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FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/11

SPONSOR Stewart LAST UPDATED _____ HB 587

SHORT TITLE Prohibit Restriction on Certain Green Energy SB _____

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
NFI	NFI	NFI		

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

The Attorney General's Office provides the following disclaimer: "This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Opinion letter. This is a staff analysis in response to the agency's, committee's or legislator's request."

Energy, Minerals and Natural Resources Department (EMNRD)

Office of the State Engineer (OSE)

SUMMARY

Synopsis of Bill

House Bill 587 would amend Section 3-18-32 NMSA 1978 and add a new section to chapter 4, NMSA 1978. The effect of these changes is to move the prohibition on county restrictions on solar collectors from Chapter 3 (Municipalities) to Chapter 4 (Counties), and to add a limitation on the ability of either a city or a county to restrict the installation of water conservation measures.

The Bill also adds a new section to Chapter 47 NMSA 1978 which declares that it “is in the [S]tate’s best interest that its residents not be limited in how solar technology and water conservation measures are used on private property.” This section also declares that a “covenant restriction or condition contained in a deed, contract, security agreement or other instrument,” “affecting the transfer, use or interest in real property is void and unenforceable if it prohibits the installation, restricts the use, impairs the functioning or adversely affects the cost or efficiency” of a solar collector or water conservation measure. The prohibition would be limited to instruments executed after July 1, 1978 for solar collectors, but there is no such restriction on prohibitions against water conservation measures.

The effective date of this bill if passed is July 1, 2011.

FISCAL IMPLICATIONS

House Bill 587 does not make any appropriations.

SIGNIFICANT ISSUES

The EMNRD notes the Solar Rights Act was amended in 2007 to prohibit municipalities and counties from passing ordinances or codes that forbid solar installations, with the exception of historic districts. However, while the municipality statute was amended to agree with the Solar Rights Act, the county statute was not. HB 587 makes the prohibition on restrictions for solar access uniform for all local governments.

The AGO found the following issues.

There is no definition of “historic districts” in the bill which may lead to confusion and disagreement. It is unclear whether or not this refers to properties that are listed as state or federal historic districts and properties or whether a municipality or county can make such a designation or whether any formal designation as a “historic district” is necessary.

It is unclear what the purpose is of having an effective date of July 1, 1978 for covenants or restrictions on solar collectors before that covenant or restriction is declared void and unenforceable. It appears that such covenants or restrictions that were effective before July 1, 1978 are “grandfathered” in and are not declared void and unenforceable.

OSE Interstate Stream Commission reports as follows.

This bill does not impact the legislative mandates related to administrating the state's water resources. However, the term "rainwater harvesting systems" may cause confusion. Generally, this term is used to describe the installation of cisterns or rain barrels associated with residential rooftop precipitation catchment and storage.

However, given the broad connotations of this term, it may also include water harvesting activities such as stormwater catchment ponds and berms associated with parking lot, roads and other impervious surfaces. These activities fall within the State Engineer's jurisdiction and must be properly permitted and operated to certain standards. It is recommended that this phrase be defined or deleted entirely from the bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB9. This bill is Section 23 of proposed HB9.

TECHNICAL ISSUES

The OSE recommends including a definition of what a "rainwater harvesting system" is so there is no confusion or delete the phrase from the bill.

OTHER SUBSTANTIVE ISSUES

The OSE warns that certain conservation measures noted in the bill may be prohibited in the Gila River region due to United State Supreme Court rulings. The interstate decree that governs the use of water in this area caps depletions to pre-decree levels unless there is an appropriate offset. This restriction includes new outdoor residential uses, including rain barrels and rainwater harvesting systems. Since these limitations are imposed by an interstate compact decree, it is not anticipated that if this bill were enacted, there would be a conflict. Nevertheless, there may be confusion regarding certain limitations of water conservation measures that are legally mandated.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The EMNRD observes the consequences of not enacting HB 587 will be to allow city and county governments to pass ordinances to restrict the installation of water conservation measures and to arguably allow counties to restrict the installation of solar collectors. Also, there would be no prohibition against covenants and restrictions in instruments transferring interests in real property concerning solar collectors and water conservation measures.

AMENDMENTS

The OSE makes the following recommendations to clarify the proposed amendments.

On Page 2, line 8, after "SYSTEMS" insert "NOT UNDER JURISDICTION OF THE STATE ENGINEER"

On Page 2, line 24, after "SYSTEMS" insert "NOT UNDER JURISDICTION OF THE STATE ENGINEER"

On Page 4, line 11, after "SYSTEMS" insert "NOT UNDER JURISDICTION OF THE STATE ENGINEER"

House Bill 587 – Page 4

OR

On Page 2, line 8, after “BARRELS,” delete “RAINWATER HARVESTING SYSTEMS,”

On Page 2, line 23, after “BARRELS,” delete “RAINWATER HARVESTING SYSTEMS,”

On Page 4, line 10, after “BARRELS,” delete “RAINWATER HARVESTING SYSTEMS,”

JCH/bym