

1 SENATE BILL 163

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026**

3 INTRODUCED BY

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5 and Mark B. Murphy and Heather Berghmans

10 AN ACT

11 RELATING TO TAXATION; RENAMING THE GEOTHERMAL ELECTRICITY
12 GENERATION INCOME AND CORPORATE INCOME TAX CREDITS TO THE
13 GEOTHERMAL ENERGY PRODUCTION INCOME AND CORPORATE INCOME TAX
14 CREDITS; CREATING A TAX CREDIT SCHEDULE BASED ON THE AMOUNT PER
15 KILOWATT-HOUR OF GEOTHERMAL ENERGY PRODUCED FOR CREDITS.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 7-2-18.38 NMSA 1978 (being Laws 2024,
19 Chapter 67, Section 33, as amended) is amended to read:

20 "7-2-18.38. GEOTHERMAL ~~ELECTRICITY GENERATION~~ ENERGY
21 PRODUCTION INCOME TAX CREDIT. --

22 A. For taxable years ending prior to January 1,
23 ~~2032~~ 2036, a taxpayer who is not a dependent of another
24 individual and who holds an interest in a geothermal
25 ~~electricity generation~~ energy production facility may apply
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for, and the department may allow, a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act. The tax credit provided by this section may be referred to as the "geothermal [electricity generation] energy production income tax credit".

[B. The amount of a tax credit allowed pursuant to this section shall be an amount equal to one and one-half cents (\$0.015) per kilowatt-hour of electricity generated in New Mexico in a taxable year by the geothermal electricity generation facility in which the taxpayer holds an interest.]

B. The amount of credit shall be at the following amounts; provided that the total amount of credits claimed for a single geothermal energy production facility in a taxable year shall be limited to the first two hundred thousand megawatt-hours of geothermal energy produced by the geothermal energy production facility in that taxable year:

(1) one and one-half cents (\$.015) per kilowatt-hour in the first taxable year in which the geothermal energy production facility produces geothermal energy using a geothermal energy resource;

(2) two cents (\$.02) per kilowatt-hour in the second taxable year in which the geothermal energy production facility produces geothermal energy using a geothermal energy resource;

(3) two and one-half cents (\$.025) per

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1 kilowatt-hour in the third taxable year in which the geothermal
2 energy production facility produces geothermal energy using a
3 geothermal energy resource;

4 (4) three cents (\$.03) per kilowatt-hour in
5 the fourth taxable year in which the geothermal energy
6 production facility produces geothermal energy using a
7 geothermal energy resource;

8 (5) three and one-half cents (\$.035) per
9 kilowatt-hour in the fifth taxable year in which the geothermal
10 energy production facility produces geothermal energy using a
11 geothermal energy resource;

12 (6) four cents (\$.04) per kilowatt-hour in the
13 sixth taxable year in which the geothermal energy production
14 facility produces geothermal energy using a geothermal energy
15 resource;

16 (7) three and one-half cents (\$.035) per
17 kilowatt-hour in the seventh taxable year in which the
18 geothermal energy production facility produces geothermal
19 energy using a geothermal energy resource;

20 (8) three cents (\$.03) per kilowatt-hour in
21 the eighth taxable year in which the geothermal energy
22 production facility produces geothermal energy using a
23 geothermal energy resource;

24 (9) two and one-half cents (\$.025) per
25 kilowatt-hour in the ninth taxable year in which the geothermal

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1 energy production facility produces geothermal energy using a
2 geothermal energy resource; and

3 (10) two cents (\$.02) per kilowatt-hour in the
4 tenth taxable year in which the geothermal energy production
5 facility produces geothermal energy using a geothermal energy
6 resource.

7 C. Subject to the limitation provided in Subsection
8 D of this section, a taxpayer shall apply for certification of
9 eligibility for the credit provided by this section from the
10 energy, minerals and natural resources department on forms and
11 in the manner prescribed by that department. ~~[The total annual~~
12 ~~aggregate amount of credits that may be certified for~~
13 ~~geothermal electricity generation income tax credits and~~
14 ~~geothermal electricity generation corporate income tax credits~~
15 ~~in any calendar year is five million dollars (\$5,000,000).]~~

16 Completed applications shall be considered in the order
17 received. Applications for certification received after this
18 limitation has been met in a calendar year shall not be
19 approved for that calendar year, but shall be considered for
20 certification in the following calendar year. ~~[The application~~
21 ~~shall include proof that the taxpayer is eligible for~~
22 ~~certification, including that the geothermal electricity~~
23 ~~generation facility that produced the energy for which the~~
24 ~~taxpayer is claiming credit, the geothermal resources used by~~
25 ~~the geothermal electricity generation facility and the~~

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1 ~~taxpayer's interest in the geothermal electricity generation~~
2 ~~facility are in accordance with the definitions set forth in~~
3 ~~this section.] For taxpayers approved to receive the credit,~~
4 the energy, minerals and natural resources department shall
5 issue a certificate of eligibility stating the amount of credit
6 to which the taxpayer is entitled and the taxable year in which
7 the credit may be claimed. The certificate of eligibility
8 shall be numbered for identification and declare the date of
9 issuance and the amount of the tax credit allowed. The energy,
10 minerals and natural resources department shall provide the
11 department with the certificates of eligibility issued pursuant
12 to this subsection in an electronic format at regularly agreed-
13 upon intervals.

