

HOUSE BILL 432

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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AN ACT

RELATING TO UTILITIES; ENACTING THE AFFORDABLE SOLAR ENERGY
ACT; ALLOWING FOR ON-BILL FINANCING FOR CERTAIN ENERGY
EFFICIENCY AND CONSERVATION IMPROVEMENTS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Affordable Solar Energy Act".

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

A. "energy conservation system" includes a fuel-
switching system that replaces existing equipment using a
particular fuel with equipment that uses another fuel that does
not increase greenhouse gas emissions and that:

(1) is more fuel efficient; or

(2) results in lower fuel expense;

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1 B. "meter conservation charge" means a charge
2 placed on a customer's utility bill by a utility to recover
3 costs under an on-bill financing agreement;

4 C. "on-bill financing agreement" means an agreement
5 entered into pursuant to Section 3 of the Affordable Solar
6 Energy Act; and

7 D. "utility" means an entity that provides retail
8 electric service in New Mexico, including a public utility, a
9 rural electric cooperative or municipal utility.

10 **SECTION 3. [NEW MATERIAL] ON-BILL FINANCING OF ENERGY**
11 **EFFICIENCY AND CONSERVATION IMPROVEMENTS--AUTHORIZATION--**
12 **ELIGIBILITY.--**

13 A. A utility may enter into a written on-bill
14 financing agreement with a customer to finance the purchase and
15 installation of a renewable energy system, energy efficiency
16 device, energy storage device or energy conservation system in
17 a residence or building that is eligible under Subsection B of
18 this section by assessing a meter conservation charge on the
19 customer's utility bill.

20 B. A residence or building is eligible for on-bill
21 financing under the Affordable Solar Energy Act if, at the time
22 the on-bill financing agreement is entered into, the residence
23 or building:

24 (1) is occupied or in use; and

25 (2) is not under initial construction.

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1 C. An on-bill financing agreement must clearly
2 state the interest rate to be charged for financing the
3 purchase and installation of the renewable energy system,
4 energy efficiency device, energy storage device or energy
5 conservation system. The interest shall be set at a rate that
6 is fixed over the term of the agreement.

7 D. An on-bill financing agreement is not valid
8 under this section unless the utility has offered the customer
9 in writing the option of purchasing a repair and maintenance
10 agreement for the renewable energy system, energy efficiency
11 device, energy storage device or energy conservation system
12 before the purchase and installation of the system or device.
13 A repair and maintenance agreement under this section shall:

14 (1) be for a term of not less than the
15 duration of the on-bill financing agreement;

16 (2) benefit the customer and any subsequent
17 owner of the residence or building from whom the utility may
18 recover the costs under the on-bill financing agreement under
19 Section 5 of the Affordable Solar Energy Act; and

20 (3) for a fixed periodic fee, maintain the
21 original function and performance of the renewable energy
22 system, energy efficiency device, energy storage device or
23 energy conservation system.

24 E. A customer may decline to purchase a repair and
25 maintenance agreement described under Subsection D of this

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1 section only if the customer enters into an agreement in
2 writing with the utility to pay the balance of the on-bill
3 financing agreement before transferring ownership of the
4 residence or building. At the time of transfer of ownership,
5 the subsequent owner may waive the requirement that the
6 customer pay the balance of the on-bill financing agreement by
7 notifying the utility in writing that the subsequent owner
8 assumes the balance owed on the on-bill financing agreement.

9 F. The balance owed on an on-bill financing
10 agreement may be paid in full at any time without penalty.

11 G. Nothing in this section requires a utility to
12 enter into an on-bill financing agreement with a specific
13 customer or for a specific device or system.

14 SECTION 4. [NEW MATERIAL] METER CONSERVATION CHARGE.--

15 A. A meter conservation charge assessed under
16 Section 3 of the Affordable Solar Energy Act may only be used
17 to recover the:

18 (1) actual costs incurred by the utility for
19 the purchase, installation and financing of the renewable
20 energy system, energy efficiency device, energy storage device
21 or energy conservation system, including the administrative
22 costs of the on-bill financing agreement and the cost of filing
23 notice under Section 5 of the Affordable Solar Energy Act;

24 (2) repayment of costs incurred by a third
25 party that has performed a function under Section 8 of the

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1 Affordable Solar Energy Act; and

2 (3) periodic fee for a repair and maintenance
3 agreement under Subsection D of Section 3 of the Affordable
4 Solar Energy Act.

5 B. A utility may assess a meter conservation charge
6 on:

7 (1) the customer who entered into the on-bill
8 financing agreement; or

9 (2) a subsequent owner of the residence or
10 building under Section 6 of the Affordable Solar Energy Act.

