

UNANNOTATED

CHAPTER 71 Energy and Minerals

ARTICLE 1 Solar Power Loans (Repealed.)

71-1-1 to 71-1-8. Repealed.

ARTICLE 2 Energy Resources

71-2-1 to 71-2-7. Repealed.

71-2-8. Confidentiality; penalty.

The provisions of any confidential contract or any other confidential information required or possessed by the energy, minerals and natural resources department shall be held confidential by the department upon written request of the party supplying it, and any employee of the department, whether temporary or permanent, who willfully violates the provisions of this section shall be guilty of a misdemeanor. Nothing in this section shall be construed to prevent statistical information from being derived from the information in the hands of the department or its use in public hearings before the department or in appeals from decisions of the department for which such information is essential. Notwithstanding the provisions of Sections 10-15-1 through 10-15-4 NMSA 1978 or any other act requiring meetings of public bodies to be open, the department may close that part of any meeting where confidential information covered by this section is discussed by the department.

History: 1953 Comp., § 65-13-13, enacted by Laws 1975, ch. 289, § 18; 1977, ch. 255, § 105; 1987, ch. 234, § 68.

71-2-9. Notification of contract or production.

Every producer shall notify the energy, minerals and natural resources department of:

A. the completion of a well capable of producing oil, natural gas or liquid hydrocarbon individually, or any combination thereof, or geothermal energy in commercial quantities within five days after completion of the well and not less than five days before the producer enters into a binding agreement for or otherwise provides for

the disposition of the products or geothermal energy of the well under an agreement or disposition which covers any period longer than six months; or

B. his intent to enter into a binding agreement covering the disposition of the products or geothermal energy of a potential well or series of wells at least five days before he enters into the agreement.

History: 1953 Comp., § 65-13-14, enacted by Laws 1975, ch. 289, § 19; 1977, ch. 255, § 106; 1987, ch. 234, § 69.

71-2-10. Repealed.

ARTICLE 3 Federal Lands Action Group (Repealed.)

71-3-1 to 71-3-3. Repealed.

ARTICLE 4 Energy Research and Development (Repealed.)

71-4-1 to 71-4-8. Repealed.

71-4-9 to 71-4-20. Repealed.

ARTICLE 5 Geothermal Resources Conservation (Repealed.)

71-5-1. Repealed.

History: 1953 Comp., § 65-11-1, enacted by Laws 1975, ch. 272, § 1; 2003, ch. 16, § 1; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-2. Repealed.

History: 1953 Comp., § 65-11-2, enacted by Laws 1975, ch. 272, § 2; 1977, ch. 255, § 73; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-2.1. Repealed.

History: Laws 2003, ch. 16, § 2; 2012, ch. 50, § 1; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-3. Repealed.

History: 1953 Comp., § 65-11-3, enacted by Laws 1975, ch. 272, § 3; 1977, ch. 255, § 74; 1982, ch. 51, § 2; 1987, ch. 234, § 70; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-4. Repealed.

History: 1953 Comp., § 65-11-4, enacted by Laws 1975, ch. 272, § 4; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-5. Repealed.

History: 1953 Comp., § 65-11-5, enacted by Laws 1975, ch. 272, § 5; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-6. Repealed.

History: 1953 Comp., § 65-11-6, enacted by Laws 1975, ch. 272, § 6; 1977, ch. 255, § 75; 1979, ch. 175, § 2; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-7. Repealed.

History: 1953 Comp., § 65-11-7, enacted by Laws 1975, ch. 272, § 7; 1977, ch. 255, § 76; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-8. Repealed.

History: 1953 Comp., § 65-11-8, enacted by Laws 1975, ch. 272, § 8; 1977, ch. 255, § 77; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-9. Repealed.

History: 1953 Comp., § 65-11-9, enacted by Laws 1975, ch. 272, § 9; 1977, ch. 255, § 78; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-10. Repealed.

History: 1953 Comp., § 65-11-10, enacted by Laws 1975, ch. 272, § 10; 1977, ch. 255, § 79; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-11. Repealed.

History: 1953 Comp., § 65-11-11, enacted by Laws 1975, ch. 272, § 11; 1977, ch. 255, § 80; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-12. Repealed.

History: 1953 Comp., § 65-11-12, enacted by Laws 1975, ch. 272, § 12; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-13. Repealed.

History: 1953 Comp., § 65-11-13, enacted by Laws 1975, ch. 272, § 13; 1977, ch. 255, § 81; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-14. Repealed.

History: 1953 Comp., § 65-11-14, enacted by Laws 1975, ch. 272, § 14; 1977, ch. 255, § 82; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-15. Repealed.

History: 1953 Comp., § 65-11-15, enacted by Laws 1975, ch. 272, § 15; 1977, ch. 255, § 83; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-16. Repealed.

History: 1953 Comp., § 65-11-16, enacted by Laws 1975, ch. 272, § 16; 1977, ch. 255, § 84; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-17. Repealed.

History: 1953 Comp., § 65-11-17, enacted by Laws 1975, ch. 272, § 17; 1977, ch. 255, § 85; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-17.1. Repealed.

History: 1978 Comp., § 71-5-17.1, enacted by Laws 1979, ch. 326, § 1; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-17.2. Repealed.

History: 1978 Comp., § 71-5-17.2, enacted by Laws 1979, ch. 326, § 2; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-17.3. Repealed.

History: 1978 Comp., § 71-5-17.3, enacted by Laws 1979, ch. 326, § 3; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-17.4. Repealed.

History: 1978 Comp., § 71-5-17.4, enacted by Laws 1979, ch. 326, § 4; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-17.5. Repealed.

History: 1978 Comp., § 71-5-17.5, enacted by Laws 1979, ch. 326, § 5; 1981, ch. 63, § 3; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-18. Repealed.

History: 1953 Comp., § 65-11-18, enacted by Laws 1975, ch. 272, § 18; 1977, ch. 255, § 86; 1981, ch. 63, § 4; 1998, ch. 55, § 88; 1999, ch. 265, § 90; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-19. Repealed.

History: 1953 Comp., § 65-11-19, enacted by Laws 1975, ch. 272, § 19; 1977, ch. 255, § 87; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-20. Repealed.

History: 1953 Comp., § 65-11-20, enacted by Laws 1975, ch. 272, § 20; 1977, ch. 255, § 88; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-21. Repealed.

History: 1953 Comp., § 65-11-21, enacted by Laws 1975, ch. 272, § 21; 1977, ch. 255, § 89; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-21.1. Repealed.

History: Laws 2012, ch. 50, § 2; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-22. Repealed.

History: 1953 Comp., § 65-11-22, enacted by Laws 1975, ch. 272, § 22; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-23. Repealed.

History: 1978 Comp., § 71-5-23, enacted by Laws 1981, ch. 362, § 2; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

71-5-24. Repealed.

