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HOUSE BILL 736

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

RAYMOND G. SANCHEZ

AN ACT

RELATING TO PUBLIC FINANCES; AMENDING THE PUBLIC BUILDING ENERGY EFFICIENCY ACT TO INCLUDE WATER CONSERVATION MEASURES AND TO PROVIDE THAT STATE AGENCIES MAY CARRY OVER UTILITY SAVINGS REALIZED THROUGH GUARANTEED UTILITY SAVINGS CONTRACTS.

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

Section 1. Section 6-23-1 NMSA 1978 (being Laws 1993, Chapter 231, Section 1) is amended to read:

"6-23-1. SHORT TITLE. -- [~~Sections 1 through 10 of this act~~] Chapter 6, Article 23 NMSA 1978 may be cited as the "Public Building Energy Efficiency and Water Conservation Act". "

Section 2. Section 6-23-2 NMSA 1978 (being Laws 1993, Chapter 231, Section 2) is amended to read:

"6-23-2. DEFINITIONS. -- As used in the Public Building Energy Efficiency and Water Conservation Act:

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1 A. "energy conservation measure" means a training
2 program or facility alteration designed to reduce energy
3 consumption or operating costs 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 and
10 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 without increasing the overall illumination of a
18 facility, unless an increase in illumination is necessary to
19 conform to the applicable state or local building code for the
20 lighting system after the proposed modifications are made;

21 (6) energy recovery systems;

22 (7) solar heating and cooling systems or other
23 renewable energy systems;

24 (8) cogeneration systems that produce steam or
25 forms of energy such as heat, as well as electricity, for use

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1 primarily within a building or complex of buildings; or

2 (9) energy conservation measures that provide
3 long-term operating cost reductions;

4 B. "governmental unit" means an agency, institution
5 or instrumentality of the state, a municipality, a county or a
6 school district;

7 C. "guaranteed [~~energy~~] utility savings contract"
8 means a contract for the evaluation and recommendation of energy
9 or water conservation measures, or both, and for the
10 implementation of one or more of those measures, and which
11 contract provides that all payments, except obligations on
12 termination of the contract before its expiration, are to be
13 made over time and the savings are guaranteed to the extent
14 necessary to make the payments for the energy or water
15 conservation measures, or both;

16 D. "qualified provider" means a person or business
17 experienced in the design, implementation and installation of
18 energy or water conservation measures, or both, and who meets
19 the experience qualifications developed by the energy, minerals
20 and natural resources department for energy conservation
21 measures or the state engineer's office for water conservation
22 measures; and

23 E. "water conservation measures" means a training
24 program, change in maintenance practices or facility or
25 landscape alteration designed to reduce water consumption or

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1 operating costs."

2 Section 3. Section 6-23-3 NMSA 1978 (being Laws 1993,
3 Chapter 231, Section 3) is amended to read:

4 "6-23-3. ENERGY EFFICIENCY AND WATER CONSERVATION
5 CONTRACTS AUTHORIZED--ENERGY OR WATER SAVINGS GUARANTEE
6 REQUIRED. --

7 A. A governmental unit may enter into a guaranteed
8 [energy] utility savings contract with a qualified provider to
9 reduce energy, water or operating costs if, after review of the
10 [energy] utility efficiency proposal from the qualified
11 provider, the governmental unit finds that:

12 (1) the amount the governmental unit would
13 spend on the energy or water conservation measures, or both,
14 recommended in the proposal is not likely to exceed the amount
15 to be saved in energy and operational costs over ten years from
16 the date of installation if the recommendations in the proposal
17 were followed; and

18 (2) the qualified provider can provide a
19 written guarantee that the energy, water or operating cost
20 savings will meet or exceed the costs of the system.

21 B. A guaranteed [energy] utility savings contract
22 shall include a written guarantee from the qualified provider
23 that annual savings shall meet or exceed the cost of the energy
24 or water conservation measures, or both.

25 C. A guaranteed [energy] utility savings contract

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1 may extend beyond the fiscal year in which it becomes effective
2 and may provide for payments over a period of time not to exceed
3 ten years; provided, however, such payments shall be made only
4 from special funds authorized for that purpose pursuant to the
5 Public Building Energy Efficiency and Water Conservation Act or
6 other law.

