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SENATE BILL 233

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Daniel A. Ivey-Soto and Nate Gentry

AN ACT

RELATING TO TAXATION; EXTENDING THE TIME PERIOD FOR WHEN A QUALIFIED GENERATING FACILITY MUST BE CONSTRUCTED FOR A TAXPAYER TO CLAIM AN ADVANCED ENERGY INCOME TAX CREDIT, AN ADVANCED ENERGY CORPORATE INCOME TAX CREDIT, AN ADVANCED ENERGY DEDUCTION PURSUANT TO THE GROSS RECEIPTS AND COMPENSATING TAX ACT AND AN ADVANCED ENERGY COMBINED REPORTING TAX CREDIT; REDUCING THE AGGREGATE AMOUNT OF ALL ADVANCED ENERGY TAX CREDITS THAT MAY BE CLAIMED WITH RESPECT TO A QUALIFIED GENERATING FACILITY.

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

SECTION 1. Section 7-2-18.25 NMSA 1978 (being Laws 2009, Chapter 279, Section 1) is amended to read:

"7-2-18.25. ADVANCED ENERGY INCOME TAX CREDIT.--

A. The tax credit that may be claimed pursuant to

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1 this section may be referred to as the "advanced energy income
2 tax credit".

3 B. A taxpayer who holds an interest in a qualified
4 generating facility located in New Mexico and who files an
5 individual New Mexico income tax return may claim an advanced
6 energy income tax credit in an amount equal to six percent of
7 the eligible generation plant costs of a qualified generating
8 facility, subject to the limitations imposed in this section.
9 The tax credit claimed shall be verified and approved by the
10 department.

11 C. An entity that holds an interest in a qualified
12 generating facility may request a certificate of eligibility
13 from the department of environment to enable the requester to
14 apply for an advanced energy income tax credit. The department
15 of environment:

16 (1) shall determine if the facility is a
17 qualified generating facility;

18 (2) shall require that the requester provide
19 the department of environment with the information necessary to
20 assess whether the requester's facility meets the criteria to
21 be a qualified generating facility;

22 (3) shall issue a certificate to the requester
23 stating that the facility is or is not a qualified generating
24 facility within one hundred eighty days after receiving all
25 information necessary to make a determination;

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1 (4) shall:

2 (a) issue a schedule of fees in which no
3 fee exceeds one hundred fifty thousand dollars (\$150,000); and

4 (b) deposit fees collected pursuant to
5 this paragraph in the state air quality permit fund created
6 pursuant to Section 74-2-15 NMSA 1978; and

7 (5) shall report annually to the appropriate
8 interim legislative committee information that will allow the
9 legislative committee to analyze the effectiveness of the
10 advanced energy tax credits, including the identity of
11 qualified generating facilities, the energy production means
12 used, the amount of emissions identified in this section
13 reduced and removed by those qualified generating facilities
14 and whether any requests for certificates of eligibility could
15 not be approved due to program limits.

16 D. A taxpayer who holds an interest in a qualified
17 generating facility may be allocated the right to claim the
18 advanced energy income tax credit without regard to the
19 taxpayer's relative interest in the qualified generating
20 facility if:

21 (1) the business entity making the allocation
22 provides notice of the allocation and the taxpayer's interest
23 in the qualified generating facility to the department on forms
24 prescribed by the department;

25 (2) allocations to the taxpayer and all other

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1 taxpayers allocated a right to claim the advanced energy tax
2 credit shall not exceed one hundred percent of the advanced
3 energy tax credit allowed for the qualified generating
4 facility; and

5 (3) the taxpayer and all other taxpayers
6 allocated a right to claim the advanced energy tax credits
7 collectively own at least a five percent interest in the
8 qualified generating facility.

9 E. To claim the advanced energy income tax credit,
10 a taxpayer shall submit with the taxpayer's New Mexico income
11 tax return a certificate of eligibility from the department of
12 environment stating that the taxpayer may be eligible for
13 advanced energy tax credits. The taxation and revenue
14 department shall provide credit claims forms. A credit claim
15 form shall accompany any return in which the taxpayer wishes to
16 apply for an approved credit, and the claim shall specify the
17 amount of credit intended to apply to each return. The
18 taxation and revenue department shall determine the amount of
19 advanced energy income tax credit for which the taxpayer may
20 apply.

21 F. Upon receipt of the notice of an allocation of
22 the right to claim all or a portion of the advanced energy
23 income tax credit, the department shall verify the allocation
24 due to the recipient.

25 G. [~~A husband and wife~~] Married individuals who

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1 file separate returns for a taxable year in which they could
2 have filed a joint return may each claim only one-half of the
3 advanced energy income tax credit that would have been allowed
4 on a joint return.

5 H. The total amount of all advanced energy tax
6 credits claimed shall not exceed the total amount determined by
7 the department to be allowable pursuant to this section, the
8 Corporate Income and Franchise Tax Act and Section 7-9G-2 NMSA
9 1978.

10 I. Any balance of the advanced energy income tax
11 credit that the taxpayer is approved to claim may be claimed by
12 the taxpayer as an advanced energy combined reporting tax
13 credit allowed pursuant to Section 7-9G-2 NMSA 1978. If the
14 advanced energy income tax credit exceeds the amount of the
15 taxpayer's tax liabilities pursuant to the Income Tax Act and
16 Section 7-9G-2 NMSA 1978 in the taxable year in which it is
17 claimed, the balance of the unpaid credit may be carried
18 forward for ten years and claimed as an advanced energy income
19 tax credit or an advanced energy combined reporting tax credit.
20 The advanced energy income tax credit is not refundable.

