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

**SPONSOR** Sedillo Lopez **ORIGINAL DATE** 02/07/21 **LAST UPDATED** **HB**

**SHORT TITLE** Energy Storage System Tax Credit **SB** 301

**ANALYST** Graeser

## REVENUE (dollars in thousands)

| Estimated Revenue | | | | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| FY21 | FY22 | FY23 | FY24 | FY25 | | |
| | | (750.0) | (875.0) | (250.0) | Recurring | General Fund (PIT) |

Parenthesis ( ) indicate revenue decreases

## SOURCES OF INFORMATION
LFC Files - FIRS for HB77 (2018) and HB593 (2019)

Responses Received From
Energy, Minerals and Natural Resources (EMNRD)

## SUMMARY

Synopsis of Bill

Senate Bill 301 proposes a tax credit of 40 percent of the cost of equipment and installation for an energy storage system. The credit is for installation of an energy storage system on the claimant's residential property. The energy storage system must be installed for use with a new or existing solar photoelectric array and has a minimum of two hours of storage capacity. The credit amount is 40 percent of the cost of equipment and installation, limited to a maximum credit of $5,000 per system. Only one credit is allowed for each property. Aggregate annual approvals are limited to $1 million in aggregate. If aggregate applications exceed this cap, TRD will notify the taxpayer and EMNRD and allow the taxpayer to apply again early in the next year. Approved credits that exceed a taxpayer's tax liability can be carried forward for five years. TRD is required to prepare a report for presentation to the legislature.

There is no effective date of this bill. It is assumed that the effective date is 90 days after this session ends (June 18, 2021). The provisions of the act are applicable to tax years beginning January 1, 2022 and ending December 31, 2023. This is a two-fiscal year experiment. However, because the tax credits are limited to the amount of the taxpayer's liability, some proportion of credits certified will not be applied until 2028. The tax credits are non-refundable and not transferable.

## FISCAL IMPLICATIONS

This bill creates a tax expenditure with a cost that is difficult to determine, but unlikely to exceed $2million for the two-year experiment. However, because credits that exceed a taxpayer's liability may be carried forward for five years, this proposed tax credit could affect revenue from FY22 through 2028, although with minimal impact in FY22.

A newsletter, Electrek[1], indicates that total system cost of a Tesla Powerwall, the number one residential-scale energy storage system, is currently $7,500 for the system, $1,000 for the controller, and $3,500 for installation. A 40 percent credit on the system would $4,800, just less than the maximum credit amount for each system. The $1 million credit cap would allow 200 Powerwall systems to installed and credited each year.

However, fewer than 8 percent of New Mexico resident taxpayers incur net PIT liabilities exceeding $5,000 per year Assume that this tax credit will only be taken up by relatively wealthy taxpayers and that the credit will be fully subscribed and further, that 75 percent of the credit will be applied in the year of approval.

## SIGNIFICANT ISSUES

EMNRD points out significant features of this bill:

> Senate Bill 301 would create a new tax credit program to specifically encourage development and installation of energy storage systems. Energy storage allows renewable energy systems to be more efficient by storing electricity in batteries and providing power at night or other times when renewable energy is less reliable. Storage is an important part of the overall grid modernization picture by helping to stabilize the electricity demand peaks and by compensating for the variability of energy produced from renewables.
>
> Behind-the-meter storage *gives the customer control*; it allows for the customer to better control time of energy use and will likely mean less drawing on the grid overall (if accompanied by a solar system). Residential and business-located storage will be good for the electrification of transportation.
>
> Under the current New Mexico Public Regulation Commission's Interconnection Manual any solar + storage system exceeding 10 kW total combined power output would not be eligible for the expedited review process and thus interconnection delays may significantly limit access to the tax credit during the 2-year window. Many residential buildings can easily exceed the 10-kW limit.
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> SB301 requires that EMNRD certify the energy storage systems for a credit to be received. EMNRD recommends language to SB301 that for purposes of inspecting the energy storage system's installation, EMNRD or its authorized representative shall have the right to inspect an energy storage system an applicant owns and that EMNRD has certified, after EMNRD's certification, upon providing a minimum of five days' notice to the taxpayer. (see proposed amendments).

