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

SPONSOR HENRC **ORIGINAL DATE** 02/25/21 **LAST UPDATED** 02/26/21 **HB** 262/HENRCS

SHORT TITLE Energy Storage System Tax Credit **SB**

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue						Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23	FY24	FY25	FY25		
		Up to ($1,000.0)	Up to ($1,000.0)	Up to ($1,000.0)	Up to ($1,000.0)	Recurring	General Fund
		≈20.0	≈20.0			Recurring	EMNRD/General Fund – Application Fee

Parenthesis ( ) indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		$10.3	0	0	Non-Recurring*	TRD Operating
		$27.5	$27.5	$27.5	Recurring*	TRD Operating
		$60.0	$10.0	$70.0	Recurring*	EMNRD Operating

Parenthesis ( ) indicate expenditure decreases.

Duplicates SB301.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Energy, Minerals and Natural Resources Department (EMNRD)
Taxation and Revenue Department (TRD) (on original bill)

SUMMARY

Synopsis of Bill

The House Energy, Environment and Natural Resources Committee substitute for House Bill 262 proposes a tax credit of 40 percent of the cost of equipment and installation for an energy storage system. The credit is for installation of an energy storage system on the claimant's agricultural, business or residential property. The system may be installed behind the meter that is connected to the power grid or installed to support an off-grid system.

The energy storage system must be installed for use with a new or existing solar photoelectric array and has a minimum of two hours of storage capacity. If installed in a grid-tied system and the communication and control mechanisms exist, the storage system can be used as a shared resource with a utility.

The credit amount is 40 percent of the cost of equipment and installation, limited to a maximum credit of $5,000 per system. Only one credit is allowed for each property. Aggregate annual approvals are limited to $1 million in aggregate and applications will be processed by TRD on a first-come, first-served basis. If aggregate applications exceed this cap, TRD will post notice on the department website no further applications will be processed that year but that the claimant may file claim the following year. Approved credits that exceed a taxpayer's tax liability can be carried forward for five years (see "Technical Issues").

EMNRD is assigned the duty to establish an application website where an applicant can report an installation. Following that report and payment of a $100 application fee, EMNRD will provide the taxpayer with an identification number.

By June 30, 2023, and June 30, 2024, EMNRD is required to report to the Legislative Finance Committee data regarding energy storage systems installed. Unusually, TRD is not required to prepare a report for presentation to the Legislature on the tax credit costs.

There is no effective date of this bill. It is assumed the effective date is 90 days after this session ends (June 18, 2021). The provisions of the act are applicable to tax years beginning January 1, 2022, and ending December 31, 2023. This is a two-fiscal-year experiment. However, because the tax credits are limited to the amount of the taxpayer's liability and the bill allows delayed applications if the $1 million cap is exceeded, some proportion of credits certified will not be applied until 2028. The tax credits are nonrefundable and not transferable. Because of the roll-over feature, if a large number of systems are installed from June 18, 2021, through December 31, 2023, and the total value of credit claims exceeds the $1 million cap, there is a possibility of tax credits from these excess systems being claimed in tax years after 2023.

FISCAL IMPLICATIONS

This bill creates a tax expenditure with a cost that is difficult to determine but may exceed $2 million for the two-year experiment and could reach up to $5 million if the provisions stimulate installations that far exceed expectations. In addition, because credits that exceed a taxpayer's liability may be carried forward for five years, this proposed tax credit could affect revenue from FY22 through 2028.

A newsletter, *Electrek*[1], indicates total system cost of a Tesla Powerwall, the number one residential-scale energy storage system, is currently $7,500 for the system, $1,000 for the

[1] https://electrek.co/2021/01/17/tesla-increases-price-powerwall/

controller, and $3,500 for installation. A 40 percent credit on the system would be $4,800, just under the maximum credit amount for each system. The $1 million credit cap would allow 200 Powerwall systems to be installed and credited each year.

However, fewer than 8 percent of New Mexico resident taxpayers incur net personal income tax liabilities exceeding $5,000 per year, and it is likely this tax credit will only be taken up by relatively wealthy taxpayers and the credit will be fully subscribed.

