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FISCAL IMPACT REPORT

ORIGINAL DATE 2-19-07

SPONSOR Griego LAST UPDATED 3-15-07 HB _____

SHORT TITLE Solar Rights Act Definitions & Installations SB 1031/aSCONC/aHJC

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 HB 611/HENRCS/aSFL#1
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 HJC Amendment

The House Judiciary Committee amendment reinserts the July 1, 1978 effective date that had been eliminated by the Senate Conservation Committee amendment, thereby reinstating the provision that voids solar collector restrictions in agreements and other documents related to real property going back almost 30 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 SCONC Amendment

The Senate Conservation Committee Amendment makes two fundamental changes to Senate Bill 1031. First, in the case of historic districts in a county or municipality, solar collector placement could be restricted as well as regulated, removing the requirement to not prohibit solar collector placement.

Second, 7-1-78 as the effective date for voiding restrictions on solar collector placement in agreements and the other documents was deleted. According to the AGO, this change means that a covenant, restriction or condition, contained in a deed, contract, security agreement or other instrument affecting the transfer, sale or use of, or an interest in, real property, that effectively prohibits the installation or use of a solar collector is void and unenforceable. EMNRD suggests that this amendment could be interpreted as only affecting the listed agreements from the time of HB 611’s effective date going forward

According to EMNRD’s interpretation, the amendment scales back potential solar market deployment that could be implemented in historic districts and in land development with agreements in force back to 1978; however, broad opportunities would still exist for the solar markets.

Adding the “county” designation (Page 1, line 23) cleans up the language to agree with wording earlier in the sentence. However, the technical issue raised by the AGO remains: related sections of statute would not be appropriately updated to reflect the intent of the bill. Rather, the standard practice of reconciling various sections through amending all related sections is replaced by putting statute relating to counties and property conveyances in this section relating to municipalities.

Synopsis of Original Bill

Senate Bill 1031 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 but not prohibit 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.

SB 1031 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 SB 1031 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

SB 1031 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 HB 1031 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

EMNRD suggests that the Senate Conservation Committee Amendment scales back potential solar market deployment that could be implemented in historic districts and in land development with agreements in force back to 1978, but maintains that broad opportunities would still exist for the solar market with the amendments included.

SB 1031 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 HB 611/HENRCS.

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 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 from the effective date of the bill.

MA/nt