

AN ACT

RELATING TO THE CONSERVATION OF RESOURCES; RENAMING THE PUBLIC BUILDING ENERGY EFFICIENCY AND WATER CONSERVATION ACT; AMENDING THE ACT TO PROVIDE THAT ENERGY CONSERVATION MEASURES MAY INCLUDE MODIFICATIONS TO TRAFFIC CONTROL SYSTEMS AND VEHICLES AND THAT UTILITY COST SAVINGS AND CONSERVATION-RELATED COST SAVINGS MAY BE PLEDGED AND USED FOR PAYMENTS.

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, as amended) is amended to read:

"6-23-1. SHORT TITLE. -- Chapter 6, Article 23 NMSA 1978 may be cited as the "Public Facility Energy Efficiency and Water Conservation Act". "

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

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

A. "conservation-related cost savings" means cost savings, other than utility cost savings, in the operating budget of a governmental unit that are a direct result of energy or water conservation measures implemented pursuant to a guaranteed utility savings contract;

B. "energy conservation measure" means a training program or a modification to a facility, including buildings,

systems or vehicles that is designed to reduce energy consumption or conservation-related operating costs and may include:

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

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

(3) automated or computerized energy control systems;

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

(5) replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code or nationally accepted standards for the lighting system after the proposed modifications are made;

(6) energy recovery systems;

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

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

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

(10) maintenance and operation management systems that provide long-term operating cost reductions;

(11) traffic control systems; or

(12) alternative fuel options or accessories for vehicles;

C. "governmental unit" means an agency, political subdivision, institution or instrumentality of the state, including two- and four-year institutions of higher education, a municipality, a county or a school district;

D. "guaranteed utility savings contract" means a contract for the evaluation and recommendation of energy or water conservation measures and for the implementation of one or more of those measures, and which contract provides that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make the payments for the conservation measures;

E. "qualified provider" means a person experienced in the design, implementation and installation of

energy or water conservation measures and who meets the experience qualifications developed by the energy, minerals and natural resources department for energy conservation measures or the office of the state engineer for water conservation measures;

F. "utility cost savings" means the amounts saved by a governmental unit in the purchase of energy or water that are a direct result of energy or water conservation measures implemented pursuant to a guaranteed utility savings contract; and

G. "water conservation measures" means a training program, change in maintenance practices or facility or landscape alteration designed to reduce water consumption or conservation-related operating costs. "

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

"6-23-3. GUARANTEED UTILITY SAVINGS 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, after review of the utility efficiency proposal from the qualified provider, the governmental unit finds that:

(1) the amount the governmental unit would

spend on the energy or water conservation measures recommended in the proposal is not likely to exceed the amount of utility cost savings and conservation-related cost savings over ten years from the date of installation if the recommendations in the proposal were followed; and

(2) the qualified provider can provide a written guarantee that the utility cost savings and conservation-related cost savings will meet or exceed the costs of the conservation measures.

B. A guaranteed utility savings contract shall include:

(1) a written guarantee from the qualified provider that annual utility cost savings and conservation-related cost savings shall meet or exceed the cost of the conservation measures; and

(2) a requirement that the qualified provider maintain a direct financial relationship with the governmental unit, irrespective of the source of financing for the energy or water conservation measures to be implemented.

C. A guaranteed utility savings contract may extend beyond the fiscal year in which it becomes effective and may provide for payments over a period of time not to exceed ten years; provided, however, only utility cost savings, conservation-related cost savings and special funds

authorized pursuant to the Public Facility Energy Efficiency and Water Conservation Act or other law shall be pledged for the payments.

D. A governmental unit may enter into an installment payment contract or lease-purchase agreement for the purchase and installation of energy or water conservation measures pursuant to a guaranteed utility savings contract, but only in accordance with the provisions of the Public Facility Energy Efficiency and Water Conservation Act.

