

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

AN ACT

RELATING TO LOCAL GOVERNMENT; ENACTING THE RENEWABLE ENERGY FINANCING DISTRICT ACT; AUTHORIZING MUNICIPALITIES AND COUNTIES TO CREATE RENEWABLE ENERGY FINANCING DISTRICTS; AUTHORIZING THE IMPOSITION OF SPECIAL ASSESSMENTS ON REAL PROPERTY; AUTHORIZING ISSUANCE OF SPECIAL ASSESSMENT BONDS.

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

Section 1. SHORT TITLE.--This act may be cited as the "Renewable Energy Financing District Act".

Section 2. LEGISLATIVE FINDINGS.--The legislature finds that:

A. the development of renewable energy sources will advance the security, economic well-being and public and environmental health of the state, as well as contributing to the energy independence of the nation and addressing the issue of global climate change;

B. it is in the best interests of the state, municipalities and counties to encourage the development of distributed generation renewable energy sources and the installation by property owners of such energy sources;

C. the high front-end costs of renewable energy installations to real property prevents many property owners from making these improvements, and therefore it is desirable

and necessary to authorize alternative financing procedures to SB 647  
Page 1

1 promote the installation of the improvements; and

2 D. the creation and administration of renewable  
3 energy financing districts to facilitate the development of  
4 renewable energy improvements on property in the district  
5 will serve a valid public purpose and is expressly declared  
6 to be in the public interest.

7 Section 3. DEFINITIONS.--As used in the Renewable  
8 Energy Financing District Act:

9 A. "county" means any county, including an H class  
10 county;

11 B. "debt service" means the principal of, interest  
12 on and premium, if any, on the bonds, when due, whether at  
13 maturity or prior redemption and fees and costs of agents  
14 necessary to handle the bonds and the costs of credit  
15 enhancement or liquidity support;

16 C. "district" means a renewable energy financing  
17 district formed pursuant to the Renewable Energy Financing  
18 District Act by a municipality or by a county in an  
19 unincorporated area or in an incorporated area with the  
20 municipality's consent;

21 D. "district board" means the board of directors  
22 of the district, which shall be composed of the members of  
23 the governing body of the municipality or county in which the  
24 district is located, or at the option of the governing body,  
25 five directors appointed by the governing body, as provided

1 in Section 9 of the Renewable Energy Financing District Act.  
2 The board shall serve until replaced by elected directors,  
3 which shall occur not later than six years after the date on  
4 which the resolution establishing the district is enacted;

5 E. "election" means an election held in compliance  
6 with the provisions of the Renewable Energy Financing  
7 District Act;

8 F. "governing body" means the body or board that  
9 by law is constituted as the governing body of the  
10 municipality or county in which the district is located;

11 G. "municipality" means an incorporated city,  
12 village or town;

13 H. "owner" means the person who is listed as the  
14 owner of real property in the district on the current  
15 property tax assessment roll;

16 I. "renewable energy improvement" means a  
17 photovoltaic, solar thermal, geothermal or wind energy system  
18 permanently installed on real property; and

19 J. "special assessment" means a levy imposed  
20 against real property within a district.

21 Section 4. RENEWABLE ENERGY FINANCING DISTRICTS

22 AUTHORIZED.--

23 A. A governing body of a municipality or county  
24 may form a district for the purpose of encouraging,  
25 accommodating and financing renewable energy improvements on

1 property within the municipality or county. A district shall  
2 include only property for which an owner executes an  
3 agreement consenting to the inclusion of the property within  
4 the district and to the imposition of a special assessment on  
5 the property for the purpose of financing renewable energy  
6 improvements.

7 B. A district formed by a municipality shall be  
8 wholly within the boundaries of the municipality. A district  
9 formed by a county shall be wholly within the boundaries of  
10 the county and shall be in the unincorporated area of the  
11 county, or may include an incorporated area with the  
12 municipality's consent. A district may include contiguous  
13 and noncontiguous property.

14 C. Except as otherwise provided in this section, a  
15 district shall be a political subdivision of the state,  
16 separate and apart from the municipality or county.

17 Section 5. RESOLUTION DECLARING INTENTION TO FORM  
18 DISTRICT.--

19 A. A governing body may adopt a resolution  
20 declaring its intention to form a district. The resolution  
21 shall state the following:

22 (1) the purposes for which the district is  
23 to be formed;

24 (2) that the district shall include only  
25 property for which the owner has agreed to the inclusion of

1 the property within the district, and that inclusion of  
2 property may occur subsequent to the adoption of the  
3 resolution forming the district;

4 (3) the process by which a property owner  
5 can execute an agreement to include property in the district;

6 (4) a description of the specific types of  
7 renewable energy improvements that will be eligible for the  
8 financing provided pursuant to the Renewable Energy Financing  
9 District Act;

10 (5) that inclusion of property in the  
11 district will result in the imposition of special assessments  
12 on the property to pay the costs of the approved renewable  
13 energy improvements, financing and administrative fees;

14 (6) the method of calculating the amount of  
15 the special assessment and the manner of collection of the  
16 special assessment;

17 (7) that standards and requirements will be  
18 set by the district board for renewable energy improvements  
19 to be installed on property in the district;

20 (8) a reference to the Renewable Energy  
21 Financing District Act; and

22 (9) that the district will be governed by a  
23 district board composed of the members of the governing body  
24 or by five directors to be appointed by the governing body.

