



## Climate Change Statutes

### STATE OF NEW MEXICO

*This project was undertaken in partnership with the USDA Office of the Chief Economist, The Office of Energy Policy and New Uses. For information on the full project, visit [Climate Change Statutes](#).*

*Current through the 2010 Legislative Session of the New Mexico State Legislature.*

#### **§ 5-18-1. Short title.**

This act may be cited as the "Renewable Energy Financing District Act".

#### **§ 5-18-2. Legislative findings.**

The legislature finds that:

A. the development of renewable energy sources will advance the security, economic well-being and public and environmental health of the state, as well as contributing to the energy independence of the nation and addressing the issue of global climate change;

B. it is in the best interests of the state, municipalities and counties to encourage the development of distributed generation renewable energy sources and the installation by property owners of such energy sources;

C. the high front-end costs of renewable energy installations to real property prevents many property owners from making these improvements, and therefore it is desirable and necessary to authorize alternative financing procedures to promote the installation of the improvements; and

D. the creation and administration of renewable energy financing districts to facilitate the development of renewable energy improvements on property in the district will serve a valid public purpose and is expressly declared to be in the public interest.

#### **§ 5-18-3. Definitions.**

As used in the Renewable Energy Financing District Act:

A. "county" means any county, including an H class county;

B. "debt service" means the principal of, interest on and premium, if any, on the bonds, when due, whether at maturity or prior redemption and fees and costs of agents necessary to handle the bonds and the costs of credit enhancement or liquidity support;

C. "district" means a renewable energy financing district formed pursuant to the Renewable Energy Financing District Act by a municipality or by a county in an unincorporated area or in an incorporated area with the municipality's consent;

D. "district board" means the board of directors of the district, which shall be composed of the members of the governing body of the municipality or county in which the district is located, or at the option of the governing body, five directors appointed by the governing body, as provided in Section 9

of the Renewable Energy Financing District Act. The board shall serve until replaced by elected directors, which shall occur not later than six years after the date on which the resolution establishing the district is enacted;

E. "election" means an election held in compliance with the provisions of the Renewable Energy Financing District Act;

F. "governing body" means the body or board that by law is constituted as the governing body of the municipality or county in which the district is located;

G. "municipality" means an incorporated city, village or town;

H. "owner" means the person who is listed as the owner of real property in the district on the current property tax assessment roll;

I. "renewable energy improvement" means a photovoltaic, solar thermal, geothermal or wind energy system permanently installed on real property; and

J. "special assessment" means a levy imposed against real property within a district.

#### **§ 5-18-4. Renewable energy financing districts authorized.**

A. A governing body of a municipality or county may form a district for the purpose of encouraging, accommodating and financing renewable energy improvements on property within the municipality or county. A district shall include only property for which an owner executes an agreement consenting to the inclusion of the property within the district and to the imposition of a special assessment on the property for the purpose of financing renewable energy improvements.

B. A district formed by a municipality shall be wholly within the boundaries of the municipality. A district formed by a county shall be wholly within the boundaries of the county and shall be in the unincorporated area of the county, or may include an incorporated area with the municipality's consent. A district may include contiguous and noncontiguous property.

C. Except as otherwise provided in this section, a district shall be a political subdivision of the state, separate and apart from the municipality or county.

#### **§ 5-18-5. Resolution declaring intention to form district.**

A. A governing body may adopt a resolution declaring its intention to form a district. The resolution shall state the following:

(1) the purposes for which the district is to be formed;

(2) that the district shall include only property for which the owner has agreed to the inclusion of the property within the district, and that inclusion of property may occur subsequent to the adoption of the resolution forming the district;

(3) the process by which a property owner can execute an agreement to include property in the district;

(4) a description of the specific types of renewable energy improvements that will be eligible for the financing provided pursuant to the Renewable Energy Financing District Act;

(5) that inclusion of property in the district will result in the imposition of special assessments on the property to pay the costs of the approved renewable energy improvements, financing and administrative fees;

(6) the method of calculating the amount of the special assessment and the manner of collection of the special assessment;

(7) that standards and requirements will be set by the district board for renewable energy improvements to be installed on property in the district;

(8) a reference to the Renewable Energy Financing District Act; and

(9) that the district will be governed by a district board composed of the members of the governing body or by five directors to be appointed by the governing body.

B. The resolution shall direct that a hearing on formation of the district be scheduled and notice be published as required for public hearings of the governing body.

**§ 5-18-6. Hearing; formation of a district.**

A. At the hearing on formation of a district, the governing body shall accept and pass on written and oral testimony and evidence presented in support of or in opposition to the formation of the district. After hearing the written and oral testimony, the governing body shall determine whether the district should be formed based on the interests, convenience or necessity of the owners of property in the proposed district and the citizens of the municipality or county in which the proposed district would be located.

B. If the governing body determines that the district should be formed, it shall adopt an ordinance ordering that the district be formed and identifying the method by which property owners can execute agreements to have their property included in the district. The ordinance shall state that the district will be governed by a district board consisting of members of the governing body, or upon determination of the governing body, five directors appointed by the governing body. The ordinance shall state that one or more resolutions shall be adopted by the district board to identify the property to be included in the district and the special assessment to be imposed on that property.

C. The governing body shall cause a copy of the ordinance ordering formation of the district to be delivered to the county assessor and county treasurer of the county in which the district is located, the taxation and revenue department and the local government division of the department of finance and administration.

D. Subsequent to the formation of the district, property may be included in the district by execution of an agreement by the owner of the property and the district board, agreeing to the inclusion of the property and the imposition of a special assessment on the property, and the district board shall adopt a resolution to this effect. The district shall deliver a copy of the resolution to the county assessor and county treasurer of the county in which the district is located. A copy of the resolution and a description of the property included in the district shall be recorded with the county clerk of the county in which the district is located.

