

SENATE TAX, BUSINESS AND TRANSPORTATION  
COMMITTEE SUBSTITUTE FOR  
SENATE BILL 84

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

AN ACT

RELATING TO UTILITIES; ENACTING THE COMMUNITY SOLAR ACT;  
PRESCRIBING REQUIREMENTS FOR COMMUNITY SOLAR FACILITIES,  
SUBSCRIBER ORGANIZATIONS AND SUBSCRIPTIONS; PRESCRIBING  
REQUIREMENTS FOR ADMINISTRATION OF A COMMUNITY SOLAR PROGRAM;  
PROVIDING THAT RENEWABLE ENERGY CERTIFICATES ASSOCIATED WITH A  
COMMUNITY SOLAR FACILITY ARE THE PROPERTY OF THE QUALIFYING  
UTILITY; PROVIDING EXCEPTIONS FOR NATIVE COMMUNITY SOLAR  
PROJECTS; DIRECTING THE PUBLIC REGULATION COMMISSION TO ADOPT  
RULES TO IMPLEMENT A COMMUNITY SOLAR PROGRAM; ALLOWING THE  
COMMISSION TO ESTABLISH AND COLLECT FROM SUBSCRIBER  
ORGANIZATIONS REASONABLE APPLICATION FEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 9 of this act may be cited as the "Community Solar  
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1 Act."

2 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
3 Community Solar Act:

4 A. "commission" means the public regulation  
5 commission;

6 B. "community solar bill credit" means the credit  
7 value of the electricity generated by a community solar  
8 facility and allocated to a subscriber to offset the  
9 subscriber's electricity bill on the qualifying utility's  
10 monthly billing cycle as required by the Community Solar Act;

11 C. "community solar bill credit rate" means the  
12 dollar-per-kilowatt-hour rate determined by the commission that  
13 is used to calculate a subscriber's community solar bill  
14 credit;

15 D. "community solar facility" means a facility that  
16 generates electricity by means of a solar photovoltaic device,  
17 and subscribers to the facility receive a bill credit for the  
18 electricity generated in proportion to the subscriber's share  
19 of the facility's kilowatt-hour output;

20 E. "community solar program" or "program" means the  
21 program created through the adoption of rules by the commission  
22 that allows for the development of community solar facilities  
23 and provides customers of a qualifying utility with the option  
24 of accessing solar energy produced by a community solar  
25 facility in accordance with the Community Solar Act;

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1 F. "Indian nation, tribe or pueblo" means a  
2 federally recognized Indian nation, tribe or pueblo located  
3 wholly or partially in New Mexico;

4 G. "low-income customer" means a residential  
5 customer of a qualifying utility with an annual household  
6 income at or below eighty percent of area median income, as  
7 published by the United States department of housing and urban  
8 development, or that is enrolled in a low-income program  
9 facilitated by the state or a low-income energy program led by  
10 the qualifying utility or as determined by the commission;

11 H. "low-income service organization" means an  
12 organization that provides services, assistance or housing to  
13 low-income customers and may include a local or central tribal  
14 government, a chapter house or a tribally designated housing  
15 entity;

16 I. "nameplate capacity" means the maximum rated  
17 output of electric power production equipment that is commonly  
18 indicated on a nameplate physically attached to the generator  
19 and expressed in megawatts alternating current;

20 J. "native community solar project" means a  
21 community solar facility that is sited in New Mexico on the  
22 land of an Indian nation, tribe or pueblo and that is owned or  
23 operated by a subscriber organization that is an Indian nation,  
24 tribe or pueblo or a tribal entity or in partnership with a  
25 third-party entity;

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1           K. "qualifying utility" means an investor-owned  
2 electric public utility certified by the commission to provide  
3 retail electric service in New Mexico pursuant to the Public  
4 Utility Act or a rural electric distribution cooperative that  
5 has opted in to the community solar program;

6           L. "subscriber" means a retail customer of a  
7 qualifying utility that owns a subscription to a community  
8 solar facility from a subscriber organization;

9           M. "subscriber organization" means an entity that  
10 owns or operates a community solar facility and may include a  
11 municipality, a county, a for-profit or nonprofit entity or  
12 organization, an Indian nation, tribe, or pueblo, a local  
13 tribal governance structure or other tribal entity authorized  
14 to transact business in New Mexico;

15           N. "subscription" means a contract for a community  
16 solar subscription entered into between a subscriber and a  
17 subscriber organization for a share of the nameplate capacity  
18 from a community solar facility;

