

**FORTY-EIGHTH LEGISLATURE
FIRST SESSION, 2007**

SB 463/a

March 15, 2007

Madam President:

Your **FINANCE COMMITTEE**, to whom has been referred

SENATE BILL 463

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 1, line 14, after the semicolon insert:

"PROVIDING A SUSTAINABLE BUILDING TAX CREDIT IN THE INCOME TAX ACT AND THE CORPORATE INCOME AND FRANCHISE TAX ACT; PROVIDING A CREDIT IN THE INCOME TAX ACT AND THE CORPORATE INCOME AND FRANCHISE TAX ACT FOR AGRICULTURAL WATER CONSERVATION EXPENSES; PROVIDING TAX INCENTIVES FOR PRODUCTION AND SALE OF BIODIESEL FUEL; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR RECEIPTS FROM THE SALE AND INSTALLATION OF CERTAIN SOLAR ENERGY SYSTEMS; ENACTING THE ALTERNATIVE ENERGY PRODUCT MANUFACTURERS TAX CREDIT ACT;"

2. On page 1, line 16, before the period, insert "; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978".

3. On page 2, line 9, after "generator", insert "that first produced electricity on or before January 1, 2018".

4. On page 2, line 12, after "bond", insert "and if the qualified energy generator first produced electricity on or before January 1, 2018".

5. On page 4, line 1, after "(\$.035)", insert "per kilowatt-hour".

6. On page 4, line 5, after "(\$.04)", insert "per kilowatt-hour".

7. On page 4, line 9, after "(\$.035)", insert "per kilowatt-hour".

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8. On page 8, line 6, before the period, insert "and shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the renewable energy production tax credit, including the identity of qualified energy generators, the energy production means used, the amount of energy produced by those qualified energy generators and whether any applications could not be approved due to program limits".

9. On page 11, line 16, after "generator", insert "that first produced electricity on or before January 1, 2018".

10. On page 11, line 19, after "bond", insert "and if the qualified energy generator first produced electricity on or before January 1, 2018".

11. On page 13, line 7, after "(\$.035)", insert "per kilowatt-hour".

12. On page 13, line 11, after "(\$.04)", insert "per kilowatt-hour".

13. On page 13, line 15, after "(\$.035)", insert "per kilowatt-hour".

14. On page 17, line 8, before the period insert "and shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the renewable energy production tax credit, including the identity of qualified energy generators, the energy production means used, the amount of energy produced by those qualified energy generators and whether any applications could not be approved due to program limits".

15. On page 20, strike lines 1 through 4 and insert in lieu thereof the following sections:

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"Section 3. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] SUSTAINABLE BUILDING TAX CREDIT.--

A. The tax credit provided by this section may be referred to as the "sustainable building tax credit". The sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building or the renovation of an existing building in New Mexico into a sustainable building. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the sustainable building tax credit provided in the Corporate Income and Franchise Tax Act has been claimed.

B. A taxpayer who files an income tax return is eligible to apply for a sustainable building tax credit if the taxpayer is:

(1) the owner of the building at the time the certification level for the building in the LEED green building rating system or the build green New Mexico rating system is awarded; or

(2) the subsequent purchaser of a sustainable building with respect to which no tax credit has been previously claimed, if the certification level for the building in the LEED green building rating system or the build green New Mexico rating system is awarded on or after January 1, 2007.

C. The amount of the sustainable building tax credit that may be claimed with respect to a sustainable commercial building shall be calculated based on the certification level the building has achieved in the LEED green building rating system and the amount of qualified occupied square footage in the building, as indicated on the following chart:

LEED Rating Level	Qualified	Tax Credit per
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	Occupied Square Footage	Square Foot
LEED-NC Silver	First 10,000	\$3.50
	Next 40,000	\$1.75
	Over 50,000	
	up to 500,000	\$.70
LEED-NC Gold	First 10,000	\$4.75
	Next 40,000	\$2.00
	Over 50,000	
	up to 500,000	\$1.00
LEED-NC Platinum	First 10,000	\$6.25
	Next 40,000	\$3.25
	Over 50,000	
	up to 500,000	\$2.00
LEED-EB or CS Silver	First 10,000	\$2.50
	Next 40,000	\$1.25
	Over 50,000	
	up to 500,000	\$.50
LEED-EB or CS Gold	First 10,000	\$3.35
	Next 40,000	\$1.40
	Over 50,000	
	up to 500,000	\$.70
LEED-EB or CS Platinum	First 10,000	\$4.40
	Next 40,000	\$2.30
	Over 50,000	
	up to 500,000	\$1.40
LEED-CI Silver	First 10,000	\$1.40
	Next 40,000	\$.70
	Over 50,000	

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	up to 500,000	\$.30
LEED-CI Gold	First 10,000	\$1.90
	Next 40,000	\$.80
	Over 50,000	
	up to 500,000	\$.40
LEED-CI Platinum	First 10,000	\$2.50
	Next 40,000	\$1.30
	Over 50,000	
	up to 500,000	\$.80.