History: 1953 Comp., § 65-11-24, enacted by Laws 1975, ch. 272, § 24; 1977, ch. 255, § 91; repealed by Laws 2016, ch. 71, § 14 and Laws 2016, ch. 78, § 14.

ARTICLE 6

Solar Energy Development

71-6-1. Short title.

This act [71-6-1 to 71-6-3 NMSA 1978] may be cited as the "Solar Energy Development Act."

History: 1953 Comp., § 4-37-1, enacted by Laws 1975, ch. 83, § 1.

71-6-2. Purpose.

The purpose of the Solar Energy Development Act [71-6-1 to 71-6-3 NMSA 1978] is to promote development and use of solar energy in New Mexico, by both industry and government for the benefit of New Mexico citizens and for the citizens of the United States. It is proposed to accomplish this purpose through active measures to encourage the location within this state of the proposed national solar institute, research to discover practical and feasible methods to harness solar energy to supplement existing but limited present sources of energy and development of a vigorous and productive solar energy industrial complex.

History: 1953 Comp., § 4-37-2, enacted by Laws 1975, ch. 83, § 2.

71-6-3. Duties.

The commerce and industry department shall:

A. establish and operate a program of promotion to encourage investment in the research and application of solar energy within New Mexico;

B. promote and develop in New Mexico a vigorous and productive solar energy industrial complex;

C. actively seek and promote the state of New Mexico as the proper and ideal site, because of geographical location, climate, research facilities and plentiful supply of scientific and technical expertise, for the location of the proposed national solar institute;

D. develop necessary promotional material to be used in the process of attracting new investment capital within the solar energy field;

E. employ sufficient staff to carry out the purpose of the Solar Energy Development Act [71-6-1 to 71-6-3 NMSA 1978]; and

F. cooperate with private firms and all agencies of the state and federal government in furthering research and investment in solar energy use in New Mexico.

History: 1953 Comp., § 4-37-3, enacted by Laws 1975, ch. 83, § 3; 1977, ch. 245, § 17.

71-6-4. Short title.

Sections 71-6-4 through 71-6-10 NMSA 1978 may be cited as the "Solar Collector Standards Act".

History: Laws 1981, ch. 379, § 14; 2007, ch. 38, § 1.

71-6-5. Purpose.

The purpose of the Solar Collector Standards Act [71-6-4 to 71-6-10 NMSA 1978] is to develop and implement a program to promote solar industry and stimulate a demand for high quality solar components and systems.

History: Laws 1981, ch. 379, § 15.

71-6-6. Definitions.

As used in the Solar Collector Standards Act [71-6-4 to 71-6-10 NMSA 1978]:

A. "department" means the energy, minerals and natural resources department; and

B. "solar collector" means a component that provides for the collection and transfer of incident solar energy, such transfer to be effected through a liquid or air medium primarily by mechanical means for use in water heating, space heating or cooling or other applications that normally require or would require a conventional source of energy such as petroleum products, natural gas or electricity; but does not include a passive system that uses structural elements of a building to provide for the collection, storage and distribution of solar energy for heating or cooling without the use of a motor-driven fan or pump.

History: Laws 1981, ch. 379, § 16; 2007, ch. 38, § 2.

71-6-7. Department; duties relating to solar collector standards.

A. The department shall promulgate rules to:

- (1) define minimum standards for the durability and reliability of solar collectors; and
- (2) establish criteria for testing the durability, reliability and thermal efficiency of solar collectors.

B. In promulgating the rules required by Subsection A of this section, the department shall:

- (1) consult with scientists, engineers and individuals in research centers and professional societies such as the American society of testing and materials who are engaged in the construction of, experimentation with and research of solar energy systems in order to make changes, modifications and improvements to the standards and certification program;
- (2) consider compliance costs to industry and, insofar as practicable, make efforts to reduce such costs; and
- (3) consider similar standards and testing criteria adopted by other states or included in nationally recognized and accepted testing methodologies.

C. The department shall approve testing facilities that meet the criteria established by Paragraph (2) of Subsection A of this section and that have no financial interest in the manufacture, distribution or sale of solar collectors. An approved testing facility that is partially or wholly supported by state funds may collect a reasonable testing fee sufficient to cover the costs of testing.

History: Laws 1981, ch. 379, § 17; 1987, ch. 234, § 71; 2007, ch. 38, § 3.

71-6-7.1. Repealed.

History: Laws 2007, ch. 38, § 5; repealed by Laws 2013, ch. 86, § 3.

71-6-8. Certification.

A. A person who manufactures, distributes or sells solar collectors may apply to the department for certification of the collectors. The department shall certify the solar collectors if:

- (1) the applicant submits test results performed by an approved testing facility that show that the collectors meet the minimum standards of durability and reliability and that indicate the thermal efficiency of the collectors; or

(2) the applicant submits test results that show that the collectors meet the minimum standards of durability and reliability and that indicate the thermal efficiency of the collectors and the applicant submits proof that the collectors have been certified or approved by another state or the federal government and, in the opinion of the secretary of energy, minerals and natural resources, the minimum standards and testing criteria of the other state or the federal government are at least as stringent as those established pursuant to the Solar Collector Standards Act [71-6-4 to 71-6-10 NMSA 1978].

B. The department shall maintain accurate records of all solar collectors that have been certified pursuant to Subsection A of this section, including the test results submitted to the department. The records shall be available for public inspection.

C. Not more than once every two years, the department may require any applicant for which solar collectors have been previously certified pursuant to this section to submit additional or more recent test results. If the applicant continues to meet the requirements of Subsection A of this section, the certification of the solar collectors shall be continued. If the applicant fails to submit the additional or more recent test results or if the applicant fails to continue to meet the requirements of Subsection A of this section, the department shall withdraw the certification previously issued and shall so notify the applicant.

D. The department shall promulgate rules necessary to implement the provisions of this section.

History: Laws 1981, ch. 379, § 18; 1987, ch. 234, § 72; 2007, ch. 38, § 4.

71-6-9. Repeal.

History: Laws 1981, ch. 379, § 19; 1987, ch. 234, § 73; 2007, ch. 38, § 7.

71-6-10. Liability.

Nothing in the Solar Collector Standards Act [71-6-4 to 71-6-10 NMSA 1978] shall be construed to create any liability of malfeasance, misfeasance or nonfeasance in the performance of any duty required of the state, any of its agencies or political subdivisions or any institution controlled by the state.

History: Laws 1981, ch. 379, § 20.

ARTICLE 7

Advanced Energy Technologies Economic Development Act

71-7-1. Short title.

This act [71-7-1 to 71-7-7 NMSA 1978] may be cited as the "Advanced Energy Technologies Economic Development Act".

History: Laws 2004, ch. 55, § 1.

71-7-2. Findings.

