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

SPONSOR Carraro **DATE TYPED** 2/24/05 **HB**

SHORT TITLE Public Facility Utility Savings Contract **SB** 807

ANALYST Wilson

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	**FY06**			
		$0.1		

Relates to SB 32 & HB720

SOURCES OF INFORMATION
LFC Files

Responses Received From
Energy, Minerals & Natural Resources Department (EMNRD)
General Services Department (GSD)
Public School Facility Authority (PSFA)

SUMMARY

Synopsis of Bill

Senate Bill 807 expands the type of performance bond requirement to include a cash bond, letter or credit with an "A" or better rating from Moody's or Standard and Poor's or other surety, including insurance, as approved by the contracting agency. The bill allows a "design and install" delivery method for contracts to conserve natural resources and for guaranteed utility savings contracts. The length of guaranteed utility savings contracts is increased from ten years to fourteen years.

This bill also provides for allowing competitive sealed proposals for design-build procurement of projects whose primary purpose is to conserve natural resources. Guaranteed utility savings contracts will also be subject to competitive sealed proposals.

Significant Issues

GSD states the change to the required surety allows agencies to accept a letter of credit issued by a bank or any other surety, including insurance, for the contract. This may place state funds and projects under contract in jeopardy if the bank revokes the letter of credit.

EMNRD provided the following:

> This bill will make it easier for state agencies, municipalities, counties, school districts and institutions of higher education to enter into guaranteed utility savings contracts by expanding the types of guarantees that may be providing and reducing the amount of the guarantees. These contracts allow public entities to upgrade the efficiency of their facilities with no upfront, out-of-pocket expenditures. The qualified provider, a private-sector energy service company, arranges all financing and recovers its costs and fees through the savings resulting from the building efficiency improvements. Over the long term, substantial savings accrue to state and local governments from reduced utility costs.
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> One change that is problematic is the proposed extension of the maximum term of guaranteed utility performance contracts from 10 years to 14 years. Extending the maximum term of such contracts will allow energy efficiency and water conservation projects to be paid off over a longer period of time. This may have cost implications for those public entities entering into such contracts. They will incur debt service payments and fees over a longer period of time. Indeed, contracts payments may extend beyond the useful life of some of the installed efficiency measures. In addition, less energy-efficient projects will likely be proposed by energy service companies in some contracts since the payback term is extended and could therefore accommodate such projects. Extending the contract term is a double-edged sword, however, because public entities could also combine relatively expensive renewable energy projects such as solar photovoltaic system with more cost-effective energy efficiency projects in a contract.

FISCAL IMPLICATIONS

EMNRD believes over the long term, substantial savings accrue to the State and local governments from reduced utility costs. New Mexico taxpayers are thus the ultimate beneficiaries of this bill since their tax dollars cover the operating expenses of all public facilities. The occupants of upgraded public buildings—government workers, teachers, and students—will also reap the benefits through more comfortable, better lit offices and classrooms that have been shown to increase learning and productivity.

ADMINISTRATIVE IMPLICATIONS

GSD can manage a change to the procurement code with existing staff.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 720 and SB 807 change existing requirements for utility savings performance guarantees in different ways. HB 720 will require a performance bond, cash bond, corporate guarantee or any other surety agreeable to the government entity purchasing a utility savings contract. SB 807 replaces the corporate guarantee proposed in HB 720 with a letter of credit issued by a bank with a Moody’s or Standard and Poor’s rating of “A” or better, and including insurance. The HENRC amendment to HB 720 changes the requirement that a qualified provider shall provide a corporate guarantee to require a letter of credit issued by a bank and now conforms to SB 807.

SB 807 also expands the time for a utility savings contract and related cost savings from ten to fourteen years. Other substantive provisions of the two bills are the same.

TECHNICAL ISSUES

EMNRD notes section 5 adds new material to the Procurement code allowing for competitive sealed proposals for design and installation of measures to conserve natural resources. This appears unnecessary in light of the section 2 change requiring competitive sealed proposals in procuring these measures.

DW/lg