

FORTY-SEVENTH LEGISLATURE
SECOND SESSION, 2006

SB 469/a

February 14, 2006

Madam President:

Your **FINANCE COMMITTEE**, to whom has been referred

SENATE BILL 469, as amended

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. Strike Senate Corporations and Transportation Committee Amendments 3 and 4.

2. On page 1, between lines 18 and 19, insert the following new section to read:

"Section 1. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] RENEWABLE ENERGY PRODUCTION TAX CREDITS--
LIMITATIONS--DEFINITIONS--CLAIMING THE CREDITS.--

A. The tax credits provided in this section may be referred to as the "renewable energy production tax credits".

B. A person is eligible for the renewable energy production tax credits if the person:

(1) holds title to a qualified energy generator; or

(2) leases property upon which a qualified energy generator operates from a county or municipality under authority of an industrial revenue bond.

C. The amount of the tax credit shall equal one cent (\$.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator using a wind- or biomass-derived qualified energy resource in the taxable year; provided that the total amount of tax credits

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claimed by all taxpayers for a single qualified energy generator using a wind- or biomass-derived qualified energy resource in a taxable year shall not exceed one cent (\$.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator. The amount of the tax credit shall equal two cents (\$.02) per kilowatt-hour of the first two hundred thousand megawatt-hours of electricity produced by a qualified energy generator using a solar-light- or solar-heat-derived qualified energy resource in the taxable year; provided that the total amount of tax credits claimed by all taxpayers for a single qualified energy generator using a solar-light- or solar-heat-derived qualified energy resource shall not exceed two cents (\$.02) per kilowatt-hour of the first two hundred thousand megawatt-hours of electricity produced by the qualified energy resource in the taxable year.

D. A taxpayer eligible for the renewable energy production tax credits pursuant to Subsection B of this section shall be eligible for the renewable energy production tax credits for ten consecutive years, beginning on the date the qualified energy generator begins producing electricity.

E. As used in this section:

(1) "biomass" means organic material that is available on a renewable or recurring basis, including:

(a) forest-related materials, including mill residues, logging residues, forest thinnings from trees less than fifteen inches in diameter, slash, brush, low-commercial-value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

(b) agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws

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and stover, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey and lactose;

(c) animal waste, including manure and slaughterhouse and other processing waste;

(d) solid woody waste materials, including landscape or right-of-way tree trimmings, range land maintenance residues, waste pallets, crates and manufacturing, construction and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

(e) crops and trees planted for the purpose of being used to produce energy; and

(f) landfill gas, wastewater treatment gas and biosolids, including organic waste byproducts generated during the wastewater treatment process;

(2) "qualified energy generator" means a facility with at least one megawatt generating capacity located in New Mexico that produces electricity using a qualified energy resource and that sells that electricity to an unrelated person; and

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

(a) solar light;

(b) solar heat;

(c) wind; or

(d) biomass.

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F. A person that holds title to a facility generating electricity from a qualified energy resource or a person that leases such a facility from a county or municipality pursuant to an industrial revenue bond may request certification of eligibility for the renewable energy production tax credits from the energy, minerals and natural resources department, which shall determine if the facility is a qualified energy generator; provided that the department may certify the eligibility of an energy generator only if the total amount of electricity that may be produced annually by all qualified energy generators that are certified will not exceed two million megawatt-hours. Applications shall be considered in the order received. The energy, minerals and natural resources department may estimate the annual power-generating potential of a generating facility for the purposes of this section. The energy, minerals and natural resources department shall issue a certificate to the applicant stating whether the facility is an eligible qualified energy generator and the estimated annual production potential of the generating facility, which shall be the limit of that facility's energy production eligible for the tax credits for the taxable year. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection.

G. A taxpayer may be allocated all or a portion of the right to claim the renewable energy production tax credits without regard to proportional ownership interest if:

(1) the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership;

(2) the business entity:

(a) would qualify for the renewable energy production tax credits pursuant to Paragraph (1) or (2) of Subsection B of this section;

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(b) owns an interest in a business entity that is also taxed for federal income tax purposes as a partnership and that would qualify for the renewable energy production tax credits pursuant to Paragraph (1) or (2) of Subsection B of this section; or

(c) owns, through one or more intermediate business entities that are each taxed for federal income tax purposes as a partnership, an interest in the business entity described in Subparagraph (b) of this paragraph;

(3) the taxpayer and all other taxpayers allocated a right to claim the renewable energy production tax credits pursuant to this subsection own collectively at least a five percent interest in a qualified energy generator;

(4) the business entity provides notice of the allocation and the taxpayer's interest to the energy, minerals and natural resources department on forms prescribed by that department; and

(5) the energy, minerals and natural resources department certifies the allocation in writing to the taxpayer.

H. Upon receipt of notice of an allocation of the right to claim all or a portion of the renewable energy production tax credits, the energy, minerals and natural resources department shall promptly certify the allocation in writing to the recipient of the allocation.

I. A taxpayer may claim the renewable energy production tax credits by submitting to the taxation and revenue department the certificate issued by the energy, minerals and natural resources department, pursuant to Subsection F or G of this section, documentation showing the taxpayer's interest in the facility, documentation of the amount of electricity produced by the facility in the taxable year and any other information the taxation and revenue department may require to determine the amount of the tax

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credits due the taxpayer.

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

K. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax credits that would have been allowed on a joint return.

L. A renewable energy production tax credit may be deducted from the taxpayer's New Mexico income tax liability for a taxable year. If the amount of the tax credit claimed exceeds the taxpayer's income tax liability, the excess may be carried forward for up to ten consecutive taxable years."".

3. Renumber the succeeding sections accordingly.

4. On page 3, line 14, after "means" strike the remainder of the line, strike lines 15 through 17 in their entirety, strike line 18 through "basins" and insert in lieu thereof the following:

"organic material that is available on a renewable or recurring basis, including:

(a) forest-related materials, including mill residues, logging residues, forest thinnings from trees less than fifteen inches in diameter, slash, brush, low-commercial-value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

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(b) agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws and stover, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey and lactose;

(c) animal waste, including manure and slaughterhouse and other processing waste;

(d) solid woody waste materials, including landscape or right-of-way tree trimmings, range land maintenance residues, waste pallets, crates and manufacturing, construction and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

(e) crops and trees planted for the purpose of being used to produce energy; and

(f) landfill gas, wastewater treatment gas and biosolids, including organic waste byproducts generated during the wastewater treatment process".

3. On page 7, line 21, strike "2006" and insert in lieu thereof "2008".

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Respectfully submitted,

Joseph A. Fidel, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against
Yes: 6
No: 0
Excused: Beffort, Campos, Carraro, Rodriguez
Absent: None

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