

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 433

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO CONSERVATION; ENACTING THE LAND, WILDLIFE AND CLEAN
ENERGY ACT; CREATING A BOARD; PROVIDING FOR LEGISLATIVE
OVERSIGHT; CREATING FUNDS; AUTHORIZING THE ISSUANCE OF BONDS;
MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Land, Wildlife and Clean Energy Act".

Section 2. PURPOSE.--The purpose of the Land, Wildlife
and Clean Energy Act is to fund projects, conservation
easements and fee land acquisitions in order to protect the
land base available for working farms or ranches, forests or
watersheds, natural areas, outdoor recreation and trails and
wildlife habitat; to fund land and habitat restoration and
management projects; and to fund clean energy development

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1 projects.

2 Section 3. DEFINITIONS.--As used in the Land, Wildlife
3 and Clean Energy Act:

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

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

8 C. "clean energy development project" means a
9 project that increases:

10 (1) energy efficiency;

11 (2) the conservation of energy; or

12 (3) the production of energy using biomass,
13 geothermal, hydrogen, solar or wind power;

14 D. "conservation project" means preservation,
15 rehabilitation, restoration or management activities directed
16 at:

17 (1) natural areas;

18 (2) working farms or ranches;

19 (3) wildlife or its habitats;

20 (4) outdoor recreation areas and trails;

21 (5) forests or watersheds; or

22 (6) other ecologically damaged lands;

23 E. "department" means the energy, minerals and
24 natural resources department;

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

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1 G. "Indian tribe" means a federally recognized
 2 Indian nation, tribe or pueblo located wholly or partially in
 3 New Mexico; a governmental unit or wholly owned enterprise of
 4 such an Indian nation, tribe or pueblo; or a consortium of
 5 those Indian tribes, nations, pueblos or entities;

6 H. "public or private clean energy development
 7 agency" means a governmental body or a private not-for-profit
 8 charitable corporation or trust authorized to do business in
 9 New Mexico that has tax-exempt status under the federal
 10 Internal Revenue Code of 1986 and is authorized to conduct
 11 clean energy development projects;

12 I. "public or private conservation agency" means a
 13 governmental body or a private not-for-profit charitable
 14 corporation or trust authorized to do business in New Mexico
 15 that has tax-exempt status as a public charity under the
 16 federal Internal Revenue Code of 1986, and the power to
 17 acquire, hold or maintain land or interests in land; and

18 J. "qualified entity" means a state agency; a
 19 political subdivision of the state; an Indian tribe; a school
 20 district; a state educational institution named in Article 12,
 21 Section 11 of the constitution of New Mexico; or a public or
 22 private conservation or clean energy development agency.

23 Section 4. LAND, WILDLIFE AND CLEAN ENERGY BOARD
 24 CREATED--APPOINTMENTS--TERMS.--

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

2 B. The board consists of fourteen members as
3 follows:

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

6 (2) the director of the New Mexico department
7 of agriculture or the director's designee;

8 (3) the director of the department of game and
9 fish or the director's designee;

10 (4) the state engineer or the state engineer's
11 designee; and

12 (5) ten public members appointed by the
13 governor with the advice and consent of the senate, with one
14 representative from each of the following occupations,
15 interests or activities:

16 (a) wind, solar or biomass energy;

17 (b) energy conservation and efficiency;

18 (c) farm production; provided that the
19 representative's primary occupation is farm production;

20 (d) municipalities and counties;

21 (e) land or natural area protection
22 trust;

23 (f) wildlife management and
24 conservation;

25 (g) tribal land conservation;

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- 1 (h) community land grants and acequias;
2 (i) livestock or dairy production;
3 provided that the representative's primary occupation is
4 raising livestock or in dairy production; and
5 (j) hunting or fishing.

6 C. Appointed members of the board shall serve
7 staggered terms of four years; provided that at the time of
8 making the first appointments, the governor shall designate
9 one-half of the appointed board members' first terms as being
10 two years and one-half of the members' first terms as being for
11 four years so that the terms of no more than five appointed
12 members will expire at the same time. The governor shall
13 appoint the chair of the board. A vacancy on the board shall
14 be filled for the remainder of the term of that appointee.
15 Appointed members of the board shall receive reimbursement for
16 expenses incurred in the performance of their duties pursuant
17 to the Per Diem and Mileage Act and shall receive no other
18 compensation, perquisite or allowance.

