

**NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.**

**Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Suite 101 of the State Capitol Building North.**

## FISCAL IMPACT REPORT

SPONSOR: Burpo DATE TYPED: 02/04/01 HB 405  
 SHORT TITLE: Public Facility Energy Efficiency Act SB \_\_\_\_\_  
 ANALYST: Valenzuela

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
	NFI		Indeterminable	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files  
 Energy, Minerals and Natural Resources Department

### SUMMARY

#### Synopsis of Bill

House Bill 405 amends the Public Building Energy Efficiency and Water Conservation Act [Section 6-23-1 to Section 6-23-10 NMSA 1978] to change the name of the Act and to expand its scope. Key provisions of the Act are detailed below:

**Section 1:** Changes the Act’s name to the “Public Facility Energy Efficiency and Water Conservation Act.” According to EMNRD, this change in name allows transportation-related items such as traffic control systems to be included in guaranteed utility savings contracts.

**Section 2:** Revises existing definitions in line with the focus of the name change. House Bill 405 adds two new definitions: “energy-related cost savings” and “utility cost savings”. The terms and definitions allow such savings to be used for payments under guaranteed utility savings contracts.

**Section 3:** Substitutes “utility cost savings and conservation-related cost savings” for “energy and conservation-related operational cost savings”. The new subsection requires that a 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.

**Section 4:** Changes the entity required to review and approve a guaranteed utility savings contract for state agencies, municipalities and counties. For state agencies, the approval

authority for contracts involving buildings not owned, leased or otherwise controlled by the General Services Department (GSD) is transferred from GSD to the secretary or equivalent head of the agency that owns, leases or otherwise controls the building. For municipalities, the approval authority for contracts involving municipal buildings is transferred from the Department of Finance and Administration (DFA) to the municipality's governing body. For counties, the approval authority is transferred from the DFA to the county's board of county commissioners.

Section 5: Allows payment obligations of a governmental unit that results from a guaranteed utility savings contract to be collectible directly from utility cost savings and from conservation-related cost savings appropriated by the Legislature. Currently, such obligations are collectible only from revenues pledged for that purpose this Act.

Section 6: Substitutes "utility cost savings and conservation-related cost savings" for "energy and conservation-related cost savings". The amendment also broadens the definition of "state agency" by eliminating the requirement that such entity be "...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."

Section 7: Substitutes "distribution" for "income" in reference to the permanent fund to be more precise and accurate. The amendment also substitutes the Act's new name, i.e. "Public Facility Energy Efficiency and Water Conservation Act."

Section 8: Allows municipalities to pledge utility cost savings or conservation-related cost savings for payments pursuant to a guaranteed utility savings contract. According to EMNRD, municipalities may pledge only revenues not otherwise pledged or obligated from gross receipts taxes received by the municipality. In addition, this section would allow municipalities to make such pledges upon adoption of a resolution by an affirmative vote of a majority of the members of the governing body. At present, municipalities must adopt an ordinance to make such pledges; hence, the amendment would provide them greater flexibility.

Section 9: Allows counties to pledge utility cost savings or conservation-related cost savings for payments pursuant to a guaranteed utility savings contract. According to EMNRD, counties may pledge only revenues not otherwise pledged or obligated from gross receipts taxes received by the county. In addition, this section would allow counties to make such pledges upon adoption of a resolution by an affirmative vote of a majority of the members of the governing body. At present, counties must adopt an ordinance to make such pledges; hence, the amendment would provide them greater flexibility.

Section 10: Clarifies that utility cost savings and conservation-related cost savings may be used by state agencies for payments pursuant to a guaranteed utility savings contract, provided that such savings are subject to appropriation by the New Mexico State Legislature.

Section 11: Revises the Procurement Code to reflect the name change.

### Significant Issues

Since the Public Building Energy Efficiency and Water Conservation Act was enacted, restriction in the statute have prevented state agencies from participating in the program.

## **House Bill 405 -- Page 3**

The bill allows savings in utility costs to be pledged to make payments on Guaranteed Utility Savings Contracts. The current act only allows payments to be made from income from lands granted pursuant to Section 19-1-17 NMSA 1978. State agencies outside the city of Santa Fe, community colleges and other institutions not receiving these types of funds are not eligible to participate. Several state agencies with facilities outside of the city of Santa Fe are not eligible. In addition, State agencies eligible for land income funds are using them to meet current needs. The savings would be subject to appropriation by the legislature.

According to EMNRD, the states of Nevada, Arizona and Colorado have been able to resolve this issue by allowing payment of guaranteed utility savings contracts from utility savings. EMNRD reports that the Nevada statutes consider a guaranteed utility savings contract as a source of revenue. It is a revenue contract that is guaranteed with a performance-based bond. In Arizona, the contract is considered entirely self-funding and must be guaranteed. Colorado's concept is similar to those of Nevada and Arizona. New Mexico does require that the savings be guaranteed with a performance bond. The savings will become a revenue source to pay the construction debt.

The bill would also allow cities and counties to use utility savings to make payments on guaranteed utility savings contracts. Currently, they are required to make payments from gross receipts taxes that are pledged to other programs.

The approval authority for cities, counties and some state agencies is simplified. Cities and counties do not need approval from the Department of Finance and Administration. In addition, a state agency needs approval from the General Services Department only if its buildings are controlled by the Property Control Division of GSD. Also, a city can enter into a Guaranteed Utility Savings Contract by resolution instead of by ordinance in this bill.

### **FISCAL IMPLICATIONS**

House Bill 405 does not contain an appropriation. However, enactment of the bill would have an impact on state agency appropriations. The fiscal impact can be determined only after a state agency enters into a guaranteed utility savings contract. Ideally though, the expectation by state agencies is that utility costs could be reduced, and thus providing a savings in operating costs. It is this savings that state agencies propose to use to offset other recurring costs in their annual operating budgets. In theory, the enactment of House Bill 405 would lessen the burden on the general fund.

### **ADMINISTRATIVE IMPLICATIONS**

Enactment of House Bill 405 seeks to lessen the administrative burden placed on agencies with regard to its management of its operating costs, specifically utility and maintenance costs. The bill does provide procedures for state agencies to follow, as identified in synopsis.

MV/ar