

HOUSE BILL ____

53rd Legislature – STATE OF NEW MEXICO – Regular Session, 2016

INTRODUCED BY REP. ____

AN ACT

RELATING TO ENERGY CONSERVATION; AMENDING THE ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING ACT.

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

SECTION 1. Section 6-21D-2 NMSA 1978 (being Laws 2005, Chapter 176, Section 2, as amended) is amended to read:

As used in the Energy Efficiency and Renewable Energy Bonding Act:

- A. “authority” means the New Mexico finance authority;
- B. “bonds” means energy efficiency bonds;
- ~~_____C.~~ C. “building” means a building, the title to which is held by an eligible entity;
- D. “college” means a two-year, public post-secondary educational institution organized pursuant to the provisions of the Branch Community College Act, Chapter 21, Article 13, Community College Act, Chapter 21, Article 14 NMSA 1978 or the Technical and Vocational Institute Act, Chapter 21, Article 16 NMSA 1978;
- E. “department” means the energy, minerals and natural resources department;
- ~~_____D.~~ F. “eligible entity” means a college, a school district, a state educational institution, or a state agency;

G. “energy efficiency measure” means a modification or improvement to a building or complex of buildings that is designed to reduce energy consumption or operating costs or that provides a renewable energy source 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;
- (6) energy recovery systems;
- (7) on-site photovoltaics, solar heating and cooling systems or other renewable energy systems; or
- (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;

H. “fund” means the energy efficiency and renewable energy bonding fund;

I. ~~_____F~~ “oversight entity” means the public education department in the case of a school district, the department of finance and administration in the case of a state

agency, or the higher education department in the case of a college or state educational institution;

I. “school district” means a political subdivision of the state established for the administration of public schools, segregated geographically for taxation and bonding purposes and governed by the Public School Code [Chapter 22 NMSA 1978, except Article 5A]; and

~~G. “school district building.”~~ J. “state educational institution” means a building, the title to which is held by a school district; and

~~— H. “state building” means a building, the title to which is held by the state or an agency~~ educational institution designated in Article 12, Section 11 of the state constitution of New Mexico.

SECTION 2. Section 6-21D-3 NMSA 1978 (being Laws 2005, Chapter 176, Section 3, as amended) is amended to read:

A. An eligible entity or, upon the request of ~~a state agency or a school district~~ an eligible entity, the department may perform an energy efficiency assessment of a ~~state or school district~~ building to identify the energy efficiency measures that can be installed and operated at a total price that is less than the energy cost savings realized. In addition, the assessment shall include a schedule for funding and installing the energy efficiency measures that will realize significant energy cost savings in the shortest time frame. ~~The department shall develop the assessment of:~~ The department shall review the assessment and provide a certification of the results of the assessment and the amount of energy cost savings to be realized from the energy efficiency measures over the life of the energy efficiency measures to the applicable oversight entity and to the eligible entity. For state

agency buildings, the department shall also certify the results to the facilities management division of the general services department. For school district buildings, the department shall also certify the results to the public school facilities authority.

~~————— (1) — state buildings, in conjunction with the facilities management division of the general services department, the staff architect of the division, the capitol buildings planning commission and other state agencies with control and management over buildings; and~~

~~————— (2) — school district buildings, in conjunction with the public education department, the public school capital outlay council and the public school facilities authority.~~

B. ~~State agencies and school districts~~Eligible entities shall cooperate with the department in the review and certification of the assessment performed pursuant to Subsection A of this section.

SECTION 3. Section 6-21D-4 NMSA 1978 (being Laws 2005, Chapter 176, Section 4, as amended) is amended to read:

Pursuant to an energy efficiency assessment performed under Section 6-21D-3 NMSA 1978 and ~~with the approval of the department, a state agency or school district~~if the department certifies the results of the assessment, an eligible entity may install or enter into contracts for the installation of energy efficiency measures on the building identified in the assessment. An installation contract shall be entered into pursuant to the Procurement Code [13-1-28 through 13-1-199 NMSA 1978]~~, except that the contract may be entered into for a term of up to ten years.].~~ The installation or contracts shall address provisions concerning payment schedules, monitoring, inspecting, measuring and

warranties as are necessary to ensure that the energy efficiency measures will be installed and the energy cost savings realized in the manner most beneficial to the ~~state; provided that bonds shall not be issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act without a finding by the department that the energy cost savings realized from the energy efficiency measures will be greater than the debt service due on the bonds issued to finance the energy efficiency measures~~eligible entity.

SECTION 4. Section 6-21D-5 NMSA 1978 (being Laws 2005, Chapter 176, Section 5, as amended) is amended to read:

A. The ~~“energy efficiency and renewable energy bonding fund” is created as a special fund within the gross receipts tax proceeds distributed to the~~ authority. ~~The fund pursuant to section 7-1-6.53 NMSA 1978 shall be administered by deposited each month in a separate fund or account of the authority as a special account.~~ The fund or account shall consist of gross receipts tax revenues distributed to the fund or account by law, money transferred to the fund or account pursuant to the provisions of the Energy Efficiency and Renewable Energy Bonding Act and other transfers and appropriations made to the fund or account. Earnings of the fund or account shall be credited to the fund or account. Any unexpended or unencumbered balance in the ~~energy efficiency and renewable energy bonding~~ fund or account shall revert to the general fund at the end of a fiscal year.

