

LFC Requester:

Laird Graeser

AGENCY BILL ANALYSIS  
2024 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

**SECTION I: GENERAL INFORMATION**

{Indicate if analysis is on an original bill, amendment, substitute, or a correction of a previous bill}

Check all that apply:

Original  Amendment   
Correction  Substitute

Date 1/26/2024

Bill No: SB 121

Sponsor: Senators Mimi Stewart & Liz  
Stefanics  
Short Title: Solar Market Development Tax  
Credit Changes

Agency Name  
and Code EMNRD-521  
Number:

Person Writing Analysis: AnnaLinden Weller, Policy Director  
Phone: 505-470-5322 Email: annalinden.weller@emnrn.nm.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
(15,000.0)	(30,000.0)	(30,000.0)	Recurring through FY32	General Fund (tax liability)
(20,000.0)	0	0	Nonrecurring	General Fund (tax liability)

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Staff</b>	156.8	156.8	156.8	470.4	Recurring	GF
<b>Contracts</b>	30.0	00	0	30.0	Recurring	GF

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act – HB 2 contains authorization for two FTEs to administer this program.

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: Senate Bill 121 (SB 121) amends Section 7-2-18.31 NMSA 1978 in the following ways:

- 1) SB 121 creates a provision that taxpayers who install an eligible solar system on a property held by that taxpayer in leasehold from federally-recognized Indian nations, Tribes, or Pueblos will be eligible for the tax credit.
- 2) SB 121 creates an additional opportunity for taxpayers who were eligible for the credit in tax years 2020 through 2023, but did not receive a certificate of eligibility due to the aggregate cap of available credits being reached in those tax years, to apply to EMNRD for a certificate of eligibility for the qualifying solar system in tax year 2023. The aggregate cap on this supplemental opportunity is \$20 million.
- 3) SB 121 increases the aggregate cap of available tax credits to \$30 million annually for calendar years 2024 through 2032.
- 4) SB 121 clarifies that a taxpayer who receives a certificate of eligibility from EMNRD must claim their tax credit from the Taxation and Revenue Department within twelve months following the calendar year in which the certificate was issued.

**FISCAL IMPLICATIONS**

*For EMNRD*

As SB 121 raises the annual credit cap from \$12 million to \$30 million, EMNRD expects to see a commensurate increase in applications for certificates. Furthermore, the \$20 million ‘lookback’ provision in SB 121 will create a one-year-long spike in applications which will require additional

staff resources. Thus, EMNRD would need 2 new FTEs (including salary and benefits) to administer the program, including processing the additional applications received. These two new FTE are currently in the Executive Recommendation for HB 2.

EMNRD will also require approximately \$30,000 in one-time costs for program updates, and administrative, legal and information technology staff time to update the electronic application process. Staff are necessary to effectively manage the program, provide system reviews, certify systems for tax credit eligibility, collect data, and maintain the required databases.

## **SIGNIFICANT ISSUES**

### **Benefits of the New Solar Market Development Tax Credit**

The New Solar Market Development Tax Credit has been incredibly popular amongst New Mexicans, creating a vibrant solar industry and reducing greenhouse gas emissions from the power sector in New Mexico. Since the inception of the credit in 2020, more than 12,202 taxpayers have used it to help them defray the cost of installing residential solar systems. The average taxpayer is saving 13,522 kWh of energy and \$1,623 per year on their electric bills. A total of 97.06 MW of electricity generation capacity has been added to distribution systems of utilities of New Mexico, reducing the state’s CO<sub>2</sub> emission by 70,122 tons.

Furthermore, all these solar systems purchased by New Mexicans have cost \$144.5 million, with installation labor of an additional \$42.6 million, increasing economic activity in New Mexico by over \$187.1 million per year.

The non-profit Solar Energy Industries Association and DOE’s National Renewable Energy Laboratory estimate the tax credit has created the following New Mexican jobs:

<b>Estimated Jobs Supported by the New Solar Market Development Tax Credit</b>				
	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
Total Jobs Created (SEIA estimate)	493	543	787	713
Total Jobs Created (NREL estimate)	559	616	893	809

Provisions added to the credit in recent legislative sessions, like refundability and transferability, have helped lower-income New Mexicans access residential solar as well.

### **Oversubscription and SB 121’s Cap Increase and Lookback Provisions**

However, the credit’s popularity has created constant issues with oversubscription, exhaustion of the annual aggregate cap, and commensurate rejection of otherwise perfectly eligible applications – disappointing New Mexicans and creating financial difficulties for those who had counted on the tax credit to defray their solar costs. The yearly aggregate cap is usually met three to five months before the end of a tax year.

