

1 HOUSE BILL 440

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 George Dodge Jr. And Randal S. Crowder

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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 TO TEN YEARS; MAKING GEOTHERMAL ENERGY A QUALIFIED
20 ENERGY SOURCE.

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

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

25 "7-2-18.18. RENEWABLE ENERGY PRODUCTION TAX CREDIT.--

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1 A. A taxpayer who is not a dependent of another
2 individual and who holds title to a qualified energy generator
3 or leases property upon which a qualified energy generator
4 operates from a county or municipality under authority of an
5 industrial revenue bond may claim a tax credit against the
6 taxpayer's tax liability imposed pursuant to the Income Tax
7 Act. The tax credit provided in this section may be referred
8 to as the "renewable energy production tax credit". [~~The tax~~
9 ~~credit provided in this section may not be claimed with respect~~
10 ~~to the same electricity production for which a tax credit~~
11 ~~pursuant to Section 7-2A-19 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 ~~C. The amount of the tax credit shall equal one~~
25 ~~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- or~~
3 ~~biomass-derived qualified energy resource; provided that] If a
4 taxpayer claims a renewable energy production tax credit for a
5 qualified energy generator, the taxpayer shall not claim any
6 other credit pursuant to the Income Tax Act, the Corporate
7 Income and Franchise Tax Act, the Investment Credit Act or a
8 credit pursuant to Section 7-9G-2 NMSA 1978 that is based on
9 the investment in, or the volume of electricity produced by,
10 the qualified energy generator.~~

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

18 ~~[D. The amount of the tax credit for electricity~~
19 ~~produced by a qualified energy generator in the taxable year~~
20 ~~using a solar-light-derived or solar-heat-derived qualified~~
21 ~~energy resource shall be at the amounts specified in Paragraphs~~
22 ~~(1) through (10) of this subsection; provided that]~~

23 (1) ten dollars (\$10.00) per megawatt-hour for
24 ten consecutive years beginning on the date the qualified
25 energy generator receives the certificate of eligibility

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1 pursuant to Subsection F of this section if the generator first
2 produces electricity prior to January 1, 2018;

3 (2) five dollars (\$5.00) per megawatt-hour for
4 ten consecutive years beginning on the date the qualified
5 energy generator receives the certificate of eligibility
6 pursuant to Subsection F of this section if the generator first
7 produces electricity on or after January 1, 2018 and prior to
8 January 1, 2020;

9 (3) three dollars (\$3.00) per megawatt-hour
10 for ten consecutive years beginning on the date the qualified
11 energy generator receives the certificate of eligibility
12 pursuant to Subsection F of this section if the generator first
13 produces electricity on or after January 1, 2020 and prior to
14 January 1, 2023; and

15 (4) zero dollars (\$0.00) if the qualified
16 energy generator first produces electricity on or after January
17 1, 2023.

18 C. The total amount of tax credits claimed for a
19 taxable year by all taxpayers for a single qualified energy
20 generator using a solar-light-derived or solar-heat-derived
21 qualified energy resource shall ~~[be limited to]~~ equal the
22 following amounts of the first two hundred thousand megawatt-
23 hours of electricity produced by the qualified energy generator
24 in the taxable year:

25 (1) if the qualified energy generator is

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1 certified pursuant to Subsection F of this section prior to
2 January 1, 2015:

3 (a) one and one-half cents (\$.015) per
4 kilowatt-hour in the first 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 ~~(2)]~~ (b) two cents (\$.02) per kilowatt-
8 hour in the second taxable year; ~~[in which the qualified energy~~
9 ~~generator produces electricity using a solar-light-derived or~~
10 ~~solar-heat-derived qualified energy resource;~~

11 ~~(3)]~~ (c) two and one-half cents (\$.025)
12 per kilowatt-hour in the third 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 ~~(4)]~~ (d) three cents (\$.03) per
16 kilowatt-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)]~~ (e) three and one-half cents
20 (\$.035) per kilowatt-hour in the fifth taxable year; ~~[in which~~
21 ~~the qualified energy generator produces electricity using a~~
22 ~~solar-light-derived or solar-heat-derived qualified energy~~
23 ~~resource;~~

