

1 SENATE BILL 215

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Peter Wirth

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10 AN ACT

11 RELATING TO LOCAL GOVERNMENT; AMENDING, REPEALING AND ENACTING
12 SECTIONS OF THE RENEWABLE ENERGY FINANCING DISTRICT ACT;
13 ENABLING EFFICIENCY, STORAGE AND WATER CONSERVATION
14 IMPROVEMENTS TO BE FINANCED WITH SPECIAL ASSESSMENTS; CHANGING
15 THE PRIORITY OF LIENS UNDER THE ACT.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 5-18-1 NMSA 1978 (being Laws 2009,
19 Chapter 180, Section 1) is amended to read:

20 "5-18-1. SHORT TITLE.--~~[This act]~~ Chapter 5, Article 18
21 NMSA 1978 may be cited as the "Renewable Energy Financing
22 District Act".

23 SECTION 2. Section 5-18-2 NMSA 1978 (being Laws 2009,
24 Chapter 180, Section 2) is amended to read:

25 "5-18-2. LEGISLATIVE FINDINGS.--The legislature finds
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1 that:

2 A. the development of distributed renewable energy
3 sources and energy storage, improvements to the energy
4 efficiency of structures and water conservation will advance
5 the security, economic well-being and public and environmental
6 health of the state, as well as contributing to the energy
7 independence of the nation and addressing the issue of global
8 climate change;

9 B. it is in the best interests of the state,
10 municipalities and counties to encourage the development and
11 installation of distributed generation renewable energy sources
12 and ~~[the installation by]~~ energy storage, improvements to the
13 energy efficiency and water conservation measures by owners of
14 existing and new real property ~~[owners of such energy sources];~~

15 C. the high front-end costs of renewable energy,
16 ~~[installations]~~ energy storage, energy efficiency and water
17 conservation improvements to real property ~~[prevents]~~ prevent
18 many property owners from making these improvements, and many
19 property owners lack access to traditional financing and
20 therefore it is desirable and necessary to authorize
21 alternative financing procedures to promote the installation of
22 the improvements; ~~[and]~~

23 it is desirable and necessary to authorize
24 alternative financing procedures to promote the installation of
25 renewable energy, energy storage, energy efficiency and water

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1 conservation improvements by owners of commercial, residential,
2 agricultural and other real property; and

3 ~~[D-]~~ E. the creation and administration of
4 renewable energy financing districts to facilitate the
5 development of renewable energy, energy storage, energy
6 efficiency and water conservation improvements on property in
7 the district will serve a valid public purpose and is expressly
8 declared to be in the public interest."

9 SECTION 3. Section 5-18-3 NMSA 1978 (being Laws 2009,
10 Chapter 180, Section 3) is amended to read:

11 "5-18-3. DEFINITIONS.--As used in the Renewable Energy
12 Financing District Act:

13 A. "assessment contract" means a contract entered
14 into between a district, an owner and, if applicable, a third-
15 party lender, under which the district or such third-party
16 lender agrees to provide financing for an energy improvement or
17 water conservation in exchange for a property owner's agreement
18 to pay an annual assessment for a period not to exceed the
19 useful life of the energy project;

20 ~~[A-]~~ B. "county" means any county, including an H
21 class county;

22 ~~[B-]~~ C. "debt service" means the payment of
23 principal of, interest on and premium, if any, on ~~[the bonds]~~
24 any bonds or other financial instrument:

25 (1) when due, whether at maturity; or ~~[prior~~

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1 redemption]

2 (2) upon redemption prior to maturity and
3 fees, [and] costs [~~of agents necessary to handle the~~] and
4 expenses incurred in connection with the issuance and
5 administration of such bonds or other financial instrument and
6 the costs of credit enhancement or liquidity support;

7 [~~G.~~] D. "district" means a renewable energy
8 financing district formed pursuant to the Renewable Energy
9 Financing District Act by a municipality or by a county in an
10 unincorporated area or in an incorporated area with the
11 applicable municipality's consent, or a regional district
12 formed pursuant to Section 8 of this 2017 act;

