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HOUSE BILL 461

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO ENERGY EFFICIENCY; AMENDING THE ENERGY EFFICIENCY
AND RENEWABLE ENERGY BONDING ACT TO EXTEND ITS PROVISIONS TO
MUNICIPALITIES AND COUNTIES AND TO INCREASE THE MAXIMUM AMOUNT
OF OUTSTANDING ENERGY EFFICIENCY BONDS.

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

SECTION 1. Section 6-21D-2 NMSA 1978 (being Laws 2005,
Chapter 176, Section 2) is amended to read:

"6-21D-2. DEFINITIONS.--As used in the Energy Efficiency
and Renewable Energy Bonding Act:

A. "authority" means the New Mexico finance
authority;

B. "bonds" means energy efficiency bonds;

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

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1 D. "energy efficiency measure" means a modification
2 or improvement to a building or complex of buildings that is
3 designed to reduce energy consumption or operating costs or
4 that provides a renewable energy source and may include:

5 (1) insulation of the building structure or
6 systems within the building;

7 (2) storm windows or doors, caulking or
8 weatherstripping, multiglazed windows or doors, heat-absorbing
9 or heat-reflective glazed and coated window or door systems,
10 additional glazing, reductions in glass area or other window
11 and door system modifications that reduce energy consumption;

12 (3) automated or computerized energy control
13 systems;

14 (4) heating, ventilating or air conditioning
15 system modifications or replacements;

16 (5) replacement or modification of lighting
17 fixtures to increase the energy efficiency of the lighting
18 system;

19 (6) energy recovery systems;

20 (7) on-site photovoltaics, solar heating and
21 cooling systems or other renewable energy systems; or

22 (8) cogeneration or combined heat and power
23 systems that produce steam, chilled water or forms of energy
24 such as heat, as well as electricity, for use primarily within
25 a building or complex of buildings;

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1 E. "fund" means the energy efficiency and renewable
2 energy bonding fund;

3 F. "legally available gross receipts tax revenue"
4 means revenue, distributed to a municipality pursuant to
5 Section 7-1-6.4 NMSA 1978; transferred to a municipality
6 pursuant to Section 7-1-6.12 NMSA 1978; or transferred to a
7 county pursuant to Section 7-1-6.13 NMSA 1978, that is not:

8 (1) required by law to be expended for a
9 purpose that is inconsistent with the installation of energy
10 efficiency measures authorized by the Energy Efficiency and
11 Renewable Energy Bonding Act; or

12 (2) otherwise pledged as debt service or other
13 security for bonds or other debt obligations of the
14 municipality or county;

15 G. "local government" means a county or an
16 incorporated municipality;

17 H. "local government building" means a building,
18 the title to which is held by a local government;

19 [~~F.~~] I. "school district" means a political
20 subdivision of the state established for the administration of
21 public schools, segregated geographically for taxation and
22 bonding purposes and governed by the Public School Code;

23 [~~G.~~] J. "school district building" means a
24 building, the title to which is held by a school district; and

25 [~~H.~~] K. "state building" means a building, the

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1 title to which is held by the state or an agency of the state."

2 SECTION 2. Section 6-21D-3 NMSA 1978 (being Laws 2005,
3 Chapter 176, Section 3, as amended) is amended to read:

4 "6-21D-3. BUILDING ASSESSMENTS FOR ENERGY EFFICIENCY
5 MEASURES.--

6 A. Upon the request of a state agency, a local
7 government or a school district, the department may perform an
8 energy efficiency assessment of a state, local government or
9 school district building to identify the energy efficiency
10 measures that can be installed and operated at a total price
11 that is less than the energy cost savings realized. In
12 addition, the assessment shall include a schedule for funding
13 and installing the energy efficiency measures that will realize
14 significant energy cost savings in the shortest time frame.
15 The department shall develop the assessment of:

16 (1) state buildings, in conjunction with the
17 property control division of the general services department,
18 the staff architect of the division, the capitol buildings
19 planning commission and other state agencies with control and
20 management over buildings; [~~and~~]

21 (2) local government buildings, in conjunction
22 with the local government division of the department of finance
23 and administration and the affected local government; and

24 [~~(2)~~] (3) school district buildings, in
25 conjunction with the public education department, the public

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1 school capital outlay council and the public school facilities
2 authority.