24 ~~(6)]~~ (f) four cents (\$.04) per
25 kilowatt-hour in the sixth taxable year; ~~[in which the~~

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

3 ~~(7)] (g) three and one-half cents~~
4 ~~(\$.035) per kilowatt-hour in the seventh taxable year; [in~~
5 ~~which the qualified energy generator produces electricity using~~
6 ~~a solar-light-derived or solar-heat-derived qualified energy~~
7 ~~resource;~~

8 ~~(8)] (h) three cents (\$.03) per~~
9 ~~kilowatt-hour in the eighth taxable year; [in which the~~
10 ~~qualified energy generator produces electricity using a solar-~~
11 ~~light-derived or solar-heat-derived qualified energy resource;~~

12 ~~(9)] (i) two and one-half cents (\$.025)~~
13 ~~per kilowatt-hour in the ninth 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 and

17 ~~[(10)] (j) two cents (\$.02) per~~
18 ~~kilowatt-hour in the tenth taxable year [in which the qualified~~
19 ~~energy generator produces electricity using a solar-light-~~
20 ~~derived or solar-heat-derived qualified energy resource.~~

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

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1 F. ~~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 fats, oils,~~
15 ~~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;~~

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1 ~~production tax credit from the energy, minerals and natural~~
2 ~~resources department which shall determine if the facility is a~~
3 ~~qualified energy generator. The energy, minerals and natural~~
4 ~~resources department may certify the eligibility of an energy~~
5 ~~generator only if the total amount of electricity that may be~~
6 ~~produced annually by all qualified energy generators that are~~
7 ~~certified pursuant to this section and pursuant to Section~~
8 ~~7-2A-19 NMSA 1978 will not exceed a total of two million~~
9 ~~megawatt-hours plus an additional five hundred thousand~~
10 ~~megawatt-hours produced by qualified energy generators using a~~
11 ~~solar-light-derived or solar-heat-derived qualified energy~~
12 ~~resource. Applications shall be considered in the order~~
13 ~~received. The energy, minerals and natural resources~~
14 ~~department may estimate the annual power-generating potential~~
15 ~~of a generating facility for the purposes of this section. The~~
16 ~~energy, minerals and natural resources department shall issue a~~
17 ~~certificate to the applicant stating whether the facility is an~~
18 ~~eligible qualified energy generator and the estimated annual~~
19 ~~production potential of the generating facility, which shall be~~
20 ~~the limit of that facility's energy production eligible for the~~
21 ~~tax credit for the taxable year]; and~~

22 (2) if the qualified energy generator is
23 certified pursuant to Subsection F of this section on or after
24 January 1, 2015:

25 (a) twelve dollars (\$12.00) per

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1 megawatt-hour for ten consecutive years beginning on the date
2 the qualified energy generator receives the certificate of
3 eligibility pursuant to Subsection F of this section if the
4 generator first produces electricity prior to January 1, 2017;

5 (b) eight dollars (\$8.00) per megawatt-
6 hour for ten consecutive years beginning on the date the
7 qualified energy generator receives the certificate of
8 eligibility pursuant to Subsection F of this section if the
9 generator first produces electricity on or after January 1,
10 2017 and prior to January 1, 2019;

11 (c) four dollars (\$4.00) per megawatt-
12 hour for ten consecutive years beginning on the date the
13 qualified energy generator receives the certificate of
14 eligibility pursuant to Subsection F of this section if the
15 generator first produces electricity on or after January 1,
16 2019 and prior to January 1, 2023; and

17 (d) zero dollars (\$0.00) if the
18 qualified energy generator first produces electricity on or
19 after January 1, 2023.

