

**BILL ANALYSIS AND FISCAL IMPACT REPORT**  
**Taxation and Revenue Department**

**February 2, 2024**

**Bill:** HB-187, as amended by the HENRC      **Sponsor:** Representative Joanne J. Ferrary

**Short Title:** School Solar Tax Credit

**Description:** This bill creates for taxable years prior to January 1, 2036, the School Solar Income Tax Credit for a taxpayer who purchases and installs a photovoltaic system on school property for the purpose of providing electricity to a school building in New Mexico. The amount of tax credit is equal to 40% of all costs necessary to purchase and install a photovoltaic system. A taxpayer may claim the tax credit for the taxable year in which the photovoltaic (PV) system is installed and the portion of tax credit that exceeds a taxpayer's tax liability shall be refunded to the taxpayer. The taxpayer shall apply for certification of eligibility for the tax credit from the Energy, Minerals and Natural Resources Department (EMNRD). The total aggregate amount of credits that may be certified for all taxable years in which the credit is available is \$204 million. A certificate of eligibility for the tax credit may be sold, exchanged, or otherwise transferred to another taxpayer for the full value of the credit. Married individuals filing separate returns may claim one-half of the credit. A taxpayer may claim the tax credit in proportion to the taxpayer's ownership interest in an entity taxed as a partnership or limited liability company that has met all the requirements to be eligible for the credit. The Taxation and Revenue Department (Tax & Rev) shall compile an annual report that shall include the number of taxpayers approved, the aggregate amount of the credits approved and any other information necessary to evaluate the credit and present the report to the Revenue Stabilization and Tax Policy Committee and the Legislative Finance Committee with an analysis of the cost of the tax credit.

The *House Energy, Environment and Natural Resources Committee* amendment removes the requirement that a taxpayer purchase a photovoltaic system to qualify for the credit and instead requiring that the taxpayer only installs the system on school property.

**Effective Date:** Not specified; 90 days following adjournment (May 15, 2024).

**Taxation and Revenue Department Analyst:** Sara Grubbs

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2024	FY2025	FY2026	FY2027	FY2028		
--	(\$2,200)	(\$2,600)	(\$3,100)	(\$3,700)	R	General Fund

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

**Methodology for Estimated Revenue Impact:** Tax & Rev cannot anticipate how many taxpayers will provide the funds for the installation a PV system on school property, and therefore potentially claim a credit against their income tax liability or if the process to claim a credit and the amount of the final credit will incentivize taxpayers. Therefore, this analysis is based on the number of potential installations. Also, because the credit is refundable the number of taxpayers that claim this credit will likely increase.

There are 941 schools within the New Mexico Public Education Department<sup>1</sup> (PED). Tax & Rev assumes 896 of these schools qualify under this bill per Section 1 (J) (2) and (3). This excludes home schools, off-

<sup>1</sup> [New Mexico Public Education Department \(state.nm.us\)](http://New Mexico Public Education Department (state.nm.us))

site programs, and private schools. Additionally, there are 35 tribal-controlled or Bureau of Indian Education-operated schools on tribal land in New Mexico<sup>2</sup>. Tax & Rev assumes there are a total of 931 schools eligible for the school solar income tax credit.

According to the National Renewable Energy Laboratory (NREL), the Q1 2022 percentage of stand-alone labor cost for the national benchmark commercial PV system is 9%. When including engineering, permitting, interconnection, support structure, racking, batteries, subcontracting costs and other costs necessary to install a PV system on school property, this percentage increases to 40%. Tax & Rev then assumes the average total cost of installing and purchasing a PV system at a New Mexico school is \$450,000<sup>3</sup> excluding federal solar tax credits and other rebates<sup>4</sup>. Of this cost, 40% is eligible for the school solar tax credit and the installation cost is inflated annually by the average growth of national labor cost from 2019 to 2022 of 4.1%<sup>5</sup>. Tax & Rev also assumes an initial frequency of 40 projects per year (see footnote 3) grown by 13% per annum, the growth rate in the number of U.S. schools that installed a PV system from 2014 to 2021<sup>6</sup>.

**Policy Issues:** The HENRC committee amendment removes the requirement for the taxpayer claiming the credit to purchase the solar system being installed on the school property. As amended, although the taxpayer will only get the credit for the installation of the solar system, the credit will still offset a percentage of the cost to get schools utilizing solar as an electricity source.

An alternative solution to the issue raised in this bill would be to allow solar installations in public schools to be funded through the Public School Capital Outlay program. The PSCOC program was established over 20 years ago to fund facility needs in public schools statewide. It is funded by supplemental severance tax bonds issued by the State Board of Finance. According to the December 2023 bonding capacity forecast issued by the SBOF, about \$750 million per year is available through this bonding program for public school facilities, with a total capacity of \$3.7 billion in the next five years. Because solar installations are not required to meet adequacy standards, they are not currently funded through the PSCOC program. That could be accomplished by amending the Severance Tax Bonding Act.

