

1 HOUSE BILL 196

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Bill McCamley

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10 AN ACT

11 RELATING TO ENERGY CONSERVATION; AMENDING THE ENERGY EFFICIENCY
12 AND RENEWABLE ENERGY BONDING ACT; ADDING DEFINITIONS; UPDATING
13 REQUIREMENTS FOR BUILDING ASSESSMENTS AND CERTAIN AGREEMENTS;
14 PROVIDING FOR DISTRIBUTIONS TO AND ADMINISTRATION OF A FUND FOR
15 DEBT SERVICE PAYMENTS; REQUIRING ADJUSTMENTS TO STATE
16 EQUALIZATION GUARANTEE DISTRIBUTIONS OR OPERATING BUDGETS FOR
17 CERTAIN AMOUNTS CERTIFIED PURSUANT TO THE ACT; CHANGING
18 CRITERIA FOR THE ISSUANCE OF ENERGY EFFICIENCY BONDS; REQUIRING
19 CERTIFICATIONS AND VERIFICATIONS REGARDING COMPLIANCE WITH
20 CERTAIN PROVISIONS OF THE ACT.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

25 "6-21D-2. DEFINITIONS.--As used in the Energy Efficiency

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1 and Renewable Energy Bonding Act:

2 A. "audit" means an investment grade audit that:

3 (1) is conducted pursuant to American society
4 of heating, refrigerating and air-conditioning engineers
5 standards and department guidelines; and

6 (2) includes a comprehensive evaluation,
7 identification and analysis of potential energy efficiency
8 measures and savings for the building;

9 ~~[A.]~~ B. "authority" means the New Mexico finance
10 authority;

11 ~~[B.]~~ C. "bonds" means energy efficiency bonds;

12 D. "building" means a building under the ownership
13 or jurisdiction of an eligible entity;

14 E. "construction oversight" includes the review and
15 management of the performance and completion of the
16 installation of energy efficiency measures identified in a
17 certified energy assessment or audit;

18 F. "construction oversight authority" means the
19 public school facilities authority for a school district; the
20 facilities management division of the general services
21 department for a building under the ownership or jurisdiction
22 of the general services department; and the higher education
23 department for a public post-secondary educational institution;

24 ~~[G.]~~ G. "department" means the energy, minerals and
25 natural resources department;

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1 H. "eligible entity" means a public post-secondary
2 educational institution, a school district or a state agency;

3 I. "energy assessment" means:

4 (1) an evaluation of a facility's utility
5 usage data; mechanical and electrical deficiencies; and ability
6 to generate energy;

7 (2) the overall performance of the facility
8 before or after energy efficiency measures have been completed;
9 and

10 (3) a comprehensive analysis of energy
11 savings;

12 ~~[D-]~~ J. "energy efficiency measure" means a
13 modification or improvement to a building or complex of
14 buildings that is designed to reduce energy consumption or
15 operating costs or that provides a renewable energy source and
16 may include:

17 (1) insulation of the building structure or
18 systems within the building;

19 (2) storm windows or doors, caulking or
20 weatherstripping, multiglazed windows or doors, heat-absorbing
21 or heat-reflective glazed and coated window or door systems,
22 additional glazing, reductions in glass area or other window
23 and door system modifications that reduce energy consumption;

24 (3) automated or computerized energy control
25 systems;

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1 (4) heating, ventilating or air conditioning
2 system modifications or replacements;

3 (5) replacement or modification of lighting
4 fixtures to increase the energy efficiency of the lighting
5 system;

6 (6) energy recovery systems;

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

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

13 [~~E-~~] K. "fund" means the energy efficiency and
14 renewable energy bonding fund;

15 L. "oversight entity" means the higher education
16 department for a public post-secondary educational institution;
17 the public education department for a school district; and the
18 department of finance and administration for a state agency;

19 M. "power purchase agreement" means a financial
20 agreement under which a qualified provider arranges for the
21 design, permitting, financing and installation of an energy
22 system for purchase by an eligible entity;

23 N. "public post-secondary educational institution"
24 means an educational institution designated in Article 12,
25 Section 11 of the constitution of New Mexico or organized

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1 pursuant to the provisions of Chapter 21, Article 13, 14 or 16
2 NMSA 1978;

