

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2-19-07
 SPONSOR HENRC LAST UPDATED 3-15-07 HB CS/611/aSFI
 SHORT TITLE Solar Rights Act Definitions & Installations SB _____
 ANALYST Aubel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.01			Recurring	See narrative

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 1031/aSCONC/aHJC
 Relates to HB 610

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)
 Attorney General's Office (AGO)
 New Mexico Environment Department (NMED)

SUMMARY

Synopsis of Senate Floor Amendment

The Senate Floor Amendment voids covenants on deeds, security agreements or other instruments affecting the transfer, sale or use of real property that prohibit the installation or use of a solar collector, effective July 1, 1978. This amendment covers real property covenants by going back 29 years to the effective date of the Solar Rights Act.

Two opposite interpretations of this provision have been forwarded. EMNRD suggests that without the date the provision applies only to those documents relating to real property moving forward from the bill's effective date. However, NMED suggests the opposite: that without the date the provision would apply to all listed contracts relating to real property, not just those dating from July 1, 1978. These differing interpretations indicate some confusion regarding this provision.

In addition, ENMRD points out that retroactively voiding restrictive covenants on real property from this date may violate Article II, Section 19 of the New Mexico Constitution, which prohibits the impairment of contractual obligations unless it is a valid exercise of the state's

police power, as follows:

“No ex post facto law, bill of attainder nor law impairing the obligation of contracts shall be enacted by the legislature.”

The technical issue of including *counties* in statute relating to *municipalities* remains.

Synopsis of Original Bill

The House Energy and Natural Resources Committee Substitute for House Bill 611 enacts a new section in Chapter 3, Article 18 NMSA 1978 (relating to powers of municipalities) to limit restrictions by counties and municipalities on the installation or use of solar collectors, including historic preservation districts, which may regulate and restrict placement of solar collectors; and voids future covenants or conditions attached to real property after July 1, 2007 that prohibit the installation or use of a solar collector.

The bill also expands the definition of “solar collector” in NMSA section 47-3-3 of the Solar Rights Act to include “substances” that collect British Thermal Units from sunshine. The definition of “solar collector” is also expanded to include devices, substances, or elements that are used for the conveyance of light to the interior of a building.

FISCAL IMPLICATIONS

EMNRD suggests that HB 611/HENRCS would likely increase workload and the need for additional resources for interpreting and training the revised Solar Rights Act, which would be a recurring budget impact to its Energy Conservation and Management Division. In addition, new brochures or educational and outreach material would most likely be required, which would have a non-recurring budget impact.

SIGNIFICANT ISSUES

HB 611/HENRCS strengthens the Solar Rights Act in favor of increased solar market development. Future prohibitions on solar installations—as currently known to be practiced through covenants, deeds, contracts, or other agreements relating to real property—would be prevented. Counties and municipalities would not be able to limit solar access that is protected by the Solar Rights Act, with the exception that historic preservation districts can regulate, but not prohibit, solar installations. Restating the proposed “solar collector” and unchanged “solar right” definitions from the Solar Rights Act would re-emphasize in law that solar access is a significant property right in New Mexico.

According to the AGO, the language in the bill relating to covenants and restrictions would appear to allow reasonable restrictions on the installation or use of solar collector, as long as the restriction does not “effectively prohibit” that installation or use. The case law on this issue is limited and has examined the ability of homeowner’s associations to enforce restrictions on the use of real property with respect to solar collection. See *Palos Verdes Home Association v. Rodman*, 182 Cal. App. 3d 324 (1986); *Garden Lakes Community Association v. Madigan*, 204 Ariz. 238 (2003).

PERFORMANCE IMPLICATIONS

HB 611/HENRCS would further the goal of increased solar market development.

ADMINISTRATIVE IMPLICATIONS

There would be administration implications for EMNRD if called upon to interpret the revised Solar Rights Act and provide training.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates SB 1031.

Relates to HB 610 due to revising definitions of “solar collector.” SB 1031 and HB 611/HENRCS revise the definition of solar collector in the Solar Rights Act; HB 610 revises the definition of solar collector in the Solar Collector Standards Act. A single definition of solar collector should be considered.

TECHNICAL ISSUES

The AGO notes the following technical issues:

Chapter 3, Article 18 of the New Mexico Statutes, relates only to powers of municipalities. However, Section 1A of this bill restricts the power of *counties* with respect to solar collectors. The substitute bill does not amend Chapter 4 which governs the powers of counties. Further, Section 1B of this bill governs deed restrictions and covenants, but does not amend Chapter 47 of the New Mexico Statutes which relates to private property conveyances. If this bill is enacted, the restrictions on counties and private property conveyances would be placed in the sections of New Mexico law governing the powers of municipalities.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Increased solar market development may be hindered due to solar-access-limiting practices of local governments, historic preservation districts, and property agreements.

POSSIBLE QUESTIONS:

1. Will the confusion regarding the effective date for voiding documents with solar restrictions relating to real property lead to future lawsuits?

MA/nt:csd