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HOUSE BILL 37

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Kristina Ortez and Debra M. Sariñana and
Patricia Roybal Caballero and Tara L. Lujan and Mimi Stewart

AN ACT

RELATING TO UTILITIES; ENACTING THE COMMUNITY ENERGY EFFICIENCY
DEVELOPMENT BLOCK GRANT ACT; CREATING A GRANT PROGRAM TO
IMPLEMENT ENERGY EFFICIENCY MEASURES IN LOW-INCOME HOUSEHOLDS;
AUTHORIZING THE NEW MEXICO MORTGAGE FINANCE AUTHORITY TO APPLY
FOR COMMUNITY ENERGY EFFICIENCY DEVELOPMENT BLOCK GRANTS;
MANDATING UTILITY REPORTING OF CUSTOMER DISCONNECTIONS, ARREARS
AND HOUSEHOLDS WITHOUT SERVICE; REQUIRING UTILITIES TO SUBMIT
REPORTS ON ENERGY AFFORDABILITY AND ACCESS TO ELECTRIC, WATER
AND WASTEWATER SERVICE; AUTHORIZING UTILITY RATE PREFERENCES
FOR LOW-INCOME CUSTOMERS; DIRECTING RULEMAKING; CREATING A
FUND.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 7 of this act may be cited as the "Community Energy
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1 Efficiency Development Block Grant Act".

2 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
3 Community Energy Efficiency Development Block Grant Act:

4 A. "affordable housing" means residential housing
5 primarily for low-income persons, including housing currently
6 occupied by low-income persons or housing that is affordable to
7 low-income persons based on assessed value, rent or estimated
8 mortgage;

9 B. "community energy efficiency project" means a
10 project that provides improvements to residential buildings in
11 an underserved community that will in the aggregate reduce
12 energy consumption, energy-related operating costs or the
13 carbon intensity of energy consumption;

14 C. "community partner" means an organization that
15 provides services or outreach to an underserved community to
16 implement a community energy efficiency project;

17 D. "department" means the energy, minerals and
18 natural resources department;

19 E. "division" means the energy conservation and
20 management division of the department;

21 F. "energy efficiency" means measures that target
22 efficient energy consumer behavior, equipment or devices and
23 result in a decrease in energy consumption without reducing the
24 amount or quality of energy services, and includes health and
25 safety measures that use efficient equipment or devices to

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1 improve indoor air or drinking water quality;

2 G. "low-income person" means an individual, couple
3 or family whose annual household adjusted gross income, as
4 defined in Section 62 of the federal Internal Revenue Code of
5 1986, as that section may be amended or renumbered, does not
6 exceed two hundred percent of the federal poverty level;

7 H. "registered apprenticeship program that promotes
8 diversity" means an apprenticeship program registered pursuant
9 to the Apprenticeship Assistance Act that encourages diversity
10 among participants, participation by those underrepresented in
11 the industry associated with the apprenticeship program and
12 participation from disadvantaged communities as determined by
13 the workforce solutions department;

14 I. "residential housing" means:

15 (1) a building, structure or portion thereof
16 that is primarily occupied or designed for or intended
17 primarily for occupancy as a residence by one or more
18 households, including congregate housing, manufactured homes
19 and other facilities; or

20 (2) real property that is offered for sale or
21 lease for the construction or location on that real property of
22 a building, structure or portion thereof that is intended
23 primarily for occupancy as a residence by one or more
24 households; and

25 J. "underserved community" means an area in the

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1 state, including a county, municipality or neighborhood, or
2 subset of an area, where:

3 (1) the median adjusted gross income, as
4 defined in Section 62 of the Internal Revenue Code of 1986, as
5 that section may be amended or renumbered, does not exceed two
6 hundred percent of the federal poverty level; or

7 (2) there is a high energy burden or limited
8 access to energy efficiency services as determined by
9 department rule.

10 SECTION 3. [NEW MATERIAL] COMMUNITY ENERGY EFFICIENCY
11 DEVELOPMENT BLOCK GRANT--PROGRAM CREATED--RULEMAKING--REPORT TO
12 LEGISLATURE.--

13 A. The "community energy efficiency development
14 program" is created and shall be administered by the division.

15 B. If state or federal funds have been deposited
16 into the community energy efficiency block grant fund, the
17 department shall:

18 (1) adopt rules to:

19 (a) administer the community energy
20 efficiency development program;

21 (b) restrict eligibility for certain
22 funds, if required by the entity that provided the funding to
23 the program;

24 (c) govern the acceptance, evaluation
25 and prioritization of applications submitted by qualified

