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HOUSE BILL 425

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Rob Burpo

AN ACT

RELATING TO THE PUBLIC BUILDING ENERGY EFFICIENCY AND WATER
CONSERVATION ACT; PROVIDING THAT OPERATING COST SAVINGS MAY BE
USED TO PAY GUARANTEED UTILITY SAVINGS CONTRACTS; PROVIDING
THAT SPECIAL FUNDS OF INSTITUTIONS MAY BE PLEDGED FOR
PAYMENTS.

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

Section 1. Section 6-23-3 NMSA 1978 (being Laws 1993,
Chapter 231, Section 3, as amended) is amended to read:

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

A. A governmental unit may enter into a guaranteed
utility savings contract with a qualified provider to reduce
energy, water or conservation-related operating costs if,

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1 after review of the utility efficiency proposal from the
2 qualified provider, the governmental unit finds that:

3 (1) the amount the governmental unit would
4 spend on the energy or water conservation measures, or both,
5 recommended in the proposal is not likely to exceed the amount
6 to be saved in energy and conservation-related operational
7 costs over ten years from the date of installation if the
8 recommendations in the proposal were followed; and

9 (2) the qualified provider can provide a
10 written guarantee that the energy, water or conservation-
11 related operating cost savings will meet or exceed the costs
12 of the system.

13 B. A guaranteed utility savings contract shall
14 include a written guarantee from the qualified provider that
15 annual savings shall meet or exceed the cost of the energy or
16 water conservation measures, or both.

17 C. A guaranteed utility savings contract may
18 extend beyond the fiscal year in which it becomes effective
19 and may provide for payments over a period of time not to
20 exceed ten years; provided, however, [~~such payments shall be~~
21 ~~made only from~~] only special funds authorized [~~for that~~
22 ~~purpose~~] pursuant to the Public Building Energy Efficiency and
23 Water Conservation Act or other law shall be pledged for the
24 payments.

25 D. A governmental unit may enter into an

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1 installment payment contract or lease-purchase agreement for
2 the purchase and installation of energy or water conservation
3 measures, or both, pursuant to a guaranteed utility savings
4 contract, but only in accordance with the provisions of the
5 Public Building Energy Efficiency and Water Conservation Act.

6 E. A governmental unit may enter into a utility
7 savings contract pursuant to Section 13-1-129 NMSA 1978 in
8 accordance with the provisions of the Public Building Energy
9 Efficiency and Water Conservation [~~Efficiency~~] Act. "

10 Section 2. Section 6-23-6.1 NMSA 1978 (being Laws 1997,
11 Chapter 42, Section 7) is amended to read:

12 "6-23-6.1. REPORTING AND RETENTION OF UTILITY COST
13 SAVINGS FOR STATE AGENCIES. --

14 A. A state agency entering into a guaranteed
15 utility savings contract with a qualified provider shall, no
16 later than thirty days after the close of the fiscal year,
17 furnish the energy, minerals and natural resources department
18 a consumption and savings report, in a format established
19 jointly by that department and the department of finance and
20 administration, which estimates any cost savings resulting
21 from the implementation of the guaranteed utility savings
22 contract during the fiscal year. The report shall include:

- 23 (1) the name or description of each facility
24 or major utility system covered by the report;
25 (2) utility account numbers;

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

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

5 B. If the consumption and savings report for a
6 state agency shows a utility or conservation-related operating
7 cost savings at the end of the fiscal year that resulted from
8 implementation of a guaranteed utility savings contract and
9 causes an unexpended and unencumbered balance in the agency's
10 utility line item, [~~the department of finance and~~
11 ~~administration shall carry forward~~] the dollar amount of the
12 energy, water or conservation-related operating cost savings
13 shall be carried over as a reserved designated fund balance to
14 the subsequent fiscal year.

15 C. Beginning the year after the utility cost
16 savings and conservation-related operating cost savings
17 measures are implemented, and until any alternative financing
18 for a guaranteed utility savings contract is repaid, or for a
19 period of no more than ten years, whichever is less, all
20 utility budgets and appropriations for the state agency shall
21 be based on:

22 (1) the energy or water consumption levels,
23 or both, before the energy or water conservation measures were
24 implemented;

25 (2) the same allowance for escalation or

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1 decrease of utility costs given state agencies that did not
2 participate in a guaranteed utility savings contract; and

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

5 D. At the end of the repayment period for the
6 guaranteed utility savings contract, or ten years, whichever
7 is less, new budgets or appropriations for utilities shall
8 again be based upon actual utility consumption.