B. Money in the fund or account shall be pledged irrevocably by the authority for the payment of principal and interest on all bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act. Money in the fund or account is appropriated to the authority for the purpose of paying debt service, including redemption

premiums, on the bonds and the expenses incurred in the issuance, payment and administration of the bonds.

C. On the ~~last day of January and July of each year~~date that the bonds are issued, the authority shall ~~estimate~~provide a certification to the secretary of taxation and revenue of the amount needed to make debt service payments on the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act plus the amount that may be needed for any required reserves, administrative expenses or ~~other~~ obligations ~~coming due during~~until final maturity or defeasance of the bonds. The taxation and revenue department shall use the ~~next twelve months from the fund~~authority's certification to make distributions required by Section 7-1-6.53 NMSA 1978. Amounts that revert to the general fund from the ~~energy efficiency and renewable energy bonding fund~~fund or account may be appropriated by the legislature to the department for the purposes of carrying out the provisions of the Energy Efficiency and Renewable Energy Bonding Act. The Authority shall provide a new certification to the secretary of taxation and revenue any time the amount certified on the date the bonds were issued has changed.

D. Upon payment or defeasance of all principal, interest and other expenses or obligations related to the bonds, the authority shall ~~certify~~provide a certification to the ~~public education department~~secretary of taxation and revenue, the ~~department~~secretary of finance and administration ~~and, the secretary of taxation and revenue~~applicable oversight entity, and the secretary of general services in the case of state agency buildings, that all obligations for the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act have been discharged and shall direct that distributions cease to the fund pursuant to that act and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

E. The bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act shall be payable solely from the fund or account or such other special funds as may be provided by law and do not create an obligation or indebtedness of the state within the meaning of any constitutional provision. A breach of any contractual obligation incurred pursuant to that act shall not impose a pecuniary liability or a charge upon the general credit or taxing power of the state, and the bonds are not general obligations for which the state's full faith and credit is pledged.

F. The state does hereby pledge that the fund shall be used only for the purposes specified in this section and pledged first to pay the debt service on the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act. The state further pledges that any law authorizing the distribution of taxes or other revenues to the fund or authorizing expenditures from the fund shall not be amended or repealed or otherwise modified so as to impair the bonds to which the fund is dedicated as provided in this section.

SECTION 5. Section 6-21D-6 NMSA 1978 (being Laws 2005, Chapter 176, Section 6, as amended) is amended to read:

A. Upon the installation of energy efficiency measures in a ~~state building or school district~~ building, the department shall calculate the estimated energy cost savings, in the form of lower utility payments by the ~~school district or the state~~eligible entity, that will be annually realized as a result of the installation of the energy efficiency measures. The department shall certify the estimate to the ~~department~~secretary of finance and administration, the applicable oversight entity, the eligible entity and ~~the general services department or any~~ other state agency with jurisdiction, ~~in the case of state buildings, and to~~

~~the department of finance and administration, the public education department and the school district, in the case of school district buildings.~~

B. ~~In the case of a school district building,~~ When calculating the eligible entity's operating budget or state equalization guarantee distribution pursuant to Section 22-8-25 NMSA 1978, the ~~public education department~~oversight entity shall deduct ninety percent of the amount certified ~~for the school district~~ by the department.

~~—— C. —— Reduction of a school district's state equalization guarantee distribution shall cease when the school district's cumulative reductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act.~~

~~—— D. —— Prior to June 30 of each year, the total amount deducted for all school districts pursuant to Subsection B of this section shall be transferred to the fund.~~

~~—— E. —— In the case of a state building, the department of finance and administration shall deduct from the operating budget of the agency responsible for paying the utilities of the state building ninety percent of the amount certified for the agency by the department.~~

~~—— F. —— Deduction~~this amount from the operating budget of the agency responsible for paying the utilities of the state building ~~shall cease when the agency's cumulative deductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act., which may be a different agency than the eligible entity.~~

GC. Reduction of a eligible entity's operating budget or state equalization guarantee distribution shall cease upon payment or defeasance of all principal, interest and

other expenses or obligations related to bonds issued to finance energy efficiency measures in the eligible entity's building.

D. Prior to June 30 of each year, each oversight entity shall revert to the general fund the total amount deducted for all ~~agencies and all state buildings~~eligible entities pursuant to Subsection ~~DB~~ of this section ~~shall be transferred from the appropriate funds to the energy efficiency and renewable energy bonding fund.~~

SECTION 6. Section 6-21D-6.1 NMSA 1978 (being Laws 2007, Chapter 171, Section 6.1) is amended to read:

The “energy efficiency assessment revolving fund” is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund and reimbursements of costs incurred by the department in performing energy efficiency assessments pursuant to the Energy Efficiency and Renewable Energy Bonding Act. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year. Money in the fund is appropriated to the department for the purposes of performing energy efficiency assessments. 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.