25 B. The resolution shall direct that a hearing on

1 formation of the district be scheduled and notice be  
2 published as required for public hearings of the governing  
3 body.

4 Section 6. HEARING--FORMATION OF A DISTRICT.--

5 A. At the hearing on formation of a district, the  
6 governing body shall accept and pass on written and oral  
7 testimony and evidence presented in support of or in  
8 opposition to the formation of the district. After hearing  
9 the written and oral testimony, the governing body shall  
10 determine whether the district should be formed based on the  
11 interests, convenience or necessity of the owners of property  
12 in the proposed district and the citizens of the municipality  
13 or county in which the proposed district would be located.

14 B. If the governing body determines that the  
15 district should be formed, it shall adopt an ordinance  
16 ordering that the district be formed and identifying the  
17 method by which property owners can execute agreements to  
18 have their property included in the district. The ordinance  
19 shall state that the district will be governed by a district  
20 board consisting of members of the governing body, or upon  
21 determination of the governing body, five directors appointed  
22 by the governing body. The ordinance shall state that one or  
23 more resolutions shall be adopted by the district board to  
24 identify the property to be included in the district and the  
25 special assessment to be imposed on that property.

1           C. The governing body shall cause a copy of the  
2 ordinance ordering formation of the district to be delivered  
3 to the county assessor and county treasurer of the county in  
4 which the district is located, the taxation and revenue  
5 department and the local government division of the  
6 department of finance and administration.

7           D. Subsequent to the formation of the district,  
8 property may be included in the district by execution of an  
9 agreement by the owner of the property and the district  
10 board, agreeing to the inclusion of the property and the  
11 imposition of a special assessment on the property, and the  
12 district board shall adopt a resolution to this effect. The  
13 district shall deliver a copy of the resolution to the county  
14 assessor and county treasurer of the county in which the  
15 district is located. A copy of the resolution and a  
16 description of the property included in the district shall be  
17 recorded with the county clerk of the county in which the  
18 district is located.

19           Section 7. SPECIAL ASSESSMENT--LIEN CREATED.--

20           A. The district board may impose a special  
21 assessment on property within the district to facilitate the  
22 financing of renewable energy improvements to the property.  
23 The special assessment shall be sufficient in the case of  
24 each property to pay the costs of the financing of the  
25 renewable energy improvements, including the costs of bond

1 issuance, debt service and administrative costs of the  
2 district and the municipality or county in which the district  
3 is located.

4 B. The special assessment shall be levied and  
5 collected at the same time and in the same manner as property  
6 taxes are levied and collected, except to the extent that the  
7 district board has provided for other imposition and  
8 collection procedures. Money derived from the imposition of  
9 the special assessment shall be kept separately from other  
10 funds of the governing body.

11 C. A special assessment shall constitute a lien on  
12 the property, which shall be effective during the period in  
13 which the assessment is imposed and shall have priority over  
14 all other liens except liens for ad valorem property taxes.

15 D. The obligation to pay the special assessment  
16 may be prepaid and permanently satisfied, and the district  
17 board shall specify the conditions under which this may be  
18 achieved.

19 Section 8. SPECIAL ASSESSMENT BONDS.--

20 A. A district may issue one or more series of  
21 bonds to provide money for renewable energy improvements to  
22 property in the district, and the bonds may be payable from  
23 the special assessments levied pursuant to one or more  
24 assessment resolutions.

25 B. For any bonds issued pursuant to the Renewable



1 Energy Financing District Act, the district board shall  
2 prescribe the denominations of the bonds, the principal  
3 amount of each issue and the form of the bonds and shall  
4 establish the maturities, which shall not exceed twenty  
5 years, interest payment dates and interest rates, whether  
6 fixed or variable, not exceeding the maximum rate stated in  
7 the resolution of the district board. The bonds may be sold  
8 by competitive bid or negotiated sale for public or private  
9 offering at, below or above par. The proceeds of the bonds  
10 shall be deposited with the treasurer, or with a trustee or  
11 agent designated by the district board, to the credit of the  
12 district to be withdrawn for the purposes provided by the  
13 Renewable Energy Financing District Act. Pending that use,  
14 the proceeds may be invested as determined by the district.  
15 The bonds shall be made payable as to both principal and  
16 interest solely from revenues of the district, and shall  
17 specify the revenues pledged for such purposes, and shall  
18 contain such other terms, conditions, covenants and  
19 agreements as the district board deems proper.