21 J. A taxpayer claiming the advanced energy income
22 tax credit pursuant to this section is ineligible for credits
23 pursuant to the Investment Credit Act or any other credit that
24 may be taken pursuant to the Income Tax Act or credits that may
25 be taken against the gross receipts tax, compensating tax or

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1 withholding tax for the same expenditures.

2 K. The aggregate amount of all advanced energy tax
3 credits that may be claimed with respect to a qualified
4 generating facility shall not exceed [~~sixty million dollars~~
5 ~~(\$60,000,000)~~] one million dollars (\$1,000,000).

6 L. As used in this section:

7 (1) "advanced energy tax credit" means the
8 advanced energy income tax credit, the advanced energy
9 corporate income tax credit and the advanced energy combined
10 reporting tax credit;

11 (2) "coal-based electric generating facility"
12 means a new or repowered generating facility and an associated
13 coal gasification facility, if any, that uses coal to generate
14 electricity and that meets the following specifications:

15 (a) emits the lesser of: 1) what is
16 achievable with the best available control technology; or 2)
17 thirty-five thousandths pound per million British thermal units
18 of sulfur dioxide, twenty-five thousandths pound per million
19 British thermal units of oxides of nitrogen and one hundredth
20 pound per million British thermal units of total particulates
21 in the flue gas;

22 (b) removes the greater of: 1) what is
23 achievable with the best available control technology; or 2)
24 ninety percent of the mercury from the input fuel;

25 (c) captures and sequesters or controls

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1 carbon dioxide emissions so that by the later of January 1,
2 2017 or eighteen months after the commercial operation date of
3 the coal-based electric generating facility, no more than one
4 thousand one hundred pounds per megawatt-hour of carbon dioxide
5 is emitted into the atmosphere;

6 (d) all infrastructure required for
7 sequestration is in place by the later of January 1, 2017 or
8 eighteen months after the commercial operation date of the
9 coal-based electric generating facility;

10 (e) includes methods and procedures to
11 monitor the disposition of the carbon dioxide captured and
12 sequestered from the coal-based electric generating facility;
13 and

14 (f) does not exceed a name-plate
15 capacity of seven hundred net megawatts;

16 (3) "eligible generation plant costs" means
17 expenditures for the development and construction of a
18 qualified generating facility, including permitting; site
19 characterization and assessment; engineering; design; carbon
20 dioxide capture, treatment, compression, transportation and
21 sequestration; site and equipment acquisition; and fuel supply
22 development used directly and exclusively in a qualified
23 generating facility;

24 (4) "entity" means an individual, estate,
25 trust, receiver, cooperative association, club, corporation,

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1 company, firm, partnership, limited liability company, limited
2 liability partnership, joint venture, syndicate or other
3 association or a gas, water or electric utility owned or
4 operated by a county or municipality;

5 (5) "geothermal electric generating facility"
6 means a facility with a name-plate capacity of one megawatt or
7 more that uses geothermal energy to generate electricity,
8 including a facility that captures and provides geothermal
9 energy to a preexisting electric generating facility using
10 other fuels in part;

11 (6) "interest in a qualified generating
12 facility" means title to a qualified generating facility; a
13 leasehold interest in a qualified generating facility; an
14 ownership interest in a business or entity that is taxed for
15 federal income tax purposes as a partnership that holds title
16 to or a leasehold interest in a qualified generating facility;
17 or an ownership interest, through one or more intermediate
18 entities that are each taxed for federal income tax purposes as
19 a partnership, in a business that holds title to or a leasehold
20 interest in a qualified generating facility;

21 (7) "name-plate capacity" means the maximum
22 rated output of the facility measured as alternating current or
23 the equivalent direct current measurement;

24 (8) "qualified generating facility" means a
25 facility that begins construction not later than December 31,

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1 [2015] 2020 and is:

2 (a) a solar thermal electric generating
3 facility that begins construction on or after July 1, 2007 and
4 that may include an associated renewable energy storage
5 facility;

6 (b) a solar photovoltaic electric
7 generating facility that begins construction on or after
8 July 1, 2009 and that may include an associated renewable
9 energy storage facility;

10 (c) a geothermal electric generating
11 facility that begins construction on or after July 1, 2009;

12 (d) a recycled energy project if that
13 facility begins construction on or after July 1, 2007; or

14 (e) a new or repowered coal-based
15 electric generating facility and an associated coal
16 gasification facility;

17 (9) "recycled energy" means energy produced
18 by a generation unit with a name-plate capacity of not more
19 than fifteen megawatts that converts the otherwise lost energy
20 from the exhaust stacks or pipes to electricity without
21 combustion of additional fossil fuel;

22 (10) "sequester" means to store, or
23 chemically convert, carbon dioxide in a manner that prevents
24 its release into the atmosphere and may include the use of
25 geologic formations and enhanced oil, coalbed methane or

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1 natural gas recovery techniques;

2 (11) "solar photovoltaic electric generating
3 facility" means an electric generating facility with a
4 name-plate capacity of one megawatt or more that uses solar
5 photovoltaic energy to generate electricity; and

6 (12) "solar thermal generating facility"
7 means an electric generating facility with a name-plate
8 capacity of one megawatt or more that uses solar thermal energy
9 to generate electricity, including a facility that captures and
10 provides solar energy to a preexisting electric generating
11 facility using other fuels in part."

12 SECTION 2. Section 7-2A-25 NMSA 1978 (being Laws 2009,
13 Chapter 279, Section 2) is amended to read:

14 "7-2A-25. ADVANCED ENERGY CORPORATE INCOME TAX CREDIT.--

15 A. The tax credit that may be claimed pursuant to
16 this section may be referred to as the "advanced energy
17 corporate income tax credit".

18 B. A taxpayer that holds an interest in a qualified
19 generating facility located in New Mexico and that files a New
20 Mexico corporate income tax return may claim an advanced energy
21 corporate income tax credit in an amount equal to six percent
22 of the eligible generation plant costs of a qualified
23 generating facility, subject to the limitations imposed in this
24 section. The tax credit claimed shall be verified and approved
25 by the department.

