

Proposals for RSTP Committee Endorsement

Page #	Short Description	202#	Presenter
3	Replace Investment Credit with Expanded Manufacturer's GRT Deduction	215809.4	Representative Jason Harper
59	Economic Development Incentive Reporting Requirements	215948.2	Senator Bill Tallman
	Pages 77 through 86 have been removed		
87	Clarify Limitation on Property Valuation Increases for Low-Income Disabled Persons	215931.2SA	Stephanie Schardin Clarke, Secretary, TRD
93	Allow TRD to Share Data with Certain Agencies	215933.2SA	Stephanie Schardin Clarke, Secretary, TRD
99	Main Street Fire Suppression Equipment Tax Credit	215941.2SA	Jon Clark, Deputy Secretary, EDD
105	Changes to the "Local Government Transportation Project Fund"	215929.3SA	Stephen Thies, Assistant General Counsel, DOT
111	Making a Temporary GRT Distribution to the State Aviation Fund Permanent	215944.1SA	Stephen Thies, Assistant General Counsel, DOT

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HOUSE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; EXPANDING A GROSS RECEIPTS TAX DEDUCTION FOR MANUFACTURERS TO INCLUDE RECEIPTS FROM SELLING OR LEASING CERTAIN EQUIPMENT TO A MANUFACTURER; ADDING REPORTING REQUIREMENTS TO THE ADVANCED ENERGY INCOME TAX CREDIT, ADVANCED ENERGY CORPORATE INCOME TAX CREDIT AND ADVANCED ENERGY COMBINED REPORTING TAX CREDIT; REPEALING THE INVESTMENT CREDIT ACT.

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

SECTION 1. Section 7-1-2 NMSA 1978 (being Laws 1965, Chapter 248, Section 2, as amended by Laws 2019, Chapter 47, Section 1 and by Laws 2019, Chapter 53, Section 10 and also by Laws 2019, Chapter 270, Section 1) is amended to read:

"7-1-2. APPLICABILITY.--The Tax Administration Act applies to and governs:

A. the administration and enforcement of the

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1 following taxes or tax acts as they now exist or may hereafter
2 be amended:

- 3 (1) Income Tax Act;
- 4 (2) Withholding Tax Act;
- 5 (3) Oil and Gas Proceeds and Pass-Through
6 Entity Withholding Tax Act;
- 7 (4) Gross Receipts and Compensating Tax Act,
8 Interstate Telecommunications Gross Receipts Tax Act and Leased
9 Vehicle Gross Receipts Tax Act;
- 10 (5) Liquor Excise Tax Act;
- 11 (6) Local Liquor Excise Tax Act;
- 12 (7) any municipal local option gross receipts
13 tax or municipal compensating tax;
- 14 (8) any county local option gross receipts tax
15 or county compensating tax;
- 16 (9) Special Fuels Supplier Tax Act;
- 17 (10) Gasoline Tax Act;
- 18 (11) petroleum products loading fee, which fee
19 shall be considered a tax for the purpose of the Tax
20 Administration Act;
- 21 (12) Alternative Fuel Tax Act;
- 22 (13) Cigarette Tax Act;
- 23 (14) Estate Tax Act;
- 24 (15) Railroad Car Company Tax Act;
- 25 (16) [~~Investment Credit Act~~] rural job tax

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1 credit, Laboratory Partnership with Small Business Tax Credit
2 Act, Technology Jobs and Research and Development Tax Credit
3 Act, Film Production Tax Credit Act, Affordable Housing Tax
4 Credit Act and high-wage jobs tax credit;

5 (17) Corporate Income and Franchise Tax Act;

6 (18) Uniform Division of Income for Tax
7 Purposes Act;

8 (19) Multistate Tax Compact;

9 (20) Tobacco Products Tax Act;

10 (21) the telecommunications relay service
11 surcharge imposed by Section 63-9F-11 NMSA 1978, which
12 surcharge shall be considered a tax for the purposes of the Tax
13 Administration Act; ~~and~~

14 (22) the Insurance Premium Tax Act; and

15 (23) the Health Care Quality Surcharge Act;

16 B. the administration and enforcement of the
17 following taxes, surtaxes, advanced payments or tax acts as
18 they now exist or may hereafter be amended:

19 (1) Resources Excise Tax Act;

20 (2) Severance Tax Act;

21 (3) any severance surtax;

22 (4) Oil and Gas Severance Tax Act;

23 (5) Oil and Gas Conservation Tax Act;

24 (6) Oil and Gas Emergency School Tax Act;

25 (7) Oil and Gas Ad Valorem Production Tax Act;

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- 1 (8) Natural Gas Processors Tax Act;
2 (9) Oil and Gas Production Equipment Ad
3 Valorem Tax Act;
4 (10) Copper Production Ad Valorem Tax Act;
5 (11) any advance payment required to be made
6 by any act specified in this subsection, which advance payment
7 shall be considered a tax for the purposes of the Tax
8 Administration Act;
9 (12) Enhanced Oil Recovery Act;
10 (13) Natural Gas and Crude Oil Production
11 Incentive Act; and
12 (14) intergovernmental production tax credit
13 and intergovernmental production equipment tax credit;
14 C. the administration and enforcement of the
15 following taxes, surcharges, fees or acts as they now exist or
16 may hereafter be amended:
17 (1) Weight Distance Tax Act;
18 (2) the workers' compensation fee authorized
19 by Section 52-5-19 NMSA 1978, which fee shall be considered a
20 tax for purposes of the Tax Administration Act;
21 (3) Uniform Unclaimed Property Act (1995);
22 (4) 911 emergency surcharge and the network
23 and database surcharge, which surcharges shall be considered
24 taxes for purposes of the Tax Administration Act;
25 (5) the solid waste assessment fee authorized

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1 by the Solid Waste Act, which fee shall be considered a tax for
2 purposes of the Tax Administration Act;

3 (6) the water conservation fee imposed by
4 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
5 for the purposes of the Tax Administration Act; and

6 (7) the gaming tax imposed pursuant to the
7 Gaming Control Act; and

8 D. the administration and enforcement of all other
9 laws, with respect to which the department is charged with
10 responsibilities pursuant to the Tax Administration Act, but
11 only to the extent that the other laws do not conflict with the
12 Tax Administration Act."

13 SECTION 2. Section 7-1-26 NMSA 1978 (being Laws 1965,
14 Chapter 248, Section 28, as amended) is amended to read:

15 "7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT, REBATE
16 OR REFUND.--

17 A. A person who believes that an amount of tax has
18 been paid by or withheld from that person in excess of that for
19 which the person was liable, who has been denied a credit or
20 rebate claimed or who claims a prior right to property in the
21 possession of the department pursuant to a levy made under
22 authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim
23 a refund by directing to the secretary, within the time
24 limitations provided by Subsections F and G of this section, a
25 written claim for refund that, except as provided in Subsection

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1 K of this section, includes:

2 (1) the taxpayer's name, address and
3 identification number;

4 (2) the type of tax for which a refund is
5 being claimed, the credit or rebate denied or the property
6 levied upon;

7 (3) the sum of money or other property being
8 claimed;

9 (4) with respect to a refund, the period for
10 which overpayment was made;

11 (5) a brief statement of the facts and the law
12 on which the claim is based, which may be referred to as the
13 "basis for the refund", which may include documentation that
14 substantiates the written claim and supports the taxpayer's
15 basis for the refund; and

16 (6) if applicable, a copy of an amended return
17 for each tax period for which the refund is claimed.

18 B. A claim for refund that meets the requirements
19 of Subsection A of this section and that is filed within the
20 time limitations provided by Subsections F and G of this
21 section is deemed to be properly before the department for
22 consideration, regardless of whether the department requests
23 additional documentation after receipt of the claim for refund.

24 C. If the department requests additional relevant
25 documentation from a taxpayer who has submitted a claim for

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1 refund, the claim for refund shall not be considered incomplete
2 provided the taxpayer submits sufficient information for the
3 department to make a determination.

4 D. The secretary or the secretary's delegate may
5 allow the claim in whole or in part or may deny the claim. If
6 the:

7 (1) claim is denied in whole or in part in
8 writing, the person shall not refile the denied claim, but the
9 person, within ninety days after either the mailing or delivery
10 of the denial of all or any part of the claim, may elect to
11 pursue only one of the remedies provided in Subsection E of
12 this section; and

13 (2) department has neither granted nor denied
14 any portion of a complete claim for refund within one hundred
15 eighty days after the claim was mailed or otherwise delivered
16 to the department, the person may elect to treat the claim as
17 denied and elect to pursue only one of the remedies provided in
18 Subsection E of this section.

19 E. A person may elect to pursue only one of the
20 remedies provided in this subsection. A person who timely
21 pursues more than one remedy is deemed to have elected the
22 first. The person may:

23 (1) direct to the secretary, pursuant to the
24 provisions of Section 7-1-24 NMSA 1978, a written protest that
25 sets forth:

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1 (a) the circumstances of: 1) an alleged
2 overpayment; 2) a denied credit; 3) a denied rebate; or 4) a
3 denial of a prior right to property levied upon by the
4 department;

5 (b) an allegation that, because of that
6 overpayment or denial, the state is indebted to the taxpayer
7 for a specified amount, including any allowed interest, or for
8 the property;

9 (c) a demand for the refund to the
10 taxpayer of that amount or that property; and

11 (d) a recitation of the facts of the
12 claim for refund; or

13 (2) commence a civil action in the district
14 court for Santa Fe county by filing a complaint setting forth
15 the circumstance of the claimed overpayment, denied credit or
16 rebate or denial of a prior right to property levied upon by
17 the department alleging that on account thereof the state is
18 indebted to the plaintiff in the amount or property stated,
19 together with any interest allowable, demanding the refund to
20 the plaintiff of that amount or property and reciting the facts
21 of the claim for refund. The plaintiff or the secretary may
22 appeal from any final decision or order of the district court
23 to the court of appeals.

