

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 407

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

AN ACT

RELATING TO CONSERVATION; ENACTING THE LAND, WILDLIFE AND CLEAN
ENERGY ACT; PROVIDING FOR DISTRIBUTION OF PROCEEDS FROM THE OIL
AND GAS CONSERVATION TAX; CREATING A BOARD; CREATING FUNDS;
AUTHORIZING THE ISSUANCE OF BONDS; MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 11 of this act may cited as the "Land, Wildlife and
Clean Energy Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Land, Wildlife and Clean Energy Act:

A. "authority" means the New Mexico finance
authority;

B. "board" means the land, wildlife and clean
energy board;

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1 C. "clean energy development project" means a
2 project that increases:

- 3 (1) energy efficiency;
4 (2) the conservation of energy; or
5 (3) the production of energy using biomass,
6 geothermal, hydrogen, solar or wind power;

7 D. "conservation project" means preservation,
8 rehabilitation, restoration or management activities directed
9 at natural areas, working farms or ranches, wildlife or its
10 habitats, outdoor recreation areas and trails, forests or
11 watersheds or other ecologically damaged lands;

12 E. "department" means the energy, minerals and
13 natural resources department;

14 F. "director" means the director of the board;

15 G. "Indian tribe" means a federally recognized
16 Indian nation, tribe or pueblo located wholly or partially in
17 New Mexico; a governmental unit or wholly owned enterprise of
18 such an Indian nation, tribe or pueblo; and a consortium of
19 those Indian tribes, nations, pueblos or entities;

20 H. "public or private clean energy agency" means a
21 governmental body or a private not-for-profit charitable
22 corporation or trust authorized to do business in New Mexico
23 that has tax-exempt status under the federal Internal Revenue
24 Code of 1986;

25 I. "public or private conservation agency" means a

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1 governmental body or a private not-for-profit charitable
 2 corporation or trust authorized to do business in New Mexico
 3 that has tax-exempt status as a public charity under the
 4 federal Internal Revenue Code of 1986, and the power to
 5 acquire, hold or maintain land or interests in land; and

6 J. "qualified entity" means a state agency,
 7 political subdivision of the state, Indian tribe, school
 8 district, state educational institution named in Article 12,
 9 Section 11 of the constitution of New Mexico and a public or
 10 private conservation or clean energy development agency.

11 Section 3. [NEW MATERIAL] LAND, WILDLIFE AND CLEAN ENERGY
 12 BOARD CREATED--APPOINTMENTS--TERMS.--

13 A. The "land, wildlife and clean energy board" is
 14 created and is administratively attached to the department.

15 B. The board consists of fourteen members as
 16 follows:

17 (1) the secretary of energy, minerals and
 18 natural resources or the secretary's designee;

19 (2) the director of the New Mexico department
 20 of agriculture or the director's designee;

21 (3) the director of the department of game and
 22 fish or the director's designee;

23 (4) the state engineer or the state engineer's
 24 designee; and

25 (5) ten public members appointed by the

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1 governor with the advice and consent of the senate, with one
2 representative from each of the following occupations,
3 interests or activities:

- 4 (a) wind, solar or biomass energy;
- 5 (b) energy conservation and efficiency;
- 6 (c) farm production; provided that the
7 representative's primary occupation is farm production;
- 8 (d) municipalities and counties;
- 9 (e) natural area protection;
- 10 (f) wildlife management and
11 conservation;
- 12 (g) tribal land conservation;
- 13 (h) community land grants and acequias;
- 14 (i) livestock or dairy production;
- 15 provided that the representative's primary occupation is
16 raising livestock or in dairy production; and
17 (j) hunting or fishing.

18 C. Appointed members of the board shall serve
19 staggered terms of four years; provided that at the time of
20 making the first appointments, the governor shall designate
21 one-half of the appointed board members' first terms as being
22 two years and one-half of the members' first terms as being for
23 four years so that the term of no more than seven appointed
24 members' terms will expire at the same time. The governor
25 shall appoint the chair of the board. A vacancy on the board

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1 shall be filled for the remainder of the term of that
2 appointee. Appointed members of the board shall receive
3 reimbursement for expenses incurred in the performance of their
4 duties pursuant to the Per Diem and Mileage Act and shall
5 receive no other compensation, perquisite or allowance.

