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**HOUSE BILL 121**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**Roberto "Bobby" J. Gonzales**

**FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**AN ACT**

**RELATING TO TAXATION; CHANGING THE RENEWABLE ENERGY PRODUCTION  
TAX CREDIT RATE FOR THE USE OF SOLAR- ENERGY- DERIVED QUALIFIED  
ENERGY GENERATORS; CHANGING ELECTRICITY PRODUCTION REQUIREMENTS  
FOR THE CALCULATION OF RENEWABLE ENERGY PRODUCTION TAX CREDITS;  
MAKING THE RENEWABLE ENERGY PRODUCTION TAX CREDITS REFUNDABLE.**

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

**Section 1. Section 7-2A-19 NMSA 1978 (being Laws 2002,  
Chapter 59, Section 1, as amended) is amended to read:**

**"7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--  
LIMITATIONS-- DEFINITIONS-- CLAIMING THE CREDIT. --**

**A. A taxpayer that owns a qualified energy  
generator certified by the energy, minerals and natural  
resources department is eligible for a tax credit in an amount  
equal to one cent (\$.01) per kilowatt-hour for the first four**

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1 hundred thousand megawatt-hours of electricity produced by the  
2 qualified energy generator using a wind- or biomass-derived  
3 qualified energy resource in the taxable year. A taxpayer that  
4 owns a qualified energy generator certified by the energy,  
5 minerals and natural resources department is eligible for a tax  
6 credit in an amount equal to four cents (\$.04) per kilowatt-  
7 hour for the first one hundred thousand megawatt-hours of  
8 electricity produced by the qualified energy generator using a  
9 solar-light- or solar-heat-derived qualified energy resource in  
10 the taxable year. A taxpayer shall be eligible for the tax  
11 credit for ten consecutive years, beginning on the date the  
12 qualified energy generator begins producing electricity. The  
13 tax [~~credit~~] credits provided in this section may be referred  
14 to as the "renewable energy production tax [~~credit~~] credits".

15 B. As used in this section:

16 (1) "biomass" means agricultural or animal  
17 waste; thinnings from trees less than fifteen inches in  
18 diameter, slash and brush; lumbermill or sawmill residues; and  
19 salt cedar and other phreatophytes removed from watersheds or  
20 river basins;

21 (2) "qualified energy generator" means a  
22 facility with at least [~~ten megawatts~~] one megawatt generating  
23 capacity located in New Mexico that produces electricity using  
24 a qualified energy resource and that sells that electricity to  
25 an unrelated person; and

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1                                   (3) "qualified energy resource" means a  
2 resource that generates electrical energy by means of a  
3 fluidized bed technology or similar low-emissions technology or  
4 a zero-emissions generation technology that has substantial  
5 long-term production potential and that uses only the following  
6 energy sources:

- 7   (a) solar light;
- 8   (b) solar heat;
- 9   (c) wind; or
- 10    (d) biomass.

11                                   C. A taxpayer may request certification of  
12 eligibility for ~~[the]~~ a renewable energy production tax credit  
13 from the energy, minerals and natural resources department,  
14 which shall determine if the applicant is a qualified energy  
15 generator; provided that the department may certify the  
16 eligibility of an energy generator only if the total amount of  
17 electricity that may be produced annually by all qualified  
18 energy generators that are certified will not exceed two  
19 million megawatt-hours. Applications shall be considered in  
20 the order received. The energy, minerals and natural resources  
21 department may estimate the annual power-generating potential  
22 of a generating facility for the purposes of this section. The  
23 energy, minerals and natural resources department shall issue a  
24 certificate to the applicant stating whether the applicant is  
25 an eligible qualified energy generator and the estimated annual

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1 production potential of the generating facility, which shall be  
2 the limit of that facility's energy production eligible for the  
3 tax credit for the taxable year. The energy, minerals and  
4 natural resources department may issue rules governing the  
5 procedure for administering the provisions of this subsection.

6 D. To claim a renewable energy production tax  
7 credit, a taxpayer that has been certified as eligible pursuant  
8 to Subsection C of this section shall submit to the taxation  
9 and revenue department the certificate issued by the energy,  
10 minerals and natural resources department, documentation of the  
11 amount of electricity produced by the taxpayer's facility in  
12 the taxable year and any other information the taxation and  
13 revenue department may require to determine the amount of the  
14 tax credit due the taxpayer.

15 E. Once a taxpayer has been granted a renewable  
16 energy production tax credit for a given facility, that  
17 taxpayer shall be allowed to retain its original date of  
18 application for tax credits for that facility until either the  
19 facility goes out of production for more than six consecutive  
20 months in a year or until the facility's ten-year eligibility  
21 has expired.

22 F. ~~[The]~~ A renewable energy production tax credit  
23 may be deducted from the taxpayer's New Mexico corporate income  
24 tax liability for the taxable year. If the amount of the tax  
25 credit claimed exceeds the taxpayer's corporate income tax

1 liability, the excess [~~may be carried forward for up to five~~  
2 ~~consecutive taxable years~~] shall be refunded to the taxpayer."

3 Section 2. APPLICABILITY. -- The provisions of this act  
4 apply to taxable years beginning on or after January 1, 2005.

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