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SENATE BILL 101

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO PUBLIC FINANCING; PROVIDING A PROCESS FOR
ALLOCATING AND ISSUING QUALIFIED ENERGY CONSERVATION BONDS
PURSUANT TO THE FEDERAL INTERNAL REVENUE CODE.

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

**SECTION 1. QUALIFIED ENERGY CONSERVATION BONDS--
ALLOCATION--ISSUANCE.--**

A. As used in this section:

- (1) "board" means the state board of finance;
- (2) "federal act" means Section 54D of the federal Internal Revenue Code and includes federal rules and guidelines adopted to carry out the provisions of that section;
- (3) "large local government" means:
 - (a) a municipality or county with a population greater than one hundred thousand, as determined

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1 pursuant to the provisions of the federal act; or

2 (b) an Indian tribal government;

3 (4) "qualified conservation purpose" means:

4 (a) capital expenditures incurred for
5 purposes of: 1) reducing energy consumption in publicly owned
6 buildings by at least twenty percent; 2) implementing green
7 community programs, including the use of loans, grants or other
8 repayment mechanisms to implement the programs; 3) rural
9 development involving the production of electricity from
10 renewable energy resources; or 4) any qualified facility, as
11 determined under Section 45 (d) of the federal Internal Revenue
12 Code without regard to Paragraphs (8) and (10) of that
13 subsection and without regard to any placed in service date;

14 (b) expenditures with respect to
15 research facilities and research grants to support research in:
16 1) development of cellulosic ethanol or other nonfossil fuels;
17 2) technologies for the capture and sequestration of carbon
18 dioxide produced through the use of fossil fuel; 3) increasing
19 the efficiency of existing technologies for producing nonfossil
20 fuels; 4) automobile battery technologies and other
21 technologies to reduce fossil fuel consumption in
22 transportation; or 5) technologies to reduce energy use in
23 buildings;

24 (c) mass commuting facilities and
25 related facilities that reduce the consumption of energy,

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1 including expenditures to reduce pollution from vehicles used
2 for mass commuting;

3 (d) demonstration projects designed to
4 promote the commercialization of: 1) green building
5 technology; 2) conversion of agricultural waste for use in the
6 production of fuel or otherwise; 3) advanced battery
7 manufacturing technologies; 4) technologies to reduce peak use
8 of electricity; or 5) technologies for the capture and
9 sequestration of carbon dioxide emitted from combusting fossil
10 fuels in order to produce electricity; or

11 (e) public education campaigns to
12 promote energy efficiency;

13 (5) "qualified energy conservation bond" means
14 a bond of a qualified issuer, the net proceeds from the sale of
15 which are used exclusively for qualified conservation purposes
16 and that meets all of the other requirements of the federal act
17 for a qualified energy conservation bond;

18 (6) "qualified issuer" means the state, a
19 county, a municipality or an Indian tribal government;

20 (7) "remaining allocation" means the state
21 allocation:

22 (a) less the amounts required by the
23 federal act to be allocated to large local governments; and

24 (b) plus any amount not used by a large
25 local government and reallocated by that large local government

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1 to the state; and

2 (8) "state allocation" means the maximum
3 amount of qualified energy conservation bonds that may be
4 issued by qualified issuers in New Mexico pursuant to the
5 federal act.

6 B. The board shall determine the amount of the
7 state allocation that is required by the federal act to be
8 allocated to each large local government. The aggregate face
9 amount of all qualified energy conservation bonds issued by a
10 large local government shall not exceed the required allocated
11 amount determined for that large local government unless the
12 large local government applies for and receives an additional
13 allocation pursuant to Subsection D of this section.

14 C. Excluding qualified energy conservation bonds
15 issued by large local governments from their allocation
16 required by the federal act, the aggregate face amount of all
17 qualified energy conservation bonds issued by qualified issuers
18 shall not exceed the remaining allocation. The board is the
19 state agency responsible for ensuring compliance with the
20 limitation of this subsection and for ensuring compliance with
21 the provisions of the federal act.

22 D. If a qualified issuer that has been authorized
23 to issue bonds, or is in the process of obtaining authorization
24 to issue bonds, desires to designate all or any portion of the
25 bonds as qualified energy conservation bonds, unless exempted

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1 pursuant to Subsection E of this section, it shall submit an
2 application to the board for an allocation distribution. The
3 board shall, by rule, establish deadlines for receiving
4 applications from qualified issuers desiring to designate bonds
5 as qualified energy conservation bonds and deadlines for
6 issuing bonds that have been allocated by the board. The
7 application shall include:

8 (1) evidence that the requirements of the
9 federal act have been satisfied; and

10 (2) such other information as is required by
11 rule of the board.

12 E. A large local government for which an allocation
13 is required by the federal act shall be exempt from the
14 application requirement to the extent that the amount of
15 qualified energy conservation bonds to be issued by that large
16 local government does not exceed the required allocation.

17 F. In the event that the face amount of all
18 proposed qualified energy conservation bonds in valid, timely
19 submitted applications exceeds the remaining allocation, the
20 board shall decide how the remaining allocation shall be
21 distributed to applicants by considering:

22 (1) the dates anticipated for the initial
23 expenditure of bond proceeds and for completion of the project;

24 (2) the percent of the bond proceeds that are
25 likely to be expended within three years of the date of the

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1 issuance of the bonds;

2 (3) whether the bond proceeds, together with
3 all other money available for the project, are sufficient to
4 complete the project; and

5 (4) such other criteria as deemed by rule of
6 the board to be relevant.

7 G. If the remaining allocation exceeds the total
8 amount of qualified energy conservation bonds allocated to
9 applicants and issued within the time frame required by the
10 board, the excess shall revert to the board and, together with
11 any unused amount reallocated by a large local government to
12 the state, shall be carried forward and included in another
13 application cycle pursuant to this section, if determined by
14 the board to be necessary.