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SENATE BILL 237

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Timothy M. Keller

AN ACT

RELATING TO ENERGY; EXPANDING THE SCOPE OF THE ENERGY
EFFICIENCY AND RENEWABLE ENERGY BONDING ACT TO INCLUDE PUBLIC
POST-SECONDARY EDUCATIONAL INSTITUTIONS.

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

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

"6-21D-2. 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;

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

D. "energy efficiency measure" means a modification

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1 or improvement to a building or complex of buildings that is
2 designed to reduce energy consumption or operating costs or
3 that provides a renewable energy source and may include:

4 (1) insulation of the building structure or
5 systems within the building;

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

11 (3) automated or computerized energy control
12 systems;

13 (4) heating, ventilating or air conditioning
14 system modifications or replacements;

15 (5) replacement or modification of lighting
16 fixtures to increase the energy efficiency of the lighting
17 system;

18 (6) energy recovery systems;

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

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

25 E. "fund" means the energy efficiency and renewable

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1 energy bonding fund;

2 F. "post-secondary educational institution" means a
3 public two- or four-year state institution of higher education;

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

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

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

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

14 "6-21D-3. BUILDING ASSESSMENTS FOR ENERGY EFFICIENCY
15 MEASURES.--

16 A. Upon the request of a state agency, post-
17 secondary educational institution or [~~⌘~~] school district, the
18 department may perform an energy efficiency assessment of a
19 state, post-secondary educational institution or school
20 district building to identify the energy efficiency measures
21 that can be installed and operated at a total price that is
22 less than the energy cost savings realized. In addition, the
23 assessment shall include a schedule for funding and installing
24 the energy efficiency measures that will realize significant
25 energy cost savings in the shortest time frame. The department

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1 shall develop the assessment of:

2 (1) state buildings, in conjunction with the
3 property control division of the general services department,
4 the staff architect of the division, the capitol buildings
5 planning commission and other state agencies with control and
6 management over buildings; [~~and~~]

7 (2) post-secondary educational institution
8 buildings, in conjunction with the higher education department;
9 and

10 [~~(2)~~] (3) school district buildings, in
11 conjunction with the public education department, the public
12 school capital outlay council and the public school facilities
13 authority.

14 B. State agencies, post-secondary educational
15 institutions and school districts shall cooperate with the
16 department in the assessment performed pursuant to Subsection A
17 of this section."

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

20 "6-21D-4. CONTRACTS FOR THE INSTALLATION OF ENERGY
21 EFFICIENCY MEASURES.--Pursuant to an energy efficiency
22 assessment performed under Section 6-21D-3 NMSA 1978 and with
23 the approval of the department, a state agency, post-secondary
24 educational institution or school district may install or enter
25 into contracts for the installation of energy efficiency

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1 measures on the building identified in the assessment. An
2 installation contract shall be entered into pursuant to the
3 Procurement Code, except that the contract may be entered into
4 for a term of up to [~~ten~~] twenty-five years. The installation
5 or contracts shall address provisions concerning payment
6 schedules, monitoring, inspecting, measuring and warranties as
7 are necessary to ensure that the energy efficiency measures
8 will be installed and the energy cost savings realized in the
9 manner most beneficial to the state; provided that bonds shall
10 not be issued pursuant to the Energy Efficiency and Renewable
11 Energy Bonding Act without a finding by the department that the
12 energy cost savings realized from the energy efficiency
13 measures will be greater than the debt service due on the bonds
14 issued to finance the energy efficiency measures."

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

17 "6-21D-5. ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING
18 FUND--PLEDGE OF MONEY IN THE FUND.--

19 A. The "energy efficiency and renewable energy
20 bonding fund" is created as a special fund within the
21 authority. The fund shall be administered by the authority as
22 a special account. The fund shall consist of gross receipts
23 tax revenues distributed to the fund by law, money transferred
24 to the fund pursuant to the provisions of the Energy Efficiency
25 and Renewable Energy Bonding Act and other transfers and

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1 appropriations made to the fund. Earnings of the fund shall be
2 credited to the fund. Any unexpended or unencumbered balance
3 in the energy efficiency and renewable energy bonding fund
4 shall revert to the general fund at the end of a fiscal year.

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

13 C. On the last day of January and July of each
14 year, the authority shall estimate the amount needed to make
15 debt service payments on the bonds issued pursuant to the
16 Energy Efficiency and Renewable Energy Bonding Act plus the
17 amount that may be needed for any required reserves,
18 administrative expenses or the obligations coming due during
19 the next twelve months from the fund. Amounts that revert to
20 the general fund from the energy efficiency and renewable
21 energy bonding fund may be appropriated by the legislature to
22 the department for the purposes of carrying out the provisions
23 of the Energy Efficiency and Renewable Energy Bonding Act.

24 D. Upon payment or defeasance of all principal,
25 interest and other expenses or obligations related to the

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1 bonds, the authority shall certify to the public education
2 department, the higher education department, the department of
3 finance and administration and the secretary of taxation and
4 revenue that all obligations for the bonds issued pursuant to
5 the Energy Efficiency and Renewable Energy Bonding Act have
6 been discharged and shall direct that distributions cease to
7 the fund pursuant to that act and the Tax Administration Act.

8 E. The bonds issued pursuant to the Energy
9 Efficiency and Renewable Energy Bonding Act shall be payable
10 solely from the fund or such other special funds as may be
11 provided by law and do not create an obligation or indebtedness
12 of the state within the meaning of any constitutional
13 provision. A breach of any contractual obligation incurred
14 pursuant to that act shall not impose a pecuniary liability or
15 a charge upon the general credit or taxing power of the state,
16 and the bonds are not general obligations for which the state's
17 full faith and credit is pledged.

