

**6-23-1. Short title.**

Chapter 6, Article 23 NMSA 1978 may be cited as the "Public Facility Energy Efficiency and Water Conservation Act".

**6-23-2. Definitions.**

As used in the Public Facility Energy Efficiency and Water Conservation Act [6-23-1 NMSA 1978]:

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.

**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 [[6-23-1](#) NMSA 1978] 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.

**[6-23-4. Guaranteed utility savings contract; performance guarantee required.](#)**

A governmental unit shall not enter into a guaranteed utility savings contract unless a performance guarantee that meets the requirements of this section is delivered by the qualified provider to the governmental unit and that guarantee becomes binding on the parties upon the execution of the guaranteed utility savings contract. The qualified provider shall provide a performance guarantee in the form of a performance bond, a cash bond, a letter of credit issued by a bank with a Moody's or Standard and Poor's rating of "A" or better or any other surety, including insurance, satisfactory to the governmental unit and its approving agency. The guarantee for each year shall be in an amount equal to the amount of the annual guarantee given by the qualified provider in the guaranteed utility savings contract.

**[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:
  - (a) if the facilities, systems or vehicles are owned, leased or otherwise controlled by the general services department, by the secretary of general services; and
  - (b) if the facilities, systems or vehicles are not owned, leased or otherwise controlled by the general

services department, by the executive head of the state agency;

- (3) for municipalities and counties, by the governing body of the municipality or county; 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 Facility Energy Efficiency and Water Conservation Act [[Chapter 6, Article 23](#) NMSA 1978] 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 office of the state engineer 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.

#### **6-23-6. Contracts and agreements not a general obligation of the governmental unit.**

Payment obligations of a governmental unit pursuant to a guaranteed utility savings contract with a qualified provider and any installment payment contract or lease-purchase agreement pursuant to a guaranteed utility savings contract are not general obligations of the governmental unit and are collectible only from utility cost savings and conservation-related cost savings appropriated by the legislature and other revenues pledged for that purpose in accordance with the Public Facility Energy Efficiency and Water Conservation Act [[6-23-1](#) NMSA 1978].

#### **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.

#### **6-23-7. Public school utility conservation fund created; use.**

A. The "public school utility conservation fund" is created as a special fund in the state treasury. The fund shall consist of money transferred to the fund, from year to year, from the distribution of the permanent fund and land income of which the common schools are the beneficiary. No other money from any school district or state source shall be deposited or paid into the public school utility conservation fund.

B. Annually, after the calculation of the state equalization guarantee distribution has been made, the superintendent of public instruction shall determine the sum of the deductions made in the state equalization guarantee distribution of school districts pursuant to Paragraph (7) of Subsection D of [Section 22-8-25](#) NMSA 1978 and shall certify that amount to the secretary of finance and administration. Distributions from the permanent fund and land income of which the common schools are the beneficiary equal to that amount shall be transferred from the common school current fund to the public school utility conservation fund.

C. Money in the public school utility conservation fund is appropriated to the state department of public education solely for the purpose of disbursing money to school districts to make payments pursuant to any guaranteed utility savings contract between the school district and a qualified provider or any installment contract or lease-purchase agreement for the purchase and installation of energy or water conservation measures pursuant to that guaranteed utility savings contract.

D. Disbursements from the public school utility conservation fund shall be made only to school districts and only upon certification by the superintendent of public instruction that the disbursement is for a payment authorized by the Public Facility Energy Efficiency and Water Conservation Act [[6-23-1](#) NMSA 1978].

E. The superintendent of public instruction shall submit to the legislative finance committee prior to each regular legislative session a list of school districts proposing to enter into approved guaranteed utility savings contracts in the succeeding fiscal year. The list shall include information on the amount of the school district's proposed annual payments and specific amounts that utility and operational budget items are guaranteed to be reduced to achieve the savings to make the payments.

F. Any unexpended or unencumbered balance remaining in the public school utility conservation fund at the end of any fiscal year shall be transferred to the public school fund.

