

HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

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; PROVIDING FOR CORPORATE AND PERSONAL INCOME TAX
CREDITS; AMENDING DEFINITIONS IN THE RURAL ELECTRIC COOPERATIVE
ACT, THE RENEWABLE ENERGY ACT AND THE NEW MEXICO RENEWABLE
ENERGY TRANSMISSION AUTHORITY ACT; DECLARING AN EMERGENCY.

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

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

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

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

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

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

14 D. "hydrogen hub project" means a project creating
15 or modifying infrastructure for the generation of power and the
16 production, storage, transport and consumption of hydrogen,
17 including the conversion of methane, natural gas or water and
18 the sequestration of carbon dioxide;

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

24 F. "public partner" means the state and its
25 branches, agencies, departments, boards, instrumentalities or

1 institutions and all political subdivisions of the state and
2 their agencies, instrumentalities and institutions, including a
3 department, an agency, an institution of higher education, a
4 board or a commission;

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

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

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

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

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

24 A. A private partner or a public partner may
25 propose a specific geographic area for designation as a

1 hydrogen hub pursuant to Subsection C of Section 6 of the
2 Hydrogen Hub Development Act.

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

5 (1) reasonable access to a natural gas
6 pipeline, natural gas or methane gas generator or source of
7 coal within twenty-five miles of the proposed hydrogen hub;

8 (2) reasonable access to a natural gas
9 pipeline, natural gas or methane gas generator or source of
10 coal with a volume sufficient to supply one hundred fifty
11 percent of the volume necessary to support the proposed
12 hydrogen power generation;

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

16 (4) access within a four-hour travel period to
17 a railroad line providing access to major markets on the west
18 coast, gulf coast and east coast;

19 (5) reasonable access to a regional power grid
20 suitable for the export of power generated by a hydrogen hub
21 project;

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

1 (7) geologic suitability and capacity for
2 geologic sequestration of carbon dioxide produced at the
3 proposed hydrogen hub;

4 (8) existing infrastructure suitable for
5 redevelopment through a hydrogen hub project;

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

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

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

14 (12) beneficial impact on economically
15 disadvantaged and distressed communities impacted by the
16 closure of coal and other fossil fuel industries;

17 (13) feasibility of suitable evacuation plans
18 for hydrogen hub projects that generate power;

19 (14) availability of a public partner capable
20 of coordinating development activities within the proposed
21 hydrogen hub; and

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

24 (a) improvement districts pursuant to
25 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

1 public-private partnership hydrogen hub project in comparison
2 with a traditional public partner-managed hydrogen hub project;

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

6 (3) demonstrate that the proposed hydrogen hub
7 project serves an important public purpose and fulfills an
8 important public need; and

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

11 D. A public-private partnership agreement shall:

12 (1) define the roles and responsibilities of
13 the public partners and the private partners;

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

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

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

23 (5) require a private partner to provide
24 guarantees, letters of credit or other acceptable forms of
25 security, the amount of which may be less than one hundred

1 percent of the value of the contract involved based on the
2 determination of the public partner, or for public-private
3 partnership agreements requiring board approval, based on the
4 determination by the board;

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

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

9 (8) address how the public partners and the
10 private partners will share management and the risks of the
11 hydrogen hub project;

12 (9) provide that, in the event of an uncured
13 default, the public partner may:

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

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

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

23 (11) limit a private partner from seeking
24 injunctive or other equitable relief to in any way restrict a
25 public partner from developing, constructing or maintaining a

1 hydrogen hub project, except that the public-private
2 partnership agreement may provide for reasonable compensation
3 to the private partner for the adverse effect resulting from
4 development, construction, operation and maintenance of another
5 hydrogen hub project of the public partner;

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

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

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

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

17 A. The "hydrogen hub development board" is created.
18 The authority shall provide necessary administrative services
19 to the board.

20 B. The nine members of the board shall be:

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

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

25 (3) the secretary of energy, minerals and

1 natural resources or the secretary's designee;

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

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

6 (6) four public members appointed by the New
7 Mexico legislative council who shall have experience in
8 architecture, development, engineering, hydrogen hub projects,
9 project finance, public finance or bond and finance law.

10 C. The public members appointed initially shall
11 draw lots for staggered terms in such a way that two members
12 shall serve for six years, one member shall serve for four
13 years and one member shall serve for two years. Thereafter,
14 the public members shall serve for six-year terms.