20 C. No holder of special assessment bonds issued  
21 pursuant to the Renewable Energy Financing District Act may  
22 compel any exercise of the taxing power of the district,  
23 municipality or county to pay the bonds or the interest on  
24 the bonds. Special assessment bonds issued pursuant to that  
25 act are not a debt or general obligation of the county or the

1 municipality in which the district is located, nor is the  
2 payment of special assessment bonds enforceable out of any  
3 money other than the revenue pledged to the payment of the  
4 bonds.

5 D. Pursuant to this section, the district may  
6 issue and sell refunding bonds to refund any special  
7 assessment bonds of the district authorized by the Renewable  
8 Energy Financing District Act. Refunding bonds issued  
9 pursuant to this section shall have a final maturity date no  
10 later than the final maturity date of the bonds being  
11 refunded.

12 Section 9. APPOINTMENT OF DIRECTORS--QUALIFICATIONS--  
13 TERMS--RESUMPTION OF GOVERNANCE BY GOVERNING BODY.--

14 A. The governing body, at its option, may  
15 authorize the appointment of a separate district board. In  
16 the case of an appointed district board, the directors shall  
17 serve an initial term of six years. If a vacancy occurs on  
18 the district board because of death, resignation or inability  
19 of a director to discharge the duties of director, the  
20 governing body shall appoint a director to fill the vacancy,  
21 who shall hold office for the remainder of the unexpired term  
22 until the appointed director's successor is appointed or  
23 elected.

24 B. At the end of the appointed director's initial  
25 term, the governing body shall resume governance of the

1 district as its board, or, at its option, shall hold an  
2 election of directors by majority vote of the property owners  
3 in the district, pursuant to Section 10 of the Renewable  
4 Energy Financing District Act.

5 Section 10. NOTICE AND CONDUCT OF ELECTION FOR DISTRICT  
6 BOARD.--

7 A. An election pursuant to the Renewable Energy  
8 Financing District Act for the purpose of election of  
9 directors of a district board shall be called by mailing  
10 notices to the owners of property included in the district  
11 not less than twenty days before the election. The property  
12 tax assessment rolls shall be used to determine the owners of  
13 property included in the district. Notice shall also be  
14 published one time in a newspaper of general circulation in  
15 the municipality or county. The notice shall state the  
16 purpose of the election, the date of the election, the place  
17 of holding the election, the hours during the day in which  
18 the polls will be open and provisions for voting by mail.

19 B. Within thirty days after an election, the  
20 district board shall meet and canvass the returns,  
21 determining the number of votes properly cast. A majority of  
22 the votes cast at the election shall be required for election  
23 of a member to the district board.

24 Section 11. POWERS AND DUTIES OF A DISTRICT.--

25 A. The district board shall:

1 (1) establish guidelines and standards for  
2 renewable energy improvements to be made to property included  
3 in the district;

4 (2) establish guidelines and procedures for  
5 a property owner to enter into an agreement with the district  
6 board to include property in the district;

7 (3) establish guidelines for the  
8 documentation required from a property owner prior to  
9 property being included in the district of the owner's  
10 contracts or agreements for purchase and installation of  
11 renewable energy improvements;

12 (4) establish the amount of and impose  
13 special assessments for the financing of the renewable energy  
14 improvements, including the costs of bond issuance, debt  
15 service and administrative costs of the district and the  
16 municipality or county in which the district is located; and

17 (5) enter into contracts, agreements and  
18 trust indentures to obtain credit enhancement or liquidity  
19 support for its bonds and process the issuance, registration,  
20 transfer and payment of its bonds and the disbursement and  
21 investment of proceeds of the bonds.

22 B. The district board may enter into contracts to  
23 carry out the purposes of the district on such terms and with  
24 such persons as the board determines to be appropriate.

25 Section 12. CHANGE IN DISTRICT.--

1           A. At any time after adoption of a resolution  
2 creating a district, property may be added to the district at  
3 the request of the owner of the property, upon adoption of a  
4 resolution of the district board.

5           B. Property may be deleted from the district only  
6 upon request of the property owner and adoption of a  
7 resolution of intention to do so by the district board.

8 Property within the district that is subject to the lien of  
9 special assessments or other charges imposed pursuant to the  
10 Renewable Energy Financing District Act shall not be deleted  
11 from the district while there are bonds outstanding that are  
12 payable by such special assessments or charges.

13           Section 13. DISSOLUTION OF DISTRICT.--The district may  
14 be dissolved by the district board by a resolution of the  
15 district board upon a determination that the district has no  
16 outstanding bond obligations. The district shall not be  
17 dissolved if any bonds of the district remain outstanding  
18 unless an amount of money sufficient, together with investment  
19 income thereon, to make all payments due on the bonds either  
20 at maturity or prior redemption has been deposited with a  
21 trustee or escrow agent and pledged to the payment and  
22 redemption of the bonds. The district may continue to operate  
23 after dissolution only as needed to collect money and make  
24 payments on any outstanding bonds.

---

---