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

Section 4. Section 6-23-5 NMSA 1978 (being Laws 1993, Chapter 231, Section 5, as amended) is amended to read:

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

A. A governmental unit shall not enter into a guaranteed utility savings contract with a qualified provider or any installment payment contract or lease-purchase agreement pursuant to that contract unless the contracts and agreements are reviewed and approved as follows:

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

(2) for state agencies:

(a) if the facilities, systems or

vehicles are owned, leased or otherwise controlled by the general services department, by the secretary of general services; and

(b) if the facilities, systems or vehicles are not owned, leased or otherwise controlled by the general services department, by the executive head of the state agency;

(3) for municipalities and counties, by the governing body of the municipality or county; and

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

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

(1) a determination that the contracts and agreements comply with the provisions of the Public Facility 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 office of the state engineer 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. "

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

"6-23-6. CONTRACTS AND AGREEMENTS NOT A GENERAL OBLIGATION OF THE GOVERNMENTAL UNIT. -- Payment obligations of a governmental unit pursuant to a guaranteed utility savings contract with a qualified provider and any installment payment contract or lease-purchase agreement pursuant to a guaranteed utility savings contract are not general obligations of the governmental unit and are collectible only from utility cost savings and conservation-related cost savings appropriated by the legislature and other revenues pledged for that purpose in accordance with the Public Facility Energy Efficiency and Water Conservation Act. "

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

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

A. A state agency entering into a guaranteed utility savings contract with a qualified provider shall, no

later than thirty days after the close of the fiscal year, furnish the energy, minerals and natural resources department a consumption and savings report, in a format established jointly by that department and the department of finance and administration, which estimates any cost savings resulting from the implementation of the guaranteed utility savings contract during the fiscal year. The report shall include:

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

(2) utility account numbers;

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

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

B. If the consumption and savings report for a state agency shows a utility cost savings or conservation-related cost savings at the end of the fiscal year that resulted from implementation of a guaranteed utility savings contract and causes an unexpended and unencumbered balance in the agency's utility line item, and if the utility cost savings or conservation-related cost savings has not been pledged for payments pursuant to the guaranteed utility savings contract, the dollar amount of the utility cost savings or conservation-related cost savings shall be carried over as a reserved designated fund balance to the subsequent

fiscal year.

C. Beginning the year after the energy or water conservation measures are implemented, and until any alternative financing for a guaranteed utility savings contract is repaid, or for a period of no more than ten years, whichever is less, all utility budgets and appropriations for the state agency shall be based on:

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

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

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

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

E. Upon carryover of the dollar amount of utility cost savings or conservation-related cost savings as a reserved designated fund balance to the subsequent fiscal year, state agencies may submit a budget adjustment request to use those funds for the following purposes:

(1) up to one hundred percent of the funds

may be used for additional energy or water conservation measures or for payment of guaranteed utility savings contracts; and

(2) after encumbrances for additional energy or water conservation measures or for payment of guaranteed utility savings contracts have been made, up to fifty percent of the remaining funds may be used for purposes consistent with the duties and responsibilities assigned to the state agency, while the remaining funds shall revert to the appropriate fund.

F. For the purposes of this section, "state agency" means an agency, institution or instrumentality of the state of New Mexico. "State agency" does not include a municipality, county or school district."

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

"6-23-7. PUBLIC SCHOOL UTILITY CONSERVATION FUND
CREATED--USE.--

A. The "public school utility conservation fund" is created as a special fund in the state treasury. The fund shall consist of money transferred to the fund, from year to year, from the distribution of the permanent fund and land income of which the common schools are the beneficiary. No other money from any school district or state source shall be deposited or paid into the public school utility conservation

fund.

B. Annually, after the calculation of the state equalization guarantee distribution has been made, the superintendent of public instruction shall determine the sum of the deductions made in the state equalization guarantee distribution of school districts pursuant to Paragraph (7) of Subsection D of Section 22-8-25 NMSA 1978 and shall certify that amount to the secretary of finance and administration. Distributions from the permanent fund and land income of which the common schools are the beneficiary equal to that amount shall be transferred from the common school current fund to the public school utility conservation fund.

C. Money in the public school utility conservation fund is appropriated to the state department of public education solely for the purpose of disbursing money to school districts to make payments pursuant to any guaranteed utility savings contract between the school district and a qualified provider or any installment contract or lease-purchase agreement for the purchase and installation of energy or water conservation measures pursuant to that guaranteed utility savings contract.

