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## FISCAL IMPACT REPORT

LAST UPDATED 02/07/25

SPONSOR Ferrary/Cates/Sariñana ORIGINAL DATE 02/05/25

**BILL**

SHORT TITLE School Solar Tax Credits NUMBER House Bill 213

ANALYST Graeser

### REVENUE\* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
PIT & CIT tax credits		Up to (\$100,000.0)	Up to (\$100,000.0)	Up to (\$100,000.0)	Up to (\$300,000.0)	Recurring	General Fund

Parentheses ( ) indicate revenue decreases.

\*Amounts reflect most recent analysis of this legislation.

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

Agency/Program	FY25	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	\$150.0	\$75.0	\$75.0	\$375.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Conflicts with House Bill 211

### Sources of Information

LFC Files

#### Agency Analysis Received From

Energy, Minerals and Natural Resources Department (EMNRD)

#### Agency Analysis was Solicited but Not Received From

Public Education Department (PED)

Public School Facilities Department (PSFA)

Taxation and Revenue Department (TRD)

## SUMMARY

### Synopsis of House Bill 213

House Bill 213 (HB213) creates two separate tax credits for installing a photovoltaic system on public school property or the property of a public postsecondary educational institution for the purpose of providing electricity to the school's or educational institution's buildings in New Mexico.

The tax credit amount is equal to 40 percent of either the cost to install the photovoltaic system or the value of the system as determined by a licensed appraiser and as established by the taxpayers' application for federal tax credits for the system.

The total aggregate credit for each of the personal and corporate income tax credits is \$300 million over the lifetime of the credit, and the maximum that may be certified for calendar years 2025, 2026, and 2027 is \$100 million. These credits are refundable but not transferable.

The bill provides conventional instructions for applying to the Energy, Minerals and Natural Resources Department for a certification of eligibility through EMNRD's electronic platform.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or June 20, 2025, if enacted. The provisions are applicable for taxable years beginning January 1, 2025, and sunsets for systems installed after December 31, 2036.

## **FISCAL IMPLICATIONS**

This bill creates a tax expenditure. Estimating the cost of this tax expenditure is difficult because of the exceptionally large annual and overall caps. LFC has serious concerns about the substantial risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or action be postponed until the implications can be more fully studied.

For FY26, FY27, FY28, and FY29, the annual average sum of personal income tax pass-through payments plus corporate income tax average about \$950 million (according to the December 2024 Consensus Revenue Estimating Group.) The total for the 12-year duration of this credit will be around \$10 billion. Thus, \$300 million total credits represent about 3 percent of total collections for that period. However, the full \$300 million could be incurred in the first three years of the program. This is unlikely, but possible.

A 50-kilowatt (kW) commercial solar panel system is estimated to cost between \$87.5 thousand and \$113 thousand before tax credits, based on industry averages. This equates to between \$1.70 and \$2.20 per watt, somewhat less than the average \$2.84 per watt for a 5kW residential system. Thus, the \$600 million tax credit limit would install between 700 megawatts and 900 megawatts. If a typical system is 50kW, then the program could install between 14 thousand and 18 thousand systems. There are 850 schools in the states and 28 public higher education institutions. This implies that 1,100 systems in total could be installed if every school and higher education building were covered. Thus, a more appropriate credit limit should be \$40 million to \$50 million in total between corporate income and personal income tax pass-through entities.

Another significant issue is whether the systems can be grid-tied. The Public Service Company of New Mexico, for example, will not approve grid-tied systems in areas where the grid does not have the two-way capacity. Another cost variable is whether the systems would have battery back-up.

There are a lot of moving parts in this proposal. The federal renewable energy investment credit is a maximum of 30 percent and can be claimed by the school district itself or by the installer. As mentioned in EMNRD's comments, the credit is allowed for the installation. If the installer

retains ownership and bills the school at a discounted rate, then the taxpayer cost of the credit primarily benefits the installer, not the school. If the donor is not the installer, then the donor will then claim the cash installation costs less than the federal credit value claimed and the state credit granted based on an appraised value, not the actual cash cost, and then deduct the remaining amount as a charitable deduction.

