

**BILL ANALYSIS AND FISCAL IMPACT REPORT**  
**Taxation and Revenue Department**

**January 26, 2024**

**Bill:** HB-150

**Sponsor:** Representative John Block

**Short Title:** Renewable Energy Production Tax Act

**Description:** This bill introduces the Renewable Energy Production Tax, which is an excise tax levied on the generation of electricity from renewable energy sources. The tax applies to generating facilities and is set at a rate of 3.75% based on the taxable value of each megawatt-hour produced from renewable energy resources. These resources include solar, wind, hydropower, geothermal, and biomass used as energy sources. The taxable value is determined by the wholesale value of the electricity established by the United States Energy Information Administration (EIA) for the Southwest Regional Wholesale Market. However, there are certain exemptions from this tax. Electricity produced from renewable resources by the United States, the state of New Mexico, Indian nations, foreign nations, as well as electricity produced for personal consumption or excess energy not exceeding 500 kilowatt-hours in a 24-hour period, are exempted. The tax payment is due on the 25th day of the month following the occurrence of the taxable event. The revenue collected from this tax is allocated to the Severance Tax Permanent Fund.

**Effective Date:** January 1, 2025. Applicable to the production of electricity from renewable energy resources beginning on or after January 1, 2025.

**Taxation and Revenue Department Analyst:** Asif Rasool

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2024	FY2025	FY2026	FY2027	FY2028		
--	\$40,400	\$41,700	\$43,000	\$44,400	R	Severance Tax Permanent Fund

\* In thousands of dollars. Parentheses ( ) indicate a revenue loss. \*\* Recurring (R) or Non-Recurring (NR).

**Methodology for Estimated Revenue Impact:**

- **New Mexico electricity & renewable energy**

Renewable energy is the largest source of in-state electricity generation in New Mexico. Wind power alone accounted for 35% of the total in-state generation, which is approximately twice as much as it was two years prior. In 2022, wind energy surpassed coal as the leading source of power for the first time. However, coal remained the second-largest source of in-state generation at 32%, a significant decrease from its dominance of nearly 90% two decades ago<sup>1</sup>.

Until 2022, New Mexico's two largest power plants were coal-fired<sup>2</sup>. However, in mid-2022, the state retired the San Juan Generating Station, which was the second-largest plant. Since 2010, over 2,500 megawatts of the state's coal-fired capacity have been retired. To compensate for the decline in coal-fired generation, natural gas has played a significant role. In 2022, natural gas accounted for approximately 26% of New Mexico's total in-state generation<sup>3</sup>. Although this is the lowest share since 2013, it is a significant increase from the 9% share in 2004. In terms of renewable energy, solar power supplied nearly

<sup>1</sup> U.S. EIA, Electricity Data Browser, Net generation for all sectors, New Mexico, All Fuel Types, Annual, 2001-22.

<sup>2</sup> U.S. EIA, New Mexico Electricity Profile 2021, Tables 2A, 2B

<sup>3</sup> U.S. EIA, Electricity Data Browser, Net generation for all sectors, New Mexico, Fuel Type (Check All), Annual, 2001-22

all the remaining in-state generation in 2022. Interestingly, almost one-fourth of the solar energy came from small-scale, customer-sited generation. All of New Mexico's planned additions to electricity generating capacity are focused on solar photovoltaic (PV), wind turbine, natural gas-fired, or battery installations<sup>4</sup>.

In 2022, a combination of utility-scale (1 megawatt and larger) and small-scale (less than 1 megawatt) facilities contributed to renewable resources supplying approximately 42% of New Mexico's in-state electricity net generation<sup>5</sup>. This represents a significant increase, as the amount of electricity generated from renewable resources in the state was more than five times higher in 2022 compared to 2015. New Mexico is recognized as one of the leading states in terms of wind energy potential, with a substantial portion located on the high plains in the eastern half of the state<sup>6</sup>. Wind energy played a prominent role in 2022, accounting for 84% of New Mexico's renewable generation and becoming the largest contributor to the state's total in-state generation at 35%<sup>7</sup>. The largest wind farm in the state, a 522-megawatt facility situated in eastern New Mexico, commenced operations in December 2020<sup>8</sup>. An additional 1,700 megawatts of capacity were added in 2021, followed by an additional 145 megawatts in 2022<sup>9</sup>. As of the beginning of 2023, New Mexico ranked ninth in the nation in wind capacity, with approximately 4,411 megawatts installed<sup>10</sup>. According to the Solar Energy Industries Association, New Mexico possesses sufficient installed solar energy capacity to provide power to more than 371,000 homes. Currently, slightly over 6% of the state's electricity is generated from solar panels, and the residential solar market has experienced consistent growth in recent years. In 2022, the largest increase in solar capacity in New Mexico occurred in the residential and utility-scale market segments<sup>11</sup>.

To estimate the fiscal impact of the proposed bill, Tax & Rev assumed that 6% of the total renewable electricity is subject to the exemption offered in the bill. Next, Tax & Rev assumed the tax base as the taxable value from the remaining 94% of total renewable energy production as reported by EIA. Next, Tax & Rev calculated the average growth of taxable value from the last 12 years to be 3.19%. Lastly, Tax & Rev applied the 3.75% tax rate on the projected taxable value through FY2028.

## Policy Issues:

- **Executive Order 2019-003 & The Proposed Bill HB-150: Renewable Energy Production Tax Act**

Executive Order 2019-003, titled "Addressing Climate Change and Energy Waste Prevention," was issued by Gov. Michelle Luján Grisham on January 29, 2019. The order focuses on addressing climate change, promoting renewable energy, and reducing energy waste in the state of New Mexico.

The key provisions of Executive Order 2019-003 include:

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<sup>4</sup> U.S. EIA, Electricity, Preliminary Monthly Electric Generator Inventory (based on Form EIA-860M as a supplement to Form EIA-860), Inventory of Planned Generators as of March 2023.

<sup>5</sup> U.S. EIA, Electricity Data Browser, Net generation for all sectors, New Mexico, All fuels, Conventional hydroelectric, Other renewables (total), Small-scale solar photovoltaic, Annual, 2001--22.

<sup>6</sup> U.S. Department of Energy, Energy Efficiency and Renewable Energy, WINDEXchange, U.S. Installed and Potential Wind Power Capacity and Generation, Potential, U.S. Potential Wind Capacity in Megawatts (MW) at 80 Meters, accessed January 24, 2024.

<sup>7</sup> U.S. Department of Energy, Energy Efficiency and Renewable Energy, WINDEXchange, New Mexico 80-Meter Wind Resource Map, accessed January 24, 2024

<sup>8</sup> U.S. EIA, Electricity Data Browser, Net generation for all sectors, New Mexico, Fuel Type (Check all), Annual, 2001--22.

<sup>9</sup> U.S. EIA, Preliminary Monthly Electric Generator Inventory (based on Form EIA-860M as a supplement to Form EIA-860), Inventory of Operating Generators as of March 2023.

<sup>10</sup> U.S. EIA, Electric Power Monthly (April 2023), Table 6.2.B.

<sup>11</sup> <https://www.greenlancer.com/post/solar-power-new-mexico#:~:text=In%20fact%2C%20New%20Mexico%20has,been%20steady%20in%20recent%20years.>

1. **Climate Change Task Force:** The order establishes a Climate Change Task Force to develop recommendations and strategies for mitigating climate change impacts in New Mexico. The task force consists of various state agency representatives, experts, and stakeholders who collaborate to develop policies and initiatives.
2. **Renewable Energy Portfolio Standards:** The order directs the New Mexico Energy, Minerals, and Natural Resources Department to propose an increase in the state's renewable energy portfolio standards (RPS). The RPS mandates that a certain percentage of electricity consumed in the state comes from renewable sources such as wind, solar, and geothermal energy.
3. **Methane Emissions Reduction:** The order calls for the development and implementation of regulations to reduce methane emissions from oil and gas operations in New Mexico. It aims to address methane leakage, a potent greenhouse gas, and promote responsible energy production.
4. **Energy Efficiency and Conservation:** The order emphasizes the importance of energy efficiency and conservation measures. It directs state agencies to prioritize energy efficiency projects, reduce energy waste, and promote energy-saving practices in government buildings and operations.
5. **Clean Energy Innovation Fund:** The order establishes the Clean Energy Innovation Fund to support research, development, and commercialization of clean energy technologies in New Mexico. The fund aims to accelerate the transition to a clean energy economy and attract investment in renewable energy projects.

A tax on electricity produced from renewable sources in New Mexico could potentially have adverse effects on electricity production and the state's ability to achieve the goals set in Governor's Executive Order 2019-003. More specifically, such a tax could impact New Mexico's renewable energy sector and the goals outlined in the executive order:

1. **Renewable energy investment:** Taxes on renewable electricity production may discourage investment in new renewable energy projects. This could impede the development of additional renewable energy capacity needed to achieve the targets set in the executive order. Without sufficient investment, it could be challenging to expand renewable electricity production and meet the renewable energy goals within the specified timeline.
2. **Renewable energy affordability:** Taxes on renewable electricity could lead to increased costs for consumers. This could make renewable energy less financially viable for households and businesses, potentially reducing demand for renewable electricity. Affordability plays a crucial role in promoting the adoption of renewable energy sources, and any additional taxes on renewable electricity could hinder the affordability aspect.
3. **Market competitiveness:** New Mexico's executive order outlines the goal of achieving a carbon-free electricity grid by 2045. To meet this objective, the state may need to export excess renewable electricity to neighboring regions or states. However, if a tax is imposed on renewable electricity, it could reduce the competitiveness of New Mexico's renewable energy exports. This could limit the state's ability to expand renewable energy production and hinder its progress toward a carbon-free grid.
4. **Economic impact:** The renewable energy sector in New Mexico has been an essential driver of economic growth and job creation. Imposing a tax on renewable electricity could negatively impact the industry, potentially leading to job losses and reduced economic activity. This could

hinder the state's ability to achieve the economic and job creation goals outlined in the executive order.

The taxing of renewable energy conflicts with current tax incentives to promote the generation of renewable energy. The following tax incentives for renewable energy currently exist in the tax code:

- Section 7-9J NMSA 1978 - Alternative Energy Product Manufacturers Tax Credit Act".
- Section 7-1-6.53 NMSA 1978 - Distribution; energy efficiency and renewable energy bonding fund; gross receipts tax.
- Section 7-2-18.18 NMSA 1978 - Renewable energy production tax credit
- Section 7-2-18.31 NMSA 1978 – New Solar Market Development Income Tax Credit
- Section 7-2-18.32 NMSA 1978 – 2021 Sustainable Building Tax Credit
- Section 7-2A-28.1 NMSA 1978 – 2021 Sustainable Building Tax Credit
- Section 7-2A-19 NMSA 1978 - Renewable energy production tax credit; limitations; definitions; claiming the credit.

The taxing of renewable energy at the same time as offering tax incentives may be counter to the equity and efficiency principles of tax policy. “Efficiency denotes whether policies benefit economic growth. Tax policy experts agree that all taxes potentially affect or distort economic behavior by making certain economic choices more or less attractive, and that these effects on the economy are complicated.”<sup>12</sup> Removing renewable energy tax incentives would demonstrate in tax policy clarity that renewable energy generation is to be taxed as it is no longer of need of tax incentives.

However, as oil and gas production declines, resulting in reduced severance tax revenues, and as the State increasingly switches over to renewable energy generation, new sources of revenue must be found. As the renewable energy industry matures, policymakers will need to consider removing subsidies for renewable energy, and then taxing them in order to diversify the State’s revenues.