14 D. The total annual aggregate amount of credits
15 that may be certified for geothermal energy production income
16 tax credits and geothermal energy production corporate income
17 tax credits in a calendar year is fifty-five million dollars
18 (\$55,000,000); provided that eleven million dollars
19 (\$11,000,000) of the total annual aggregate amount shall be
20 reserved for applications submitted by tribal businesses and
21 small businesses. If the total aggregate amount pursuant to
22 this section is not met in a calendar year, the difference may
23 be added to the total annual aggregate amount allowed for the
24 following calendar year.

25 E. A certificate of eligibility for the tax credit

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1 may be sold, exchanged or otherwise transferred to another
2 taxpayer for the full value of the credit. The parties to such
3 a transaction shall notify the department of the sale, exchange
4 or transfer within ten days of the sale, exchange or transfer
5 in an electronic format prescribed by the department.

6 [D.] F. A taxpayer may claim a geothermal
7 ~~[electricity generation]~~ energy production income tax credit
8 for the taxable year in which ~~[electricity was generated]~~
9 geothermal energy was produced in New Mexico by a geothermal
10 ~~[electricity generation]~~ energy production facility in which
11 the taxpayer holds an interest. To receive the credit provided
12 by this section, a taxpayer shall apply to the department on
13 forms and in the manner prescribed by the department. The
14 application shall include a certificate of eligibility issued
15 pursuant to Subsection C of this section.

16 [E.] G. That portion of a credit that exceeds a
17 taxpayer's tax liability in the taxable year in which the
18 credit is claimed shall not be refunded but may be carried
19 forward for up to three consecutive years.

20 [F.] H. Married individuals filing separate returns
21 for a taxable year for which they could have filed a joint
22 return may each claim only one-half of the credit that would
23 have been claimed on a joint return.

24 [G.] I. A taxpayer may be allocated the right to
25 claim a credit provided by this section in proportion to the

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1 taxpayer's ownership interest if the taxpayer owns an interest
2 in a business entity that is taxed for federal income tax
3 purposes as a partnership or limited liability company and that
4 business entity has met all of the requirements to be eligible
5 for the credit. The total credit claimed by all members of the
6 partnership or limited liability company shall not exceed the
7 maximum amount of the credit allowed pursuant to this section.

8 ~~H. A taxpayer allowed a tax credit pursuant to
9 this section shall report the amount of the credit to the
10 department in a manner required by the department.~~

11 ~~I.~~ J. The tax credit provided by this section
12 shall be included in the tax expenditure budget pursuant to
13 Section 7-1-84 NMSA 1978, including the annual aggregate cost
14 of the tax credit.

15 ~~J.~~ K. As used in this section:

16 (1) "geothermal [electricity generation]
17 energy production facility" means a facility located in New
18 Mexico that ~~[generates electricity]~~ produces and delivers
19 electricity or thermal energy from geothermal resources for
20 industrial, commercial or residential use and:

21 (a) for new facilities, begins
22 construction on or after January 1, 2025; or

23 (b) for existing facilities, on or after
24 January 1, 2025, increases the amount of ~~[electricity~~
25 ~~generated]~~ geothermal energy produced from geothermal resources

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1 the facility [generated] produced prior to that date by at
2 least one hundred percent;

3 (2) "geothermal resources" means the natural
4 heat of the earth in excess of two hundred fifty degrees
5 Fahrenheit or the energy, in whatever form, below the surface
6 of the earth present in, resulting from, created by or that may
7 be extracted from this natural heat in excess of two hundred
8 fifty degrees Fahrenheit and all minerals in solution or other
9 products obtained from naturally heated fluids, brines,
10 associated gases and steam, in whatever form, found below the
11 surface of the earth, but excluding oil, hydrocarbon gas and
12 other hydrocarbon substances and excluding the heating and
13 cooling capacity of the earth not resulting from the natural
14 heat of the earth in excess of two hundred fifty degrees
15 Fahrenheit as may be used for the heating and cooling of
16 buildings through an on-site geoexchange heat pump or similar
17 on-site system; [and]

