FISCAL IMPACT REPORT

SPONSOR Hamblen **LAST UPDATED** **ORIGINAL DATE** 1/30/24

SHORT TITLE Low Income Solar Act **BILL NUMBER** Senate Bill 2

ANALYST Graeser

REVENUE*
(dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
Property Tax		No fiscal impact	Indeterminate but minimal loss	Indeterminate but minimal loss	Indeterminate but minimal loss	Recurring	GO Bond
Property Tax		No fiscal impact	Indeterminate but minimal loss	Indeterminate but minimal loss	Indeterminate but minimal loss	Recurring	Local Beneficiaries

Parentheses ( ) indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files
LFC FIR on 2023's SB432

Agency Analysis Received From
Energy, Minerals and Natural Resources Department (EMNRD)
Human Services Department (HSD)
Public Regulation Commission (PRC) on last year's SB432

Agency Analysis was Solicited but Not Received From
Taxation and Revenue Department (TRD)
Department of Finance and Administration/Local Government Division (DFA/LGD).

SUMMARY

Synopsis of Senate Bill 2

Senate Bill 2 (SB2) provides a mechanism whereby the owners of certain types of affordable multifamily buildings can install solar devices on their owned buildings, share the benefits of net metering with residents, and receive a property tax abatement on the cost of the installation. It 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, 2025, 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. The utility is required to provide virtual net metering bill credits equal to the full retail value of the kWh to

users of systems. 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 2 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 effective date of this bill is July 1, 2024. The property tax portion of the bill is applicable to valuations for property tax purposes made on or after January 1, 2026.

FISCAL IMPLICATIONS

The provisions of this bill create an opportunity for owners/developers of certain affordable or low-income housing structures and projects to provide access for tenants to net metering and equitable sharing of the benefits of the program. The developers will benefit from the 30 percent federal tax credit enacted and expanded by the Inflation Reduction Act. The minimal state impact is created by abating the personal property tax imposed. Solar equipment is considered five-year MACRS property, hence is taxed under the business personal property tax provisions. The state imposes 1.36 mills on the depreciated value of all business personal property. It should be noted that solar equipment installed on, and of benefit to, existing residential property is exempt from property taxes. There has been some debate about whether solar equipment installed on new property would be taxable. The provisions of this bill may put that discussion to rest. The fiscal impact is minimal since the 3 percent assessment limit provision (Section 7-36-21.2 NMSA 1978) clearly zero-rates solar installed on existing residential structure and most assessors extend that treatment to solar installations on new construction.

Because the major benefit to the owner of the property is federal tax credits, the additional property tax abatement conferred by the provisions of this bill may provide little marginal benefit or uptake.

The effective date of this bill is July 1, 2024. By January 1, 2025, PRC will have regulated the low-income solar act. There may be a few projects built in the period from July to December 2024. These projects will be eligible for the property abatement for the 2025 tax year. Payments for obligations of the 2025 tax year will be received by county treasurer in November 2025 and April of 2026 of FY26. The bulk of any impact, however, will affect FY27 and subsequent fiscal years.

On last year's SB432, PRC commented:

> 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.
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> 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 Section 7- 36-21.2 NMSA 1978 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

Other significant features of SB2 follow:

1) The size of the installed solar array can be no larger than to provide 120 percent of the historic or estimated future usage of the qualifying low-income multifamily residential property;
2) A qualifying low-income multifamily building must have at least five rental housing units;
3) Has a narrow definition of qualified low-income residential buildings to include projects authorized pursuant to the federal Violence Against Women Act of 1994, Title 5 of the federal Housing Act of 1949 and a housing program pursuant to the federal Native American Housing Assistance and Self-Determination Act of 1996;
4) Requires the public utility to pay retail rates for solar power generated and provided to the grid;
5) Prevents discrimination by the public utility;
6) Provides a narrow definition for eligibility for the property tax abatement by providing the abatement only for business personal property; and
7) Requires the PRC to rule various aspects of the low-income housing shared distributed generation system.

EMNRD comments:

> Facilitating the development of solar on multifamily affordable housing is a necessary (albeit difficult) part of achieving equitable access to renewable energy. SB2 would require

investor-owned utilities (IOUs) to provide "virtual net metering" bill credits to the residents of low-income multifamily buildings with grid connected solar systems. In a net metering system, customers would only be charged for the "net" energy they consume: the energy the customer *pulls* from the grid minus the excess energy the customer's behind-the-meter distributed generation system (such as a solar panel array) *contributes* to the grid. SB 2 would create a net metering system that distributes the calculated credit amongst all the residents of a multifamily building, with the goal of lowering all their utility bills proportionately. This policy would allow low-income renters to materially benefit, alongside their landlords, from distributed generation installed on the building within which they live.

SB2 is effectively community solar on a smaller scale – the scale of a single qualifying low-income multifamily residential building. However, SB2 is a narrow policy lever, in that it only applies to investor-owned utilities (IOUs) and not rural electric coops. This means that only those multifamily buildings in the service areas of the IOUs will have access to the benefits of SB2, leaving most of rural New Mexico out.

EMNRD also notes that SB2 may lack sufficient incentives for a property owner of a low-income multifamily residential property to install a solar energy system in the first place. . Under a net-metering scheme as described in SB2, the direct financial benefit of reduced energy bills will go to the tenants, bypassing the owner entirely. This leaves the property owner with the financial burden of the purchase and installation of the system without the reward, making such an investment less appealing. One way a landlord might choose to offset the costs associated with installing a distributed energy system could be through raising rents or evicting tenants to replace them with those paying higher rents, neither of which is disallowed in SB2 and could negate any financial benefit for residents.

In other parts of the nation (California, Washington D.C., Massachusetts) where similar regulatory regimes to SB2 already exist, the property owner can receive direct incentives for making an investment in a solar energy system. For example, Massachusetts's SREC II program awards higher prices for renewable energy credits generated by projects that serve affordable housing.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is <u>not</u> met since TRD is <u>not</u> required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the exemption. However, this is a general criticism of the entire property tax system. There is little information available at the level required by the LFC tax policy.

ADMINISTRATIVE IMPLICATIONS

The provisions of this bill significantly affect the Public Regulation Commission, which is required to develop and promulgate rules for low-income housing shared distributed generation system.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 2 duplicates HB189; and is similar to 2023 SB432.

TECHNICAL ISSUES

This bill does not contain a delayed repeal date. LFC recommends adding a delayed repeal date.

OTHER SUBSTANTIVE ISSUES

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

- **Adequacy**: Revenue should be adequate to fund needed government services.
- **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity**: Different taxpayers should be treated fairly.
- **Simplicity**: Collection should be simple and easily understood.
- **Accountability**: Preferences should be easy to monitor and evaluate.

In addition, staff reviews whether the bill meets principles specific to tax expenditures. Those policies and how this bill addresses those issues:

Tax Expenditure Policy Principle	Met?	Comments
Vetted: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.	✓	Introduced last year as SB432.
Targeted: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals. Clearly stated purpose Long-term goals Measurable targets	 ✓ ✗ ✗	Implicit purpose is to support the state's transition to 100% renewable by 2040.
Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies	✗	Property tax deductions or exemptions are not reported.
Accountable: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date. Public analysis Expiration date	 ✗ ✗	
Effective: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure. Fulfills stated purpose Passes "but for" test	 ✗ ✗	The availability of federal renewable credits is the primary incentive. Thie property tax portions of this bill are minimal at the margin.
Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.	✗	The property tax portion of this bill are not efficient.
Key: ✓ Met ✗ Not Met ? Unclear		

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