

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 175

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

David M. Gallegos and George Dodge, Jr.

AN ACT

RELATING TO UTILITIES; INCREASING THE AMOUNT OF ELECTRICITY THAT MAY BE PRODUCED BY QUALIFIED ENERGY GENERATORS THAT WILL BE ELIGIBLE FOR THE RENEWABLE ENERGY PRODUCTION TAX CREDIT; EXTENDING THE DATE THAT A QUALIFIED ENERGY GENERATOR MUST FIRST PRODUCE ELECTRICITY TO QUALIFY FOR THE RENEWABLE ENERGY PRODUCTION TAX CREDIT; DECREASING THE AMOUNT OF CREDIT PER KILOWATT-HOUR FOR CERTAIN TAXABLE YEARS; LIMITING THE PERIOD FOR WHICH A TAXPAYER MAY CLAIM THE RENEWABLE ENERGY PRODUCTION TAX CREDIT TO TEN YEARS; MAKING GEOTHERMAL ENERGY A QUALIFIED ENERGY SOURCE.

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

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

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

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

underscored material = new  
[bracketed material] = delete

1           A. A taxpayer who is not a dependent of another  
2 individual and who holds title to a qualified energy generator  
3 or leases property upon which a qualified energy generator  
4 operates from a county or municipality under authority of an  
5 industrial revenue bond may claim a tax credit against the  
6 taxpayer's tax liability imposed pursuant to the Income Tax  
7 Act. The tax credit provided in this section may be referred  
8 to as the "renewable energy production tax credit". The tax  
9 credit provided in this section may not be claimed with respect  
10 to the same electricity production for which a tax credit  
11 pursuant to Section 7-2A-19 NMSA 1978 has been claimed.

12           ~~[B. A taxpayer who files an individual New Mexico~~  
13 ~~income tax return and who is not a dependent of another~~  
14 ~~taxpayer is eligible for the renewable energy production tax~~  
15 ~~credit if the taxpayer:~~

16                   ~~(1) holds title to a qualified energy~~  
17 ~~generator that first produced electricity on or before January~~  
18 ~~1, 2018; or~~

19                   ~~(2) leases property upon which a qualified~~  
20 ~~energy generator operates from a county or municipality under~~  
21 ~~authority of an industrial revenue bond and if the qualified~~  
22 ~~energy generator first produced electricity on or before~~  
23 ~~January 1, 2018.~~

24           ~~G. The amount of the tax credit shall equal one~~  
25 ~~cent (\$.01) per kilowatt-hour of the first four hundred~~

.202917.1

underscored material = new  
[bracketed material] = delete

1 ~~thousand megawatt-hours of electricity produced by the~~  
2 ~~qualified energy generator in the taxable year using a wind-,~~  
3 ~~or biomass-derived qualified energy resource; provided that]~~

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

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

16 (1) ten dollars (\$10.00) per megawatt-hour if  
17 the electricity is first produced prior to January 1, 2018;

18 (2) five dollars (\$5.00) per megawatt-hour if  
19 the electricity is first produced on or after January 1, 2018  
20 and prior to January 1, 2020;

21 (3) three dollars (\$3.00) per megawatt-hour if  
22 the electricity is first produced on or after January 1, 2020  
23 and prior to January 1, 2022; and

24 (4) zero dollars if the qualified energy  
25 generator first produces electricity on or after January 1,

.202917.1

underscored material = new  
[bracketed material] = delete

1 2022.