SECTION 7. Section 6-21D-7 NMSA 1978 (being Laws 2005, Chapter 176, Section 7, as amended) is amended to read:

A. The authority is authorized to issue and sell from time to time revenue bonds, known as “energy efficiency bonds”, in an amount outstanding at any one time not to exceed twenty million dollars (\$20,000,000), payable solely from the fund, in

compliance with the Energy Efficiency and Renewable Energy Bonding Act and the New Mexico Finance Authority Act [Chapter 6, Article 21 NMSA 1978] for the purpose of installing energy efficiency measures when the department has certified the need for the bonds and the conditions of Subsection C of this section have been satisfied.

B. The net proceeds from the bonds are appropriated to the authority for the purpose of making distributions to one or more ~~state agencies or school districts~~eligible entities that, pursuant to an energy efficiency assessment by the department, have committed to install energy efficiency measures or entered into contracts for the installation of the measures. Upon receipt of a distribution, the ~~state agency or school district shall deposit into the energy efficiency assessment revolving fund the cost incurred by the department to make the energy efficiency assessment on the building and shall use the remainder~~eligible entity shall use the net proceeds of the bonds for the installation of energy efficiency measures pursuant to the Energy Efficiency and Renewable Energy Bonding Act, costs incurred by the eligible entity to make the energy efficiency assessment and costs of issuance, provided that, after the installation of the energy efficiency measures, any unexpended balance of the bond proceeds shall revert to the energy efficiency and renewable energy bonding fund.

C. Bonds shall not be issued pursuant to this section unless:

(1) ~~a state agency or school district~~an eligible entity has committed to install or has entered into one or more contracts pursuant to Section 6-21D-4 NMSA 1978 for the installation of energy efficiency measures and the department has certified that the resulting energy cost savings will be realized within a reasonable time;

(2) considering the timeliness and amount of energy cost savings estimated to be realized from the energy efficiency measures, the department has certified the ~~the approximate date when the~~ energy cost savings ~~are most likely to equal or exceed~~realized from the energy efficiency measures over the ~~debt service due on the bonds to be issued to fund~~life of the energy efficiency measures;

(3) the life of energy efficiency measures meets or exceeds the life of the bonds allocable to those energy efficiency measures as determined by the department and the authority; and

(4) based on the department's certification, the debt service on the bonds has been structured by the authority ~~to preclude the annual debt service payments due until the dates~~such that the total cost savings ~~equal~~meet or exceed ~~the~~ debt service ~~payments and other associated costs over the term of the bonds.~~

D. Each series of bonds shall be issued pursuant to the provisions of the New Mexico Finance Authority Act, except as otherwise provided in the Energy Efficiency and Renewable Energy Bonding Act.

SECTION 8. Section 6-21D-8 NMSA 1978 (being Laws 2005, Chapter 176, Section 8, as amended) is amended to read:

A. The Energy Efficiency and Renewable Energy Bonding Act and the New Mexico Finance Authority Act [Chapter 6, Article 21 NMSA 1978] shall, without reference to any other act of the legislature, be full authority for the issuance and sale of energy efficiency bonds, which bonds shall have all the qualities of investment securities under the Uniform Commercial Code [Chapter 55 NMSA 1978] and shall not be invalid for any

irregularity or defect or be contestable in the hands of bona fide purchasers or holders thereof for value.

B. Energy efficiency bonds are legal investments for any person or board charged with the investment of any public funds and are acceptable as security for any deposit of public money.

SECTION 9. Section 6-21D-9 NMSA 1978 (being Laws 2005, Chapter 176, Section 9, as amended) is amended to read:

All energy efficiency bonds shall be exempt from taxation by the state or any of its political subdivisions.

SECTION 10. Section 6-21D-10 NMSA 1978 (being Laws 2005, Chapter 176, Section 10, as amended) is amended to read:

No later than December 1 of each year, the department shall report to the legislature ~~and to~~, the governor and the authority on its activities during the previous fiscal year in administering the provisions of the Energy Efficiency and Renewable Energy Bonding Act. The report shall include:

A. details concerning all payments made for the installation of energy efficiency measures;

B. details concerning all expenditures made in administering the provisions of the Energy Efficiency and Renewable Energy Bonding Act;

C. a list of all buildings on which an energy efficiency assessment has been performed and the buildings in which energy efficiency measures were installed;

D. details showing how the energy cost savings were calculated;

E. an analysis of whether the program has been cost-effective;

- F. a summary of activities being conducted during the present fiscal year; and
- G. any additional information that will assist the legislature and the governor in evaluating the program.

SECTION 11. EFFECTIVE DATE. – The effective date of the provisions of this act is July 1, 2017.