

HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES  
COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 538

**57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

AN ACT

RELATING TO TAXATION; CREATING THE INDUSTRIAL DECARBONIZATION  
PRODUCTION CORPORATE INCOME TAX CREDIT; CREATING THE INDUSTRIAL  
DECARBONIZATION INVESTMENT CORPORATE INCOME TAX CREDIT.

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

**SECTION 1.** A new section of the Corporate Income and  
Franchise Tax Act is enacted to read:

"~~[NEW MATERIAL]~~ INDUSTRIAL DECARBONIZATION PRODUCTION  
CORPORATE INCOME TAX CREDIT.--

A. Prior to taxable year 2031, a taxpayer that owns  
or operates a qualified industrial facility and reduces the net  
carbon dioxide equivalent emissions of the product produced by  
the facility to at least forty percent below the industrial  
benchmark of a comparable product in the same product category  
may claim a tax credit against the taxpayer's tax liability

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1 imposed pursuant to the Corporate Income and Franchise Tax Act  
2 in an amount provided in Subsection B of this section. The tax  
3 credit provided in this section may be referred to as the  
4 "industrial decarbonization production corporate income tax  
5 credit".

6 B. The industrial decarbonization production  
7 corporate income tax credit shall be in an amount equal to  
8 eighty-five dollars (\$85.00) per metric ton of net carbon  
9 dioxide equivalent that is reduced below the industrial  
10 benchmark in a taxable year, up to a maximum of ten million  
11 dollars (\$10,000,000) per qualified industrial facility per  
12 taxable year; provided that if the energy, minerals and natural  
13 resources department determines that a qualified industrial  
14 facility has a high likelihood of creating new jobs, bringing  
15 significant new investment to the state and reducing the net  
16 carbon dioxide equivalent emissions of the product produced by  
17 the facility to at least fifty percent below the industrial  
18 benchmark of a comparable product in the same product category,  
19 that department may certify up to fifteen million dollars  
20 (\$15,000,000) for that facility in a taxable year. The  
21 industrial benchmark used to measure net carbon dioxide  
22 equivalent reduction of a qualified industrial facility shall  
23 be used for each consecutive year the facility is issued a  
24 certificate of eligibility pursuant to this section, for up to  
25 ten years; provided that if a facility is not issued a

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1 certificate of eligibility for the previous taxable year, the  
2 current industrial benchmark shall be used.

3 C. A taxpayer that seeks to claim the tax credit  
4 provided by this section shall apply for certification of  
5 eligibility from the energy, minerals and natural resources  
6 department on forms and in the manner prescribed by that  
7 department. The application shall include evidence that the  
8 taxpayer owns or operates a qualified industrial facility and  
9 reduces the net carbon dioxide equivalent emissions of the  
10 product produced by the facility to at least forty percent  
11 below the industrial benchmark of carbon dioxide equivalent  
12 emissions of a comparable product in the same product category.  
13 The evidence shall include:

14 (1) a life cycle assessment of the facility's  
15 production prepared and documented in conformance with the  
16 requirements of Section 45Q of the Internal Revenue Code, as  
17 that section may be amended or renumbered, and standards of the  
18 international organization for standardization;

19 (2) an industrial benchmark of carbon dioxide  
20 equivalent emissions of a comparable product in the same  
21 product category as the taxpayer's product; and

22 (3) any other evidence required by the energy,  
23 minerals and natural resources department.

24 D. If the energy, minerals and natural resources  
25 department determines that a taxpayer meets the requirements to

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1 claim a tax credit pursuant to this section, that department  
2 shall issue to the taxpayer a dated certificate of eligibility  
3 providing the amount of the tax credit for which the taxpayer  
4 is eligible, the taxable year in which the credit may be  
5 claimed and the net carbon dioxide equivalent emissions  
6 reduced. The energy, minerals and natural resources department  
7 shall provide the taxation and revenue department and the  
8 department of environment with the certificates of eligibility  
9 issued pursuant to this subsection in an electronic format at  
10 regularly agreed-upon intervals.

11 E. A taxpayer shall not be eligible to claim the  
12 industrial decarbonization production corporate income tax  
13 credit if the taxpayer claims in the same taxable year for the  
14 same facility a federal carbon dioxide sequestration tax credit  
15 pursuant to Section 45Q of the Internal Revenue Code, as that  
16 section may be amended or renumbered.