The legislature finds that advancing the development of hydrogen, fuel cell, renewable energy and energy efficiency technologies is important for the state's economic future and energy stability, and to protect the public health of its citizens and the state's environment. The legislature further finds that there is a need to assist in the development of early market demand that will advance the commercialization and widespread application of these emerging energy technologies. The legislature further finds that New Mexico is ideally positioned to stimulate advanced energy technology economic development due to its abundance of natural and renewable energy sources, a successful research and development track record, an ability to attract significant research and development federal dollars and the establishment of a variety of entrepreneurial support programs.

History: Laws 2004, ch. 55, § 2.

71-7-3. Purpose.

The Advanced Energy Technologies Economic Development Act provides funds to stimulate the market for and promote the statewide utilization of advanced energy technologies. That act further provides for a targeted program that advances the creation of a hydrogen and fuel cell industry cluster.

History: Laws 2004, ch. 55, § 3.

71-7-4. Definitions.

As used in the Advanced Energy Technologies Economic Development Act:

- A. "alternative fuel" means natural gas, liquefied petroleum gas, electricity, hydrogen, a fuel mixture containing not less than eighty-five percent ethanol or methanol, a fuel mixture containing not less than twenty percent vegetable oil or a water-phased hydrocarbon fuel emulsion consisting of a hydrocarbon base and water in an amount not less than twenty percent by volume of the total water-phased fuel emulsion;
- B. "clean energy" means alternative fuels, energy efficiency, renewable energy and fuel cells;
- C. "department" means the energy, minerals and natural resources department;

D. "energy efficiency" means the application of technology resulting in the reduced or improved use of energy;

E. "fuel cell" means equipment using an electrochemical process to generate electricity and heat;

F. "fund" means the clean energy grants fund;

G. "renewable energy" means thermal or electrical energy generated by means of a low- or zero-emissions generation technology that has substantial long-term production potential, including solar, wind, geothermal, landfill gas or biomass, but does not include fossil fuel or nuclear power; and

H. "secretary" means the secretary of energy, minerals and natural resources.

History: Laws 2004, ch. 55, § 4.

71-7-5. Clean energy grants fund.

The "clean energy grants fund" is created in the state treasury. The fund shall consist of money appropriated and transferred to the fund and tax revenues distributed to the fund by law. Earnings from investment of the fund shall be credited to the fund. Money in the fund is subject to appropriation by the legislature to the department for the purpose of administering the clean energy grants program pursuant to the Advanced Energy Technologies Economic Development Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources.

History: Laws 2004, ch. 55, § 5.

71-7-6. Clean energy grants program.

A. The secretary shall establish the clean energy grants program to provide clean energy grants to:

- (1) municipalities and county governments;
- (2) state agencies;
- (3) state universities;
- (4) public schools;
- (5) post-secondary educational institutions; and

(6) Indian nations, tribes and pueblos.

B. The secretary may make grants from the fund for physical projects utilizing clean energy technologies and clean energy education, technical assistance and training programs. The department may use no more than one hundred thousand dollars (\$100,000) from the fund for the administration of the grants program and to conduct research or studies directly related to the Advanced Energy Technologies Economic Development Act.

C. The department may adopt rules establishing the application procedure and required qualifications of projects. No single entity shall receive greater than one hundred thousand dollars (\$100,000) from the fund. Factors that may be considered in approving or denying disbursements from the fund are:

(1) the geographic area of the state in which the project is to be conducted in relation to other projects;

(2) percentage of cash or in-kind contributions applied to the total project;

(3) the extent to which the project incorporates an innovative new technology or an innovative application of an existing technology;

(4) the degree to which the project will reduce the entity's energy-related expenditures;

(5) the degree to which the project fosters the general public's, students' or a specific government or industry sector's overall understanding and appreciation of clean energy technologies; and

(6) the extent to which the project stimulates in-state economic development, including jobs creation, and further development of a commercial market for clean energy technologies.

D. Except as provided otherwise in this section, the department shall disburse:

(1) no less than three hundred thousand dollars (\$300,000) to municipalities and county governments;

(2) no less than three hundred thousand dollars (\$300,000) to state universities and post-secondary educational institutions;

(3) no less than three hundred thousand dollars (\$300,000) to Indian nations, tribes and pueblos; and

(4) no more than two hundred thousand dollars (\$200,000) to state agencies and public schools.

E. The minimum disbursements designated in this section may be amended by the department if an insufficient number of qualified projects are applied for by entities seeking grant funding within a particular category or categories.

F. The department shall report on disbursements made from the fund to the legislative finance committee prior to each regular legislative session. The report shall include:

- (1) a list of recipients receiving disbursements;
- (2) the amount of each disbursement;
- (3) the date of each disbursement;
- (4) a description of each project or expansion funded with a disbursement;
- (5) a description of each project's contribution to the state's knowledge and use of clean energy technologies; and
- (6) a description of the extent to which the grants program is benefitting the state's environment, public health and economic development.

History: Laws 2004, ch. 55, § 6.

71-7-7. Hydrogen and fuel cell technologies development program.

A. The secretary of economic development, in collaboration with the department, shall establish a hydrogen and fuel cell technologies development program for the purpose of fostering the development of hydrogen and fuel cell-related commercialization and economic development in the state. The program shall include:

- (1) establishing a public-private partnership between the state, national laboratories, nonprofit organizations and the hydrogen and fuel cell technologies industry sector to provide guidance and support for hydrogen and fuel cell initiatives;
- (2) supporting activities to adopt uniform hydrogen safety codes and standards and provide education and training to communicate these codes and standards to the appropriate fire and regulatory entities;
- (3) developing demonstration projects by pursuing federal funds and other available funds to augment state resources, advancing public education about hydrogen and fuel cell technology and building the necessary infrastructure to support commercial use and adoption of hydrogen and fuel cell technologies; and
- (4) coordinating and supporting research and education activities in hydrogen and fuel cells between state universities and federally funded research and

development organizations in the state to promote closer cooperation and advance the state's overall capabilities and programs in hydrogen and fuel cell technologies.

B. The economic development department shall report on the status and progress of the hydrogen and fuel cell technologies development program to the legislative finance committee prior to each regular legislative session. The report shall include the type and amount of expenditures made pursuant to the appropriation in this section.

History: Laws 2004, ch. 55, § 7.

ARTICLE 8

Sustainable Development Testing Site Act

71-8-1. Short title.

This act [71-8-1 to 71-8-8 NMSA 1978] may be cited as the "Sustainable Development Testing Site Act".

History: Laws 2007, ch. 34, § 1.

71-8-2. Definitions.

