

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 380

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO ENERGY CONSERVATION; ENACTING THE ENERGY EFFICIENCY  
AND RENEWABLE ENERGY BONDING ACT; PROVIDING PROCEDURES FOR  
INSTALLING ENERGY EFFICIENCY MEASURES IN STATE AND SCHOOL  
DISTRICT BUILDINGS; AUTHORIZING THE ISSUANCE OF ENERGY  
EFFICIENCY BONDS; MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1  
through 10 of this act may be cited as the "Energy Efficiency  
and Renewable Energy Bonding Act".

Section 2. [NEW MATERIAL] 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;

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

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

7 (1) insulation of the building structure or  
8 systems within the building;

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

14 (3) automated or computerized energy control  
15 systems;

16 (4) heating, ventilating or air conditioning  
17 system modifications or replacements;

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

21 (6) energy recovery systems;

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

24 (8) cogeneration or combined heat and power  
25 systems that produce steam, chilled water or forms of energy

1 such as heat, as well as electricity, for use primarily within  
2 a building or complex of buildings;

3 E. "fund" means the energy efficiency and renewable  
4 energy bonding fund;

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

9 G. "school district building" means a building, the  
10 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 3. [NEW MATERIAL] STATE PLAN FOR ENERGY  
14 EFFICIENCY MEASURES. --

15 A. The department shall develop a state plan for  
16 the installation, no later than the end of fiscal year 2010, of  
17 energy efficiency measures in state buildings and school  
18 district buildings. The plan shall include the maximum amount  
19 of on-site renewable energy measures possible while retaining  
20 the overall revenue-neutral status of the plan, such that the  
21 total cost of the plan is covered entirely by the combined  
22 energy cost savings of both the renewable energy and other  
23 energy efficiency measures undertaken. In addition, the plan  
24 shall include a schedule for funding and installing the energy  
25 efficiency measures that gives priority to those projects that

. 150754. 1

underscored material = new  
[bracketed material] = delete

1 will realize significant energy cost savings in the shortest  
2 time frame. The department shall develop the plan:

3 (1) for energy efficiency measures in state  
4 buildings in conjunction with the property control division of  
5 the general services department, the staff architect of the  
6 division, the capitol buildings planning commission and other  
7 state agencies with control and management over buildings; and

8 (2) for energy efficiency measures in  
9 buildings owned by school districts in conjunction with the  
10 public education department, the public school capital outlay  
11 council and the public school facilities authority.

12 B. The plan shall be followed by each state agency  
13 and school district in New Mexico, and those agencies and  
14 districts shall cooperate with the department in the  
15 development and the implementation of the plan.

16 Section 4. [NEW MATERIAL] CONTRACTS FOR THE INSTALLATION  
17 OF ENERGY EFFICIENCY MEASURES. --Pursuant to the Procurement  
18 Code, the department shall install or enter into contracts for  
19 the installation of energy efficiency measures at one or more  
20 of the state buildings and school district buildings identified  
21 in the state plan. The installation or contracts shall address  
22 provisions concerning payment schedules, monitoring,  
23 inspecting, measuring and warranties as are necessary to ensure  
24 that the energy efficiency measures will be installed and the  
25 energy cost savings realized in the manner most beneficial to

. 150754. 1

1 the state; provided that no bonds shall be issued pursuant to  
 2 the Energy Efficiency and Renewable Energy Bonding Act without  
 3 a finding by the department that the energy cost savings  
 4 realized from the energy efficiency measures will be greater  
 5 than the debt service due on the bonds issued to finance the  
 6 energy efficiency measures.

7 Section 5. [NEW MATERIAL] ENERGY EFFICIENCY AND RENEWABLE  
 8 ENERGY BONDING FUND-- PLEDGE OF MONEY IN THE FUND. --

9 A. The "energy efficiency and renewable energy  
 10 bonding fund" is created as a special fund within the  
 11 authority. The fund shall be administered by the authority as  
 12 a special account. The fund shall consist of gross receipts  
 13 tax revenues distributed to the fund by law, money transferred  
 14 to the fund pursuant to the provisions of the Energy Efficiency  
 15 and Renewable Energy Bonding Act and other transfers and  
 16 appropriations made to the fund. Earnings of the fund shall be  
 17 credited to the fund. Balances in the fund at the end of any  
 18 fiscal year shall remain in the fund, except as provided in  
 19 this section.

