

HOUSE BILL 137

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Nathan P. Small

AN ACT

RELATING TO UTILITIES; ENACTING THE CLEAN ELECTRIFICATION ACT;
ALLOWING UTILITIES AND COOPERATIVES TO PROVIDE BENEFICIAL AND
LOW-INCOME ELECTRIFICATION; REQUIRING PUBLIC UTILITIES,
MUNICIPAL UTILITIES AND RURAL ELECTRIC COOPERATIVES TO REDUCE
CARBON DIOXIDE EMISSIONS FROM ELECTRICITY GENERATION OVER TIME;
PRESCRIBING DEADLINES AND REQUIREMENTS; ALLOWING THE CREATION
OF CLEAN ELECTRICITY CREDITS; ESTABLISHING COMPLIANCE
PROCEDURES; ESTABLISHING FEES; CREATING A PENALTY; ALLOWING
VARIANCES; AMENDING THE STATE AIR QUALITY PERMIT FUND; MAKING
AN APPROPRIATION.

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

SECTION 1. A new section of Chapter 62 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 8 of this
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1 act may be cited as the "Clean Electrification Act"."

2 SECTION 2. A new section of Chapter 62 NMSA 1978 is
3 enacted to read:

4 "[NEW MATERIAL] DEFINITIONS.--As used in the Clean
5 Electrification Act:

6 A. "base period emissions" means the average annual
7 metric tons of carbon dioxide that a utility or cooperative
8 caused to be emitted into the atmosphere from its dedicated
9 generation during the three-calendar-year period of 2018 to
10 2020; provided that for a utility that has received approval of
11 a financing order pursuant to the Energy Transition Act, "base
12 period emissions" means the utility's average New Mexico load
13 during the three-calendar-year period of 2018 to 2020
14 multiplied by two-tenths metric tons per megawatt-hour. The
15 operation of any dedicated generation that reduces methane
16 emitted into the atmosphere in an amount equal to at least
17 one-tenth of the metric tons of carbon dioxide that the
18 generation emitted into the atmosphere shall be deemed to not
19 emit any carbon dioxide;

20 B. "beneficial and low-income electrification"
21 means the conversion or development of a building use or
22 industrial process from one that does, or economically could,
23 consume fossil-fueled energy to one that uses electric energy,
24 or the provision of electricity to existing low-income and
25 indigenous New Mexico households without electricity service;

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1 C. "clean electricity credit" or "credit" means an
2 instrument in a physical or electronic format approved by the
3 secretary that represents each metric ton of emissions that is
4 less than one per megawatt-hour produced from dedicated
5 generation;

6 D. "commission" means the public regulation
7 commission;

8 E. "compliance period" means a three-calendar-year
9 period, with the first period being the years 2022 through
10 2024;

11 F. "cooperative" means a rural electric cooperative
12 organized pursuant to the Rural Electric Cooperative Act;

13 G. "dedicated generation" means electricity
14 production capacity that is owned by, or assigned for a period
15 of twenty-four months or longer to, a utility or cooperative to
16 serve its New Mexico load; provided that if a utility's or
17 cooperative's electricity production capacity produces:

18 (1) more energy in a year than the utility's
19 or cooperative's New Mexico load, "dedicated generation" means
20 the sum of:

21 (a) the utility's or cooperative's
22 renewable generation capacity; and

23 (b) the utility's or cooperative's
24 non-renewable generation capacity, uniformly scaled down by the
25 ratio of the utility's or cooperative's New Mexico load minus
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1 the amount of energy produced by renewable generation capacity
2 to the amount of energy produced from the non-renewable
3 generation capacity; and

4 (2) less energy in a year than the utility's
5 or cooperative's New Mexico load, the shortfall is deemed to be
6 provided from dedicated generation with an emission rate equal
7 to the purchased power emission rate;

8 H. "department" means the department of
9 environment;

10 I. "emissions" means carbon dioxide emitted into
11 the atmosphere;

12 J. "market development" means financial incentives
13 or technical assistance provided to the developer, builder,
14 owner or resident of a home, apartment building, commercial
15 building, government building or industrial facility or to an
16 equipment distributor, installer or manufacturer to further the
17 deployment of beneficial and low-income electrification
18 technologies and solutions, including facilities to
19 electrically charge transportation vehicles;

20 K. "New Mexico load" means the megawatt-hours of
21 electricity during a year that a utility or cooperative sells
22 to its New Mexico retail customers plus the amount of energy
23 lost from transmission lines, distribution lines and energy
24 storage operations, plus the amount of energy stored at the end
25 of the year and minus the amount of energy stored at the