TRD notes a slightly different fiscal impact:

Estimated Revenue Impact*					**R or NR****	**Fund(s) Affected**
FY2021	**FY2022**	**FY2023**	**FY2024**	**FY2025**		
--	Unknown – less than ($1,000)	Unknown – less than ($1,000)	($1,000)	($1,000)	R	General Fund

* In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

From TRD:

> According to 2019 data from the U.S. Energy Information Administration (EIA), the market for energy storage systems in New Mexico is underdeveloped. EIA's publication "Battery Storage in the United States: An Update on Market Trends" and its "Annual Electric Power Industry Report, Form EIA-861" detailed data files indicate minimal megawatt storage capacity in New Mexico. EIA's data shows that only 0.155 megawatt of storage capacity was installed in residential homes, with no commercial or industrial installations reported.
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> Being that this is a developing market, the fiscal impact will likely be under $1 million in the first couple of years, as consumers begin to take advantage of this credit. Starting in fiscal year 2024 and going forward, it is expected that the market will experience higher adoption by consumers who would then maximize the use of the aggregate credit cap. The credit applies to periods prior to January 1, 2024; as such, the fiscal impact estimated in fiscal year 2025 assumes carryforwards from taxpayers who may not be able to receive credit in fiscal year 2024 due to cap limitations.

However, both EMNRD and TRD may have to administer this program for significantly longer than the nominal two-year life of the experiment. Although energy storage system must be installed from the effective date of this bill to January 1, 2024 (something more than two and a half years), the credits may be claimed on tax returns for 2022 and subsequent years. The bill does not require installations to be reported timely to EMNRD if TRD has announced the cap has been exceeded. TRD must allow claims for as long as five years if approved credits exceed tax liabilities.

SIGNIFICANT ISSUES

EMNRD points out significant features of this bill:

> House Bill 262 would create a new tax credit program to specifically encourage development and installation of energy storage systems. Energy storage allows renewable energy systems to be more efficient by storing electricity in batteries and providing power at night or other times when renewable energy is less reliable. Storage is an

important part of the overall grid modernization picture by helping to stabilize the electricity demand peaks and by compensating for the variability of energy produced from renewables.

Behind-the-meter storage *gives the customer control*; it allows for the customer to better control time of energy use and will likely mean less drawing on the grid overall (if accompanied by a solar system). Residential and business-located storage will be good for the electrification of transportation.

Under the current New Mexico Public Regulation Commission's Interconnection Manual any solar + storage system exceeding 10 kW total combined power output would not be eligible for the expedited review process and thus interconnection delays may significantly limit access to the tax credit during the 2-year window. Many residential buildings can easily exceed the 10-kW limit.

HB262/HENRCS requires that EMNRD certify the energy storage systems for a credit to be received. EMNRD recommends language to the bill that for purposes of inspecting the energy storage system's installation, EMNRD or its authorized representative shall have the right to inspect an energy storage system an applicant owns and that EMNRD has certified, after EMNRD's certification, upon providing a minimum of five days' notice to the taxpayer. (see proposed amendments).

The definition of energy storage system is defined as a battery system. HB262 limits the tax credit to retail electricity customers only and the focus is on electricity. Therefore, if electricity is the focus of the bill, the definition should focus on "electric energy storage" and should be simplified to: "Electric Energy Storage System – a system used to capture electric energy produced at one time for use at a later time."

In HB262/HENRCS, EMNRD's role is now to:

- Establish a website for taxpayers to provide data on the energy storage system installed, to collect a $100 fee per application and to provide the taxpayer with an identification number to be used for claiming the credit in their subsequent tax return; and
- Annually report the data collected from the website to the LFC.

TRD notes the following policy issues:

PIT revenue represents a fairly consistent source of revenue for many states. PIT revenue is susceptible to economic downturns but also positively responsive to economic expansion. New Mexico is one of 42 states along with the District of Columbia that impose a broad-based personal income tax. The personal income tax is seen as both horizontally equitable, meaning that the same statutes apply to all taxpayers, and vertically equitable, due to the progressive design of the personal income tax. Progressive, in this context, means taxes where the average tax rate increase as the taxable amount increases.

