATING FACILITY ECONOMIC DISTRICT GROSS RECEIPTS TAX TO PAY REVENUE BONDS ISSUED PURSUANT TO THE ELECTRIC GENERATING FACILITY ECONOMIC DISTRICT ACT; DECLARING AN EMERGENCY.

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

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SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 11 of this act may be cited as the "Electric Generating Facility Economic District Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Electric Generating Facility Economic District Act:

A. "authority" means the governing body of a district; and

B. "district" means an electric generating facility economic district governed by an authority.

SECTION 3. [NEW MATERIAL] CREATION OF A DISTRICT.--A county may form a district:

A. the initial boundaries of which lie within the jurisdiction of the county; and

B. that includes an operating HCEDC→~~fossil fuel electric generating facility or fossil fuel~~←HCEDC HCEDC→~~coal-fueled electric generating facility that is owned by a non-investor-owned electric utility or a coal-fueled~~←HCEDC electric generating facility that HCEDC→~~is owned by a non-investor-owned electric utility and~~←HCEDC has been or is in the process of being retired.

SECTION 4. [NEW MATERIAL] CREATION OF AN AUTHORITY--MEMBERS--TERMS--QUALIFICATIONS.--

A. A county that forms a district shall create an authority to govern the district that consists of SJC→~~an odd number of members, but not fewer than five or more than nine in~~

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~~number~~←SJC SJC→five members←SJC. The governing body of the county shall appoint authority members.

B. The terms of the authority members shall be staggered. Of the members initially appointed, that number of members closest to, but not more than, one-half of the membership shall serve for two years. The term of all other members shall be four years. SJC→If additional counties become part of the authority pursuant to Subsection E of this section, the additional authority members shall be appointed in a similar manner so that they shall serve staggered four-year terms.←SJC

C. An authority member shall not serve more than two consecutive four-year terms on the authority. A member who has served two consecutive four-year terms on the authority shall not serve another term until after four years following the second term have elapsed.

D. The authority shall include a non-voting member appointed by the governor who shall serve at the pleasure of the governor for a two-year term.

E. The authority SCORC→may←SCORC SCORC→shall, for the period ending December 31, 2020,←SCORC authorize a county that borders the county that created the district SCORC→within twenty miles of a qualifying electric generating facility←SCORC to become part of the authority. SJC→~~The county that created the district and any subsequently accepted counties~~

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~~SCORC may SCORC SJC SCORC shall SCORC SJC SJC may SJC change the membership of the authority, up to SJC SCORC one less than SCORC SJC the maximum allowed by Subsection A of this section, and change the terms of the authority members to allow the newly accepted county to appoint SCORC one or more SCORC SJC SCORC an equal number of SCORC SJC SJC one or more SJC members to the authority SCORC . SCORC SJC SCORC as there are appointed by the county that formed the authority. If necessary, the governing body of the county that created the district shall determine which members of the authority appointed by that body shall have their membership terminated to provide for new members to be appointed by a bordering county. If an equal number of members are appointed by multiple counties, those members shall appoint one or more members as needed to provide for an odd number of authority members. SCORC SJC SJC . SJC SJC SJC Any additional county that becomes part of the district shall appoint four additional members to the authority. SJC~~

F. An elected official shall not serve as an authority member SFC nor influence or attempt to influence any action of an authority member SFC. Authority members shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance. SFC An authority member shall post a surety bond

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for the faithful performance of the member's duties pursuant to the Surety Bond Act.←SFC

G. Before appointing a person as an authority member, the governing body of a county shall first determine that the person has:

(1) experience in energy development business, economic development, finance, commercial real estate investment or accounting or possesses other qualifications that the governing body determines are necessary or appropriate for carrying out the duties of the authority SFC→but does not have at the time of appointment and will not have during service as an authority member employment or a contract with an energy development business←SFC; and

(2) no direct substantial conflict of interest in the business or operation of the authority.

H. An authority member shall SFC→~~abstain from an authority vote if the matter~~←SFC SFC→resign from the authority if a matter to be←SFC voted on poses a conflict of interest for the member. Authority members and employees of the authority shall be governed by the provisions of the Governmental Conduct Act. An authority member or employee of the authority shall not:

(1) acquire a financial interest in a new or existing business venture or business property if the member or employee believes or has reason to believe that the financial

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interest will be directly affected by an official act conducted in that membership or employment capacity;

(2) use confidential information acquired by virtue of membership on or employment by the authority for the member's or employee's or another person's private gain; or

(3) as a person with a financial or other interest in a business that is party to a contract, enter into a contract with the authority without there being public notice of the contract, a competitive bidding process for entry into the contract and full disclosure of that financial or other interest.