6 Section 4. [NEW MATERIAL] LAND, WILDLIFE AND CLEAN ENERGY
7 BOARD--POWERS--DUTIES.--

8 A. The board shall employ a director, who shall
9 hire personnel, not to exceed five full-time employees or the
10 equivalent, and contract for services necessary to carry out
11 the purposes of the Land, Wildlife and Clean Energy Act. The
12 director shall develop and implement plans and a budget as
13 directed by the board. The department shall be reimbursed for
14 costs incurred for any administrative support provided to the
15 board and the director. The board shall have an independent
16 audit of the board's finances conducted annually.

17 B. The board shall promulgate rules for the
18 management of board-funded projects; to govern the application
19 and selection process for projects; to ensure adequate public
20 notice of proposed actions; to provide certification
21 requirements of projects to be funded; and to otherwise guide
22 the work of the board and carry out the provisions of the Land,
23 Wildlife and Clean Energy Act.

24 C. For the purposes of this section, "adequate
25 public notice" means at a minimum mailing notice of approved

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1 projects to landowners adjacent to the geographic boundaries of
2 a conservation project and publishing notice in each county in
3 which a project is to be located.

4 D. The board shall evaluate each project using
5 criteria that shall include at least the following:

6 (1) the fund leveraging potential of the
7 project;

8 (2) the impacts of the project, including
9 benefits or avoidance of waste;

10 (3) the expertise of the proponent of the
11 project in conducting conservation or clean energy development
12 projects; and

13 (4) the potential of the project to increase
14 collaboration.

15 E. The board may fund projects that:

16 (1) maintain an appropriate balance in the
17 funding of conservation projects and clean energy development
18 projects over time;

19 (2) conserve land or wildlife or increase
20 clean energy development;

21 (3) support private ownership of working farms
22 and ranches;

23 (4) assist private landowners in conservation
24 of land and wildlife;

25 (5) will directly receive financial or in-kind

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1 support from existing or new public or private programs to
 2 protect open space and habitat, provide for recreational
 3 opportunities, including hunting or fishing, or increase clean
 4 energy development;

5 (6) conserve land and water in association
 6 with ecosystem or natural area protection or habitat
 7 enhancement;

8 (7) leverage other public or private
 9 investment in land, wildlife and clean energy development
 10 projects, including allowing local governments to match funding
 11 by adopting open space and agriculture protection policies; or

12 (8) improve public access to land, water,
 13 wildlife and open space and recreation opportunities, including
 14 hunting and fishing.

15 F. Projects involving acquisition of land or water
 16 rights shall respect private property rights with a preference
 17 for leaving land and water rights in private ownership subject
 18 to negotiated easements to ensure public benefit.

19 G. The board may:

20 (1) administer the land, wildlife and clean
 21 energy fund and make grants and loans from the fund for
 22 projects authorized by the Land, Wildlife and Clean Energy Act;

23 (2) acquire and manage, or assign management
 24 of, whole or partial interests in land or water rights,
 25 including easements;

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1 (3) make grants or loans to or otherwise
2 contract with qualified entities for qualified conservation
3 projects and clean energy development projects;

4 (4) fund wildlife management projects;

5 (5) request the authority to issue
6 conservation bonds or clean energy bonds to finance eligible
7 conservation projects or clean energy development projects;

8 (6) apply for, accept and expend funds from
9 private and public sources; and

10 (7) enter into contracts or agreements with
11 qualified entities as necessary to achieve the purposes of the
12 Land, Wildlife and Clean Energy Act.

13 H. The board shall meet at least quarterly, review
14 proposed conservation projects and clean energy development
15 projects and, in consultation with the director, select those
16 projects to be financed with money from the land, wildlife and
17 clean energy fund or with the proceeds of bonds issued by the
18 authority for those purposes.