**[6-23-8. Municipalities; use of certain revenues authorized.](#)**

Upon adoption of an ordinance or resolution by an affirmative vote of a majority of the members of the governing body at any regular or special meeting of the governing body called for this purpose, a municipality may pledge utility cost savings, conservation-related cost savings or any or all revenues not otherwise pledged or obligated from gross receipts taxes received by the municipality pursuant to [Section 7-1-6.4](#) NMSA 1978 and [Section 7-1-6.12](#) NMSA 1978 for payments pursuant to a guaranteed utility savings contract with a qualified provider and any installment payment contract or lease-purchase agreement pursuant to that guaranteed utility savings contract. The ordinance or resolution shall declare the necessity for the guaranteed utility savings contract and related contracts or agreements and shall designate the source of the pledged revenues. Any revenues pledged for such contract payments shall be deposited in a special fund, and the municipality shall not use any other revenues to make such payments. At the end of each fiscal year, any money remaining in the special fund after payment obligations are met may be transferred to any other fund of the municipality.

**6-23-9. Counties; use of certain revenues authorized.**

Upon adoption of an ordinance or resolution by an affirmative vote of a majority of the members of the board of county commissioners at any regular or special meeting of the board called for this purpose, a county may pledge utility cost savings, conservation-related cost savings or any or all of the revenue not otherwise pledged or obligated from the first one-eighth of one percent increment and of one-half of the revenue from the third one-eighth of one percent increment of the county gross receipts tax transferred to the county pursuant to [Section 7-1-6.13](#) NMSA 1978 and any or all of the revenue from the distribution related to the first one-eighth of one percent increment made pursuant to [Section 7-1-6.16](#) NMSA 1978 for the purpose of making payments pursuant to a guaranteed utility savings contract with a qualified provider or any installment payment contract or lease-purchase agreement pursuant to that guaranteed utility savings contract. The ordinance or resolution shall declare the necessity for the guaranteed utility savings contract and related contracts or agreements and shall designate the source of the pledged revenues. Any revenues pledged for such contract payments shall be deposited in a special fund and the county shall not use any other county or state revenue to make such payments. At the end of each fiscal year, any money remaining in the special fund after the payment obligations are met may be transferred to any other fund of the county.

**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 [[6-23-1](#) NMSA 1978]. 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.

**13-1-129. Procurement under existing contracts.**

A. Notwithstanding the requirements of [Sections 13-1-102](#) through [13-1-118](#) NMSA 1978, the state purchasing agent or a central purchasing office may contract for services, construction or items of tangible personal property without the use of competitive sealed bids or competitive sealed proposals as follows:

- (1) at a price equal to or less than the contractor's current federal supply contract price (GSA), providing the contractor has indicated in writing a willingness to extend such contractor pricing, terms and conditions to the state agency or local public body and the purchase order adequately identifies the contract relied upon; or
- (2) with a business which has a current exclusive or nonexclusive price agreement with the state

purchasing agent or a central purchasing office for the item, services or construction meeting the same standards and specifications as the items to be procured if the following conditions are met:

- (a) the quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement; and
- (b) the purchase order adequately identifies the price agreement relied upon.

B. The central purchasing office shall retain for public inspection and for the use of auditors a copy of each federal supply contractor state purchasing agent price agreement relied upon to make purchases without seeking competitive bids or proposals.

**7-1-6.4. Distribution; municipality from gross receipts tax.**

A. Except as provided in Subsection B of this section, a distribution pursuant to Section [7-1-6.1](#) NMSA 1978 shall be made to each municipality in an amount, subject to any increase or decrease made pursuant to Section [7-1-6.15](#) NMSA 1978, equal to the product of the quotient of one and two hundred twenty-five thousandths percent divided by the tax rate imposed by Section [7-9-4](#) NMSA 1978 multiplied by the net receipts for the month attributable to the gross receipts tax from business locations:

- (1) within that municipality;
- (2) on land owned by the state, commonly known as the "state fairgrounds", within the exterior boundaries of that municipality;
- (3) outside the boundaries of any municipality on land owned by that municipality; and
- (4) on an Indian reservation or pueblo grant in an area that is contiguous to that municipality and in which the municipality performs services pursuant to a contract between the municipality and the Indian tribe or Indian pueblo if:
  - (a) the contract describes an area in which the municipality is required to perform services and requires the municipality to perform services that are substantially the same as the services the municipality performs for itself; and
  - (b) the governing body of the municipality has submitted a copy of the contract to the secretary.