17 F. The total annual aggregate amount of industrial  
18 decarbonization production corporate income tax credits that  
19 may be certified in a calendar year is thirty million dollars  
20 (\$30,000,000) in 2026, fifty million dollars (\$50,000,000) in  
21 2027 and one hundred million dollars (\$100,000,000) in each  
22 year thereafter. Completed applications shall be considered in  
23 the order received. The energy, minerals and natural resources  
24 department shall publish on that department's website on a  
25 regular basis the number of industrial decarbonization

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1 production corporate income tax credits that have been  
2 certified in each calendar year.

3 G. To receive a tax credit provided by this  
4 section, a taxpayer shall claim the credit on forms and in the  
5 manner prescribed by the department within twelve months  
6 following the calendar year in which the certificate of  
7 eligibility was issued.

8 H. A certificate of eligibility issued pursuant to  
9 this section may either be submitted by the taxpayer with that  
10 taxpayer's return or be sold, exchanged or otherwise  
11 transferred to another taxpayer for the full value of the  
12 credit. The parties to such a transaction shall notify the  
13 department of the sale, exchange or transfer within ten days of  
14 the sale, exchange or transfer in a format prescribed by the  
15 department.

16 I. That portion of an industrial decarbonization  
17 production corporate income tax credit that exceeds a  
18 taxpayer's tax liability in the taxable year in which the tax  
19 credit is claimed shall not be refunded but may be carried  
20 forward for three consecutive taxable years.

21 J. The department of environment shall determine,  
22 publish electronically and periodically update industrial  
23 benchmarks and product categories to reflect current emissions  
24 data.

25 K. The credit provided by this section shall be

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1 included in the tax expenditure budget pursuant to Section  
2 7-1-84 NMSA 1978, including the total annual aggregate cost of  
3 the credit.

4 L. As used in this section:

5 (1) "industrial benchmark" means the average  
6 carbon dioxide equivalent emissions intensity of the relevant  
7 product category;

8 (2) "product category" means a set of products  
9 that serve substantially similar end-use applications in  
10 construction, manufacturing or other industrial processes;

11 (3) "qualified industrial facility" means an  
12 industrial facility located in New Mexico that produces:

13 (a) concrete, cement, asphalt, iron,  
14 steel, glass, hydrogen, paper, ammonia or a critical mineral as  
15 designated by the United States department of the interior; or

16 (b) a product through refinement; and

17 (4) "refinement" means a chemical or physical  
18 process to remove impurities from a substance or form."

19 SECTION 2. A new section of the Corporate Income and  
20 Franchise Tax Act is enacted to read:

21 "[NEW MATERIAL] INDUSTRIAL DECARBONIZATION INVESTMENT  
22 CORPORATE INCOME TAX CREDIT.--

23 A. Prior to taxable year 2031, a taxpayer that owns  
24 or operates a qualified industrial facility that makes  
25 qualified expenditures for the facility 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 in an amount provided in  
3 Subsection B of this section. The tax credit provided in this  
4 section may be referred to as the "industrial decarbonization  
5 investment corporate income tax credit".

6 B. The industrial decarbonization investment  
7 corporate income tax credit shall be in an amount equal to the  
8 lesser of ten percent of the cost of qualified expenditures  
9 made by the taxpayer in a taxable year for a qualified  
10 industrial facility or five million dollars (\$5,000,000) per  
11 facility; provided that if the energy, minerals and natural  
12 resources department determines a qualified industrial facility  
13 has a high likelihood of creating new jobs, bringing  
14 significant new investment to the state and reducing the net  
15 carbon dioxide equivalent emissions of the product produced by  
16 the facility to at least fifty percent below the industrial  
17 benchmark of a comparable product in the same product category,  
18 that department may certify up to seven million five hundred  
19 thousand dollars (\$7,500,000) for that facility in a taxable  
20 year.