19 Section 5. LAND, WILDLIFE AND CLEAN ENERGY BOARD--
20 POWERS--DUTIES.--

21 A. The board shall employ a director, who shall
22 hire personnel, not to exceed five full-time employees or the
23 equivalent, and contract for services necessary to carry out
24 the purposes of the Land, Wildlife and Clean Energy Act. The
25 director shall develop and implement plans and a budget as

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1 directed by the board.

2 B. The department shall be reimbursed for costs
3 incurred for any administrative support provided to the board
4 and the director. The board shall have an independent audit of
5 the board's finances conducted annually.

6 C. The board shall promulgate rules:

7 (1) for the management of board-funded
8 projects;

9 (2) to govern the application and selection
10 process for projects;

11 (3) to ensure appropriate public notice of
12 proposed actions;

13 (4) to provide certification requirements of
14 projects to be funded; and

15 (5) to otherwise guide the work of the board
16 and carry out the provisions of the Land, Wildlife and Clean
17 Energy Act.

18 D. The board shall evaluate each proposed project
19 using the following criteria:

20 (1) the project's potential for conserving
21 land or wildlife or increasing clean energy development;

22 (2) whether the project leverages or matches
23 other public or private investment in, or in-kind support of,
24 conservation and clean energy development projects, including
25 allowing local governments to match funding by adopting open

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1 space and agriculture protection policies;

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

4 (4) the expertise of the qualified entity
5 proposing the project in conducting conservation or clean
6 energy development projects;

7 (5) the project's potential to increase
8 collaboration among the state and its political subdivisions,
9 other public and private conservation and clean energy entities
10 and landowners and other interested individuals or entities;

11 (6) an appropriate balance of funding of
12 conservation projects and clean energy development projects
13 over the time that reflects the board's strategic plan;

14 (7) for conservation projects:

15 (a) the project's support of private
16 ownership of working farms and ranches;

17 (b) the project's assistance to private
18 landowners in land and wildlife conservation;

19 (c) the project's potential for
20 conserving land and water in association with ecosystem or
21 natural area protection or habitat enhancement; or

22 (d) the project's potential to improve
23 public access to land, water, wildlife and natural areas and
24 outdoor recreation opportunities, including hunting and
25 fishing; and

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1 (8) for clean energy development projects:

2 (a) how the project will increase energy
3 efficiency or conservation; or

4 (b) how the project will increase energy
5 production using solar, biomass, geothermal, hydrogen or wind
6 power.

7 E. Projects involving acquisition of land or water
8 rights shall respect private property rights with a preference
9 for leaving land and water rights in private ownership through
10 purchase of negotiated conservation easements or voluntary
11 access agreements to ensure public benefit.

12 F. No provision of the Land, Wildlife and Clean
13 Energy Act shall be construed to alter state law regarding
14 access to the commercial development of, extraction from or
15 status of a mineral estate.

16 G. The board may:

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

20 (2) acquire and manage, or assign management
21 of, whole or partial interests in land or water rights,
22 including easements;

23 (3) make grants or loans to or otherwise
24 contract with qualified entities for approved conservation
25 projects and clean energy development projects;

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1 (4) fund wildlife management projects;

2 (5) request the authority to issue
3 conservation bonds or clean energy bonds to finance eligible
4 conservation projects or clean energy development projects;

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

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

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

16 I. By October 1 of each year, the board shall issue
17 an annual report to the legislature and the governor that
18 includes:

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

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

24 (3) the independent auditor's report or
25 letter;

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

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

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

8 Section 6. CONSERVATION AND CLEAN ENERGY DEVELOPMENT
9 PROJECTS--LIMITATIONS ON ACQUISITION OF LAND AND WATER
10 RIGHTS.--

11 A. Land or water rights shall not be acquired for
12 conservation or clean energy development projects through
13 condemnation or the exercise of the power of eminent domain nor
14 for any purpose other than that authorized by the Land,
15 Wildlife and Clean Energy Act. Land, water rights,
16 conservation easements and access agreements may be acquired
17 pursuant to the Land, Wildlife and Clean Energy Act only if the
18 owner voluntarily enters into an agreement to sell the land,
19 water rights or conservation easement or enter into an access
20 agreement.

