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HOUSE BILL 405

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Robert M. Burpo

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 Building Energy Efficiency and Water Conservation Act"~~] "Public Facility Energy Efficiency and Water Conservation Act". "

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

3 "6-23-2. DEFINITIONS. --As used in the Public [~~Building~~]
4 Facility Energy Efficiency and Water Conservation Act:

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

10 ~~[A.]~~ B. "energy conservation measure" means a
11 training program or [~~facility alteration~~] a modification to a
12 facility, including buildings, systems or vehicles that
13 is designed to reduce energy consumption or conservation-
14 related operating costs and may include:

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

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

22 (3) automated or computerized energy control
23 systems;

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

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

8 (6) energy recovery systems;

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

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

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

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

19 (11) traffic control systems; or

20 (12) alternative fuel options or accessories
21 for vehicles;

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

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

10 ~~[D.]~~ E. "qualified provider" means a person ~~[or~~
11 ~~business]~~ experienced in the design, implementation and
12 installation of energy or water conservation measures ~~[or both]~~
13 and who meets the experience qualifications developed by the
14 energy, minerals and natural resources department for energy
15 conservation measures or the ~~[state engineer's]~~ office of the
16 state engineer for water conservation measures; ~~[and]~~

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

22 ~~[E.]~~ G. "water conservation measures" means a
23 training program, change in maintenance practices or facility
24 or landscape alteration designed to reduce water consumption or
25 conservation-related operating costs. "

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

3 "6-23-3. [~~ENERGY EFFICIENCY AND WATER CONSERVATION~~]
4 GUARANTEED UTILITY SAVINGS CONTRACTS AUTHORIZED-- ENERGY OR
5 WATER SAVINGS GUARANTEE REQUIRED. --

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

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

18 (2) the qualified provider can provide a
19 written guarantee that the [~~energy, water or~~] utility cost
20 savings and conservation-related [~~operating~~] cost savings will
21 meet or exceed the costs of the [~~system~~] conservation measures.

22 B. A guaranteed utility savings contract shall
23 include:

24 (1) a written guarantee from the qualified
25 provider that annual utility cost savings and conservation-

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1 related cost savings shall meet or exceed the cost of the
2 [~~energy or water~~] conservation measures [~~or both~~]; and

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

7 C. A guaranteed utility savings contract may extend
8 beyond the fiscal year in which it becomes effective and may
9 provide for payments over a period of time not to exceed ten
10 years; provided, however, only utility cost savings,
11 conservation-related cost savings and special funds authorized
12 pursuant to the Public [~~Building~~] Facility Energy Efficiency
13 and Water Conservation Act or other law shall be pledged for
14 the payments.

15 D. A governmental unit may enter into an
16 installment payment contract or lease-purchase agreement for
17 the purchase and installation of energy or water conservation
18 measures [~~or both~~] pursuant to a guaranteed utility savings
19 contract, but only in accordance with the provisions of the
20 Public [~~Building~~] Facility Energy Efficiency and Water
21 Conservation Act.

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

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

3 "6-23-5. CONTRACT APPROVAL REQUIRED. --

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

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

11 (2) for state agencies: [~~by the secretary of~~
12 ~~general services~~]

13 (a) if the facilities, systems or
14 vehicles are owned, leased or otherwise controlled by the
15 general services department, by the secretary of general
16 services; and

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

21 (3) for municipalities and counties, by the
22 [~~secretary of finance and administration~~] governing body of the
23 municipality or county; and

24 (4) for all post-secondary educational
25 institutions and the state educational institutions confirmed

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1 in Article 12, Section 11 of the constitution of New Mexico, by
2 the commission on higher education.

