

**REPORT TO THE LEGISLATURE ON
“STATE-CREATED TRANSMISSION AUTHORITIES”**

**IN COMPLIANCE WITH
MINNESOTA LAW CHAPTER 136-S.F. NO. 145,
ARTICLE 4, SEC. 21, PARAGRAPH (1)**



**SUBMITTED BY THE
MINNESOTA RELIABILITY ADMINISTRATOR ON
FEBRUARY 15, 2008**

REPORT TO THE LEGISLATURE ON STATE-CREATED TRANSMISSION AUTHORITIES

I. PURPOSE AND SCOPE

The purpose of the report provided herein is to respond to Minnesota Law Chapter 136-S.F. No. 145, Article 4, Sec. 21, paragraph (1) (hereafter referred to as “Article 4, Sec. 21”), entitled “Transmission Authority and Interconnect Evaluation.” Article 4, Sec. 21 requires the Reliability Administrator, in consultation with interested stakeholders, to:

- (1) review the structures, powers, and duties for constructing, owning, maintaining, and operating transmission facilities of state transmission authorities established in Kansas, North Dakota, South Dakota and Wyoming, and evaluate whether the existence of a similar organization in Minnesota would have the potential to increase the reliability and efficiency of the electric grid in the state; hasten the development of needed transmission lines; accelerate the development of renewable energy projects, especially in rural areas of the state; and reduce delivered energy costs to Minnesota...¹

The scope of the report is limited to the issue of State-Created Authorities, although other approaches and regulatory tools are mentioned as potential remedies used by other states to address issue(s) related to specific electricity transmission concerns.

The report is composed of four primary sections:

- I. Purpose and Scope
- II. Review of State-Created Transmission Authorities:
 - a. Overview of State-Created Transmission Authorities;
 - b. History and Background of State Authorities;
 - c. Summary of State Authorities’ Structures, Powers and Duties; and
 - d. State-by-State Examination of the Authorities’ Track Records.
- III. Evaluation of Need for a Transmission Authority in Minnesota; and
- IV. Summary, Conclusions and Recommendations.

Sections II through IV are presented below.

¹ The Legislation identifies four State-created Authorities to be examined. However, during the course of review, three additional State-created Authorities (Idaho, Colorado, and New Mexico) have been identified and reviewed as part of this report.

II. A REVIEW OF STATE-CREATED TRANSMISSION AUTHORITIES²

A. OVERVIEW OF STATE-CREATED AUTHORITIES

Beginning in 2004, several state legislatures (Wyoming, North Dakota, Kansas, Idaho, and South Dakota) created transmission (or infrastructure) authorities (Authorities) to improve and support investments in electric transmission upgrades or expansions. The Authorities were conceived to address the fact that building and maintaining new transmission requires raising large amounts of capital and ensuring reasonable cost recovery of those investments.

The Authorities are able to participate in planning, financing, constructing, developing, acquiring, maintaining, and operating electric transmission facilities and supporting infrastructure. To meet these obligations, enabling legislation generally provides the Authorities with the ability to:

- Provide low-cost financing for new transmission projects (usually in the form of bonds);
- Partner with investors and engage in joint projects, providing access to public sector financing which might otherwise not be available;
- Work on right-of-way development for transmission projects;
- Build, operate, or lease all or part of a transmission system if others are either unable or unwilling to do so;
- Coordinate interstate and intrastate transmission plans with regional organizations, the Federal Energy Regulatory Commission (FERC) and other countries;
- Speak, preserve and focus on the individual state's ability to actively participate in planning, approving, and constructing electric transmission that materially impacts the individual state's residents; and
- Protect and promote the state's interests.

The Authorities act only to fill a void where investors, developers and/or utilities are unwilling to meet the market's needs. To avoid interfering with the market, an Authority is generally required to publish a public notice describing its interest in a particular transmission project and provide a waiting period (i.e. 30 to 90 days) for any market participant to act. After the prescribed waiting period, the Authorities can move forward with the project.

While the Authorities' specific roles, responsibilities and funding approaches differ from state to state, the Authorities offer an avenue to address the problems associated with financing electric transmission facilities. For example, by issuing bonds, the Authorities attempt to overcome market reluctance to build new, necessary transmission facilities.

² The details of the structure, power and duties of each Authority reviewed in this report is included in Attachment 1, entitled "Summary Matrix of State Authorities Reviewed by the Minnesota Reliability Administrator."

B. HISTORY/BACKGROUND OF STATE AUTHORITIES

Transmission is required to transport energy resources from the site of generation to the market where the energy is consumed. The demand for energy continues to expand. While the need for more electricity increases, investment and construction of transmission facilities have not grown to meet the need. The need for transmission is immediate. Local, regional, and national electric grids are congested, which leads to higher costs because customers cannot get access to lower-cost electricity supplies. In Minnesota, even the state's low-cost generation is more expensive than before due to transmission congestion. Moreover, there is a potential for electric outages ("brown-outs" or "black-outs") in certain locations due to transmission congestion "bottle-necks." Such events could spread quickly to other locations within the state or to other states, the region and the nation.

Given the demand for electricity and the need for updated and/or expanded transmission, individual states and the federal government have increased their activity in the electric transmission arena. On the federal level, the Energy Policy Act of 2005 (EPAAct 2005) grants the FERC authority to site new transmission lines. There is currently a debate over when and where FERC can use the new powers.³ As FERC's new siting authority is being discussed, there is uncertainty in the electric transmission market. To deal with this uncertainty, individual states are becoming more active in facilitating the development of transmission infrastructure. The state activities began with streamlining regulatory processes in their own states. Most recently, several western states enacted legislation to create transmission (or infrastructure) Authorities.

C. SUMMARY OF STATE AUTHORITIES' STRUCTURES, POWERS AND DUTIES

In 2004, the first Authority was created in Wyoming. The legislative language used to create the Wyoming Infrastructure Authority (WIA)⁴ has been (and continues to be) the model legislative language used by other states. Wyoming is in the center of the Western continental coal region and is a major exporter of coal.⁵ Wyoming is also a net exporter of electricity generation.⁶ Wyoming's energy situation is that its electricity fuel resources (primarily coal and wind) are a long distance from the markets where electricity is used and there is little in-state electricity demand due to Wyoming's low population. Moreover, given the relatively large capital investments and long lead time to plan, approve and construct transmission lines, investors perceived a high risk for undertaking projects in Wyoming. The risk has led to a lack of electric infrastructure development.

³ On November 26, 2007, the Minnesota Public Utilities Commission, the New York Public Service Commission and the Piedmont Environmental Council filed a brief in the appeal of FERC Order No. 689, FERC's rulemaking order interpreting section 1221 of the Energy Policy Act of 2005 to grant FERC jurisdiction to site a line in a national interest electric transmission corridor when a state denies a permit.

⁴ Wyoming SF 52, passed in 2004, provides the enabling legislation that creates the Wyoming Infrastructure Authority (WIA). See Attachment 2 for the enabling legislation. A CD-ROM containing an electronic copy of the enabling legislation is available upon request.

⁵ According to 2006 United States Energy Information Administration (EIA) data, more than 30 states receive coal from Wyoming, and several Midwestern and Southern States are highly or entirely dependent on Wyoming's coal supply. See Attachment 3, *Electric Generation Profiles of States with Transmission Authorities* under the "Wyoming Quick Facts."

⁶ According to 2006 EIA data, Wyoming generated 45,400,370 mega-watt hours of electricity and had total in-state retail sales of 14,946,612 mega-watt hours. Thus, Wyoming had excess electric generation capacity of 30,452,758 mega-watt hours (approximately 67 percent of the total generation) available for export to other states. See Attachment 3, *Electric Generation Profiles of States with Transmission Authorities*.

To address Wyoming's particular situation, WIA was created with the specific goals of improving the state's electric transmission infrastructure by attracting investors and facilitating the export of Wyoming's generated energy to markets in other regions, specifically the West Coast and the Midwest. To avoid interfering with the market, WIA's five-member Board of Directors may act only to fill a void unfilled by market participants. Thus, WIA proceeds with a project only after publishing a public notice of its intended actions. After a specified waiting period, WIA may act if there is not a market participant willing to take on a project. WIA is also mandated to work on (investigate, plan, prioritize, etc.) the right-of-ways for transmission projects and to participate in joint regional transmission organizations. WIA is not subject to regulation by the Wyoming Public Utilities Commission. However, WIA (as well as all the newly created State Transmission Authorities) is subject to regional Independent System Operators (ISO) and FERC authority.

In 2005, four (4) additional western states (Kansas⁷, North Dakota⁸, South Dakota⁹, and Idaho¹⁰) enacted legislation modeled after the Wyoming legislation. These states face similar situations to Wyoming in that their energy resources are a long distance from the markets where electricity is used and there is little in-state electricity demand. With the exception of Idaho, these states are (or expect to be) net electricity exporters. The four states must also contend with the fact that electric transmission requires large capital investments and has long lead times for planning, approval, and construction. The 2005 legislation in these four states depart from Wyoming legislation by specifying limitations on the Authority's contractual, financial obligations and parameters, along with specific wording on debt (bond) issuance. The Boards of Directors vary in sizes from five to eight members, which are appointed either by the Governor or by Governor and the state legislature, with one noticeable exception. The North Dakota Transmission Authority (NDTA) is not governed by a Board of Directors; instead, it operates as part of the existing North Dakota Industrial Commission. While the majority of the Authorities are not subject to the states' utilities commissions, most Authorities are required to submit a report to the Governor of the State and, in some cases, to the legislature and the state's congressional delegation.

In 2007, legislation to establish a Transmission Authority was introduced in three states (Colorado,¹¹ New Mexico¹² and Montana) and all were modeled after the Wyoming 2004 legislation. The Montana legislation was not passed by the legislature. On the other hand, the Colorado and New Mexico bills were passed, establishing Authorities whose primary focuses are

⁷ Kansas House Bill No. 2263, passed in 2005, provides the enabling legislation that creates the Kansas Electric Transmission Authority (KETA). An electronic disk containing the enabling legislation is available upon request.

⁸ The 2005 North Dakota legislation passed HB 1169 that provides for creation of the North Dakota Transmission Authority (NDTA). See Attachment 2 for the enabling legislation. A CD-ROM containing an electronic copy of the enabling legislation is available upon request.

⁹ South Dakota House Bill 1260, passed in 2005, provides the enabling legislation that creates the South Dakota Energy Infrastructure Authority (SDEIA). See Attachment 2 for the enabling legislation. A CD-ROM containing an electronic copy of the enabling legislation is available upon request.

¹⁰ Idaho House Bill 106, passed in 2005, provides the enabling legislation that creates the Idaho Energy Resources Authority (IERA). See Attachment 2 for the enabling legislation. A CD-ROM containing an electronic copy of the enabling legislation is available upon request.

¹¹ Colorado House Bill 07-1150, passed in 2007, provides the enabling legislation that creates the Colorado Clean Energy Development Authority (CEDA). See Attachment 2 for the enabling legislation. A CD-ROM containing an electronic copy of the enabling legislation is available upon request.

¹² New Mexico House Bill 188, passed in 2007, provides the enabling legislation that creates the New Mexico Renewable Energy Transmission Authority (RETA). See Attachment 2 for the enabling legislation. A CD-ROM containing an electronic copy of the enabling legislation is available upon request.

to develop renewable energy-related transmission. In New Mexico, the legislation allows the Authority to fund energy storage projects (e.g., compressed air storage for wind power) in addition to transmission facilities.

D. STATE-BY-STATE EXAMINATION OF THE AUTHORITIES' TRACK RECORDS

1. Wyoming

WIA began to exercise its authority in September 2005 with the issuance of \$34.5 million in bonds to help the Basin Electric Power Cooperative finance the construction of a 130-mile, 230-kV transmission line to increase reliability in northeastern region of Wyoming and to create export capacity to Montana. Around the same time, WIA signed a memorandum-of-understanding (MOU) with Trans-Elect and the Western Area Power Administration (WAPA) and together issued a solicitation of interest to build a transmission line to Colorado to export power generated by coal and wind. Late in December 2005, WIA and National Grid conducted a study of the transmission needs in the Western states to evaluate ways to position Wyoming as a key electric generation source.

In 2006, WIA's role was expanded to include the financing and promotion of advanced coal technologies in electric generation. In July 2006, WIA issued a request for proposal (RFP) to build Wyoming's first integrated gasification combine cycle (IGCC) plant to supply California with power.

Currently, WIA is involved in three transmission projects, which include:

1. Wyoming-Colorado Intertie (TOT-3);
2. Wyoming-West Project (to Arizona); and
3. Trans West Express (to Arizona).

WIA is currently involved in the planning of two emerging "mega" projects:

- High Plains Express (from Wyoming through Utah to California); and
- Frontier Line (to Los Angeles and San Francisco, California).

To date, WIA has aggressively worked to update, expand and construct electric transmission to export its excess electric generation to major consumption areas as well as remove in-state transmission congestion.

2. *Kansas*

The Kansas Electric Transmission Authority (KETA), created in 2005, is located in the Southwest Power Pool (SPP). Similar to Wyoming, Kansas is an electricity exporting state.¹³ The SPP is responsible for identifying transmission needs. In conjunction with SPP and WAPA, KETA is currently working (planning, financing, and constructing) on three major projects:

1. The Eastern Plains Transmission Project (to Colorado and Nebraska to be synchronized with the Western Power Grid);
2. X-Plan (to upgrade, remove bottlenecks and construct an electric transmission line in the SPP region from Kansas across Oklahoma to Texas); and
3. The Central Kansas Projects (to study and upgrade transmission at potential bottlenecks in Kansas).

In addition to removing specific in-state transmission congestion, the new KETA-supported transmission lines will facilitate transmission of the existing excess capacity to other states. The new transmission will also provide transmission for two new 700 Mw coal-fired power plants at Holcomb, Kansas.

3. *Idaho*

The Idaho Energy Resource Authority (IERA) was established in 2005. Unlike WIA and Kansas, Idaho is a net electricity importing state.¹⁴ IERA was not allocated any start-up costs funding or full-time staff and, as such, has taken longer to get started. IERA hired Lehman Brothers as its investment banker and has also started its first project, the Bogus Basin Transmission line, for approximately \$2.5 million. IERA has a potential list of intrastate transmission projects for 2007-2008.

IERA also plans to contribute about \$150 million in construction financing to acquire a 900-MW plant in Utah that would supply power to southern Idaho. Thus, in addition to removing certain in-state transmission bottlenecks, the new transmission lines facilitate the importation of generation from other states, particularly from the new 900 MW plant in Utah.

¹³ According to 2006 EIA data, Kansas generated 45,523,736 mega-watt hours of electricity and had total in-state retail sales of 39,751,302 mega-watt hours. Thus, Kansas had excess electric generation capacity of 5,772,434 mega-watt hours (approximately 13 percent of the total generation) available for export to other states. Kansas will also export more excess electric generation when two new 700 Mw coal-fired power plants at Holcomb, Kansas are placed in-service between 2010 and 2011.

¹⁴ According to 2006 EIA data, Idaho generated 13,386,085 mega-watt hours of electricity and had total in-state retail sales of 22,761,749 mega-watt hours. Thus, Idaho had a negative electric generation capacity of 9,375,664 mega-watt hours (approximately a deficiency of 70 percent of the total generation.)

4. *North Dakota*

Similar to Wyoming and Kansas, North Dakota is a net electricity exporting state.¹⁵ The North Dakota Transmission Authority (NDTA), created in 2005, is unique. Rather than establishing a new government entity with an appointed Board of Directors, the Authority is established as a new role for the existing North Dakota Industrial Commission. Thus, NDTA has no appropriation outside the existing agency money. NDTA is currently assisting in forming coalitions, attracting investment and promoting public policy to support construction of new transmission. NSTA is considering a range of projects including the CapX 2020 initiative.

5. *South Dakota*

The South Dakota Energy Infrastructure Authority (SDEIA), created in 2005, issued an RFP in May 2006 for a study to assess the then-current state of South Dakota transmission infrastructure to determine where improvements were required. The SDEIA is different from Wyoming and Kansas in that any issuance of bonds must be specifically approved by the South Dakota legislature. SDEIA is required to report its findings and make recommendations to the Governor, the Legislature and the South Dakota congressional delegation by December 1, 2007. The SDEIA report found that the South Dakota government could advance the production and transmission of electricity for in-state use and export.

South Dakota is currently a net electricity importing state.¹⁶ However, one of the first SDEIA transmission projects is to facilitate transmission from the proposed Big Stone II coal-fire power plant which is to be located in South Dakota, to other states in the region. Thus, South Dakota has the potential to become an exporting state. As presently planned, the new SDEIA-supported transmission lines allow for the export of the proposed new electric generation.

6. *New Mexico/Colorado*

Both the New Mexico Renewable Energy Authority (RETA) and the Colorado Clean Energy Development Authority (CCEA) are newly created as of 2007. The two Authorities have appointed their Board of Directors and entered into discussion with other states to build regional transmission systems for renewable energy. However, a very limited track record has been established to date. The two Authorities are alike in that their primary focus is on developing a renewable energy-related infrastructure. It remains to be seen the type of projects that will be undertaken by the new “renewability-focus” Authorities.

¹⁵ According to 2006 EIA data, North Dakota generated 30,881,137 mega-watt hours of electricity (produced primarily with coal-fired power plants) and had total in-state retail sales of 11,245,238 mega-watt hours. As such, North Dakota had excess electric generation capacity of 19,635,899 mega-watt hours (approximately 63 percent of the total generation) available for export to other states.

¹⁶ According to 2006 EIA data, South Dakota is an electricity importing state that generated 7,132,243 mega-watt hours of electricity and had total in-state retail sales of 10,056,387 mega-watt hours. This means that in 2006, South Dakota had a negative electric generation capacity of 2,924,144 mega-watt hours (an approximate deficiency of 41 percent of the total generation).

III. EVALUATION OF NEED FOR A TRANSMISSION AUTHORITY IN MINNESOTA

In establishing Article 4, Sec. 21 (the “Transmission Authority and Interconnect Evaluation”), the Minnesota legislature specified that the report evaluate whether the existence of a Minnesota Authority would:

- Have the potential to increase the reliability and efficiency of the electric grid in the state;
- Hasten the development of needed transmission lines;
- Accelerate the development of renewable energy projects, especially in rural areas of the state; and
- Reduce delivered energy costs to Minnesota.

Each evaluation is discussed below.

A. *POTENTIAL TO INCREASE THE RELIABILITY AND EFFICIENCY OF THE MINNESOTA’S ELECTRIC GRID*

As seen in the above discussion, State-created Authorities are relatively new. The Authorities have generated coordinated discussions on transmission planning in the region. From the limited activities to date, activities of such Authorities appear to have facilitated the siting of new transmission facilities that should enhance reliability and increase the export of excess electric generation. In theory, the Authorities’ efforts should remove some uncertainty among investors and developers since there is state support to finance high-cost, long-term infrastructure development. In turn, the electric grids in those states with Authorities may become more efficient and reliable. However, while it is reasonable to assume that there has been some level of reliability and efficiency enhancements in those states resulting from a newly created State Authority, there are no known studies regarding this issue.

Moreover, there is no clear evidence that a State Authority is necessary to plan, construct, and develop electric transmission facilities and supporting infrastructure to increase a grid’s reliability and efficiency. In states that previously did not have a transmission coordination effort, the Authorities now serve that purpose. However, the newly established Authorities are to act only when there is a void in the market where an enhancement or reliability transmission projects will not proceed without state financing. By contrast, Minnesota utilities and investors have, with minor exceptions, identified transmission facilities that are need for reliability and/or economically efficiency and have “stepped to the plate” by working with others to address the needed transmission facilities. Moreover, as discussed below, local and regional reliability and efficiency transmission issues are being orchestrating by existing State Entities.

B. POTENTIAL TO HASTEN THE DEVELOPMENT OF NEEDED TRANSMISSION

The review shows that State-created Authorities have been established in states that, in addition to in-state or regional transmission congestion¹⁷, have:

- Actual (or planned) excess electric generation (Wyoming, Kansas, North Dakota and South Dakota); or
- A plan to import coal-fired generation from another state (Idaho); or
- An unfulfilled need for a renewable transmission system (New Mexico and Colorado).

Minnesota has transmission congestion at certain locations within the state and has a need for specific renewable transmission corridors. However, the conditions in Minnesota are different than the majority of states with newly established Authorities in that Minnesota is a net electricity importing state.¹⁸ Minnesota's transmission needs are different because there are not large amounts of excess electric capacity to export.

Thus, unlike other states with new Authorities, there is no need to create a new entity to aggressively promote and export excess capacity. Additionally, as mentioned above, Minnesota utilities and investors are, with minor exceptions, addressing the current transmission congestion. Finally, as addressed below, the need for renewable corridors can be addressed without establishing a Transmission Authority.

C. POTENTIAL TO ACCELERATE THE DEVELOPMENT OF RENEWABLE ENERGY PROJECTS

The development of renewable energy projects and the transmission of the electricity from the renewable sites remain a priority in Minnesota. However, a State Transmission Authority is not necessary to develop a renewable energy transmission infrastructure. In Texas, California, and Colorado, an alternative regulatory tool has been legislated. Specifically, a "renewable energy zone" concept is now in place to further develop an infrastructure for transmission generated by renewable sources. Although such a zone is not the subject of this report, the concept is under evaluation by the Minnesota Reliability Administrator.

D. POTENTIAL TO REDUCE DELIVERED ENERGY COSTS TO MINNESOTA

A well-coordinated transmission planning process allows for the construction of needed facilities and provides access to lower-cost generation, which, in turn, will reduce the delivered energy costs to Minnesota. The main question is whether a new agency is necessary to coordinate the planning and construction of electric transmission. In the absence of a coherent planning and construction effort, a State Authority might be helpful and perhaps necessary. However, the Minnesota Reliability Administrator in conjunction with the Minnesota Public Utilities Commission (MPUC), the Minnesota Department of Commerce (MDOC), and the Governor's office, (hereafter referred

¹⁷ For an overview of national grid congestion constraints, see "2006 Federal Congestion Study – Executive Summary" found at: http://neitc.anl.gov/documents/docs/NIETC_ExSum_8Aug08/pdf

¹⁸ According to 2006 EIA data, Minnesota is a net electricity importing state that generated 53,237,789 mega-watt hours of electricity and had total in-state retail sales of 66,769,931 mega-watt hours. This means that in 2006, Minnesota had a negative electric generation capacity of 13,532,142 mega-watt hours (an approximate deficiency of 25 percent of the total generation).

to collectively as “State Entities”) are currently functioning as the coordinators of electric transmission planning within Minnesota as well as with other states, the Midwest Independent System Operator and the FERC. Together, the State Entities have a proven record of actively promoting and protecting the state’s interest in electric generation and transmission. The appropriations for the State Entities coordinating transmission planning have been established. The roles and responsibilities of the State Entities have been developed and the communications between the State Entities are open and on-going. At this point, establishment of a State Transmission Authority in Minnesota would be redundant. The roles and responsibilities of the new Authority may add confusion to the established planning process. A new State Authority may also needlessly increase both the complexity and costs of transmission planning by adding yet another layer of administration at little or no benefit to Minnesota residents.

III. SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

The purpose of the report is to review the structures, powers, and duties of recently created State Transmission Authorities. It also evaluates whether the existence of a similar organization with the ability to promote the construction and operation of transmission facilities, would benefit Minnesota. Since 2004, several state legislatures have created Authorities to improve and support investments in electric transmission upgrades or expansions. With few exceptions, the states that established Authorities are net electricity exporters. The activities of the State Authorities focus on transmission projects that the market fails to address due to the perceived high risk associated with large capital investments and long lead times. Due to the newness of State-created Authorities, there has been limited activity and, as such, a clear track record has yet to develop. However, the activities to date appear to have facilitated the planning and siting of new transmission facilities that should enhance reliability and increase the export of excess electric generation.

A well-coordinated transmission planning process allows for the construction of needed facilities and provides access to lower-cost generation, which, in turn, will reduce the delivered energy costs to Minnesota. But the main question is whether a new agency is necessary to coordinate the planning and construction of electric transmission. In the absence of a coherent planning and construction effort, a State Authority might be helpful and perhaps necessary. However, Minnesota has specific State Entities (the Minnesota Reliability Administrator, MPUC, MDOC, and the Governor’s office) that are currently functioning as the coordinators of electric transmission planning within Minnesota as well as with other states, the Midwest Independent System Operator and the FERC. Together, the State Entities have a proven record of actively promoting and protecting the state’s interest in electric generation and transmission. The roles and responsibilities of the State Entities have been developed and the communications between the State Entities are open and on-going.

At this time, establishment of a State Transmission Authority in Minnesota is unnecessary and it would be redundant. Moreover, it has the potential to add confusion to the existing planning process. A new State Authority also has the potential to increase both the complexity and costs of transmission planning by adding yet another layer of administration at little or no benefit to Minnesota residents. In conclusion, a special Transmission Authority should not be established.

Summary Matrix of State Authorities Reviewed by the Minnesota Reliability Administrator						
STATE (IN ORDER OF LEGISLATIVE ENACTMENT) R)	ENABLING LEGISLATION	POWERS	LIMITATIONS	OVERSIGHT/ REGULATION	COOPERATION	OTHER OBSERVATIONS, COMMENTS, CURRENT ACTIVITY
Wyoming	<p>2004 SF 52 provides the legislation to create the Wyoming Infrastructure Authority (WIA). Purpose to improve Wyoming’s electric transmission infrastructure and to facilitate the export of electricity from Wyoming generated from wind and coal (primarily to the West Coast and Midwest markets).</p> <p>WIA Board of Directors is composed of five (5) voting members appointed by Governor. Must be background in electric transmission, utility regulation, and energy facility development. Currently three members are from Wyoming and two are from elsewhere in the West.</p>	<p>WIA to participate in planning, constructing, developing, acquiring, maintaining and operating electric transmission facilities and supporting infrastructure.</p> <p>\$1.6 m operating budget.</p> <p>WIA promotes emergence of “advanced” coal technologies in Wyoming with \$10 m venture account to develop projects.</p> <p>WIA can partner the private sector, including up to \$1 b in bonding capacity for projects owned by others.</p>	<p>WIA acts only to fill a void unfilled by market participants.</p> <p>To avoid interfering with the market, WIA must publish notice and provide 30 days for any market participants to act.</p> <p>WIA may act after 30 days, if a market participant takes on a project and does not move forward in 180 days, WIA may act.</p>	<p>WIA is not subject to regulation by the Wyoming Public Service Commission (PSC).</p> <p>It is considered a “State Instrumentality” with bonding authority, but bonds can be issued without pledging the full credit and faith of the State as is required if WIA was a state agency.</p>	<p>Works with other states (including Arizona, Colorado, Utah and California), as well as PSCO, SRP, WAPA, Trans Electric, and several other utilities.</p>	<p>WIA is the first state infrastructure authority. Legislation allows for “energy” transmission including both electric and gas transmission.</p> <p>The enabling legislation language used to create the Wyoming Infrastructure Authority (WIA) has been used as a model for several other states including Kansas, North Dakota, Idaho and New Mexico.</p> <p>Transmission projects underway include:</p> <ul style="list-style-type: none">• Wyoming-Colorado Intertie (TOT-3)• Wyoming-West Project (to Arizona)• Trans West Express <p>Emerging “mega” projects include:</p> <ul style="list-style-type: none">• High Plains Express• Frontier Line (to LA and San Fran) <p>Successful in attracting investors to capital intense transmission projects that have a long lead time and different interest of the different states involved.</p> <p>Demonstrates that state government can function as a facilitator and planner.</p>
Kansas	<p>2005 HB 2263 – the Kansas Electric Transmission Act creating the Kansas Electric Transmission Authority (KETA). Purpose to ensure reliable operation of an integrated transmission system through building new facilities or by facilitating construction, upgrade and repair of 3rd party facilities.</p> <p>KETA Board of directors is composed of seven (7) voting members; 3 appointed to staggered 4-year terms by Governor. Must be Kansas voter who possesses special knowledge or 5 years managerial experience in electric transmission and generation.</p>	<p>KETA has broad authority including: the ability to adopt rules and regulations; plan, finance, construct, develop, acquire, own or dispose of transmission facilities; and contract for maintenance and operations of facilities.</p> <p>Cannot directly operate facilities.</p> <p>Has ability to enter into contracts with Finance Authority to issue bond to finance projects.</p> <p>Recovers costs through tariffs of the Southwest Power Pool (SPP) Regional Transmission Organization.</p>	<p>KETA may exercise rights in regard to transmission infrastructure only: if the market is not meeting the need and is not willing to finance and own required infrastructure; and the transmission facilities are approved by SPP.</p> <p>KETA must provide notice of its intent to complete a project and may proceed to do so if no private entity expresses a willingness to complete project.</p>	<p>KETA is required to provide annual reports to Governor and Legislature.</p> <p>KETA is not supervised or subject to regulation by the Kansas Corporation Commission (KCC) except for wire stringing and line siting.</p>	<p>State agencies and local units of government must provide information, assistance and advice requested by KETA.</p> <p>State agencies and local governments authorized to lease, lend, grant or convey land to KETA without advertising or obtaining a court order for transaction.</p>	<p>Taxation – KETA is not required to pay Kansas income tax and its purchases are exempt from sales tax. KETA owned facilities are exempt from property tax.</p> <p>Open meetings – KETA is exempt from open meetings and open records when proprietary information is promised; information related to security; and information is not generally available.</p> <p>Proposed Transmission Projects include the WAPA Transmission Project, the Eastern Plains Transmission Project, the Proposed X Plan, and the Kansas/Panhandle Study.</p> <p>Southwest Power Pool (SPP) is responsible for identifying transmission needs.</p>

STATE (IN ORDER OF LEGISLATIVE ENACTMENT) R)	ENABLING LEGISLATION	POWERS	LIMITATIONS	OVERSIGHT/ REGULATION	COOPERATION	OTHER OBSERVATIONS, COMMENTS, CURRENT ACTIVITY
North Dakota	<p>2005 HB 1169 provides for creation of the North Dakota transmission authority (NDTA) to provide for the planning, construction, owning, financing, maintaining, and operating of electric facilities and related infrastructure, and to authorize issuance of revenue bonds and to reenact law relating to an Administrative Agencies Practice Act exception for the transmission authority.</p> <p>Rather than creating a new organization, the Authority is established as a new role for the existing North Dakota Industrial Commission.</p>	<p>As an entity operated by the North Dakota Industrial Commission, NDTA has the power to:</p> <ul style="list-style-type: none">• Provide different forms of financing for new transmission;• Issue and sell evidence of indebtedness (extensive language related to indebtedness;• Partner with investors and utilities to engage in joint projects;• Provide access to public sector financing not available otherwise;• Work on (investigate, plan, prioritize, etc.) right of ways for transmission projects; and• Participate in and join regional transmission organizations.	<p>NDTA can only to electric transmission, not pipelines.</p> <p>Only to become active in projects as a last resort when transmission provides are unable to respond to the needs identified by NDTA.</p> <p>Bonding authority is limited to \$800 m.</p>	<p>NDTA activities exempt from oversight by the Public Utilities Commission except for line routing.</p> <p>Authority “shall” consult with public service commission with respect to rates charged by the authority for use of its facilities.</p> <p>Authority and facilities constructed or operated except from North Dakota Energy Conservation and Transmission Facility Siting Act.</p>	<p>“Do any and all things necessary or expedient for the purposes of the authority provided in this chapter.” This includes consultation with other public utility commissions, regional organizations, and any other relevant state or federal agency as necessary.</p>	<p>NDTA enabling legislation adapted from the Wyoming legislation that created the Wyoming Infrastructure Authority (WIA).</p> <p>Common issues shared with Wyoming: it is a long distance from the wind resources to markets where electricity is consumed, and there is little internal demand due to low population.</p> <p>NDTA faces challenges that its role is being determined relative to what its jurisdiction is, and what responsibilities are Midwest ISO (MISO).</p> <p>Similar to Wyoming’s situation, it can grant tax-exempt status to NDTA projects, but is not authorized to federal tax exemption.</p> <p>Given that MISO bisects North Dakota, NDTA must work with MISO, members and non-members of MISO.</p>
South Dakota	<p>2005 HB 1260 provides for creation of the South Dakota Infrastructure Authority (SDEIA) to provide financing, construction, development, maintenance, and operate new or upgrade energy transmission facilities.</p> <p>SDEIA Board of Directors is composed of five (5) voting members appointed by Governor. Appointees “shall be” voters of South Dakota with special knowledge in the field of electric power or energy transmission or generation.</p>	<p>SDEIA shall:</p> <ul style="list-style-type: none">• Identify opportunities where parties act in cooperation to improve and increase electric transmission;• Assist parties to create or enhance electric transmission by developing business plans;• Investigate, plan, prioritize and establish corridors for the transmission of electricity; and• May issue and have outstanding bonds to finance transmission facilities.	<p>Bonds may not exceed \$1 b and no bonds may be issued until the issuance of the bonds is specifically approved by an act of the legislature.</p> <p>Section 27 states that “nothing in this Act may be construed to authorize the authority to create a debt of the state The state is not in any event liable for the payment of the principle of or interest on any bonds, notes, instruments or obligations issued by the authority”</p>	<p>SDEIA is attached to the Department of Tourism and State Development.</p>	<p>Work with willing owner of transmission lines, generators, distribution systems to understand transmission needs to, from and within South Dakota.</p> <p>Report findings and make recommendations to the Governor, the Legislature and the South Dakota congressional delegation by December 1.</p> <p>Assist authorities from other states, any federal or regional entity wanting to create transmission facilities in South Dakota.</p>	<p>Original house bill created the South Dakota Transmission Assistance Authority, which was an advisor board only.</p> <p>Legislation language provides extensive limitation on the financial and contractual obligations and parameters of the SDEIA.</p> <p>Careful wording on the authorization of debt issuance.</p> <p>Observation: The legislation attempts to overcome concerns of exposure of state to liability of SDEIA indebtedness.</p>

STATE (IN ORDER OF LEGISLATIVE ENACTMENT) R)	ENABLING LEGISLATION	POWERS	LIMITATIONS	OVERSIGHT/ REGULATION	COOPERATION	OTHER OBSERVATIONS, COMMENTS, CURRENT ACTIVITY
Idaho	<p>2005 HB 106 (Idaho Statutes, Title 87, Chapter 89), entitled “Idaho Energy Resources Authority Act” provides for creation of an independent public body politic and corporate to be known as the “Idaho Energy Resources Authority” (ERA) to provide the development and financing of facilities for the benefit of participating utilities and accomplishing the goals of the State.</p> <p>ERA Board of Directors is composed of seven (7) voting members appointed by Governor and confirmed by the Senate. Appointees: “In making the appointments, the governor shall appoint individuals with direct professional experience and demonstrated knowledge in the electric utility industry.”</p>	<p>ERA shall have the power:</p> <ul style="list-style-type: none">• To make and execute contracts;• To acquire, construct, reconstruct, renovate, replace, maintain, repair, manage, operate, lease and regulate any facility;• To assign and pledge any or all of its revenue and income for the benefit of the holders of bonds issued to finance the facilities;• To make loans to participating utilities to finance the cost of facilities;• To procure insurance against any losses;• To invest funds; and• To issue bonds which are not the liability of the state.	<p>ERA shall have no power:</p> <ul style="list-style-type: none">• To acquire operating property by exercise of eminent domain;• To provide financing for the acquisition of operating property or under the threat of eminent domain; and• To deliver retail electricity to any ultimate consumer, whether in violation of the Idaho electric supplier stabilization act. <p>Nothing in this act shall be construed to limit or restrict the public utilities commission.</p>	<p>ERA is required to submit to the governor a report of:</p> <ul style="list-style-type: none">• its operations and accomplishments;• an accounting of its receipts and expenditures;• its assets and liabilities; and• a schedule of its bonds outstanding. <p>No proceeding, notice, or approval shall be required for the issuance of any bonds by the authority.</p>	<p>ERA, by statute, is required to participate in cooperative ventures with any agencies or organizations in order to provide affordable and reliable energy to the residents of the state.</p> <p>ERA may enter into agreements with any other state body or agency, any other political subdivision of the state.</p>	<p>Legislative language is an adaptation of the Wyoming legislation.</p> <p>Legislation language provides extensive limitation on the financial and contractual obligations and parameters of the ERA.</p> <p>Careful wording on the authorization of bond issuance.</p> <p>Although ERA is relatively new, it has participated in planning and development of the Frontier Line, which takes electricity produced in Wyoming across the state of Idaho to deliver in California.</p>
New Mexico	<p>2007 H B 188 entitled “New Mexico renewable energy authority” act which relates to electric power; creates the New Mexico Renewal Energy Authority (RETA). RETA’s mandate is to plan, finance, build and operate new electricity transmission lines for power that draw at least 30 percent of its energy from renewable sources.</p> <p>ERA Board of Directors is composed of eight (8) voting members of which 3 are appointed by Governor with consent of the Senate, 1 appoint by the Speaker of the House and 1 appointed by the President Pro Tempore of the Senate. Also includes State Treasurer, State Investment Officer and Non-voting EMNR Dept. Secretary.</p>	<p>RETA may perform the following functions:</p> <ul style="list-style-type: none">• Identify and establish transmission corridors;• Finance, plan, acquire, maintain, and operate eligible facilities;• Exercise the power of eminent domain;• Issue and sell revenue bonds known as “renewable-energy transmission bonds”; and• Enter into contracts to lease and operate eligible facilities owned by a public utility or private person or owned by RETA.	<p>RETA shall not enter into any project if public utilities or other private persons are willing to provide funds for and own new infrastructure.</p> <p>Before undertaking a project, RETA shall provide notice that eligible facilities are contemplated. After 90 days from the notice, RETA may proceed if no entity comes forth with a project proposal.</p>	<p>RETA has full authority to issue bonds.</p> <p>Required to annually report to the legislature. Each report shall set forth complete operating and financial statements covering its operation.</p> <p>RETA is subject to the “legislative oversight committee.”</p>	<p>RETA may participate in regional transmission forums, coordinate, investigate, plan, prioritize and negotiate with entities within and outside the state for the establishment of interstate transmission corridors.</p>	<p>Legislative language is an adaptation of the Wyoming legislation, but focuses on renewal energy.</p> <p>The initial attempt to pass similar legislation was introduced in 2004 and 2006.</p> <p>The New Mexico legislation is one of the most recently enacted legislation (enacted on July 1, 2007) and is the first state-level financing authority whose primary focus is on developing renewable energy-related transmission infrastructure.</p> <p>RETA can fund energy storage projects (e.g., compressed air storage for wind power) as well as transmission facilities.</p> <p>Legislation language provides a definition of and criteria for the issuance of “renewable energy transmission bonds.”</p> <p>Observation: The legislation is an attempt to promote the use of renewable energy by developing new electricity transmission lines for power that draws at least 30 percent of its energy from renewable sources.</p>

STATE (IN ORDER OF LEGISLATIVE ENACTMENT) R)	ENABLING LEGISLATION	POWERS	LIMITATIONS	OVERSIGHT/ REGULATION	COOPERATION	OTHER OBSERVATIONS, COMMENTS, CURRENT ACTIVITY
Colorado	<p>2007 H B 07-1150 entitled “Colorado Clean Energy Authority” act which relates to electric power; creates the Colorado Clean Energy Authority (CCEA). CCEA’s purpose is to establish a state funding mechanism to leverage bond proceeds and provide government backed loan guarantees through a public authority for the purpose of building transmission capacity for renewable resources.</p> <p>ERA Board of Directors is composed of eight (8) voting members of which 1 is appointed by Governor with consent of the Senate, 1 appoint by the speaker of the house, 1 appointed by the president of the senate, 1 appointed by the minority leader of the House, 1 member appointed by the minority leader of the Senate. Also included State Treasurer, Director of the Office of Economic Development and Director of the Governor’s Office of Energy Management.</p>	<p>CCEA must team with a newly formed Task Force to make recommendation as to whether:</p> <ul style="list-style-type: none">• Hydroelectric Power should be considered as clean energy;• Integrated Gasification Combined Cycle (IGCC) as clean energy; and• Only certain types of Biomass projects should be considered as clean energy. <p>Solicit public input regarding projects recommended by CCEA and the Task Force.</p> <p>CCEA can: purchase or arrange Bonds; enter into contracts; and sue or be sued.</p>	<p>CCEA’s projects must be recommended by the General Assembly.</p>	<p>CCEA’s projects must be recommended by the General Assembly.</p> <p>CCEA must team with a Task Force to respond to legislative queries and to identify clean energy and storage projects.</p> <p>Before financing, refinancing or otherwise supporting any project, CCEA must publish a 3-year plan of its activities for submission to the Agriculture, Natural Resources, and Energy Committee.</p>	<p>CCEA must provide opportunities for public input and technical assistance to local entities.</p> <p>CCEA may enter into one or more agreements with US Government, the state, any other state...in order to jointly finance one or more projects.</p>	<p>Legislative language is an adaptation of the Wyoming legislation, but focuses on renewal energy and is similar to legislation in other Western states.</p> <p>The Colorado legislation is one of the most recent enacted legislation and, like New Mexico, is primarily focused on developing renewable energy-related transmission infrastructure.</p> <p>In front of the US House Select Committee on Renewable, Colorado Ritter stated that “We need a ‘Smart Grid.’ In Colorado, we created the Clean Energy Development Authority to help finance renewable transmission project. We’re joining with the Wyoming Infrastructure Authority and the New Mexico Renewable energy Transmission Authority to examine ways to further the building of regional transmission systems for renewable energy.”</p>
Montana	<p>207 HB 114 introduces an act to establish a “Montana Electricity Transmission and Pipeline Authority.” The legislation was not signed into law.</p>					<p>According to the Montana Conservation Voters (www.mtvoters.org) in the publication entitled <i>2007 Montanan Environmental Legislative Wrap-up</i>, “the bill allows for energy to be exported to Las Vegas and Los Angeles and will lead to an increase in prices for Montana consumers and demand for increased development of resources for the benefit of people out of state.”</p>
Utah	<p>In a draft report dated October 12, 2007, the Renewable Energy Initiative Focus Group recommended to the Governor’s Council on Climate Change that a possible action to help spur the development of transmission to serve renewable energy resources was to establish a “Utah Infrastructure Authority.”</p>					<p>To date, no action has been taken of the suggestion.</p>

CHAPTER 280

PUBLIC UTILITIES

HOUSE BILL 07-1150

BY REPRESENTATIVE(S) Gardner C., Witwer, Rose, Hodge, Kerr J., Lundberg, Massey, Soper, Balmer, Borodkin, Buescher, Butcher, Carroll M., Carroll T., Curry, Frangas, Gallegos, Gardner B., Gibbs, Hicks, Kefalas, Kerr A., King, Labuda, Levy, Liston, Looper, Madden, Marostica, May M., McFadyen, McGihon, McNulty, Merrifield, Peniston, Primavera, Rice, Riesberg, Roberts, Romanoff, Solano, Sonnenberg, Stafford, Stephens, Summers, Todd, Vaad, White, and Jahn;
also SENATOR(S) Kester, Penry, Harvey, Bacon, Boyd, Brophy, Groff, Isgar, Keller, Kepp, Morse, Romer, Schwartz, Shaffer, Spence, Taylor, Tupa, Ward, Williams, Windels, and Tapia.

AN ACT

CONCERNING THE CREATION OF THE CLEAN ENERGY DEVELOPMENT AUTHORITY.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Title 40, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 9.7
Colorado Clean Energy
Development Authority

40-9.7-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO CLEAN ENERGY DEVELOPMENT AUTHORITY ACT".

40-9.7-102. Legislative declaration. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(a) THERE ARE EXTENSIVE CLEAN ENERGY RESOURCES IN COLORADO, AND ADDITIONAL FACILITIES ARE NEEDED TO DEVELOP AND MARKET THESE RESOURCES;

(b) COLORADO HAS A GREAT CAPACITY TO PRODUCE AND CONSUME CLEAN ENERGY, BUT ADDITIONAL PROJECTS, INCLUDING PROJECTS TO IMPROVE PRODUCTION, TRANSPORTATION, TRANSMISSION, AND STORAGE OF CLEAN ENERGY, ARE NEEDED TO DEVELOP AND MARKET THIS CAPACITY;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(c) TIMELY DEVELOPMENT OF PROJECTS FOR THE PRODUCTION, TRANSPORTATION, TRANSMISSION, AND STORAGE OF CLEAN ENERGY SOURCES WILL STABILIZE AND INCREASE STATE REVENUES;

(d) THE PROMOTION OF THE ECONOMIC WELFARE OF THE STATE AND ITS RESIDENTS THROUGH THE DEVELOPMENT AND UTILIZATION OF CLEAN ENERGY RESOURCES IS IN THE PUBLIC INTEREST AND SERVES A PUBLIC PURPOSE BECAUSE IT WILL INCREASE EMPLOYMENT, STIMULATE ECONOMIC ACTIVITY, AUGMENT SOURCES OF TAX REVENUE, FOSTER ECONOMIC STABILITY, AND IMPROVE THE BALANCE OF THE STATE'S ECONOMY;

(e) IT IS ALSO IN THE PUBLIC INTEREST AND IN FURTHERANCE OF A PUBLIC PURPOSE TO DEVELOP COLORADO'S VAST SOURCES OF CLEAN ENERGY FOR IN-STATE CONSUMPTION AND FOR EXPORT TO OTHER CLEAN ENERGY MARKETS AND TO PROMOTE COLORADO AS A NATIONAL CENTER FOR CLEAN ENERGY FINANCE AND DEVELOPMENT;

(f) INVESTMENT IN THE PRODUCTION, TRANSPORTATION, TRANSMISSION, AND STORAGE OF CLEAN ENERGY PURSUANT TO THE PROVISIONS OF THIS ARTICLE WILL RESULT IN SIGNIFICANT ENVIRONMENTAL BENEFITS BOTH WITHIN AND OUTSIDE COLORADO.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT THE PURPOSE OF THIS ARTICLE IS TO CREATE THE COLORADO CLEAN ENERGY DEVELOPMENT AUTHORITY AND TO ENDOW THE AUTHORITY WITH POWERS SUFFICIENT TO ENABLE IT TO:

(a) FACILITATE THE PRODUCTION AND CONSUMPTION OF CLEAN ENERGY; AND

(b) INCREASE THE TRANSMISSION AND USE OF CLEAN ENERGY BY FINANCING AND REFINANCING PROJECTS LOCATED WITHIN OR OUTSIDE THE STATE FOR THE PRODUCTION, TRANSPORTATION, TRANSMISSION, AND STORAGE OF CLEAN ENERGY, INCLUDING PIPELINES, AND RELATED SUPPORTING INFRASTRUCTURE AND INTERESTS HEREIN.

40-9.7-103. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "AUTHORITY" MEANS THE COLORADO CLEAN ENERGY DEVELOPMENT AUTHORITY CREATED IN SECTION 40-9.7-104.

(2) "AUTHORITY FINANCING AGREEMENT" MEANS A LOAN GUARANTY AGREEMENT, LEASE, SUBLEASE, RENTAL AGREEMENT, AGREEMENT TO PURCHASE OUTPUT OR PRODUCTS, GUARANTY OF AMOUNTS PAYABLE BY THE USER OR A THIRD-PARTY FINANCIER FOR A PROJECT LOCATED WITHIN THE STATE ONLY, OR ANY COMBINATION THEREOF THAT DOES NOT GIVE THE AUTHORITY OWNERSHIP OF OR AN OWNERSHIP INTEREST IN A PROJECT AND THAT IS ENTERED INTO BETWEEN THE AUTHORITY AND A USER OR THIRD-PARTY FINANCIER IN CONNECTION WITH THE FINANCING OR REFINANCING OF ANY PROJECT PURSUANT TO THIS ARTICLE; EXCEPT THAT THE AUTHORITY SHALL NOT MAKE A DIRECT COMMERCIAL LOAN TO A USER.

(3) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE AUTHORITY.

(4) "BOND" MEANS A BOND, NOTE, DEBENTURE, INTERIM CERTIFICATE, GRANT OR REVENUE ANTICIPATION NOTE, OR OTHER EVIDENCE OF INDEBTEDNESS AUTHORIZED TO BE ISSUED BY THE AUTHORITY PURSUANT TO THIS ARTICLE.

(5) "CLEAN ENERGY" MEANS ANY OF THE FOLLOWING FUELS THAT ARE THEMSELVES MANUFACTURED OR SYNTHESIZED AND ENERGY DERIVED FROM ANY OF THE FOLLOWING:

(a) BIODIESEL;

(b) BIOMASS RESOURCES SUCH AS BIOGAS, AGRICULTURAL OR ANIMAL WASTE, SMALL DIAMETER TIMBER, SALT CEDAR, OTHER NONNATIVE INVASIVE PHREATOPHYTE VEGETATION REMOVED FROM RIVER BASINS OR WATERSHEDS IN COLORADO, LANDFILL GAS, AND ANAEROBICALLY DIGESTED WASTE BIOMASS; EXCEPT THAT BIOMASS RESOURCES DO NOT INCLUDE ENERGY GENERATED BY USE OF FOSSIL FUEL;

(c) ETHANOL;

(d) FUEL CELLS THAT DO NOT USE FOSSIL FUELS;

(e) ZERO-EMISSIONS GENERATION TECHNOLOGY, INCLUDING EMISSION OF CARBON DIOXIDE, WITH LONG-TERM PRODUCTION POTENTIAL;

(f) RENEWABLE RESOURCES, INCLUDING BUT NOT LIMITED TO SOLAR, WIND, AND GEOTHERMAL RESOURCES; OR

(g) THE IGCC PROJECT DEFINED IN SECTION 40-2-123 (2) (b) (I).