D. The amount of the sustainable building tax credit that may be claimed with respect to a sustainable residential building shall be calculated based on the certification level the building has achieved in the LEED green building rating system or the build green New Mexico rating system and the amount of qualified occupied square footage, as indicated on the following chart:

Rating System/Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
Build Green NM Gold	First 2,000	\$4.50
	Next 1,000	\$2.00
LEED-H Silver	First 2,000	\$5.00
	Next 1,000	\$2.50
LEED-H Gold	First 2,000	\$6.85
	Next 1,000	\$3.40
LEED-H Platinum	First 2,000	\$9.00
	Next 1,000	\$4.45

EPA ENERGY STAR

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Manufactured Housing Up to 3,000 \$3.00.

E. A taxpayer may apply for certification of eligibility for the sustainable building tax credit from the energy, minerals and natural resources department after the construction or renovation of the sustainable building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the taxpayer meets the requirements of Subsection B of this section and that the building with respect to which the tax credit application is made meets the requirements of this section as a sustainable residential building or a sustainable commercial building, it may issue a certificate of eligibility to the taxpayer, subject to the limitation in Subsection F of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of sustainable building tax credit for which the taxpayer would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection.

F. The energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Corporate Income and Franchise Tax Act shall not exceed in any calendar year an aggregate amount of five million dollars (\$5,000,000) with respect to sustainable commercial buildings and an aggregate amount of five million dollars (\$5,000,000) with respect to sustainable residential buildings; provided that no more than one million two hundred fifty thousand dollars (\$1,250,000) of the aggregate amount with respect to sustainable residential buildings shall be for manufactured housing.

G. Installation of a solar thermal system or a

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photovoltaic system eligible for the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the sustainable building tax credit, unless a solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 has not been claimed with respect to that system and the taxpayer certifies that such a tax credit will not be claimed with respect to that system.

H. To be eligible for the sustainable building tax credit, the taxpayer must provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection E of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit due the taxpayer.

I. If the requirements of this section have been complied with, the department shall issue to the applicant a document granting a sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be sold, exchanged or otherwise transferred. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

J. Except as provided in Subsection K of this section, the sustainable building tax credit represented by the document issued pursuant to Subsection I of this section shall be applied against the taxpayer's income tax liability for the taxable year in which the credit is approved and the three subsequent taxable years, in increments of twenty-five percent of the total credit amount in each of the four taxable years. If the amount of the credit available in a taxable year exceeds the taxpayer's income tax liability for that taxable year, the excess may be carried forward for up to seven years.

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K. If the total amount of a sustainable building tax credit approved by the department is less than twenty-five thousand dollars (\$25,000), the entire amount of the credit may be applied against the taxpayer's income tax liability for the taxable year in which the credit is approved. If the amount of the credit exceeds the taxpayer's income tax liability for that taxable year, the excess may be carried forward for up to seven years.

L. A taxpayer who otherwise qualifies and claims a sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the sustainable building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

M. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

N. For the purposes of this section:

(1) "build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico;

(2) "LEED-CI" means the LEED rating system for commercial interiors;

(3) "LEED-CS" means the LEED rating system for the core and shell of buildings;

(4) "LEED-EB" means the LEED rating system for existing buildings;

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(5) "LEED gold" means the rating in compliance with, or exceeding, the second highest rating awarded by the LEED certification process;

(6) "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the United States green building council;

(7) "LEED-H" means the LEED rating system for homes;

(8) "LEED-NC" means the LEED rating system for new buildings and major renovations;

(9) "LEED platinum" means the rating in compliance with, or exceeding, the highest rating awarded by the LEED certification process;

(10) "LEED silver" means the rating in compliance with, or exceeding, the third highest rating awarded by the LEED certification process;

(11) "qualified occupied square footage" means the occupied spaces of the building as determined by:

(a) the United States green building council for those buildings obtaining LEED certification;

(b) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and

(c) the United States environmental protection agency for ENERGY STAR-certified manufactured homes;

(12) "sustainable building" means either a

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sustainable commercial building or a sustainable residential building;

(13) "sustainable commercial building" means a building that has been registered and certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system and that:

(a) is certified by the United States green building council at LEED-Silver or higher;

(b) achieves any prerequisite for and at least one point related to commissioning under LEED "energy and atmosphere", if included in the applicable rating system; and

(c) has reduced energy consumption, as follows: 1) through 2011, a fifty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and beginning January 1, 2012, a sixty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and 2) is substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development; and

(14) "sustainable residential building" means:

(a) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating systems that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as gold or higher; and 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network;

(b) a building used as multi-family dwelling units, as registered and certified under the LEED-H rating system

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that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as gold or higher; and 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; or

(c) manufactured housing as defined by the United States department of housing and urban development that is ENERGY STAR-qualified by the United States environmental protection agency."

Section 4. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"[NEW MATERIAL] SUSTAINABLE BUILDING TAX CREDIT.--

A. The tax credit provided by this section may be referred to as the "sustainable building tax credit". The sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building or the renovation of an existing building in New Mexico into a sustainable building. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the sustainable building tax credit provided in the Income Tax Act has been claimed.