24 F. Except as otherwise provided in Subsection G of
25 this section, a credit or refund of any amount may be allowed

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1 or made to a person:

2 (1) only within three years after the end of
3 the calendar year in which:

4 (a) the payment was originally due or
5 the overpayment resulted from an assessment by the department
6 as provided in Section 7-1-17 NMSA 1978, whichever is later;

7 (b) the final determination of value
8 occurs with respect to any overpayment that resulted from a
9 disapproval by any agency of the United States or the state of
10 New Mexico or any court of increase in value of a product
11 subject to taxation under the Oil and Gas Severance Tax Act,
12 the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency
13 School Tax Act, the Oil and Gas Ad Valorem Production Tax Act
14 or the Natural Gas Processors Tax Act;

15 (c) property was levied upon as provided
16 in the Tax Administration Act; or

17 (d) an overpayment of New Mexico tax
18 resulted from: 1) an internal revenue service audit adjustment
19 or a federal refund paid due to an adjustment of an audit by
20 the internal revenue service or an amended federal return; or
21 2) the amendment to a federal return for which federal approval
22 is required by the Internal Revenue Code;

23 (2) in the case of a denial of a claim for
24 credit under the [~~Investment Credit Act~~] Laboratory Partnership
25 with Small Business Tax Credit Act or Technology Jobs and

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1 Research and Development Tax Credit Act or for the rural job
2 tax credit provided by Section 7-2E-1.1 NMSA 1978 or similar
3 credit, only within one year after the date of the denial;

4 (3) in the case of a taxpayer under audit by
5 the department who has signed a waiver of the limitation on
6 assessments on or after July 1, 1993 pursuant to Subsection F
7 of Section 7-1-18 NMSA 1978, only for a refund of the same tax
8 paid for the same period for which the waiver was given, and
9 only until a date one year after the later of the date of the
10 mailing of an assessment issued pursuant to the audit, the date
11 of the mailing of final audit findings to the taxpayer or the
12 date a proceeding is begun in court by the department with
13 respect to the same tax and the same period;

14 (4) in the case of a payment of an amount of
15 tax not made within three years of the end of the calendar year
16 in which the original due date of the tax or date of the
17 assessment of the department occurred, only for a claim for
18 refund of that amount of tax and only within one year of the
19 date on which the tax was paid; or

20 (5) in the case of a taxpayer who has been
21 assessed a tax on or after July 1, 1993 under Subsection B, C
22 or D of Section 7-1-18 NMSA 1978 and an assessment that applies
23 to a period ending at least three years prior to the beginning
24 of the year in which the assessment was made, only for a refund
25 for the same tax for the period of the assessment or for any

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1 period following that period within one year of the date of the
2 assessment unless a longer period for claiming a refund is
3 provided in this section.

4 G. No credit or refund shall be allowed or made to
5 a person claiming a refund of gasoline tax under Section
6 7-13-11 NMSA 1978 unless notice of the destruction of the
7 gasoline was given to the department within thirty days of the
8 actual destruction and the claim for refund is made within six
9 months of the date of destruction. No credit or refund shall
10 be allowed or made to a person claiming a refund of gasoline
11 tax under Section 7-13-17 NMSA 1978 unless the refund is
12 claimed within six months of the date of purchase of the
13 gasoline and the gasoline has been used at the time the claim
14 for refund is made.

15 H. If, as a result of an audit by the department or
16 a managed audit covering multiple periods, an overpayment of
17 tax is found in any period under the audit and if the taxpayer
18 files a claim for refund for the overpayments identified in the
19 audit, that overpayment may be credited against an underpayment
20 of the same tax found in another period under audit pursuant to
21 Section 7-1-29 NMSA 1978.

22 I. A refund of tax paid under any tax or tax act
23 administered under Subsection B of Section 7-1-2 NMSA 1978 may
24 be made, at the discretion of the department, in the form of
25 credit against future tax payments if future tax liabilities in

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1 an amount at least equal to the credit amount reasonably may be
2 expected to become due.

3 J. For the purposes of this section, "oil and gas
4 tax return" means a return reporting tax due with respect to
5 oil, natural gas, liquid hydrocarbons, carbon dioxide, helium
6 or nonhydrocarbon gas pursuant to the Oil and Gas Severance Tax
7 Act, the Oil and Gas Conservation Tax Act, the Oil and Gas
8 Emergency School Tax Act, the Oil and Gas Ad Valorem Production
9 Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas
10 Production Equipment Ad Valorem Tax Act.

11 K. The filing of a fully completed original income
12 tax return, corporate income tax return, corporate income and
13 franchise tax return, estate tax return or special fuel excise
14 tax return that shows a balance due the taxpayer or a fully
15 completed amended income tax return, an amended corporate
16 income tax return, an amended corporate income and franchise
17 tax return, an amended estate tax return, an amended special
18 fuel excise tax return or an amended oil and gas tax return
19 that shows a lesser tax liability than the original return
20 constitutes the filing of a claim for refund for the difference
21 in tax due shown on the original and amended returns."

22 SECTION 3. Section 7-1-68 NMSA 1978 (being Laws 1965,
23 Chapter 248, Section 69, as amended) is amended to read:

24 "7-1-68. INTEREST ON OVERPAYMENTS.--

25 A. As provided in this section, interest shall be

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1 allowed and paid on the amount of tax overpaid by a person that
2 is subsequently refunded or credited to that person.

3 B. Interest on overpayments of tax shall accrue and
4 be paid at the underpayment rate established pursuant to
5 Section 6621 of the Internal Revenue Code, computed on a daily
6 basis; provided that if a different rate is specified by a
7 compact or other interstate agreement to which New Mexico is a
8 party, that rate shall apply to amounts due under the compact
9 or other agreement.

10 C. Unless otherwise provided by this section,
11 interest on an overpayment not arising from an assessment by
12 the department shall be paid from the date of the claim for
13 refund until a date preceding by not more than thirty days the
14 date of the credit or refund to any person; and interest on an
15 overpayment arising from an assessment by the department shall
16 be paid from the date of overpayment until a date preceding by
17 not more than thirty days the date of the credit or refund to
18 any person.

19 D. No interest shall be allowed or paid with
20 respect to an amount credited or refunded if:

21 (1) the amount of interest due is less than
22 one dollar (\$1.00);

23 (2) the credit or refund is made within:

24 (a) fifty-five days of the date of the
25 complete claim for refund of income tax, pursuant to either the

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1 Income Tax Act or the Corporate Income and Franchise Tax Act
2 for the tax year immediately preceding the tax year in which
3 the claim is made;

4 (b) sixty days of the date of the
5 complete claim for refund of any tax not provided for in this
6 paragraph;

7 (c) seventy-five days of the date of the
8 complete claim for refund of gasoline tax to users of gasoline
9 off the highways;

10 (d) one hundred twenty days of the date
11 of the complete claim for refund of tax imposed pursuant to the
12 Resources Excise Tax Act, the Severance Tax Act, the Oil and
13 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,
14 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
15 Valorem Production Tax Act, the Natural Gas Processors Tax Act
16 or the Oil and Gas Production Equipment Ad Valorem Tax Act; or

17 (e) one hundred twenty days of the date
18 of the complete claim for refund of income tax, pursuant to the
19 Income Tax Act or the Corporate Income and Franchise Tax Act,
20 for any tax year more than one year prior to the year in which
21 the claim is made;

22 (3) Sections 6611(f) and 6611(g) of the
23 Internal Revenue Code, as those sections may be amended or
24 renumbered, prohibit payment of interest for federal income tax
25 purposes;

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1 (4) the credit results from overpayments found
2 in an audit of multiple reporting periods and applied to
3 underpayments found in that audit or refunded as a net
4 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA
5 1978;

6 (5) the department applies the credit or
7 refund to an intercept program, to the taxpayer's estimated
8 payment prior to the due date for the estimated payment or to
9 offset prior liabilities of the taxpayer pursuant to Subsection
10 E of Section 7-1-29 NMSA 1978;

11 (6) the credit or refund results from
12 overpayments the department finds pursuant to Subsection F of
13 Section 7-1-29 NMSA 1978 that exceed the refund claimed by the
14 taxpayer on the return; or

15 (7) the refund results from a tax credit
16 pursuant to the [~~Investment Credit Act~~] Laboratory Partnership
17 with Small Business Tax Credit Act, Technology Jobs and
18 Research and Development Tax Credit Act, Film Production Tax
19 Credit Act, Affordable Housing Tax Credit Act or a rural job
20 tax credit or high-wage jobs tax credit.

21 E. Nothing in this section shall be construed to
22 require the payment of interest upon interest."

23 SECTION 4. Section 7-2-18.25 NMSA 1978 (being Laws 2009,
24 Chapter 279, Section 1) is amended to read:

25 "7-2-18.25. ADVANCED ENERGY INCOME TAX CREDIT.--

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1 A. The tax credit that may be claimed pursuant to
2 this section may be referred to as the "advanced energy income
3 tax credit".

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

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

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

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

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

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1 information necessary to make a determination;

2 (4) shall:

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

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

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

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

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

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

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

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

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

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1 G. ~~[A husband and wife]~~ Married individuals who
2 file separate returns for a taxable year in which they could
3 have filed a joint return may each claim only one-half of the
4 advanced energy income tax credit that would have been allowed
5 on a joint return.

6 H. The total amount of all advanced energy tax
7 credits claimed shall not exceed the total amount determined by
8 the department to be allowable pursuant to this section, the
9 Corporate Income and Franchise Tax Act and Section 7-9G-2 NMSA
10 1978.

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

22 J. A taxpayer ~~[claiming the advanced energy income~~
23 ~~tax credit pursuant to this section is ineligible for credits~~
24 ~~pursuant to the Investment Credit Act or any other]~~ that has
25 claimed a credit ~~[that may be taken]~~ pursuant to the Income Tax

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1 Act or credits or deductions that may be taken against the
2 gross receipts tax, compensating tax or withholding tax for the
3 same expenditures is ineligible to claim an advanced energy
4 income tax credit.

5 K. The aggregate amount of all advanced energy tax
6 credits that may be claimed with respect to a qualified
7 generating facility shall not exceed sixty million dollars
8 (\$60,000,000).

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

12 M. The department shall compile an annual report on
13 the advanced energy income tax credit that shall include the
14 number of taxpayers approved by the department to receive the
15 credit, the aggregate amount of credits approved and any other
16 information necessary to evaluate the tax credit. The
17 department shall present the report to the revenue
18 stabilization and tax policy committee and the legislative
19 finance committee with an analysis of the cost of the tax
20 credit.

21 [~~L.~~] N. As used in this section:

22 (1) "advanced energy tax credit" means the
23 advanced energy income tax credit, the advanced energy
24 corporate income tax credit and the advanced energy combined
25 reporting tax credit;

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

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

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

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

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

25 (e) includes methods and procedures to

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1 monitor the disposition of the carbon dioxide captured and
2 sequestered from the coal-based electric generating facility;
3 and

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

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

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

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

underscoring material = new
~~[bracketed material] = delete~~

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

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

14 (8) "qualified generating facility" means a
15 facility that begins construction not later than December 31,
16 2015 and is:

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

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

25 (c) a geothermal electric generating

1 facility that begins construction on or after July 1, 2009;

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

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

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

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

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

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

.215809.4

underscoring material = new
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1 using other fuels in part."