D. Disbursements from the public school utility conservation fund shall be made only to school districts and only upon certification by the superintendent of public instruction that the disbursement is for a payment authorized

by the Public Facility Energy Efficiency and Water Conservation Act.

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

F. Any unexpended or unencumbered balance remaining in the public school utility conservation fund at the end of any fiscal year shall be transferred to the public school fund."

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

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

municipality pursuant to Section 7-1-6.4 NMSA 1978 and Section 7-1-6.12 NMSA 1978 for payments pursuant to a guaranteed utility savings contract with a qualified provider and any installment payment contract or lease-purchase agreement pursuant to that guaranteed utility savings contract. The ordinance or resolution shall declare the necessity for the guaranteed utility savings contract and related contracts or agreements and shall designate the source of the pledged revenues. Any revenues pledged for such contract payments shall be deposited in a special fund, and the municipality shall not use any other revenues to make such payments. At the end of each fiscal year, any money remaining in the special fund after payment obligations are met may be transferred to any other fund of the municipality. "

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

"6-23-9. COUNTIES--USE OF CERTAIN REVENUES

AUTHORIZED.--Upon adoption of an ordinance or resolution by an affirmative vote of a majority of the members of the board of county commissioners at any regular or special meeting of the board called for this purpose, a county may pledge utility cost savings, conservation-related cost savings or any or all of the revenue not otherwise pledged or obligated from the first one-eighth of one percent increment and of

one-half of the revenue from the third one-eighth of one percent increment of the county gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978 and any or all of the revenue from the distribution related to the first one-eighth of one percent increment made pursuant to Section 7-1-6.16 NMSA 1978 for the purpose of making payments pursuant to a guaranteed utility savings contract with a qualified provider or any installment payment contract or lease-purchase agreement pursuant to that guaranteed utility savings contract. The ordinance or resolution shall declare the necessity for the guaranteed utility savings contract and related contracts or agreements and shall designate the source of the pledged revenues. Any revenues pledged for such contract payments shall be deposited in a special fund and the county shall not use any other county or state revenue to make such payments. At the end of each fiscal year, any money remaining in the special fund after the payment obligations are met may be transferred to any other fund of the county."

Section 10. 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. --

A. 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 Facility 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, except as provided in Subsection B of this section, that revenue and no other revenue shall be pledged for payments pursuant to the Public Facility Energy Efficiency and Water Conservation Act.

B. In the absence of an appropriation for payments pursuant to Subsection A of this section, when entering into a guaranteed utility savings contract, an institution may pledge resulting utility cost savings or conservation-related cost savings for payments to be made under the contract, provided that the utility cost savings or conservation-related cost savings are subject to appropriation by the legislature."

Section 11. Section 13-1-150 NMSA 1978 (being Laws 1984, Chapter 65, Section 123, as amended) is amended to read:

"13-1-150. MULTI-TERM CONTRACTS-- SPECIFIED PERIOD. -- A multi-term contract for items of tangible personal property,

construction or services except for professional services, in an amount under twenty-five thousand dollars (\$25,000), may be entered into for any period of time deemed to be in the best interests of the state agency or a local public body not to exceed four years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting. If the amount of the contract is twenty-five thousand dollars (\$25,000) or more, the term shall not exceed eight years, including all extensions and renewals, except that for any such contract entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act, the term shall not exceed ten years, including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. A contract for professional services, except for services required to support or operate federally certified medicaid, financial assistance and child support enforcement management information or payment systems and except for services to design, develop or implement the taxation and revenue information management systems project authorized by Laws 1997, Chapter 125, may not exceed a term of four years, including all extensions and renewals, except that a multi-term contract for the services of trustees,

escrow agents, registrars, paying agents, letter of credit issuers and other forms of credit enhancement and other similar services, excluding bond attorneys, underwriters and financial advisors with regard to the issuance, sale and delivery of public securities, may be for the life of the securities or as long as the securities remain outstanding." ==

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