

HOUSE BILL 432

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO UTILITIES; ENACTING THE AFFORDABLE SOLAR ENERGY ACT; ALLOWING FOR ON-BILL FINANCING FOR CERTAIN ENERGY EFFICIENCY AND CONSERVATION IMPROVEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Affordable Solar Energy Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Affordable Solar Energy Act:

A. "energy conservation system" includes a fuel-

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switching system that replaces existing equipment using a particular fuel with equipment that uses another fuel that does not increase greenhouse gas emissions and that:

- (1) is more fuel efficient; or
- (2) results in lower fuel expense;

B. "meter conservation charge" means a charge placed on a customer's utility bill by a utility to recover costs under an on-bill financing agreement;

C. "on-bill financing agreement" means an agreement entered into pursuant to Section 3 of the Affordable Solar Energy Act; and

D. "utility" means an entity that provides retail electric service in New Mexico, including a public utility, a rural electric cooperative or municipal utility.

SECTION 3. [NEW MATERIAL] ON-BILL FINANCING OF ENERGY EFFICIENCY AND CONSERVATION IMPROVEMENTS--AUTHORIZATION--ELIGIBILITY.--

A. A utility may enter into a written on-bill financing agreement with a customer to finance the purchase and installation of a renewable energy system, energy efficiency device, energy storage device or energy conservation system in a residence or building that is eligible under Subsection B of this section by assessing a meter conservation charge on the customer's utility bill.

B. A residence or building is eligible for on-bill

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financing under the Affordable Solar Energy Act if, at the time the on-bill financing agreement is entered into, the residence or building:

- (1) is occupied or in use; and
- (2) is not under initial construction.

C. An on-bill financing agreement must clearly state the interest rate to be charged for financing the purchase and installation of the renewable energy system, energy efficiency device, energy storage device or energy conservation system. The interest shall be set at a rate that is fixed over the term of the agreement.

D. An on-bill financing agreement is not valid under this section unless the utility has offered the customer in writing the option of purchasing a repair and maintenance agreement for the renewable energy system, energy efficiency device, energy storage device or energy conservation system before the purchase and installation of the system or device. A repair and maintenance agreement under this section shall:

- (1) be for a term of not less than the duration of the on-bill financing agreement;
- (2) benefit the customer and any subsequent owner of the residence or building from whom the utility may recover the costs under the on-bill financing agreement under Section 5 of the Affordable Solar Energy Act; and
- (3) for a fixed periodic fee, maintain the

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original function and performance of the renewable energy system, energy efficiency device, energy storage device or energy conservation system.

E. A customer may decline to purchase a repair and maintenance agreement described under Subsection D of this section only if the customer enters into an agreement in writing with the utility to pay the balance of the on-bill financing agreement before transferring ownership of the residence or building. At the time of transfer of ownership, the subsequent owner may waive the requirement that the customer pay the balance of the on-bill financing agreement by notifying the utility in writing that the subsequent owner assumes the balance owed on the on-bill financing agreement.

F. The balance owed on an on-bill financing agreement may be paid in full at any time without penalty.

G. Nothing in this section requires a utility to enter into an on-bill financing agreement with a specific customer or for a specific device or system.

SECTION 4. [NEW MATERIAL] METER CONSERVATION CHARGE.--

A. A meter conservation charge assessed under Section 3 of the Affordable Solar Energy Act may only be used to recover the:

(1) actual costs incurred by the utility for the purchase, installation and financing of the renewable energy system, energy efficiency device, energy storage device

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or energy conservation system, including the administrative costs of the on-bill financing agreement and the cost of filing notice under Section 5 of the Affordable Solar Energy Act;

(2) repayment of costs incurred by a third party that has performed a function under Section 8 of the Affordable Solar Energy Act; and

(3) periodic fee for a repair and maintenance agreement under Subsection D of Section 3 of the Affordable Solar Energy Act.

B. A utility may assess a meter conservation charge on:

(1) the customer who entered into the on-bill financing agreement; or

(2) a subsequent owner of the residence or building under Section 6 of the Affordable Solar Energy Act.

C. A meter conservation charge shall be shown as a separate line item on a customer's bill.

D. A utility may treat a customer's failure to pay a meter conservation charge as a failure to pay the utility account, and the utility may disconnect the utility service for nonpayment of the meter conservation charge, if the utility complies with all applicable laws for discontinuation or disconnection of service. A utility shall not remove a renewable energy system, energy efficiency device, energy storage device or energy conservation system for failure to pay

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a meter conservation charge or when disconnecting service for failure to pay a meter conservation charge.

E. The billing and collection of a meter conservation charge does not subject a utility to the laws that regulate financial institutions, escrow depositories or collection agencies. A utility is not responsible for a lending, underwriting or credit determination for an on-bill financing agreement.

SECTION 5. [NEW MATERIAL] NOTICE OF ON-BILL FINANCING AGREEMENT AND METER CONSERVATION CHARGE.--

A. A utility that enters into an on-bill financing agreement shall file notice of the on-bill financing agreement and related meter conservation charge in the office of the county clerk in the county in which the residence or building subject to the agreement is located. Notice under this subsection does not constitute a lien on the property, but is intended to give an owner of the residence or building notice that the residence or building is subject to a meter conservation charge. Notice is considered given if it is sufficient to disclose to prospective owners the existence of the meter conservation charge, including the balance owed under the on-bill financing agreement, whether the system or device is covered by a repair and maintenance agreement described in Subsection D of Section 3 of the Affordable Solar Energy Act and the length of time the meter conservation charge is

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expected to remain in effect.

B. A utility shall file notice of satisfaction when an on-bill financing agreement is paid in full. Notice of satisfaction shall be filed in the office of the county clerk in the county in which the residence or building subject to the on-bill financing agreement is located.

SECTION 6. [NEW MATERIAL] TRANSFERABILITY OF ON-BILL FINANCING BALANCES TO SUBSEQUENT OWNERS.--A utility that enters into an on-bill financing agreement may recover the balance of the costs allowed under the agreement from a subsequent owner of the residence or building in which the renewable energy system, energy efficiency device, energy storage device or energy conservation system was installed if the utility gives notice under Section 5 of the Affordable Solar Energy Act that the residence or building is subject to the agreement.

SECTION 7. [NEW MATERIAL] RENTAL PROPERTY.--A utility may recover the costs under an on-bill financing agreement for a rental property by assessing a meter conservation charge on a utility bill only if the landlord is responsible for the entire utility bill, including the meter conservation charge.

HJC → ~~SECTION 8. [NEW MATERIAL] THIRD PARTIES--CONTRACTING AND LIABILITY.--~~

~~A. A utility may contract with a third party to perform functions permitted under the Affordable Solar Energy Act, including financing the purchase and installation costs~~

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~~for a renewable energy system, energy efficiency device, energy storage device or energy conservation system and the third party shall comply with the provisions of the Affordable Solar Energy Act.~~

~~B. If the installation, operation or maintenance of a renewable energy system, energy efficiency device, energy storage device or energy conservation system is performed by a third party:~~

~~(1) the utility is not liable for the installation, operation or maintenance of the renewable energy system, energy efficiency device, energy storage device or energy conservation system;~~

~~(2) the utility may not provide, nor is there implied, a warranty of merchantability or fitness of the renewable energy system, energy efficiency device, energy storage device or energy conservation system; and~~

~~(3) no action may be brought against the utility related to the failure of the renewable energy system, energy efficiency device, energy storage device or energy conservation system.~~

~~G. When a utility contracts with a third party to perform administrative or financing functions:~~

~~(1) the third party is not liable for the installation, operation or maintenance of the renewable energy~~

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~~system, energy efficiency device, energy storage device or energy conservation system;~~

~~(2) the third party shall not provide, nor is there implied, a warranty of merchantability or fitness of the renewable energy system, energy efficiency device, energy storage device or energy conservation system; and~~

~~(3) an action shall not be brought against the third party related to the failure of the renewable energy system, energy efficiency device, energy storage device or energy conservation system.~~

~~D. The provisions of Subsections B and C of this section shall not be construed to impair the rights and remedies of a utility customer against any other parties to a transaction involving the purchase or installation of a renewable energy system, energy efficiency device, energy storage device or energy conservation system.~~ ←HJC