B. If the reduction made by Laws 1991, Chapter 9, Section 9 to the distribution under this section impairs the ability of a municipality to meet its principal or interest payment obligations for revenue bonds outstanding prior to July 1, 1991 that are secured by the pledge of all or part of the municipality's revenue from the distribution made under this section, then the amount distributed pursuant to this section to that municipality shall be increased by an amount sufficient to meet any required payment, provided that the distribution amount does not exceed the amount that would have been due that municipality under this section as it was in effect on June 30, 1992.

C. A distribution pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a municipality pursuant to the Tax Increment for Development Act [\[5-15-1](#) NMSA 1978].



**7-1-6.12. Transfer; revenues from municipal local option gross receipts taxes.**

A. A transfer pursuant to Section [7-1-6.1](#) NMSA 1978 shall be made to each municipality for which the department is collecting a local option gross receipts tax imposed by that municipality in an amount, subject to any increase or decrease made pursuant to Section [7-1-6.15](#) NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax imposed by that municipality, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that municipality of the local option gross receipts tax and any additional administrative fee withheld pursuant to Subsection C of Section [7-1-6.41](#) NMSA 1978.

B. A transfer pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a municipality pursuant to the Tax Increment for Development Act [[5-15-1](#) NMSA 1978].

**7-1-6.13. Transfer; revenues from county local option gross receipts taxes.**

A. Except as provided in Subsections B and C of this section, a transfer pursuant to Section [7-1-6.1](#) NMSA 1978 shall be made to each county for which the department is collecting a local option gross receipts tax imposed by that county in an amount, subject to any increase or decrease made pursuant to Section [7-1-6.15](#) NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax imposed by that county, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that county of the local option gross receipts tax and any additional administrative fee withheld pursuant to Subsection C of Section [7-1-6.41](#) NMSA 1978.

B. A transfer pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a county pursuant to the Tax Increment for Development Act [[5-15-1](#) NMSA 1978].

C. Through June 30, 2009, a distribution pursuant to Section [7-1-6.1](#) NMSA 1978 shall be made to the sole community provider fund from revenue attributable to the county gross receipts tax imposed by a county pursuant to Section [7-20E-9](#) NMSA 1978, subject to the approval of the board of county commissioners of that county. The distribution shall be in an amount equal to one-twelfth of the county's annual approved contribution for support of sole community provider payments. Revenue in excess of the amount required for the contribution shall be transferred to the county pursuant to the provisions of Subsection A of this section.

**7-1-6.16. County equalization distribution.**

A. Beginning on September 15, 1989 and on September 15 of each year thereafter, the department shall distribute to any county that has imposed or continued in effect during the state's preceding fiscal year a county gross receipts tax pursuant to Section [7-20E-9](#) NMSA 1978 an amount equal to:

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- (1) the product of a fraction, the numerator of which is the county's population and the denominator of which is the state's population, multiplied by the annual sum for the county; less
  - (2) the net receipts received by the department during the report year, including any increase or decrease made pursuant to Section [7-1-6.15](#) NMSA 1978, attributable to the county gross receipts tax at a rate of one-eighth percent; provided that for any month in the report year, if no county gross receipts tax was in effect in the county in the previous month, the net receipts, for the purposes of this section, for that county for that month shall be zero.
- B. If the amount determined by the calculation in Subsection A of this section is zero or a negative number for a county, no distribution shall be made to that county.
- C. As used in this section:
- (1) "annual sum" means for each county the sum of the monthly amounts for those months in the report year that follow a month in which the county had in effect a county gross receipts tax;
  - (2) "monthly amount" means an amount equal to the product of:
    - (a) the net receipts received by the department in the month attributable to the state gross receipts tax plus five percent of the total amount of deductions claimed pursuant to Section [7-9-92](#) NMSA 1978 for the month plus five percent of the total amount of deductions claimed pursuant to Section [7-9-93](#) NMSA 1978 for the month; and
    - (b) a fraction, the numerator of which is one-eighth percent and the denominator of which is the tax rate imposed by Section [7-9-4](#) NMSA 1978 in effect on the last day of the previous month;
  - (3) "population" means the most recent official census or estimate determined by the United States census bureau for the unit or, if neither is available, the most current estimated population for the unit provided in writing by the bureau of business and economic research at the university of New Mexico; and
  - (4) "report year" means the twelve-month period ending on the July 31 immediately preceding the date upon which a distribution pursuant to this section is required to be made.

**[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 [[6-23-1](#) NMSA 1978], 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 [[21-21K-1](#) NMSA 1978]; 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.

**19-1-17. Permanent, income and current funds; creating deposits.**

A. The following funds are created.

B. To the credit of these funds, in the respective proportions to which they are by law entitled, all money derived from state lands shall be deposited by the commissioner with the state treasurer, as nearly as possible, on the first day of each calendar month. The commissioner shall keep an accurate record of all such deposits. The funds are:

- (1) common school current fund;
- (2) common school permanent fund;
- (3) university income fund;
- (4) university permanent fund;

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- (5) university saline income fund;
- (6) New Mexico state university income fund;
- (7) New Mexico state university permanent fund;
- (8) western New Mexico university income fund;
- (9) western New Mexico university permanent fund;
- (10) New Mexico highlands university income fund;
- (11) New Mexico highlands university permanent fund;
- (12) northern New Mexico state school income fund;
- (13) northern New Mexico state school permanent fund;
- (14) eastern New Mexico university income fund;
- (15) eastern New Mexico university permanent fund;
- (16) New Mexico institute of mining and technology income fund;
- (17) New Mexico institute of mining and technology permanent fund;
- (18) New Mexico military institute income fund;
- (19) New Mexico military institute permanent fund;
- (20) New Mexico boys' school income fund;
- (21) New Mexico boys' school permanent fund;
- (22) miners' hospital income fund;
- (23) miners' hospital permanent fund;
- (24) New Mexico behavioral health institute at Las Vegas income fund;
- (25) New Mexico behavioral health institute at Las Vegas permanent fund;
- (26) penitentiary income fund;
- (27) penitentiary permanent fund;
- (28) state charitable, penal and reformatory institutions income fund;
- (29) state charitable, penal and reformatory institutions permanent fund; to be equally distributed among the institutions as defined in Article [14](#), Section [1](#) of the constitution of New Mexico;
- (30) New Mexico school for the blind and visually impaired income fund;
- (31) New Mexico school for the blind and visually impaired permanent fund;
- (32) New Mexico school for the deaf income fund;
- (33) New Mexico school for the deaf permanent fund;
- (34) permanent reservoirs for irrigation purposes income fund;

- (35) permanent reservoirs for irrigation purposes permanent fund;
- (36) improvement of Rio Grande income fund;
- (37) improvement of Rio Grande permanent fund;
- (38) public buildings at capital income fund;
- (39) public buildings at capital permanent fund;
- (40) Santa Fe and Grant county railroad bond fund, to be applied as provided by Article [9](#), Section [4](#) of the constitution of New Mexico; and
- (41) state lands maintenance fund.

**[21-21K-1. Short title.](#)**

Sections 1 through 7 [[21-21K-1](#) to [21-21K-7](#) NMSA 1978] of this act may be cited as the "Education Trust Act".