18 (3) "interest in a geothermal [electricity
19 generation] energy production facility" means title to a
20 geothermal [electricity generation] energy production facility;
21 a leasehold interest in such facility; an ownership interest in
22 a business or entity that is taxed for federal income tax
23 purposes as a partnership that holds title to or a leasehold
24 interest in such facility; or an ownership interest, through
25 one or more intermediate entities that are each taxed for

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federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in such facility;

(4) "kilowatt-hour of geothermal energy"

means:

(a) one kilowatt-hour of electricity

(b) one kilowatt-hour of net thermal energy transferred to a purchaser or end user at the point of sale or end-use, as measured at a customer delivery point using calibrated metering equipment that determines thermal energy based on measured flow and measured supply-and-return temperature differential, in accordance with generally accepted industry practice;

(5) "small business" means a business located in New Mexico that employs fifty or fewer full-time employees; and

(6) "tribal business" means a business located in New Mexico that is owned and operated by an Indian nation, tribe or pueblo or a member of an Indian nation, tribe or pueblo."

SECTION 2. Section 7-2A-24.1 NMSA 1978 (being Laws 2024, Chapter 67, Section 34, as amended) is amended to read:

"7-2A-24.1. GEOTHERMAL [ELECTRICITY GENERATION] ENERGY
PRODUCTION CORPORATE INCOME TAX CREDIT.--

A. For taxable years ending prior to January 1,

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[2032] 2036, a taxpayer that holds an interest in a geothermal [electricity generation] energy production facility may apply for, and the department may allow, a credit against the taxpayer's tax liability imposed pursuant to the Corporate Income and Franchise Tax Act. The tax credit provided by this section may be referred to as the "geothermal [electricity generation] energy production corporate income tax credit".

[B. The amount of a tax credit allowed pursuant to this section shall be an amount equal to one and one-half cents (\$0.015) per kilowatt-hour of electricity generated in New Mexico in a taxable year by the geothermal electricity generation facility in which the taxpayer holds an interest.]

B. The amount of credit shall be at the following amounts; provided that the total amount of credits claimed for a single geothermal energy production facility in a taxable year shall be limited to the first two hundred thousand megawatt-hours of geothermal energy produced by the geothermal energy production facility in that taxable year:

(1) one and one-half cents (\$.015) per kilowatt-hour in the first taxable year in which the geothermal energy production facility produces geothermal energy using a geothermal energy resource;

(2) two cents (\$.02) per kilowatt-hour in the second taxable year in which the geothermal energy production facility produces geothermal energy using a geothermal energy

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1 resource;

2 (3) two and one-half cents (\$.025) per
3 kilowatt-hour in the third taxable year in which the geothermal
4 energy production facility produces geothermal energy using a
5 geothermal energy resource;

6 (4) three cents (\$.03) per kilowatt-hour in
7 the fourth taxable year in which the geothermal energy
8 production facility produces geothermal energy using a
9 geothermal energy resource;

10 (5) three and one-half cents (\$.035) per
11 kilowatt-hour in the fifth taxable year in which the geothermal
12 energy production facility produces geothermal energy using a
13 geothermal energy resource;

14 (6) four cents (\$.04) per kilowatt-hour in the
15 sixth taxable year in which the geothermal energy production
16 facility produces geothermal energy using a geothermal energy
17 resource;

18 (7) three and one-half cents (\$.035) per
19 kilowatt-hour in the seventh taxable year in which the
20 geothermal energy production facility produces geothermal
21 energy using a geothermal energy resource;

22 (8) three cents (\$.03) per kilowatt-hour in
23 the eighth taxable year in which the geothermal energy
24 production facility produces geothermal energy using a
25 geothermal energy resource;

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(9) two and one-half cents (\$.025) per kilowatt-hour in the ninth taxable year in which the geothermal energy production facility produces geothermal energy using a geothermal energy resource; and

(10) two cents (\$.02) per kilowatt-hour in the tenth taxable year in which the geothermal energy production facility produces geothermal energy using a geothermal energy resource.

C. Subject to the limitation provided in Subsection D of this section, a taxpayer shall apply for certification of eligibility for the credit provided by this section from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. [The total annual aggregate amount of geothermal electricity generation corporate income tax credits and geothermal electricity generation income tax credits that may be certified in any calendar year is five million dollars (\$5,000,000).] Completed applications shall be considered in the order received. Applications for certification received after this limitation has been met in a calendar year shall not be approved for that calendar year, but shall be considered for certification in the following calendar year. [The application shall include proof that the taxpayer is eligible for certification, including that the geothermal electricity generation facility that produced the energy for which the taxpayer is claiming credit, the geothermal resources

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1 used by the geothermal electricity generation facility and the
2 taxpayer's interest in the geothermal electricity generation
3 facility are in accordance with the definitions set forth in
4 this section.] For taxpayers approved to receive the credit,
5 the energy, minerals and natural resources department shall
6 issue a certificate of eligibility stating the amount of credit
7 to which the taxpayer is entitled and the taxable year in which
8 the credit may be claimed. The certificate of eligibility
9 shall be numbered for identification and declare the date of
10 issuance and the amount of the tax credit allowed. The energy,
11 minerals and natural resources department shall provide the
12 department with the certificates of eligibility issued pursuant
13 to this subsection in an electronic format at regularly agreed-
14 upon intervals.

