

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 242

3 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

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10 AN ACT

11 RELATING TO UTILITIES; INCREASING THE AMOUNT OF ELECTRICITY
12 THAT MAY BE PRODUCED BY QUALIFIED ENERGY GENERATORS THAT WILL
13 BE ELIGIBLE FOR THE RENEWABLE ENERGY PRODUCTION TAX CREDIT;
14 EXTENDING THE DATE THAT A QUALIFIED ENERGY GENERATOR MUST FIRST
15 PRODUCE ELECTRICITY TO QUALIFY FOR THE RENEWABLE ENERGY
16 PRODUCTION TAX CREDIT; DECREASING THE AMOUNT OF CREDIT PER
17 KILOWATT-HOUR FOR CERTAIN TAXABLE YEARS; LIMITING THE PERIOD
18 FOR WHICH A TAXPAYER MAY CLAIM THE RENEWABLE ENERGY PRODUCTION
19 TAX CREDIT; MAKING GEOTHERMAL ENERGY A QUALIFIED ENERGY SOURCE.

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

22 SECTION 1. Section 7-2-18.18 NMSA 1978 (being Laws 2007,
23 Chapter 204, Section 2) is amended to read:

24 "7-2-18.18. RENEWABLE ENERGY PRODUCTION TAX CREDIT.--

25 A. Prior to January 1, 2032, a taxpayer who is not

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1 a dependent of another individual and who holds title to a
2 qualified energy generator or leases property upon which a
3 qualified energy generator operates from a county or
4 municipality under authority of an industrial revenue bond may
5 claim a tax credit against the taxpayer's tax liability imposed
6 pursuant to the Income Tax Act. The tax credit provided in
7 this section may be referred to as the "renewable energy
8 production tax credit". The tax credit provided in this
9 section may not be claimed with respect to the same electricity
10 production for which a tax credit pursuant to Section 7-2A-19
11 NMSA 1978 has been claimed.

12 ~~[B. A taxpayer who files an individual New Mexico~~
13 ~~income tax return and who is not a dependent of another~~
14 ~~taxpayer is eligible for the renewable energy production tax~~
15 ~~credit if the taxpayer:~~

16 ~~(1) holds title to a qualified energy~~
17 ~~generator that first produced electricity on or before January~~
18 ~~1, 2018; or~~

19 ~~(2) leases property upon which a qualified~~
20 ~~energy generator operates from a county or municipality under~~
21 ~~authority of an industrial revenue bond and if the qualified~~
22 ~~energy generator first produced electricity on or before~~
23 ~~January 1, 2018.~~

24 ~~G.] B.~~ The amount of the tax credit [shall equal
25 one cent (\$.01) per kilowatt-hour] of the first four hundred

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1 thousand megawatt-hours of electricity produced by the
 2 qualified energy generator in the taxable year using a wind-,
 3 geothermal- or biomass-derived qualified energy resource shall
 4 equal the following amounts; provided that the total amount of
 5 tax credits claimed by all taxpayers for a single qualified
 6 energy generator in a taxable year using a wind-, geothermal-
 7 or biomass-derived qualified energy resource shall not exceed
 8 [one cent (\$.01) per kilowatt-hour of], for the first four
 9 hundred thousand megawatt-hours of electricity produced by the
 10 qualified energy generator:

11 (1) ten dollars (\$10.00) per megawatt-hour for
 12 a taxpayer that receives a certificate of eligibility pursuant
 13 to Subsection F of this section prior to January 1, 2015; and

14 (2) five dollars (\$5.00) per megawatt-hour for a
 15 taxpayer that receives a certificate of eligibility pursuant to
 16 Subsection F of this section on or after January 1, 2015.

17 ~~[D.]~~ C. The amount of the tax credit for
 18 electricity produced by a qualified energy generator ~~[in the~~
 19 ~~taxable year]~~ using a solar-light-derived or solar-heat-derived
 20 qualified energy resource shall ~~[be at]~~ equal the following
 21 amounts ~~[specified in Paragraphs (1) through (10) of this~~
 22 ~~subsection]~~ in the following taxable years for which the tax
 23 credit is claimed and in which the qualified energy generator
 24 produces electricity using a solar-light-derived or solar-heat-
 25 derived qualified energy resource; provided that the total

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1 amount of tax credits claimed for a taxable year by all
2 taxpayers for a single qualified energy generator using a
3 solar-light-derived or solar-heat-derived qualified energy
4 resource shall be limited to the first two hundred thousand
5 megawatt-hours of electricity produced by the qualified energy
6 generator in the taxable year:

7 (1) ~~[one and one-half cents (\$.015) per~~
8 ~~kilowatt-hour]~~ for a taxpayer that receives a certificate of
9 eligibility pursuant to Subsection F of this section prior to
10 January 1, 2015:

11 (a) fifteen dollars (\$15.00) per
12 megawatt-hour in the first taxable year; ~~[in which the~~
13 ~~qualified energy generator produces electricity using a solar-~~
14 ~~light-derived or solar-heat-derived qualified energy resource;~~

15 ~~(2) two cents (\$.02) per kilowatt-hour]~~

16 (b) twenty dollars (\$20.00) per
17 megawatt-hour in the second taxable year; ~~[in which the~~
18 ~~qualified energy generator produces electricity using a solar-~~
19 ~~light-derived or solar-heat-derived qualified energy resource;~~

20 ~~(3) two and one-half cents (\$.025) per~~
21 ~~kilowatt-hour]~~

22 (c) twenty-five dollars (\$25.00) per
23 megawatt-hour in the third taxable year; ~~[in which the~~
24 ~~qualified energy generator produces electricity using a~~
25 ~~solar-light-derived or solar-heat-derived qualified energy~~

1 resource;

2 ~~(4) three cents (\$.03) per kilowatt-hour]~~

3 (d) thirty dollars (\$30.00) per
 4 megawatt-hour in the fourth taxable year; [~~in which the~~
 5 ~~qualified energy generator produces electricity using a solar-~~
 6 ~~light-derived or solar-heat-derived qualified energy resource;~~

7 ~~(5) three and one-half cents (\$.035) per~~
 8 ~~kilowatt-hour]~~

9 (e) thirty-five dollars (\$35.00) per
 10 megawatt-hour in the fifth taxable year; [~~in which the~~
 11 ~~qualified energy generator produces electricity using a solar-~~
 12 ~~light-derived or solar-heat-derived qualified energy resource;~~

13 ~~(6) four cents (\$.04) per kilowatt-hour]~~

14 (f) forty dollars (\$40.00) per
 15 megawatt-hour in the sixth taxable year; [~~in which the~~
 16 ~~qualified energy generator produces electricity using a~~
 17 ~~solar-light-derived or solar-heat-derived qualified energy~~
 18 ~~resource;~~

19 ~~(7) three and one-half cents (\$.035) per~~
 20 ~~kilowatt-hour]~~

21 (g) thirty-five dollars (\$35.00) per
 22 megawatt-hour in the seventh taxable year; [~~in which the~~
 23 ~~qualified energy generator produces electricity using a~~
 24 ~~solar-light-derived or solar-heat-derived qualified energy~~
 25 ~~resource;~~

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~~(8) three cents (\$.03) per kilowatt-hour]~~

(h) thirty dollars (\$30.00) per megawatt-hour in the eighth taxable year; ~~[in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;~~

~~(9) two and one-half cents (\$.025) per kilowatt-hour]~~

(i) twenty-five dollars (\$25.00) per megawatt-hour in the ninth taxable year ~~[in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource];~~ and

~~[(10) two cents (\$.02) per kilowatt-hour]~~

(j) twenty dollars (\$20.00) per megawatt-hour in the tenth taxable year ~~[in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource.~~

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

~~F. As used in this section:~~

~~(1) "biomass" means organic material that is~~

1 ~~available on a renewable or recurring basis, including:~~

2 ~~(a) forest-related materials, including~~
3 ~~mill residues, logging residues, forest thinnings, slash,~~
4 ~~brush, low-commercial-value materials or undesirable species,~~
5 ~~salt cedar and other phreatophyte or woody vegetation removed~~
6 ~~from river basins or watersheds and woody material harvested~~
7 ~~for the purpose of forest fire fuel reduction or forest health~~
8 ~~and watershed improvement;~~