(6) (a) "FINANCE" OR "FINANCING" MEANS:

(I) THE ISSUANCE OF BONDS BY THE AUTHORITY TO FINANCE A PROJECT OWNED BY A USER AND THE USE OF SUBSTANTIALLY ALL OF THE NET PROCEEDS OF SUCH BONDS TO PAY FOR, OR TO REIMBURSE THE USER OR ITS DESIGNEE FOR THE PAYMENT OF, THE COSTS OF THE PLANNING FOR OR THE DEVELOPMENT, ACQUISITION, CONSTRUCTION, MAINTENANCE, OPERATION, OR OWNERSHIP OF A PROJECT, WHETHER THE COSTS ARE INCURRED BY THE AUTHORITY, THE USER, OR THE USER'S DESIGNEE; OR

(II) THE GUARANTY BY THE AUTHORITY OF ALL OR ANY PORTION OF THE AMOUNTS PAYABLE BY THE USER UNDER ANY THIRD-PARTY FINANCING AGREEMENT SO LONG AS SUBSTANTIALLY ALL OF THE AMOUNTS PAYABLE TO THE USER PURSUANT TO THE AGREEMENT ARE USED TO PAY FOR OR TO REIMBURSE THE USER, A THIRD-PARTY FINANCIER, OR THEIR DESIGNEE FOR THE PAYMENT OF THE COSTS OF THE PLANNING, DEVELOPMENT, ACQUISITION, CONSTRUCTION, MAINTENANCE, OPERATION, OR OWNERSHIP OF A PROJECT LOCATED WITHIN THE STATE, WHETHER THE COSTS ARE INCURRED BY THE AUTHORITY, THE USER, OR THE THIRD-PARTY FINANCIER, OR ANY DESIGNEE THEREOF.

(7) "FINANCING AGREEMENT" MEANS AN AUTHORITY FINANCING AGREEMENT OR THIRD-PARTY FINANCING AGREEMENT.

(8) "FUND" MEANS THE COLORADO CLEAN ENERGY DEVELOPMENT AUTHORITY FUND CREATED IN SECTION 40-9.7-108.

(9) "PERSON" MEANS ANY INDIVIDUAL, CORPORATION, THE UNITED STATES GOVERNMENT, THIS STATE, ANY OTHER STATE, ANY LOCAL GOVERNMENT OF THIS STATE OR ANY OTHER STATE, ANY PUBLIC BODY, DEPARTMENT, AGENCY, OR INSTRUMENTALITY OF THE UNITED STATES GOVERNMENT, THIS STATE, ANY OTHER STATE, OR ANY PUBLIC BODY, BUSINESS TRUST, ESTATE, TRUST, LIMITED LIABILITY COMPANY, PARTNERSHIP, ASSOCIATION, OR OTHER LEGAL ENTITY.

(10) (a) "PROJECT" MEANS REAL PROPERTY INCLUDING LAND AND BUILDINGS OR OTHER IMPROVEMENTS, PERSONAL OR INTANGIBLE PROPERTY, AND ANY UNDIVIDED OR FRACTIONAL INTEREST, INCLUDING A USE INTEREST, IN REAL, PERSONAL, OR INTANGIBLE PROPERTY, WHETHER IN OR OUTSIDE THE STATE, WHETHER OR NOT IN EXISTENCE, USED OR TO BE USED FOR, OR IN CONNECTION WITH, THE FOLLOWING:

(I) THE PRODUCTION OF CLEAN ENERGY;

(II) THE TRANSPORTATION OF CLEAN ENERGY BY ANY MEANS, INCLUDING BY PIPELINE, CONTAINER, RAIL, OR TRUCK;

(III) THE TRANSMISSION OF CLEAN ENERGY BY ANY MEANS;

(IV) THE STORAGE OF CLEAN ENERGY; OR

(V) THE MANUFACTURING OF MAJOR EQUIPMENT OR COMPONENTS NEEDED TO PRODUCE CLEAN ENERGY.

(b) (I) A BIOMASS RESOURCES PROJECT MAY USE ENERGY THAT IS NOT CLEAN ENERGY IN THE PRODUCTION, TRANSPORTATION, OR STORAGE OF CLEAN ENERGY SO LONG AS THE BIOMASS RESOURCES PROJECT IS DESIGNED AND EXPECTED TO PRODUCE ONLY CLEAN ENERGY WITHIN FIVE YEARS OF BECOMING OPERATIONAL.

(II) A PROJECT OTHER THAN A BIOMASS RESOURCES PROJECT MAY TRANSPORT, TRANSMIT, OR STORE ENERGY THAT IS NOT CLEAN ENERGY SO LONG AS, IN THE CASE OF A TRANSMISSION PROJECT, THE PRINCIPAL PURPOSE IS TO PROVIDE FOR TRANSMISSION OF CLEAN ENERGY OR, IN THE CASE OF A TRANSPORT OR STORAGE PROJECT, THE PROJECT IS DESIGNED AND IS EXPECTED TO BE USED TO TRANSPORT OR STORE PRIMARILY CLEAN ENERGY WITHIN FIVE YEARS OF BECOMING OPERATIONAL.

(11) "PUBLIC BODY" INCLUDES, BUT IS NOT LIMITED TO, THE STATE, ANY INSTITUTION, AGENCY, COUNTY, CITY AND COUNTY, MUNICIPALITY, DISTRICT, OR OTHER POLITICAL SUBDIVISION OF THE STATE, ANY DEPARTMENT, AGENCY, OR INSTRUMENTALITY THEREOF, AND ANY POLITICAL OR PUBLIC CORPORATION, BOARD, OR COMMISSION.

(12) "PUBLIC UTILITY" MEANS A PUBLIC UTILITY AS DEFINED IN SECTION 40-1-103 AND REGULATED BY THE PUBLIC UTILITIES COMMISSION CREATED, IN SECTION

40-2-101.

(13) "REFINANCE" OR "REFINANCING" MEANS:

(a) THE ISSUANCE OF BONDS BY THE AUTHORITY AND THE USE OF SUBSTANTIALLY ALL OF THE NET PROCEEDS THEREFROM TO LIQUIDATE ANY OBLIGATIONS PREVIOUSLY INCURRED TO FINANCE OR AID IN THE FINANCING OF A PROJECT NOT ORIGINALLY UNDERTAKEN OR FINANCED BY THE AUTHORITY PURSUANT TO THIS ARTICLE; OR

(b) THE GUARANTY BY THE AUTHORITY OF ALL OR ANY PORTION OF THE AMOUNT PAYABLE BY THE USER UNDER ANY THIRD-PARTY FINANCING AGREEMENT, OR AN INTEREST IN A THIRD-PARTY FINANCING AGREEMENT, IF SUBSTANTIALLY ALL AMOUNTS SO GUARANTEED ARE USED TO PAY, OR PROVIDE FOR THE PAYMENT OF, ANY OBLIGATIONS PREVIOUSLY INCURRED TO FINANCE OR AID IN THE FINANCING OF A PROJECT LOCATED WITHIN THE STATE AND NOT ORIGINALLY UNDERTAKEN OR FINANCED BY THE AUTHORITY PURSUANT TO THIS ARTICLE.

(14) "THIRD-PARTY FINANCIER" MEANS A PERSON, OTHER THAN THE AUTHORITY, THAT ENTERS INTO A THIRD-PARTY FINANCING AGREEMENT WITH A USER.

(15) "THIRD-PARTY FINANCING AGREEMENT" MEANS A LOAN AGREEMENT, LEASE, SUBLEASE, RENTAL AGREEMENT, AGREEMENT TO PURCHASE OUTPUT OR PRODUCTS, GUARANTY OF AMOUNTS PAYABLE BY THE USER OR A THIRD-PARTY FINANCIER FOR A PROJECT LOCATED WITHIN THE STATE ONLY, OR ANY OTHER AGREEMENT OR COMBINATION THEREOF THAT DOES NOT GIVE THE AUTHORITY OWNERSHIP OF OR AN OWNERSHIP INTEREST IN A PROJECT AND THAT IS ENTERED INTO BETWEEN A USER AND A PERSON OTHER THAN THE AUTHORITY IN CONNECTION WITH THE FINANCING OR REFINANCING OF ANY PROJECT PURSUANT TO THIS ARTICLE.

(16) "USER" MEANS ONE OR MORE PERSONS OR A RENEWABLE ENERGY OPERATIVE ESTABLISHED PURSUANT TO SECTION 7-56-210, C.R.S., WHO ENTER INTO AN AUTHORITY FINANCING AGREEMENT WITH THE AUTHORITY OR A THIRD-PARTY FINANCING AGREEMENT WITH A THIRD-PARTY FINANCIER RELATING TO A PROJECT. "USER" MAY INCLUDE, BUT NEED NOT BE LIMITED TO, THE PERSON ACTUALLY OCCUPYING, OPERATING, OR MAINTAINING THE PROJECT.

40-9.7-104. Colorado clean energy development authority - creation - board membership. (1) THERE IS HEREBY CREATED THE COLORADO CLEAN ENERGY DEVELOPMENT AUTHORITY, AN INDEPENDENT PUBLIC BODY POLITIC AND CORPORATE. THE AUTHORITY IS CONSTITUTED A PUBLIC INSTRUMENTALITY, AND ITS EXERCISE OF THE POWERS CONFERRED BY THIS ARTICLE SHALL BE DEEMED AND HELD TO BE THE PERFORMANCE OF AN ESSENTIAL PUBLIC FUNCTION IN FURTHERANCE OF A PUBLIC PURPOSE. THE AUTHORITY SHALL BE A POLITICAL SUBDIVISION OF THE STATE, SHALL NOT BE AN AGENCY OF STATE GOVERNMENT, AND SHALL NOT BE SUBJECT TO ADMINISTRATIVE DIRECTION BY ANY DEPARTMENT, COMMISSION, BOARD, OR AGENCY OF THE STATE.

(2) THE AUTHORITY SHALL BE GOVERNED BY A BOARD OF DIRECTORS, WHICH SHALL EXERCISE THE POWERS OF THE AUTHORITY AND SHALL BE COMPOSED OF NINE MEMBERS, INCLUDING:

(a) THE FOLLOWING FOUR EX OFFICIO MEMBERS OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT OR THEIR DESIGNEES:

(I) THE STATE TREASURER;

(II) THE DIRECTOR OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT CREATED IN SECTION 24-48.5-101 (1), C.R.S.;

(III) THE COMMISSIONER OF AGRICULTURE; AND

(IV) THE DIRECTOR OF THE GOVERNOR'S OFFICE OF ENERGY MANAGEMENT AND CONSERVATION, WHO SHALL SERVE AS THE CHAIRPERSON OF THE BOARD.

(b) ONE MEMBER APPOINTED BY THE GOVERNOR. THE GOVERNOR SHALL MAKE THE GOVERNOR'S INITIAL APPOINTMENT TO THE BOARD ON OR BEFORE AUGUST 1, 2007. THE TERM OF THE MEMBER APPOINTED BY THE GOVERNOR SHALL BE FOUR YEARS.

(c) ONE MEMBER APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES. THE SPEAKER SHALL MAKE THE SPEAKER'S INITIAL APPOINTMENT TO THE BOARD ON OR BEFORE AUGUST 1, 2007. THE TERM OF THE MEMBER APPOINTED BY THE SPEAKER SHALL BE FOUR YEARS; EXCEPT THAT THE TERM OF THE MEMBER INITIALLY APPOINTED BY THE SPEAKER SHALL BE TWO YEARS.

(d) ONE MEMBER APPOINTED BY THE PRESIDENT OF THE SENATE. THE PRESIDENT SHALL MAKE THE PRESIDENT'S INITIAL APPOINTMENT TO THE BOARD ON OR BEFORE AUGUST 1, 2007. THE TERM OF THE MEMBER APPOINTED BY THE PRESIDENT SHALL BE FOUR YEARS.

(e) ONE MEMBER APPOINTED BY THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES. THE MINORITY LEADER SHALL MAKE THE MINORITY LEADER'S INITIAL APPOINTMENT TO THE BOARD ON OR BEFORE AUGUST 1, 2007. THE TERM OF THE MEMBER APPOINTED BY THE MINORITY LEADER SHALL BE FOUR YEARS; EXCEPT THAT THE TERM OF THE MEMBER INITIALLY APPOINTED BY THE MINORITY LEADER SHALL BE TWO YEARS.

(f) ONE MEMBER APPOINTED BY THE MINORITY LEADER OF THE SENATE. THE MINORITY LEADER SHALL MAKE THE MINORITY LEADER'S INITIAL APPOINTMENT TO THE BOARD ON OR BEFORE AUGUST 1, 2007. THE TERM OF THE MEMBER APPOINTED BY THE MINORITY LEADER SHALL BE FOUR YEARS.

(3) THE MEMBERS OF THE BOARD SHALL ELECT A VICE-CHAIRPERSON AND A SECRETARY.

(4) THE APPOINTED MEMBERS OF THE BOARD SHALL BE QUALIFIED VOTERS OF THE STATE WHO HAVE SPECIALIZED KNOWLEDGE OR COMPETENCE REGARDING THE FIELD OF CLEAN ENERGY DEVELOPMENT, THE PUBLIC UTILITY INDUSTRY, BANKING, OR PUBLIC FINANCE, AS EVIDENCED BY ACADEMIC COURSE WORK, DEGREES, OR SIGNIFICANT WORK EXPERIENCE IN MANAGEMENT POSITIONS IN SAID FIELDS OR INDUSTRY.

(5) NOTWITHSTANDING ANY OTHER LAW, IT IS NOT A CONFLICT OF INTEREST FOR TRUSTEE, DIRECTOR, OFFICER, OR EMPLOYEE OF ANY PUBLIC UTILITY, FINANCIAL INSTITUTION, INVESTMENT BANKING FIRM, BROKERAGE FIRM, COMMERCIAL BANK OR TRUST COMPANY, INSURANCE COMPANY, OR OTHER FIRM, CORPORATION, OR BUSINESS ENTITY TO SERVE AS A BOARD MEMBER, THE EXECUTIVE DIRECTOR OF THE AUTHORITY, OR AN EMPLOYEE OF THE AUTHORITY. HOWEVER, A BOARD MEMBER, EXECUTIVE DIRECTOR, OR OTHER EMPLOYEE WHO IS ALSO SUCH A TRUSTEE, DIRECTOR, OFFICER, OR EMPLOYEE SHALL DISCLOSE HIS OR HER BUSINESS AFFILIATION TO THE BOARD AND SHALL ABSTAIN FROM VOTING OR OTHERWISE TAKING ACTION IN ANY INSTANCE IN WHICH HIS OR HER BUSINESS AFFILIATION IS DIRECTLY INVOLVED.

40-9.7-105. Meetings of authority - quorum - expenses. (1) FIVE MEMBERS OF THE BOARD SHALL CONSTITUTE A QUORUM FOR THE PURPOSE OF CONDUCTING BUSINESS AND EXERCISING THE POWERS OF THE BOARD. ACTION MAY BE TAKEN BY THE BOARD UPON THE AFFIRMATIVE VOTE OF AT LEAST FIVE OF ITS MEMBERS. NO VACANCY IN THE MEMBERSHIP OF THE BOARD SHALL IMPAIR THE RIGHT OF A QUORUM TO EXERCISE ALL THE RIGHTS AND PERFORM ALL THE DUTIES OF THE BOARD.

(2) THE AUTHORITY SHALL BE SUBJECT TO THE OPEN MEETINGS PROVISIONS OF THE "COLORADO SUNSHINE ACT OF 1972" CONTAINED IN PART 4 OF ARTICLE 6 OF TITLE 24, C.R.S., AND THE OPEN RECORDS PROVISIONS OF ARTICLE 72 OF TITLE 24, C.R.S.

(3) THE BOARD SHALL PROMULGATE AND ADHERE TO POLICIES AND PROCEDURES THAT GOVERN ITS CONDUCT AND PROVIDE MEANINGFUL OPPORTUNITIES FOR PUBLIC INPUT. THE POLICIES SHALL INCLUDE STANDARDS AND PROCEDURES FOR CALLING AN EMERGENCY MEETING.

(4) MEMBERS OF THE BOARD SHALL RECEIVE NO COMPENSATION FOR SERVICES IT SHALL BE ENTITLED TO THE NECESSARY EXPENSES, INCLUDING TRAVEL AND LODGING EXPENSES, INCURRED IN THE DISCHARGE OF THEIR OFFICIAL DUTIES. ANY PAYMENTS FOR COMPENSATION AND EXPENSES SHALL BE PAID FROM FUNDS OF THE AUTHORITY.

40-9.7-106. Authority - duties and powers. (1) THE AUTHORITY SHALL:

(a) HIRE AN EXECUTIVE DIRECTOR AND SUCH OTHER EMPLOYEES OR OTHER AGENTS AS IT DEEMS NECESSARY FOR THE PERFORMANCE OF ITS POWERS AND DUTIES, INCLUDING CONSULTANTS, FINANCIAL ADVISORS, AND LEGAL ADVISORS, AND PRESCRIBE THE POWERS AND DUTIES AND FIX THE COMPENSATION OF THE EMPLOYEES AND AGENTS. THE EXECUTIVE DIRECTOR OF THE AUTHORITY SHALL DIRECT THE AFFAIRS AND BUSINESS OF THE AUTHORITY, SUBJECT TO THE POLICIES, CONTROL, AND DIRECTION OF THE BOARD.

(b) MAINTAIN RECORDS AND ACCOUNTS OF REVENUES AND EXPENDITURES AS REQUIRED BY THE STATE AUDITOR;

(c) (I) CONVENE QUALIFIED TASK FORCES TO DEVELOP PROPOSED RECOMMENDATIONS FOR ITS CONSIDERATION, AMENDMENT, AND ADOPTION AND

THEREAFTER ITSELF ADOPT OFFICIAL RECOMMENDATIONS FOR THE GENERAL ASSEMBLY REGARDING THE TYPES OF CLEAN ENERGY PROJECTS THAT THE AUTHORITY SHOULD FINANCE, REFINANCE, OR OTHERWISE SUPPORT. THE AUTHORITY SHALL CONVENE THE TASK FORCES AS SOON AS THE AUTHORITY DETERMINES THAT IT HAS RECEIVED SUFFICIENT MONEYS FROM GIFTS, GRANTS, DONATIONS, OR PROJECT FEES TO ADEQUATELY FUND THE ACTIVITIES OF THE TASK FORCES. THE TASK FORCES SHALL DEVELOP AND THE AUTHORITY SHALL ADOPT FINAL RECOMMENDATIONS AS TO:

(A) WHETHER HYDROELECTRIC POWER GENERATION PROJECTS SHOULD BE CONSIDERED CLEAN ENERGY PROJECTS THAT THE AUTHORITY MAY FINANCE, REFINANCE, OR OTHERWISE SUPPORT AND, IF SO, THE NATURE OF ANY RESTRICTIONS, INCLUDING BUT NOT LIMITED TO TECHNOLOGICAL OR NAMEPLATE RATING REQUIREMENTS, THAT SUCH PROJECTS SHOULD SATISFY AS A PREREQUISITE TO AUTHORITY FINANCING, REFINANCING, OR OTHER SUPPORT;

(B) WHETHER PROJECTS THAT INVOLVE INTEGRATED GASIFICATION COMBINED CYCLE GENERATION FACILITIES OR IGCC FACILITIES, AS DEFINED IN SECTION 40-2-123 (2) (b) (II), OTHER THAN THE IGCC PROJECT DESCRIBED IN SECTION 40-2-123 (2) (b) (I) THAT IS SPECIFICALLY DEFINED AS CLEAN ENERGY PURSUANT TO SECTION 40-9.7-103 (5) (g), OR OTHER CLEAN COAL TECHNOLOGIES THAT HAVE THE POTENTIAL FOR SUBSTANTIAL SEQUESTRATION OF CARBON EMISSIONS SHOULD BE CONSIDERED CLEAN ENERGY PROJECTS THAT THE AUTHORITY MAY FINANCE, REFINANCE, OR OTHERWISE SUPPORT, AND, IF SO, THE NATURE AND EXTENT OF ANY RESTRICTIONS, INCLUDING BUT NOT LIMITED TO SPECIFIC CARBON DIOXIDE EMISSIONS SEQUESTRATION REQUIREMENTS, THAT SUCH PROJECTS SHOULD SATISFY AS A PREREQUISITE TO AUTHORITY FINANCING, REFINANCING, OR OTHER SUPPORT; AND

(C) WHETHER ADDITIONAL RESTRICTIONS ON THE TYPES OF BIOMASS PROJECTS THAT ARE CONSIDERED CLEAN ENERGY PROJECTS THAT THE AUTHORITY MAY FINANCE, REFINANCE, OR OTHERWISE SUPPORT ARE APPROPRIATE AND, IF SO, WHAT RESTRICTIONS SHOULD BE.

(II) BEFORE DEVELOPING AND ADOPTING RECOMMENDATIONS AS REQUIRED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (c), THE TASK FORCES AND AUTHORITY SHALL SOLICIT PUBLIC INPUT REGARDING THE ISSUES FOR WHICH RECOMMENDATIONS ARE TO BE DEVELOPED AND ADOPTED. THE AUTHORITY SHALL INCLUDE ITS RECOMMENDATIONS IN EITHER ITS INITIAL THREE-YEAR PLAN PREPARED PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (3) OR, WITH RESPECT TO ANY RECOMMENDATION THAT IS NOT DEVELOPED AND ADOPTED BY FEBRUARY 1, 2008, IN THE FIRST THREE-YEAR PLAN THAT FOLLOWS THE DEVELOPMENT AND ADOPTION OF THE RECOMMENDATION.

(d) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (IV) OF THIS PARAGRAPH (d), BEFORE FINANCING, REFINANCING, OR OTHERWISE SUPPORTING ANY PROJECT, DEVELOP, ADOPT, AND PUBLISH A THREE-YEAR PLAN FOR ITS ACTIVITIES THAT INCLUDES:

(A) A DESCRIPTION OF HOW THE PLANNED ACTIVITIES OF THE AUTHORITY ARE CONSISTENT WITH THE FINDINGS AND DECLARATIONS OF THE GENERAL ASSEMBLY

EXPRESSED IN SECTION 40-9.7-102; AND

(B) A DESCRIPTION OF THE PRIORITIES OF THE AUTHORITY IN EXERCISING ITS POWERS AND DUTIES, INCLUDING A SPECIFIC DESCRIPTION OF THE RELATIVE EMPHASES PLACED BY THE AUTHORITY ON FUEL AND ELECTRICITY PROJECTS AND ON PROJECTS LOCATED WITHIN OR OUTSIDE THE STATE.

(II) THE AUTHORITY SHALL DEVELOP, PUBLISH, AND ADOPT A NEW THREE-YEAR ACTIVITY PLAN THAT INCLUDES THE DESCRIPTIONS SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (d) FOR EACH THREE-YEAR PERIOD FOLLOWING THE PERIOD COVERED BY ITS INITIAL THREE-YEAR PLAN.

(III) BEFORE ADOPTING ANY THREE-YEAR PLAN REQUIRED BY SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (d), THE AUTHORITY SHALL DEVELOP AND PUBLISH A DRAFT OF THE PLAN AND SOLICIT PUBLIC COMMENTS ON THE PLAN.

(IV) THE AUTHORITY SHALL ADOPT AND SUBMIT ITS INITIAL THREE-YEAR PLAN TO THE AGRICULTURE, NATURAL RESOURCES, AND ENERGY COMMITTEE OF THE SENATE AND THE TRANSPORTATION AND ENERGY COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, NO LATER THAN FEBRUARY 1, 2008, AND SHALL ADOPT AND SUBMIT TO SAID COMMITTEES ITS SUBSEQUENT THREE-YEAR PLANS NO LATER THAN FEBRUARY 1 OF EVERY THIRD YEAR THEREAFTER.

(V) THE AUTHORITY MAY FINANCE, REFINANCE, OR OTHERWISE LEND SUPPORT TO THE PROJECTS DESCRIBED IN SECTION 40-9.7-108 (3) (d) BEFORE DEVELOPING, ADOPTING, AND PUBLISHING A PLAN REQUIRED BY SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (d).

(2) IN ADDITION TO ANY OTHER POWERS SPECIFICALLY GRANTED TO THE AUTHORITY IN THIS ARTICLE, THE AUTHORITY HAS THE FOLLOWING POWERS:

(a) TO HAVE PERPETUAL EXISTENCE AND SUCCESSION AS A BODY POLITIC AND CORPORATE;

(b) TO HAVE AND TO USE A SEAL AND TO ALTER THE SAME AT ITS PLEASURE;

(c) TO MAINTAIN AN OFFICE AT SUCH PLACE AS IT MAY DESIGNATE;

(d) TO ADOPT AND FROM TIME TO TIME AMEND OR REPEAL BYLAWS FOR THE REGULATION OF ITS AFFAIRS AND THE CONDUCT OF ITS BUSINESS, CONSISTENT WITH THE PROVISIONS OF THIS ARTICLE;

(e) TO FIX THE TIME AND PLACE OF BOARD MEETINGS, WHETHER WITHIN OR OUTSIDE THE STATE, AND THE METHOD OF PROVIDING NOTICE OF THE MEETINGS;

(f) TO MAKE AND PASS ORDERS AND RESOLUTIONS NECESSARY FOR THE GOVERNMENT AND MANAGEMENT OF THE AFFAIRS OF THE AUTHORITY AND THE EXECUTION OF THE POWERS VESTED IN THE AUTHORITY;

(g) TO APPOINT ADVISORY COMMITTEES AND TO DEFINE THE DUTIES THEREOF;

(h) TO SUE AND BE SUED;

(i) TO FINANCE AND REFINANCE PROJECTS LOCATED WITHIN OR OUTSIDE THE STATE AND TO ENTER INTO AND PERFORM ITS OBLIGATIONS UNDER FINANCING AGREEMENTS;

(j) TO ISSUE BONDS AND REFUNDING BONDS IN ACCORDANCE WITH SECTION 40-9.7-107;

(k) TO ENTER INTO AND PERFORM ITS OBLIGATIONS UNDER CONTRACTS AND AGREEMENTS AFFECTING THE AFFAIRS, ASSETS, REVENUES, AND PROPERTY OF THE AUTHORITY AND AFFECTING ANY BONDS, FINANCING AGREEMENTS, OR ANY OTHER CONTRACTS OF THE AUTHORITY, INCLUDING, BUT NOT LIMITED TO, CONTRACTS FOR THE ORIGINATION, PROCESSING, AND SERVICING OF FINANCING AGREEMENTS;

(l) TO PURCHASE OR ARRANGE FOR BOND INSURANCE, LETTERS OF CREDIT, STANDBY BOND PURCHASE AGREEMENTS, INTEREST RATE HEDGING, AND OTHER FINANCIAL ARRANGEMENTS WITH RESPECT TO ANY BONDS, FINANCING AGREEMENTS, OR OTHER CONTRACTS AUTHORIZED BY THIS ARTICLE;

(m) TO PLEDGE ALL OR ANY PORTION OF THE REVENUES PAYABLE TO THE AUTHORITY PURSUANT TO A FINANCING AGREEMENT TO SECURE BONDS OR THE OBLIGATIONS OF THE AUTHORITY UNDER ANY FINANCING AGREEMENT OR CONTRACT AUTHORIZED BY THIS ARTICLE;

(n) TO USE MONEYS IN THE FUND OR ANY ACCOUNT THEREOF TO MAKE LOANS TO USERS OR THIRD-PARTY FINANCIERS OR TO ENTER INTO OTHER FINANCING AGREEMENTS IN CONNECTION WITH THE FINANCING OR REFINANCING OF PROJECTS IN ACCORDANCE WITH SECTION 40-9.7-108;

(o) TO USE OR PLEDGE ALL OR ANY PORTION OF THE FUND OR ANY ACCOUNT THEREOF TO PAY OR SECURE THE PAYMENT OF BONDS OR THE OBLIGATIONS OF THE AUTHORITY UNDER ANY FINANCING AGREEMENT OR CONTRACT AUTHORIZED BY THIS ARTICLE IN ACCORDANCE WITH SECTION 40-9.7-108;

(p) IN CONNECTION WITH A FINANCING, A REFINANCING, OR BONDS ISSUED TO FINANCE OR REFINANCE A PROJECT PURSUANT TO AN ARRANGEMENT UNDER WHICH TITLE TO OR IN A PROJECT OR AN INTEREST THEREIN REMAINS WITH THE USER OR A THIRD-PARTY FINANCIER, TO GRANT A MORTGAGE OR OTHER LIEN UPON OR SECURITY INTEREST IN SUCH PROJECT OR AN INTEREST THEREIN OR ANY OTHER PROPERTY OF THE USER OR THE THIRD-PARTY FINANCIER, UPON OR IN ONE OR MORE NOTES, DEBENTURES, BONDS, LOAN AGREEMENTS, LEASES, SUBLEASES, RENTAL AGREEMENTS, OPTIONS TO PURCHASE, AGREEMENTS TO PURCHASE OUTPUT OR PRODUCTS, GUARANTEES, OR ANY OTHER PROPERTY OF THE USER OR THIRD-PARTY FINANCIER OR UPON OR IN ANY OTHER SECURED OR UNSECURED OBLIGATIONS OF THE USER OR A THIRD-PARTY FINANCIER, AS THE AUTHORITY DEEMS ADVISABLE;

(q) TO RECEIVE AND ACCEPT FROM ANY SOURCE AID, GRANTS OR CONTRIBUTIONS OF MONEY, CONVEYANCES OF REAL OR PERSONAL PROPERTY, LABOR, OR OTHER THINGS OF VALUE, INCLUDING, BUT NOT LIMITED TO, GIFTS OR GRANTS FROM ANY DEPARTMENT, AGENCY, OR INSTRUMENTALITY OF THE UNITED STATES, UPON SUCH

TERMS AND CONDITIONS AS THE AUTHORITY MAY APPROVE TO BE HELD, USED, AND APPLIED BY THE AUTHORITY TO CARRY OUT THE PURPOSES OF THIS ARTICLE SUBJECT TO ANY CONDITIONS UPON WHICH THE AID, GRANTS OR CONTRIBUTIONS, PROPERTY, LABOR, OR OTHER THINGS OF VALUE ARE PROVIDED;

(r) TO PROCURE INSURANCE AGAINST ANY LOSS IN CONNECTION WITH ITS PROPERTY AND OTHER ASSETS, INCLUDING LOANS AND LOAN NOTES, IN SUCH AMOUNTS AND FROM SUCH INSURERS AS IT MAY DEEM ADVISABLE;

(s) TO PROCURE INSURANCE OR GUARANTEES FROM ANY PUBLIC OR PRIVATE ENTITY, INCLUDING ANY DEPARTMENT, AGENCY, OR INSTRUMENTALITY OF THE UNITED STATES, FOR PAYMENT OF ANY BONDS ISSUED BY THE AUTHORITY AND TO PAY PREMIUMS FOR ANY SUCH INSURANCE;

(t) TO ENTER INTO CONTRACTS AND AGREEMENTS WITH ANY USER, THIRD-PARTY FINANCIER, OR PERSON;

(u) TO PROVIDE TECHNICAL ASSISTANCE TO LOCAL PUBLIC BODIES AND FOR-PROFIT AND NONPROFIT ENTITIES IN THE DEVELOPMENT OR OPERATION OF PROJECTS AND TO DISTRIBUTE DATA AND INFORMATION CONCERNING THE ENCOURAGEMENT AND IMPROVEMENT OF PROJECTS;

(v) TO ENTER INTO ONE OR MORE AGREEMENTS OR CONTRACTS WITH THE UNITED STATES GOVERNMENT, THIS STATE, ANY OTHER STATE, ANY LOCAL GOVERNMENT OF THIS STATE OR ANY OTHER STATE, ANY PUBLIC BODY, OR ANY DEPARTMENT, AGENCY, OR INSTRUMENTALITY OF THE UNITED STATES GOVERNMENT, THIS STATE, ANY OTHER STATE, OR ANY PUBLIC BODY, IN ORDER TO JOINTLY FINANCE OR REFINANCE ONE OR MORE PROJECTS AND TO COOPERATE WITH AND EXCHANGE SERVICES, PERSONNEL, AND INFORMATION WITH ANY SUCH GOVERNMENT, PUBLIC BODY, DEPARTMENT, AGENCY, OR INSTRUMENTALITY;

(w) TO SELL, AT PUBLIC OR PRIVATE SALE, WITH OR WITHOUT PUBLIC BIDDING, NOTES, DEBENTURES, BONDS, LOAN AGREEMENTS, LEASES, SUBLEASES, RENTAL AGREEMENTS, AGREEMENTS TO PURCHASE OUTPUT OR PRODUCTS, GUARANTEES, OR ANY OTHER SECURED OR UNSECURED OBLIGATIONS HELD BY THE AUTHORITY;

(x) TO PROVIDE INFORMATION AND TRAINING TO EMPLOYEES OF A PROJECT REGARDING ANY UNIQUE HAZARDS THAT MAY BE POSED BY THE PROJECT, AS WELL AS TRAINING IN SAFETY WORK PRACTICES AND EMERGENCY PROCEDURES; AND

(y) TO HAVE AND EXERCISE ALL RIGHTS AND POWERS NECESSARY OR INCIDENTAL TO OR IMPLIED FROM THE SPECIFIC POWERS GRANTED BY THIS ARTICLE AND TO DO ALL OTHER THINGS NECESSARY AND CONVENIENT TO CARRY OUT THE PURPOSES OF THIS ARTICLE.

(3) IN PERFORMING ITS DUTIES AND EXERCISING ITS POWERS UNDER THIS ARTICLE, THE AUTHORITY SHALL, TO THE GREATEST EXTENT FEASIBLE, SEEK TO ENSURE AND PROVIDE OPEN NONDISCRIMINATORY ACCESS TO CLEAN ENERGY PROJECT FINANCING AND THE USE OF CLEAN ENERGY PROJECTS THAT THE AUTHORITY FINANCES, REFINANCES, OR GUARANTEES.

40-9.7-107. Bonds. (1) SUBJECT TO SECTION 40-9.7-109, THE AUTHORITY MAY ISSUE BONDS FOR ANY OF ITS CORPORATE PURPOSES AND MAY PAY AND SECURE THE BONDS BY, AND PLEDGE FOR THE PAYMENT AND SECURITY OF THE BONDS, ALL OR ANY PORTION OF THE FUND, THE RIGHT, TITLE, AND INTEREST OF THE AUTHORITY IN AND TO REVENUES FROM ANY PROJECT, FINANCING AGREEMENT, MORTGAGE, LIEN, OR OTHER SECURITY INTEREST PERMITTED BY SECTION 40-9.7-106 (2) (p), OR ANY OTHER REVENUES, MONEY, PROPERTY, CONTRACT RIGHTS, OR OTHER RIGHTS OF THE AUTHORITY. BONDS SHALL BE ISSUED PURSUANT TO A RESOLUTION OF THE AUTHORITY.

(2) AS PROVIDED IN THE RESOLUTION OF THE AUTHORITY UNDER WHICH BONDS ARE AUTHORIZED TO BE ISSUED OR AS PROVIDED IN A TRUST INDENTURE BETWEEN THE AUTHORITY AND ANY COMMERCIAL BANK OR TRUST COMPANY HAVING FULL TRUST POWERS, BONDS MAY:

- (a) BE EXECUTED AND DELIVERED BY THE AUTHORITY AT SUCH TIMES;
 - (b) BE IN SUCH FORM AND DENOMINATIONS AND INCLUDE SUCH TERMS AND MATURITIES;
 - (c) BE SUBJECT TO OPTIONAL OR MANDATORY REDEMPTION PRIOR TO MATURITY WITH OR WITHOUT A PREMIUM;
 - (d) BE IN FULLY REGISTERED FORM OR BEARER FORM REGISTRABLE AS TO PRINCIPAL OR INTEREST OR BOTH;
 - (e) BEAR SUCH CONVERSION PRIVILEGES;
 - (f) BE PAYABLE IN SUCH INSTALLMENTS AND AT SUCH TIMES NOT EXCEEDING FIFTY YEARS FROM THE DATE THEREOF;
 - (g) BE PAYABLE AT SUCH PLACE OR PLACES WHETHER WITHIN OR OUTSIDE THE STATE;
 - (h) BEAR INTEREST AT SUCH RATE OR RATES PER ANNUM, WHICH MAY BE FIXED OR VARY ACCORDING TO INDEX, PROCEDURE, OR FORMULA OR AS DETERMINED BY THE AUTHORITY OR ITS AGENTS, WITHOUT REGARD TO ANY INTEREST RATE LIMITATION APPEARING IN ANY OTHER LAW OF THE STATE;
 - (i) BE SUBJECT TO PURCHASE AT THE OPTION OF THE HOLDER OR THE AUTHORITY;
 - (j) BE EVIDENCED IN SUCH MANNER;
 - (k) BE EXECUTED BY SUCH OFFICERS OF THE AUTHORITY, INCLUDING THE USE OF ONE OR MORE FACSIMILE SIGNATURES SO LONG AS AT LEAST ONE MANUAL SIGNATURE OF AN OFFICER OF THE AUTHORITY OR OF AN AGENT AUTHENTICATING THE SAME APPEARS ON THE BONDS;
 - (l) BE IN THE FORM OF COUPON BONDS THAT HAVE ATTACHED INTEREST COUPONS BEARING A MANUAL OR FACSIMILE SIGNATURE OF AN OFFICER OF THE AUTHORITY;
- AND

(m) CONTAIN SUCH PROVISIONS NOT INCONSISTENT WITH THIS ARTICLE.

(3) BONDS MAY BE SOLD AT PUBLIC OR PRIVATE SALE AT SUCH PRICE OR PRICES, IN SUCH MANNER, AND AT SUCH TIMES AS DETERMINED BY THE AUTHORITY, AND THE AUTHORITY MAY PAY ALL FEES, EXPENSES, AND COMMISSIONS THAT IT DEEMS NECESSARY OR ADVANTAGEOUS IN CONNECTION WITH THE SALE OF THE BONDS. THE POWER TO FIX THE DATE OF SALE OF THE BONDS, TO RECEIVE BIDS OR PROPOSALS, TO AWARD AND SELL BONDS, TO FIX INTEREST RATES, AND TO TAKE ALL OTHER ACTION NECESSARY TO SELL AND DELIVER THE BONDS MAY BE DELEGATED TO AN OFFICER OR AGENT OF THE AUTHORITY. ANY OUTSTANDING BONDS MAY BE REFUNDED BY THE AUTHORITY PURSUANT TO ARTICLE 56 OF TITLE 11, C.R.S.; EXCEPT THAT THE MATURITY OF ANY REFUNDING BONDS SHALL NOT EXCEED FIFTY YEARS NOTWITHSTANDING ANY PROVISION OF ARTICLE 56 OF TITLE 11, C.R.S., TO THE CONTRARY. ALL BONDS AND ANY APPLICABLE INTEREST COUPONS ARE DECLARED TO BE NEGOTIABLE INSTRUMENTS.

(4) SUBJECT TO THE PROVISIONS OF SECTION 40-9.7-109, THE RESOLUTION OR TRUST INDENTURE AUTHORIZING THE ISSUANCE OF BONDS MAY CONTAIN SUCH PROVISIONS FOR PROTECTING AND ENFORCING THE RIGHTS AND REMEDIES OF HOLDERS OF ANY OF THE BONDS AS THE AUTHORITY DEEMS APPROPRIATE, MAY SET FORTH THE RIGHTS AND REMEDIES OF THE HOLDERS OF ANY OF THE BONDS, AND MAY CONTAIN PROVISIONS THAT THE AUTHORITY DEEMS APPROPRIATE FOR THE SECURITY OF THE HOLDERS OF THE BONDS, INCLUDING, BUT NOT LIMITED TO, PROVISIONS FOR LETTERS OF CREDIT, INSURANCE, STANDBY CREDIT AGREEMENTS, OR OTHER FORMS OF CREDIT INSURING TIMELY PAYMENT OF THE BONDS, INCLUDING THE REDEMPTION PRICE OR THE PURCHASE PRICE.

(5) ANY PLEDGE OF REVENUES OR PROPERTY MADE BY THE AUTHORITY OR BY ANY PERSON OR GOVERNMENTAL UNIT WITH WHICH THE AUTHORITY CONTRACTS SHALL BE VALID AND BINDING FROM THE TIME THE PLEDGE IS MADE. THE REVENUES OR PROPERTY PLEDGED SHALL IMMEDIATELY BE SUBJECT TO THE LIEN OF THE PLEDGE WITHOUT ANY PHYSICAL DELIVERY OR FURTHER ACT, AND THE LIEN OF THE PLEDGE SHALL BE VALID AND BINDING AGAINST ALL PARTIES HAVING CLAIMS OF ANY KIND IN TORT, CONTRACT, OR OTHERWISE AGAINST THE PLEDGING PARTY, IRRESPECTIVE OF WHETHER THE CLAIMING PARTY HAS NOTICE OF THE LIEN. THE INSTRUMENT BY WHICH THE PLEDGE IS CREATED NEED NOT BE RECORDED OR FILED.

(6) THE MEMBERS OF THE AUTHORITY, EMPLOYEES OF THE AUTHORITY, AND ANY PERSON EXECUTING BONDS ARE NOT LIABLE PERSONALLY ON THE BONDS OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE THEREOF.

(7) THE AUTHORITY MAY PURCHASE ITS BONDS OUT OF ANY AVAILABLE FUNDS AND MAY HOLD, PLEDGE, CANCEL, OR RESELL THE BONDS SUBJECT TO AND IN ACCORDANCE WITH AGREEMENTS WITH THE BOND HOLDERS.

(8) THE AUTHORITY IS AUTHORIZED TO ENGAGE THE SERVICES OF CONSULTANTS, FINANCIAL ADVISORS, UNDERWRITERS, ATTORNEYS, ACCOUNTANTS, CONSULTANTS, BOND INSURERS, LETTER OF CREDIT BANKS, RATING AGENCIES, AGENTS, OR OTHER PERSONS WHOSE SERVICES MAY BE REQUIRED OR DEEMED ADVANTAGEOUS BY THE AUTHORITY IN CONNECTION WITH BONDS.

40-9.7-108. Colorado clean energy development authority fund - creation - authorization of projects. (1) THE COLORADO CLEAN ENERGY DEVELOPMENT AUTHORITY FUND IS HEREBY CREATED IN THE STATE TREASURY. THE FOLLOWING MONEYS, TOGETHER WITH ANY OTHER MONEYS APPROPRIATED BY THE GENERAL ASSEMBLY, SHALL BE CREDITED TO THE FUND SUBJECT TO AGREEMENTS WITH THE HOLDERS OF BONDS, FINANCING AGREEMENTS, CONTRACTS, AGREEMENTS, OR OTHER OBLIGATIONS OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE:

(a) ANY GIFTS, GRANTS, AND DONATIONS, INCLUDING GRANTS FROM OTHER GOVERNMENTAL AGENCIES OR ENTITIES, ACCEPTED BY THE AUTHORITY TO BE USED FOR THE PURPOSES SET FORTH IN THIS ARTICLE;

(b) REVENUES PAID TO THE AUTHORITY BY PUBLIC UTILITIES AND OTHER PERSONS USING PROJECTS FINANCED OR REFINANCED BY THE AUTHORITY; AND

(c) ANY OTHER MONEYS DETERMINED BY THE GENERAL ASSEMBLY OR THE AUTHORITY TO BE DEPOSITED THEREIN.

(2) THE FUND SHALL BE ADMINISTERED BY THE AUTHORITY AND SHALL BE AVAILABLE IN PERPETUITY FOR THE PURPOSES STATED IN THIS ARTICLE. THE AUTHORITY IS AUTHORIZED TO ESTABLISH PROCEDURES TO ADMINISTER THE FUND IN ACCORDANCE WITH THIS ARTICLE. THE AUTHORITY MAY CREATE SEPARATE ACCOUNTS IN THE FUND. SUBJECT TO THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION, MONEYS IN THE FUND SHALL BE USED, AS DETERMINED BY THE AUTHORITY, FOR THE PURPOSES OF PAYING FOR OR PROVIDING FOR THE PAYMENT OF THE COSTS OF OPERATING THE AUTHORITY, FINANCING OR REFINANCING PROJECTS, PAYING OR SECURING OR PROVIDING FOR THE PAYMENT OF OR SECURITY FOR BONDS OF THE AUTHORITY OR OBLIGATIONS OF THE AUTHORITY UNDER ANY BOND, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE, OR FOR ANY OTHER PURPOSE CONSISTENT WITH THIS ARTICLE. THE AUTHORITY MAY LIMIT THE USE OF ANY PORTION OF THE FUND OR ANY ACCOUNT IN THE FUND TO ONE OR MORE SPECIFIED PURPOSES, INCLUDING BUT NOT LIMITED TO THE FINANCING OR REFINANCING OF A PARTICULAR TYPE OF PROJECT OR THE FINANCING OR REFINANCING OF PROJECTS FOR A PARTICULAR TYPE OF USER.

(3) (a) SUBJECT TO THE PROVISIONS OF SUBSECTION (4) OF THIS SECTION, AND AS DETERMINED BY AND SUBJECT TO THE LIMITATIONS DETERMINED BY THE AUTHORITY, MONEYS IN THE FUND MAY BE USED TO FUND OR PROVIDE FOR THE FUNDING OF ONE OR MORE RESERVES FOR THE PAYMENT OF ALL OR ANY PORTION OF BONDS OR OBLIGATIONS OF THE AUTHORITY UNDER ANY BOND, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE.

(b) (I) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (4) OF THIS SECTION, AND SUBJECT TO THE LIMITATIONS SET FORTH IN PARAGRAPHS (e) AND (f) OF THIS SUBSECTION (3), THE AUTHORITY, WITH PRIOR APPROVAL BY ENACTED LEGISLATION OF THE GENERAL ASSEMBLY IN ACCORDANCE WITH PARAGRAPH (c) OF THIS SUBSECTION (3), MAY AGREE IN ANY RESOLUTION OR TRUST INDENTURE AUTHORIZING THE ISSUANCE OF BONDS THAT, IF THE BALANCE IN THE FUND PLEDGED AS A RESERVE FOR THE PAYMENT OF ALL OR ANY PORTION OF BONDS OR OBLIGATIONS OF THE AUTHORITY UNDER ANY BOND, FINANCING AGREEMENT,

CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE FALLS BELOW THE DEBT SERVICE RESERVE FUND REQUIREMENT ESTABLISHED IN SUCH RESOLUTION OR TRUST INDENTURE, THE BOARD SHALL, ON OR BEFORE JANUARY 1 OF EACH YEAR, MAKE AND DELIVER TO THE GOVERNOR A CERTIFICATE STATING THE SUM, IF ANY, REQUIRED TO RESTORE THE DEBT SERVICE RESERVE FUND TO THE RESERVE FUND REQUIREMENT AND, IF THE PROJECT IS LOCATED PARTLY OR WHOLLY OUTSIDE THE STATE, THE PERCENTAGE OF THE TOTAL VALUE OF THE PROJECT THAT IS LOCATED WITHIN THE STATE. IF THE GOVERNOR DETERMINES THAT THE SUM OF THE AMOUNT OF ANTICIPATED GENERAL FUND REVENUES FOR THE FISCAL YEAR IN WHICH THE BOARD DELIVERS A CERTIFICATE TO THE GOVERNOR AND THE AMOUNT OF AVAILABLE MONEYS IN OR TO BE CREDITED TO STATE FUNDS OTHER THAN THE GENERAL FUND FOR THE FISCAL YEAR ARE SUFFICIENT TO ALLOW THE GENERAL ASSEMBLY TO MAKE GENERAL FUND APPROPRIATIONS UP TO THE LIMIT SPECIFIED IN SECTION 24-75-201.1 (1) (a), C.R.S., MAINTAIN THE FOUR PERCENT RESERVE REQUIRED BY SECTION 24-75-201.1 (1) (d) (III), C.R.S., AND RESTORE THE DEBT SERVICE RESERVE FUND TO THE RESERVE FUND REQUIREMENT, THE GOVERNOR SHALL TRANSMIT TO THE GENERAL ASSEMBLY A REQUEST FOR THE AMOUNT, IF ANY, REQUIRED TO RESTORE THE DEBT SERVICE RESERVE FUND TO THE DEBT SERVICE RESERVE FUND REQUIREMENT; EXCEPT THAT, IF THE PROJECT IS LOCATED PARTLY OR WHOLLY OUTSIDE THE STATE, THE GOVERNOR SHALL TRANSMIT TO THE GENERAL ASSEMBLY ONLY A REQUEST FOR AN AMOUNT EQUAL TO THE PRODUCT OF THE AMOUNT, IF ANY, REQUIRED TO RESTORE THE DEBT SERVICE RESERVE FUND TO THE DEBT SERVICE RESERVE FUND REQUIREMENT AND THE PERCENTAGE OF THE TOTAL VALUE OF THE PROJECT LOCATED WITHIN THE STATE. THE GENERAL ASSEMBLY MAY, BUT SHALL NOT BE REQUIRED TO, MAKE ANY APPROPRIATIONS SO REQUESTED. ALL SUMS APPROPRIATED AND PAID BY THE GENERAL ASSEMBLY FOR THE RESTORATION SHALL BE DEPOSITED BY THE AUTHORITY IN THE DEBT SERVICE RESERVE FUND. NOTHING IN THIS SECTION SHALL CREATE OR CONSTITUTE A DEBT OR LIABILITY OF THE STATE.

(II) ANY MONEYS APPROPRIATED BY THE GENERAL ASSEMBLY PURSUANT TO THIS PARAGRAPH (b) FOR THE PURPOSES OF ANY DEBT SERVICE RESERVE FUNDS ESTABLISHED PURSUANT TO THIS SECTION SHALL NOT REVERT TO THE GENERAL FUND OF THE STATE AT THE END OF ANY FISCAL YEAR.