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1 C. An entity that holds an interest in a qualified
2 generating facility may request a certificate of eligibility
3 from the department of environment to enable the requester to
4 apply for an advanced energy corporate income tax credit. The
5 department of environment:

6 (1) shall determine if the facility is a
7 qualified generating facility;

8 (2) shall require that the requester provide
9 the department of environment with the information necessary to
10 assess whether the requester's facility meets the criteria to
11 be a qualified generating facility;

12 (3) shall issue a certificate to the
13 requester stating that the facility is or is not a qualified
14 generating facility within one hundred eighty days after
15 receiving all information necessary to make a determination;

16 (4) shall:

17 (a) issue a schedule of fees in which no
18 fee exceeds one hundred fifty thousand dollars (\$150,000); and

19 (b) deposit fees collected pursuant to
20 this paragraph in the state air quality permit fund created
21 pursuant to Section 74-2-15 NMSA 1978; and

22 (5) shall report annually to the appropriate
23 interim legislative committee information that will allow the
24 legislative committee to analyze the effectiveness of the
25 advanced energy tax credits, including the identity of

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1 qualified generating facilities, the energy production means
2 used, the amount of emissions identified in this section
3 reduced and removed by those qualified generating facilities
4 and whether any requests for certificates of eligibility could
5 not be approved due to program limits.

6 D. A taxpayer that holds an interest in a qualified
7 generating facility may be allocated the right to claim the
8 advanced energy corporate income tax credit without regard to
9 the taxpayer's relative interest in the qualified generating
10 facility if:

11 (1) the business entity making the allocation
12 provides notice of the allocation and the taxpayer's interest
13 in the qualified generating facility to the department on forms
14 prescribed by the department;

15 (2) allocations to the taxpayer and all other
16 taxpayers allocated a right to claim the advanced energy tax
17 credit shall not exceed one hundred percent of the advanced
18 energy tax credit allowed for the qualified generating
19 facility; and

20 (3) the taxpayer and all other taxpayers
21 allocated a right to claim the advanced energy tax credits
22 collectively own at least a five percent interest in the
23 qualified generating facility.

24 E. Upon receipt of the notice of an allocation of
25 the right to claim all or a portion of the advanced energy

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1 corporate income tax credit, the department shall verify the
2 allocation due to the recipient.

3 F. To claim the advanced energy corporate income
4 tax credit, a taxpayer shall submit with the taxpayer's New
5 Mexico corporate income tax return a certificate of eligibility
6 from the department of environment stating that the taxpayer
7 may be eligible for advanced energy tax credits. The taxation
8 and revenue department shall provide credit claim forms. A
9 credit claim form shall accompany any return in which the
10 taxpayer wishes to apply for an approved credit, and the claim
11 shall specify the amount of credit intended to apply to each
12 return. The taxation and revenue department shall determine
13 the amount of advanced energy corporate income tax credit for
14 which the taxpayer may apply.

15 G. The total amount of all advanced energy tax
16 credits claimed shall not exceed the total amount determined by
17 the department to be allowable pursuant to this section, the
18 Income Tax Act and Section 7-9G-2 NMSA 1978.

19 H. Any balance of the advanced energy corporate
20 income tax credit that the taxpayer is approved to claim may be
21 claimed by the taxpayer as an advanced energy combined
22 reporting tax credit allowed pursuant to Section 7-9G-2 NMSA
23 1978. If the advanced energy corporate income tax credit
24 exceeds the amount of the taxpayer's tax liabilities pursuant
25 to the Corporate Income and Franchise Tax Act and Section

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1 7-9G-2 NMSA 1978 in the taxable year in which it is claimed,
2 the balance of the unpaid credit may be carried forward for ten
3 years and claimed as an advanced energy corporate income tax
4 credit or an advanced energy combined reporting tax credit.
5 The advanced energy corporate income tax credit is not
6 refundable.

7 I. A taxpayer claiming the advanced energy
8 corporate income tax credit pursuant to this section is
9 ineligible for credits pursuant to the Investment Credit Act or
10 any other credit that may be taken pursuant to the Corporate
11 Income and Franchise Tax Act or credits that may be taken
12 against the gross receipts tax, compensating tax or withholding
13 tax for the same expenditures.

14 J. The aggregate amount of all advanced energy tax
15 credits that may be claimed with respect to a qualified
16 generating facility shall not exceed [~~sixty million dollars~~
17 ~~(\$60,000,000)~~] one million dollars (\$1,000,000).

18 K. As used in this section:

19 (1) "advanced energy tax credit" means the
20 advanced energy income tax credit, the advanced energy
21 corporate income tax credit and the advanced energy combined
22 reporting tax credit;

23 (2) "coal-based electric generating facility"
24 means a new or repowered generating facility and an associated
25 coal gasification facility, if any, that uses coal to generate

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1 electricity and that meets the following specifications:

2 (a) emits the lesser of: 1) what is
3 achievable with the best available control technology; or 2)
4 thirty-five thousandths pound per million British thermal units
5 of sulfur dioxide, twenty-five thousandths pound per million
6 British thermal units of oxides of nitrogen and one hundredth
7 pound per million British thermal units of total particulates
8 in the flue gas;

9 (b) removes the greater of: 1) what is
10 achievable with the best available control technology; or 2)
11 ninety percent of the mercury from the input fuel;

12 (c) captures and sequesters or controls
13 carbon dioxide emissions so that by the later of January 1,
14 2017 or eighteen months after the commercial operation date of
15 the coal-based electric generating facility, no more than one
16 thousand one hundred pounds per megawatt-hour of carbon dioxide
17 is emitted into the atmosphere;