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

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

21 F. A member of the board shall not participate in
22 or influence a decision by the board in which that member has a
23 conflict of interest, pecuniary interest or other disqualifying
24 interest respecting a public-private partnership agreement or a
25 hydrogen hub project that is considered by the board. All

1 members of the board shall certify annually and in writing
2 compliance with this subsection.

3 **SECTION 6. [NEW MATERIAL] HYDROGEN HUB DEVELOPMENT**

4 **BOARD--POWERS.--**The board shall have the following powers:

5 A. meet quarterly and at such other times as deemed
6 necessary by the chair;

7 B. develop forms of applications for approval of
8 public-private partnerships;

9 C. review and approve, modify or disapprove
10 specific geographic areas to be designated as hydrogen hubs;

11 D. review and approve or disapprove proposed
12 public-private partnership agreements for a hydrogen hub
13 project;

14 E. certify the need for the issuance of revenue
15 bonds and refunding bonds by the authority;

16 F. determine the use of a public-private
17 partnership agreement and ensure that the proposed funding
18 mechanism is a prudent expenditure of public funds;

19 G. adopt and promulgate rules establishing the
20 application process and criteria for the approval of public-
21 private partnership agreements in accordance with the
22 provisions of the State Rules Act;

23 H. approve or disapprove applications for grants or
24 loans from the hydrogen hub project fund for hydrogen hub
25 projects; and

1 I. take all other action necessary to implement the
2 Hydrogen Hub Development Act, including entering into joint
3 powers agreements and retaining legal counsel and experts when
4 appropriate.

5 SECTION 7. [NEW MATERIAL] HYDROGEN HUB PROJECTS--CRITERIA
6 FOR APPROVAL.--In deciding whether to approve or disapprove a
7 proposed public-private partnership agreement for a hydrogen
8 hub project, the board shall consider at least the following
9 criteria:

10 A. the technological feasibility of the proposed
11 hydrogen hub project, including the ability of the private
12 partners and public partners to successfully implement the
13 proposed hydrogen hub project;

14 B. if the proposed hydrogen hub project is to
15 generate power, whether the hydrogen hub project sequesters at
16 least ninety percent of the carbon dioxide generated pre-
17 combustion and whether the hydrogen hub project uses fresh
18 water for cooling;

19 C. the financial feasibility of the proposed
20 hydrogen hub project, including the cost of the hydrogen hub
21 project, the projected financial income from the hydrogen hub
22 project and the public-private partnership's ability to
23 leverage grants or loans from the state;

24 D. the projected time frame for completion of the
25 hydrogen hub project;

1 E. the impact of the proposed hydrogen hub project
2 on the local employment base and on an economically distressed
3 community;

4 F. the net environmental impact of the proposed
5 hydrogen hub project, including the decarbonization of electric
6 generation, industrial manufacturing and transportation and the
7 conservation and production of freshwater reserves;

8 G. the projected impact of the proposed hydrogen
9 hub project on the taxable revenue for the state and relevant
10 municipalities and counties; and

11 H. the potential qualification of the proposed
12 hydrogen hub project for state and federal grants, loans and
13 tax incentives.

14 SECTION 8. [NEW MATERIAL] NEW MEXICO FINANCE AUTHORITY--
15 DUTIES.--The authority shall:

- 16 A. provide staff support to the board;
17 B. administer the hydrogen hub project fund;
18 C. develop forms of grant and loan applications for
19 hydrogen hub projects seeking funds from the hydrogen hub
20 project fund;
21 D. make grants and loans from the hydrogen hub
22 project fund for applications that have been approved by the
23 board pursuant to Subsection H of Section 6 of the Hydrogen Hub
24 Development Act;

25 E. adopt and promulgate rules as necessary relating

1 to the issuance of bonds for hydrogen hub projects;

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

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

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

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

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

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

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1 B. Money in the hydrogen hub project fund may be
2 used to make grants of up to two hundred fifty thousand dollars
3 (\$250,000) to a public partner for the purposes of studying the
4 costs and benefits of entering into a public-private
5 partnership for a proposed hydrogen hub project. A private
6 partner shall provide funds that match or exceed the public
7 partner's monetary obligation for the cost of the study, as
8 required by the authority.

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

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

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

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

25 E. Money in the hydrogen hub project fund may be

1 used for grants or loans to an Indian nation, tribe or pueblo
2 that has entered into a partnership with a private partner for
3 the development of a hydrogen hub project only if:

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

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

9 F. Money in the hydrogen hub project fund may be
10 used for administrative and reimbursable costs incurred by the
11 board and by the authority.