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

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

16 ~~(d) solid woody waste materials,~~
17 ~~including landscape or right-of-way tree trimmings, rangeland~~
18 ~~maintenance residues, waste pallets, crates and manufacturing,~~
19 ~~construction and demolition wood wastes, excluding~~
20 ~~pressure-treated, chemically treated or painted wood wastes and~~
21 ~~wood contaminated with plastic;~~

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

24 ~~(f) landfill gas, wastewater treatment~~
25 ~~gas and biosolids, including organic waste byproducts generated~~

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1 ~~during the wastewater treatment process; and~~

2 ~~(g) segregated municipal solid waste,~~
3 ~~excluding tires and medical and hazardous waste;~~

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

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

15 ~~(a) solar light;~~

16 ~~(b) solar heat;~~

17 ~~(c) wind; or~~

18 ~~(d) biomass]; and~~

19 ~~(2) for a taxpayer that receives a certificate~~
20 ~~of eligibility pursuant to Subsection F of this section on or~~
21 ~~after January 1, 2015, thirteen dollars seventy-five cents~~
22 ~~(\$13.75) per megawatt-hour.~~

23 ~~D. A taxpayer may claim a renewable energy~~
24 ~~production tax credit for ten consecutive taxable years~~
25 ~~beginning in the first taxable year that the taxpayer claims~~

1 the tax credit; provided that no taxpayer may claim the tax
 2 credit for electricity produced on or after January 1, 2032. A
 3 taxpayer shall claim a renewable energy production tax credit
 4 within one year following the end of the calendar year in which
 5 the taxpayer received a certificate of eligibility pursuant to
 6 Subsection F of this section.

7 E. Once a taxpayer has received a certificate of
 8 eligibility pursuant to Subsection F of this section for a
 9 given facility, that taxpayer shall be allowed to retain the
 10 facility's original date of certification for tax credits for
 11 that facility until either the generator goes out of production
 12 for more than six consecutive months in a year or until the
 13 facility's ten-year eligibility has expired.

14 ~~[G.] F. A [person that holds title to a facility~~
 15 ~~generating electricity from a qualified energy resource or a~~
 16 ~~person that leases such a facility from a county or~~
 17 ~~municipality pursuant to an industrial revenue bond may request~~
 18 ~~certification of eligibility for the renewable energy~~
 19 ~~production tax credit] taxpayer may apply for a certificate of~~
 20 eligibility for a qualified energy generator from the energy,
 21 minerals and natural resources department [which shall
 22 determine if the facility is a qualified energy generator].
 23 The energy, minerals and natural resources department may
 24 [certify the] issue a certificate of eligibility [of an] for a
 25 qualified energy generator only if the total amount of

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1 electricity that may be produced annually by all qualified
2 energy generators using a wind-, geothermal- or biomass-derived
3 qualified energy resource that are certified pursuant to this
4 section and pursuant to Section 7-2A-19 NMSA 1978 will not
5 exceed a total of [~~two million~~] three million one hundred fifty
6 thousand megawatt-hours plus an additional [~~five hundred~~
7 ~~thousand~~] one million three hundred thousand megawatt-hours
8 produced by qualified energy generators using a solar-light-
9 derived or solar-heat-derived qualified energy resource.

10 Completed applications shall be considered in the order
11 received. The energy, minerals and natural resources
12 department may annually estimate the annual power-generating
13 potential of a generating facility for the purposes of this
14 section. [~~The energy, minerals and natural resources~~
15 ~~department shall issue~~] A certificate [~~to the applicant stating~~
16 ~~whether~~] of eligibility shall state that the facility is [~~an~~
17 ~~eligible~~] a qualified energy generator and shall include the
18 estimated annual production potential of the generating
19 facility, which shall be the limit of that facility's energy
20 production eligible for the tax credit for the taxable year.

