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F I S C A L   I M P A C T   R E P O R T

SPONSOR Romero **ORIGINAL DATE** 1/30/19 **LAST UPDATED** 3/04/19 **HB** 291/aHENRC/aHSEIC

SHORT TITLE Efficient Use of Energy Act Changes **SB**

ANALYST Martinez/Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications					

(Parenthesis ( ) Indicate Expenditure Decreases)

Related to SB136

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Regulation Department (PRC)

SUMMARY

Synopsis of HSEIC Amendments

The House State Government, Elections and Indian Affairs Committee amendments to House Bill 291, as amended, repeal Section 62-17-2, NMSA 1078, the policy section of the Efficient Use of Energy Act (EUEA).

In its analysis of a similar bill (SB 136), PRC commented that removal of this section effectively addresses a previously expressed concern about the existence of utility inhibitions regarding the development of EE and LM resources.

Synopsis of HENRC Amendments

The House Energy, Environment and Natural Resources Committee amendments to House Bill 291: 1) strike the proposed addition of Subsection (K) in Section 1 by striking Section 1; 2) remove references to “minimum” and “maximum” energy savings that result from energy efficiency (EE) or load management (LM) programs; 3) add language to the requirement that PRC promulgate rules, starting in 2025, which rules must provide utility incentives for achieved savings; and 4) remove language that directs PRC approval of greater funding for EE and LM programs if requested by a utility or allows for PRC approval of greater funding if requested by an intervenor.

PRC comments that the amendment described in 3) above appears inconsistent with existing EUEA language in Section 62-17-5(F)(3) (appearing in renumbered Section 2) concerning the utility's opportunity to earn a profit on EE and LM resource development. PRC also notes that the amendments described in 2) and 4) above address concerns raised by PRC in the original FIR.

Synopsis of Original Bill

House Bill 291 changes the Efficient Use of Energy Act (EUEA) by (1) changing the current requirement to fund investor-owned utility energy efficiency (EE) and load management (LM) from a set amount of 3 percent of sales for electric utilities to a minimum of 3 percent and a maximum of 5 percent of sales, and changing the maximum funding for gas utilities from 3 percent to 5 percent, (2) removing the savings requirement for electric utilities of 8 percent of 2005 retail sales by 2020 and replacing it a savings goal of 5 percent of 2020 retail sales by 2025 based on program implementations between 2021 and 2025, directing the Commission to establish subsequent savings requirements in a rulemaking, raising the threshold for achievable savings that would be necessary for the Commission to lower the savings goal, (3) directing the Commission to approve a rate adjustment mechanism which decouples the revenue per customer from the quantity of electricity actually sold, upon petition by the public utility to identify and remove regulatory disincentives, (4) establishing that regulatory disincentives inhibit the development the utilities of EE and LM resources, (5) establishing that fair returns on common equity is vital to sustain investor-owned utilities' incentive to invest in EE and to prudently invest in electric service in New Mexico, (6) directing the Commission to not reduce a utility's return on equity based on the approval of a revenue decoupling mechanism or on profit incentives pursuant to the EUEA, and (7) preventing the Commission from adjust the discount rate for taxes when considering the life-cycle costs and benefits of EE and LM programs.

FISCAL IMPLICATIONS

HB291 carries no appropriation.

Since utility spending on EE and LM would change from a set amount of 3 percent of customer bills for electric to a range between 3 percent and 5 percent of customer bills for electric utilities (or from a maximum of 3 percent of customer bills to a higher maximum of 5 percent of customer bills for gas utilities), and such spending is recovered from customers, the increase in spending would result in higher customer bills thus generating more GRT revenue.

SIGNIFICANT ISSUES

The following was submitted by the Public Regulation Commission:

This bill has potentially significant implications both on utility spending on EE and LM programs that are reflected on customers' bills, and on fundamental ratemaking principles that have long been within the discretion of the Commission.