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

5 (1) a determination that the contracts and
6 agreements comply with the provisions of the Public [~~Building~~
7 Facility Energy Efficiency and Water Conservation Act and other
8 applicable law;

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

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

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

23 "6-23-6. CONTRACTS AND AGREEMENTS NOT A GENERAL
24 OBLIGATION OF THE GOVERNMENTAL UNIT.-- Payment obligations of a
25 governmental unit pursuant to a guaranteed utility savings

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1 contract with a qualified provider and any installment payment
2 contract or lease-purchase agreement pursuant to a guaranteed
3 utility savings contract are not general obligations of the
4 governmental unit and are collectible only from utility cost
5 savings and conservation-related cost savings appropriated by
6 the legislature and other revenues pledged for that purpose in
7 accordance with the Public [~~Building~~] Facility Energy
8 Efficiency and Water Conservation Act. "

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

11 "6-23-6.1. REPORTING AND RETENTION OF UTILITY COST
12 SAVINGS FOR STATE AGENCIES. --

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

- 22 (1) the name or description of each facility
23 or major utility system covered by the report;
- 24 (2) utility account numbers;
- 25 (3) a record of monthly consumption of water

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1 or energy by fuel type [~~or both~~]; and

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

4 B. If the consumption and savings report for a
5 state agency shows a utility cost savings or conservation-
6 related [~~operating~~] cost savings at the end of the fiscal year
7 that resulted from implementation of a guaranteed utility
8 savings contract and causes an unexpended and unencumbered
9 balance in the agency's utility line item, and if the utility
10 cost savings or conservation-related cost savings has not been
11 pledged for payments pursuant to the guaranteed utility savings
12 contract, the dollar amount of the [~~energy, water~~] utility cost
13 savings or conservation-related [~~operating~~] cost savings shall
14 be carried over as a reserved designated fund balance to the
15 subsequent fiscal year.

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

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

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(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 [~~energy, water~~] utility cost savings or conservation-related [~~operating~~] 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 both~~] or for payment of guaranteed utility savings contracts; and

(2) after encumbrances for additional energy or water conservation measures [~~or both~~] 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

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1 ~~[general]~~ appropriate fund.

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

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

10 "6-23-7. PUBLIC SCHOOL UTILITY CONSERVATION FUND
11 CREATED--USE.--

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

20 B. Annually, after the calculation of the state
21 equalization guarantee distribution has been made, the
22 superintendent of public instruction shall determine the sum of
23 the deductions made in the state equalization guarantee
24 distribution of school districts pursuant to Paragraph ~~[(6)]~~
25 (7) of Subsection D of Section 22-8-25 NMSA 1978 and shall

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1 certify that amount to the secretary of finance and
2 administration. [~~Income~~] Distributions from the permanent fund
3 and land income of which the common schools are the beneficiary
4 equal to that amount shall be transferred from the common
5 school current fund to the public school utility conservation
6 fund.

7 C. Money in the public school utility conservation
8 fund is appropriated to the state department of public
9 education solely for the purpose of disbursing money to school
10 districts to make payments pursuant to any guaranteed utility
11 savings contract between the school district and a qualified
12 provider or any installment contract or lease-purchase
13 agreement for the purchase and installation of energy or water
14 conservation measures [~~or both~~] pursuant to that guaranteed
15 utility savings contract.

16 D. Disbursements from the public school utility
17 conservation fund shall be made only to school districts and
18 only upon certification by the superintendent of public
19 instruction that the disbursement is for a payment authorized
20 by the Public [~~Building~~] Facility Energy Efficiency and Water
21 Conservation Act.

22 E. The superintendent of public instruction shall
23 submit to the legislative finance committee prior to each
24 regular legislative session a list of school districts
25 proposing to enter into approved guaranteed utility savings

1 contracts in the succeeding fiscal year. The list shall
2 include information on the amount of the school district's
3 proposed annual payments and specific amounts that utility and
4 operational budget items are guaranteed to be reduced to
5 achieve the savings to make the payments.

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

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

12 "6-23-8. MUNICIPALITIES--USE OF CERTAIN REVENUES
13 AUTHORIZED.--Upon adoption of an ordinance or resolution by an
14 affirmative vote of a majority of the members of the governing
15 body at any regular or special meeting of the governing body
16 called for this purpose, a municipality may pledge utility cost
17 savings, conservation-related cost savings or any or all
18 revenues not otherwise pledged or obligated from gross receipts
19 taxes received by the municipality pursuant to Section 7-1-6.4
20 NMSA 1978 and Section 7-1-6.12 NMSA 1978 for payments pursuant
21 to a guaranteed utility savings contract with a qualified
22 provider and any installment payment contract or lease-purchase
23 agreement pursuant to that guaranteed utility savings contract.
24 The ordinance or resolution shall declare the necessity for the
25 guaranteed utility savings contract and related contracts or

