

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Hamblen</u>	<b>LAST UPDATED</b> <u>3/12/23</u>
	<b>ORIGINAL DATE</b> <u>2/22/2023</u>
<b>SHORT TITLE</b> <u>Low-Income Solar Act</u>	<b>BILL NUMBER</b> <u>Senate Bill 432/aSTBTC</u>
	<b>ANALYST</b> <u>Dick-Peddie/Graeser</u>

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
	Indeterminate loss of revenue				Recurring	State GOBs
	Indeterminate loss of revenue, moderated by yield control				Recurring	Municipal, County School District Operating
	Indeterminate reduction in revenue and bond capacity				Recurring	Municipal, County School District Debt
	Reduction in revenue and bond capacity				Recurring	Higher Ed & Special Districts

Parenthesis ( ) indicate revenue decreases.

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
PRC Operating	\$0.0	\$200.0	\$200.0	\$400.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)

Energy, Minerals and Natural Resources Department (EMNRD)

Public Regulation Commission (PRC)

## SUMMARY

### Synopsis of STBTC Amendment to Senate Bill 432

The Senate Tax, Business and Transportation Committee amendment provides a definition for “utility” which excludes electric cooperatives.

## Synopsis of Original Senate Bill 432

Senate Bill 432 would create a new section of the Public Utilities Act, titled the Low-Income Solar Act, which would require the PRC to adopt rules by January 1, 2024 regarding low income solar credits. Under the legislation, electric utilities in the state are required to provide a virtual net metering bill credit to users of low-income housing shared distributed generation systems. A low-income housing shared distributed generation system is defined as systems that:

- Use a renewable energy resource as its primary source to generate electricity;
- Are located on a qualifying low-income multi-family residential property;
- Have a generating capacity designed to produce no more than 120 percent of the average historic usage or reasonably expected future usage of the residential property;
- Operate with the utility’s transmission and distribution facilities;
- Equitably allocate the capacity and associated electricity to each of the individually metered units or common areas within the residential property, or if master-metered, equitably allocates these benefits to residents;
- Are intended to offset the residential property’s electricity requirements and is subject to the following maximum allocations:
  - For common-area meters or master meters, capacity sized to supply no more than 120 percent of the metered historic usage or reasonably expected future usage; and
  - For meters serving tenant units, a capacity of no more than 10kW per unit.

Virtual net metering is defined as a utility tariff arrangement that allow individually metered billing accounts of a qualifying low-income property to receive calculated bill credits for their allocation of a system’s energy generation.

The utility is required to provide virtual net metering bill credits equal to the full retail value of the kWh to users of systems. Net electricity shall be determined by measuring the net electricity produced or consumed by the user during a monthly billing period. Users shall be billed only for the net electricity consumed during the billing period, and if the user produces net electricity, the utility shall credit the user on the next bill for the net kWh produced. Unused credits are carried forward month-to-month, and any unused credits shall be paid to the user at the utility’s avoided cost if the user leaves the system.

The utility may not charge a user any fee or charge different than that charged to other utility customers within the same rate class and may not place a user into a rate class based on a user’s participation in this program. The utility may charge the owner of the system for its “reasonable” costs to install a meter to measure the output of the system or for any actual costs of any upgrades to the utility’s distribution system required to make the system compatible with the utility’s distribution system.

Senate Bill 432 also amends Chapter 7 NMSA 1978 to stipulate that solar energy systems subject to valuation for property taxation purposes shall be valued at zero dollars (\$0.00). To qualify, the solar system must:

- Be installed on residential property;
- Include equipment that is part of a [solar-thermal, or solar-electric] system;
- Include photovoltaic panels, [other solar-thermal or solar-electric] equipment; and

- Is used, produced, manufactured, held for sale, leased or maintained by a person for purposes of the person's profession, business or occupation."

This solar zero valuation applies to any owner of rental housing, not just landlords providing affordable housing.

The PRC has until January 1, 2024, to enact detailed rules regarding the tariffs.

The effective date of this bill is July 1, 2023.

## FISCAL IMPLICATIONS

The PRC notes it will expend “significant time and funds enacting the rules required by this bill” in addition to time spent reviewing individual tariffs and potential disputes. This analysis assumes an additional \$200 thousand recurring impact to the PRC operating budget to either hire more FTE or contract services to execute the requirements of the legislation.

Though the PRC notes that participants in the program may realize some savings on their cost of electricity arising under the net metering and billing provisions of this bill, it is unclear how the legislation would impact costs to utilities. LFC notes that increased utility costs would result in increased rates for non-participating utility customers.