18 (d) all infrastructure required for
19 sequestration is in place by the later of January 1, 2017 or
20 eighteen months after the commercial operation date of the
21 coal-based electric generating facility;

22 (e) includes methods and procedures to
23 monitor the disposition of the carbon dioxide captured and
24 sequestered from the coal-based electric generating facility;
25 and

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1 (f) does not exceed a name-plate
2 capacity of seven hundred net megawatts;

3 (3) "eligible generation plant costs" means
4 expenditures for the development and construction of a
5 qualified generating facility, including permitting; site
6 characterization and assessment; engineering; design; carbon
7 dioxide capture, treatment, compression, transportation and
8 sequestration; site and equipment acquisition; and fuel supply
9 development used directly and exclusively in a qualified
10 generating facility;

11 (4) "entity" means an individual, estate,
12 trust, receiver, cooperative association, club, corporation,
13 company, firm, partnership, limited liability company, limited
14 liability partnership, joint venture, syndicate or other
15 association or a gas, water or electric utility owned or
16 operated by a county or municipality;

17 (5) "geothermal electric generating facility"
18 means a facility with a name-plate capacity of one megawatt or
19 more that uses geothermal energy to generate electricity,
20 including a facility that captures and provides geothermal
21 energy to a preexisting electric generating facility using
22 other fuels in part;

23 (6) "interest in a qualified generating
24 facility" means title to a qualified generating facility; a
25 leasehold interest in a qualified generating facility; an

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1 ownership interest in a business or entity that is taxed for
2 federal income tax purposes as a partnership that holds title
3 to or a leasehold interest in a qualified generating facility;
4 or an ownership interest, through one or more intermediate
5 entities that are each taxed for federal income tax purposes as
6 a partnership, in a business that holds title to or a leasehold
7 interest in a qualified generating facility;

8 (7) "name-plate capacity" means the maximum
9 rated output of the facility measured as alternating current or
10 the equivalent direct current measurement;

11 (8) "qualified generating facility" means a
12 facility that begins construction not later than December 31,
13 ~~[2015]~~ 2020 and is:

14 (a) a solar thermal electric generating
15 facility that begins construction on or after July 1, 2007 and
16 that may include an associated renewable energy storage
17 facility;

18 (b) a solar photovoltaic electric
19 generating facility that begins construction on or after
20 July 1, 2009 and that may include an associated renewable
21 energy storage facility;

22 (c) a geothermal electric generating
23 facility that begins construction on or after July 1, 2009;

24 (d) a recycled energy project if that
25 facility begins construction on or after July 1, 2007; or

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1 (e) a new or repowered coal-based
2 electric generating facility and an associated coal
3 gasification facility;

4 (9) "recycled energy" means energy produced
5 by a generation unit with a name-plate capacity of not more
6 than fifteen megawatts that converts the otherwise lost energy
7 from the exhaust stacks or pipes to electricity without
8 combustion of additional fossil fuel;

9 (10) "sequester" means to store, or
10 chemically convert, carbon dioxide in a manner that prevents
11 its release into the atmosphere and may include the use of
12 geologic formations and enhanced oil, coalbed methane or
13 natural gas recovery techniques;

14 (11) "solar photovoltaic electric generating
15 facility" means an electric generating facility with a name-
16 plate capacity of one megawatt or more that uses solar
17 photovoltaic energy to generate electricity; and

18 (12) "solar thermal electric generating
19 facility" means an electric generating facility with a
20 name-plate capacity of one megawatt or more that uses solar
21 thermal energy to generate electricity, including a facility
22 that captures and provides solar energy to a preexisting
23 electric generating facility using other fuels in part."

24 SECTION 3. Section 7-9-114 NMSA 1978 (being Laws 2010,
25 Chapter 77, Section 1 and Laws 2010, Chapter 78, Section 1, as
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1 amended) is amended to read:

2 "7-9-114. ADVANCED ENERGY DEDUCTION--GROSS RECEIPTS AND
3 COMPENSATING TAXES.--

4 A. Receipts from selling or leasing tangible
5 personal property or services that are eligible generation
6 plant costs to a person that holds an interest in a qualified
7 generating facility may be deducted from gross receipts if the
8 holder of the interest delivers an appropriate nontaxable
9 transaction certificate to the seller or lessor. The
10 department shall issue nontaxable transaction certificates to a
11 person that holds an interest in a qualified generating
12 facility upon presentation to the department of a certificate
13 of eligibility obtained from the department of environment
14 pursuant to Subsection G of this section for the deduction
15 created in this section or a certificate of eligibility
16 pursuant to Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.
17 The deduction created in this section may be referred to as the
18 "advanced energy deduction".

19 B. The purpose of the advanced energy deduction is
20 to encourage the construction and development of qualified
21 generating facilities in New Mexico and to sequester or control
22 carbon dioxide emissions.

23 C. The value of eligible generation plant costs
24 from the sale or lease of tangible personal property to a
25 person that holds an interest in a qualified generating

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1 facility for which the department of environment has issued a
2 certificate of eligibility pursuant to Subsection G of this
3 section may be deducted in computing the compensating tax due.

4 D. The maximum tax benefit allowed for all eligible
5 generation plant costs from a qualified generating facility
6 shall be [~~sixty million dollars (\$60,000,000)~~] one million
7 dollars (\$1,000,000) total for eligible generation plant costs
8 deducted or claimed pursuant to this section or Section
9 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.

10 E. Deductions taken pursuant to this section shall
11 be reported separately on a form approved by the department.
12 The nontaxable transaction certificates used to obtain tax-
13 deductible tangible personal property or services shall display
14 clearly a notice to the taxpayer that the deduction shall be
15 reported separately from any other deductions claimed from
16 gross receipts. A taxpayer deducting eligible generation plant
17 costs from the costs on which compensating tax is imposed shall
18 report those eligible generation plant costs that are being
19 deducted.