21 The energy, minerals and natural resources department may issue
22 rules governing the procedure for administering the provisions
23 of this subsection and shall report annually to the appropriate
24 interim legislative committee information that will allow the
25 legislative committee to analyze the effectiveness of the

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1 renewable energy production tax credit, including the identity
2 of qualified energy generators, the energy production means
3 used, the amount of energy produced by those qualified energy
4 generators and whether any applications could not be approved
5 due to program limits.

6 ~~[H.]~~ G. A taxpayer may be allocated all or a
7 portion of the right to claim a renewable energy production tax
8 credit without regard to proportional ownership interest if:

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

12 (2) the business entity:
13 (a) would qualify for the renewable
14 energy production tax credit pursuant to ~~[Paragraph (1) or (2)~~
15 ~~of Subsection B of]~~ this section;

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

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

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

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

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

11 ~~[F.]~~ H. Upon receipt of notice of an allocation of
12 the right to claim all or a portion of the renewable energy
13 production tax credit, the energy, minerals and natural
14 resources department shall promptly certify the allocation in
15 writing to the recipient of the allocation.

16 ~~[J. A husband and wife who file]~~ I. Married
17 individuals filing separate returns for a taxable year in which
18 they could have filed a joint return may each claim only
19 one-half of the credit that would have been allowed on a joint
20 return.

21 ~~[K.]~~ J. A taxpayer may claim the renewable energy
22 production tax credit by submitting to the taxation and revenue
23 department the certificate of eligibility issued by the energy,
24 minerals and natural resources department, pursuant to
25 Subsection ~~[G or H]~~ F of this section, documentation showing

1 the taxpayer's interest in the facility, documentation of the
 2 amount of electricity produced by the facility in the taxable
 3 year and any other information the taxation and revenue
 4 department may require to determine the amount of the tax
 5 credit due the taxpayer.

6 ~~[L.]~~ K. If the requirements of this section have
 7 been complied with, the department shall approve the renewable
 8 energy production tax credit. The credit may be deducted from
 9 a taxpayer's New Mexico income tax liability for the taxable
 10 year for which the credit is claimed. If the amount of tax
 11 credit exceeds the taxpayer's income tax liability for the
 12 taxable year:

13 (1) the excess may be carried forward for a
 14 period of five consecutive taxable years; or

15 (2) if the tax credit was issued with respect
 16 to a qualified energy generator that first produced electricity
 17 using a qualified energy resource on or after October 1, 2007,
 18 the excess shall be refunded to the taxpayer.

19 ~~[M. Once a taxpayer has been granted a renewable~~
 20 ~~energy production tax credit for a given facility, that~~
 21 ~~taxpayer shall be allowed to retain the facility's original~~
 22 ~~date of application for tax credits for that facility until~~
 23 ~~either the facility goes out of production for more than six~~
 24 ~~consecutive months in a year or until the facility's ten-year~~
 25 ~~eligibility has expired.]~~

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1 L. As used in this section:

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

4 (a) forest-related materials, including
5 mill residues, logging residues, forest thinnings, slash,
6 brush, low-commercial-value materials or undesirable species,
7 salt cedar and other phreatophyte or woody vegetation removed
8 from river basins or watersheds and woody material harvested
9 for the purpose of forest fire fuel reduction or forest health
10 and watershed improvement;

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

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

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

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

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

4 (g) segregated municipal solid waste,
 5 excluding tires and medical and hazardous waste;

6 (2) "geothermal" means electricity produced at
 7 a facility built or expanded after January 1, 2015 and that is
 8 derived from the natural heat of the earth or from the energy,
 9 in whatever form, below the surface of the earth present in,
 10 resulting from, created by or that may be extracted from, this
 11 natural heat, or from minerals in solution or other products
 12 obtained from naturally heated fluids, brines, associated gases
 13 and steam, in whatever form, found below the surface of the
 14 earth, but excluding oil, hydrocarbon gas and other hydrocarbon
 15 substances;

16 (3) "qualified energy generator" means a
 17 facility with at least one megawatt generating capacity located
 18 in New Mexico that:

19 (a) produces electricity using a
 20 qualified energy resource;

21 (b) sells that electricity to an
 22 unrelated person; and

23 (c) first produced electricity on or
 24 before January 1, 2021; and

25 (4) "qualified energy resource" means a

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

6 (a) solar light;

7 (b) solar heat;

8 (c) wind;

9 (d) geothermal; or

10 (e) biomass."

11 SECTION 2. Section 7-2A-19 NMSA 1978 (being Laws 2002,
12 Chapter 59, Section 1, as amended) is amended to read:

13 "7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--
14 LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

15 A. Prior to January 1, 2032, a taxpayer that holds
16 title to a qualified energy generator or leases property upon
17 which a qualified energy generator operates from a county or
18 municipality under authority of an industrial revenue bond may
19 claim a tax credit against the taxpayer's tax liability imposed
20 pursuant to the Corporate Income and Franchise Tax Act. The
21 tax credit provided in this section may be referred to as the
22 "renewable energy production tax credit". The tax credit
23 provided in this section may not be claimed with respect to the
24 same electricity production for which [~~the renewable energy~~
25 ~~production~~] a tax credit [~~provided in the Income Tax Act~~]

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1 pursuant to Section 7-2-18.18 NMSA 1978 has been claimed.

2 ~~[B. A person is eligible for the renewable energy~~
 3 ~~production tax credit if the person:~~

4 ~~(1) holds title to a qualified energy~~
 5 ~~generator that first produced electricity on or before January~~
 6 ~~1, 2018; or~~

7 ~~(2) leases property upon which a qualified~~
 8 ~~energy generator operates from a county or municipality under~~
 9 ~~authority of an industrial revenue bond and if the qualified~~
 10 ~~energy generator first produced electricity on or before~~
 11 ~~January 1, 2018.~~

12 ~~G.]~~ B. The amount of the tax credit [~~shall equal~~
 13 ~~one cent (\$.01) per kilowatt-hour]~~ of the first four hundred
 14 thousand megawatt-hours of electricity produced by the
 15 qualified energy generator in the taxable year using a wind-,
 16 geothermal- or biomass-derived qualified energy resource shall
 17 equal the following amounts; provided that the total amount of
 18 tax credits claimed by all taxpayers for a single qualified
 19 energy generator in a taxable year using a wind-, geothermal-
 20 or biomass-derived qualified energy resource shall not exceed
 21 [~~one cent (\$.01) per kilowatt-hour of]~~ for the first four
 22 hundred thousand megawatt-hours of electricity produced by the
 23 qualified energy generator:

24 (1) ten dollars (\$10.00) per megawatt-hour for
 25 a taxpayer that receives a certificate of eligibility pursuant

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1 to Subsection F of this section prior to January 1, 2015; and
2 (2) five dollars (\$5.00) per megawatt-hour for
3 a taxpayer that receives a certificate of eligibility pursuant
4 to Subsection F of this section on or after January 1, 2015.

5 ~~[D.]~~ C. The amount of the tax credit for
6 electricity produced by a qualified energy generator ~~[in the~~
7 ~~taxable year]~~ using a solar-light-derived or solar-heat-derived
8 qualified energy resource shall ~~[be at]~~ equal the following
9 amounts ~~[specified in Paragraphs (1) through (10) of this~~
10 ~~subsection]~~ in the following taxable years for which the tax
11 credit is claimed and in which the qualified energy generator
12 produces electricity using a solar-light-derived or solar-heat-
13 derived qualified energy resource; provided that the total
14 amount of tax credits claimed for a taxable year by all
15 taxpayers for a single qualified energy generator using a
16 solar-light-derived or solar-heat-derived qualified energy
17 resource shall be limited to the first two hundred thousand
18 megawatt-hours of electricity produced by the qualified energy
19 generator in the taxable year:

20 (1) ~~[one and one-half cents (\$.015) per~~
21 ~~kilowatt-hour]~~ for a taxpayer that receives a certificate of
22 eligibility pursuant to Subsection F of this section prior to
23 January 1, 2015:

24 (a) fifteen dollars (\$15.00) per
25 megawatt-hour in the first taxable year; ~~[in which the~~

1 ~~qualified energy generator produces electricity using a solar-~~
2 ~~light-derived or solar-heat-derived qualified energy resource;~~

