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HOUSE BILL 8

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

INTRODUCED BY

Patricia A. Lundstrom and Harry Garcia

AN ACT

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

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

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

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

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

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

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

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

9 B. that includes an operating fossil fuel electric
10 generating facility or fossil fuel electric generating facility
11 that has been or is in the process of being retired.

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

14 A. A county that forms a district shall create an
15 authority to govern the district that consists of an odd number
16 of members, but not fewer than five or more than nine in
17 number. The governing body of the county shall appoint
18 authority members.

19 B. The terms of the authority members shall be
20 staggered. Of the members initially appointed, that number of
21 members closest to, but not more than, one-half of the
22 membership shall serve for two years. The term of all other
23 members shall be four years.

24 C. An authority member shall not serve more than
25 two consecutive four-year terms on the authority. A member who

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1 has served two consecutive four-year terms on the authority
2 shall not serve another term until after four years following
3 the second term have elapsed.

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

7 E. The authority may authorize a county that
8 borders the county that created the district to become part of
9 the authority. The county that created the district and any
10 subsequently accepted counties may change the membership of the
11 authority, up to the maximum allowed by Subsection A of this
12 section, and change the terms of the authority members to allow
13 the newly accepted county to appoint one or more members to the
14 authority.

15 F. An elected official shall not serve as an
16 authority member. Authority members shall receive per diem and
17 mileage as provided in the Per Diem and Mileage Act and shall
18 receive no other compensation, perquisite or allowance.

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

22 (1) experience in energy development business,
23 economic development, finance, commercial real estate
24 investment or accounting or possesses other qualifications that
25 the governing body determines are necessary or appropriate for

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1 carrying out the duties of the authority; and

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

4 H. An authority member shall abstain from an
5 authority vote if the matter voted on poses a conflict of
6 interest for the member. Authority members and employees of
7 the authority shall be governed by the provisions of the
8 Governmental Conduct Act. An authority member or employee of
9 the authority shall not:

10 (1) acquire a financial interest in a new or
11 existing business venture or business property if the member or
12 employee believes or has reason to believe that the financial
13 interest will be directly affected by an official act conducted
14 in that membership or employment capacity;

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

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

24 I. The governing body that appoints an authority
25 member may remove the member if the governing body determines

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1 that the member has:

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

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

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

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

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

12 (1) have perpetual existence;

13 (2) sue and be sued;

14 (3) adopt bylaws, policies and procedures;

15 (4) employ a director, who may employ staff as
16 necessary to administer the authority;

17 (5) fix the time and place of meetings and the
18 method of providing notice of the meetings;

19 (6) make and pass orders and resolutions
20 necessary for governing and managing the authority and
21 executing the powers of the authority;

22 (7) adopt and use a seal;

23 (8) create and define the duties of advisory
24 committees;

25 (9) enter into contracts and agreements;

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- 1 (10) borrow money and issue bonds;
- 2 (11) pledge all or a portion of its revenue to
- 3 the payment of its bonds;
- 4 (12) issue refunding revenue bonds to
- 5 refinance, pay or discharge all or part of its outstanding
- 6 revenue bonds;
- 7 (13) impose liens;
- 8 (14) acquire, dispose of or encumber real or
- 9 personal property or interests in real or personal property,
- 10 including leases and easements;
- 11 (15) manage the land and property constituting
- 12 and associated with the authority within the district,
- 13 including by imposing rental charges and fees for the use of
- 14 that land and property;
- 15 (16) exercise the power of eminent domain
- 16 within the boundaries of the district as provided by law for
- 17 the condemnation of private property for public use with just
- 18 compensation;
- 19 (17) sell, transfer or convey real or personal
- 20 property or interests in real or personal property acquired by
- 21 the authority;
- 22 (18) alter the boundaries of the district with
- 23 the approval of the counties that are part of the district;
- 24 (19) establish standards and long-term
- 25 development plans;

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1 (20) apply to a public or private source for a
2 loan, grant, guarantee or other type of financial assistance;

3 (21) exercise the rights and powers necessary
4 or incidental to or implied by the specific powers granted by
5 this section; and

6 (22) by resolution, delegate to a member or
7 agent of the authority any of its powers, except the power to:

8 (a) adopt authority policies or
9 procedures;

10 (b) initiate or continue legal action;

11 (c) establish policies on the use of
12 revenue;

13 (d) acquire real or personal property or
14 interests in real or personal property;

15 (e) expand the district; or

16 (f) issue bonds.