7 D. A governmental unit may enter into an installment
8 payment contract or lease-purchase agreement for the purchase
9 and installation of energy or water conservation measures, or
10 both, pursuant to a guaranteed ~~[energy]~~ utility savings
11 contract, but only in accordance with the provisions of the
12 Public Building Energy Efficiency and Water Conservation Act. "

13 Section 4. Section 6-23-4 NMSA 1978 (being Laws 1993,
14 Chapter 231, Section 4) is amended to read:

15 "6-23-4. GUARANTEED ~~[ENERGY]~~ UTILITY SAVINGS CONTRACT--
16 PERFORMANCE BOND REQUIRED. -- ~~[No]~~ A governmental unit shall not
17 enter into a guaranteed ~~[energy]~~ utility savings contract unless
18 a performance bond that meets the requirements of this section
19 is delivered by the qualified provider to the governmental unit
20 and that bond becomes binding on the parties upon the execution
21 of the guaranteed utility savings contract. The qualified
22 provider shall provide a performance bond satisfactory to the
23 governmental unit and its approving agency executed by a surety
24 company authorized to do business in this state and approved in
25 federal circular 570 published by the United States treasury

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1 department or by the state board of finance. The bond shall be
2 in an amount equal to the amount of the guarantee given by the
3 qualified provider in the guaranteed [energy] utility savings
4 contract. "

5 Section 5. Section 6-23-5 NMSA 1978 (being Laws 1993,
6 Chapter 231, Section 5) is amended to read:

7 "6-23-5. CONTRACT APPROVAL REQUIRED. --

8 A. [No] A governmental unit shall not enter into a
9 guaranteed [energy] utility savings contract with a qualified
10 provider or any installment payment contract or lease-purchase
11 agreement pursuant to that contract unless the contracts and
12 agreements are reviewed and approved as follows:

13 (1) for school districts, by the superintendent
14 of public instruction;

15 (2) for agencies, institutions and
16 instrumentalities of the state, by the secretary of general
17 services; and

18 (3) for municipalities and counties, by the
19 secretary of finance and administration.

20 B. The approval required under this section shall be
21 given upon:

22 (1) a determination that the contracts and
23 agreements comply with the provisions of the Public Building
24 Energy Efficiency and Water Conservation Act and other
25 applicable law; [and]

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1 (2) certification by the energy, minerals and
2 natural resources department that the qualified provider of
3 energy conservation measures meets the experience requirements
4 set by the department and the guaranteed energy savings from the
5 energy conservation measures proposed appear to be accurately
6 estimated and reasonable; and

7 (3) certification by the state engineer's
8 office that the qualified provider of water conservation
9 measures meets the experience requirements set by that office
10 and the guaranteed water savings from the water conservation
11 measures proposed appear to be accurately estimated and
12 reasonable. "

13 Section 6. Section 6-23-6 NMSA 1978 (being Laws 1993,
14 Chapter 231, Section 6) is amended to read:

15 "6-23-6. CONTRACTS AND AGREEMENTS NOT A GENERAL OBLIGATION
16 OF THE GOVERNMENTAL UNIT. --Payment obligations of a governmental
17 unit pursuant to a guaranteed [~~energy~~] utility savings contract
18 with a qualified provider and any installment payment contract
19 or lease-purchase agreement pursuant to a guaranteed [~~energy~~]
20 utility savings contract are not general obligations of the
21 governmental unit and are collectible only from revenues pledged
22 for that purpose in accordance with the Public Building Energy
23 Efficiency and Water Conservation Act. "

24 Section 7. A new Section 6-23-6.1 NMSA 1978 is enacted
25 read:

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1 "6-23-6.1. [NEW MATERIAL] REPORTING AND RETENTION OF
2 UTILITY COST SAVINGS FOR STATE AGENCIES. --

3 A. A state agency entering into a guaranteed utility
4 savings contract with a qualified provider shall, no later than
5 thirty days after the close of the fiscal year, furnish the
6 energy, minerals and natural resources department a consumption
7 and savings report, in a format established jointly by that
8 department and the department of finance and administration,
9 which estimates any cost savings resulting from the
10 implementation of the guaranteed utility savings contract during
11 the fiscal year. The report shall include:

12 (1) the name or description of each facility or
13 major utility system covered by the report;

14 (2) utility account numbers;

15 (3) a record of monthly consumption of water,
16 energy by fuel type, or both; and

17 (4) a record of monthly per-unit cost of water,
18 energy by fuel type, or both.