3 ~~(2) two cents (\$.02) per kilowatt-hour]~~

4 (b) twenty dollars (\$20.00) per
5 megawatt-hour in the second taxable year; [~~in which the~~
6 ~~qualified energy generator produces electricity using a solar-~~
7 ~~light-derived or solar-heat-derived qualified energy resource;~~

8 ~~(3) two and one-half cents (\$.025) per~~
9 ~~kilowatt-hour]~~

10 (c) twenty-five dollars (\$25.00) per
11 megawatt-hour in the third taxable year; [~~in which the~~
12 ~~qualified energy generator produces electricity using a solar-~~
13 ~~light-derived or solar-heat-derived qualified energy resource;~~

14 ~~(4) three cents (\$.03) per kilowatt-hour]~~

15 (d) thirty dollars (\$30.00) per
16 megawatt-hour in the fourth taxable year; [~~in which the~~
17 ~~qualified energy generator produces electricity using a solar-~~
18 ~~light-derived or solar-heat-derived qualified energy resource;~~

19 ~~(5) three and one-half cents (\$.035) per~~
20 ~~kilowatt-hour]~~

21 (e) thirty-five dollars (\$35.00) per
22 megawatt-hour in the fifth taxable year; [~~in which the~~
23 ~~qualified energy generator produces electricity using a solar-~~
24 ~~light-derived or solar-heat-derived qualified energy resource;~~

25 ~~(6) four cents (\$.04) per kilowatt-hour]~~

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1 (f) forty dollars (\$40.00) per
2 megawatt-hour in the sixth taxable year; [~~in which the~~
3 ~~qualified energy generator produces electricity using a solar-~~
4 ~~light-derived or solar-heat-derived qualified energy resource;~~

5 ~~(7) three and one-half cents (\$.035) per~~
6 ~~kilowatt-hour]~~

7 (g) thirty-five dollars (\$35.00) per
8 megawatt-hour in the seventh taxable year; [~~in which the~~
9 ~~qualified energy generator produces electricity using a solar-~~
10 ~~light-derived or solar-heat-derived qualified energy resource;~~

11 ~~(8) three cents (\$.03) per kilowatt-hour]~~

12 (h) thirty dollars (\$30.00) per
13 megawatt-hour in the eighth taxable year; [~~in which the~~
14 ~~qualified energy generator produces electricity using a solar-~~
15 ~~light-derived or solar-heat-derived qualified energy resource;~~

16 ~~(9) two and one-half cents (\$.025) per~~
17 ~~kilowatt-hour]~~

18 (i) twenty-five dollars (\$25.00) per
19 megawatt-hour in the ninth taxable year [~~in which the qualified~~
20 ~~energy generator produces electricity using a solar-light-~~
21 ~~derived or solar-heat-derived qualified energy resource]; and~~

22 ~~[(10) two cents (\$.02) per kilowatt-hour]~~

23 (j) twenty dollars (\$20.00) per
24 megawatt-hour in the tenth taxable year [~~in which the qualified~~
25 ~~energy generator produces electricity using a solar-light-~~

1 ~~derived or solar heat-derived qualified energy resource.~~

2 ~~E. A taxpayer eligible for a renewable energy~~
3 ~~production tax credit pursuant to Subsection B of this section~~
4 ~~shall be eligible for the renewable energy production tax~~
5 ~~credit for ten consecutive years, beginning on the date the~~
6 ~~qualified energy generator begins producing electricity.~~

7 ~~F. As used in this section:~~

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

10 ~~(a) forest-related materials, including~~
11 ~~mill residues, logging residues, forest thinnings, slash,~~
12 ~~brush, low-commercial value materials or undesirable species,~~
13 ~~salt cedar and other phreatophyte or woody vegetation removed~~
14 ~~from river basins or watersheds and woody material harvested~~
15 ~~for the purpose of forest fire fuel reduction or forest health~~
16 ~~and watershed improvement;~~

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

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

24 ~~(d) solid woody waste materials,~~
25 ~~including landscape or right-of-way tree trimmings, rangeland~~

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1 ~~maintenance residues, waste pallets, crates and manufacturing,~~
2 ~~construction and demolition wood wastes, excluding pressure-~~
3 ~~treated, chemically treated or painted wood wastes and wood~~
4 ~~contaminated with plastic;~~

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

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

10 ~~(g) segregated municipal solid waste,~~
11 ~~excluding tires and medical and hazardous waste;~~

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

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

23 ~~(a) solar light;~~

24 ~~(b) solar heat;~~

25 ~~(c) wind; or~~

1 ~~(d) biomass~~; and

2 (2) for a taxpayer that receives a certificate
 3 of eligibility pursuant to Subsection F of this section on or
 4 after January 1, 2015 thirteen dollars seventy-five cents
 5 (\$13.75) per megawatt-hour.