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

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

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

23 C. In addition to the pledge of revenues to the
24 payment of revenue bonds, the authority may grant a mortgage on
25 a hydrogen hub project that has been solely financed by revenue

1 bonds to the bondholders or a trustee for the benefit of the
2 holders of revenue bonds.

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

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

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

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

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

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

23 (5) shall be sold for cash at, above or below
24 par and at a price that results in a net effective interest
25 rate that does not exceed the maximum permitted by the Public

1 Securities Act and the Public Securities Short-Term Interest
2 Rate Act; and

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

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

7 (1) declares the necessity for issuing revenue
8 bonds;

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

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

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

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

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

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

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

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

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

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

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

25 F. The principal amount of the refunding bonds may

1 exceed the principal amount of the refunded bonds and may also
2 be less than or the same as the principal amount of the bonds
3 being refunded if provision is duly and sufficiently made for
4 the payment of the refunded bonds.

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

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

17 I. Refunding bonds:

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

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

25 (3) may be serial in form and maturity or may

1 consist of a single bond payable in one or more installments or
2 may be in another form, as determined by the authority; and

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

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

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

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

25 A. hydrogen hubs approved by the board;

1 B. grant and loan applications approved by the
2 board;

3 C. public-private partnership agreements approved
4 by the board;

5 D. the status of the hydrogen hub project fund;

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

8 F. any recommended changes to the Hydrogen Hub
9 Development Act.

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

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

24 "[NEW MATERIAL] HYDROGEN FUEL PRODUCTION INCOME TAX
25 CREDIT.--

1 A. A taxpayer who is not a dependent of another
2 taxpayer and who holds title to a qualified hydrogen fuel or
3 hydrogen resource generator that first produced and sold
4 hydrogen on or before January 1, 2026 may claim a tax credit
5 against the taxpayer's tax liabilities pursuant to the Income
6 Tax Act. The tax credit provided by this section may be
7 referred to as the "hydrogen fuel production income tax
8 credit".

9 B. The tax credit provided by this section shall
10 not be claimed in addition to the renewable energy production
11 tax credit pursuant to Section 7-2-18.18 NMSA 1978.

12 C. The amount of the tax credit shall equal the
13 cost of generating the hydrogen but shall not exceed one dollar
14 (\$1.00) per kilogram of the first four million kilograms of
15 hydrogen fuel produced and sold by the qualified hydrogen fuel
16 or hydrogen resource generator in the taxable year.

17 D. A taxpayer eligible for a hydrogen fuel
18 production income tax credit shall be eligible for the credit
19 for five consecutive taxable years, beginning on the date the
20 qualified hydrogen fuel or hydrogen resource generator begins
21 producing hydrogen. Any portion of the tax credit that remains
22 unused at the end of the taxpayer's taxable year may be carried
23 forward for a maximum of five consecutive taxable years.

24 E. To receive a hydrogen fuel production income tax
25 credit, a taxpayer shall apply to the department on forms and

1 in the manner prescribed by the department.

2 F. A taxpayer who otherwise qualifies and claims
3 the tax credit provided by this section with respect to a
4 qualified hydrogen fuel or hydrogen resource generator owned by
5 a partnership or other business association of which the
6 taxpayer is a member may claim a credit only in proportion to
7 that taxpayer's interest in the partnership or association.
8 The total credit claimed in the aggregate by all members of the
9 partnership or association with respect to the qualified
10 hydrogen fuel or hydrogen resource generator shall not exceed
11 the amount of the credit that could have been claimed by a sole
12 owner of the property.

13 G. Married individuals who file separate returns
14 for a taxable year in which they could have filed a joint
15 return may each claim only one-half of the hydrogen fuel
16 production income tax credit that would have been allowed on a
17 joint return.

18 H. A taxpayer allowed a tax credit pursuant to this
19 section shall report the amount of the credit to the department
20 in a manner required by the department.

21 I. The department shall compile an annual report on
22 the tax credit provided by this section that shall include the
23 number of taxpayers approved by the department to receive the
24 credit, the aggregate amount of credits approved and any other
25 information necessary to evaluate the effectiveness of the tax

1 credit. The department shall present the report to the revenue
2 stabilization and tax policy committee and the legislative
3 finance committee with an analysis of the effectiveness and
4 cost of the tax credit.

