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HOUSE BILL 406

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Matthew McQueen

AN ACT

RELATING TO ENERGY; AMENDING A SECTION OF THE PUBLIC UTILITY  
ACT TO PROVIDE FOR JURISDICTION BY THE PUBLIC REGULATION  
COMMISSION OVER TRANSMISSION LINE LOCATIONS; REQUIRING PUBLIC  
REGULATION COMMISSION APPROVAL OF THE LOCATION OF NEW MEXICO  
RENEWABLE ENERGY TRANSMISSION AUTHORITY FACILITIES.

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

SECTION 1. Section 62-9-3 NMSA 1978 (being Laws 1971,  
Chapter 248, Section 1, as amended by Laws 2005, Chapter 339,  
Section 6 and by Laws 2005, Chapter 340, Section 2) is amended  
to read:

"62-9-3. LOCATION CONTROL--LIMITATIONS.--

A. The legislature finds that it is in the public  
interest to consider any adverse effect upon the environment  
and upon the quality of life of the people of the state that

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1 may occur due to plants, facilities and transmission lines  
2 needed to supply present and future electrical services. It is  
3 recognized that such plants, facilities and transmission lines  
4 will be needed to meet growing demands for electric services  
5 and cannot be built without in some way affecting the physical  
6 environment where these plants, facilities and transmission  
7 lines are located. The legislature therefore declares that it  
8 is the purpose of this section to provide for the supervision  
9 and control by the commission of the location within this state  
10 of new plants, facilities and transmission lines for the  
11 generation and transmission of electricity [~~for sale to the~~  
12 ~~public~~].

13 B. A person, including any municipality, shall not  
14 begin the construction of any plant designed for or capable of  
15 operation at a capacity of three hundred thousand kilowatts or  
16 more for the generation of electricity for sale [~~to the public~~]  
17 within or without this state, whether or not owned or operated  
18 by a person that is a public utility subject to regulation by  
19 the commission, or of any transmission [~~lines in connection~~  
20 ~~with such a plant~~] line on a location within this state  
21 designed for or capable of operations at a nominal voltage of  
22 two hundred thirty kilovolts or more, including any substation  
23 or other facilities associated therewith, unless the location  
24 has been approved by the commission. For the purposes of this  
25 section, "transmission line" means any electric transmission

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1 line and associated facilities designed for or capable of  
2 operations at a nominal voltage of two hundred thirty kilovolts  
3 or more [~~to be constructed in connection with and to transmit~~  
4 ~~electricity from a new plant for which approval is required~~].

5 C. Application for approval shall contain all  
6 information required by the commission to make its  
7 determination, be made in writing setting forth the facts  
8 involved and be filed with the commission. The commission  
9 shall, after a public hearing and upon notice as the commission  
10 may prescribe, act upon the application. The commission may  
11 condition its approval upon a demonstration by the applicant  
12 that it has received all necessary air and water quality  
13 permits. A public utility regulated by the commission may  
14 submit an application pursuant to Section 62-9-1 NMSA 1978 for  
15 a certificate of public convenience and necessity prior to  
16 filing an application for location approval pursuant to this  
17 section in order to determine the need for the generating plant  
18 or transmission line prior to determination of the appropriate  
19 location.

20 D. Approval shall not be required for additions to  
21 or modifications of an existing plant or additions to an  
22 existing transmission line within existing rights of way.

23 E. The commission shall approve the application for  
24 the location of the generating plant unless the commission  
25 finds that the operations of the facilities for which approval

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1 is sought will not be in compliance with all applicable air and  
2 water pollution control standards and regulations existing or  
3 will unduly impair system reliability. The commission shall  
4 not require compliance with performance standards other than  
5 those established by the agency of this state having  
6 jurisdiction over a particular pollution source.