6 D. A taxpayer may claim a renewable energy
 7 production tax credit for ten consecutive taxable years
 8 beginning in the first taxable year that the taxpayer claims
 9 the tax credit; provided that no taxpayer may claim the tax
 10 credit for electricity produced on or after January 1, 2032. A
 11 taxpayer shall claim a renewable energy production tax credit
 12 within one year following the end of the calendar year in which
 13 the taxpayer received a certificate of eligibility pursuant to
 14 Subsection F of this section.

15 E. Once a taxpayer has received a certificate of
 16 eligibility pursuant to Subsection F of this section for a
 17 given facility, that taxpayer shall be allowed to retain the
 18 facility's original date of certification for tax credits for
 19 that facility until either the generator goes out of production
 20 for more than six consecutive months in a year or until the
 21 facility's ten-year eligibility has expired.

22 [G.] F. A [person that holds title to a facility
 23 generating electricity from a qualified energy resource or a
 24 person that leases such a facility from a county or
 25 municipality pursuant to an industrial revenue bond may request

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1 ~~certification of eligibility for the renewable energy~~
2 ~~production tax credit] taxpayer may apply for a certificate of~~
3 eligibility for a qualified energy generator from the energy,
4 minerals and natural resources department [~~which shall~~
5 ~~determine if the facility is a qualified energy generator~~].
6 The energy, minerals and natural resources department may
7 [~~certify the~~] issue a certificate of eligibility [~~of an~~] for a
8 qualified energy generator only if the total amount of
9 electricity that may be produced annually by all qualified
10 energy generators using a wind-, geothermal- or biomass-derived
11 qualified energy resource that are certified pursuant to this
12 section and pursuant to [~~the Income Tax Act~~] Section 7-2-18.18
13 NMSA 1978 will not exceed a total of [~~two million~~] three
14 million one hundred fifty thousand megawatt-hours plus an
15 additional [~~five hundred thousand~~] one million three hundred
16 thousand megawatt-hours produced by qualified energy generators
17 using a solar-light-derived or solar-heat-derived qualified
18 energy resource. Completed applications shall be considered in
19 the order received. The energy, minerals and natural resources
20 department may annually estimate the annual power-generating
21 potential of a generating facility for the purposes of this
22 section. [~~The energy, minerals and natural resources~~
23 ~~department shall issue~~] A certificate [~~to the applicant stating~~
24 ~~whether~~] of eligibility shall state that the facility is [~~an~~
25 ~~eligible~~] a qualified energy generator and shall include the

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1 estimated annual production potential of the generating
 2 facility, which shall be the limit of that facility's energy
 3 production eligible for the tax credit for the taxable year.
 4 The energy, minerals and natural resources department may issue
 5 rules governing the procedure for administering the provisions
 6 of this subsection and shall report annually to the appropriate
 7 interim legislative committee information that will allow the
 8 legislative committee to analyze the effectiveness of the
 9 renewable energy production tax credit, including the identity
 10 of qualified energy generators, the energy production means
 11 used, the amount of energy produced by those qualified energy
 12 generators and whether any applications could not be approved
 13 due to program limits.