2 C. The total amount of tax credits claimed for a  
3 taxable year by all taxpayers for a single qualified energy  
4 generator using a solar-light-derived or solar-heat-derived  
5 qualified energy resource shall ~~[be limited to]~~ equal the  
6 following amounts of the first two hundred thousand megawatt-  
7 hours of electricity produced by the qualified energy generator  
8 in the taxable year:

9 (1) if the qualified energy generator is  
10 certified pursuant to Subsection F of this section prior to  
11 January 1, 2015:

12 (a) one and one-half cents (\$.015) per  
13 kilowatt-hour in the first taxable year; ~~[in which the~~  
14 ~~qualified energy generator produces electricity using a solar-~~  
15 ~~light-derived or solar-heat-derived qualified energy resource;~~

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

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

25 ~~(4)]~~ (d) three cents (\$.03) per

.202917.1

underscored material = new  
[bracketed material] = delete

1 kilowatt-hour in the fourth taxable year; [~~in which the~~  
2 ~~qualified energy generator produces electricity using a solar-~~  
3 ~~light-derived or solar-heat-derived qualified energy resource;~~

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

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

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

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

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

underscored material = new  
[bracketed material] = delete

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

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

9 E. ~~A taxpayer eligible for a renewable energy~~  
10 ~~production tax credit pursuant to Subsection B of this section~~  
11 ~~shall be eligible for the renewable energy production tax~~  
12 ~~credit for ten consecutive years, beginning on the date the~~  
13 ~~qualified energy generator begins producing electricity.~~

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

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

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

24 (b) ~~agricultural-related materials,~~  
25 ~~including orchard trees, vineyard, grain or crop residues,~~

.202917.1

underscored material = new  
[bracketed material] = delete

1 ~~including straws and stover, aquatic plants and agricultural~~  
2 ~~processed co-products and waste products, including fats, oils,~~  
3 ~~greases, whey and lactose;~~

4 ~~(c) animal waste, including manure and~~  
5 ~~slaughterhouse and other processing waste;~~

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

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

14 ~~(f) landfill gas, wastewater treatment~~  
15 ~~gas and biosolids, including organic waste byproducts generated~~  
16 ~~during the wastewater treatment process; and~~

17 ~~(g) segregated municipal solid waste,~~  
18 ~~excluding tires and medical and hazardous waste;~~

19 ~~(2) "qualified energy generator" means a~~  
20 ~~facility with at least one megawatt generating capacity located~~  
21 ~~in New Mexico that produces electricity using a qualified~~  
22 ~~energy resource and that sells that electricity to an unrelated~~  
23 ~~person; and~~

24 ~~(3) "qualified energy resource" means a~~  
25 ~~resource that generates electrical energy by means of a~~

underscored material = new  
[bracketed material] = delete

1 ~~fluidized bed technology or similar low-emissions technology or~~  
2 ~~a zero-emissions generation technology that has substantial~~  
3 ~~long-term production potential and that uses only the following~~  
4 ~~energy sources:~~

5 ~~(a) solar light;~~

6 ~~(b) solar heat;~~

7 ~~(c) wind; or~~

8 ~~(d) biomass;~~

9 ~~G. A person that holds title to a facility~~  
10 ~~generating electricity from a qualified energy resource or a~~  
11 ~~person that leases such a facility from a county or~~  
12 ~~municipality pursuant to an industrial revenue bond may request~~  
13 ~~certification of eligibility for the renewable energy~~  
14 ~~production tax credit from the energy, minerals and natural~~  
15 ~~resources department which shall determine if the facility is a~~  
16 ~~qualified energy generator. The energy, minerals and natural~~  
17 ~~resources department may certify the eligibility of an energy~~  
18 ~~generator only if the total amount of electricity that may be~~  
19 ~~produced annually by all qualified energy generators that are~~  
20 ~~certified pursuant to this section and pursuant to Section~~  
21 ~~7-2A-19 NMSA 1978 will not exceed a total of two million~~  
22 ~~megawatt-hours plus an additional five hundred thousand~~  
23 ~~megawatt-hours produced by qualified energy generators using a~~  
24 ~~solar-light-derived or solar-heat-derived qualified energy~~  
25 ~~resource. Applications shall be considered in the order~~