EMNRD’s informal records show that at least 849 applications could not be funded in 2021 and 2022 combined. From 2020 to 2023, issued credits surged 43%. It is likely that the current \$12

million fund cap will be exceeded in 2023 and future years. EMNRD estimates at least 500 additional applications for the 2023 tax year will be rejected due to exhaustion of the cap. These numbers are estimates, as EMNRD has no visibility into the total number of taxpayers who could have, but did not, attempt to receive a tax credit after the yearly cap had been reached – only the number who were rejected by the agency.

### Funding History

Year	Application Count	Issued	Fund Cap	Status
2020	2369	\$ 6,695,238	\$ 8,000,000	Qualification Period Elapsed
2021	2613	\$ 8,000,000	\$ 8,000,000	Exhausted Fund
2022	3785	\$12,000,000	\$ 12,000,000	Exhausted Fund
2023	3396	\$10,779,966	\$ 12,000,000	On Target to Exhaust March 2024
2024	3	\$ 7,618	\$ 12,000,000	Started issuing

The following table demonstrates EMNRD’s best guess at the required funding necessary to ‘make whole’ *known* rejected applicants from 2021 and 2022. 2023 applicants are not yet reflected in this table.

Rejected NSMDTC Applications Due to Exhausted Fund Estimated Amount to Make Whole			
Application Source	Count	Average	Estimated
2021 Electronic	42	3,062	128,604
2021 Paper	442	3,062	1,353,404
2022 Electronic	41	3,168	129,888
2022 Paper	324	3,168	1,026,432
	849	<b>Total</b>	2,638,328

The table below shows the percentage of applications which were rejected solely based on the yearly cap being expended, and would have otherwise been approved.

Year	Rejected	Issued	Sum	% not approved
2021	484	2613	3097	16%
2022	365	3785	4150	9%
2023	estimated 500	current 4448	4948	10.11%

In addition, EMNRD has received information from the Public Service Company of New Mexico (PNM) regarding the number of residential solar interconnection applications they have received in tax year 2023. To date, PNM has received 6444 applications, and interconnected 6024 of them. If all 6024 applicants applied for the Solar Market Development Tax Credit, the total tax liability necessary to meet demand – in just this one service area – would be \$18,258,744. So far in 2023, EMNRD has approved nearly 5000 applications, and only approximately \$1 million remains in the 2023 cap. We therefore expect that the cap will be exceeded by at least 1000, if not many more applications, especially considering those taxpayers outside the PNM service area that may also apply.

Raising the aggregate cap to \$30 million in tax years 2024-2032, as SB 121 does, will likely

eliminate the problem of oversubscription. In addition, creating the \$20 million ‘lookback’ provision in tax year 2023 will go a long way – perhaps even all the way – to addressing those taxpayers who applied and were rejected for certificates due to the exhaustion of the cap.

### **Tribal Eligibility Provisions**

The statute authorizing the New Solar Market Development Tax Credit inadvertently made certain New Mexicans, namely those who hold leasehold properties on federally recognized nations, tribes, and pueblos in New Mexico, ineligible for the credit. As written the language in the Act only made the credit available to structures “owned by that taxpayer.” The convention for ownership on tribal and pueblo land is that a homeowner may purchase a structure but that the land underneath is held in trust by the tribe or pueblo. This made certification of systems impossible. The provisions in SB 121 fix this unintentional exclusion.

### **PERFORMANCE IMPLICATIONS**

To develop and implement the revised rules required by the new provisions in SB 121, EMNRD will need additional legal and administrative resources. In addition, IT services – either internal, contractual, or both – will be needed to continue to improve and update the online application process. Furthermore, without the 2 FTEs in the Executive Recommendation, EMNRD may not be able to process the increased number of applications in a rapid and secure fashion.

### **ADMINISTRATIVE IMPLICATIONS**

EMNRD will need to develop and maintain data to report to the legislature and to the Taxation and Revenue Department; to revise and update the existing Solar Market Development Tax Credit rules to implement the changes in SB 121; to update the electronic submission portal in anticipation of the increased volume of applications; and provide technical assistance to guide applicants through the electronic portal application process. In 2021 and 2022, over 784 applications were submitted in paper form; these applicants will need to update their applications to digital form if they apply for the ‘lookback’ provision.

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

N/A

### **TECHNICAL ISSUES**

N/A

### **OTHER SUBSTANTIVE ISSUES**

N/A

### **ALTERNATIVES**

N/A

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

New Mexicans will continue to be unable to be sure of receiving a tax credit for installing their solar systems due to the yearly exhaustion of the aggregate caps. Tribal leaseholders will continue to be ineligible for the credit.

**AMENDMENTS**

None.