11 C. A meter conservation charge shall be shown as a
12 separate line item on a customer's bill.

13 D. A utility may treat a customer's failure to pay
14 a meter conservation charge as a failure to pay the utility
15 account, and the utility may disconnect the utility service for
16 nonpayment of the meter conservation charge, if the utility
17 complies with all applicable laws for discontinuation or
18 disconnection of service. A utility shall not remove a
19 renewable energy system, energy efficiency device, energy
20 storage device or energy conservation system for failure to pay
21 a meter conservation charge or when disconnecting service for
22 failure to pay a meter conservation charge.

23 E. The billing and collection of a meter
24 conservation charge does not subject a utility to the laws that
25 regulate financial institutions, escrow depositories or

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1 collection agencies. A utility is not responsible for a
2 lending, underwriting or credit determination for an on-bill
3 financing agreement.

4 SECTION 5. [NEW MATERIAL] NOTICE OF ON-BILL FINANCING
5 AGREEMENT AND METER CONSERVATION CHARGE.--

6 A. A utility that enters into an on-bill financing
7 agreement shall file notice of the on-bill financing agreement
8 and related meter conservation charge in the office of the
9 county clerk in the county in which the residence or building
10 subject to the agreement is located. Notice under this
11 subsection does not constitute a lien on the property, but is
12 intended to give an owner of the residence or building notice
13 that the residence or building is subject to a meter
14 conservation charge. Notice is considered given if it is
15 sufficient to disclose to prospective owners the existence of
16 the meter conservation charge, including the balance owed under
17 the on-bill financing agreement, whether the system or device
18 is covered by a repair and maintenance agreement described in
19 Subsection D of Section 3 of the Affordable Solar Energy Act
20 and the length of time the meter conservation charge is
21 expected to remain in effect.

22 B. A utility shall file notice of satisfaction when
23 an on-bill financing agreement is paid in full. Notice of
24 satisfaction shall be filed in the office of the county clerk
25 in the county in which the residence or building subject to the

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1 on-bill financing agreement is located.

2 SECTION 6. [NEW MATERIAL] TRANSFERABILITY OF ON-BILL
3 FINANCING BALANCES TO SUBSEQUENT OWNERS.--A utility that enters
4 into an on-bill financing agreement may recover the balance of
5 the costs allowed under the agreement from a subsequent owner
6 of the residence or building in which the renewable energy
7 system, energy efficiency device, energy storage device or
8 energy conservation system was installed if the utility gives
9 notice under Section 5 of the Affordable Solar Energy Act that
10 the residence or building is subject to the agreement.

11 SECTION 7. [NEW MATERIAL] RENTAL PROPERTY.--A utility may
12 recover the costs under an on-bill financing agreement for a
13 rental property by assessing a meter conservation charge on a
14 utility bill only if the landlord is responsible for the entire
15 utility bill, including the meter conservation charge.

16 SECTION 8. [NEW MATERIAL] THIRD PARTIES--CONTRACTING AND
17 LIABILITY.--

18 A. A utility may contract with a third party to
19 perform functions permitted under the Affordable Solar Energy
20 Act, including financing the purchase and installation costs
21 for a renewable energy system, energy efficiency device, energy
22 storage device or energy conservation system and the third
23 party shall comply with the provisions of the Affordable Solar
24 Energy Act.

25 B. If the installation, operation or maintenance of

1 a renewable energy system, energy efficiency device, energy
2 storage device or energy conservation system is performed by a
3 third party:

4 (1) the utility is not liable for the
5 installation, operation or maintenance of the renewable energy
6 system, energy efficiency device, energy storage device or
7 energy conservation system;

8 (2) the utility may not provide, nor is there
9 implied, a warranty of merchantability or fitness of the
10 renewable energy system, energy efficiency device, energy
11 storage device or energy conservation system; and

12 (3) no action may be brought against the
13 utility related to the failure of the renewable energy system,
14 energy efficiency device, energy storage device or energy
15 conservation system.

16 C. When a utility contracts with a third party to
17 perform administrative or financing functions:

18 (1) the third party is not liable for the
19 installation, operation or maintenance of the renewable energy
20 system, energy efficiency device, energy storage device or
21 energy conservation system;

22 (2) the third party shall not provide, nor is
23 there implied, a warranty of merchantability or fitness of the
24 renewable energy system, energy efficiency device, energy
25 storage device or energy conservation system; and

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1 (3) an action shall not be brought against the
2 third party related to the failure of the renewable energy
3 system, energy efficiency device, energy storage device or
4 energy conservation system.

5 D. The provisions of Subsections B and C of this
6 section shall not be construed to impair the rights and
7 remedies of a utility customer against any other parties to a
8 transaction involving the purchase or installation of a
9 renewable energy system, energy efficiency device, energy
10 storage device or energy conservation system.