19           O. "total aggregate retail rate" means the total  
20 amount of a qualifying utility's demand, energy and other  
21 charges converted to a kilowatt-hour rate, including fuel and  
22 power cost adjustments, the value of renewable energy  
23 attributes and other charges of a qualifying utility's  
24 effective rate schedule applicable to a given customer rate  
25 class, but does not include charges described on a qualifying

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1 utility's rate schedule as minimum monthly charges, including  
2 customer or service availability charges, energy efficiency  
3 program riders or other charges not related to a qualifying  
4 utility's power production, transmission or distribution  
5 functions, as approved by the commission, franchise fees and  
6 tax charges on utility bills;

7 P. "tribal entity" means an enterprise, a nonprofit  
8 entity or organization or a political subdivision formed under  
9 the inherent sovereignty of an Indian nation, tribe or pueblo;  
10 and

11 Q. "unsubscribed electricity" means electricity,  
12 measured in kilowatt-hours, generated by a community solar  
13 facility that is not allocated to a subscriber.

14 SECTION 3. [NEW MATERIAL] COMMUNITY SOLAR FACILITY  
15 REQUIREMENTS.--

16 A. A community solar facility shall:

17 (1) have a nameplate capacity rating of five  
18 megawatts alternating current or less;

19 (2) be located in the service territory of the  
20 qualifying utility and be interconnected to the electric  
21 distribution system of that qualifying utility;

22 (3) have at least ten subscribers;

23 (4) have the option to be co-located with  
24 other energy resources, but shall not be co-located with other  
25 community solar facilities;

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1 (5) not allow a single subscriber to be  
2 allocated more than forty percent of the generating capacity of  
3 the facility; and

4 (6) make at least forty percent of the total  
5 generating capacity of a community solar facility available in  
6 subscriptions of twenty-five kilowatts or less.

7 B. The provisions of this section shall not apply  
8 to a native community solar project; provided that a native  
9 community solar project shall be located in the service  
10 territory of a qualifying utility and be interconnected to the  
11 electric distribution system of that qualifying utility.

12 SECTION 4. [NEW MATERIAL] OWNERSHIP OF COMMUNITY SOLAR  
13 FACILITIES.--

14 A. A community solar facility shall be owned or  
15 operated by a subscriber organization.

16 B. Third-party entities or subscriber organizations  
17 developing projects on the land of an Indian nation, tribe, or  
18 pueblo are subject to tribal jurisdiction.

19 SECTION 5. [NEW MATERIAL] SUBSCRIPTION REQUIREMENTS.--

20 A. A subscription shall be:

21 (1) sized to supply no more than one hundred  
22 twenty percent of the subscriber's average annual electricity  
23 consumption; and

24 (2) transferable and portable within the  
25 qualifying utility service territory.

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1           B. The provisions of this section shall not apply  
2 to a native community solar project; provided that  
3 subscriptions to a native community solar project shall be  
4 transferable and portable within the qualifying utility service  
5 territory.

6           SECTION 6. [NEW MATERIAL] COMMUNITY SOLAR PROGRAM  
7 ADMINISTRATION.--

8           A. A qualifying utility shall:

9                   (1) acquire the entire output of a community  
10 solar facility connected to its distribution system;

11                   (2) apply community solar bill credits to  
12 subscriber bills within one billing cycle following the cycle  
13 during which the energy was generated by the community solar  
14 facility;

15                   (3) provide community solar bill credits to a  
16 community solar facility's subscribers for not less than  
17 twenty-five years from the date the community solar facility is  
18 first interconnected;

19                   (4) carry over any amount of a community solar  
20 bill credit that exceeds the subscriber's monthly bill and  
21 apply it to the subscriber's next monthly bill unless and until  
22 the subscriber cancels service with the qualifying utility; and

23                   (5) on a monthly basis and in a standardized  
24 electronic format, provide to the subscriber organization a  
25 report indicating the total value of community solar bill

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1 credits generated by the community solar facility in the prior  
2 month as well as the amount of the community solar bill credits  
3 applied to each subscriber.

4 B. A subscriber organization shall, on a monthly  
5 basis and in a standardized electronic format, provide to the  
6 qualifying utility a list indicating the kilowatt-hours of  
7 generation attributable to each subscriber. Subscriber lists  
8 may be updated monthly to reflect canceling subscribers and to  
9 add new subscribers.

10 C. If a community solar facility is not fully  
11 subscribed in a given month, the unsubscribed energy may be  
12 rolled forward on the community solar facility account for up  
13 to one year from its month of generation and allocated by the  
14 subscriber organization to subscribers at any time during that  
15 period. At the end of that period, any undistributed bill  
16 credit shall be removed, and the unsubscribed energy shall be  
17 purchased by the qualifying utility at its applicable avoided  
18 cost of energy rate as approved by the commission.

