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## FISCAL IMPACT REPORT

**SPONSOR** HENRC **ORIGINAL DATE** 2/20/21 **CS/CS/206/HCPACS/**  
**LAST UPDATED** 2/26/21 **HB** HENRCS  
**SHORT TITLE** Utility Affordability & Relief Act **SB** \_\_\_\_\_  
**ANALYST** Martinez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	\$65.0	\$260.0	\$260.0	\$585.0	Recurring	General Fund - PRC
		\$74.3	\$74.3	\$148.6	Recurring	General Fund - EMNRD

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Mortgage Finance Authority

Public Regulation Commission (PRC)

Energy, Minerals and Natural Resources Department (EMNRD)

Environment Department (NMED)

### SUMMARY

#### Synopsis of HCPAC Substitute

The House Energy, Environment and Natural Resources Committee substitute for House Consumer and Public Affairs Committee Substitute for House Bill 206 (HB206/HCPACS/HENRCS) addresses both the short-term and long-term affordability of utilities (including electricity, gas, water, and wastewater service). It creates two programs: a “utility bill relief program” intended to address bill arrears accrued by utility customers who have been adversely affected by the COVID-19 pandemic and the community energy efficiency development block grant (CEED block grant), to address, long-term, the energy burden experienced by low-income households in New Mexico.

A definition not included in previous versions of the bill is "certification of economic hardship" means a written declaration signed by a customer under penalty of perjury that is submitted to a public utility to certify that the customer is prevented from being able to make payments on an installment agreement due to economic hardship.

HB206/HCPACS/HENRCS adds cooperative provisions to this section's requirement that the Public Regulation Commission (PRC) to issue rules or orders to require public utilities to file regular reports on the data generated by and required to administer this act:

- The Public Regulation Commission (PRC) may contract with a third party, including a governmental agency, or may enter into a memorandum of understanding with a governmental agency, to qualify public utility customers for the utility bill relief program or to process certifications of economic hardship made by public utility customers and may assess costs for this service to public utilities, provided that utilities may recover the costs pursuant to conditions of the Utility Affordability and Relief Act. PRC may share customer data with a third party for these purposes.
- PRC shall coordinate with the Department of Finance and Administration (DFA) to ensure that, to the maximum extent possible, any funding from the federal emergency rental assistance program available for payment of utility arrears is provided to public utilities and applied to qualifying customer accounts.

As in the original HB206, Section 5 of HB206/HCPACS/HENRCS creates a “utility bill relief program,” intended to address bill arrears accrued by utility customers who have been adversely affected by the Covid-19 pandemic. This program allows public utilities to offer these customers an installment agreement for payment, which has specific term requirements: The length of the agreement must be at least twice the number of months in which the customer failed to pay at least 50 percent of the utility bill. If the customer enters into such an agreement, then the public utility shall not discontinue service or pursue collection.

Once a customer has been confirmed by the public utility (or a contracted third party) to have met the criteria for the program, the customer will receive a temporary credit from the public utility equal to one-half of the arrears that have been incurred by the customer during the public health emergency. The customer will also be entered into an installment agreement for the remaining half of the balance due. If the customer makes all of the payments on the installment agreement, then the temporary credit on the account will be made permanent, clearing the customer's account of all of the arrears. If a customer defaults on the installment agreement, the temporary credit will be removed from their account. A permanent credit will be put onto the account equal to the amount that had been paid by the customer prior to the default, and the customer will be responsible for the difference.

To qualify for the “utility bill relief program” a residential customer must meet the following criteria:

- The customer meets the qualifications to receive assistance from the federal low-income home energy assistance program; or
- The customer has an annual income equal to or less than 250 percent of the federal poverty level proven by
  - (a) Verification that a member of the customer's household has qualified for public assistance through the federal Supplemental Nutrition Assistance Program, the federal Temporary Assistance For Needy Families Program, the UCB Patient Assistance Program (private prescription medicine help), the federal special supplemental nutrition Women, Infants, And Children program or the Children, Youth And Families Department's Childcare Assistance Program; or

- (b) a certification of economic hardship establishing that the customer's annual household adjusted gross income, as defined in the Income Tax Act, is below two hundred fifty percent of the federal poverty level.

Section 6 of HB206/HCPAC has been eliminated and the qualification provisions described in it have been integrated into HB 206/HENRC Section 5, returning to the original form of HB206 as introduced.