15 D. The total annual aggregate amount of credits
16 that may be certified for geothermal energy production income
17 tax credits and geothermal energy production corporate income
18 tax credits in a calendar year is fifty-five million dollars
19 (\$55,000,000); provided that eleven million dollars
20 (\$11,000,000) of the total annual aggregate amount shall be
21 reserved for applications submitted by tribal businesses and
22 small businesses. If the total aggregate amount pursuant to
23 this section is not met in a calendar year, the difference may
24 be added to the total annual aggregate amount allowed for the
25 following calendar year.

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1 E. A certificate of eligibility for the tax credit
2 may be sold, exchanged or otherwise transferred to another
3 taxpayer for the full value of the credit. The parties to such
4 a transaction shall notify the department of the sale, exchange
5 or transfer within ten days of the sale, exchange or transfer
6 in an electronic format prescribed by the department.

7 [D.] F. A taxpayer may claim a geothermal
8 ~~[electricity generation]~~ energy production corporate income tax
9 credit for the taxable year in which ~~[electricity was~~
10 ~~generated]~~ geothermal energy was produced in New Mexico by a
11 geothermal ~~[electricity generation]~~ energy production facility
12 in which the taxpayer holds an interest. To receive the credit
13 provided by this section, a taxpayer shall apply to the
14 department on forms and in the manner prescribed by the
15 department. The application shall include a certificate of
16 eligibility issued pursuant to Subsection C of this section.

17 [E.] G. That portion of a credit that exceeds a
18 taxpayer's tax liability in the taxable year in which the
19 credit is claimed shall not be refunded but may be carried
20 forward for up to three consecutive years.

21 [F.] ~~A taxpayer allowed a tax credit pursuant to~~
22 ~~this section shall report the amount of the credit to the~~
23 ~~department in a manner required by that department.~~

24 G.] H. The tax credit provided by this section
25 shall be included in the tax expenditure budget pursuant to

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1 Section 7-1-84 NMSA 1978, including the annual aggregate cost
2 of the tax credit.

3 [H.] I. As used in this section:

4 (1) "geothermal [electricity generation]
5 energy production facility" means a facility located in New
6 Mexico that [generates electricity] produces and delivers
7 electricity or thermal energy from geothermal resources for
8 industrial, commercial or residential use and:

9 (a) for new facilities, begins
10 construction on or after January 1, 2025; or

11 (b) for existing facilities, on or after
12 January 1, 2025, increases the amount of [electricity
13 generated] geothermal energy produced from geothermal resources
14 the facility [generated] produced prior to that date by at
15 least one hundred percent;

16 (2) "geothermal resources" means the natural
17 heat of the earth in excess of two hundred fifty degrees
18 Fahrenheit or the energy, in whatever form, below the surface
19 of the earth present in, resulting from, created by or that may
20 be extracted from this natural heat in excess of two hundred
21 fifty degrees Fahrenheit and all minerals in solution or other
22 products obtained from naturally heated fluids, brines,
23 associated gases and steam, in whatever form, found below the
24 surface of the earth, but excluding oil, hydrocarbon gas and
25 other hydrocarbon substances and excluding the heating and

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cooling capacity of the earth not resulting from the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit as may be used for the heating and cooling of buildings through an on-site geoexchange heat pump or similar on-site system; [and]

(3) "interest in a geothermal [electricity generation] energy production facility" means title to a geothermal [electricity generation] energy production facility; a leasehold interest in such facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in such facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in such facility;

(4) "kilowatt-hour of geothermal energy"

means:

(a) one kilowatt-hour of electricity generated; or

(b) one kilowatt-hour of net thermal energy transferred to a purchaser or end user at the point of sale or end-use, as measured at a customer delivery point using calibrated metering equipment that determines thermal energy based on measured flow and measured supply-and-return temperature differential, in accordance with generally accepted

1 industry practice;

2 (5) "small business" means a business located
3 in New Mexico that employs fifty or fewer full-time employees;
4 and

5 (6) "tribal business" means a business located
6 in New Mexico that is owned and operated by an Indian nation,
7 tribe or pueblo or a member of an Indian nation, tribe or
8 pueblo."

9 **SECTION 3. APPLICABILITY.--**The provisions of this act
10 apply to taxable years beginning on or after January 1, 2026.

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