FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Ferrary/Cates/Anaya/Sariñana	**ORIGINAL DATE**	02/07/25
SHORT TITLE	Solar Market Tax Credit Changes	**BILL NUMBER**	House Bill 211
		ANALYST	Graeser

REVENUE*
(dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
CIT & PIT combined	**$0**	**$0**	**$0**	**$0**	**$0**	Recurring	General Fund

Parentheses ( ) indicate revenue decreases.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
EMNRD	**$150.0**	**$150.0**	**$150.0**	**$450.0**	Recurring	**General Fund**
TRD	**No fiscal impact**	**$34.5**	**$0**	**34.5**	Recurring	**General Fund**
Total	**$150.0**	**$184.5**	**$150.0**	**$484.5**		**General Fund**

Parentheses ( ) indicate expenditure decreases. *** Note: EMNRD's administrative costs have been copied from HB5's FIR

Relates to House Bill 213 and House Bill 51

Sources of Information

LFC Files

<u>Agency Analysis was Received From</u>
Energy, Minerals and Natural Resources Department (EMNRD)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of House Bill 211

House Bill 211 (HB211) expands the New Solar Market Development Income Tax Credit in several ways:

- Allows the credit to a company that installs a solar system on a residential, business or agricultural property, owns the power generated and the system, but leases the system and sells the power to the property owner at a discount via a power purchase agreement. This is essentially a financing arrangement, but the property owner does not own the system.

- Adds "non-profit organization" to the purpose section of the bill.
- Extends the credit percentage to 20 percent for solar systems that include at least 15 kilowatt hours of battery or other forms of energy storage capacity.
- Doubles the annual per-system credit cap from $6,000 to $12 thousand when the system includes 15-kilowatt hours energy storage capacity.
- Clarifies the process whereby solar credits can be sold or otherwise transferred as part of the power purchase agreement.
- Confirms that the existing personal income tax (PIT) and new corporate income tax (CIT) tax credits are refundable, as well as transferable.
- Provides a completely parallel corporate income tax credit.

Section 2 strikes the "catch up" provision inserted in the statute in 2024 that allows filers who would have been eligible to claim the credit in tax years 2020-2023 but were unable to because of the credit had hit the cap. Section 2 also restates the new annual cap at $30 million and allows filers who are unable to claim to the credit due to the cap in a given year to apply for the credit from the cap in the following year.

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 sunset for installations completed after December 31, 2031.

FISCAL IMPLICATIONS

Last year's tax package increased the PIT cap to $30 million. This bill adds a corporate tax credit but did not change the joint cap. The Taxation and Revenue Department (TRD) notes "[HB211] will not impact the revenue loss to the general fund. It may, however, shift where the loss of general fund is coming from, with a new portion coming from CIT and less from PIT."

The Energy, Minerals and Natural Resources Department (EMNRD) will have to complete a rulemaking amendment and revise the current web application process, including:

- ITO online web application design, modification development, testing, and implementation.
- Additional documents required for verification of eligibility for the credit.
- Electronic process for issuing certificates to approved taxpayers.
- Tracking credit distribution and ensuring compliance with the fund cap.

This process will require modifications to existing systems and additional resources in the initial stages of implementation.

TRD will need to update forms, instructions, and publications and make information system changes. This implementation will be included in the annual tax year changes. TRD's Administrative Services Division will test credit sourcing and perform other systems testing. It is anticipated this work will take approximately 40 hours split between 2 FTE of a pay band 70 and a pay band 80 at a cost of approximately $2,500. Pay band 70 hours are estimated at time and ½ due to extra hours worked required for implementation. This bill will have a moderate impact on TRD's Information Technology Division of approximately 480 hours or three months for an estimated staff workload cost of $31,987.