B. A taxpayer that files a corporate income tax return is eligible to apply for a sustainable building tax credit if the taxpayer is:

(1) the owner of the building at the time the certification level for the building in the LEED green building rating system or the build green New Mexico rating system is awarded; or

(2) the subsequent purchaser of a sustainable building with respect to which no tax credit has been previously

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claimed, if the certification level for the building in the LEED green building rating system or the build green New Mexico rating system is awarded on or after January 1, 2007.

C. The amount of the sustainable building tax credit that may be claimed with respect to a sustainable commercial building shall be calculated based on the certification level the building has achieved in the LEED green building rating system and the amount of qualified occupied square footage in the building, as indicated on the following chart:

LEED Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-NC Silver	First 10,000	\$3.50
	Next 40,000	\$1.75
	Over 50,000	
	up to 500,000	\$.70
LEED-NC Gold	First 10,000	\$4.75
	Next 40,000	\$2.00
	Over 50,000	
	up to 500,000	\$1.00
LEED-NC Platinum	First 10,000	\$6.25
	Next 40,000	\$3.25
	Over 50,000	
	up to 500,000	\$2.00
LEED-EB or CS Silver	First 10,000	\$2.50
	Next 40,000	\$1.25
	Over 50,000	
	up to 500,000	\$.50
LEED-EB or CS Gold	First 10,000	\$3.35
	Next 40,000	\$1.40

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	Over 50,000 up to 500,000	\$.70
LEED-EB or CS Platinum	First 10,000 Next 40,000 Over 50,000 up to 500,000	\$4.40 \$2.30 \$1.40
LEED-CI Silver	First 10,000 Next 40,000 Over 50,000 up to 500,000	\$1.40 \$.70 \$.30
LEED-CI Gold	First 10,000 Next 40,000 Over 50,000 up to 500,000	\$1.90 \$.80 \$.40
LEED-CI Platinum	First 10,000 Next 40,000 Over 50,000 up to 500,000	\$2.50 \$1.30 \$.80.

D. The amount of the sustainable building tax credit that may be claimed with respect to a sustainable residential building shall be calculated based on the certification level the building has achieved in the LEED green building rating system or the build green New Mexico rating system and the amount of qualified occupied square footage, as indicated on the following chart:

Rating System/Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
Build Green NM Gold	First 2,000	\$4.50

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	Next 1,000	\$2.00
LEED-H Silver	First 2,000	\$5.00
	Next 1,000	\$2.50
LEED-H Gold	First 2,000	\$6.85
	Next 1,000	\$3.40
LEED-H Platinum	First 2,000	\$9.00
	Next 1,000	\$4.45
EPA ENERGY STAR Manufactured Housing	Up to 3,000	\$3.00.

E. A taxpayer may apply for certification of eligibility for the sustainable building tax credit from the energy, minerals and natural resources department after the construction or renovation of the sustainable building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the taxpayer meets the requirements of Subsection B of this section and that the building with respect to which the tax credit application is made meets the requirements of this section as a sustainable residential building or a sustainable commercial building, it may issue a certificate of eligibility to the taxpayer, subject to the limitation in Subsection F of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of sustainable building tax credit for which the taxpayer would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection.

F. The energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of sustainable building tax credits represented by certificates of

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eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Income Tax Act shall not exceed in any calendar year an aggregate amount of five million dollars (\$5,000,000) with respect to sustainable commercial buildings and an aggregate amount of five million dollars (\$5,000,000) with respect to sustainable residential buildings; provided that no more than one million two hundred fifty thousand dollars (\$1,250,000) of the aggregate amount with respect to sustainable residential buildings shall be for manufactured housing.

G. Installation of a solar thermal system or a photovoltaic system eligible for the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the sustainable building tax credit, unless a solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 has not been claimed with respect to that system and the taxpayer certifies that such a tax credit will not be claimed with respect to that system.

H. To be eligible for the sustainable building tax credit, the taxpayer must provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection E of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit due the taxpayer.

I. If the requirements of this section have been complied with, the department shall issue to the applicant a document granting a sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be sold, exchanged or otherwise transferred. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

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J. Except as provided in Subsection K of this section, the sustainable building tax credit represented by the document issued pursuant to Subsection I of this section shall be applied against the taxpayer's corporate income tax liability for the taxable year in which the credit is approved and the three subsequent taxable years, in increments of twenty-five percent of the total credit amount in each of the four taxable years. If the amount of the credit available in a taxable year exceeds the taxpayer's corporate income tax liability for that taxable year, the excess may be carried forward for up to seven years.

K. If the total amount of a sustainable building tax credit approved by the department is less than twenty-five thousand dollars (\$25,000), the entire amount of the credit may be applied against the taxpayer's corporate income tax liability for the taxable year in which the credit is approved. If the amount of the credit exceeds the taxpayer's corporate income tax liability for that taxable year, the excess may be carried forward for up to seven years.