2 SECTION 5. Section 7-2A-25 NMSA 1978 (being Laws 2009,
3 Chapter 279, Section 2) is amended to read:

4 "7-2A-25. ADVANCED ENERGY CORPORATE INCOME TAX CREDIT.--

5 A. The tax credit that may be claimed pursuant to
6 this section may be referred to as the "advanced energy
7 corporate income tax credit".

8 B. A taxpayer that holds an interest in a qualified
9 generating facility located in New Mexico and that files a New
10 Mexico corporate income tax return may claim an advanced energy
11 corporate income tax credit in an amount equal to six percent
12 of the eligible generation plant costs of a qualified
13 generating facility, subject to the limitations imposed in this
14 section. The tax credit claimed shall be verified and approved
15 by the department.

16 C. An entity that holds an interest in a qualified
17 generating facility may request a certificate of eligibility
18 from the department of environment to enable the requester to
19 apply for an advanced energy corporate income tax credit. The
20 department of environment:

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

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

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1 be a qualified generating facility;

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

6 (4) shall:

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

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

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

21 D. A taxpayer that holds an interest in a qualified
22 generating facility may be allocated the right to claim the
23 advanced energy corporate income tax credit without regard to
24 the taxpayer's relative interest in the qualified generating
25 facility if:

.215809.4

1 (1) the business entity making the allocation
2 provides notice of the allocation and the taxpayer's interest
3 in the qualified generating facility to the department on forms
4 prescribed by the department;

5 (2) allocations to the taxpayer and all other
6 taxpayers allocated a right to claim the advanced energy tax
7 credit shall not exceed one hundred percent of the advanced
8 energy tax credit allowed for the qualified generating
9 facility; and

10 (3) the taxpayer and all other taxpayers
11 allocated a right to claim the advanced energy tax credits
12 collectively own at least a five percent interest in the
13 qualified generating facility.

14 E. Upon receipt of the notice of an allocation of
15 the right to claim all or a portion of the advanced energy
16 corporate income tax credit, the department shall verify the
17 allocation due to the recipient.

18 F. To claim the advanced energy corporate income
19 tax credit, a taxpayer shall submit with the taxpayer's New
20 Mexico corporate income tax return a certificate of eligibility
21 from the department of environment stating that the taxpayer
22 may be eligible for advanced energy tax credits. The taxation
23 and revenue department shall provide credit claim forms. A
24 credit claim form shall accompany any return in which the
25 taxpayer wishes to apply for an approved credit, and the claim

underscored material = new
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1 shall specify the amount of credit intended to apply to each
2 return. The taxation and revenue department shall determine
3 the amount of advanced energy corporate income tax credit for
4 which the taxpayer may apply.

5 G. 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 Income Tax Act and Section 7-9G-2 NMSA 1978.

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

22 I. A taxpayer ~~[claiming the advanced energy~~
23 ~~corporate income tax credit pursuant to this section is~~
24 ~~ineligible for credits pursuant to the Investment Credit Act or~~
25 ~~any other] that has claimed a credit ~~[that may be taken]~~~~

.215809.4

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1 pursuant to the Corporate Income and Franchise Tax Act or
2 credits or deductions that may be taken against the gross
3 receipts tax, compensating tax or withholding tax for the same
4 expenditures is ineligible to claim an advanced energy
5 corporate income tax credit.

6 J. The aggregate amount of all advanced energy tax
7 credits that may be claimed with respect to a qualified
8 generating facility shall not exceed sixty million dollars
9 (\$60,000,000).

10 K. A taxpayer allowed a tax credit pursuant to this
11 section shall report the amount of the credit to the department
12 in a manner required by the department.

13 L. The department shall compile an annual report on
14 the advanced energy corporate income tax credit that shall
15 include the number of taxpayers approved by the department to
16 receive the credit, the aggregate amount of credits approved
17 and any other information necessary to evaluate the tax credit.
18 The department shall present the report to the revenue
19 stabilization and tax policy committee and the legislative
20 finance committee with an analysis of the cost of the tax
21 credit.

22 [~~K-~~] M. As used in this section:

23 (1) "advanced energy tax credit" means the
24 advanced energy income tax credit, the advanced energy
25 corporate income tax credit and the advanced energy combined

.215809.4

1 reporting tax credit;

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

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

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

16 (c) captures and sequesters or controls
17 carbon dioxide emissions so that by the later of January 1,
18 2017 or eighteen months after the commercial operation date of
19 the coal-based electric generating facility, no more than one
20 thousand one hundred pounds per megawatt-hour of carbon dioxide
21 is emitted into the atmosphere;

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

.215809.4

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1 (e) includes methods and procedures to
2 monitor the disposition of the carbon dioxide captured and
3 sequestered from the coal-based electric generating facility;
4 and

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

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

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

21 (5) "geothermal electric generating facility"
22 means a facility with a name-plate capacity of one megawatt or
23 more that uses geothermal energy to generate electricity,
24 including a facility that captures and provides geothermal
25 energy to a preexisting electric generating facility using

.215809.4

1 other fuels in part;

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

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

15 (8) "qualified generating facility" means a
16 facility that begins construction not later than December 31,
17 2015 and is:

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

22 (b) a solar photovoltaic electric
23 generating facility that begins construction on or after July
24 1, 2009 and that may include an associated renewable energy
25 storage facility;

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

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

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

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

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

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

22 (12) "solar thermal electric generating
23 facility" means an electric generating facility with a name-
24 plate capacity of one megawatt or more that uses solar thermal
25 energy to generate electricity, including a facility that

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1 captures and provides solar energy to a preexisting electric
2 generating facility using other fuels in part."

3 SECTION 6. Section 7-9-46 NMSA 1978 (being Laws 1969,
4 Chapter 144, Section 36, as amended) is amended to read:

5 "7-9-46. DEDUCTION--GROSS RECEIPTS [~~TAX~~]~~--GOVERNMENTAL~~
6 GROSS RECEIPTS--SALES TO MANUFACTURERS.--

7 A. Receipts from selling tangible personal property
8 may be deducted from gross receipts or from governmental gross
9 receipts if the sale is made to a [~~person engaged in the~~
10 ~~business of manufacturing~~] manufacturer who delivers a
11 nontaxable transaction certificate to the seller. The buyer
12 delivering the nontaxable transaction certificate must
13 incorporate the tangible personal property as an ingredient or
14 component part of the product that the buyer is in the business
15 of manufacturing.

16 B. Receipts from selling [~~tangible personal~~
17 ~~property that is~~] a manufacturing consumable [~~and used in such~~
18 ~~a way that it is consumed in the manufacturing process of a~~
19 ~~product, provided that the tangible personal property is not a~~
20 ~~tool or equipment used to create the manufactured product, to a~~
21 ~~person engaged in the business of manufacturing that product~~
22 ~~and who delivers a nontaxable transaction certificate to the~~
23 ~~seller~~] to a manufacturer may be deducted [~~in the following~~
24 ~~percentages~~] from gross receipts or from governmental gross
25 receipts

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1 ~~[(1) twenty percent of receipts received prior~~
2 ~~to January 1, 2014;~~

3 ~~(2) forty percent of receipts received in~~
4 ~~calendar year 2014;~~

5 ~~(3) sixty percent of receipts received in~~
6 ~~calendar year 2015;~~

7 ~~(4) eighty percent of receipts received in~~
8 ~~calendar year 2016; and~~

9 ~~(5) one hundred percent of receipts received~~
10 ~~on or after January 1, 2017] if the buyer delivers a nontaxable~~
11 ~~transaction certificate to the seller.~~

12 C. Receipts from selling or leasing qualified
13 equipment may be deducted from gross receipts if the sale is
14 made to, or the lease is entered into with, a manufacturer who
15 delivers a nontaxable transaction certificate to the seller.

16 ~~[G.]~~ D. The purpose of the deductions provided in
17 this section is to encourage manufacturing businesses to locate
18 in New Mexico and to reduce the tax burden, including reducing
19 pyramiding, on the tangible personal property that is consumed
20 in the manufacturing process and that is purchased by
21 manufacturing businesses in New Mexico.

22 ~~[D.]~~ E. The department shall annually report to the
23 revenue stabilization and tax policy committee the aggregate
24 amount of deductions taken pursuant to this section, the number
25 of taxpayers claiming each of the deductions and any other

.215809.4

1 information that is necessary to determine that the deductions
2 are performing the purposes for which they are enacted.

3 ~~[E.]~~ F. A taxpayer deducting gross receipts
4 pursuant to this section shall report the amount deducted
5 separately for each deduction provided in this section and
6 attribute the amount of the deduction to the appropriate
7 authorization provided in this section in a manner required by
8 the department that facilitates the evaluation by the
9 legislature of the benefit to the state of these deductions.

10 ~~[F.]~~ G. As used in ~~[Subsection B of]~~ this section:

11 (1) "manufacturer" means a person engaged in
12 the business of:

13 (a) manufacturing; or

14 (b) providing the service of combining
15 or processing components or materials owned by another;

16 (2) "manufacturing consumable" means tangible
17 personal property, other than qualified equipment or an
18 ingredient or component part of a manufactured product, that is
19 incorporated into, destroyed, depleted or transformed in the
20 process of manufacturing a product, [~~(1)~~] including
21 electricity, fuels, water, manufacturing aids and supplies,
22 chemicals, gases, repair parts, spares and other tangibles used
23 to manufacture a product, but [~~(2)~~] excluding tangible personal
24 property used in [~~(a)~~] the generation of power; [~~(b)~~] the
25 processing of natural resources, including hydrocarbons; and

.215809.4

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[bracketed material] = delete

1 [~~(e)~~] the processing and preparation of meals for immediate
2 consumption [~~on or off premises~~];

3 (3) "manufacturing operation" means a plant
4 operated by a manufacturer that employs personnel to perform
5 production tasks to produce goods, in conjunction with
6 machinery and equipment; and

7 (4) "qualified equipment" means machinery,
8 equipment and tools, including component, repair, replacement
9 and spare parts thereof, that are used directly in the
10 manufacturing process of a manufacturing operation. "Qualified
11 equipment" includes computer hardware and software used
12 directly in the manufacturing process of a manufacturing
13 operation but excludes any motor vehicle that is required to be
14 registered in this state pursuant to the Motor Vehicle Code."