HB206/HCPACS/HENRCS retains the allowance for public utilities to adjust the initial terms of the installment agreement with the customer's agreement, and to contract with third parties to evaluate applications for economic hardship. These provisions were not in the original HB206.

HB206/HCPACS/HENRCS also maintains the carve-out for rural electric distribution cooperatives introduced in HB206/HCPAC, which states that a cooperative may stop accepting or approving applications for economic hardship if that cooperative determines that the total costs of the utility bill relief program, reflecting actually applied temporary and permanent credits and projected administrative costs, would exceed one percent of total customer electricity bills from the prior year.

Lastly, a residential customer who qualifies for the utility bill relief program is deemed to also qualify for low-income programs offered by a public utility under the Efficient Use of Energy Act for the current and following calendar years unless the programs in question require additional proof of eligibility under federal or state law.

Section 6 requires public utilities to notify customers in arrears of the existence of the utility bill relief program.

Section 7 specifies how public utilities can obtain cost recovery for the implementation of the utility bill relief program, in the same manner as the House Consumer and Public Affairs Committee substitute for HB206 did. First, public utilities must make reasonable efforts to apply for federal funding that can be used for mitigating customer arrears. Secondly, HB206/HCPACS/HENRCS specifies that utilities may seek recovery of reasonable costs for this program in rate cases before the PRC – but, as opposed to the provisions in HB206 as introduced, assigns different cost recovery allowances to different types of utilities.

- Investor-owned utilities (IOUs), which are not “small utilities” and are subject to the rate regulation by the public regulatory commission, are entitled to recover reasonable costs for the implementation of this program in the utility's next rate case;
- Electric cooperatives and “small utilities” are entitled to recover reasonable costs for the implementation of this program via a PRC-approved tariff rider or in the cooperative or small utility's next rate adjustment, or both.

Section 8 specifies that electric cooperatives may deduct from fees paid to the State (pursuant to Section 62-8-8 NMSA 1978) an amount equal to 50 percent of the amount the cooperative will seek to collect from customers in that year.

Sections 9-16 enact the Community Energy Efficiency Development Block Grant Act (CEED block grant), to address, long-term, the energy burden experienced by low-income households in New Mexico. The CEED Block Grant Act allows the state, a county, or a municipality to provide or pay the costs of financing infrastructure necessary to support affordable housing projects as

provided by Article 9, Section 14, of the Constitution of New Mexico. The CEED fund is created as a nonreverting fund in the state treasury.

The CEED block grant shall be administered by the Energy, Minerals and Natural Resource Department (EMNRD). EMNRD shall adopt rules for the administration of the program, including application evaluation, acceptance, and prioritization, determining qualifications for low-income persons, and assessing the value and affordability of residential housing as referenced in applications. HB206/HCPACS/HENRCS requires EMNRD to adopt a rule to restrict eligibility for certain funds, if required by the entity that provided the funding to the program;

EMNRD must consider, when choosing projects to fund, the estimated reductions in energy usage, the geographic diversity of the project, and the benefits to the community of working with the specified community partner and service provider. EMNRD may also use additional criteria to select projects, including

- Improving the energy efficiency, livability, or public health and safety of affordable housing in underserved communities;
- The degree to which the project will protect public health, including protection from Covid-19; and
- The degree to which the project will contribute to economic recovery, including from the Covid-19 pandemic.

In contrast to previous versions of this bill, HB206/HCPACS/HENRCS requires EMNRD to “coordinate with” the New Mexico Mortgage Finance Authority to administer this program, rather than to “share information with” them. The Mortgage Finance Authority is also authorized to be an applicant for the program.

In addition, in years where there is no funding for the program, EMNRD is not required to administer it (Section C).

By November 1 of each year in which there is a community energy efficiency project in operation, EMNRD must report to interim legislative committees on the status of participation in the program by people in underserved communities, the types of projects funded and any recommended changes with respect to the program.

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

## **FISCAL IMPLICATIONS**

PRC stated it would need 2 additional FTE to carry out the mandates proposed in HB206/HCPACS/HENRCS. Therefore, the impact to PRC operating budget will be \$260 thousand annually in general fund revenue.