This could be a good strategy for oil and gas companies or others that owe substantial amounts of New Mexico corporate income tax. These companies could contract with an established solar installer to install solar on New Mexico schools, colleges, and universities. Approximately ¼ of the total corporate income tax plus pass-through entity tax is paid by oil and gas companies. For 2022, the total corporate income taxes paid were \$126 million, representing about 25 percent of the total payments. In addition, there could have been more taxes paid by pass-through entities.

The provision to allow either the cash installation cost or the (presumably) greater appraised value will increase the value of the tax credit as astute consolidators might give a group of entities a price break based on volume, where the appraised value would be compared with prices without the price break.

EMNRD notes that there will be administrative costs:

HB213 will create a new school solar tax credit incentive program, requiring EMNRD to promulgate a new rule and administer the tax credit. An additional FTE will be required for EMNRD's tax credit incentive team and will need one-time IT services to design, develop, and implement web portals.

## **SIGNIFICANT ISSUES**

EMNRD notes the following:

Public schools and public postsecondary educational institutions are uniquely positioned to benefit from on-site solar, with the potential for significant cost savings and resilience through appropriately sized installations. HB213 helps enable these savings by establishing a corporate tax credit for entities that install distributed solar systems at public schools. By incentivizing private investment, these tax credits maximize the impact of state funding for distributed generation projects, “stretching” outlay dollars. As a result, with this bill, more schools can access solar energy, reducing operational costs while improving the overall cost-benefit ratio of these projects.

There are two value propositions supported by HB213. The school solar corporate tax credit could incentivize energy savings contractor (ESCO) power purchase agreements (PPAs) where companies own the systems installed and sell power to schools at a discounted rate. The six existing ESCO PPAs in New Mexico currently save participating municipalities over \$180 thousand per year on average or \$4 million over the 22.5-year average contract duration. School districts with comparable savings from this bill could conceivably hire 3 new teachers per year at the base level 1 salary for New Mexico in FY2031.

Additionally, companies might be well positioned to take advantage of school solar tax credits given their large tax liabilities and incentives to improve corporate ESG ratings to attract impact investors. Corporate tax credits could amplify the impact of state dollars by leveraging private support to finance projects that lower school district operating costs.

Transferability is important to the success of this tax credit, given many ESCOs and large corporations in pursuit of ESG ratings may not have sufficiently large New Mexico state tax liabilities.

## PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the credit and other information to determine whether the credit is meeting its purpose.

## ADMINISTRATIVE IMPLICATIONS

HB213's tax credit incentive for the purchase of a solar installation has different parameters than the existing New Solar Market Development Tax credit for individual taxpayers. The eligible costs, tax credit amount and aggregate tax credit allocated by the state are different, creating the need for EMNRD to stand up an entirely new program. Adding another tax credit program to EMNRD's certification responsibilities without adding additional FTE and IT resources could slow down processing for all tax credit certifications.

EMNRD would need to promulgate a new rule and stand up a new application process for this tax credit certification.

EMNRD FTE would be handling IRS data and may have to obtain annual privacy and disclosure training required by IRS.

Implementing the provisions of this bill would require collaboration between EMNRD's IT department and the Taxation and Revenue Department (TRD) to electronically transmit electronic data to TRD. The departments already collaborate on other credits.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB213 relates to HB211, which also proposes changes to the state solar market tax credit program.

## OTHER SUBSTANTIVE ISSUES

The limits may be excessively large compared to the number of installations possible. A total cap amount of a combined \$40 million to \$50 million might be more appropriate.

In addition, the basis for the credit could be an appraised value rather than the actual cash cost used for claiming federal renewable credits.

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
<b>Vetted:</b> 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.	X	<b>This concept has not been previously discussed</b>
<b>Targeted:</b> 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	? ? ?	The timing of uptake is highly uncertain. The credit is limited to \$100 million per year for the first three years.
<b>Transparent:</b> The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies	✓	TRD will report costs and projects
<b>Accountable:</b> 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	? ✓	
<b>Effective:</b> 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		
<b>Efficient:</b> The tax expenditure is the most cost-effective way to achieve the desired results.	?	
Key: ✓ Met   ✗ Not Met   ? Unclear		

## ALTERNATIVES

LG/hj/hg/rl