20 D. A taxpayer eligible for a renewable energy
21 production tax credit pursuant to:

22 (1) Paragraph (1) of Subsection C of this
23 section may claim the renewable energy production tax credit
24 for ten consecutive taxable years, beginning on the date the
25 qualified energy generator begins producing electricity;

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1 provided that no taxpayer may claim the tax credit for
2 electricity produced on or after January 1, 2033; and

3 (2) Subsection B of this section or Paragraph
4 (2) of Subsection C of this section may claim the renewable
5 energy production tax credit for ten consecutive years,
6 beginning on the date the qualified energy generator receives
7 the certificate of eligibility pursuant to Subsection F of this
8 section; provided that no taxpayer may claim the tax credit for
9 electricity produced on or after January 1, 2033.

10 E. Once a qualified energy generator is certified
11 pursuant to Subsection F of this section, the generator shall
12 be allowed to retain the original date of certification until
13 the generator goes out of production for more than six
14 consecutive months in a year or until the facility's ten-year
15 eligibility has expired.

16 F. A taxpayer may apply for a certificate of
17 eligibility for a qualified energy generator from the energy,
18 minerals and natural resources department. Completed
19 applications shall be considered in the order received. The
20 energy, minerals and natural resources department shall issue a
21 certificate of eligibility if the electricity production
22 limitations pursuant to Subsection G of this section will not
23 be exceeded. A certificate of eligibility shall state that the
24 facility is a qualified energy generator and shall include the
25 estimated annual production potential of the facility, which

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1 shall be the limit of that facility's energy production for the
2 tax credit for the taxable year.

3 G. The energy, minerals and natural resources
4 department may issue a certificate of eligibility for a
5 qualified energy generator if, as may be estimated by the
6 department, the total amount of electricity that may be
7 produced annually by all qualified energy generators certified
8 pursuant to this section and Section 7-2A-19 NMSA 1978 will not
9 exceed:

10 (1) for qualified energy generators pursuant
11 to Subsection B of this section, energy produced annually by
12 all qualified energy generators using a wind-, geothermal- or
13 biomass-derived qualified energy resource:

14 (a) prior to January 1, 2021, two
15 million megawatt-hours; or

16 (b) on and after January 1, 2021, two
17 million five hundred thousand megawatt-hours; and

18 (2) for qualified energy generators pursuant
19 to Subsection C of this section, energy produced annually by
20 all qualified energy generators using a solar-light-derived or
21 solar-heat-derived qualified energy resource:

22 (a) prior to January 1, 2018, five
23 hundred thousand megawatt-hours;

24 (b) on or after January 1, 2018 and
25 prior to January 1, 2019, six hundred thousand megawatt-hours;

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1 (c) on or after January 1, 2019 and
2 prior to January 1, 2020, seven hundred thousand megawatt-
3 hours;

4 (d) on or after January 1, 2020 and
5 prior to January 1, 2021, eight hundred thousand megawatt-
6 hours;

7 (e) on or after January 1, 2021 and
8 prior to January 1, 2022, nine hundred thousand megawatt-hours;
9 and

10 (f) on or after January 1, 2022, one
11 million megawatt-hours.

12 H. The energy, minerals and natural resources
13 department may issue rules governing the procedure for
14 administering the provisions of this ~~[subsection]~~ section and
15 shall report annually to the appropriate interim legislative
16 committee information that will allow the legislative committee
17 to analyze the effectiveness of the renewable energy production
18 tax credit, including the identity of qualified energy
19 generators, the energy production means used, the amount of
20 energy produced by those qualified energy generators and
21 whether any applications could not be approved due to program
22 limits.

23 ~~[H.]~~ I. A taxpayer may be allocated all or a
24 portion of the right to claim a renewable energy production tax
25 credit without regard to proportional ownership interest if:

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

4 (2) the business entity:

5 (a) would qualify for the renewable
6 energy production tax credit pursuant to [~~Paragraph (1) or (2)~~
7 ~~of Subsection B of~~] this section;

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

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

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

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

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

3 [~~F.~~] J. Upon receipt of notice of an allocation of
4 the right to claim all or a portion of the renewable energy
5 production tax credit, the energy, minerals and natural
6 resources department shall promptly certify the allocation in
7 writing to the recipient of the allocation.

8 [~~J. A husband and wife who file~~] K. Married
9 individuals filing separate returns for a taxable year in which
10 they could have filed a joint return may each claim only one-
11 half of the credit that would have been allowed on a joint
12 return.

