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SENATE BILL 104

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

INTRODUCED BY

Clemente Sanchez

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.--

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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~~

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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,

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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

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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~~

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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,~~

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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~~

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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~~

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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:

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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

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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:

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- 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

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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;

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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

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1 credit due the taxpayer.

2 ~~[H.]~~ 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

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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,

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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

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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]~~

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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

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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

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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-~~

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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~~

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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~~

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~~(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~~

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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

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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

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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;

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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;

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- 1 (2) the business entity:
- 2 (a) would qualify for the renewable
- 3 energy production tax credit pursuant to [~~Paragraph (1) or (2)~~
- 4 ~~of Subsection B of~~] this section;
- 5 (b) owns an interest in a business
- 6 entity that is also taxed for federal income tax purposes as a
- 7 partnership and that would qualify for the renewable energy
- 8 production tax credit pursuant to [~~Paragraph (1) or (2) of~~
- 9 ~~Subsection B of~~] this section; or
- 10 (c) owns, through one or more
- 11 intermediate business entities that are each taxed for federal
- 12 income tax purposes as a partnership, an interest in the
- 13 business entity described in Subparagraph (b) of this
- 14 paragraph;
- 15 (3) the taxpayer and all other taxpayers
- 16 allocated a right to claim the renewable energy production tax
- 17 credit pursuant to this subsection own collectively at least a
- 18 five percent interest in a qualified energy generator;
- 19 (4) the business entity provides notice of the
- 20 allocation and the taxpayer's interest to the energy, minerals
- 21 and natural resources department on forms prescribed by that
- 22 department; and
- 23 (5) the energy, minerals and natural resources
- 24 department certifies the allocation in writing to the taxpayer.
- 25 [~~F.~~] J. Upon receipt of notice of an allocation of

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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

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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

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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

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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.

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