19 D. The environmental attributes, including  
20 renewable energy certificates, associated with a community  
21 solar facility shall be owned by the qualifying utility to  
22 whose electric distribution system the community solar facility  
23 is interconnected; provided that environmental attributes  
24 associated with a native community solar project shall be owned  
25 by the owner of the native community solar project.

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1           E. Nothing in the Community Solar Act shall  
 2 preclude an Indian nation, tribe or pueblo from using financial  
 3 mechanisms other than subscription models, including virtual  
 4 and aggregate net-metering, for native community solar  
 5 projects.

6           SECTION 7. [NEW MATERIAL] PUBLIC REGULATION COMMISSION--  
 7 RULEMAKING.--

8           A. The commission shall adopt rules to establish a  
 9 community solar program by no later than April 1, 2022. The  
 10 rules shall:

11                   (1) provide an initial annual statewide  
 12 capacity program cap of one hundred megawatts alternating  
 13 current proportionally allocated to investor-owned utilities  
 14 until November 1, 2024. The annual statewide capacity program  
 15 cap shall exclude native community solar projects and rural  
 16 electric distribution cooperatives;

17                   (2) establish an annual statewide capacity  
 18 program cap to be in effect after November 1, 2024;

19                   (3) require a target thirty percent annual  
 20 statewide carve-out of the annual statewide capacity program  
 21 cap to be reserved for low-income customers and low-income  
 22 service organizations. In facilitation of this target, the  
 23 commission shall issue guidelines to ensure the carve-out is  
 24 achieved each year and develop a list of low-income service  
 25 organizations and programs that may pre-qualify low-income

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1 customers;

2 (4) establish a process for the selection of  
3 community solar facility projects and allocation of the  
4 statewide capacity program cap;

5 (5) require a qualifying utility to file the  
6 tariffs, agreement or forms necessary for implementation of the  
7 community solar program;

8 (6) establish reasonable, uniform, efficient  
9 and non-discriminatory standards, fees and processes for the  
10 interconnection of community solar facilities that are  
11 consistent with the commission's existing interconnection rules  
12 and interconnection manual that allows a qualifying utility to  
13 recover reasonable costs for administering the community solar  
14 program and interconnection costs for each community solar  
15 facility;

16 (7) provide consumer protections for  
17 subscribers, including a uniform disclosure form that  
18 identifies the information that shall be provided by a  
19 subscriber organization to a potential subscriber, in both  
20 English and Spanish, and when appropriate, native or indigenous  
21 languages, to ensure fair disclosure of future costs and  
22 benefits of subscriptions, key contract terms and other  
23 relevant but reasonable information pertaining to the  
24 subscription;

25 (8) provide a community solar bill credit rate

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1 mechanism for subscribers derived from the qualifying utility's  
2 total aggregate retail rate on a per-customer-class basis, less  
3 the commission-approved distribution cost components, and  
4 identify all proposed rules, fees and charges;

5 (9) reasonably allow for the creation,  
6 financing and accessibility of community solar facilities; and

7 (10) provide requirements for the siting and  
8 co-location of community solar facilities with other energy  
9 resources; provided that community solar facilities shall not  
10 be co-located with other community solar facilities.

11 B. The commission may through rule establish a  
12 reasonable application fee for subscriber organizations that is  
13 designed to cover a portion of the administrative costs of the  
14 commission in carrying out the community solar program.

15 Application fees collected by the commission shall be remitted  
16 to the state treasurer no later than the day after their  
17 receipt.

18 C. The commission shall solicit input from relevant  
19 state agencies, public utilities, low-income stakeholders,  
20 disproportionately impacted communities, potential owners or  
21 operators of community solar facilities, Indian nations, tribes  
22 and pueblos and other interested parties in its rulemaking  
23 process.

24 D. By no later than November 1, 2024, the  
25 commission shall provide to the appropriate interim legislative

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1 committee a report on the status of the community solar  
2 program, including the development of community solar  
3 facilities, the participation of investor-owned utilities and  
4 rural electric distribution cooperatives, low-income  
5 participation, the adequacy of facility size, proposals for  
6 alternative rate structures and bill credit mechanisms, cross-  
7 subsidization issues, local developer project selection and  
8 expansion of the local solar industry, community solar  
9 facilities' effect on utility compliance with the renewable  
10 portfolio standard and an evaluation of the effectiveness of  
11 the commission's rules to implement the Community Solar Act and  
12 any recommended changes.