17 B. An authority shall:

18 (1) govern the district;

19 (2) adopt rules to govern its conduct,
20 including standards and procedures for calling emergency
21 meetings and a conflicts-of-interest policy;

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

25 (4) comply with all applicable state and

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1 federal laws, ordinances or rules enacted by the county having
2 jurisdiction over the district's land or real property.

3 SECTION 6. [NEW MATERIAL] REVENUE BONDS--EXEMPTION FROM
4 TAXATION.--The bonds authorized by the Electric Generating
5 Facility Economic District Act, the income from those bonds,
6 mortgages or other security instruments executed as security
7 for those bonds, lease agreements authorized by the Electric
8 Generating Facility Economic District Act and revenue derived
9 from a lease or sale by an authority are exempt from taxation
10 by the state and its subdivisions.

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

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

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

21 C. Revenues in excess of the annual principal and
22 interest due on revenue bonds secured by a pledge of revenue
23 may be accumulated in a debt service reserve account. The
24 authority may appoint a commercial bank trust department to act
25 as paying agent or trustee of the revenues and to administer

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1 the payment of principal of and interest on the bonds.

2 D. Except as otherwise provided in the Electric
3 Generating Facility Economic District Act, revenue bonds:

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

7 (2) may be subject to a prior redemption at
8 the district's option at a time and upon terms and conditions,
9 with or without the payment of a premium, as determined by the
10 authority;

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

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

16 (5) shall be sold for cash at, above or below
17 par and at a price that results in a net effective interest
18 rate that does not exceed the maximum permitted by the Public
19 Securities Act and the Public Securities Short-Term Interest
20 Rate Act; and

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

22 E. At a regular or special meeting, the authority
23 may adopt a resolution that:

24 (1) declares the necessity for issuing revenue
25 bonds;

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

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

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

7 A. An authority that has issued bonds in accordance
8 with the Electric Generating Facility Economic District Act may
9 issue refunding bonds for the purpose of refinancing, paying
10 and discharging all or any part of outstanding bonds for the:

11 (1) acceleration, deceleration or other
12 modification of the payment of the outstanding bonds,
13 including, without limitation, any capitalization of any
14 interest thereon in arrears or about to become due for any
15 period not exceeding two years from the date of the refunding
16 bonds;

17 (2) purpose of reducing interest costs or
18 effecting other economies; or

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

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

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

25 B. An authority may pledge irrevocably for the

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1 payment of interest, principal and premium, if any, on
2 refunding bonds the appropriate pledged revenues, which may be
3 pledged to an original issue of bonds.

4 C. Refunding bonds may be issued separately or in
5 combination in one series or more.

6 D. Refunding bonds shall be authorized by
7 resolution. Bonds that are refunded shall be paid at maturity
8 or on any permitted prior redemption date in the amounts, at
9 the time and places and, if called prior to maturity, in
10 accordance with any applicable notice provisions, all as
11 provided in the proceedings authorizing the issuance of the
12 refunded bonds or otherwise appertaining thereto, except for
13 any such bond that is voluntarily surrendered for exchange or
14 payment by the holder or owner.

15 E. The principal amount of the refunding bonds may
16 exceed the principal amount of the refunded bonds and may also
17 be less than or the same as the principal amount of the bonds
18 being refunded if provision is duly and sufficiently made for
19 the payment of the refunded bonds.