20 F. The deductions allowed for a qualified
21 generating facility pursuant to this section shall be available
22 for a ten-year period for purchases and a twenty-five-year
23 period for leases from the year development of the qualified
24 generating facility begins and expenditures are made for which
25 nontaxable transaction certificates authorized pursuant to this

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1 section are submitted to sellers or lessors for eligible
2 generation plant costs or deductions from the costs on which
3 compensating tax are calculated are first taken for eligible
4 generation plant costs.

5 G. An entity that holds an interest in a qualified
6 generating facility may request a certificate of eligibility
7 from the department of environment to enable the requester to
8 obtain a nontaxable transaction certificate for the advanced
9 energy deduction. The department of environment shall:

10 (1) determine if the facility is a qualified
11 generating facility;

12 (2) require that the requester provide the
13 department of environment with the information necessary to
14 assess whether the requester's facility meets the criteria to
15 be a qualified generating facility;

16 (3) issue a certificate from sequentially
17 numbered certificates to the requester stating that the
18 facility is or is not a qualified generating facility within
19 one hundred eighty days after receiving all information
20 necessary to make a determination;

21 (4) issue:

22 (a) rules governing the procedures for
23 administering the provisions of this subsection; and

24 (b) a schedule of fees in which no fee
25 exceeds one hundred fifty thousand dollars (\$150,000);

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1 (5) deposit fees collected pursuant to this
2 subsection in the state air quality permit fund created
3 pursuant to Section 74-2-15 NMSA 1978; and

4 (6) report annually to the appropriate
5 interim legislative committee information that will allow the
6 legislative committee to analyze the effectiveness of the
7 advanced energy deduction, including the identity of qualified
8 generating facilities, the energy production means used, the
9 amount of emissions identified in this section reduced and
10 removed by those qualified generating facilities and whether
11 any requests for certificates of eligibility could not be
12 approved due to program limits.

13 H. The economic development department shall keep a
14 record of temporary and permanent jobs at all qualified
15 generating facilities in New Mexico. The economic development
16 department and the taxation and revenue department shall
17 measure the amount of state revenue that is attributable to
18 activity at each qualified generating facility in New Mexico.
19 The economic development department shall coordinate with the
20 department of environment to report annually to the appropriate
21 interim legislative committee on the effectiveness of the
22 advanced energy deduction. A taxpayer who claims an advanced
23 energy deduction shall provide the economic development
24 department, the department of environment and the taxation and
25 revenue department with the information required to compile the

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1 report required by this section. Notwithstanding any other
2 section of law to the contrary, the economic development
3 department, the department of environment and the taxation and
4 revenue department may disclose the number of applicants for
5 the advanced energy deduction, the amount of the deduction
6 approved, the number of employees of the taxpayer and any other
7 information required by the legislature or the taxation and
8 revenue department to aid in evaluating the effectiveness of
9 that deduction.

10 I. If the department of environment issues a
11 certificate of eligibility to a taxpayer stating that the
12 taxpayer holds an interest in a qualified generating facility
13 and the taxpayer does not sequester or control carbon dioxide
14 emissions to the extent required by this section by the later
15 of January 1, 2017 or eighteen months after the commercial
16 operation date of the qualified generating facility, the
17 taxpayer's certification as a qualified generating facility
18 shall be revoked by the department of environment and the
19 taxpayer shall repay to the state tax deductions granted
20 pursuant to this section; provided that, if the taxpayer
21 demonstrates to the department of environment that the taxpayer
22 made every effort to sequester or control carbon dioxide
23 emissions to the extent feasible and the facility's inability
24 to meet the sequestration requirements of a qualified
25 generating facility was beyond the facility's control, the

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1 department of environment shall determine, after a public
2 hearing, the amount of tax deduction that should be repaid to
3 the state. The department of environment, in its
4 determination, shall consider the environmental performance of
5 the facility and the extent to which the inability to meet the
6 sequestration requirements of a qualified generating facility
7 was in the control of the taxpayer. The repayment as
8 determined by the department of environment shall be paid
9 within one hundred eighty days following a final order by the
10 department of environment.

11 J. The advanced energy deduction allowed pursuant
12 to this section shall not be claimed for the same qualified
13 expenses for which a taxpayer claims a credit pursuant to
14 Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978 or a deduction
15 pursuant to Section 7-9-54.3 NMSA 1978.

16 K. An appropriate legislative committee shall
17 review the effectiveness of the advanced energy deduction every
18 four years beginning in 2015.

19 L. As used in this section:

20 (1) "coal-based electric generating facility"
21 means a new or repowered generating facility and an associated
22 coal gasification facility, if any, that uses coal to generate
23 electricity and that meets the following specifications:

24 (a) emits the lesser of: 1) what is
25 achievable with the best available control technology; or 2)

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1 thirty-five thousandths pound per million British thermal units
2 of sulfur dioxide, twenty-five thousandths pound per million
3 British thermal units of oxides of nitrogen and one hundredth
4 pound per million British thermal units of total particulate in
5 the flue gas;

6 (b) removes the greater of: 1) what is
7 achievable with the best available control technology; or 2)
8 ninety percent of the mercury from the input fuel;

9 (c) captures and sequesters or controls
10 carbon dioxide emissions so that by the later of January 1,
11 2017 or eighteen months after the commercial operation date of
12 the coal-based electric generating facility, no more than one
13 thousand one hundred pounds per megawatt-hour of carbon dioxide
14 is emitted into the atmosphere;

15 (d) all infrastructure required for
16 sequestration is in place by the later of January 1, 2017 or
17 eighteen months after the commercial operation date of the
18 coal-based electric generating facility;