As used in the Sustainable Development Testing Site Act:

A. "permittee" means a person who holds a testing site permit;

B. "planning commission" means a county planning commission appointed pursuant to Section 4-57-1 NMSA 1978; provided that, if no county planning commission has been appointed pursuant to that section, "planning commission" means the board of county commissioners;

C. "sustainable development" means a live-in environment composed of structures and systems that inherently produce utilities and life-support systems free of existing conventional grids and disposal systems. "Sustainable development" includes:

- (1) the inherent provision of on-site energy needs via renewable resources;
- (2) the inherent provision of water needs while minimizing the withdrawals from ground water and surface water systems in accordance with state water law and the rules and policies of the state engineer;
- (3) the inherent provision of sewage treatment needs with zero discharge;
- (4) the reuse of materials discarded by modern society; and

(5) the development of organic foods and fuel;

D. "sustainable development research" means activities conducted at a sustainable development testing site that test ideas, concepts or inventions designed to lead ultimately to sustainable development;

E. "sustainable development testing site" means an area that is:

(1) two acres or less in size;

(2) situated wholly outside the planning and platting jurisdiction of a municipality; and

(3) subject to a testing site permit and existing federal laws and regulations; and

F. "testing site permit" means a permit, issued by a planning commission, that designates an area as a sustainable development testing site and specifies:

(1) the sustainable development research that can be conducted within the site by the permittee; and

(2) the county codes, ordinances, rules or permits that are not applicable to the permittee and the research.

History: Laws 2007, ch. 34, § 2.

71-8-3. Application for testing site permit; evaluation; notice of public hearing.

A. A person desiring a testing site permit shall submit an application to the planning commission for the county in which the proposed sustainable development testing site is located. The application shall include:

(1) a detailed description of the sustainable development research that will be conducted on the sustainable development testing site, including an explanation of the ideas, concepts and inventions that will be tested;

(2) a schematic layout of the sustainable development testing site;

(3) the number of inhabitants and employees that are expected to occupy the sustainable development testing site;

(4) a water budget detailing the anticipated indoor and outdoor water use for the sustainable development testing site;

(5) an assessment of the county codes, ordinances, rules or permits relating to construction or building requirements, occupancy, zoning or subdivisions that are not practicable for the specific sustainable development testing site and that may inhibit the proposed sustainable development research and an explanation of how the sustainable development testing site will not be damaged if the proposed sustainable development research at the site is allowed;

(6) an application fee, set by the planning commission, equal to the estimated costs of evaluating the application, holding the public hearing and administering the permit;

(7) other information as may be required by rules adopted pursuant to Section 8 [71-8-8 NMSA 1978] of the Sustainable Development Testing Site Act or by rule of the planning commission or ordinance of the county; and

(8) copies of all required state permits, including the approval of the wastewater treatment and disposal technology on an experimental basis.

B. Upon receipt of a complete application, the planning commission shall:

(1) forward a copy of the application to the office of the state engineer and to the department of environment;

(2) set a date for a public hearing on the application; and

(3) publish in a newspaper of general circulation in the county an announcement of its receipt of the application, a notice of the public hearing and information concerning where an interested person can obtain a copy of the application.

C. The department of environment and the office of the state engineer shall, prior to the hearing, evaluate the application and the proposed sustainable development research to be performed at the proposed sustainable development testing site and submit comments to the planning commission.

History: Laws 2007, ch. 34, § 3.

71-8-4. Application for testing site permit; public hearing; decision.

A. At the public hearing for a testing site permit application pursuant to Section 3 [71-8-3 NMSA 1978] of the Sustainable Development Testing Site Act, the planning commission shall hear comments from all interested persons, federal, state or local agencies and, if appropriate, responses from the applicant.

B. Following the hearing, the planning commission shall, in writing, make its decision. The planning commission may issue a testing site permit if:

(1) the state engineer and the department of environment have determined that the sustainable development testing site or sustainable development research proposed to be conducted at the site will not damage land, water or air adjacent to the site or will not permanently damage the area of the site;

(2) no existing county codes, ordinances, rules or permits, other than those identified in the permit, will be violated by the proposed sustainable development research at the sustainable development testing site;

(3) the applicant has complied with rules adopted pursuant to Section 8 [71-8-8 NMSA 1978] of the Sustainable Development Testing Site Act;

(4) the proposed sustainable development research at the sustainable development testing site is beneficial to sustainable development;

(5) the sustainable development testing site and proposed sustainable development research are otherwise beneficial to the county and to the state; and

(6) the applicant has provided a cash bond, an irrevocable letter of credit or any other surety, including insurance, satisfactory to the planning commission, in the amount of one hundred thousand dollars (\$100,000), to secure payment for damage caused by the sustainable development testing site.

C. A testing site permit shall include:

(1) the specific sustainable development research that may be conducted at the sustainable development testing site;

(2) the maximum number of structures that may be constructed;

(3) the maximum number of individuals that may inhabit the sustainable development testing site;

(4) the specific county codes, ordinances, rules and permits relating to construction or building requirements, occupancy, zoning or subdivisions otherwise applicable to the permittee and the permittee's sustainable development research on the sustainable development testing site but that do not apply to the permittee and research conducted pursuant to the permit; and

(5) other restrictions on the sustainable development testing site and the permittee's activities as required by rules adopted pursuant to Section 8 of the Sustainable Development Testing Site Act or as determined by the planning commission.

D. For each testing site permit issued, the board of county commissioners shall designate a nonelected member of the planning commission or a member of the

planning commission's staff to monitor the activities conducted pursuant to the permit, share information with appropriate state agencies and represent the county in interpreting the terms and conditions of the permit. The designee or a successor shall serve during the life of the permit and any renewal thereof.

E. The permit shall be filed and recorded in the records of the county clerk for the county in which the sustainable development testing site is located in the same manner as deeds of real estate are filed and recorded.

F. A testing site permit shall be issued for a term specified by the planning commission, not to exceed five years, subject to renewal for a second five-year period with no renewal after the second five-year period.

History: Laws 2007, ch. 34, § 4.

71-8-5. Testing site permit; effect.

As long as a testing site permit is in effect:

A. the permittee, when conducting sustainable development research that is specified in the testing site permit, shall comply with all applicable laws and rules except those county codes, ordinances, rules or permits specified in the permit as inapplicable to the permittee and the research;

B. nothing in the Sustainable Development Testing Site Act or the testing site permit shall be deemed to allow the permittee to appropriate or otherwise use underground or surface water without first obtaining a water rights permit or approval from the state engineer. New appropriations of water and water rights transfers shall in no event be exempted from state water law and the rules of the state engineer;

C. employees and agents of the state or the county may, at all reasonable times, enter the sustainable development testing site for the purpose of inspecting the site and activities conducted on the site to ensure that conditions specified in the testing site permit are being met;

D. the permittee shall annually, no later than the anniversary date of the testing site permit, submit a report to the planning commission, the department of environment, the state engineer, the energy, minerals and natural resources department and the construction industries division of the regulation and licensing department describing the sustainable development research conducted during the preceding twelve months and summarizing the results. The report shall also include all required monitoring data for soil, water, including water quality and quantity, and air. All information contained in the report and all other information learned from activities pursuant to the testing site permit shall be made available to the public;

E. the planning commission may revoke the testing site permit if it finds, after a public hearing, that:

(1) the permittee has violated a testing site permit provision, a provision of the Sustainable Development Testing Site Act or a rule adopted pursuant to Section 8 [71-8-8 NMSA 1978] of that act; or

(2) the sustainable development testing site has not complied with a permit provision, ordinance, rule, regulatory policy or other associated administrative action of the state engineer, the department of environment or another state or federal agency; and

F. a permittee may apply to have a testing site permit amended by submitting a new application pursuant to Section 3 [71-8-3 NMSA 1978] of the Sustainable Development Testing Site Act; provided that, if the planning commission determines that the proposed amendment will not substantially alter the sustainable development research or other activities conducted at the sustainable development testing site, it may waive the requirements of that section for notice and public hearing.