**[21-21K-2. Definitions.](#)**

As used in the Education Trust Act [[21-21K-1](#) NMSA 1978]:

- A. "beneficiary" means a person who is entitled to receive benefits under a college investment agreement or a prepaid tuition contract;
- B. "board" means the education trust board;
- C. "commission" means the commission on higher education;
- D. "college investment agreement" means an agreement entered into by the board and an investor, pursuant to the provisions of the Education Trust Act, to defray the costs of attendance of a beneficiary at an institution of higher education;
- E. "council" means the state investment council;
- F. "fund" means the education trust fund;
- G. "institution of higher education" means a state public post-secondary educational institution as defined in [Section 6-17-1.1](#) NMSA 1978, a branch college, an independent community college, a technical and vocational institute or, if approved by the board, another public or private post-secondary educational institution located in this state or any other state;
- H. "investor" means a person who has entered into a college investment agreement with the board;
- I. "prepaid tuition contract" means a contract entered into by the board and a purchaser, pursuant to the provisions of the Education Trust Act, to provide for the payment of higher education tuition and required fees of a beneficiary; and

J. "purchaser" means a person who is obligated to make payments under a prepaid tuition contract.

**21-21K-3. Education trust fund; creation.**

A. The "education trust fund" is created in the state treasury. The board shall deposit all money received pursuant to college investment agreements and prepaid tuition contracts into the fund. Money in the fund shall consist of appropriations, investments, payments, gifts, bequests and donations. All money invested in the fund is appropriated to the board. Money in the fund shall not revert to the general fund at the end of the fiscal year. The board shall account for each payment from an investor or purchaser on behalf of a beneficiary pursuant to a college investment agreement or prepaid tuition contract. The board shall provide that all money in the fund shall be invested either by the state investment officer according to rules promulgated by the council, subject to the approval of the board, or by a private investment advisor, approved by the council, pursuant to a contract between the board and the investment advisor. The board shall review investments made pursuant to this subsection at least quarterly.

B. Expenditures from the fund shall be for payments to institutions of higher education on behalf of beneficiaries or for refunds, in accordance with the provisions of the Education Trust Act [[21-21K-1](#) NMSA 1978], and for costs of administering that act.

C. In no event shall any liability of, or contractual obligation incurred by, the program established pursuant to the provisions of the Education Trust Act obligate or encumber any of the state's land grant permanent funds, the severance tax permanent fund or any money that is a part of a state-funded financial aid program. Nothing in the Education Trust Act creates any obligation, legal, moral or otherwise, to fulfill the terms of any college investment agreement or prepaid tuition contract out of any source other than the education trust fund.

D. The board may create within the fund separate trust funds or accounts for college investment agreements and prepaid tuition contracts, and may deposit all money received pursuant to college investment agreements and prepaid tuition contracts into the related separate trust funds or accounts. The board may appoint one or more custodians of the separate trust funds or accounts that shall be a state or national bank authorized to do business in the United States. No member of the board, while acting within the scope of his authority or while acting as a trustee of any trust fund or account of the board, shall be subject to any personal liability for any action taken or omitted within that scope of authority.

**21-21K-4. Board created; members; appointment; terms of office; powers and duties.**

A. There is created the "education trust board". The board is administratively attached to the commission, and the commission shall provide administrative support for the board in carrying out its

duties pursuant to the Education Trust Act [[21-21K-1](#) NMSA 1978]. The board shall consist of the following voting members:

- (1) the executive director of the commission, or his designee, who shall be the ex-officio chair of the board;
- (2) the state investment officer, or his designee;
- (3) one member appointed by the governor;
- (4) one member representing institutions of higher education appointed by the speaker of the house of representatives; and
- (5) one member representing students at institutions of higher education appointed by the president pro tempore of the senate.

B. The appointed members must possess knowledge, skill and experience in higher education, business or finance.

C. The appointed members shall serve six-year terms, with the exception of the member representing students, who shall be appointed for a two-year term. Vacancies on the board shall be filled by the respective appointing authority for the remainder of the vacating member's term.