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1 entities for grants made pursuant to the Community Energy
2 Efficiency Development Block Grant Act;

3 (d) determine whether the status of a
4 person or household is low-income; and

5 (e) assess whether the value, rent or
6 estimated mortgage of residential housing is affordable to low-
7 income persons;

8 (2) solicit, review and prioritize community
9 energy efficiency project applications;

10 (3) make grants for community energy
11 efficiency projects from the community energy efficiency
12 development block grant fund; and

13 (4) approve and enter into contracts with
14 grantees to implement selected community energy efficiency
15 projects; provided that the contracts shall include project
16 performance measures, penalties or other provisions that ensure
17 the successful completion of the projects in accordance with
18 Article 9, Section 14 of the constitution of New Mexico and
19 shall require reporting on project performance, energy savings
20 and non-energy benefits resulting from the energy efficiency
21 measures.

22 C. The department shall not be required to carry
23 out the responsibilities in Subsection B of this section in any
24 year that there are insufficient funds available for making
25 grants in the community energy efficiency block grant fund.

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1 D. In a year in which state or federal funds have
2 been deposited into the community energy efficiency block grant
3 fund or in which a community energy efficiency project is in
4 operation, the department and the New Mexico mortgage finance
5 authority shall coordinate the work done in the state to
6 implement energy efficiency measures.

7 E. By November 1 of each year in which a community
8 energy efficiency project is in operation, the department shall
9 provide to the interim legislative committee that addresses the
10 status of the development of energy efficiency measures and
11 programs a report on the status of participation in the
12 community energy efficiency development program by people in
13 underserved communities, the types of projects funded by grants
14 made through the program and any recommended changes with
15 respect to the program.

16 SECTION 4. [NEW MATERIAL] COMMUNITY ENERGY EFFICIENCY
17 PROJECT REQUIREMENTS.--

18 A. A county, municipality, Indian nation, tribe or
19 pueblo or the New Mexico mortgage finance authority may submit
20 an application to the department for a grant for a community
21 energy efficiency project.

22 B. An application shall:
23 (1) describe the community energy efficiency
24 project for which a grant is requested and how the project
25 would support infrastructure improvements for affordable

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1 housing;

2 (2) describe how the community energy
3 efficiency project would benefit an underserved community in
4 which it is located;

5 (3) identify the targeted underserved
6 community;

7 (4) set forth the energy efficiency
8 improvements to residential units located within an underserved
9 community that meet the following eligibility criteria pursuant
10 to Article 9, Section 14 of the constitution of New Mexico:

11 (a) residential housing units occupied
12 by low-income persons within an underserved community; or

13 (b) residential housing units within an
14 underserved community that otherwise meet the criteria for
15 housing that is affordable to low-income persons as established
16 by the department in rule;

17 (5) propose a series of energy efficiency
18 measures expected to reduce energy use in targeted households
19 and the estimated reduction of energy use from the
20 implementation of the measures;

21 (6) identify a service provider that will
22 implement the energy efficiency measures in targeted households
23 and set forth the experience of the service provider in working
24 with the targeted underserved community;

25 (7) identify one or more community partners

1 that will identify and work with targeted households to
2 implement a community energy efficiency project in an
3 underserved community and set forth the experience of the
4 community partner in working with the targeted underserved
5 community;

6 (8) set forth any commitment by a service
7 provider or community partner to employ apprentices from a
8 registered apprenticeship program that promotes diversity or to
9 provide paid internships to persons from the targeted
10 underserved community; and

11 (9) provide a project budget detailing
12 anticipated expenditures and additional sources of funding that
13 would complement a grant obtained pursuant to the Community
14 Energy Efficiency Development Block Grant Act.

15 C. Notwithstanding the application requirements of
16 Subsection B of this section, the New Mexico mortgage finance
17 authority may submit an application that:

18 (1) describes the community energy efficiency
19 project for which a grant is requested and how the project
20 would support infrastructure improvements for affordable
21 housing that would complement and not duplicate other energy
22 efficiency programs in the state;

23 (2) either meets the requirements of
24 Paragraphs (2) through (4) of Subsection B of this section or
25 sets forth the energy efficiency improvements to residential

1 housing units, regardless of whether the residential housing
2 units are located in an underserved community; provided that
3 the residential housing units meet the eligibility criteria
4 established by the New Mexico mortgage finance authority
5 pursuant to Article 9, Section 14 of the constitution of New
6 Mexico; and provided further that the application describes how
7 energy efficiency improvements to the residential housing units
8 will help to reduce the energy burden of low-income households
9 that may not qualify for other energy efficiency programs in
10 the state;

11 (3) proposes a series of energy efficiency
12 measures expected to reduce energy use in targeted households
13 and the estimated reduction of energy use from the
14 implementation of the measures;

15 (4) identifies a service provider that will
16 implement the energy efficiency measures in targeted households
17 and sets forth the experience of the service provider in
18 working with underserved communities;

19 (5) identifies one or more community partners
20 that will identify and work with targeted households and sets
21 forth the experience of the community partner in working with
22 underserved communities; and

23 (6) provides a project budget detailing
24 anticipated expenditures and additional sources of funding that
25 would complement a grant awarded pursuant to the Community

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1 Energy Efficiency Development Block Grant Act.