3 O. "qualified provider" means a company that is
4 qualified and certified as qualified by the department; and

5 ~~[F.]~~ P. "school district" means a political
6 subdivision of the state established for the administration of
7 public schools, segregated geographically for taxation and
8 bonding purposes and governed by the Public School Code

9 ~~[G. "school district building" means a building,~~
10 ~~the title to which is held by a school district; and~~

11 ~~H. "state building" means a building, the title to~~
12 ~~which is held by the state or an agency of the state]."~~

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

15 "6-21D-3. BUILDING ASSESSMENTS FOR ENERGY EFFICIENCY
16 MEASURES.--

17 A. ~~[Upon the request of a state agency or a school~~
18 ~~district]~~ The department may perform or contract for the
19 performance of an energy [efficiency] assessment [of a state or
20 school district] or audit of a building [to]. The energy
21 assessment or audit shall:

22 (1) identify the energy efficiency measures
23 that can be installed and operated at a total price that is
24 less than the energy cost savings [realized. In addition, the
25 assessment shall]; and

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1 (2) include a schedule for funding and
2 installing the energy efficiency measures that will realize
3 significant energy cost savings in the shortest time frame.

4 [~~The department shall develop the assessment of:~~

5 ~~(1) state buildings, in conjunction with the~~
6 ~~facilities management division of the general services~~
7 ~~department, the staff architect of the division, the capitol~~
8 ~~buildings planning commission and other state agencies with~~
9 ~~control and management over buildings; and~~

10 ~~(2) school district buildings, in conjunction~~
11 ~~with the public education department, the public school capital~~
12 ~~outlay council and the public school facilities authority.~~

13 ~~B. State agencies and school districts shall~~
14 ~~cooperate with the department in the assessment performed~~
15 ~~pursuant to Subsection A of this section.]~~

16 B. An eligible entity shall cooperate with the
17 department in its certification of an energy assessment or
18 audit that the department determines to have been completed by
19 a qualified provider and to have provided reasonable and
20 accurate estimates. The department shall provide the
21 certification that includes energy cost savings projections to
22 the eligible entity and the construction oversight entity."

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

25 "6-21D-4. CONTRACTS FOR THE INSTALLATION, MAINTENANCE AND

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1 SAVINGS MONITORING OF ENERGY EFFICIENCY MEASURES.--

2 A. Pursuant to ~~[an]~~ a certified energy ~~[efficiency]~~
3 assessment or audit performed ~~[under]~~ pursuant to Section
4 6-21D-3 NMSA 1978, ~~[and with]~~ the provisions of the Procurement
5 Code and the guidelines and approval of the department, ~~[a~~
6 ~~state agency or school district]~~ an eligible entity may
7 ~~[install]~~ perform or enter into contracts for the installation,
8 maintenance and savings monitoring of energy efficiency
9 measures ~~[on]~~ for the building identified in the energy
10 assessment ~~[An installation contract shall be entered into~~
11 ~~pursuant to the Procurement Code, except that the contract may~~
12 ~~be entered into for a term of up to ten years. The~~
13 ~~installation or contracts shall address provisions concerning~~
14 ~~payment schedules, monitoring, inspecting, measuring and~~
15 ~~warranties as are necessary to ensure that the energy~~
16 ~~efficiency measures will be installed and the energy cost~~
17 ~~savings realized in the manner most beneficial to the state;~~
18 ~~provided that bonds shall not be issued pursuant to the Energy~~
19 ~~Efficiency and Renewable Energy Bonding Act without a finding~~
20 ~~by the department that the energy cost savings realized from~~
21 ~~the energy efficiency measures will be greater than the debt~~
22 ~~service due on the bonds issued to finance the energy~~
23 ~~efficiency measures]~~ or audit.

24 B. A qualified provider shall:

25 (1) maintain a direct relationship with an

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1 eligible entity throughout the term of the authority loan
2 agreement; and

3 (2) verify and report to the eligible entity
4 about:

5 (a) the completion of the installation;

6 (b) each instance of maintenance; and

7 (c) each instance of savings monitoring.

8 C. The eligible entity and construction oversight
9 authority shall report to the department on the verifications
10 and reports received from the qualified provider pursuant to
11 the provisions of Subsection B of this section."

