F I S C A L I M P A C T R E P O R T

SPONSOR HENRC **ORIGINAL DATE** 2/11/2020 **LAST UPDATED** **HB** 9/HENRCS

SHORT TITLE Community Solar Act **SB**

ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		$200.0	$200.0	$300.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB80

SOURCES OF INFORMATION

Responses received from:
Public Regulation Commission (PRC)
Energy, Minerals and Natural Resources (EMNRD)

Some analysis provided by PRC for the original HB9 was used where applicable.

SUMMARY

Synopsis of Bill

The House, Energy and Natural Resources Committee substitute for House Bill 9 creates the Community Solar Act.

A community solar facility is a solar electric generation facility, where an energy storage facility may be co-located, owned, or operated by a subscriber organization or, in certain limited circumstances, by an investor-owned electric public utility. While it must register with the Public Regulation Commission (PRC), a subscriber organization is not to be considered a public utility subject to the oversight of PRC and rates paid by subscribers are not to be subject to regulation by PRC.

Community solar facilities are solar electric generation facilities with nameplate rated production capacity of 5 megawatts or less each, located within the service territory of an investor-owned electric utility. Community solar facilities are to be interconnected with the utility's distribution system. Shares of the energy produced by a community solar facility are effectively made available to subscribers based on their relative interest. Any retail customer of the public utility

that serves the area where the facility is located can be a subscriber. Each subscription shall be sized to represent at least 1 kilowatt (kW) of the community solar facility's generating capacity and may not supply more than 120 percent of the electricity at the premises to which the subscription is attributed on a rolling 12-month basis, after adjusting for the generation of any existing solar facilities located at the retail location. At least 60 percent of each community solar facility's capacity is to be available in subscriptions of 25 kW or less. At least 10 subscribers must be associated with a single facility and no single subscriber may be allocated more than 40 percent of the facility's capacity. PRC shall provide exemptions to many of these conditions for community solar facilities located on the lands of Indian nations, tribes or pueblos serving subscribers on those lands. A subscriber to a community solar facility shall identify a retail location to which the subscription is attributed. A subscription shall be transferrable and portable within a public utility's service territory.

The public utility serving the area where the community solar facility is located shall effectively acquire the subscribed output from the community solar facility by providing bill credits to its customers who are also subscribers to the community solar facility in proportion to each subscriber's interest in the community solar facility. To the extent there remains unsubscribed output from the community solar facility that is not distributed to the existing subscribers, the public utility shall acquire that energy at the utility's avoided cost rate filed with PRC.

In payment for the subscribed output of a community solar facility, HB9 prescribes the determination of a credit provided by the public utility to the subscribers for their share of the output. This applicable credit rate credit is the result of taking the utility's total aggregate rate minus the utility's distribution cost rate. This credit is applied to each subscriber's proportionate share of the facility's actual generation. Any excess credit that exceeds the subscriber's bill is accumulated over 12 months. The public utility and the subscriber are required to exchange the information necessary for the public utility to issue the correct community solar bill credits to those retail customers who are also subscribers. The public utility is to provide a monthly report to the subscriber organization about the total value of the community solar bill credits for the month as well as the amount of the community solar bill credits applied to each customer while the subscriber organization is to provide the public utility with real-time production data, monthly generation data with the amounts attributable to each subscriber.

All renewable energy certificates (RECs) generated from a community solar facility are the property of the subscriber organization.

HB9 requires PRC to develop rules to establish a community solar program by June 30, 2021.

HB9 requires PRC to develop a report by November 1, 2025, in consultation with appropriate state agencies and proved the report to the appropriate interim legislative committees that address energy issues.

A public utility shall file with PRC any tariffs, agreements, or forms as needed to allow for the development of community solar programs. No more than two years following the establishment by PRC of community solar rules, a qualifying public utility shall file a status report annually with data about the number of subscribers, the number of community solar facilities and facility capacity, low-income, affordable housing, and native American participation and capacity subscriptions, co-located storage projects, days between interconnection and initial bill credits, and interconnection costs.

Within 180 days of finalization of PRC's rules for the community solar program, a utility is to begin crediting the subscriber accounts.

HB9 provides for a qualifying public utility to include in its integrated resource planning process the effects of the development of community solar facilities. This includes notifying the PRC and the participants in the public advisory process of any impact from the development of community solar facilities on the most recent integrated resource plan filed with the PRC.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

Section 6 (9) requires PRC to develop rules to establish a low income subsidy fund.

It is estimated that the additional regulation required by HB9 would require approximately two additional full-time staff per year for PRC, one economist and one attorney. Two additional FTE will have an estimated additional operating budget impact of $200 thousand annually.

SIGNIFICANT ISSUES

The following was provided by the Public Regulation Commission:

> A significant issue is that HB9 states in Section 8 that subscriber organizations or subscribers to a community solar facility are not a "public utility" as defined by the Public Utility Act Section 62-3-3 (G) NMSA 1978 however, it does not specifically amend Section 62-3-3 (G) to exclude "subscriber organizations" or "subscribers" from the definition of "public utility". This is a technical issue that could be fixed before final passage of the bill and without making this clear, may result in litigation.
>
> Another issue is that pursuant to the current Efficient Use of Energy Act, Section 62-17-10 NMSA 1978 (EUEA) utilities are required to periodically file an "integrated resource plan" (IRP) that evaluates conventional resources and renewable energy and energy efficient resources. The NMPRC has promulgated IRP Rules that provides for utilities, stakeholders and ratepayers to collaborate in the long-term development of adequate resources to meet projected load. HB9 creates the independent development of community solar facilities, however, according to Section 9 a qualifying utility is required to include and address the effects of the development of community solar facilities in its IRP and is required to notify the commission and participants in the commission's public advisory process, in accordance with PRC rules, of any development of community solar facilities that would have the effect of changing the results of the utility's most recent integrated resource plan. Section 9 effectively requires the utility's resource planning process to work around and accommodate the community solar facilities even if the utility had other resource plans. Another issue is that subscriber organizations, under HB9, can add generation capacity to the utility's generation portfolio without paying attention to the utility's requirement, under the IRP law and Rule, to serve its customers with the most reasonable and cost effective mix of generation resources.

ADMINISTRATIVE IMPLICATIONS

The following was provided by the Public Regulation Commission:

> While the NMPRC regulates "public utilities" as defined by the Public Utility Act, Section 62-3-3 (G) NMSA 1978, the NMPRC does not regulate affiliates of public utilities or 3rd parties, both of which may own or operate community solar facilities. To the extent that both regulated and un-regulated entities can play in the role in the development and operation of community solar facilities, there can potentially be disputes with respect to community solar facilities that are similar but are subject to different regulatory oversight by the NMPRC. While the NMPRC would have jurisdiction over a number of facets of the relationship between the subscriber and the community solar facility owner/operator, the insertion of 3rd parties including affiliates of public utilities into these relationships raises questions about the NMPRC's authority over possible disputes.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill conflicts with SB80 which proposes an alternative Community Solar Act.

ALTERNATIVES

The following was provided by the Public Regulation Commission:

> If HB9 is not enacted, the NMPRC has, within the limits of its present authority, the ability to promulgate rules regarding the development and regulation of community solar facilities. The NMPRC currently has a pending Notice of Inquiry docket that is investigating this issue, Case No. 15-00355-UT, In the Matter of a Commission Inquiry into Public Utilities Constructing and Owning Distributed Generation Dedicated to Serving One or More Retail Customers.

JM/al/rl