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1 beginning of the year and minus load that has renewable energy
2 assigned to serve a particular customer; provided that the
3 utility verifies that the particular customer has or will
4 retain the associated renewable energy certificates and will
5 not use them for compliance with a law or regulation in any
6 jurisdiction;

7 L. "purchased power emission rate" means the
8 combustion output emission rate, in metric tons of carbon
9 dioxide per megawatt-hour, identified in the United States
10 environmental protection agency's emissions and generation
11 resource integrated database reports for the North American
12 electric reliability council subregion from which the power was
13 procured; provided that, if the reports are unavailable for the
14 period during which the power was procured, or if there exists
15 a better approximation of the average emission rate from
16 combustion methods of producing electricity in the applicable
17 subregion, "purchased power emission rate" means the emission
18 rate that best represents the emissions from combustion sources
19 of electricity production in the applicable subregion, as
20 determined by the department;

21 M. "reference emission rate" means one metric ton
22 of carbon dioxide per megawatt-hour of produced electricity;

23 N. "secretary" means the secretary of environment;
24 and

25 O. "utility" means an electric public utility as

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1 defined in Subsection G of 62-3-3 NMSA 1978 and a municipal
2 electric utility as defined in Subsection H of Section 3-1-2
3 NMSA 1978."

4 SECTION 3. A new section of Chapter 62 NMSA 1978 is
5 enacted to read:

6 "[NEW MATERIAL] CLEAN ELECTRICITY REQUIREMENTS.--

7 A. A utility or cooperative shall make reasonable
8 and consistent progress over time to reduce the emissions from
9 its dedicated generation as follows:

10 (1) a utility shall emit no more than
11 ninety-two percent of its base period emissions in 2022 and
12 shall reduce its emissions by an amount equal to an additional
13 four percent of its base period emissions each year thereafter
14 until January 1, 2045. For calendar year 2045 and thereafter,
15 emissions shall remain fixed at zero; and

16 (2) a cooperative shall emit no more than its
17 base period emissions in 2022 and ninety-six percent of its
18 base period emissions in 2023 and shall reduce its emissions by
19 an amount equal to an additional four percent each year until
20 January 1, 2039, after which it shall reduce its emissions by
21 an amount equal to an additional three percent of its base
22 period emissions each year until January 1, 2050. For calendar
23 year 2050 and thereafter, emissions shall remain fixed at zero.

24 B. To demonstrate compliance with the requirements
25 of Subsection A of this section, a utility or cooperative shall

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1 retire a number of credits, the amount of which is calculated
2 annually, equal to the reference emission rate multiplied by
3 the utility's or cooperative's New Mexico load for that year,
4 less the number of metric tons of its base period emissions
5 reduced as specified for that year under Subsection A of this
6 section as applicable. At the end of each compliance period, a
7 utility or cooperative shall retire the cumulative credits
8 required for each year of that period, plus any deficiency
9 amount required by Subsection E of Section 6 of the Clean
10 Electrification Act. If in any year the calculated number of
11 credits to retire is a negative number, that amount shall be
12 deemed to be zero.

13 C. For calculating base period emissions, the
14 purchased power emission rate for the period closest to 2019
15 shall be used."

16 SECTION 4. A new section of Chapter 62 NMSA 1978 is
17 enacted to read:

18 "[NEW MATERIAL] BENEFICIAL AND LOW-INCOME
19 ELECTRIFICATION.--

20 A. An investor-owned utility or cooperative that is
21 in compliance with the Clean Electrification Act may undertake
22 projects and provide market development and customer incentives
23 to electrify energy usage in buildings and industrial processes
24 within the utility's or cooperative's service territory.

25 B. The reasonable and prudent costs of the

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1 expenditures and investments of beneficial and low-income
2 electrification shall be recoverable through a commission-
3 approved tariff rider or in base rates. Projects that qualify
4 for approval and rate recovery shall provide for improved
5 utilization of electricity transmission and distribution
6 systems, or shall be shown to reduce carbon dioxide or methane
7 emitted into the atmosphere in amounts exceeding what would
8 occur during the lifetime of the proposed project, in the
9 absence of the project.

10 C. Investor-owned utility projects that provide
11 electricity to existing low-income and indigenous households
12 without electricity service shall be allowed an additional one
13 hundred basis point return on equity for those project
14 investments. The one dollar (\$1.00) per credit fee required by
15 Subsection A of Section 6 of the Clean Electrification Act
16 shall be waived for one year for a cooperative or municipal
17 utility that electrifies at least one hundred existing low-
18 income or indigenous households in the prior year.