By changing the formula for electric EE and LM programs from a set amount of 3 percent to a range of 3 percent to 5 percent of customer bills, utility spending will at a minimum remain where it is or it could increase by as much as 67 percent. The three electric investor-owned utilities are currently budgeting about $44 million annually for such programs and are recovering

these costs from customers contemporaneously. Should funding of EE and LM programs increase to 5 percent of customer bills, annual spending could increase to $73 million. A demonstration of the incremental cost effectiveness of the additional $29 million in spending is not required by this bill. With respect to the large gas investor-owned utility, its current annual budget of $6 is equivalent to 2 percent of customer bills and it could increase by 150 percent to $15 million. Public utilities providing electricity and natural gas service will be required to acquire maximum cost-effective and achievable energy efficiency and achievable load management resources available, which could further increase the cost impact on utility customers.

For electric investor-owned utilities, the Commission is directed by this bill to approve funding greater than 3 percent (up to 5 percent) of customer bills for EE and LM programs if so requested by the utility and to possibly consider greater funding (up to 5 percent) if requested by an intervener. This direction may be inconsistent with the existing requirement in the EUEA that the portfolio must be found to be cost-effective and to provide every affected customer class with the opportunity to participate and benefit economically before the Commission approves a portfolio of EE and LM programs.

Based on a preliminary analysis by PRC staff, the new savings requirement for electric utilities of 5 percent of 2020 retail sales by 2025 is likely to be significant lower in absolute terms than the current requirement of 8 percent of 2005 retail sales by 2020.

The policy assertion in this bill that regulatory disincentives inhibit the development by utilities of EE and LM resources is difficult to harmonize with other salient elements of the EUEA. Electric utilities are currently mandated to fund EE and LM programs with 3 percent of customers' bill revenue. This funding is recovered contemporaneously from customers thus removing any risk of utility recovery in terms of either the extent or timing of the recovery. Utilities are currently further earning a profit incentive on its EE and LM program spending. The policy assertion about the existence of any utility inhibitions regarding the development of EE and LM resources is not consistent with this reduction of risk.

This bill essentially directs the Commission to approve a rate adjustment mechanism which decouples the revenue per customer from the quantity of electricity actually sold by the customer, upon petition by a public utility for removal of regulatory disincentive pursuant to the EUEA. The Public Utility Act does not currently identify or describe specific rate adjustment mechanisms nor prescribe (or prevent) their approval by the Commission. Nor does the Public Utility Act prevent public utilities from seeking Commission authority to implement any rate adjustment mechanism it deems appropriate. This bill would shoehorn the Commission into approving a decoupling mechanism under the guise of a regulatory disincentive removal application pursuant to the EUEA without considering the wide ranging implications of such a mechanism. Moreover, the bill requires this decoupling mechanism to be separate from the utility's energy efficiency rate rider, so that the revenues from decoupling are not counted against the cap on energy efficiency charges.

This bill also prohibits the Commission from reducing a utility's return on investment based on approval of a disincentive removal mechanism, which in this bill consists of a decoupling mechanism, or based on profit incentives pursuant to the EUEA. This limits the Commission's discretion in setting an appropriate return based on actual risks faced by the utility, including any change or shift in risk that may result from the existence of a decoupling mechanism or from the existence of a profit incentive that is tied only to utility spending on EE and LM programs.

This bill further prevents the Commission from establishing a fair discount rate associated with the life-cycle of purported long-term benefits from EE and LM programs by directing the Commission not to making any adjustment for the impact of taxes in the determination of the discount rate.
Finally, the bill requires the Commission to do a rulemaking in 2026 to reset the EUEA's overall energy efficiency goals.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The following was submitted by the Public Regulation Commission:

The status quo which is that utilities will continue to be required to spend 3 percent (electric) or up to 3 percent (gas) of customer bills on a cost-effective portfolio EE and LM programs. The savings requirement of 8 percent of 2005 retail sales by 2020 will remain in place. Utilities will continue to have the opportunity to request Commission authority to implement rate adjustment mechanisms it deems necessary, including decoupling mechanisms. The Commission will continue to have the authority to establish an appropriate risk-adjusted return on equity taking a wide range of factors into consideration. The Commission will maintain its authority to determine a reasonable discount rate for the purpose of valuing long-term benefits of EE and LM programs.

JM/MD/sb/al/gb