.202917.1



underscored material = new  
[bracketed material] = delete

1 ~~received. The energy, minerals and natural resources~~  
2 ~~department may estimate the annual power-generating potential~~  
3 ~~of a generating facility for the purposes of this section. The~~  
4 ~~energy, minerals and natural resources department shall issue a~~  
5 ~~certificate to the applicant stating whether the facility is an~~  
6 ~~eligible qualified energy generator and the estimated annual~~  
7 ~~production potential of the generating facility, which shall be~~  
8 ~~the limit of that facility's energy production eligible for the~~  
9 ~~tax credit for the taxable year]; and~~

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

13 (a) thirteen dollars seventy-five cents  
14 (\$13.75) per megawatt-hour produced if the electricity is first  
15 produced prior to January 1, 2017;

16 (b) ten dollars (\$10.00) per megawatt-  
17 hour produced if the electricity is first produced on or after  
18 January 1, 2017 and prior to January 1, 2019;

19 (c) five dollars (\$5.00) per megawatt-  
20 hour produced if the electricity is first produced on or after  
21 January 1, 2019 and prior to January 1, 2022; and

22 (d) zero dollars if the electricity is  
23 first produced on or after January 1, 2022.

24 D. A taxpayer eligible for a renewable energy  
25 production tax credit pursuant to:

.202917.1

underscored material = new  
[bracketed material] = delete

1                   (1) Paragraph (1) of Subsection C of this  
2 section may claim the renewable energy production tax credit  
3 for ten consecutive taxable years, beginning on the date the  
4 qualified energy generator begins producing electricity;  
5 provided that no taxpayer may claim the tax credit for  
6 electricity produced on or after January 1, 2032; and

7                   (2) Subsection B of this section or Paragraph  
8 (2) of Subsection C of this section may claim the renewable  
9 energy production tax credit for ten consecutive years,  
10 beginning on the date the qualified energy generator receives  
11 the certificate of eligibility pursuant to Subsection F of this  
12 section; provided that no taxpayer may claim the tax credit for  
13 electricity produced on or after January 1, 2032.

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

20                   F. A taxpayer may apply for a certificate of  
21 eligibility for a qualified energy generator from the energy,  
22 minerals and natural resources department. Completed  
23 applications shall be considered in the order received. The  
24 energy, minerals and natural resources department shall issue a  
25 certificate of eligibility if the electricity production

underscored material = new  
[bracketed material] = delete

1 limitations pursuant to Subsection G of this section will not  
2 be exceeded. A certificate of eligibility shall state that the  
3 facility is a qualified energy generator and shall include the  
4 estimated annual production potential of the facility, which  
5 shall be the limit of that facility's energy production for the  
6 tax credit for the taxable year.

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

14 (1) for qualified energy generators pursuant  
15 to Subsection B of this section, energy produced annually by  
16 all qualified energy generators using a wind-, geothermal- or  
17 biomass-derived qualified energy resource:

18 (a) prior to January 1, 2020, two  
19 million megawatt-hours; or

20 (b) on and after January 1, 2020, two  
21 million five hundred thousand megawatt-hours; and

22 (2) for qualified energy generators pursuant  
23 to Subsection C of this section, energy produced annually by  
24 all qualified energy generators using a solar-light-derived or  
25 solar-heat-derived qualified energy resource:

.202917.1

underscored material = new  
[bracketed material] = delete

1                   (a) prior to January 1, 2017, five  
2 hundred thousand megawatt-hours;

3                   (b) on or after January 1, 2017 and  
4 prior to January 1, 2018, six hundred thousand megawatt-hours;

5                   (c) on or after January 1, 2018 and  
6 prior to January 1, 2019, seven hundred thousand megawatt-  
7 hours;

8                   (d) on or after January 1, 2019 and  
9 prior to January 1, 2020, eight hundred thousand megawatt-  
10 hours;

11                   (e) on or after January 1, 2020 and  
12 prior to January 1, 2021, nine hundred thousand megawatt-hours;  
13 and

14                   (f) on or after January 1, 2021, one  
15 million megawatt-hours.