History: Laws 2007, ch. 34, § 5.

71-8-6. Expiration of testing site permits.

Upon the expiration of the term of a testing site permit or any renewal thereof:

A. all activities within the area of the sustainable development testing site shall comply with all applicable laws, ordinances or rules, including permitting requirements; and

B. the permittee may provide the wastewater treatment and disposal technologies to the wastewater technical advisory committee for review and, if appropriate, for listing by the department of environment as approved for use.

History: Laws 2007, ch. 34, § 6.

71-8-7. Sale of land within a sustainable development testing site.

Land within a sustainable development testing site shall not be sold in whole or in part unless:

A. the subsequent owner obtains a testing site permit pursuant to the provisions of the Sustainable Development Testing Site Act; or

B. the owner or subsequent owner enters into an agreement with the planning commission to bring the land and improvements within the sustainable development

testing site into compliance with all county codes, ordinances, rules or permits that would be applicable to the site in the absence of a testing site permit.

History: Laws 2007, ch. 34, § 7.

71-8-8. Promulgation of rules.

A county or planning commission may define a new category of rules applicable to sustainable development testing sites and promulgate rules for the category. A county or a planning commission may also promulgate rules or permit conditions applicable to a specific sustainable development testing site.

History: Laws 2007, ch. 34, § 8.

ARTICLE 9 Geothermal Resources Development

71-9-1. Short title.

Chapter 71, Article 9 NMSA 1978 may be cited as the "Geothermal Resources Development Act".

History: Laws 2016, ch. 71, § 1; 2016, ch. 78, § 1; 2024, ch. 55, § 1.

71-9-2. Findings and purpose.

The legislature finds that the people of New Mexico have a direct interest in the development of geothermal resources and that the state should exercise its power and jurisdiction through the division to require that geothermal resources be explored, developed and produced in such a manner as to safeguard life, health, property, natural resources and the public welfare and to encourage maximum economic recovery.

History: Laws 2016, ch. 71, § 2 and Laws 2016, ch. 78, § 2.

71-9-3. Definitions.

As used in the Geothermal Resources Development Act:

A. "correlative rights" means the opportunity afforded, insofar as is practicable, to each owner or leaseholder in a geothermal reservoir to produce the owner's or leaseholder's just and equitable share of the geothermal resources within such reservoir, being an amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the recoverable geothermal resources of such ownership or lease interest bear to the total

recoverable geothermal resources in the reservoir and, for such purpose, to use the owner's or leaseholder's just and equitable share of the natural heat or energy in the reservoir;

B. "division" means the energy conservation and management division of the energy, minerals and natural resources department;

C. "geothermal development project" means a project using the heat of the earth above one hundred degrees Fahrenheit to generate electricity or otherwise support industrial, commercial or residential uses;

D. "geothermal reservoir" means an underground reservoir containing geothermal resources, whether the fluids in the reservoir are native to the reservoir or flow into or are injected into the reservoir;

E. "geothermal resources" means the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit, or the energy, in whatever form, below the surface of the earth present in, resulting from, created by or that may be extracted from this natural heat in excess of two hundred fifty degrees Fahrenheit, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas and other hydrocarbon substances and excluding the heating and cooling capacity of the earth not resulting from the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit, as may be used for the heating and cooling of buildings through an on-site geo-exchange heat pump or similar on-site system; and

F. "person" means an individual or other legal entity, including federal, state or local governments or their agents or instrumentalities.

History: Laws 2016, ch. 71, § 3; 2016, ch. 78, § 3; 2024, ch. 55, § 2.

71-9-4. Exclusion; incidental loss or extraction of heat; limited exception.

A. A permit from the state engineer is not required for the use of ground water over two hundred fifty degrees Fahrenheit as incident to the development of geothermal resources permitted pursuant to the Geothermal Resources Development Act when:

(1) the use does not require any diversion of ground water; or

(2) all diverted ground water is reinjected as soon as practicable into the same ground water source from which it was diverted, resulting in no new depletions to the source; provided that:

(a) the division shall provide to the state engineer all information available to the division regarding the proposed diversion and reinjection and shall request the

opinion of the state engineer as to whether existing ground water rights sharing the same ground water source may be impaired; and

(b) if the state engineer determines that the information provided is sufficient to render an opinion and it is the opinion of the state engineer that any existing ground water rights may be impaired, the division, upon receipt of the opinion of the state engineer, shall require the owner or operator to submit to the division a plan of replacement with regard to any existing ground water rights that are likely to be impaired.

B. In response to a request for opinion pursuant to Subsection A of this section, the determination by the state engineer as to whether the information provided is sufficient to render an opinion or the issuance by the state engineer of an opinion shall not constitute a decision, act or refusal to act under Section 72-2-16 NMSA 1978.

C. No ground water right is established through the use of ground water as allowed in Subsection A of this section.

D. As used in this section, "plan of replacement" means a detailed plan for the replacement of water, which may include:

- (1) the furnishing of a substitute water supply;
- (2) the modification of existing water supply facilities;
- (3) the drilling of replacement wells;
- (4) the assumption of additional operating costs;
- (5) the procurement of documentation establishing a waiver of protection by owners of affected water rights;
- (6) artificial recharge; or
- (7) any other means to avoid impairment of water rights.

History: Laws 2016, ch. 71, § 4 and Laws 2016, ch. 78, § 4.

71-9-5. General duties, jurisdiction and authority of the division.

A. The division shall regulate the exploration, development and production of geothermal resources on public and private land for the purposes of conservation; protection of correlative rights; protection of life, health, property, natural resources, the environment and the public welfare; and encouraging maximum economic recovery of the geothermal resources. The division may require persons seeking to explore, develop or produce geothermal resources to obtain permits from the division.

B. The division has jurisdiction over all matters relating to the exploration, development and production of geothermal resources. It has jurisdiction, authority and control of all persons, matters and things necessary or proper to enforce effectively the provisions of the Geothermal Resources Development Act, including making investigations and inspections of geothermal projects, facilities and wells.

