F I S C A L I M P A C T R E P O R T

SPONSOR Lopez **ORIGINAL DATE / LAST UPDATED** 2/22/27 **HB**

SHORT TITLE Community Solar Gardens Act **SB** 342

ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		$100.0	$100.0	$200.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 338

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

SB 342 adds an exception to Section 62-8-6 NMSA 1978, this bill provides for the independent development and operation of community solar gardens within the service territory of investor-owned electric utilities. A community solar garden is a solar electric generation facility 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 garden is located shall purchase all of the output from the community solar garden and shall sell this energy to its customers who are also subscribers to the community solar garden in proportion to each subscriber's interest in the community solar garden.

Community solar gardens 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 garden and no single subscriber may be allocated more than 40% of the garden's capacity. Each subscription shall be sized to represent at least one kilowatt (1 kW) of the community solar garden's generating capacity and may not supply more than 100% 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 garden is located can be a subscriber to the extent the customer identifies and attributes a physical location served by the public utility. A subscription to a community solar garden may be transferred or assigned to a subscriber organization or another qualifying subscriber.

All output and associated renewable energy credits (RECs) from a community solar garden shall be sold to the public utility which serves the geographic area where the garden is located at a rate equal to the rate established by NMPRC rules implementing 18 C.F.R. 292.304 (currently NMPRC rules pertaining to qualifying facilities which qualify as cogeneration and small power production facilities as defined by 18 C.F.R 292.203 as codified at 17.9.570 NMAC). The public utility shall in turn sell this electricity to its retail customers who are also subscribers based their proportional share of the energy generated by the garden at the same rate paid by the utility for this energy subject to certain adjustments to be filed and approved by the NMPRC like any other utility rates. Such adjustments are meant to cover utility costs of integrating the community solar garden with its system, delivery and administrative costs.

SB 342 requires that the NMPRC, to the extent practical and achievable, ensure that 10% of a community solar garden's capacity is made available to low-income residential customers or entities serving such customers with possible funding from low-income energy-assistance programs.

SB 342 also requires that the NMPRC develop rules as needed to implement the Community Solar Gardens Act which address financing matters including: 1) minimum capitalization, ownership limitations by a subscriber organization, and authorizations for subscriber organizations to enter into financial arrangements such as leases, sale-leasebacks, or other ownership or operating agreements with 3rd parties; 2) address any change in premises served by the utility for a subscriber and the implications for the continuing subscription.; 3) low-income participation, participation across all rate classes, uniform standards, fees and processes for interconnection of the garden that allow the utility to recover reasonable associated costs, fair disclosure information provided to potential subscribers, potentially unfair competition of public utilities and their affiliates with non-utility subscriber organizations.

Further, SB 342 authorizes the NMPRC to promulgate rules that shall: 1) facilitate the financing of subscriber-owned community solar gardens.; 2) facilitate the participation of low-income residential customers in programs authorized by the Community Solar Gardens Act and entities serving low-income residential customers; 3) ensure that all rate classes may participate in community solar gardens; 4) establish uniform standards, fees and processes for the interconnection of community solar garden facilities that will allow a public utility to recover a reasonable interconnection cost for each community solar garden; 5) identify the information required to be provided to potential subscribers to ensure fair disclosure of the estimated future cost and benefits of subscriptions; and (6) prevent public utilities and their affiliates from unfairly competing with non-utility subscriber organizations, including prohibiting public utilities and their affiliates from making improper use of customer information that is not publicly available.

FISCAL IMPLICATIONS

The NMPRC estimates that SB342 would require approximately one additional full time employee per year to handle the resulting implications. This would cost approximately $100

thousand annually to the NMPRC's operating budget. The NMPRC is currently facing financial difficulties, resulting in hiring freezes. $100 thousand is a significant amount of money for the NMPRC to find within their current operating budget. SB 342 carries no appropriation.

SIGNIFICANT ISSUES

The following significant issues were provided by the Public Regulation Commission:

- SB 342 implies that the term "community solar garden" 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 exclusion nor does it specifically amend Section 62-3-3 (G) to exclude "community solar gardens" from the definition of "public utility". This lack of clarity may result in litigation and leaves open the question of the jurisdiction of the NMPRC over community solar gardens.

- SB 342 permits an undetermined number of community solar gardens that could be aggregated (as long as each one was limited to 10 megawatts) but does not provide any maximum aggregate capacity that could be provided from aggregated community solar gardens. This means that, hypothetically, an entity could build ten (10) megawatt community solar gardens, within proximity of each other, and the public utility would be required to purchase all the energy generated (even if the public utility did not need to purchase all of the energy because it had sufficient capacity).