2 D. The department may require that applications
3 meet additional criteria consistent with the goal of improving
4 the energy efficiency, livability or public health and safety
5 of affordable housing in underserved communities.

6 SECTION 5. [NEW MATERIAL] REQUIRED GRANT OF AUTHORITY.--

7 A. The Community Energy Efficiency Development
8 Block Grant Act is enacted to allow the state, a county or a
9 municipality to provide or pay the costs of financing
10 infrastructure necessary to support affordable housing projects
11 as provided by Article 9, Section 14 of the constitution of New
12 Mexico.

13 B. Prior to the department's final approval of an
14 application for a grant pursuant to the Community Energy
15 Efficiency Development Block Grant Act, an applicant that is a
16 county or a municipality shall provide the department with a
17 copy of the ordinance enacted by the county or municipality
18 that provides the county's or municipality's formal approval
19 for a specific community energy efficiency development block
20 grant and includes in the ordinance the terms and conditions of
21 the grant approved by the department. The department shall not
22 approve an application for a community energy efficiency
23 project if the county or municipality fails to enact an
24 ordinance that gives formal approval for the terms and
25 conditions approved by the department for the community energy

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1 efficiency development block grant and includes in the
2 ordinance those exact terms and conditions.

3 C. Prior to the department's final approval of an
4 application for a grant pursuant to the Community Energy
5 Efficiency Development Block Grant Act, an applicant that is an
6 Indian nation, tribe or pueblo shall provide the department
7 with a copy of a resolution enacted by the Indian nation, tribe
8 or pueblo that provides the Indian nation's, tribe's or
9 pueblo's formal approval for a specific community energy
10 efficiency development block grant and includes in the
11 ordinance the terms and conditions of the grant approved by the
12 department. The department shall not approve an application
13 for a community energy efficiency project if the Indian nation,
14 tribe or pueblo fails to enact a resolution that gives formal
15 approval for the terms and conditions approved by the
16 department for the community energy efficiency development
17 block grant and includes in the resolution those exact terms
18 and conditions.

19 D. Prior to the department's final approval of an
20 application from the New Mexico mortgage finance authority for
21 a grant pursuant to the Community Energy Efficiency Development
22 Block Grant Act, the New Mexico mortgage finance authority
23 shall provide the department with formal approval of the New
24 Mexico mortgage finance authority to accept a specific
25 community energy efficiency development block grant.

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1 SECTION 6. [NEW MATERIAL] SELECTION OF COMMUNITY ENERGY
2 EFFICIENCY PROJECTS.--

3 A. When reviewing and selecting community energy
4 efficiency projects for grants from the community energy
5 efficiency development block grant fund, the department shall
6 consider:

7 (1) the estimated reduction in energy use from
8 the project;

9 (2) the geographic diversity of the portfolio
10 of community energy efficiency projects to be approved by the
11 department;

12 (3) the experience of each community partner
13 or service provider identified in the application in working
14 with the targeted underserved community;

15 (4) whether the application includes a
16 commitment by a service provider or community partner to employ
17 apprentices from a registered apprenticeship program that
18 promotes diversity or to provide paid internships to persons
19 from the targeted underserved communities;

20 (5) the value of the project as a
21 demonstration project to provide data for the effectiveness of
22 implementing similar projects elsewhere; and

23 (6) the degree to which the project benefits
24 an underserved community, including any non-energy benefits and
25 health benefits provided by the project.

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1 B. Provided that the criteria are published in the
2 project solicitation, the department may further consider in
3 its review and selection of community energy efficiency
4 projects:

5 (1) the degree to which the project will
6 protect public health, including protecting underserved
7 communities from a public health threat such as the coronavirus
8 disease 2019;

9 (2) the degree to which the project will
10 contribute to economic recovery, including from the coronavirus
11 disease 2019 pandemic; or

12 (3) the degree to which the project will
13 reduce economic hardship of individual families due to the
14 coronavirus disease 2019 pandemic.