SIGNIFICANT ISSUES

EMNRD files the following comments on significant issues:

Striking the "catch up" provision on Page 4, lines 18-25 could potentially disallow the utilization of that provision for filers who are amending their 2023 return in order to claim the credit for a system installed from 2020-2023. The timeline for amending New Mexico state tax returns is connected to the federal timeline of three years. We are still within the three year window of time to amend tax returns from both 2022 and 2023, so it is conceivable that a filer who 1) has had a system that was installed from 2020-2023 and certified in the last 12 months, and 2) amends their federal and state returns to attempt to claim the credit under the "catch up" cap in NMSA 7-2- 18.31(F)(1) would find themselves disallowed from doing so under the proposed change.

HB211 supports the sustainability, affordability, reliability, and resiliency of New Mexico's electricity grid by doubling the New Solar Market Development Income Tax Credit for taxpayers who combine their photovoltaic systems with storage. Combined distributed generation and storage can help balance power flows on distribution feeders that are oversaturated with photovoltaic-only systems, freeing up additional hosting capacity and avoiding costly infrastructure upgrades. Such "solar-plus-storage" systems can also provide grid resilience and, depending on the system, electricity during grid outages. Currently New Mexico incentivizes rooftop solar via tax credits but has no complementary incentive for technology (such as distributed energy storage) that can be deployed to better manage the grid impact of distributed photovoltaic systems in a way that prioritizes efficiency and ratepayer affordability. Key to any potential customer-provided benefit to the grid will be the ability to consult current utility hosting capacity maps.

As transportation, building, and industrial electrification all increase electricity demand in New Mexico, combined distributed energy storage and generation systems supported by HB211 can flex load to off-peak hours and increase the utilization rate of existing grid assets, benefiting utility ratepayers by reducing the need to meet growing peaks with costly, new utility-scale resources such as natural gas peaker plants and associated grid buildout.

HB211's "at least" 15-kilowatt hour threshold for energy storage system eligibility may exclude many residential applicants from this tax credit, because most residential distributed solar-plus-storage systems include batteries in the 9–13-kilowatt hour range.[1] This could skew the distribution of storage bonus benefits to wealthier individuals with larger houses and power needs. Additionally, the large storage size requirement could make it more attractive to a taxpayer/developer who intends to use the storage and electricity for more than one property, possibly conflicting with Community Solar.

The 15-kilowatt hour threshold could also negatively incentivize solar installers to overbuild solar systems for the stated needs of the residential consumer which would not be in the best interest of the homeowner.

Extending eligibility to both tax credits for installers of leased systems used to fulfill power

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[1] [1] Barbose et al. (2021). Behind-the-Meter Solar+Storage: Market Data and Trends.

purchase agreement contracts with property owners would be a direct transfer of the credit to the rooftop solar industry rather than homeowners and businesses. This eligibility could also incentivize the rooftop solar industry to push power purchase agreement contracts when such contracts may not be advantageous for that household. Similar arrangements are currently facing legal challenges in other jurisdictions.[2]

The current language of HB211 does not prioritize smaller residential solar installations over large corporate housing projects, which could result in an unfair distribution of tax credit funds. With a $30 million cap shared between individual and corporate applicants, there is a significant risk that corporate housing developments and large-scale commercial projects will consume the majority of the available funds. This structure does not guarantee that single-family homeowners, small businesses, or agricultural applicants will have equal access to the credit. Without clear funding allocations or prioritization for smaller projects, individual homeowners who want to adopt solar energy may find themselves unable to benefit from the program once larger corporate filers claim the majority of the credits. To truly support widespread solar adoption, the legislation should consider separate funding pools, priority for smaller projects, or an adjusted cap that ensures fair access for all applicants.

EMNRD requests a clarification:

To clarify the language of the bill, there may need to be a comma before "or" and after "that taxpayer" in Section 1, subsection A, or some other clarifying language or restructuring. The way the bill currently reads it describes a credit for a property held in leasehold by a taxpayer or another taxpayer … who installs a PV system and sells the electricity from the system…" (In other words, the amendment could be argued to describe a taxpayer with a leasehold, not any taxpayer.)

TRD notes several policy issues:

Combining the aggregate credit cap for both PIT and CIT at the same amount of $30 million may erode the share available for PIT filers. Additionally, a new class of eligible installations, systems installed on property of other owners, and allowing a credit of 20% for photovoltaic systems that have at least 15-kilowatt hours of solar storage capacity may further increase the demand for the credit. But as the aggregate cap stays at $30 million, an evaluation can be performed of the impact of the changes and the rate of credit claiming among the different classes of solar installations.

