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SENATE BILL 325

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Sue Wilson

AN ACT

RELATING TO ELECTRICITY; PROVIDING FOR RENEWABLE ENERGY TAX  
CREDITS AGAINST CORPORATE INCOME TAX; MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] FINDINGS AND PURPOSE. --The legislature finds that the rapid increase in costs of fuel and the proposed restructuring of the electric industry are creating increasing uncertainty about the long-range prospects for a stable supply of electricity at reasonable cost to the residents and businesses in New Mexico. The state is blessed with an abundance of technological expertise and natural resources that can be used to help develop alternative sources of electricity using low- or zero-emission technologies. Developing those resources can also generate new employment and business opportunities for the residents of the state and

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1 help New Mexico lead the nation in applying new technologies  
2 to produce electricity using renewable energy sources.  
3 Electricity produced using wind energy and fuel cells is  
4 becoming commercially viable on a large scale. Providing  
5 incentives to private industry to invest in and produce  
6 electricity with renewable energy sources will promote greater  
7 use of low- and zero-emission technologies and less reliance  
8 on non-renewable energy sources for electricity production  
9 and, for residents of areas of the state with high wind energy  
10 potential, create new sources of jobs and income. Promoting  
11 these technologies now will help ensure that electric  
12 consumers in New Mexico will have a stable supply of surplus  
13 energy available at reasonable rates in the future.

14 Section 2. A new section of the Corporate Income and  
15 Franchise Tax Act is enacted to read:

16 "[NEW MATERIAL] CORPORATE INCOME AND FRANCHISE TAX--  
17 RENEWABLE ENERGY INVESTMENT CREDITS-- DEFINITIONS. --

18 A. A taxpayer that is a small energy producer and  
19 owns a qualified energy generator, and that files a New Mexico  
20 corporate income tax return may claim a renewable energy  
21 investment credit against corporate income tax in an amount up  
22 to fifty thousand dollars (\$50,000), equal to twenty percent  
23 of the cost of productive capital used exclusively for  
24 generation of electricity using a qualified energy resource.

25 B. To qualify for the credit pursuant to

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1 Subsection A of this section, the productive capital must be  
2 placed in service in New Mexico during the taxable year for  
3 which the credit is claimed, the credit must be claimed within  
4 a year of the productive capital being placed in service and  
5 the taxpayer must submit a tax credit claim from the public  
6 regulation commission qualifying the taxpayer for the credit.

7 C. The credit may be deducted from the taxpayer's  
8 corporate income tax liability; provided that, if the credit  
9 exceeds the tax liability for the taxable year in which the  
10 productive capital was placed in service, the taxpayer may  
11 carry forward the credit for up to a total of five taxable  
12 years. A taxpayer may claim the credit for each taxable year  
13 in which productive capital is placed in service; provided  
14 that the maximum aggregate credit allowable for a qualified  
15 energy generator for any taxable year shall not exceed fifty  
16 thousand dollars (\$50,000).

17 D. A taxpayer may not claim the credit provided by  
18 the provisions of this section if the taxpayer has claimed a  
19 credit for the same productive capital pursuant to the  
20 Investment Credit Act.

21 E. As used in this section:

22 (1) "productive capital" means tangible  
23 personal property that is depreciable, has a useful life of at  
24 least three years and is used exclusively as an integral part  
25 of the equipment used to generate electricity using a

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1 qualified energy resource;

2 (2) "qualified energy generator" means a  
3 facility located in New Mexico that is put into production  
4 after July 1, 2001, that produces electricity using a  
5 qualified energy resource;

6 (3) "qualified energy resource" means  
7 electrical energy generated by means of a low- or zero-  
8 emissions generation technology that has substantial long-term  
9 production potential and for the purposes of this section  
10 includes only generation technology using any of the following  
11 energy sources: solar light; solar heat; wind; geothermal;  
12 landfill gas; anaerobically digested waste biomass; and fuel  
13 cells; and

