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FISCAL IMPACT REPORT

SPONSOR SJC ORIGINAL DATE 2/15/17
 LAST UPDATED 3/15/17 HB _____

SHORT TITLE Distributed Generation Consumer Protection SB 210/SJCS/aHBIC

ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 199

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Public Regulation Commission

SUMMARY

Synopsis of House Business and Industry Committee Amendment

The House Business and Industry Committee amendment on page 4, line 4, strikes “any” and inserts the following in its place, “Beginning thirty days after publication in the New Mexico register of the form disclosure statements issues by the attorney general pursuant to Section 5 of the Distributed Generation Disclosure Act, any”

The Business and Industry Committee amendment on page 4, line 9, strikes “acknowledged” and replaces it with “signed”.

Synopsis of SJC Substitute

The Senate Judiciary Committee Substitute for SB 210 provides for minimum disclosure requirements related to the selling or marketing for the financing, sale or lease of a distributed energy generation system. It also extends disclosure requirements to the sale of power generated from a third party owned or operated distributed energy generation system to a power purchaser. Any buying, financing, leasing or power supply agreement shall include a written statement limited to four pages separate from but acknowledged in the agreement between the provider or supplier and the buyer, lessee or power purchaser.

The written statement shall include a number of disclosures:

- 1) Details about the provider or supplier and buyer, lessee or power purchaser;
- 2) Notification of the right of the buyer or lessee to rescind within three days;
- 3) Details about the renewable energy generation system and its expected energy generation;
- 4) Description of performance guarantees;
- 5) Purchase price of distributed energy generation system, projected lease or power purchase payments;
- 6) Description of any one-time or recurring fees including the circumstances triggering them;
- 7) Financing details including number and frequency of payments, payment amount, due dates and applicable annual percentage rate;
- 8) Identification of any federal and state tax incentive used by seller or marketer to determine the price;
- 9) Description of ownership and transferability of tax credits, rebates, incentives or renewable energy credits;
- 10) Statement that buyer or lessee should contact a tax advisor about tax implications;
- 11) Description of ownership and transferability of warranty or maintenance obligations;
- 12) Restrictions on the buyer or lessee to modify or transfer ownership of the distributed energy generation system including option available in the event of the sale of the property to which the system is affixed or the death of the buyer or lessee;
- 13) Description of the assumptions used to estimate savings including a statement that such savings estimate can change due to uncertain future utility rates or unknown future federal or state incentives;
- 14) Notification that utility rate information is available from the utility or the PRC; and
- 15) Notification of the information about interconnection requirements established by the Public Regulation Commission in 17.9.568 NMAC.

The above disclosure requirements shall be deemed met with a form disclosure statement to be developed by the New Mexico Attorney General in collaboration with the Energy, Minerals and Natural Resources Department.

The bill also requires the seller or marketer to provide proof about obtaining all required permits and inspector approvals for the installation or modification of the distributed energy generation system. All financial and energy savings claims must be explicitly supported with the underlying assumptions and calculations. Any use of historical data must be presented with the stipulation that it is not necessarily representative of future results.

Finally, the bill provides for penalties and remedies for violations to be subject to enforcement by the NM Attorney General and it enacts a new section of the Real Estate Disclosure Act.

FISCAL IMPLICATIONS

No fiscal impact.

SIGNIFICANT ISSUES

The Public Regulation Commission (PRC) states there are not any significant issues for the agency, as it does not regulate the solar installation industry. However, the PRC does state there are significant issues as follows:

- Renewable energy distributed generation facilities are already defined in the Public Utility Act (62-13-13.1 NMSA 1978) (“PUA”). This bill’s definition of a distributed energy generation system is inconsistent with the existing definition of a renewable energy distributed generation facility. The bill should adopt the nomenclature and definition from the PUA to avoid the suggestion of a distinction between a facility as currently defined in the PUA and a system as defined in this bill;
- This bill refers to a number of possible transactions related to distributed energy. These include the financing, sale or lease of such facilities. In addition, the bill addresses power supply agreements wherein customers purchase power from a 3rd party owner or operator of such systems. The definition of seller or marketer in this bill refers only to the sale or lease of distributed energy generation facilities. This bill should also include a definition of the third party owner or operator of a facility that is supplying power to the customer;
- The minimum disclosure requirements to be provided in a written statement appear to predominantly apply to the financing, sale or lease of a distributed energy generation system. These disclosure requirements mostly do not appear to apply to the third party owner or operator of the distributed energy generation system that is only engaged in the provision of power to the power purchaser;
- Pg. 6 Section 12 (a): This sentence is unclear whether the purchase referred to is that of the home or of the distributed generation facility; and
- Pg. 6 Section 12 (c): Distributed generation facilities are exempt from New Mexico gross receipts tax, so the requirement to report gross receipt taxes for “equipment purchased and services rendered” that are part of the distributed generation facility is contrary to New Mexico law.

PERFORMANCE IMPLICATIONS

To the extent customers have complaints against sellers, lessors or third party power providers, they may erroneously call the PRC for help. In those instances, the PRC would refer the complaints to the Attorney General’s Office or the Construction Industries Division of the Regulation and Licensing Department, which regulates the solar installation industry.

ADMINISTRATIVE IMPLICATIONS

Disputes arising from the contractual relationship between the buyer/lessee and the seller/lessor will likely need to be dealt with in civil litigation if they cannot be resolved informally. As mentioned above, customer complaints directed to the PRC would be redirected to the New Mexico Attorney General, which has authority to pursue penalties under the Unfair Trade Practice Act and other appropriate laws.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 210 relates to HB 199

JM/jle/al/jle