EMNRD stated, if funded, the block grant program will require EMNRD to hire program staff to establish the program rules and for continuing administration of the block grant program. EMNRD stated the impact to the operating budget will be \$74.3 thousand annually for 1 FTE.

Although HB206/HCPACS/HENRCS does not specify future appropriations, establishing a new grant program could create an expectation the program will continue in future fiscal years; therefore, this cost is scored as recurring.

This bill creates a new fund and is subject to appropriation by the Legislature to the department to carry out the provisions of the Community Energy Efficiency Development Block Grant Act.

The Public Regulation Commission provided the following:

The UARA and the creation of the customer bill relief program that covers all public utilities is likely to result in a significant increase in activity for the PRC's Consumer Relations Division which will require one additional FTE (Compliance Officer).

New reporting requirements from all public utilities in this bill about disconnections, reconnections, customer income level and arrearages will require one additional FTE specializing in utility economics for the PRC to analyze. One additional FTE with utility economic training with the ability to analyze and assimilate data regarding low income customers of public utilities, which is not an area of the current PRC expertise, is also therefore necessary.

New rulemaking proceedings and commission orders along with the related development of a long-term plan to achieve energy affordability and adequate water service for all public utilities under the commission's jurisdiction will be a significant undertaking and will require one additional FTE in the Legal Division or the Office of General Council.

The Energy, Minerals and Natural Resources Department provided the following:

HB206/HCPACS/HENRCS does not include an appropriation for the CEED program. Without funding for the grant program, there is no program to administer. This creates a similar situation to the other Clean Energy Grants Program from years ago: a fund is created but no money is deposited and EMNRD has no way to fund the program. If federal funding is requested for this fund, EMNRD would need to request administrative dollars to oversee the requirements of the federal funds.

If funding for the program becomes available, there will be fiscal implications for EMNRD. EMNRD will be required to adopt rules and administer the program. The program will require at least one FTE to administer it. The position would likely be a staff manager at a range of 75, with an hourly rate of \$27.5/hr. plus fringe benefits which equates to \$74,346 per annum. Additional expenses would relate to statewide travel, program implementation and onsite monitoring. Additional expenses would be incurred for legal and administration expenses.

## **SIGNIFICANT ISSUES**

The Public Regulation Commission provided the following:

HB 206/HENRC attempts to accomplish three primary goals that are only tangentially interrelated or interdependent. First, in relation to the impact of the pandemic, restricts utility residential customer disconnections and provides a framework to address related

qualifying low to moderate income utility customer arrearages with a path toward the forgiveness of such arrearages. Second, HB 206 creates a community energy efficiency development program that provides an opportunity to qualified entities to seek funding to implement energy efficiency projects for low to moderate income customers. Finally, the bill seeks to achieve long term equity in rates for low to moderate income customers through a number of rulemaking proceedings or Commission orders concerning access to utility service and affordable income-based rates.

The NMPRC regulates electric, gas, water and wastewater public utilities that operate under a wide variety of circumstances, including the size of the utility from very small to very large, from investor-owned to member-owned, and with service territories that vary from less populated rural areas to dense urban areas, with varying socio-economic mixes of customers. With the creation of the utility bill relief program pursuant to the UARA, the bill creates a prescriptive approach that would uniformly apply to the range of circumstances faced by all public utilities. Utility customer arrearages, under normal non-pandemic circumstances, are managed independently by all public utilities and constitute in the aggregate one of many elements of what it costs the utility to provide safe and reliable service at reasonable rates. The UARA would create a separate layered statutory framework for the management of utility customer arrearages that result from the COVID-19 pandemic regardless of a utility's specific circumstances and thus supersede each utility's current more tailored response to pandemic related utility bill arrearages. Due to its statutory basis, the Commission could therefore be prevented from exercising its discretion to make a judgment about the prudence and reasonableness of this bill's uniform utility bill relief program. In response to the COVID 19 pandemic and subsequent closures and economic downturn, the NMPRC issued its initial order prohibiting utility disconnections of residential customers due to non-payment on March 18, 2020 and the prohibition remains in place to this day. More recently, the Commission has examined the impact on public utilities of further extensions of the moratorium and it has issued an order concerning transition periods until the expiration of these moratoriums based on the size and ownership of each utility. The restriction on residential utility disconnections based on the existence of an installment plan, as provided for in this bill, will likely be inconsistent with the current moratorium and the transition periods now in place.