(III) IF, BY VIRTUE OF A DECISION OF THE COLORADO SUPREME COURT OR ANY FEDERAL COURT, PORTIONS OF THIS ARTICLE ARE HELD UNCONSTITUTIONAL AND THE AUTHORITY IS THEREBY RENDERED INCAPABLE OF PERFORMING ALL OF THE PURPOSES FOR WHICH IT IS HEREBY CREATED, THEN, SUBJECT TO THE PROVISIONS OF SECTION 40-9-7-114, ANY MONEYS APPROPRIATED BY THE GENERAL ASSEMBLY FOR ANY DEBT SERVICE RESERVE FUNDS PURSUANT TO THIS PARAGRAPH (b) REMAINING IN THE FUND SHALL BE TRANSFERRED TO THE FUND FROM WHICH THEY WERE APPROPRIATED, EFFECTIVE ON THE DAY AFTER THE COURT DECISION BECOMES FINAL AND IS NO LONGER APPEALABLE.

(c) THE AUTHORITY SHALL PROVIDE TO THE GENERAL ASSEMBLY BY JANUARY 15 OF EACH YEAR A LIST THAT IDENTIFIES EACH PROJECT FOR WHICH THE AUTHORITY SEEKS APPROVAL TO MAKE AN AGREEMENT OF THE KIND DESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (3) IN A RESOLUTION OR TRUST INDENTURE AUTHORIZING THE ISSUANCE OF BONDS TO FINANCE OR REFINANCE THE PROJECT. EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (d) OF

THIS SUBSECTION (3), THE AUTHORITY MAY ONLY INCLUDE SUCH AN AGREEMENT IN A RESOLUTION OR TRUST INDENTURE IF THE GENERAL ASSEMBLY ENACTS A BILL PROVIDING THE INCLUSION OF THE AGREEMENT. THE AUTHORITY SHALL NOT SEEK APPROVAL TO INCLUDE, AND THE GENERAL ASSEMBLY SHALL NOT APPROVE THE INCLUSION OF, SUCH AN AGREEMENT IN A RESOLUTION OR TRUST INDENTURE IF THE AUTHORITY CANNOT ASSURE THE GENERAL ASSEMBLY THAT IT WILL BE ABLE TO COMPLY WITH PARAGRAPH (f) OF THIS SUBSECTION (3) OR IF THE INCLUSION WOULD CAUSE THE AGGREGATE AMOUNT OF SCHEDULED PAYMENTS IN ANY ONE FISCAL YEAR FOR ALL OUTSTANDING BONDS OF THE AUTHORITY THAT WERE ISSUED PURSUANT TO ANY RESOLUTION OR TRUST INDENTURE THAT INCLUDES SUCH AN AGREEMENT TO EXCEED THE MAXIMUM AMOUNT SPECIFIED IN PARAGRAPH (e) OF THIS SUBSECTION (3). FAILURE OF THE AUTHORITY TO COMPLY WITH PARAGRAPH (f) OF THIS SUBSECTION (3) BY OBTAINING EITHER A PERFORMANCE BOND OR SIMILAR ASSURANCE OR A THIRD-PARTY GUARANTY OF THE BONDS TO BE ISSUED SHALL VOID ANY PRIOR APPROVAL BY THE GENERAL ASSEMBLY OF THE INCLUSION OF SUCH AN AGREEMENT IN A RESOLUTION OR TRUST INDENTURE.

(d) IN ACCORDANCE WITH THE PROVISIONS OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (3), AND SUBJECT TO THE LIMITATIONS SET FORTH IN PARAGRAPHS (e) AND (f) OF THIS SUBSECTION (3), THE AUTHORITY IS HEREBY AUTHORIZED TO MAKE AN AGREEMENT OF THE KIND DESCRIBED IN SAID SUBPARAGRAPH (I) IN ANY RESOLUTION OR TRUST INDENTURE THAT AUTHORIZES THE ISSUANCE OF BONDS TO FINANCE OR REFINANCE ONE OR MORE OF THE FOLLOWING PROJECTS:

(I) A WIND ENERGY TRANSMISSION FACILITIES PROJECT FINANCED OR REFINANCED BY UP TO FORTY MILLION DOLLARS OF BONDS; AND

(II) A SOLAR ENERGY PROJECT FINANCED OR REFINANCED BY UP TO TWENTY-FIVE MILLION DOLLARS OF BONDS.

e) FOR ANY ONE FISCAL YEAR, THE AGGREGATE AMOUNT OF THE SCHEDULED PAYMENTS FOR ALL OUTSTANDING BONDS OF THE AUTHORITY ISSUED PURSUANT TO A RESOLUTION OR TRUST INDENTURE THAT INCLUDES AN AGREEMENT OF THE KIND DESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (3) SHALL NOT EXCEED EIGHT MILLION DOLLARS.

(f) PRIOR TO OR AT THE TIME OF ISSUANCE OF BONDS ISSUED PURSUANT TO A RESOLUTION OR TRUST INDENTURE THAT INCLUDES AN AGREEMENT OF THE KIND DESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (3), THE AUTHORITY SHALL OBTAIN EITHER A PERFORMANCE BOND OR SIMILAR ASSURANCE THAT GUARANTEES THE COMPLETION OF THE PROJECT TO BE FINANCED BY THE BONDS OR A THIRD-PARTY GUARANTY OF THE BONDS PROVIDED BY A THIRD PARTY THAT HAS AN INVESTMENT-GRADE RATING.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE:

(a) NO BONDS OR OTHER FINANCIAL OBLIGATIONS MAY BE PAID FROM OR SECURED BY THE PROCEEDS OF ANY TAXES LEVIED OR IMPOSED BY ANY PUBLIC BODY; AND

(b) UNLESS THE VOTERS OF THE STATE HAVE APPROVED BONDS OR OTHER

FINANCIAL OBLIGATIONS IN ACCORDANCE WITH SECTION 40-9.7-109, NO MONEYS IN THE FUND, OTHER THAN MONEYS THAT ARE ON DEPOSIT IN THE FUND AND ARE REVOCABLY PLEDGED TO THE PAYMENT OF THE BONDS OR FINANCIAL OBLIGATIONS AS OF THE DATE THE BONDS ARE ISSUED OR THE FINANCIAL OBLIGATIONS ARE INCURRED OR MONEYS THAT ARE DEPOSITED INTO A DEBT SERVICE RESERVE FUND PURSUANT TO SUBSECTION (3) OF THIS SECTION, MAY BE USED TO PAY OR SECURE THE PAYMENT OF AMOUNTS PAYABLE ON BONDS OR OTHER FINANCIAL OBLIGATIONS AFTER THE END OF THE FISCAL YEAR IN WHICH THE BONDS ARE ISSUED OR THE OTHER FINANCIAL OBLIGATIONS ARE INCURRED.

(5) MONEYS IN THE FUND NOT CURRENTLY NEEDED FOR THE OPERATION OF THE AUTHORITY AND THE FUND MAY BE INVESTED IN ACCORDANCE WITH THIS ARTICLE, AND ALL EARNINGS SHALL BE CREDITED TO THE FUND OR AN ACCOUNT IN THE FUND SPECIFIED BY THE AUTHORITY.

40-9.7-109. Voter approval required for certain bonds and financial obligations - legislative declaration. (1) (a) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE AUTHORITY SHALL NOT, UNLESS THE VOTERS OF THE STATE HAVE AUTHORIZED AT A STATEWIDE ELECTION THE INCURRENCE OF A MULTIPLE-FISCAL YEAR OBLIGATION FOR SUCH PURPOSE, ISSUE ANY BONDS OR INCUR ANY FINANCIAL OBLIGATION UNDER ANY BOND, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY PAYABLE IN ANY FISCAL YEAR BEYOND THE FISCAL YEAR IN WHICH THE BONDS ARE ISSUED OR THE FINANCIAL OBLIGATION IS INCURRED IF THE BONDS OR FINANCIAL OBLIGATION ARE PAYABLE FROM OR SECURED BY ANY PORTION OF THE FUND OTHER THAN MONEYS THAT ARE ON DEPOSIT IN THE FUND AND ARE IRREVOCABLY PLEDGED TO THE PAYMENT OF THE BONDS OR FINANCIAL OBLIGATION AS OF THE DATE THE BONDS ARE ISSUED OR THE FINANCIAL OBLIGATION IS INCURRED, OR SECURED BY MONEYS THAT ARE DEPOSITED INTO A DEBT SERVICE RESERVE FUND PURSUANT TO SECTION 40-9.7-108 (3).

(b) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE QUESTION WHETHER THE AUTHORITY SHOULD INCUR A MULTIPLE-FISCAL YEAR OBLIGATION AT REQUIRES THE AUTHORIZATION OF THE VOTERS OF THE STATE UNDER PARAGRAPH (a) OF THIS SUBSECTION (1) IS A STATE MATTER ARISING UNDER SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION. CONSEQUENTLY, IN ACCORDANCE WITH THE PROVISIONS OF SAID SECTION 20 AND ARTICLE 41 OF TITLE 1, C.R.S., THE AUTHORITY MAY INSTRUCT THE SECRETARY OF STATE TO SUBMIT A BALLOT QUESTION TO A VOTE OF THE REGISTERED ELECTORS OF THE STATE SEEKING THEIR APPROVAL FOR THE AUTHORITY TO INCUR SUCH A MULTIPLE-FISCAL YEAR OBLIGATION AT ANY GENERAL ELECTION OR STATEWIDE ODD-YEAR ELECTION.

(2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION AND SECTION 40-9.7-107 (1) AND (4), THE AUTHORITY, WITHOUT VOTER APPROVAL, SHALL BE AUTHORIZED TO ISSUE BONDS AND INCUR FINANCIAL OBLIGATIONS UNDER ANY BOND, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE IF THE BONDS OR FINANCIAL OBLIGATIONS:

(a) ARE PAYABLE IN THE FISCAL YEAR IN WHICH THE BONDS ARE ISSUED OR THE FINANCIAL OBLIGATION IS INCURRED; OR

(b) ARE PAYABLE ONLY FROM OR SECURED ONLY BY THE FOLLOWING:

(I) AMOUNTS PAYABLE BY A USER OR A THIRD-PARTY FINANCIER PURSUANT TO A THIRD-PARTY FINANCING AGREEMENT;

(II) A MORTGAGE OR OTHER LIEN UPON OR SECURITY INTEREST GRANTED IN ACCORDANCE WITH SECTION 40-9.7-106 (2) (p);

(III) A DEBT SERVICE RESERVE FUND CREATED PURSUANT TO SECTION 40-9.7-108 (3) THAT IS FUNDED WITH MONEYS THAT ARE ON DEPOSIT IN THE FUND AND ARE IRREVOCABLY PLEDGED TO THE PAYMENT OF THE BONDS OR FINANCIAL OBLIGATIONS AS OF THE DATE THE BONDS ARE ISSUED OR THE FINANCIAL OBLIGATIONS ARE INCURRED;

(IV) MONEYS THAT ARE DEPOSITED INTO A DEBT SERVICE RESERVE FUND PURSUANT TO SECTION 40-9.7-108 (3); OR

(V) ANOTHER SOURCE FOR WHICH STATEWIDE VOTER APPROVAL IS NOT SPECIFICALLY REQUIRED PURSUANT TO SUBSECTION (1) OF THIS SECTION.

40-9.7-110. Payment of obligations - nonliability of state. (1) BONDS OR OBLIGATIONS OF THE AUTHORITY UNDER ANY BOND, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE SHALL NOT CONSTITUTE OR BECOME AN INDEBTEDNESS, A DEBT, OR A LIABILITY OF THE STATE, NOR SHALL THE STATE BE LIABLE FOR THE PAYMENT THEREOF, NOR SHALL THE BONDS OR OBLIGATIONS OF THE AUTHORITY UNDER ANY BOND, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE CONSTITUTE THE GIVING, PLEDGING, OR LOANING OF THE FULL FAITH AND CREDIT OF THE STATE, BUT THE BONDS OR OBLIGATIONS OF THE AUTHORITY UNDER ANY BOND, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE SHALL BE PAYABLE SOLELY FROM THE MONEYS SPECIFIED IN THIS ARTICLE. THE ISSUANCE OF BONDS OR THE INCURRENCE OF OBLIGATIONS OF THE AUTHORITY UNDER ANY BOND, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE UNDER THE PROVISIONS OF THIS ARTICLE SHALL NOT OBLIGATE THE STATE OR THE AUTHORITY, DIRECTLY, INDIRECTLY, OR CONTINGENTLY, TO LEVY OR COLLECT ANY FORM OF TAXES OR ASSESSMENTS OR TO CREATE ANY INDEBTEDNESS PAYABLE OUT OF TAXES OR ASSESSMENTS.

(2) NOTHING IN THIS SECTION SHALL PREVENT OR BE CONSTRUED TO PREVENT THE AUTHORITY FROM PLEDGING ITS FULL FAITH AND CREDIT TO THE PAYMENT OF BONDS OR OBLIGATIONS OF THE AUTHORITY UNDER ANY BOND, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE, BUT NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO AUTHORIZE THE AUTHORITY TO CREATE A DEBT OF THE STATE WITHIN THE MEANING OF THE CONSTITUTION OR STATUTES OF THE STATE. ALL BONDS OR OBLIGATIONS OF THE AUTHORITY UNDER ANY BOND, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE ARE PAYABLE AND SHALL STATE THAT THEY ARE PAYABLE SOLELY FROM THE FUNDS PLEDGED FOR THEIR PAYMENT IN ACCORDANCE WITH THE RESOLUTION AUTHORIZING THEIR ISSUANCE OR INCURRENCE AND WITH ANY TRUST INDENTURE, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY

EXECUTED AS THEIR SECURITY AND ARE NOT A DEBT OR LIABILITY OF THE STATE.

(3) THE STATE IS NOT LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON ANY BONDS OR OBLIGATIONS OF THE AUTHORITY UNDER ANY BOND, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION, OR AGREEMENT OF ANY KIND WHATSOEVER THAT MAY BE UNDERTAKEN BY THE AUTHORITY. NO BREACH OF ANY SUCH PLEDGE, OBLIGATION, OR AGREEMENT SHALL IMPOSE ANY PECUNIARY LIABILITY UPON THE STATE OR ANY CHARGE UPON ITS GENERAL CREDIT OR AGAINST ITS TAXING POWER.

40-9.7-111. Exemption from taxation - securities law. THE INCOME OR OTHER REVENUES OF THE AUTHORITY, ALL PROPERTIES AT ANY TIME OWNED BY THE AUTHORITY, ANY BONDS OR OBLIGATIONS OF THE AUTHORITY UNDER ANY BOND, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE, THE TRANSFER OF AND THE INCOME, INCLUDING ANY PROFIT MADE ON SALE THEREFROM, AND ALL TRUST INDENTURES, FINANCING AGREEMENTS, CONTRACTS, AGREEMENTS, OTHER OBLIGATIONS OF THE AUTHORITY, AND OTHER DOCUMENTS ISSUED OR EXECUTED IN CONNECTION THEREWITH SHALL BE EXEMPT AT ALL TIMES FROM ALL TAXATION AND ASSESSMENTS IN THE STATE. BONDS OR OBLIGATIONS OF THE AUTHORITY UNDER ANY BOND, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE SHALL ALSO BE EXEMPT FROM THE PROVISIONS OF ARTICLE 51 OF TITLE 11, C.R.S.

40-9.7-112. Expenses of the authority. EXPENSES OF THE AUTHORITY INCURRED IN CARRYING OUT THE PROVISIONS OF THIS ARTICLE SHALL BE PAYABLE SOLELY FROM MONEYS PROVIDED UNDER THE AUTHORITY OF THIS ARTICLE, AND NO LIABILITY SHALL BE INCURRED BY THE AUTHORITY BEYOND THE MONEYS THAT ARE PROVIDED PURSUANT TO THIS ARTICLE. FOR THE PURPOSES OF MEETING THE NECESSARY EXPENSES OF INITIAL ORGANIZATION AND OPERATION UNTIL SUCH DATE AS THE AUTHORITY DERIVES MONEYS FROM FUNDS PROVIDED PURSUANT TO THIS ARTICLE, THE AUTHORITY MAY BORROW SUCH MONEYS AS MAY BE REQUIRED FOR THE NECESSARY EXPENSES OF ORGANIZATION AND OPERATION. SUCH BORROWED MONEYS SHALL BE REPAYED WITHIN A REASONABLE TIME AFTER THE AUTHORITY RECEIVES FUNDS PROVIDED PURSUANT TO THIS ARTICLE.

40-9.7-113. Investment powers of authority. THE AUTHORITY MAY INVEST OR DEPOSIT ANY FUNDS IN THE MANNER PROVIDED BY PART 6 OF ARTICLE 75 OF TITLE 24, C.R.S. IN ADDITION, THE AUTHORITY MAY DIRECT A CORPORATE TRUSTEE THAT HOLDS FUNDS OF THE AUTHORITY TO INVEST OR DEPOSIT THE FUNDS IN INVESTMENTS OR DEPOSITS OTHER THAN THOSE SPECIFIED BY SAID PART 6 IF THE AUTHORITY DETERMINES, BY RESOLUTION, THAT SUCH AN INVESTMENT OR DEPOSIT MEETS THE STANDARD ESTABLISHED IN SECTION 15-1-304, C.R.S., THE INCOME IS AT LEAST COMPARABLE TO INCOME AVAILABLE ON INVESTMENTS OR DEPOSITS SPECIFIED BY SAID PART 6, AND THE INVESTMENT WILL ASSIST THE AUTHORITY IN THE FINANCING, CONSTRUCTION, MAINTENANCE, OR OPERATION OF ANY PROJECT.

40-9.7-114. Agreement of the state not to limit or alter rights of obligees. THE STATE HEREBY PLEDGES TO AND AGREES WITH THE HOLDERS OF ANY BONDS ISSUED UNDER THIS ARTICLE AND WITH THOSE PARTIES WHO MAY ENTER INTO

CONTRACTS WITH THE AUTHORITY PURSUANT TO THIS ARTICLE THAT THE STATE WILL NOT LIMIT, ALTER, RESTRICT, OR IMPAIR THE RIGHTS VESTED IN THE AUTHORITY TO FULFILL THE TERMS OF ANY AGREEMENTS MADE WITH THE HOLDERS OF BONDS AND WITH THE PARTIES WHO MAY ENTER INTO CONTRACTS WITH THE AUTHORITY. THE STATE FURTHER AGREES THAT IT WILL NOT IN ANY WAY IMPAIR THE RIGHTS OR REMEDIES OF THE HOLDERS OF BONDS OR THE PARTIES UNTIL THE BONDS, TOGETHER WITH INTEREST THEREON AND WITH INTEREST ON ANY UNPAID INSTALLMENT OF INTEREST, AND ALL COSTS AND EXPENSES IN CONNECTION WITH ANY ACTION OR PROCEEDING BY OR ON BEHALF OF THE HOLDERS, ARE FULLY PAID AND DISCHARGED AND THE CONTRACTS WITH THE PARTIES ARE FULLY PERFORMED ON THE PART OF THE AUTHORITY. NOTHING IN THIS ARTICLE PRECLUDES SUCH LIMITATION OR ALTERATION IF AND WHEN ADEQUATE PROVISION IS MADE BY LAW FOR THE PROTECTION OF THE HOLDERS OF BONDS OR THE PARTIES. THE AUTHORITY MAY INCLUDE THIS PLEDGE AND UNDERTAKING FOR THE STATE IN ITS BONDS AND CONTRACTS.

40-9.7-115. Enforcement of rights of obligees. ANY HOLDER OF BONDS ISSUED PURSUANT TO THIS ARTICLE OR OTHER OBLIGATIONS OF THE AUTHORITY UNDER ANY BOND, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE, OR A TRUSTEE UNDER A TRUST AGREEMENT OR TRUST INDENTURE ENTERED INTO PURSUANT TO THIS ARTICLE, EXCEPT TO THE EXTENT THAT THE TRUSTEE'S RIGHTS ARE RESTRICTED BY THE AUTHORITY RESOLUTION AUTHORIZING THE SAME, MAY PROTECT AND ENFORCE, BY ANY SUITABLE FORM OF LEGAL PROCEEDINGS, ANY RIGHTS UNDER THE LAWS OF THE STATE OR GRANTED BY THE AUTHORIZING RESOLUTION, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY. ENFORCEABLE RIGHTS INCLUDE THE RIGHT TO COMPEL THE PERFORMANCE OF ALL DUTIES OF THE AUTHORITY REQUIRED BY THIS ARTICLE, THE AUTHORIZING RESOLUTION, THE BOND, OR THE FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AND THE RIGHT TO ENJOIN UNLAWFUL ACTIVITIES.

40-9.7-116. Bonds eligible for investment. ALL BANKS, BANKERS, TRUST COMPANIES, SAVINGS AND LOAN ASSOCIATIONS, INVESTMENT COMPANIES, INSURANCE COMPANIES AND ASSOCIATIONS, EXECUTORS, ADMINISTRATORS, GUARDIANS, TRUSTEES, AND OTHER FIDUCIARIES MAY LEGALLY INVEST ANY MONEYS BELONGING TO THEM OR WITHIN THEIR CONTROL IN ANY BONDS ISSUED PURSUANT TO THIS ARTICLE. PUBLIC ENTITIES, AS DEFINED IN SECTION 24-75-601 (1), C.R.S., MAY INVEST PUBLIC FUNDS IN SUCH BONDS ONLY IF THE BONDS SATISFY THE INVESTMENT REQUIREMENTS ESTABLISHED IN PART 6 OF ARTICLE 75 OF TITLE 24, C.R.S.

40-9.7-117. No action maintainable. AN ACTION OR PROCEEDING AT LAW OR INEQUITY TO REVIEW ANY ACTS OR PROCEEDINGS OR TO QUESTION THE VALIDITY OR ENJOIN THE PERFORMANCE OF ANY ACT OR PROCEEDINGS OR THE ISSUANCE OF ANY BONDS OR THE INCURRENCE OF OBLIGATIONS OF THE AUTHORITY UNDER ANY BOND, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE OR FOR ANY OTHER RELIEF AGAINST OR FROM ANY ACTS OR PROCEEDINGS DONE UNDER THIS ARTICLE, WHETHER BASED UPON IRREGULARITIES OR JURISDICTIONAL DEFECTS, SHALL NOT BE MAINTAINED UNLESS COMMENCED WITHIN THIRTY DAYS AFTER THE PERFORMANCE OF THE ACT OR PROCEEDINGS OR THE EFFECTIVE DATE THEREOF, WHICHEVER OCCURS FIRST, AND

IS THEREAFTER PERPETUALLY BARRED.

40-9.7-118. Judicial examination of powers, acts, proceedings, or contracts of an authority. IN ITS DISCRETION, THE AUTHORITY MAY FILE A PETITION AT ANY TIME IN THE DISTRICT COURT IN AND FOR ANY COUNTY IN WHICH THE AUTHORITY IS LOCATED WHOLLY OR IN PART REQUESTING A JUDICIAL EXAMINATION AND DETERMINATION OF ANY POWER CONFERRED TO THE AUTHORITY OR ANY ACT, PROCEEDING, OR CONTRACT OF THE AUTHORITY, WHETHER OR NOT THE CONTRACT HAS BEEN EXECUTED. THE JUDICIAL EXAMINATION AND DETERMINATION SHALL BE CONDUCTED IN SUBSTANTIALLY THE MANNER SET FORTH IN SECTION 32-4-540, C.R.S.; EXCEPT THAT THE NOTICE REQUIRED SHALL BE PUBLISHED ONCE A WEEK FOR THREE CONSECUTIVE WEEKS AND THE HEARING SHALL BE HELD NOT LESS THAN THIRTY DAYS NOR MORE THAN FORTY DAYS AFTER THE FILING OF THE PETITION.

40-9.7-119. Sufficiency of article - preservation of authority of public utilities commission. (1) THIS ARTICLE, WITHOUT REFERENCE TO OTHER STATUTES OF THE STATE, CONSTITUTES FULL AUTHORITY FOR THE EXERCISE OF POWERS GRANTED IN THIS ARTICLE, INCLUDING, BUT NOT LIMITED TO, THE AUTHORIZATION AND ISSUANCE OF BONDS AND THE INCURRENCE OF OTHER OBLIGATIONS OF THE AUTHORITY UNDER ANY BOND, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE.

(2) NO OTHER ACT OR LAW WITH REGARD TO THE AUTHORIZATION OR ISSUANCE OF BONDS OR INCURRENCE OF OTHER OBLIGATIONS THAT PROVIDES FOR AN ELECTION REQUIRING AN APPROVAL OR IN ANY WAY IMPEDING OR RESTRICTING THE CARRYING OUT OF THE ACTS AUTHORIZED IN THIS ARTICLE TO BE DONE SHALL BE CONSTRUED AS APPLYING TO ANY PROCEEDINGS TAKEN UNDER THIS ARTICLE OR ACTS DONE PURSUANT TO THIS ARTICLE.

(3) NO NOTICE, CONSENT, OR APPROVAL BY ANY PUBLIC BODY OR OFFICER THEREOF SHALL BE REQUIRED AS A PREREQUISITE TO THE SALE OR ISSUANCE OF ANY BONDS, THE INCURRENCE OF OTHER OBLIGATIONS OF THE AUTHORITY UNDER ANY BOND, FINANCING AGREEMENT, CONTRACT, AGREEMENT, OR OTHER OBLIGATION OF THE AUTHORITY AUTHORIZED BY THIS ARTICLE, OR THE EXERCISE OF ANY OTHER POWER UNDER THIS ARTICLE, EXCEPT AS PROVIDED IN THIS ARTICLE.

(4) THE POWERS CONFERRED BY THIS ARTICLE SHALL BE IN ADDITION AND SUPPLEMENTAL TO AND NOT IN SUBSTITUTION FOR, AND THE LIMITATIONS IMPOSED BY THIS ARTICLE SHALL NOT AFFECT, THE POWERS CONFERRED BY ANY OTHER LAW.

(5) NO PART OF THIS ARTICLE SHALL REPEAL OR AFFECT ANY OTHER LAW OR PART THEREOF EXCEPT TO THE EXTENT THAT THIS ARTICLE IS INCONSISTENT WITH ANY OTHER LAW, IT BEING INTENDED THAT THIS ARTICLE SHALL PROVIDE A SEPARATE METHOD OF ACCOMPLISHING ITS OBJECTIVES AND NOT AN EXCLUSIVE ONE; AND THIS ARTICLE SHALL NOT BE CONSTRUED AS REPEALING, AMENDING, OR CHANGING ANY OTHER LAW EXCEPT TO THE EXTENT OF SUCH INCONSISTENCY.

(6) NOTHING IN THIS ARTICLE SHALL AFFECT THE JURISDICTION OR POWER OF THE PUBLIC UTILITIES COMMISSION, AND THE AUTHORITY SHALL NOT FINANCE OR REFINANCE ANY PROJECT THAT IS SUBJECT TO REGULATION BY THE COMMISSION WITHOUT THE APPROVAL OF THE COMMISSION.

40-9.7-120. Account of activities - receipts for expenditures - report - audit.

THE AUTHORITY SHALL KEEP AN ACCURATE ACCOUNT OF ALL ITS ACTIVITIES AND OF ALL ITS RECEIPTS AND EXPENDITURES. THE STATE AUDITOR MAY INVESTIGATE THE AFFAIRS OF THE AUTHORITY, MAY EXAMINE THE PROPERTIES AND RECORDS OF THE AUTHORITY, AND MAY PRESCRIBE METHODS OF ACCOUNTING AND THE RENDERING OF PERIODICAL REPORTS IN RELATION TO UNDERTAKINGS BY THE AUTHORITY.

40-9.7-121. Federal social security act.

THE AUTHORITY MAY TAKE SUCH ACTION AS IT DEEMS APPROPRIATE TO ENABLE ITS EMPLOYEES TO COME WITHIN THE PROVISIONS AND OBTAIN THE BENEFITS OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED.

40-9.7-122. Powers of authority not restricted.

THIS ARTICLE SHALL NOT BE CONSTRUED AS A RESTRICTION OR LIMITATION UPON ANY POWERS THAT THE AUTHORITY MIGHT OTHERWISE HAVE UNDER ANY LAWS OF THIS STATE BUT SHALL BE CONSTRUED AS CUMULATIVE OF ANY SUCH POWERS. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO DEPRIVE THE STATE AND ITS POLITICAL SUBDIVISIONS OF THEIR RESPECTIVE POLICE POWERS OVER PROPERTIES OF THE AUTHORITY OR TO IMPAIR ANY POWER OVER SUCH PROPERTIES OF ANY OFFICIAL OR AGENCY OF THE STATE AND ITS GOVERNMENTAL SUBDIVISIONS THAT MAY BE OTHERWISE PROVIDED BY LAW.

40-9.7-123. Report to legislature.

NOTWITHSTANDING SECTION 24-1-136 (11), C.R.S., THE AUTHORITY SHALL SUBMIT A REPORT OF ITS ACTIVITIES TO THE GOVERNOR AND TO THE AGRICULTURE, NATURAL RESOURCES, AND ENERGY COMMITTEE OF THE SENATE AND THE TRANSPORTATION AND ENERGY COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, NO LATER THAN FEBRUARY 1 OF EACH YEAR. EACH REPORT SHALL SET FORTH A COMPLETE OPERATING AND FINANCIAL STATEMENT COVERING THE AUTHORITY'S OPERATIONS FOR THE PREVIOUS FISCAL YEAR.

SECTION 2. 24-77-102 (15) (b), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

24-77-102. Definitions. As used in this article, unless the context otherwise requires:

(15) (b) "Special purpose authority" includes, but is not limited to:

(XVI) THE COLORADO CLEAN ENERGY DEVELOPMENT AUTHORITY CREATED PURSUANT TO SECTION 40-9.7-104, C.R.S.

SECTION 3. 40-3.2-104, Colorado Revised Statutes, as enacted by House Bill 07-1037, enacted at the First Regular Session of the Sixty-sixth General Assembly, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

40-3.2-104. Electricity utility demand-side management programs - rules - annual report. (7) FOR PURPOSES OF THIS SECTION, "ELECTRIC UTILITY" OR "UTILITY" MEANS "INVESTOR-OWNED UTILITY".

SECTION 4. **Effective date.** This act shall take effect upon passage; except that

section 3 of this act shall take effect only if House Bill 07-1037 is enacted at the next Regular Session of the Sixty-sixth General Assembly and becomes law.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 23, 2007

HOUSE BILL NO. 100

[View Bill Status](#)

[View Bill Text](#)

[View Statement of Purpose / Fiscal Impact](#)

Text to be added within a bill has been marked with Bold and Underline. Text to be removed has been marked with Strikethrough and Italic. How these codes are actually displayed will vary based on the browser software you are using.

This sentence is marked with bold and underline to show added text.

~~*This sentence is marked with strikethrough and italic, indicating text to be removed.*~~

Bill Status

H0106.....by ENVIRONMENT, ENERGY AND TECHNOLOGY
ENERGY RESOURCES AUTHORITY ACT - Adds to existing law to create an Idaho
Energy Resources Authority as an independent body; and to authorize the
Authority to issue revenue bonds for construction of transmission
facilities.

02/03 House intro - 1st rdg - to printing

02/04 Rpt prt - to Env

02/09 Rpt out - rec d/p - to 2nd rdg

02/10 2nd rdg - to 3rd rdg

02/15 3rd rdg - PASSED - 62-6-2

AYES -- Anderson, Andrus, Barraclough, Bastian, Bayer, Bedke, Bilbao,
Black, Block, Boe, Bolz, Bradford, Cannon, Chadderdon, Collins, Deal,
Edmunson, Ellsworth, Eskridge, Field(18), Field(23), Garrett, Hart,
Harwood, Henbest, Henderson, Jaquet, Kemp, Lake, LeFavour,
Loertscher, Martinez, Mathews, McGeachin, Miller, Mitchell, Nielsen,
Nonini, Pasley-Stuart, Pence, Raybould, Ring, Ringo, Roberts, Rusche,
Rydalch, Sali, Sayler, Schaefer, Shepherd(2), Shepherd(8), Shirley,
Skippen, Smith(30), Smith(24), Smylie, Snodgrass, Stevenson, Trail,
Wills, Wood, Mr. Speaker

NAYS -- Barrett, Clark, Crow, Denney, McKague, Moyle
Absent and excused -- Bell, Jones

Floor Sponsor - Eskridge

Title apvd - to Senate

02/16 Senate intro - 1st rdg - to Res/Env

02/21 Rpt out - ref'd to St Aff

02/28 Rpt out - rec d/p - to 2nd rdg

03/01 2nd rdg - to 3rd rdg

03/03 3rd rdg - PASSED - 28-5-2

AYES -- Andreason, Brandt, Broadsword, Bunderson, Burtenshaw,
Cameron, Coiner, Compton, Corder, Darrington, Davis, Gannon, Geddes,
Goedde, Hill, Kelly, Keough, Little, Lodge, Marley, McKenzie, Pearce,
Richardson, Schroeder, Stennett, Sweet, Werk, Williams

NAYS -- Burkett, Jorgenson, Langhorst, Malepeai, Stegner
Absent and excused -- McGee, Noble

Floor Sponsor - Hill

Title apvd - to House

03/04 To enrol

03/07 Rpt enrol - Sp signed

03/08 Pres signed

03/09 To Governor

Governor signed

Session Law Chapter 53

Effective: 07/01/05

]]] LEGISLATURE OF THE STATE OF IDAHO]]]]
 y-eighth Legislature First Regular Session - 2005

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 106

BY ENVIRONMENT, ENERGY AND TECHNOLOGY COMMITTEE

AN ACT

RELATING TO AN IDAHO ENERGY RESOURCES AUTHORITY; AMENDING TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 89, TITLE 67, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE A DECLARATION OF NECESSITY AND PURPOSE, TO DEFINE TERMS, TO CREATE THE IDAHO ENERGY RESOURCES AUTHORITY, TO PROVIDE FOR DIRECTORS OF THE AUTHORITY, TO PROVIDE TERMS OF OFFICE, APPOINTMENT AND FILLING VACANCIES AND REMOVAL, TO PROVIDE A QUORUM, MODE OF ACTION AND COMPENSATION FOR THE DIRECTORS, TO PROVIDE FOR AN ORGANIZATIONAL MEETING, OFFICERS AND APPOINTMENT OF AN EXECUTIVE DIRECTOR, TO PROVIDE FOR DELEGATION OF POWER, TO PROVIDE A SURETY BOND AND TO PROVIDE FOR A CONFLICT OF INTEREST, TO PROVIDE POWERS OF THE AUTHORITY, TO PROVIDE FOR DEVELOPMENT, ACQUISITION AND CONSTRUCTION OF FACILITIES, TO PROVIDE FOR MANAGEMENT AND OPERATION OF FACILITIES, TO PROVIDE FOR THE SALE OF ELECTRICITY, PRODUCT OR SERVICE FROM FACILITIES AND TO PROVIDE FOR CHARGES, TO PROVIDE FOR COST RECOVERY AND FOR RATE STABILIZATION CHARGES OF PARTICIPATING UTILITIES, TO PROVIDE FOR COOPERATION WITH OTHER AGENCIES AND POLITICAL SUBDIVISIONS, TO PROVIDE FOR EXEMPTION FROM INCOME TAXATION, TO PROVIDE FOR THE ISSUANCE OF BONDS TO FINANCE FACILITIES, TO PROVIDE FOR REFUNDING OF BONDS, TO PROVIDE FOR PAYMENT OF BONDS AND THE NONLIABILITY OF THE STATE OF IDAHO, TO PROVIDE FOR THE STATE OF IDAHO'S PLEDGE TO HOLDERS OF BONDS, TO PROVIDE FOR FEES, TO PROVIDE FOR EXEMPTION OF REAL PROPERTY OF THE AUTHORITY FROM LEVY AND SALE BY EXECUTION, TO PROVIDE FOR AN ANNUAL REPORT, TO PROVIDE THAT AUTHORITY OBLIGATIONS ARE LEGAL INVESTMENTS, TO PROVIDE THAT THIS ACT IS NOT A LIMITATION OF POWERS OF THE AUTHORITY AND TO PROVIDE FOR CONSTITUTIONALITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 89, Title 67, Idaho Code, and to read as follows:

CHAPTER 89

IDAHO ENERGY RESOURCES AUTHORITY ACT

67-8901. SHORT TITLE. This act may be referred to and cited as the "Idaho Energy Resources Authority Act."

67-8902. DECLARATION OF NECESSITY AND PURPOSE. (1) It is hereby determined and declared that:

(a) Industrial, irrigation, commercial and residential consumers in the state of Idaho receive electric service from various investor-owned, cooperative and municipal utilities and the ability of these utilities to provide reliable and economic electric services at stable prices is essential to the economy and the economic development of the state of Idaho and to the health, safety and welfare of its people;

(b) The regional interconnection of electric utilities causes events and conditions in other western states to have a significant impact of the

electric industry in recent years by the federal government and in other states has exposed all utilities in Idaho, and the consumers served by them, to volatile market prices, reliability concerns and other adverse conditions;

(c) It is in the best interest of the state of Idaho and its people that sufficient and reliable electric generation and transmission resources are developed and made available at cost-based rates in order to enable these utilities to meet existing and future demands for electric services, to provide adequate reserves and to promote reliability at the most stable rates practicable;

(d) The electric utility and energy industries are and will continue to be capital-intensive industries and the availability of cost-effective financing to investor-owned, cooperative and municipal utilities will enhance the ability of these utilities to provide and promote economic electric services to consumers in the state;

(e) Coordination, cooperation and joint ventures between and among such utilities with one another and with the private, cooperative, federal, state and municipal utilities and agencies that provide wholesale and retail electric services in the western states will promote regional electric reliability and stability and will provide economies of scale; and

(f) It is the intent of the legislature to create the Idaho energy resources authority to promote the development and financing of facilities for the benefit of participating utilities and to accomplish the purposes stated above, and to authorize the authority to exercise all such powers as are necessary to enable it to achieve such purposes and to thereby promote and protect the economy of the state of Idaho and the health, safety and welfare of its people.

(2) Nothing contained herein is intended or shall be construed to limit or restrict the authority of the Idaho public utilities commission with respect to the regulation of electric corporations and public utilities pursuant to title 61, Idaho Code.

67-8903. DEFINITIONS. When used in this chapter, the following terms shall have the following meanings:

(1) "Authority" means the Idaho energy resources authority created pursuant to section 67-8904, Idaho Code.

(2) "Board" means the board of directors of the authority.

(3) "Bonds" means any bonds, notes, certificates or other obligations or evidences of indebtedness issued by the authority.

(4) "Commission" means the Idaho public utilities commission created pursuant to section 61-201, Idaho Code.

(5) "Electric cooperative" means a cooperative corporation or association which is:

(a) Organized under the provisions of section 501(c)(12) or 1381 of the Internal Revenue Code;

(b) Is an Idaho nonprofit corporation pursuant to chapter 3, title 30, Idaho Code; and

(c) Is an operating entity or successor entity thereof which owns facilities and provides electric service to customers in Idaho as of the effective date of this chapter.

(6) "Facility" means any facility necessary, used or useful in connection with the generation or transmission of electric power and energy, in each case

including, but not limited to, all real and personal property, fuel supplies and transportation facilities, pollution control facilities and all equipment and improvements necessary or desirable in connection with a facility.

"Facility" shall include facilities owned in whole or in part by the authority or a participating utility, including undivided ownership interests in facilities, leasehold interests in facilities and other estates, but excludes a generating facility that sells any portion of its output as a qualifying facility to a participating utility under provisions of the public utility regulatory policies act of 1978, 16 U.S.C. section 2601 et seq.

(7) "Participating utility" means, with respect to any facilities under-

ration, electric cooperative or other cooperative corporation or association, municipal corporation, political subdivision of this state or another state, state or federal agency, joint operating entity or other entity that:

(a) Owns and operates an electric utility system that provides electric services to consumers of electricity located in an existing service area within the boundaries of this state;

(b) Provides electric generation, power supply, transmission and/or ancillary and related services at wholesale to one (1) or more participating utilities described in paragraph (a) of this subsection; or

(c) Is organized or operates as a regional transmission organization covering all or any part of the state of Idaho and one (1) or more other states.

(8) "Revenues" means all receipts, purchase payments, loan repayments, lease payments, rents, fees and charges, and all other income or receipts derived by the authority from a participating utility.

67-8904. CREATION OF IDAHO ENERGY RESOURCES AUTHORITY. There is hereby created and established an independent public body politic and corporate to be known as the "Idaho Energy Resources Authority." The authority is a public instrumentality of the state and its exercise of the powers conferred by this chapter is and shall be deemed to be the performance of essential public functions and purposes.

67-8905. DIRECTORS -- TERMS OF OFFICE -- APPOINTMENT -- FILLING VACANCIES AND REMOVAL. (1) The powers of the authority shall be vested in a board of seven (7) directors to be appointed by the governor and confirmed by the senate.

(2) In making appointments, the governor shall endeavor to appoint individuals with direct professional experience and demonstrated knowledge in the electric utility industry. In addition to representatives of investor-owned, electric cooperative or municipal utilities, the governor may also appoint individuals with expertise in fields related to the functions of the authority such as engineering, banking, finance, economics and law.

(3) The directors of the authority first appointed by the governor shall serve for terms to be designated by the governor expiring on June 30, as follows: two (2) in 2006, one (1) in 2007, two (2) in 2008 and one (1) in each of 2009 and 2010. After the expiration of these initial terms, directors shall serve for five (5) year terms. Each director shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. Any director shall be eligible for reappointment but no director may serve more than two (2) consecutive terms.

(4) The governor shall fill any vacancy for the remainder of any unexpired term.

(5) Any director may be removed by the governor for malfeasance or will-

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ful neglect of duty or other cause.

67-8906. QUORUM -- MODE OF ACTION -- COMPENSATION. (1) Four (4) directors of the authority shall constitute a quorum for the purpose of conducting business and exercising its powers.

(2) Action may be taken by the authority upon the affirmative vote of at least four (4) directors. No vacancy on the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

(3) Notice of meetings shall be given as provided in sections 67-2341 through 67-2347, Idaho Code, and the bylaws of the authority.

(4) The board may hold any of its meetings by telephone, teleconference or other electronic means, as and to the extent provided in its bylaws.

(5) The board shall act by resolution or order which shall be recorded in its official minutes but need not be published or posted.

(6) Directors shall be compensated for services as provided by section 59-509(o), Idaho Code.

67-8907. ORGANIZATIONAL MEETING -- CHAIRMAN -- SECRETARY AND TREASURER --

INTEREST. (1) A director designated by the governor shall call and convene the initial organizational meeting of the authority and shall serve as its chairman pro tempore. At such meeting, appropriate bylaws shall be presented for adoption. The bylaws may provide for the election or appointment of officers and the delegation of certain powers and duties and such other matters as the authority deems proper. At such meeting and annually thereafter the board shall elect one (1) of the directors as chairman and one (1) as vice chairman.

(2) The board shall appoint a secretary and a treasurer and may appoint one (1) or more assistant secretaries and assistant treasurers, any of whom may be, but not required to be, a director of the authority, and who shall serve at the pleasure of the board. A single individual may be appointed as secretary-treasurer. They shall receive such compensation for their services as shall be fixed by the board. The secretary or an assistant secretary designated by the board shall keep a record of the proceedings of the board and shall be custodian of all books, documents, and papers filed with the authority, the minute books or journal thereof and its official seal. The secretary or any assistant secretary shall cause necessary copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies and all persons dealing with the authority may rely on such certificates. The treasurer shall have custody of and responsibility for the safekeeping of the funds and investments of the authority.

(3) The board may employ an executive officer and one (1) or more additional employees as it shall deem necessary and expedient to carry out its purposes. The executive officer may be, but is not required to be, a director of the authority. The executive officer shall serve at the pleasure of the board and shall receive such compensation as shall be fixed by the board.

(4) The board may delegate by resolution such powers and duties as it may deem proper to one (1) or more of its directors or to its secretary, executive officer or any assistant officers.

(5) The secretary, the treasurer and any executive officer shall execute a surety bond in the penal sum of one million dollars (\$1,000,000) or, in lieu thereof, the chairman of the authority shall execute a blanket bond covering each director, the secretary, the treasurer, the executive officer and any other employees or officers of the authority, each surety bond to be conditioned upon the faithful performance of the duties of the office or offices

covered, to be executed by a surety authorized to transact business in this state as surety. The cost of each such bond shall be paid by the authority.

(6) Notwithstanding any other law to the contrary, it shall not constitute a conflict of interest for a trustee, director, officer, or employee of any electric corporation, electric utility, financial institution, investment banking firm, brokerage firm, commercial bank or trust company, architecture firm, insurance company, or any other firm, person or corporation to serve as a director of the authority, provided such trustee, director, officer, or employee shall abstain from deliberation, action and vote by the authority in each instance where the business affiliation of any such trustee, director, officer, or employee is involved.

67-8908. POWERS. (1) The authority shall have the following powers, which are hereby declared to be necessary to enable the authority to carry out and effectuate the purposes and provisions of this chapter, together with all powers incidental thereto or necessary for the performance thereof:

(a) To have perpetual succession as a body politic and corporate;

(b) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(c) To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;

(d) To have and to use a corporate seal and to alter the same at pleasure;

(e) To maintain an office at such place or places as it may designate;

(f) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chap-

(g) To acquire, whether by purchase, gift, grant, bequest, devise, exchange, eminent domain or otherwise, own, hold, improve, lease, transfer, assign, pledge and dispose of, any real or personal property or any interest therein necessary or convenient in connection with any facility or its purposes under this chapter; provided however, that the power of eminent domain is limited to only those purposes and participating utilities as authorized by section 7-701, Idaho Code;

(h) To acquire, construct, reconstruct, renovate, improve, replace, maintain, repair, manage, operate, lease as lessee or lessor, and regulate any facility; to enter into contracts for any and all of such purposes and for the acquisition and management of fuel supplies, provided such is reasonably necessary for the operation and maintenance of any facility; to enter into contracts and agreements to manage risks associated with the purchase and sale of energy and energy commodities, provided such is reasonably necessary for the operation and maintenance of any facility; and shall designate one (1) or more qualified participating utilities as agent or agents of the authority, as agreed to among the participating utilities, with respect to the foregoing;

(i) To sell, lease or otherwise provide by contract to one (1) or more participating utilities the services, output or product provided by any or all of the facilities undertaken by the authority upon such terms and conditions as the authority and the participating utilities shall deem proper, and to establish, charge, collect and revise from time to time such rents, fees and charges for such services, output or product as provided for in this chapter;

(j) To borrow money and to issue bonds for any of the purposes described in this chapter, to issue refunding bonds and to enter into contracts and agreements determined by the authority to be necessary or desirable to

manage its debt service and interest costs;

(k) To establish rules and regulations for the use of facilities and to designate a participating utility as its agent, to establish rules and regulations for the use of the facilities undertaken or operated by such participating utility;

(l) To employ or contract for consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment and to fix their compensation;

(m) To enter into contracts, agreements or other transactions with and accept grants and the cooperation of the United States or any agency thereof or any state or any agency or governmental subdivision thereof, in furtherance of the purposes of this chapter including, but not limited to, the development, maintenance, operation, and financing of any facility and to do any and all things necessary in order to avail itself of such aid and cooperation;

(n) To receive and accept aid or contributions from any source of money, property, labor, or other things of value, to be held, used, and applied to carry out the purposes of this chapter subject to such conditions upon which such grants and contributions may be made, including, but not limited to, gifts or grants from any department or agency of the United States or any state for any purpose consistent with this chapter;

(o) To assign and pledge all or any part of its revenues and income and to mortgage or otherwise encumber any or all of its facilities and the site or sites thereof, whether then owned or thereafter acquired, for the benefit and security of the holders of bonds issued to finance such facilities or any portion thereof;

(p) To make loans to any participating utility to finance the cost of any facilities in accordance with an agreement between the authority and such participating utility;

(q) To make secured or unsecured loans to a participating utility to refinance obligations and indebtedness incurred for facilities undertaken and completed prior to or after the enactment of this chapter when the authority finds that such financing is in the public interest and either

connection with other financing by the authority for such participating utility or may be expected to result in a cost-effective delivery of electricity to the consumers served by the participating utility, or any combination thereof;

(r) To charge to and equitably apportion its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter among the participating utilities that have entered into contracts with the authority;

(s) To procure insurance against any loss in connection with its property and other assets in such amounts and from such insurers as it deems desirable and to self-insure against such risks as it shall deem to be reasonable;

(t) To invest any funds not needed for immediate use or disbursement, including any funds held in reserve, in:

(i) Bonds, notes and other obligations of the United States or any agency or instrumentality thereof and other securities secured by such bonds, notes or other obligations;

(ii) Money market funds which are insured or the assets of which are limited to obligations of the United States or any agency or instrumentality thereof;

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(iii) Time certificates of deposit and savings accounts;

(iv) Commercial paper which, at the time of its purchase, is rated in the highest category by a nationally recognized rating service;

(v) Property or securities in which the state treasurer may invest funds in the state treasury pursuant to section 67-1210, Idaho Code; and

(vi) With respect to any funds representing bond proceeds or amounts pledged to the payment of bonds, such other investments as may be specified in a bond resolution or trust indenture securing bonds of the authority;

(u) To participate in cooperative ventures with any agencies or organizations in order to provide affordable and reliable energy to the residents of the state; and

(v) To do all things necessary and convenient to carry out the purposes of this chapter.