9 E. Upon carryover of the dollar amount of energy,
10 water or conservation-related operating cost savings as a
11 reserved designated fund balance to the subsequent fiscal
12 year, state agencies may submit a budget adjustment request to
13 use those funds. Upon the approval of the budget adjustment
14 request, the funds are appropriated for the following
15 purposes:

16 (1) up to one hundred percent of the funds
17 may be used for additional energy or water conservation
18 measures, or both, or for payment of guaranteed utility
19 savings contracts; and

20 (2) after encumbrances for additional energy
21 or water conservation measures, or both, have been made, up to
22 fifty percent of the remaining funds may be used for purposes
23 consistent with the duties and responsibilities assigned to
24 the state agency, while the remaining funds shall revert to
25 the general fund.

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

Section 3. Section 6-23-10 NMSA 1978 (being Laws 1993, Chapter 231, Section 10, as amended) is amended to read:

"6-23-10. STATE INSTITUTIONS AND BUILDINGS--USE OF CERTAIN REVENUES AUTHORIZED.--Income from lands granted for the use of certain institutions and public buildings and deposited in income funds for such institutions and buildings pursuant to Section 19-1-17 NMSA 1978 and special funds of institutions may be appropriated and pledged for payments pursuant to any guaranteed utility savings contract or related lease-purchase agreement or installment payment contract pursuant to the Public Building Energy Efficiency and Water Conservation Act. Any money so appropriated shall be deposited in a special fund or account of the institution or fund and that revenue and no other revenue shall be used to make such payments pursuant to the Public Building Energy Efficiency and Water Conservation Act. "

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 February 16, 1999

7
8 Mr. Speaker:

9
10 Your AGRICULTURE AND WATER RESOURCES COMMITTEE,
11 to whom has been referred

12
13 HOUSE BILL 425

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 ENERGY AND NATURAL RESOURCES COMMITTEE.

18 Respectfully submitted,

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22 _____
23 Joe M Stell, Chairman
24
25

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HB 425

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4 Adopted _____ Not Adopted _____

6 (Chief Clerk)

(Chief Clerk)

8 Date _____

10 The roll call vote was 5 For 0 Against

11 Yes: 5

12 Excused: Blanton, Townsend, Varela, Wright

13 Absent: None

15 J: \99BillSWP\H0425

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999

3
4 February 26, 1999

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7 Mr. Speaker:

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9 Your ENERGY AND NATURAL RESOURCES COMMITTEE, to
10 whom has been referred

11 HOUSE BILL 425

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

15
16 1. On page 3, between lines 9 and 10, insert the
17 following new section:

18 "Section 2. Section 6-23-5 NMSA 1978 (being Laws 1993,
19 Chapter 231, Section 5, as amended) is amended to read:

20
21 "6-23-5. CONTRACT APPROVAL REQUIRED. --

22
23 A. A governmental unit shall not enter into a
24 guaranteed utility savings contract with a qualified
25 provider or any installment payment contract or lease-
purchase agreement pursuant to that contract unless the

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FIRST SESSION, 1999

3 HENRC/HB 425

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4 contracts and agreements are reviewed and approved as
5 follows:

6
7 (1) for school districts, by the
8 superintendent of public instruction;

9
10 (2) for state agencies [~~institutions and~~
11 ~~instrumentalities of the state~~], by the secretary of general
12 services; [~~and~~]

13 (3) for municipalities and counties, by the
14 secretary of finance and administration; and

15
16 (4) for all post-secondary educational
17 institutions and the state educational institutions
18 confirmed in Article 12, Section 11 of the constitution of
19 New Mexico.

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25 B. The approval required under this section shall

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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be given upon:

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

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

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

2. Renumber the succeeding sections accordingly.

3. On page 5, line 13, strike the period and underscored language and on line 14, strike the underscored

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FIRST SESSION, 1999

3 HENRC/HB 425

Page 12

4 language.