I. The governing body that appoints an authority member may remove the member if the governing body determines that the member has:

(1) neglected or refused to perform an official duty;

(2) violated the policies or procedures adopted by the authority; or

(3) developed a direct, substantial conflict of interest in the business of the authority.

SECTION 5. [NEW MATERIAL] AUTHORITY--POWERS--DUTIES.--

A. An authority is a political subdivision of the state that may, in accordance with law and to effectuate the purposes of the district it governs:

(1) have perpetual existence;

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- (2) sue and be sued;
- (3) adopt bylaws, policies and procedures;
- (4) employ a director, who may employ staff as necessary to administer the authority;
- (5) fix the time and place of meetings and the method of providing notice of the meetings;
- (6) make and pass orders and resolutions necessary for governing and managing the authority and executing the powers of the authority;
- (7) adopt and use a seal;
- (8) create and define the duties of advisory committees;
- (9) enter into contracts and agreements;
- (10) borrow money and issue bonds;
- (11) pledge all or a portion of its revenue to the payment of its bonds;
- (12) issue refunding revenue bonds to refinance, pay or discharge all or part of its outstanding revenue bonds;
- (13) impose liens;
- (14) acquire, dispose of or encumber real or personal property or interests in real or personal property, including leases and easements;
- (15) manage the land and property constituting and associated with the authority within the district,

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including by imposing rental charges and fees for the use of that land and property;

Hf11→(16)←~~exercise the power of eminent domain within the boundaries of the district as provided by law for the condemnation of private property for public use with just compensation;~~←Hf11

Hf11→(17)←Hf11 Hf11→(16)←Hf11 sell, transfer or convey real or personal property or interests in real or personal property acquired by the authority;

Hf11→(18)←Hf11 Hf11→(17)←Hf11 alter the boundaries of the district with the approval of the counties that are part of the district;

Hf11→(19)←Hf11 Hf11→(18)←Hf11 establish standards and long-term development plans;

Hf11→(20)←Hf11 Hf11→(19)←Hf11 apply to a public or private source for a loan, grant, guarantee or other type of financial assistance; SJC→and←SJC

Hf11→(21)←Hf11 Hf11→(20)←Hf11 exercise the rights and powers necessary or incidental to or implied by the specific powers granted by this section SJC→; and←SJC
SJC→.←SJC

SJC→Hf11→(22)←Hf11 Hf11→(21)←Hf11 by
~~resolution, delegate to a member or agent of the authority any of its powers, except the power to:~~

~~(a) adopt authority policies or~~

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~~procedures;~~

~~(b) initiate or continue legal action;~~

~~(c) establish policies on the use of~~

~~revenue;~~

~~(d) acquire real or personal property or~~

~~interests in real or personal property;~~

~~(e) expand the district; or~~

~~(f) issue bonds.~~ ←SJC

B. An authority shall:

(1) govern the district;

(2) adopt rules to govern its conduct,

including standards and procedures for calling emergency meetings and a conflicts-of-interest policy;

(3) use district property to create jobs and foster economic development in all areas it deems appropriate and in the public welfare; and

(4) comply with all applicable state and federal laws, ordinances or rules enacted by the county having jurisdiction over the district's land or real property.

SECTION 6. [NEW MATERIAL] REVENUE BONDS--EXEMPTION FROM TAXATION.--The bonds authorized by the Electric Generating Facility Economic District Act, the income from those bonds, mortgages or other security instruments executed as security for those bonds, lease agreements authorized by the Electric Generating Facility Economic District Act and revenue derived

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from a lease or sale by an authority are exempt from taxation by the state and its subdivisions.

SECTION 7. [NEW MATERIAL] BONDING AUTHORITY.--

A. An authority may issue revenue bonds for the purpose of constructing, purchasing, improving, remodeling, furnishing or equipping any necessary buildings, structures, roads or other infrastructure of the district.

B. An authority may pledge irrevocably any or all of the revenue received by the district to the payment of the interest on and principal of revenue bonds for any of the purposes authorized in the Electric Generating Facility Economic District Act.

C. Revenues in excess of the annual principal and interest due on revenue bonds secured by a pledge of 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 revenues and to administer the payment of principal of and interest on the bonds.