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

14 "6-21D-5. ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING
15 FUND--~~[PLEDGE OF MONEY IN THE FUND]~~ AUTHORITY ADMINISTRATION OF
16 A FUND FOR DEBT SERVICE.--

17 A. The "energy efficiency and renewable energy
18 bonding fund" is created as a special fund within the
19 authority. The fund shall be administered by the authority as
20 a special account. The fund shall consist of gross receipts
21 tax revenues distributed to the fund ~~[by law]~~ pursuant to
22 Section 7-1-6.53 NMSA 1978, money transferred to the fund
23 pursuant to the provisions of the Energy Efficiency and
24 Renewable Energy Bonding Act and other transfers and
25 appropriations made to the fund. Earnings of the fund shall be

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1 credited to the fund. Any unexpended or unencumbered balance
2 in the [~~energy efficiency and renewable energy bonding~~] fund
3 shall revert to the general fund at the end of a fiscal year.

4 B. Money in the fund shall be pledged irrevocably
5 by the authority for the payment of principal and interest on
6 all bonds issued pursuant to the Energy Efficiency and
7 Renewable Energy Bonding Act. Money in the fund is
8 appropriated to the authority for the purpose of paying debt
9 service, including redemption premiums, on the bonds and the
10 expenses incurred in the issuance, payment and administration
11 of the bonds.

12 C. On the [~~last day of January and July of each~~
13 ~~year~~] date of bond issuance, the authority shall [~~estimate~~]
14 provide to the secretary of taxation and revenue a
15 certification of the amount needed to make debt service
16 payments on the bonds issued pursuant to the Energy Efficiency
17 and Renewable Energy Bonding Act plus the amount that may be
18 needed for any required reserves, administrative expenses or
19 [~~the~~] other obligations [~~coming due during the next twelve~~
20 ~~months from the fund~~] until final maturity or defeasance of the
21 bonds. The taxation and revenue department shall use the
22 certification from the authority to make distributions pursuant
23 to the provisions of Section 7-1-6.53 NMSA 1978. Amounts that
24 revert to the general fund from the [~~energy efficiency and~~
25 ~~renewable energy bonding~~] fund may be appropriated by the

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1 legislature to the department for the purposes of carrying out
2 the provisions of the Energy Efficiency and Renewable Energy
3 Bonding Act. The authority shall provide a new certification
4 to the secretary of taxation and revenue upon any change in
5 amount from the amount originally certified on the date of bond
6 issuance.

7 D. Upon payment or defeasance of all principal,
8 interest and other expenses or obligations related to the
9 bonds, the authority shall [~~certify to the public education~~
10 ~~department, the department~~] provide a certification to the
11 secretary of finance and administration, [and] the secretary of
12 taxation and revenue, the applicable oversight entity and the
13 secretary of general services for state agency buildings that
14 all obligations for the bonds issued pursuant to the Energy
15 Efficiency and Renewable Energy Bonding Act have been
16 discharged and shall direct that distributions cease to the
17 fund pursuant to that act and the Tax Administration Act.

18 E. The bonds issued pursuant to the Energy
19 Efficiency and Renewable Energy Bonding Act shall be payable
20 solely from the fund or such other special funds as may be
21 provided by law and do not create an obligation or indebtedness
22 of the state within the meaning of any constitutional
23 provision. A breach of any contractual obligation incurred
24 pursuant to that act shall not impose a pecuniary liability or
25 a charge upon the general credit or taxing power of the state,

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1 and the bonds are not general obligations for which the state's
2 full faith and credit is pledged.

3 F. The state does hereby pledge that the fund shall
4 be used only for the purposes specified in this section and
5 pledged first to pay the debt service on the bonds issued
6 pursuant to the Energy Efficiency and Renewable Energy Bonding
7 Act. The state further pledges that any law authorizing the
8 distribution of taxes or other revenues to the fund or
9 authorizing expenditures from the fund shall not be amended or
10 repealed or otherwise modified so as to impair the bonds to
11 which the fund is dedicated as provided in this section."