While tax incentives can support specific industries or promote desired social and economic behaviors, the growing number of such incentives complicate the tax code. Introducing more tax incentives has two main consequences: (1) it creates special treatment and exceptions within the code, leading to increased tax expenditures and a narrower tax base, which negatively impacts the general fund; and (2) it imposes a heavier compliance burden on both taxpayers and TRD. Increasing complexity and exceptions in the tax code is generally not in line with sound tax policy.

The broader question of subsidizing solar energy has many economic factors to consider

[2] Office of the Connecticut Attorney General. (2023). Attorney General Tong Sues Vision Solar Over Unfair and Deceptive Sales, Violations of Home Improvement Act.

including job creation, impacts to established markets and environmental concerns. A credit is a tax expenditure that gives preferential tax treatment to certain taxpayers. Some economists would argue that energy costs should reflect the associated cost impacts or benefits to the environment. Thus, solar energy which can be expensive to start-up, should be given tax incentives due to its low environmental impact and health and social benefits for the current and future populations. The long-term environmental, health and social benefits outweigh the short-term revenue cost. New job opportunities are associated with solar energy generation, such as solar photovoltaic installers, engineers and managers.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the statutory requirement that TRD include in the annual Tax Expenditure Report the data compiled from the reports from taxpayers taking the credit and other information to determine whether the credit is meeting its purpose.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB211 relates to House Bill 213 (HB213). HB213 may allow 40 percent credits for solar systems installed on school or higher education premises even if the systems are not owned by the school and the power is sold to the installer via a power purchase agreement. This bill may allow both credits.

HB211 relates to House Bill 51 (HB51), which proposes a 40 percent credit for any energy storage equipment installed in or on residential, commercial or farm or ranch property. If that bill and this bill both pass, the credits will be additive for the energy storage portion of the system. EMNRD notes that HB211 would complement HB51, which provides an incentive for existing rooftop solar customers to adopt solar. Authors may need to clarify that recipients of New Solar Market Development Income Tax Credit storage incentives are ineligible for Energy Storage Tax Credits in HB51.

TECHNICAL ISSUES

TRD suggests two drafting changes:

TRD notes conflicting language in section 1, subsection D, page 4, lines 10-12 and in the new credit for CIT, in Section 2, subsection D, page 9 lines 24-25 through page 10, line 1. The provision in these sections allows for the sale, exchange, or transfer of the certificate of eligibility for the tax credit before the installation is made. This provision conflicts with the certification requirement that requires the installation be complete. It also represents an agreement between parties without an official tax credit certification to reference. Taxpayers will still be obligated to notify TRD of an official "sale, exchange, or transfer within 10 days of the sale, exchange or transfer." TRD suggests removing this provision in both sections.

To enhance process efficiency and reduce internal risk, TRD suggests inserting the following text in Section 1 on page 4, line 4, and in Section 2 on page 9, line 18, immediately after the word "claimed": "The Energy Minerals and Natural Resources Department shall regularly provide the department with electronically issued certificates of eligibility at agreed-upon intervals."

TRD notes that the credit language currently 7-2-18.31 NMSA 1978 contains a purpose statement in subsection B, page 2, lines 14-17. A similar purpose statement was not included in the new proposed CIT credit. Additionally, in Section 1, subsection B, nonprofit organizations were added to the list of installation sites. These purpose statements are not crucial to the administration of the credits but relay policy intent which is important in evaluating the credits. By omitting the purpose statement in the new CIT credit, the two companion credits are not consistent,

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.	X	**While the underlying New Solar Development Tax credit has been vetted, this expansion to the lease model have not been adequately debated**
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	 ? ? ?	The increase to $30 million annual cap is a goal.
Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies		Statutory Requirement
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	 **?** **?**	
Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.	**?**	
Key: ✓ Met ✗ Not Met ? Unclear		

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