5 J. As used in this section, "qualified hydrogen
6 fuel or hydrogen resource generator" means a hydrogen fuel
7 generator or hydrogen resource generator that uses:

8 (1) renewably powered electrolysis such as
9 that which is:

- 10 (a) solar-light-derived;
- 11 (b) solar-heat-derived;
- 12 (c) wind-derived;
- 13 (d) hydroelectric-derived; or
- 14 (e) geothermal-derived;

15 (2) renewably powered pyrolysis such as that
16 which is:

- 17 (a) solar-light-derived;
- 18 (b) solar-heat-derived;
- 19 (c) plasma-derived;
- 20 (d) wind-derived;
- 21 (e) hydroelectric-derived; or
- 22 (f) geothermal-derived;

23 (3) biomass or cellulose; or

24 (4) methane or coal, where at least ninety
25 percent of the carbon dioxide generated pre-combustion is

1 sequestered as certified by the department of environment."

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

4 "[NEW MATERIAL] HYDROGEN FUEL PRODUCTION CORPORATE INCOME
5 TAX CREDIT.--

6 A. A taxpayer that holds title to a qualified
7 hydrogen fuel or hydrogen resource generator that first
8 produced and sold hydrogen on or before January 1, 2026 may
9 claim a tax credit against the taxpayer's tax liabilities
10 pursuant to the Corporate Income and Franchise Tax Act. The
11 tax credit provided by this section may be referred to as the
12 "hydrogen fuel production corporate income tax credit".

13 B. The tax credit provided by this section shall
14 not be claimed in addition to the renewable energy production
15 tax credit pursuant to Section 7-2A-19 NMSA 1978.

16 C. The amount of the tax credit shall equal the
17 cost of generating the hydrogen but shall not exceed one dollar
18 (\$1.00) per kilogram of the first four million kilograms of
19 hydrogen fuel produced and sold by the qualified hydrogen fuel
20 or hydrogen resource generator in the taxable year.

21 D. A taxpayer eligible for a hydrogen fuel
22 production corporate income tax credit shall be eligible for
23 the credit for five consecutive taxable years, beginning on the
24 date the qualified hydrogen fuel or hydrogen resource generator
25 begins producing hydrogen. Any portion of the tax credit that

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1 remains unused at the end of the taxpayer's taxable year may be
2 carried forward for a maximum of five consecutive taxable
3 years.

4 E. To receive a hydrogen fuel production corporate
5 income tax credit, a taxpayer shall apply to the department on
6 forms and in the manner prescribed by the department.

7 F. A taxpayer allowed a tax credit pursuant to this
8 section shall report the amount of the credit to the department
9 in a manner required by the department.

10 G. The department shall compile an annual report on
11 the tax credit provided by this section that shall include the
12 number of taxpayers approved by the department to receive the
13 credit, the aggregate amount of credits approved and any other
14 information necessary to evaluate the effectiveness of the tax
15 credit. The department shall present the report to the revenue
16 stabilization and tax policy committee and the legislative
17 finance committee with an analysis of the effectiveness and
18 cost of the tax credit.

19 H. As used in this section, "qualified hydrogen
20 fuel or hydrogen resource generator" means a hydrogen fuel
21 generator or hydrogen resource generator that uses:

22 (1) renewably powered electrolysis such as
23 that which is:

24 (a) solar-light-derived;

25 (b) solar-heat-derived;

1 (c) wind-derived;
2 (d) hydroelectric-derived; or
3 (e) geothermal-derived;
4 (2) renewably powered pyrolysis such as that
5 which is:

6 (a) solar-light-derived;
7 (b) solar-heat-derived;
8 (c) plasma-derived;
9 (d) wind-derived;
10 (e) hydroelectric-derived; or
11 (f) geothermal-derived;
12 (3) biomass or cellulose; or
13 (4) methane or coal, where at least ninety
14 percent of the carbon dioxide generated pre-combustion is
15 sequestered as certified by the department of environment."

16 SECTION 17. Section 62-15-37 NMSA 1978 (being Laws 2007,
17 Chapter 4, Section 4, as amended) is amended to read:

18 "62-15-37. DEFINITIONS--ENERGY EFFICIENCY--RENEWABLE
19 ENERGY.--As used in the Rural Electric Cooperative Act:

20 A. "energy efficiency" means measures, including
21 energy conservation measures, or programs that target consumer
22 behavior, equipment or devices to result in a decrease in
23 consumption of electricity without reducing the amount or
24 quality of energy services;

25 B. "renewable energy" means electric energy

1 generated by use of renewable energy resources and delivered to
2 a rural electric cooperative;

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

8 D. "renewable energy resource" means electric or
9 useful thermal energy:

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

13 (a) solar, wind and geothermal;