3 B. State agencies, local governments and school
4 districts shall cooperate with the department in the assessment
5 performed pursuant to Subsection A of this section."

6 SECTION 3. Section 6-21D-4 NMSA 1978 (being Laws 2005,
7 Chapter 176, Section 4, as amended) is amended to read:

8 "6-21D-4. CONTRACTS FOR THE INSTALLATION OF ENERGY
9 EFFICIENCY MEASURES.--Pursuant to an energy efficiency
10 assessment performed under Section 6-21D-3 NMSA 1978 and with
11 the approval of the department, a state agency, local
12 government or school district may install or enter into
13 contracts for the installation of energy efficiency measures on
14 the building identified in the assessment. An installation
15 contract shall be entered into pursuant to the Procurement
16 Code, except that the contract may be entered into for a term
17 of up to ten years. The installation or contracts shall
18 address provisions concerning payment schedules, monitoring,
19 inspecting, measuring and warranties as are necessary to ensure
20 that the energy efficiency measures will be installed and the
21 energy cost savings realized in the manner most beneficial to
22 the state; provided that bonds shall not be issued pursuant to
23 the Energy Efficiency and Renewable Energy Bonding Act without
24 a finding by the department that the energy cost savings
25 realized from the energy efficiency measures will be greater

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1 than the debt service due on the bonds issued to finance the
2 energy efficiency measures."

3 SECTION 4. Section 6-21D-5 NMSA 1978 (being Laws 2005,
4 Chapter 176, Section 5) is amended to read:

5 "6-21D-5. ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING
6 FUND--PLEDGE OF MONEY IN THE FUND.--

7 A. The "energy efficiency and renewable energy
8 bonding fund" is created as a special fund within the
9 authority. The fund shall be administered by the authority as
10 a special account. The fund shall consist of gross receipts
11 tax revenues distributed to the fund by law, money transferred
12 to the fund pursuant to the provisions of the Energy Efficiency
13 and Renewable Energy Bonding Act and other transfers and
14 appropriations made to the fund. Earnings of the fund shall be
15 credited to the fund. [~~Any unexpended or unencumbered balance~~
16 ~~in the energy efficiency and renewable energy bonding fund~~
17 ~~shall revert to the general fund at the end of a fiscal year.~~]

18 B. Money in the fund shall be pledged irrevocably
19 by the authority for the payment of principal and interest on
20 all bonds issued pursuant to the Energy Efficiency and
21 Renewable Energy Bonding Act. Money in the fund is
22 appropriated to the authority for the purpose of paying debt
23 service, including redemption premiums, on the bonds and the
24 expenses incurred in the issuance, payment and administration
25 of the bonds.

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1 C. On the last day of January and July of each
2 year, the authority shall estimate the amount needed to make
3 debt service payments on the bonds issued pursuant to the
4 Energy Efficiency and Renewable Energy Bonding Act plus the
5 amount that may be needed for any required reserves,
6 administrative expenses or the obligations coming due during
7 the next twelve months from the fund. Except as provided in
8 Subsection D of this section, the authority shall transfer to
9 the general fund any balance in the energy efficiency and
10 renewable energy bonding fund above the estimated amounts.
11 Amounts that revert to the general fund from the energy
12 efficiency and renewable energy bonding fund may be
13 appropriated by the legislature to the [~~department for the~~
14 ~~purposes of carrying out the provisions of the Energy~~
15 ~~Efficiency and Renewable Energy Bonding Act]~~ energy efficiency
16 assessment revolving fund.

17 D. The authority shall maintain a separate account
18 in the fund for each pledge by a local government of legally
19 available gross receipts tax revenue. If the amount in such a
20 separate account exceeds a semiannual estimate of the amount
21 needed during the next twelve months for debt service and other
22 potential costs relating to the bonds for which the legally
23 available gross receipts tax revenue is pledged, the excess
24 shall be refunded to the local government.

25 [~~D.~~] E. Upon payment or defeasance of all

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1 principal, interest and other expenses or obligations related
2 to the bonds, the authority shall certify to the public
3 education department, the department of finance and
4 administration and the secretary of taxation and revenue that
5 all obligations for the bonds issued pursuant to the Energy
6 Efficiency and Renewable Energy Bonding Act have been
7 discharged and shall direct that distributions cease to the
8 fund pursuant to that act and the Tax Administration Act.