19 I. The board shall issue an annual report to the
20 legislature and the governor that includes:

21 (1) a list and description of each project
22 funded that year and the status of any other ongoing projects;

23 (2) a summary of the board's revenues and
24 expenses, including a combined balance sheet and statement of
25 revenue, expenditures and changes in the balances of the fund;

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1 (3) the independent auditor's report or
2 letter;

3 (4) a summary of the board's five-year
4 strategy for carrying out the purposes of the Land, Wildlife
5 and Clean Energy Act;

6 (5) information on how qualified entities may
7 apply for funding of eligible projects; and

8 (6) an evaluation of the social, economic and
9 ecological effects of its program.

10 Section 5. [NEW MATERIAL] CONSERVATION PROJECTS--
11 LIMITATIONS.--

12 A. Land or water rights shall not be acquired for
13 conservation or clean energy projects through condemnation or
14 the exercise of the power of eminent domain.

15 B. Money in the land, wildlife and clean energy
16 fund shall not be used to acquire water rights that:

17 (1) are served by or owned by an acequia or
18 community ditch established pursuant to Chapter 73, Article 2
19 or 3 NMSA 1978 unless the water rights are acquired by an
20 acequia or community ditch;

21 (2) are served by an irrigation district
22 established pursuant to Chapter 73, Article 10 NMSA 1978 or a
23 conservancy district established pursuant to Chapter 73,
24 Article 14 NMSA 1978, except through contractual arrangement
25 with the district board of directors or as a special water

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1 users association established pursuant to Chapter 73, Article
2 10 NMSA 1978;

3 (3) are not purchased or leased from willing
4 sellers or lessors;

5 (4) will result in an increase in net
6 depletions in the affected river or basin that will create
7 cumulative adverse impacts on existing water users, delivery
8 systems or compact obligations;

9 (5) cost more than the appraised market value
10 to purchase or lease based upon the best available information
11 and considering the seniority and the consistent, historic
12 beneficial use of the water rights;

13 (6) do not have sufficient seniority and
14 consistent, historic beneficial use to effectively contribute
15 to the purposes of the Land, Wildlife and Clean Energy Act;

16 (7) have not been adjudicated or licensed by
17 the state engineer or do not comply with all state engineer
18 rules governing surface and ground water transfer applications
19 or clearly conflict with the state water plan;

20 (8) will be used to authorize the exportation
21 of water from one surface drainage basin or declared
22 underground water basin to another; or

23 (9) will, upon cessation of use, increase
24 depletions to a river or an underground water basin.

25 C. Water rights purchased with money from the land,

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1 wildlife and clean energy fund or the proceeds of bonds issued
 2 pursuant to the Land, Wildlife and Clean Energy Act shall not
 3 be sold to the United States.

4 D. A conservation project that includes the
 5 purchase of land or an interest in land with a public or
 6 private conservation agency shall, to the extent required by
 7 law, require that title to the land or interest in land be held
 8 by the state or a political subdivision of the state, or by the
 9 public or private conservation agency and the state, or
 10 political subdivision of the state, as cotenants with an
 11 undivided interest in the land or interest in the land. If the
 12 public or private conservation agency fails to perform its
 13 management, monitoring or enforcement duties as they relate to
 14 a conservation project, the ownership interest of any land or
 15 interest in land purchased with state funds for that project
 16 shall revert to the state.

17 E. Conservation projects that reduce the taxable
 18 land base of a political subdivision shall provide compensation
 19 to the affected political subdivision.

20 Section 6. [NEW MATERIAL] LAND, WILDLIFE AND CLEAN ENERGY
 21 FUND--CREATION--USE.--

22 A. The "land, wildlife and clean energy fund" is
 23 created in the state treasury and shall consist of
 24 distributions made to the fund from the conservation and clean
 25 energy bonding fund; gifts, grants and donations; other revenue

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1 credited to the fund; and income from investment of the fund.
2 Balances in the fund at the end of a fiscal year shall not
3 revert to the general fund. The fund shall be administered by
4 the department.