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

.202917.1

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

1 limits.

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

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

8 (2) the business entity:  
9 (a) would qualify for the renewable  
10 energy production tax credit pursuant to ~~[Paragraph (1) or (2)~~  
11 ~~of Subsection B of]~~ this section;

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

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

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

.202917.1

underscored material = new  
[bracketed material] = delete

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

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

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

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

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

.202917.1

underscoring material = new  
[bracketed material] = delete

1 credit due the taxpayer.

2 ~~[E.]~~ M. If the requirements of this section have  
3 been complied with, the department shall approve the renewable  
4 energy production tax credit. The credit may be deducted from  
5 a taxpayer's New Mexico income tax liability for the taxable  
6 year for which the credit is claimed. If the amount of tax  
7 credit exceeds the taxpayer's income tax liability for the  
8 taxable year:

9 (1) the excess may be carried forward for a  
10 period of five consecutive taxable years; or

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

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

22 N. As used in this section:

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

25 (a) forest-related materials, including

underscored material = new  
[bracketed material] = delete

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

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

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

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

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

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

25 (g) segregated municipal solid waste,



underscored material = new  
[bracketed material] = delete

1 excluding tires and medical and hazardous waste;

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

5 (a) produces electricity using a  
6 qualified energy resource; and

7 (b) sells that electricity to an  
8 unrelated person; and

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

15 (a) solar light;

16 (b) solar heat;

17 (c) wind;

18 (d) geothermal; or

19 (e) biomass."

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

22 "7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--  
23 LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

24 A. A taxpayer that holds title to a qualified  
25 energy generator or leases property upon which a qualified

underscored material = new  
[bracketed material] = delete

1 energy generator operates from a county or municipality under  
2 authority of an industrial revenue bond may claim a tax credit  
3 against the taxpayer's tax liability imposed pursuant to the  
4 Corporate Income and Franchise Tax Act. The tax credit  
5 provided in this section may be referred to as the "renewable  
6 energy production tax credit". The tax credit provided in this  
7 section may not be claimed with respect to the same electricity  
8 production for which [~~the renewable energy production~~] a tax  
9 credit [~~provided in the Income Tax Act~~] pursuant to Section  
10 7-2-18.18 NMSA 1978 has been claimed.

11 ~~[B. A person is eligible for the renewable energy~~  
12 ~~production tax credit if the person:~~

13 ~~(1) holds title to a qualified energy~~  
14 ~~generator that first produced electricity on or before January~~  
15 ~~1, 2018; or~~

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

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

.202917.1

underscoring material = new  
[bracketed material] = delete

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

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

13                   (1) ten dollars (\$10.00) per megawatt-hour if  
14 the electricity is first produced prior to January 1, 2018;

15                   (2) five dollars (\$5.00) per megawatt-hour if  
16 the electricity is first produced on or after January 1, 2018  
17 and prior to January 1, 2020;

18                   (3) three dollars (\$3.00) per megawatt-hour if  
19 the electricity is first produced on or after January 1, 2020  
20 and prior to January 1, 2022; and

21                   (4) zero dollars if the qualified energy  
22 generator first produces electricity on or after January 1,  
23 2022.

24           C. The total amount of tax credits claimed for a  
25 taxable year by all taxpayers for a single qualified energy

underscored material = new  
[bracketed material] = delete

1 generator using a solar-light-derived or solar-heat-derived  
2 qualified energy resource shall ~~[be limited to]~~ equal the  
3 following amounts of the first two hundred thousand megawatt-  
4 hours of electricity produced by the qualified energy generator  
5 in the taxable year:

6 (1) if the qualified energy generator is  
7 certified pursuant to Subsection F of this section prior to  
8 January 1, 2015:

9 (a) one and one-half cents (\$.015) per  
10 kilowatt-hour in the first taxable year; ~~[in which the~~  
11 ~~qualified energy generator produces electricity using a solar-~~  
12 ~~light-derived or solar-heat-derived qualified energy resource;~~