7 F. The commission shall approve the application for  
8 the location of the transmission lines unless the commission  
9 finds that the location will unduly impair important  
10 environmental values or the [~~operation of the proposed~~  
11 ~~transmission lines will unduly impair power system reliability~~]  
12 commission determines that the applicant is able to construct  
13 transmission lines with substantially similar nominal voltage  
14 capacity and transmission benefits at another location at a  
15 substantially similar or lower cost that will result in less  
16 adverse effects on important environmental values.

17 G. An application shall not be approved pursuant to  
18 this section that violates an existing state, county or  
19 municipal land use statutory or administrative regulation  
20 unless the commission finds that the regulation is unreasonably  
21 restrictive and compliance with the regulation is not in the  
22 interest of the public convenience and necessity, in which  
23 event and to the extent found by the commission, the regulation  
24 shall be inapplicable and void as to the siting. When it  
25 becomes apparent to the commission that an issue exists with

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1 respect to whether a regulation is unreasonably restrictive and  
2 compliance with the regulation is not in the interest of public  
3 convenience and necessity, it shall promptly serve notice of  
4 that fact by certified mail upon the agency, board or  
5 commission having jurisdiction for land use of the area  
6 affected and shall make the agency, board or commission a party  
7 to the proceedings upon its request and shall give it an  
8 opportunity to respond to the issue. The judgment of the  
9 commission shall be conclusive on all questions of siting, land  
10 use, aesthetics and any other state or local requirements  
11 affecting the siting.

12 H. A public utility subject to the jurisdiction of  
13 the commission may elect to file an application pursuant to  
14 this section with the commission for location approval of an  
15 electric transmission line or associated facilities designed  
16 for or capable of operation at a nominal voltage of one hundred  
17 fifteen kilovolts or more but less than two hundred thirty  
18 kilovolts if:

19 (1) the public utility files an application  
20 for construction, extension, rebuilding or improvement of the  
21 electric transmission line or associated equipment under any  
22 applicable county or municipal land use statute, ordinance or  
23 administrative regulation; and

24 (2) the agency, board or commission of the  
25 county or municipality disapproves the application. For

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1 purposes of this subsection, "disapprove" means the failure of  
2 the county or municipal agency, board or commission to issue a  
3 final order approving the application within two hundred forty  
4 days of the public utility's filing of a complete application  
5 with the agency, board or commission. An application shall be  
6 deemed complete if within fifteen working days of the public  
7 utility's filing of the application, or a supplement or  
8 amendment thereto, the agency, board or commission fails to  
9 send written notice to the public utility enumerating the  
10 specific requirements under the applicable county or municipal  
11 land use statute, ordinance or administrative regulation that  
12 the application fails to satisfy.

13 I. Upon consideration of the application and the  
14 standards set forth in Subsection G of this section, the  
15 commission may authorize construction, extension, rebuilding or  
16 improvement of the transmission line or facilities  
17 notwithstanding the prior disapproval of the county or  
18 municipal agency, board or commission. The judgment of the  
19 commission shall be conclusive on all questions of siting, land  
20 use, aesthetics and any other state or local requirements  
21 affecting the siting.

22 J. Nothing in this section shall be deemed to  
23 confer upon the commission power or jurisdiction to regulate or  
24 supervise any person, including a municipality, that is not  
25 otherwise a public utility regulated and supervised by the

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1 commission, with respect to its rates and service and with  
2 respect to its securities, nor shall any other provision of the  
3 Public Utility Act be applicable with respect to such a person,  
4 including a municipality.

5 K. The commission may approve an application filed  
6 pursuant to this section without a formal hearing if no protest  
7 is filed within sixty days of the date that notice is given  
8 that the application has been filed. The commission shall  
9 issue its order granting or denying the application within six  
10 months from the date the application is filed with the  
11 commission; provided, however, that:

12 (1) if a public utility simultaneously files  
13 an application for approval of location of a transmission line  
14 pursuant to this section and an application for a certificate  
15 of public convenience and necessity pursuant to Subsection B of  
16 Section 62-9-1 NMSA 1978, the commission shall issue its order  
17 granting or denying the applications within nine months from  
18 the date the applications are filed with the commission;  
19 provided, however, that the commission may extend the time for  
20 granting approval an additional six months for good cause  
21 shown;