13 [~~K.~~] L. A taxpayer may claim the renewable energy
14 production tax credit by submitting to the taxation and revenue
15 department the certificate of eligibility issued by the energy,
16 minerals and natural resources department, pursuant to
17 Subsection [~~G or H~~] F of this section, documentation showing
18 the taxpayer's interest in the facility, documentation of the
19 amount of electricity produced by the facility in the taxable
20 year and any other information the taxation and revenue
21 department may require to determine the amount of the tax
22 credit due the taxpayer.

23 [~~F.~~] M. If the requirements of this section have
24 been complied with, the department shall approve the renewable
25 energy production tax credit. The credit may be deducted from

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1 a taxpayer's New Mexico income tax liability for the taxable
2 year for which the credit is claimed. If the amount of tax
3 credit exceeds the taxpayer's income tax liability for the
4 taxable year:

5 (1) the excess may be carried forward for a
6 period of five consecutive taxable years; provided that any
7 excess shall not be carried forward to a taxable year that
8 begins on or after January 1, 2033; or

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

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

20 N. As used in this section:

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

23 (a) forest-related materials, including
24 mill residues, logging residues, forest thinnings, slash,
25 brush, low-commercial-value materials or undesirable species,

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1 salt cedar and other phreatophyte or woody vegetation removed
2 from river basins or watersheds and woody material harvested
3 for the purpose of forest fire fuel reduction or forest health
4 and watershed improvement;

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

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

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

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

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

23 (g) segregated municipal solid waste,
24 excluding tires and medical and hazardous waste;

25 (2) "qualified energy generator" means a

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1 facility with at least one megawatt generating capacity located
2 in New Mexico that:

3 (a) produces electricity using a
4 qualified energy resource; and

5 (b) sells that electricity to an
6 unrelated person; and

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

- 13 (a) solar light;
- 14 (b) solar heat;
- 15 (c) wind;
- 16 (d) geothermal; or
- 17 (e) biomass."

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

20 "7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--
21 LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

22 A. A taxpayer that holds title to a qualified
23 energy generator or leases property upon which a qualified
24 energy generator operates from a county or municipality under
25 authority of an industrial revenue bond may claim a tax credit

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1 against the taxpayer's tax liability imposed pursuant to the
2 Corporate Income and Franchise Tax Act. The tax credit
3 provided in this section may be referred to as the "renewable
4 energy production tax credit". ~~[The tax credit provided in~~
5 ~~this section may not be claimed with respect to the same~~
6 ~~electricity production for which the renewable energy~~
7 ~~production tax credit provided in the Income Tax Act has been~~
8 ~~claimed.~~

9 B. ~~A person is eligible for the renewable energy~~
10 ~~production tax credit if the person:~~

11 (1) ~~holds title to a qualified energy~~
12 ~~generator that first produced electricity on or before January~~
13 ~~1, 2018; or~~

14 (2) ~~leases property upon which a qualified~~
15 ~~energy generator operates from a county or municipality under~~
16 ~~authority of an industrial revenue bond and if the qualified~~
17 ~~energy generator first produced electricity on or before~~
18 ~~January 1, 2018.~~

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

24 If a taxpayer claims a renewable energy production tax credit
25 for a qualified energy generator, the taxpayer shall not claim

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1 any other credit pursuant to the Income Tax Act, the Corporate
2 Income and Franchise Tax Act, the Investment Credit Act or a
3 credit pursuant to Section 7-9G-2 NMSA 1978 that is based on
4 the investment in, or the volume of electricity produced by,
5 the qualified energy generator.

