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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/11/09  
 SPONSOR SCONC LAST UPDATED 2/27/09 HB \_\_\_\_\_  
 SHORT TITLE Public Facility Energy Efficiency Contracts SB 348/SCONCS/aSCORC  
 ANALYST Archuleta

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

|              | FY08 | FY09  | FY10  | 3 Year<br>Total Cost | Recurring<br>or Non-Rec | Fund<br>Affected |
|--------------|------|-------|-------|----------------------|-------------------------|------------------|
| <b>Total</b> |      | \$0.1 | \$0.1 | \$0.1                |                         |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)  
 General Services Department (GSD)  
 Public Education Department (PED)

### SUMMARY

#### Synopsis of SCORC amendment to SCONC substitute

The Senate Corporations and Transportation Committee amendment to the Senate Conservation Committee Substitute for Senate Bill 348 removes the reference to making an appropriation in description of the bill. Secondly, the amendment inserts the following language as related to the implementation of the Education Trust Act: services relating to measurement and verification of conservation-related cost savings and utility cost savings pursuant to the Public Facility Energy Efficiency and Water Conservation Act.

#### Synopsis of SCONC substitute

Senate Conservation Committee Substitute for Senate Bill 348 extends the allowable payback period from 10 to the lesser of 25 years or the life of the project equipment. It clarifies that the cumulative savings from multiple components of a project may all be used to repay the cost of the project and that normal maintenance costs shall not be included as energy or water cost.

Senate Bill 348 amends the Public Facility Energy Efficiency and Water Conservation Act by adding solar generating and solar heating and cooling as an energy conservation measure. It also extends the allowed payback period from 10 to 25 years. Lastly, language clarifying the allowable source of monies to repay qualifying performance contracts is added.

## **FISCAL IMPLICATIONS**

According to GSD, 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 through 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.

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.

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.

## **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.

According to NMED, The state's coal-fired power plants emit contaminants into the air including oxides of nitrogen, sulfur dioxide, particulates, mercury and carbon dioxide. Those pollutants adversely impact public health, visibility and the global climate. SB 348 would promote the use of energy conservation for state facilities and help to obviate the need to construct new conventional coal fired power plants that emit more air pollution.

## **PERFORMANCE IMPLICATIONS**

The Environment Department's Air Quality Bureau has a legislative performance measure to reduce annual statewide greenhouse gas emissions to a target level. Similarly, the Governor's Accountability and Performance Contract contains goals for reduction of greenhouse gas

emissions. Finally, the Governor's Executive Order on Climate Change also contains goals for reduction of greenhouse gas emissions to 2000 levels by 2012, 10 percent below that by 2020 and 75 percent below 2000 levels by 2050. This Executive Order also requires the Energy, Minerals and Natural Resources Department to establish financial incentives for distributed and centralized renewable energy.

### **ADMINISTRATIVE IMPLICATIONS**

PED currently reviews all Public Energy Efficiency Act contracts. The contract is first reviewed by the Energy Minerals & Natural Resources Department for technical issues to ensure the implementation of the new energy efficient equipment will guarantee the savings that is stated in the contract. The contract is then reviewed and approved by PED.

### **OTHER SUBSTANTIVE ISSUES**

According to PED, if the cost of implementing a renewable energy or conservation system exceeds the amount of guaranteed savings for a school district in the current ten-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 twenty-five 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 twenty-five years, they may not be able to take advantage of newer methods of saving energy.

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.

A statement from the New Mexico Office of the State Engineer indicates: Federal facilities and the Public Service Company of New Mexico have joined together in a partnership to save energy and water at federal installations. Under this agreement, which is the first public/private partnership of its kind, a federal agency in New Mexico can acquire energy and water conservation services directly from PNM under an area wide contract which enables PNM to work at any federal facility in the state.

The federal government is actively pursuing water conservation. The Water Conservation Field Services Program (WCFSP) under the Bureau of Reclamation, Department of the Interior states, The goal of the Water Conservation Field Services Program is to actively encourage water conservation and efficient use of water supplies on Federal Reclamation projects, assist water districts with their responsibility to develop water conservation plans, implement measures identified in their plans, and complement and support State and other conservation programs

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Solar PV will not be allowed under energy performance contracts, and the term for such contracts will not be extended. This could make some performance improvements unfeasible over a shorter time period.

According to NMED, increasing the pay-back period for energy conservation projects would not be available. The result would be increased air pollution over what would occur with the use of additional energy conservation projects in state facilities.

According to PED, local school districts will continue to enter into guaranteed savings contracts with qualified providers for up to ten years to finance, purchase, and install energy efficiency measures in their buildings or schools will continue to use the normal means of energy and use standard building materials because of the high cost of implementation

DA/mt