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## FISCAL IMPACT REPORT

SPONSOR Hickey/Stewart ORIGINAL DATE 02/14/21  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE State Agency Renewable Energy Purchases SB 297  
ANALYST Wan

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### **SOURCES OF INFORMATION**

LFC Files

#### Responses Received From

General Services Department (GSD)

Energy, Minerals and Natural Resources Department (EMNRD)

### **SUMMARY**

#### Synopsis of Bill

Senate Bill 297 amends Section 13-1-150 NMSA 1978, the Procurement Code, by adding a provision that allows state agencies to enter into long-term contracts for renewable power purchases for up to the useful life of the equipment. The bill provides for multi-term contracts for the purchase of electricity produced from solar, wind, landfill gas, or biogas. The term of the contract and conditions of renewal or extension must be included in the specifications and funds must be available for the first fiscal period at the time of contracting. Payment and performance obligations for subsequent fiscal years will be subject to appropriation of funds.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

### **FISCAL IMPLICATIONS**

Neither the General Services Department (GSD) nor the Energy, Minerals and Natural Resources Department (EMNRD) reported any operating budget impact from this bill.

## **SIGNIFICANT ISSUES**

According to GSD, SB297 is a departure from the current Procurement Code contract term approach, which provides specific term limits for property and services contracts. Based on the bill's term limit of "the useful life of the facilities used to supply the electricity," GSD presents the possibility that a long-term contract could lock the state into obligations to fund outdated and inefficient electric power production facilities as renewable energy technology advances.

EMNRD notes that SB297 duplicates the provision of the Procurement Code that allows a governmental unit to enter into a guaranteed utility savings installment contract or lease-purchase agreement for the purchase and installation of energy or water conservation measures (Sections 13-1-150 and 6-23-3 NMSA 1978). Unlike that provision, however, SB297 does not include a requirement for independent review of projects to ensure the best interest of government entities is protected. EMNRD provided the following analysis:

"Not all state agencies or local governments have technical staff to conduct engineering analysis of renewable purchase projects. Currently, EMNRD reviews renewable energy projects for all public[ly] funded agencies that submit projects for review and certification ... This process assures that the project is valid and cost effective. The process includes on-site verification of the needs and follow-up construction review to ensure that the project is implemented as designed and approved. Bypassing an independent review process that verifies cost savings and benefits may be unwise, and projects could be oversized in the design phase, which could be more costly in the long term."

The current provision in the Procurement Code allowing for guaranteed utility savings installment contracts, or "energy performance contracts," allows projects to be pursued outside of the state's typical capital outlay appropriation process by which capital projects are vetted. While SB297 governs electricity purchases rather than capital purchases, it could be introducing a similar oversight issue.

## **ADMINISTRATIVE IMPLICATIONS**

GSD points out that the useful life of a facility with proper maintenance could be decades, making the long-term obligation substantial. For example, the useful life of a coal power plant historically has been between 50 to 60 years. The agency also notes that SB297 does not identify how "the useful life of the facility" is determined or by whom, and engineers and other professionals may not come to the same conclusion.

## **TECHNICAL ISSUES**

If SB297 is enacted, it would likely be beneficial for EMNRD to have a role in evaluating agency proposals that take advantage of the bill's change to the Procurement Code, similar to the agency's role in energy performance contracting. Language could be added to the bill to specify that contracts are subject to review by EMNRD's Energy Conservation and Management Division.