C. The division may limit and allocate production of geothermal resources as needed to prevent waste whenever the total amount of geothermal resources that may be produced from a geothermal reservoir is limited. The division shall allocate and distribute the allowable production, insofar as is practicable, to afford each ownership or lease interest in a geothermal reservoir the opportunity to produce its just and equitable share of the geothermal resources in the reservoir.

D. The division shall have exclusive authority to regulate injection into geothermal wells pursuant to the Geothermal Resources Development Act and shall have exclusive authority over matters related to the protection of natural resources, property, health and public welfare as they relate to geothermal injection wells.

E. The division shall:

- (1) administer laws and rules relating to geothermal resources, except those laws specifically administered by another authority;
- (2) administer the geothermal projects development fund and geothermal projects revolving loan fund and ensure that all applicable state economic development incentive programs are used for grants and loans from those funds;
- (3) apply for federal grants related to geothermal resources development; and
- (4) foster the growth of geothermal resources in New Mexico.

History: Laws 2016, ch. 71, § 5; 2016, ch. 78, § 5; 2024, ch. 55, § 3.

71-9-6. Rules.

A. The division shall promulgate and enforce rules providing for the exploration, development and production of geothermal resources and to accomplish the purposes of the Geothermal Resources Development Act and that are reasonably necessary to carry out the purposes of that act whether or not indicated or specified in any section of that act.

B. The rules shall include, at minimum, provisions to:

- (1) protect the environment against damage resulting from the exploration, development or production of geothermal resources;

- (2) prevent waste of natural resources, including geothermal resources, in connection with the exploration, development or production of geothermal resources;
- (3) ensure proper casing to prevent geothermal resources, water or other fluids from escaping from the strata in which they are found into other strata;
- (4) prevent the premature cooling of any geothermal reservoir from the exploration, development or production of geothermal resources;
- (5) protect the general public against injury or damage resulting from the exploration, development or production of geothermal resources;
- (6) protect correlative rights against infringement resulting from the exploration, development or production of geothermal resources;
- (7) regulate disposal of geothermal resources or the residue of geothermal resources or the disposal of nondomestic waste from the exploration, development or production of geothermal resources and direct the surface or subsurface disposal of such in a manner that will afford reasonable protection against contamination of all fresh water and water of present or probable future value for domestic, commercial, agricultural or stock purposes and will afford reasonable protection to human life and health and to the environment;
- (8) regulate the permitting of geothermal projects, facilities and wells and provide for public notice and comment and an opportunity for hearing;
- (9) where sufficient information is available, define and, from time to time as is necessary, redefine the horizontal and vertical limits of geothermal reservoirs;
- (10) permit and regulate the injection of fluids into geothermal reservoirs;
- (11) require geothermal projects, facilities and wells to be drilled, installed, developed, operated or produced in a manner so as to prevent environmental injury to neighboring leases or properties and to afford reasonable protection to human life and health and to the environment;
- (12) require persons applying for permits to explore, develop or produce geothermal resources to demonstrate that they have the right to produce the geothermal resources through ownership, leases, permits or other documentation;
- (13) require geothermal projects, facilities and wells to be operated efficiently;
- (14) require financial assurance in the form of a surety bond, cash bond or letter of credit for geothermal projects, facilities and wells, as may be applicable, in amounts to be established by the division;

(15) require owners or operators of geothermal projects, facilities or wells to keep or cause records to be maintained and submitted to the division;

(16) require abandoned geothermal projects, facilities and wells to be reclaimed, including requiring wells to be plugged in a manner to confine all fluids in the strata in which they are found and to prevent them from escaping into other strata; and

(17) govern the manner and procedures by which all hearings conducted pursuant to the Geothermal Resources Development Act shall be held.

History: Laws 2016, ch. 71, § 6 and Laws 2016, ch. 78, § 6.

71-9-7. Access to property.

Employees or agents of the division, on proper identification, may enter public or private property to inspect and investigate conditions in relation to the exploration, development or production of geothermal resources, to monitor compliance with the Geothermal Resources Development Act or a rule, permit or order of the division, or to examine and copy, during reasonable business hours, those records or memoranda of the business being investigated; provided, however, that any inspection or investigation on private property shall be at reasonable times and upon notice to the private landowner. Employees or agents acting under the authority of this section shall observe the business's safety, internal security and fire protection rules.

History: Laws 2016, ch. 71, § 7 and Laws 2016, ch. 78, § 7.

71-9-8. Administrative penalty.

A. If a person violates the provisions of the Geothermal Resources Development Act or the rules promulgated pursuant to that act or an order or permit issued pursuant to that act, the division may assess the person a civil penalty of two thousand five hundred dollars (\$2,500) for each violation. In the case of a continuing violation, each day of violation shall constitute a separate violation.

B. In determining the amount of the penalty, the division shall consider the person's history of previous violations of the Geothermal Resources Development Act or the Geothermal Resources Act [19-13-1 to 19-13-28 NMSA 1978] or the rules or permits issued pursuant to those acts, the seriousness of the violation, any hazard to the health or safety of the public or the environment and the demonstrated good faith of the person.

C. The division may assess a civil penalty only after the person charged with a violation has been given an opportunity for a public hearing.

D. After the public hearing is held, or the person has failed to participate in the public hearing, the division shall issue an order requiring that any penalty imposed be paid.

E. If the person fails to pay the civil penalty as ordered by the division, the division may file a civil suit to collect the penalty in the district court of the county in which the defendant resides or in which any defendant resides if there is more than one defendant or in the district court of any county in which the violation occurred.

History: Laws 2016, ch. 71, § 8 and Laws 2016, ch. 78, § 8.

71-9-9. Appeals.

A person subject to a final decision of the division may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 2016, ch. 71, § 9 and Laws 2016, ch. 78, § 9.

71-9-10. Water rights owner; action for impairment.

In addition to the appeal rights pursuant to Section 9 [71-9-9 NMSA 1978] of the Geothermal Resources Development Act, a water rights owner may bring a de novo action in the district court in which the water rights are located for damages or injunctive relief with respect to any claimed impairment of existing water rights due to the exploration, development or production of geothermal resources pursuant to Section 4 [71-9-4 NMSA 1978] of that act.

History: Laws 2016, ch. 71, § 10 and Laws 2016, ch. 78, § 10.

71-9-11. Transfer of administration of rules, orders and permits.

All rules, orders, permits and administrative determinations of the oil conservation division of the energy, minerals and natural resources department or oil conservation commission issued pursuant to the Geothermal Resources Conservation Act [repealed] that existed prior to the effective date of the Geothermal Resources Development Act shall be administered by the energy conservation and management division of the department and shall remain in full force and effect after that date until repealed or amended, unless in conflict with, prohibited by or inconsistent with the provisions of the Geothermal Resources Development Act.

History: Laws 2016, ch. 71, § 11 and Laws 2016, ch. 78, § 11.

71-9-12. Geothermal projects development fund created; study grants; project grants; annual report.