This credit is a tax expenditure that will decrease the PIT revenue base. While the bill does not detail the intent of providing this credit, providing a credit may incentivize the growth of this underdeveloped market in New Mexico.

The proposed credit does include a sunset date and a cap on the total amount of credit that can be claimed in a taxable year, rather, the cap is on fiscal years. TRD supports sunset dates for policymakers to review the impact of a credit before extending it, if a sufficient timeframe is allotted for tax incentives to be measured. The sunset date would force an examination of the benefit of this credit versus the cost and the extent to which the credit reaches the cap. It is worth noting that this credit can be carried forward for five consecutive years if the credit amount exceeds the taxpayer's tax liability.

The federal Department of Energy, Energy Information Agency (DOE/EIA) published a study in July 2020[2] that contained some interesting statistics:

- In 2018, utilities reported 234 megawatts of existing small-scale storage power capacity in the United States. A little more than 50 percent of this capacity was installed in the commercial sector, 31 percent was installed in the residential sector, and 15 percent was installed in the industrial sector….
- In 2018, 86 percent of reported small-scaled storage power capacity in the United States was in California and, specifically, was owned by six utilities.
- Utah was in third place, outside California with about 0.6 megawatts of residential energy storage systems.
- In California, capacity and installations at the end-user level are not collected.
- Utah is in third place outside of California, with about 0.6 megawatts of capacity. Virtually all this capacity is for residential systems owned by the end-user. (Utah offers a 10 percent tax credit for renewable energy systems, including energy storage as long as the energy storage is installed at the same time as solar or wind systems.)

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability may be met with the bill's requirement for EMNRD to report in two annual tranches to the LFC on the data. TRD is not required to report on data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose but will report as a part of the annual TRD tax expenditure report.

EMNRD comments, "HB262 allows the use of renewable energy through energy storage at night and other times when renewable energy is intermittent. This supports the Governor's Executive Order on addressing climate change and energy waste prevention."

ADMINISTRATIVE IMPLICATIONS

The fiscal impact for EMNRD includes staff resources to develop the website for electronic submission of applications. There would be an estimated cost of approximately $60 thousand for website design, development, testing, and deployment, program data collection, and administrative, legal and information technology staff time. Ongoing staff resources would be required to effectively manage the program, perform website updates and maintenance, and prepare the annual report to LFC – approximately $10 thousand in operating costs per year.

HB262/HENRCS establishes a $100 application fee a taxpayer pays to EMNRD, which could be used to offset some of the development costs. At maximum (all applications requesting the

[2] https://www.eia.gov/analysis/studies/electricity/batterystorage/pdf/battery_storage.pdf

maximum $5,000 credit, 200 applications per year), this fee would generate $20 thousand per year.

TRD notes a moderate administrative impact:

> Changes to forms, publications, and instructions will be needed. Staff training to administer the credit will need to take place. Changes to the GenTax and Taxpayer Access Point (TAP) systems will require approximately 200 hours of effort or approximately 1 ½ months of estimated staff workload costs of $10,328. These updates will be included in the annual tax year changes for tax year 2021. Additional staff, equivalent to a half-time employee will be needed to administer the credit. The cost of an additional staff is based on a Tax Examiner Operational.
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> TRD expects to be able to absorb the impact of these changes, as outlined in this standalone bill, with one additional half-time FTE. However, if several bills with similar effective dates become law there will be a greater impact to TRD and additional FTE or contract resources may be needed in order to complete the changes specified by the effective date(s) of each bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB262 is a duplicate of SB301 and similar to HB201 from the 2020 regular session.

TECHNICAL ISSUES

HB262/HENRCS refers to the tax credit cap availability on a fiscal year basis (page 4, line 1) and not on a calendar or tax year basis. This issue creates difficulty for TRD and could easily be amended.

The bill provides a $100 fee to be paid by the applicant to EMNRD. However, the disposition of this fee is not provided in the bill. It may be necessary to add, "MAKING AN APPROPRIATION" in the title.

While the substitute bill resolves most of the administrative issues identified in the FIR on the original bill, there is one uncertainty remaining. A taxpayer posts details of the installation on the EMNRD special website and receives an identification number. The taxpayer later claims the credit on a filed tax return (or amended return). If the credit claimed exceeds the taxpayer's liability for that year, the bill provides that the excess can be carried forward for up to five years. The question is which amount counts toward the cap – the total amount of the credit, or the amount applied to liabilities? Although the energy storage systems must be installed between the effective date of the bill and January 1, 2024, the $1 million annual cap does not expire. If the number of installations exceeds expectations, there could be credit claims for years in the future. TRD would have to implement procedures to allow, then track the full amount of the amounts allowed and any rollovers because of claims limited by liability.

EMNRD comments:

> The data collected under paragraph K does not align with or provide full verification of the requirements under paragraph C. EMNRD recommends that the language to HB262/HENRCS be modified to ensure consistency between the two sections.

EMNRD also recommends that the full address at which the energy storage system is installed be added to the data collection requests.

TRD also comments on technical/administrative issues:

It is unclear in the bill language who is going to be reviewing and certifying that the systems meet the requirements for the credit. Section C on page 2 stipulates the criteria for energy systems that would be eligible to apply for the credit, and states that TRD shall only allow a credit for an energy system that meets these criteria. Additionally, section L states that the taxpayer shall report the information to EMNRD on a website established by that agency, and that EMNRD shall provide the ID number to be used on that taxpayer's application to TRD for the credit. Therefore, TRD suggests that these criteria should be reviewed and certified by EMNRD instead of TRD; having EMNRD perform these duties also makes sense, given that these are non-financial specifications, but rather technological. The bill does not say that any sort of verification or review by TRD of the information submitted on the EMNRD website, and upon which certification for the credit is based, shall occur to determine if the system meets the requirements in the law. Because of the difference between the language of subsections (C)(2) and (L), it is not clear whether review is intended to occur at EMNRD or TRD, and TRD recommends that the bill should clearly state which agency performs the review. EMNRD seems better positioned to determine the eligibility for the credit than TRD.

There is a reference to an application and a claim that both are being submitted to TRD in Section F. In general, there is an application to see if a taxpayer would get approved for a credit, and then an approved credit is claimed on a return. It is unclear if these are intended to be two different actions or not. There is also no limit to the time that the taxpayer must apply for the credit, so they could presumably apply for the credit several years after the installation and go back to claim it in the year the system was installed per Section F.

In sections F and G, TRD is charged with maintaining and monitoring the cap, with the responsibility to post a notice on its website when the cap has been reached. It would be more efficient if EMRND accepted registrations and fees for systems while also maintaining the cap. That way, there would be no room for error for EMNRD to issue identification numbers and accept payments when the cap has been reached. When the cap is reached, EMNRD could stop accepting registrations at the front end before they request a credit from TRD. This was a demonstrated problem with the Renewal Energy Production Tax Credit when taxpayers became confused after receiving certification from EMNRD, and were then told by TRD that there was no available space in the cap. While the substitute eliminates the certification requirement by ENMRD, the payment of $100 to register the energy systems could lead taxpayers to expect that TRD would grant them the tax credit. If EMNRD maintained the aggregate cap, it could notify taxpayers at the point of registration that while their energy systems can be registered, the aggregate cap has been met for that year and no tax credits will be awarded. Alternatively, EMNRD and TRD could create a mechanism in which information is shared in real time and in a secure electronic format, to include the status of the cap and the taxpayer's identification number.

There is a timing issue on page 3, lines 6 through 17, with the credit claims. Typically, credits are claimed on tax returns after the tax year is over. This is well after when EMNRD would

have already recorded registration of the energy systems and issued identification numbers to be included on an application to TRD for the tax credit. Since the storage systems are registered and paid for prior to the taxpayer filing a return, it would not be possible for TRD to accurately publish the status of the cap. Also, the order in which credits are granted by TRD would then be dependent on the timing and filing method (paper or electronic) chosen by the taxpayer – if TRD receives an electronic return and a paper return on the same day, the electronic return may be processed anywhere from two to 20 business days earlier. A cap administered by TRD will lead to significant uncertainty and delays for taxpayers that could be much improved if the cap was monitored by EMNRD.

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