15 C. In considering an application from the New
16 Mexico mortgage finance authority, the department shall
17 consider whether full or partial funding of the New Mexico
18 mortgage finance authority application would:

19 (1) promote geographic diversity of the
20 portfolio of community energy efficiency projects;

21 (2) reduce the energy burden of low-income
22 persons, within or outside of underserved communities, who
23 would not be likely to otherwise receive energy efficiency
24 improvements through other state programs; or

25 (3) help create a portfolio of community

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1 energy efficiency projects that would best meet the goals of
2 the Community Energy Efficiency Development Block Grant Act.

3 SECTION 7. [NEW MATERIAL] COMMUNITY ENERGY EFFICIENCY
4 DEVELOPMENT BLOCK GRANT FUND CREATED--ADMINISTRATION.--

5 A. The "community energy efficiency development
6 block grant fund" is created as a nonreverting fund in the
7 state treasury. The fund consists of appropriations, gifts,
8 grants and donations to the fund, federal funding for purposes
9 consistent with the fund and income from investment of the
10 fund; provided that federal funding allocated to the state for
11 the federal weatherization assistance program pursuant to 42
12 U.S.C. Section 6863 or the federal low income home energy
13 assistance program pursuant to 42 U.S.C. Sections 8621 through
14 8630 shall not be deposited in the fund without the written
15 approval of the appropriate federal agency and the New Mexico
16 mortgage finance authority. Expenditures from the fund shall
17 be made on warrant of the secretary of finance and
18 administration pursuant to vouchers signed by the secretary of
19 energy, minerals and natural resources or the secretary's
20 authorized representative.

21 B. Money in the fund is subject to appropriation by
22 the legislature to the department to carry out the purposes of
23 the Community Energy Efficiency Development Block Grant Act,
24 including the administrative costs of the department; provided
25 that money in the fund that is derived from the federal

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1 government may be expended by the department without
2 legislative authorization for any purpose that is consistent
3 with the goal of reducing the energy burden of low-income
4 persons or underserved communities as otherwise allowed by law,
5 including carrying out the community energy efficiency
6 development block grant program and the administrative costs of
7 the department.

8 SECTION 8. A new section of Chapter 62, Article 6 NMSA
9 1978 is enacted to read:

10 "[NEW MATERIAL] UTILITY REPORTING ON DISCONNECTIONS,
11 ARREARS AND PEOPLE WITHOUT SERVICE.--

12 A. By December 31, 2023, the commission shall
13 promulgate rules requiring that each utility under the
14 commission's jurisdiction report:

15 (1) on a quarterly basis, the number of
16 customers in each customer class that are disconnected, the
17 reason for disconnection, the number of customers reconnected
18 after disconnection, the number of disconnected and reconnected
19 customers that were eligible for the federal low-income home
20 energy assistance program, the current number of customers
21 eligible for disconnection due to arrears and the average
22 amount of arrears for customers eligible for disconnection;

23 (2) on an annual basis, the number, or best
24 estimate of the number, of prospective residential customers
25 that are not receiving utility service in the utility's service

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1 territory and any information available about why the
2 prospective customers are not receiving service; and

3 (3) any other information the commission
4 determines is necessary and available for understanding and
5 monitoring the provision of uninterrupted electricity and gas
6 service and adequate water service to all New Mexicans and to
7 low-income New Mexicans in particular.

8 B. For the purposes of this section, "low-income"
9 means an annual household adjusted gross income, as defined in
10 Section 62 of the federal Internal Revenue Code of 1986, as
11 that section may be amended or renumbered, of equal to or less
12 than two hundred percent of the federal poverty level."

13 SECTION 9. A new section of Chapter 62, Article 6 NMSA
14 1978 is enacted to read:

15 "[NEW MATERIAL] PUBLIC UTILITY REPORT ON ACHIEVING ENERGY
16 AND WATER EQUITY.--

17 A. By December 31, 2023, the commission shall issue
18 an order requiring each public utility providing electricity
19 service to provide a report that:

20 (1) includes an analysis of the benefits,
21 costs and feasibility of providing all prudent energy
22 efficiency improvements to fifty percent of all low-income New
23 Mexico households by 2030 and to one hundred percent of all
24 low-income New Mexico households by 2050, including an analysis
25 of the benefits to energy affordability, utility load and

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1 greenhouse gas emissions;

2 (2) identifies whether the utility's rates are
3 affordable to low-income customers in its service territory,
4 and if not, identifies what type of low-income discount rate,
5 alone or in combination with other actions such as energy
6 efficiency improvements, the utility would recommend to achieve
7 energy affordability; and

8 (3) identifies whether changes could be made
9 to the utility's policies, to the rules or orders of the
10 commission or in statute to ensure that all homes have access
11 to essential household services, improve energy affordability,
12 reduce energy burden and ensure continuous energy access for
13 low-income New Mexicans.