20 F. The proceeds of refunding bonds, including
21 accrued interest and premiums appertaining to the sale of
22 refunding bonds, shall be immediately applied to the retirement
23 of the bonds being refunded or placed in escrow in a commercial
24 bank or trust company that possesses and exercises trust powers
25 and that is a member of the federal deposit insurance

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1 corporation. The proceeds shall be applied to the principal
2 of, interest on and any prior redemption premium due in
3 connection with the bonds being refunded; provided that the
4 refunding bond proceeds, including accrued interest and
5 premiums appertaining to a sale of refunding bonds, may be
6 applied to the establishment and maintenance of a reserve fund
7 and to the payment of expenses incidental to the refunding and
8 the issuance of the refunding bonds, the interest on those
9 bonds and the principal of those bonds, or both interest and
10 principal as the authority determines. This section does not
11 require the establishment of an escrow if the refunded bonds
12 and the amounts necessary to retire the refunded bonds within
13 that time are deposited with the paying agent for the refunded
14 bonds. Any such escrow shall not necessarily be limited to
15 proceeds of refunding bonds but may include other money
16 available for its purpose. Proceeds in escrow pending such use
17 may be invested or reinvested in bills, certificates of
18 indebtedness, notes or bonds that are direct obligations of, or
19 the principal and interest of which obligations are
20 unconditionally guaranteed by, the United States or in
21 certificates of deposit of banks that are members of the
22 federal deposit insurance corporation; provided that the par
23 value of the certificates of deposit is collateralized by a
24 pledge of obligations or by a pledge of payment that is
25 unconditionally guaranteed by the United States; and further

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1 provided that the par value of those obligations is at least
2 seventy-five percent of the par value of the certificates of
3 deposit. Such proceeds and investments in escrow, together
4 with any interest or other income to be derived from any such
5 investment, shall be in an amount at all times sufficient as to
6 principal, interest, any prior redemption premium due and any
7 charges of the escrow agent payable therefrom to pay the bonds
8 being refunded as they become due at their respective
9 maturities or at any designated prior redemption date or dates
10 in connection with which the district shall exercise a prior
11 redemption option. A purchaser of a refunding bond issued is
12 not responsible for the application of the proceeds by the
13 district or any of its officers, agents or employees.

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

19 H. Refunding bonds:

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

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

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1 determined by the authority;

2 (3) may be serial in form and maturity or may
3 consist of a single bond payable in one or more installments or
4 may be in another form, as determined by the authority; and

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

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

13 SECTION 9. [NEW MATERIAL] BONDS NOT OBLIGATION OF THE
14 STATE OR A COUNTY.--Except as otherwise provided in the
15 Electric Generating Facility Economic District Act, all bonds
16 or other obligations issued pursuant to that act are payable
17 solely from the revenues of the district that may be pledged to
18 the payment of such obligations, and the bonds or other
19 obligations shall not create an obligation, debt or liability
20 of the state or any other of its political subdivisions. No
21 breach of any pledge, obligation or agreement or a district
22 shall impose a pecuniary liability or a charge upon the general
23 credit or taxing power of the state or any other of its
24 political subdivisions.

25 SECTION 10. [NEW MATERIAL] DISSOLUTION.--The governing

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1 body of the county that formed the district and the governing
2 bodies of any counties that have become part of the district
3 may, by majority vote, agree to unwind and dissolve the
4 district and dismiss the authority members if they find the
5 district is not meeting the needs of the community in creating
6 jobs or fostering economic development. The assets and all
7 debts and obligations of the district shall be transferred to
8 and assumed by the counties as set forth in the unwinding or
9 dissolution agreement.

10 SECTION 11. [NEW MATERIAL] LIMITATION OF
11 APPLICABILITY.--No provision of the Electric Generating
12 Facility Economic District Act or Section 12 of this 2020 act
13 shall affect an operating fossil fuel electric generating
14 facility or fossil fuel electric generating facility that has
15 been or is in the process of being retired unless and to the
16 extent the owner of such a facility and any existing lienors to
17 such a facility agree in writing that such a facility may be
18 affected by the powers of the authority or the governing body
19 of a county.

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

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

25 A. A majority of the members of the governing body

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1 of a county within which a county electric generating facility
2 economic district is located may enact an ordinance imposing an
3 excise tax of up to one-fourth percent of the gross receipts of
4 any person engaging in business in the county area for the
5 privilege of engaging in business. The tax authorized by this
6 section may be referred to as the "county electric generating
7 facility economic district gross receipts tax".

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

13 C. The governing body, at the time of enacting an
14 ordinance imposing a county electric generating facility
15 economic district gross receipts tax, shall dedicate the
16 revenue only for the payment of the interest on and principal
17 of revenue bonds issued pursuant to the Electric Generating
18 Facility Economic District Act."

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