19 B. If the consumption and savings report for a state
20 agency shows a utility or operating cost savings at the end of
21 the fiscal year that resulted from implementation of a
22 guaranteed utility savings contract and causes an unexpended and
23 unencumbered balance in the agency's utility line item, the
24 department of finance and administration shall carry forward the
25 dollar amount of the energy, water or operating cost savings as

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1 a reserved designated fund balance to the subsequent fiscal
2 year.

3 C. Beginning the year after the utility cost savings
4 measures are implemented, and until any alternative financing
5 for a guaranteed utility savings contract is repaid, or for a
6 period of no more than five years, whichever is less, all
7 utility budgets and appropriations for the state agency shall be
8 based on:

9 (1) the energy or water consumption levels, or
10 both, before the energy or water conservation measures were
11 implemented;

12 (2) the same allowance for escalation or
13 decrease of utility costs given state agencies that did not
14 participate in a guaranteed utility savings contract; and

15 (3) any adjustments for acquisitions,
16 expansions, sale or disposition of state agency facilities.

17 D. At the end of the repayment period for the
18 guaranteed utility savings contract, or five years, whichever is
19 less, new budgets or appropriations for utilities shall again be
20 based upon actual utility consumption.

21 E. Upon carryover of the dollar amount of energy,
22 water or operating cost savings as a reserved designated fund
23 balance to the subsequent fiscal year, state agencies may submit
24 a budget adjustment request to use those funds for the following
25 purposes:

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1 (1) up to one hundred percent of the funds may
2 be used for additional energy or water conservation measures, or
3 both; and

4 (2) after encumbrances for additional energy or
5 water conservation measures, or both, have been made, up to
6 fifty percent of the remaining funds may be used for purposes
7 consistent with the duties and responsibilities assigned to the
8 state agency, while the remaining funds shall revert to the
9 general fund.

10 F. For the purposes of this section, "state agency"
11 means an agency, institution or instrumentality of the state of
12 New Mexico eligible to receive income from lands granted for the
13 use of certain institutions and deposited in income funds
14 pursuant to Section 19-1-17 NMSA 1978. "State agency" does not
15 include a municipality, county or school district. "

16 Section 8. Section 6-23-7 NMSA 1978 (being Laws 1993,
17 Chapter 231, Section 7) is amended to read:

18 "6-23-7. PUBLIC SCHOOL [~~ENERGY EFFICIENCY~~] UTILITY
19 CONSERVATION FUND CREATED--USE. --

20 A. The "public school [~~energy efficiency~~] utility
21 conservation fund" is created as a special fund in the state
22 treasury. The fund shall consist of money transferred to the
23 fund, from year to year, from the income of the permanent fund
24 and land income of which the common schools are the beneficiary.
25 No other money from any school district or state source shall be

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1 deposited or paid into the public school [~~energy efficiency~~]
2 utility conservation fund.

3 B. Annually, after the calculation of the state
4 equalization guarantee [~~distributions~~] distribution has been
5 made, the superintendent of public instruction shall determine
6 the sum of the deductions made in the state equalization
7 guarantee [~~distributions~~] distribution of school districts
8 pursuant to Paragraph (6) of Subsection D of Section 22-8-25
9 NMSA 1978 and shall certify that amount to the secretary of
10 finance and administration. Income from the permanent fund and
11 land income of which the common schools are the beneficiary
12 equal to that amount shall be transferred from the common school
13 current fund to the public school [~~energy efficiency~~] utility
14 conservation fund.