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1 agreements and shall designate the source of the pledged
2 revenues. Any revenues pledged for such contract payments
3 shall be deposited in a special fund, and the municipality
4 shall not use any other revenues to make such payments. At the
5 end of each fiscal year, any money remaining in the special
6 fund after payment obligations are met may be transferred to
7 any other fund of the municipality. "

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

10 "6-23-9. COUNTIES--USE OF CERTAIN REVENUES AUTHORIZED. --
11 Upon adoption of an ordinance or resolution by an affirmative
12 vote of a majority of the members of the board of county
13 commissioners at any regular or special meeting of the board
14 called for this purpose, a county may pledge utility cost
15 savings, conservation-related cost savings or any or all of the
16 revenue not otherwise pledged or obligated from the first one-
17 eighth of one percent increment and of one-half of the revenue
18 from the third one-eighth of one percent increment of the
19 county gross receipts tax transferred to the county pursuant to
20 Section 7-1-6.13 NMSA 1978 and any or all of the revenue from
21 the distribution related to the first one-eighth of one percent
22 increment made pursuant to Section 7-1-6.16 NMSA 1978 for the
23 purpose of making payments pursuant to a guaranteed utility
24 savings contract with a qualified provider or any installment
25 payment contract or lease-purchase agreement pursuant to that

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1 guaranteed utility savings contract. The ordinance or
2 resolution shall declare the necessity for the guaranteed
3 utility savings contract and related contracts or agreements
4 and shall designate the source of the pledged revenues. Any
5 revenues pledged for such contract payments shall be deposited
6 in a special fund and the county shall not use any other county
7 or state revenue to make such payments. At the end of each
8 fiscal year, any money remaining in the special fund after the
9 payment obligations are met may be transferred to any other
10 fund of the county."

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

13 "6-23-10. STATE INSTITUTIONS AND BUILDINGS--USE OF
14 CERTAIN REVENUES AUTHORIZED. --

15 A. Income from lands granted for the use of certain
16 institutions and public buildings and deposited in income funds
17 for such institutions and buildings pursuant to Section 19-1-17
18 NMSA 1978 and special funds of institutions may be appropriated
19 and pledged for payments pursuant to any guaranteed utility
20 savings contract or related lease-purchase agreement or
21 installment payment contract pursuant to the Public [~~Building~~
22 Facility Energy Efficiency and Water Conservation Act. Any
23 money so appropriated shall be deposited in a special fund or
24 account of the institution or fund and, except as provided in
25 Subsection B of this section, that revenue and no other revenue

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1 shall be pledged for payments pursuant to the Public [~~Building~~
2 Facility Energy Efficiency and Water Conservation Act.

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

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

12 "13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD.--A
13 multi-term contract for items of tangible personal property,
14 construction or services except for professional services, in
15 an amount under twenty-five thousand dollars (\$25,000), may be
16 entered into for any period of time deemed to be in the best
17 interests of the state agency or a local public body not to
18 exceed four years; provided that the term of the contract and
19 conditions of renewal or extension, if any, are included in the
20 specifications and funds are available for the first fiscal
21 period at the time of contracting. If the amount of the
22 contract is twenty-five thousand dollars (\$25,000) or more, the
23 term shall not exceed eight years, including all extensions and
24 renewals, except that for any such contract entered into
25 pursuant to the Public [~~Building~~ Facility Energy Efficiency

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1 and Water Conservation Act, the term shall not exceed ten
2 years, including all extensions and renewals. Payment and
3 performance obligations for succeeding fiscal periods shall be
4 subject to the availability and appropriation of funds
5 therefor. A contract for professional services, except for
6 services required to support or operate federally certified
7 medicaid, financial assistance and child support enforcement
8 management information or payment systems and except for
9 services to design, develop or implement the taxation and
10 revenue information management systems project authorized by
11 Laws 1997, Chapter 125, may not exceed a term of four years,
12 including all extensions and renewals, except that a multi-term
13 contract for the services of trustees, escrow agents,
14 registrars, paying agents, letter of credit issuers and other
15 forms of credit enhancement and other similar services,
16 excluding bond attorneys, underwriters and financial advisors
17 with regard to the issuance, sale and delivery of public
18 securities, may be for the life of the securities or as long as
19 the securities remain outstanding. "

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