FISCAL IMPACT REPORT

SPONSOR Reps. Dixon, Small and Duncan/ Sen. Sharer

LAST UPDATED

ORIGINAL DATE 2/28/25

SHORT TITLE Industrial Decarbonization Production Credits

BILL NUMBER House Bill 538

ANALYST Torres

REVENUE*
(dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
CIT - Industrial Decarb. Production Tax Credit		Up to ($30,000.0)	Up to ($50,000.0)	Up to ($100,000.0)	Up to ($100,000.0)	Recurring	General Fund
CIT - Industrial Decarb. Investment Tax Credit		Up to ($30,000.0)	Up to ($50,000.0)	Up to ($100,000.0)	Up to ($100,000.0)	Recurring	General Fund
TOTAL Corporate Income Tax		**Up to ($60,000.0)**	**Up to ($100,000.0)**	**Up to ($200,000.0)**	**Up to ($200,000.0)**	**Recurring**	**General Fund**

Parentheses ( ) indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMED		$1,635.0	$1,635.0	$4,905.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
State Ethics Commission (SEC)
Energy, Minerals, and Natural Resources Department (EMNRD)
Economic Development Department (EDD)
Environment Department (NMED)

Agency Analysis was Solicited but Not Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of House Bill 538

House Bill 538 (HB538) creates two corporate income tax credits: the industrial decarbonization production corporate income tax credit and the industrial decarbonization investment corporate income tax credit. These credits incentivize industrial facilities in New Mexico to reduce carbon emissions by providing tax credits for both production-based emissions reductions and investments in decarbonization technology.

The industrial decarbonization production corporate income tax credit allows qualified industrial facilities to claim a tax credit of $85 per metric ton of carbon dioxide equivalent emissions reduced beyond 40 percent below the industry benchmark for similar products. The maximum allowable credit per facility is $10 million per year, with an option for $15 million per year if the facility is determined to have a high likelihood of job creation and new investment.

The industrial decarbonization investment corporate income tax credit provides a credit equal to 10 percent of qualified expenditures for emissions-reducing equipment, with a cap of $5 million per facility per year. Facilities with significant job creation and investment potential may qualify for an increased cap of $7.5 million per year.

Both credits require certification from the Environment Department and prohibit facilities from claiming both the state tax credit and the federal 45Q carbon sequestration credit for the same emissions reductions. The cap for these credits starts at $30 million each in 2026, increases to $50 million each in 2027, and reaches $100 million per year each thereafter.

The credits are nonrefundable but may be carried forward for up to three years. They may also be transferred or sold to another taxpayer. The provisions of this bill apply to tax years beginning on or after January 1, 2025, and expire on January 1, 2033.

FISCAL IMPLICATIONS

HB538 establishes significant new corporate income tax credits, with an increasing annual cap on the total credits issued, reaching up to $200 million per year after 2027. This represents a substantial reduction in corporate income tax revenue, though the fiscal impact will depend on participation rates and the scale of emissions reductions achieved.

The transferability of credits may facilitate broader industry participation but could also result in speculative trading of tax credits, complicating revenue forecasting. The carryforward provision allows credits to be applied in future years, spreading revenue losses over multiple fiscal years with losses potentially exceeding $200 million per year if credit claims are delayed and claimed in the same year. Corporate income taxes are highly unpredictable and credit claims could be difficult to predict because companies claim them in years most beneficial to profit. This could result in unexpected losses to general fund revenues that are sufficient to cause revenue declines and budget reductions.

For the purposes of this analysis, costs were assumed to reach the cap and be fully claimed in the year earned due to an absence of information on potential uptake. This is highly unlikely; low to zero costs in the first year is more probable, with a potential doubling of credits in future years as credits are claimed simultaneously by new applicants and carryforward credits from previous applicants. For this reason, the creation of this tax expenditure has a cost that is difficult to determine but significant. LFC has serious concerns about the substantial risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or action be postponed until the implications can be more fully studied.

The Environment Department (NMED) and the Taxation and Revenue Department (TRD) will incur administrative costs related to certification, compliance monitoring, and credit tracking. The extent of these costs depends on the number of applicants and the complexity of verification processes.

SIGNIFICANT ISSUES

HB538 aligns with state and federal efforts to encourage industrial decarbonization and incentivize reductions in greenhouse gas emissions. By offering tax relief for facilities that achieve significant emissions reductions or invest in clean technology, the bill promotes economic and environmental benefits.

However, the effectiveness of the program depends on industry participation and enforcement. Ensuring that emissions reductions are verifiable and permanent will require robust oversight from NMED. Facilities may face technical and financial barriers to achieving the required 40 percent reduction in emissions, limiting eligibility.

The transferability of credits increases flexibility for taxpayers but introduces risks of speculative trading, where credits are bought and sold without direct ties to emissions reductions. Proper tracking and oversight will be necessary to ensure intended environmental benefits.

Finally, while the bill provides significant financial incentives for industrial decarbonization, the long-term impact on state revenue and economic growth remains uncertain. If the expected job creation and investment benefits do not materialize, the state could face a net loss in corporate tax revenue without sufficient economic offsets.

Energy, Minerals, and Natural Resources Department (EMNRD) adds:

> HB538 may assist in the reduction of waste gas in New Mexico from qualifying facilities, which the Oil Conservation Division also regulates at production and midstream facilities. Emissions reductions practices or technologies installed at gas processing plants or oil refineries could potentially limit the transfer of unrefined product to the qualifying facilities. It has been observed that temporary outages or restricted processing at natural gas plants can effectively limit a facility's acceptance of unrefined product, which can push venting or flaring decisions out to midstream or production facilities. Appropriate safeguards should be put in place to ensure that a qualifying facility does not receive a tax credit through a practice of relocating emissions sources to production or midstream facilities.

TECHNICAL ISSUES

NMED reports:

> 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

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

- **Adequacy**: Revenue should be adequate to fund needed government services.
- **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity**: Different taxpayers should be treated fairly.
- **Simplicity**: Collection should be simple and easily understood.
- **Accountability**: Preferences should be easy to monitor and evaluate.

In addition, staff reviews whether the bill meets principles specific to tax expenditures. Those policies and how this bill addresses those issues:

Tax Expenditure Policy Principle	Met?	Comments
Vetted: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.	×	
Targeted: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.		
Clearly stated purpose	×	
Long-term goals	×	
Measurable targets	×	
Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies	✓	
Accountable: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.		
Public analysis	✓	
Expiration date	✓	
Effective: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure.		
Fulfills stated purpose	?	
Passes "but for" test	?	
Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.	?	
Key: ✓ Met × Not Met ? Unclear		

IT/hj/hg/sgs