6 4. On page 5, line 21, after "both," insert "or for
7 payment of guaranteed utility savings contracts".

9 5. On page 6, lines 21 and 22, strike "used to make
10 such" and insert in lieu thereof "pledged for".,

11 and thence referred to the APPROPRIATIONS AND FINANCE
12 COMMITTEE.

18 Respectfully submitted,

23 _____
James Roger Madalena, Chairman

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999

3 HENRC/HB 425

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4 Adopted _____ Not Adopted _____
5 (Chief Clerk) (Chief Clerk)

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7 Date _____

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9 The roll call vote was 8 For 0 Against

10 Yes: 8

11 Excused: Picraux, Stewart

12 Absent: None

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15 J: \99BillSWP\H0425

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999
3

4 March 5, 1999
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7 Mr. Speaker:
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9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
10 whom has been referred

11 HOUSE BILL 425, as amended
12

13 has had it under consideration and reports same with
14 recommendation that it DO PASS, amended as follows:
15

16 1. Strike House Energy and Natural Resources Committee
17 Amendment 1.

18 2. On page 3, between lines 9 and 10, insert the
19 following new section:
20

21 "Section 2. Section 6-23-5 NMSA 1978 (being Laws 1993,
22 Chapter 231, Section 5, as amended) is amended to read:
23

24 "6-23-5. CONTRACT APPROVAL REQUIRED. --
25

A. A governmental unit shall not enter into a

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FIRST SESSION, 1999

3HAF/ HB 425a

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4 guaranteed utility savings contract with a qualified provider or
5 any installment payment contract or lease-purchase agreement
6 pursuant to that contract unless the contracts and agreements
7 are reviewed and approved as follows:

8
9 (1) for school districts, by the superintendent
10 of public instruction;

11 (2) for state agencies [~~institutions and~~
12 ~~instrumentalities of the state~~], by the secretary of general
13 services; [~~and~~]

14
15 (3) for municipalities and counties, by the
16 secretary of finance and administration; and

17 (4) for all post-secondary educational
18 institutions and the state educational institutions confirmed in
19 Article 12, Section 11 of the constitution of New Mexico, by the
20 commission on higher education.

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

24 (1) a determination that the contracts and
25 agreements comply with the provisions of the Public Building

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3HARC/HB 425a

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4 Energy Efficiency and Water Conservation Act and other
5 applicable law;

6
7 (2) certification by the energy, minerals and
8 natural resources department that the qualified provider of
9 energy conservation measures meets the experience requirements
10 set by the department and the guaranteed energy savings from the
11 energy conservation measures proposed appear to be accurately
12 estimated and reasonable; and

13 (3) certification by the state engineer's
14 office that the qualified provider of water conservation
15 measures meets the experience requirements set by that office
16 and the guaranteed water savings from the water conservation
17 measures proposed appear to be accurately estimated and
18 reasonable. "".

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HARC/HB 425a

Page 17

4
5 Respectfully submitted,

8 _____
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10 Max Coll, Chairman

12 Adopted _____

Not Adopted _____

14 (Chief Clerk)

(Chief Clerk)

16 Date _____

17 The roll call vote was 14 For 0 Against

18 Yes: 14

19 Excused: Coll, Picraux, Watchman

20 Absent: None

23 128648.1

24 J:\99BillSWP\H0425

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FIRST SESSION, 1999

1 HAF/ HB 425a

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FORTY- FOURTH LEGI SLATURE
FIRST SESSI ON, 1999

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March 11, 1999

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Mr. Presi dent:

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Your CONSERVATION COMMI TTEE, to whom has been referred

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HOUSE BILL 425, as amended

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has had it under consideration and reports same with
recomm~~endation~~ that it DO PASS.

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Respectfully submi tted,

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Fernando R. Maci as, Chai rman

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

1 HAFc/HB 425a

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2 Adopted _____ Not

3 Adopted _____

4 (Chief Clerk)

(Chief Clerk)

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Date _____

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The roll call vote was 8 For 0 Against

11

Yes: 8

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No: 0

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Excused: Eisenstadt, Sanchez

14

Absent: None

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