21 C. A taxpayer that seeks to claim the tax credit  
22 provided by this section shall, within twelve months of  
23 claiming an industrial decarbonization production corporate  
24 income tax credit provided pursuant to Section 1 of this 2025  
25 act, apply for certification from the energy, minerals and

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1 natural resources department on forms and in the manner  
2 prescribed by that department. An application for  
3 certification shall include information required by the energy,  
4 minerals and natural resources department to determine  
5 eligibility for the tax credit, including evidence that the  
6 taxpayer is a qualified industrial facility, substantiating  
7 qualified expenditures and that the equipment purchased with  
8 the qualified expenditures was installed and a certificate of  
9 eligibility for an industrial decarbonization production  
10 corporate income tax credit provided for the same taxpayer and  
11 facility pursuant to Section 1 of this 2025 act.

12 D. If the energy, minerals and natural resources  
13 department determines that a taxpayer meets the requirements of  
14 this section, that department shall issue to the taxpayer a  
15 dated certificate of eligibility providing the amount of the  
16 tax credit for which the taxpayer is eligible, the taxable year  
17 in which the credit may be claimed and the net carbon dioxide  
18 equivalent emissions reduced. Only one certificate of  
19 eligibility shall be issued for all activities performed at a  
20 qualified industrial facility, regardless of ownership of the  
21 facility. The energy, minerals and natural resources  
22 department shall provide the taxation and revenue department  
23 and the department of environment with the certificates of  
24 eligibility issued pursuant to this subsection in an electronic  
25 format at regularly agreed-upon intervals.

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1           E. The total annual aggregate amount of industrial  
2 decarbonization investment corporate income tax credits that  
3 may be certified in a calendar year is thirty million dollars  
4 (\$30,000,000) in 2026, fifty million dollars (\$50,000,000) in  
5 2027 and one hundred million dollars (\$100,000,000) in each  
6 year thereafter. Completed applications shall be considered in  
7 the order received. The energy, minerals and natural resources  
8 department shall publish on that department's website on a  
9 regular basis the number of industrial decarbonization  
10 investment corporate income tax credits that have been  
11 certified in each calendar year.

12           F. To receive a tax credit provided by this  
13 section, a taxpayer shall claim the credit on forms and in the  
14 manner prescribed by the department within twelve months  
15 following the calendar year in which the certificate of  
16 eligibility was issued.

17           G. A certificate of eligibility issued pursuant to  
18 this section may either be submitted by the taxpayer with that  
19 taxpayer's return or be sold, exchanged or otherwise  
20 transferred to another taxpayer for the full value of the  
21 credit. The parties to such a transaction shall notify the  
22 department of the sale, exchange or transfer within ten days of  
23 the sale, exchange or transfer in a format prescribed by the  
24 department.

25           H. That portion of an industrial decarbonization

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1 investment corporate income tax credit that exceeds a  
2 taxpayer's tax liability in the taxable year in which the tax  
3 credit is claimed shall not be refunded but may be carried  
4 forward for three consecutive taxable years.

5 I. The credit provided by this section shall be  
6 included in the tax expenditure budget pursuant to Section  
7 7-1-84 NMSA 1978, including the total annual aggregate cost of  
8 the credit.

9 J. As used in this section:

10 (1) "industrial benchmark" means the average  
11 carbon dioxide equivalent emissions intensity of the relevant  
12 product category;

13 (2) "product category" means a set of products  
14 that serve substantially similar end-use applications in  
15 construction, manufacturing or other industrial processes;

16 (3) "qualified expenditure" means an  
17 expenditure made on or after January 1, 2025 and prior to  
18 January 1, 2031 for the purchase of that portion of the costs  
19 of equipment dedicated to and necessary for producing a  
20 qualified industrial facility's product in a way that reduces  
21 the product's net carbon dioxide equivalent emissions;

22 (4) "qualified industrial facility" means an  
23 industrial facility located in New Mexico that produces:

24 (a) concrete, cement, asphalt, iron,  
25 steel, glass, hydrogen, paper, ammonia or a critical mineral as

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1 designated by the United States department of the interior; or

2 (b) a product through refinement; and

3 (5) "refinement" means a chemical or physical  
4 process to remove impurities from a substance or form."

5 SECTION 3. DELAYED REPEAL.--Sections 1 and 2 of this act  
6 are repealed effective January 1, 2033.

7 SECTION 4. APPLICABILITY.--The provisions of this act  
8 apply to taxable years beginning on or after January 1, 2025.

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