L. A taxpayer that otherwise qualifies and claims a sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the sustainable building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

M. For the purposes of this section:

(1) "build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico;

(2) "LEED-CI" means the LEED rating system for

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commercial interiors;

(3) "LEED-CS" means the LEED rating system for the core and shell of buildings;

(4) "LEED-EB" means the LEED rating system for existing buildings;

(5) "LEED gold" means the rating in compliance with, or exceeding, the second highest rating awarded by the LEED certification process;

(6) "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the United States green building council;

(7) "LEED-H" means the LEED rating system for homes;

(8) "LEED-NC" means the LEED rating system for new buildings and major renovations;

(9) "LEED platinum" means the rating in compliance with, or exceeding, the highest rating awarded by the LEED certification process;

(10) "LEED silver" means the rating in compliance with, or exceeding, the third highest rating awarded by the LEED certification process;

(11) "qualified occupied square footage" means the occupied spaces of the building as determined by:

(a) the United States green building council for those buildings obtaining LEED certification;

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(b) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and

(c) the United States environmental protection agency for ENERGY STAR-certified manufactured homes;

(12) "sustainable building" means either a sustainable commercial building or a sustainable residential building;

(13) "sustainable commercial building" means a building that has been registered and certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system and that:

(a) is certified by the United States green building council at LEED-Silver or higher;

(b) achieves any prerequisite for and at least one point related to commissioning under LEED "energy and atmosphere", if included in the applicable rating system; and

(c) has reduced energy consumption, as follows: 1) through 2011, a fifty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and beginning January 1, 2012, a sixty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and 2) is substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development; and

(14) "sustainable residential building" means:

(a) a building used as a single-family residence as registered and certified under the build green New

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Mexico or LEED-H rating systems that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as gold or higher; and 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network;

(b) a building used as multi-family dwelling units, as registered and certified under the LEED-H rating system that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as gold or higher; and 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; or

(c) manufactured housing as defined by the United States department of housing and urban development that is ENERGY STAR-qualified by the United States environmental protection agency."

Section 5. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] TAX CREDIT--AGRICULTURAL WATER CONSERVATION EXPENSES.--

A. A taxpayer may claim a credit against the taxpayer's income tax liability for expenses incurred by the taxpayer for eligible improvements in irrigation systems or water management methods. The credit may be claimed for the taxable year in which the expenses are incurred if the taxpayer:

(1) in that year, owned or leased a water right appurtenant to the land on which an eligible improvement was made;

(2) files an individual New Mexico income tax return for that year;

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(3) in that year, is not a dependent of another individual; and

(4) does not take a tax credit for the same expense on any corporate tax return filed by the taxpayer.

B. The credit provided in this section shall be in the following amounts, not to exceed a maximum annual credit of ten thousand dollars (\$10,000):

(1) for expenses incurred from January 1, 2008 until December 31, 2008, an amount equal to thirty-five percent of the incurred expenses; and

(2) for expenses incurred on or after January 1, 2009, an amount equal to fifty percent of the incurred expenses.

C. As used in this section, "eligible improvement in irrigation systems or water management methods" means an improvement that is:

(1) made on or after January 1, 2008;

(2) consistent and complies with a water conservation plan approved by the local soil and water conservation district in which the improvement is located; and

(3) primarily designed to substantially conserve water on land in New Mexico that is owned or leased by the taxpayer and used by the taxpayer or the taxpayer's lessee to:

(a) produce agricultural products;

(b) harvest or grow trees; or

(c) sustain livestock.

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D. Taxpayers who are considered for federal income tax purposes as co-owners of the land on which an eligible improvement in irrigation systems or water management methods is made may claim the pro rata share of the credit allowed pursuant to this section based on the co-owner's ownership interest. The total of the credits allowed all the taxpayers considered co-owners may not exceed the amount that would have been allowed a sole owner of the land.

E. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

F. If the allowable tax credit in a taxable year exceeds the income taxes otherwise due from a taxpayer pursuant to the Income Tax Act, or if there are no income taxes due from the taxpayer, the taxpayer may carry forward the amount of the credit not used in that year to offset the taxpayer's liability for income taxes pursuant to the Income Tax Act for not more than five consecutive taxable years.

G. The New Mexico department of agriculture, with the advice of the soil and water conservation commission, and with information provided by the state engineer, shall promulgate rules to implement this section, and those rules shall include detailed guidelines to assist the department in determining whether improvements in irrigation systems or water management methods qualify for the credit available under this section.

H. A taxpayer claiming the credit shall provide documentary evidence of the amount of water conserved during the period for which the credit is claimed if requested by the department.

I. Water conserved due to improvements in irrigation systems or water management methods and for which a credit is

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claimed shall not be subject to abandonment or forfeiture, nor shall the conserved water be put to consumptive beneficial use.

J. As used in this section, "taxpayer" may include a partnership, limited liability corporation or other form of pass-through entity, which may pass the credit provided in this section through to its owners in proportion to their share of ownership."

Section 6. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"[NEW MATERIAL] TAX CREDIT--AGRICULTURAL WATER CONSERVATION EXPENSES.--

A. A taxpayer may claim a credit against the taxpayer's corporate income tax liability for expenses incurred by the taxpayer for eligible improvements in irrigation systems or water management methods. The credit may be claimed for the taxable year in which the expenses are incurred if the taxpayer:

(1) in that year, owned or leased a water right appurtenant to the land on which an eligible improvement was made; and

(2) files a New Mexico corporate income tax return for that year.