19 D. On or before July 1, 2022, and thereafter upon
20 request by the commission but no more frequently than every two
21 years, a utility or cooperative shall file with the commission
22 a plan to undertake beneficial and low-income electrification
23 projects and an application to develop projects pursuant to
24 that plan. When considering applications for approval, the
25 commission shall consider whether the projects reasonably

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1 satisfy the criteria for beneficial or low-income
2 electrification projects and the reasonableness and prudence of
3 undertaking such projects."

4 SECTION 5. A new section of Chapter 62 NMSA 1978 is
5 enacted to read:

6 "[NEW MATERIAL] CLEAN ELECTRICITY CREDITS.--

7 A. By June 1 of each year beginning in 2023, the
8 secretary shall approve and certify the creation of credits
9 associated with the prior calendar year's emissions from a
10 utility's or cooperative's dedicated generation.

11 B. The number of credits certified shall equal the
12 megawatt-hours produced from the dedicated generation in a year
13 multiplied by the difference of one minus the emission rate of
14 that generation, in metric tons per megawatt-hour; provided
15 that:

16 (1) dedicated generation shall be deemed to
17 have zero emissions if its operation reduces metric tons of
18 methane emitted into the atmosphere by an amount equal to no
19 less than one-tenth of the metric tons of emissions from that
20 generation;

21 (2) dedicated generation with an emission rate
22 that cannot be verified to the satisfaction of the secretary
23 shall be deemed to have an emission rate equal to the purchased
24 power emission rate; and

25 (3) dedicated generation that is provided

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1 renewable energy certificates associated with its electricity
2 production shall be considered to have zero emissions in the
3 base period emissions determination and in the provision of
4 credits during a compliance period if the renewable energy
5 certificates associated with that production are or will be
6 retired by the utility or cooperative to which the generation
7 is dedicated.

8 C. The secretary may authorize credits to be sold
9 or otherwise transferred; provided that the authorization does
10 not result in increased emissions over time and is otherwise
11 consistent with the protection of public health, safety and the
12 environment in New Mexico communities. Credits shall not
13 expire and may be used at any time unless and until they are
14 retired for compliance with the Clean Electrification Act or
15 another law or rule requiring carbon dioxide reductions in
16 another jurisdiction or sector of the economy. Credits shall
17 not be used for compliance more than once. The secretary may
18 allow credits, allowances or other instruments from another
19 jurisdiction or economic sector that has a program to require
20 comparable reductions of emissions over time and that accepts
21 credits into its program to be certified and used for
22 compliance with the Clean Electrification Act; provided that
23 the use of credits, allowances or other instruments from
24 another jurisdiction or economic sector shall not result in
25 increased emissions over time and shall be otherwise consistent

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1 with the protection of public health, safety and the
2 environment in New Mexico communities.

3 D. The department shall establish and maintain a
4 secure and verifiable system for creating, accounting, tracking
5 and retiring credits. The secretary may use a third party, or a
6 regional or national system, to satisfy the requirements of
7 this subsection."

8 SECTION 6. A new section of Chapter 62 NMSA 1978 is
9 enacted to read:

10 "[NEW MATERIAL] COMPLIANCE PROCEDURES--FEES.--

11 A. On or before January 1, 2022, a utility or
12 cooperative shall file with the department a verified statement
13 of its base period emissions along with supporting
14 documentation and other information as the secretary may
15 require. A fee of one dollar (\$1.00) per metric ton of
16 approved base period emissions shall be paid to the department.
17 Unless the department determines within thirty days that the
18 statement may be incorrect, it shall be deemed approved. If a
19 statement is not deemed approved, the department shall
20 determine by June 15, 2022 the appropriate base period
21 emissions for the utility or cooperative, and the fee shall be
22 paid within seven days of approval. Once established, the
23 determination of base period emissions shall not be changed.

24 B. On or before July 1 of each calendar year
25 commencing in 2023, a utility or cooperative shall file with
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1 the department a verified statement of its entitlement to, and
2 reconciliation of, clean electricity credits for the prior
3 calendar year. The statement shall be accompanied by
4 supporting documentation that includes the utility's or
5 cooperative's production and emissions from its dedicated
6 generation, an accounting and reconciliation of all credits
7 that the utility or cooperative has been provided, has
8 transferred, has banked and has retired for compliance at the
9 conclusion of the last calendar year and additional information
10 as the secretary may require.

11 C. Unless the secretary determines that the
12 statement of entitlement and reconciliation may be incorrect,
13 the secretary shall within sixty days of the filing provide the
14 requested number of credits in the format proposed by the
15 utility or cooperative, or another format as determined by the
16 secretary. If the secretary determines that further inquiry is
17 appropriate, the secretary shall determine the correct number
18 of reconciled credits and shall provide by October 1 of that
19 same year the correct number of additional clean electricity
20 credits to which the utility or cooperative is entitled. A fee
21 of one dollar (\$1.00) for each credit provided shall be paid to
22 the department by the utility or cooperative receiving credits
23 within thirty days of issuance.