**Technical Issues:** None.

**Other Issues:** None.

**Administrative & Compliance Impact:** This bill proposes the implementation of a new excise tax. Tax & Rev will need to create and publish new forms and publications, make changes to information systems, and create new regulations. Tax & Rev will need to test system changes and train employees on the administration of the proposed tax act.

Tax & Rev’s Administrative Services Division (ASD) anticipates this bill will take approximately 560 hours for testing, creating new reports and establishing new revenue distributions and 1 additional full-time employee (FTE) to process this new tax program on an on-going basis at a pay band level 70. This will result in \$39 thousand in staff workload costs and \$94 thousand in recurring costs for 1 new FTE.

The implementation of this bill will result in a significant impact on Tax & Rev’s Information Technology Division (ITD), requiring approximately 9-12 months and incurring contractual costs of approximately \$3,441,193. This cost breakdown includes \$3,210,313 for contractual resources and an additional \$230,880 for staff workload costs. Considering the nature and complexity of the effort needed to implement the proposed changes, a contract with the GenTax vendor, FAST Enterprises, LLC, is necessary. In addition to the contract with FAST, there will be a need for a full-time contract project manager and Independent Verification and Validation (IV&V) contract services would also be necessary.

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<sup>12</sup> 2023 New Mexico Tax Expenditure Report, See <https://www.tax.newmexico.gov/forms-publications/>

The staff workload costs require 1 state development resource and 1 state business analyst for the project's duration.

The addition of a new tax program necessitates collaboration between the Revenue Processing Division (RPD) and the Taxpayer Information and Processing Office (TIPO). This collaboration is required for the creation of forms and instructions, as well as the implementation of the new tax program. Such an undertaking demands a dedicated resource for project implementation, along with associated costs for stakeholders. While the impact on taxpayers may be limited to a small population, the efforts required from RPD resources will be substantial. Tax & Rev’s Revenue Processing Division (RPD) estimates that implementing this bill requires 6 weeks for a FTE dedicated to the project, and 6 weeks of FTE contributors to project implementation meetings, for a total cost of \$21 thousand in staff workload. In addition, internal systems to process a new tax program will need to be updated. Further, the Special Tax Programs Business Unit within RPD has added several new tax programs over the past few years. Implementing this new tax program will require additional staff to aid in the workload and will need a reduction in the forced vacancy rate to be equal to one position. This FTE is based on a Tax Examiner Advanced, pay band 60. Tax & Rev’s Audit and Compliance Division (ACD) estimates that it will need a reduction of the forced vacancy rate to be equal to 2 FTE employees to process and test the new tax program, perform registration, collection and audit functions on a reoccurring basis. The 2 FTEs are based at a pay band 70.

Considering the complexity and effort required for the implementation of this bill, meeting the effective date of January 1, 2025, will be challenging. Tax & Rev suggests an implementation date of July 1, 2025.

Estimated Additional Operating Budget Impact*				R or NR**	Fund(s) or Agency Affected
FY2024	FY2025	FY2026	3 Year Total Cost		
--	\$39	--	\$39	NR	Tax & Rev - ASD - operating
--	--	\$94	\$94	R	Tax & Rev - ASD - FTE
\$802.6	\$2,407.7	--	\$3,210.3	NR	Tax & Rev - ITD - contractual
\$57.7	\$173.2	--	\$230.9	NR	Tax & Rev - ITD - staff workload
--	--	\$231.0	\$231.0	R	Tax & Rev - ITD - FTE
--	\$20	--	\$20	NR	Tax & Rev - RPD – contractual
--	\$8	--	\$8	NR	Tax & Rev - RPD – system changes
--	\$73	\$73	\$146	R	Tax & Rev – RPD – FTE
\$130	\$130	\$130	\$390	R	Tax & Rev – ACD - FTE

\* In thousands of dollars. Parentheses ( ) indicate a cost saving. \*\* Recurring (R) or Non-Recurring (NR).

**Related Bills:** None