Personal income tax (PIT) represents a consistent source of revenue for many states. For New Mexico, PIT is approximately 25% of the state's recurring general fund revenue. While this revenue source is susceptible to economic downturns, it is also positively responsive to economic expansions. New Mexico is one of 41 states, along with the District of Columbia, that impose a broad-based PIT (New Hampshire and Washington do not tax wage and salary income). Like several states, New Mexico computes its income tax based on the federal definition of taxable income and ties to other statutes in the federal tax code. This is referred to as "conformity" to the federal tax code. The PIT is an important tax policy tool that has the potential to further both horizontal equity, by ensuring the same statutes apply to all taxpayers, and vertical equity, by ensuring the tax burden is based on taxpayers' ability to pay.

Nationally, public K-12 districts spend approximately \$8 billion a year on energy bills. This is the second largest expense after teacher salaries<sup>7</sup>. Albuquerque Public Schools (APS) has an electric utility bill of over \$50,000 per day. The installation of PV systems can significantly reduce electricity costs. Atrisco Heritage Academy High School in Albuquerque spends about \$354,000 per year in utility expenses. The school completed the district's largest solar and battery storage project in 2022 with a total cost of \$3.2

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<sup>2</sup> [Bureau of Indian Education](http://www.bie.edu) ([www.bie.edu](http://www.bie.edu))

<sup>3</sup> U.S. Solar Photovoltaic System and Energy Storage Cost Benchmarks, With Minimum Sustainable Price Analysis: Q1 2022 ([www.nrel.gov](http://www.nrel.gov))

<sup>4</sup> [Federal Solar Tax Credits for Businesses](http://www.energy.gov) ([www.energy.gov](http://www.energy.gov))

<sup>5</sup> [U.S. Bureau of Labor Statistics](http://www.bls.gov) ([bls.gov](http://www.bls.gov)); Labor Cost Index

<sup>6</sup> [Brighter-Future -A-Study-on-Solar-in-U.S.-Schools-2020](http://www.generation180.org) ([generation180.org](http://www.generation180.org))

<sup>7</sup> [www.whitehouse.gov](http://www.whitehouse.gov)

million. It is expected to save the school district over \$3.5 million over the next 25 years. However, most PV systems installed at a school do not include battery storage and have lower levels of electricity consumption.

The typical lifespan of solar projects is around 30 years, providing school districts with decades of low-cost solar power. About 90% of schools enter into a power purchasing agreement (PPA) with a third party which allows the school to purchase power at a discounted rate over several decades.

The installation of PV systems also provides schools the opportunity to use solar technology to teach science and engineering skills to students at any school and further professional development of older students. The New York City Department of Education trains students on solar PV installation and offers internships for students to become solar PV installers<sup>8</sup>.

The broader question of subsidizing solar energy implicates many economic factors, including job creation, impacts to established markets and environmental concerns. A credit is a tax expenditure that gives preferential tax treatment to certain taxpayers and while any taxpayer may apply for this credit, most of the financial benefit is realized by high wealth individuals. Some economists would argue that energy costs should reflect the associated cost impacts or benefits to the environment. Thus, solar energy which can be expensive to start-up, should be given tax incentives due to its low environmental impact and health and social benefits for the current and future populations. The long-term environmental, health and social benefits outweigh the short-term revenue cost. New job opportunities are associated with solar energy generation, such as solar photovoltaic installers, engineers and managers.

The bill does not require the taxpayer receiving the credit to have any connection with the school. Public schools are publicly owned, and charter schools may be in public or private leased facilities. It is unclear whether the bill envisions making solar energy available in leased space, where the taxpayer claiming the credit would own the building. Tax & Rev suggests that there should be a requirement for an agreement between a school and a taxpayer to purchase and install the system.

There is no parallel Corporate Income Tax credit, limiting the scope of those who may take advantage of the credit. The credit will be more effective if corporations, especially those involved in the solar industry, are also granted eligibility for the credit.

It is unclear whether the credit is available for private schools or home schools. The bill does not explicitly state that it applies only to public schools. The definition of “school” in Section 1(J)(2) of the bill mirrors the definition of “*public* school” in the Public School Code, Section 22-1-2(L) NMSA 1978, but the bill uses only the term “school” in its text, and therefore appears to be attempting to include private schools and possibly home schools.

Depending on the recipient of the donation, allowing a credit for the value of the donation may constitute “double dipping”. If the recipient of the donation is a 501(c)(3) corporation, for example, the donor would be entitled to take a deduction for the value of their donation. Allowing one donation to qualify for two types of tax incentive would be contrary to good tax policy.