24 D. On or before July 1, 2025 for compliance in the
25 2022 through 2024 period, and every three years thereafter for

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1 compliance during the next three-year period, a utility or a
2 cooperative shall file an application certifying to the
3 department that it will retire the requisite number of clean
4 electricity credits. This certification shall include verified
5 information and documentation necessary for the department to
6 determine that the correct number of credits will be retired
7 and that the renewable energy certificates associated with
8 dedicated generation from renewable energy have been or will be
9 retired by the utility or cooperative. The department shall
10 within thirty days of the application approve and require the
11 retirement of sufficient clean electricity credits to establish
12 compliance with the Clean Electrification Act.

13 E. If a utility or cooperative possesses an
14 insufficient number of credits for retirement at the end of a
15 compliance period, the utility or cooperative shall satisfy one
16 hundred twenty-five percent of that deficiency on or before
17 July 1 of the year following the end of the next three-year
18 compliance period. After notice and hearing, the department
19 shall assess a penalty of one hundred dollars (\$100) per
20 deficient credit, paid to the department within thirty days of
21 the assessment, for any deficiency persisting beyond a second
22 consecutive compliance period.

23 F. The department may undertake audits or other
24 oversight procedures to ensure compliance with the Clean
25 Electrification Act. The attorney general shall seek a court

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1 order to enforce the Clean Electrification Act and any
2 applicable penalties upon request by the department.

3 G. Fees collected by the department pursuant to
4 this section shall be deposited in the state air quality permit
5 fund. A utility or cooperative may recover fees paid to the
6 department through a commission-approved monthly tariff rider
7 designed to recover those fees over a period of twelve months
8 or through base rates."

9 SECTION 7. A new section of Chapter 62 NMSA 1978 is
10 enacted to read:

11 "[NEW MATERIAL] OTHER LAWS AND REGULATIONS.--The Clean
12 Electrification Act does not diminish or otherwise affect a
13 utility's or cooperative's obligation to comply with any other
14 law or rule, unless that law or rule so provides. If a federal
15 law or regulation requires earlier or greater emission
16 reductions than required by the Clean Electrification Act, the
17 department shall adjust the emission reduction requirements of
18 the Clean Electrification Act to conform to the federal law or
19 regulation."

20 SECTION 8. A new section of Chapter 62 NMSA 1978 is
21 enacted to read:

22 "[NEW MATERIAL] VARIANCES.--A utility or cooperative may
23 request from the department a variance from compliance with the
24 requirements of the Clean Electrification Act. Applications
25 shall be in writing and shall state the reason for the variance

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1 request, identify each section of the Clean Electrification Act
2 for which a variance is requested, describe the effect the
3 variance will have on compliance with the Clean Electrification
4 Act and describe why the variance would be a reasonable
5 alternative to the Clean Electrification Act's requirements.
6 In consultation with the commission, the department may grant a
7 requested variance if it determines that the variance is
8 required to preserve the reliability or affordability of
9 electricity service in New Mexico and those factors outweigh
10 any harm to public health, safety or the environment caused by
11 noncompliance. A variance granted by the department shall be
12 of the shortest duration, consistent with the protection of
13 public health, safety and the environment and the preservation
14 of affordable and reliable electricity service."

15 SECTION 9. Section 74-2-15 NMSA 1978 (being Laws 1992,
16 Chapter 20, Section 18) is amended to read:

17 "74-2-15. STATE AIR QUALITY PERMIT FUND.--

18 A. There is created in the state treasury the
19 "state air quality permit fund" to be administered by the
20 department. All fees collected by the department pursuant to
21 Section 74-2-7 NMSA 1978 and the Clean Electrification Act
22 shall be deposited in the state air quality permit fund. Any
23 unexpended or unencumbered balance remaining at the end of a
24 fiscal year shall not revert to the general fund.

25 B. Money in the state air quality permit fund is

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1 appropriated to the department for the purpose of [~~paying the~~
2 ~~reasonable costs of~~]:

3 (1) reviewing and acting upon any application
4 for a permit;

5 (2) if the owner or operator receives a
6 permit, implementing and enforcing the terms and conditions of
7 such permit not including any court costs or other costs
8 associated with any enforcement action;

9 (3) emissions and ambient monitoring;

10 (4) preparing generally applicable regulations
11 or guidance;

12 (5) modeling, analysis and demonstrations;

13 [~~and~~]

14 (6) preparing inventories and tracking
15 emissions; and

16 (7) regulating air pollution, including carbon
17 dioxide and criteria pollutants."

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