

LFC Requester:

Torres

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(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: Feb 21, 2025

Check all that apply:

Bill Number: HB538

Original Correction

Amendment Substitute

**Agency Name
and Code**

NMED-667

Number:

Sponsor: Dixon

INDUSTRIAL

Person Writing

Michelle Miano

Short

DECARBONIZATION

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PRODUCTION AND

INVESTMENT CREDITS

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
0	0	0	NA

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
0	0	0	0	N/A

(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		1,635	1,635	4,905	recurring	General Fund

(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:

Section 1 of House Bill 538 (HB538) establishes the “Industrial Decarbonization Production Corporate Income Tax Credit.” HB538 creates a tax credit for qualified industrial facilities in New Mexico that significantly reduce their carbon emissions on a production basis, rewarding actual, verified emission reductions on a production basis. Facilities that cut emissions by at least 40% below benchmarks from a comparable industrial facility may receive a tax credit of \$85 per metric ton of carbon dioxide equivalent (CO₂e), up to \$10 million per facility annually. Facilities that demonstrate job creation and achieve 50% reductions that may receive up to \$15 million in tax credits. The program runs until 2031 with funding caps of \$30 million in 2026, \$50 million in 2027, and \$100 million annually thereafter. Eligible facilities include those producing concrete, cement, asphalt, iron, steel, glass, hydrogen, critical minerals, or refinement facilities. A taxpayer seeking to claim the tax credit must apply for certification of eligibility through the Environment Department (“NMED” or “Department”) that includes documentation that the taxpayer owns or operates the facility; life cycle assessment demonstrating the required CO₂e emission reduction; an industrial benchmark in the same product category as the taxpayer’s product; and any other evidence required by the NMED. NMED shall provide the certification of eligibility to Tax and Revenue Department on a regular basis. The taxpayer cannot claim this credit alongside federal carbon sequestration credits. Credits can be transferred to other taxpayers and carried forward for three years if unused.

Section 2 of HB538 establishes the “Industrial Decarbonization Investment Corporate Income Tax Credit.” This credit applies to taxpayers who own or operate a qualified industrial facility in New Mexico and make qualified expenditures to reduce the facility's carbon emissions. The credit amount is the lesser of 10% of qualified expenditures or \$5 million per facility, per taxable year. If NMED certifies that the facility has a high likelihood of creating jobs, attracting investment, and reducing carbon emissions by at least 50% below the industrial benchmark, the credit limit can be up to \$7.5 million. To claim the credit, a taxpayer must apply for certification from NMED within 12 months of claiming the related “Industrial Decarbonization Production Corporate Income Tax Credit” (from Section 1). The application must include information about the facility, qualified expenditures, proof of equipment installation, and the certificate of eligibility for the production tax credit. Only one investment tax credit certificate will be issued per facility. The total annual aggregate amount of investment tax credits that can be certified is capped at \$30 million in 2026, \$50 million in 2027, and \$100 million annually thereafter. This credit can be carried forward for three years if they exceed the taxpayer's tax liability and can be sold, exchanged, or transferred. The tax credit will be included in the tax expenditure budget.

FISCAL IMPLICATIONS

To manage the work identified in HB538, NMED will need \$1,635 thousand per year: \$700 thousand per year for salary and benefits; \$245 thousand per year in indirect costs; \$40 thousand

per year for equipment; and \$650 thousand per year for contractual support. NMED will need at least 5 full-time employees to manage the program, more if the number of facilities seeking certification is greater than 12 per fiscal year. NMED staff will need to determine the appropriate regulatory framework for the program, including rulemaking if necessary, conduct site visits, define benchmarks, set up an online application system, review and verify the information submitted in each application, issue certifications, coordinate with tax and revenue, post necessary information to the Department website, and work with interested parties. The contractual support is for technical support for developing the online application process, establishing facility benchmarks, reviewing lifecycle emission submitted applications, and other program support. HB538 is a recurring impact on NMED's budget. Currently, NMED does not manage tax credit program validation or have online tools to expand to this effort.

The existing Executive budget request for NMED includes a \$3 million special appropriation (one time funding) for climate change program already enacted. In contrast, the Legislative Finance Committee and existing version of House Bill 2 as passed by the House Appropriations and Finance Committee recommend \$0. This one-time funding was requested as a bridge to stand up certain programs that will then be sustained by program fees. With a \$0 appropriation in House Bill 2, NMED cannot implement existing laws such as Clean Transportation Fuel Standard (NMSA 1978, Section 74-1-18) passed by the Legislature in 2024. NMED cannot absorb additional responsibilities as described in HB538 without funding the non-discretionary duties of implementing the existing programs.

SIGNIFICANT ISSUES

HB538 bill requires that the taxpayer submit the comparable industrial benchmark, while NMED is better positioned to determine the appropriate industrial benchmark. Without NMED determining the benchmark, the submitted information needs to be certified through a third-party verification system.

PERFORMANCE IMPLICATIONS

The Department will need at least 12 months to hire and train the staff and the technical experts to be ready to review the taxpayer applications and provide the certifications for applications submitted to the Department; thus the Department recommends beginning these tax incentives for taxable year beginning January 1, 2026.

According to data in the U.S. Environmental Protection Agency's Greenhouse Gas Reporting Program (EPA-GHGRP), there are at least 85 facilities in New Mexico that could apply for this tax credit.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB538 provides incentives for industrial and production corporations to reduce greenhouse gas emissions reductions to advance the directives as set in Executive Order 2019-003 Executive Order on Addressing Climate Change and Energy Waste Prevention.

TECHNICAL ISSUES

The process of coordinating with the U.S. Department of Energy for the determination that "a qualified industrial facility has a high likelihood of creating new jobs, bringing significant new investment to the state and reducing the net carbon dioxide equivalent emissions of the product

produced by the facility to at least fifty percent below the industrial benchmark of a comparable product in the same product category” as in Section 1.B will require the Department to review information provided by another agency before issuing the certification of eligibility. This may cause additional, and perhaps unnecessary duplication in the certification process. In Section 2 of HB538, the certification is the responsibility of the Department.

The definitions of “industrial benchmark” in Sections 1 and 2 are not the same and may cause confusion. The definition in section 1 refers to the average emissions, and the definition in section 2 refers to typical emissions. The Department recommends using average emissions in both Section 1 and Section 2.

OTHER SUBSTANTIVE ISSUES

A \$0 appropriation to NMED’s Climate Change Bureau with the directives under HB528 also potentially increases the State of New Mexico’s risk under the *Atencio v. State* lawsuit.

ALTERNATIVES

- In Section 1, page 2, line 12, replace the Department of Energy with the Environment Department.
- Use the definition of “industrial benchmark” in Section 1 for the definition in Section 2
- Duplicate the certification of eligibility language from Section 1 in Section 2.
- Change the year in Section 4. Applicability to January 1, 2026, and align all time references throughout HB538 to begin with the 2026 tax year.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Without this tax credit as an incentive, the State of New Mexico will need to develop other climate measures to reach the state’s carbon reduction goals. NMED’s Climate Change Bureau will continue to need a funding source regardless if this bill is enacted or not giving existing obligations.

AMENDMENTS

See “Alternatives” above.