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

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

21 ~~(4)]~~ (d) three cents (\$.03) per  
22 kilowatt-hour in the fourth taxable year; ~~[in which the~~  
23 ~~qualified energy generator produces electricity using a solar-~~  
24 ~~light-derived or solar-heat-derived qualified energy resource;~~

25 ~~(5)]~~ (e) three and one-half cents

underscored material = new  
[bracketed material] = delete

1 (\$ .035) per kilowatt-hour in the fifth taxable year; [~~in which~~  
2 ~~the qualified energy generator produces electricity using a~~  
3 ~~solar-light-derived or solar-heat-derived qualified energy~~  
4 ~~resource;~~

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

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

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

18 ~~(9)] (i) two and one-half cents (\$ .025)~~  
19 ~~per kilowatt-hour in the ninth taxable year [~~in which the~~~~  
20 ~~qualified energy generator produces electricity using a solar-~~  
21 ~~light-derived or solar-heat-derived qualified energy resource];~~  
22 and

23 ~~[(10)] (j) two cents (\$ .02) per~~  
24 ~~kilowatt-hour in the tenth taxable year [~~in which the qualified~~~~  
25 ~~energy generator produces electricity using a solar-light-~~

underscored material = new  
[bracketed material] = delete

1 ~~derived or solar heat-derived qualified energy resource.~~

2 ~~E. A taxpayer eligible for a renewable energy~~  
3 ~~production tax credit pursuant to Subsection B of this section~~  
4 ~~shall be eligible for the renewable energy production tax~~  
5 ~~credit for ten consecutive years, beginning on the date the~~  
6 ~~qualified energy generator begins producing electricity.~~

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

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

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

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

22 ~~(c) animal waste, including manure and~~  
23 ~~slaughterhouse and other processing waste;~~

24 ~~(d) solid woody waste materials,~~  
25 ~~including landscape or right-of-way tree trimmings, rangeland~~

.202917.1

underscored material = new  
[bracketed material] = delete

1 ~~maintenance residues, waste pallets, crates and manufacturing,~~  
2 ~~construction and demolition wood wastes, excluding pressure-~~  
3 ~~treated, chemically treated or painted wood wastes and wood~~  
4 ~~contaminated with plastic;~~

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

7 ~~(f) landfill gas, wastewater treatment~~  
8 ~~gas and biosolids, including organic waste byproducts generated~~  
9 ~~during the wastewater treatment process; and~~

10 ~~(g) segregated municipal solid waste,~~  
11 ~~excluding tires and medical and hazardous waste;~~

12 ~~(2) "qualified energy generator" means a~~  
13 ~~facility with at least one megawatt generating capacity located~~  
14 ~~in New Mexico that produces electricity using a qualified~~  
15 ~~energy resource and that sells that electricity to an unrelated~~  
16 ~~person; and~~

17 ~~(3) "qualified energy resource" means a~~  
18 ~~resource that generates electrical energy by means of a~~  
19 ~~fluidized bed technology or similar low-emissions technology or~~  
20 ~~a zero-emissions generation technology that has substantial~~  
21 ~~long-term production potential and that uses only the following~~  
22 ~~energy sources:~~

23 ~~(a) solar light;~~

24 ~~(b) solar heat;~~

25 ~~(c) wind; or~~

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

~~(d) biomass.~~

~~G. A person that holds title to a facility generating electricity from a qualified energy resource or a person that leases such a facility from a county or municipality pursuant to an industrial revenue bond may request certification of eligibility for the renewable energy production tax credit from the energy, minerals and natural resources department, which shall determine if the facility is a qualified energy generator. The energy, minerals and natural resources department may certify the eligibility of an energy generator only if the total amount of electricity that may be produced annually by all qualified energy generators that are certified pursuant to this section and pursuant to the Income Tax Act will not exceed a total of two million megawatt-hours plus an additional five hundred thousand megawatt-hours produced by qualified energy generators using a solar-light-derived or solar-heat-derived qualified energy resource. Applications shall be considered in the order received. The energy, minerals and natural resources department may estimate the annual power-generating potential of a generating facility for the purposes of this section. The energy, minerals and natural resources department shall issue a certificate to the applicant stating whether the facility is an eligible qualified energy generator and the estimated annual production potential of the generating facility, which shall be the limit of that~~



