

AN ACT

RELATING TO PUBLIC FACILITIES; PROVIDING FOR CUMULATIVE UTILITY AND CONSERVATION-RELATED COST SAVINGS FOR USE IN GUARANTEED UTILITY SAVINGS CONTRACTS PURSUANT TO THE PUBLIC FACILITY ENERGY EFFICIENCY AND WATER CONSERVATION ACT; EXTENDING THE MAXIMUM TERM FOR CONTRACTS PURSUANT TO THE PUBLIC FACILITY ENERGY EFFICIENCY AND WATER CONSERVATION ACT; CLARIFYING TYPES OF RENEWABLE ENERGY SYSTEMS AND SOURCES OF FUNDING AUTHORIZED BY THE PUBLIC FACILITY ENERGY EFFICIENCY AND WATER CONSERVATION ACT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2001.

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

Section 1. Section 6-23-2 NMSA 1978 (being Laws 1993, Chapter 231, Section 2, as amended) is amended to read:

"6-23-2. DEFINITIONS.--As used in the Public Facility Energy Efficiency and Water Conservation Act:

A. "conservation-related cost savings" means cost savings, other than utility cost savings, in the operating budget of a governmental unit that are a direct result of energy or water conservation measures implemented pursuant to a guaranteed utility savings contract;

B. "energy conservation measure" means a training program or a modification to a facility, including buildings, systems or vehicles, that is designed to reduce energy

consumption or conservation-related operating costs 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 without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code or nationally accepted standards for the lighting system after the proposed modifications are made;
- (6) energy recovery systems;
- (7) solar energy generating or heating and cooling systems or other renewable energy systems;
- (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;

(9) energy conservation measures that provide long-term operating cost reductions;

(10) maintenance and operation management systems that provide long-term operating cost reductions;

(11) traffic control systems; or

(12) alternative fuel options or accessories for vehicles;

C. "governmental unit" means an agency, political subdivision, institution or instrumentality of the state, including two- and four-year institutions of higher education, a municipality, a county or a school district;

D. "guaranteed utility savings contract" means a contract for the evaluation and recommendation of energy or water conservation measures and for the implementation of one or more of those measures, and which contract provides that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make the payments for the conservation measures;

E. "qualified provider" means a person experienced in the design, implementation and installation of energy or water conservation measures and who meets the experience qualifications developed by the energy, minerals and natural

resources department for energy conservation measures or the office of the state engineer for water conservation measures;

F. "utility cost savings" means the amounts saved by a governmental unit in the purchase of energy or water that are a direct result of energy or water conservation measures implemented pursuant to a guaranteed utility savings contract; and

G. "water conservation measures" means a training program, change in maintenance practices or facility or landscape alteration designed to reduce water consumption or conservation-related operating costs."

Section 2. Section 6-23-3 NMSA 1978 (being Laws 1993, Chapter 231, Section 3, as amended) is amended to read:

"6-23-3. GUARANTEED UTILITY SAVINGS CONTRACTS
AUTHORIZED--ENERGY OR WATER SAVINGS GUARANTEE REQUIRED.--

A. A governmental unit may enter into a guaranteed utility savings contract with a qualified provider to reduce energy, water or conservation-related operating costs if, after review of the utility efficiency proposal from the qualified provider, the governmental unit finds that:

(1) the amount the governmental unit would spend on the energy or water conservation measures recommended in the proposal is not likely to exceed the cumulative amount of utility cost savings and conservation-related cost savings of all energy or water conservation measures in the proposal

over twenty-five years or over a period not to exceed the expected useful life of the most durable measure in the proposal, whichever period of time is less, from the date of installation if the recommendations in the proposal were followed. The normal periodic repair and replacement of components of an energy or water conservation measure that are required after the measure is installed or completed shall not be considered in the amount a governmental unit would spend on the energy or water conservation measure for purposes of this paragraph; and

(2) the qualified provider can provide a written guarantee that the utility cost savings and conservation-related cost savings will meet or exceed the costs of the conservation measures.

B. A guaranteed utility savings contract shall include:

(1) a written guarantee from the qualified provider that annual utility cost savings and conservation-related cost savings shall meet or exceed the cost of the conservation measures; and

(2) a requirement that the qualified provider maintain a direct financial relationship with the governmental unit, irrespective of the source of financing for the energy or water conservation measures to be implemented.

C. A guaranteed utility savings contract may

extend beyond the fiscal year in which it becomes effective and may provide for payments over a period of time not to exceed twenty-five years or the expected useful life of the most durable energy or water conservation measure in the contract, whichever period of time is less; provided, however, only utility cost savings, conservation-related cost savings and special funds authorized pursuant to the Public Facility Energy Efficiency and Water Conservation Act or other law shall be pledged for the payments.

D. A governmental unit may enter into an installment payment contract or lease-purchase agreement for the purchase and installation of energy or water conservation measures pursuant to a guaranteed utility savings contract, but only in accordance with the provisions of the Public Facility Energy Efficiency and Water Conservation Act and Section 13-1-150 NMSA 1978.

E. A governmental unit may enter into a guaranteed utility savings contract pursuant to Section 13-1-129 NMSA 1978 in accordance with the provisions of the Public Facility Energy Efficiency and Water Conservation Act."