19 (e) includes methods and procedures to
20 monitor the disposition of the carbon dioxide captured and
21 sequestered from the coal-based electric generating facility;
22 and

23 (f) does not exceed a name-plate
24 capacity of seven hundred net megawatts;

25 (2) "eligible generation plant costs" means

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1 expenditures for the development and construction of a
2 qualified generating facility, including permitting; lease
3 payments; site characterization and assessment; engineering;
4 design; carbon dioxide capture, treatment, compression,
5 transportation and sequestration; site and equipment
6 acquisition; and fuel supply development used directly and
7 exclusively in a qualified generating facility;

8 (3) "entity" means an individual, estate,
9 trust, receiver, cooperative association, club, corporation,
10 company, firm, partnership, limited liability company, limited
11 liability partnership, joint venture, syndicate or other
12 association or a gas, water or electric utility owned or
13 operated by a county or municipality;

14 (4) "geothermal electric generating facility"
15 means a facility with a name-plate capacity of one megawatt or
16 more that uses geothermal energy to generate electricity,
17 including a facility that captures and provides geothermal
18 energy to a preexisting electric generating facility using
19 other fuels in part;

20 (5) "interest in a qualified generating
21 facility" means title to a qualified generating facility; a
22 lessee's interest in a qualified generating facility; and a
23 county or municipality's interest in a qualified generating
24 facility when the county or municipality issues an industrial
25 revenue bond for construction of the qualified generating

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1 facility;

2 (6) "name-plate capacity" means the maximum
3 rated output of the facility measured as alternating current or
4 the equivalent direct current measurement;

5 (7) "qualified generating facility" means a
6 facility that begins construction not later than December 31,
7 [~~2015~~] 2020 and is:

8 (a) a solar thermal electric generating
9 facility that begins construction on or after July 1, 2010 and
10 that may include an associated renewable energy storage
11 facility;

12 (b) a solar photovoltaic electric
13 generating facility that begins construction on or after July
14 1, 2010 and that may include an associated renewable energy
15 storage facility;

16 (c) a geothermal electric generating
17 facility that begins construction on or after July 1, 2010;

18 (d) a recycled energy project if that
19 facility begins construction on or after July 1, 2010; or

20 (e) a new or repowered coal-based
21 electric generating facility and an associated coal
22 gasification facility;

23 (8) "recycled energy" means energy produced
24 by a generation unit with a name-plate capacity of not more
25 than fifteen megawatts that converts the otherwise lost energy

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1 from the exhaust stacks or pipes to electricity without
2 combustion of additional fossil fuel;

3 (9) "sequester" means to store, or chemically
4 convert, carbon dioxide in a manner that prevents its release
5 into the atmosphere and may include the use of geologic
6 formations and enhanced oil, coaled methane or natural gas
7 recovery techniques;

8 (10) "solar photovoltaic electric generating
9 facility" means an electric generating facility with a name-
10 plate capacity of one megawatt or more that uses solar
11 photovoltaic energy to generate electricity; and

12 (11) "solar thermal electric generating
13 facility" means an electric generating facility with a name-
14 plate capacity of one megawatt or more that uses solar thermal
15 energy to generate electricity, including a facility that
16 captures and provides solar thermal energy to a preexisting
17 electric generating facility using other fuels in part."

18 **SECTION 4.** Section 7-9G-2 NMSA 1978 (being Laws 2007,
19 Chapter 229, Section 1, as amended) is amended to read:

20 "7-9G-2. **ADVANCED ENERGY COMBINED REPORTING TAX CREDIT--**
21 **GROSS RECEIPTS TAX--COMPENSATING TAX--WITHHOLDING TAX.--**

22 A. Except as otherwise provided in this section, a
23 taxpayer that holds an interest in a qualified generating
24 facility located in New Mexico may claim a credit to be
25 computed pursuant to the provisions of this section. The

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1 credit provided by this section may be referred to as the
2 "advanced energy combined reporting tax credit".

3 B. As used in this section:

4 (1) "advanced energy tax credit" means the
5 advanced energy income tax credit, the advanced energy
6 corporate income tax credit and the advanced energy combined
7 reporting tax credit;

8 (2) "coal-based electric generating facility"
9 means a new or repowered generating facility and an associated
10 coal gasification facility, if any, that uses coal to generate
11 electricity and that meets the following specifications:

12 (a) emits the lesser of: 1) what is
13 achievable with the best available control technology; or
14 2) thirty-five thousandths pound per million British thermal
15 units of sulfur dioxide, twenty-five thousandths pound per
16 million British thermal units of oxides of nitrogen and one
17 hundredth pound per million British thermal units of total
18 particulates in the flue gas;

19 (b) removes the greater of: 1) what is
20 achievable with the best available control technology; or 2)
21 ninety percent of the mercury from the input fuel;

22 (c) captures and sequesters or controls
23 carbon dioxide emissions so that by the later of January 1,
24 2017 or eighteen months after the commercial operation date of
25 the coal-based electric generating facility, no more than one

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1 thousand one hundred pounds per megawatt-hour of carbon dioxide
2 is emitted into the atmosphere;

3 (d) all infrastructure required for
4 sequestration is in place by the later of January 1, 2017 or
5 eighteen months after the commercial operation date of the
6 coal-based electric generating facility;

7 (e) includes methods and procedures to
8 monitor the disposition of the carbon dioxide captured and
9 sequestered from the coal-based electric generating facility;
10 and

11 (f) does not exceed a name-plate
12 capacity of seven hundred net megawatts;

13 (3) "department" means the taxation and
14 revenue department, the secretary of taxation and revenue or
15 any employee of the department exercising authority lawfully
16 delegated to that employee by the secretary;