With the creation of the utility bill relief program pursuant to the UARA, the bill creates a prescriptive approach that would uniformly apply to the range of circumstances faced by all public utilities. Utility customer arrearages, under normal non-pandemic circumstances, are managed independently by all public utilities and constitute in the aggregate one of many elements of what it costs the utility to provide safe and reliable service at reasonable rates. The UARA would create a separate layered statutory framework for the management of utility customer arrearages that result from the COVID-19 pandemic regardless of a utility's specific circumstances and thus supersede each utility's current more tailored response to pandemic related utility bill arrearages. Due to its statutory basis, the Commission could therefore be prevented from exercising its discretion to make a judgment about the prudence and reasonableness of this bill's uniform utility bill relief program.

Regarding the treatment of past due bill arrearages and associated bad debt, on June 24, 2020, the Commission issued an order allowing public utilities to create a regulatory asset

to record expenses associated with pandemic related uncollectible utility arrearages and other expenses incurred during the duration of the Governor's executive orders about the public health emergency. This will likely be inconsistent with the provisions in HB 206/HENRC that provide for certain public utilities to recover the reasonable costs of a utility bill relief program which allows for the forgiveness of a significant portion of a utility customer's bill arrearages. The conflation of uncollectible bill arrearages with the forgiveness of such arrearages provided for by this bill could result in the recovery of such costs from the other utility customers without allowing the Commission to consider recovering such costs from other sources, such as utility shareholders.

HB 206/HENRC adds significant new utility reporting requirements in Section 18 concerning tangentially related matters. It requires quarterly reporting about disconnections and reconnections, customer income levels, annual reporting about the number of customers that do not receive utility service, and other undefined information concerning the availability of electric or gas service to all customers. The scope of the information required from all public utilities suggest it will be a challenge for the Commission to analyze without significant additional resources. It should also be noted that the utility's obligation to serve customers in its service territory is a fundamental element of the regulatory compact that grants the utility the exclusive right to serve customers in its territory.

HB 206/HENRC adds further requirements for new Commission rules and orders concerning a long-term objective of achieving energy and water equity by 2050 across all electric, gas, water and wastewater utilities, be they investor-owned or cooperatives. This is another significant undertaking that will tax the NMPRC's limited resources. It is also an undertaking that would represent a departure from the traditional ratemaking approach based on cost causation, in that rates are based to a significant extent on what it costs to provide service to a uniform customer class rather than on affordability such that rates would be based on what certain customers can afford or on broad access to fundamental utility services such as water or wastewater.

Finally, this bill significantly expands and amends the PUA's discrimination clause to allow rates that recover the impact of forgiveness of utility customer arrearages and allow rates and charges (as well as services, classifications or facilities) that provide a reasonable preference or advantage. It is not clear that it is necessary to explicitly allow rates that recover forgiven utility customer arrearages. Such rates are inherently allowed and authorized by the Commission as the result of utility rate cases when bad debt expenses are considered in the review of the utility's reasonable cost of service. With respect to rates and charges that provide a reasonable preference or advantage, this would be a significant departure from traditional ratemaking practice which provides for rates to recover the costs reasonably incurred to serve customer in a given rate class with uniform consumption characteristics.

The Energy, Minerals and Natural Resources Department provided the following:

This bill addresses the short-term issue of customer arrears due to the coronavirus disease 2019 public health emergency along with long-term issues surrounding affordability of utilities for low-income New Mexicans. The combination of short and long-term aspects make this bill unusually comprehensive in attempting to solve utility affordability.

The CEED block grant is designed to complement the capabilities of New Mexico's existing EnergySmart low-income energy efficiency program. EnergySmart, administered through the Mortgage Finance Authority, uses funds from the federal Department of Energy, LIHEAP, and various utilities for home weatherization. This program has limited funding and can only perform upgrades aligned with federal funding requirements, resulting in a waitlist of over 2,000 homes and a yearly reach of approximately 487 households. This program is insufficient to meet the weatherization and energy efficiency needs of New Mexicans.

The U.S. Department of Energy reports that low-income households have an energy burden that is three times higher than other households. On average, New Mexicans living below the federal poverty level pay an average of 14 percent of their income on energy expenses, and in some rural communities this can be as high as 37 percent. New Mexico is currently tied with Louisiana for the second highest poverty rate in the country, with 19.8 percent of state residents living in poverty. The need for low-income household energy efficiency programs in New Mexico is clear.