underscored material = new  
[bracketed material] = delete

1 ~~facility's energy production eligible for the tax credit for~~  
2 ~~the taxable year]; and~~

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

6 (a) thirteen dollars seventy-five cents  
7 (\$13.75) per megawatt-hour produced if the electricity is first  
8 produced prior to January 1, 2017;

9 (b) ten dollars (\$10.00) per megawatt-  
10 hour produced if the electricity is first produced on or after  
11 January 1, 2017 and prior to January 1, 2019;

12 (c) five dollars (\$5.00) per megawatt-  
13 hour produced if the electricity is first produced on or after  
14 January 1, 2019 and prior to January 1, 2022; and

15 (d) zero dollars if the electricity is  
16 first produced on or after January 1, 2022.

17 D. A taxpayer eligible for a renewable energy  
18 production tax credit pursuant to:

19 (1) Paragraph (1) of Subsection C of this  
20 section may claim the renewable energy production tax credit  
21 for ten consecutive taxable years, beginning on the date the  
22 qualified energy generator begins producing electricity;  
23 provided that no taxpayer may claim the tax credit for  
24 electricity produced on or after January 1, 2032; and

25 (2) Subsection B of this section or Paragraph

underscored material = new  
[bracketed material] = delete

1 (2) of Subsection C of this section may claim the renewable  
2 energy production tax credit for ten consecutive years,  
3 beginning on the date the qualified energy generator receives  
4 the certificate of eligibility pursuant to Subsection F of this  
5 section; provided that no taxpayer may claim the tax credit for  
6 electricity produced on or after January 1, 2032.

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

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

25 G. The energy, minerals and natural resources

underscored material = new  
[bracketed material] = delete

1 department may issue a certificate of eligibility for a  
2 qualified energy generator if, as may be estimated by the  
3 department, the total amount of electricity that may be  
4 produced annually by all qualified energy generators certified  
5 pursuant to this section and Section 7-2-18.18 NMSA 1978 will  
6 not exceed:

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

11 (a) prior to January 1, 2020, two  
12 million megawatt-hours; or

13 (b) on and after January 1, 2020, two  
14 million five hundred thousand megawatt-hours; and

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

19 (a) prior to January 1, 2017, five  
20 hundred thousand megawatt-hours;

21 (b) on or after January 1, 2017 and  
22 prior to January 1, 2018, six hundred thousand megawatt-hours;

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

.202917.1

underscored material = new  
[bracketed material] = delete

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

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

7                   (f) on or after January 1, 2021, one  
8 million megawatt-hours.

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

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

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

.202917.1

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(2) the business entity:

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

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

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

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

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

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

[~~F.~~] J. Upon receipt of notice of an allocation of

underscored material = new  
[bracketed material] = delete

1 the right to claim all or a portion of the renewable energy  
2 production tax credit, the energy, minerals and natural  
3 resources department shall promptly certify the allocation in  
4 writing to the recipient of the allocation.

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

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

22 (1) the excess may be carried forward for a  
23 period of five consecutive taxable years; or

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

underscored material = new  
[bracketed material] = delete

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

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

10 M. As used in this section:

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

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

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

25 (c) animal waste, including manure and

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

1 slaughterhouse and other processing waste;

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

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

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

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

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

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

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

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



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

3 (a) solar light;

4 (b) solar heat;

5 (c) wind;

6 (d) geothermal; or

7 (e) biomass."

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

10 - 33 -

underscored material = new  
[bracketed material] = delete