17 (4) "eligible generation plant costs" means
18 expenditures for the development and construction of a
19 qualified generating facility, including permitting; site
20 characterization and assessment; engineering; design; carbon
21 dioxide capture, treatment, compression, transportation and
22 sequestration; site and equipment acquisition; and fuel supply
23 development used directly and exclusively in a qualified
24 generating facility;

25 (5) "entity" means an individual, estate,

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1 trust, receiver, cooperative association, club, corporation,
2 company, firm, partnership, limited liability company, limited
3 liability partnership, joint venture, syndicate or other
4 association or a gas, water or electric utility owned or
5 operated by a county or municipality;

6 (6) "geothermal electric generating facility"
7 means a facility with a name-plate capacity of one megawatt or
8 more that uses geothermal energy to generate electricity,
9 including a facility that captures and provides geothermal
10 energy to a preexisting electric generating facility using
11 other fuels in part;

12 (7) "gross receipts tax due to the state"
13 means the taxpayer's gross receipts liability for the reporting
14 period that is:

15 (a) determined by, if the taxpayer's
16 business location is described in Subsection A of Section
17 7-1-6.4 NMSA 1978, multiplying the taxpayer's taxable gross
18 receipts for the reporting period by the difference between the
19 gross receipts tax rate specified in Section 7-9-4 NMSA 1978
20 and one and two hundred twenty-five thousandths percent; or

21 (b) equal to, if the taxpayer's business
22 location is not described in Subsection A of Section 7-1-6.4
23 NMSA 1978, the gross receipts tax rate specified in Section
24 7-9-4 NMSA 1978;

25 (8) "interest in a qualified generating

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1 facility" means title to a qualified generating facility; a
2 leasehold interest in a qualified generating facility; an
3 ownership interest in a business or entity that is taxed for
4 federal income tax purposes as a partnership that holds title
5 to or a leasehold interest in a qualified generating facility;
6 or an ownership interest, through one or more intermediate
7 entities that are each taxed for federal income tax purposes as
8 a partnership, in a business that holds title to or a leasehold
9 interest in a qualified generating facility;

10 (9) "name-plate capacity" means the maximum
11 rated output of the facility measured as alternating current or
12 the equivalent direct current measurement;

13 (10) "qualified generating facility" means a
14 facility that begins construction not later than December 31,
15 ~~[2015]~~ 2020 and is:

16 (a) a solar thermal electric generating
17 facility that begins construction on or after July 1, 2007 and
18 that may include an associated renewable energy storage
19 facility;

20 (b) a solar photovoltaic electric
21 generating facility that begins construction on or after
22 July 1, 2009 and that may include an associated renewable
23 energy storage facility;

24 (c) a geothermal electric generating
25 facility that begins construction on or after July 1, 2009;

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1 (d) a recycled energy project if that
2 facility begins construction on or after July 1, 2007; or

3 (e) a new or repowered coal-based
4 electric generating facility and an associated coal
5 gasification facility;

6 (11) "recycled energy" means energy produced
7 by a generation unit with a name-plate capacity of not more
8 than fifteen megawatts that converts the otherwise lost energy
9 from the exhaust stacks or pipes to electricity without
10 combustion of additional fossil fuel;

11 (12) "sequester" means to store, or
12 chemically convert, carbon dioxide in a manner that prevents
13 its release into the atmosphere and may include the use of
14 geologic formations and enhanced oil, coalbed methane or
15 natural gas recovery techniques;

16 (13) "solar photovoltaic electric generating
17 facility" means an electric generating facility with a name-
18 plate capacity of one megawatt or more that uses solar
19 photovoltaic energy to generate electricity; and

20 (14) "solar thermal electric generating
21 facility" means an electric generating facility with a
22 name-plate capacity of one megawatt or more that uses solar
23 thermal energy to generate electricity, including a facility
24 that captures and provides solar energy to a preexisting
25 electric generating facility using other fuels in part.

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1 C. A taxpayer that holds an interest in a qualified
2 generating facility may be allocated the right to claim the
3 advanced energy combined reporting tax credit without regard to
4 the taxpayer's relative interest in the qualified generating
5 facility if:

6 (1) the business entity making the allocation
7 provides notice of the allocation and the taxpayer's interest
8 in the qualified generating facility to the department on forms
9 prescribed by the department;

10 (2) allocations to the taxpayer and all other
11 taxpayers allocated a right to claim the advanced energy tax
12 credit shall not exceed one hundred percent of the advanced
13 energy tax credit allowed for the qualified generating
14 facility; and

15 (3) the taxpayer and all other taxpayers
16 allocated a right to claim the advanced energy tax credits
17 collectively own at least a five percent interest in the
18 qualified generating facility.

19 D. Upon receipt of the notice of an allocation of
20 the right to claim all or a portion of the advanced energy
21 combined reporting tax credit, the department shall verify the
22 allocation due to the recipient.

23 E. Subject to the limit imposed in Subsection K of
24 this section, the advanced energy combined reporting tax credit
25 with respect to a qualified generating facility shall equal six

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1 percent of the eligible generation plant costs of the qualified
2 generating facility. Taxpayers eligible to claim an advanced
3 energy combined reporting tax credit holding less than one
4 hundred percent of the interest in the qualified generating
5 facility shall designate an individual to report annually to
6 the department. That designated individual shall report the
7 eligible generation plant costs incurred during the calendar
8 year and the relative interest of those costs attributed to
9 each eligible interest holder. The taxpayers shall submit a
10 copy of the relative interests attributed to each interest
11 holder to the department, and any change to the apportioned
12 interests shall be submitted to the department. The designated
13 person and the department may identify a mutually acceptable
14 reporting schedule.