**Technical Issues:** In Subsection A, with 931 schools eligible, many with multiple buildings, it is unclear if this credit is applicable to one school building per year, if the PV system must provide electricity to the entire school building in a single installation, or if a taxpayer may apply this credit multiple times per year. The bill also does not specify if tribal schools not associated with New Mexico’s public school system are eligible. The ownership of the PV system nor the generation of electricity once installed is not

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<sup>8</sup> [Brighter-Future -A-Study-on-Solar-in-U.S.-Schools-2020 \(generation180.org\)](https://www.generation180.org/Brighter-Future-A-Study-on-Solar-in-U.S.-Schools-2020)

specified.

In Subsection C, for clarity, Tax & Rev recommends stating that the aggregate amount of credits of \$204 million is in total, not annually.

In Subsection D, lines 14 through 15, the time that the taxpayer may claim the credit with Tax & Rev is based on the date the system gets approval from the utility. This may be better based on the time they get certified by EMNRD since they must be certified to claim the credit. In addition, the requirement in Section H is duplicative of the requirement in Section D.

The taxpayer is entitled to the credit in the year the solar system is installed, page 3, lines 10-11. On page 3, lines 14-15, the taxpayer has up to “twelve months following the time at which the relevant utility gives permission to operate to apply.” This language raises the question of how and when the credit can be claimed by the taxpayer on the original return or will an amended return be required. This is because on page 2, lines 18-25, the application requires cost certification, but then the twelve-month utility requirement makes it unclear as to what taxable year the credit can be claimed. Section 7-2-18.14 NMSA 1978 has a similar credit, and it may be possible to have the same criteria. However, the fixes to avoid confusion as to when the credit could be claimed are suggested below:

Page 2, line 22, insert after “components” insert “the date the relevant utility gives permission to apply”

Page 3, line 13, remove “and shall have”

Page 3, remove line 14

Page 3, line 15 “utility give permission to operate to apply.”

Section 1(J)(2) defines “school”; but the definition is different from the definition of “school” in the Public School Code, Section 22-1-2(M) NMSA 1978 (“school” means a supervised program of instruction designed to educate a student in a particular place, manner, and subject area.”) Tax & Rev recommends avoiding inconsistent definitions in statute, as that can lead to confusion and inconsistency in the law; that is especially the case when, as here, the subsequent definition of “school property” refers specifically to the Public School Code. Alternatively, the bill should use the term “public school”, which definition is in the Public School Code, 22-1-2(L) NMSA 1978, and which mirrors the language in Section 1(J)(2).

Section 1(J)(3) defines “school property” as a “school district pursuant to the Public School Code.” Section 22-1-2(R) NMSA 1978 defines “school district” as “an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes.” A school district is therefore a political unit of taxation that can often be coextensive with the boundaries of a county or municipality. The entire school district is not school property, as the term “property” is commonly understood. Tax & Rev suggests revising Section 1(A) of the bill to substitute “purchases and installs a photovoltaic system on or adjacent to a school building for the purpose of providing electricity to school buildings...” on page 1, lines 20-22. “School building” though used in the bill is not defined; it is however defined in the Public School Code, Section 22-1-2(P) NMSA 1978, and Tax & Rev suggests incorporating that definition in this bill, whether or not the proposed change above is adopted.

The bill should be amended to clarify that a taxpayer cannot claim both this credit as well as the New Solar Market Development tax credit. That credit, created in Section 7-2-18.31 NMSA 1978, allows a credit of up to \$6,000 for installation of a PV system in residence, business or agricultural enterprise in New Mexico.

**Other Issues:** Since the requirements of this school solar credit are similar to the preexisting new solar

market development income tax credit, it may be a better to add to the eligibility for an individual who purchases and installs a solar system on school property to the existing credit. This would simplify the application process and reduce costs of administering two separate credits. EMNRD could still follow the proposed aggregate amount of credits allowed for solar systems installed on school property but without necessarily creating a different credit. As proposed, this new credit would need to be applied on a new separate application, and then claimed on the income tax return on a separate line, when the requirements of each credit are essentially the same.

**Administrative & Compliance Impact:** Tax & Rev will update forms, instructions, and publications and make information system changes. Implementing the new income tax credit will be included in the annual tax year changes along with staff training to administer the credit. Tax & Rev’s Administrative Services Division (ASD) will be required to test the system changes and revise revenue reports. It is anticipated this work will take approximately 40 hours, split between 2 existing full-time employees. This bill will have a low impact on Tax & Rev’s Information Technology Division (ITD), approximately 220 hours or just over 1 month and \$12,210 of staff workload costs.

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 staff workload
--	\$12.2		\$12.2	NR	Tax & Rev – ITD staff workload

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