13 E. "department" means the energy, minerals and
14 natural resources department;

15 [~~D.~~] F. "district board" means the board of
16 directors of the district, except for regional districts, which
17 shall be composed of the members of the governing body of the
18 municipality or county in which the district is located, or at
19 the option of the governing body, five directors appointed by
20 the governing body, as provided in Section [~~9 of the Renewable~~
21 ~~Energy Financing District Act. The board shall serve until~~
22 ~~replaced by elected directors, which shall occur not later than~~
23 ~~six years after the date on which the resolution establishing~~
24 ~~the district is enacted;~~

25 ~~E. "election" means an election held in compliance~~

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1 ~~with the provisions of the Renewable Energy Financing District~~
2 ~~Act;~~] 5-18-9 NMSA 1978;

3 G. "efficiency improvement" means a modification
4 that is permanently installed on or affixed to property that is
5 designed to reduce energy consumption or energy-related
6 operating costs, and may include the following:

7 (1) insulation of a building structure or
8 system within a building;

9 (2) "cool roofing" or radiant barriers that
10 reflect heat;

11 (3) storm windows or doors, caulking or
12 weatherstripping, multiglazed windows or doors, heat-absorbing
13 or heat-reflective glazed and coated window or door systems,
14 additional glazing, reductions in glass area or other window
15 and door system modifications that reduce energy consumption;

16 (4) automated or computerized energy control
17 systems;

18 (5) heating, ventilating or air conditioning
19 system modifications or replacements;

20 (6) replacement or modification of lighting
21 fixtures to increase the energy efficiency of the lighting
22 system without increasing the overall illumination of a
23 facility, unless an increase in illumination is necessary to
24 conform to the applicable state or local building code or
25 nationally accepted standards for the lighting system after the

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1 proposed modifications are made;

2 (7) energy recovery systems; and

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

7 H. "energy improvement" means a renewable energy
8 improvement, energy efficiency improvement or energy storage
9 improvement;

10 I. "energy storage improvement" means any
11 modification that is permanently installed on or affixed to
12 property that is capable of absorbing energy or storing it for
13 a period of time and thereafter delivering the energy;

14 ~~[F.]~~ J. "governing body" means the body or board
15 that by law is constituted as the governing body of the
16 municipality or county in which the district is located;

17 ~~[G.]~~ K. "municipality" means an incorporated city,
18 village or town;

19 ~~[H.]~~ L. "owner" means the person who is listed as
20 the owner of real property in the district on the current
21 property tax assessment roll;

22 ~~[I.]~~ M. "renewable energy improvement" means a
23 photovoltaic, solar thermal, geothermal heat pump or wind
24 energy system permanently installed on real property; ~~and~~

25 ~~[J.]~~ N. "special assessment" means a levy imposed

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1 against real property within a district; and

2 0. "water conservation improvement" means a
3 modification that is permanently installed on or affixed to
4 property and that is designed to reduce water consumption."

5 SECTION 4. Section 5-18-4 NMSA 1978 (being Laws 2009,
6 Chapter 180, Section 4) is amended to read:

7 "5-18-4. RENEWABLE ENERGY FINANCING DISTRICTS
8 AUTHORIZED.--

9 A. A governing body of a municipality or county may
10 form a district for the purpose of encouraging, accommodating
11 and financing [~~renewable~~] energy improvements and water
12 conservation improvements on property within the municipality
13 or county. A district shall include only property for which an
14 owner executes an agreement consenting to the inclusion of the
15 property within the district and to the imposition of a special
16 assessment on the property for the purpose of financing
17 [~~renewable~~] energy improvements and water conservation
18 improvements.

19 B. A district formed by a municipality shall be
20 wholly within the boundaries of the municipality. A district
21 formed by a county shall be wholly within the boundaries of the
22 county and shall be in the unincorporated area of the county,
23 or may include an incorporated area with the municipality's
24 consent. A district may include contiguous and noncontiguous
25 property.

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1 C. Except as otherwise provided in this section, a
2 district shall be a political subdivision of the state,
3 separate and apart from the municipality or county."