**§ 5-18-7. Special assessment; lien created.**

A. The district board may impose a special assessment on property within the district to facilitate the financing of renewable energy improvements to the property. The special assessment shall be sufficient in the case of each property to pay the costs of the financing of the renewable energy improvements, including the costs of bond issuance, debt service and administrative costs of the district and the municipality or county in which the district is located.

B. The special assessment shall be levied and collected at the same time and in the same manner as property taxes are levied and collected, except to the extent that the district board has provided for

other imposition and collection procedures. Money derived from the imposition of the special assessment shall be kept separately from other funds of the governing body.

C. A special assessment shall constitute a lien on the property, which shall be effective during the period in which the assessment is imposed and shall have priority over all other liens except liens for ad valorem property taxes.

D. The obligation to pay the special assessment may be prepaid and permanently satisfied, and the district board shall specify the conditions under which this may be achieved.

**§ 5-18-8. Special assessment bonds.**

A. A district may issue one or more series of bonds to provide money for renewable energy improvements to property in the district, and the bonds may be payable from the special assessments levied pursuant to one or more assessment resolutions.

B. For any bonds issued pursuant to the Renewable Energy Financing District Act, the district board shall prescribe the denominations of the bonds, the principal amount of each issue and the form of the bonds and shall establish the maturities, which shall not exceed twenty years, interest payment dates and interest rates, whether fixed or variable, not exceeding the maximum rate stated in the resolution of the district board. The bonds may be sold by competitive bid or negotiated sale for public or private offering at, below or above par. The proceeds of the bonds shall be deposited with the treasurer, or with a trustee or agent designated by the district board, to the credit of the district to be withdrawn for the purposes provided by the Renewable Energy Financing District Act. Pending that use, the proceeds may be invested as determined by the district. The bonds shall be made payable as to both principal and interest solely from revenues of the district, and shall specify the revenues pledged for such purposes, and shall contain such other terms, conditions, covenants and agreements as the district board deems proper.

C. No holder of special assessment bonds issued pursuant to the Renewable Energy Financing District Act may compel any exercise of the taxing power of the district, municipality or county to pay the bonds or the interest on the bonds. Special assessment bonds issued pursuant to that act are not a debt or general obligation of the county or the municipality in which the district is located, nor is the payment of special assessment bonds enforceable out of any money other than the revenue pledged to the payment of the bonds.

D. Pursuant to this section, the district may issue and sell refunding bonds to refund any special assessment bonds of the district authorized by the Renewable Energy Financing District Act. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

**§ 5-18-9. Appointment of directors; qualifications; terms; resumption of governance by governing body.**

A. The governing body, at its option, may authorize the appointment of a separate district board. In the case of an appointed district board, the directors shall serve an initial term of six years. If a vacancy occurs on the district board because of death, resignation or inability of a director to discharge the duties of director, the governing body shall appoint a director to fill the vacancy, who shall hold office for the remainder of the unexpired term until the appointed director's successor is appointed or elected.

B. At the end of the appointed director's initial term, the governing body shall resume governance of the district as its board, or, at its option, shall hold an election of directors by majority vote of the property owners in the district, pursuant to Section 10 of the Renewable Energy Financing District Act.

**§ 5-18-10. Notice and conduct of election for district board.**

A. An election pursuant to the Renewable Energy Financing District Act for the purpose of election of directors of a district board shall be called by mailing notices to the owners of property included in the district not less than twenty days before the election. The property tax assessment rolls shall be used to determine the owners of property included in the district. Notice shall also be published one time in a newspaper of general circulation in the municipality or county. The notice shall state the purpose of the election, the date of the election, the place of holding the election, the hours during the day in which the polls will be open and provisions for voting by mail.

B. Within thirty days after an election, the district board shall meet and canvass the returns, determining the number of votes properly cast. A majority of the votes cast at the election shall be required for election of a member to the district board.

**§ 5-18-11. Powers and duties of a district.**

A. The district board shall:

(1) establish guidelines and standards for renewable energy improvements to be made to property included in the district;

(2) establish guidelines and procedures for a property owner to enter into an agreement with the district board to include property in the district;

(3) establish guidelines for the documentation required from a property owner prior to property being included in the district of the owner's contracts or agreements for purchase and installation of renewable energy improvements;

(4) establish the amount of and impose special assessments for the financing of the renewable energy improvements, including the costs of bond issuance, debt service and administrative costs of the district and the municipality or county in which the district is located; and

(5) enter into contracts, agreements and trust indentures to obtain credit enhancement or liquidity support for its bonds and process the issuance, registration, transfer and payment of its bonds and the disbursement and investment of proceeds of the bonds.

B. The district board may enter into contracts to carry out the purposes of the district on such terms and with such persons as the board determines to be appropriate.

**§ 5-18-12. Change in district.**

A. At any time after adoption of a resolution creating a district, property may be added to the district at the request of the owner of the property, upon adoption of a resolution of the district board.

B. Property may be deleted from the district only upon request of the property owner and adoption of a resolution of intention to do so by the district board. Property within the district that is subject to the lien of special assessments or other charges imposed pursuant to the Renewable Energy Financing District Act shall not be deleted from the district while there are bonds outstanding that are payable by such special assessments or charges.

**§ 5-18-13. Dissolution of district.**

The district may be dissolved by the district board by a resolution of the district board upon a determination that the district has no outstanding bond obligations. The district shall not be dissolved if any bonds of the district remain outstanding unless an amount of money sufficient, together with investment income thereon, to make all payments due on the bonds either at maturity or prior redemption has been deposited with a trustee or escrow agent and pledged to the payment and

redemption of the bonds. The district may continue to operate after dissolution only as needed to collect money and make payments on any outstanding bonds.