B. The credit provided in this section shall be in the following amounts, not to exceed a maximum annual credit of ten thousand dollars (\$10,000):

(1) for expenses incurred from January 1, 2008 until December 31, 2008, an amount equal to thirty-five percent of the incurred expenses; and

(2) for expenses incurred on or after January 1, 2009, an amount equal to fifty percent of the incurred expenses.

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C. As used in this section, "eligible improvement in irrigation systems or water management methods" means an improvement that is:

- (1) made on or after January 1, 2008;
- (2) consistent and complies with a water conservation plan approved by the local soil and water conservation district in which the improvement is located; and
- (3) primarily designed to substantially conserve water on land in New Mexico that is owned or leased by the taxpayer and used by the taxpayer or the taxpayer's lessee to:
 - (a) produce agricultural products;
 - (b) harvest or grow trees; or
 - (c) sustain livestock.

D. Taxpayers that are considered for federal income tax purposes as co-owners of the land, or co-owners of a pass-through entity that owns the land, on which an eligible improvement in irrigation systems or water management methods is made may claim the pro rata share of the credit allowed pursuant to this section based on the co-owner's ownership interest. The total of the credits allowed all the taxpayers considered co-owners may not exceed the amount that would have been allowed a sole owner of the land.

E. If the allowable tax credit in a taxable year exceeds the corporate income taxes otherwise due from a taxpayer pursuant to the Corporate Income and Franchise Tax Act, or if there are no taxes due pursuant to the Corporate Income and Franchise Tax Act, the taxpayer may carry forward the amount of the credit not used in that year to offset the taxpayer's liability for corporate income taxes pursuant to the Corporate Income and Franchise Tax Act for not more than five consecutive tax years.

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F. The New Mexico department of agriculture, with the advice of the soil and water conservation commission and with information provided by the state engineer, shall promulgate rules to implement this section, including detailed guidelines to assist the department in determining whether improvements in irrigation systems or water management methods qualify for the credit available under this section.

G. A taxpayer claiming the credit shall provide documentary evidence of the amount of water conserved during the period for which the credit is claimed if requested by the department.

H. Water conserved due to improvements in irrigation systems or water management methods and for which a credit is claimed shall not be subject to abandonment or forfeiture, nor shall the conserved water be put to consumptive beneficial use.

I. As used in this section, "taxpayer" may include a partnership, limited liability corporation or other form of pass-through entity, which may pass the credit provided in this section through to its owners in proportion to their share of ownership."

Section 7. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] CREDIT--BLENDED BIODIESEL FUEL.--

A. A taxpayer who is liable for payment of the special fuel excise tax pursuant to Subsections A through D of Section 7-16A-2.1 NMSA 1978 and who files a New Mexico income tax return is eligible to claim a credit against income tax liability for each gallon of blended biodiesel fuel on which that person paid the special fuel excise tax in the taxable year, or would have paid the special fuel excise tax in the taxable year but for the deductions allowed pursuant to Subsections B through F of Section 7-16A-10 NMSA 1978 or the treaty exemption for north Atlantic treaty organization

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use. The credit shall be in the following amounts for the following periods:

(1) from January 1, 2007 until December 31, 2010, at a rate of three cents (\$.03) per gallon;

(2) from January 1, 2011 until December 31, 2011, at a rate of two cents (\$.02) per gallon; and

(3) from January 1, 2012 until December 31, 2012, at a rate of one cent (\$.01) per gallon.

B. The tax credit provided by this section may not be claimed with respect to the same blended biodiesel fuel for which a credit has been claimed pursuant to the Corporate Income and Franchise Tax Act or for which a credit or refund has been claimed pursuant to Section 7-16A-13 NMSA 1978.

C. A taxpayer who otherwise qualifies for and claims a credit pursuant to this section for blended biodiesel fuel on which special fuel excise tax has been paid by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership or business association. The total credit claimed in the aggregate by all members of the partnership or business association shall not exceed the amount of credit allowed pursuant to Subsection A of this section.

D. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

E. The tax credit provided by this section may only be applied against the income tax liability of the person who paid the special fuel excise tax on the blended biodiesel fuel with respect to which the credit is provided, or who would have paid the special

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fuel excise tax but for the deductions allowed pursuant to Subsections B through F of Section 7-16A-10 NMSA 1978 or the treaty exemption for north Atlantic treaty organization use. If the credit exceeds the person's income tax liability for the taxable year in which the credit is granted, the credit may be carried forward for five years.

F. A taxpayer claiming a credit pursuant to this section shall provide documentation of eligibility in form and content as determined by the department.

G. For the purposes of this section:

(1) "biodiesel" means renewable, biodegradable, monoalkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets American society for testing and materials D 6751 standard specification for biodiesel B100 blend stock for distillate fuels;

(2) "blended biodiesel fuel" means a diesel fuel that contains at least two percent biodiesel; and

(3) "diesel fuel" means any diesel-engine fuel used for the generation of power to propel a motor vehicle."