Section 3. Section 6-23-6.1 NMSA 1978 (being Laws 1997, Chapter 42, Section 7, as amended) is amended to read:

"6-23-6.1. REPORTING AND RETENTION OF UTILITY COST SAVINGS FOR STATE AGENCIES.--

A. A state agency entering into a guaranteed

utility savings contract with a qualified provider shall, no later than thirty days after the close of the fiscal year, furnish the energy, minerals and natural resources department a consumption and savings report, in a format established jointly by that department and the department of finance and administration, that estimates any cost savings resulting from the implementation of the guaranteed utility savings contract during the fiscal year. The report shall include:

(1) the name or description of each facility or major utility system covered by the report;

(2) utility account numbers;

(3) a record of monthly consumption of water or energy by fuel type; and

(4) a record of monthly per-unit cost of water or energy by fuel type.

B. If the consumption and savings report for a state agency shows a utility cost savings or conservation-related cost savings at the end of the fiscal year that resulted from implementation of a guaranteed utility savings contract and causes an unexpended and unencumbered balance in the agency's utility line item, and if the utility cost savings or conservation-related cost savings has not been pledged for payments pursuant to the guaranteed utility savings contract, the dollar amount of the utility cost savings or conservation-related cost savings shall be carried

over as a reserved designated fund balance to the subsequent fiscal year.

C. Beginning the year after the energy or water conservation measures are implemented, and until any alternative financing for a guaranteed utility savings contract is repaid, or for a period of no more than twenty-five years, whichever is less, all utility budgets and appropriations for the state agency shall be based on:

(1) the energy or water consumption levels, or both, before the energy or water conservation measures were implemented;

(2) the same allowance for escalation or decrease of utility costs given state agencies that did not participate in a guaranteed utility savings contract; and

(3) any adjustments for acquisitions, expansions, sale or disposition of state agency facilities.

D. At the end of the repayment period for the guaranteed utility savings contract, or twenty-five years, whichever is less, new budgets or appropriations for utilities shall again be based upon actual utility consumption.

E. Upon carryover of the dollar amount of utility cost savings or conservation-related cost savings as a reserved designated fund balance to the subsequent fiscal year, state agencies may submit a budget adjustment request to use those funds for the following purposes:

(1) up to one hundred percent of the funds may be used for additional energy or water conservation measures or for payment of guaranteed utility savings contracts; and

(2) after encumbrances for additional energy or water conservation measures or for payment of guaranteed utility savings contracts have been made, up to fifty percent of the remaining funds may be used for purposes consistent with the duties and responsibilities assigned to the state agency, while the remaining funds shall revert to the appropriate fund.

F. For the purposes of this section, "state agency" means an agency, institution or instrumentality of the state of New Mexico. "State agency" does not include a municipality, county or school district."

Section 4. Section 6-23-10 NMSA 1978 (being Laws 1993, Chapter 231, Section 10, as amended) is amended to read:

"6-23-10. STATE INSTITUTIONS AND BUILDINGS--USE OF CERTAIN REVENUES AUTHORIZED.--Resulting utility cost savings and conservation-related cost savings, income from lands granted for the use of certain institutions and public buildings and deposited in income funds for such institutions and buildings pursuant to Section 19-1-17 NMSA 1978 or special funds of institutions may be appropriated and pledged for payments pursuant to a guaranteed utility savings contract or

related lease-purchase agreement or installment payment contract pursuant to the Public Facility Energy Efficiency and Water Conservation Act. Money appropriated for that purpose shall be deposited in a special fund or account of the institution or fund and that revenue and no other revenue shall be pledged for payments pursuant to the Public Facility Energy Efficiency and Water Conservation Act."

Section 5. Section 13-1-150 NMSA 1978 (being Laws 1984, Chapter 65, Section 123, as amended by Laws 2001, Chapter 247, Section 11 and by Laws 2001, Chapter 270, Section 1) is amended to read:

"13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD.--

A. A multi-term contract for items of tangible personal property, construction or services except for professional services, in an amount under twenty-five thousand dollars (\$25,000), may be entered into for any period of time deemed to be in the best interests of the state agency or a local public body not to exceed four years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting. If the amount of the contract is twenty-five thousand dollars (\$25,000) or more, the term shall not exceed eight years, including all extensions and renewals, except that for a contract entered into pursuant to the Public

Facility Energy Efficiency and Water Conservation Act, the term shall not exceed twenty-five years, including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

B. A contract for professional services may not exceed four years, including all extensions and renewals, except for the following:

(1) services required to support or operate federally certified medicaid, financial assistance and child support enforcement management information or payment systems;

(2) services to design, develop or implement the taxation and revenue information management systems project authorized by Laws 1997, Chapter 125;

(3) a multi-term contract for the services of trustees, escrow agents, registrars, paying agents, letter of credit issuers and other forms of credit enhancement and other similar services, excluding bond attorneys, underwriters and financial advisors with regard to the issuance, sale and delivery of public securities, may be for the life of the securities or as long as the securities remain outstanding;

(4) services relating to the implementation, operation and administration of the Education Trust Act; and

(5) services relating to measurement and verification of conservation-related cost savings and utility

cost savings pursuant to the Public Facility Energy Efficiency and Water Conservation Act."

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009._____

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