4 SECTION 5. Section 5-18-5 NMSA 1978 (being Laws 2009,
5 Chapter 180, Section 5) is amended to read:

6 "5-18-5. RESOLUTION DECLARING INTENTION TO FORM
7 DISTRICT.--

8 A. A governing body may adopt a resolution
9 declaring its intention to form a district. The resolution
10 shall ~~[state]~~ include the following:

11 (1) the purposes for which the district is to
12 be formed;

13 (2) that the district shall include only
14 property for which the owner has agreed to the inclusion of the
15 property within the district, and that inclusion of property
16 may occur subsequent to the adoption of the resolution forming
17 the district;

18 (3) the process by which a property owner can
19 execute an agreement to include property in the district;

20 (4) ~~[a description of the specific types of~~
21 ~~renewable]~~ that only energy improvements, ~~[that]~~ water
22 conservation improvements and improvements incidental to such
23 improvements, not to exceed twenty percent of the total amount
24 financed, will be eligible for the financing provided pursuant
25 to the Renewable Energy Financing District Act;

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1 (5) that inclusion of property in the district
2 will result in the imposition of special assessments on the
3 property to pay the costs of ~~[the]~~ approved ~~[renewable]~~ energy
4 improvements, water conservation improvements, financing and
5 administrative fees;

6 (6) the method of calculating the amount of
7 the special assessment and the manner of collection of the
8 special assessment;

9 (7) that standards and requirements will be
10 set by the district board for ~~[renewable]~~ energy improvements
11 and water conservation improvements to be installed on property
12 in the district;

13 (8) a contract form to be used for assessment
14 contracts between the district, the owner of the qualifying
15 property and, if applicable, a third-party lender governing the
16 terms and conditions of financing and annual assessments,
17 including provisions for the district's collection of its
18 administrative and other costs;

19 (9) the application process and eligibility
20 requirements for financing energy improvements and water
21 conservation improvements;

22 (10) that the district shall only finance
23 energy improvements for which the reasonably estimated economic
24 benefits, including energy cost savings, maintenance cost
25 savings and other property operating savings expected from the

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1 improvement during the financing period, are equal to or
2 greater than the principal cost of the improvement less the
3 estimated cost of a similar improvement to property that does
4 not provide such benefits and less property value increase;

5 [~~8~~] (11) a reference to the Renewable Energy
6 Financing District Act; and

7 [~~9~~] (12) that the district will be governed
8 by a district board composed of the members of the governing
9 body or by five directors to be appointed by the governing
10 body.

11 B. The resolution shall direct that a hearing on
12 formation of the district be scheduled and notice be published
13 as required for public hearings of the governing body.

14 C. After passage of a resolution pursuant to
15 Subsection A of this section, a district may enter into an
16 assessment contract with the record owner of qualifying
17 property within the district and, if applicable, with a
18 third-party lender to finance an energy improvement or water
19 conservation improvement on the qualifying property. The costs
20 financed under the assessment contract may include the cost of
21 materials and labor necessary for installation, permit fees,
22 inspection fees, application and administrative fees, bank fees
23 and all other fees, costs and expenses that may be incurred by
24 the owner pursuant to the installation. The assessment
25 contract shall provide for the repayment of all fees, costs and

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1 expenses through annual assessments upon the qualifying
2 property benefited by the energy or water conservation
3 improvement. The funds for payment of the annual assessment
4 may be collected more frequently than annually and escrowed by
5 the third-party lender."

6 SECTION 6. Section 5-18-7 NMSA 1978 (being Laws 2009,
7 Chapter 180, Section 7) is amended to read:

8 "5-18-7. SPECIAL ASSESSMENT--LIEN CREATED--PRIORITY OF
9 LIENS.--

10 A. The district board may impose a special
11 assessment on property within the district to facilitate the
12 financing of [~~renewable~~] energy improvements and water
13 conservation improvements to the property. The special
14 assessment shall be sufficient in the case of each property to
15 pay the costs of the financing of the [~~renewable~~] energy
16 improvements and water conservation improvements, including the
17 costs of bond issuance, debt service and administrative costs
18 of the district and the municipality or county in which the
19 district is located.