5 B. Money in the land, wildlife and clean energy
6 fund is appropriated to the board to make loans or grants to,
7 or otherwise contract with, qualified entities for conservation
8 projects and clean energy development projects as authorized by
9 the Land, Wildlife and Clean Energy Act and for expenses
10 necessary to carry out the provisions of that act.
11 Disbursements from the fund shall be made upon warrants drawn
12 by the secretary of finance and administration pursuant to
13 vouchers signed by the chair of the board or the chair's
14 authorized representative.

15 Section 7. [NEW MATERIAL] CONSERVATION AND CLEAN ENERGY
16 BONDING FUND--CREATED--PLEDGE OF MONEY IN THE FUND--
17 DISTRIBUTION.--

18 A. The "conservation and clean energy bonding fund"
19 is created as a special fund within the authority. The fund
20 shall be administered by the authority as a special account.
21 The fund shall consist of oil and gas conservation tax revenues
22 distributed to the fund by law; appropriations by the
23 legislature to carry out the purposes of the Land, Wildlife and
24 Clean Energy Act; and any other public or private money
25 dedicated to the fund. Earnings of the fund shall be credited

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1 to the fund. Balances in the fund at the end of any fiscal
2 year shall remain in the fund, except as provided in this
3 section.

4 B. Money in the conservation and clean energy
5 bonding fund shall be pledged irrevocably by the authority for
6 the payment of principal and interest on conservation bonds and
7 clean energy bonds issued pursuant to the Land, Wildlife and
8 Clean Energy Act. Money in the fund is appropriated to the
9 authority for the purposes of paying debt service, including
10 redemption premiums, on the bonds and expenses incurred in the
11 issuance, payment and administration of the bonds.

12 C. On the last day of January and July of each
13 year, the authority shall estimate the amount needed to make
14 debt service payments on the bonds issued pursuant to the Land,
15 Wildlife and Clean Energy Act, plus the amount that may be
16 needed for any required reserves, administrative expenses or
17 obligations coming due during the next twelve months from the
18 fund, and distribute to the land, wildlife and clean energy
19 fund any balance in the conservation and clean energy bonding
20 fund above the estimated amounts; provided that if there are no
21 bonds issued or outstanding, then distributions from the oil
22 and gas conservation tax shall be transferred to the land,
23 wildlife and clean energy fund upon receipt by the authority.

24 D. The bonds issued pursuant to the Land, Wildlife
25 and Clean Energy Act shall be payable solely from the fund or

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1 such other special funds as may be provided by law and do not
2 create an obligation or indebtedness of the state within the
3 meaning of any constitutional provision. A breach of any
4 contractual obligation incurred pursuant to the Land, Wildlife
5 and Clean Energy Act shall not impose a pecuniary liability or
6 a charge upon the general credit or taxing power of the state,
7 and the bonds are not general obligations for which the state's
8 full faith and credit is pledged.

9 E. The state pledges that the conservation and
10 clean energy bonding fund shall be used only for the purposes
11 specified in this section and shall first be pledged to pay the
12 debt service on the bonds issued pursuant to the Land, Wildlife
13 and Clean Energy Act. The state further pledges that any law
14 authorizing the distribution of taxes or other revenues to the
15 fund or authorizing expenditures from the fund shall not be
16 amended or repealed or otherwise modified so as to impair the
17 bonds to which the fund is dedicated as provided in this
18 section.

19 Section 8. [NEW MATERIAL] CONSERVATION BONDS AND CLEAN
20 ENERGY BONDS AUTHORIZED.--

21 A. The authority is authorized to issue and sell
22 from time to time bonds, known as "conservation bonds" or
23 "clean energy bonds", at the request of the board and in
24 compliance with the Land, Wildlife and Clean Energy Act and the
25 New Mexico Finance Authority Act for the purpose of financing

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1 conservation projects or clean energy development projects when
 2 the board has certified the need for the bonds.

3 B. The net proceeds from the bonds are appropriated
 4 to the board for the purpose of financing conservation projects
 5 and clean energy development projects pursuant to the Land,
 6 Wildlife and Clean Energy Act.

