LFC Requester:	

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/23/2025
Bill Number: HB538

Check all that apply:
Original X Correction __
Amendment __ Substitute __

Sponsor: Meredith A. Dixon, Nathan P. Small, Mark Duncan, William E. Sharer
Short Title: Industrial Decarbonization Production Credits

Agency Name and Code Number: Economic Development Department 41900
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 538 (HB538) creates the industrial decarbonization production corporate income tax credit and the industrial decarbonization investment corporate income tax credit under the Corporate Income and Franchise Tax Act.

A taxpayer who owns or operates a qualified industrial facility and reduces the net carbon dioxide equivalent emissions of its product by at least 40 percent below the industrial benchmark for a comparable product before taxable year 2031 may claim the industrial decarbonization production corporate income tax credit against corporate income tax liability.

The credit equals $85 per metric ton of net carbon dioxide equivalent reduced below the industrial benchmark in a taxable year, up to a maximum of $10,000,000 per facility per taxable year. However, if the Department of Energy determines that a facility is highly likely to create new jobs, attract significant new investment, and reduce emissions by at least 50 percent below the industrial benchmark, it may certify up to $15,000,000 per facility per taxable year.

A taxpayer must apply for certification of eligibility from the New Mexico Environment Department (NMED). The application must include evidence that the facility meets the ownership and emissions reduction requirements, along with a life cycle assessment of production, an industrial benchmark for emissions of a comparable product, and any additional evidence required by NMED.

If NMED determines that the taxpayer qualifies, it issues a dated certificate of eligibility with the approved credit amount and taxable year in which the credit may be claimed. A taxpayer must claim the credit using the forms and procedures required by the Taxation and Revenue Department (TRD) within 12 months after the calendar year of the certificate issuance. A taxpayer cannot claim the credit if they also claim the federal carbon dioxide sequestration tax credit under the Internal Revenue Code for the same facility in the same taxable year.

A taxpayer who owns or operates a qualified industrial facility that makes qualified expenditures for the facility from January 1, 2025, to January 1, 2031, and has claimed the aforementioned industrial decarbonization production corporate income tax credit (production credit) may claim the industrial decarbonization investment corporate income tax credit against corporate income tax liability.

The credit equals the lesser of 10 percent of qualified expenditures or $5,000,000 per facility. However, if NMED determines that a facility meets the same enhanced certification criteria as the production credit, it may certify up to $7,500,000 per facility per taxable year.

A taxpayer must apply for certification from NMED within 12 months after claiming the production credit. The application must include information required by NMED to determine eligibility, including a certificate of eligibility for the production credit for the same taxpayer and facility.

If NMED determines that the taxpayer qualifies, it issues a dated certificate of eligibility with the approved credit amount and taxable year in which the credit may be claimed. A single certificate of eligibility is issued for all activities at a facility, regardless of ownership. A taxpayer must claim the credit using the forms and procedures required TRD within 12 months after the calendar year of the certificate issuance.

The total annual aggregate amount that may be certified for each of the two credits is $30,000,000 in 2026, $50,000,000 in 2027, and $100,000,000 per calendar year thereafter. Applications for each credit are processed in the order received. For each credit, NMED must regularly provide TRD with issued certificates of eligibility and also regularly publish the number of certified tax credits on its website.

A certificate of eligibility for each credit may be sold, exchanged, or transferred to another taxpayer for its full value. The parties involved in such transactions must notify TRD within 10 days of the transaction. Any portion of the credit that exceeds a taxpayer's tax liability in the taxable year is not refundable but may be carried forward for up to three consecutive taxable years.

Each credit must be included in the tax expenditure budget with the total annual aggregate cost. The provisions of this act apply to taxable years beginning on or after January 1, 2025, and are repealed effective January 1, 2033.

FISCAL IMPLICATIONS

House Bill 538 ask the New Mexico Taxation and Revenue Department to provide & track this credit for up to three years of each instance of achieving the parameters defined. It also asks New Mexico Taxation and Revenue Department to allow for this credit to be transferred to another taxpayer. These additional requirements and tracking will most likely create the need for additional resources including new FTEs for New Mexico Taxation and Revenue Department.

SIGNIFICANT ISSUES

House Bill 538 does create significant capital investment and job creation opportunities in the specified industry sectors. The tax credits as outlined will provide the type of incentive that will put New Mexico in a positive light for these investments while still achieving the goals of carbon reduction. These credits will not only encourage existing business to make the necessary investments to achieve these carbon reductions they will also provide the incentive to choose New Mexico over neighboring states for new investments.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

In Section 1, Subsection B, the bill references the Department of Energy as the entity responsible for determining whether a facility qualifies for an increased certification amount. However, based on the structure and responsibilities outlined in other sections of the bill, this reference was likely intended to be the New Mexico Environment Department (NMED) rather than the Department of Energy. Clarifying this discrepancy would ensure consistency and prevent potential confusion in the bill's implementation.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS