

HOUSE BILL 37

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO UTILITIES; ENACTING THE COMMUNITY ENERGY EFFICIENCY DEVELOPMENT BLOCK GRANT ACT; CREATING A GRANT PROGRAM TO IMPLEMENT ENERGY EFFICIENCY MEASURES IN LOW-INCOME HOUSEHOLDS; AUTHORIZING THE NEW MEXICO MORTGAGE FINANCE AUTHORITY TO APPLY FOR COMMUNITY ENERGY EFFICIENCY DEVELOPMENT BLOCK GRANTS;
HENRC → ~~MANDATING UTILITY REPORTING OF CUSTOMER DISCONNECTIONS, ARREARS AND HOUSEHOLDS WITHOUT SERVICE; REQUIRING UTILITIES TO SUBMIT REPORTS ON ENERGY AFFORDABILITY AND ACCESS TO ELECTRIC, WATER AND WASTEWATER SERVICE; AUTHORIZING UTILITY RATE~~

.221431.1AIC February 1, 2022 (5:31pm)

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~~PREFERENCES FOR LOW-INCOME CUSTOMERS;~~ ←HENRC DIRECTING

RULEMAKING; CREATING A FUND.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.-- HENRC→Sections
~~1 through 7 of this~~←HENRC HENRC→This←HENRC act may be cited as
the "Community Energy Efficiency Development Block Grant Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Community Energy Efficiency Development Block Grant Act:

A. "affordable housing" means residential housing
primarily for low-income persons, including housing currently
occupied by low-income persons or housing that is affordable to
low-income persons based on assessed value, rent or estimated
mortgage;

B. "community energy efficiency project" means a
project that provides improvements to residential buildings in
an underserved community that will in the aggregate reduce
energy consumption, energy-related operating costs or the
carbon intensity of energy consumption;

C. "community partner" means an organization that
provides services or outreach to an underserved community to
implement a community energy efficiency project;

D. "department" means the energy, minerals and
natural resources department;

E. "division" means the energy conservation and
management division of the department;

F. "energy efficiency" means measures that target

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efficient energy consumer behavior, equipment or devices and result in a decrease in energy consumption without reducing the amount or quality of energy services, and includes health and safety measures that use efficient equipment or devices to improve indoor air or drinking water quality;

G. "low-income person" means an individual, couple or family whose annual household adjusted gross income, as defined in Section 62 of the federal Internal Revenue Code of 1986, as that section may be amended or renumbered, does not exceed two hundred percent of the federal poverty level;

H. "registered apprenticeship program that promotes diversity" means an apprenticeship program registered pursuant to the Apprenticeship Assistance Act that encourages diversity among participants, participation by those underrepresented in the industry associated with the apprenticeship program and participation from disadvantaged communities as determined by the workforce solutions department;

I. "residential housing" means:

(1) a building, structure or portion thereof that is primarily occupied or designed for or intended primarily for occupancy as a residence by one or more households, including congregate housing, manufactured homes and other facilities; or

(2) real property that is offered for sale or lease for the construction or location on that real property of

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a building, structure or portion thereof that is intended primarily for occupancy as a residence by one or more households; and

J. "underserved community" means an area in the state, including a county, municipality or neighborhood, or subset of an area, where:

(1) the median adjusted gross income, as defined in Section 62 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, does not exceed two hundred percent of the federal poverty level; or

(2) there is a high energy burden or limited access to energy efficiency services as determined by department rule.

SECTION 3. [NEW MATERIAL] COMMUNITY ENERGY EFFICIENCY DEVELOPMENT BLOCK GRANT--PROGRAM CREATED--RULEMAKING--REPORT TO LEGISLATURE.--

A. The "community energy efficiency development program" is created and shall be administered by the division.

B. If state or federal funds have been deposited into the community energy efficiency block grant fund, the department shall:

(1) adopt rules to:

(a) administer the community energy efficiency development program;

(b) restrict eligibility for certain

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funds, if required by the entity that provided the funding to the program;

(c) govern the acceptance, evaluation and prioritization of applications submitted by qualified entities for grants made pursuant to the Community Energy Efficiency Development Block Grant Act;

(d) determine whether the status of a person or household is low-income; and

(e) assess whether the value, rent or estimated mortgage of residential housing is affordable to low-income persons;

(2) solicit, review and prioritize community energy efficiency project applications;

(3) make grants for community energy efficiency projects from the community energy efficiency development block grant fund; and

(4) approve and enter into contracts with grantees to implement selected community energy efficiency projects; provided that the contracts shall include project performance measures, penalties or other provisions that ensure the successful completion of the projects in accordance with Article 9, Section 14 of the constitution of New Mexico and shall require reporting on project performance, energy savings and non-energy benefits resulting from the energy efficiency measures.

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C. The department shall not be required to carry out the responsibilities in Subsection B of this section in any year that there are insufficient funds available for making grants in the community energy efficiency block grant fund.

D. In a year in which state or federal funds have been deposited into the community energy efficiency block grant fund or in which a community energy efficiency project is in operation, the department and the New Mexico mortgage finance authority shall coordinate the work done in the state to implement energy efficiency measures.

E. By November 1 of each year in which a community energy efficiency project is in operation, the department shall provide to the interim legislative committee that addresses the status of the development of energy efficiency measures and programs a report on the status of participation in the community energy efficiency development program by people in underserved communities, the types of projects funded by grants made through the program and any recommended changes with respect to the program.

SECTION 4. [NEW MATERIAL] COMMUNITY ENERGY EFFICIENCY PROJECT REQUIREMENTS.--

A. A county, municipality, Indian nation, tribe or pueblo or the New Mexico mortgage finance authority may submit an application to the department for a grant for a community energy efficiency project.

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B. An application shall:

(1) describe the community energy efficiency project for which a grant is requested and how the project would support infrastructure improvements for affordable housing;

(2) describe how the community energy efficiency project would benefit an underserved community in which it is located;

(3) identify the targeted underserved community;

(4) set forth the energy efficiency improvements to residential units located within an underserved community that meet the following eligibility criteria pursuant to Article 9, Section 14 of the constitution of New Mexico:

(a) residential housing units occupied by low-income persons within an underserved community; or

(b) residential housing units within an underserved community that otherwise meet the criteria for housing that is affordable to low-income persons as established by the department in rule;

(5) propose a series of energy efficiency measures expected to reduce energy use in targeted households and the estimated reduction of energy use from the implementation of the measures;

(6) identify a service provider that will

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implement the energy efficiency measures in targeted households and set forth the experience of the service provider in working with the targeted underserved community;

(7) identify one or more community partners that will identify and work with targeted households to implement a community energy efficiency project in an underserved community and set forth the experience of the community partner in working with the targeted underserved community;

(8) set forth any commitment by a service provider or community partner to employ apprentices from a registered apprenticeship program that promotes diversity or to provide paid internships to persons from the targeted underserved community; and

(9) provide a project budget detailing anticipated expenditures and additional sources of funding that would complement a grant obtained pursuant to the Community Energy Efficiency Development Block Grant Act.

C. Notwithstanding the application requirements of Subsection B of this section, the New Mexico mortgage finance authority may submit an application that:

(1) describes the community energy efficiency project for which a grant is requested and how the project would support infrastructure improvements for affordable housing that would complement and not duplicate other energy

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efficiency programs in the state;

(2) either meets the requirements of Paragraphs (2) through (4) of Subsection B of this section or sets forth the energy efficiency improvements to residential housing units, regardless of whether the residential housing units are located in an underserved community; provided that the residential housing units meet the eligibility criteria established by the New Mexico mortgage finance authority pursuant to Article 9, Section 14 of the constitution of New Mexico; and provided further that the application describes how energy efficiency improvements to the residential housing units will help to reduce the energy burden of low-income households that may not qualify for other energy efficiency programs in the state;

(3) proposes a series of energy efficiency measures expected to reduce energy use in targeted households and the estimated reduction of energy use from the implementation of the measures;

(4) identifies a service provider that will implement the energy efficiency measures in targeted households and sets forth the experience of the service provider in working with underserved communities;

(5) identifies one or more community partners that will identify and work with targeted households and sets forth the experience of the community partner in working with

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underserved communities; and

(6) provides a project budget detailing anticipated expenditures and additional sources of funding that would complement a grant awarded pursuant to the Community Energy Efficiency Development Block Grant Act.

D. The department may require that applications meet additional criteria consistent with the goal of improving the energy efficiency, livability or public health and safety of affordable housing in underserved communities.

SECTION 5. [NEW MATERIAL] REQUIRED GRANT OF AUTHORITY.--

A. The Community Energy Efficiency Development Block Grant Act is enacted to allow the state, a county or a municipality to provide or pay the costs of financing infrastructure necessary to support affordable housing projects as provided by Article 9, Section 14 of the constitution of New Mexico.

B. Prior to the department's final approval of an application for a grant pursuant to the Community Energy Efficiency Development Block Grant Act, an applicant that is a county or a municipality shall provide the department with a copy of the ordinance enacted by the county or municipality that provides the county's or municipality's formal approval for a specific community energy efficiency development block grant and includes in the ordinance the terms and conditions of the grant approved by the department. The department shall not

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approve an application for a community energy efficiency project if the county or municipality fails to enact an ordinance that gives formal approval for the terms and conditions approved by the department for the community energy efficiency development block grant and includes in the ordinance those exact terms and conditions.

C. Prior to the department's final approval of an application for a grant pursuant to the Community Energy Efficiency Development Block Grant Act, an applicant that is an Indian nation, tribe or pueblo shall provide the department with a copy of a resolution enacted by the Indian nation, tribe or pueblo that provides the Indian nation's, tribe's or pueblo's formal approval for a specific community energy efficiency development block grant and includes in the ordinance the terms and conditions of the grant approved by the department. The department shall not approve an application for a community energy efficiency project if the Indian nation, tribe or pueblo fails to enact a resolution that gives formal approval for the terms and conditions approved by the department for the community energy efficiency development block grant and includes in the resolution those exact terms and conditions.

D. Prior to the department's final approval of an application from the New Mexico mortgage finance authority for a grant pursuant to the Community Energy Efficiency Development

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Block Grant Act, the New Mexico mortgage finance authority shall provide the department with formal approval of the New Mexico mortgage finance authority to accept a specific community energy efficiency development block grant.

SECTION 6. [NEW MATERIAL] SELECTION OF COMMUNITY ENERGY EFFICIENCY PROJECTS.--

A. When reviewing and selecting community energy efficiency projects for grants from the community energy efficiency development block grant fund, the department shall consider:

(1) the estimated reduction in energy use from the project;

(2) the geographic diversity of the portfolio of community energy efficiency projects to be approved by the department;

(3) the experience of each community partner or service provider identified in the application in working with the targeted underserved community;

(4) whether the application includes a commitment by a service provider or community partner to employ apprentices from a registered apprenticeship program that promotes diversity or to provide paid internships to persons from the targeted underserved communities;

(5) the value of the project as a demonstration project to provide data for the effectiveness of

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implementing similar projects elsewhere; and

(6) the degree to which the project benefits an underserved community, including any non-energy benefits and health benefits provided by the project.

B. Provided that the criteria are published in the project solicitation, the department may further consider in its review and selection of community energy efficiency projects:

(1) the degree to which the project will protect public health, including protecting underserved communities from a public health threat such as the coronavirus disease 2019;

(2) the degree to which the project will contribute to economic recovery, including from the coronavirus disease 2019 pandemic; or

(3) the degree to which the project will reduce economic hardship of individual families due to the coronavirus disease 2019 pandemic.

C. In considering an application from the New Mexico mortgage finance authority, the department shall consider whether full or partial funding of the New Mexico mortgage finance authority application would:

(1) promote geographic diversity of the portfolio of community energy efficiency projects;

(2) reduce the energy burden of low-income

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persons, within or outside of underserved communities, who would not be likely to otherwise receive energy efficiency improvements through other state programs; or

(3) help create a portfolio of community energy efficiency projects that would best meet the goals of the Community Energy Efficiency Development Block Grant Act.

SECTION 7. [NEW MATERIAL] COMMUNITY ENERGY EFFICIENCY DEVELOPMENT BLOCK GRANT FUND CREATED--ADMINISTRATION.--

A. The "community energy efficiency development block grant fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants and donations to the fund, federal funding for purposes consistent with the fund and income from investment of the fund; provided that federal funding allocated to the state for the federal weatherization assistance program pursuant to 42 U.S.C. Section 6863 or the federal low income home energy assistance program pursuant to 42 U.S.C. Sections 8621 through 8630 shall not be deposited in the fund without the written approval of the appropriate federal agency and the New Mexico mortgage finance authority. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources or the secretary's authorized representative.

B. Money in the fund is subject to appropriation by

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the legislature to the department to carry out the purposes of the Community Energy Efficiency Development Block Grant Act, including the administrative costs of the department; provided that money in the fund that is derived from the federal government may be expended by the department without legislative authorization for any purpose that is consistent with the goal of reducing the energy burden of low-income persons or underserved communities as otherwise allowed by law, including carrying out the community energy efficiency development block grant program and the administrative costs of the department.

HENRC → ~~SECTION 8. A new section of Chapter 62, Article 6 NMSA 1978 is enacted to read:~~

~~"[NEW MATERIAL] UTILITY REPORTING ON DISCONNECTIONS, ARREARS AND PEOPLE WITHOUT SERVICE.--~~

~~A. By December 31, 2023, the commission shall promulgate rules requiring that each utility under the commission's jurisdiction report:~~

~~(1) on a quarterly basis, the number of customers in each customer class that are disconnected, the reason for disconnection, the number of customers reconnected after disconnection, the number of disconnected and reconnected customers that were eligible for the federal low-income home energy assistance program, the current number of customers eligible for disconnection due to arrears and the average~~

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~~amount of arrears for customers eligible for disconnection;
(2) on an annual basis, the number, or best estimate of the number, of prospective residential customers that are not receiving utility service in the utility's service territory and any information available about why the prospective customers are not receiving service; and~~

~~(3) any other information the commission determines is necessary and available for understanding and monitoring the provision of uninterrupted electricity and gas service and adequate water service to all New Mexicans and to low-income New Mexicans in particular.~~

~~B. For the purposes of this section, "low-income" means an annual household adjusted gross income, as defined in Section 62 of the federal Internal Revenue Code of 1986, as that section may be amended or renumbered, of equal to or less than two hundred percent of the federal poverty level."~~

~~SECTION 9. A new section of Chapter 62, Article 6 NMSA 1978 is enacted to read:~~

~~"[NEW MATERIAL] PUBLIC UTILITY REPORT ON ACHIEVING ENERGY AND WATER EQUITY.--~~

~~A. By December 31, 2023, the commission shall issue an order requiring each public utility providing electricity service to provide a report that:~~

~~(1) includes an analysis of the benefits,~~

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~~costs and feasibility of providing all prudent energy efficiency improvements to fifty percent of all low-income New Mexico households by 2030 and to one hundred percent of all low-income New Mexico households by 2050, including an analysis of the benefits to energy affordability, utility load and greenhouse gas emissions;~~

~~(2) identifies whether the utility's rates are affordable to low-income customers in its service territory, and if not, identifies what type of low-income discount rate, alone or in combination with other actions such as energy efficiency improvements, the utility would recommend to achieve energy affordability; and~~