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

13 ~~[D. The amount of the tax credit for electricity~~
14 ~~produced by a qualified energy generator in the taxable year~~
15 ~~using a solar-light-derived or solar-heat-derived qualified~~
16 ~~energy resource shall be at the amounts specified in Paragraphs~~
17 ~~(1) through (10) of this subsection; provided that]~~

18 (1) ten dollars (\$10.00) per megawatt-hour for
19 ten consecutive years beginning on the date the qualified
20 energy generator receives the certificate of eligibility
21 pursuant to Subsection F of this section if the generator first
22 produces electricity prior to January 1, 2018;

23 (2) five dollars (\$5.00) per megawatt-hour for
24 ten consecutive years beginning on the date the qualified
25 energy generator receives the certificate of eligibility

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1 pursuant to Subsection F of this section if the generator first
2 produces electricity on or after January 1, 2018 and prior to
3 January 1, 2020;

4 (3) three dollars (\$3.00) per megawatt-hour
5 for ten consecutive years beginning on the date the qualified
6 energy generator receives the certificate of eligibility
7 pursuant to Subsection F of this section if the generator first
8 produces electricity on or after January 1, 2020 and prior to
9 January 1, 2023; and

10 (4) zero dollars (\$0.00) if the qualified
11 energy generator first produces electricity on or after January
12 1, 2023.

13 C. The total amount of tax credits claimed for a
14 taxable year by all taxpayers for a single qualified energy
15 generator using a solar-light-derived or solar-heat-derived
16 qualified energy resource shall ~~[be limited to]~~ equal the
17 following amounts of the first two hundred thousand megawatt-
18 hours of electricity produced by the qualified energy generator
19 in the taxable year:

20 (1) if the qualified energy generator is
21 certified pursuant to Subsection F of this section prior to
22 January 1, 2015:

23 (a) one and one-half cents (\$.015) per
24 kilowatt-hour in the first taxable year; ~~[in which the~~
25 ~~qualified energy generator produces electricity using a solar-~~

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1 ~~light-derived or solar-heat-derived qualified energy resource;~~

2 ~~(2)] (b) two cents (\$.02) per kilowatt-~~
3 ~~hour in the second taxable year; [in which the qualified energy~~
4 ~~generator produces electricity using a solar-light-derived or~~
5 ~~solar-heat-derived qualified energy resource;~~

6 ~~(3)] (c) two and one-half cents (\$.025)~~
7 ~~per kilowatt-hour in the third taxable year; [in which the~~
8 ~~qualified energy generator produces electricity using a solar-~~
9 ~~light-derived or solar-heat-derived qualified energy resource;~~

10 ~~(4)] (d) three cents (\$.03) per~~
11 ~~kilowatt-hour in the fourth 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 ~~(5)] (e) three and one-half cents~~
15 ~~(\$.035) per kilowatt-hour in the fifth taxable year; [in which~~
16 ~~the qualified energy generator produces electricity using a~~
17 ~~solar-light-derived or solar-heat-derived qualified energy~~
18 ~~resource;~~

19 ~~(6)] (f) four cents (\$.04) per kilowatt-~~
20 ~~hour in the sixth taxable year; [in which the qualified energy~~
21 ~~generator produces electricity using a solar-light-derived or~~
22 ~~solar-heat-derived qualified energy resource;~~

23 ~~(7)] (g) three and one-half cents~~
24 ~~(\$.035) per kilowatt-hour in the seventh taxable year; [in~~
25 ~~which the qualified energy generator produces electricity using~~

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1 ~~a solar-light-derived or solar-heat-derived qualified energy~~
2 ~~resource;~~

3 ~~(8)] (h) three cents (\$.03) per~~
4 ~~kilowatt-hour in the eighth 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 ~~(9)] (i) two and one-half cents (\$.025)~~
8 ~~per kilowatt-hour in the ninth 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 and

12 ~~[(10)] (j) two cents (\$.02) per~~
13 ~~kilowatt-hour in the tenth taxable year [in which the qualified~~
14 ~~energy generator produces electricity using a solar-light-~~
15 ~~derived or solar-heat-derived qualified energy resource.~~

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

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

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

24 ~~(a) forest-related materials, including~~
25 ~~mill residues, logging residues, forest thinnings, slash,~~

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1 ~~brush, low-commercial value materials or undesirable species,~~
2 ~~salt cedar and other phreatophyte or woody vegetation removed~~
3 ~~from river basins or watersheds and woody material harvested~~
4 ~~for the purpose of forest fire fuel reduction or forest health~~
5 ~~and watershed improvement;~~