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

23 (1) are served by or owned by an acequia or
24 community ditch established pursuant to Chapter 73, Article 2
25 or 3 NMSA 1978 unless the water rights are acquired by an

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1 acequia or community ditch;

2 (2) are served by an irrigation district
3 established pursuant to Chapter 73, Article 10 NMSA 1978 or a
4 conservancy district established pursuant to Chapter 73,
5 Article 14 NMSA 1978, except through contractual arrangement
6 with the district board of directors or as a special water
7 users association established pursuant to Chapter 73, Article
8 10 NMSA 1978;

9 (3) will result in an increase in net
10 depletions in the affected river or basin that will create
11 cumulative adverse impacts on existing water users, delivery
12 systems or compact obligations;

13 (4) cost more than the appraised market value
14 to purchase or lease based upon the best available information
15 and considering the seniority and the consistent, historic
16 beneficial use of the water rights;

17 (5) do not have sufficient seniority and
18 consistent, historic beneficial use to effectively contribute
19 to the purposes of the Land, Wildlife and Clean Energy Act;

20 (6) have not been adjudicated or licensed by
21 the state engineer or do not comply with all state engineer
22 rules governing surface and ground water transfer applications
23 or that clearly conflict with the state water plan;

24 (7) will be used to authorize the exportation
25 of water from one surface drainage basin or declared

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1 underground water basin to another; or

2 (8) will, upon cessation of use, increase
3 depletions to a river or an underground water basin.

4 C. Water rights purchased with money from the land,
5 wildlife and clean energy fund or the proceeds of bonds issued
6 pursuant to the Land, Wildlife and Clean Energy Act shall not
7 be sold to the United States.

8 D. A conservation project that includes the
9 purchase of land or an interest in land with a public or
10 private conservation agency shall, to the extent required by
11 law, require that title to the land or interest in land be held
12 by the state or a political subdivision of the state, or by the
13 private conservation agency and the state, or political
14 subdivision of the state, as cotenants with an undivided
15 interest in the land or interest in the land. If the private
16 conservation agency fails to perform its management, monitoring
17 or enforcement duties as they relate to a conservation project,
18 the ownership interest of any land or interest in land
19 purchased with state funds for that project shall revert to the
20 participating governmental entity until the interest is
21 transferred to another private conservation agency chosen by
22 the owner of the underlying estate, in the case of a
23 conservation easement, or by the participating government
24 entity if the land is owned in fee.

25 E. All projects, including the purchase of land,

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1 shall guarantee that the project or land shall be maintained so
2 as to protect the public health and welfare.

3 F. Conservation projects that reduce the taxable
4 land base of a political subdivision that is not a partner in
5 the proposed project shall provide compensation for the
6 estimated revenue loss based on the land's use at the time of
7 purchase to the affected political subdivision from money in
8 the land, wildlife and clean energy fund or the proceeds of
9 bonds issued pursuant to the Land, Wildlife and Clean Energy
10 Act.

11 Section 7. LAND, WILDLIFE AND CLEAN ENERGY FUND--
12 CREATION--USE.--

13 A. The "land, wildlife and clean energy fund" is
14 created in the state treasury and shall consist of
15 distributions made to the fund from the conservation and clean
16 energy bonding fund; gifts, grants and donations; other revenue
17 credited to the fund; and income from investment of the fund.
18 Balances in the fund at the end of a fiscal year shall not
19 revert to the general fund. The department shall administer
20 the fund on the board's behalf.

21 B. Money in the land, wildlife and clean energy
22 fund is appropriated to the board to make loans or grants to,
23 or otherwise contract with, qualified entities for conservation
24 projects and clean energy development projects as authorized by
25 the Land, Wildlife and Clean Energy Act for projects costing

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1 less than two million dollars (\$2,000,000) and, if specifically
2 authorized by law, for projects costing two million dollars
3 (\$2,000,000) or more and for expenses necessary to carry out
4 the provisions of that act. Disbursements from the fund shall
5 be made upon warrants drawn by the secretary of finance and
6 administration pursuant to vouchers signed by the chair of the
7 board or the chair's authorized representative.

8 Section 8. CONSERVATION AND CLEAN ENERGY BONDING FUND--
9 CREATED--PLEDGE OF MONEY IN THE FUND--DISTRIBUTION.--

10 A. The "conservation and clean energy bonding fund"
11 is created as a special fund within the authority. The
12 authority shall administer the fund as a special account. The
13 fund shall consist of appropriations by the legislature to
14 carry out the purposes of the Land, Wildlife and Clean Energy
15 Act and any other public or private money dedicated to the
16 fund. The fund's earnings shall be credited to the fund.
17 Balances in the fund at the end of any fiscal year shall remain
18 in the fund, except as provided in this section.

19 B. Money in the conservation and clean energy
20 bonding fund shall be pledged irrevocably by the authority for
21 the payment of principal and interest on conservation bonds and
22 clean energy bonds issued pursuant to the Land, Wildlife and
23 Clean Energy Act. Money in the fund is appropriated to the
24 authority for the purposes of paying debt service, including
25 redemption premiums, on the bonds and expenses incurred in the

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1 issuance, payment and administration of the bonds.

