F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 03/09/09
SPONSOR HBIC **LAST UPDATED** **HB** 603/HBICS

SHORT TITLE Public Facility Cumulative Cost Savings **SB**

ANALYST Archuleta

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown	Unknown	Unknown		Various

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
General Services Department (GSD)

SUMMARY

Synopsis of Bill

House Business and Industry Committee Substitute for House Bill 603 amends the Public Facility Efficiency and Water Conservation Act by extending the allowed payback period from 10 to 25 years or the life of the project equipment, adds solar generating to the list of approved systems, and clarifies the allowable sources of funding to repay qualifying performance contracts. The bill indicates that the cumulative savings from multiple components of a project may be used to repay the cost of the project and that normal maintenance costs shall not be included as an energy or water cost.

FISCAL IMPLICATIONS

Although the bill does not contain an appropriation, there would be some initial investment costs by governmental units that qualify for participation in this program. However, according to GSD the bill will not have an impact on capital expenditures and may allow agencies to enter into agreements that will reduce future year operating budgets (after the payback of the project).

SIGNIFICANT ISSUES

According to GSD, the addition of solar energy generation and the extension of the qualifying payback period would allow for the solar photovoltaic (PV) projects to be funded under this program. The State has significant acreage on the roofs of public buildings that would well accommodate grid-tied PV systems. This sort of third party installation of PV is being used in other jurisdictions to great effect. By allowing the creation of energy saving and solar energy generating projects using third party capital and paying back this investment with savings on utilities, it provides an opportunity for New Mexico to utilize renewable energy, lead by example and help to drive the creation of renewable energy jobs in New Mexico. Entering into long term purchase power agreements using this program may also confer stability to an agency's utility costs. This is important in this era of pending caps on carbon emissions and trade program creation.

ADMINISTRATIVE IMPLICATIONS

There may be minimal administrative implications for Energy, Minerals, and Natural Resources Depart and General Services Department.

PED currently reviews all Public Energy Efficiency Act contracts. The contract is first reviewed by the Energy Minerals & Natural Resources Department for technical issues and is then reviewed by PED to see if the implementation would be cost effective and for contractual language.

OTHER SUBSTANTIVE ISSUES

GSD notes the following:

> Obligating future year general fund monies is not allowed by Article IX, Section 8 of the NM Constitution. Montano v. Gabaldon, 108 NM 94, also speaks to this. If a government entity is funded though some non-General Fund source, like a fee or royalty fund, this problem would not apply. As written, if an agency is funded through general funds, there may be a difficulty with entering into an agreement. In a situation where utility rates are increasing, there may not be sufficient dollar savings in an appropriated budget to meet the annual payback obligation if the remaining agency utility costs exceed an annual general fund utility budget.
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> Any energy savings contract or lease purchase agreement, entered into pursuant to this statute, unless paid for entirely with special funds that do not obligate the general revenue of the State of New Mexico, must contain a clause permitting termination of the contract or lease purchase agreement without cause or penalty at the end of the fiscal year, a non appropriations, non-authorization clause, and in the case of a lease-purchase agreement, any purchase at the end of the lease must be for the fair market value of the equipment purchased.
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> This act should also be amended to give legislative authority to the agency entering into an installment payment contract or lease purchase agreement to grant a security lien on the equipment installed pursuant to the contract or lease if such a lien is requested by the contractor or lessor.

According to PED's analysis of House Bill 603, if the cost of implementing a renewable energy or conservation system exceeds the amount of guaranteed savings for a school district in the current 10-year period, the district will not be allowed to enter into the contract because school districts are not allowed to incur debt. However, if the length of the contract were extended to 25 years the district would have a longer period of time to pay off the contract. On the other hand, technology is rapidly changing and if the district is stuck in a contract for 25 years, they may not be able to take advantage of newer methods of saving energy.

According to PED's analysis of House Bill 603, the estimated backlog of repair and renovation costs to bring the state's public school buildings up to the statewide adequacy standards is approximately $4,100,000.0. This amount pertains to HVAC equipment and damaged lighting and branch circuits. There were also approximately 739 public school buildings throughout the state encompassing approximately 66 million square feet. The average age of school buildings in New Mexico is 30+ years. Most schools may need a major renovation for any type of building to be energy efficient. The Energy, Minerals, and Natural Resources Department would not want to put energy efficiency equipment on buildings that are not energy efficient.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Solar PV will not be allowed under energy performance contracts nor will the allowable payback period be extended.

DA/mt:svb