(2) Notwithstanding any other provision of this chapter, the authority shall have no power to:

(a) Acquire the operating property of any investor-owned, private, cooperative, municipal or other utility by the exercise of the power of eminent domain;

(b) Provide financing for the acquisition of the operating property of any such utility by or under threat of eminent domain, in either case unless such utility consents in writing to the acquisition; or

(c) Deliver retail electricity or related retail products or services to any ultimate consumer, whether in violation of the Idaho electric supplier stabilization act or otherwise.

67-8909. DEVELOPMENT, ACQUISITION AND CONSTRUCTION OF FACILITIES. (1) The authority will endeavor to achieve efficiencies and economies of scale by pursuing the development of facilities with multiple participating utilities on a joint and cooperative basis and shall, to the fullest extent practicable, offer all potential participating utilities the opportunity to participate in the development of a facility and the electricity, service or product to be provided by the facility.

(2) The authority shall not commence the development or financing for any facility until it shall have entered into contractual arrangements with one (1) or more participating utilities that contain provisions acceptable to both the authority and the participating utility or utilities and which are determined by the authority to provide adequate assurance that all capital, operating and related costs of the facility will be paid by or provided for by one (1) or more participating utilities.

(3) The authority may acquire, construct and own any facility undertaken

by it, may cause such facility to be acquired and constructed on its behalf by one (1) or more participating utilities as its agent, may enter into joint ownership arrangements with respect to any facility, and may enter into contractual arrangements with third parties for the acquisition and construction of a facility.

(4) Upon the payment in full of all bonds issued by the authority to finance or refinance the cost of a facility and upon the discharge of all other obligations of the authority with respect to a facility, the authority will convey title to the facility to the participating utility or utilities with respect to such facility, unless a participating utility requests in writing to the authority that it continue to retain title of the facility on behalf of the participating utility. Any such conveyance shall be in proportion to the funds provided or paid by the participating utility in respect of

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the debt service and operating costs of the facility.

67-8910. MANAGEMENT AND OPERATION OF FACILITIES. The authority shall cause any facilities undertaken by it to be managed and operated on its behalf by one (1) or more qualified participating utilities, or if no participating utility is qualified, willing or able to manage and operate such facility, by an agent so designated by the authority capable and skilled in the management and operation of such a facility. The authority shall enter into joint operating arrangements with participating utilities, designated agents of the authority or others and may enter into any and all contractual arrangements determined by the authority to promote the effective and efficient management and operation of its facilities.

67-8911. SALE OF ELECTRICITY, PRODUCT OR SERVICE FROM FACILITIES -- CHARGES. (1) The authority shall operate on a not-for-profit basis and shall sell the electricity, product or service provided by its facilities to participating utilities at cost, as provided in subsections (2) and (3) of this section. The authority shall contract with one (1) or more participating utilities for the sale of the electricity, product or service provided or to be provided by each facility upon such terms and conditions as the authority shall deem proper and to provide reasonable assurances that the authority will recover all of its costs associated with each of its facilities. Such contracts may contain the agreement of each participating utility to purchase a specified quantity of the output or service provided by a facility, to purchase all or a portion of its requirements for electric generation, transmission or other services from the authority and to make payments to the authority regardless of whether any particular facility is completed, operable, operating, damaged or destroyed, in whole or in part.

(2) The authority shall establish and collect rents, fees and charges for the electricity, product or service from its facilities that it shall find to be necessary in order to produce revenues which, together with all other available moneys, revenues, income and receipts of the authority, will be sufficient:

(a) To pay, as the same become due, the principal of and interest on the bonds issued to finance or refinance its facilities and to make, create and maintain deposits, reserves and margins required or provided for in any resolution authorizing, or trust agreement securing, bonds of the authority;

(b) To pay its costs, including its organizational, operational and management costs; and

(c) To pay for the operation, maintenance, renewal, replacement and repair of its facilities, including necessary reserves and allowances for depreciation and decommissioning costs.

The authority is hereby authorized to fix, revise, charge and collect rents, fees and charges for the use of and for the electricity, products or services furnished or to be furnished by each facility and to contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof.

(3) Rents, fees and charges for the electricity, product or service from a facility shall be revised and adjusted by the authority from time to time as

50 or moneys available therefor, to pay the cost of maintaining, repairing and
51 operating the facility and each and every portion thereof; and, to the extent
52 that the payment of such cost has not otherwise been adequately provided for,
53 to pay the principal of and the interest on outstanding bonds of the authority

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1 issued in respect of such facility as the same shall become due and payable.

2 (4) Notwithstanding the language, terms or definitions contained in sec-
3 tions 61-119 and 61-129, Idaho Code, the authority shall not be considered to
4 be an electrical corporation as provided by section 61-119, Idaho Code, or a
5 public utility as provided by section 61-129, Idaho Code, and the rents, fees
6 and charges established by contract between the authority and one (1) or more
7 participating utilities for the purchase and sale of the output or services
8 provided by any facility shall not be subject to supervision or regulation by
9 any department, commission, board, body, bureau or agency of this state other
10 than the authority provided that any participating utility regulated pursuant
11 to title 61, Idaho Code, shall be required to submit such contract to the com-
12 mission to the extent required by title 61, Idaho Code.

13 67-8912. COST RECOVERY AND RATE STABILIZATION CHARGES OF PARTICIPATING
14 UTILITIES. (1) A participating utility contracting with the authority for the
15 electricity, service or product provided by a facility may establish one (1)
16 or more rate stabilization charges, cost recovery charges or power cost
17 adjustment charges as it deems necessary to provide for the payment of all
18 amounts owed by the participating utility to the authority with respect to the
19 facility and otherwise enable the participating utility to stabilize its
20 rates, to protect its consumers from volatile market prices and to insure
21 against market and other risks. Such rate stabilization charges, cost recovery
22 charges or power cost adjustment charges may be established by the participat-
23 ing utility as a separate component of its existing rates and charges or as a
24 new charge.

(2) A participating utility that is subject to rate regulation by the
commission shall submit each of its proposed rate stabilization charges, cost
recovery charges or power cost adjustment charges to the commission for
approval.

(3) Each other participating utility that serves electric consumers in
the state but which is not subject to rate regulation by the commission, may
establish a rate stabilization charge, cost recovery charge or power cost
adjustment charge only after it has provided adequate notice of and a public
meeting or hearing on such charge to the members or consumers served by it. A
notice shall be deemed to be adequate if:

(a) It is given at least fifteen (15) days prior to the public meeting or
hearing in the manner usually employed by the participating utility to
give notice of its hearings or meetings, by mail, publication or other-
wise; and

(b) It provides a brief description of the proposed rate stabilization,
cost recovery or power cost adjustment charges and a summary of the pur-
poses for which it is being established.

After the meeting or hearing has been held, the participating utility may pro-
ceed to establish and fix the rate stabilization, cost recovery or power cost
adjustment charge.

(4) Each participating utility may agree in its contractual arrangements
with the authority as to the use and disposition of all or any part of the
revenues from any rate stabilization, cost recovery or power cost adjustment
charges established by the participating utility. Each participating utility
may pledge, and may create and grant a security interest in, all or a portion
of such revenues to secure its payment obligations to the authority in respect
of any facility. Any such agreement or pledge by a participating utility that
is a municipal corporation of the state shall not be deemed to create an
indebtedness or liability of such municipal corporation or a loan or donation
of its credit within the meaning of any constitutional or statutory provision.

1 67-8913. COOPERATION WITH OTHER AGENCIES AND SUBDIVISIONS. The authority
2 may enter into agreements with any other state body or agency, any other
3 political subdivision of the state and any other public agency, as defined in
4 section 67-2327, Idaho Code, for the joint exercise of powers and the author-
5 ity and all other public agencies may join or cooperate with each other,
6 either jointly or otherwise, in the exercise of any of their powers for the
purpose of planning, undertaking, owning, constructing, or contracting with
respect to, a facility.

9 67-8914. EXEMPTION FROM INCOME TAXATION. All bonds issued by the author-
10 ity and the interest thereon and all revenues, fees, charges, gifts, grants,
11 receipts and other moneys of the authority pledged to the payment of its bonds
12 shall at all times be free from the taxes imposed under the Idaho income tax
13 act.

14 67-8915. ISSUANCE OF BONDS TO FINANCE FACILITIES. (1) The authority shall
15 have power and is hereby authorized to issue, from time to time, its bonds in
16 such principal amount as it shall determine to be necessary to provide suffi-
17 cient funds to pay, finance or refinance the cost of any facility, and all
18 other expenditures of the authority incidental and necessary or convenient to
19 carry out its corporate purposes and powers. The cost of any facility shall
20 include all amounts determined by the authority to be necessary or desirable
21 in connection with the acquisition, construction, development, improvement and
22 equipping of a facility including, but not limited to:

23 (a) The cost of acquiring all lands, structures, real or personal prop-
24 erty, rights, rights-of-way, franchises, easements and interests neces-
25 sary, used or useful for or in connection with the facility;

26 (b) The cost of all machinery and equipment necessary, used or useful in
27 connection with the facility;

28 (c) The cost of architectural, engineering and legal services, including
29 studies, surveys, plans and specifications, and related services;

30 (d) The cost of interest on bonds prior to and during construction, and
31 if judged advisable by the authority, for a period after completion of
such construction, and all other costs incidental to the issuance of bonds
by the authority;

32 (e) The cost of reserves for future repairs, replacements and additions
33 to a facility, insurance policies and premiums and related costs and
34 expenses; and

35 (f) All other costs and expenses determined by the authority to be neces-
36 sary and incidental to the acquisition, construction, financing and plac-
37 ing in operation of a facility.

38 The proceeds of the bonds may also be used to provide for the payment of any
39 financial fees and charges, including underwriting discounts, financial advi-
40 sory, legal and trustee fees and expenses, the premiums for or costs of bond
41 insurance, surety bonds or other forms of credit or liquidity enhancement, and
42 to provide for any necessary debt service reserves associated with such bonds.

43 (2) The bonds shall be authorized by resolution or resolutions of the
44 authority, shall be dated, shall mature, shall bear interest, shall be in such
45 form and shall otherwise have such terms and provisions as such resolution or
46 resolutions may provide, except that no bond shall mature more than forty (40)
47 years from the date of its issue. The bonds shall bear interest at such rate
48 or rates, shall be executed in such manner, shall be payable in such medium at
49 such place or places, and be subject to such terms of redemption as such reso-
50 lution or resolutions may provide. The authority may sell its bonds at public
51 or private sale, at such price or prices as it shall determine.

1 (3) Any resolution or resolutions authorizing bonds, or any trust inden-
2 ture or other instrument securing bonds, may contain provisions which shall be
a part of the contract or contracts with the holders thereof, as to:

3 (a) Pledging and assigning all or any part of the revenues of the author-
4 ity to secure the payment of the bonds, and the use and disposition of
5 such revenues pending the payment of the bonds;

6 (b) Pledging and assigning all or any part of the assets of the authority
7 including mortgages and obligations securing the same, to secure the pay-
8

(c) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(d) Limitations on the purpose to which the proceeds of sale of bonds may be applied and limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(e) The procedure, if any, by which the terms of any contract with bondholders may be amended, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(f) Vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this chapter;

(g) Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the authority to the holders of the bonds and providing for the rights and remedies of the holders of the bonds in the event of such default, including as a matter of right the appointment of a receiver; and

(h) Any other matters, of like or different character, deemed necessary, desirable or appropriate by the authority in connection with the issuance of its bonds.

(4) Any pledge made by the authority shall be valid and binding from the time when the pledge is made; the revenues, moneys or property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(5) Neither the directors of the authority nor any other person executing such bonds shall be subject to any personal liability or accountability by reason of the issuance thereof.

(6) The authority may from time to time purchase any of its outstanding bonds out of any moneys available to it for such purpose at such price or prices as the authority shall deem reasonable or necessary.

(7) In the discretion of the authority, the bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any bank or trust company organized under the laws of the United States or any state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be determined by the authority to be reasonable and necessary, including covenants setting forth the duties of the authority in relation to the exercise of its corporate powers, the custody, the safeguarding and application of all moneys, the events of default and the rights and remedies of the bondholders and the corporate trustee upon the occurrence of an event of default. The authority may provide by such trust indenture for the payment of the proceeds of the bonds

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and the revenues to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of the authority. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

(8) Whether or not the bonds are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, the bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the bonds for registration.

67-8916. REFUNDING BONDS. (1) The authority may provide for the issuance of refunding bonds for the purpose of refunding any bonds then outstanding which have been issued under the provisions of this chapter, including the payment of any redemption premium thereon, any interest accrued or to accrue

pose of the authority. The issuance of such bonds, the maturities, and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the authority in respect of the same shall be governed by the provisions of this chapter which relate to the issuance of bonds, insofar as such provisions may be appropriate therefor.

(2) Refunding bonds may be sold or exchanged for outstanding bonds issued under this chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding bonds. Pending the application of the proceeds of any such refunding bonds, with any other available funds, to the payment of the principal, accrued interest, and any redemption premium on the bonds being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding bonds or in the trust agreement securing the same, to the payment of any interest on such refunding bonds and any expenses in connection with such refunding, such proceeds may be invested in such obligations as may be permitted for the defeasance of the outstanding bonds in the resolution or indenture under which they were issued.

67-8917. PAYMENT OF BONDS -- NONLIABILITY OF STATE. (1) Bonds issued by the authority shall not constitute or become an indebtedness, or a debt or liability of the state or any agency or subdivision of the state and neither the state nor any of its agencies or subdivisions shall be liable on such bonds nor shall the bonds constitute the giving, pledging or loaning of the faith and credit of the state or any agency or subdivision of the state, but shall be payable solely from the funds provided for their payment. The issuance of bonds under the provisions of this chapter shall not, directly, indirectly or contingently, obligate the state or any agency or subdivision of the state to levy or collect any form of taxes or assessments for their payment or to create any indebtedness payable out of taxes or assessments. Nothing in this chapter shall be construed to authorize the authority to create a debt of the state within the meaning of the constitution or statutes of the state of Idaho or authorize the authority to levy or collect taxes or assessments and all bonds issued by the authority pursuant to the provisions of this chapter are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or in any trust indenture or mortgage or deed of trust executed as security therefor and are not a debt or liability of the state of Idaho.

(2) The state shall not in any event be liable for the payment of the

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principal of or interest on any bonds of the authority or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the authority. No breach of any such pledge, mortgage, obligation or agreement shall impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing power.

(3) All expenses incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter and no liability or obligation shall be incurred by the authority beyond the extent to which moneys shall have been provided under this chapter.

67-8918. STATE'S PLEDGE. (1) The state pledges to and agrees with the holders of any bonds issued under this chapter, and with those parties who may enter into contracts with the authority pursuant to the provisions of this chapter, that the state will not limit, alter, restrict or impair the rights hereby vested in the authority to acquire, construct, reconstruct, maintain and operate any facility as defined in this chapter or to establish, revise, charge and collect rates, rents, fees and other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds authorized and issued under this chapter, and with the parties who may enter into contracts with the authority pursuant to this chapter, or in any way impair the rights or remedies of the holders of such bonds or of such parties until the bonds, together with the interest thereon, are fully paid and discharged and such contracts are fully performed on the

(2) Nothing in this chapter precludes such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such bonds or those entering into such contracts with the authority.

(3) The authority is authorized to include this pledge and undertaking for the state in such bonds and in such contracts.

67-8919. FEES. All expenses of the authority incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter by participating utilities to the authority in the form of application fees, annual service, loan or administrative fees and other negotiated fees as between the authority and the participating utilities and no liability shall be incurred by the authority beyond the extent to which moneys shall have been provided under this chapter, except that for the purposes of meeting the necessary expenses of initial organization and operation until such date as the authority derives moneys from funds provided hereunder, the authority shall be empowered to borrow moneys as may be required for such necessary expenses of organization and operation. Such borrowed moneys shall be repaid within a reasonable time after the authority receives funds provided for under this chapter.

67-8920. EXEMPTION OF REAL PROPERTY OF AUTHORITY FROM LEVY AND SALE BY EXECUTION. All real property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the authority be a charge or lien upon its real property; provided however, that the provisions of this section shall not apply to or limit the right of bondholders to foreclose or otherwise enforce any mortgage or other security of the authority or the right of obligees and bondholders to pursue any remedies for the enforcement of any pledge or lien given by the authority on its rents, fees or revenues or the right of obligees or bondholders to pursue any remedies conferred

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upon the same pursuant to this chapter.

67-8921. ANNUAL REPORT. The authority shall submit to the governor within ninety (90) days after the end of its fiscal year a complete and detailed report setting forth:

(1) Its operations and accomplishments;

(2) An accounting of its receipts and expenditures during such fiscal year in accordance with the categories or classifications established by the authority for its operating and capital outlay purposes;

(3) Its assets and liabilities at the end of its fiscal year, including the status of reserve, special or other funds; and

(4) A schedule of its bonds outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year.

67-8922. AUTHORITY OBLIGATIONS ARE LEGAL INVESTMENTS. The bonds of the authority shall be legal investments in which all public officers and public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations, and other persons carrying on an insurance business, all banks, bankers, banking associations, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The bonds are also hereby made securities which may properly and legally be deposited with and received by all public officers and bodies of the state or any agency or political subdivisions of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized by law.

31 67-8923. CHAPTER NOT A LIMITATION OF POWERS. Neither this chapter nor
32 anything herein contained is or shall be construed as a restriction or limita-
33 tion upon any powers which the authority might otherwise have under any laws
34 of this state, and this chapter is cumulative to any such powers. This chapter
35 does and shall be construed to provide a complete additional, and alternative
method for the doing of the things authorized thereby and shall be regarded as
supplemental and additional to powers conferred by other laws. This chapter is
intended to provide full and exclusive authority for the issuance of bonds and
the authority shall not be subject to any other state law applicable to the
issuance of bonds, notes and other obligations by the state or its agencies or
instrumentalities. Contracts for the construction and acquisition of any
facilities undertaken pursuant to this chapter need not comply with the provi-
sions of any other state law applicable to contracts for the construction and
acquisition of state owned property. No proceedings, notice or approval shall
be required for the issuance of any bonds by the authority or any instrument
as security therefor, except as is provided in this chapter.

47 67-8924. CONSTITUTIONALITY. (1) Notwithstanding any other evidence of
48 legislative intent, it is hereby declared to be the controlling legislative
49 intent, that if any provision of this chapter or the application thereof to
50 any person or circumstance is held invalid, the remainder of this chapter and
51 the application of such provisions to persons or circumstances other than

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1 those as to which it is held invalid shall not be affected thereby.

2 (2) If any section, subdivision, paragraph, sentence, clause or provision
3 of this chapter shall be unconstitutional or ineffective, in whole or in part,
4 to the extent that it is not unconstitutional or ineffective it shall be valid
5 and effective and no other section, subdivision, paragraph, sentence, clause
6 or provision shall on account thereof be deemed invalid or ineffective.

Statement of Purpose / Fiscal Impact

STATEMENT OF PURPOSE

RS 14783

The purpose of this legislation is to create the Idaho Energy Resources Authority (ERA), an instrumentality independent from the state with authority to finance the construction of electric generation and transmission projects. The ERA's purpose is to provide investor-owned, municipal and cooperative electric utilities that serve Idaho customers a least cost financing vehicle for building Idaho's electric infrastructure. Idaho currently imports more than half the electricity consumed in the state. Significant transmission bottlenecks exist in most major transmission corridors across the state. The Bonneville Power Administration no longer has sufficient generating resources to meet future load growth of Idaho's municipal and cooperative utilities. All Idaho utilities need to make significant investment in both generation and transmission infrastructure to provide reliable electric service at stable rates, and to meet expected load growth. The ERA will have the power to issue revenue bonds on behalf of one or more participating utilities to finance generation and transmission projects. Bonds issued by the ERA will be secured solely by debt service payments made to the ERA by the participating utilities and by security interests held by the ERA in the financed facilities. The ERA will have no obligation (primary or residual) to pay bonds issued by the ERA. Participation by utilities in ERA financing is optional, although it is expected the ERA will be able to offer least cost financing options. The ERA will operate on a non-profit basis and report annually to the Governor.

FISCAL NOTE

This legislation will have no negative fiscal impact on the state. Positive fiscal impacts will occur as the ERA helps stimulate economic growth and enhances the property tax base of local taxing jurisdictions. All administrative costs of the Authority will be paid by the utilities financing facilities through the ERA.

Contact

Name: Representative George Eskridge
Representative Dell Raybould
Senator Brent Hill
Senator Bart Davis
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STATEMENT OF PURPOSE/FISCAL NOTE

H 106

HOUSE BILL NO. 106

[View Bill Status](#)

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Text to be added within a bill has been marked with Bold and Underline. Text to be removed has been marked with Strikethrough and Italic. How these codes are actually displayed will vary based on the browser software you are using.

This sentence is marked with bold and underline to show added text.

~~*This sentence is marked with strikethrough and italic, indicating text to be removed.*~~

Bill Status

H0106.....by ENVIRONMENT, ENERGY AND TECHNOLOGY
ENERGY RESOURCES AUTHORITY ACT - Adds to existing law to create an Idaho
Energy Resources Authority as an independent body; and to authorize the
Authority to issue revenue bonds for construction of transmission
facilities.

02/03 House intro - 1st rdg - to printing

02/04 Rpt prt - to Env

02/09 Rpt out - rec d/p - to 2nd rdg

02/10 2nd rdg - to 3rd rdg

02/15 3rd rdg - PASSED - 62-6-2

AYES -- Anderson, Andrus, Barraclough, Bastian, Bayer, Bedke, Bilbao,
Black, Block, Boe, Bolz, Bradford, Cannon, Chadderdon, Collins, Deal,
Edmunson, Ellsworth, Eskridge, Field(18), Field(23), Garrett, Hart,
Harwood, Henbest, Henderson, Jaquet, Kemp, Lake, LeFavour,
Loertscher, Martinez, Mathews, McGeachin, Miller, Mitchell, Nielsen,
Nonini, Pasley-Stuart, Pence, Raybould, Ring, Ringo, Roberts, Rusche,
Rydalch, Sali, Sayler, Schaefer, Shepherd(2), Shepherd(8), Shirley,
Skippen, Smith(30), Smith(24), Smylie, Snodgrass, Stevenson, Trail,
Wills, Wood, Mr. Speaker

NAYS -- Barrett, Clark, Crow, Denney, McKague, Moyle

Absent and excused -- Bell, Jones

Floor Sponsor - Eskridge

Title apvd - to Senate

02/16 Senate intro - 1st rdg - to Res/Env

02/21 Rpt out - ref'd to St Aff

02/28 Rpt out - rec d/p - to 2nd rdg

03/01 2nd idg - to 3rd rdg

03/03 3rd rdg - PASSED - 28-5-2

AYES -- Andreason, Brandt, Broadsword, Bunderson, Burtenshaw,
Cameron, Coiner, Compton, Corder, Darrington, Davis, Gannon, Geddes,
Goedde, Hill, Kelly, Keough, Little, Lodge, Marley, McKenzie, Pearce,
Richardson, Schroeder, Stennett, Sweet, Werk, Williams

NAYS -- Burkett, Jorgenson, Langhorst, Malepeai, Stegner

Absent and excused -- McGee, Noble

Floor Sponsor - Hill

Title apvd - to House

03/04 To enrol

03/07 Rpt enrol - Sp signed

03/08 Pres signed

03/09 To Governor

Governor signed

Session Law Chapter 53

Effective: 07/01/05

]]] LEGISLATURE OF THE STATE OF IDAHO]]]
 y-eighth Legislature First Regular Session - 2005

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 106

BY ENVIRONMENT, ENERGY AND TECHNOLOGY COMMITTEE

AN ACT

RELATING TO AN IDAHO ENERGY RESOURCES AUTHORITY; AMENDING TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 89, TITLE 67, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE A DECLARATION OF NECESSITY AND PURPOSE, TO DEFINE TERMS, TO CREATE THE IDAHO ENERGY RESOURCES AUTHORITY, TO PROVIDE FOR DIRECTORS OF THE AUTHORITY, TO PROVIDE TERMS OF OFFICE, APPOINTMENT AND FILLING VACANCIES AND REMOVAL, TO PROVIDE A QUORUM, MODE OF ACTION AND COMPENSATION FOR THE DIRECTORS, TO PROVIDE FOR AN ORGANIZATIONAL MEETING, OFFICERS AND APPOINTMENT OF AN EXECUTIVE DIRECTOR, TO PROVIDE FOR DELEGATION OF POWER, TO PROVIDE A SURETY BOND AND TO PROVIDE FOR A CONFLICT OF INTEREST, TO PROVIDE POWERS OF THE AUTHORITY, TO PROVIDE FOR DEVELOPMENT, ACQUISITION AND CONSTRUCTION OF FACILITIES, TO PROVIDE FOR MANAGEMENT AND OPERATION OF FACILITIES, TO PROVIDE FOR THE SALE OF ELECTRICITY, PRODUCT OR SERVICE FROM FACILITIES AND TO PROVIDE FOR CHARGES, TO PROVIDE FOR COST RECOVERY AND FOR RATE STABILIZATION CHARGES OF PARTICIPATING UTILITIES, TO PROVIDE FOR COOPERATION WITH OTHER AGENCIES AND POLITICAL SUBDIVISIONS, TO PROVIDE FOR EXEMPTION FROM INCOME TAXATION, TO PROVIDE FOR THE ISSUANCE OF BONDS TO FINANCE FACILITIES, TO PROVIDE FOR REFUNDING OF BONDS, TO PROVIDE FOR PAYMENT OF BONDS AND THE NONLIABILITY OF THE STATE OF IDAHO, TO PROVIDE FOR THE STATE OF IDAHO'S PLEDGE TO HOLDERS OF BONDS, TO PROVIDE FOR FEES, TO PROVIDE FOR EXEMPTION OF REAL PROPERTY OF THE AUTHORITY FROM LEVY AND SALE BY EXECUTION, TO PROVIDE FOR AN ANNUAL REPORT, TO PROVIDE THAT AUTHORITY OBLIGATIONS ARE LEGAL INVESTMENTS, TO PROVIDE THAT THIS ACT IS NOT A LIMITATION OF POWERS OF THE AUTHORITY AND TO PROVIDE FOR CONSTITUTIONALITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 89, Title 67, Idaho Code, and to read as follows:

CHAPTER 89

IDAHO ENERGY RESOURCES AUTHORITY ACT

67-8901. SHORT TITLE. This act may be referred to and cited as the "Idaho Energy Resources Authority Act."

67-8902. DECLARATION OF NECESSITY AND PURPOSE. (1) It is hereby determined and declared that:

(a) Industrial, irrigation, commercial and residential consumers in the state of Idaho receive electric service from various investor-owned, cooperative and municipal utilities and the ability of these utilities to provide reliable and economic electric services at stable prices is essential to the economy and the economic development of the state of Idaho and to the health, safety and welfare of its people;

(b) The regional interconnection of electric utilities causes events and conditions in other western states to have a significant impact of the

operations of utilities in the state of Idaho and the restructuring of the electric industry in recent years by the federal government and in other states has exposed all utilities in Idaho, and the consumers served by them, to volatile market prices, reliability concerns and other adverse conditions;

(c) It is in the best interest of the state of Idaho and its people that sufficient and reliable electric generation and transmission resources are developed and made available at cost-based rates in order to enable these utilities to meet existing and future demands for electric services, to provide adequate reserves and to promote reliability at the most stable rates practicable;

(d) The electric utility and energy industries are and will continue to be capital-intensive industries and the availability of cost-effective financing to investor-owned, cooperative and municipal utilities will enhance the ability of these utilities to provide and promote economic electric services to consumers in the state;

(e) Coordination, cooperation and joint ventures between and among such utilities with one another and with the private, cooperative, federal, state and municipal utilities and agencies that provide wholesale and retail electric services in the western states will promote regional electric reliability and stability and will provide economies of scale; and

(f) It is the intent of the legislature to create the Idaho energy resources authority to promote the development and financing of facilities for the benefit of participating utilities and to accomplish the purposes stated above, and to authorize the authority to exercise all such powers as are necessary to enable it to achieve such purposes and to thereby promote and protect the economy of the state of Idaho and the health, safety and welfare of its people.

(2) Nothing contained herein is intended or shall be construed to limit or restrict the authority of the Idaho public utilities commission with respect to the regulation of electric corporations and public utilities pursuant to title 61, Idaho Code.

67-8903. DEFINITIONS. When used in this chapter, the following terms shall have the following meanings:

(1) "Authority" means the Idaho energy resources authority created pursuant to section 67-8904, Idaho Code.

(2) "Board" means the board of directors of the authority.

(3) "Bonds" means any bonds, notes, certificates or other obligations or evidences of indebtedness issued by the authority.

(4) "Commission" means the Idaho public utilities commission created pursuant to section 61-201, Idaho Code.

(5) "Electric cooperative" means a cooperative corporation or association which is:

(a) Organized under the provisions of section 501(c)(12) or 1381 of the Internal Revenue Code;

(b) Is an Idaho nonprofit corporation pursuant to chapter 3, title 30, Idaho Code; and

(c) Is an operating entity or successor entity thereof which owns facilities and provides electric service to customers in Idaho as of the effective date of this chapter.

(6) "Facility" means any facility necessary, used or useful in connection with the generation or transmission of electric power and energy, in each case

including, but not limited to, all real and personal property, fuel supplies and transportation facilities, pollution control facilities and all equipment and improvements necessary or desirable in connection with a facility.

"Facility" shall include facilities owned in whole or in part by the authority or a participating utility, including undivided ownership interests in facilities, leasehold interests in facilities and other estates, but excludes a generating facility that sells any portion of its output as a qualifying facility to a participating utility under provisions of the public utility regulatory policies act of 1978, 16 U.S.C. section 2601 et seq.

(7) "Participating utility" means, with respect to any facilities under-

11 by the authority pursuant to this chapter, any public or private corpo-
12 ration, electric cooperative or other cooperative corporation or association,
13 municipal corporation, political subdivision of this state or another state,
14 state or federal agency, joint operating entity or other entity that:

15 (a) Owns and operates an electric utility system that provides electric
16 services to consumers of electricity located in an existing service area
within the boundaries of this state;

17 (b) Provides electric generation, power supply, transmission and/or
18 ancillary and related services at wholesale to one (1) or more participat-
19 ing utilities described in paragraph (a) of this subsection; or

20 (c) Is organized or operates as a regional transmission organization cov-
21 ering all or any part of the state of Idaho and one (1) or more other
22 states.

23 (8) "Revenues" means all receipts, purchase payments, loan repayments,
24 lease payments, rents, fees and charges, and all other income or receipts
25 derived by the authority from a participating utility.
26

27 67-8904. CREATION OF IDAHO ENERGY RESOURCES AUTHORITY. There is hereby
28 created and established an independent public body politic and corporate to be
29 known as the "Idaho Energy Resources Authority." The authority is a public
30 instrumentality of the state and its exercise of the powers conferred by this
31 chapter is and shall be deemed to be the performance of essential public func-
32 tions and purposes.

33 67-8905. DIRECTORS -- TERMS OF OFFICE -- APPOINTMENT -- FILLING VACANCIES
34 AND REMOVAL. (1) The powers of the authority shall be vested in a board of
35 seven (7) directors to be appointed by the governor and confirmed by the sen-
36 ate.

37 (2) In making appointments, the governor shall endeavor to appoint indi-
38 viduals with direct professional experience and demonstrated knowledge in the
39 electric utility industry. In addition to representatives of investor-owned,
40 electric cooperative or municipal utilities, the governor may also appoint
41 individuals with expertise in fields related to the functions of the authority
such as engineering, banking, finance, economics and law.

42 (3) The directors of the authority first appointed by the governor shall
43 serve for terms to be designated by the governor expiring on June 30, as fol-
44 lows: two (2) in 2006, one (1) in 2007, two (2) in 2008 and one (1) in each of
45 2009 and 2010. After the expiration of these initial terms, directors shall
46 serve for five (5) year terms. Each director shall hold office for the term of
47 his appointment and until his successor shall have been appointed and quali-
48 fied. Any director shall be eligible for reappointment but no director may
49 serve more than two (2) consecutive terms.

50 (4) The governor shall fill any vacancy for the remainder of any unex-
51 pired term.

52 (5) Any director may be removed by the governor for malfeasance or will-
53

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1 ful neglect of duty or other cause.

2 67-8906. QUORUM -- MODE OF ACTION -- COMPENSATION. (1) Four (4) directors
3 of the authority shall constitute a quorum for the purpose of conducting busi-
4 ness and exercising its powers.

5 (2) Action may be taken by the authority upon the affirmative vote of at
6 least four (4) directors. No vacancy on the board shall impair the right of a
7 quorum to exercise all the rights and perform all the duties of the authority.

8 (3) Notice of meetings shall be given as provided in sections 67-2341
9 through 67-2347, Idaho Code, and the bylaws of the authority.

10 (4) The board may hold any of its meetings by telephone, teleconference
11 or other electronic means, as and to the extent provided in its bylaws.

12 (5) The board shall act by resolution or order which shall be recorded in
its official minutes but need not be published or posted.

13 (6) Directors shall be compensated for services as provided by section
14 59-509(o), Idaho Code.
15

16 67-8907. ORGANIZATIONAL MEETING -- CHAIRMAN -- SECRETARY AND TREASURER --

EXECUTIVE DIRECTOR DELEGATION OF POWER -- SURETY BOND AND CONFLICT OF INTEREST. (1) A director designated by the governor shall call and convene the initial organizational meeting of the authority and shall serve as its chairman pro tempore. At such meeting, appropriate bylaws shall be presented for adoption. The bylaws may provide for the election or appointment of officers and the delegation of certain powers and duties and such other matters as the authority deems proper. At such meeting and annually thereafter the board shall elect one (1) of the directors as chairman and one (1) as vice chairman.

(2) The board shall appoint a secretary and a treasurer and may appoint one (1) or more assistant secretaries and assistant treasurers, any of whom may be, but not required to be, a director of the authority, and who shall serve at the pleasure of the board. A single individual may be appointed as secretary-treasurer. They shall receive such compensation for their services as shall be fixed by the board. The secretary or an assistant secretary designated by the board shall keep a record of the proceedings of the board and shall be custodian of all books, documents, and papers filed with the authority, the minute books or journal thereof and its official seal. The secretary or any assistant secretary shall cause necessary copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies and all persons dealing with the authority may rely on such certificates. The treasurer shall have custody of and responsibility for the safekeeping of the funds and investments of the authority.

(3) The board may employ an executive officer and one (1) or more additional employees as it shall deem necessary and expedient to carry out its purposes. The executive officer may be, but is not required to be, a director of the authority. The executive officer shall serve at the pleasure of the board and shall receive such compensation as shall be fixed by the board.

(4) The board may delegate by resolution such powers and duties as it may deem proper to one (1) or more of its directors or to its secretary, executive officer or any assistant officers.

(5) The secretary, the treasurer and any executive officer shall execute a surety bond in the penal sum of one million dollars (\$1,000,000) or, in lieu thereof, the chairman of the authority shall execute a blanket bond covering each director, the secretary, the treasurer, the executive officer and any other employees or officers of the authority, each surety bond to be conditioned upon the faithful performance of the duties of the office or offices

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covered, to be executed by a surety authorized to transact business in this state as surety. The cost of each such bond shall be paid by the authority.

(6) Notwithstanding any other law to the contrary, it shall not constitute a conflict of interest for a trustee, director, officer, or employee of any electric corporation, electric utility, financial institution, investment banking firm, brokerage firm, commercial bank or trust company, architecture firm, insurance company, or any other firm, person or corporation to serve as a director of the authority, provided such trustee, director, officer, or employee shall abstain from deliberation, action and vote by the authority in each instance where the business affiliation of any such trustee, director, officer, or employee is involved.

67-8908. POWERS. (1) The authority shall have the following powers, which are hereby declared to be necessary to enable the authority to carry out and effectuate the purposes and provisions of this chapter, together with all powers incidental thereto or necessary for the performance thereof:

(a) To have perpetual succession as a body politic and corporate;

(b) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(c) To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;

(d) To have and to use a corporate seal and to alter the same at pleasure;

(e) To maintain an office at such place or places as it may designate;

(f) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chap-

26
27 (g) To acquire, whether by purchase, gift, grant, bequest, devise,
28 exchange, eminent domain or otherwise, own, hold, improve, lease, trans-
29 fer, assign, pledge and dispose of, any real or personal property or any
30 interest therein necessary or convenient in connection with any facility
31 or its purposes under this chapter; provided however, that the power of
eminent domain is limited to only those purposes and participating utili-
ties as authorized by section 7-701, Idaho Code;

34 (h) To acquire, construct, reconstruct, renovate, improve, replace, main-
35 tain, repair, manage, operate, lease as lessee or lessor, and regulate any
36 facility; to enter into contracts for any and all of such purposes and for
37 the acquisition and management of fuel supplies, provided such is reason-
38 ably necessary for the operation and maintenance of any facility; to enter
39 into contracts and agreements to manage risks associated with the purchase
40 and sale of energy and energy commodities, provided such is reasonably
41 necessary for the operation and maintenance of any facility; and shall
42 designate one (1) or more qualified participating utilities as agent or
43 agents of the authority, as agreed to among the participating utilities,
44 with respect to the foregoing;

45 (i) To sell, lease or otherwise provide by contract to one (1) or more
46 participating utilities the services, output or product provided by any or
47 all of the facilities undertaken by the authority upon such terms and con-
48 ditions as the authority and the participating utilities shall deem
49 proper, and to establish, charge, collect and revise from time to time
50 such rents, fees and charges for such services, output or product as pro-
51 vided for in this chapter;

52 (j) To borrow money and to issue bonds for any of the purposes described
53 in this chapter, to issue refunding bonds and to enter into contracts and
54 agreements determined by the authority to be necessary or desirable to

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1 manage its debt service and interest costs;

2 (k) To establish rules and regulations for the use of facilities and to
3 designate a participating utility as its agent, to establish rules and
4 regulations for the use of the facilities undertaken or operated by such
5 participating utility;

6 (l) To employ or contract for consulting engineers, architects, attor-
7 neys, accountants, construction and financial experts, superintendents,
8 managers, and such other employees and agents as may be necessary in its
9 judgment and to fix their compensation;

10 (m) To enter into contracts, agreements or other transactions with and
11 accept grants and the cooperation of the United States or any agency
12 thereof or any state or any agency or governmental subdivision thereof, in
13 furtherance of the purposes of this chapter including, but not limited to,
14 the development, maintenance, operation, and financing of any facility and
15 to do any and all things necessary in order to avail itself of such aid
16 and cooperation;

17 (n) To receive and accept aid or contributions from any source of money,
18 property, labor, or other things of value, to be held, used, and applied
19 to carry out the purposes of this chapter subject to such conditions upon
20 which such grants and contributions may be made, including, but not lim-
21 ited to, gifts or grants from any department or agency of the United
22 States or any state for any purpose consistent with this chapter;

23 (o) To assign and pledge all or any part of its revenues and income and
24 to mortgage or otherwise encumber any or all of its facilities and the
25 site or sites thereof, whether then owned or thereafter acquired, for the
26 benefit and security of the holders of bonds issued to finance such facil-
27 ities or any portion thereof;

28 (p) To make loans to any participating utility to finance the cost of any
facilities in accordance with an agreement between the authority and such
participating utility;

29 (q) To make secured or unsecured loans to a participating utility to
30 refinance obligations and indebtedness incurred for facilities undertaken
31 and completed prior to or after the enactment of this chapter when the
32 authority finds that such financing is in the public interest and either
33
34

35 alleviates the financial hardship upon the participating utility or is in
36 connection with other financing by the authority for such participating
37 utility or may be expected to result in a cost-effective delivery of elec-
38 tricity to the consumers served by the participating utility, or any com-
39 bination thereof;

40 (r) To charge to and equitably apportion its administrative costs and
expenses incurred in the exercise of the powers and duties conferred by
this chapter among the participating utilities that have entered into con-
tracts with the authority;

44 (s) To procure insurance against any loss in connection with its property
45 and other assets in such amounts and from such insurers as it deems desir-
46 able and to self-insure against such risks as it shall deem to be reason-
47 able;

48 (t) To invest any funds not needed for immediate use or disbursement,
49 including any funds held in reserve, in:

50 (i) Bonds, notes and other obligations of the United States or any
51 agency or instrumentality thereof and other securities secured by
52 such bonds, notes or other obligations;

53 (ii) Money market funds which are insured or the assets of which are
54 limited to obligations of the United States or any agency or instru-
55 mentality thereof;

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1 (iii) Time certificates of deposit and savings accounts;

2 (iv) Commercial paper which, at the time of its purchase, is rated
3 in the highest category by a nationally recognized rating service;

4 (v) Property or securities in which the state treasurer may invest
5 funds in the state treasury pursuant to section 67-1210, Idaho Code;
6 and

7 (vi) With respect to any funds representing bond proceeds or amounts
8 pledged to the payment of bonds, such other investments as may be
9 specified in a bond resolution or trust indenture securing bonds of
the authority;

12 (u) To participate in cooperative ventures with any agencies or organiza-
13 tions in order to provide affordable and reliable energy to the residents
of the state; and

14 (v) To do all things necessary and convenient to carry out the purposes
15 of this chapter.

16 (2) Notwithstanding any other provision of this chapter, the authority
17 shall have no power to:

18 (a) Acquire the operating property of any investor-owned, private, coop-
19 erative, municipal or other utility by the exercise of the power of emi-
20 nent domain;

21 (b) Provide financing for the acquisition of the operating property of
22 any such utility by or under threat of eminent domain, in either case
23 unless such utility consents in writing to the acquisition; or

24 (c) Deliver retail electricity or related retail products or services to
25 any ultimate consumer, whether in violation of the Idaho electric supplier
26 stabilization act or otherwise.

27 67-8909. DEVELOPMENT, ACQUISITION AND CONSTRUCTION OF FACILITIES. (1) The
28 authority will endeavor to achieve efficiencies and economies of scale by pur-
29 suing the development of facilities with multiple participating utilities on a
30 joint and cooperative basis and shall, to the fullest extent practicable,
31 offer all potential participating utilities the opportunity to participate in
32 the development of a facility and the electricity, service or product to be
33 provided by the facility.

34 (2) The authority shall not commence the development or financing for any
35 facility until it shall have entered into contractual arrangements with one
(1) or more participating utilities that contain provisions acceptable to both
the authority and the participating utility or utilities and which are deter-
36 mined by the authority to provide adequate assurance that all capital, operat-
37 ing and related costs of the facility will be paid by or provided for by one
38 (1) or more participating utilities.

41 (3) The authority may acquire, construct and own any facility undertaken

by it, may cause such facility to be acquired and constructed on its behalf by one (1) or more participating utilities as its agent, may enter into joint ownership arrangements with respect to any facility, and may enter into contractual arrangements with third parties for the acquisition and construction of a facility.

(4) Upon the payment in full of all bonds issued by the authority to finance or refinance the cost of a facility and upon the discharge of all other obligations of the authority with respect to a facility, the authority will convey title to the facility to the participating utility or utilities with respect to such facility, unless a participating utility requests in writing to the authority that it continue to retain title of the facility on behalf of the participating utility. Any such conveyance shall be in proportion to the funds provided or paid by the participating utility in respect of

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the debt service and operating costs of the facility.

67-8910. MANAGEMENT AND OPERATION OF FACILITIES. The authority shall cause any facilities undertaken by it to be managed and operated on its behalf by one (1) or more qualified participating utilities, or if no participating utility is qualified, willing or able to manage and operate such facility, by an agent so designated by the authority capable and skilled in the management and operation of such a facility. The authority shall enter into joint operating arrangements with participating utilities, designated agents of the authority or others and may enter into any and all contractual arrangements determined by the authority to promote the effective and efficient management and operation of its facilities.

67-8911. SALE OF ELECTRICITY, PRODUCT OR SERVICE FROM FACILITIES -- CHARGES. (1) The authority shall operate on a not-for-profit basis and shall sell the electricity, product or service provided by its facilities to participating utilities at cost, as provided in subsections (2) and (3) of this section. The authority shall contract with one (1) or more participating utilities for the sale of the electricity, product or service provided or to be provided by each facility upon such terms and conditions as the authority shall deem proper and to provide reasonable assurances that the authority will recover all of its costs associated with each of its facilities. Such contracts may contain the agreement of each participating utility to purchase a specified quantity of the output or service provided by a facility, to purchase all or a portion of its requirements for electric generation, transmission or other services from the authority and to make payments to the authority regardless of whether any particular facility is completed, operable, operating, damaged or destroyed, in whole or in part.

(2) The authority shall establish and collect rents, fees and charges for the electricity, product or service from its facilities that it shall find to be necessary in order to produce revenues which, together with all other available moneys, revenues, income and receipts of the authority, will be sufficient:

(a) To pay, as the same become due, the principal of and interest on the bonds issued to finance or refinance its facilities and to make, create and maintain deposits, reserves and margins required or provided for in any resolution authorizing, or trust agreement securing, bonds of the authority;

(b) To pay its costs, including its organizational, operational and management costs; and

(c) To pay for the operation, maintenance, renewal, replacement and repair of its facilities, including necessary reserves and allowances for depreciation and decommissioning costs.

The authority is hereby authorized to fix, revise, charge and collect rents, fees and charges for the use of and for the electricity, products or services furnished or to be furnished by each facility and to contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof.

(3) Rents, fees and charges for the electricity, product or service from a facility shall be revised and adjusted by the authority from time to time as

50 or moneys available therefor, to pay the cost of maintaining, repairing and
51 operating the facility and each and every portion thereof; and, to the extent
52 that the payment of such cost has not otherwise been adequately provided for,
53 to pay the principal of and the interest on outstanding bonds of the authority

1 issued in respect of such facility as the same shall become due and payable.

2 (4) Notwithstanding the language, terms or definitions contained in sec-
3 tions 61-119 and 61-129, Idaho Code, the authority shall not be considered to
4 be an electrical corporation as provided by section 61-119, Idaho Code, or a
5 public utility as provided by section 61-129, Idaho Code, and the rents, fees
6 and charges established by contract between the authority and one (1) or more
7 participating utilities for the purchase and sale of the output or services
8 provided by any facility shall not be subject to supervision or regulation by
9 any department, commission, board, body, bureau or agency of this state other
10 than the authority provided that any participating utility regulated pursuant
11 to title 61, Idaho Code, shall be required to submit such contract to the com-
12 mission to the extent required by title 61, Idaho Code.

13 67-8912. COST RECOVERY AND RATE STABILIZATION CHARGES OF PARTICIPATING
14 UTILITIES. (1) A participating utility contracting with the authority for the
15 electricity, service or product provided by a facility may establish one (1)
16 or more rate stabilization charges, cost recovery charges or power cost
17 adjustment charges as it deems necessary to provide for the payment of all
18 amounts owed by the participating utility to the authority with respect to the
19 facility and otherwise enable the participating utility to stabilize its
20 rates, to protect its consumers from volatile market prices and to insure
21 against market and other risks. Such rate stabilization charges, cost recovery
22 charges or power cost adjustment charges may be established by the participat-
23 ing utility as a separate component of its existing rates and charges or as a
24 new charge.

25 (2) A participating utility that is subject to rate regulation by the
26 commission shall submit each of its proposed rate stabilization charges, cost
27 recovery charges or power cost adjustment charges to the commission for
28 approval.

29 (3) Each other participating utility that serves electric consumers in
30 the state but which is not subject to rate regulation by the commission, may
31 establish a rate stabilization charge, cost recovery charge or power cost
32 adjustment charge only after it has provided adequate notice of and a public
33 meeting or hearing on such charge to the members or consumers served by it. A
34 notice shall be deemed to be adequate if:

35 (a) It is given at least fifteen (15) days prior to the public meeting or
36 hearing in the manner usually employed by the participating utility to
37 give notice of its hearings or meetings, by mail, publication or other-
38 wise; and

39 (b) It provides a brief description of the proposed rate stabilization,
40 cost recovery or power cost adjustment charges and a summary of the pur-
41 poses for which it is being established.

42 After the meeting or hearing has been held, the participating utility may pro-
43 ceed to establish and fix the rate stabilization, cost recovery or power cost
44 adjustment charge.

45 (4) Each participating utility may agree in its contractual arrangements
46 with the authority as to the use and disposition of all or any part of the
47 revenues from any rate stabilization, cost recovery or power cost adjustment
48 charges established by the participating utility. Each participating utility
49 may pledge, and may create and grant a security interest in, all or a portion
50 of such revenues to secure its payment obligations to the authority in respect
51 of any facility. Any such agreement or pledge by a participating utility that
is a municipal corporation of the state shall not be deemed to create an
indebtedness or liability of such municipal corporation or a loan or donation
of its credit within the meaning of any constitutional or statutory provision.

may enter into agreements with any other state body or agency, any other political subdivision of the state and any other public agency, as defined in section 67-2327, Idaho Code, for the joint exercise of powers and the authority and all other public agencies may join or cooperate with each other, either jointly or otherwise, in the exercise of any of their powers for the purpose of planning, undertaking, owning, constructing, or contracting with respect to, a facility.

67-8914. EXEMPTION FROM INCOME TAXATION. All bonds issued by the authority and the interest thereon and all revenues, fees, charges, gifts, grants, receipts and other moneys of the authority pledged to the payment of its bonds shall at all times be free from the taxes imposed under the Idaho income tax act.