A. The "geothermal projects development fund" is created in the state treasury. The fund consists of appropriations, income from investment of the fund and any other money distributed or otherwise allocated to the fund. Balances in the fund at the end of any fiscal year shall not revert to the general fund. The division shall administer the fund. Money in the fund is subject to appropriation by the legislature.

B. Money in the geothermal projects development fund may be used to make grants of up to two hundred fifty thousand dollars (\$250,000) for the purposes of studying the costs and benefits of a proposed geothermal development project as approved by the secretary of energy, minerals and natural resources.

C. Money in the geothermal projects development fund may be used to provide grants for financing a geothermal development project approved by the secretary of energy, minerals and natural resources.

D. Except as provided in Subsection E of this section, money in the geothermal projects development fund may be used pursuant to Subsections B and C of this section only for grants to a political subdivision of the state or to a state university for a geothermal development project.

E. Money in the geothermal projects development fund may be used for grants to an Indian nation, tribe or pueblo for the development of a geothermal development project only if the grant application is approved by the secretary of energy, minerals and natural resources.

F. Geothermal development projects approved for a grant by the secretary of energy, minerals and natural resources under this section shall not be exempt from any required permits or permissions under New Mexico or United States law.

G. Money in the geothermal projects development fund may be used for administrative and reimbursable costs incurred by the energy, minerals and natural resources department.

H. Disbursements from the geothermal projects development fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources or the secretary's authorized representative.

I. By December 1, 2024, and by December 1 of each year thereafter, the secretary of energy, minerals and natural resources shall provide a report to the governor, the legislative finance committee and the library of the legislative council service regarding:

(1) grants approved by the secretary pursuant to Subsections B and C of this section;

(2) the status of studies funded in part by grants made pursuant to Subsection B of this section;

(3) the status of projects funded in part by grants made pursuant to Subsection C of this section;

(4) money used for administrative and reimbursable costs pursuant to Subsection G of this section; and

(5) the status of the geothermal projects development fund.

History: Laws 2024, ch. 55, § 4.

71-9-13. Geothermal projects revolving loan fund created; project loans; annual report.

A. The "geothermal projects revolving loan fund" is created in the state treasury. The fund consists of appropriations, federal funds received for the purpose of making loans, repayment of loans and interest, gifts, grants and donations made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year. The division shall administer the fund. Money in the fund is subject to appropriation by the legislature.

B. Money in the geothermal projects revolving loan fund may be used to provide revolving loans to political subdivisions of the state, state universities, Indian nations, tribes or pueblos, nonprofit organizations and private entities for financing a geothermal development project approved by the secretary of energy, minerals and natural resources. Loans from the fund are to be made at the lowest legally permissible interest rates.

C. Geothermal development projects approved for a loan by the secretary of energy, minerals and natural resources under this section shall not be exempt from any required permits or permissions under New Mexico or United States law.

D. Money in the geothermal projects revolving loan fund may be used for administrative and reimbursable costs incurred by the energy, minerals and natural resources department.

E. Disbursements from the geothermal projects revolving loan fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources or the secretary's authorized representative.

F. By December 1, 2024, and by December 1 of each year thereafter, the secretary of energy, minerals and natural resources shall provide a report to the governor, the legislative finance committee and the library of the legislative council service regarding:

- (1) loans approved by the secretary pursuant to Subsection B of this section;
- (2) the status of repayment obligations for revolving loans made pursuant to Subsection B of this section;
- (3) money used for administrative and reimbursable costs pursuant to Subsection D of this section; and
- (4) the status of the geothermal projects revolving loan fund.

History: Laws 2024, ch. 55, § 5.

ARTICLE 10

Electric Generating Facility Economic District

71-10-1. Short title.

Sections 1 through 11 [71-10-1 to 71-10-11 NMSA 1978] of this act may be cited as the "Electric Generating Facility Economic District Act".

History: Laws 2020, ch. 78, § 1.

71-10-2. Definitions.

As used in the Electric Generating Facility Economic District Act:

- A. "authority" means the governing body of a district; and
- B. "district" means an electric generating facility economic district governed by an authority.

History: Laws 2020, ch. 78, § 2.

71-10-3. Creation of a district.

A county may form a district:

- A. the initial boundaries of which lie within the jurisdiction of the county; and
- B. that includes an operating coal-fueled electric generating facility that is owned by a non-investor-owned electric utility or a coal-fueled electric generating facility that is owned by a non-investor-owned electric utility and has been or is in the process of being retired.

History: Laws 2020, ch. 78, § 3.

71-10-4. Creation of an authority; members; terms; qualifications.

A. A county that forms a district shall create an authority to govern the district that consists of five members. The governing body of the county shall appoint authority members.

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

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

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

E. The authority shall, for the period ending December 31, 2020, authorize a county that borders the county that created the district within twenty miles of a qualifying electric generating facility to become part of the authority. Any additional county that becomes part of the district shall appoint four additional members to the authority.

F. An elected official shall not serve as an authority member nor influence or attempt to influence any action of an authority member. Authority members shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance. An authority member shall post a surety bond for the faithful performance of the member's duties pursuant to the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978].

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

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

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

H. An authority member shall resign from the authority if a matter to be voted on poses a conflict of interest for the member. Authority members and employees of the authority shall be governed by the provisions of the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978]. An authority member or employee of the authority shall not:

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

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

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

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

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

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

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

History: Laws 2020, ch. 78, § 4.

71-10-5. Authority; powers; duties.

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

(1) have perpetual existence;

(2) sue and be sued;

(3) adopt bylaws, policies and procedures;

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

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

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

(7) adopt and use a seal;

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

(9) enter into contracts and agreements;

(10) borrow money and issue bonds;

(11) pledge all or a portion of its revenue to the payment of its bonds;

(12) issue refunding revenue bonds to refinance, pay or discharge all or part of its outstanding revenue bonds;

(13) impose liens;

(14) acquire, dispose of or encumber real or personal property or interests in real or personal property, including leases and easements;

(15) manage the land and property constituting and associated with the authority within the district, including by imposing rental charges and fees for the use of that land and property;

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

(17) alter the boundaries of the district with the approval of the counties that are part of the district;

(18) establish standards and long-term development plans;

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

(20) exercise the rights and powers necessary or incidental to or implied by the specific powers granted by this section.

B. An authority shall:

(1) govern the district;

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

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

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

History: Laws 2020, ch. 78, § 5.

71-10-6. Revenue bonds; exemption from taxation.

The bonds authorized by the Electric Generating Facility Economic District Act, the income from those bonds, mortgages or other security instruments executed as security for those bonds, lease agreements authorized by the Electric Generating Facility Economic District Act and revenue derived from a lease or sale by an authority are exempt from taxation by the state and its subdivisions.

History: Laws 2020, ch. 78, § 6.

71-10-7. Bonding authority.