14 ~~[H.]~~ G. A taxpayer may be allocated all or a
 15 portion of the right to claim a renewable energy production tax
 16 credit without regard to proportional ownership interest if:

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

20 (2) the business entity:
 21 (a) would qualify for the renewable
 22 energy production tax credit pursuant to ~~[Paragraph (1) or (2)~~
 23 ~~of Subsection B of]~~ this section;

24 (b) owns an interest in a business
 25 entity that is also taxed for federal income tax purposes as a

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1 partnership and that would qualify for the renewable energy
2 production tax credit pursuant to [~~Paragraph (1) or (2) of~~
3 ~~Subsection B of~~] this section; or

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

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

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

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

19 [~~F.~~] H. Upon receipt of notice of an allocation of
20 the right to claim all or a portion of the renewable energy
21 production tax credit, the energy, minerals and natural
22 resources department shall promptly certify the allocation in
23 writing to the recipient of the allocation.

24 [~~J.~~] I. A taxpayer may claim the renewable energy
25 production tax credit by submitting to the taxation and revenue

1 department the certificate of eligibility issued by the energy,
 2 minerals and natural resources department, pursuant to
 3 Subsection [~~G or H~~] F of this section, documentation showing
 4 the taxpayer's interest in the facility, documentation of the
 5 amount of electricity produced by the facility in the taxable
 6 year and any other information the taxation and revenue
 7 department may require to determine the amount of the tax
 8 credit due the taxpayer.

9 [~~K-~~] J. If the requirements of this section have
 10 been complied with, the department shall approve the renewable
 11 energy production tax credit. The credit may be deducted from
 12 a taxpayer's New Mexico corporate income tax liability for the
 13 taxable year for which the credit is claimed. If the amount of
 14 tax credit exceeds the taxpayer's corporate income tax
 15 liability for the taxable year:

16 (1) the excess may be carried forward for a
 17 period of five consecutive taxable years; or

18 (2) if the tax credit was issued with respect
 19 to a qualified energy generator that first produced electricity
 20 using a qualified energy resource on or after October 1, 2007,
 21 the excess shall be refunded to the taxpayer.

22 [~~L. Once a taxpayer has been granted a renewable~~
 23 ~~energy production tax credit for a given facility, that~~
 24 ~~taxpayer shall be allowed to retain the facility's original~~
 25 ~~date of application for tax credits for that facility until~~

1 ~~either the facility goes out of production for more than six~~
2 ~~consecutive months in a year or until the facility's ten-year~~
3 ~~eligibility has expired.]~~

4 K. As used in this section:

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

7 (a) forest-related materials, including
8 mill residues, logging residues, forest thinnings, slash,
9 brush, low-commercial-value materials or undesirable species,
10 salt cedar and other phreatophyte or woody vegetation removed
11 from river basins or watersheds and woody material harvested
12 for the purpose of forest fire fuel reduction or forest health
13 and watershed improvement;

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

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

21 (d) solid woody waste materials,
22 including landscape or right-of-way tree trimmings, rangeland
23 maintenance residues, waste pallets, crates and manufacturing,
24 construction and demolition wood wastes, excluding pressure-
25 treated, chemically treated or painted wood wastes and wood

1 contaminated with plastic;

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

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

7 (g) segregated municipal solid waste,
 8 excluding tires and medical and hazardous waste;

9 (2) "geothermal" means electricity produced at
 10 a facility built or expanded after January 1, 2015 that is
 11 derived from the natural heat of the earth, or from the energy,
 12 in whatever form, below the surface of the earth present in,
 13 resulting from, created by or that may be extracted from this
 14 natural heat, or from minerals in solution or other products
 15 obtained from naturally heated fluids, brines, associated gases
 16 and steam, in whatever form, found below the surface of the
 17 earth, but excluding oil, hydrocarbon gas and other hydrocarbon
 18 substances;

19 (3) "qualified energy generator" means a
 20 facility with at least one megawatt generating capacity located
 21 in New Mexico that:

22 (a) produces electricity using a
 23 qualified energy resource;

24 (b) sells that electricity to an
 25 unrelated person; and

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underscored material = new
 [bracketed material] = delete

1 (c) first produced electricity on or
2 before January 1, 2021; and

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

9 (a) solar light;

10 (b) solar heat;

11 (c) wind;

12 (d) geothermal; or

13 (e) biomass."

14 SECTION 3. APPLICABILITY.--The provisions of this act
15 apply to taxable years beginning on or after January 1, 2015.

underscored material = new
[bracketed material] = delete