Additionally, under the current provisions of the Energy Efficiency Act, rural electric cooperatives are not required to spend funds on low-income energy efficiency improvements within their service territories (*contra* IOUs). This means that rural New Mexicans do not receive the same level of energy efficiency opportunities as those who live in the service territories of the three investor-owned utilities. HB206/HCPACS would help to level this playing field and bring these benefits to those who may need them the most.

Energy efficiency improvements will help New Mexico cost-effectively meet the goals set forth by the Energy Transition Act. Energy efficiency improvements reduce overall energy demand, including at peak times, meaning that utilities will need to procure less renewable energy to meet their statutory goals. Additionally, investing in energy efficiency is generally more cost effective than investing in zero-carbon electricity. The levelized cost of investment into a range of energy efficiency investments is 2.5 cents per kWh, compared to the levelized cost of renewable energy investments which starts around 3.5 cents per kWh.

Although energy efficiency efforts will benefit the state's pursuit of clean energy goals, these measures will also have real economic, environmental and personal benefits on the household level. By employing energy efficiency upgrades, a household can save anywhere from 5-30 percent on their utility bills – an amount of money which can vastly increase the quality of life and financial stability of low-income residents. Furthermore, decreasing the demand load of a dwelling also insulates its resident from rising electricity prices in the future.

There are also notable health benefits from energy efficiency upgrades. Residences will be warmer, drier, and more properly ventilated, lowering the risk of illness and mold growth. Energy efficiency measures can also prevent the buildup of indoor pollutants which can be a serious health risk. The benefit-to-cost ratio of energy efficient buildings is 4:1, with over 75 percent of those benefits linked to health advantages.

However, there is no funding for the CEED Block Grant in HB206/HCPACS/HENRCS as written. Passing HB206/HCPACS/HENRCS without any funding for the block grant will result in no additional long-term help for low-income New Mexicans.

The New Mexico Mortgage Finance Authority provided the following:

The relief measure in this bill could improve the ability to pay down arrears and prevent disconnection for many of the New Mexican households who have faced challenges to their financial security in the wake of the coronavirus pandemic.

MFA has administered a weatherization program in the State of New Mexico since 1997. NM Energy Smart weatherizes the homes of approximately 750 low-income families each year using two federal sources, the Weatherization Assistance Program (WAP) and the Low-Income Home Energy Assistance Program (LIHEAP), in addition to State and utility company contributions. Demand for the program is great. Based on income eligibility, more than 200 thousand households across the state are eligible, and MFA's current wait list numbers over 2.3 thousand households. As a result, low-income homeowners, many of whom are frail elderly with fixed incomes, save hundreds of dollars in annual utility costs, realize an improved quality of life and are healthier and safer in their homes.

If this program is funded, New Mexico would have two weatherization programs, and it is important that the two administering entities coordinate as much as possible in order to avoid duplication of efforts. Consistency of eligibility criteria for both programs would avoid confusion and enable potential leveraging and efficiencies.

## **TECHNICAL ISSUES**

A "public utility" is defined in the bill and it includes all public utilities under the PRC's jurisdiction, including electric, gas, water and wastewater investor-owned utilities, as well as member-owned rural electric distribution cooperation. "Small public utilities," which are newly defined in the bill, are a subset of "public utilities." This could result in confusion about provisions in the bill that apply alternatively to public utilities or to small public utilities, and about which provisions may take precedence.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The commission will continue to exercise its authority through its existing orders regulating pandemic-related residential disconnections and regulating the recovery of reasonable costs associated with uncollectible utility customer arrearages and other expenses incurred during the public health emergency.

The Energy, Minerals and Natural Resources Department provided the following on the original bill:

Many New Mexico residents will be at risk for having their utilities disconnected once the current utility disconnection moratorium expires, causing further hardship to residents who have already been hit the hardest by the Covid-19 pandemic.

Low-income households, who have an energy burden three times greater than other households according to the U.S. Department of Energy, will continue to pay disproportionately more for their energy costs. Demand for energy efficiency services specific to low-income and underserved communities will continue to outpace the capacity of existing programs, both in terms of the number of households served and the breadth of energy efficiency upgrades eligible.

JM/sb/rl/al