67-8915. ISSUANCE OF BONDS TO FINANCE FACILITIES. (1) The authority shall have power and is hereby authorized to issue, from time to time, its bonds in such principal amount as it shall determine to be necessary to provide sufficient funds to pay, finance or refinance the cost of any facility, and all other expenditures of the authority incidental and necessary or convenient to carry out its corporate purposes and powers. The cost of any facility shall include all amounts determined by the authority to be necessary or desirable in connection with the acquisition, construction, development, improvement and equipping of a facility including, but not limited to:

(a) The cost of acquiring all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests necessary, used or useful for or in connection with the facility;

(b) The cost of all machinery and equipment necessary, used or useful in connection with the facility;

(c) The cost of architectural, engineering and legal services, including studies, surveys, plans and specifications, and related services;

(d) The cost of interest on bonds prior to and during construction, and if judged advisable by the authority, for a period after completion of such construction, and all other costs incidental to the issuance of bonds by the authority;

(e) The cost of reserves for future repairs, replacements and additions to a facility, insurance policies and premiums and related costs and expenses; and

(f) All other costs and expenses determined by the authority to be necessary and incidental to the acquisition, construction, financing and placing in operation of a facility.

The proceeds of the bonds may also be used to provide for the payment of any financial fees and charges, including underwriting discounts, financial advisory, legal and trustee fees and expenses, the premiums for or costs of bond insurance, surety bonds or other forms of credit or liquidity enhancement, and to provide for any necessary debt service reserves associated with such bonds.

(2) The bonds shall be authorized by resolution or resolutions of the authority, shall be dated, shall mature, shall bear interest, shall be in such form and shall otherwise have such terms and provisions as such resolution or resolutions may provide, except that no bond shall mature more than forty (40) years from the date of its issue. The bonds shall bear interest at such rate or rates, shall be executed in such manner, shall be payable in such medium at such place or places, and be subject to such terms of redemption as such resolution or resolutions may provide. The authority may sell its bonds at public or private sale, at such price or prices as it shall determine.

(3) Any resolution or resolutions authorizing bonds, or any trust indenture or other instrument securing bonds, may contain provisions which shall be a part of the contract or contracts with the holders thereof, as to:

(a) Pledging and assigning all or any part of the revenues of the authority to secure the payment of the bonds, and the use and disposition of such revenues pending the payment of the bonds;

(b) Pledging and assigning all or any part of the assets of the authority including mortgages and obligations securing the same, to secure the pay-

(c) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(d) Limitations on the purpose to which the proceeds of sale of bonds may be applied and limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(e) The procedure, if any, by which the terms of any contract with bondholders may be amended, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(f) Vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this chapter;

(g) Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the authority to the holders of the bonds and providing for the rights and remedies of the holders of the bonds in the event of such default, including as a matter of right the appointment of a receiver; and

(h) Any other matters, of like or different character, deemed necessary, desirable or appropriate by the authority in connection with the issuance of its bonds.

(4) Any pledge made by the authority shall be valid and binding from the time when the pledge is made; the revenues, moneys or property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(5) Neither the directors of the authority nor any other person executing such bonds shall be subject to any personal liability or accountability by reason of the issuance thereof.

(6) The authority may from time to time purchase any of its outstanding bonds out of any moneys available to it for such purpose at such price or prices as the authority shall deem reasonable or necessary.

(7) In the discretion of the authority, the bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any bank or trust company organized under the laws of the United States or any state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be determined by the authority to be reasonable and necessary, including covenants setting forth the duties of the authority in relation to the exercise of its corporate powers, the custody, the safeguarding and application of all moneys, the events of default and the rights and remedies of the bondholders and the corporate trustee upon the occurrence of an event of default. The authority may provide by such trust indenture for the payment of the proceeds of the bonds

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and the revenues to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of the authority. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

(8) Whether or not the bonds are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, the bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the bonds for registration.

67-8916. REFUNDING BONDS. (1) The authority may provide for the issuance of refunding bonds for the purpose of refunding any bonds then outstanding which have been issued under the provisions of this chapter, including the payment of any redemption premium thereon, any interest accrued or to accrue

pose of the authority. The issuance of such bonds, the maturities, and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the authority in respect of the same shall be governed by the provisions of this chapter which relate to the issuance of bonds, insofar as such provisions may be appropriate therefor.

(2) Refunding bonds may be sold or exchanged for outstanding bonds issued under this chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding bonds. Pending the application of the proceeds of any such refunding bonds, with any other available funds, to the payment of the principal, accrued interest, and any redemption premium on the bonds being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding bonds or in the trust agreement securing the same, to the payment of any interest on such refunding bonds and any expenses in connection with such refunding, such proceeds may be invested in such obligations as may be permitted for the defeasance of the outstanding bonds in the resolution or indenture under which they were issued.

67-8917. PAYMENT OF BONDS -- NONLIABILITY OF STATE. (1) Bonds issued by the authority shall not constitute or become an indebtedness, or a debt or liability of the state or any agency or subdivision of the state and neither the state nor any of its agencies or subdivisions shall be liable on such bonds nor shall the bonds constitute the giving, pledging or loaning of the faith and credit of the state or any agency or subdivision of the state, but shall be payable solely from the funds provided for their payment. The issuance of bonds under the provisions of this chapter shall not, directly, indirectly or contingently, obligate the state or any agency or subdivision of the state to levy or collect any form of taxes or assessments for their payment or to create any indebtedness payable out of taxes or assessments. Nothing in this chapter shall be construed to authorize the authority to create a debt of the state within the meaning of the constitution or statutes of the state of Idaho or authorize the authority to levy or collect taxes or assessments and all bonds issued by the authority pursuant to the provisions of this chapter are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or in any trust indenture or mortgage or deed of trust executed as security therefor and are not a debt or liability of the state of Idaho.

(2) The state shall not in any event be liable for the payment of the

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principal of or interest on any bonds of the authority or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the authority. No breach of any such pledge, mortgage, obligation or agreement shall impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing power.

(3) All expenses incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter and no liability or obligation shall be incurred by the authority beyond the extent to which moneys shall have been provided under this chapter.

67-8918. STATE'S PLEDGE. (1) The state pledges to and agrees with the holders of any bonds issued under this chapter, and with those parties who may enter into contracts with the authority pursuant to the provisions of this chapter, that the state will not limit, alter, restrict or impair the rights hereby vested in the authority to acquire, construct, reconstruct, maintain and operate any facility as defined in this chapter or to establish, revise, charge and collect rates, rents, fees and other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds authorized and issued under this chapter, and with the parties who may enter into contracts with the authority pursuant to this chapter, or in any way impair the rights or remedies of the holders of such bonds or of such parties until the bonds, together with the interest thereon, are fully paid and discharged and such contracts are fully performed on the

(2) Nothing in this chapter precludes such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such bonds or those entering into such contracts with the authority.

(3) The authority is authorized to include this pledge and undertaking for the state in such bonds and in such contracts.

67-8919. FEES. All expenses of the authority incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter by participating utilities to the authority in the form of application fees, annual service, loan or administrative fees and other negotiated fees as between the authority and the participating utilities and no liability shall be incurred by the authority beyond the extent to which moneys shall have been provided under this chapter, except that for the purposes of meeting the necessary expenses of initial organization and operation until such date as the authority derives moneys from funds provided hereunder, the authority shall be empowered to borrow moneys as may be required for such necessary expenses of organization and operation. Such borrowed moneys shall be repaid within a reasonable time after the authority receives funds provided for under this chapter.

67-8920. EXEMPTION OF REAL PROPERTY OF AUTHORITY FROM LEVY AND SALE BY EXECUTION: All real property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the authority be a charge or lien upon its real property; provided however, that the provisions of this section shall not apply to or limit the right of bondholders to foreclose or otherwise enforce any mortgage or other security of the authority or the right of obligees and bondholders to pursue any remedies for the enforcement of any pledge or lien given by the authority on its rents, fees or revenues or the right of obligees or bondholders to pursue any remedies conferred

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upon the same pursuant to this chapter.

67-8921. ANNUAL REPORT. The authority shall submit to the governor within ninety (90) days after the end of its fiscal year a complete and detailed report setting forth:

(1) Its operations and accomplishments;

(2) An accounting of its receipts and expenditures during such fiscal year in accordance with the categories or classifications established by the authority for its operating and capital outlay purposes;

(3) Its assets and liabilities at the end of its fiscal year, including the status of reserve, special or other funds; and

(4) A schedule of its bonds outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year.

67-8922. AUTHORITY OBLIGATIONS ARE LEGAL INVESTMENTS. The bonds of the authority shall be legal investments in which all public officers and public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking associations, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The bonds are also hereby made securities which may properly and legally be deposited with and received by all public officers and bodies of the state or any agency or political subdivisions of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized by law.

31 67-8923. CHAPTER NOT A LIMITATION OF POWERS. Neither this chapter nor
32 anything herein contained is or shall be construed as a restriction or limita-
33 tion upon any powers which the authority might otherwise have under any laws
34 of this state, and this chapter is cumulative to any such powers. This chapter
35 does and shall be construed to provide a complete additional, and alternative
method for the doing of the things authorized thereby and shall be regarded as
supplemental and additional to powers conferred by other laws. This chapter is
intended to provide full and exclusive authority for the issuance of bonds and
39 the authority shall not be subject to any other state law applicable to the
40 issuance of bonds, notes and other obligations by the state or its agencies or
41 instrumentalities. Contracts for the construction and acquisition of any
42 facilities undertaken pursuant to this chapter need not comply with the provi-
43 sions of any other state law applicable to contracts for the construction and
44 acquisition of state owned property. No proceedings, notice or approval shall
45 be required for the issuance of any bonds by the authority or any instrument
46 as security therefor, except as is provided in this chapter.

47 67-8924. CONSTITUTIONALITY. (1) Notwithstanding any other evidence of
48 legislative intent, it is hereby declared to be the controlling legislative
49 intent, that if any provision of this chapter or the application thereof to
50 any person or circumstance is held invalid, the remainder of this chapter and
51 the application of such provisions to persons or circumstances other than

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1 those as to which it is held invalid shall not be affected thereby.

2 (2) If any section, subdivision, paragraph, sentence, clause or provision
3 of this chapter shall be unconstitutional or ineffective, in whole or in part,
4 to the extent that it is not unconstitutional or ineffective it shall be valid
5 and effective and no other section, subdivision, paragraph, sentence, clause
6 or provision shall on account thereof be deemed invalid or ineffective.

Statement of Purpose / Fiscal Impact

STATEMENT OF PURPOSE

RS 14783

The purpose of this legislation is to create the Idaho Energy Resources Authority (ERA), an instrumentality independent from the state with authority to finance the construction of electric generation and transmission projects. The ERA's purpose is to provide investor-owned, municipal and cooperative electric utilities that serve Idaho customers a least cost financing vehicle for building Idaho's electric infrastructure.

Idaho currently imports more than half the electricity consumed in the state. Significant transmission bottlenecks exist in most major transmission corridors across the state. The Bonneville Power Administration no longer has sufficient generating resources to meet future load growth of Idaho's municipal and cooperative utilities. All Idaho utilities need to make significant investment in both generation and transmission infrastructure to provide reliable electric service at stable rates, and to meet expected load growth. The ERA will have the power to issue revenue bonds on behalf of one or more participating utilities to finance generation and transmission projects. Bonds issued by the ERA will be secured solely by debt service payments made to the ERA by the participating utilities and by security interests held by the ERA in the financed facilities. The ERA will have no obligation (primary or residual) to pay bonds issued by the ERA. Participation by utilities in ERA financing is optional, although it is expected the ERA will be able to offer least cost financing options. The ERA will operate on a non-profit basis and report annually to the Governor.

FISCAL NOTE

This legislation will have no negative fiscal impact on the state. Positive fiscal impacts will occur as the ERA helps stimulate economic growth and enhances the property tax base of local taxing jurisdictions. All administrative costs of the Authority will be paid by the utilities financing facilities through the ERA.

Contact

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STATEMENT OF PURPOSE/FISCAL NOTE

H 106

HOUSE BILL No. 2263

AN ACT concerning utilities; enacting the Kansas electric transmission act; providing for recovery of certain costs of construction and upgrading of electric transmission facilities; prescribing procedures for curtailment of natural gas service to certain premises; amending K.S.A. 66-103a and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Sections 1 through 13, and amendments thereto, may be cited as the Kansas electric transmission authority act.

(b) The purpose for which the Kansas electric transmission authority is created is to further ensure reliable operation of the integrated electrical transmission system, diversify and expand the Kansas economy and facilitate the consumption of Kansas energy through improvements in the state's electric transmission infrastructure.

New Sec. 2. As used in the Kansas electric transmission authority act:

(a) "Authority" means the Kansas electric transmission authority created by this act.

(b) "Board" means the board of directors of the authority.

(c) "Transmission facilities" means electric transmission facilities or related supporting infrastructure, including any interests therein, or both.

New Sec. 3. (a) There is hereby created a body politic and corporate to be known as the Kansas electric transmission authority. The authority is hereby constituted a public instrumentality and the exercise by the authority of the powers conferred by this act in the construction, operation and maintenance of electric transmission projects shall be deemed and held to be the performance of an essential governmental function.

(b) (1) The authority shall be governed by a board of directors consisting of seven members.

(2) Three members shall be appointed by the governor, subject to confirmation by the senate as provided by K.S.A. 75-4315b and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed to the board shall exercise any power, duty or function as a member of the board until confirmed by the senate. The terms of members first appointed to the board shall be as follows: One shall be appointed for terms expiring the second March 15 following appointment, one for a term expiring the third March 15 following appointment and one for terms expiring the fourth March 15 following appointment. Thereafter, members shall be appointed for terms of four years and until their successors are appointed and confirmed. All persons appointed by the governor and serving as members shall be qualified voters of the state of Kansas with special knowledge, as evidenced by college degrees or courses, or with at least five years' experience in managerial positions, in the field of electric transmission or generation development. Not more than two of the members appointed by the governor shall be members of the same political party. A person appointed by the governor to fill a vacancy on the board shall be appointed to serve for the unexpired term. A member appointed to the board by the governor shall be eligible for reappointment. A member of the board appointed by the governor may be removed by the governor for misfeasance, malfeasance or willful neglect of duty, but only after reasonable notice and a public hearing conducted in accordance with the provisions of the Kansas administrative procedure act.

(3) The following shall be *ex officio* of the board: The chairperson and ranking minority member of the senate standing committee on utilities or its successor and the chairperson and ranking minority member of the house standing committee on utilities or its successor. Members *ex officio* shall be entitled to vote and participate as full members of the board.

(c) Each member of the board, before entering upon the member's duties, shall take and subscribe an oath or affirmation as required by law.

(d) Members of the board attending meetings of the board, or attending a subcommittee meeting thereof authorized by the board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

New Sec. 4. (a) The board shall elect annually from among its members a chairperson, vice-chairperson and secretary. Four members of the board shall constitute a quorum and the affirmative vote of four members shall be necessary for any action taken by the board. No vacancy in the

membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(b) Notwithstanding any provision of K.S.A. 75-4317 et seq., and amendments thereto, in the case of the authority, discussion, consideration and action on any of the following may occur in executive session when in the opinion of the board disclosure of the items would be harmful to the competitive position of third parties or to the security of transmission facilities:

(1) Proprietary information gathered by or in the possession of the authority from third parties pursuant to a promise of confidentiality;

(2) information regarding the location of transmission facilities and security measures that protect such facilities; or

(3) information which is related to transmission capacity or availability and is not otherwise available to all electric energy market participants.

(c) Notwithstanding any provision of this section to the contrary, the authority may claim the benefit of any other exemption to the Kansas open meetings act listed in K.S.A. 75-4317 et seq., and amendments thereto.

New Sec. 5. (a) All resolutions and orders of the board shall be recorded and authenticated by the signature of the secretary or a person designated by the secretary. The book of resolutions, orders, minutes of open meetings, annual reports and annual financial statements of the authority shall be public records as defined by K.S.A. 45-215 et seq., and amendments thereto. All public records shall be subject to regular audit as provided in K.S.A. 46-1106, and amendments thereto.

(b) Notwithstanding any provision of K.S.A. 45-215 et seq., and amendments thereto to the contrary, the following records of the authority shall not be subject to the provisions of the Kansas open records act when in the opinion of the board disclosure of the information in the records would be harmful to the competitive position of third parties or to the security of transmission facilities:

(1) Proprietary information gathered by or in the possession of the authority from third parties pursuant to a promise of confidentiality;

(2) information regarding the location of transmission facilities and security measures that protect such facilities; or

(3) information which is related to transmission capacity or availability and is not otherwise available to all electric energy market participants.

(c) Notwithstanding any provision of this section to the contrary, the authority may claim the benefit of any other exemption to the Kansas open records act listed in K.S.A. 45-215 et seq. and amendments thereto.

New Sec. 6. (a) Any member of the board and any employee, other agent or advisor of the authority, who has a direct or indirect interest in any contract or transaction with the authority, shall disclose such interest to the authority in writing. Such interest shall be set forth in the minutes of the authority. No board member, employee or other agent or advisor having such interest shall participate on behalf of the authority in the authorization of any such contract or transaction.

(b) All members of the board shall file a written statement pursuant to K.S.A. 46-247 et seq., and amendments thereto, regarding any substantial interests within the meaning of K.S.A. 46-229, and amendments thereto, that each board member may hold. Any employee, other agent or advisor of the authority who has a substantial interest in any contract or transaction with the authority within the meaning of K.S.A. 46-229, and amendments thereto, shall file a written statement of substantial interest pursuant to K.S.A. 46-247 et seq., and amendments thereto.

New Sec. 7. (a) Except as otherwise provided by this act, the authority shall have all the powers necessary to carry out the purposes and provisions of this act, including, without limitation:

(1) Having the duties, privileges, immunities, rights, liabilities and disabilities of a body corporate and a political instrumentality of the state;

(2) having perpetual existence and succession;

(3) adopting, having and using a seal and altering the same at its pleasure;

(4) suing and being sued in its own name;

(5) adopting bylaws for the regulation of its affairs and the conduct of its business;

(6) adopting such rules and regulations as the authority deems necessary for the conduct of the business of the authority;

(7) employing consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as the authority deems necessary and fixing the compensation thereof;

(8) making and executing all contracts and agreements necessary or incidental to the performance of the authority's duties and the execution of the authority's powers under this act;

(9) planning, financing, constructing, developing, acquiring, owning, disposing of, contracting for maintenance of and contracting with electric public utilities, electric cooperative utilities or electric municipal utilities for operation of transmission facilities of the authority and any real or personal property, structures, equipment or facilities necessary or useful for the accomplishment of the purposes for which the authority was created, including the obtaining of permits and the acquisition of rights of way;

(10) receiving and accepting from any federal agency grants, or any other form of assistance, for or in aid of the planning, financing, construction, development, acquisition or ownership of any property, structures, equipment, facilities and works of public improvement necessary or useful for the accomplishment of the purposes for which the authority was created and receiving and accepting aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(11) borrowing funds to carry out the purposes of the authority and mortgaging and pledging any lease or leases granted, assigned or subleased by the authority;

(12) purchasing, leasing, trading, exchanging or otherwise acquiring, maintaining, holding, improving, mortgaging, selling, leasing and disposing of personal property, whether tangible or intangible, and any interest therein; and purchasing, leasing, trading, exchanging or otherwise acquiring real property or any interest therein, and maintaining, holding, improving, mortgaging, leasing and otherwise transferring such real property, so long as such transactions do not conflict with the mission of the authority as specified in this act;

(13) as provided by section 9, and amendments thereto, incurring or assuming indebtedness and entering into contracts with the Kansas development finance authority, which is authorized to borrow money, issue bonds and provide financing for: (A) The construction, upgrading or repair of transmission facilities of the Kansas electric transmission authority or the acquisition of right-of-way for such facilities, or both, and any such bonds shall be payable from and be secured by the pledge of revenues derived from the operation of such electric transmission facilities; or (B) making loans to finance the construction, upgrading or repair of transmission facilities not owned by the Kansas electric transmission authority or the acquisition of right-of-way for such facilities, or both, upon such terms and conditions as required by the authority, including a requirement that any entity receiving a loan under this act shall maintain records and accounts relating to receipt and disbursements of loan proceeds, transportation costs and information on energy sales and deliveries and make the records available to the authority for inspection, and any such bonds shall be payable from and be secured by the pledge of revenues derived from the operation of such electric transmission facilities;

(14) depositing any moneys of the authority in any banking institution within or without the state or in any depository authorized to receive such deposits, one or more persons to act as custodians of the moneys of the authority, to give surety bonds in such amounts in form and for such purposes as the board requires;

(15) recovering its costs through tariffs of the southwest power pool regional transmission organization, or its successor, and, if all costs are not recovered through such tariffs, through assessments against all electric public utilities, electric municipal utilities and electric cooperative utilities receiving benefits of the construction or upgrade and having retail customers in this state. Each such utility's assessment shall be based on the benefits the utility receives from the construction or upgrade, as determined by the state corporation commission upon application by the

authority. In determining allocation of benefits and costs to utilities, the commission may take into account funding and cost recovery mechanisms developed by regional transmission organizations and shall take into account financial payments by transmission users and approved by the federal energy regulatory commission or regional transmission organization. Each electric public utility shall recover any such assessed costs from the utility's customers in a manner approved by the commission and each electric municipal or cooperative utility shall recover such assessed costs from the utility's customers in a manner approved by the utility's governing body;

(16) participating in partnerships or joint ventures with individuals, corporations, governmental bodies or agencies, partnerships, associations or other entities to facilitate any activities or programs consistent with the public purpose and intent of this act, including partnerships or joint ventures for the purpose of financing all or any portion of a project pursuant to subsection (a)(2) of section 9, and amendments thereto;

(17) participating in and coordinating with the planning activities of the southwest power pool regional transmission organization, or its successor, and adjoining regional transmission organizations, or their successors; and

(18) participating in and coordinating with the planning activities of the southwest power pool regional reliability organization, or its successor, and adjoining regional reliability organizations, or their successors.

(b) (1) Except as otherwise provided in this act, the authority shall not exercise any of the rights or powers granted to it in this act, if private entities are performing the acts, are constructing or have constructed the facilities or are providing the services contemplated by the authority and such private entities are willing to finance and own new infrastructure to meet an identified need and market.

(2) Prior to exercising any rights or powers granted to it in this section, the authority shall publish once in the Kansas register, and once in a newspaper and trade magazine in the area where the facilities or services are contemplated, a notice describing the acts, facilities or services contemplated by the authority and stating that private entities willing and able to perform the acts, finance and own and construct the facilities or provide the services described in the notice shall have a period of 90 days after the date of publication of the notice within which to notify the authority of intention and ability to perform the acts, finance and construct the facilities or provide the services described in the notice. In the absence of notification by a private entity, the authority may proceed to perform the acts, construct the facilities or provide the services originally contemplated. If a private entity has given notice of intention to perform the acts, finance and construct the facilities or provide the services contemplated by the authority, the authority may proceed to perform the acts, construct the facilities or provide the services originally contemplated if the private entity fails to commence performance within 180 days after the date of notification of the authority of its intention. Actions deemed to constitute commencement of performance of the acts, construction of the facilities or provision of the services within the required time shall include, but not be limited to, holding of public meetings on siting of facilities, acquisition of land or commencement of proceedings for condemnation of land, application to acquire any federal, state, local or private permits, certificates or other authorizations or approvals necessary to perform the acts, construct the facilities or provide the services.

(3) Notwithstanding commencement of performance of the acts, construction of the facilities or provision of the services by a private entity, if the authority is not satisfied with subsequent progress in performance of the acts, construction of the facilities or provision of the services, the authority may again give notice as provided in subsection (b)(2) with respect to completion of performance of the acts, construction of the facilities or provision of the services. In the absence of notification by a private entity willing and able to complete performance of the acts, construction of the facilities or provision of the services, the authority may proceed to complete performance. If a private entity has given notice of intention to complete performance, the authority may proceed to perform the acts, construct the facilities or provide the services if the private entity fails to complete performance within 180 days after the date of notice by the entity.

(c) The authority shall not operate or maintain transmission facilities.

(d) The authority shall exercise the rights and powers granted to it in this act only with respect to transmission facilities which the southwest power pool regional transmission organization, or its successor, has determined are compatible with plans adopted by such organization and which have been approved by such organization.

(e) On or before the first day of the regular legislative session each year, the authority shall submit to the governor and to the legislature a written report of the authority's activities for the preceding fiscal year. Such report shall include the report of any audit conducted pursuant to section 10, and amendments thereto, of the preceding fiscal year.

(f) The authority shall continue until terminated by law. No such law terminating the authority shall take effect while the authority has bonds, debts or obligations outstanding unless adequate provision has been made for the payment or retirement of such bonds, debts or obligations. Upon dissolution of the authority, all property, funds and assets thereof shall be disposed of as provided by law.

New Sec. 8. (a) The authority shall not be subject to supervision or regulation by the state corporation commission, except that the authority shall be construed to be a public utility subject to the jurisdiction of the state corporation commission with regard to wire stringing and transmission line siting pursuant to K.S.A. 66-183 and 66-1,177 et seq., and amendments thereto.

(b) The authority may exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of such power by corporations constructing, upgrading or repairing electric transmission facilities.

(c) Except as otherwise provided by this act, the authority shall be entitled to all statutory benefits available to corporations constructing, upgrading or repairing electric transmission lines.

(d) The authority and its authorized agents and employees may enter upon any lands, waters and premises in the state for the purpose of making surveys, soundings, drillings and examinations as the authority may deem necessary or convenient for the purposes of this act. Such entry shall not be deemed a trespass or an entry under any condemnation proceedings which may be then pending. The authority shall make reimbursement for any actual damage resulting to such lands, waters and premises as a result of entry or activities authorized by this section.

New Sec. 9. (a) The Kansas electric transmission authority may enter into agreements with the Kansas development finance authority to issue revenue bonds or provide other financing pursuant to the Kansas development finance authority act, K.S.A. 74-8901 et seq., and amendments thereto, and to provide for payment of the bonds for the purpose of:

(1) Financing the construction, upgrading or repair of transmission facilities owned by the Kansas electric transmission authority pursuant to this act or the acquisition of right-of-way for such facilities, or both; or

(2) financing the construction, upgrading or repair of transmission facilities not owned by the Kansas electric transmission authority or the acquisition of right-of-way for such facilities, or both.

(b) Transmission facilities constructed, upgraded or repaired using proceeds of bonds issued pursuant to this section shall not be required to be located wholly within this state if:

(1) The majority of the costs of the construction, upgrade or repair is for construction, upgrade or repair of transmission facilities located or to be located in this state; and

(2) the state corporation commission certifies that the portions of the lines and appurtenances located outside this state will improve the reliability and security of the state's electric transmission system or will contribute to the long-term economic well being of this state.

(c) The Kansas development finance authority may pledge the agreement or agreements authorized in this section for the payment or redemption of the bonds. The activities of the Kansas electric transmission authority in administering and performing the powers, duties and functions prescribed by the provisions of this act from the proceeds of bonds issued for such purpose by the Kansas development finance authority are hereby approved for the purposes of subsection (b) of K.S.A. 74-8905, and amendments thereto, and the authorization of the issuance of such

bonds by the Kansas development finance authority in accordance with that statute. No bonds shall be issued pursuant to this section unless the Kansas development finance authority has received a resolution of the board of the Kansas electric transmission authority requesting the issuance of such bonds. The provisions of subsection (a) of K.S.A. 74-8905, and amendments thereto, shall not prohibit the issuance of bonds for such purposes when so authorized and any such issuance of bonds is exempt from the provisions of subsection (a) of K.S.A. 74-8905, and amendments thereto. Bonds issued pursuant to this section shall not be subject to the notice requirements of K.S.A. 74-8905, and amendments thereto.

New Sec. 10. (a) The accounts and transactions of the authority shall be subject to such financial-compliance and other audits as directed by the legislative post audit committee, in the manner provided for audits of state agencies pursuant to the legislative post audit act. The auditor to conduct the audit work shall be determined in the manner provided by K.S.A. 46-1122, and amendments thereto. If the legislative post audit committee determines that a firm, as defined by K.S.A. 46-1112, and amendments thereto, is to perform all or part of such audit work, such firm shall be selected and shall perform such audit work in the manner provided by K.S.A. 46-1123, and amendments thereto, and K.S.A. 46-1125 through 46-1127, and amendments thereto.

(b) The post auditor shall compute the cost of providing an audit pursuant to this section. If the audit is conducted by the division of post audit, such cost shall be subject to review and approval by the post audit committee. If the audit is conducted by a firm, as defined by K.S.A. 46-1112, and amendments thereto, such cost shall be subject to review and approval by the contract audit committee established by K.S.A. 46-1120, and amendments thereto. Upon approval of the cost by the appropriate committee, the authority shall reimburse the division of post audit for such amount.

New Sec. 11. (a) The authority shall be exempt from all tax under the Kansas state income tax act.

(b) Purchases by the authority shall not be subject to sales or use tax under subsection (b) of K.S.A. 79-3606 et seq., K.S.A. 79-3601 et seq. or K.S.A. 79-3701 et seq., and amendments thereto.

(c) Transmission facilities owned by the authority shall be exempt from general ad valorem taxes to the same extent that such facilities would be exempt from such taxes if owned by a private entity.

New Sec. 12. (a) All agencies of the state and political subdivisions of the state shall make such surveys, reports and investigations and shall furnish records and information and other assistance and advice as may be required by the authority. The authority shall reimburse such agencies and political subdivisions for the actual costs thereof.

(b) All political subdivisions and public agencies of the state, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the authority, at its request, upon such terms and conditions as such political subdivisions or agencies deem reasonable and fair, and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the authority.

New Sec. 13. (a) Any appropriation or transfer of state general fund moneys for the operation of the Kansas electric transmission authority and other expenses incurred pursuant to this act shall be considered a loan and shall be repaid with interest to the state general fund in one payment not later than 120 months from the effective date of the appropriation or transfer of such general fund moneys. Such loan shall not be considered an indebtedness or debt of the state within the meaning of section 6 of article 11 of the constitution of the state of Kansas. Such loan shall bear interest at a rate equal to the rate prescribed by K.S.A. 75-4210, and amendments thereto, for inactive accounts of the state effective on the first day of the month during which the appropriation or transfer takes effect.

(b) At the time of repayment of a loan pursuant to subsection (a), the chairman of the board shall certify to the director of accounts and reports

the amount to be repaid and any interest due thereon. Upon receipt of such certification, the director of accounts and reports shall promptly credit or transfer the amount certified from accounts of the authority to the state general fund.

New Sec. 14. (a) As used in this section:

(1) "Appurtenances" means all substations, towers, poles and other structures and equipment necessary for the bulk transfer of electricity.

(2) "Commission" means the state corporation commission.

(3) "Construction or upgrade of an electric transmission facility" means construction or upgrade of an electric line, and appurtenances, with an operating voltage of 115 kilovolts or more.

(b) Upon application, the commission may authorize recovery of costs associated with the construction or upgrade of an electric transmission facility if the commission finds that:

(1) (A) A regional transmission organization has identified such construction or upgrade as appropriate for reliable operation of the integrated electric transmission system or for economic benefits to transmission owners and customers; and (B) a state agency has determined that such construction or upgrade will provide measurable economic benefits to electric consumers in all or part of this state that will exceed anticipated project costs; and

(2) such costs are not being otherwise recovered.

(c) The commission shall review an application for recovery of costs pursuant to this section in an expedited manner if the application includes evidence that expedited construction or upgrade of the electric transmission facility will result in significant, measurable economic benefits to Kansas electric consumers. Recommendation or approval of construction or upgrade of an electric transmission facility by a regional transmission organization shall constitute a rebuttable presumption of the appropriateness of such construction or upgrade for system reliability or economic dispatch of power.

(d) In determining whether to approve recovery of costs pursuant to this section the commission may consider factors such as the speed with which Kansas electric consumers will benefit from the transmission facility and the long-term benefits of the transmission facility to Kansas electric consumers, or both, and whether such factors outweigh other less costly options. An application for recovery of costs pursuant to this section shall include such information as the commission requires to weigh such factors, including, but not limited to, information regarding estimated line losses, reactive power and voltage implications and long-term economic and system reliability benefits.

(e) Any recovery of costs authorized by the commission pursuant to this section shall be assessed against all electric public utilities, electric municipal utilities and electric cooperative utilities receiving benefits of the construction or upgrade and having retail customers in this state. Each such utility's assessment shall be based on the benefits the utility receives from the construction or upgrade. In determining allocation of benefits and costs to utilities, the commission may take into account funding and cost recovery mechanisms developed by regional transmission organizations and shall take into account financial payments by transmission users and approved by the federal energy regulatory commission or regional transmission organization. Each electric public utility shall recover any such assessed costs from the utility's retail customers in a manner approved by the commission and each electric municipal or cooperative utility shall recover such assessed costs from the utility's retail customers in a manner approved by the utility's governing body.

(f) All moneys collected by a utility from assessments authorized by the commission pursuant to this section shall be paid quarterly by the utility to the transmission operator or owner designated by the commission.

(g) Notwithstanding any other provision of law to the contrary, electric municipal utilities and electric cooperative utilities shall be subject to the jurisdiction of the commission for the limited purpose of implementing the provisions of this section.

Sec. 15. K.S.A. 66-105a is hereby amended to read as follows: 66-105a. (a) On and after July 1, 1997, the term "public utility" as used in K.S.A. 66-104, and amendments thereto, and the term "common carriers"

as used in K.S.A. 66-105, and amendments thereto, shall not include any gas gathering system, as defined in K.S.A. 55-150, and amendments thereto.

(b) Notwithstanding the provisions of subsection (a), for those persons providing gas gathering services in such a manner that allows end use customers to obtain natural gas by direct connection to a gathering system, the commission shall have authority, upon complaint or petition or upon its own motion, to determine the reasonableness of, and regulate and supervise, any health or safety related curtailment or proposed health or safety related curtailment of natural gas that results in the loss of service to the end use customer.

(c) Any person providing gas gathering services in such a manner that allows the offering of natural gas from a gas gathering system to an end use customer shall give notice thereof to the commission and to each affected end use customer and public utility of its intent to curtail service that will result in the loss of natural gas service to the end use customer. Except in the case of an emergency, notice shall be provided at least 30 days prior to such curtailment. In the case of an emergency, service to residential dwellings or commercial offices may be curtailed immediately upon a good faith belief that an emergency exists. Notice shall be given immediately to the end user and public utility. The person curtailing service, within 24 hours of the determination of the emergency, shall report the curtailment to the state corporation commission and provide the basis for and evidence supporting the good faith belief that curtailment was necessary under the emergency provisions of this subsection. In the event that the curtailment was not based upon a good faith belief and was unnecessary, as subsequently determined by the state corporation commission, the person curtailing service shall be held responsible for the cost of the service curtailment, including any reconnection cost and temporary heating costs.

(d) Nothing contained in subsections (b) and (c) shall be construed to diminish any authority vested in the commission prior to the effective date of this act.

Sec. 16. K.S.A. 66-105a is hereby repealed.

Sec. 17. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.

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HOUSE BILL 188

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Jose A. Campos

AN ACT

RELATING TO ELECTRIC POWER; ENACTING THE **NEW MEXICO RENEWABLE ENERGY TRANSMISSION AUTHORITY ACT**; CREATING THE **NEW MEXICO RENEWABLE ENERGY TRANSMISSION AUTHORITY**; PROVIDING, UNDER CERTAIN CIRCUMSTANCES, FOR THE FINANCING OR THE PLANNING, ACQUISITION, MAINTENANCE AND OPERATION OF CERTAIN ELECTRIC TRANSMISSION FACILITIES BY THE AUTHORITY; PROVIDING GROSS RECEIPTS TAX DEDUCTIONS FOR CERTAIN RECEIPTS RELATING TO ELECTRIC TRANSMISSION PROJECTS; PROVIDING FOR THE ISSUANCE OF RENEWABLE ENERGY TRANSMISSION BONDS; MAKING AN APPROPRIATION.

ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. **[NEW MATERIAL]** SHORT TITLE.--Sections 1 through 15 of this

act may be cited as the "New Mexico Renewable Energy Transmission Authority Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the New Mexico Renewable Energy Transmission Authority Act:

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

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

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

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

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

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

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

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

I. "renewable energy" means electric energy:

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

(2) generated by use of renewable energy resources that may

include:

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

(b) fuel cells that are not fossil fueled; or

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

(3) does not include electric energy generated by use of fossil fuel or nuclear energy; and

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

Section 3. [NEW MATERIAL] NEW MEXICO RENEWABLE ENERGY TRANSMISSION

AUTHORITY CREATED--ORGANIZATION.--

A. The "New Mexico renewable energy transmission authority" is created as a public body, politic and corporate, separate and apart from the state, constituting a governmental instrumentality for the performance of essential public functions.

B. The authority shall be composed of five members as follows:

(1) three members appointed by the governor with the advice and consent of the senate. The initial appointees shall be appointed for staggered terms of one, two and three years; thereafter the members shall be appointed for three-year terms;

(2) one member appointed by the speaker of the house of representatives who shall serve at the pleasure of the speaker of the house; and

(3) one member appointed by the president pro tempore of

the senate who shall serve at the pleasure of the president pro tempore.

C. The qualifications of the members shall be as follows:

(1) one member appointed by the governor shall have

expertise in financial matters involving the financing of major electrical transmission projects;

(2) the other four members shall have:

(a) special knowledge of the public utility industry, as evidenced by college degrees or by experience, at least five years of which must be with the public utility industry; and

(b) knowledge of renewable energy development; and

(3) no member shall represent a person that owns or operates facilities.

D. In addition to the appointed members, the secretary of energy, minerals and natural resources shall serve as an ex-officio nonvoting member of the authority.

E. The governor shall designate an appointed member of the authority to serve as chair, and the authority may elect annually such other officers as it deems necessary.

F. The authority shall meet at the call of the chair or whenever three members shall so request in writing. A majority of members then serving constitutes a quorum for the transaction of business, but the affirmative vote of at least three members is necessary for any action to be taken by the authority.

G. The authority is not created or organized and its operations are not conducted for the purpose of making a profit, but it is expected to recover the costs of operating the authority. No part of the revenues or assets of the authority shall benefit or be distributable to its members, officers or other private persons. The members of the authority shall receive no compensation for their services but shall be reimbursed for actual and necessary expenses at the same rate and on the same basis as provided for public officers in the Per Diem and Mileage Act.

n. The authority is not subject to the supervision or control of any other board, bureau, department or agency of the state except as specifically provided in the New Mexico Renewable Energy Transmission Authority Act. No use of the terms "state agency" or "instrumentality" in any other law of the state shall be deemed to refer to the authority unless the authority is specifically referred to in the law.

I. The authority is a governmental instrumentality for purposes of the Tort Claims Act.

Section 4. [NEW MATERIAL] AUTHORITY--DUTIES AND POWERS.--

A. The authority shall:

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

(2) hire an executive director and such other employees or other agents as it deems necessary for the performance of its powers and duties, including consultants, financial advisors and legal advisors, and prescribe the powers and duties and fix the compensation of the employees and agents. The executive director of the authority shall direct the affairs and business of the authority, subject to the policies, control and direction of the authority; and

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

B. The authority may:

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

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

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

(4) enter into partnerships with public or private

ities;

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

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

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

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

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

(10) for any project, provide information and training to employees of the project regarding any unique hazards that may be posed by the project, as well as training in safety work practices and emergency procedures;

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

(12) enter into contracts for the lease and operation by

the authority or eligible facilities owned by a public utility or other private person;

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

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

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

(16) sue and be sued; and

(17) adopt such reasonable administrative and procedural rules as may be necessary or appropriate to carry out its powers and duties.

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

(1) the authority shall provide to each public utility and the public regulation commission and publish one time in a newspaper of general circulation in New Mexico and one time in a newspaper in the area where the eligible facilities are contemplated and on a publicly accessible web page maintained by the authority, an initial notice describing the project that the authority is contemplating, including a detailed

description of the existing or anticipated renewable energy sources that justify the determination by the authority that the project facilities are eligible facilities. The description shall contain, at a minimum, the names of all persons that already are or will develop the renewable energy sources, all persons that will own the renewable energy sources and the peak output capacity, source type, location and anticipated connection date of the renewable energy sources;

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

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

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

(b) within ninety days of the date of the notice of determination if a challenge is received pursuant to Paragraph (2) of this subsection; and

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

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

E. The authority and any eligible facilities acquired by the authority are not subject to the supervision, regulation, control or jurisdiction of the public regulation commission; provided that nothing in this subsection shall be interpreted to allow a public utility to include the cost of using eligible facilities in its rate base without the approval of the public regulation commission.

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

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

(2) the operation, maintenance and use of the facilities are vested by lease or other contract in a public utility or such other

person approved by the public regulation commission;

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

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

G. A public utility subject to regulation of the public regulation commission pursuant to the Public Utility Act may recover the capital cost of a project undertaken pursuant to the New Mexico Renewable Energy Transmission Authority Act from its retail customers only if the project has received a certificate of public convenience and necessity from the public regulation commission. A municipal utility exempt from regulation of the public regulation commission may recover such costs only if the project has been approved by the governing body of the municipality. Costs associated with a project undertaken pursuant to the New Mexico Renewable Energy Transmission Authority Act are not recoverable from retail utility customers except to the extent the costs are prudently incurred and the project is used and useful in serving those customers as determined by the public regulation commission.

Section 5. [NEW MATERIAL] RENEWABLE ENERGY TRANSMISSION BONDS--
APPROPRIATION OF PROCEEDS.--

A. The authority is authorized to issue and sell revenue bonds, known as "renewable energy transmission bonds", payable solely from the renewable energy transmission bonding fund, in compliance with the New Mexico Renewable Energy Transmission Authority Act, for the purpose of entering into a project when the authority determines that the project is needed.

B. The net proceeds from the bonds are appropriated to the authority for the purpose of financing or acquiring eligible facilities.

SECTION 6. [NEW MATERIAL] RENEWABLE ENERGY TRANSMISSION BONDING FUND
CREATED--MONEY IN THE FUND PLEDGED.--

A. The "renewable energy transmission bonding fund" is created in state treasury. The fund shall consist of revenues received by the authority from operating or leasing eligible facilities, fees and service charges collected, and, if the authority has provided financing for eligible facilities, money from payments of principal and interest on loans. Earnings of the fund shall be credited to the fund. Balances in the fund at the end of any fiscal year shall remain in the fund, except as provided in this section.

B. Money in the renewable energy transmission bonding fund is pledged for the payment of principal and interest on all bonds issued pursuant to the New Mexico Renewable Energy Transmission Authority Act. Money in the fund is appropriated to the authority for the purpose of paying debt service, including redemption premiums, on the bonds and the expenses incurred in the issuance, payment and administration of the bonds.

C. On the last day of January and the last day of July of each year, the authority shall estimate the amount needed to make debt service and other payments during the next twelve months from the renewable energy transmission bonding fund on the bonds plus the amount that may be needed for any required reserves. The authority shall transfer to the renewable energy transmission authority operational fund any balance in the renewable energy transmission bonding fund above the estimated amounts.

D. Bonds issued pursuant to the New Mexico Renewable Energy Transmission Authority Act shall be payable solely from the renewable energy transmission bonding fund or, with the approval of the bondholders, such other special funds as may be provided by law and do not create an obligation or indebtedness of the state within the meaning of any constitutional provision. No breach of any contractual obligation incurred pursuant to that act shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state, and the bonds are not

general obligations for which the state's full faith and credit is pledged.

E. The state does hereby pledge that the renewable energy transmission bonding fund shall be used only for the purposes specified in section and pledged first to pay the debt service on the bonds issued pursuant to the New Mexico Renewable Energy Transmission Authority Act. The state further pledges that any law requiring the deposit of revenues in the renewable energy transmission bonding fund or authorizing expenditures from the fund shall not be amended or repealed or otherwise modified so as to impair the bonds to which the renewable energy transmission bonding fund is dedicated as provided in this section.

Section 7. [NEW MATERIAL] AUTHORITY TO REFUND BONDS.--The authority may issue and sell at public or private sale bonds to refund outstanding renewable energy transmission bonds by exchange, immediate or prospective redemption, cancellation or escrow, including the escrow of debt service funds accumulated for payment of outstanding bonds, or any combination thereof, when, in its opinion, such action will be beneficial to the state.

Section 8. [NEW MATERIAL] RENEWABLE ENERGY TRANSMISSION BONDS--FORM--EXECUTION.--

A. The authority, except as otherwise specifically provided in the New Mexico Renewable Energy Transmission Authority Act, shall determine at its discretion the terms, covenants and conditions of the bonds, including, but not limited to, date of issue, denominations, maturities, rate or rates of interest, call features, call premiums, registration, refundability and other covenants covering the general and technical aspects of the issuance of the bonds.

B. The bonds shall be in such form as the authority may determine, and successive issues shall be identified by alphabetical, numerical or other proper series designation.

C. Bonds shall be signed and attested by the executive director of the authority and shall be executed with the facsimile signature of the chair of the authority and the facsimile seal of the authority, except for

bonds issued in book entry or similar form without the delivery of physical securities. Any interest coupons attached to the bonds shall bear the facsimile signature of the executive director of the authority, which officer, by the execution of the bonds, shall adopt as the executive director's own signature the facsimile thereof appearing on the coupons. Except for bonds issued in book entry or similar form without the delivery of physical securities, the Uniform Facsimile Signature of Public Officials Act shall apply, and the authority shall determine the manual signature to be affixed on the bonds.

Section 9. [NEW MATERIAL] PROCEDURE FOR SALE OF RENEWABLE ENERGY TRANSMISSION BONDS.--

A. Bonds shall be sold by the authority at such times and in such manner as the authority may elect, either at private sale for a negotiated price or to the highest bidder at public sale for cash at not less than par and accrued interest.

B. In connection with any public sale of the bonds, the authority shall publish a notice of the time and place of sale in a newspaper of general circulation in the state and also in a recognized financial journal outside the state. The publication shall be made once each week for two consecutive weeks prior to the date fixed for such sale, the last publication to be two business days prior to the date of sale. The notice shall specify the amount, denomination, maturity and description of the bonds to be offered for sale and the place, day and hour at which sealed bids therefore shall be received. All bids, except those of the state, shall be accompanied by a deposit of two percent of the principal amount of the bonds. Deposits of unsuccessful bidders shall be returned upon rejection of the bid. At the time and place specified in such notice, the authority shall open the bids in public and shall award the bonds, or any part thereof, to the bidder or bidders offering the best price. The authority may reject any or all bids and readvertise.

C. The authority may sell a bond issue, or any part thereof, to

the state or to one or more investment bankers or institutional investors at private sale.

Section 10. [NEW MATERIAL] NEW MEXICO RENEWABLE ENERGY TRANSMISSION AUTHORITY ACT IS FULL AUTHORITY FOR ISSUANCE OF BONDS--BONDS ARE LEGAL INVESTMENTS.--

A. The New Mexico Renewable Energy Transmission Authority Act is, without reference to any other act of the legislature, full authority for the issuance and sale of renewable energy transmission bonds, which bonds shall have all the qualities of investment securities under the Uniform Commercial Code and shall not be invalid for any irregularity or defect or be contestable in the hands of bona fide purchasers or holders thereof for value.

B. The bonds are legal investments for any person or board charged with the investment of any public funds and are acceptable as security for any deposit of public money.

Section 11. [NEW MATERIAL] SUIT MAY BE BROUGHT TO COMPEL PERFORMANCE OF OFFICERS.--Any holder of bonds or any person or officer being a party in interest may sue to enforce and compel the performance of the provisions of the New Mexico Renewable Energy Transmission Authority Act.

Section 12. [NEW MATERIAL] RENEWABLE ENERGY TRANSMISSION BONDS TAX EXEMPT.--All renewable energy transmission bonds are exempt from taxation by the state or any of its political subdivisions.

Section 13. [NEW MATERIAL] RENEWABLE ENERGY TRANSMISSION AUTHORITY OPERATIONAL FUND.--The "renewable energy transmission authority operational fund" is created in the state treasury. The fund shall consist of money appropriated and transferred to the fund. Earnings from investment of the fund shall be credited to the fund. Money in the fund is appropriated to the authority for the purpose of carrying out the provisions of the New Mexico Renewable Energy Transmission Authority 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 executive director of the authority.

Section 14. [NEW MATERIAL] REPORT TO LEGISLATURE.--The authority shall submit a report of its activities to the governor and to the legislature not later than December 1 of each year. Each report shall set forth a complete operating and financial statement covering its operations for the previous fiscal year.

Section 15. [NEW MATERIAL] LEGISLATIVE OVERSIGHT COMMITTEE.--

A. The "New Mexico renewable energy transmission authority oversight committee" is created as a joint interim legislative committee. The New Mexico legislative council shall determine the membership of the committee and shall appoint the members and designate the chair and the vice chair in accordance with legislative council policies. The staff for the committee shall be provided by the legislative council service.

B. The New Mexico renewable energy transmission authority

oversight committee shall:

(1) monitor and oversee the operation of the authority;

(2) meet on a regular basis to receive and review reports from the authority on implementation of the provisions of the New Mexico Renewable Energy Transmission Authority Act and to review rules proposed for adoption pursuant to that act;

(3) review and provide assistance and advice to the authority before the authority enters into a project;

(4) undertake an ongoing examination of the statutes, constitutional provisions, regulations and court decisions governing energy transmission and renewable energy development; and

(5) report its findings and recommendations, including recommended legislation or necessary changes, to the governor, to the public regulation commission and to each session of the legislature. The report and proposed legislation shall be made available on or before December 15 of each year.

Section 16. A new section of the Gross Receipts and Compensating Tax

Act is enacted to read:

"[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS--EQUIPMENT FOR CERTAIN
ELECTRIC TRANSMISSION OR STORAGE FACILITIES.--Receipts from selling
equipment to the New Mexico renewable energy transmission authority or an
agent or lessee of the authority may be deducted from gross receipts if the
equipment is installed as part of an electric transmission facility or an
interconnected storage facility acquired by the authority pursuant to the
New Mexico Renewable Energy Transmission Authority Act."