9 ~~[E-]~~ F. The bonds issued pursuant to the Energy
10 Efficiency and Renewable Energy Bonding Act shall be payable
11 solely from the fund or such other special funds as may be
12 provided by law and do not create an obligation or indebtedness
13 of the state within the meaning of any constitutional
14 provision. A breach of any contractual obligation incurred
15 pursuant to that act shall not impose a pecuniary liability or
16 a charge upon the general credit or taxing power of the state,
17 and the bonds are not general obligations for which the state's
18 full faith and credit is pledged.

19 ~~[F-]~~ G. The state does hereby pledge that the fund
20 shall be used only for the purposes specified in this section
21 and pledged first to pay the debt service on the bonds issued
22 pursuant to the Energy Efficiency and Renewable Energy Bonding
23 Act. The state further pledges that any law authorizing the
24 distribution of taxes or other revenues to the fund or
25 authorizing expenditures from the fund shall not be amended or

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1 repealed or otherwise modified so as to impair the bonds to
2 which the fund is dedicated as provided in this section."

3 SECTION 5. Section 6-21D-6 NMSA 1978 (being Laws 2005,
4 Chapter 176, Section 6) is amended to read:

5 "6-21D-6. CALCULATION OF COST SAVINGS--TRANSFERS TO
6 ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING FUND.--

7 A. Upon the installation of energy efficiency
8 measures in a state building, local government building or
9 school district building, the department shall calculate the
10 estimated energy cost savings, in the form of lower utility
11 payments by the school district, the local government or the
12 state, that will be annually realized as a result of the
13 installation of the energy efficiency measures. The department
14 shall certify the estimate to the department of finance and
15 administration and the general services department or other
16 state agency with jurisdiction, in the case of state buildings,
17 [~~and~~] to the department of finance and administration, the
18 public education department and the school district, in the
19 case of school district buildings, and to the department of
20 finance and administration and the local government, in the
21 case of local government buildings.

22 B. In the case of a school district building, when
23 calculating the state equalization guarantee distribution
24 pursuant to Section 22-8-25 NMSA 1978, the public education
25 department shall deduct ninety percent of the amount certified

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1 for the school district by the department.

2 C. Reduction of a school district's state
3 equalization guarantee distribution shall cease when the school
4 district's cumulative reductions equal its proportional share
5 of the cumulative debt service payments necessary to service
6 the bonds issued pursuant to the Energy Efficiency and
7 Renewable Energy Bonding Act.

8 D. Prior to June 30 of each year, the total amount
9 deducted for all school districts pursuant to Subsection B of
10 this section shall be transferred to the fund.

11 E. In the case of a state building, the department
12 of finance and administration shall deduct from the operating
13 budget of the agency responsible for paying the utilities of
14 the state building ninety percent of the amount certified for
15 the agency by the department.

16 F. Deduction from the operating budget of the
17 agency responsible for paying the utilities of the state
18 building shall cease when the agency's cumulative deductions
19 equal its proportional share of the cumulative debt service
20 payments necessary to service the bonds issued pursuant to the
21 Energy Efficiency and Renewable Energy Bonding Act.

22 G. Prior to June 30 of each year, the total amount
23 deducted for all agencies and all state buildings pursuant to
24 Subsection D of this section shall be transferred from the
25 appropriate funds to the energy efficiency and renewable energy

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1 bonding fund.

2 H. In the case of a local government building, the
3 local government shall, at such intervals as are agreed to
4 between the local government and the authority, transfer to the
5 fund that amount of its legally available gross receipts tax
6 revenue that has been pledged by a resolution of the governing
7 body of the local government; provided that:

8 (1) the amount pledged shall equal the debt
9 service payments necessary to service the bonds issued for the
10 purpose of financing the installation of energy efficiency
11 measures in the local government building;

12 (2) no action shall be brought questioning the
13 legality of the pledge of gross receipts tax revenue, the
14 resolution, the bonds, the proceedings or any other matter
15 concerning the pledge of gross receipts tax revenue after
16 thirty days from the date of publication of the resolution
17 pledging the revenue; and

18 (3) the legislature or local government shall
19 not repeal, amend or otherwise modify any law, ordinance or
20 resolution that adversely affects the pledge of the gross
21 receipts tax revenue, unless the bonds have been paid."