15 SECTION 7. Section 7-9F-3 NMSA 1978 (being Laws 2000 (2nd
16 S.S.), Chapter 22, Section 3, as amended by Laws 2019, Chapter
17 270, Section 38 and by Laws 2019, Chapter 274, Section 12) is
18 amended to read:

19 "7-9F-3. DEFINITIONS.--As used in the Technology Jobs and
20 Research and Development Tax Credit Act:

21 A. "affiliate" means a person who directly or
22 indirectly owns or controls, is owned or controlled by or is
23 under common ownership or control with another person through
24 ownership of voting securities or other ownership interests
25 representing a majority of the total voting power of the

.215809.4

1 entity;

2 B. "annual payroll expense" means the wages paid or
3 payable to employees in the state by the taxpayer in the
4 taxable year for which the taxpayer applies for an additional
5 credit pursuant to the Technology Jobs and Research and
6 Development Tax Credit Act;

7 C. "base payroll expense" means the wages paid or
8 payable by the taxpayer in the taxable year prior to the
9 taxable year for which the taxpayer applies for an additional
10 credit pursuant to the Technology Jobs and Research and
11 Development Tax Credit Act, adjusted for any increase from the
12 preceding taxable year in the consumer price index for the
13 United States for all items as published by the United States
14 department of labor in the taxable year for which the
15 additional credit is claimed. In a taxable year during which a
16 taxpayer has been part of a business merger or acquisition or
17 other change in business organization, the taxpayer's base
18 payroll expense shall include the payroll expense of all
19 entities included in the reorganization for all positions that
20 are included in the business entity resulting from the
21 reorganization;

22 D. "department" means the taxation and revenue
23 department, the secretary of taxation and revenue or any
24 employee of the department exercising authority lawfully
25 delegated to that employee by the secretary;

.215809.4

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[bracketed material] = delete

1 E. "facility" means a factory, mill, plant,
2 refinery, warehouse, dairy, feedlot, building or complex of
3 buildings located within the state, including the land on which
4 it is located and all machinery, equipment and other real and
5 tangible personal property located at or within it and used in
6 connection with its operation;

7 F. "local option gross receipts tax" means a tax
8 authorized to be imposed by a county or municipality upon a
9 taxpayer's gross receipts, as that term is defined in the Gross
10 Receipts and Compensating Tax Act, and required to be collected
11 by the department at the same time and in the same manner as
12 the gross receipts tax;

13 G. "qualified expenditure" means an expenditure or
14 an allocated portion of an expenditure by a taxpayer in
15 connection with qualified research at a qualified facility,
16 including expenditures for depletable land and rent paid or
17 incurred for land, improvements, the allowable amount paid or
18 incurred to operate or maintain a facility, buildings,
19 equipment, computer software, computer software upgrades,
20 consultants and contractors performing work in New Mexico,
21 payroll, technical books and manuals and test materials, but
22 not including any expenditure on property that is owned by a
23 municipality or county in connection with an industrial revenue
24 bond project, property for which the taxpayer has received any
25 credit pursuant to the Investment Credit Act, a manufacturing

.215809.4

1 consumable for which the receipt of its sale may be deducted
2 pursuant to Section 7-9-46 NMSA 1978, property that was owned
3 by the taxpayer or an affiliate before July 3, 2000 or research
4 and development expenditures reimbursed by a person who is not
5 an affiliate of the taxpayer. If a "qualified expenditure" is
6 an allocation of an expenditure, the cost accounting
7 methodology used for the allocation of the expenditure shall be
8 the same cost accounting methodology used by the taxpayer in
9 its other business activities;

10 H. "qualified facility" means a facility in New
11 Mexico at which qualified research is conducted other than a
12 facility operated by a taxpayer for the United States or any
13 agency, department or instrumentality thereof;

14 I. "qualified research" means research:

15 (1) that is undertaken for the purpose of
16 discovering information:

17 (a) that is technological in nature; and
18 (b) the application of which is intended
19 to be useful in the development of a new or improved business
20 component of the taxpayer; and

21 (2) substantially all of the activities of
22 which constitute elements of a process of experimentation
23 related to a new or improved function, performance, reliability
24 or quality, but not related to style, taste or cosmetic or
25 seasonal design factors;

underscoring material = new
~~[bracketed material] = delete~~

1 J. "qualified research and development small
2 business" means a taxpayer that:

3 (1) employed no more than fifty employees as
4 determined by the number of employees for which the taxpayer
5 was liable for unemployment insurance coverage in the taxable
6 year for which an additional credit is claimed;

7 (2) had total qualified expenditures of no
8 more than five million dollars (\$5,000,000) in the taxable year
9 for which an additional credit is claimed; and

10 (3) did not have more than fifty percent of
11 its voting securities or other equity interest with the right
12 to designate or elect the board of directors or other governing
13 body of the business owned directly or indirectly by another
14 business;

15 K. "rural area" means any area of the state other
16 than the state fairgrounds, an incorporated municipality with a
17 population of thirty thousand or more according to the most
18 recent federal decennial census and any area within three miles
19 of the external boundaries of an incorporated municipality with
20 a population of thirty thousand or more according to the most
21 recent federal decennial census;

22 L. "taxpayer" means any of the following persons,
23 other than a federal, state or other governmental unit or
24 subdivision or an agency, department, institution or
25 instrumentality thereof:

.215809.4

1 (1) a person liable for payment of any tax;
2 (2) a person responsible for withholding and
3 payment or collection and payment of any tax;

4 (3) a person to whom an assessment has been
5 made if the assessment remains unabated or the assessed amount
6 has not been paid; or

7 (4) for purposes of the additional credit
8 against the taxpayer's income tax pursuant to the Technology
9 Jobs and Research and Development Tax Credit Act and to the
10 extent of their respective interest in that entity, the
11 shareholders, members, partners or other owners of:

12 (a) a small business corporation that
13 has elected to be treated as an S corporation for federal
14 income tax purposes; or

15 (b) an entity treated as a partnership
16 or disregarded entity for federal income tax purposes; and

17 M. "wages" means remuneration for services
18 performed by an employee in New Mexico for an employer."

19 **SECTION 8.** Section 7-9G-2 NMSA 1978 (being Laws 2007,
20 Chapter 229, Section 1, as amended) is amended to read:

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

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

.215809.4

1 computed pursuant to the provisions of this section. The
2 credit provided by this section may be referred to as the
3 "advanced energy combined reporting tax credit".

4 B. As used in this section:

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

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

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

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

23 (c) captures and sequesters or controls
24 carbon dioxide emissions so that by the later of January 1,
25 2017 or eighteen months after the commercial operation date of

.215809.4

1 the coal-based electric generating facility, no more than one
2 thousand one hundred pounds per megawatt-hour of carbon dioxide
3 is emitted into the atmosphere;

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

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

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

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

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

1 (5) "entity" means an individual, estate,
2 trust, receiver, cooperative association, club, corporation,
3 company, firm, partnership, limited liability company, limited
4 liability partnership, joint venture, syndicate or other
5 association or a gas, water or electric utility owned or
6 operated by a county or municipality;

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

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

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

22 (b) equal to, if the taxpayer's business
23 location is not described in Subsection A of Section 7-1-6.4
24 NMSA 1978, the gross receipts tax rate specified in Section
25 7-9-4 NMSA 1978;

.215809.4

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

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

14 (10) "qualified generating facility" means a
15 facility that begins construction not later than December 31,
16 2015 and is:

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

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

25 (c) a geothermal electric generating

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1 facility that begins construction on or after July 1, 2009;

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

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

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

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

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

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

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1 generating facility using other fuels in part.

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

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

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

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

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

24 E. Subject to the limit imposed in Subsection [K] J
25 of this section, the advanced energy combined reporting tax

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

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

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1 requests to determine the amount of tax credit due to the
2 taxpayer.

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

24 H. A taxpayer that is liable for the payment of
25 gross receipts or compensating tax with respect to the

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

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

12 J. The aggregate amount of advanced energy tax
13 credit that may be claimed with respect to each qualified
14 generating facility shall not exceed sixty million dollars
15 (\$60,000,000).

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

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

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

.215809.4

1 be a qualified generating facility;

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

6 (4) shall:

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

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

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

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

25 L. If the department of environment issues a

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

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1 ~~[M. Expenditures for which a taxpayer claims an~~
2 ~~advanced energy combined reporting tax credit pursuant to this~~
3 ~~section are ineligible for credits pursuant to the provisions~~
4 ~~of the Investment Credit Act or any other credit against~~
5 ~~personal income tax, corporate income tax, compensating tax,~~
6 ~~gross receipts tax or withholding tax.]~~

7 M. A taxpayer that has claimed a credit pursuant to
8 the Income Tax Act or Corporate Income and Franchise Tax Act or
9 credits or deductions that may be taken against the gross
10 receipts tax, compensating tax or withholding tax for the same
11 expenditures is ineligible to claim an advanced energy combined
12 reporting tax credit.

13 N. A taxpayer shall apply for approval for a credit
14 within one year following the end of the calendar year in which
15 the eligible generation plant costs are incurred.

16 O. A taxpayer allowed a tax credit pursuant to this
17 section shall report the amount of the credit to the department
18 in a manner required by the department.

19 P. The department shall compile an annual report on
20 the advanced energy combined reporting tax credit that shall
21 include the number of taxpayers approved by the department to
22 receive the credit, the aggregate amount of credits approved
23 and any other information necessary to evaluate the tax credit.
24 The department shall present the report to the revenue
25 stabilization and tax policy committee and the legislative

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1 finance committee with an analysis of the cost of the tax
2 credit."

3 SECTION 9. REPEAL.--Sections 7-9A-1 through 7-9A-11 NMSA
4 1978 (being Laws 1979, Chapter 347, Sections 1 and 2; Laws
5 2001, Chapter 57, Section 2 and Laws 2001, Chapter 337, Section
6 2; Laws 1979, Chapter 347, Sections 3 through 7; Laws 1983,
7 Chapter 206, Section 6; Laws 1979, Chapter 347, Sections 8 and
8 9; and Laws 1997, Chapter 62, Section 2, as amended) are
9 repealed.

10 SECTION 10. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2020.

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SENATE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO ECONOMIC DEVELOPMENT INCENTIVES; REQUIRING
RECIPIENTS OF PUBLIC SUPPORT FROM THE STATE PURSUANT TO THE
LOCAL ECONOMIC DEVELOPMENT ACT TO REPORT JOB CREATION AND
CAPITAL INVESTMENT INFORMATION; AUTHORIZING THE REVEAL OF
TAXPAYER RETURN INFORMATION TO STATE PROFESSIONAL ECONOMISTS
FOR CERTAIN PURPOSES; IMPOSING A PENALTY ON A PERSON THAT
ATTEMPTS TO DIRECT OR COERCE A PERSON TO REVEAL CONFIDENTIAL
TAXPAYER RETURN INFORMATION; REQUIRING THE TAXATION AND REVENUE
DEPARTMENT TO COMPILE AND PRESENT A TAX EXPENDITURE BUDGET TO
THE GOVERNOR AND LEGISLATIVE COMMITTEES; REQUIRING THE ECONOMIC
DEVELOPMENT DEPARTMENT AND THE WORKFORCE SOLUTIONS DEPARTMENT
TO PROVIDE INFORMATION TO STATE PROFESSIONAL ECONOMISTS FOR
PURPOSES OF EVALUATING TAX EXPENDITURES AND OTHER ECONOMIC
DEVELOPMENT INCENTIVES; MAKING AN APPROPRIATION.