2 C. On the last day of January and July of each
3 year, the authority shall estimate the amount needed to make
4 debt service payments on the bonds issued pursuant to the Land,
5 Wildlife and Clean Energy Act, plus the amount that may be
6 needed for any required reserves, administrative expenses or
7 obligations coming due during the next twelve months from the
8 fund, and distribute to the land, wildlife and clean energy
9 fund any balance in the conservation and clean energy bonding
10 fund above the estimated amounts; provided that, if there are
11 no bonds issued or outstanding, all money in the conservation
12 and clean energy bonding fund shall be transferred to the land,
13 wildlife and clean energy fund upon receipt by the authority.

14 D. The bonds issued pursuant to the Land, Wildlife
15 and Clean Energy Act shall be payable solely from the
16 conservation and clean energy bonding fund or such other
17 special funds as may be provided by law and that do not create
18 an obligation or indebtedness of the state within the meaning
19 of any constitutional provision. A breach of any contractual
20 obligation incurred pursuant to the Land, Wildlife and Clean
21 Energy Act shall not impose a pecuniary liability or a charge
22 upon the general credit or taxing power of the state, and the
23 bonds are not general obligations for which the state's full
24 faith and credit is pledged.

25 E. The state pledges that the conservation and

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1 clean energy bonding fund shall be used only for the purposes
2 specified in this section and shall first be pledged to pay the
3 debt service on the bonds issued pursuant to the Land, Wildlife
4 and Clean Energy Act. The state further pledges that any law
5 authorizing the distribution of taxes or other revenues to the
6 fund or authorizing expenditures from the fund shall not be
7 amended or repealed or otherwise modified so as to impair the
8 bonds to which the fund is dedicated as provided in this
9 section.

10 Section 9. CONSERVATION BONDS AND CLEAN ENERGY BONDS
11 AUTHORIZED.--

12 A. The authority is authorized to issue and sell
13 from time to time bonds, known as "conservation bonds" or
14 "clean energy bonds", at the board's request and in compliance
15 with the Land, Wildlife and Clean Energy Act and the New Mexico
16 Finance Authority Act for the purpose of financing conservation
17 projects or clean energy development projects when the board
18 has certified the need for the bonds for projects that have
19 been reviewed by the New Mexico finance authority oversight
20 committee and specifically authorized by law.

21 B. The net proceeds from the bonds are appropriated
22 to the board for the purpose of financing conservation projects
23 and clean energy development projects pursuant to the Land,
24 Wildlife and Clean Energy Act.

25 C. Each series of bonds shall be issued pursuant to
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1 the provisions of the New Mexico Finance Authority Act, except
 2 as otherwise provided in the Land, Wildlife and Clean Energy
 3 Act.

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

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

10 Section 10. LAND, WILDLIFE AND CLEAN ENERGY ACT IS FULL
 11 AUTHORITY FOR ISSUANCE OF BONDS--BONDS ARE LEGAL INVESTMENTS.--

12 A. The Land, Wildlife and Clean Energy Act and the
 13 New Mexico Finance Authority Act shall, without reference to
 14 any other act of the legislature, be full authority for the
 15 issuance and sale of conservation bonds and clean energy bonds,
 16 which bonds shall have all the qualities of investment
 17 securities under the Uniform Commercial Code and shall not be
 18 invalid for any irregularity or defect or be contestable in the
 19 hands of bona fide purchasers or holders thereof for value.

20 B. Conservation bonds and clean energy bonds are
 21 legal investments for any person or board charged with the
 22 investment of any public funds and are acceptable as security
 23 for any deposit of public money.

24 Section 11. BONDS TAX EXEMPT.--All conservation bonds and
 25 clean energy bonds shall be exempt from taxation by the state

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1 or any of its political subdivisions.

2 Section 12. THIRD-PARTY ENFORCEMENT LIMIT--NOTICE OF
3 TRANSFER OF PROPERTY.--

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

8 B. No conservation easement acquired under the
9 Land, Wildlife and Clean Energy Act that restricts the transfer
10 of the conservation easement may be transferred to a third
11 party without prior legal notice to the current owner of the
12 underlying property.

13 Section 13. APPROPRIATION.--Ten million dollars
14 (\$10,000,000) is appropriated from the general fund to the
15 conservation and clean energy bonding fund for expenditure in
16 fiscal year 2008 and subsequent fiscal years to carry out the
17 purposes of the Land, Wildlife and Clean Energy Act. Any
18 unexpended or unencumbered balance remaining at the end of a
19 fiscal year shall not revert to the general fund.

20 Section 14. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2007.