D. Members of the board shall be subject to the provisions of the Per Diem and Mileage Act [[10-8-1](#) NMSA 1978] and shall receive no other compensation, perquisite or allowance for their service on the board.

E. The board is authorized to adopt and promulgate rules and regulations as necessary to carry out the provisions of the Education Trust Act, protect the financial integrity of the fund, preserve the program's benefits and assure the appropriate use of the tax benefits. The board shall also determine and adopt by regulation the cost of attendance at institutions of higher education, provided that the cost of attendance shall include the same components and allowances as are used to determine cost of attendance for the federal student financial assistance programs.

#### **[21-21K-5. College investment agreement.](#)**

A. An investor may enter into a college investment agreement with the board under which the investor agrees to make investments into the fund from time to time for the purpose of defraying the costs of attendance billed by institutions of higher education. An investor may enter into a college investment agreement on behalf of any beneficiary. The board shall adopt a form of the college investment agreement to be used by the board and investors.

B. The board shall provide for the direct payment of principal, investment earnings and capital appreciation accrued pursuant to a college investment agreement to the institution of higher education that the beneficiary actually attends.

C. A college investment agreement may be terminated by the investor at any time. The investor may

modify the college investment agreement to designate a new beneficiary instead of the original beneficiary if the new beneficiary meets the requirements of the original beneficiary on the date the designation is changed and if the original beneficiary:

- (1) dies;
- (2) is not admitted to an institution of higher education following proper application;
- (3) elects not to attend an institution of higher education or, if attending, elects to discontinue higher education; or
- (4) for any other circumstance approved by the board, does not exercise his rights under the college investment agreement.

D. The board shall provide, by rule, procedures for determining the amount to be refunded for college investment agreements terminated pursuant to the provisions of this section. The balance of the accrued investment earnings and capital appreciation less the amount refunded and administrative costs shall be credited to the fund.

E. The board shall establish a refund policy if a beneficiary receives additional student financial aid.

F. The board shall specify, by rule, appropriate provisions for the term and termination of college investment agreements.

G. Gifts and bequests to the fund may be made in the name of a specific beneficiary or in the name of the fund in general. Gifts and bequests given for the benefit of a specific beneficiary shall be credited to that beneficiary, and gifts and bequests given to the fund in general shall be credited equally to each beneficiary of a college investment agreement.

H. Principal paid into the fund, together with accrued investment earnings and capital appreciation, shall be excluded from any calculation of a beneficiary's state student financial aid eligibility.

I. The board shall annually notify each investor of the status of the fund.

**21-21K-6. Prepaid higher education tuition program; rules.**

A. The board may promulgate rules in order to establish a prepaid higher education tuition program. Prior to the establishment of the program, the board will contract for a thorough feasibility study of the proposed prepaid higher education tuition program, including an actuarial analysis of the assumptions underlying the proposed program, and report to the appropriate interim committee of the legislature. The report shall include a recommendation from the board regarding whether it is feasible to proceed with the adoption of the proposed program based on the findings of the feasibility study.

B. The rules regarding the prepaid higher education tuition program shall specify at least the following:

- (1) that prepaid tuition contracts, once paid, will cover all tuition and required fees of state public institutions of higher education;



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- (2) that payments for prepaid tuition contracts may be made either in a lump sum or in installments;
- (3) that the prepaid tuition contracts shall include at least the following:
  - (a) provisions that allow purchasers to choose from payment plans that pay the tuition and required fees for institutions of higher education;
  - (b) provisions that allow for rollover of prepaid higher education tuition benefits from one plan to another and that provide that benefits may be used at any institution of higher education;
  - (c) penalties for termination of the contract or default on any of the contract's terms or conditions; and
  - (d) provisions that allow purchasers to change or switch beneficiaries;
- (4) that beneficiaries must meet certain minimum eligibility requirements as determined by the board;
- (5) that the board shall consider at least the following variables when setting contract prices:
  - (a) the amount and estimated rate of increase of tuition and fees at institutions of higher education;
  - (b) estimated investment returns;
  - (c) estimated administrative costs; and
  - (d) the period between the date the contract is entered into and the date the beneficiary is projected to graduate from high school;
- (6) that gifts or bequests may be made to the fund, either on behalf of a beneficiary or to the fund generally;
- (7) how and when institutions of higher education become eligible to participate in the program;
- (8) that benefits under a prepaid tuition contract are excluded from any calculation of a beneficiary's state student financial aid eligibility; and
- (9) that the board shall annually provide for audited statements and actuarial studies on the condition of the fund.