18 F. The state does hereby pledge that the fund shall
19 be used only for the purposes specified in this section and
20 pledged first to pay the debt service on the bonds issued
21 pursuant to the Energy Efficiency and Renewable Energy Bonding
22 Act. The state further pledges that any law authorizing the
23 distribution of taxes or other revenues to the fund or
24 authorizing expenditures from the fund shall not be amended or
25 repealed or otherwise modified so as to impair the bonds to

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1 which the fund is dedicated as provided in this section."

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

4 "6-21D-6. CALCULATION OF COST SAVINGS--TRANSFERS TO
5 ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING FUND.--

6 A. Upon the installation of energy efficiency
7 measures in a state building, post-secondary educational
8 institution building or school district building, the
9 department shall calculate the estimated energy cost savings,
10 in the form of lower utility payments by the school district,
11 the post-secondary educational institution or the state, that
12 will be annually realized as a result of the installation of
13 the energy efficiency measures. The department shall certify
14 the estimate to the department of finance and administration
15 and the:

16 (1) general services department or other state
17 agency with jurisdiction, in the case of state buildings;

18 (2) higher education department and the post-
19 secondary educational institution, in the case of post-
20 secondary educational institution buildings; and [~~to the~~
21 ~~department of finance and administration, the~~]

22 (3) public education department and the school
23 district, in the case of school district buildings.

24 B. In the case of a school district building, when
25 calculating the state equalization guarantee distribution

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1 pursuant to Section 22-8-25 NMSA 1978, the public education
2 department shall deduct ninety percent of the amount certified
3 for the school district by the department.

4 C. Reduction of a school district's state
5 equalization guarantee distribution shall cease when the school
6 district's cumulative reductions equal its proportional share
7 of the cumulative debt service payments necessary to service
8 the bonds issued pursuant to the Energy Efficiency and
9 Renewable Energy Bonding Act.

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

13 ~~E.]~~ D. In the case of a state building, the
14 department of finance and administration shall deduct from the
15 operating budget of the agency responsible for paying the
16 utilities of the state building ninety percent of the amount
17 certified for the agency by the department.

18 ~~[F.]~~ E. Deduction from the operating budget of the
19 agency responsible for paying the utilities of the state
20 building shall cease when the agency's cumulative deductions
21 equal its proportional share of the cumulative debt service
22 payments necessary to service the bonds issued pursuant to the
23 Energy Efficiency and Renewable Energy Bonding Act.

24 ~~[G. Prior to June 30 of each year, the total amount~~
25 ~~deducted for all agencies and all state buildings pursuant to~~

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1 ~~Subsection D of this section shall be transferred from the~~
2 ~~appropriate funds to the energy efficiency and renewable energy~~
3 ~~bonding fund.]~~

4 F. In the case of a post-secondary educational
5 institution building, the post-secondary educational
6 institution shall deduct from the operating budget of the
7 department responsible for paying the utilities of the post-
8 secondary educational institution ninety percent of the amount
9 certified for the post-secondary educational institution by the
10 energy, minerals and natural resources department.

11 G. Deduction from the operating budget of the
12 department responsible for paying the utilities of the post-
13 secondary educational institution building shall cease when the
14 cumulative deductions equal the post-secondary educational
15 institution's proportional share of the cumulative debt service
16 payments necessary to service the bonds issued pursuant to the
17 Energy Efficiency and Renewable Energy Bonding Act.

18 H. Prior to June 30 of each year, the total amount
19 deducted for all school district, state agency and all post-
20 secondary educational institution buildings pursuant to
21 Subsections B, D and F of this section shall be transferred
22 from the appropriate funds to the energy efficiency and
23 renewable energy bonding fund."

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

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1 "6-21D-7. ENERGY EFFICIENCY BONDS AUTHORIZED--CONDITIONS--
2 PROCEDURE.--

3 A. The authority is authorized to issue and sell
4 from time to time revenue bonds, known as "energy efficiency
5 bonds", in an amount outstanding at any one time not to exceed
6 twenty million dollars (\$20,000,000), payable solely from the
7 fund, in compliance with the Energy Efficiency and Renewable
8 Energy Bonding Act and the New Mexico Finance Authority Act for
9 the purpose of installing energy efficiency measures when the
10 department has certified the need for the bonds and the
11 conditions of Subsection C of this section have been satisfied.

12 B. The net proceeds from the bonds are appropriated
13 to the authority for the purpose of making distributions to one
14 or more state agencies, post-secondary educational institutions
15 or school districts that, pursuant to an energy efficiency
16 assessment by the department, have committed to install energy
17 efficiency measures or entered into contracts for the
18 installation of the measures. Upon receipt of a distribution,
19 the state agency, post-secondary educational institution or
20 school district shall deposit into the [~~energy efficiency~~
21 ~~assessment revolving~~] fund the cost incurred by the department
22 to make the energy efficiency assessment on the building and
23 shall use the remainder for the installation of energy
24 efficiency measures pursuant to the Energy Efficiency and
25 Renewable Energy Bonding Act, provided that, after the

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1 installation of the energy efficiency measures, any unexpended
2 balance of the bond proceeds shall revert to the [~~energy~~
3 ~~efficiency and renewable energy bonding~~] fund.

4 C. Bonds shall not be issued pursuant to this
5 section unless:

6 (1) a state agency, post-secondary educational
7 institution or school district has committed to install or has
8 entered into one or more contracts pursuant to Section 6-21D-4
9 NMSA 1978 for the installation of energy efficiency measures
10 and the department has certified that the resulting energy cost
11 savings will be realized within a reasonable time;

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

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

22 (4) based on the department's certification,
23 the debt service on the bonds has been structured by the
24 authority to preclude the annual debt service payments due
25 until the date that the cost savings equal or exceed the debt

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1 service.

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 7. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2011.

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