- Current law on distributed generation of electricity, Section 62-13-13.1, may conflict in an irreconcilable manner with SB 342. 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. The definition of "community solar garden" means a solar electric generation facility that has subscribers who are allocated a share of the electricity generated in proportion to the size of their subscription. The problem lies in the fact that certain distributed generation facilities could be both a "community solar garden" and also be "renewable energy distributed generation facility" but "renewable energy distributed generation facilities" are limited to be located on the host's site and the 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 garden" is not located on the host's site and the host does not only use the energy generated, rather the energy generated is sold to a public utility that transmits the energy to many subscribers off site.

- The community solar garden may be "wheeling" within the definition of STATE OF NEW MEXICO, EX REL., SANDEL V. NEW MEXICO PUBLIC UTILITY COMMISSION, 127 N.M. 272, 980 P.2D 55 (1999) which defined "wheeling" as "the transmission of electricity by an entity that does not own or directly use the power it is transmitting." Sandel, 1999-NMSC-019, 7 5 (internal quotations and citations omitted). The New Mexico Supreme Court held that the NMPRC's predecessor agency (the NMPUC) order that permitted "retail wheeling" exceeded its authority under the Public Utility Act. Sandel, 1999-NMSC-019, 77 16-17, 19-28. SB 342 may create unauthorized wheeling of power.

- The current Efficient Use of Energy Act, Sections 62-17-1 through 62-17-11 NMSA 1978 (EUEA) and the NMPRC rules pertaining to the integrated resource planning (IRP) requirement of the EUEA currently provides for utilities, stakeholders and ratepayers to collaborate in the long-term development of adequate resources to meet projected load. Since SB 342 creates the independent development of community solar gardens, these community solar gardens might also become part of the IRP process.

- SB 342 authorizes a public utility or its affiliate to be the owner and/or operator of a community solar garden. Under this circumstance, the public utility or its affiliate can be both the seller and the buyer (or the related seller or the related buyer) of the energy generated by the community solar garden. Having an investor-owned public utility potentially be both buyer and seller in a transaction raises the issue of whether this may risk increased costs to retail customers.

- 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. SB 342 provides a new, separate, 3rd method for public utilities to develop solar energy generation facilities which raises a question as to whether community solar gardens could be used to meet RPS requirements.

- SB 342 provides for the NMPRC to approve adjustments to the rate at which the utility sells energy generated by the community solar gardens to subscribers for "integrating the community solar garden with the public utility's system". This 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 garden 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, SB 342 raises issues regarding the allocation of the utility's costs which have, in the past, been contested issues before the Commission and this bill provides little guidance on how to address this in the context of community solar gardens.

- SB 342 limits Commission jurisdiction in some areas and it increases Commission in other areas related to community solar gardens:
    - Owners of community solar gardens are not considered public utilities yet public utilities can be owners of community solar gardens.
    - Neither the costs nor the revenues attributable to a community solar garden owned by a public utility can be considered in determining the utility's cost of service in a general rate case. There appears to be no precedent for excluding a portion of a public utility operation beyond Commission scrutiny with respect to cost of service.
    - The Commission is charged with assuring that balanced competition exists among independent developers and public utilities (or their affiliates) with respect to community solar gardens.
    - The Commission is to approve a discount rate to apply to the purchase by the public utility of the receivable associated with subscriptions from a community solar garden.
    - The Commission has rate approval authority over any adjustments to the rate at which it sells energy from community solar gardens to subscribers.

ADMINISTRATIVE IMPLICATIONS

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 gardens. To the extent that both regulated and un-regulated entities can play in the role in the development and operation of community solar gardens, there can potentially be disputes with respect to community solar gardens 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 garden 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

SB342 conflicts with Section 62-13-13.1 NMSA 1978, Renewable energy distributed generation facilities; owners and operators not public utilities, (2010) discussed above.

HB 338 is a duplicate except that HB 338 includes a section with policy language that is omitted from SB 342. Also, the last sentence in Section 8 of SB 342 differs from the last sentence in the analogous section of the duplicate bill (Section 9 of HB 338): "pursuant to" is used in SB 342 instead of "under" in HB 338.

TECHNICAL ISSUES

Two investor-owned electric public utilities have service territories that straddle New Mexico and a neighboring state. The development of community solar gardens in the New Mexico portions of these service territories raises concerns about how the associated benefits and costs are shared among jurisdictions.

OTHER SUBSTANTIVE ISSUES

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

ALTERNATIVES

If SB 342 is not enacted, the NMPRC has, within the limits of its present authority, to promulgate rules regarding the development and regulation of community solar gardens. 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 status quo will remain, a significant potential for further penetration of distributed generation throughout the New Mexico service territories of the 3 investor-owned electric utilities.

JM/jle/al