[1] https://electrek.co/2021/01/17/tesla-increases-price-powerwall/

> The definition of energy storage system is defined as a battery system. SB301 limits the tax credit to retail electricity customers only and the focus is on electricity. Therefore, if electricity is the focus of the bill, the definition should focus on "electric energy storage" and should be simplified to: "Electric Energy Storage System – a system used to capture electric energy produced at one time for use at a later time."

The federal Department of Energy, Energy Information Agency (DOE/EIA) published a study in July 2020[2] that contained some interesting statistics.

> In 2018, utilities reported 234 MW of existing small-scale storage power capacity in the United State. A little more than 50 percent of this capacity was installed in the commercial sector, 31 percent was installed in the residential sector, and 15 percent was installed in the industrial sector….
>
> … in 2018, 86 percent of reported small-scaled storage power capacity in the United State was in California and, specifically, was owned by six utilities.
>
> Utah was in third place, outside California with about .6 megawatts of residential energy storage systems.
>
> In California, capacity and installations at the end-user level are not collected.
>
> Utah is in third place outside of California, with about .6 megawatts of capacity. Virtually all this capacity is for residential systems owned by the end-user. (LFC Note: Utah offers a 10 percent tax credit for renewable energy systems, including energy storage as long as the energy storage is installed at the same time as solar or wind systems.)

## 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 deduction and other information to determine whether the deduction is meeting its purpose. EMNRD is required to contribute utilization data to TRD to assist in preparation of this annual report to the legislature.

EMNRD comments, "SB 301 allows the use of renewable energy through energy storage at night and other times when renewable energy is intermittent. This supports the Governor's Executive Order on addressing Climate Change and Energy Waste Prevention."

## ADMINISTRATIVE IMPLICATIONS

EMNRD details the administrative impact of this proposal:

> SB301 requires EMNRD staff lead the rulemaking process to create procedures to certify systems for tax credit eligibility of each tax credit applicant. In addition, to accommodate the application review process the use of electronic form submission and IT technical support is required for this effort.

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[2] https://www.eia.gov/analysis/studies/electricity/batterystorage/pdf/battery_storage.pdf

> The fiscal impact for EMNRD includes staff resources to create rules and to develop an electronic submission process for applications. There would be an estimated cost for initiation of the program of $59,800 for a new staff position including fringe benefits, and approximately $30,000 for program, administrative, legal and information technology staff. Ongoing staff resources are required to effectively manage, provide system reviews, certify systems for tax credit eligibility, collect data, and maintain a database. The revenue fiscal impact for SB 301 is indeterminate as this tax credit is new in its development and historical data is not available to determine the number of tax credits that would be eligible.

LFC notes, however, that unlike the Solar Market tax credit or the sustainable building tax credit, this tax credit program may involve only 200 certifications a year for two years. Although the duties assigned to EMNRD are significant, the program is very small.

For HB593 (2020), which was a far more significant program, TRD indicated no additional budget was needed.

## TECHNICAL ISSUES/POTENTIAL AMENDMENTS

Page 1, line 23 requires the system to be installed on the taxpayer's residential property. Page 2, lines 9 & 10, however, require that the system be installed in an agriculture enterprise, a business or a residence. These requirements are in conflict.

For other energy conservation credits, the procedure of EMNRD certifying systems first-come, first-served and then being notified by TRD if the cap has been exceeded is neither efficient nor effective. Having EMNRD enforce the cap and rollover provisions, such has been done for the sustainable building credit, is a better procedure and causes far less taxpayer dissatisfaction.

The credit cap is described as "a maximum annual aggregate … " on page 3, line18 & 19, but "eligible for a tax credit for that fiscal year." On page 3, line 25 and page 4, line 1. This will cause a great deal of confusion. For most taxpayers in the state, the tax year is the calendar year. Clearly administering the credit cap on a tax year basis will remove some of the confusion.

Confusion remains, however, since EMNRD accepts applications throughout the year and issues certificates. For the most part, these certificates are presented to TRD with the annual filing of tax returns by April 15 of each year. Thus, up to 12 months can separate the application for a credit certificate and the applying of that certificate to the tax liability.

EMNRD recommends language to SB301 that for purposes of inspecting the energy storage system's installation, EMNRD or its authorized representative shall have the right to inspect an energy storage system an applicant owns and that EMNRD has certified, after EMNRD's certification, upon providing a minimum of five days' notice to the taxpayer.

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