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

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

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

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

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

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

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

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

(5) shall be sold for cash at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978] and the Public Securities Short-Term Interest Rate Act [6-18-1 to 6-18-16 NMSA 1978]; and

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

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

(1) declares the necessity for issuing revenue bonds;

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

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

History: Laws 2020, ch. 78, § 7.

71-10-8. Refunding bonds.

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

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

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

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

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

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

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

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

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

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

F. The proceeds of refunding bonds, including accrued interest and premiums appertaining to the sale of refunding bonds, shall be immediately applied to the retirement of the bonds being refunded or placed in escrow in a commercial bank or trust company that possesses and exercises trust powers and that is a member of the federal deposit insurance corporation. The proceeds shall be applied to the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that the refunding bond proceeds, including accrued interest and premiums appertaining to a sale of refunding bonds, may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest on those bonds and the principal of those bonds, or both interest and principal as the authority determines. This section does not require the establishment of an escrow if the refunded bonds and the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available for its purpose. Proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States or in certificates of deposit of banks that are members of the federal deposit insurance corporation; provided that the par value of the certificates of deposit is collateralized by a pledge of obligations or by a pledge of payment that is unconditionally guaranteed by the United States; and further provided that the par value of those obligations is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow, together with any interest or other income to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds being refunded as

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

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

H. Refunding bonds:

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

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

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

(4) shall be exchanged for the bonds and any matured unpaid interest being refunded at not less than par or sold at public or negotiated sale at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978].

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

History: Laws 2020, ch. 78, § 8.

71-10-9. Bonds not obligation of the state or a county.

Except as otherwise provided in the Electric Generating Facility Economic District Act, all bonds or other obligations issued pursuant to that act are payable solely from the revenues of the district that may be pledged to the payment of such obligations, and the bonds or other obligations shall not create an obligation, debt or liability of the state or any other of its political subdivisions. No breach of any pledge, obligation or agreement or a district shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state or any other of its political subdivisions.

History: Laws 2020, ch. 78, § 9.

71-10-10. Dissolution.

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

History: Laws 2020, ch. 78, § 10.

71-10-11. Limitation of applicability.

No provision of the Electric Generating Facility Economic District Act or Section 12 [71-10-12 NMSA 1978] of this 2020 act shall affect an operating coal-fueled electric generating facility that is owned by a non-investor-owned electric utility or a coal-fueled electric generating facility that is owned by a non-investor-owned electric utility and has been or is in the process of being retired unless and to the extent the owner of such a facility and any existing lienors to such a facility agree in writing that such a facility may be affected by the powers of the authority or the governing body of a county.

History: Laws 2020, ch. 78, § 11.

ARTICLE 11

Grid Modernization Roadmap and Grant Program

71-11-1. Grid modernization roadmap and grant program.

A. The energy, minerals and natural resources department shall develop a roadmap for grid modernization that shall detail priorities and strategies to modernize New Mexico's electric grid.

B. The department shall establish a grid modernization grant program to support implementation of a modern grid by providing grants to eligible projects proposed by:

- (1) municipalities and county governments;
- (2) state agencies;
- (3) state universities;
- (4) public schools;
- (5) post-secondary educational institutions; and
- (6) Indian nations, tribes and pueblos.

C. The department shall adopt rules establishing the application procedure, the required qualifications for projects and the purposes for which the grant may be used. In approving grants, consideration shall be given to:

(1) the extent to which the project improves electrical system efficiency, reliability, resilience and security; lowers operations and maintenance costs; and meets energy demands through a flexible, diversified and distributed energy portfolio consistent with New Mexico's energy goals;

(2) the extent to which the project incorporates a new technology or a new or innovative application of an existing technology that will provide useful information to the state, utilities, electric cooperatives and the general public related to grid modernization;

(3) the degree to which the project fosters the general public's, students' or a specific government or industry sector's overall understanding and appreciation of the benefits of modernizing the electric grid;

(4) the extent to which the project complements or coordinates with the resource planning of a public utility as required by the Public Utility Act [62-13-1 NMSA 1978]; and

(5) the extent to which the project stimulates in-state economic development, including the creation of jobs and apprenticeships.

D. Grants shall be awarded on a competitive basis, and priority shall be given to proposals that use matching funds from non-state sources. The grant program shall seek to fund applicants in each of the following categories:

(1) an Indian nation, tribe or pueblo;

(2) a rural community served by a rural electric cooperative;

(3) a rural community served by an investor-owned public utility;

(4) an urban or semi-urban municipality or county; and

(5) an institution of higher education.

E. Projects receiving a grant from the grid modernization grant program shall be required to be coordinated with the electric service provider that serves the entity in order to ensure that the program does not adversely impact electrical system efficiency, reliability, resilience and security.

F. The department shall provide a report on the grid modernization grant program to the legislative finance committee prior to each regular legislative session. The report shall include:

- (1) a list of grant recipients;
- (2) the amount and date of each grant;
- (3) a description of each project funded; and
- (4) a description of how each project contributes to grid modernization and demonstrates increased electric grid reliability, resilience, security; creates economic benefits; or pilots or demonstrates new technologies or new implementations of existing technologies.

G. For the purposes of this section:

(1) "department" means the energy, minerals and natural resources department; and

(2) "grid modernization" means improvements to electric distribution or transmission infrastructure, including related data analytics equipment, that are designed to accommodate or facilitate the integration of renewable electric generation resources with the electric distribution grid or to otherwise enhance electric distribution or transmission grid reliability, grid security, demand response capability, customer service or energy efficiency or conservation and includes:

(a) advanced metering infrastructure that facilitates metering and providing related price signals to users to incentivize shifting demand;

(b) intelligent grid devices for real time system and asset information at key substations and large industrial customers;

(c) automated control systems for electric distribution circuits and substations;

(d) communications networks for service meters;

(e) distribution system hardening projects for circuits and substations designed to reduce service outages or service restoration times;

(f) physical security measures at key distribution substations;

(g) cybersecurity measures;

(h) energy storage systems and microgrids that support circuit-level grid stability, power quality, reliability or resiliency or provide temporary backup energy supply;

(i) electrical facilities and infrastructure necessary to support electric vehicle charging systems;

(j) new customer information platforms designed to provide improved customer access, greater service options and expanded access to energy usage information; and

(k) other new technologies that may be developed regarding the electric grid.

History: Laws 2020, ch. 15, § 1.

71-11-2. Grid modernization grant fund; created.

The "grid modernization grant fund" is created in the state treasury. The fund consists of appropriations, gifts, grants and donations. The energy, minerals and natural resources department shall administer the fund, and money in the fund is subject to appropriation by the legislature to the department for the purpose of administering the grid modernization grant program. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources or the secretary's designee. Any unexpended and unencumbered balance in the fund remaining at the end of any fiscal year shall not revert to the general fund.

History: Laws 2020, ch. 15, § 2.