Section 8. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"[NEW MATERIAL] CREDIT--BLENDED BIODIESEL FUEL.--

A. A taxpayer that is liable for payment of the special fuel excise tax pursuant to Subsections A through D of Section 7-16A-2.1 NMSA 1978 and that files a New Mexico corporate income tax return is eligible to claim a credit against corporate income tax liability for each gallon of blended biodiesel fuel on which that person paid the special fuel excise tax in the taxable year or who would have paid the special fuel excise tax in the taxable year but

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for the deductions allowed pursuant to Subsections B through F of Section 7-16A-10 NMSA 1978 or the treaty exemption for north Atlantic treaty organization use. The credit shall be in the following amounts for the following periods:

(1) from January 1, 2007 until December 31, 2010, at a rate of three cents (\$.03) per gallon;

(2) from January 1, 2011 until December 31, 2011, at a rate of two cents (\$.02) per gallon; and

(6) from January 1, 2012 until December 31, 2012, at a rate of one cent (\$.01) per gallon.

B. The tax credit provided by this section may not be claimed with respect to the same blended biodiesel fuel for which a credit has been claimed pursuant to the Income Tax Act or for which a credit or refund has been claimed pursuant to Section 7-16A-13 NMSA 1978.

C. A taxpayer that otherwise qualifies for and claims a credit pursuant to this section for blended biodiesel fuel on which special fuel excise tax has been paid by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership or business association. The total credit claimed in the aggregate by all members of the partnership or business association shall not exceed the amount of credit allowed pursuant to Subsection A of this section.

D. The tax credit provided by this section may only be applied against the corporate income tax liability of the person that paid the special fuel excise tax on the blended biodiesel fuel with respect to which the credit is provided or that would have paid the special fuel excise tax but for the deductions allowed pursuant to Subsections B through F of Section 7-16A-10 NMSA 1978 or the treaty exemption for north Atlantic treaty organization use. If the

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credit exceeds the person's corporate income tax liability for the taxable year in which the credit is granted, the credit may be carried forward for five years.

E. A taxpayer claiming a credit pursuant to this section shall provide documentation of eligibility in form and content as determined by the department.

F. For the purposes of this section:

(1) "biodiesel" means renewable, biodegradable, monoalkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets American society for testing and materials D 6751 standard specification for biodiesel B100 blend stock for distillate fuels;

(2) "blended biodiesel fuel" means a diesel fuel that contains at least two percent biodiesel; and

(3) "diesel fuel" means any diesel-engine fuel used for the generation of power to propel a motor vehicle."

Section 9. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"[NEW MATERIAL] GROSS RECEIPTS TAX--COMPENSATING TAX--BIODIESEL BLENDING FACILITY TAX CREDIT.--

A. A taxpayer who is a rack operator as defined in the Special Fuels Supplier Tax Act and who installs biodiesel blending equipment in property owned by the taxpayer for the purpose of establishing or expanding a facility to produce blended biodiesel fuel is eligible to claim a credit against gross receipts tax or compensating tax. The credit shall be an amount equal to thirty percent of the purchase cost of the equipment plus thirty percent of the cost of installing that equipment. The credit provided by this section may be referred to as the "biodiesel blending facility tax

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credit".

B. The biodiesel blending facility tax credit shall not exceed fifty thousand dollars (\$50,000) with respect to equipment installed at any one facility.

C. Upon application from a taxpayer wishing to claim the biodiesel blending facility tax credit, the energy, minerals and natural resources department shall determine if the equipment for which the tax credit will be claimed meets the requirements of this section and if purchase and installation costs reported by the taxpayer are legitimate. Upon these determinations being made in favor of the taxpayer, the energy, minerals and natural resources department shall issue a dated certificate of eligibility containing this information and an estimate of the amount of the biodiesel blending facility tax credit for which the taxpayer is eligible.

D. To claim the biodiesel blending facility tax credit, the taxpayer shall provide to the taxation and revenue department the certificate of eligibility from the energy, minerals and natural resources department. Upon receipt of the certificate, the taxation and revenue department shall approve the claim for the credit if the total cumulative amount of approved claims for the credit for all taxpayers for the calendar year does not exceed one million dollars (\$1,000,000). The department shall maintain a record of the cumulative amount of claims for the credit that have been approved and when it determines that this cumulative amount has reached one million dollars (\$1,000,000), it shall cease approving any additional claims for the biodiesel blending facility tax credit.

E. If a taxpayer who has received the biodiesel blending facility tax credit ceases biodiesel blending without completing at least one hundred eighty days of availability of the facility within the first three hundred sixty-five days after the issuance of the certificate of eligibility from the energy, minerals and natural resources department, any amount of approved credit not applied against the taxpayer's gross receipts tax or compensating tax

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liability shall be extinguished. The taxpayer must amend the taxpayer's return, self-assess the tax owed and return any biodiesel blending facility tax credit received within four hundred twenty-five days of the date of issuance of the certificate of eligibility.

F. The tax credit provided by this section may only be applied against the taxpayer's gross receipts tax liability or compensating tax liability. If the credit exceeds the taxpayer's tax liability in the reporting period for which it is granted, the credit may be carried forward for four years from the date of the certificate of eligibility.