14 (4) "small energy producer" means a person  
15 that does not own electric generating facilities or owns  
16 facilities that have a net production capacity of less than  
17 ten megawatts. "

18 Section 3. A new section of the Corporate Income and  
19 Franchise Tax Act is enacted to read:

20 "[NEW MATERIAL] CORPORATE INCOME AND FRANCHISE TAX--  
21 RENEWABLE ENERGY PRODUCTION CREDIT-- DEFINITIONS. --

22 A. A taxpayer that owns a qualified energy  
23 generator using a qualified energy resource is eligible for a  
24 renewable energy production credit in an amount equal to one  
25 and one-half cent (\$.015) per kilowatt hour for the

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1 electricity so produced. The production credit may be  
2 deducted annually from the taxpayer's corporate income tax  
3 liability.

4 B. The production credit is available to a  
5 qualified energy generator that begins producing electricity  
6 after July 1, 2001. A qualified energy generator is eligible  
7 for a production credit for ten consecutive years, beginning  
8 on the date the qualified generator begins producing  
9 electricity. The taxpayer must submit a tax credit claim  
10 issued by the public regulation commission qualifying the  
11 taxpayer for the credit.

12 C. As used in this section:

13 (1) "qualified energy generator" means a  
14 facility located in New Mexico that produces electricity using  
15 a qualified energy resource and that sells that electricity to  
16 an unrelated person; and

17 (2) "qualified energy resource" means  
18 electrical energy generated by means of a low- or zero-  
19 emissions generation technology that has substantial long-term  
20 production potential and for the purposes of this section  
21 includes only generation technology using any of the following  
22 energy sources: solar light; solar heat; wind; geothermal;  
23 landfill gas; anaerobically digested waste biomass; and fuel  
24 cells. "

25 Section 4. [NEW MATERIAL] VERIFICATION OF RENEWABLE

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1 ENERGY CREDIT--PUBLIC REGULATION COMMISSION RULES--TAX CREDIT  
2 CLAIM FORM- ANNUAL LIMIT. --

3 A. A taxpayer may apply for verification of  
4 eligibility for a renewable energy investment tax credit or  
5 production tax credit with the public regulation commission,  
6 which shall determine if the applicant is a qualified energy  
7 generator using a qualified energy resource. The commission  
8 shall issue a tax credit claim to the taxpayer if the taxpayer  
9 qualifies for the credit and the taxpayer has applied before  
10 the annual limit on tax credit claims is reached.

11 B. The public regulation commission shall limit  
12 the total amount of tax credit claims approved and issued  
13 annually to no more than eight million dollars (\$8,000,000) on  
14 a first-come, first-served basis. Once a taxpayer has been  
15 granted a production tax credit for a given facility, that  
16 taxpayer shall be allowed to keep its original date of  
17 application for that credit for that facility until either the  
18 facility goes out of production for more than six months in a  
19 year or until the facility's ten-year eligibility has expired.

20 C. The public regulation commission shall provide  
21 tax credit claim forms. A tax credit claim shall accompany  
22 any return to which the taxpayer wishes to apply an approved  
23 credit, and the claim shall specify the amount of credit  
24 intended to apply to each return.

25 D. The public regulation commission shall adopt

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1 and promulgate rules necessary to carry out the provisions of  
2 this section and shall report annually to the legislature on  
3 the costs of administering the provisions of this section.

4 Section 5. APPROPRIATION. -- One hundred thousand dollars  
5 (\$100,000) is appropriated from the general fund to the public  
6 regulation commission for expenditure in fiscal year 2002 to  
7 fund one full-time-equivalent position and to carry out the  
8 provisions of Section 4 of this act. Any unexpended or  
9 unencumbered balance remaining at the end of fiscal year 2002  
10 shall revert to the general fund.

11 Section 6. APPLICABILITY. -- The provisions of this act  
12 apply to taxable years beginning on or after January 1, 2001.

13 Section 7. EFFECTIVE DATE. -- The effective date of the  
14 provisions of this act is July 1, 2001.