7 C. Each series of bonds shall be issued pursuant to
 8 the provisions of the New Mexico Finance Authority Act, except
 9 as otherwise provided in the Land, Wildlife and Clean Energy
 10 Act.

11 D. The authority may additionally secure the bonds
 12 issued pursuant to this section by a pledge on the money in the
 13 public project revolving fund as determined by the authority.

14 E. The authority may purchase bonds issued pursuant
 15 to this section with money in the public project revolving fund
 16 pursuant to the provisions of Section 6-21-6 NMSA 1978.

17 Section 9. [NEW MATERIAL] LAND, WILDLIFE AND CLEAN ENERGY
 18 ACT IS FULL AUTHORITY FOR ISSUANCE OF BONDS--BONDS ARE LEGAL
 19 INVESTMENTS.--

20 A. The Land, Wildlife and Clean Energy Act and the
 21 New Mexico Finance Authority Act shall, without reference to
 22 any other act of the legislature, be full authority for the
 23 issuance and sale of conservation bonds and clean energy bonds,
 24 which bonds shall have all the qualities of investment
 25 securities under the Uniform Commercial Code and shall not be

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

3 B. Conservation bonds and clean energy bonds are
4 legal investments for any person or board charged with the
5 investment of any public funds and are acceptable as security
6 for any deposit of public money.

7 Section 10. [NEW MATERIAL] BONDS TAX EXEMPT.--All
8 conservation bonds and clean energy bonds shall be exempt from
9 taxation by the state or any of its political subdivisions.

10 Section 11. [NEW MATERIAL] THIRD-PARTY ENFORCEMENT
11 LIMIT--NOTICE OF TRANSFER OF PROPERTY.--

12 A. No person shall have a third-party enforcement
13 right pertaining to a conveyance made pursuant to the Land,
14 Wildlife and Clean Energy Act, except against the state or a
15 political subdivision of the state.

16 B. No land or interest in real property acquired
17 under the Land, Wildlife and Clean Energy Act may be
18 transferred to a third party without prior legal notice to the
19 person from whom the property was acquired.

20 Section 12. Section 7-1-6.21 NMSA 1978 (being Laws 1985,
21 Chapter 65, Section 7, as amended) is amended to read:

22 "7-1-6.21. DISTRIBUTION TO OIL AND GAS RECLAMATION FUND,
23 CONSERVATION AND CLEAN ENERGY BONDING FUND AND THE OIL
24 CONSERVATION DIVISION OF THE ENERGY, MINERALS AND NATURAL
25 RESOURCES DEPARTMENT.--

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1 A. With respect to any period for which the rate of
2 the tax imposed by Section 7-30-4 NMSA 1978 is nineteen-
3 hundredths percent, a distribution pursuant to Section 7-1-6.20
4 NMSA 1978 shall be made to the oil and gas reclamation fund in
5 the amount equal to two-nineteenths of the net receipts
6 attributable to the tax imposed under the Oil and Gas
7 Conservation Tax Act.

8 B. With respect to any period for which the rate of
9 the tax imposed by Section 7-30-4 NMSA 1978 is eighteen-
10 hundredths percent, a distribution pursuant to Section 7-1-6.20
11 NMSA 1978 shall be made to the oil and gas reclamation fund in
12 the amount equal to one-eighteenth of the net receipts
13 attributable to the tax imposed under the Oil and Gas
14 Conservation Tax Act.

15 C. A distribution pursuant to Section 7-1-6.20 NMSA
16 1978 shall be made to the conservation and clean energy bonding
17 fund in an amount equal to one-half of the net receipts
18 attributable to the tax imposed by the Oil and Gas Conservation
19 Tax Act.

20 D. A distribution pursuant to Section 7-1-6.20 NMSA
21 1978 shall be made to the oil conservation division of the
22 energy, minerals and natural resources department in an amount
23 equal to one thirty-eighth of the net receipts attributable to
24 the tax imposed by the Oil and Gas Conservation Tax Act to fund
25 the inspection and enforcement activities of the division as

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1 authorized by law."

2 Section 13. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2006.

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