G. For the purposes of this section:

(1) "biodiesel" means renewable, biodegradable, monoalkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets American society for testing and materials D 6751 standard specification for biodiesel B100 blend stock for distillate fuels;

(2) "biodiesel blending equipment" means equipment necessary for the process of blending biodiesel with diesel fuel to produce blended biodiesel fuel;

(3) "blended biodiesel fuel" means a diesel fuel that contains at least two percent biodiesel; and

(4) "diesel fuel" means any diesel-engine fuel used for the generation of power to propel a motor vehicle."

Section 10. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS--SOLAR ENERGY SYSTEMS.--

A. Receipts from the sale and installation of solar

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energy systems may be deducted from gross receipts.

B. As used in this section, "solar energy system" means an installation that is used to provide space heat, hot water or electricity to the property in which it is installed and is:

(1) an installation that utilizes solar panels that are not also windows, including the solar panels and all equipment necessary for the installation and operation of the solar panels;

(2) a dark-colored water tank exposed to sunlight, including all equipment necessary for the installation and operation of the water tank as a part of the overall water system of the property; or

(3) a non-vented trombe wall, including all equipment necessary for the installation and operation of the trombe wall."

Section 11. [NEW MATERIAL] SHORT TITLE.--Sections 11 through 18 of this act may be cited as the "Alternative Energy Product Manufacturers Tax Credit Act".

Section 12. [NEW MATERIAL] DEFINITIONS.--As used in the Alternative Energy Product Manufacturers Tax Credit Act:

A. "alternative energy product" means an alternative energy vehicle, fuel cell system, renewable energy system or any component of an alternative energy vehicle, fuel cell system or renewable energy system or components for integrated gasification combined cycle coal facilities and equipment related to the sequestration of carbon from integrated gasification combined cycle plants;

B. "alternative energy vehicle" means a motor vehicle manufactured by an original equipment manufacturer that fully

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warrants and certifies that the motor vehicle meets the federal motor vehicle safety standards and is designed to be propelled in whole or in part by electricity; "alternative energy vehicle" includes a gasoline-electric hybrid motor vehicle exempt from the motor vehicle excise tax pursuant to Subsection F of Section 7-14-6 NMSA 1978;

C. "component" means a part, assembly of parts, material, ingredient or supply that is incorporated directly into an end product;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or an employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "fuel cell system" means a system that converts hydrogen, natural gas or waste gas to electricity without combustion, including:

(1) a fuel cell or a system used to generate or reform hydrogen for use in a fuel cell; or

(2) a system used to generate or reform hydrogen for use in a fuel cell, including:

(a) electrolyzers that use renewable energy;
and

(b) reformers that use natural gas as the feedstock;

F. "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include construction, farming, power generation or processing natural resources;

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G. "manufacturing equipment" means an essential machine, mechanism or tool or a component of an essential machine, mechanism or tool used directly and exclusively in a taxpayer's manufacturing operation and that is subject to depreciation pursuant to the Internal Revenue Code of 1986 by the taxpayer carrying on the manufacturing; provided that "manufacturing equipment" does not include a vehicle that leaves the site of a manufacturing operation for the purpose of transporting persons or property, including property for which the taxpayer claims a credit pursuant to Section 7-9-79 NMSA 1978;

H. "manufacturing operation" means a plant employing personnel to perform production tasks, in conjunction with manufacturing equipment not previously existing at the site, to produce alternative energy products;

I. "modified combined tax liability" means the total liability for the reporting period for the gross receipts tax imposed by Section 7-9-4 NMSA 1978 together with any tax collected at the same time and in the same manner as that gross receipts tax, such as the compensating tax, the withholding tax, the interstate telecommunications gross receipts tax, the surcharge imposed by Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount of any credit other than the alternative energy product manufacturers tax credit applied against any or all of those taxes or surcharges; provided that "modified combined tax liability" excludes all amounts collected with respect to local option gross receipts taxes;

J. "pass-through entity" means a business association other than:

- (1) a sole proprietorship;
- (2) an estate or trust;
- (3) a corporation, limited liability company,

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partnership or other entity that is not a sole proprietorship taxed as a corporation for federal income tax purposes for the taxable year; or

(4) a partnership that is organized as an investment partnership in which the partner's income is derived solely from interest, dividends and sales of securities;

K. "qualified expenditure" means an expenditure for the purchase of manufacturing equipment made after July 1, 2006 by a taxpayer approved by the department;

L. "renewable energy" means energy from solar heat, solar light, wind, geothermal energy, landfill gas or biomass either singly or in combination that produces low or zero emissions and has substantial long-term production potential;

M. "renewable energy system" means a system using only renewable energy to produce hydrogen or to generate electricity, including related cogeneration systems that create mechanical energy or that produce heat or steam for space or water heating and agricultural or small industrial processes and includes a:

- (1) photovoltaic energy system;
- (2) solar-thermal energy system;
- (3) biomass energy system;
- (4) wind energy system;
- (5) hydrogen production system; or
- (6) battery cell energy system; and

N. "taxpayer" means a person, including a shareholder, member, partner or other owner of a pass-through entity, who is

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liable for payment of a tax or to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid.