22 (2) if a public utility files an application  
23 for approval of location of a transmission line pursuant to  
24 this section after its application for a certificate of public  
25 convenience and necessity has been approved pursuant to

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1 Subsection B of Section 62-9-1 NMSA 1978, the commission shall  
2 issue its order granting or denying the application for  
3 approval of location of a transmission line within ninety days  
4 from the date the application is filed with the commission; and

5 (3) if a public utility files an application  
6 for approval of location of a transmission line pursuant to  
7 this section while its application for a certificate of public  
8 convenience and necessity is pending pursuant to Subsection B  
9 of Section 62-9-1 NMSA 1978, and the application for a  
10 certificate is subsequently approved, the commission shall  
11 issue its order granting or denying the application for  
12 approval of location of a transmission line within ninety days  
13 from the date the application for certificate of public  
14 convenience and necessity is approved.

15 L. Failure to issue its order approving or denying  
16 an application filed pursuant to this section within the time  
17 periods set forth in Subsection ~~[J]~~ K of this section is deemed  
18 to be approval of the application; provided, however, that the  
19 commission may extend the time for granting approval for a  
20 transmission line that is subject to this section for an  
21 additional nine months upon finding that the additional time is  
22 necessary to determine if the proposed location of the line  
23 will unduly impair important environmental values.

24 M. In determining if the proposed location of the  
25 transmission line will unduly impair important environmental

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1 values, the commission may consider the following factors:

2 (1) existing plans of the state, local  
3 government, public utilities and private entities for other  
4 developments at or in the vicinity of the proposed location;

5 (2) fish, wildlife and plant life;

6 (3) noise emission levels and interference  
7 with communication signals;

8 (4) the proposed availability of the location  
9 to the public for recreational purposes, consistent with safety  
10 considerations and regulations;

11 (5) existing scenic areas, historic, cultural  
12 or religious sites and structures or archaeological sites at or  
13 in the vicinity of the proposed location; and

14 (6) additional factors that require  
15 consideration under applicable federal and state laws  
16 pertaining to the location."

17 **SECTION 2.** Section 62-16A-4 NMSA 1978 (being Laws 2007,  
18 Chapter 3, Section 4) is amended to read:

19 "62-16A-4. AUTHORITY--DUTIES AND POWERS.--

20 A. The authority shall:

21 (1) do any and all things necessary or proper  
22 to accomplish the purposes of the New Mexico Renewable Energy  
23 Transmission Authority Act;

24 (2) hire an executive director and such other  
25 employees or other agents as it deems necessary for the

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1 performance of its powers and duties, including consultants,  
2 financial advisors and legal advisors, and prescribe the powers  
3 and duties and fix the compensation of the employees and  
4 agents. The executive director of the authority shall direct  
5 the affairs and business of the authority, subject to the  
6 policies, control and direction of the authority; and

7 (3) maintain such records and accounts of  
8 revenues and expenditures as required by the state auditor.  
9 The state auditor or the state auditor's designee shall conduct  
10 an annual financial and legal compliance audit of the accounts  
11 of the authority and file copies with the governor and the  
12 legislature.

13 B. The authority may:

14 (1) make and execute agreements, contracts and  
15 other instruments necessary or convenient in the exercise of  
16 its powers and functions with any person or governmental  
17 agency;

18 (2) enter into contractual agreements with  
19 respect to one or more projects upon the terms and conditions  
20 the authority considers advisable;

21 (3) utilize the services of executive  
22 departments of the state upon mutually agreeable terms and  
23 conditions;

24 (4) enter into partnerships with public or  
25 private entities;

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1 (5) identify and establish corridors for the  
2 transmission of electricity within the state;

3 (6) through participation in appropriate  
4 regional transmission forums, coordinate, investigate, plan,  
5 prioritize and negotiate with entities within and outside the  
6 state for the establishment of interstate transmission  
7 corridors;

