

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

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

**SPONSOR** Roybal Caballero/ Stefanics      **ORIGINAL DATE** 1/23/19  
**LAST UPDATED** 2/12/19      **HB** 210/aHJC  
**SHORT TITLE** Community Solar Act      **SB** \_\_\_\_\_  
**ANALYST** Martinez

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
NFI	\$120.0	\$120.0	Recurring	Land Maintenance Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$100.0	\$100.0	\$200.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates: SB281

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Regulation Commission (PRC)

State Land Office (SLO)

### SUMMARY

#### Synopsis of Amendment

HB210 Section 4 as amended removes that a third party under contract with a subscriber organization can be an owner or operator of a community solar facility.

HB210 Section 7 as amended removes a significant amount of determinations that qualify as a bill credit.

HB210 Section 9 removes the commissioner's duty of establishing rules for how a qualifying utility can reasonably determine its community solar program plan, and determine the value of the benefits to its attributable customer's subscription.

The Public Regulation Commission did NOT submit an analysis for HB210 as amended, since the PRC submitted a substantial amount of information for the original version of HB210, specifically areas of the bill that were heavily amended (Section 7), it would be recommended that PRC provide additional information to understand full impact before passing of this bill.

Synopsis of Original Bill

HB 210 creates the Community Solar Act which provides for the independent development and operation of community solar facilities within the service territory of investor-owned electric utilities. A community solar facility is a solar electric generation facility, where an energy storage facility may be co-located, owned or operated by a public utility, an affiliate of a public utility or a subscriber organization. The public utility serving the area where the community solar facility is located shall acquire all of the output from the community solar facility and shall provide community solar bill credits to its customers who are also subscribers to the community solar facility in proportion to each subscriber's interest in the community solar facility.

The Public Regulation Commission Submitted the following:

Community solar facilities are solar electric generation facilities with rated production capacity of ten (10) megawatts or less within the service territory of an investor-owned electric utility. Shares of the energy produced are effectively made available to subscribers based on their relative interest. At least 10 subscribers must be associated with a single facility and no single subscriber may be allocated more than 60% of the facility's capacity. Each subscription shall be sized to represent at least one kilowatt (1 kW) of the community solar facility's generating capacity and may not supply more than 120% of the electricity at the premises to which the subscription is attributed on a rolling 12-month basis. Any retail customer of the public utility which serves the area where the facility is located can be a subscriber to the extent the customer identifies and attributes a physical location in the same county as, or a county adjacent to, the community solar facility. A subscription to a community solar facility may be transferred or assigned to a subscriber organization or another qualifying subscriber.

All output from a community solar facility shall be acquired by the public utility which serves the geographic area where the facility is located through the issuance of community solar credits to subscribing customers. The public utility shall issue these credits to its retail customers who are also subscribers based their proportional share of the energy generated by the facility at a community solar credit rate to be filed and approved by the NMPRC like any other utility rates. This rate is to be established based on several criteria identified in this bill. Such criteria include adjusting a total aggregate retail rate by deducting the utility's distribution cost component, and giving due consideration to reasonable benefits to the utility attributable to the customer's subscription such as the value of renewable energy credits if transferred to the utility, the avoidance of any incremental capital investments in utility-scale generation resources, the reduction of the utility's energy or capacity costs, the reduction of the utility's system line losses, the benefits of system integration or other benefits from any co-located energy storage.

All renewable energy certificates generated from a community solar facility are the property of a subscriber organization, and they may be accumulated, sold, retired, or transferred to subscribers or to the utility.

HB 210 requires that the NMPRC, through reasonable mechanisms, encourage accessibility by low-income customers to community solar programs as provided by rule, including mandatory

reservations of capacity for low-income customers and, within two years from the enactment of the Community Solar Act, an annual statewide target of at least 25% low-income subscriptions.

HB 210 also requires that the NMPRC develop rules by November 1, 2019 (it would be difficult for the NMPRC to promulgate rules between July 1, 2019 and November 1, 2019 and would suggest moving the date to July 1, 2020) to implement the Community Solar Act which address several matters including: 1) reasonable and uniform customer disclosure forms concerning the costs and benefits of subscriptions as well as subscribers' rights and obligations; 2) subscription requirements for subscriber organizations and customer protections; 3) reasonable uniform, non-discriminatory applications forms, requirements, standards, fees and processes by a utility of the interconnection of a community solar facility to the utility's grid; 4) the reasonable recovery by a utility from subscribers of its distribution cost component of its overall cost of service; 5) the notification of developers by subscriber organizations of its application for interconnection of community solar facility within 30 days from the completion of the application; 6) ensuring that community solar program conditions, terms and provisions are consistent with the Community Solar Act and the public interest; 7) a Commission process to review at least every other year the status of the development of community solar facilities in accordance with the Community Solar Act and allowing for public comment concerning the rules, the Act's objectives, and low-income participation.