Section 17. A new section of the Gross Receipts and Compensating Tax
Act is enacted to read:

"[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS--SERVICES PROVIDED FOR
CERTAIN ELECTRIC TRANSMISSION AND STORAGE FACILITIES.--Receipts from
providing services to the New Mexico renewable energy transmission
authority or an agent or lessee of the authority for the planning,
installation, repair, maintenance or operation of an electric transmission
facility or an interconnected storage facility acquired by the authority
pursuant to the New Mexico Renewable Energy Transmission Authority Act may
be deducted from gross receipts."

Section 18. EFFECTIVE DATE.--The effective date of the provisions of
this act is July 1, 2007.

Transmission Authority (2007 SSL)

This Act creates a state-owned authority to facilitate developing electric power lines and substations.

Submitted as:

North Dakota

Chapter 406 of 2005

Status: Enacted into law in 2005.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as "An Act To Provide For A State
2 Transmission Authority."

3
4 Section 2. [*State Transmission Authority.*] There is created a [state transmission
5 authority], which shall be governed an [industrial commission].

6
7 Section 3. [*Definitions.*] As used in this Act:

8 A. "Authority" means the [industrial commission] acting as the [state transmission
9 authority].

10 B. "Commission" means the [industrial commission].

11 C. "Industrial Commission" means [insert definition].

12 D. "Notice of intent" means the notice to the [authority] indicating willingness to
13 construct transmission facilities contemplated by the [authority] or to provide services fulfilling
14 the need for such transmission facilities.

15 E. "Project area" means the geographic area in which construction of a transmission
16 facility contemplated by the [authority] is likely to occur.

17 F. "Transmission facilities" means electric transmission lines and substations, and related
18 structures, equipment, rights of way, and works of public improvement, located within and
19 outside this state, excluding electric generating facilities.

20
21 Section 4. [*Purposes.*] The [state transmission authority] is created to diversify and
22 expand the state economy by facilitating development of transmission facilities to support the
23 production, transportation, and utilization of [insert state] electric energy.

24
25 Section 5. [*Powers.*] The [authority] has all powers necessary to carry out the purposes of
26 this Act, including the power to:

27 A. make grants or loans and to provide other forms of financial assistance as necessary or
28 appropriate for the purposes of this Act;

29 B. make and execute contracts and all other instruments necessary or convenient for the
30 performance of its powers and functions under this Act;

31 C. borrow money and issue evidences of indebtedness as provided in this Act;

32 D. receive and accept aid, grants, or contributions of money or other things of value from
33 any source, including aid, grants, or contributions from any department, agency, or

instrumentality of the United States, subject to the conditions upon which the aid, grants, or contributions are made and consistent with the provisions of this Act;

E. issue and sell evidences of indebtedness in an amount or amounts as the [authority] may determine, but not to exceed [eight hundred million dollars], plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the [authority] is created under this Act, provided that the amount of any refinancing shall not be counted toward such [eight hundred million dollar] limitation to the extent it does not exceed the outstanding amount of the obligations being refinanced;

F. refund and refinance its evidences of indebtedness;

G. make and execute interest rate exchange contracts;

H. enter lease-sale contracts;

I. pledge any and all revenues derived by the [authority] under this Act or from a transmission facility, service, or activity funded under this Act to secure payment or redemption of the evidences of indebtedness;

J. to the extent and for the period of time necessary for the accomplishment of the purposes for which the [authority] was created, plan, finance, develop, acquire, own in whole or in part, lease, rent, and dispose of transmission facilities;

K. enter contracts to construct, maintain, and operate transmission facilities;

L. consult with the [public service commission], regional organizations, and any other relevant state or federal authority as necessary and establish reasonable fees, rates, tariffs, or other charges for transmission facilities and all services rendered by the [authority];

M. lease, rent, and dispose of transmission facilities owned pursuant to this Act;

N. investigate, plan, prioritize, and propose corridors of the transmission of electricity;

O. participate in and join regional transmission organizations; and

P. do any and all things necessary or expedient for the purposes of the [authority] provided in this Act.

Section 6. *[Coordinating Planning Transmission Facilities and Notice.]*

A. The [authority] shall coordinate its plans for transmission facilities with regional organizations having transmission planning responsibilities for the project area.

B. Before exercising its powers to construct transmission facilities granted to it in this Act, the [authority] shall publish in a newspaper of general circulation in this state and in a newspaper in the project area, a notice describing the need for transmission facilities contemplated by the [authority]. Anyone willing to construct the transmission facilities or furnish services to satisfy the needs described in the notice have a period of [one hundred eighty days] from the date of last publication of the notice within which to deliver to the [authority] a notice of intent. After receipt of a notice of intent, the [authority] may not exercise its powers to construct transmission facilities unless the [authority] finds that exercising its [authority] would be in the public interest. In making such a finding the [authority] shall consider factors including economic impact to the state, economic feasibility, technical performance, reliability, past performance and the likelihood of successful completion and ongoing operation.

C. The [authority] may require a person giving a notice of intent to provide a bond and to submit a plan for completion of the transmission facilities or commencement of services within a period of time acceptable to the [authority]. If no person submits an adequate plan or bond as required by the [authority], the [authority] may proceed with contracting for construction of the facility described in the [authority's] published notice.

82 Section 7. [*Authority May Participate Upon Request.*] The [authority] may participate in
83 a transmission facility through financing, planning, joint ownership, or other arrangements at the
84 request of a person giving a notice of intent.

85
86 Section 8. [*Evidences of Indebtedness.*]

87 A. Evidences of indebtedness of the [authority] must be authorized by resolution of the
88 [industrial commission] and may be issued in one or more series and must bear such date or
89 dates, mature at such time or times, bear interest at such rate or rates of interest per year, be in
90 such denomination or denominations, be in such form, either coupon or registered, carry such
91 conversion or registration privileges, have such rank or priority, be executed in such manner, be
92 payable from such sources in such medium of payment at such place or places within or without
93 the state, and be subject to such terms of redemption, with or without premium, as such
94 resolution or resolutions may provide. Evidences of indebtedness of the [authority] are to mature
95 not more than [forty years] from the date of issue. Evidences of indebtedness of the [authority]
96 may be sold at such time or times and at such price or prices as the authority determines.

97 B. Evidences of indebtedness and grants, loans, or other forms of financial assistance
98 issued by the [authority] are payable solely from:

99 1. revenues that may be received by the [authority] from transmission facilities,
100 services, or activities funded under this Act with the proceeds of the [authority's] evidences of
101 indebtedness, subject only to prior payment of the reasonable and necessary expenses of
102 operating and maintaining such transmission facilities except depreciation.

103 2. amounts received by the [authority] under loans authorized under this Act.

104 3. revenues received by the [authority] under this Act from any source other than
105 general tax revenues.

106 C. The evidences of indebtedness are not subject to taxation by the state or any of its
107 political subdivisions and do not constitute a debt of this state within the meaning of any
108 statutory or constitutional provision and must contain a statement to that effect on their face.

109 D. The [authority] may establish and maintain a reserve fund for evidences of
110 indebtedness issued under this Act.

111 E. There must be deposited in the reserve fund:

112 1. all moneys appropriated by the legislative assembly to the [authority] for the
113 purpose of the reserve fund.

114 2. all proceeds of evidences of indebtedness issued under this Act required to be
115 deposited in the reserve fund by the terms of any contract between the [authority] and the holders
116 of its evidences of indebtedness or any resolution of the [authority].

117 3. any lawfully available moneys of the [authority] which it may determine to
118 deposit in the reserve fund.

119 4. any moneys from any other source made available to the [authority] for deposit
120 in the reserve fund or any contractual right to the receipt of moneys by the [authority] for the
121 purpose of the fund, including a letter of credit, surety bond, or similar instrument.

122 F. The [authority] must include in its biennial request to the [office of the budget] the
123 amount, if any, necessary to restore any reserve fund established under this section to an amount
124 equal to the amount required to be deposited in the fund by the terms of any contract or
125 resolution approved by the [commission].

126 G. Any pledge of revenue made by the [industrial commission] as security for the
127 [authority's] evidences of indebtedness is valid and binding from time to time when the pledge is
128 made. The revenues or other moneys so pledged and thereafter received by the [authority] are
129 immediately subject to the lien of any such pledge without any physical delivery thereof or
130 further act, and the lien of any such pledge is valid and binding as against all parties having

claims of any kind in tort, contract or otherwise against the [authority], regardless of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the [authority].

H. The [authority] is authorized and empowered to obtain from any entity of the state, any department or agency of the United States of America, or any nongovernmental insurer any insurance, guaranty, or liquidity facility, or from a financial institution a letter of credit to the extent such insurance, guaranty, liquidity facility, or letter of credit now or hereafter available, as to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any evidences of indebtedness issued by the authority pursuant to this Act, and to enter into any agreement or contract with respect to any such insurance, guaranty, letter of credit, or liquidity facility, and pay any required fee, unless the same would impair or interfere with the ability of the authority to fulfill the terms of any agreement made with the holders of its evidences of indebtedness.

I. After issuance, all evidences of indebtedness of the [authority] are conclusively presumed to be fully authorized and issued under the laws of the state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the [authority].

J. When the [authority] has issued evidences of indebtedness and pledged the revenues of the transmission facilities for the payment thereof as herein provided, the [authority] shall operate and maintain the transmission facilities and shall impose and collect fees and charges for the services furnished by the transmission facilities, including those furnished to the [authority] itself, in the amounts and at the rates as are fully sufficient at all times to:

1. pay the expenses of operating and maintaining the transmission facilities;
2. provide a debt service fund sufficient to assure the prompt payment of principal and interest on the evidences of indebtedness at maturity; and
3. provide a reasonable fund for contingencies as may be required by the resolution authorizing the evidences of indebtedness.

Section 9. *[Public Service Commission Jurisdiction and Consultation.]*

A. The [authority] and the transmission facilities built under this Act, until sold or disposed of by the [authority], are exempt from the provisions of [insert citation]. Upon sale or disposal by the [authority], transmission facilities built under this Act are subject to the provisions of [insert citation].

B. The [authority] shall consult with the [public service commission] with respect to the rates charged by the [authority] for use of its transmission facilities and such rates must thereafter be considered just and reasonable in proceedings before the [public service commission] pursuant to [insert citation].

C. The [authority] shall conduct its activities in consultation with transmission providers, wind interests, the [Lignite Research Council], and other people having relevant expertise.

Section 10. *[Bonds as Legal Investments.]* The bonds of the [authority] are legal investments which may be used as collateral for public funds of the state, insurance companies, banks, savings and loan associations, investment companies, trustees, and other fiduciaries which may properly and legally invest funds in their control or belonging to them in bonds of the [authority]. The [state investment board] may invest in bonds of the [authority] in an amount specified by the [state investment board].

Section 11. *[Disposal of Transmission Facilities.]*

179 A. Before becoming an owner or partial owner of a transmission facility, the [authority]
180 shall develop a plan identifying:

- 181 1. the public purposes of the [authority's] ownership;
182 2. conditions that would make the [authority's] ownership no longer necessary for
183 accomplishing those public purposes; and
184 3. a plan to divest the [authority's] ownership interest as soon as economically
185 prudent once those conditions occur.

186 B. For transmission facilities that are leased to another entity by the [authority], at the end
187 of the lease, absent default by the lessee, the [authority] shall convey its interest in the
188 transmission facilities to the lessee.

189 C. For transmission facilities that are owned by the [authority] without a lessee, the
190 [authority] shall divest itself of ownership as soon as economically prudent in accordance with
191 the divestiture plan developed pursuant to subsection A.

192
193 Section 12. [*Exemption from Property Taxes.*] Transmission facilities built under sections
194 1 through 11 of this Act are exempt from property taxes for a period determined by the
195 [authority] not to exceed the first [five taxable years] of operation; after this initial period,
196 transmission lines of [two hundred thirty kilovolts] or larger and the transmission lines'
197 associated transmission substations remain exempt from property taxes but are subject to a per
198 mile tax at the full per mile rate and subject to the same manner of imposition and allocation as
199 the per mile tax imposed by [insert citation] without application of the discounts provided in that
200 subsection.

201
202 Section 13. [*Biennial Report to Legislative Council.*] The [authority] shall deliver a
203 written report on its activities to the [legislative council] each [biennium].
204

205 Section 14. [*Severability.*] [Insert severability clause.]
206

207 Section 15. [*Repealer.*] [Insert repealer clause.]
208

209 Section 16. [*Effective Date.*] [Insert effective date.]

Disposition:

CSG policy task force recommendations to

The Committee on Suggested State

Legislation:

2008 Energy Supplement

() Include in Volume

() Reject

() No action

Comments/Note to staff:

SSL Committee Meeting:

2008 Energy Supplement

() Include in Volume

() Reject

Comments/Note to staff:

Wyoming example, Kansas⁷⁹ and South Dakota⁸⁰ adopted similar infrastructure authorities. New Mexico and Montana legislatures have considered infrastructure authorities in the last session.

Western Area Power Administration. Western, acting at the direction of the Secretary of Energy, provided facilitation services that resulted in the upgrade of the critical Path 15 transmission constraint in California. During the period 2001-02, transmission bottlenecks in Path 15 enabled some parties to exercise market power that contributed to the meltdown of the state's power market. Western partnered with the state, Trans Elect, and transmission owners to plan, finance, and construct the long-needed Path 15 upgrade, which was dedicated by Governor Schwarzenegger in December, 2004. Western has also agreed to facilitate the TOT 3 upgrade between Cheyenne and Denver in an MOU with the Wyoming Infrastructure Authority and Trans Elect. Western has the power of eminent domain for transmission routes throughout its service territory, which covers most of the WGA western region. In the Midwest, Western sponsored the Dakotas Wind Study which evaluated the transmission capability to send 500 MW of wind energy from the Dakotas to regional markets.⁸¹

EPAct 2005 Incentives. The Energy Policy Act of 2005 included numerous provisions designed to provide incentives for new transmission facilities. Section 1241 instructs FERC to adopt new rules within one year that provide incentive-based rates for transmission of electricity, a rate of return on equity to attract new investment in transmission facilities, encourages deployment of transmission technologies to increase capacity and efficiency, and allows for recovery of costs associated with reliability provisions and siting of new facilities. Section 1242 authorizes FERC to approve a participant funding plan that allocates costs related to transmission upgrades or new generator interconnections subject to specified conditions. Two additional provisions provide tax benefits for transmission owners. Section 1308 establishes a 15-year recovery period and class life of 30 years or more for transmission lines (67 KV or more) put into use after April 11, 2005. Section 1311 allows transmission owners to utilize a net operating loss carryover for five years on expenditures attributable to electric transmission property.

⁷⁹ In 2005, the Kansas Legislature enacted House Bill No. 2263 which created the Kansas Electric Transmission Authority. The legislation vested the Kansas Electric Transmission Authority with powers to plan, finance, construct, develop, acquire, own, and dispose of transmission facilities. Additional financial powers include the ability to enter contracts with the Kansas Development Finance Authority to issue bonds and provide financing for construction, upgrades of transmission facilities and acquisition of rights-of-way.

⁸⁰ The South Dakota Legislature adopted HB No. 1260 during its 2005 Session to create the South Dakota Energy Infrastructure Authority. The South Dakota Energy Infrastructure Authority has powers to finance, construct, develop, maintain and operate new or upgraded transmission facilities. It may own, lease, or enter into partnerships for such facilities. The South Dakota Energy Infrastructure Authority may issue bonds to finance transmission facilities up to one billion dollars, however, the state legislature must approve the issuance of such bonds.

⁸¹ ABB Inc., Electric Systems Consulting, *Dakotas Wind Transmission Study*, prepared for Western Area Power Administration, 2005. <http://www.wapa.gov/ugp/study/DakotasWind/FinalReports/default.htm>. See Appendix B for a summary of this study.

N. Dakota

locality of the surface coal mining operation," relating to his desire to have the bond released. This bill removes the requirement that s/he post the advert in the other daily newspapers of general circulation. In addition the bill removes the group "owners of subsurface rights within the permit area" from the list of people the permittee must contact by letter informing them of his/her desire to seek release of the bond.

NEW LAW

(-) SB 2043

(3/7/05 - Signed by Governor)

SB 2043 amends bonding requirements for various programs. All of the bonds described below are provided by the State Bonding Fund, and, therefore, the effect on surety companies should be negligible. The bill continues to require that each member of the milk marketing board post a bond. However, the bill amends current law to remove the language that required this bond to be \$5000. In addition, the bill removes the requirement for the director of the board to post a bond. This bill also modifies bonding requirements for the state agency entrusted to carry out the state's agricultural plan. The state agency is no longer be required to execute "surety bonds for all employees entrusted with moneys or securities" related to the agricultural program. Also, the bill removes the right of the educational technology council to determine the amount of the bond to be posted by the director of the council. Moreover, the bill removes a \$10,000 bond requirement for the Director of the Game and Fish Department. Next, the bill removes the requirement for each state agency, department, industry, and institution to annually review the amount of blanket bond coverage of its officers and employees. In addition, state agencies applying to be bonded now have to include the following information in their applications: "The application must include a requested amount of bond coverage based on the amount of money and property handled and the opportunity for defalcation and any other condition imposed by law and list twenty-five percent of the money in control of the public officials or employees for which the bond is requested for the preceding year based on the total monthly balances. In addition, the application must include any information requested by the commissioner to determine the amount of money and property handled and the opportunity for defalcation, including the procedure used to determine the amount of bond requested, revenues for the last budget period by type, expenditures for the last budget period by type, the number of people that handle money, any portion of the last audit, and any financial procedures." This bill also removes the clause that "the bond for the clerk of district court must be set by the supreme court." The bill also repeals the requirement for the treasurer of the dairy promotion commission to file a \$10,000 fidelity bond, executed by a surety company. Finally, this bill amends rules regarding the state bonding fund as follows: "Interest on the claim runs from the date of filing the claim with the commissioner. The liability of the fund is limited to a breach of a condition of the bond which occurred within two years before the date of filing the claim with the commissioner."

(+) HB 1156

(3/30/05 - Sent to Governor)

HB 1156 would allow the telecommunications commission to require a telecommunications company that is not an incumbent telecommunications company to post a surety bond in an amount determined by the commission.

(+) HB 1169

(3/29/05 - Signed by President of Senate)

HB 1169 would create the North Dakota Transmission Authority. The authority would have the power to build electric transmission facilities and infrastructure. The authority could demand bid bonds from contractors submitting bids for projects for the authority.

House Measure No. 1169

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58229 . 0100 INTRODUCED

[0100 Fiscal Note](#)

58229 . 0103 Prepared by the Legislative Council staff for Representative D. Johnson

58229 . 0200 FIRST ENGROSSMENT

[0200 Fiscal Note](#)

58229 . 0300 ENROLLMENT

[0300 Fiscal Note](#)

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Fifty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1169

Introduced by

Industry, Business and Labor Committee

(At the request of the Industrial Commission)

1 A BILL for an Act to provide for the North Dakota transmission authority, provide for the
2 planning, constructing, owning, financing, maintaining, and operating of electric transmission
3 facilities and related infrastructure, and to authorize issuance of revenue bonds; and to amend
4 and reenact subdivision 1 of subsection 2 of section 28-32-01 of the North Dakota Century
5 Code, relating to an Administrative Agencies Practice Act exemption for the transmission
6 authority.

7 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

8 **SECTION 1. Declaration of findings and public purpose.** The legislative assembly
9 finds and declares that:

- 10 1. North Dakota has twenty-five billion tons of abundant, recoverable lignite coal
11 reserves, enough to last eight hundred years at today's thirty million tons of annual
12 production.
- 13 2. The lignite industry presently generates electricity for more than two million people
14 in the northern great plains region and there is increased regional demand for
15 development of North Dakota's lignite resources.
- 16 3. North Dakota has enormous wind resources, providing additional economic
17 opportunity to broaden and diversify the state's economy and diversify the region's
18 energy supply, and that timely development of these resources will stabilize and
19 increase revenues to the state.
- 20 4. Transmission constraints impede the development of the state's lignite and wind
21 resources.
- 22 5. An essential governmental function and public purpose is to assist with the removal
23 of electric transmission export constraints and to assist with upgrading and

1 expansion of the region's electrical transmission grid to facilitate the development
2 of the state's abundant natural resources.

3 6. Developing and exporting our natural resources will promote the public interest by
4 increasing employment, stimulating economic activity, augmenting sources of tax
5 revenue, fostering economic stability, and improving the state's economy.

6 **SECTION 2. North Dakota transmission authority.** There is created the North
7 Dakota transmission authority, which shall be governed by the industrial commission.

8 **SECTION 3. Definitions. As used in this chapter:**

9 1. "Authority" means the industrial commission acting as the North Dakota
10 transmission authority.

11 2. "Commission" means the industrial commission.

12 3. "Facilities" means electric transmission facilities and related supporting
13 infrastructure.

14 4. "Notice of intent" means the notice a person delivers to the authority indicating
15 willingness to construct facilities contemplated by the authority or to provide
16 services fulfilling the need for such facilities.

17 5. "Project area" means the geographic area in which construction of a facility
18 contemplated by the authority is likely to occur.

19 **SECTION 4. Purposes.** The purpose for which the authority is created is to diversify
20 and expand the North Dakota economy through improvements in the state's infrastructure and
21 to facilitate the utilization of North Dakota energy by planning, financing, constructing,
22 developing, acquiring, owning in whole or in part, leasing or renting, maintaining, and operating
23 electric transmission facilities and related supporting infrastructure to facilitate the production,
24 transportation, and utilization of electric energy.

25 **SECTION 5. Powers.** The authority has all powers necessary to carry out the
26 purposes of this chapter, including the power to:

27 1. Make grants or loans and to provide other forms of financial assistance as
28 necessary or appropriate for the purposes of this chapter;

29 2. Make and execute contracts and all other instruments necessary or convenient for
30 the performance of its powers and functions under this chapter;

31 3. Borrow money and issue evidences of indebtedness as provided in this chapter;

- 1 4. Receive and accept aid, grants, or contributions of money or other things of value
- 2 from any source, including aid, grants, or contributions from any department,
- 3 agency, or instrumentality of the United States, subject to the conditions upon
- 4 which the aid, grants, or contributions are made and consistent with the provisions
- 5 of this chapter;
- 6 5. Issue and sell evidences of indebtedness in an amount or amounts as the authority
- 7 may determine, but not to exceed eight hundred million dollars, plus costs of
- 8 issuance, credit enhancement, and any reserve funds required by agreements with
- 9 or for the benefit of holders of the evidences of indebtedness for the purposes for
- 10 which the authority is created under this chapter, provided that the amount of any
- 11 refinancing shall not be counted toward such eight hundred million dollar limitation
- 12 to the extent it does not exceed the outstanding amount of the obligations being
- 13 refinanced;
- 14 6. Refund and refinance its evidences of indebtedness;
- 15 7. Make and execute interest rate exchange contracts;
- 16 8. Pledge any and all revenues derived by the authority under this chapter or from a
- 17 project, service, or activity funded under this chapter to secure payment or
- 18 redemption of the evidences of indebtedness;
- 19 9. Plan, finance, construct, develop, acquire, own in whole or in part, lease, rent,
- 20 maintain, and operate within and outside the state of North Dakota property,
- 21 structures, equipment, facilities and works of public improvement necessary or
- 22 useful for the accomplishment of the purposes for which the authority was created,
- 23 including the obtaining of permits and the acquisition of rights of way;
- 24 10. Consult with the public service commission, regional organizations, and any other
- 25 relevant state or federal authority as necessary and establish reasonable fees,
- 26 rates, tariffs, or other charges for facilities administered by the authority and all
- 27 services rendered by it, consistent with cost-causation principles until such time as
- 28 the costs of the regional transmission system are shared on a systemwide basis;
- 29 11. Operate, lease, rent, and dispose of facilities constructed pursuant to this chapter,
- 30 and all incidental and necessary facilities, structures, and properties;
- 31 12. Investigate, plan, prioritize, and propose corridors of the transmission of electricity;

13. Participate in and join regional transmission organizations; and

14. Do any and all things necessary or expedient for the purposes of the authority provided in this chapter.

SECTION 6. Authority may act.

1. The authority shall coordinate its plans for constructing facilities with regional organizations having transmission planning responsibilities for the project area.
2. Prior to exercising its powers to construct facilities granted to it in this chapter, the authority shall publish in a newspaper of general circulation in North Dakota and in a newspaper in the project area, a notice describing the need for facilities contemplated by the authority. Persons willing to construct the facilities or furnish services to satisfy the needs described in the notice shall have a period of one hundred eighty days from the date of last publication of the notice within which to deliver to the authority a notice of intent. After receipt of a notice of intent, the authority shall not exercise its powers to construct facilities unless the authority finds that exercising its authority would be in the public interest. In making such a finding the authority shall consider factors including economic feasibility, technical performance, reliability, and the likelihood of successful completion and ongoing operation.
3. The authority may require a person giving a notice of intent to provide a bond and to submit a plan for completion of the facilities or commencement of services within a period of time acceptable to the authority. If no person submits an adequate plan or bond as required by the authority, the authority may proceed with constructing the facility described in the authority's published notice.

SECTION 7. Authority may participate upon request. The authority may participate in a project, through financing, planning, joint ownership, or other arrangements at the request of a person giving a notice of intent.

SECTION 8. Evidences of indebtedness.

1. Evidences of indebtedness of the authority must be authorized by resolution of the industrial commission and may be issued in one or more series and must bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest per year, be in such denomination or denominations, be in such form,

1 either coupon or registered, carry such conversion or registration privileges, have
2 such rank or priority, be executed in such manner, be payable from such sources
3 in such medium of payment at such place or places within or without the state, and
4 be subject to such terms of redemption, with or without premium, as such
5 resolution or resolutions may provide. Evidences of indebtedness of the authority
6 are to mature not more than forty years from the date of issue. Evidences of
7 indebtedness of the authority may be sold at such time or times and at such price
8 or prices as the authority determines.

9 2. Evidences of indebtedness issued by the authority are payable solely from:

- 10 a. Revenues that may be received by the authority from projects, facilities,
11 services, or activities funded under this chapter with the proceeds of the
12 authority's evidences of indebtedness, subject only to prior payment of the
13 reasonable and necessary expenses of operating and maintaining such
14 projects or facilities except depreciation.
15 b. Amounts received by the authority under loans authorized under this chapter.
16 c. Revenues received by the authority under this chapter from any source other
17 than general tax revenues.

18 3. The evidences of indebtedness are not subject to taxation by the state or any of its
19 political subdivisions and do not constitute a debt of the state of North Dakota
20 within the meaning of any statutory or constitutional provision and must contain a
21 statement to that effect on their face.

22 4. The authority may establish and maintain a reserve fund for evidences of
23 indebtedness issued under this chapter. There must be deposited in the reserve
24 fund:

- 25 a. All moneys appropriated by the legislative assembly to the authority for the
26 purpose of the reserve fund.
27 b. All proceeds of evidences of indebtedness issued under this chapter required
28 to be deposited in the reserve fund by the terms of any contract between the
29 authority and the holders of its evidences of indebtedness or any resolution of
30 the authority.

- 1 c. Any lawfully available moneys of the authority which it may determine to
2 deposit in the reserve fund.
- 3 d. Any moneys from any other source made available to the authority for deposit
4 in the reserve fund or any contractual right to the receipt of moneys by the
5 authority for the purpose of the fund, including a letter of credit, surety bond,
6 or similar instrument.
- 7 5. The authority must include in its biennial request to the office of the budget the
8 amount, if any, necessary to restore any reserve fund established under this
9 section to an amount equal to the amount required to be deposited in the fund by
10 the terms of any contract or resolution approved by the commission.
- 11 6. Any pledge of revenue made by the industrial commission as security for the
12 authority's evidences of indebtedness is valid and binding from time to time when
13 the pledge is made. The revenues or other moneys so pledged and thereafter
14 received by the authority are immediately subject to the lien of any such pledge
15 without any physical delivery thereof or further act, and the lien of any such pledge
16 is valid and binding as against all parties having claims of any kind in tort, contract
17 or otherwise against the authority, regardless of whether such parties have notice
18 thereof. Neither the resolution nor any other instrument by which a pledge is
19 created need be filed or recorded, except in the records of the authority.
- 20 7. The authority is authorized and empowered to obtain from any entity of the state,
21 any department or agency of the United States of America, or any
22 nongovernmental insurer any insurance, guaranty, or liquidity facility, or from a
23 financial institution a letter of credit to the extent such insurance, guaranty, liquidity
24 facility, or letter of credit now or hereafter available, as to, or for, the payment or
25 repayment of, interest or principal, or both, or any part thereof, on any evidences of
26 indebtedness issued by the authority pursuant to this chapter, and to enter into any
27 agreement or contract with respect to any such insurance, guaranty, letter of credit,
28 or liquidity facility, and pay any required fee, unless the same would impair or
29 interfere with the ability of the authority to fulfill the terms of any agreement made
30 with the holders of its evidences of indebtedness.

8. After issuance, all evidences of indebtedness of the authority are conclusively presumed to be fully authorized and issued under the laws of the state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the authority.

9. When the authority has issued evidences of indebtedness and pledged the revenues of the project or facilities for the payment thereof as herein provided, the authority shall operate and maintain the project or facilities and shall impose and collect fees and charges for the services furnished by the project or facilities, including those furnished to the authority itself, in the amounts and at the rates as shall be fully sufficient at all times to:

- a. Pay the expenses of operating and maintaining the project or facilities;
- b. Provide a debt service fund sufficient to assure the prompt payment of principal and interest on the evidences of indebtedness at maturity; and
- c. Provide a reasonable fund for contingencies as may be required by the resolution authorizing the evidences of indebtedness.

SECTION 9. Public service commission jurisdiction.

1. The authority and the facilities constructed or operated by the authority are exempt from the provisions of title 49 except for chapter 49-22, the North Dakota Energy Conversion and Transmission Facility Siting Act.

2. The authority shall consult with the public service commission with respect to the rates charged by the authority for use of its facilities and such rates shall thereafter be considered just and reasonable in proceedings before the public service commission pursuant to section 49-05-06.

SECTION 10. Bonds as legal investments. The bonds of the authority are legal investments which may be used as collateral for public funds of the state, insurance companies, banks, savings and loan associations, investment companies, trustees, and other fiduciaries which may properly and legally invest funds in their control or belonging to them in bonds of the authority. The state investment board may invest in bonds of the authority in an amount specified by the state investment board.

SECTION 11. AMENDMENT. Subdivision 1 of subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

Fifty-ninth
Legislative Assembly

- 1 l. The industrial commission with respect to the activities of the Bank of North
- 2 Dakota, North Dakota housing finance agency, North Dakota municipal bond
- 3 bank, North Dakota mill and elevator association, ~~and~~ North Dakota farm
- 4 finance agency, and the North Dakota transmission authority.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

400L0782

CONFERENCE COMMITTEE ENGROSSED NO. **HB 1260** -
03/04/2005

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on State Affairs at the request of the Governor

FOR AN ACT ENTITLED, An Act to create the South Dakota Energy Infrastructure Authority.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. Terms used in this Act mean as follows:

- (1) "Authority," the South Dakota Energy Infrastructure Authority created pursuant to this Act;
- (2) "Board," the board of directors of the authority.

Section 2. The South Dakota Energy Infrastructure Authority is created to diversify and expand the state's economy by developing in this state the energy production facilities and the energy transmission facilities necessary to produce and transport energy to markets within the state and outside of the state.

Section 3. The authority may provide for the financing, construction, development, maintenance, and operation of new or upgraded energy transmission facilities. The authority may own, lease, or rent such facilities. The authority may enter into partnerships with public and private entities to develop and operate such facilities.

Section 4. If the authority becomes the owner or partial owner of any energy transmission facility, the authority shall divest itself of ownership as soon as economically practical. Recovery by the authority of its net investment in the energy production facility or energy transmission facility is deemed to be economically practical.

Section 5. In order to finance energy transmission facilities authorized pursuant to this Act, the authority may issue and have outstanding bonds to finance such facilities in an amount not to exceed one billion dollars. However, no bonds may be issued until the issuance of the bonds is specifically approved by an act of the Legislature. The authority shall have contracts sufficient to justify the issuance of bonds.

Section 6. The authority shall:

(1) Meet with any interested owner of transmission lines in South Dakota and any interested generator and distributor of electricity to consumers in South Dakota by August first each year to understand the generation of electricity in South Dakota and the transmission enhancements needed for the transmission of electricity to, from, and within South Dakota, and to analyze how the authority could proactively assist in developing the generation and transmission infrastructure;

(2) Report its findings and make recommendations to the Governor, the Legislature, and the South Dakota congressional delegation by December first of each year concerning what the private sector, the state, and the federal government can do to create and enhance the generation of electricity in South Dakota and the transmission of electricity to, from, and within South Dakota. The report due December 1, 2005, shall address and quantify market opportunities for the development, use in-state, and export of South Dakota's enormous wind power resource;

(3) Annually evaluate state laws and rules affecting electric generation and electric transmission and make recommendations to the Governor and the Legislature for improvements by December first of each year;

(4) Annually evaluate federal laws and rules affecting electric generation and electric transmission and make recommendations to the South Dakota congressional delegation for improvements by December first of each year;

(5) Identify opportunities where owners of transmission lines in South Dakota and generators and

in South Dakota and communicate those opportunities to owners, generators, and distributors of electricity in South Dakota;

(6) Assist any entity that wants to build new or upgrade existing electric transmission facilities to, from, and within South Dakota by helping the entity develop a business plan and identify financing options; and

(7) Assist other state transmission authorities and any federal or regional entity wanting to build new or upgrade existing transmission facilities to deliver electricity to, from, and within South Dakota.

Section 7. The governing and administrative powers of the authority are vested in its board of directors consisting of five members. The Governor shall appoint the directors, with the advice and consent of the Senate. Not all members of the board may be of the same political party. The terms of the members of the board may not exceed six years. The terms of the initial board of directors shall be staggered by the drawing of lots so that not more than two of the director's terms shall end at the same time. Members of the board may serve more than one term.

Section 8. The Governor may remove any member of the board for cause, including incompetence, neglect of duty, or malfeasance in office.

Section 9. Members of the board shall receive compensation for the performance of their duties as established by the Legislature in accordance with § 4-7-10.4 from the funds of the authority. Members may be reimbursed at rates established by the Bureau of Personnel for necessary expenses, including travel and lodging expenses, incurred in connection with the performance of their duties as members.

Section 10. Each member of the board shall, before entering upon the duties of office, take and subscribe the constitutional oath of office.

Section 11. The board may appoint an executive director. The executive director may not be a member of the board. The executive director shall hold office at the discretion of the board. The executive director shall be the chief administrative and operational officer of the authority, shall direct and supervise its administrative affairs and general management, shall perform such other duties as may be prescribed from time to time by the board, and shall receive compensation fixed by the board. The executive director shall attend all meetings of the board. However, no action of the board or the authority is invalid on account of the absence of the executive director from a meeting. The board may engage the services of such other agents and employees as they deem appropriate, including attorneys, appraisers, scientists, researchers, engineers, accountants, credit analysts, and other consultants, and may prescribe their duties and fix their compensation.

Section 12. The board shall meet on the call of the chair, upon the written request of four members of the board, or upon the request of the executive director.

Section 13. A majority of the members of the board constitute a quorum for the transaction of business. All official acts of the authority shall require the affirmative vote of at least four members of the board at a meeting of the board at which the members casting those affirmative votes are present.

Section 14. Notwithstanding any other law to the contrary it is not a conflict of interest for a trustee, director, officer, or employee of any financial institution, investment banking firm, brokerage firm, commercial bank or trust company, architectural firm, utility company, engineering firm, mining firm, insurance company, energy company, or any other firm, person, or corporation to serve as a member of the authority, if the trustee, director, officer, or employee abstains from deliberation, action, and vote by the authority in each instance where the business affiliation of any such trustee, director, officer, or employee is involved.

Section 15. Each meeting of the authority for any purpose whatsoever shall be open to the public as required by chapter 1-25. Notice of meetings shall be as provided in the bylaws of the authority. Resolutions need not be published or posted.

Section 16. The executive director or other person designated by the authority shall keep a record of the proceedings thereof and shall be custodian of all books, documents, and papers filed with the authority, the minute books or journal of the authority and its official seal. The executive director or other person designated by the authority may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies and all persons dealing with the authority may rely on such certificates.

Section 17. The authority shall establish and collect fees, schedules of fees, rentals and other charges for the use of the transmission facilities of the authority as the board may determine, and may borrow funds for the execution of the purposes of the authority, and mortgage and pledge any lease or leases granted, assigned, or subleased by the authority.

Section 18. The authority may

- (2) Sue and be sued in its own name;
- (3) Have an official seal and alter the seal at will;
- (4) Maintain an office at such places within the state as the authority may designate;
- (5) Make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this Act;
- (6) Employ fiscal consultants, engineers, attorneys, and such other consultants and employees as may be required and contract with agencies of the state to provide staff and support services;
- (7) Procure insurance against any loss in connection with its property and other assets, including loans and notes in such amounts and from such insurers as it may deem advisable;
- (8) Borrow money and issue bonds as provided by this Act;
- (9) Procure insurance, letters of credit, guarantees, or other credit enhancement arrangements from any public or private entities, including any department, agency, or instrumentality of the United States or the state, for payment of all or any portion of any bonds issued by the authority, including the power to pay premiums, fees, or other charges on any such insurance, letters of credit, guarantees, or credit arrangements;
- (10) Receive and accept from any source financial aid or contributions of moneys, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this Act subject to the conditions upon which the grants or contributions are made, including, gifts or grants from any department, agency, or instrumentality of the United States for any purpose consistent with the provisions of this Act;
- (11) To the extent permitted under its contract with the holders of bonds of the authority, consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any contract, loan, loan note, loan note commitment, contract, lease, or agreement of any kind to which the authority is a party;
- (12) To make loans and grants to, and enter into financing agreements with, any governmental agency or any person for the costs incurred in connection with the development, construction, acquisition, improvement, maintenance, operation, or decommissioning of electric transmission facilities, or for the maintenance of the physical or structural integrity of real or personal property incorporated or which may be incorporated into such facilities, in accordance with a written agreement between the authority and such governmental agency or person. However, no such loan or grant may exceed the total cost of such facilities as determined by the governmental agency or person and approved by the authority;
- (13) Cooperate with and exchange services, personnel, and information with any governmental agency;
- (14) Enter into agreements for management on behalf of the authority of any of its properties upon such terms and conditions as may be mutually agreeable;
- (15) Sell, exchange, lease, donate, and convey any of its properties whenever the authority finds such action to be in furtherance of the purposes for which it was organized;
- (16) Acquire, hold, lease, and dispose of real and personal property, and construct, develop, maintain, operate, and decommission electric transmission facilities;
- (17) Indemnify any person or governmental agency for such reasonable risks as the authority deems advisable if the indemnification is a condition of a grant, gift, or donation to the authority. However, any such obligation to indemnify may only be paid from insurance or from revenues of the authority, and such obligation does not constitute a debt or obligation of the State of South Dakota;
- (18) Do any act and execute any instrument which in the authority's judgment is necessary or convenient to the exercise of the powers granted by this Act or reasonably implied from it;
- (19) After consultation with the Public Utilities Commission and any other relevant governmental authority, establish and charge reasonable fees, rates, tariffs, or other charges for the use of all facilities administered by the authority and for all services rendered by it;
- (20) Investigate, plan, prioritize, and establish corridors for the transmission of electricity; and
- (21) Acquire by condemnation, in accordance with chapter 21-35, within the state any properties necessary or useful for the authority's purposes. However, the authority may not condemn any existing facilities.

Section 19. The authority may invest any funds not needed for immediate investment in the following:

- (1) Bonds, notes, certificates of indebtedness, treasury bills, or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully guaranteed or insured by, the United States of America;
- (2) Obligations issued by or obligations the principal of and interest on which are fully guaranteed or insured by any agency or instrumentality of the United States of America;
- (3) Certificates of deposit or time deposits constituting direct obligations of any bank which is a

qualified public depository or any savings and loan association which is a savings and loan association, or the Public Deposit Insurance Act pursuant to chapter 4-6A, unless sufficient volume of such certificates is not available at competitive interest rates. In that event, the authority may purchase noncollateralized direct obligations of any bank or savings institution or holding company if such institution or holding company is rated in the highest two quality categories by a nationally recognized rating agency;

(4) Obligations of any solvent insurance company or other corporation or business entity existing under the laws of the United States or any state thereof, if the obligation of the insurance company or other corporation or business entity is rated in the two highest classifications established by a standard rating service of insurance companies or a nationally recognized rating agency;

(5) Short term discount obligations of the Federal National Mortgage Association;

(6) Obligations issued by any state of the United States or any political subdivision, public instrumentality, or public authority of any state of the United States, which obligations are not callable before the date the principal thereof will be required to be paid and which obligations are fully secured as to both sufficiency and timely payment by, and payable solely from, securities described in subdivision (1) and which obligations are rated in the highest investment classification by at least two standard rating services of such obligations.

Any securities may be purchased at the offering or market price thereof at the time of the purchase. All securities so purchased shall mature or be redeemable on a date or dates prior to the time when, in the judgment of the authority, the funds so invested will be required for expenditure. The express judgment of the authority as to the time when any funds will be required for expenditure or be redeemable is final and conclusive. Investment in any obligation enumerated in this section may be made either directly or in the form of securities of, or other interests in, an investment company registered under the Federal Investment Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and whose investments are limited to these obligations.

Section 20. The authority may issue revenue bonds, notes, or other evidences of indebtedness to pay the cost incurred in connection with developing, constructing, acquiring, improving, maintaining, operating, and decommissioning electric transmission facilities. For the purpose of evidencing the obligations of the authority to repay any money borrowed, the authority may, pursuant to resolution, from time to time issue and dispose of its interest bearing revenue bonds, notes, or other instruments and may also from time to time issue and dispose of such bonds, notes, or other instruments to refund, at maturity, at a redemption date or in advance of either, any revenue bonds, notes, or other instruments pursuant to redemption provisions or at any time before maturity. All such revenue bonds, notes, or other instruments shall be payable solely from the revenues or income to be derived with respect to such facilities, from the leasing or sale of such facilities, or from any other funds available to the authority for such purposes. The revenue bonds, notes, or other instruments may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may bear interest at such rate or rates, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be made subject to redemption in such manner and upon such terms, with or without premium as is stated on the face thereof, may be authenticated in such manner, and may contain such terms and covenants as may be provided by an applicable resolution.

Section 21. Any holder of any revenue bonds, notes, or other instruments issued by the authority may bring suits at law or proceedings in equity to compel the performance and observance by any corporation or person or by the authority or any of its agents or employees of any contract or covenant made with the holders of such revenue bonds, notes, or other instruments, to compel such corporation, person, the authority, and any of its agents or employees to perform any duties required to be performed for the benefit of the holders of any such revenue bonds, notes, or other instruments by the provision of the resolution authorizing their issuance and to enjoin such corporation, person, the authority, and any of its agents or employees from taking any action in conflict with any such contract or covenant.

Section 22. If the authority fails to pay the principal of or interest on any of the revenue bonds or premium, if any, as the same become due, a civil action to compel payment may be instituted in the appropriate circuit court by the holder or holders of the revenue bonds on which such default of payment exists or by an indenture trustee acting on behalf of such holders. Delivery of a summons and a copy of the complaint to the chair of the board constitutes sufficient service to give the circuit court jurisdiction of the subject matter of such a suit and jurisdiction over the authority and its officers named as defendants for the purpose of compelling such payment.

Section 23. Notwithstanding the form and tenor of any such revenue bonds, notes, or other instruments and in the absence of any express recital on the face of any such revenue bond, note, or other instruments that it is non-negotiable, all such revenue bonds, notes, and other instruments shall be negotiable instruments. Pending the preparation and execution of any such revenue bonds, notes, or other instruments, temporary revenue bonds, notes, or instruments may be issued as provided by resolution.

Section 24. To secure the payment of any or all of such revenue bonds, notes, or other instruments, the revenues to be received by the authority from a lease agreement or loan agreement shall be pledged, and, for the purpose of setting forth the covenants and undertakings of the authority in connection with the issuance thereof and the issuance of any additional revenue bonds, notes, or other instruments payable from such revenues, income, or other funds to be derived from electric transmission facilities, the authority may execute and deliver a trust agreement. A remedy for any breach or default of the terms of any such trust agreement by the authority may be by mandamus proceedings in the appropriate circuit court to compel the performance and compliance therewith, but the trust agreement may prescribe by whom or on whose behalf the action may be instituted.

Section 25. The revenue bonds or notes shall be secured as provided in the authorizing resolution which may, notwithstanding any other provision of this Act, include in addition to any other security a specific pledge or assignment of and lien on or security interest in any or all revenues or money of the authority from whatever source which may by law be used for debt service purposes and a specific pledge or assignment of and lien on or security interest in any funds or accounts established or provided for by resolution of the authority authorizing the issuance of such revenue bonds, notes, or other instruments. Any pledge made by the authority of revenues or other moneys received or to be received by the authority pursuant to an agreement with a governmental agency relating to a project to pay revenue bonds, notes, or other evidences of indebtedness of the authority shall be binding from the time the pledge is made. Revenues and other moneys received or to be received by the authority pursuant to an agreement with a governmental agency relating to a project so pledged to pay revenue bonds, notes, or other evidences of indebtedness of the authority shall be held outside of the state treasury and in the custody of the authority or a trustee or a depository appointed by the authority. Revenues or other moneys received or to be received by the authority pursuant to an agreement with a governmental agency relating to a project so pledged to pay revenue bonds, notes, or other evidences of indebtedness of the authority and thereafter received by the authority or such trustee or depository shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be binding against all parties having claims of any kind of tort, contract, or otherwise against the authority or the State of South Dakota, irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded except in the records of the authority.

Section 26. The State of South Dakota pledges to and agrees with the holders of the revenue bonds and notes of the authority issued pursuant to this Act that the state will not limit or decrease the rights and powers vested in the authority by this Act so as to impair the terms of any contract made by the authority with such holders or in any way impair the rights and remedies of such holders until such revenue bonds, notes, or other instruments, together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders, are fully met and discharged. The authority may include these pledges and agreements of the state in any contract with the holders of revenue bonds, notes, or other instruments issued pursuant to this section.

Section 27. Nothing in this Act may be construed to authorize the authority to create a debt of the state within the meaning of the Constitution or statutes of South Dakota and all revenue bonds, notes, other instruments and obligations issued by the authority pursuant to the provisions of this Act are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or in any trust indenture or mortgage or deed of trust executed as security therefor. The state is not in any event liable for the payment of the principal of or interest on any bonds, notes, instruments, or obligations issued by the authority or for the performance of any pledge, mortgage, obligation, or agreement of any kind whatsoever which may be undertaken by the authority. No breach of any such pledge, mortgage, obligation, or agreement may impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing power.

Section 28. The state and all counties, municipalities, political subdivisions, public bodies, public officers, banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, personal representatives, conservators, trustees, and other fiduciaries may legally invest any debt service funds, money, or other funds belonging to them or within their control in any bonds or notes issued pursuant to this Act.

Section 29. Any documentary material or data made or received by the authority for purposes under this Act, to the extent that such material or data consists of trade secrets, scientific or technical secrets, matters involving national security, or commercial or financial information regarding the operation of a business, may not be released as public records, and are exempt from disclosure. Any discussion or consideration of such information may be held by the authority in executive session.

Section 30. The authority may acquire title to any electric transmission facility with respect to which it exercises its authority.

Section 31. The authority may acquire by purchase, lease, gift, or otherwise any property or rights to any property from any person or any governmental agency, whether improved for the purposes of any prospective project or unimproved. The authority may also accept any donation of funds for its purposes from any of those sources.

Section 32. The authority may acquire, develop, construct, improve, maintain, operate, and decommission any electric transmission facilities, either under its own direction or through collaboration with any approved applicant, acquire any project through purchase or otherwise, using for that purpose the proceeds derived from its sale of revenue bonds, notes, or other instruments or governmental loans, grants, or other funds and to hold title to those projects in the name of the authority.

Section 33. The authority may enter into intergovernmental agreements with any governmental agency.

Section 34. The authority may share employees with governmental agencies.

Section 35. The provisions of § 5-2-19 do not apply to real or personal property given to the authority.

Section 36. The authority shall designate a qualified public depository as defined in § 4-6A-1 as a depository of its money. Those depositories shall be designated only within the state and upon condition that bonds approved as to form and surety by the authority and at least equal in amount to the maximum sum expected to be on deposit at any one time shall be first given by the depositories to the authority, those bonds to be conditioned for the safekeeping and prompt repayment of the deposits. If any of the funds of the authority are deposited by the treasurer in any such depository, the treasurer and the sureties on the treasurer's official bond are, to that extent, exempt from liability for the loss of any of the deposited funds by reason of the failure, bankruptcy, or any other act or default of the depository. However, the authority may accept assignments of collateral by any depository of its funds to secure the deposits to the same extent and conditioned in the same manner as assignments of collateral are permitted by law to secure deposits of the funds consistent with the provisions of chapter 4-6A.

Section 37. The income of the authority and all land, improvements, equipment, fixtures, or other property interests owned by the authority are exempt from all taxation in the State of South Dakota. The authority is exempt from the provisions of chapter 47-31A.

Section 38. The authority is attached to the Department of Tourism and State Development for reporting purposes. The authority shall submit such records, information, and reports in the form and at such times as required by the secretary. However, the authority shall report at least annually.