14 B. By December 31, 2023, the commission shall issue
15 an order requiring each public utility providing water service
16 and each wastewater company under its jurisdiction to provide a
17 report that includes an analysis of the benefits, costs and
18 feasibility of providing adequate water service to fifty
19 percent of all New Mexico households by 2030 and to one hundred
20 percent of all New Mexico households by 2050 that desire that
21 service in their jurisdiction.

22 C. The commission shall request public comment on
23 the reports required by this section and hold a public hearing
24 on the reports to solicit recommendations on action that the
25 commission may take.

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1 D. By December 31, 2024, the commission shall
2 promulgate rules or issue orders in response to recommendations
3 made by utilities and members of the public to make immediate,
4 reasonable and consistent improvements toward ensuring all
5 homes have access to essential household services, toward
6 energy affordability and to reduce energy burden as allowed by
7 law, with a goal of achieving fifty percent energy
8 affordability for low-income New Mexicans by 2030 and one
9 hundred percent by 2050; provided that the commission may
10 tailor policies to apply to a subset of low-income New Mexicans
11 to achieve these goals. In promulgating the rules or issuing
12 the orders, the commission shall consider the degree to which
13 the rules or orders:

14 (1) ensure all homes have access to essential
15 household services;

16 (2) improve energy affordability;

17 (3) reduce utility load;

18 (4) reduce greenhouse gas emissions; and

19 (5) impact ratepayers.

20 E. By December 31, 2024, the commission shall
21 promulgate rules or issue orders in response to recommendations
22 made by water utilities and wastewater companies under its
23 jurisdiction and members of the public to make immediate,
24 reasonable and consistent improvements to the access to water
25 service, including wastewater connections, with a goal of

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1 providing adequate water service to fifty percent of all New
2 Mexico households by 2030 and to one hundred percent of all New
3 Mexico households by 2050 that desire that service.

4 F. For the purposes of this section:

5 (1) "adequate water service" means service to
6 a customer that provides the customer with access to piped or
7 well water twenty-four hours a day, meets state and federal
8 standards for safety and enables complete plumbing at the
9 customer's residence, including a water heater, sink, shower or
10 bathtub, toilet and a code-compliant system for removing
11 wastewater;

12 (2) "energy affordability" means that the
13 combination of electricity and gas bills do not equal more than
14 five percent of the annual income of a customer's household;

15 (3) "essential household services" means
16 internet, electric, natural gas, water, wastewater and other
17 services connected to a domicile, as provided by law, and
18 includes the infrastructure necessary to connect the services
19 to a domicile; and

20 (4) "low-income" means an annual household
21 adjusted gross income, as defined in Section 62 of the federal
22 Internal Revenue Code of 1986, as that section may be amended
23 or renumbered, of equal to or less than two hundred percent of
24 the federal poverty level."

25 SECTION 10. Section 62-8-6 NMSA 1978 (being Laws 1941,

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1 Chapter 84, Section 42, as amended) is amended to read:

2 "62-8-6. DISCRIMINATION.--

3 A. No public utility shall, as to rates or
4 services, make or grant any unreasonable preference or
5 advantage to ~~[any]~~ a corporation or person within any
6 classification or subject ~~[any]~~ a corporation or person within
7 any classification to any unreasonable prejudice or
8 disadvantage. ~~[No]~~ A public utility shall not establish and
9 maintain any unreasonable differences as to rates of service
10 either as between localities or as between classes of service.

11 B. Nothing shall prohibit ~~[however]~~ the commission
12 from approving:

- 13 (1) economic development rates; ~~[and]~~
- 14 (2) rates designed to retain load; or ~~[from~~
15 approving]

16 (3) energy efficiency programs designed to
17 reduce the burden of energy costs on low-income customers
18 pursuant to the Efficient Use of Energy Act.

19 C. Nothing in this section shall prohibit a public
20 utility from making or granting a reasonable preference or
21 advantage to low-income customers with approval of the
22 commission, and the commission may approve a rate, charge,
23 service, classification or facility that includes the
24 reasonable preference or advantage. The implementation of such
25 a commission-approved rate, charge, service, classification or

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1 facility by a public utility shall not be deemed to subject a
2 person or corporation to any unreasonable prejudice or
3 disadvantage or undue discrimination."

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