

LFC Requester:	Jonas Armstrong
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**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: Date 1/28/16
Original **Amendment** **Bill No:** HB 256
Correction **Substitute**

Sponsor: Rep. Andy Nunez **Agency Code:** 305
Short Distributed Energy Generation **Person Writing** P. Cholla Khoury, AAG
Title: System Sale **Phone:** 827-7484 **Email** ckhoury@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

Synopsis: HB 256 (the bill) creates requirements for anyone looking to lease or sell a distributed energy generation system. It provides definitions of “distributed energy generation system” and “seller or marketer.”

HB 256 sets forth the requirements for any agreement governing the financing, sale or lease of a distributed energy generation system. Those requirements are: 1) it must be signed by the person buying or financing the system and be dated; 2) it must be in at least ten-point type; 3) it must include a provision granting the buyer or lessee the right to rescind the financing, sale or lease, for a period of not less than three days and before the system is installed; 4) it must provide a description of the system, including the make and model of the system’s major components or a guarantee concerning the energy production of the system over the life of the agreement; 5) set forth the total purchase price or total cost to the buyer or lessee under the agreement, any interest, installation fees or other costs to be paid by the buyer or lessee, the total number and frequency of payments for leased systems; 6) disclosure of all current tax incentives and rebates for which the buyer may be eligible and any conditions or requirements for obtaining these incentives; 7) identification of the tax obligation that the buyer or lessee may be required to pay as a result of the transaction; 8) disclosure of whether the warranty or maintenance obligations may be sold or transferred to a third party; 9) disclosure of the agreement’s impact on the buyer or lessee’s ability to modify or transfer ownership of the system, including whether modification or transfer is subject to third party approval and the information of that third party; 10) disclosure of whether the agreement requires third party approval of the buyer or lessee’s ability to modification or transfer of the ownership of the real property to which the system is attached; 11) provide the full and accurate summary of the total costs under the agreement for maintaining and operating the system of the life of the system; 12) requirements for the estimation of the buyer’s or lessee’s future utility charges; and 13) include disclosure that utility rates and rate structures are subject to change, the projected savings are subject to change and the tax incentives are subject to change.

HB 256 requires that before maintenance or warranty obligations of the system are transferred, the person who is currently under the obligation must disclose the information of the person who will be assuming the maintenance or warranty of the system.

The bill requires that if a buyer’s or lessee’s utility rates are estimated for the period after the installation of the system, the buyer or lessee shall also see an estimate of the utility charges for the same period as impacted by potential utility rate changes ranging from at least a five percent decrease to at least a five percent increase from currant rates.

The bill exempts out person engaged in transferring real property to which the system is or will be affixed.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

Section B(6) provides that the seller or marketer must identify “all current tax incentives and rebates or other state or federal incentives for which the buyer may be eligible and any conditions or requirements pursuant to the agreement to obtain these tax incentives, rebates or other incentives[.]”

Section B(7) requires the seller or marketer to “identify the tax obligation that the buyer or lessee may be required to pay as a result of buying, financing or leasing the distributed energy generation system[.]” These sections may be problematic because it may require the seller or marketer to provide tax advice to the buyer or lessee.

Sections B(9) and B(10) address the required disclosure of any limitation of transfer of either the lease or the real property to which the system is attached. However, the bill does not provide a remedy or solution for any party involved in the transferring party or third party chooses not to approve the transfer of the system.

PERFORMANCE IMPLICATIONS N/A

ADMINISTRATIVE IMPLICATIONS N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP N/A

TECHNICAL ISSUES N/A

OTHER SUBSTANTIVE ISSUES N/A

ALTERNATIVES N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL status quo

AMENDMENTS

Section B(12) page 5 line 18 should be amended to read “if the agreement shall contains an estimate of...”

A new section at page 6 line 3 should be created and inserted before the current section B(13) to read "set forth the estimated number of months in which the buyer or lessee can expect to recover the total amount of investment. This recovery period shall be calculated by dividing the total purchase price or total cost to the buyer or lessee under the agreement for the distributed energy generation system over the life of the agreement by estimated change in future monthly utility charges."