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FISCAL IMPACT REPORT

SPONSOR Sanchez ORIGINAL DATE 01/19/17
LAST UPDATED _____ HB _____

SHORT TITLE Truth in Marketing Distributed Generation Act SB 59

ANALYST Amacher

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
N/A	N/A		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Economic Development Department (NMEDD)

New Mexico Public Regulation Commission (PRC)

New Mexico Regulation and Licensing Department (RLD)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 59 enacts a new section of the Trade Practices and Regulations law (Chapter 57 NMSA 1978) as the "Truth in Marketing Distributed Generation Act"; provides minimum disclosures the financing, lease or sale of a distributed energy generation system. SB 59 outlines the requirements for such agreements and provides for penalties and remedies for violations. Furthermore, SB 59 enacts a new section of the Real Estate Disclosure Act (Chapter 47 NMSA 1978) regarding disclosure of certain distributed energy generation systems.

FISCAL IMPLICATIONS

No known fiscal implications.

SIGNIFICANT ISSUES

Senate Bill 59 enacts a new section of the Trade Practices and Regulations law (Chapter 57 NMSA 1978) as the "Truth in Marketing Distributed Generation Act" to provide for the lease or

sale of a distributed energy generation system. SB 59 delineates the terms and parameters for which disclosures and exceptions must be outlined in the agreements for financing, lease or sale of such systems. Penalties and remedies for violations are also outlined. SB 59 enacts a new section of the Real Estate Disclosure Act (Chapter 47 NMSA 1978) specific to distributed energy generation systems. SB 59 makes clear that a distributed energy generation system does not include an electric generator intended for occasional use.

Section 1 adds new material to the Trade Practices and Regulations Law (Chapter 57 NMSA 1978) as the “Truth in Marketing Distributed Generation Act”.

Section 2 adds new material defining “distributed energy generation system”, “seller or marketer” and other terms. A “distributed energy generation system” is a device or system that is used to generate or store electricity and that has a capacity, singly or in connection with other similar devices or systems, greater than one kilowatt that is primarily for on-site consumption. The “seller or marketer” is described as a person or a company acting through its officers, employees, brokers or agents that markets, sells or solicits the sale, financing or lease of distributed energy generation systems or negotiates or enters into agreements for the sale, financing or lease of distributed energy generations systems.

Section 3 adds new material titled “distributed energy generation system agreements, disclosure, exception” that outlines the requirements such agreements will govern the financing , sale or lease of a distributed energy generation system to any person, entity or political subdivision of this state. The requirements include descriptions of a system’s capacity and energy production, consumption estimates, operational and maintenance costs, warranties, and other system specific characteristics. Disclosure requirements include identifying applicable tax incentives and obligations, gross receipts taxes, and the transfer of tax credits. An exception applies in the case a distributed energy generation system is part of a transaction involving the sale or transfer of the real property to which it is or will be affixed. This exception raised concerns by the RLD as further outlined in both the technical issues and other substantive issues of this report.

Section 4 adds new material titled “violations as unfair practices, penalties and remedies for violations.” Any violation of the Truth in Marketing Distributed Generation Act is then a violation of the Unfair Practices Act and subject to the penalties existing in the Unfair Practices Act with the same enforcement authority by the attorney general.

Section 5 creates a new section of the Real Estate Disclosure Act noting the requirements of the Truth in Marketing Distributed Generation Act shall not apply to a transaction involving the sale or transfer of the real property to which the distributed energy generation system is affixed.

PERFORMANCE IMPLICATIONS

The AGO notes SB 59 would be enforceable under the Unfair Practices Act (Chapter 57-12-1 to 26 NMSA 1978), thereby potentially expanding the enforcement duties of the AGO under the environmental and consumer protection division; however, no additional appropriation for additional staff may impact the agency’s other performance based budget targets.

TECHNICAL ISSUES

As proposed by the AGO:

On page 5, line 5, strike “guarantee” and replace with “good faith estimate”.

As proposed by the RLD:

On page 11, line 16, insert the word “or” before the word “negotiates”.

On page 11, lines 16 through 21, beginning on line 16, strike the words “or enters” and continue to strike lines 17 through 21; and replace with “the resale or lease of real property to which a distributed energy generation system is affixed.”

On page 12, lines 12 and 13, strike the words “transaction involving the sale” and replace with “resale.”

OTHER SUBSTANTIVE ISSUES

The AGO notes that due to the nature of a distributed energy generations system, a guarantee regarding the actual output may be difficult or even impossible to definitively determine. Section 3(A) requires an agreement governing the financing, sale or lease of a distributed energy generation system “include a guarantee concerning the energy production output that the distributed energy generation system being sold or leased will provide over the life of the agreement.” The AGO suggests an amendment of a “good faith estimate”; as further outlined under the technical issues of this report.

The PRC states there is significant complexity in the relationship between the utility and its customers who also interconnect a separate distributed energy generation system with the utility. The customer’s bill reflects both the reduced consumption of electricity as well as the surplus electricity that the utility may purchase from the customer. There can be a misunderstanding when projected savings from the installation of a distributed energy generation system does not materialize on the bill. Therefore, it becomes even more important the buyer/lessee of the distributed energy generation system is well informed of all elements of the agreement. The utility and the PRC can become the subject of concern from a utility customer when savings do not materialize as expected.

RLD highlights a potential impact on real estate brokers from the required disclosure of any restrictions on the lessee’s/buyer’s ability to transfer ownership or modify real property which a system is installed. This includes the review or approval that may be subject to a third party (see page 7, paragraph 11 of SB 59.) The real estate commission rules require brokers to make written disclosure to their clients of any adverse material facts known by the broker about the property or the transaction, any restrictions, modifications, or transfer of real property to which energy systems are affixed.

Additionally, as mentioned by RLD, if an energy system on a property was being purchased on installments or leased at the time that a property was sold, the broker would have to inform the prospective buyer of the existing loan or lease and ensure the new owner qualifies to assume the loan or lease. That loan or lease would be a lien on the property which might complicate or

prevent the transfer of ownership.

RLD suggests amendments be made to clarify if the disclosure on page 11, paragraph H, is applicable to resale of the property to which the energy system is attached; thereby relieving the burden on owners and real estate brokers to make disclosures that they are unable or unqualified to make.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The NMEDD, AGO, and the PRC expressed concern that the sale, financing, and installation of distributed energy systems will remain unregulated. The AGO noted the transactions of the distributed energy systems are currently within the scope of the Unfair Trade Practices Act (Chapter 57-12-1 to 26 NMSA 1978) albeit without the specific disclosure requirements proposed in this bill.

JMA/jle