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

. 150754. 1

1 expenses incurred in the issuance, payment and administration  
2 of the bonds.

3 C. On the last day of January and July of each  
4 year, the authority shall estimate the amount needed to make  
5 debt service payments on the bonds issued pursuant to the  
6 Energy Efficiency and Renewable Energy Bonding Act plus the  
7 amount that may be needed for any required reserves,  
8 administrative expenses or the obligations coming due during  
9 the next twelve months from the fund. The authority shall  
10 transfer to the general fund any balance in the fund above the  
11 estimated amounts. Amounts transferred to the general fund may  
12 be appropriated by the legislature to the department for the  
13 purposes of carrying out the provisions of the Energy  
14 Efficiency and Renewable Energy Bonding Act.

15 D. Upon payment or defeasance of all principal,  
16 interest and other expenses or obligations related to the  
17 bonds, the authority shall certify to the public education  
18 department, the department of finance and administration and  
19 the secretary of taxation and revenue that all obligations for  
20 the bonds issued pursuant to the Energy Efficiency and  
21 Renewable Energy Bonding Act have been discharged and shall  
22 direct that distributions cease to the fund pursuant to that  
23 act and the Tax Administration Act.

24 E. The bonds issued pursuant to the Energy  
25 Efficiency and Renewable Energy Bonding Act shall be payable

. 150754. 1

1 solely from the fund or such other special funds as may be  
 2 provided by law and do not create an obligation or indebtedness  
 3 of the state within the meaning of any constitutional  
 4 provision. No breach of any contractual obligation incurred  
 5 pursuant to that act shall impose a pecuniary liability or a  
 6 charge upon the general credit or taxing power of the state,  
 7 and the bonds are not general obligations for which the state's  
 8 full faith and credit is pledged.

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

18 Section 6. [NEW MATERIAL] CALCULATION OF COST SAVINGS--  
 19 TRANSFERS TO ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING  
 20 FUND. --

21 A. Upon the installation of energy efficiency  
 22 measures in a state building or school district building, the  
 23 department shall calculate the estimated energy cost savings,  
 24 in the form of lower utility payments by the school district or  
 25 the state, that will be annually realized as a result of the

. 150754. 1

1 installation of the energy efficiency measures. The department  
2 shall certify the estimate to the department of finance and  
3 administration and the general services department or other  
4 state agency with jurisdiction, in the case of state buildings,  
5 and to the department of finance and administration, the public  
6 education department and the school district, in the case of  
7 school district buildings.

8 B. In the case of school district buildings, when  
9 calculating the state equalization guarantee distribution for a  
10 district pursuant to Section 22-8-25 NMSA 1978, the public  
11 education department shall deduct ninety percent of the amount  
12 certified for each building in the school district by the  
13 energy, minerals and natural resources department. Prior to  
14 June 30 of each year the total amount deducted for all school  
15 districts shall be transferred to the fund.

16 C. In the case of a state building, the department  
17 of finance and administration shall proportionately deduct  
18 ninety percent of the amount certified from the operating  
19 budget of each agency responsible for paying the utilities.  
20 Prior to June 30 of each year the total amount deducted for all  
21 agencies and all state buildings shall be transferred from the  
22 appropriate funds to the energy efficiency and renewable energy  
23 bonding fund.

24 Section 7. [NEW MATERIAL] ENERGY EFFICIENCY BONDS  
25 AUTHORIZED-- CONDITIONS-- PROCEDURE. --

. 150754. 1

underscored material = new  
[bracketed material] = delete

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), payable solely from the  
5 fund, in compliance with the Energy Efficiency and Renewable  
6 Energy Bonding Act and the New Mexico Finance Authority Act for  
7 the purpose of installing energy efficiency measures when the  
8 department has certified the need for the bonds and the  
9 conditions of Subsection C of this section have been satisfied.

10           B. The net proceeds from the bonds are appropriated  
11 to the department for the purpose of making payments for the  
12 installation of energy efficiency measures pursuant to the  
13 Energy Efficiency and Renewable Energy Bonding Act.