HB 210 also provides for an investor-owned utility to file with the Commission by February 1, 2020 an application for approval of a plan and rate schedule to administer a community solar program. The proposed program plan is to be approved or modified within 180 days from the date of the application. The program plan may be approved more quickly in the absence of timely protests. The utility's program plan and rate schedule is to include: 1) an implementation schedule, interconnection applications, and community solar bill credits within 90 days of Commission approval of the plan; 2) all applicable terms, conditions, rules, fees and charges of the program; 3) the manner in which the utility may bill subscribers for the price of subscriptions and remit those amounts collected to the appropriate subscriber organizations; 4) the plan to promote the program to potential subscribers; 5) allow all customer classes to participate in the program and rate schedule and not require a customer to be removed from the customer's otherwise applicable customer class in order to subscribe to a facility; 6) not limit the number nor cumulative generating capacity of community solar facilities; 7) allow for the creation, financing and accessibility of community solar facilities to encourage robust customer participation. An investor-owned utility is directed to approve an interconnection for a community solar facility within 6 months but shall give priority to applications from low-income service organizations or affordable housing providers.

### **FISCAL IMPLICATIONS**

HB 210 carries no appropriation.

The Public Regulation Commission Submitted the following:

It is estimated that the regulation by the NMPRC required by HB 210 would require approximately one additional full time staff person to handle the resulting implications.

The State Land Office submitted the following:

The NMSLO supports expanded opportunities for solar and other renewable energy development and is poised to generate additional revenue from these activities. In addition to larger scale solar projects on Trust Land, there are currently two 10 MW business leases on Trust Land in Lea County. These two leases are currently generating just over \$23,000 in annual lease payments. Assuming 10 community solar projects are located on Trust Land with each producing annual rental payments of \$12,000, an additional \$120,000 would be distributed to the beneficiaries each year.

## **SIGNIFICANT ISSUES**

The Public Regulation Commission Submitted the following:

A significant issue is that HB 210 states in Section 6 that “community solar facility” is not a “public utility” as defined by the Public Utility Act Section 62-3-3 (G) NMSA 1978 however, it does not specifically state that Community Solar Facilities are not public utilities” nor does it specifically amend Section 62-3-3 (G) to exclude “community solar facilities” from the definition of “public utility”. This is a technical issue that could be fixed before final passage of the bill and without making this clear, may result in litigation.

HB 210 in Section 3 (B) (4) states that: 4) a community solar facility shall not be co-located with another community solar facility on a single parcel or contiguous parcels of land if the nameplate rating of ten megawatts is exceeded in the aggregate; and (5) subscriber organizations under common control shall not develop, own or operate more than one community solar facility on contiguous parcels of land. However, this language could be clarified to state there is no aggregating of community solar facilities even if not contiguous otherwise it is unclear whether or not an entity could build ten (10) megawatt community solar facilities, within some proximity of each other, and the public utility would be required to acquire or purchase all the energy generated.

Another significant issue is the interplay between the current law on distributed generation of electricity, Section 62-13-13.1, and HB 210. Specifically, Section 62-13-13.1 (C) (2) defines “renewable energy distributed generation facility” to mean a facility that produces electric energy by the use of renewable energy and that is sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the host at the site of the renewable energy distributed generation facility in accordance with applicable interconnection rules. HB 210 provides the definition of “community solar facility” “means a solar electric generation facility that is interconnected with the distribution system of a utility in the service territory of customers of the utility that subscribe for a portion of the capacity of the facility”. Certain distributed generation facilities could be both a “community solar facility” and also be “renewable energy distributed generation facility” , however, “renewable energy distributed generation facilities” are limited to be located on the host’s site and only the host can actually use the energy generated and the facility can only generate 120% of energy consumed by host while a “community solar facility” is not located on the host’s site and the host does not only use the energy generated, rather the energy generated is acquired by a public utility that transmits the energy to many subscribers off site. This could be fixed by stating that community solar facilities are not covered by the provisions of Section 62-13-13.1 (C) (2) and are excluded from the definition of “renewable energy distributed generation facility”

Another issue is that pursuant to the current Efficient Use of Energy Act, Section 62- 62-17-10 NMSA 1978 (EUEA) utilities are required to periodically file an “integrated resource plan”