Section 13. [NEW MATERIAL] ADMINISTRATION.--The department shall administer the Alternative Energy Product Manufacturers Tax Credit Act pursuant to the Tax Administration Act.

Section 14. [NEW MATERIAL] ALTERNATIVE ENERGY PRODUCT MANUFACTURERS TAX CREDIT.--

A. A tax credit to be known as the "alternative energy product manufacturers tax credit" may be claimed by a taxpayer in an amount:

(1) for which the taxpayer has been granted approval by the department pursuant to the Alternative Energy Product Manufacturers Tax Credit Act; and

(2) not to exceed five percent of the taxpayer's qualified expenditures.

B. The alternative energy product manufacturers tax credit may only be deducted from the taxpayer's modified combined tax liability. Any portion of the alternative energy product manufacturers tax credit that remains unused at the end of the taxpayer's reporting period may be carried forward for five years.

Section 15. [NEW MATERIAL] ELIGIBILITY REQUIREMENTS--EMPLOYMENT.--To be eligible to claim a credit pursuant to the Alternative Energy Product Manufacturers Tax Credit Act, the taxpayer shall employ a number of full-time employees equal to one full-time employee in addition to the number of full-time employees employed one year prior to the day on which the taxpayer applies for the credit for every:

A. five hundred thousand dollars (\$500,000), or a

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portion of that amount, of qualified expenditures claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars (\$30,000,000); and

B. one million dollars (\$1,000,000), or a portion of that amount, in value of qualified expenditures over thirty million dollars (\$30,000,000) claimed by the taxpayer in a taxable year in the same claim.

Section 16. [NEW MATERIAL] APPROVAL OF CREDIT--ISSUANCE AND DENIAL--APPLICATION--DEADLINES.--

A. The department shall issue or deny approval for an alternative energy product manufacturers tax credit in response to a taxpayer's application for approval for the credit. The department shall issue approval for a credit claimed by a taxpayer who satisfies the requirements of the Alternative Energy Product Manufacturers Tax Credit Act.

B. The department may require a taxpayer who claims an alternative energy product manufacturers tax credit to produce evidence of the taxpayer's compliance with the Alternative Energy Product Manufacturers Tax Credit Act.

C. A taxpayer may apply for approval of an alternative energy product manufacturers tax credit on or before the last day of the year following the end of the calendar year in which the qualified expenditure is made. The department shall not issue approval for the alternative energy product manufacturers tax credit if the taxpayer applies for approval after the last day of the year following the end of the calendar year in which the qualified expenditure is made.

Section 17. [NEW MATERIAL] RECAPTURE.--If the taxpayer or a successor in the business of the taxpayer ceases operations at a facility in New Mexico for at least one hundred eighty consecutive days within a two-year period after the taxpayer has claimed an

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alternative energy product manufacturers tax credit, the department shall not grant additional alternative energy product manufacturers tax credits with respect to that facility. Any amount of the approved credit with respect to that facility that is not claimed against the taxpayer's modified combined tax liability shall be extinguished, and within thirty days after the one hundred eightieth day of cessation of operations, the taxpayer shall pay the modified income tax liability against which an approved credit was taken. For the purposes of this section, a taxpayer shall not be deemed to have ceased operations during reasonable periods for maintenance or retooling, for the repair or replacement of facilities damaged or destroyed or during labor disputes.

Section 18. [NEW MATERIAL] CREDIT CLAIM FORMS.--The department shall provide credit claim forms and instructions. A credit claim form shall accompany any return in which the taxpayer claims a credit, and the claim shall specify the amount of credit intended to apply to each return.

Section 19. REPEAL.--Laws 2005, Chapter 104, Section 7 is repealed.

Section 20. DELAYED REPEAL.--Sections 5 and 6 of this act are repealed effective January 1, 2013.

Section 21. APPLICABILITY.--

A. The provisions of Sections 1 and 2 of this act apply to taxable years beginning on or after January 1, 2008.

B. The provisions of Sections 3 and 4 of this act apply to taxable years beginning on or after January 1, 2007 through December 31, 2013.

C. The provisions of Sections 5 and 6 of this act apply to taxable years beginning on or after January 1, 2008 and ending on or before December 31, 2012.

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Section 22. CONTINUED APPLICABILITY OF TAX CREDIT.--The balance of a tax credit granted before December 31, 2012 to a taxpayer pursuant to Section 5 or 6 of this act may be applied after that date in the manner provided for in Section 5 or 6 of this act against the taxpayer's personal or corporate income tax liability, as applicable as if the provisions of Sections 5 and 6 of this act were still in effect.

Section 23. EFFECTIVE DATE.--The effective date of the provisions of Sections 9 through 18 of this act is July 1, 2007."

Respectfully submitted,

John Arthur Smith, Co-Chair
Timothy Z. Jennings, Co-Chair

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against
Yes: 6
No: 0
Excused: Campos, Carraro, Rawson, Rodriguez
Absent: None

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