The somewhat unusual provision that residential solar systems shall be valued at zero dollars creates a revenue loss for property tax beneficiaries that could be significant, depending on uptake. The zero valuation applies to any rental property, not just properties designated as affordable housing. The provision is relatively narrow. The zero valuation applies to solar systems installed on rental residential structures in the year of installation or for the year that the property changes hands. In subsequent years, the three percent annual assessment limitation of 7-36-21.2 would apply to the somewhat artificially lowered valuation pursuant to the provisions of this bill. A \$120 thousand system (about 100 kilowatt capacity – suitable for a 15- to 20-unit apartment building) would create about \$1,200 in tax reduction annually for each property of this size. PRC would not include this benefit accorded to the property owner when setting the rules for how the Renewable Energy Credits would be allocated to the residents of the affordable housing units. If the property were not considered affordable, the property owner would not be required to share this decreased tax with tenants.

## SIGNIFICANT ISSUES

The Energy, Minerals and Natural Resources Department describes Senate Bill 432 as “community solar on a smaller scale,” the scale being a single qualifying low-income multifamily rental building. EMNRD states that developing solar for low-income and multifamily housing is critical to making renewable energy more accessible in the state, and notes that the proposed legislation could allow low-income renters to “materially benefit, alongside their landlords, from distributed generation installed on the building within which they live.”

In agency analysis, the PRC expressed concerns about program participation and administrative rulemaking:

It is unclear what incentive the owner of a qualifying low-income multifamily residential

property would have to incur the capital cost of installing such a system, beyond the valuation of the system at \$0.00 for property tax purposes and perhaps attracting tenants with lower electricity rates. As the capital cost of the system and production meter and the cost of needed upgrades to the utility system may be significant, there may not be sufficient financial incentive for the installation of such systems.

The owner of the system would have to apply to the utility for an interconnection agreement, which may impact the feasibility of the project.

The time needed for the required rulemaking would far exceed the six months allowed for in the bill. Such a rulemaking proceeding can be expected to last a year or more. In addition, it would appear that the PRC's regulatory authority under this bill would be limited to enforcing the rules and resultant tariffs. The Commission would not have regulatory authority over any issues arising between individual users and the owners of such systems.

EMNRD notes similar concerns about the lack of incentive for property owners to participate in the program, but also states that assigning a property tax valuation of \$0.00 to solar photovoltaic systems also eliminates a *disincentive* for property owners to install solar systems on multifamily buildings, since that valuation would not increase an owner's property tax.

Finally, EMNRD notes that the legislation does not prevent a building owner from increasing tenant rent in order to pay for the cost of solar energy systems. ENRD speculates that the legislation could result in a "perverse incentive for landlords to increase their low-income residents' rent to offset system installation costs, which could offset any financial benefit the tenants were supposed to receive."

## TECHNICAL ISSUES

The bill contain two distinct and separate provisions: (1) instructions to PRC to develop rules such that electric utilities in the state are required to provide a virtual net metering bill credit to users of low-income housing shared distributed generation systems; and (2) an instruction to county assessors to value solar systems installed on rental real estate at zero dollars.

That the bill proposes changes in two distinct and separate areas may violate the Constitutional prohibition on "log-rolling:"

Article IV, Sec. 16. [Subject of bill in title; appropriation bills.]

The subject of every bill shall be clearly expressed in its title, and no bill embracing more than one subject shall be passed except general appropriation bills and bills for the codification or revision of the laws; but if any subject is embraced in any act which is not expressed in its title, only so much of the act as is not so expressed shall be void.

If the zero valuation were restricted to affordable housing, the provisions of the bill would be on one subject.

The other potential problem with the provisions of the bill, despite the careful drafting, is that the Legislature may make laws regarding the property taxation of tangible personal property but may not alter the laws regarding real property with obtaining an amendment to Article VIII of the

Constitution.

Article VIII, Section 3 provides:

Exemptions of personal property from ad valorem taxation may be provided by law if approved by a three-fourths majority vote of all the members elected to each house of the legislature.

Section 5 of this bill does not declare an “exemption” but, in fact, “zero valuation” is an exemption.

The “careful drafting” mentioned above uses the phrase, “valuation of zero dollars” rather than “exemption”; uses the careful requirement that the solar system contain “equipment” – this to qualify the solar system as personal property rather than real property even though the solar system is permanently attached to the real property.

It is uncertain what will happen if the bill does not pass the house and senate by the constitutionally required three-fourths majority vote.

A residential solar system is excluded from valuation on existing real property for the year of installation and every year thereafter until the property is sold and gets a stepped-up valuation.

7-36-21.2. Limitation on increases in valuation of residential property.

A. Residential property shall be valued at its current and correct value in accordance with the provisions of the Property Tax Code; provided that ... the value of a property in any tax year shall not exceed ... one hundred three percent of the value in the tax year prior to the tax year in which the property is being valued. ... This limitation on increases in value does not apply to: ... any physical improvements, except for solar energy system installations, made to the property during the year immediately prior to the tax year...

So a solar system installed on a new residence or a solar system previously installed on a residence and included in the price of a pre-owned home is not accorded that same zero valuation.

ADP/mg/ne/mg