15 F. A taxpayer may apply for the advanced energy
16 combined reporting tax credit by submitting to the taxation and
17 revenue department a certificate issued by the department of
18 environment pursuant to Subsection K of this section,
19 documentation showing the taxpayer's interest in the qualified
20 generating facility identified in the certificate,
21 documentation of all eligible generation plant costs incurred
22 by the taxpayer prior to the date of the application by the
23 taxpayer for the advanced energy combined reporting tax credit
24 and any other information the taxation and revenue department
25 requests to determine the amount of tax credit due to the

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1 taxpayer.

2 G. A taxpayer having applied for and been granted
3 approval to claim an advanced energy combined reporting tax
4 credit by the department pursuant to this section may claim an
5 amount of available credit against the taxpayer's gross
6 receipts tax, compensating tax or withholding tax due to the
7 state. Any balance of the advanced energy combined reporting
8 tax credit that the taxpayer is approved to claim after
9 applying that tax credit against the taxpayer's gross receipts
10 tax, compensating tax or withholding tax liabilities may be
11 claimed by the taxpayer against the taxpayer's tax liability
12 pursuant to the Income Tax Act by claiming an advanced energy
13 income tax credit or against the taxpayer's tax liability
14 pursuant to the Corporate Income and Franchise Tax Act by
15 claiming an advanced energy corporate income tax credit. The
16 advanced energy combined reporting tax credit is not
17 refundable. The total amount of tax credit claimed pursuant to
18 this section, when combined with the advanced energy tax
19 credits claimed pursuant to the Income Tax Act and the
20 Corporate Income and Franchise Tax Act, shall not exceed the
21 total amount of advanced energy tax credits approved by the
22 department for the qualified generating facility.

23 H. A taxpayer that is liable for the payment of
24 gross receipts or compensating tax with respect to the
25 ownership, development, construction, maintenance or operation

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1 of a new coal-based electric generating facility that does not
2 meet the criteria for a qualified generating facility and that
3 begins construction after January 1, 2007 shall not claim an
4 advanced energy tax combined reporting credit pursuant to this
5 section or a gross receipts tax credit, a compensating tax
6 credit or a withholding tax credit pursuant to any other state
7 law.

8 I. If the amount of the advanced energy tax credit
9 approved by the department exceeds the taxpayer's liability,
10 the excess may be carried forward for up to ten years.

11 J. The aggregate amount of advanced energy tax
12 credit that may be claimed with respect to each qualified
13 generating facility shall not exceed [~~sixty million dollars~~
14 ~~(\$60,000,000)~~] one million dollars (\$1,000,000).

15 K. An entity that holds an interest in a qualified
16 generating facility may request a certificate of eligibility
17 from the department of environment to enable the requester to
18 apply for the advanced energy combined reporting tax credit.

19 The department of environment:

20 (1) shall determine if the facility is a
21 qualified generating facility;

22 (2) shall require that the requester provide
23 the department of environment with the information necessary to
24 assess whether the requester's facility meets the criteria to
25 be a qualified generating facility;

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1 (3) shall issue a certificate to the
2 requester stating that the facility is or is not a qualified
3 generating facility within one hundred eighty days after
4 receiving all information necessary to make a determination;

5 (4) shall:

6 (a) issue rules governing the procedure
7 for administering the provisions of this subsection and
8 Subsection L of this section and for providing certificates of
9 eligibility for advanced energy tax credits;

10 (b) issue a schedule of fees in which no
11 fee exceeds one hundred fifty thousand dollars (\$150,000); and

12 (c) deposit fees collected pursuant to
13 this paragraph in the state air quality permit fund created
14 pursuant to Section 74-2-15 NMSA 1978; and

15 (5) shall report annually to the appropriate
16 interim legislative committee information that will allow the
17 legislative committee to analyze the effectiveness of the
18 advanced energy tax credits, including the identity of
19 qualified generating facilities, the energy production means
20 used, the amount of emissions identified in this section
21 reduced and removed by those qualified generating facilities
22 and whether any requests for certificates of eligibility could
23 not be approved due to program limits.

24 L. If the department of environment issues a
25 certificate of eligibility to a taxpayer stating that the

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1 taxpayer holds an interest in a qualified generating facility
2 and the taxpayer does not sequester or control carbon dioxide
3 emissions to the extent required by this section by the later
4 of January 1, 2017 or eighteen months after the commercial
5 operation date of the qualified generating facility, the
6 taxpayer's certification as a qualified generating facility
7 shall be revoked by the department of environment and the
8 taxpayer shall repay to the state tax credits granted pursuant
9 to this section; provided that if the taxpayer demonstrates to
10 the department of environment that the taxpayer made every
11 effort to sequester or control carbon dioxide emissions to the
12 extent feasible and the facility's inability to meet the
13 sequestration requirements of a qualified generating facility
14 was beyond the facility's control, in which case the
15 department of environment shall determine, after a public
16 hearing, the amount of the tax credit that should be repaid to
17 the state. The department of environment, in its
18 determination, shall consider the environmental performance of
19 the facility and the extent to which the inability to meet the
20 sequestration requirements of a qualified generating facility
21 was in the control of the taxpayer. The repayment as
22 determined by the department of environment shall be paid
23 within one hundred eighty days following a final order by the
24 department of environment.

25 M. Expenditures for which a taxpayer claims an

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1 advanced energy combined reporting tax credit pursuant to this
2 section are ineligible for credits pursuant to the provisions
3 of the Investment Credit Act or any other credit against
4 personal income tax, corporate income tax, compensating tax,
5 gross receipts tax or withholding tax.

6 N. A taxpayer shall apply for approval for a
7 credit within one year following the end of the calendar year
8 in which the eligible generation plant costs are incurred."

9 SECTION 5. APPLICABILITY.--The provisions of this act
10 apply to qualified generating facilities that begin
11 construction on or after January 1, 2016.