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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/18/11

**SPONSOR** Cisneros **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** Building Energy Disclosure Act **SB** 442

**ANALYST** Hoffmann

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$44.0	\$44.0	\$88.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

General Services Department (GSD)

Regulation and Licensing Department (RLD)

Energy, Minerals and Natural Resources Department (EMNRD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 442 (SB 442) would enact the “Building Energy Disclosure Act.” The Act would require owners of specified buildings, including state agencies, to collect and disclose the most recent 12 months of energy consumption in that building. The requirement is referred to as “benchmarking”, and it uses the Environmental Protection Agency’s Energy Star Portfolio Management web-based tool, or equivalent tool as adopted by EMNRD. SB 442 also requires tenants and utilities to provide energy consumption information to building owners, upon request, stipulating that personal identifying information is not disclosed. Utilities are required to

provide this information in a way that maximizes efficiency and minimizes overall program cost. Violation of this act is subject to civil action, including recovery of attorney fees and costs, depending on the outcome.

For state agencies, benchmarking for specified state buildings is required to begin no later than January 1, 2012, and be published on the agencies' websites or a public access internet site beginning January 1, 2013. The buildings that are affected by this act include buildings owned by a state agency or for which a state agency pays any utility bills. If more than one building is on the same tax lot, it is considered one building. This benchmarking shall be ongoing and annual energy consumption shall be republished every year by February 1.

All other covered buildings are defined as non-residential buildings that are 5,000 square feet or larger. Covered buildings are required to be benchmarked if all or part of the building is being leased, sold, or refinanced. The building owner must provide the benchmarking information to prospective tenants, buyers, lenders, and, upon request, current tenants. The benchmarking rating derived from this information must also be included in any advertisements for sale or lease of all or part of the building.

The disclosure of covered buildings is to be phased in over three years as follows: 1) buildings 200,000 SF or larger by July 1, 2012; 2) buildings 75,000 SF or larger by July 1, 2013; and 3) buildings 5,000 or larger by July 1, 2014.

The Act would provide remedies for persons or departments if a person fails to comply with the requirements of the Act or misrepresentations are made. The remedy in a successful action would be reasonable attorney fees and costs attributable to the action.

SB 442 requires Energy, Minerals and Natural Resources Department to promulgate rules to carry out this act within 120 days of the effective date of July 1, 2011.

## **FISCAL IMPLICATIONS**

Senate Bill 442 makes no appropriation, but would affect state agencies.

The EMNRD forecasts the following fiscal impact.

There will be a fiscal impact on EMNRD to establish rules for this act. To protect the state against possible liability, EMNRD must also monitor state agencies to ensure compliance. This impact is estimated to be one half of a full time position (FTE) at the Program Manager level, for an annual cost to the general fund of \$44,000. Any reduction in general fund appropriations to the Energy Conservation and Management Division would hinder ECMD's ability to carry out the requirements of SB 442.

By measuring energy consumption at state buildings, agencies may have incentives to lower energy consumption and therefore lower costs for state government.

The GSD notes that state agencies not already collecting energy consumption data would be required to devote part of an FTE to collecting and reporting this data. The fraction of FTE and resulting expense to the agency would depend upon the number of buildings operated by the agency. If data collection for all executive state agencies were consolidated at one location, well

over one FTE could be required to collect data from around 30 separate utility providers, including investor owned, coop and municipal. If the burden of collecting data for GSD owned (non-BSD) buildings in a non-ARRA environment fell to PCD, it could experience perhaps a 1/5 FTE work load. Other State entities needing to set up reporting could include Supreme Court, Judicial, Land Office, Public Safety, Department of Transportation, etc.

## **SIGNIFICANT ISSUES**

The EMNRD foresees potential long-term cost savings for state government and private building owners.

With these requirements for measuring energy consumption, New Mexico publicly owned or operated buildings can be rated to show how their energy performance compares to other buildings of the same type across the United States. SB 442 supports transparency by making utility costs of state buildings available to taxpayers. This will also provide a tool for state agencies to evaluate how their buildings are performing so they can address the most significant issues and, over time, improve the energy performance of buildings and thereby reduce utility costs.

The disclosure of energy performance to prospective buyers, tenants, and lenders will provide pertinent information, in addition to what is already required in real estate transactions, to enable informed decision making. This will protect New Mexico citizens from unforeseen, and potentially debilitating, costs. At the same time, the market incentive for building owners to be competitive will encourage the implementation of energy efficiency measures. This will reduce overall energy consumption throughout the state, postponing the need for building new utility power plants and related infrastructure.

## **ADMINISTRATIVE IMPLICATIONS**

The EMNRD states SB 442 would have administrative implications, requiring staff time to promulgate rules and to monitor state agency compliance. There may be a small administrative impact on the various agencies that will be required to collect and enter the energy consumption information. The initial impact to set up the Portfolio Manager accounts may take a few hours per building. After that, the data entry should be minimal.

## **TECHNICAL ISSUES**

The GSD identified the following technical issues.

The bill does not explicitly omit school districts and municipal governments, although the intent appears to be to exclude them. This should be made explicit. As State-owned buildings, Universities would presumably be included in the required reporting, but this should also be made explicit.

Section 4. On a campus, many buildings can be on a single utility meter. Installing individual building submeters could be a prohibitive expense. In this case a “building” might be defined as an aggregated group of buildings on a single meter.

Section 6. This section requires the making available of utility bill data to the building

owner/operator. This may not be the building tenant or account owner. This section could require a change in utility company policy.

Section 7a. This section seems unnecessary, as the utility is required to provide data to the building owner or operator under Section 6. This reviewer is not aware of a condition where additional data would be necessary.

Section 7b. This section could be very difficult to achieve compliance by the administrator. Tenants moving out of a building may be unresponsive to requests for information and may be difficult or impossible to locate after moving out of a building.

JCH/mew:bym