

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR HJC ORIGINAL DATE 2/24/17
LAST UPDATED _____ HB 199/aHF1#1/HJCS
SHORT TITLE Distributed Generation Consumer Protection SB _____
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)

Duplicate to SB210

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

SUMMARY

Synopsis of House Floor Amendment

The House Floor Amendment on page 4, line 4 strikes “any,” and inserts, “Beginning thirty days after publication in the New Mexico register of the form disclosure statements issued by the attorney general pursuant to Section 5 of the Distributed Generation Disclosure Act, any”

Synopsis of Bill

HB 199 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 buyer or lessee
- 2) Details about the person responsible for installing the distributed energy generation system

- 3) Details about the distributed energy generation system maintenance provider if different than person installing
- 4) Notification of the right of the buyer or lessee to rescind within three days
- 5) Details about the renewable energy generation system and its expected energy generation
- 6) Description of performance guarantees
- 7) Purchase price of distributed energy generation system, projected lease or power purchase payments
- 8) Description of any one-time or recurring fees including the circumstances triggering them
- 9) Financing or leasing details including number and frequency of payments, payment amount, due dates and applicable annual percentage rate
- 10) Identification of any federal and state tax incentive used by seller or marketer to determine the price
- 11) Description of ownership and transferability of tax credits, rebates, incentives or renewable energy credits
- 12) A list of tax obligations that the buyer may be required to pay or incur as a result of the contract's provisions, including; the cost of any business personal property taxes assessed, gross receipts taxes for any equipment purchased and services rendered, obligations of the power purchaser or lessee to transfer tax credits or tax incentives, in the event of a commercial installation- a change in assessed property taxes in the event of a purchase of a distributed energy generation system
- 13) Description of ownership and transferability of warranty or maintenance obligations
- 14) 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
- 15) Description of all options available to the buyer or lessee in connection with the continuation, termination or transfer of the agreement between the buyer or lessee and the seller or marketer in the event of the transfer of the real property to which the distributed energy is affixed
- 16) Description of the assumptions used for any savings estimates
- 17) Description that such savings estimate can change due to uncertain future utility rates or unknown future federal or state incentives
- 18) Disclosure notifying the buyer or the lessee of transferability of any warranty obligations to subsequent buyers or lessee and
- 19) Notification of the information about interconnection requirements established by the Public Regulation Commission or the local utility.

The above disclosure requirements shall be deemed met with a form disclosure statement to be developed by the New Mexico Attorney General.

The bill also requires the seller or marketer to provide proof, within thirty days, 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.

The bill states that the act does not apply to third-party financial institutions that enter into an agreement for the financing of a distributed energy generation system.

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;
- Pg. 6 Section 12 (b): 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.

JM/jle/sb/al