22 SECTION 6. Section 6-21D-7 NMSA 1978 (being Laws 2005,
23 Chapter 176, Section 7, as amended) is amended to read:

24 "6-21D-7. ENERGY EFFICIENCY BONDS AUTHORIZED--CONDITIONS--
25 PROCEDURE.--

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1 A. The authority is authorized to issue and sell
2 from time to time revenue bonds, known as "energy efficiency
3 bonds", in an amount outstanding at any one time not to exceed
4 [~~twenty million dollars (\$20,000,000)~~] one hundred fifty
5 million dollars (\$150,000,000), payable solely from the fund,
6 in compliance with the Energy Efficiency and Renewable Energy
7 Bonding Act and the New Mexico Finance Authority Act for the
8 purpose of installing energy efficiency measures when the
9 department has certified the need for the bonds and the
10 conditions of Subsection C of this section have been satisfied.

11 B. The net proceeds from the bonds are appropriated
12 to the authority for the purpose of making distributions to one
13 or more state agencies, local governments or school districts
14 that, pursuant to an energy efficiency assessment by the
15 department, have committed to install energy efficiency
16 measures or entered into contracts for the installation of the
17 measures. Upon receipt of a distribution, the state agency,
18 local governments or school district shall deposit into the
19 energy efficiency assessment revolving fund the cost incurred
20 by the department to make the energy efficiency assessment on
21 the building and shall use the remainder for the installation
22 of energy efficiency measures pursuant to the Energy Efficiency
23 and Renewable Energy Bonding Act, provided that, after the
24 installation of the energy efficiency measures, any unexpended
25 balance of the bond proceeds shall revert to the energy

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1 efficiency and renewable energy bonding fund.

2 C. Bonds shall not be issued pursuant to this
3 section unless:

4 (1) a state agency, local government or school
5 district has committed to install or has entered into one or
6 more contracts pursuant to Section 6-21D-4 NMSA 1978 for the
7 installation of energy efficiency measures and the department
8 has certified that the resulting energy cost savings will be
9 realized within a reasonable time;

10 (2) considering the timeliness and amount of
11 energy cost savings estimated to be realized from the energy
12 efficiency measures, the department has certified the
13 approximate date when the energy cost savings are most likely
14 to equal or exceed the debt service due on the bonds to be
15 issued to fund the energy efficiency measures;

16 (3) the life of energy efficiency measures
17 meets or exceeds the life of the bonds allocable to those
18 energy efficiency measures as determined by the department and
19 the authority; ~~and~~

20 (4) in the case of bonds issued for the
21 installation of energy efficiency measures in a local
22 government building, the governing body of the local government
23 has, pursuant to Section 6-21D-6 NMSA 1978, passed a resolution
24 pledging legally available gross receipts tax revenue for the
25 debt service on the bonds; and

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1 [~~(4)~~] (5) based on the department's
2 certification, the debt service on the bonds has been
3 structured by the authority to preclude the annual debt service
4 payments due until the date that the cost savings equal or
5 exceed the debt service.

6 D. Each series of bonds shall be issued pursuant to
7 the provisions of the New Mexico Finance Authority Act, except
8 as otherwise provided in the Energy Efficiency and Renewable
9 Energy Bonding Act."

10 SECTION 7. A new section of Chapter 3, Article 18 NMSA
11 1978 is enacted to read:

12 "[NEW MATERIAL] PLEDGING OF GROSS RECEIPTS TAX REVENUE
13 AUTHORIZED FOR ENERGY EFFICIENCY MEASURES.--Pursuant to the
14 Energy Efficiency and Renewable Energy Bonding Act, a
15 municipality may pledge a portion of its legally available
16 gross receipts tax revenue to pay the debt service on energy
17 efficiency bonds issued by the New Mexico finance authority for
18 the purpose of financing the installation of energy efficiency
19 measures in buildings owned by the municipality."

20 SECTION 8. A new section of Chapter 4, Article 36 NMSA
21 1978 is enacted to read:

22 "[NEW MATERIAL] PLEDGING OF GROSS RECEIPTS TAX REVENUE
23 AUTHORIZED FOR ENERGY EFFICIENCY MEASURES.--Pursuant to the
24 Energy Efficiency and Renewable Energy Bonding Act, a county
25 may pledge a portion of its legally available gross receipts

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1 tax revenue to pay the debt service on energy efficiency bonds
2 issued by the New Mexico finance authority for the purpose of
3 financing the installation of energy efficiency measures in
4 buildings owned by the county."

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