8 (7) pursuant to Subsection C of this section,  
9 finance or plan, acquire, maintain and operate eligible  
10 facilities necessary or useful for the accomplishment of the  
11 purposes of the New Mexico Renewable Energy Transmission  
12 Authority Act;

13 (8) pursuant to the provisions of the Eminent  
14 Domain Code, exercise the power of eminent domain for acquiring  
15 property or rights of way for public use if needed for projects  
16 if such action does not involve taking utility property or does  
17 not materially diminish electric service reliability of the  
18 transmission system in New Mexico, as determined by the public  
19 regulation commission;

20 (9) receive by gift, grant, donation or  
21 otherwise, any sum of money, aid or assistance from the United  
22 States, the state of New Mexico, any other state, any political  
23 subdivision or any other public or private entity;

24 (10) for any project, provide information and  
25 training to employees of the project regarding any unique

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1 hazards that may be posed by the project, as well as training  
2 in safety work practices and emergency procedures;

3 (11) issue bonds pursuant to the New Mexico  
4 Renewable Energy Transmission Authority Act as necessary to  
5 undertake a project;

6 (12) enter into contracts for the lease and  
7 operation by the authority of eligible facilities owned by a  
8 public utility or other private person;

9 (13) enter into contracts for leasing eligible  
10 facilities owned by the authority; provided that any revenue  
11 derived pursuant to the lease shall be deposited in the  
12 renewable energy transmission bonding fund;

13 (14) collect payments of reasonable rates,  
14 fees, interest or other charges from persons using eligible  
15 facilities to finance eligible facilities and for other  
16 services rendered by the authority; provided that any revenue  
17 derived from payments made to the authority shall be deposited  
18 in the renewable energy transmission bonding fund;

19 (15) borrow money necessary to carry out the  
20 purposes of the New Mexico Renewable Energy Transmission  
21 Authority Act and mortgage and pledge any leases, loans or  
22 contracts executed and delivered by the authority;

23 (16) sue and be sued; and

24 (17) adopt such reasonable administrative and  
25 procedural rules as may be necessary or appropriate to carry

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1 out its powers and duties.

2 C. Except as provided in this subsection, the  
3 authority shall not enter into any project if public utilities  
4 or other private persons are performing the acts, are  
5 constructing or have constructed the facilities, or are  
6 providing the services contemplated by the authority, and are  
7 willing to provide funds for and own new infrastructure to meet  
8 an identified need and market. Before entering into a project,  
9 the following procedures shall be implemented:

10 (1) the authority shall provide to each public  
11 utility and the public regulation commission and publish one  
12 time in a newspaper of general circulation in New Mexico and  
13 one time in a newspaper in the area where the eligible  
14 facilities are contemplated and on a publicly accessible web  
15 page maintained by the authority, an initial notice describing  
16 the project that the authority is contemplating, including a  
17 detailed description of the existing or anticipated renewable  
18 energy sources that justify the determination by the authority  
19 that the project facilities are eligible facilities. The  
20 description shall contain, at a minimum, the names of all  
21 persons that already are or will develop the renewable energy  
22 sources, all persons that will own the renewable energy sources  
23 and the peak output capacity, source type, location and  
24 anticipated connection date of the renewable energy sources;

25 (2) any person with an interest that may be

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1 affected by the proposed project shall have thirty days from  
2 the date of the last publication of the initial notice to  
3 challenge, in writing, the determination by the authority that  
4 the facilities are eligible facilities. If a challenge is  
5 received by the authority within the thirty days, the authority  
6 shall hold a public hearing no sooner than thirty days after  
7 receiving the challenge and after a minimum of two weeks notice  
8 in the same newspapers and web page in which the initial notice  
9 was given. Following the public hearing, the authority shall  
10 make a final determination of eligibility and give notice of  
11 the determination pursuant to Section 39-3-1.1 NMSA 1978. Any  
12 person or governmental entity participating in the hearing may  
13 appeal the final determination by filing a notice of appeal  
14 with the district court pursuant to Section 39-3-1.1 NMSA 1978;