14           C. No bonds shall be issued pursuant to this  
15 section unless:

16                   (1) the department has committed to install or  
17 has entered into one or more contracts pursuant to Section 4 of  
18 the Energy Efficiency and Renewable Energy Bonding Act for the  
19 installation of energy efficiency measures and the resulting  
20 energy cost savings will be realized within a reasonable time;

21                   (2) considering the timeliness and amount of  
22 energy cost savings estimated to be realized from the energy  
23 efficiency measures, the department has certified the  
24 approximate date when the energy cost savings are most likely  
25 to equal or exceed the debt service due on the bonds to be

. 150754. 1

1 issued to fund the energy efficiency measures;

2 (3) the life of energy efficiency measures  
3 meets or exceeds the life of the bonds allocable to those  
4 energy efficiency measures as determined by the department and  
5 the authority; and

6 (4) based on the department's certification,  
7 the debt service on the bonds has been structured by the  
8 authority to minimize the annual debt service payments due  
9 until the date that the cost savings equal or exceed the debt  
10 service.

11 D. Each series of bonds shall be issued pursuant to  
12 the provisions of the New Mexico Finance Authority Act, except  
13 as otherwise provided in the Energy Efficiency and Renewable  
14 Energy Bonding Act.

15 Section 8. [NEW MATERIAL] ENERGY EFFICIENCY AND RENEWABLE  
16 ENERGY BONDING ACT IS FULL AUTHORITY FOR ISSUANCE OF BONDS--  
17 BONDS ARE LEGAL INVESTMENTS. --

18 A. The Energy Efficiency and Renewable Energy  
19 Bonding Act and the New Mexico Finance Authority Act shall,  
20 without reference to any other act of the legislature, be full  
21 authority for the issuance and sale of energy efficiency bonds,  
22 which bonds shall have all the qualities of investment  
23 securities under the Uniform Commercial Code and shall not be  
24 invalid for any irregularity or defect or be contestable in the  
25 hands of bona fide purchasers or holders thereof for value.

1           B. Energy efficiency bonds are legal investments  
2 for any person or board charged with the investment of any  
3 public funds and are acceptable as security for any deposit of  
4 public money.

5           Section 9. ~~[NEW MATERIAL]~~ BONDS TAX EXEMPT.--All energy  
6 efficiency bonds shall be exempt from taxation by the state or  
7 any of its political subdivisions.

8           Section 10. ~~[NEW MATERIAL]~~ ANNUAL REPORT REQUIRED.--

9           A. No later than December 1 of each year, the  
10 department shall report to the legislature and to the governor  
11 on its activities during the previous fiscal year in  
12 administering the provisions of the Energy Efficiency and  
13 Renewable Energy Bonding Act. The report shall include:

14                   (1) details concerning all payments made for  
15 the installation of energy efficiency measures;

16                   (2) details concerning all expenditures made  
17 in administering the provisions of the Energy Efficiency and  
18 Renewable Energy Bonding Act;

19                   (3) a list of all buildings in which energy  
20 efficiency measures were installed;

21                   (4) details showing how the energy cost  
22 savings were calculated;

23                   (5) an analysis of whether the program has  
24 been cost-effective;

25                   (6) a report showing progress made in

underscored material = new  
[bracketed material] = delete

1 complying with the state plan developed pursuant to Section 3  
2 of the Energy Efficiency and Renewable Energy Bonding Act and,  
3 if in noncompliance, a plan for achieving compliance in the  
4 future;

5 (7) a summary of activities being conducted  
6 during the present fiscal year; and

7 (8) any additional information that will  
8 assist the legislature and the governor in evaluating the  
9 program.

10 Section 11. A new section of the Tax Administration Act  
11 is enacted to read:

12 "NEW MATERIAL DISTRIBUTION--ENERGY EFFICIENCY AND  
13 RENEWABLE ENERGY BONDING FUND--GROSS RECEIPTS TAX.--A  
14 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be  
15 made to the energy efficiency and renewable energy bonding fund  
16 in the amount of two hundred thousand dollars (\$200,000) from  
17 the net receipts attributable to the gross receipts tax imposed  
18 by the Gross Receipts and Compensating Tax Act. The  
19 distribution shall be made:

20 A. after the required distribution pursuant to  
21 Section 7-1-6.4 NMSA 1978;

22 B. contemporaneously with other distributions of  
23 net receipts attributable to the gross receipts tax for payment  
24 of debt service on outstanding bonds or to a fund dedicated for  
25 that purpose; and

. 150754. 1

1 C. prior to any other distribution of net receipts  
2 attributable to the gross receipts tax. "

3 Section 12. Section 22-8-25 NMSA 1978 (being Laws 1981,  
4 Chapter 176, Section 5, as amended) is amended to read:

5 "22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--  
6 DEFINITIONS--DETERMINATION OF AMOUNT. --

7 A. The state equalization guarantee distribution is  
8 that amount of money distributed to each school district to  
9 ensure that the school district's operating revenue, including  
10 its local and federal revenues as defined in this section, is  
11 at least equal to the school district's program cost.