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

2 SECTION 1. A new section of the Local Economic
3 Development Act is enacted to read:

4 "[NEW MATERIAL] REPORTING REQUIREMENTS.--

5 A. A qualifying entity that receives public support
6 provided by the state to a local or regional government shall,
7 prior to April 1 of each year for five years following
8 receiving public support, report to the department the number
9 of new full-time economic base jobs created in the previous
10 calendar year, the total annual wages and salaries for those
11 jobs and any capital investments made in the previous calendar
12 year. Prior to August 1 of each year, the department shall
13 compile the annual reports and submit the compilation to the
14 legislative finance committee and the department of finance and
15 administration.

16 B. As used in this section, "new full-time economic
17 base job" means a job:

18 (1) that is primarily performed in New Mexico;

19 (2) that is held by an employee who is hired
20 to work an average of at least thirty-two hours per week for at
21 least forty-eight weeks per year;

22 (3) that is:

23 (a) involved, directly or in a
24 supervisory capacity, with the production of: 1) a service;
25 provided that the majority of the revenue generated from the

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1 service is from sources outside the state; or 2) tangible or
2 intangible personal property for sale; or

3 (b) held by an employee that is employed
4 at a regional, national or international headquarters operation
5 or at an operation that primarily provides services for other
6 operations of the qualifying entity that are located outside
7 the state;

8 (4) that is created as a direct result of the
9 public support provided by the state and that would not have
10 been created in the state but for the public support, as
11 determined by the qualifying entity; and

12 (5) that is not directly involved with natural
13 resources extraction or processing, on-site services where the
14 customer is present for the delivery of the service, retail,
15 construction or agriculture except for value-added processing
16 performed on agricultural products that would then be sold for
17 wholesale or retail consumption."

18 SECTION 2. Section 7-1-4.2 NMSA 1978 (being Laws 2003,
19 Chapter 398, Section 2, as amended) is amended to read:

20 "7-1-4.2. NEW MEXICO TAXPAYER BILL OF RIGHTS.--The rights
21 afforded New Mexico taxpayers during the assessment, collection
22 and enforcement of any tax administered by the department as
23 set forth in the Tax Administration Act include:

24 A. the right to available public information and
25 prompt and courteous tax assistance;

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1 B. the right to be represented or advised by
2 counsel or other qualified representatives at any time in
3 administrative interactions with the department in accordance
4 with the provisions of Section 7-1-24 NMSA 1978 or the
5 administrative hearings office in accordance with the
6 provisions of the Administrative Hearings Office Act;

7 C. the right to have audits, inspections of records
8 and meetings conducted at a reasonable time and place in
9 accordance with the provisions of Section 7-1-11 NMSA 1978;

10 D. the right to have the department conduct its
11 audits in a timely and expeditious manner and be entitled to
12 the tolling of interest as provided in the Tax Administration
13 Act;

14 E. the right to obtain nontechnical information
15 that explains the procedures, remedies and rights available
16 during audit, protest, appeals and collection proceedings
17 pursuant to the Tax Administration Act;

18 F. the right to be provided with an explanation of
19 the results of and the basis for audits, assessments or denials
20 of refunds that identify any amount of tax, interest or penalty
21 due;

22 G. the right to seek review, through formal or
23 informal proceedings, of any findings or adverse decisions
24 relating to determinations during audit or protest procedures
25 in accordance with the provisions of Section 7-1-24 NMSA 1978

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1 and the Administrative Hearings Office Act;

2 H. the right to have the taxpayer's tax information
3 kept confidential unless otherwise specified by law, in
4 accordance with Sections 7-1-8 through [~~7-1-8.11~~] 7-1-8.12 NMSA
5 1978;

6 I. the right to abatement of an assessment of taxes
7 determined to have been incorrectly, erroneously or illegally
8 made, as provided in Section 7-1-28 NMSA 1978 and the right to
9 seek a compromise of an asserted tax liability by obtaining a
10 written determination of liability or nonliability when the
11 secretary in good faith is in doubt of the liability as
12 provided in Section 7-1-20 NMSA 1978;

13 J. upon receipt of a tax assessment, the right to
14 be informed clearly that if the assessment is not paid,
15 secured, protested or otherwise provided for in accordance with
16 the provisions of Section 7-1-16 NMSA 1978, the taxpayer will
17 be a delinquent taxpayer and, upon notice of delinquency, the
18 right to timely notice of any collection actions that will
19 require sale or seizure of the taxpayer's property in
20 accordance with the provisions of the Tax Administration Act;
21 and

22 K. the right to procedures for payment of tax
23 obligations by installment payment agreements, in accordance
24 with Section 7-1-21 NMSA 1978."

25 SECTION 3. Section 7-1-8 NMSA 1978 (being Laws 1965,

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1 Chapter 248, Section 13, as amended) is amended to read:

2 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
3 INFORMATION.--

4 A. It is unlawful for any person other than the
5 taxpayer to reveal to any other person the taxpayer's return or
6 return information, except as provided in Sections 7-1-8.1
7 through [~~7-1-8.11~~] 7-1-8.12 NMSA 1978.

8 B. A return or return information revealed [~~under~~]
9 pursuant to Sections 7-1-8.1 through [~~7-1-8.11~~] 7-1-8.12 NMSA
10 1978:

11 (1) may only be revealed to a person
12 specifically authorized to receive the return or return
13 information and the employees, directors, officers and agents
14 of such person whose official duties or duties in the course of
15 their employment require the return or return information and
16 to an employee of the department;

17 (2) may only be revealed for the authorized
18 purpose and only to the extent necessary to perform that
19 authorized purpose;

20 (3) shall at all times be protected from being
21 revealed to an unauthorized person by physical, electronic or
22 any other safeguards specified by directive by the secretary;
23 and

24 (4) shall be returned to the secretary or the
25 secretary's delegate or destroyed as soon as it is no longer

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1 required for the authorized purpose.

2 C. If any provision of Sections 7-1-8.1 through
3 [~~7-1-8.11~~] 7-1-8.12 NMSA 1978 requires that a return or return
4 information will only be revealed pursuant to a written
5 agreement between a person and the department, the written
6 agreement shall:

7 (1) list the name and position of any official
8 or employee of the person to whom a return or return
9 information is authorized to be revealed under the provision;

10 (2) describe the specific purpose for which
11 the return or return information is to be used;

12 (3) describe the procedures and safeguards the
13 person has in place to ensure that the requirements of
14 Subsection B of this section are met; and

15 (4) provide for reimbursement to the
16 department for all costs incurred by the department in
17 supplying the returns or return information to, and
18 administering the agreement with, the person.

19 D. A return or return information that is lawfully
20 made public by an employee of the department or any other
21 person, or that is made public by the taxpayer, is not subject
22 to the provisions of this section once it is made public."

23 SECTION 4. A new Section 7-1-8.12 NMSA 1978 is enacted to
24 read:

25 "7-1-8.12. [NEW MATERIAL] INFORMATION THAT MAY BE

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1 REVEALED TO STATE PROFESSIONAL ECONOMISTS.--

2 A. An employee of the department may reveal to a
3 state professional economist return information for purposes
4 provided in this section.

5 B. Upon request by a state chief economist,
6 including by electronic means, the department shall provide
7 return information, except that which is prohibited by law, to
8 a state professional economist of the same agency as that of
9 the requesting state chief economist. In cases where access is
10 prohibited by federal law, and upon an additional request by
11 the state chief economist, the department shall provide the
12 requested return information, redacting any prohibited
13 information. In regard to return information filed pursuant to
14 the Income Tax Act, Corporate Income and Franchise Tax Act,
15 Withholding Tax Act and Uniform Division of Income for Tax
16 Purposes Act, the department shall only provide aggregated data
17 to three taxpayers, or more if necessary to maintain federal
18 standards for confidential return information, as determined by
19 the department, and shall not include personally identifiable
20 information.

21 C. Prior to the initial reveal of return
22 information to a state professional economist, the department
23 and the state professional economist's agency shall enter into
24 a memorandum of understanding for security protocols regarding
25 the confidentiality of the return information. The memorandum

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1 of understanding shall be in effect for any subsequent requests
2 to reveal return information to that agency.

3 D. If the information requested pursuant to
4 Subsection B of this section is available in an electronic
5 format, the information shall be provided in an editable
6 electronic format available for viewing and editing in software
7 available to the state professional economist.

8 E. The department shall provide visible and clearly
9 marked notification of confidential return information provided
10 to a state professional economist pursuant to this section. A
11 state professional economist shall not reveal such return
12 information unless the information is aggregated to at least
13 three businesses.

14 F. A state professional economist is prohibited
15 from requesting or using return information received pursuant
16 to this section for any purpose other than to:

17 (1) improve revenue tracking and forecasting;

18 (2) evaluate tax expenditures and economic
19 development incentives for effectiveness and efficiency or to
20 make recommendations regarding the continuance of such
21 expenditures and incentives; and

22 (3) analyze potential issues of multiple
23 taxpayers' misreporting or underreporting as part of broader
24 tax policy and tax administration concerns but not to act as an
25 audit of any individual taxpayers.

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1 G. A state professional economist shall destroy all
2 confidential return information received pursuant to this
3 section within one year of receipt of the information.

4 H. As used in this section:

5 (1) "state chief economist" means the chief
6 economist of the legislative finance committee, department of
7 finance and administration or economic development department,
8 or if those agencies have no chief economist, the state
9 professional economist designated by the secretary or director
10 of such agency to request return information pursuant to this
11 section; and

12 (2) "state professional economist" means a
13 professional economist who is an employee or contractor of the
14 legislative finance committee, department of finance and
15 administration or economic development department."

16 SECTION 5. Section 7-1-76 NMSA 1978 (being Laws 1965,
17 Chapter 248, Section 76, as amended) is amended to read:

18 "7-1-76. REVEALING INFORMATION CONCERNING TAXPAYERS--
19 ATTEMPTS TO DIRECT AN AUTHORIZED PERSON TO REVEAL TAXPAYER
20 INFORMATION--PENALTY.--

21 A. A person who reveals to another person any
22 return or return information that is prohibited from being
23 revealed pursuant to Section 7-1-8 NMSA 1978 or who uses a
24 return or return information for any purpose that is not
25 authorized by Sections 7-1-8 through [~~7-1-8.11~~] 7-1-8.12 NMSA

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1 1978 is guilty of a misdemeanor and shall, upon conviction
2 thereof, be fined not more than one thousand dollars (\$1,000)
3 or imprisoned up to one year, or both, together with costs of
4 prosecution, and shall not be employed by the state for a
5 period of five years after the date of the conviction.