20 B. The special assessment shall be levied and
21 collected at the same time and in the same manner as property
22 taxes are levied and collected, except to the extent that the
23 district board has provided for other imposition and collection
24 procedures. Money derived from the imposition of the special
25 assessment shall be kept separately from other funds of the

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1 governing body.

2 C. A special assessment shall constitute a tax lien
3 on the property, which shall be effective during the period in
4 which the assessment is imposed and shall have priority over
5 all other liens except liens for ad valorem property taxes;
6 provided that only the delinquent portion of such special
7 assessment shall have priority to liens for a first lien
8 mortgage such as those insured by the federal housing
9 administration, as provided in Subsection E of this section.

10 D. The obligation to pay the special assessment may
11 be prepaid and permanently satisfied, and the district board
12 shall specify the conditions under which this may be achieved.

13 E. In the event a scheduled payment of the special
14 assessment is not paid when due, the amount of the scheduled
15 payment and collection costs for the payment, and only those
16 amounts, shall have priority over a first lien mortgage such as
17 a mortgage insured by the federal housing administration.
18 Payment of an obligation created under the Renewable Energy
19 Financing District Act shall not accelerate for any reason,
20 including late payments, and the property shall not be subject
21 to an enforceable accelerated claim or lien superior to a first
22 lien mortgage such as those insured by the federal housing
23 administration for the full outstanding obligation at any time.

24 F. There shall be no terms or conditions in the
25 special assessment that limit the right of the owner to

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1 transfer property encumbered by a special assessment pursuant
2 to this section; provided, however, that property shall remain
3 encumbered by the special assessment until such time as the
4 obligation related to the special assessment is paid in full.

5 G. The district shall cause the special assessment
6 and the assessment contract to be recorded with the clerk of
7 the county in which the property is located.

8 H. In the event of the sale, including a
9 foreclosure sale, of a property with an outstanding special
10 assessment, the special assessment and the associated liens
11 shall remain with the property until the financing related
12 thereto is paid in full. Unless the special assessment is paid
13 in full in connection with the sale, the buyer will assume the
14 obligation and will be responsible for the payments on the
15 outstanding special assessment."

16 SECTION 7. Section 5-18-8 NMSA 1978 (being Laws 2009,
17 Chapter 180, Section 8) is amended to read:

18 "5-18-8. SPECIAL ASSESSMENT BONDS AND LENDER FINANCING.--

19 A. A district may issue one or more series of bonds
20 to provide money for [~~renewable~~] energy improvements and water
21 conservation improvements to property in the district, and the
22 bonds may be payable from the special assessments levied
23 pursuant to one or more assessment resolutions.

24 B. For any bonds issued pursuant to the Renewable
25 Energy Financing District Act, the district board shall

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1 prescribe the denominations of the bonds, the principal amount
2 of each issue and the form of the bonds and shall establish the
3 maturities, which shall not exceed [~~twenty~~] thirty years,
4 interest payment dates and interest rates, whether fixed or
5 variable, not exceeding the maximum rate stated in the
6 resolution of the district board. The bonds may be sold by
7 competitive bid or negotiated sale for public or private
8 offering at, below or above par. The proceeds of the bonds
9 shall be deposited in a segregated account with the treasurer
10 of the district board, or with a trustee or agent designated by
11 the district board, to the credit of the district to be
12 withdrawn solely for the purposes provided by the Renewable
13 Energy Financing District Act. Pending that use, the proceeds
14 may be invested as determined by the district. The bonds shall
15 be made payable as to both principal and interest solely from
16 revenues of the district, and shall specify the revenues
17 pledged for such purposes, and shall contain such other terms,
18 conditions, covenants and agreements as the district board
19 deems proper.