~~(3) identifies whether changes could be made to the utility's policies, to the rules or orders of the commission or in statute to ensure that all homes have access to essential household services, improve energy affordability, reduce energy burden and ensure continuous energy access for low-income New Mexicans.~~

~~B. By December 31, 2023, the commission shall issue an order requiring each public utility providing water service and each wastewater company under its jurisdiction to provide a report that includes an analysis of the benefits, costs and feasibility of providing adequate water service to fifty percent of all New Mexico households by 2030 and to one hundred~~

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~~percent of all New Mexico households by 2050 that desire that service in their jurisdiction.~~

~~G. The commission shall request public comment on the reports required by this section and hold a public hearing on the reports to solicit recommendations on action that the commission may take.~~

~~D. By December 31, 2024, the commission shall promulgate rules or issue orders in response to recommendations made by utilities and members of the public to make immediate, reasonable and consistent improvements toward ensuring all homes have access to essential household services, toward energy affordability and to reduce energy burden as allowed by law, with a goal of achieving fifty percent energy affordability for low-income New Mexicans by 2030 and one hundred percent by 2050; provided that the commission may tailor policies to apply to a subset of low-income New Mexicans to achieve these goals. In promulgating the rules or issuing the orders, the commission shall consider the degree to which the rules or orders:~~

~~(1) ensure all homes have access to essential household services;~~

~~(2) improve energy affordability;~~

~~(3) reduce utility load;~~

~~(4) reduce greenhouse gas emissions; and~~

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~~(5) impact ratepayers.~~

~~E. By December 31, 2024, the commission shall promulgate rules or issue orders in response to recommendations made by water utilities and wastewater companies under its jurisdiction and members of the public to make immediate, reasonable and consistent improvements to the access to water service, including wastewater connections, with a goal of providing adequate water service to fifty percent of all New Mexico households by 2030 and to one hundred percent of all New Mexico households by 2050 that desire that service.~~

~~F. For the purposes of this section:~~

~~(1) "adequate water service" means service to a customer that provides the customer with access to piped or well water twenty-four hours a day, meets state and federal standards for safety and enables complete plumbing at the customer's residence, including a water heater, sink, shower or bathtub, toilet and a code-compliant system for removing wastewater;~~

~~(2) "energy affordability" means that the combination of electricity and gas bills do not equal more than five percent of the annual income of a customer's household;~~

~~(3) "essential household services" means internet, electric, natural gas, water, wastewater and other services connected to a domicile, as provided by law, and~~

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~~includes the infrastructure necessary to connect the services to a domicile; and~~

~~(4) "low-income" means an annual household adjusted gross income, as defined in Section 62 of the federal Internal Revenue Code of 1986, as that section may be amended or renumbered, of equal to or less than two hundred percent of the federal poverty level."~~

~~SECTION 10. Section 62-8-6 NMSA 1978 (being Laws 1941, Chapter 84, Section 42, as amended) is amended to read:~~

~~"62-8-6. DISCRIMINATION.--~~

~~A. No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to [any] a corporation or person within any classification or subject [any] a corporation or person within any classification to any unreasonable prejudice or disadvantage. [No] A public utility shall not establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.~~

~~B. Nothing shall prohibit [however] the commission from approving:~~

~~(1) economic development rates; [and]~~

~~(2) rates designed to retain load; or [from approving]~~

~~(3) energy efficiency programs designed to~~

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~~reduce the burden of energy costs on low-income customers pursuant to the Efficient Use of Energy Act.~~

~~G. Nothing in this section shall prohibit a public utility from making or granting a reasonable preference or advantage to low-income customers with approval of the commission, and the commission may approve a rate, charge, service, classification or facility that includes the reasonable preference or advantage. The implementation of such a commission-approved rate, charge, service, classification or facility by a public utility shall not be deemed to subject a person or corporation to any unreasonable prejudice or disadvantage or undue discrimination."~~←HENRC