6 B. If a person who is authorized to receive a
7 return or return information receives a request from another
8 person who is not authorized to receive such information, the
9 authorized person shall notify the requester in writing that
10 the information cannot be revealed pursuant to Section 7-1-8
11 NMSA 1978. If, after receiving the written notification, the
12 requester attempts to direct or coerce the authorized person to
13 provide the information, the requester is guilty of a
14 misdemeanor and shall, upon conviction thereof, be fined not
15 more than one thousand dollars (\$1,000) or imprisoned up to one
16 year, or both, together with costs of prosecution, and shall
17 not be employed by the state for a period of five years after
18 the date of the conviction."

19 SECTION 6. A new section of the Tax Administration Act is
20 enacted to read:

21 "[NEW MATERIAL] TAX EXPENDITURE BUDGET.--

22 A. No later than October 15 of each year, the
23 secretary shall compile and present a tax expenditure budget to
24 the governor, the revenue stabilization and tax policy
25 committee and the legislative finance committee and post the

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1 tax expenditure budget report to the department's website.

2 B. A tax expenditure budget report shall include
3 the following information for each tax deviation of a tax
4 administered by the department:

5 (1) identify the tax deviation and the
6 deviation's statutory basis;

7 (2) the year of enactment, amendment or
8 repeal, if any;

9 (3) a brief description of the tax deviation;

10 (4) the intended purpose of the tax deviation,
11 if specified in the law providing for the tax deviation or as
12 otherwise determined by the department;

13 (5) if the tax deviation is a tax expenditure,
14 an estimate of the approximate amount of foregone revenue by
15 fiscal year for:

16 (a) the three fiscal years preceding the
17 current fiscal year, including the general fund, other state
18 funds and local government revenues; and

19 (b) the current and subsequent fiscal
20 year, if feasible, and a brief description of the methodology
21 and assumptions applied to the forecasted estimate;

22 (6) the number of taxpayers that claimed a tax
23 expenditure for each fiscal year reported, unless reporting of
24 such data is in a form that can be associated with or otherwise
25 identify, directly or indirectly, a particular taxpayer;

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1 (7) the data source used for the estimate; and
2 (8) a measure of the reliability of the
3 estimate.

4 C. A tax expenditure budget report may include
5 additional information that the department considers relevant
6 to the review of individual tax deviations, including:

7 (1) a description or reference citation of any
8 tax deviation evaluation or compilation of information
9 completed by an executive or legislative agency since the last
10 tax expenditure budget report by the department; and

11 (2) a measure of the tax deviation's effect on
12 the administration of the tax system.

13 D. The department may request from an executive
14 agency or a local government agency or official, information
15 necessary to complete the tax expenditure budget required by
16 this section. An agency or official shall comply with a
17 request made pursuant to this section by the department as
18 permitted by law.

19 E. As used in this section:

20 (1) "tax deviation" means a deduction, credit,
21 exemption, exclusion, preferential tax rate, subtraction,
22 allowance or other deviation from a tax that reduces tax
23 liability, as determined by the secretary in consultation with
24 the legislative finance committee and the department of finance
25 and administration. "Tax deviation" includes a tax expenditure

1 and also a deviation that is not a tax expenditure but is
2 enacted due to constitutional prohibition, federal preemption,
3 comity between governments, avoiding taxation under multiple
4 tax programs or defining a tax base or is otherwise determined
5 to not be a tax expenditure; and

6 (2) "tax expenditure" means a tax deviation
7 that deviates from the baseline of a tax, as determined by the
8 secretary in consultation with the legislative finance
9 committee and the department of finance and administration, to
10 reflect state policy, such as to promote the general welfare of
11 citizens or give preferential tax treatment to a specific
12 industry, or to reflect a specific purpose, such as to
13 incentivize consumer behavior, economic development or job
14 creation."

15 SECTION 7. Section 9-15-10 NMSA 1978 (being Laws 1983,
16 Chapter 297, Section 10, as amended) is amended to read:

17 "9-15-10. ORGANIZATIONAL UNITS OF DEPARTMENT--POWERS AND
18 DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--

19 A. Those organizational units of the department and
20 the officers of those units specified by law shall have all of
21 the powers and duties enumerated in the specific laws involved.
22 However, the carrying out of those powers and duties shall be
23 subject to the direction and supervision of the secretary, and
24 [~~he~~] the secretary shall retain the final decision-making
25 authority and responsibility for the administration of any such

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1 laws as provided in Subsection B of Section 9-15-6 NMSA 1978.
2 The department shall have access to all records, data and
3 information of other state departments, agencies and
4 institutions, including its own organizational units, not
5 specifically held confidential by law. Except as provided in
6 Subsection B of this section, any information obtained by the
7 department that is proprietary technical information or related
8 to the possible relocation or expansion of a business shall be
9 deemed confidential and withheld from inspection pursuant to
10 the Inspection of Public Records Act.

11 B. Upon written request by a state professional
12 economist, including by electronic means, the department shall
13 provide all information obtained by the department that is
14 proprietary technical information or related to an actual or
15 relocation or expansion of a business; provided that providing
16 such information shall not violate the terms of a previously
17 executed agreement with the department. The state professional
18 economist is prohibited from requesting or using this
19 information for any purpose other than to evaluate tax
20 expenditures and economic development incentives for
21 effectiveness and efficiency or to make recommendations
22 regarding the continuance of such expenditures and incentives.

23 C. The department shall provide visible and clearly
24 marked notification of confidential information revealed
25 pursuant to Subsection B of this section. A state professional

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1 economist shall not reveal such confidential information unless
2 the information is aggregated to at least three businesses.

3 D. As used in this section, "state professional
4 economist" means a professional economist who is an employee or
5 contractor of the legislative finance committee, the department
6 of finance and administration or the taxation and revenue
7 department."

8 SECTION 8. Section 9-26-14 NMSA 1978 (being Laws 2007,
9 Chapter 200, Section 14) is amended to read:

10 "9-26-14. DISCLOSURE OF INFORMATION.--

11 A. To the extent permitted by federal law, upon the
12 written request of a corporation organized pursuant to the
13 Educational Assistance Act, the department shall furnish the
14 last known address and the date of that address of every person
15 certified to the department as being an absent obligor of an
16 educational debt that is due and owed to the corporation or
17 that the corporation has lawfully contracted to collect. The
18 corporation and its officers and employees shall use such
19 information only for the purpose of enforcing the educational
20 debt obligation of such absent obligors and shall not disclose
21 that information or use it for any other purpose.

22 B. To the extent permitted by federal law, upon
23 written request by a state professional economist, including by
24 electronic means, the department shall provide all information
25 related to labor data obtained by the department. The state

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1 professional economist is prohibited from requesting or using
2 this information for any purpose other than to evaluate tax
3 expenditures and economic development incentives for
4 effectiveness and efficiency or to make recommendations
5 regarding the continuance of such expenditures and incentives.

6 C. The department shall provide visible and clearly
7 marked notification of confidential information revealed
8 pursuant to Subsection B of this section. A state professional
9 economist shall not reveal such confidential information unless
10 the information is aggregated to at least three businesses.

11 D. As used in this section, "state professional
12 economist" means a professional economist who is an employee or
13 contractor of the legislative finance committee, the department
14 of finance and administration, the economic development
15 department or the taxation and revenue department."

16 **SECTION 9. APPROPRIATION.**--One hundred eighty-eight
17 thousand dollars (\$188,000) is appropriated from the general
18 fund to the legislative finance committee for expenditure in
19 fiscal year 2021 to assist the committee in evaluating tax
20 expenditures and other economic development incentives. Any
21 unexpended or unencumbered balance remaining at the end of
22 fiscal year 2021 shall revert to the general fund.

23 **SECTION 10. EFFECTIVE DATE.**--The effective date of the
24 provisions of this act is July 1, 2020.

Pages 77 through 86 have been removed

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54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PROPERTY TAX; CLARIFYING THE LIMITATION ON
VALUATION INCREASES FOR LOW-INCOME DISABLED PERSONS.

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

SECTION 1. Section 7-36-21.3 NMSA 1978 (being Laws 2000,
Chapter 21, Section 1, as amended) is amended to read:

"7-36-21.3. LIMITATION ON INCREASE IN VALUE FOR SINGLE-
FAMILY DWELLINGS OCCUPIED BY LOW-INCOME OWNERS WHO ARE SIXTY-
FIVE YEARS OF AGE OR OLDER OR DISABLED--REQUIREMENTS--
PENALTIES.--

A. The valuation for property taxation purposes of
a single-family dwelling owned and occupied by a person who is
sixty-five years of age or older or disabled and whose modified
gross income for the prior taxable year did not exceed the
greater of thirty-five thousand dollars (\$35,000) or the amount

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1 calculated pursuant to Subsection F of this section shall not
2 be greater than the valuation of the property for property
3 taxation purposes [~~in the~~]:

4 (1) for a person sixty-five years of age or
5 older:

6 (a) in the tax year in which the owner's
7 sixty-fifth birthday occurs, if the owner owns and occupies
8 that property; or

9 [~~2~~] (b) in the tax year following the
10 tax year in which an owner who is sixty-five years of age or
11 older first owns and occupies the property; or

12 (2) for a person who is disabled in the tax
13 year in which the owner first files an application for the
14 limitation provided by this section.

15 B. The limitation provided by this section may be
16 claimed by filing proof of eligibility with the county assessor
17 on an application form furnished by the assessor. The
18 application form shall be designed by the department and shall
19 provide for proof of age or disability, occupancy and income
20 eligibility. An owner who applies for the limitation of value
21 specified in this section and files proof of income eligibility
22 for the three consecutive years immediately prior to the tax
23 year for which the application is made need not claim the
24 limitation for subsequent tax years if there is no change in
25 eligibility. The county assessor shall apply the limitation

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1 automatically in subsequent tax years until a change in
2 eligibility occurs.

3 C. An owner who has claimed and been allowed the
4 limitation of value specified in this section for the three
5 consecutive tax years immediately prior to the 2020 tax year is
6 not required to claim the limitation for subsequent tax years
7 if there is no change in eligibility, unless the county
8 assessor requests updated information on the owner's modified
9 gross income. The county assessor shall apply the limitation
10 automatically in subsequent tax years until a change in
11 eligibility occurs.