Section 39. Notwithstanding any other provisions of law, all funds received by the authority shall be set forth in an informational budget as described in § 4-7-7.2.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

400L0782

SENATE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB 1260**

02/28/2005

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on State Affairs at the request of the Governor

FOR AN ACT ENTITLED, An Act to create the South Dakota Energy Infrastructure Authority and to declare an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. Terms used in this Act mean as follows:

- (1) "Authority," the South Dakota Energy Infrastructure Authority created pursuant to this Act;
- (2) "Board," the board of directors of the authority.

Section 2. The South Dakota Energy Infrastructure Authority is created to diversify and expand the state's economy by developing in this state the energy production facilities and the energy transmission facilities necessary to produce and transport energy to markets within the state and outside of the state.

Section 3. The authority may provide for the financing, construction, development, maintenance, and operation of or upgraded energy transmission facilities. The authority may own, lease, or rent such facilities. The authority may enter into partnerships with public and private entities to develop and operate such facilities.

Section 4. If the authority becomes the owner or partial owner of any energy transmission facility, the authority shall divest itself of ownership as soon as economically practical. Recovery by the authority of its net investment in the energy production facility or energy transmission facility is deemed to be economically practical.

Section 5. In order to finance energy transmission facilities authorized pursuant to this Act, the authority may issue and have outstanding bonds to finance such facilities in an amount not to exceed one billion dollars. However, no bonds may be issued until the issuance of the bonds is specifically approved by an act of the Legislature. The authority shall have contracts sufficient to justify the issuance of bonds.

Section 6. The authority shall:

(1) Meet with any interested owner of transmission lines in South Dakota and any interested generator and distributor of electricity to consumers in South Dakota by August first each year to understand the generation of electricity in South Dakota and the transmission enhancements needed for the transmission of electricity to, from, and within South Dakota, and to analyze how the authority could proactively assist in developing the generation and transmission infrastructure;

(2) Report its findings and make recommendations to the Governor, the Legislature, and the South Dakota congressional delegation by December first of each year concerning what the private sector, the state, and the federal government can do to create and enhance the generation of electricity in South Dakota and the transmission of electricity to, from, and within South Dakota. The report due December 1, 2005, shall address and quantify market opportunities for the development, use in-state, and export of South Dakota's enormous wind power resource;

(3) Annually evaluate state laws and rules affecting electric generation and electric transmission and make recommendations to the Governor and the Legislature for improvements by December first of each year;

(4) Annually evaluate federal laws and rules affecting electric generation and electric transmission and make recommendations to the South Dakota congressional delegation for improvements by December first of each year;

distributors of electricity to consumers in South Dakota can cooperate to improve and increase electric transmission in South Dakota and communicate those opportunities to owners, generators, and distributors of electricity in South Dakota;

(6) Assist any entity that wants to build new or upgrade existing electric transmission facilities to, from, and within South Dakota by helping the entity develop a business plan and identify financing options; and

(7) Assist other state transmission authorities and any federal or regional entity wanting to build new or upgrade existing transmission facilities to deliver electricity to, from, and within South Dakota.

Section 7. There is hereby appropriated from the state general fund the sum of five hundred thousand dollars (\$500,000), or so much thereof as may be necessary, to the authority created pursuant to this Act.

Section 8. The director of the authority shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 9. Any amounts appropriated in this Act not lawfully expended or obligated by June 30, 2007, shall revert in accordance with § 4-8-21.

Section 10. The governing and administrative powers of the authority are vested in its board of directors consisting of five members. The Governor shall appoint the directors, with the advice and consent of the Senate. Not all members of the board may be of the same political party. The terms of the members of the board may not exceed six years. The terms of the initial board of directors shall be staggered by the drawing of lots so that not more than two of the director's terms shall end at the same time. Members of the board may serve more than one term.

Section 11. The Governor may remove any member of the board for cause, including incompetence, neglect of duty, or malfeasance in office.

Section 12. Members of the board shall receive compensation for the performance of their duties as established by the Legislature in accordance with § 4-7-10.4 from the funds of the authority. Members may be reimbursed at rates established by the Bureau of Personnel for necessary expenses, including travel and lodging expenses, incurred in connection with the performance of their duties as members.

Section 13. Each member of the board shall, before entering upon the duties of office, take and subscribe the constitutional oath of office.

Section 14. The board may appoint an executive director. The executive director may not be a member of the board. The executive director shall hold office at the discretion of the board. The executive director shall be the chief administrative and operational officer of the authority, shall direct and supervise its administrative affairs and general management, shall perform such other duties as may be prescribed from time to time by the board, and shall receive compensation fixed by the board. The executive director shall attend all meetings of the board. However, no action of the board or the authority is invalid on account of the absence of the executive director from a meeting. The board may engage the services of such other agents and employees as they deem appropriate, including attorneys, appraisers, scientists, researchers, engineers, accountants, credit analysts, and other consultants, and may prescribe their duties and fix their compensation.

Section 15. The board shall meet on the call of the chair, upon the written request of four members of the board, or upon the request of the executive director.

Section 16. A majority of the members of the board constitute a quorum for the transaction of business. All official acts of the authority shall require the affirmative vote of at least four members of the board at a meeting of the board at which the members casting those affirmative votes are present.

Section 17. Notwithstanding any other law to the contrary it is not a conflict of interest for a trustee, director, officer, or employee of any financial institution, investment banking firm, brokerage firm, commercial bank or trust company, architectural firm, utility company, engineering firm, mining firm, insurance company, energy company, or any other firm, person, or corporation to serve as a member of the authority, if the trustee, director, officer, or employee abstains from deliberation, action, and vote by the authority in each instance where the business affiliation of any such trustee, director, officer, or employee is involved.

Section 18. Each meeting of the authority for any purpose whatsoever shall be open to the public as required by chapter 1-25. Notice of meetings shall be as provided in the bylaws of the authority. Resolutions need not be published or posted.

Section 19. The executive director or other person designated by the authority shall keep a record of the proceedings thereof and shall be custodian of all books, documents, and papers filed with the authority, the minutes or journal of the authority and its official seal. The executive director or other person designated by the authority may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies and all persons dealing with the authority may rely on such certificates.

Section 20. The authority shall establish and collect fees, schedules of fees, rentals and other charges for the use of the transmission facilities of the authority as the board may determine, and may borrow funds for the execution of the purposes of the authority, and mortgage and pledge any lease or leases granted, assigned, or subleased by the authority.

Section 21. The authority may:

- (1) Have perpetual succession as a body politic and corporate exercising essential public functions;
- (2) Sue and be sued in its own name;
- (3) Have an official seal and alter the seal at will;
- (4) Maintain an office at such places within the state as the authority may designate;
- (5) Make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this Act;
- (6) Employ fiscal consultants, engineers, attorneys, and such other consultants and employees as may be required and contract with agencies of the state to provide staff and support services;
- (7) Procure insurance against any loss in connection with its property and other assets, including loans and notes in such amounts and from such insurers as it may deem advisable;
- (8) Borrow money and issue bonds as provided by this Act;
- (9) Procure insurance, letters of credit, guarantees, or other credit enhancement arrangements from any public or private entities, including any department, agency, or instrumentality of the United States or the state, for payment of all or any portion of any bonds issued by the authority, in

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

400L0782

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB 1260**

02/11/2005

Introduced by: The Committee on State Affairs at the request of the Governor

FOR AN ACT ENTITLED, An Act to create the South Dakota Electric Transmission Assistance Authority.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. Terms used in this Act mean:

- (1) "Authority," the South Dakota Electric Transmission Assistance Authority created by this Act;
- (2) Board," the board of directors of the authority.

Section 2. The authority is created and has a five-member board of directors. The Governor shall appoint the board members and not all members of the board may be of the same political party. The members of the initial board shall be appointed for staggered terms with two members for terms of one year each and the other members for terms of two, three, and four years, respectively, as designated at the time of appointment. Thereafter all members shall be appointed for four year terms. Members of the board may serve more than one term. The members shall elect from the membership a chair, vice-chair, and secretary. A majority of persons appointed and serving as members shall be qualified voters of the State of South Dakota and a majority of members shall possess special knowledge in the field of electric power or energy transmission or generation. The board members shall receive per diem set pursuant to § 4-7-10.4 and expenses at the same rate as other state employees while engaged in their official duties.

Section 3. The authority shall:

- (1) Meet with all willing owners of transmission lines in South Dakota and all willing generators and distributors of electricity to consumers in South Dakota by August first each year to understand transmission enhancements needed for the transmission of electricity to, from, and within South Dakota, and to analyze how the authority could proactively assist in developing transmission infrastructure;
- (2) Report its findings and make recommendations to the Governor, the Legislature, and the South Dakota congressional delegation by December first of each year concerning what the private sector, the state, and the federal government can do to create and enhance the transmission of electricity to, from, and within South Dakota. The report due December 1, 2005, shall address and quantify market opportunities for the development, use in-state, and export of South Dakota's enormous wind power resource;
- (3) Annually evaluate state laws and rules affecting electric transmission and make recommendations to the Governor and the Legislature for improvements by December first of each year;
- (4) Annually evaluate federal laws and rules affecting electric transmission and make recommendations to the South Dakota congressional delegation for improvements by December first of each year;
- (5) Identify opportunities where owners of transmission lines in South Dakota and generators and distributors of electricity to consumers in South Dakota can cooperate to improve and increase electric transmission in South Dakota and communicate those opportunities to owners, generators, and distributors of electricity in South Dakota;
- (6) Assist any entity or group of entities who wish to create or enhance electric transmission to, from, and within South Dakota by helping them develop a business plan and identify financing options; and
- (7) Assist the electric transmission authorities of other states and any other federal or regional entity wanting to create additional transmission or enhance current transmission of electricity to, from, and within South Dakota.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

400L0782

HOUSE BILL NO. **1260**

Introduced by: The Committee on State Affairs at the request of the Governor

FOR AN ACT ENTITLED, An Act to create the South Dakota Electric Transmission Assistance Authority.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. Terms used in this Act mean:

- (1) "Authority," the South Dakota Electric Transmission Assistance Authority created by this Act;
- (2) Board," the board of directors of the authority.












Section 2. The authority is created and has a five-member board of directors. The Governor shall appoint the board members and not all members of the board may be of the same political party. The members of the initial board shall be appointed for staggered terms with two members for terms of one year each and the other members for terms of two, three, and four years, respectively, as designated at the time of appointment. Thereafter all members shall be appointed for four year terms. Members of the board may serve more than one term. The members shall elect from the membership a chair, vice-chair, and secretary. A majority of persons appointed and being as members shall be qualified voters of the State of South Dakota and a majority of members shall possess knowledge in the field of electric power or energy transmission or generation. The board members shall receive per diem set pursuant to § 4-7-10.4 and expenses at the same rate as other state employees while engaged in their official duties.

Section 3. The authority shall:

- (1) Contact all owners of transmission lines in South Dakota and all generators and distributors of electricity to consumers in South Dakota by August first of each year to ask them if they need any assistance in creating or enhancing the transmission of electricity to, from, or within South Dakota;
- (2) Report its findings and make recommendations to the Governor, the Legislature, and the South Dakota congressional delegation by December first of each year concerning what the private sector, the state, and the federal government can do to create and enhance the transmission of electricity to, from, and within South Dakota;
- (3) Annually evaluate state laws and rules affecting electric transmission and make recommendations to the Governor and the Legislature for improvements by December first of each year;
- (4) Annually evaluate federal laws and rules affecting electric transmission and make recommendations to the South Dakota congressional delegation for improvements by December first of each year;
- (5) Identify opportunities where owners of transmission lines in South Dakota and generators and distributors of electricity to consumers in South Dakota can cooperate to improve and increase electric transmission in South Dakota and communicate those opportunities to owners, generators, and distributors of electricity in South Dakota;
- (6) Assist any entity or group of entities who wish to create or enhance electric transmission to, from, and within South Dakota by helping them develop a business plan and identify financing options; and
- (7) Assist the electric transmission authorities of other states and any other federal or regional entity wanting to create additional transmission or enhance current transmission of electricity to, from, and within South Dakota.

Section 4. The authority shall be administered by the Department of Tourism and State Development.

House Bill 1260**The Committee on State Affairs at the request of the Governor****An Act to create the South Dakota Energy Infrastructure Authority.****Subject Index:** Energy , Governor , State Affairs and Government

Date	Action	
02/02/2005	First read in House and referred to House State Affairs H.J. 292	
02/09/2005	Scheduled for committee hearing on this date	
02/09/2005	Deferred by Chair	
02/11/2005	Scheduled for committee hearing on this date	
02/11/2005	House State Affairs Amendment (1260oa)	
02/11/2005	State Affairs Do Pass Amended Passed, <u>YEAS 10</u> , <u>NAYS 0</u> . H.J. 440	
02/15/2005	House of Representatives Do Pass Amended Passed, <u>YEAS 70</u> , <u>NAYS 0</u> . H.J. 490	
02/16/2005	First read in Senate and referred to Senate State Affairs S.J. 521	
02/25/2005	Scheduled for committee hearing on this date	
02/25/2005	Deferred by Chair	
02/28/2005	Scheduled for committee hearing on this date	
02/28/2005	State Affairs Hoghoused Passed <u>Amendment (1260fa)</u>	
02/28/2005	State Affairs Do Pass Amended Passed, <u>YEAS 9</u> , <u>NAYS 0</u> . S.J. 661	
02/28/2005	Senate State Affairs Title Amendment (1260fta)	
03/01/2005	Senate Do Pass Amended Failed, <u>YEAS 23</u> , <u>NAYS 9</u> . S.J. 715	
03/01/2005	Intent to reconsider S.J. 716	
03/01/2005	Senate Reconsidered Passed, <u>YEAS 32</u> , <u>NAYS 1</u> . S.J. 725	
03/01/2005	Senate Do Pass Amended Passed, <u>YEAS 29</u> , <u>NAYS 4</u> . S.J. 726	
03/01/2005	Senate Title amended Passed S.J. 726 <u>Amendment (1260zta)</u>	
03/03/2005	Senate Conference Committee appointed S.J. 758	
03/03/2005	House of Representatives Failed to concur, appoint Conference Committee Passed H.J. 770	
03/04/2005	House of Representatives Conference Committee Report adopted Failed, <u>YEAS 44</u> , <u>NAYS 23</u> . H.J. 793	
03/04/2005	Senate Conference Committee Report adopted Passed, <u>YEAS 34</u> , <u>NAYS 1</u> . S.J. 772	
03/04/2005	Intent to reconsider H.J. 795	
03/04/2005	House of Representatives Reconsidered Passed, <u>YEAS 47</u> , <u>NAYS 22</u> . H.J. 799	
03/04/2005	House of Representatives Conference Committee Report adopted Failed, <u>YEAS 44</u> , <u>NAYS 25</u> . H.J. 800	
03/04/2005	House of Representatives Conference Committee report not adopted, appoint Conference Committee Passed H.J. 801	
03/04/2005	Senate Conference Committee appointed S.J. 780	
03/04/2005	House of Representatives Conference Committee Report adopted Passed, <u>YEAS 46</u> ,	

03/04/2005	Delivered to the Governor H.J. 823
03/04/2005	Senate Conference Committee Report adopted Passed, YEAS 33, NAYS 1. S.J. 788
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SENATE FILE NO. SF0052

Infrastructure authority.

Sponsored by: Joint Corporations, Elections and Political
Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to the Wyoming infrastructure authority;
2 creating the authority; defining composition, purposes,
3 powers and duties of the authority; providing for the
4 planning, constructing, financing, maintaining and
5 operating of electric transmission facilities and related
6 infrastructure by the authority; authorizing the issuance
7 of revenue bonds or other obligations payable from revenues
8 of the authority; providing terms and procedures for the
9 issuance of bonds and other obligations; providing for
10 disposition of revenue of the authority; specifying
11 legislative findings; authorizing state investment in bonds
12 of the authority; authorizing financing of other projects
13 by the authority; providing for reports and
14 recommendations; creating an advisory committee for the
15 authority; providing an appropriation for a loan to the

1 authority and for repayment; and providing for an effective
2 date.

3

4 *Be It Enacted by the Legislature of the State of Wyoming:*

5

6 **Section 1.** W.S. 37-5-301 through 37-5-307 and
7 37-5-401 through 37-5-408 are created to read:

8

9

ARTICLE 3

10 WYOMING INFRASTRUCTURE AUTHORITY PROJECTS

11

12 **37-5-301. Wyoming infrastructure authority.**

13

14 (a) There is created the Wyoming infrastructure
15 authority, hereinafter called the "authority", which is a
16 body corporate operating as a state instrumentality, with
17 authority to adopt an official seal and to sue and be sued.

18

19 (b) The authority shall be governed by a board
20 composed of five (5) members appointed by the governor,
21 with the advice and consent of the senate. The members of
22 the initial board shall be appointed for staggered terms,
23 two (2) members for terms of one (1) year each and the
24 other members for terms of two (2), three (3) and four (4)

1 years, respectively, as designated at the time of
2 appointment. Thereafter all members shall be appointed for
3 four (4) year terms. The governor may remove any member as
4 provided in W.S. 9-1-202. Vacancies shall be filled by
5 appointment by the governor in accordance with W.S.
6 28-12-101. The members shall elect from the membership a
7 chairman, vice-chairman and secretary. A majority of
8 persons appointed and serving as members shall be qualified
9 voters of the state of Wyoming with special knowledge, as
10 evidenced by college degrees or courses, or with at least
11 five (5) years experience in managerial positions, in the
12 field of electric transmission or generation development,
13 or natural gas or coal production, transportation,
14 marketing or industrial or municipal consumption. Members
15 of the board may receive the same per diem, expenses and
16 travel allowance as members of the legislature while in
17 actual attendance at meetings of the board and the
18 performance of their duties relative thereto.

19

20 (c) There is created an advisory committee for the
21 authority which shall consist of five (5) members appointed
22 by the governor. Initial appointments, terms, removal of
23 members, filling of vacancies and compensation of the
24 committee shall be the same as provided for the authority

1 under subsection (b) of this section. The advisory
2 committee shall make recommendations to the authority's
3 board concerning any proposed or ongoing project of the
4 authority.

5
6 (d) Any agency, board, commission, department or
7 institution of the state and the governing authorities of
8 political subdivisions, may make surveys, reports and
9 investigations, and furnish records and information and
10 other assistance and advice as may be required by the
11 authority.

12
13 **37-5-302. Definitions.**

14
15 (a) As used in this article and W.S. 37-5-401 through
16 37-5-408:

17
18 (i) "Authority" means the Wyoming infrastructure
19 authority created by W.S. 37-5-301(a);

20
21 (ii) "Board" means the board of directors of the
22 authority;

23

1 (iii) "Facilities" means electric transmission
2 facilities and related supporting infrastructure.

3

4 37-5-303. Purposes.

5

6 (a) The purpose for which the authority is created is
7 to diversify and expand the Wyoming economy through
8 improvements in the state's infrastructure and to
9 facilitate the consumption of Wyoming energy by planning,
10 financing, constructing, developing, acquiring, maintaining
11 and operating electric transmission facilities and related
12 supporting infrastructure to facilitate the production,
13 transportation, distribution and delivery of energy. In
14 order to provide for the financing, construction,
15 development, maintenance and operation of electric
16 transmission facilities, the authority may own, lease or
17 rent facilities constructed pursuant to the authority
18 conferred herein, and all facilities, structures and
19 properties incidental and necessary thereto, to facilitate
20 the production, transportation, distribution and delivery
21 of energy.

22

23 (b) The facilities and related supporting
24 infrastructure may include all facilities, structures and

1 properties incidental and necessary or useful in the
2 production, transportation, transmission and delivery of
3 electric energy.

4

5 (c) The authority shall establish and collect fees,
6 schedule of fees, rentals and other charges for the use of
7 the facilities of the authority as the board may determine,
8 and may borrow funds for the execution of the purposes of
9 the authority, and mortgage and pledge any lease or leases
10 granted, assigned or subleased by the authority.

11

12 (d) Anything in this article to the contrary
13 notwithstanding, the authority shall not exercise any of
14 the rights or powers granted to it in this section, if
15 private persons, firms, or corporations are performing the
16 acts, constructing or have constructed the facilities, or
17 are providing the services contemplated by the authority,
18 and are willing to finance and own new infrastructure to
19 meet an identified need and market. Prior to exercising
20 any rights or powers granted to it in this section, the
21 authority shall publish in a newspaper of general
22 circulation in Wyoming, and in a newspaper and trade
23 magazine in the area where the facilities or services are
24 contemplated, in the manner prescribed by law, a notice

1 describing the acts, facilities, or services contemplated
2 by the authority, and private persons, firms or
3 corporations willing and able to perform the acts, finance
4 and own, and construct the facilities or provide the
5 services described in the notice shall have a period of
6 thirty (30) days from the date of last publication of the
7 notice within which to notify the authority of intention
8 and ability to perform the acts, finance and construct the
9 facilities, or provide the services described in the
10 notice. In the absence of notification by a private
11 person, firm or corporation, or if a person, firm or
12 corporation, having given notice of intention to perform
13 the acts, finance and construct the facilities, or provide
14 the services contemplated by the authority, fails to
15 commence construction of the same within one hundred eighty
16 (180) days from the date of notification of the authority
17 of its intention, the authority may proceed to perform the
18 acts, construct the facilities or provide the services
19 originally contemplated. The authority may require that
20 any person giving notice of intention to perform the acts,
21 finance and construct the facilities, or provide the
22 services contemplated by the authority, submit a plan for
23 completion of the facility within three (3) years from
24 notification to the authority. The authority may also

1 require the person to provide a bond as approved by the
2 attorney general to pay liquidated damages to the authority
3 for the person's failure to perform the acts, finance and
4 construct facilities or provide the services contemplated
5 by the authority. The authority shall not be precluded
6 from maintaining any other action for the person's failure
7 to perform.

8

9 37-5-304. Powers of the authority.

10

11 (a) In exercising the rights and powers granted to
12 it, the authority shall be vested with authority to:

13

14 (i) Employ officers, agents and employees as it
15 deems necessary for the performance of its powers and
16 duties and prescribe the powers and duties and fix the
17 compensation of the officers, agents and employees;

18

19 (ii) Contract, upon terms as it may agree upon,
20 for legal, financial, engineering and other professional
21 services necessary or expedient in the conduct of its
22 affairs;

23

(iii) Utilize the services of executive departments of the state upon mutually agreeable terms and conditions;

(iv) Plan, finance, construct, develop, acquire, own, maintain and operate within and outside the state of Wyoming, property, structures, equipment, facilities and works of public improvement necessary or useful for the accomplishment of the purposes for which the authority was created, including the obtaining of permits and the acquisition of rights of way;

(v) Acquire by condemnation any properties necessary or useful for its purposes, provided the authority shall not have the right to condemn mineral leases, gas supplies, gas reserves, oil refineries, minerals, water rights, mineral rights or pipelines used in connection therewith;

(vi) Receive by gift, grant, donation or otherwise, any sum of money, aid or assistance from the United States, the state of Wyoming, any political subdivision or any other public or private entity;

1 (vii) Provide light, water, communications,
2 security and other services for its facilities as it deems
3 advisable;

4
5 (viii) After consultation with the public
6 service commission and any other relevant state or federal
7 authority, establish and charge reasonable fees, rates,
8 tariffs or other charges for the use of all facilities
9 administered by the authority and for all services rendered
10 by it;

11
12 (ix) In whole or in part, operate, lease, rent
13 and dispose of facilities constructed pursuant to the
14 authority conferred herein, and all facilities, structures
15 and properties incidental and necessary thereto. The
16 authority shall review at least every three (3) years the
17 feasibility of disposing of facilities it holds;

18
19 (x) Investigate, plan, prioritize and establish
20 corridors of the transmission of electricity;

21
22 (xi) Enter into partnerships with public or
23 private entities; and

24

1 (xii) Do any and all things necessary or proper
2 for the development, regulation and accomplishment of the
3 purposes of the authority within the limitations of
4 authority granted by this article and W.S. 37-5-401 through
5 37-5-408.

6

7 37-5-305. Bonds.

8

9 (a) In addition to the powers otherwise herein
10 granted to the authority, in order to accomplish its
11 purposes, it shall have the power to borrow money and
12 evidence the borrowing in the issuance and sale of bonds or
13 other obligations of the authority, the principal and
14 interest of which shall be payable solely out of revenues
15 herein authorized to be dedicated and pledged for the
16 payment.

17

18 (b) Bonds issued under authority of this section
19 shall be solely the obligation of the authority and shall
20 recite on their face that they do not constitute
21 obligations of the state of Wyoming or any county,
22 municipality or other political subdivision of the state.
23 The bonds or other obligations shall be authorized and
24 issued by resolution of the authority and shall be of the

1 series, bear the date or dates, mature at the time or
2 times, bear interest at the rate or rates, be in the form,
3 either coupon or fully registered without coupons, carry
4 the registration and exchangeability privileges, be payable
5 in the medium of payment and at the place or places, be
6 subject to the terms of redemption and be entitled to the
7 priorities on the revenues of the authority, as the
8 resolution may provide. The bonds and the coupons, if any,
9 attached shall be executed in the form and manner provided
10 by the resolution authorizing their issuance.

11

12 (c) The bonds or other obligations issued under
13 authority of this section shall be sold by the authority,
14 the bonds or other obligations to be sold to the highest
15 bidder on sealed proposals at public sale, after
16 publication of notice of sale at least seven (7) days in
17 advance of the date of sale in newspapers or financial
18 journals published at places the authority may determine,
19 reserving to the authority the right to reject any and all
20 bids.

21

22 (d) Any bonds issued hereunder shall be payable from
23 and be secured by the pledge of the revenues derived from
24 the operation of the electric transmission facilities, as

1 constructed, acquired, extended or improved with the
2 proceeds of the bonds, subject only to prior payment of the
3 reasonable and necessary expenses of operating and
4 maintaining the facilities. Any holder of the bonds or of
5 any of the coupons thereto attached may by appropriate
6 legal action compel performance of all duties required of
7 the authority in order to enforce payment of the bonds when
8 due. If any bond issued hereunder is permitted to go into
9 default as to principal or interest, any court of competent
10 jurisdiction may, pursuant to the application of the holder
11 of the bonds, appoint a receiver for the facilities, who
12 shall operate the same and collect and distribute the
13 revenues thereof pursuant to the provisions and
14 requirements of the resolution authorizing the bonds.

15
16 (e) If more than one (1) series of bonds is issued
17 payable from the revenues of the facilities, priority of
18 lien on the revenues shall depend on the time of the
19 delivery of the bonds, each series enjoying a lien prior
20 and superior to that enjoyed by any series of bonds
21 subsequently delivered, except that where provision is made
22 in the proceedings authorizing any issue or series of bonds
23 for the issuance of additional bonds in the future on a
24 parity therewith pursuant to procedure or restrictions

1 provided in such proceedings, additional bonds may be
2 issued in the future on a parity with the issue or series
3 in the manner so provided in such proceedings.

4

5 (f) All bonds issued under the provisions of this
6 section shall constitute negotiable instruments within the
7 meaning of the Uniform Commercial Code. The bonds and the
8 income thereof shall be exempt from all taxation within the
9 state of Wyoming.

10

11 (g) No board or commission other than the board of
12 the authority shall have authority to fix or supervise the
13 making of fees and charges hereafter stated, which shall be
14 in amounts reasonably necessary for the purposes herein
15 stated. When the authority has issued bonds and pledged
16 the revenues of the facilities for the payment thereof as
17 herein provided, the authority shall operate and maintain
18 the facilities and shall impose and collect fees and
19 charges for the services furnished by the facilities,
20 including those furnished to the authority itself, in the
21 amounts and at the rates as shall be fully sufficient at
22 all times to:

23

F 1 (i) Pay the expenses of operating and
2 maintaining the facilities;

3

4 (ii) Provide a sinking fund sufficient to assure
5 the prompt payment of principal and interest on the bonds
6 as each falls due;

7

8 (iii) Provide a reasonable fund for
9 contingencies as may be required by any bond underwriting
10 or by the resolution authorizing the bonds; and

11

12 (iv) Provide an adequate depreciation fund for
13 repairs, extensions and improvements to the facilities
14 necessary to assure adequate and efficient service to the
15 public.

16

17 (h) Any resolution of the board of the authority
18 authorizing the issuance of bonds shall be published once
19 in a newspaper of general circulation published in the city
20 of Cheyenne, and in a newspaper in the area where the
21 facilities or services are contemplated. For a period of
22 thirty (30) days from the date of the publication any
23 person in interest may contest the legality of the
24 resolution and of the bonds to be issued pursuant thereto

1 and the provisions securing the bonds, including the
2 validity of any lease or other contract pledged to the
3 payment thereof. After the expiration of thirty (30) days
4 no one shall have any right of action to contest the
5 validity of the bonds, the validity of the security pledged
6 to the payment thereof or the provisions of the resolution
7 pursuant to which the bonds were issued, and all the bonds
8 and all proceedings relating thereto shall be conclusively
9 presumed to be legal.

10

11 (j) The board of the authority may authorize the
12 issuance of bonds for the purpose of refunding, extending
13 and unifying the whole or any part of the principal,
14 interest and redemption premiums on any outstanding bonds
15 issued under the authority of this article or W.S.
16 37-5-403. The refunding bonds may either be sold and the
17 proceeds applied to or deposited in escrow for the
18 retirement of the outstanding bonds, or may be delivered in
19 exchange for the outstanding bonds. The refunding bonds
20 shall be authorized in all respects as original bonds are
21 herein required to be authorized. The board of the
22 authority in authorizing the refunding bonds, shall provide
23 for the security of the bonds, the sources from which the
24 bonds are to be paid and for the rights of the holders

1 thereof in all respects as herein provided for other bonds
2 issued under the authority of this article or W.S.
3 37-5-403. The board may also provide that the refunding
4 bonds shall have the same priority of lien on the revenues
5 pledged for their payment as was enjoyed by the bonds
6 refunded.

7

8 **37-5-306. Use of net revenues.**

9

10 The authority, acting alone or in cooperation with any
11 agency of the state of Wyoming shall use and employ any net
12 revenues derived from the facilities herein authorized or
13 from any other source, after providing all cost of
14 maintenance and operation of the facilities and after
15 making the required principal and interest payments on any
16 revenue bonds issued and any other payments provided in any
17 resolution or resolutions authorizing the issuance and sale
18 of revenue bonds and obligations, in extending and
19 improving the facilities as the board of the authority may
20 determine to be warranted by the need for additional
21 intrastate electric transmission facilities. If the board
22 determines that no need exists, the net revenues shall be
23 paid to the state treasurer for credit to the state general
24 fund.

1

2 37-5-307. Authority not subject to public service
3 commission.

4

5 Notwithstanding any other provisions of law to the
6 contrary, the authority shall not be subject to the
7 supervision, regulation, control or jurisdiction of the
8 public service commission, and the fees, rates, rental and
9 other charges and services of the authority shall not be
10 subject thereto.

11

12

ARTICLE 4

13

FINANCING OF OTHER PROJECTS

14

15 37-5-401. Legislative findings.

16

17 (a) The legislature finds that:

18

19 (i) There are in Wyoming extensive reserves of
20 energy and insufficient facilities to warrant the timely
21 development and marketing of those reserves;

22

23 (ii) Timely development of Wyoming energy
24 sources will stabilize and increase revenue to the state;

1

2

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(iii) New infrastructure will increase development of Wyoming energy sources;

(iv) It is in the public interest of the citizens of this state to promote the economic welfare of the state and its residents by increasing employment, stimulating economic activity, augmenting sources of tax revenue, fostering economic stability and improving the balance of the state's economy;

(v) This article constitutes a valid public purpose of primary benefit to all citizens of this state.

37-5-402. Definitions.

(a) As used in this article:

(i) "Bonds" means notes, warrants, bonds, temporary bonds and anticipation notes issued by the authority pursuant to this article.

37-5-403. Authority revenue bonds; issuance; amount.

1 (a) The authority may issue bonds to finance electric
2 transmission facilities and related infrastructure, which
3 shall be located at least partially within Wyoming, in an
4 amount not to exceed one billion dollars
5 (\$1,000,000,000.00).

6
7 (b) Subject to subsection (a) of this section, the
8 authority may issue bonds in principal amounts the
9 authority determines necessary to provide sufficient funds
10 for achieving its purposes under this article, including
11 the reduction of principal, the payment of interest, the
12 establishment of reserves, the costs of administration and
13 for the purpose of defraying all other associated costs.
14 All bonds issued under this article are negotiable
15 instruments under the laws of the state unless expressly
16 provided to the contrary on the face of the bonds.

17
18 (c) All bonds issued by the authority are payable
19 solely out of special funds consisting of all or part of
20 its revenues, receipts, monies and assets, as designated in
21 the proceedings under which the bonds are authorized. The
22 bonds shall bear interest at the rates, be executed and
23 delivered at times and in denominations, be of terms and
24 maturities, be in bearer form or in registered form as to

1 principal and interest or principal alone, and bear manual
2 or facsimile signatures and seals as determined by the
3 authority. Bonds issued by the authority are not general
4 obligations of this state nor of any political subdivision
5 of this state. The bonds shall be solely the obligation of
6 the authority and shall recite on their face that they do
7 not constitute obligations of the state or any political
8 subdivision of the state.

9

10 (d) Bonds may be payable in installments and may bear
11 maturities not exceeding forty (40) years from the date
12 issued as determined by the authority.

13

14 (e) As determined by the authority, bonds and
15 interest may be payable at a time or place whether within
16 or without the state. Bonds may contain other provisions
17 not inconsistent with this article.

18

19 (f) Any bonds issued by the authority may contain an
20 option to redeem all or any part as may be specified. The
21 price of redemption, the terms and conditions and the
22 procedure of notice shall be set forth in the proceedings
23 of the authority and may appear on the face of the bonds.

24

1 (g) Any bonds of the authority may be sold at, above
2 or below par value, at public or private sale, in a manner
3 and from time to time as determined by the authority. The
4 authority may pay legal fees, expenses, premiums and
5 commissions which it finds necessary or advantageous to
6 this state in connection with the issuance and sale.

7
8 (h) The authority may provide for the issuance of its
9 bonds to refund any bonds of the authority then
10 outstanding, including the payment of any redemption
11 premium and any interest or premium accrued or to accrue
12 to, the earliest or subsequent date of redemption, purchase
13 or maturity of the bonds. Refunding shall be accomplished
14 in the manner prescribed by W.S. 16-5-101 through 16-5-119
15 to the extent it is not inconsistent with this article.

16

17 **37-5-404. Authority revenue bonds; security; payments**
18 **after retirement.**

19

20 (a) The principal and interest on any bonds issued by
21 the authority shall be secured by a pledge of revenues from
22 the operation of the project financed and by a first
23 mortgage on the facilities and by such guarantees, pledges
24 and assignments, as may be required by the bond underwriter

1 or the state treasurer, of the entity owning the project or
2 of the parent corporation owning said entity. The
3 guarantees and pledges shall be no less favorable to the
4 authority than those granted other lenders of the same
5 class.

6
7 (b) The authority may require additional payments, as
8 negotiated, to bondholders to be made either in a lump sum
9 at the time of retirement of the bonds or annually from the
10 time of retirement of the bonds until project use is
11 terminated or may require additional incentives from the
12 owner of the project to prospective bondholders so long as
13 the incentives are not contrary to the Wyoming
14 constitution.

15

16 (c) The authority may require such other security for
17 repayment of the bonds as it deems necessary.

18

19 37-5-405. Exemptions from taxation.

20

21 The exercise of the powers granted by this article
22 constitutes the performance of an essential governmental
23 function. Any bonds issued under this article and the
24 income therefrom, shall be free from taxation of every kind

1 by the state, municipalities and political subdivisions of
2 the state.

3

4 37-5-406. Bonds as legal investments.

5

6 The bonds of the authority are legal investments which may
7 be used as collateral for public funds of the state,
8 insurance companies, banks, savings and loan associations,
9 investment companies, trustees and other fiduciaries which
10 may properly and legally invest funds in their control or
11 belonging to them in bonds of the authority. With the
12 written approval of the state loan and investment board and
13 the attorney general, the state treasurer may invest monies
14 from the permanent Wyoming mineral trust fund in bonds of
15 the authority in an amount specified by the state loan and
16 investment board and the attorney general but not to exceed
17 the amount specified in W.S. 37-5-403(a), and the interest
18 payable on the bonds shall be at least four percent (4%)
19 and revenue under W.S. 37-5-404(b) shall be credited as
20 received to the state general fund. The limitation on
21 legislatively designated investments under W.S. 9-4-712
22 shall not apply to investments made under this section.

23

1 37-5-407. State pledge not to impair bondholder's
2 rights and remedies.

3
4 The state pledges to the holders of any bonds issued under
5 this article, that the state will not limit or alter the
6 rights vested in the authority to fulfill the terms of
7 agreements made with the holders, or in any way impair the
8 rights and remedies of the holders until the bonds together
9 with the interest, with interest on any unpaid installments
10 of interest, and all costs and expenses in connection with
11 any action or proceeding by or on behalf of the holders are
12 fully met and discharged. The authority is authorized to
13 include this pledge of the state in any agreement with the
14 holders of the bonds.

15

16 37-5-408. Powers; duties; limitations.

17

18 (a) The authority has the powers granted by W.S.
19 37-5-301 through 37-5-307 as necessary to carry out the
20 purposes of this article including the power to hire
21 technical consultants, financial advisors and legal
22 advisors and specifically including the powers granted by
23 W.S. 37-5-304(a)(ii).

24

1 (b) The authority may assess and collect fees that
2 are nonrefundable from applicants seeking to obtain
3 authority financing of a project.

4
5 (c) The authority shall maintain such records and
6 accounts of revenues and expenditures as required by the
7 director of the state department of audit. The director or
8 his designee shall conduct an annual financial and legal
9 compliance audit of the accounts of the authority and file
10 copies thereof with the governor and the legislature.

11
12 (d) The authority is subject to the requirements of:

13
14 (i) W.S. 16-3-101 through 16-3-105;

15
16 (ii) W.S. 16-4-201 through 16-4-205; and

17
18 (iii) W.S. 16-4-401 through 16-4-407.

19
20 (e) The authority shall require that any project
21 owner receiving a loan under this article shall maintain
22 records and accounts relating to receipt and disbursements
23 of loan proceeds, transportation costs and information on

1 energy sales and deliveries and make the records available
2 to the state auditor for inspection.

3

4 Section 2. W.S. 9-4-831(a)(xi) is amended to read:

5

6 9-4-831. Investment of public funds.

7

8 (a) The state treasurer, or treasurer of any
9 political subdivision, municipality or special district of
10 this state, and the various boards of trustees and boards
11 of directors of county hospitals, airports, fairs and other
12 duly constituted county boards and commissions, may invest
13 in:

14

15 (xi) As authorized by W.S. 37-5-206 and
16 37-5-406, bonds of the Wyoming natural gas pipeline
17 authority and the Wyoming infrastructure authority;

18

19 Section 3. The infrastructure authority created by
20 this act shall at times it determines appropriate, report
21 to the legislature regarding additional authority or
22 increased debt limitations necessary or convenient to
23 fulfill the purposes of this act. The report shall include
24 any recommendations for legislation and, if necessary,

1 elections, to authorize the additional authority or debt
2 limitations.

3

4 **Section 4.** Two hundred fifty thousand dollars
5 (\$250,000.00) is appropriated from the general fund to be
6 loaned by the state treasurer to the Wyoming infrastructure
7 authority to pursue the construction of infrastructure
8 authorized by this act and beneficial to the state of
9 Wyoming. Monies loaned to the authority shall be repaid,
10 with interest at an annual rate set by the state loan and
11 investment board of not more than four percent (4%), to the
12 general fund not later than June 30, 2009 from the proceeds
13 of bonds issued by the authority. A loan agreement shall
14 be prepared and approved by the attorney general before
15 execution thereof and distribution of the loan proceeds.

16

17 **Section 5.** This act is effective July 1, 2004.

18

19

(END)

HOUSE BILL NO. HB0129

Wyoming infrastructure authority.

Sponsored by: Joint Minerals, Business and Economic
Development Interim Committee

A BILL

for

1 AN ACT relating to the Wyoming infrastructure authority;
2 expanding the purpose of the Wyoming infrastructure
3 authority; and providing for an effective date.

4

5 *Be It Enacted by the Legislature of the State of Wyoming:*

6

7 **Section 1.** W.S. 37-5-303(a) and (b), 37-5-305(d) and
8 37-5-403(a) are amended to read:

9

10 **37-5-303. Purposes.**

11

12 (a) The purpose for which the authority is created is
13 to diversify and expand the Wyoming economy through
14 improvements in the state's electric transmission
15 infrastructure and to facilitate the consumption of Wyoming
16 energy by planning, financing, constructing, developing,

1 acquiring; maintaining and operating electric transmission
2 facilities, advanced coal technology facilities, advanced
3 energy technology facilities and related supporting
4 infrastructure and undivided or other interests therein to
5 facilitate the transmission of energy. In order to provide
6 for the financing, construction, development, maintenance,
7 upgrade and operation of existing and new electric
8 transmission facilities, the authority may own, lease or
9 rent facilities constructed pursuant to the authority
10 conferred herein, and all facilities, structures and
11 properties incidental and necessary thereto, to facilitate
12 the transmission of energy.

13

14 (b) The facilities and related supporting
15 infrastructure may include all facilities, structures and
16 properties incidental and necessary or useful in the
17 production or transmission of electric energy.

18

19 37-5-305. Bonds.

20

21 (d) Any bonds issued hereunder shall be payable from
22 and be secured by the pledge of the revenues derived from
23 the operation of the electric transmission facilities or
24 other facilities, as constructed, acquired, extended or

1 improved with the proceeds of the bonds, subject only to
2 prior payment of the reasonable and necessary expenses of
3 operating and maintaining the facilities. Any bonds issued
4 hereunder may also be payable from unexpended bond
5 proceeds. Any holder of the bonds may by appropriate legal
6 action compel performance of all duties required of the
7 authority in order to enforce payment of the bonds when
8 due. If any bond issued hereunder is permitted to go into
9 default as to principal or interest, any court of competent
10 jurisdiction may, pursuant to the application of the holder
11 of the bonds, appoint a receiver for the facilities, who
12 shall operate the same and collect and distribute the
13 revenues thereof pursuant to the provisions and
14 requirements of the resolution authorizing the bonds.

15

16 37-5-403. Authority revenue bonds; issuance; amount.

17

18 (a) In order to finance projects not owned by the
19 authority, the authority may issue and have outstanding
20 bonds to finance electric transmission facilities, other
21 facilities and related infrastructure, which shall be
22 located at least partially within Wyoming, in an amount not
23 to exceed one billion dollars (\$1,000,000,000.00). The
24 authority shall have contracts sufficient to justify the

1 issuance of bonds.

2

3 **Section 2.** This act is effective immediately upon
4 completion of all acts necessary for a bill to become law
5 as provided by Article 4, Section 8 of the Wyoming
6 Constitution.

7

8 (END)

Attachment 3
Electricity Profile of State Authorities
Reviewed by the Minnesota Reliability Administrator

Electricity Profile of States with Transmission Authorities						
State with Authorities	Net Summer Capacity (megawatts)	Net Generation (megawatthours)	Total Retail Sales (megawatthours)	Average Retail Price (cents/Kwh)	Excess Net Generation (megawatthours)	Percent of Net Generation Available for Export (megawatthours)
Colorado	11,156	50,698,353	49,733,698	7.61	964,655	1.90%
Idaho	3,210	13,386,085	22,761,749	4.92	-9,375,664	-70.04%
Kansas	11,124	45,523,736	39,751,302	6.89	5,772,434	12.68%
New Mexico	7,102	37,265,625	21,434,957	7.37	15,830,668	42.48%
North Dakota	4,839	30,881,137	11,245,238	6.21	19,635,899	63.59%
South Dakota	2,933	7,132,243	10,056,387	6.7	-2,924,144	-41.00%
Utah	6,712	41,263,324	26,365,716	5.99	14,897,608	36.10%
Wyoming	6,707	45,400,370	14,946,612	5.27	30,453,758	67.08%
State with Authorities	53,783	271,550,873	196,295,659	51	75,255,214	27.71%
Minnesota	12,651	53,237,789	66,769,931	6.98	-13,532,142	-25.42%



Energy Information Administration

Official Energy Statistics from the U.S. Government

[Glossary](#)

[Home](#) > [Electricity](#) > State Electricity Profiles

Electricity Profiles

2006 Edition

DOE/EIA-0348

Date of Data: 2006

Data Release Date: November 2007

State Electricity Profiles in Alphabetical Order					State Electric Profiles	Format
Name	Net Summer Capability (megawatts)	Net Generation (megawatthours)	Total Retail Sales (megawatthours)	Average Retail Price (cents/kWh)	2006 Entire Report	pdf
Alabama	30,664	140,895,441	90,677,695	7.07	2005 Entire Report	pdf
Alaska	1,884	6,674,197	6,182,291	12.84	2004 Entire Report	pdf
Arizona	25,608	104,392,528	73,252,776	8.24	2003 Entire Report	pdf
Arkansas	14,507	52,168,703	46,635,624	6.99	2002 Entire Report	pdf
California	63,213	216,798,688	262,958,528	12.82	2001 Entire Report	pdf
Colorado	11,156	50,698,353	49,733,698	7.61	2001 U.S. Summaries	pdf
Connecticut	7,882	34,681,736	31,677,453	14.83	1999 Entire Report	pdf
Delaware	3,374	7,182,179	11,554,672	10.13	1999 U.S. Summaries	pdf
District of Columbia	806	81,467	11,396,424	11.08	1998 Entire Report	pdf
Florida	53,206	223,751,621	228,219,544	10.45	1998 U.S. Summaries	pdf
Georgia	36,499	138,010,208	134,834,168	7.63	1996 Entire Report	pdf
Hawaii	2,414	11,559,174	10,567,912	20.72	1996 U.S. Summaries	pdf
Idaho	3,210	13,386,085	22,761,749	4.92	Individual State Electricity Profiles	Backissues
Illinois	42,289	192,426,958	142,447,811	7.07		
Indiana	26,990	130,489,788	105,664,484	6.46		
Iowa	11,143	45,483,462	43,336,835	7.01		
Kansas	11,124	45,523,736	39,751,302	6.89		
Kentucky	20,047	98,792,014	88,743,435	5.43		
Louisiana	26,786	90,921,829	77,467,748	8.30		
Maine	4,187	16,816,173	12,284,768	11.80		
Maryland	12,500	48,956,880	63,173,143	9.95		
Massachusetts	13,932	45,597,775	55,850,090	15.45		
Michigan	30,189	112,556,739	108,017,697	8.14		
Minnesota	12,651	53,237,789	66,769,931	6.98		
Mississippi	16,620	46,228,847	46,936,437	8.33		
Missouri	20,599	91,686,343	82,015,230	6.30		
Montana	5,437	28,243,536	13,814,980	6.91		
Nebraska	7,071	31,669,969	27,276,292	6.07		
Nevada	9,648	31,860,022	34,586,260	9.63		
New Hampshire	4,340	22,063,695	11,094,343	13.84		
New Jersey	18,971	60,700,139	79,680,947	11.88		

<u>New Mexico</u>	7,102	37,265,625	21,434,957	7.37
<u>New York</u>	39,550	142,265,432	142,238,019	15.27
<u>North Carolina</u>	27,061	125,214,784	126,698,979	7.53
<u>North Dakota</u>	4,839	30,881,137	11,245,238	6.21
<u>Ohio</u>	33,877	155,434,075	153,428,844	7.71
<u>Oklahoma</u>	20,085	70,614,880	54,905,314	7.30
<u>Oregon</u>	12,333	53,340,695	48,069,265	6.53
<u>Pennsylvania</u>	45,005	218,811,595	146,150,358	8.68
<u>Rhode Island</u>	1,771	5,967,725	7,799,126	13.98
<u>South Carolina</u>	22,782	99,267,606	80,877,321	6.98
<u>South Dakota</u>	2,933	7,132,243	10,056,387	6.70
<u>Tennessee</u>	20,905	93,911,102	103,931,744	6.97
<u>Texas</u>	100,754	400,582,878	342,724,213	10.34
<u>Utah</u>	6,712	41,263,324	26,365,716	5.99
<u>Vermont</u>	1,117	7,084,344	5,795,029	11.37
<u>Virginia</u>	22,648	73,069,537	106,721,241	6.86
<u>Washington</u>	28,224	108,203,155	85,033,335	6.14
<u>West Virginia</u>	16,443	93,815,804	32,312,126	5.04
<u>Wisconsin</u>	16,415	61,639,843	69,820,749	8.13
<u>Wyoming</u>	6,707	45,400,370	14,946,612	5.27
<u>U.S. Total</u>	986,215	4,064,702,227	3,669,918,840	8.90

National Ranking

pdf 

excel 

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U.S. Overview

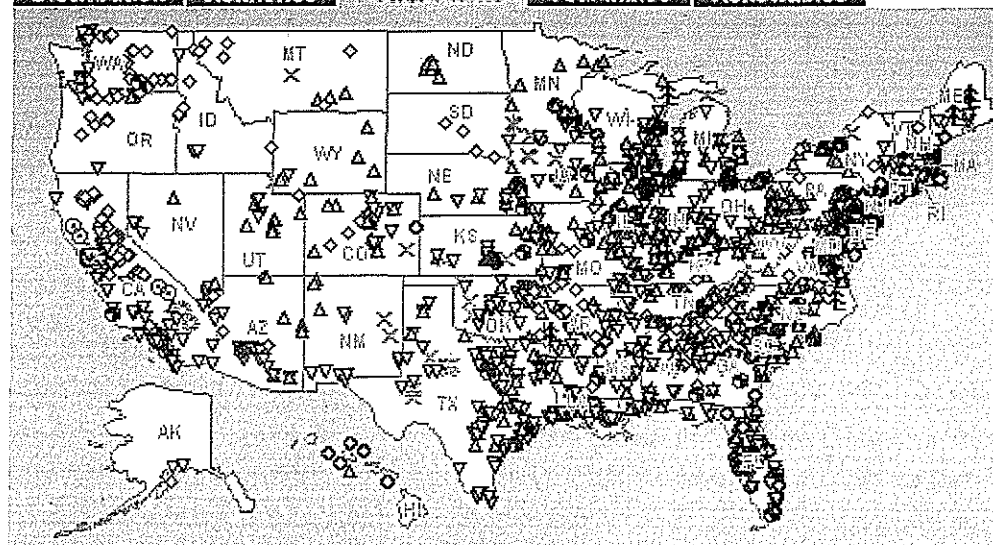
Last Update: November 29, 2007

Next Update: December 06, 2007

Select a State

STATE ENERGY PROFILES

Distribution **Refineries** **Power Plants** **Coal Mines** **Renewables**



Electric Power Plants

Min. net summer capacity of 100 megawatts
(Values below are U.S. totals)

- ▽ Natural Gas (731)
- △ Coal (401)
- ◇ Hydro (183)
- ⊙ Petroleum (108)
- ⊗ Nuclear (66)
- × Wind (31)
- ⊕ Wood (8)
- ⊖ Geothermal (4)
- Biomass (2)
- Solar (2)

Comprehensive State Energy Profiles with detailed data for each State

Alabama	Florida	Kansas	Minnesota	New Jersey	Oregon	Utah
Alaska	Georgia	Kentucky	Mississippi	New Mexico	Pennsylvania	Vermont
Arizona	Hawaii	Louisiana	Missouri	New York	Rhode Island	Virginia
Arkansas	Idaho	Maine	Montana	North Carolina	South Carolina	Washington
California	Illinois	Maryland	Nebraska	North Dakota	South Dakota	West Virginia
Colorado	Indiana	Massachusetts	Nevada	Ohio	Tennessee	Wisconsin
Connecticut	Iowa	Michigan	New Hampshire	Oklahoma	Texas	Wyoming
Delaware						

Leading Energy Producers & Consumers

- Texas and Alaska each account for large shares of U.S. crude oil production, but even they are surpassed by the Federal offshore areas in the Gulf of Mexico and California, which produce roughly one-fourth of the U.S. total.
- Texas has vast proved reserves of natural gas – about one-fourth of the Nation's total and roughly twice as much as the proved reserves found in Wyoming, the State with the next highest amount.
- Wyoming leads the Nation in coal production; it typically produces more coal than the combined production of the next four top coal-producers – West Virginia, Kentucky, Pennsylvania, and Montana.
- California generates more electricity from geothermal, solar, and wind energy sources than any other State, and Washington leads the Nation in hydroelectric power generation and in generation from all renewables (including hydroelectric) combined.
- Illinois and Pennsylvania rely to a great extent on nuclear power for electricity generation and, together, they account for approximately one-fifth of the Nation's nuclear power generation.