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

14 "6-21D-6. CALCULATION OF COST SAVINGS [~~TRANSFERS TO~~
15 ~~ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING FUND~~] AND
16 COSTS--DEDUCTIONS FROM OPERATING BUDGETS.--

17 A. Upon the installation of energy efficiency
18 measures in a [~~state building or school district~~] building, the
19 department shall calculate the estimated energy cost savings
20 [~~in the form of lower utility payments by the school district~~
21 ~~or the state~~] that will be annually realized as a result of the
22 installation of the energy efficiency measures. The department
23 shall certify the estimate to the [~~department~~] secretary of
24 finance and administration, the eligible entity, the applicable
25 oversight entity and the [~~general services department or other~~]

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1 state agency ~~[with]~~ that has ownership of or jurisdiction ~~[in~~
2 ~~the case of state buildings, and to the department of finance~~
3 ~~and administration, the public education department and the~~
4 ~~school district, in the case of school district buildings]~~ over
5 a state agency building.

6 B. ~~[In the case of a school district building]~~ When
7 calculating an eligible entity's operating budget or the state
8 equalization guarantee distribution for a school district
9 pursuant to Section 22-8-25 NMSA 1978, the ~~[public education~~
10 ~~department]~~ oversight entity shall deduct ninety percent of the
11 amount certified ~~[for the school district]~~ in the energy
12 assessment or audit by the department.

13 ~~[G. Reduction of a school district's state~~
14 ~~equalization guarantee distribution shall cease when the school~~
15 ~~district's cumulative reductions equal its proportional share~~
16 ~~of the cumulative debt service payments necessary to service~~
17 ~~the bonds issued pursuant to the Energy Efficiency and~~
18 ~~Renewable Energy Bonding Act.~~

19 ~~D. Prior to June 30 of each year, the total amount~~
20 ~~deducted for all school districts pursuant to Subsection B of~~
21 ~~this section shall be transferred to the fund.~~

22 ~~E.]~~ In the case of a ~~[state]~~ building under the
23 ownership or jurisdiction of a state agency, the department of
24 finance and administration shall deduct ~~[from the operating~~
25 ~~budget of the agency responsible for paying the utilities of~~

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1 ~~the state building]~~ ninety percent of the amount certified [~~for~~
2 ~~the agency]~~ in the energy assessment or audit by the department
3 ~~[F.—Deduction]~~ from the operating budget of the
4 agency responsible for paying the utilities of the state
5 building. ~~[shall cease when the agency's cumulative deductions~~
6 ~~equal its proportional share of the cumulative debt service~~
7 ~~payments necessary to service the bonds issued pursuant to the~~
8 ~~Energy Efficiency and Renewable Energy Bonding Act.~~

9 G.] C. Deductions made pursuant to Subsection B of
10 this section shall cease upon payment or defeasance of all
11 principal, interest and other expenses or obligations related
12 to bonds issued to finance energy efficiency measures in an
13 eligible entity's building.

14 D. Prior to June 30 of each year, each oversight
15 entity shall revert to the general fund the total amount
16 deducted for all ~~[agencies and all state buildings]~~ eligible
17 entities pursuant to Subsection ~~[D]~~ B of this section ~~[shall be~~
18 ~~transferred from the appropriate funds to the energy efficiency~~
19 ~~and renewable energy bonding fund]."~~

20 SECTION 6. Section 6-21D-6.1 NMSA 1978 (being Laws 2007,
21 Chapter 171, Section 6) is amended to read:

22 "6-21D-6.1. ENERGY EFFICIENCY ASSESSMENT REVOLVING
23 FUND.--The "energy efficiency assessment revolving fund" is
24 created in the state treasury. The fund shall consist of
25 appropriations, gifts, grants, donations and bequests made to

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1 the fund and reimbursements of costs incurred by the department
2 in performing energy [~~efficiency~~] assessments or audits
3 pursuant to the Energy Efficiency and Renewable Energy Bonding
4 Act. Income from the fund shall be credited to the fund, and
5 money in the fund shall not revert or be transferred to any
6 other fund at the end of a fiscal year. Money in the fund is
7 appropriated to the department for the purposes of performing
8 energy [~~efficiency~~] assessments or audits. Expenditures from
9 the fund shall be made on warrant of the secretary of finance
10 and administration pursuant to vouchers signed by the secretary
11 of energy, minerals and natural resources."