**21-21K-7. Reports.**

- A. The board shall annually submit to the governor and to the appropriate interim legislative committee a report including:
- (1) the board's fiscal transactions during the preceding fiscal year;
  - (2) the market and book value of the fund as of the end of the preceding fiscal year;
  - (3) the asset allocations of the fund expressed in percentages of stocks, fixed income securities, cash or other financial assets;
  - (4) the rate of return on the investment of the fund's assets during the preceding fiscal year;

- (5) an actuarial valuation of the assets and liabilities of the program, including the extent to which the program's liabilities are unfunded; and
  - (6) complete prepaid tuition contract sales information, including projected enrollments of beneficiaries at institutions of higher education.
- B. The board shall make the report described by Subsection A available to purchasers of prepaid tuition contracts and investments under college investment agreements.

**22-8-25. State equalization guarantee distribution; definitions; determination of amount.**

- A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that its operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost. For state-chartered charter schools, the state equalization guarantee distribution is the difference between the state-chartered charter school's program cost and the two percent withheld by the department for administrative services.
- B. "Local revenue", as used in this section, means seventy-five percent of receipts to the school district derived from that amount produced by a school district property tax applied at the rate of fifty cents (\$.50) to each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district and to the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act [[7-32-1](#) NMSA 1978] and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act [[7-34-1](#) NMSA 1978].
- C. "Federal revenue", as used in this section, means receipts to the school district, excluding amounts that, if taken into account in the computation of the state equalization guarantee distribution, result, under federal law or regulations, in a reduction in or elimination of federal school funding otherwise receivable by the school district, derived from the following:
- (1) seventy-five percent of the school district's share of forest reserve funds distributed in accordance with Section [22-8-33](#) NMSA 1978; and
  - (2) seventy-five percent of grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid".
- D. To determine the amount of the state equalization guarantee distribution, the department shall:
- (1) calculate the number of program units to which each school district or charter school is entitled using an average of the MEM on the second and third reporting dates of the prior year; or
  - (2) calculate the number of program units to which a school district or charter school operating under an approved year-round school calendar is entitled using an average of the MEM on appropriate dates established by the department; or

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- (3) calculate the number of program units to which a school district or charter school with a MEM of two hundred or less is entitled by using an average of the MEM on the second and third reporting dates of the prior year or the fortieth day of the current year, whichever is greater; and
  - (4) using the results of the calculations in Paragraph (1), (2) or (3) of this subsection and the instructional staff training and experience index from the October report of the prior school year, establish a total program cost of the school district or charter school;
  - (5) for school districts, calculate the local and federal revenues as defined in this section;
  - (6) deduct the sum of the calculations made in Paragraph (5) of this subsection from the program cost established in Paragraph (4) of this subsection;
  - (7) deduct the total amount of guaranteed energy savings contract payments that the department determines will be made to the school district from the public school utility conservation fund during the fiscal year for which the state equalization guarantee distribution is being computed; and
  - (8) deduct ninety percent of the amount certified for the school district by the department pursuant to the Energy Efficiency and Renewable Energy Bonding Act.
- E. 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 [[6-21D-1](#) NMSA 1978].
- F. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deductions made in Paragraphs (6) through (8) of Subsection D of this section.
- G. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. The calculation shall be based on the local and federal revenues specified in this section received from June 1 of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee distribution is being computed. In the event that a school district or charter school has received more state equalization guarantee funds than its entitlement, a refund shall be made by the school district or charter school to the state general fund.