20 C. No holder of special assessment bonds issued
21 pursuant to the Renewable Energy Financing District Act may
22 compel any exercise of the taxing power of the district,
23 municipality or county to pay the bonds or the interest on the
24 bonds. Special assessment bonds issued pursuant to that act
25 are not a debt or general obligation of the county or the

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1 municipality in which the district is located, nor is the
2 payment of special assessment bonds enforceable out of any
3 money other than the revenue pledged to the payment of the
4 bonds.

5 D. Pursuant to this section, the district may issue
6 and sell refunding bonds to refund any special assessment bonds
7 of the district authorized by the Renewable Energy Financing
8 District Act. Refunding bonds issued pursuant to this section
9 shall have a final maturity date no later than the final
10 maturity date of the bonds being refunded.

11 E. A district may raise capital to fund energy
12 improvements and water conservation improvements under the
13 Renewable Energy Financing District Act from third-party
14 lenders or permit owners to finance such energy improvements
15 and efficiency improvements by entering into "property assessed
16 clean energy" financing directly with third-party lenders.
17 Such third-party lenders shall be entitled to the full benefits
18 of the provisions of the Renewable Energy Financing District
19 Act and such loans shall be permitted to be secured by special
20 assessment liens in favor of the lender, with the same
21 priority, rights and protections as special assessment liens
22 granted in favor of the district directly; provided, however,
23 the district shall not have a repayment obligation to the
24 third-party lender in connection with any third-party financing
25 provided directly to owners as permitted hereunder."

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1 SECTION 8. Section 5-18-11 NMSA 1978 (being Laws 2009,
2 Chapter 180, Section 11) is amended to read:

3 "5-18-11. POWERS AND DUTIES OF A DISTRICT.--

4 A. The district board shall:

5 (1) establish guidelines and standards for
6 [~~renewable~~] energy improvements and water conservation
7 improvements to be made to property included in the district;

8 (2) establish guidelines and procedures for a
9 property owner to enter into an agreement with the district
10 board to include property in the district;

11 (3) establish guidelines for the documentation
12 required from a property owner prior to property being included
13 in the district of the owner's contracts or agreements for
14 purchase and installation of [~~renewable~~] energy improvements
15 and water conservation improvements;

16 (4) establish the amount of and impose special
17 assessments for the financing of the [~~renewable~~] energy
18 improvements and water conservation improvements, including the
19 costs of bond issuance, debt service and administrative costs
20 of the district and the municipality or county in which the
21 district is located; and

22 (5) enter into contracts, agreements and trust
23 indentures to obtain credit enhancement or liquidity support
24 for its bonds and process the issuance, registration, transfer
25 and payment of its bonds and the disbursement and investment of

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1 proceeds of the bonds.

2 B. The district board may enter into contracts to
3 carry out the purposes of the district on such terms and with
4 such persons as the board determines to be appropriate."

5 SECTION 9. A new section of the Renewable Energy
6 Financing District Act is enacted to read:

7 "[NEW MATERIAL] REGIONAL DISTRICTS.--

8 A. Two or more municipalities, two or more counties
9 or one or more municipalities and counties may enter into a
10 joint powers agreement pursuant to the Joint Powers Agreements
11 Act to create a regional district.

12 B. The joint powers agreement shall require that
13 the governing body of each entity shall approve an identical
14 resolution creating the regional district and each bond
15 issuance.

16 C. A regional district shall have the same powers
17 as a district pursuant to the Renewable Energy Financing
18 District Act, except as limited by the Joint Powers Agreements
19 Act or the constitution of New Mexico.

20 D. The joint powers agreement shall provide for the
21 formation of a district board for the regional district."

22 SECTION 10. A new section of the Renewable Energy
23 Financing District Act is enacted to read:

24 "[NEW MATERIAL] DUTIES OF THE DEPARTMENT.--On or before
25 April 1, 2018, the department shall adopt rules as necessary to

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1 implement the Renewable Energy Financing District Act that
2 shall include model ordinances and resolutions for the creation
3 of districts."

4 SECTION 11. REPEAL.--Section 5-18-10 NMSA 1978 (being
5 Laws 2009, Chapter 180, Section 10) is repealed.