15 C. Money in the public school [~~energy efficiency~~]
16 utility conservation fund is appropriated to the state
17 department of public education solely for the purpose of
18 disbursing money to school districts to make payments pursuant
19 to any guaranteed [~~energy~~] utility savings contract between the
20 school district and a qualified provider or any installment
21 contract or lease-purchase agreement for the purchase and
22 installation of energy or water conservation measures, or both
23 pursuant to that guaranteed [~~energy~~] utility savings contract.

24 D. Disbursements from the public school [~~energy~~
25 ~~efficiency~~] utility conservation fund shall be made only to

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1 school districts and only upon certification by the
2 superintendent of public instruction that the disbursement is
3 for a payment authorized by the Public Building Energy
4 Efficiency and Water Conservation Act.

5 E. The superintendent of public instruction shall
6 submit to the legislative finance committee prior to each
7 regular legislative session a list of school districts proposing
8 to enter into approved guaranteed ~~[energy]~~ utility savings
9 contracts in the succeeding fiscal year. The list shall include
10 information on the amount of the school district's proposed
11 annual payments and specific amounts that utility and
12 operational budget items are guaranteed to be reduced to achieve
13 the savings to make the payments.

14 F. Any unexpended or unencumbered balance remaining
15 in the public school ~~[energy-efficiency]~~ utility conservation
16 fund at the end of any fiscal year shall be transferred to the
17 public school fund."

18 Section 9. Section 6-23-8 NMSA 1978 (being Laws 1993,
19 Chapter 231, Section 8) is amended to read:

20 "6-23-8. MUNICIPALITIES--USE OF CERTAIN REVENUES
21 AUTHORIZED.--Upon adoption of an ordinance by an affirmative
22 vote of a majority of the members of the governing body at any
23 regular or special meeting of the governing body called for this
24 purpose, a municipality may pledge any or all revenues not
25 otherwise pledged or obligated from gross receipts taxes

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1 received by the municipality pursuant to Section 7-1-6.4 NMSA
2 1978 and [~~Subsections A and E of~~] Section 7-1-6.12 NMSA 1978 for
3 payments pursuant to a guaranteed [energy] utility savings
4 contract with a qualified provider and any installment payment
5 contract or lease-purchase agreement pursuant to that guaranteed
6 [energy] utility savings contract. The ordinance shall declare
7 the necessity for the guaranteed [energy] utility savings
8 contract and related contracts or agreements and shall designate
9 the source of the pledged revenues. Any revenues pledged for
10 such contract payments shall be deposited in a special fund, and
11 the municipality shall not use any other revenues to make such
12 payments. At the end of each fiscal year, any money remaining
13 in the special fund after payment obligations are met may be
14 transferred to any other fund of the municipality. "

15 Section 10. Section 6-23-9 NMSA 1978 (being Laws 1993,
16 Chapter 231, Section 9) is amended to read:

17 "6-23-9. COUNTIES--USE OF CERTAIN REVENUES AUTHORIZED. --
18 Upon adoption of an ordinance by an affirmative vote of a
19 majority of the members of the board of county commissioners at
20 any regular or special meeting of the board called for this
21 purpose, a county may pledge any or all of the revenue not
22 otherwise pledged or obligated from the first one-eighth of one
23 percent increment and of one-half of the revenue from the third
24 one-eighth of one percent increment of the county gross receipts
25 tax transferred to the county pursuant to [~~Subsection B of~~]

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1 Section 7-1-6.13 NMSA 1978 and any or all of the revenue from
2 the distribution related to the first one-eighth of one percent
3 increment made pursuant to Section 7-1-6.16 NMSA 1978 for the
4 purpose of making payments pursuant to a guaranteed [energy]
5 utility savings contract with a qualified provider or any
6 installment payment contract or lease-purchase agreement
7 pursuant to that guaranteed [energy] utility savings contract.
8 The ordinance shall declare the necessity for the guaranteed
9 [energy] utility savings contract and related contracts or
10 agreements and shall designate the source of the pledged
11 revenues. Any revenues pledged for such contract payments shall
12 be deposited in a special fund and the county shall not use any
13 other county or state revenue to make such payments. At the end
14 of each fiscal year, any money remaining in the special fund
15 after the payment obligations are met may be transferred to any
16 other fund of the county. "