12 D. A person who has had a limitation applied to a
13 tax year and subsequently becomes ineligible for the limitation
14 because of a change in the person's status or income or a
15 change in the ownership of the property against which the
16 limitation was applied shall notify the county assessor of the
17 loss of eligibility for the limitation by the last day of
18 February of the tax year immediately following the year in
19 which loss of eligibility occurs.

20 E. A person who knowingly violates the provisions
21 of this section by intentionally claiming and receiving the
22 benefit of a limitation to which the person is not entitled or
23 who fails to comply with the provisions of Subsection D of this
24 section shall be liable for all taxes due, interest and a civil
25 penalty of one thousand dollars (\$1,000).

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1 F. For the 2020 tax year and each subsequent tax
2 year, the maximum amount of modified gross income in Subsection
3 A of this section shall be adjusted to account for inflation.
4 The department shall make the adjustment by multiplying thirty-
5 five thousand dollars (\$35,000) by a fraction, the numerator of
6 which is the consumer price index ending during the prior tax
7 year and the denominator of which is the consumer price index
8 ending in tax year 2019. The result of the multiplication
9 shall be rounded down to the nearest one hundred dollars
10 (\$100), except that if the result would be an amount less than
11 the corresponding amount for the preceding tax year, then no
12 adjustment shall be made.

13 G. The department shall publish annually the
14 amount determined by the calculation made pursuant to
15 Subsection F of this section and provide the calculated amount
16 to each county assessor no later than December 1 of each tax
17 year.

18 H. The limitation of value specified in Subsection
19 A of this section does not apply to:

20 (1) a change in valuation resulting from any
21 physical improvements made to the property during the year
22 immediately prior to the tax year or a change in the permitted
23 use or zoning of the property during the year immediately prior
24 to the tax year; or

25 (2) a residential property in the first tax

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1 year that is valued for property taxation purposes.

2 I. As used in this section:

3 (1) "consumer price index" means the
4 consumer price index for all urban consumers published by the
5 United States department of labor for the month ending
6 September 30;

7 (2) "disabled" means a person who has been
8 determined to be blind or permanently disabled with medical
9 improvement not expected pursuant to 42 USCA 421 for purposes
10 of the federal Social Security Act or is determined to have a
11 permanent total disability pursuant to the Workers'
12 Compensation Act; and

13 (3) "modified gross income" means "modified
14 gross income" as used in the Income Tax Act."

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_____ BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAX ADMINISTRATION; ENABLING THE TAXATION AND REVENUE DEPARTMENT TO SHARE DATA WITH CERTAIN AGENCIES FOR THE JOINT ADMINISTRATION OF CERTAIN TAX PROGRAMS; DECLARING AN EMERGENCY.

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

SECTION 1. Section 7-1-8.8 NMSA 1978 (being Laws 2019, Chapter 87, Section 2) is amended to read:

"7-1-8.8. INFORMATION THAT MAY BE REVEALED TO OTHER STATE AGENCIES.--An employee of the department may reveal to:

A. a committee of the legislature for a valid legislative purpose, return information concerning any tax or fee imposed pursuant to the Cigarette Tax Act;

B. the attorney general, return information acquired pursuant to the Cigarette Tax Act for purposes of

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underscoring material = new
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1 Section 6-4-13 NMSA 1978 and the master settlement agreement
2 defined in Section 6-4-12 NMSA 1978;

3 C. the commissioner of public lands, return
4 information for use in auditing that pertains to rentals,
5 royalties, fees and other payments due the state under land
6 sale, land lease or other land use contracts;

7 D. the secretary of human services or the
8 secretary's delegate under a written agreement with the
9 department, the last known address with date of all names
10 certified to the department as being absent parents of children
11 receiving public financial assistance, but only for the purpose
12 of enforcing the support liability of the absent parents by the
13 child support enforcement division or any successor
14 organizational unit;

15 E. the department of information technology, by
16 electronic media, a database updated quarterly that contains
17 the names, addresses, county of address and taxpayer
18 identification numbers of New Mexico personal income tax
19 filers, but only for the purpose of producing the random jury
20 list for the selection of petit or grand jurors for the state
21 courts pursuant to Section 38-5-3 NMSA 1978;

22 F. the state courts, the random jury lists produced
23 by the department of information technology under Subsection E
24 of this section;

25 G. the director of the New Mexico department of

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1 agriculture or the director's authorized representative, upon
2 request of the director or representative, the names and
3 addresses of all gasoline or special fuel distributors,
4 wholesalers and retailers;

5 H. the public regulation commission, return
6 information with respect to the Corporate Income and Franchise
7 Tax Act required to enable the commission to carry out its
8 duties;

9 I. the state racing commission, return information
10 with respect to the state, municipal and county gross receipts
11 taxes paid by racetracks;

12 J. the gaming control board, tax returns of license
13 applicants and their affiliates as provided in Subsection E of
14 Section 60-2E-14 NMSA 1978;

15 K. the director of the workers' compensation
16 administration or to the director's representatives authorized
17 for this purpose, return information to facilitate the
18 identification of taxpayers that are delinquent or noncompliant
19 in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA
20 1978;

21 L. the secretary of workforce solutions or the
22 secretary's delegate, return information for use in enforcement
23 of unemployment insurance collections pursuant to the terms of
24 a written reciprocal agreement entered into by the department
25 with the secretary of workforce solutions for exchange of

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1 information;

2 M. the New Mexico finance authority, information
3 with respect to the amount of municipal and county gross
4 receipts taxes collected by municipalities and counties
5 pursuant to any local option municipal or county gross receipts
6 taxes imposed, and information with respect to the amount of
7 governmental gross receipts taxes paid by every agency,
8 institution, instrumentality or political subdivision of the
9 state pursuant to Section 7-9-4.3 NMSA 1978;

10 N. the secretary of human services or the
11 secretary's delegate; provided that a person who receives the
12 confidential return information on behalf of the human services
13 department shall not reveal the information and shall be
14 subject to the penalties in Section 7-1-76 NMSA 1978 if the
15 person fails to maintain the confidentiality required:

16 (1) that return information needed for reports
17 required to be made to the federal government concerning the
18 use of federal funds for low-income working families; ~~and~~

19 (2) the names and addresses of low-income
20 taxpayers for the limited purpose of outreach to those
21 taxpayers; provided that the human services department shall
22 pay the department for expenses incurred by the department to
23 derive the information requested by the human services
24 department if the information requested is not readily
25 available in reports for which the department's information

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1 systems are programmed; and

2 (3) return information required to administer
3 the Health Care Quality Surcharge Act;

4 O. the superintendent of insurance, return
5 information with respect to the premium tax and the health
6 insurance premium surtax;

7 P. the secretary of finance and administration or
8 the secretary's [~~delegate, aggregate~~] designee, return
9 information concerning a credit pursuant to the Film Production
10 Tax Credit Act; [~~and~~]

11 Q. the secretary of economic development or the
12 secretary's [~~delegate, aggregate~~] designee, return information
13 concerning a credit pursuant to the Film Production Tax Credit
14 Act;

15 R. the secretary of public safety or the
16 secretary's designee, return information concerning the Weight
17 Distance Tax Act;

18 S. the secretary of transportation or the
19 secretary's designee, return information concerning the Weight
20 Distance Tax Act;

21 T. the secretary of energy, minerals and natural
22 resources or the secretary's designee, return information
23 concerning tax credits or deductions for which eligibility is
24 certified or otherwise determined by the secretary or the
25 secretary's designee; and

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U. the secretary of environment or the secretary's
designee, return information concerning tax credits for which
eligibility is certified or otherwise determined by the
secretary or the secretary's designee."

SECTION 2. EMERGENCY.--It is necessary for the public
peace, health and safety that this act take effect immediately.

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_____ BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; CREATING THE MAIN STREET FIRE SUPPRESSION EQUIPMENT TAX CREDIT; CREATING THE MAIN STREET FIRE SUPPRESSION EQUIPMENT TAX CREDIT FUND; MAKING A DISTRIBUTION TO THE MAIN STREET FIRE SUPPRESSION EQUIPMENT TAX CREDIT FUND.

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

SECTION 1. A new section of Chapter 7, Article 9G NMSA 1978 is enacted to read:

"[NEW MATERIAL] MAIN STREET FIRE SUPPRESSION EQUIPMENT TAX CREDIT--MAIN STREET FIRE SUPPRESSION EQUIPMENT TAX CREDIT FUND.--

A. A taxpayer that purchases and installs qualified fire suppression equipment on or after July 1, 2020 for a qualified main street business may apply for, and the taxation and revenue department may allow, a tax credit against the

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1 taxpayer's modified combined tax liability; provided that the
2 installation of the qualified fire suppression equipment is
3 certified by the state fire marshal. The tax credit provided
4 by this section may be referred to as the "main street fire
5 suppression equipment tax credit".

6 B. The "main street fire suppression equipment tax
7 credit fund" is created as a nonreverting fund in the state
8 treasury. Money in the fund consists of distributions,
9 appropriations, gifts, grants, donations and income from
10 investment of the fund. The taxation and revenue department
11 shall administer the fund, and money in the fund shall be used
12 to offset main street fire suppression equipment tax credits;
13 provided that money in the fund is subject to appropriation by
14 the legislature for any purpose. Main street fire suppression
15 equipment tax credits shall not be credited against any other
16 fund. If the taxation and revenue department approves a main
17 street fire suppression equipment tax credit, the amount of the
18 credit shall be transferred from the fund to the general fund.
19 Disbursements from the main street fire suppression equipment
20 tax credit fund shall be made upon warrants drawn by the
21 secretary of finance and administration pursuant to vouchers
22 signed by the secretary of taxation and revenue.

23 C. Subject to the availability of funds in the main
24 street fire suppression equipment tax credit fund, the amount
25 of a main street fire suppression equipment tax credit shall

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1 equal fifty percent of the amount of the cost to purchase and
2 install qualified fire suppression equipment, not to exceed
3 fifty thousand dollars (\$50,000) per qualified main street
4 business.

5 D. A taxpayer may claim a main street fire
6 suppression equipment tax credit for the taxable period in
7 which the installation of qualified fire suppression equipment
8 is completed. That portion of a main street fire suppression
9 equipment tax credit that exceeds a taxpayer's modified
10 combined tax liability in the taxable period in which the
11 credit is claimed may be carried forward to succeeding taxable
12 periods for five consecutive years.

13 E. To receive a main street fire suppression
14 equipment tax credit, a taxpayer shall apply to the taxation
15 and revenue department on forms and in the manner required by
16 that department. The application shall include the
17 certification from the economic development department that the
18 business is a qualified main street business, an itemization of
19 the qualified fire suppression equipment and certification from
20 the state fire marshal of the installation of the qualified
21 fire suppression equipment.