15 (3) public utilities and other persons willing  
16 and able to provide money for, acquire, maintain and operate  
17 the eligible facilities described in the notice shall have the  
18 following time period to notify the authority of intention and  
19 ability to provide money for, acquire, maintain and operate the  
20 eligible facilities described in the notice:

21 (a) within ninety days of the date of  
22 the last publication of the initial notice if no challenge is  
23 received pursuant to Paragraph (2) of this subsection; or

24 (b) within ninety days of the date of  
25 the notice of determination if a challenge is received pursuant

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1 to Paragraph (2) of this subsection; and

2 (4) in the absence of notification by a public  
3 utility or other person pursuant to Paragraph (3) of this  
4 subsection, or if a person, having given notice of intention to  
5 provide money for, acquire, maintain and operate the eligible  
6 facilities contemplated by the authority, fails to make a good  
7 faith effort to commence the same within twelve months from the  
8 date of notification by the authority of its intention, the  
9 authority may proceed to finance or plan, acquire, maintain and  
10 operate the eligible facilities originally contemplated;  
11 provided that a person that, within the time required, has made  
12 necessary applications to acquire federal, state, local or  
13 private permits, certificates or other approvals necessary to  
14 acquire the eligible facilities shall be deemed to have  
15 commenced the same as long as the person diligently pursues the  
16 permits, certificates or other approvals.

17 D. In soliciting and entering into contracts for  
18 the transmission or storage of electricity, the authority and  
19 any person leasing or operating eligible facilities financed or  
20 acquired by the authority shall, if practical, give priority to  
21 those contracts that will transmit or store electricity to be  
22 sold and consumed in New Mexico.

23 E. The authority and any eligible facilities  
24 acquired by the authority are not subject to the supervision,  
25 regulation, control or jurisdiction of the public regulation

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1 commission; ~~[provided]~~ except that the authority shall not  
2 enter into any project for the construction of a facility  
3 unless the location of the facility has been approved by the  
4 commission pursuant to Section 62-9-3 NMSA 1978. Nothing in  
5 this subsection shall be interpreted to allow a public utility  
6 to include the cost of using eligible facilities in its rate  
7 base without the approval of the public regulation commission.

8 F. In exercising its powers and duties, the  
9 authority shall not own or control facilities unless:

10 (1) the facilities are leased to or held for  
11 lease or sale to a public utility or such other person approved  
12 by the public regulation commission;

13 (2) the operation, maintenance and use of the  
14 facilities are vested by lease or other contract in a public  
15 utility or such other person approved by the public regulation  
16 commission;

17 (3) the facilities are owned or controlled for  
18 a period of not more than one hundred eighty days after  
19 termination of a lease or contract described in Paragraph (1)  
20 or (2) of this subsection or after the authority gains  
21 possession of the facilities following a breach of such a lease  
22 or contract or as a result of bankruptcy proceedings; or

23 (4) the facilities do not affect in-state  
24 retail rates or electric service reliability.

25 G. A public utility subject to regulation of the

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1 public regulation commission pursuant to the Public Utility Act  
2 may recover the capital cost of a project undertaken pursuant  
3 to the New Mexico Renewable Energy Transmission Authority Act  
4 from its retail customers only if the project has received a  
5 certificate of public convenience and necessity from the public  
6 regulation commission. A municipal utility exempt from  
7 regulation of the public regulation commission may recover such  
8 costs only if the project has been approved by the governing  
9 body of the municipality. Costs associated with a project  
10 undertaken pursuant to the New Mexico Renewable Energy  
11 Transmission Authority Act are not recoverable from retail  
12 utility customers except to the extent the costs are prudently  
13 incurred and the project is used and useful in serving those  
14 customers as determined by the public regulation commission."

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