

AN ACT

RELATING TO THE PUBLIC BUILDING ENERGY EFFICIENCY AND WATER CONSERVATION ACT; PROVIDING THAT OPERATING COST SAVINGS MAY BE USED TO PAY GUARANTEED UTILITY SAVINGS CONTRACTS; PROVIDING THAT SPECIAL FUNDS OF INSTITUTIONS MAY BE PLEDGED FOR PAYMENTS.

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

Section 1. Section 6-23-3 NMSA 1978 (being Laws 1993, Chapter 231, Section 3, as amended) is amended to read:

"6-23-3. ENERGY EFFICIENCY AND WATER CONSERVATION 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, or both, recommended in the proposal is not likely to exceed the amount to be saved in energy and conservation-related operational costs over ten years from the date of installation if the recommendations in the proposal were followed; and

(2) the qualified provider can provide a written guarantee that the energy, water or conservation-related operating cost savings will meet or exceed the costs of the system.

B. A guaranteed utility savings contract shall include a written guarantee from the qualified provider that annual savings shall meet or exceed the cost of the energy or water conservation measures, or both.

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 ten years; provided, however, only special funds authorized pursuant to the Public Building 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, or both, pursuant to a guaranteed utility savings contract, but only in accordance with the provisions of the Public Building Energy Efficiency and Water Conservation Act.

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

Section 2. Section 6-23-5 NMSA 1978 (being Laws 1993, Chapter 231, Section 5, as amended) is amended to read:

"6-23-5. CONTRACT APPROVAL REQUIRED.--

A. A governmental unit shall not enter into a guaranteed utility savings contract with a qualified provider or any installment payment contract or lease-purchase agreement pursuant to that contract unless the contracts and agreements are reviewed and approved as

follows:

- (1) for school districts, by the superintendent of public instruction;
- (2) for state agencies, by the secretary of general services;
- (3) for municipalities and counties, by the secretary of finance and administration; and
- (4) for all post-secondary educational institutions and the state educational institutions confirmed in Article 12, Section 11 of the constitution of New Mexico, by the commission on higher education.

B. The approval required under this section shall be given upon:

- (1) a determination that the contracts and agreements comply with the provisions of the Public Building Energy Efficiency and Water Conservation Act and other applicable law;

- (2) certification by the energy, minerals and natural resources department that the qualified provider of energy conservation measures meets the experience requirements set by the department and the guaranteed energy savings from the energy conservation measures proposed appear to be accurately estimated and reasonable; and

- (3) certification by the state engineer's office that the qualified provider of water conservation measures meets the experience requirements set by that office and the guaranteed water savings from the water conservation measures proposed appear to be accurately estimated and reasonable."

1997, Chapter 42, Section 7) 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, which 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, energy by fuel type, or both; and
- (4) a record of monthly per-unit cost of water, energy by fuel type, or both.

B. If the consumption and savings report for a state agency shows a utility or conservation-related operating 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, the dollar amount of the energy, water or conservation-related operating cost savings shall be carried over as a reserved designated fund balance to the subsequent fiscal year.

C. Beginning the year after the utility cost

savings and conservation-related operating cost savings measures are implemented, and until any alternative financing for a guaranteed utility savings contract is repaid, or for a period of no more than ten 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 ten 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 energy, water or conservation-related operating 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 both, or for payment of guaranteed utility savings contracts; and

(2) after encumbrances for additional energy or water conservation measures, or both, 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 general fund.

F. For the purposes of this section, "state agency" means an agency, institution or instrumentality of the state of New Mexico eligible to receive income from lands granted for the use of certain institutions and deposited in income funds pursuant to Section 19-1-17 NMSA 1978. "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.--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 and special funds of institutions may be appropriated and pledged for payments pursuant to any guaranteed utility savings contract or related lease-purchase agreement or installment payment contract pursuant to the Public Building Energy Efficiency and Water Conservation Act. Any money so appropriated 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 Building Energy Efficiency and Water Conservation Act."