(IRP) that evaluates conventional resources and renewable energy and energy efficient resources. The NMPRC has promulgated IRP Rules that provides for utilities, stakeholders and ratepayers to collaborate in the long-term development of adequate resources to meet projected load. HB 210 creates the independent development of community solar facilities, however, according to Section 10 a qualifying utility is required include and address the effects of the development of community solar facilities in its IRP and is required to notify the commission and participants in the commission's public advisory process, in accordance with of any development of community solar facilities that would have the effect of changing the results of the utility's most recent integrated resource plan. Section 10 requires that the Commission revise its IRP Rules to accommodate this language which will use NMPRC employee time and resources. In addition Section effectively requires the utility's resource planning process to work around and accommodate the community solar facilities even if the utility had other resource plans. Another issue is that subscriber organizations, under HB 210, can add generation capacity to the utility's generation portfolio without paying attention to the utility's requirement, under the IRP law and Rule, to serve its customers with the most reasonable and cost effective mix of generation resources.

Another significant issue is that HB 210, Section 7, provides for the sale of energy and renewable energy certificates (RECs) from community solar facilities to public utilities and states that all RECs associated with the energy produced by a community solar facility are the property of the subscriber organization and, at the subscriber organization's discretion, may be accumulated, sold, retired or transferred to subscribers or to a qualifying utility. Section 7 also provides for the resale of the energy to subscribers. It appears that RECs do not remain the property of the utility unless they are transferred to the utility. However, the issue is if the RECs are transferred then can the utility use the RECs for compliance with renewable portfolio standard (RPS) requirements? If yes, then it would be helpful to expressly state this in HB 210. A related issue is that under current law, public utilities are able to develop solar energy generation facilities to either: 1) meet RPS requirements and/or 2) as part of an economic mix of generation resources to meet the utility's projected load. HB 210 provides a new, separate, 3rd method for public utilities to develop solar energy generation facilities which raises a question as to whether community solar facilities could be used to meet RPS requirements. This could be fixed by adding language to HB 210 that states that whether community solar facilities could be used to meet RPS requirements, or not.

Another significant issue is that HB 210 Section 5 allows a regulated utility to bill subscribers for the subscription price on the utility's monthly bill and remit the collected funds to the subscriber organizations. However, the Commission is not authorized to regulate the subscription price. The utility therefore would be billing for a rate (subscription charge) that is not approved by the Commission. This is inconsistent with the Commission's authority to approve all rates and charges that appear on Commission approved form (other than government imposed charges such franchise fees or GRT).

A significant issue that does not appear to have a simple fix is Section 7, HB 210 which states that the Commission is to approve a community solar credit to be placed on subscriber's bills and states detailed requirements for how to calculate the credit. The credit is to be based on a total aggregate retail rate that encompasses all utility charges other than minimum monthly charges and other charges that the Commission cannot be avoided. The total aggregate retail rate is adjusted by deducting (i.e. reducing the credit) the distribution cost component which is the cost of the utility's power distribution function, as identified in the utility's most recent general case,

converted to a per kWh rate but which does not include distribution function-related costs the utility is allowed to recover through minimum monthly charges. The total aggregate retail may also be adjusted upwards (i.e. increasing the credit) for a number of reasonable determinable benefits. HB 210's detailed ratemaking treatment clearly removes the ability of the Commission with its unique expertise to establish by rule what the reasonable incremental impact of the community solar facilities is. HB 210 expressly limits any reductions in the community solar credit rate (and thus increases the credit) attributable to the utility's distribution cost. HB 210 also limits any cost/benefit analysis by because it only accounts for the utility benefits (and not costs) attributable to the customer's subscription. HB 210 also states that the readily identifiable elements of the utility's cost of service are recovered through monthly minimum charges. In conclusion, the community solar credit rate established by HB 210 appears to run contrary to the fundamental regulatory concept that the utility is allowed, under the N.M. Constitution's "takings" clause, to recover its cost of service through Commission approved rates. The cost recovery under this theory comes from subscribers but HB 210 shifts the cost recovery to other non-subscribing customers.

Another significant issue is that HB 210 provides for the Commission to promulgate rules that encourage accessibility to community solar programs by low-income customers, low-income service organizations and affordable housing providers through reasonable mechanisms. The new Rules shall address items such as fostering participation by low-income customers; mandatory capacity reservations for low-income subscriptions; statewide low-income capacity allocation targets; a longer-term statewide capacity target of 25% for low-income subscriptions; statewide targets by utility, allowing funds for low-income energy-assistance programs to be used for subscriptions; and allowing priority for interconnections of community solar facilities by low-income service organizations and affordable housing providers. The Commission has very infrequently explicitly authorized ratemaking treatment tailored to low-income utility customers. It is well-settled that the Commission, by virtue of the N.M. Constitution's "takings" clause, could only allow the expenditure of public utility funds for low-income energy-assistance programs by the utility if the Commission also allows the utility to recover the costs of such expenditures through rates which would increase other customer's bills. However, subsidization by other customers is prohibited in Section 4 A (4) (b) which states: "(b) the cost of the solar facility and subscriptions will not be subsidized by customers that do not subscribe;"