22 F. Prior to applying for a main street fire
23 suppression equipment tax credit, a taxpayer shall apply to the
24 economic development department for certification as a
25 qualified main street business.

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1 G. A taxpayer shall not claim a main street fire
2 suppression equipment tax credit for costs for which the
3 qualified main street business received funds from any
4 governmental source.

5 H. A taxpayer allowed a tax credit pursuant to this
6 section shall report the amount of the credit to the taxation
7 and revenue department in a manner required by the department.

8 I. The taxation and revenue department shall
9 compile an annual report on the main street fire suppression
10 equipment tax credit that shall include the number of taxpayers
11 approved by the department to receive the credit, the aggregate
12 amount of credits approved and any other information necessary
13 to evaluate the cost of the credit. The department shall
14 present the annual report to the revenue stabilization and tax
15 policy committee and the legislative finance committee with an
16 analysis of the cost of the tax credit.

17 J. As used in this section:

18 (1) "modified combined tax liability" means
19 the total liability for the reporting period for the gross
20 receipts tax imposed by Section 7-9-4 NMSA 1978 together with
21 any tax collected at the same time and in the same manner as
22 the gross receipts tax, such as the compensating tax, the
23 withholding tax, the interstate telecommunications gross
24 receipts tax, the surcharges imposed by Section 63-9D-5 NMSA
25 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978,

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1 minus the amount of any credit other than the main street fire
2 suppression equipment tax credit applied against any or all of
3 these taxes or surcharges; but "modified combined tax
4 liability" excludes all amounts collected with respect to local
5 option gross receipts and compensating taxes;

6 (2) "qualified fire suppression equipment"
7 means equipment necessary to install a fire suppression system
8 certified by the state fire marshal, as determined by the
9 taxation and revenue department by rule; and

10 (3) "qualified main street business" means a
11 business located in a class B county and within the designated
12 boundaries of:

13 (a) a main street program pursuant to
14 the Main Street Act; or

15 (b) an arts and cultural district
16 pursuant to the Arts and Cultural District Act."

17 **SECTION 2. TEMPORARY PROVISION--DISTRIBUTION TO MAIN**
18 **STREET FIRE SUPPRESSION EQUIPMENT TAX CREDIT FUND.--**Prior to
19 July 1, 2020, a one-time distribution pursuant to Section
20 7-1-6.1 NMSA 1978 shall be made to the main street fire
21 suppression equipment tax credit fund in an amount equal to one
22 million dollars (\$1,000,000) of the net receipts attributable
23 to the gross receipts tax.

24 **SECTION 3. EFFECTIVE DATE.--**The effective date of the
25 provisions of Section 1 of this act is July 1, 2020.

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54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TRANSPORTATION; CHANGING THE "LOCAL GOVERNMENT
TRANSPORTATION PROJECT FUND" TO THE "TRANSPORTATION PROJECT
FUND"; ALLOWING INDIAN NATION, TRIBE OR PUEBLO PROJECTS TO BE
FUNDED BY THE TRANSPORTATION PROJECT FUND.

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

SECTION 1. Section 67-3-78 NMSA 1978 (being Laws 2019,
Chapter 205, Section 1) is amended to read:

"67-3-78. [~~DEFINITIONS LOCAL GOVERNMENT~~] TRANSPORTATION
PROJECT FUND CREATED--~~[DISTRIBUTIONS]~~ PLANNING AND
PRIORITIZATION OF FUNDING TRANSPORTATION PROJECTS FOR COUNTIES,
MUNICIPALITIES AND INDIAN NATIONS, TRIBES AND PUEBLOS.--

~~[A. As used in this section:~~

~~(1) "fund" means the local government
transportation project fund;~~

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1 ~~(2) "local government" means a county or~~
2 ~~municipality;~~

3 ~~(3) "local government transportation project"~~
4 ~~means environmental and other studies, planning, design,~~
5 ~~construction and acquisition of rights of way necessary for the~~
6 ~~development of transportation infrastructure in a county or~~
7 ~~municipality;~~

8 ~~(4) "non-state money" means money that does~~
9 ~~not derive from revenue or interest into the state treasury or~~
10 ~~into a state fund; and~~

11 ~~(5) "transportation infrastructure" means~~
12 ~~highways, streets, roadways, bridges, crossing structures and~~
13 ~~parking facilities, including all areas for vehicular use for~~
14 ~~travel, ingress, egress and parking.~~

15 B.] A. The "~~[local government]~~ transportation
16 project fund" is created in the state treasury. The fund
17 consists of appropriations, donations, interest from investment
18 of the fund and other money distributed to the fund. The
19 department shall administer the fund and may establish
20 subaccounts for the fund as it deems necessary. Money in the
21 fund is appropriated to the department for expenditure as
22 provided in this section; provided that money in the fund is
23 subject to appropriation by the legislature for any purpose.
24 Disbursements from the fund shall be made by warrant of the
25 secretary of finance and administration pursuant to vouchers

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1 signed by the secretary of transportation or the secretary's
2 designee. Money in the fund shall not revert at the end of a
3 fiscal year.

4 ~~[G.]~~ B. Money in the fund may be used to make a
5 grant to a ~~[local government]~~ county, municipality or tribe for
6 a ~~[local government]~~ transportation project that has been
7 approved pursuant to Subsection ~~[D]~~ C of this section for up
8 to:

9 (1) ninety-five percent of the total cost of a
10 ~~[local government]~~ transportation project; provided that the
11 ~~[local government]~~ county, municipality or tribe has
12 demonstrated an ability, and has contracted, to provide the
13 remainder of the project costs in non-state money; or

14 (2) one hundred percent of the total cost of a
15 ~~[local government]~~ transportation project if a financial
16 hardship qualification certificate is issued to the ~~[local~~
17 ~~government]~~ county, municipality or tribe by the department of
18 finance and administration and the level of hardship assistance
19 is approved by the state transportation commission; provided
20 that the ~~[local government]~~ county, municipality or tribe has
21 demonstrated an ability, and has contracted, to provide the
22 remainder, if any, of the project costs in non-state money.

23 ~~[D.]~~ C. By ~~[August 1, 2019 and by]~~ August 1 of each
24 year ~~[thereafter]~~, the secretary shall submit a proposed list
25 to the state transportation commission of ~~[local government]~~

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1 transportation projects identified through a transportation
2 planning process by [~~the department's metropolitan planning~~
3 ~~organization and regional transportation planning organization~~
4 ~~planning process to the state transportation commission.~~
5 Subject to any direction by the legislature regarding
6 distributions from the fund, such as minimum distributions by
7 engineering districts or to rural or urbanized local
8 governments] metropolitan planning organizations and regional
9 transportation planning organizations. The commission shall
10 approve a prioritized list of [~~local government~~] the
11 transportation projects for funding from the fund by [~~September~~
12 ~~1, 2019 and by~~] September 1 of each year [~~thereafter~~]. The
13 commission may approve subsequent changes to a priority list as
14 [~~it~~] the commission deems necessary.

15 [E.] D. By [~~November 30, 2019 and by~~] November 30
16 of each year [~~thereafter~~], the department shall provide a
17 report to the appropriate interim legislative committee on the
18 status of the fund, the status of the [~~local government~~]
19 transportation projects for which grants have been made from
20 the fund and the outstanding demand for assistance from the
21 fund.

22 E. As used in this section:

23 (1) "fund" means the transportation project
24 fund;

25 (2) "metropolitan planning organization" means

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1 the policy board of an organization designated by the state to
2 carry out a transportation planning process as permitted by
3 federal law pursuant to 23 U.S.C. 134, as that section may be
4 amended or renumbered;

5 (3) "non-state money" means money that does
6 not derive from revenue or interest into the state treasury or
7 into a state fund;

8 (4) "regional transportation planning
9 organization" means the policy board of an organization
10 designated by the state to carry out a transportation planning
11 process as permitted by federal law pursuant to 23 U.S.C. 135,
12 as that section may be amended or renumbered;

13 (5) "transportation infrastructure" means
14 highways, streets, roadways, bridges, crossing structures and
15 parking facilities, including all areas for vehicular use for
16 travel, ingress, egress and parking;

17 (6) "transportation project" means
18 environmental and other studies, planning, design, construction
19 and maintenance of transportation infrastructure, and
20 acquisition of rights of way necessary for the development of
21 transportation infrastructure, in a county, municipality or
22 tribe, but "transportation project" does not mean a
23 transportation enhancement project, as determined by the state
24 transportation commission; and

25 (7) "tribe" means an Indian nation, tribe or

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pueblo located wholly or partially in New Mexico."

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_____ BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

DISCUSSION DRAFT

ENDORSED BY THE TRANSPORTATION INFRASTRUCTURE
REVENUE SUBCOMMITTEE

AN ACT

RELATING TO THE STATE AVIATION FUND; MAKING A TEMPORARY
DISTRIBUTION OF A PORTION OF THE GROSS RECEIPTS TAX TO THE
STATE AVIATION FUND PERMANENT.

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

SECTION 1. Section 7-1-6.7 NMSA 1978 (being Laws 1994,
Chapter 5, Section 2, as amended) is amended to read:

"7-1-6.7. DISTRIBUTIONS--STATE AVIATION FUND.--

A. A distribution pursuant to Section 7-1-6.1 NMSA
1978 shall be made to the state aviation fund in an amount
equal to four and seventy-nine hundredths percent of the
taxable gross receipts attributable to the sale of fuel
specially prepared and sold for use in turboprop or jet-type
engines as determined by the department.

B. A distribution pursuant to Section 7-1-6.1 NMSA

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1 1978 shall be made to the state aviation fund in an amount
2 equal to twenty-six hundredths percent of gasoline taxes,
3 exclusive of penalties and interest, collected pursuant to the
4 Gasoline Tax Act.

5 C. [~~From July 1, 2013 through June 30, 2021~~] A
6 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
7 made to the state aviation fund in an amount equal to forty-six
8 thousandths percent of the net receipts attributable to the
9 gross receipts tax distributable to the general fund.

10 D. A distribution pursuant to Section 7-1-6.1 NMSA
11 1978 shall be made to the state aviation fund from the net
12 receipts attributable to the gross receipts tax distributable
13 to the general fund in an amount equal to:

14 (1) eighty thousand dollars (\$80,000) monthly
15 from July 1, 2007 through June 30, 2008;

16 (2) one hundred sixty-seven thousand dollars
17 (\$167,000) monthly from July 1, 2008 through June 30, 2009; and

18 (3) two hundred fifty thousand dollars
19 (\$250,000) monthly after July 1, 2009."

20 SECTION 2. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2020.

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