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

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

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

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

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

24 ~~(g) segregated municipal solid waste,~~
25 ~~excluding tires and medical and hazardous waste;~~

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

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

12 (a) ~~solar light;~~

13 (b) ~~solar heat;~~

14 (c) ~~wind; or~~

15 (d) ~~biomass.~~

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

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1 ~~produced annually by all qualified energy generators that are~~
2 ~~certified pursuant to this section and pursuant to the Income~~
3 ~~Tax Act will not exceed a total of two million megawatt-hours~~
4 ~~plus an additional five hundred thousand megawatt-hours~~
5 ~~produced by qualified energy generators using a solar-light-~~
6 ~~derived or solar-heat-derived qualified energy resource.~~
7 ~~Applications shall be considered in the order received. The~~
8 ~~energy, minerals and natural resources department may estimate~~
9 ~~the annual power-generating potential of a generating facility~~
10 ~~for the purposes of this section. The energy, minerals and~~
11 ~~natural resources department shall issue a certificate to the~~
12 ~~applicant stating whether the facility is an eligible qualified~~
13 ~~energy generator and the estimated annual production potential~~
14 ~~of the generating facility, which shall be the limit of that~~
15 ~~facility's energy production eligible for the tax credit for~~
16 ~~the taxable year]; and~~

17 (2) if the qualified energy generator is
18 certified pursuant to Subsection F of this section on or after
19 January 1, 2015:

20 (a) twelve dollars (\$12.00) per
21 megawatt-hour for ten consecutive years beginning on the date
22 the qualified energy generator receives the certificate of
23 eligibility pursuant to Subsection F of this section if the
24 generator first produces electricity prior to January 1, 2017;

25 (b) eight dollars (\$8.00) per megawatt-

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1 hour for ten consecutive years beginning on the date the
2 qualified energy generator receives the certificate of
3 eligibility pursuant to Subsection F of this section if the
4 generator first produces electricity on or after January 1,
5 2017 and prior to January 1, 2019;

6 (c) four dollars (\$4.00) per megawatt-
7 hour for ten consecutive years beginning on the date the
8 qualified energy generator receives the certificate of
9 eligibility pursuant to Subsection F of this section if the
10 generator first produces electricity on or after January 1,
11 2019 and prior to January 1, 2023; and

12 (d) zero dollars (\$0.00) if the
13 qualified energy generator first produces electricity on or
14 after January 1, 2023.

15 D. A taxpayer eligible for a renewable energy
16 production tax credit pursuant to:

17 (1) Paragraph (1) of Subsection C of this
18 section may claim the renewable energy production tax credit
19 for ten consecutive taxable years, beginning on the date the
20 qualified energy generator begins producing electricity;
21 provided that no taxpayer may claim the tax credit for
22 electricity produced on or after January 1, 2033; and

23 (2) Subsection B of this section or Paragraph
24 (2) of Subsection C of this section may claim the renewable
25 energy production tax credit for ten consecutive years,

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1 beginning on the date the qualified energy generator receives
2 the certificate of eligibility pursuant to Subsection F of this
3 section; provided that no taxpayer may claim the tax credit for
4 electricity produced on or after January 1, 2033.

5 E. Once a qualified energy generator is certified
6 pursuant to Subsection F of this section, the generator shall
7 be allowed to retain the original date of certification until
8 the generator goes out of production for more than six
9 consecutive months in a year or until the facility's ten-year
10 eligibility has expired.

11 F. A taxpayer may apply for a certificate of
12 eligibility for a qualified energy generator from the energy,
13 minerals and natural resources department. Completed
14 applications shall be considered in the order received. The
15 energy, minerals and natural resources department shall issue a
16 certificate of eligibility if the electricity production
17 limitations pursuant to Subsection G of this section will not
18 be exceeded. A certificate of eligibility shall state that the
19 facility is a qualified energy generator and shall include the
20 estimated annual production potential of the facility, which
21 shall be the limit of that facility's energy production for the
22 tax credit for the taxable year.

