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**HOUSE BILL 894**

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

**INTRODUCED BY**

**Ben Lujan**

**AN ACT**

**RELATING TO ELECTRICITY; PROVIDING FOR RENEWABLE ENERGY TAX  
CREDITS AGAINST PERSONAL 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 Income Tax Act is  
15 enacted to read:

16 "[NEW MATERIAL] INCOME TAX--RENEWABLE ENERGY INVESTMENT  
17 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 personal income tax return may claim a renewable energy  
21 investment credit against personal 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

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 personal 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 husband and wife who file separate returns  
18 for a taxable year in which they could have filed a joint  
19 return may each claim only one-half of the credit that would  
20 have been allowed them on a joint return.

21 E. A taxpayer who otherwise qualifies and claims a  
22 credit on a qualified energy generator owned by a partnership  
23 or other business association of which the taxpayer is a  
24 member may claim a credit only in proportion to his interest  
25 in the partnership or association.

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F. As used in this section:

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

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

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

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

Section 3. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] PERSONAL INCOME TAX--RENEWABLE ENERGY

1      **PRODUCTION CREDIT-- DEFINITIONS. --**

2            A. A taxpayer that owns a qualified energy  
3 generator using a qualified energy resource is eligible for a  
4 renewable energy production credit in an amount equal to one  
5 and one-half cent (\$.015) per kilowatt hour for the  
6 electricity so produced. The production credit may be  
7 deducted annually from the taxpayer's personal income tax  
8 liability.

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

17           C. A husband and wife who file separate returns  
18 for a taxable year in which they could have filed a joint  
19 return may each claim only one-half of the credit that would  
20 have been allowed them on a joint return.

21           D. A taxpayer who otherwise qualifies and claims a  
22 credit on a qualified energy generator owned by a partnership  
23 or other business association of which the taxpayer is a  
24 member may claim a credit only in proportion to his interest  
25 in the partnership or association.

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1 E. As used in this section:

2 (1) "qualified energy generator" means a  
3 facility located in New Mexico that produces electricity using  
4 a qualified energy resource and that sells that electricity to  
5 an unrelated person; and

6 (2) "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. "

14 Section 4. [NEW MATERIAL] VERIFICATION OF RENEWABLE  
15 ENERGY CREDIT--PUBLIC REGULATION COMMISSION RULES--TAX CREDIT  
16 CLAIM FORM - ANNUAL LIMIT. --

17 A. A taxpayer may apply for verification of  
18 eligibility for a renewable energy investment tax credit or  
19 production tax credit with the public regulation commission,  
20 which shall determine if the applicant is a qualified energy  
21 generator using a qualified energy resource. The commission  
22 shall issue a tax credit claim to the taxpayer if the taxpayer  
23 qualifies for the credit and the taxpayer has applied before  
24 the annual limit on tax credit claims is reached.

25 B. The public regulation commission shall limit

1 the total amount of tax credit claims approved and issued  
2 annually to no more than eight million dollars (\$8,000,000) on  
3 a first-come, first-served basis. Once a taxpayer has been  
4 granted a production tax credit for a given facility, that  
5 taxpayer shall be allowed to keep its original date of  
6 application for that credit for that facility until either the  
7 facility goes out of production for more than six months in a  
8 year or until the facility's ten-year eligibility has expired.

9 C. The public regulation commission shall provide  
10 tax credit claim forms. A tax credit claim shall accompany  
11 any return to which the taxpayer wishes to apply an approved  
12 credit, and the claim shall specify the amount of credit  
13 intended to apply to each return.

14 D. The public regulation commission shall adopt  
15 and promulgate rules necessary to carry out the provisions of  
16 this section and shall report annually to the legislature on  
17 the costs of administering the provisions of this section.

18 Section 5. APPROPRIATION.--One hundred thousand dollars  
19 (\$100,000) is appropriated from the general fund to the public  
20 regulation commission for expenditure in fiscal year 2002 to  
21 fund one full-time-equivalent position and to carry out the  
22 provisions of Section 4 of this act. Any unexpended or  
23 unencumbered balance remaining at the end of fiscal year 2002  
24 shall revert to the general fund.

25 Section 6. APPLICABILITY.--The provisions of this act

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1 apply to taxable years beginning on or after January 1, 2001.

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

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