BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

January 29, 2024

Bill: HB-73, as amended by HENRC **Sponsor:** Representatives Debra M. Sariñana and Tara L. Lujan

Short Title: Energy Storage System Income Tax Credit

Description: This bill creates the Energy Storage System Income Tax Credit for a taxpayer who purchases and installs an energy storage system on the taxpayer's residential, commercial, industrial, or agricultural property in New Mexico. The credit is 40% of the purchase and installation costs of the certified system to a maximum amount of $5,000 for a system installed on residential property, and $150,000 installed on a commercial, industrial, or agricultural property. No more than one system per property shall be eligible for the credit. A taxpayer will apply for certification of eligibility from the Energy, Minerals and Natural Resources Department (EMNRD). The aggregate amount of credits that may be certified for any calendar year is $4 million. The portion of the credit that exceeds the taxpayer's liability may be refunded to the taxpayer. Married filing separate individuals shall receive one-half of the amount of the credit. The Taxation and Revenue Department (Tax & Rev) shall report on the credit annually to the Revenue Stabilization and Tax Policy Committee and the Legislative Finance Committee.

The *House Energy, Environment and Natural Resources Committee* amendment adds a provision allowing EMNRD to issue a taxpayer a certification of eligibility for the next taxable year in which there are available certifications if a taxpayer is eligible for certification but the maximum amount of credits has already been certified in the current taxable year. It also makes adjustments to the definition of "energy storage system".

Effective Date: Applicable for tax years beginning on or after January 1, 2024. Effective date not specified; 90 days following adjournment (May 15, 2024).

Taxation and Revenue Department Analyst: Asif Rasool

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2024	FY2025	FY2026	FY2027	FY2028		
--	($1,000 - $4,000)	($1,000 - $4,000)	($4,000)	($4,000)	R	General Fund

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

Methodology for Estimated Revenue Impact: New Mexico has seen a growing interest in battery storage projects in recent years. While the market is still considered underdeveloped, notable projects have emerged. One significant project is the Buena Vista Energy Center, developed by NextEra Energy Resources. This facility, completed in early 2023 with a capacity of 50 megawatts (MW), is one of the largest battery storage projects in the United States. The U.S. Energy Information Administration (EIA) provides data and reports on battery storage in the United States, including New Mexico. Their reports, such as the "Battery Storage in the United States: An Update on Market Trends[1]," highlighted New Mexico as a developing market.

Since this market is still in its early stages, the fiscal impact is expected to be under $4 million in the first two years. However, starting in fiscal year 2026 and onwards, it is anticipated that the market will

[1] https://www.eia.gov/analysis/studies/electricity/batterystorage/

experience higher adoption and the cap will be reached.

Policy Issues: Tax incentives can support specific industries or promote desired social and economic actions, but the proliferation of more tax incentives has two primary effects. First, it creates special treatment and exceptions within the tax code, resulting in an expansion of tax expenditures and potentially narrowing the tax base. This, in turn, has a negative impact on the general fund, affecting overall revenue; Second, it imposes a heavier compliance burden on both taxpayers and Tax & Rev. The proliferation of tax incentives and the subsequent complexity they introduce do not align with the principles of sound tax policy. While tax incentives can serve a purpose, it is crucial to strike a balance that ensures fairness, simplicity, and effectiveness in the tax system.

The credit has a defined sunset date. Tax & Rev supports sunset dates for policymakers to review the impact of tax expenditures before extending them.

With respect to other capped credits, Tax & Rev has noted frustration on the part of some taxpayers who apply for credits after a cap has been reached. Given that Tax & Rev does not expect immediate full uptake of the credit, it may be possible to address this issue by rolling over the unused portion of the cap to subsequent tax years, ("A portion of the Energy Storage System Income Tax Credit that remains unused in a taxable year may be carried forward for a maximum of [x] taxable years following the year in which the credit originates until fully expended.") Another alternative is to roll over applications that exceed the cap in one year to the subsequent tax year. However, both of these solutions create additional administrative complexity for Tax & Rev and EMNRD.

Technical Issues: Page 2, lines 11 and 12: "Costs related to equipment or installation costs for energy generation shall not be eligible." "Costs related to" is vague. Replace with: "Indirect costs related to the purchase of the equipment or installation costs for energy generation shall not be eligible."

The bill provides that the credit must be claimed within 12 months of installation. The system can be installed, but not operational. Suggested language change: "The credit must be claimed within 12 months after the system becomes operational."

Tax & Rev notes that the terms "residential" and "commercial, industrial or agricultural" are not defined. This may lead to confusion, as for example may arise if a system is installed on a multi-family apartment building. A multi-family housing property would appear to be "residential" but might be deemed to be "commercial" from the point of view of the owners of the property or the county assessor, as the ownership and management of the building represents a commercial enterprise from the owners' point of view. The bill also does not define "photovoltaic system", and Tax & Rev recommends defining this term.

Page 5, line 7: rather than "stationary", Tax & Rev suggests using the word "fixed", which is a well-defined term in real property law. On the same line, Tax & Rev suggests defining "commercially available" – this term is ambiguous, as it is not clear whether this would include custom-designed systems, for example. Page 5, line 9, it is not clear what distinction is intended between "retaining" and "storing" and suggest striking the word "retaining".

Other Issues: Tax & Rev notes that this credit is only available against personal income tax, without an accompanying corporate income tax credit. As the credit may be issued to a commercial, industrial, or agricultural property, those taxpayers who file as corporate income tax filers may be unable to claim the credit or claim it efficiently.

Administrative & Compliance Impact: Tax & Rev will need to update forms, instructions, and publications and make information system changes. Tax & Rev's Administrative Services Division (ASD) will be required to test the system changes. It is anticipated this work will take approximately 40 hours, split between two existing full-time employees.

Tax & Rev's Information Technology Division (ITD) estimates that implementing the bill will require approximately 300 hours or about two months and an estimated staff workload cost of $16,650. The implementation will be included in the annual tax year changes.

Estimated Additional Operating Budget Impact*				**R or NR****	**Fund(s) or Agency Affected**
FY2024	**FY2025**	**FY2026**	**3 Year Total Cost**		
--	$2.9	--	$2.9	NR	Tax & Rev - ASD - Operating
$16.7	--	--	$16.7	NR	Tax & Rev - ITD - Staff workload

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

Related Bills: Similar to HB-32 (2023 Session)