17 Section 11. Section 6-23-10 NMSA 1978 (being Laws 1993,
18 Chapter 231, Section 10) is amended to read:

19 "6-23-10. STATE INSTITUTIONS AND BUILDINGS--USE OF CERTAIN
20 REVENUES AUTHORIZED.--Income from lands granted for the use of
21 certain institutions and public buildings and deposited in
22 income funds for such institutions and buildings pursuant to
23 Section 19-1-17 NMSA 1978 may be appropriated and pledged for
24 payments pursuant to any guaranteed [energy] utility savings
25 contract or related lease-purchase agreement or installment

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1 payment contract pursuant to the Public Building Energy
2 Efficiency and Water Conservation Act. Any money so
3 appropriated shall be deposited in a special fund or account of
4 the institution or fund and that revenue and no other revenue
5 shall be used to make such payments pursuant to the Public
6 Building Energy Efficiency and Water Conservation Act. "

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State of New Mexico
House of Representatives

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4 FORTY-THIRD LEGISLATURE
5 FIRST SESSION, 1997
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9 February 17, 1997
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11 Mr. Speaker:
12

13 Your ENERGY AND NATURAL RESOURCES COMMITTEE, to
14 whom has been referred
15

16 HOUSE BILL 736
17

18 has had it under consideration and reports same with
19 recommendation that it DO PASS, amended as follows:
20

21 1. On page 5, after line 12, insert the following new
22 subsection:
23

24 "E. A governmental unit may enter into a utility savings
25 contract pursuant to Section 13-1-129 NMSA 1978 in accordance with
the provisions of the Public Building Energy and Water
Conservation Efficiency Act. ",

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1
2 and thence referred to the APPROPRIATIONS AND FINANCE
3 COMMITTEE.

4
5 Respectfully submitted,

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8 _____
9 James Roger Madalena, Chairman

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12 Adopted _____ Not Adopted _____

13 (Chief Clerk)

13 (Chief Clerk)

14
15 Date _____

16
17 The roll call vote was 7 For 0 Against

18 Yes: 7

19 Excused: M P. Garcia, Getty, Picraux, Stewart, Salazar

20 Absent: None

21
22
23 M \ H0736

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 1, 1997

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred

HOUSE BILL 736, as amended

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 1, line 13, after "SAVINGS" insert "AND CONSERVATION-RELATED OPERATING COST SAVINGS".
2. On page 2, line 3, after "or" insert "conservation-related".
3. On page 4, line 1, before "operating" insert "conservation-related".
4. On page 4, line 9, before "operating" insert "conservation-related".

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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5. On page 4, line 15, before "operational" insert
"conservation-related".

6. On page 4, line 19, before "operating" insert
"conservation-related".

7. On page 8, line 20, before "operating" insert
"conservation-related".

8. On page 8, line 25, before "operating" insert
"conservation-related".

9. On page 9, line 3, after "savings" insert "and
conservation-related operating cost savings".

10. On page 9, line 22, before "operating" insert
"conservation-related".

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FIRST SESSION, 1997

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Respectfully submitted,

Max Coll, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Heaton, Knowles, Pearce, Salazar, Taylor, Wallace,
Watchman

Absent: None

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1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997

HB 736/a

3
4 March 10, 1997

5
6 Mr. President:

7
8 Your CONSERVATION COMMITTEE, to whom has been referred

9
10 HOUSE BILL 736, as amended

11 has had it under consideration and reports same with
12 recommendation that it DO PASS, amended as follows:

13
14 1. On page 3, line 5, after "state," insert "including two-
15 and four-year institutions of higher education,".

16
17 2. On page 9, line 6, strike "five" and insert in lieu
18 thereof "ten".

19
20 3. On page 9, line 18, strike "five" and insert in lieu
21 thereof "ten".

22 Respectfully submitted,

23
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25 _____
Michael S. Sanchez, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: None

Excused: Davis, Macias, Payne

Absent: None

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