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

16 (c) other hydropower facilities
17 supplying no greater than the amount of energy from hydropower
18 facilities that were part of an energy supply portfolio prior
19 to July 1, 2007;

20 (d) fuel cells that do not use fossil
21 fuels to create electricity;

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

1 Mexico; provided that these resources are from facilities
2 certified by the energy, minerals and natural resources
3 department to: 1) be of appropriate scale to have sustainable
4 feedstock in the near vicinity; 2) have zero life cycle carbon
5 emissions; and 3) meet scientifically determined restoration,
6 sustainability and soil nutrient principles; ~~and~~

7 (f) landfill gas and anaerobically
8 digested waste biomass; and

9 (g) methane or coal, where at least
10 ninety percent of the carbon dioxide generated pre-combustion
11 is sequestered as certified by the department of environment;
12 and

13 (2) does not include electric energy generated
14 by use of ~~[fossil fuel or]~~ nuclear energy;

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

22 F. "zero carbon resource" means an electricity
23 generation resource that emits no carbon dioxide into the
24 atmosphere, or that reduces methane emitted into the atmosphere
25 in an amount equal to no less than one-tenth of the tons of

1 carbon dioxide emitted into the atmosphere, as a result of
2 electricity production; and

3 G. "zero carbon resource standard" means providing
4 New Mexico rural electric cooperative retail customers with
5 electricity generated from one hundred percent zero carbon
6 resources."

7 SECTION 18. Section 62-16-3 NMSA 1978 (being Laws 2004,
8 Chapter 65, Section 3, as amended) is amended to read:

9 "62-16-3. DEFINITIONS.--As used in the Renewable Energy
10 Act:

11 A. "commission" means the public regulation
12 commission;

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

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

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

22 E. "reasonable cost threshold" means an average
23 annual levelized cost of sixty dollars (\$60.00) per megawatt-
24 hour at the point of interconnection of the renewable energy
25 resource with the transmission system, adjusted for inflation

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1 after 2020;

2 F. "renewable energy" means electric energy
3 generated by use of renewable energy resources and delivered to
4 a public utility;

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

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

12 (1) solar, wind and geothermal;

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

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

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

23 (b) have zero life cycle carbon
24 emissions; and

25 (c) meet scientifically determined

1 restoration, sustainability and soil nutrient principles;

2 (4) fuel cells that do not use fossil fuels to
3 create electricity; ~~[and]~~

4 (5) methane or coal, where at least ninety
5 percent of the carbon dioxide generated pre-combustion is
6 sequestered as certified by the department of environment; and

7 ~~[(5)]~~ (6) landfill gas and anaerobically
8 digested waste biogas;

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

13 J. "renewable purchased power agreement" means an
14 agreement that binds an entity generating power from renewable
15 energy resources to provide power at a specified price and
16 binds the purchaser to that price;

17 K. "zero carbon resource" means an electricity
18 generation resource that emits no carbon dioxide into the
19 atmosphere, or that reduces methane emitted into the atmosphere
20 in an amount equal to no less than one-tenth of the tons of
21 carbon dioxide emitted into the atmosphere, as a result of
22 electricity production; and

23 L. "zero carbon resource standard" means providing
24 New Mexico public utility customers with electricity generated
25 from one hundred percent zero carbon resources."

1 SECTION 19. Section 62-16A-2 NMSA 1978 (being Laws 2007,
2 Chapter 3, Section 2) is amended to read:

3 "62-16A-2. DEFINITIONS.--As used in the New Mexico
4 Renewable Energy Transmission Authority Act:

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

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

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

12 D. "eligible facilities" means facilities to be
13 financed or acquired by the authority, in which, within one
14 year after beginning the transmission or storage of any
15 electricity, and thereafter, at least thirty percent of the
16 electric energy, as estimated by the authority, originates from
17 renewable energy sources;

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

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

1 part by that public utility or other private person;

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

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

11 I. "renewable energy" means electric energy:

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

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

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

19 (b) fuel cells that are not fossil
20 fueled; ~~[or]~~

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

1 (d) methane or coal, where at least
2 ninety percent of the carbon dioxide generated pre-combustion
3 is sequestered as certified by the department of environment;
4 but

5 (3) does not include electric energy generated
6 by use of [~~fossil fuel or~~] nuclear energy; and

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

12 **SECTION 20. APPLICABILITY.**--Sections 15 and 16 of this
13 act apply to taxable years beginning on or after January 1,
14 2022.

15 **SECTION 21. EMERGENCY.**--It is necessary for the public
16 peace, health and safety that this act take effect immediately.