A further significant procedural issue concerning rules is that the requirement in HB 210 for the Commission to promulgate rules by November 1, 2019. Given that this bill would only become effective on July 1, 2019, that would provide up to four months to complete the rulemaking. Rulemakings proceedings are inherently complex multi-step proceedings that require significant due process including rounds of public notice, stakeholder deliberations, Commission action, and official recording on the New Mexico Administrative Code. It would be very difficult to reasonably complete this process within four months and this could be fixed by changing the date to July 1, 2020.

Another issue is that HB 210 authorizes a public utility or its affiliate to be the owner and/or operator of a community solar facility. Under this circumstance, the public utility or its affiliate would be both the seller and the buyer (or the related seller or the related buyer) of the energy generated by the community solar facility which raises the issue of whether this may risk increased costs to retail customers.

Another issue is that HB 210, Section 7 F. provides for the NMPRC to approve adjustments to the rate at which the utility sells energy generated by the community solar facilities to subscribers for integrating the community solar facility with the public utility's system which can be reasonably interpreted to mean that the utility should be allowed to recover a range of cost savings or increases associated with the community solar facility such as capacity, generation, transmission, or distribution, operation and maintenance expense, back-up and load following generation, and off-system sales opportunity impacts. For this reason, HB 210 raises issues regarding the allocation of the utility's costs between different groups of customers. These issues have, in the past, been contested issues before the Commission and HB 210 does not specifically state how to address this in the context of community solar facilities.

Finally, it would be helpful to add language to make it clear that HB 210 requires community solar facilities owned operated by utilities are subject to Commission approval of a Certificate of Convenience and Necessity pursuant to the Public Utility Act, Section 62-9-1 NMSA 1978.

The State Land Office submitted the following:

The expansion of renewable energy options on State Trust Lands is a top priority of Commissioner Garcia Richard. By establishing a framework that fosters the development of community solar projects throughout the state, the Land Office is well positioned to generate additional revenue for the Trust and diversify its income streams in a sustainable manner.

#### **ADMINISTRATIVE IMPLICATIONS**

The Public Regulation Commission Submitted the following:

While the NMPRC regulates "public utilities" as defined by the Public Utility Act, Section 62-3-3 (G) NMSA 1978, the NMPRC does not regulate affiliates of public utilities or 3rd parties, both of which may own or operate community solar facilities. To the extent that both regulated and un-regulated entities can play in the role in the development and operation of community solar facilities, there can potentially be disputes with respect to community solar facilities that are similar but are subject to different regulatory oversight by the NMPRC. While the NMPRC would have jurisdiction over a number of facets of the relationship between the subscriber and the community solar facility owner/operator, the insertion of 3rd parties including affiliates of public utilities into these relationships raises questions about the NMPRC's authority over possible disputes.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB210 conflicts with Section 62-13-13.1 NMSA 1978, Renewable energy distributed generation facilities; owners and operators not public utilities, (2010) discussed above.

HB210 is a duplicate of SB281.

#### **TECHNICAL ISSUES**

The Public Regulation Commission Submitted the following:

See the Significant Issues Section regarding the definition of “public utility” and the discussion concerning aggregation of community solar facilities. Both issues could be fixed by the addition of specific language.

### **OTHER SUBSTANTIVE ISSUES**

The Public Regulation Commission Submitted the following:

As with prior rulemakings before the Commission concerning renewable energy, future rulemakings about community solar facilities are likely to be costly in terms of NMPRC manpower as well as contentious given the significant issues, discussed above.

### **ALTERNATIVES**

The Public Regulation Commission Submitted the following:

If HB 210 is not enacted, the NMPRC has, within the limits of its present authority, to promulgate rules regarding the development and regulation of community solar facilities. The NMPRC currently has a pending Notice of Inquiry docket that is investigating this issue, Case No. 15-00355-UT, *In the Matter of a Commission Inquiry into Public Utilities Constructing and Owning Distributed Generation Dedicated to Serving One or More Retail Customers*.

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

The Public Regulation Commission Submitted the following:

The status quo will remain which is that there remains a significant potential for further penetration of distributed generation throughout the New Mexico service territories of the 3 investor-owned electric utilities by the building of community solar facilities in accordance with existing laws.

The State Land Office submitted the following:

A less flexible system will remain in place that inhibits community solar projects.

JM/al