D. Except as otherwise provided in the Electric Generating Facility Economic District 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 a prior redemption at the district's option at a time and upon terms and conditions,

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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.

E. At a regular or special meeting, the authority may 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 the members of the authority; and

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

SECTION 8. [NEW MATERIAL] REFUNDING BONDS.--

A. An authority that has issued bonds in accordance with the Electric Generating Facility Economic District Act may

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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, without limitation, 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) purpose of reducing interest costs or effecting other economies; or

(3) purpose of modifying or eliminating restrictive contractual limitations:

(a) pertaining to the issuance of additional bonds; or

(b) concerning the outstanding bonds or facilities relating to the outstanding bonds.

B. An authority may 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. Refunding bonds may be issued separately or in combination in one series or more.

D. 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

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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.

E. 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.

F. 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. The proceeds shall be applied to the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that the refunding bond proceeds, including accrued interest and premiums appertaining to a sale of refunding bonds, may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest on those

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bonds and the principal of those bonds, or both interest and principal as the authority determines. This section does not require the establishment of an escrow if the refunded bonds and the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available for its purpose. Proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States or in certificates of deposit of banks that are members of the federal deposit insurance corporation; provided that the par value of the certificates of deposit is collateralized by a pledge of obligations or by a pledge of payment that is unconditionally guaranteed by the United States; and further provided that the par value of those obligations is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow, together with any interest or other income to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective

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maturities or at any designated prior redemption date or dates in connection with which the district shall exercise a prior redemption option. A purchaser of a refunding bond issued is not responsible for the application of the proceeds by the district or any of its officers, agents or employees.

G. 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.

H. 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 district'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

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not exceed the maximum permitted by the Public Securities Act.

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

SECTION 9. [NEW MATERIAL] BONDS NOT OBLIGATION OF THE STATE OR A COUNTY.--Except as otherwise provided in the Electric Generating Facility Economic District Act, all bonds or other obligations issued pursuant to that act are payable solely from the revenues of the district 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 any other of its political subdivisions. No breach of any pledge, obligation or agreement or a district shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state or any other of its political subdivisions.

SECTION 10. [NEW MATERIAL] DISSOLUTION.--The governing body of the county that formed the district and the governing bodies of any counties that have become part of the district may, by majority vote, agree to unwind and dissolve the district and dismiss the authority members if they find the district is not meeting the needs of the community in creating jobs or fostering economic development. The assets and all debts and obligations of the district shall be transferred to and assumed by the counties as set forth in the unwinding or

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dissolution agreement.

SECTION 11. [NEW MATERIAL] LIMITATION OF APPLICABILITY.--No provision of the Electric Generating Facility Economic District Act or Section 12 of this 2020 act shall affect an operating HCEDC→~~fossil fuel electric generating facility or fossil fuel electric generating facility that~~←HCEDC HCEDC→coal-fueled electric generating facility that is owned by a non-investor-owned electric utility or a coal-fueled electric generating facility that is owned by a non-investor-owned electric utility and←HCEDC has been or is in the process of being retired unless and to the extent the owner of such a facility and any existing lienors to such a facility agree in writing that such a facility may be affected by the powers of the authority or the governing body of a county.

SECTION 12. A new section of the County Local Option Gross Receipts and Compensating Taxes Act is enacted to read:

"[NEW MATERIAL] ELECTRIC GENERATING FACILITY ECONOMIC DISTRICT GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE--RATE--USE OF REVENUE.--

A. A majority of the members of the governing body of a county within which a county electric generating facility economic district is located SCORC→and a bordering county within twenty miles of a qualifying electric generating facility←SCORC may enact an ordinance imposing an excise tax of up to one-fourth percent of the gross receipts of any person

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engaging in business in the Hf11→county or←Hf11 county area for the privilege of engaging in business Hf11→in the county or county area←Hf11. The tax authorized by this section may be referred to as the "county electric generating facility economic district gross receipts tax".

B. An ordinance imposing a county electric generating facility economic district gross receipts tax shall impose the tax in any number of increments of one-thousandth percent; provided that the aggregate amount of increments shall not exceed one-fourth percent.

C. The governing body, at the time of enacting an ordinance imposing a county electric generating facility economic district gross receipts tax, shall dedicate the revenue only for the payment of the interest on and principal of revenue bonds issued pursuant to the Electric Generating Facility Economic District Act. SFC→Revenue from a county electric generating facility economic district gross receipts tax shall not be used for any other purpose.←SFC"

SECTION 13. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.