Related State Reports

- State Consumption, Prices and Expenditures (SEDS)
- State Electricity Profiles
- State Compendium of Nuclear Power Plants
- Natural Gas Residential Choice Programs
- Regional Energy Profiles

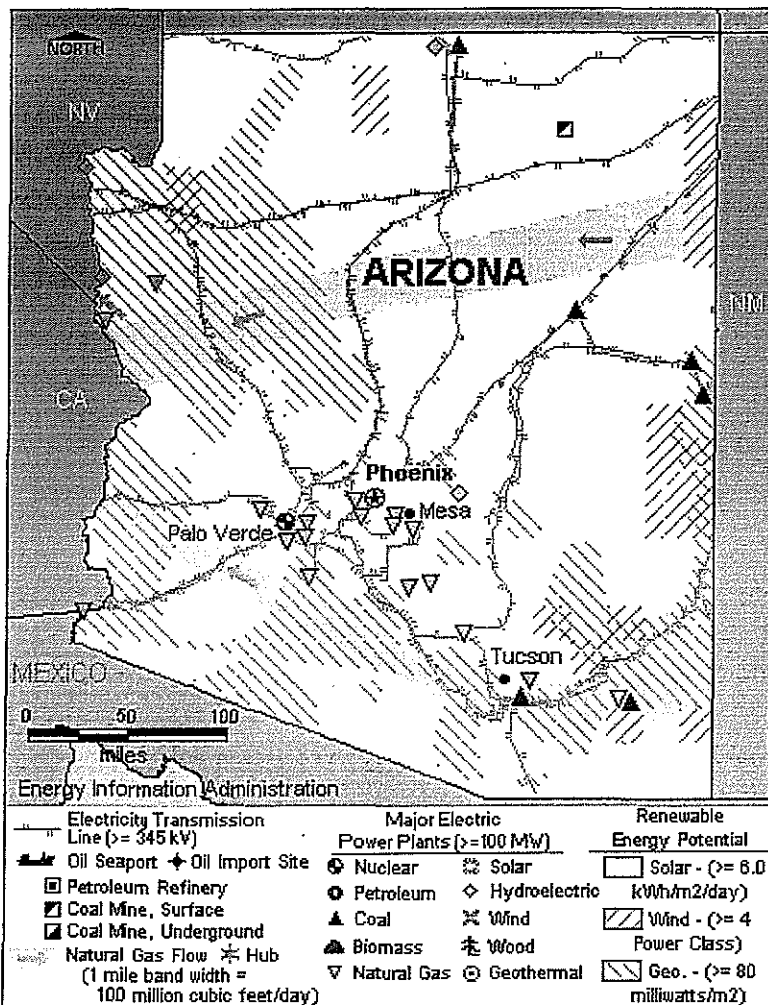
Reference Information

- About State Energy Profiles
- Directory of EIA State Data
- Notes and Sources (pdf)
- Contacts

Sign up for State Energy Emails

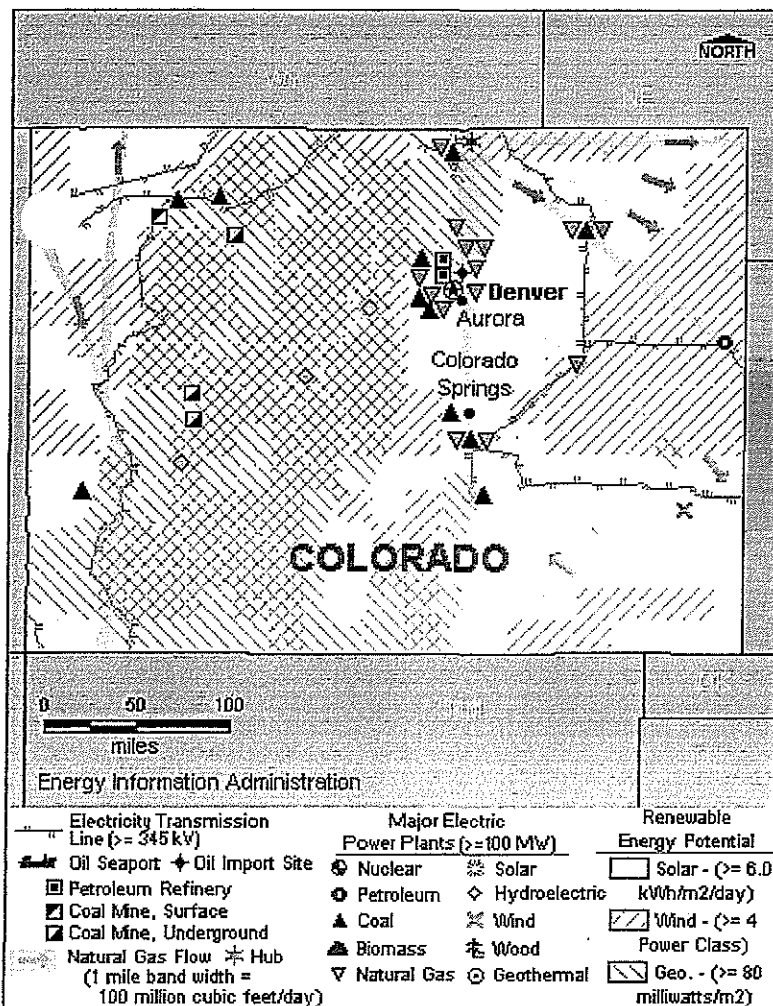
Enter Email address

Save



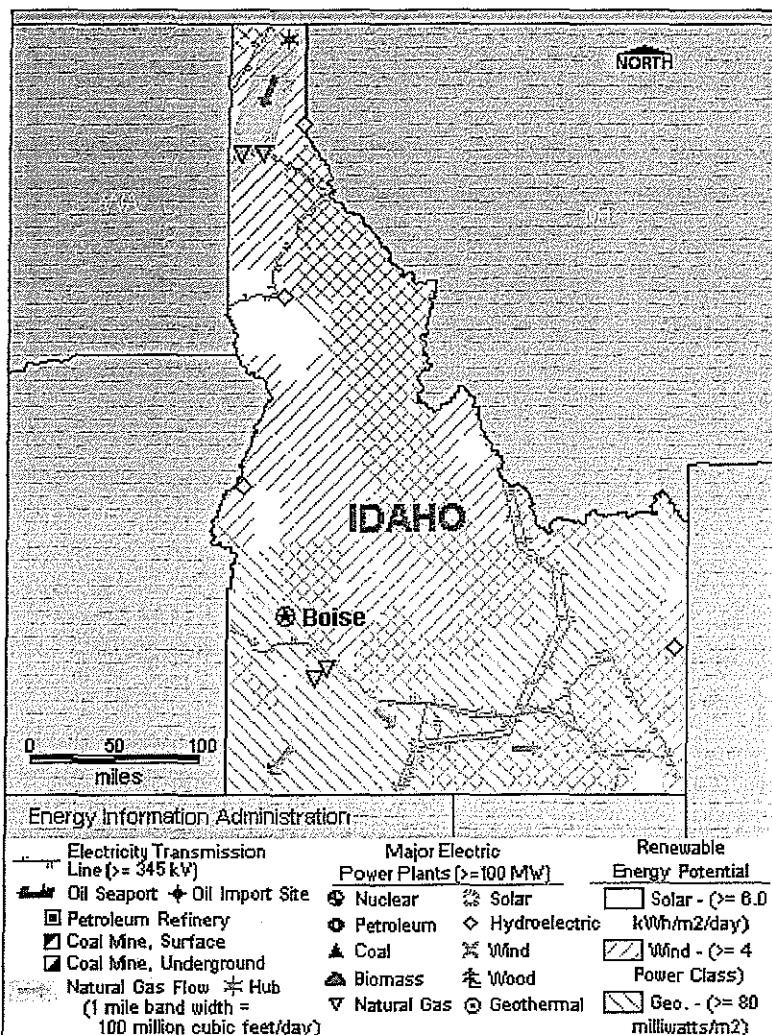
Arizona Quick Facts

- Arizona's Palo Verde nuclear power plant is the highest capacity nuclear plant in the United States.
- Arizona power plants export large amounts of electricity to neighboring States, particularly to markets in Southern California.
- Arizona's large desert areas offer the highest solar power potential in the country.
- Substantial coal production takes place in the Black Mesa Basin in northeast Arizona.



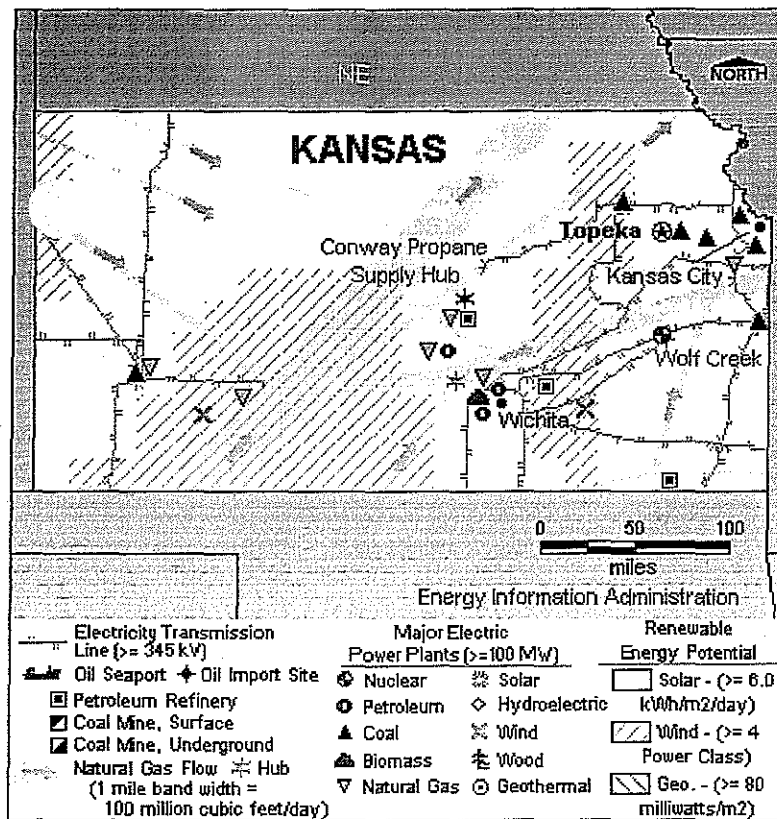
Colorado Quick Facts

- Seven of the Nation's 100 largest natural gas fields and two of its 100 largest oil fields are found in Colorado.
- Colorado is responsible for more than one-fourth of all coalbed methane produced in the United States. Coalbed methane output accounts for about one-half of Colorado's natural gas production.
- The Rockies Express Pipeline, set to begin service in January 2008, will help move Colorado's rapidly increasing natural gas production to markets in the Midwest.
- Colorado's oil shale deposits hold an estimated 1 trillion barrels of oil – nearly as much oil as the entire world's proven oil reserves. However, oil production from those deposits remains speculative.



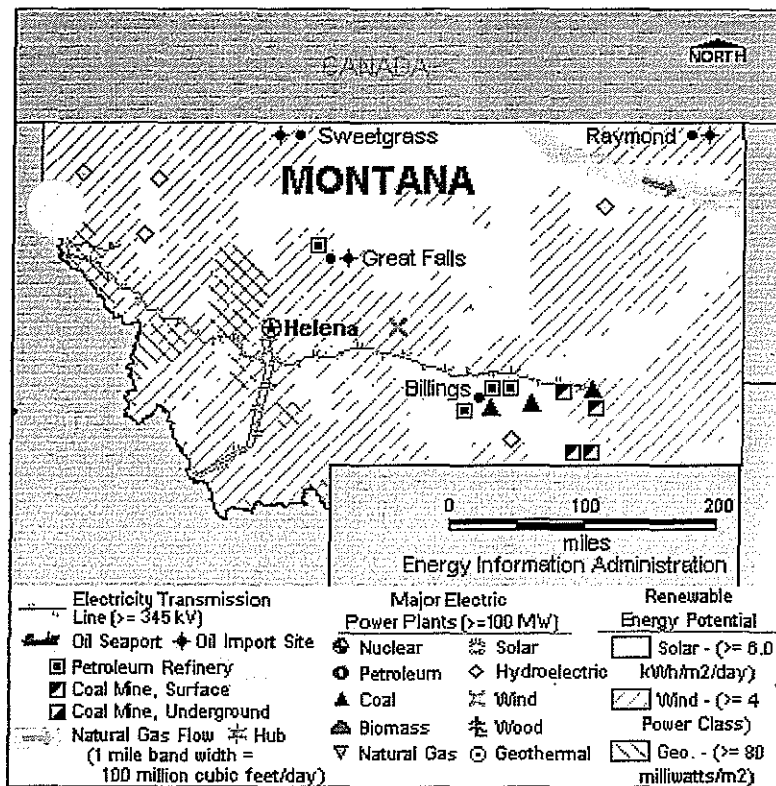
Idaho Quick Facts

- Hydroelectric power plants supply nearly four-fifths of Idaho's electricity generation.
- The Hells Canyon Complex on the Snake River is the largest privately owned hydroelectric power complex in the Nation.
- In March 2006, Idaho established a 2-year moratorium on licensing or processing proposals for new coal-fired power plants.
- Idaho is one of the few States that uses conventional motor gasoline statewide.



Kansas Quick Facts

- Kansas ranks among the top 10 States in crude oil production.
- The Anadarko Shelf contains the Hugoton Gas Area, one of the top producing gas fields in the United States.
- The Mid-Continent Center, located in Wichita, is a key natural gas supply hub that merges production from several States in the region before piping it east toward major consumption markets.
- Natural gas production from coalbed methane is rapidly expanding in the Cherokee Platform, where reserves have become economically recoverable.
- Renewable energy generation, almost all of which comes from wind power, contributes minimally to Kansas's electricity supply.



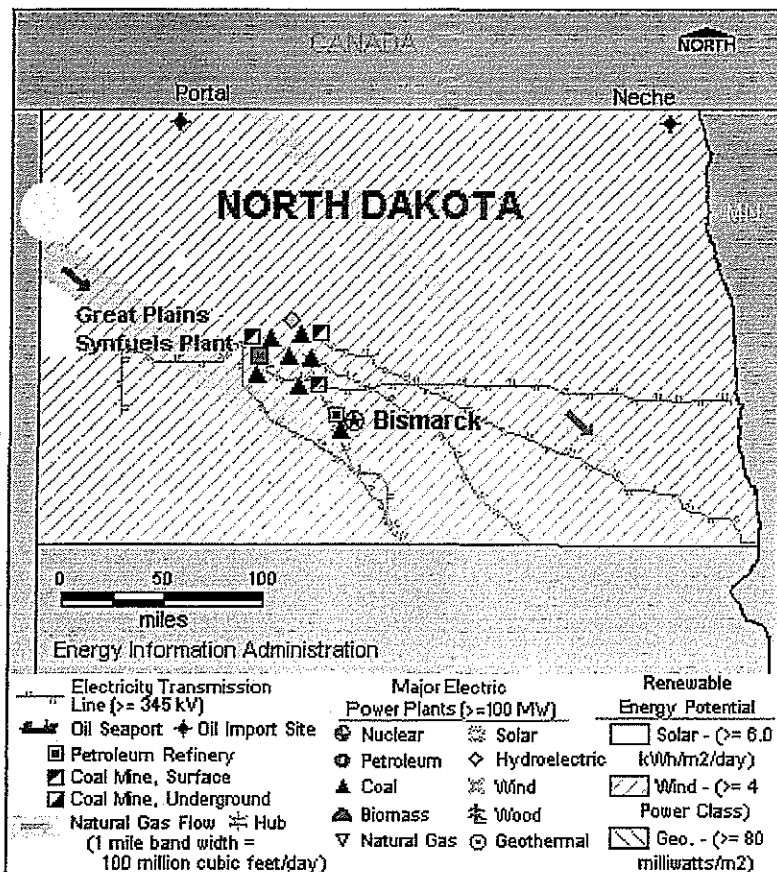
Montana Quick Facts

- Montana accounts for about 4 percent of total U.S. coal production and delivers coal to markets in more than 15 States.
- The Williston Basin covers eastern Montana (as well as western North Dakota) and contains two of the Nation's 100 largest oil fields.
- Montana is one of the top hydroelectric power producers in the United States.
- Seven of Montana's 10 largest generating plants run on hydroelectric power.



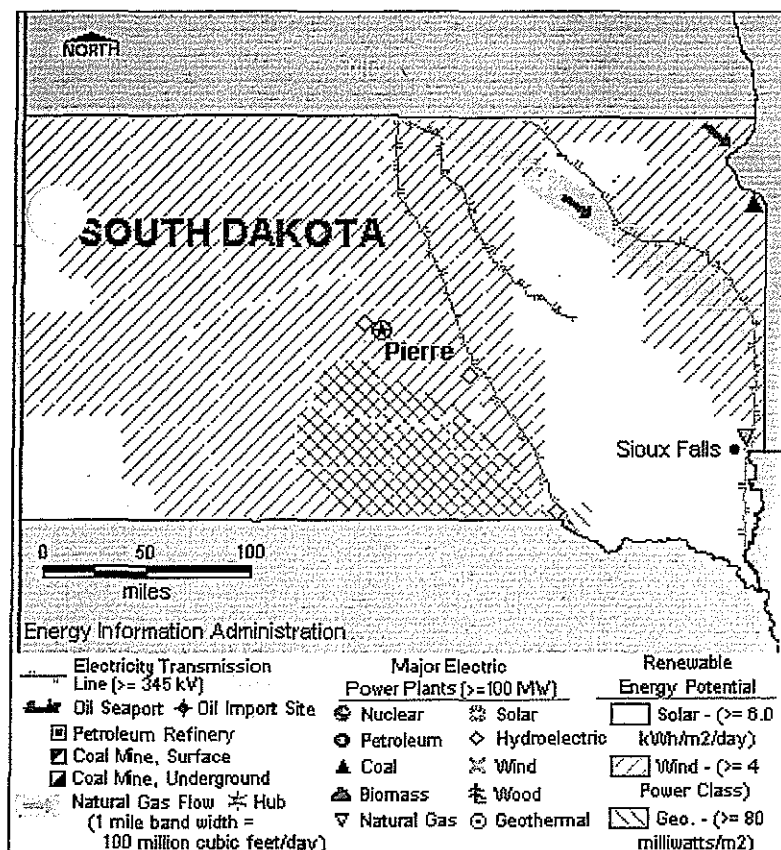
New Mexico Quick Facts

- New Mexico is a leading U.S. producer of crude oil and natural gas.
- New Mexico natural gas production accounts for close to one-tenth of the U.S. total.
- The San Juan Basin located in New Mexico and Colorado contains the Nation's largest field of proved natural gas reserves.
- New Mexico rivals Colorado as the Nation's top coalbed methane producer, and approximately one-third of all natural gas produced in New Mexico is coalbed methane.
- The Blanco Hub, located in the San Juan Basin, is a major transportation point for Rocky Mountain natural gas supplies heading to West Coast markets.
- New Mexico's Permian Basin holds three of the 100 largest oil fields in the United States.



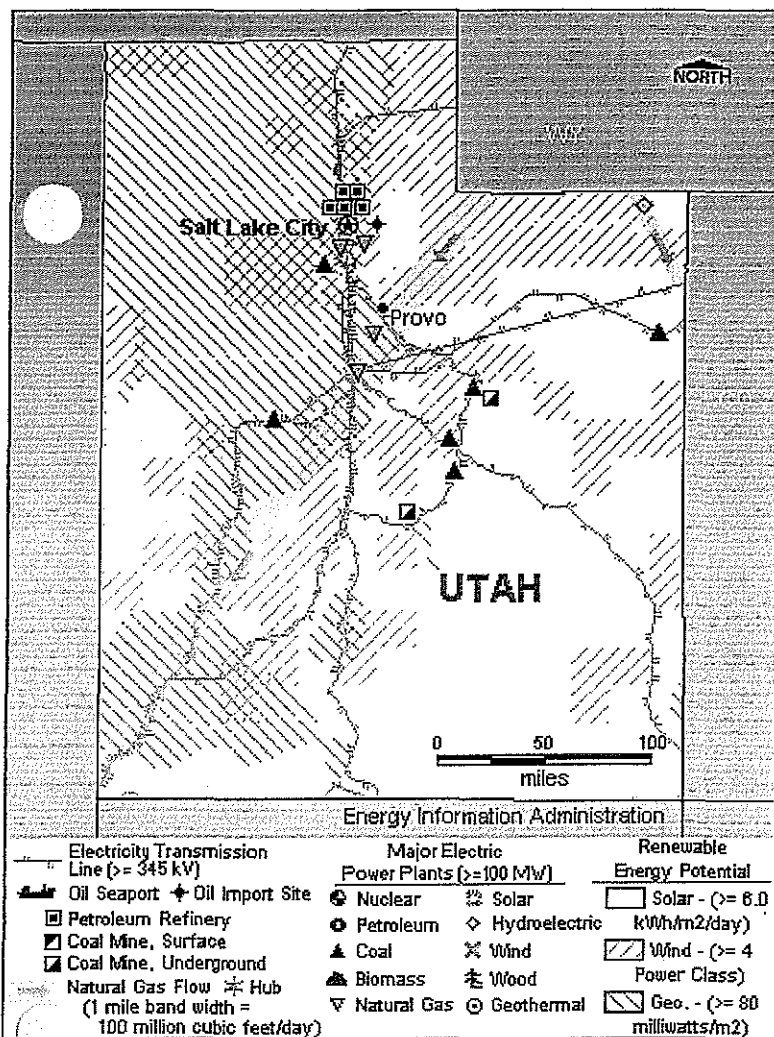
North Dakota Quick Facts

- North Dakota oil output accounts for about 2 percent of total U.S. crude oil production.
- Due partly to high heating demand in winter, North Dakota's per capita energy consumption is among the highest in the Nation.
- Nearly all of the electricity generated in North Dakota is produced by coal-fired power plants.
- North Dakota is one of the few States that allow the statewide use of conventional motor gasoline. (Most States require the use of specific gasoline blends in non-attainment areas due to air-quality considerations.)



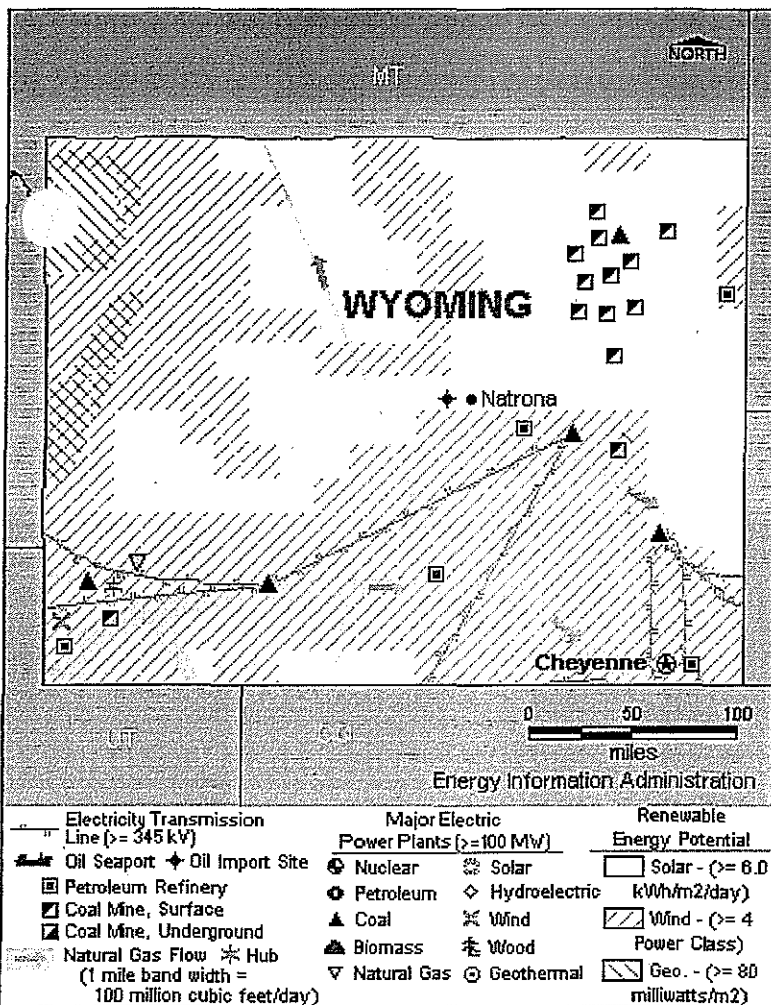
South Dakota Quick Facts

- South Dakota is well positioned to be among the Nation's leading producers of ethanol.
- South Dakota consumes more electricity generated from hydroelectric power than from any other source.
- South Dakota has high geothermal and wind power potential.
- South Dakota is one of the few States that allow the statewide use of conventional motor gasoline. (Most States require the use of specific gasoline blends in non-attainment areas due to air-quality considerations.)



Utah Quick Facts

- Utah contains three of the Nation's 100 largest oil fields and two of its 100 largest natural gas fields.
- More than four-fifths of Utah households use natural gas for home heating.
- Coalbed methane accounts for more than one-fourth of Utah natural gas production.
- Utah is one of the few States with electricity generation from geothermal power sources.
- Utah has enormous deposits of oil shale rock, known as marlstone, which can be converted into crude oil through destructive distillation.



Wyoming Quick Facts

- The Powder River Basin, most of which lies in northeastern Wyoming, is the largest coal-producing region in the Nation, accounting for approximately 40 percent of all coal mined in the United States.
- More than 30 States receive coal from Wyoming, and several Midwestern and Southern States are highly or entirely dependent on Wyoming's coal supply.
- Wyoming is one of the top natural gas-producing States in the Nation.
- The Southern Wyoming Corridor is one of the most favorable locations for wind power development in the country.
- The Governors of four Western States are pursuing a 1,300-mile high-capacity power line that would allow Wyoming and other Rocky Mountain States to transmit as much as 12 thousand megawatts of electricity to California.

Re: Docket No. E999/M-08-86

Dear Mr. Chavez,

Thank you for the opportunity to comment on the first part of the report from the Reliability Administrator's office, in fulfillment of Minn. Law Chapter 136 -- SF No 145, Article 4, section 21: "State Created Transmission Authorities", January 18/22, 2007.

I have closely followed developments in transmission legislation and implementation since 2001, when the state transmission planning statute was passed. I participated in the rulemaking committee, and have been a stakeholder in the development of CERTS and the CBED transmission study process. I am a 10 year veteran constituent of the Power Plant Siting Act and have recently finished degree work in public engagement in energy policy planning and infrastructure development. I have the following comments on the report.

Summary comments:

1. **Purpose and Scope** -- please explain context and legislative/stakeholder interest in state transmission authorities, noting process of consulting with interested stakeholders.
2. **A chart of how authorities currently work** would be very useful, including at what kv level FERC/MISO authorities do and do not apply and what state authorities apply at each level.
3. Links to current relevant documents would allow legislators to investigate the complexities of these issues for themselves. See comment under III D.
4. **Cost allocation issues should be discussed** under evaluation section D. The impact of authorities to advance and implement cost allocation policies at the FERC/ISO level are of at least equal importance and impact, to planning and routing. Cost allocation is also a primary incentive mechanism. It is appropriate for the legislature to know about these authorities, how they work (in different regions?) and the issues involved.
5. I have included, in a brief addendum, a Prospectus on "Efficient Reliability" with information from RAP.

I. Purpose and Scope:

a. It would be helpful to include, under the purpose, the reason that the legislature asked for the report (or context), and who the stakeholders were who called for the report, and/or were consulted in the review (per the statute).

b. The section of statute requiring this report appears under CBED and Other Issues (Article 4), and encompasses both transmission authorities for A. large lines that are subject to FERC and MISO (part 1) and B. potential for dispersed interconnections that are under state authority and not subject to FERC and MISO (part 2).

It would be helpful to explain the scope and purpose relative to both these categories.

II. Review of State-Created Transmission Authorities. This review appears very thorough if the assumption of part I of the report is that the transmission authority referred to is subject to FERC and MISO (A). A chart of how existing state, FERC and MISO authorities work is needed.

III. Evaluation of Need for a Transmission Authority in Minnesota.

B. Potential to Hasten the Development of Needed Transmission.

The link the report makes between the import and export balance and ambitions of the states and their interest in taking on Transmission authorities is very useful. The federal report characterizing national grid constraints could be a useful link (see resources appended).

D. Potential to Reduce Delivered Energy Costs to Minnesota.

The report claims simply that "a well-coordinated transmission planning process allows for the construction of needed facilities and provides access to lower-cost generation, which, in turn, will reduce the delivered energy costs to Minnesota".

While this statement is true, in this context it may be misleading in oversimplifying challenges in the 'new territory' of FERC and MISO planning, which does not distinguish between (345 & up?) lines needed for regional reliability and for economic transfer. The exercise of the FERC MISO authorities in planning and cost allocation have been a moving target, as well as complex and controversial.

This has many implications for the state's interests, exercise of its authorities, and very specifically, future energy delivery costs for Minnesota. The all-transmission solution to reliability issues advanced in FERC and MISO expansion planning, cannot be assumed to be the least cost or most efficient ways to address reliability.

To this end and the question of delivered energy costs to Minnesota, there are several important questions other than whether or not a new agency is needed, that are relevant to the scope of the report and to the section on costs. An overview of cost allocation issues is needed. Some of the following questions may be relevant for evaluating implications of cost allocation strategies.

1. How are costs allocated for new lines? A. For lines subject to FERC/MISO. B. For lines subject only to state authority?
2. Who pays for the smaller kv upgrades and new lines (under state jurisdiction) "needed" to support proposed bulk power lines? Where do these lines fit into state priorities relative to lines needed to support native load service?
3. How do these allocations affect cost recovery and rates for Minnesota customers?

4. What is the process for evaluating least cost options for new lines that are being built for regional reliability, keeping in mind that FERC/MISO do not distinguish between lines needed for reliability and for economic transfer.
5. How does an all-transmission solution (345kv and above) to regional reliability and the RES affect the import/export balance for Minnesota, and the cost of delivered electricity? How does the importing of power to fulfill the RES affect delivered energy costs to Minnesota?
6. How does this compare to the import/export balance and costs of connecting dispersed sources throughout Minnesota on the existing grid, or on lines that are subject only to state authority. And what is the optimal balance between these RES sources (outstate, instate) for cost to MN?

Addendum: A Prospectus on Efficient Reliability and state decisionmaking:

A key role for state authority – one that can most directly serve to reduce costs to Minnesota customers, protect business and industrial rates, and provide economic opportunity – is to create and enforce standards for Efficient Reliability. Both demand and supply side efficiency are essential to control costs, reduce environmental impacts, level demand for new electrical infrastructure.

Accomplishment of state policy goals such as carbon reduction, rural economic development, renewable energy standard, and reducing dependence on energy imports, will be impossible without a vigorous EE policy. Timely implementation, broad participation and integration of EE into economic and policy analysis for decision making are also essential. Maximization of EE opportunities (see ee.energy.gov) must be built into every permitting decision, and particularly into state need authority decisions.

Without a clear priority at the state level, the FERC/MISO transmission solutions may create unacceptable environmental, social and economic costs for Minnesota. Advancing efficiency initiatives can play a role in reliability, supply and security; and create economic development opportunities for communities, business, government, & consumers.

Consider the Efficient Reliability Decision Rule from RAP:

"Before Socializing the Cost [or providing for other public allocations] of a proposed reliability-enhancing investment through uplift or tariff, PUCs and FERC should first require a showing:

1. that the relevant market is fully open to demand-side as well as supply resources;
2. that the proposed investment is the lowest cost, reasonably-available means to correct a remaining market failure; and
3. that benefits from the investment will be widespread, and thus appropriate for broad-

based funding."

<http://www.raponline.org/Slides/NEEPsummit2003-11-12.pdf>

Decision rules could be added to these, that would enhance the effectiveness of state authorities to:

- a. Participate in advanced R&D for efficient reliability; take advantage of federal grants and programs; and integrate these advances into economic and investment decision-making.
- b. Advance efficiency across sectors by integrating the economics of efficiency into decisions at all levels in both the public and private sectors.
- c. Determine and capture the 'true' and 'added values' of dispersed, community based generation and efficiency initiatives by understanding their economic and energy values and the developing 'ancillary services', green and white tag markets.

Without leadership in developing these capacities, energy savings and efficiency benefits provided by Minnesota communities, businesses and customers will not reward and feed the state economy, but will be 'captured' by other market players.

See federal initiatives (Office of Energy Intervention at DOE could collaborate): NEW OE OFFICES DIRECTIVES: (DG, CHP and New Technologies) <http://www.nasco.org/Events/winter/2006/presentations/Smith.pdf>

Thank you for your kind attention to my comments, and related materials on efficiency and reliability.

Most respectfully yours,

Kristen Eide-Tollefson

HealingSystems@earthlink.net

612-331-1430

P.O. Box 130

Frontenac, MN 55026

Attachment:

Web resources consulted and referenced.

On-Line sources consulted and referenced:

Re: Part I of the report:

http://www.opsi.us/meetings/OPSI_2007_Annual_Session2_Dillon.pdf

Discussion in this powerpoint of relatively current cost allocation issues.

Good background (p. 2-6) in 2005 power point:

http://www.atcllc.com/oasis/Customer_Notices/PlanningandPricingAlternatives022405.pdf

Cost allocation discussion (p. 14-18) of regionalizing of costs and customer impacts:

http://www.atcllc.com/oasis/Customer_Notices/NCMRegulatory_Update111507.pdf

Page 5: Current proposal, no distinction between reliability and economic transfer for cost allocation at 345 kv level. Under 345kv allocation will be based upon load flow analysis. "100% postage stamp" for all new 345kv and greater.

http://www.atcllc.com/oasis/Customer_Notices/NCMRegulatory_Update051707.pdf

See attachment FF-ATC (p. 8 & 9) for terms of interconnection reimbursement:

http://www.atcllc.com/oasis/Customer_Notices/NCMRegulatory_Update051707.pdf

FERC SITING AUTHORITY and supplemental authorities:

<http://www.ferc.gov/news/news-releases/2006/2006-4/11-16-06-C-2.asp>

<http://www.ferc.gov/news/statements-speeches/kelliher/2006/11-16-06-kelliher-C-2.asp>

06 Federal Congestion Study – Executive Summary

http://nietc.anl.gov/documents/docs/NIETC_ExSum_8Aug08.pdf

Congestion Area Maps – see. p. 4

<http://nietc.anl.gov/documents/docs/CongestionStudy-congestion-areas.pdf>

Oct. 07 Designation of National Interest Corridors:

<http://www.energy.gov/5538.htm>

Congestion Study link page March '06:

<http://nietc.anl.gov/congestionstudy/index.cfm>

Industry COMMENTS:

http://nietc.anl.gov/documents/docs/NIETC_NOI_compilation_March_9_5pm_final_rev.pdf

Efficient Reliability resources:

NEW OE OFFICES DIRECTIVES: (DG, CHP and New Technologies)
<http://www.nasco.org/Events/winter/2006/presentations/Smith.pdf>

June, 2007 GRANTS for R&D
http://www.oe.energy.gov/DocumentsandMedia/6-27-07_US_Electric_Grid_Press_Release.pdf

R&D for Transmission and Distribution
http://www.oe.energy.gov/DocumentsandMedia/Section_925_Final.pdf

RA audio transcript of committee meeting presentation of DOC on reliability and discussion of RA:
http://www.house.leg.state.mn.us/audio/archivesall.asp?ls_year=83

NEW OE OFFICES DIRECTIVES: (DG, CHP and New Technologies)
<http://www.nasco.org/Events/winter/2006/presentations/Smith.pdf>

June, 2007 GRANTS for R&D
http://www.oe.energy.gov/DocumentsandMedia/6-27-07_US_Electric_Grid_Press_Release.pdf

R&D for Transmission and Distribution***
http://www.oe.energy.gov/DocumentsandMedia/Section_925_Final.pdf

Regulatory Assistance Project (RAP) Efficient reliability decision rule in: <http://www.raonline.org/Slides/NEEPSummit2003-11-12.pdf>

February 1, 2008

Via E-filing

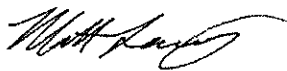
Mr. Edward Garvey
Deputy Commissioner and Acting Reliability Administrator
Minnesota Department of Commerce
85 Seventh Place East, Suite 500
St. Paul, MN 55101

Re: Evaluation of the Creation of a Minnesota Transmission Authority
Docket No. E999/M-08-86

Dear Deputy Commissioner Garvey:

Attached are the Comments of Great River Energy in the above referenced matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Lacey", with a stylized flourish at the end.

Matt Lacey
Regulatory Policy Specialist, Transmission
Great River Energy

COMMENTS OF GREAT RIVER ENERGY

Great River Energy (“GRE”) welcomes the opportunity to submit the following comments pursuant to the January 18, 2008 request for comments of the Minnesota Department of Commerce (“DOC”). Minnesota Law Chapter 136-S.F. No. 145, Article 4, Section 21, paragraph (1) requires the Reliability Administrator to perform an evaluation of whether a State-Created Transmission Authority (“SCTA”) could:

- Potentially increase the reliability and efficiency of the electric grid in Minnesota;
- Hasten the development of needed transmission lines;
- Accelerate the development of renewable energy projects, especially in rural areas of Minnesota; and

Reduce delivered energy costs to Minnesota.

GRE concurs with the conclusion of the DOC that it is unnecessary for the Minnesota Legislature to establish an SCTA. Minnesota utilities, with the assistance of the existing State Entities¹, already engage in robust regional transmission planning for planning, permitting, constructing, and investing in new transmission infrastructure.² Long range transmission planning is also developed and evaluated as part of Minnesota’s biennial transmission project planning process as required by state statute.³ Together through these processes, utilities and the State Entities work to increase reliability and efficiency, encourage transmission line development, accelerate development of renewable energy projects and reduce delivered energy costs. For example, Minnesota Statute 216B.2425 requires Minnesota utilities who own electric transmission to provide

¹ The State Entities include the Minnesota Reliability Administrator, the Minnesota Public Utilities Commission, the Minnesota Department of Commerce, and the Minnesota Governor’s Office.

² Minnesota Law Chapter 136-S.F. No. 145, Article 4, Section 17, requires a study, with the participation of the utilities, of the potential for dispersed renewable generation on Minnesota’s transmission system.

³ Minnesota Statute 216B.2425

the Minnesota Public Utilities Commission (“Commission”) with an analysis of inadequacies in the transmission system and to recommend potential remedies. The planning process encourages public input and participation, while the Commission’s deliberation process allows interested stakeholders to provide the Commission with comments and recommendations.⁴

Minnesota utilities have long planned for new transmission on an integrated basis to reliably serve customers at the lowest reasonable cost. This practice continues today through the development of comprehensive infrastructure planning by individual utilities and through the CapX 2020 consortium. GRE, through its participation in CapX 2020, is helping to meet the growing need for electricity in Minnesota and the surrounding region, to improve local reliability, and to provide for the outlet of renewable resources. GRE and the CapX 2020 partnership have found that working with the existing State Entities and their processes effectively fills the need that may otherwise be met through an SCTA. The initial phase of the CapX 2020 projects is presently under regulatory review.⁵ Further CapX2020 projects are under development and evaluation.

CONCLUSION

For the foregoing reasons, GRE respectfully suggests that the Reliability Administrator recommend to the appropriate legislative committees that a Minnesota State-Created Transmission Authority would be redundant and is unnecessary.

⁴ Commission Rules divide the state into six planning zones (7848.0700) in which at least one meeting must be held each year that allows for the input of local government officials and the public (7848.0900). Interested stakeholders are kept up to date of meetings and planning updates through a maintained e-mail list and public notices in newspapers and utility websites (7848.0800 and 7848.1000).

⁵ See Docket No. ET2,E002, et al./CN-06-1115



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February 1, 2008

Edward Garvey
Acting Reliability Administrator
Minnesota Department of Commerce
85 7th Place East, Ste. 500
St. Paul, MN 55101

Via E-filing

Re: Draft Report to the Legislature On "State-Created Transmission Authorities"
MPUC Docket No.: E999/M-08-86

Dear Mr. Garvey:

ITC Midwest LLC ("ITC Midwest") respectfully submits these comments in response to the Minnesota Department of Commerce's ("MDOC") solicitation of comments in the above-referenced docket concerning MDOC's draft report to the legislature pursuant to Minn. Law Ch. 136- S. F. No. 145, Article 4, Sec. 21, paragraph (1) ("Draft Report").

ITC Midwest is an independent transmission company whose business strategy is to own, operate, maintain and invest in transmission infrastructure in order to enhance system integrity and reliability, reduce transmission constraints, and facilitate the interconnection of renewable resources. By pursuing this strategy, ITC Midwest seeks to reduce the overall cost of delivered energy for end-use consumers by providing them with access to electricity from the lowest-cost electricity generation sources. ITC Midwest is independent of market participants and has no ownership or financial interest in electric generation or distribution assets. Consequently, ITC Midwest focuses exclusively on the transmission of electricity and investment in transmission infrastructure.

On December 18, 2007, the Minnesota Public Utilities Commission ("MPUC") voted to approve ITC Midwest's acquisition of the transmission assets of Interstate Power and Light Company ("IPL"). That transaction closed on December 20, 2007.

DISCUSSION

ITC Midwest agrees with the MDOC's conclusion, as reflected in the Draft Report, that establishment of a State Transmission Authority will not further investment in transmission infrastructure and is not necessary. The circumstances in Minnesota are unlike the circumstances in other states where legislation authorizing State Transmission Authorities has been adopted (e.g., Wyoming, North Dakota, Kansas, Idaho, and South Dakota), such that what has been done in those states cannot be taken as a reliable guide for what is in the best interests of Minnesota.

In these comments, ITC Midwest will address whether establishment of a State Transmission Authority would:

- Have the potential to increase the reliability and efficiency of the electronic grid in Minnesota;
- Hasten the development of needed transmission lines;
- Accelerate the development of renewable energy projects;
- Reduce delivered energy costs in Minnesota.

A. The Establishment of a State Transmission Authority is Not Necessary to Increase the Reliability and Efficiency of the Electric Transmission Grid

As noted in MDOC's Draft Report, State Transmission Authorities authorized in other states are not intended to supplant private investment, but rather, are intended to act only when markets have failed to produce necessary private investment. (See Draft Report at p. 2.) ITC Midwest's decision to enter the Minnesota market, as well as its willingness to pay a premium to do so, and its commitment to additional infrastructure investment, show that there is private investment available to support the reliability and efficiency of the transmission grid.

B. The Establishment of a State Transmission Authority is Not Necessary to Hasten the Development of Needed Transmission

There is every reason to believe that needed transmission will be built in Minnesota without the creation of a new authority. First, the CapX 2020 effort, involving many of the utilities in the state, is already moving ahead with plans for construction of new facilities. Second, ITC Midwest itself is singularly focused on prudently investing in needed transmission infrastructure. Indeed, in connection with obtaining approval for the purchase of the IPL transmission assets, ITC Midwest committed to specific transmission projects sought by MDOC, demonstrating not only the availability of investment to meet Minnesota's transmission needs but also the ability of existing state agencies to appropriately encourage such investment. These projects will help to alleviate constraints and reduce energy costs for Minnesota consumers. Thus, MDOC, in supporting approval of ITC Midwest's acquisition of the IPL transmission assets, subject to ITC Midwest's commitments to build transmission, and the Commission's approval of the transaction conditioned on those commitments, have already acted to hasten the development of needed transmission through the use of private, rather than public, investment. This approach is the one that is best designed to meet the State's interests.

C. The Establishment of a State Transmission Authority is Not Necessary to Accelerate the Development of Renewable Energy Projects

ITC Midwest agrees that there is no reason to believe that establishment of a State Transmission Authority will result in increased development of renewable energy projects. ITC Midwest recognizes that there is a general agreement among the various stakeholders interested in transmission development in Minnesota that additional investment in transmission infrastructure is necessary to support the movement of renewable energy to consumer markets. That being said, ITC Midwest is aware of no evidence that the lack of transmission alone is currently hampering the development of renewable energy in Minnesota. To the contrary, based on ITC Midwest's discussions with parties interested in developing renewable energy projects in Minnesota, existing processes and approvals (e.g., MISO interconnection queues and project siting cases) are the significant limiting factors on the speed with which their plans can be implemented at this time. ITC Midwest's experience is supported by a recent report which suggests that wind energy projects may be being delayed by slow downs in federally-approved processes for obtaining approval for interconnection to existing transmission (*See J. J. Cummins, And the wind waits . . . and waits*, Minneapolis-St. Paul Star Tribune, January 27, 2008, reprinted at <http://startribune.com/business/14445531.html>.)

ITC Midwest notes that FERC has approved tariff provisions filed by affiliated companies, International Transmission Company and Michigan Electric Transmission Company, LLC, that allow certain interconnectors to be reimbursed for 100% of the costs of network upgrades related to the interconnections. ITC Midwest believes that these tariff provisions will serve to encourage the development of renewable energy generation and has committed, subject to FERC approval, to offer a similar opportunity in Minnesota.

D. The Establishment of a State Transmission Authority is Not Necessary to Reduce Energy Costs

Minnesota is part of a regional market in which the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") administers a wholesale energy market. In addition, the Federal Energy Regulatory Commission ("FERC") has promulgated rules (see e.g., Order 890) requiring transmission owners and the Midwest ISO to establish an open, transparent planning process. It is through these regional planning processes that high voltage transmission projects will be considered as a means to increase the efficiency of the wholesale energy market and thereby reduce energy costs. ITC Midwest, along with other Minnesota utilities, belong to the Midwest ISO. Establishment of a State Transmission Authority will only serve to create a regulatory structure that is duplicative of processes that already exist; such legislation is not just unnecessary, but is likely to be counterproductive. The involvement of another state agency in transmission planning without any clearly associated benefits represents a waste of limited state resources.

Edward A. Garvey

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CONCLUSION

ITC Midwest agrees with the recommendation of MDOC that legislation authorizing the establishment of a State Transmission Authority not be adopted. Such a measure will not advance the State's interest in assuring a safe, reliable, and adequate transmission infrastructure. In fact, ITC Midwest, as an independent transmission company, is uniquely positioned to work with existing agencies and processes to increase the reliability and efficiency of the electronic grid in Minnesota, hasten the development of needed transmission lines; accelerate the development of renewable energy projects; and reduce delivered energy costs in Minnesota.

Sincerely,

s/ Gregory Merz

GRM/jlp