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FISCAL IMPACT REPORT

ORIGINAL DATE 2/22/17

SPONSOR Cervantes /Tallman LAST UPDATED _____ HB _____

SHORT TITLE Investor-Owned Utility Procurement Process SB 360

ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$100.0	\$100.0	\$200.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Public Regulation Commission

SUMMARY

Synopsis of Bill

SB 360 creates a new section of the Public Utility Act requiring competition resource procurement for investor owned electric public utilities, also known as IOUs (the New Mexico IOUs are Public Service Company of New Mexico, Southwestern Public Service Company and El Paso Electric Company). The bill defines “resource” as a supply side electric energy or capacity resource for duration of greater than one year.

SB 360 requires, in the following applications filed by an IOU with the NMPRC, competitive proposals for the resources contained in the application that affords all resources an opportunity to competitively bid in accordance with all applicable commission regulations:

Any application including:

- 1) An application for NMPRC issuance of a certificate of public convenience and necessity (CCN - which is a permission to acquire or build a resource) or;
- 2) NMPRC approval of a power purchase agreement (PPA -- which is an agreement between an IOU and a wholesale supplier) or;
- 3) NMPRC approval of the IOU's proposed procurement of a new resource for inclusion of such a resource in the utility's rate base.

SB 360 also requires when an IOU files an integrated resource plan (IRP - which is a public utility's plan to meet New Mexico jurisdictional retail customers' existing and future demand) with the NMPRC, the IOU shall file for commission approval the name of a qualified independent evaluator (IE) jointly proposed by the N.M. Attorney General (AG) and NMPRC Utility Division Staff (Staff) to monitor the IOU's competitive resource procurement processes; however, if the IOU, Staff and the AG fail to reach agreement on an IE, the NMPRC shall refer the matter to a hearing examiner for resolution.

In addition, SB 360 requires that the NMPRC approve the contract between the IOU and the IE, including the terms and conditions of compensation, by written decision within thirty days. The terms of the contract shall prohibit the IE from assisting other entities submitting proposals to the utility for a period of three years from the effective date of the contract approved. The IOU shall provide the IE with access to all documents, data, assumptions, models, bidding and weighting criteria used by the IOU in its bid processes. In the event the IE independent evaluator finds a problem with the IOU's bid process, the IE evaluator shall notify the IOU and the NMPRC. The IE shall generally serve as an advisor to the NMPRC to assist the NMPRC in determining whether the competitive procurement and bid evaluation procedures and methods used by the IOU, including assumptions, criteria and models, are reasonable and sufficient consistent with the public interest.

The IE shall not be a party to any IOU's resource procurement and shall not be subject to discovery or cross examination. The NMPRC or its presiding officer, the IOU and Staff shall be able to ask questions of the IE regarding its filings (including opinions, determinations and statements) which shall not constitute evidence in a proceeding unless the NMPRC allows the IOU and all parties the opportunity to conduct discovery and cross-examine. The IE shall report to the NMPRC, prior to the evidentiary hearings in a resource procurement case, whether the competitive procurement and bid evaluation procedures and methods used by the IOU, including assumptions, criteria and models, are reasonable and sufficient to solicit and evaluate bids in a fair and reasonable manner consistent with the public interest.

SB 360 states that the NMPRC may grant the IOU a waiver of this requirement upon a showing that extraordinary circumstances exist. This requirement shall not apply for procurements by IOUs to satisfy a special service contract where a customer pays for all costs associated with procurement and which is approved by the NMPRC.

Lastly, SB 360 requires the NMPRC to promulgate rules within six months to implement this new law.

FISCAL IMPLICATIONS

SB 360 carries no appropriation, however, would require the NMPRC to hire one additional FTE, at the cost of approximately \$100 thousand, to draft regulations within six months and review procurements and hire independent evaluators. The NMPRC is currently facing budget constraints and cannot incorporate the additional duties in SB360 within existing staff.

SIGNIFICANT ISSUES

The following significant issues were provided by the Public Regulation Commission:

The first significant issue is that SB 360 is silent about the responsibility for the costs of an IE to review an IOU's competitive bidding process. IOUs will likely argue that the cost of the IE should be passed onto ratepayers by the IOUs and, if so, this would increase retail customers' rates.

Another significant issue is that hiring an IE to assist the NMPRC may be duplicative and not necessary, because the NMPRC already is authorized to seek the advice of an advisor or evaluator if it so chooses. The Public Regulation Commission Act authorizes the NMPRC, subject to legislative appropriation, to employ technical assistance deemed necessary to assist it in performing its powers and duties and to enter into contracts to carry out its powers and duties. See, NMSA 1978, §§ 8-8-4B (1) and (9). It also authorizes the NMPRC to obtain the advice of a nonparty expert on an issue raised in a rulemaking or adjudication if the Commission or Hearing Examiner gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond. *Id.* § B (4).

Another significant issue is that the adoption of a process to appoint an IE may be inconsistent with applicable law. The Public Regulation Commission Act authorizes the Commission "to delegate subordinates as it deems necessary and appropriate, clearly delineating such delegated authority and any limitations" to administer and enforce the laws with which it is charged. *Id.* § B (2). The Public Regulation Commission Act may need to be amended because it presently does not authorize the NMPRC to delegate its power and duty to non-subordinates, such as a third party IE and it does not authorize the Commission to require an IOU contract with a third party expert to provide advice to Staff and other parties in proceedings before the NMPRC.

In conclusion, SB 360, by requiring the use of an IE with the intent that the IE would oversee/supersede the Commission's authority, would decrease the NMPRC's decision-making authority. Moreover, SB 360 adds further regulatory procedures to be followed to process CCNs and PPA approvals – two types of cases that already proceed on an expedited basis. Finally, it also applies to the filing of an IRP. Given the long-term scope of an IRP, and the fact that the IRP Rule uses the term "resource type" and not specific resource procurements, SB 360 will add complications to the IRP process and probably require an amendment to the IRP Rules.

ADMINISTRATIVE IMPLICATIONS

The requirement to promulgate rules to implement SB 360 within six months may be impossible to meet given the likelihood that the IOU's will contest and litigate the rulemaking.

OTHER SUBSTANTIVE ISSUES

SB 360's requirement that an IOU hire an independent evaluator that serves the NMPRC will likely increase the utility's cost of service and the utility is expected to seek recovery of this additional cost through higher retail rates than otherwise.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo, which means that the NMPRC will evaluate IOU procurements on a case-by-case basis and hire independent evaluators if the NMPRC concludes it, is necessary to fulfill its other obligations and duties under the Public Utility Act and the New Mexico Public Regulation Act.

JM/al/jle