12 B. "Local revenue", as used in this section, means  
13 seventy-five percent of receipts to the school district derived  
14 from that amount produced by a school district property tax  
15 applied at the rate of fifty cents (\$.50) to each one thousand  
16 dollars (\$1,000) of net taxable value of property allocated to  
17 the school district and to the assessed value of products  
18 severed and sold in the school district as determined under the  
19 Oil and Gas Ad Valorem Production Tax Act and upon the assessed  
20 value of equipment in the school district as determined under  
21 the Oil and Gas Production Equipment Ad Valorem Tax Act. The  
22 school district shall budget and expend twenty percent of the  
23 total revenue receipts for capital outlay.

24 C. "Federal revenue", as used in this section,  
25 means receipts to the school district, excluding amounts that,

. 150754. 1

1 if taken into account in the computation of the state  
2 equalization guarantee distribution, result, under federal law  
3 or regulations, in a reduction in or elimination of federal  
4 school funding otherwise receivable by the school district,  
5 derived from the following:

6 (1) seventy-five percent of the school  
7 district's share of forest reserve funds distributed in  
8 accordance with Section 22-8-33 NMSA 1978. The school district  
9 shall budget and expend twenty percent of the total forest  
10 reserve receipts for capital outlay; and

11 (2) seventy-five percent of grants from the  
12 federal government as assistance to those areas affected by  
13 federal activity authorized in accordance with Title 20 of the  
14 United States Code, commonly known as "PL 874 funds" or "impact  
15 aid". The school district shall budget and expend twenty  
16 percent of the grant receipts for capital outlay.

17 D. To determine the amount of the state  
18 equalization guarantee distribution, the ~~[state superintendent]~~  
19 secretary of public education shall:

20 (1) calculate the number of program units to  
21 which each school district is entitled using an average of the  
22 MEM on the fortieth, eightieth and one hundred twentieth days  
23 of the prior year; or

24 (2) calculate the number of program units to  
25 which a school district operating under an approved year-round

1 school calendar is entitled using an average of the MEM on  
2 appropriate dates established by the state board; or

3 (3) calculate the number of program units to  
4 which a school district with a MEM of two hundred or less is  
5 entitled by using an average of the MEM on the fortieth,  
6 eightieth and one hundred twentieth days of the prior year or  
7 the fortieth day of the current year, whichever is greater; and

8 (4) using the results of the calculations in  
9 Paragraph (1), (2) or (3) of this subsection and the  
10 instructional staff training and experience index from the  
11 October report of the prior school year, establish a total  
12 program cost of the school district;

13 (5) calculate the local and federal revenues  
14 as defined in this section;

15 (6) deduct the sum of the calculations made in  
16 Paragraph (5) of this subsection from the program cost  
17 established in Paragraph (4) of this subsection; [~~and~~]

18 (7) deduct the total amount of guaranteed  
19 energy savings contract payments that the [~~state~~  
20 ~~superintendent~~] secretary of public education determines will  
21 be made to the school district from the public school utility  
22 conservation fund during the fiscal year for which the state  
23 equalization guarantee distribution is being computed; and

24 (8) deduct ninety percent of the total amount  
25 of cost savings certified by the energy, minerals and natural

. 150754. 1

1 resources department for buildings in the school district  
2 pursuant to the Energy Efficiency and Renewable Energy Bonding  
3 Act.

4 E. The amount of the state equalization guarantee  
5 distribution to which a school district is entitled is the  
6 balance remaining after the deductions made in Paragraphs (6),  
7 [~~and~~] (7) and (8) of Subsection D of this section.

8 F. The state equalization guarantee distribution  
9 shall be distributed prior to June 30 of each fiscal year. The  
10 calculation shall be based on the local and federal revenues  
11 specified in this section received from June 1 of the previous  
12 fiscal year through May 31 of the fiscal year for which the  
13 state equalization guarantee distribution is being computed.  
14 In the event that a school district has received more state  
15 equalization guarantee funds than its entitlement, a refund  
16 shall be made by the school district to the state general  
17 fund. "

18 Section 13. EFFECTIVE DATE. --The effective date of the  
19 provisions of this act is July 1, 2004.