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

14 "6-21D-7. ENERGY EFFICIENCY BONDS AUTHORIZED--
15 CONDITIONS--PROCEDURE.--

16 A. The authority is authorized to issue and sell
17 from time to time revenue bonds, known as "energy efficiency
18 bonds", in an amount outstanding at any one time not to exceed
19 twenty million dollars (\$20,000,000), payable solely from the
20 fund administered by the authority pursuant to Section 6-21D-5
21 NMSA 1978, in compliance with the Energy Efficiency and
22 Renewable Energy Bonding Act and the New Mexico Finance
23 Authority Act for the purpose of installing energy efficiency
24 measures when the department has certified the need for the
25 bonds and the conditions of Subsection C of this section have

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1 been satisfied.

2 B. The net proceeds from the bonds are appropriated
3 to the authority for the purpose of making distributions to one
4 or more [~~state agencies or school districts~~] eligible entities
5 that, pursuant to an energy [~~efficiency~~] assessment or audit
6 certified by the department, have committed to install energy
7 efficiency measures or entered into contracts for the
8 installation of the energy efficiency measures. Upon receipt
9 of a distribution, the [~~state agency or school district shall~~
10 ~~deposit into the energy efficiency assessment revolving fund~~
11 ~~the cost incurred by the department to make the energy~~
12 ~~efficiency assessment on the building and shall use the~~
13 ~~remainder~~] eligible entity shall use the net proceeds of the
14 bonds for the installation of energy efficiency measures,
15 maintenance and savings monitoring pursuant to the Energy
16 Efficiency and Renewable Energy Bonding Act, costs incurred by
17 the eligible entity for the energy assessment or audit and bond
18 issuance; provided that, after the installation of the energy
19 efficiency measures, any unexpended balance of the bond
20 proceeds shall revert to the [~~energy efficiency and renewable~~
21 ~~energy bonding~~] fund administered by the authority under
22 Section 6-21D-5 NMSA 1978.

23 C. Bonds shall not be issued pursuant to this
24 section unless:

25 (1) [~~a state agency or school district~~] an

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1 eligible entity has committed to [~~install or has entered into~~
2 ~~one or more contracts~~] enter into a contract or power purchase
3 agreement for the installation, maintenance and savings
4 monitoring of energy efficiency measures pursuant to Section
5 6-21D-4 NMSA 1978 [~~for the installation of energy efficiency~~
6 ~~measures~~] and the department has certified that the resulting
7 estimated energy cost savings will be realized within a
8 reasonable time;

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

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

21 (4) based on the department's certification,
22 the debt service on the bonds has been structured by the
23 authority [~~to preclude the annual debt service payments due~~
24 ~~until the date~~] such that the total cost savings [~~equal~~] meet
25 or exceed the debt service payments and other associated costs

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1 over the term of the bonds.

2 D. Each series of bonds shall be issued pursuant to
3 the provisions of the New Mexico Finance Authority Act, except
4 as otherwise provided in the Energy Efficiency and Renewable
5 Energy Bonding Act."

6 SECTION 8. Section 6-21D-10 NMSA 1978 (being Laws 2005,
7 Chapter 176, Section 10, as amended) is amended to read:

8 "6-21D-10. ANNUAL REPORT REQUIRED.--No later than
9 December 1 of each year, the department shall report to the
10 legislature, ~~[and to]~~ the governor and the authority on its
11 activities during the previous fiscal year in administering the
12 provisions of the Energy Efficiency and Renewable Energy
13 Bonding Act. The report shall include:

14 ~~[A. details concerning all payments made for the~~
15 ~~installation of energy efficiency measures;~~

16 ~~B. details concerning all expenditures made in~~
17 ~~administering the provisions of the Energy Efficiency and~~
18 ~~Renewable Energy Bonding Act;~~

19 ~~G.]~~ A. a list of all buildings on which an energy
20 ~~[efficiency]~~ assessment or audit has been performed and the
21 buildings in which energy efficiency measures were installed;

22 ~~[D.]~~ B. details showing how the energy cost savings
23 were calculated;

24 ~~[E.]~~ C. an analysis of whether the program has been
25 cost-effective;