13 SECTION 8. [NEW MATERIAL] RURAL ELECTRIC DISTRIBUTION  
14 COOPERATIVES.--A rural electric distribution cooperative may  
15 opt in to the community solar program and provide  
16 interconnection and retail electric services to community solar  
17 developments on a per-project or system-wide basis within its  
18 service territory. The decision of a rural electric  
19 distribution cooperative to opt in to the community solar  
20 program shall be in the sole discretion of the cooperative's  
21 governing board.

22 SECTION 9. [NEW MATERIAL] EXCLUSION FROM COMMISSION  
23 REGULATION.--Subscriber organizations and the subscribers to a  
24 community solar facility shall not be considered public  
25 utilities subject to regulation by the commission under the

1 Public Utility Act solely as a result of their ownership,  
2 interest in, operation of or subscription to a community solar  
3 facility. Rates paid for subscriptions shall not be subject to  
4 regulation by the commission.

5 SECTION 10. Section 62-15-35 NMSA 1978 (being Laws 2007,  
6 Chapter 4, Section 2, as amended by Laws 2015, Chapter 64,  
7 Section 1 and by Laws 2015, Chapter 71, Section 1) is amended  
8 to read:

9 "62-15-35. RENEWABLE ENERGY CERTIFICATES--COMMISSION  
10 DUTIES.--The public regulation commission shall establish:

11 A. a system of renewable energy certificates that  
12 can be used by a distribution cooperative to establish  
13 compliance with the renewable portfolio standard and that may  
14 include certificates that are monitored, accounted for or  
15 transferred by or through a regional system or trading program  
16 for any region in which a rural electric cooperative is  
17 located. The kilowatt-hour value of renewable energy  
18 certificates may be varied by renewable energy resource or  
19 technology; provided that:

20 (1) each renewable energy certificate shall  
21 have a minimum value of one kilowatt-hour for purposes of  
22 compliance with the renewable portfolio standard;

23 (2) three thousand four hundred twelve British  
24 thermal units of useful thermal energy is equivalent to one  
25 kilowatt hour for purposes of compliance with the renewable

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1 portfolio standard; and

2 (3) the following equation shall be used to  
3 calculate the annual renewable energy certificate value for a  
4 geothermal heat pump system: (coefficient of performance of  
5 heat pump unit - 1) X (ton rating of heat pump unit/.9) =  
6 number of megawatt-hours of renewable energy certificates; and

7 B. requirements and procedures concerning renewable  
8 energy certificates that include the provisions that:

9 (1) renewable energy certificates:

10 (a) are owned by the generator of the  
11 renewable energy unless: 1) the renewable energy certificates  
12 are transferred to the purchaser of the energy through specific  
13 agreement with the generator; 2) the generator is a qualifying  
14 facility, as defined by the federal Public Utility Regulatory  
15 Policies Act of 1978, in which case the renewable energy  
16 certificates are owned by the distribution cooperative  
17 purchaser of the renewable energy unless retained by the  
18 generator through specific agreement with the distribution  
19 cooperative purchaser of the energy; ~~[or]~~ 3) a contract for the  
20 purchase of renewable energy is in effect prior to January 1,  
21 2004, in which case the renewable energy certificates are owned  
22 by the purchaser of the energy for the term of such contract;  
23 or 4) the generator is a community solar facility, excluding a  
24 native community solar project, as those terms are defined in  
25 the Community Solar Act, in which case the renewable energy

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1 certificates are owned by the distribution cooperative to whose  
2 electric distribution system the community solar facility is  
3 interconnected;

4 (b) may be traded, sold or otherwise  
5 transferred by their owner to any other party; provided that  
6 the transfers and use of the certificate by a distribution  
7 cooperative for compliance with the renewable energy portfolio  
8 standard shall require the electric or useful thermal energy  
9 represented by the certificate to be contracted for delivery or  
10 consumed, or generated by an end-use customer of the  
11 distribution cooperative in New Mexico unless the commission  
12 determines that the distribution cooperative is participating  
13 in a national or regional market for exchanging renewable  
14 energy certificates;

15 (c) that are used for the purpose of  
16 meeting the renewable portfolio standard shall be registered,  
17 beginning January 1, 2008, with a renewable energy generation  
18 information system that is designed to create and track  
19 ownership of renewable energy certificates and that, through  
20 the use of independently audited generation data, verifies the  
21 generation and delivery of electricity or useful thermal energy  
22 associated with each renewable energy certificate and protects  
23 against multiple counting of the same renewable energy  
24 certificate;