23 G. The energy, minerals and natural resources
24 department may issue a certificate of eligibility for a
25 qualified energy generator if, as may be estimated by the

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1 department, the total amount of electricity that may be
2 produced annually by all qualified energy generators certified
3 pursuant to this section and Section 7-2-18.18 NMSA 1978 will
4 not exceed:

5 (1) for qualified energy generators pursuant
6 to Subsection B of this section, energy produced annually by
7 all qualified energy generators using a wind-, geothermal- or
8 biomass-derived qualified energy resource:

9 (a) prior to January 1, 2021, two
10 million megawatt-hours; or

11 (b) on and after January 1, 2021, two
12 million five hundred thousand megawatt-hours; and

13 (2) for qualified energy generators pursuant
14 to Subsection C of this section, energy produced annually by
15 all qualified energy generators using a solar-light-derived or
16 solar-heat-derived qualified energy resource:

17 (a) prior to January 1, 2018, five
18 hundred thousand megawatt-hours;

19 (b) on or after January 1, 2018 and
20 prior to January 1, 2019, six hundred thousand megawatt-hours;

21 (c) on or after January 1, 2019 and
22 prior to January 1, 2020, seven hundred thousand megawatt-
23 hours;

24 (d) on or after January 1, 2020 and
25 prior to January 1, 2021, eight hundred thousand megawatt-

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1 hours;

2 (e) on or after January 1, 2021 and
3 prior to January 1, 2022, nine hundred thousand megawatt-hours;
4 and

5 (f) on or after January 1, 2022, one
6 million megawatt-hours.

7 H. The energy, minerals and natural resources
8 department may issue rules governing the procedure for
9 administering the provisions of this subsection and shall
10 report annually to the appropriate interim legislative
11 committee information that will allow the legislative committee
12 to analyze the effectiveness of the renewable energy production
13 tax credit, including the identity of qualified energy
14 generators, the energy production means used, the amount of
15 energy produced by those qualified energy generators and
16 whether any applications could not be approved due to program
17 limits.

18 ~~[H.]~~ I. A taxpayer may be allocated all or a
19 portion of the right to claim a renewable energy production tax
20 credit without regard to proportional ownership interest if:

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

24 (2) the business entity:

25 (a) would qualify for the renewable

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1 energy production tax credit pursuant to [~~Paragraph (1) or (2)~~
2 ~~of Subsection B of~~] this section;

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

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

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

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

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

23 [~~F.~~] J. Upon receipt of notice of an allocation of
24 the right to claim all or a portion of the renewable energy
25 production tax credit, the energy, minerals and natural

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1 resources department shall promptly certify the allocation in
2 writing to the recipient of the allocation.

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

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

20 (1) the excess may be carried forward for a
21 period of five consecutive taxable years; provided that any
22 excess shall not be carried forward to a taxable year that
23 begins on or after January 1, 2033; or

24 (2) if the tax credit was issued with respect
25 to a qualified energy generator that first produced electricity

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1 using a qualified energy resource on or after October 1, 2007,
2 the excess shall be refunded to the taxpayer.

3 ~~[L. Once a taxpayer has been granted a renewable~~
4 ~~energy production tax credit for a given facility, that~~
5 ~~taxpayer shall be allowed to retain the facility's original~~
6 ~~date of application for tax credits for that facility until~~
7 ~~either the facility goes out of production for more than six~~
8 ~~consecutive months in a year or until the facility's ten-year~~
9 ~~eligibility has expired.]~~

10 M. As used in this section:

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

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

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

25 (c) animal waste, including manure and

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1 slaughterhouse and other processing waste;

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

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

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

13 (g) segregated municipal solid waste,
14 excluding tires and medical and hazardous waste;

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

18 (a) produces electricity using a
19 qualified energy resource; and

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

22 (3) "qualified energy resource" means a
23 resource that generates electrical energy by means of a
24 fluidized bed technology or similar low-emissions technology or
25 a zero-emissions generation technology that has substantial

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1 long-term production potential and that uses only the following
2 energy sources:

3 (a) solar light;

4 (b) solar heat;

5 (c) wind;

6 (d) geothermal; or

7 (e) biomass."

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

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