25 (d) that are used once by a distribution

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1 cooperative to satisfy the renewable portfolio standard and are  
2 retired or that are traded, sold or otherwise transferred by  
3 the distribution cooperative shall not be further used by the  
4 distribution cooperative; and

5 (e) that are not used by a distribution  
6 cooperative to satisfy the renewable portfolio standard or that  
7 are not traded, sold or otherwise transferred by the  
8 distribution cooperative may be carried forward for up to four  
9 years from the date of issuance and, if not used by that time,  
10 shall be retired by the distribution cooperative; and

11 (2) a distribution cooperative shall be  
12 responsible for demonstrating that a renewable energy  
13 certificate used for compliance with the renewable portfolio  
14 standard is derived from eligible renewable energy resources  
15 and has not been retired, traded, sold or otherwise transferred  
16 to another party."

17 SECTION 11. Section 62-16-5 NMSA 1978 (being Laws 2004,  
18 Chapter 65, Section 5, as amended) is amended to read:

19 "62-16-5. RENEWABLE ENERGY CERTIFICATES--COMMISSION  
20 DUTIES.--

21 A. The commission shall establish:

22 (1) a system of renewable energy certificates  
23 that can be used by a public utility to establish compliance  
24 with the renewable portfolio standard and that may include  
25 certificates that are monitored, accounted for or transferred

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1 by or through a regional system or trading program for any  
2 region in which a public utility is located; and

3 (2) requirements and procedures concerning  
4 requirements for renewable energy certificates pursuant to  
5 Subsections B and C of this section.

6 B. Renewable energy certificates:

7 (1) are owned by the generator of the  
8 renewable energy unless:

9 (a) the renewable energy certificates  
10 are transferred to the purchaser of the electricity through  
11 specific agreement with the generator;

12 (b) the generator is a qualifying  
13 facility, as defined by the federal Public Utility Regulatory  
14 Policies Act of 1978, in which case the renewable energy  
15 certificates are owned by the public utility purchaser of the  
16 renewable energy; ~~or~~

17 (c) a contract for the purchase of  
18 renewable energy is in effect prior to July 1, 2019, in which  
19 case the renewable energy certificates are owned by the  
20 purchaser of the electricity for the term of such contract,  
21 unless otherwise agreed to in a contract approved by the  
22 commission; or

23 (d) the generator is a community solar  
24 facility, excluding a native community solar project, as those  
25 terms are defined in the Community Solar Act, in which case the

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1 renewable energy certificates are owned by the public utility  
2 to whose electric distribution system the community solar  
3 facility is interconnected;

4 (2) may be traded, sold or otherwise  
5 transferred by their owner, unless the certificates are from a  
6 rate-based public utility plant, in which case the entirety of  
7 the renewable energy certificates from that plant shall be  
8 retired by the utility on behalf of itself or its customers.  
9 Any contract to purchase renewable energy entered into by a  
10 public utility on or after July 1, 2019 shall include  
11 conveyance to the purchasing utility of all renewable energy  
12 certificates, and the entirety of those certificates shall be  
13 retired by that utility on behalf of itself or its customers or  
14 subsequently transferred to a retail customer for retirement  
15 under a voluntary program for purchasing renewable energy  
16 approved by the commission. A utility shall not claim that it  
17 is providing renewable energy from generation resources for  
18 which it has traded, sold or transferred the associated  
19 renewable energy certificates. The commission shall not  
20 disallow the recovery of the cost associated with any expired  
21 renewable energy certificate. The public utility shall  
22 annually file a report with the commission discussing:

23 (a) its use, sale, trading or transfer  
24 of renewable energy certificates; and

25 (b) whether and how its public claims of

1 renewable energy generation account for renewable energy  
2 certificates that it has traded, sold or transferred;

3 (3) that are used for the purpose of meeting  
4 the renewable portfolio standard shall be registered with a  
5 renewable energy generation information system that is designed  
6 to create and track ownership of renewable energy certificates  
7 and that, through the use of independently audited generation  
8 data, verifies the generation and delivery of electricity  
9 associated with each renewable energy certificate and protects  
10 against multiple counting of the same renewable energy  
11 certificate; and

12 (4) may be carried forward for up to four  
13 years from the date of issuance to establish compliance with  
14 the renewable portfolio standard, after which they shall be  
15 deemed retired by the public utility.

16 C. A public utility shall be responsible for  
17 demonstrating that a renewable energy certificate used for  
18 compliance with the renewable portfolio standard is derived  
19 from eligible renewable energy resources."

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