F I S C A L   I M P A C T   R E P O R T

		LAST UPDATED	
SPONSOR	STBTC	**ORIGINAL DATE**	2/7/24
SHORT TITLE	Advanced Energy Equipment Tax Credit	**BILL NUMBER**	CS/Senate Bill 316/ STBTCS
		ANALYST	Graeser

REVENUE*
(dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
TRD PIT & CIT				($15,000.0)	($25,000.0)	Recurring	General Fund

Parentheses ( ) indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD		$160.4		$160.4	Nonrecurring	General Fund
EMNRD		Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Duplicates House Bill 274
May be included in the Omnibus Tax Package per action in STBTC on 2/6/24.

Sources of Information

LFC Files

<u>Agency Analysis Received From</u>
Taxation and Revenue Department (TRD) on HB274
Energy, Minerals and Natural Resources Department (EMNRD) on HB274

SUMMARY

Synopsis of STBTC Substitute for Senate Bill 316

The Senate Tax, Business and Transportation Substitute for SB316 proposes new credits in the Income Tax Act and the Corporate Income and Franchise Tax Act called the advanced energy equipment income tax credit. This credit will be based on qualified expenditures for a qualified manufacturing facility in New Mexico. “Qualified expenditures” are those required to create an “advanced energy product” that qualifies for the federal tax credit under Section 45X of the

Internal Revenue Code (IRC), such as solar and wind energy components. This credit will be available starting January 1, 2025, and sunsetting for projects installed after December 31, 2032. The credit is the lesser of 20 percent of the qualified expenditures or $25 million. [Note: in debate in STBTC on 2/6/24 in response to an enquiry from Senator Wirth, Mark Roper, Acting Cabinet Secretary for the New Mexico Economic Development Department, indicated that an overall cap of $250 million over the seven-year duration of the credit would be acceptable.] This credit has a pre-certification process with the Energy, Minerals, and Natural Resources Department (EMNRD). After 12 months of production of any advanced energy product the pre-certified taxpayer will seek final certification with EMNRD. EMNRD will allow the credit in consultation with the Economic Development Department. If approved, EMNRD will issue a certificate of eligibility and provide that certification of eligibility to the Taxation and Revenue Department (TRD).

This credit can be sold, exchanged, or otherwise transferred to another taxpayer. The parties shall notify TRD within 10 days of the transaction. If the taxpayer decides to claim the credit on a tax return, the taxpayer must claim the credit within one taxable year of the end of the calendar year in which EMNRD provides the final certification. Any unused portions of the credit can be carried forward for five years.

If after getting this credit, the taxpayer or a successor in business ceases operations for at least 180 consecutive days within a two-year period after the credit is claimed, any amount of credit that has not been claimed will be extinguished. The taxpayer will be given 30 days after the 180 days to pay the tax liability that the credit was previously applied to.

The effective date of this bill is January 1, 2025; Applicable to taxable years beginning on or after January 1, 2025. This credit has a delayed repeal of January 1, 2034.

FISCAL IMPLICATIONS

This bill creates or expands a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the substantial risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

TRD expects an average of one company per year to qualify for the full maximum $25 million. From TRD:

> Publicly available press releases indicate three manufacturing facilities may qualify for the credit in the near term. Their qualification is based on their proposed manufacturing output aligning with the eligibility for the federal credit under Section 45X of the IRC. They are the Arcosa wind-tower production facility in Belen; Hota Industrial Manufacturing Company's auto-parts manufacturing plant in Santa Teresa, and the Maxeon Solar Technologies' solar cell production facility in Albuquerque. Arcosa planned investment is $55 million to $60 million with deliveries of wind-towers from 2024 through 2028. Hota plans mass production in 2025 with a reported investment of $99 million. Maxeon is expected to open its manufacturing facility also in 2025 with a

reported investment of $1 billion.[1]
[LFC note: it is possible that Hota Industrial Manufacturing Company's auto-parts manufacturing plant in Santa Teresa would not qualify for this advanced manufacturing credit since "advanced energy product" means a technology, product, system or component eligible for a federal tax credit under Section 45X of the federal Internal Revenue Code. The only equipment eligible under the general section of 45X are batteries and battery modules.]

The bill specifies that within 12 months of commencement of production of the advanced energy products, the taxpayer shall seek final certification from EMNRD. All construction projects have numerous inputs and complexity, given the size of these projects, TRD assumes that the majority of constructions costs for all three companies will fall after the effective date of January 1, 2025. TRD assumes one major project per year will seek final certification and receive certification by EMNRD starting in 2025 and due to certification timelines and verification, the fiscal impact will not impact the general fund until FY2027. TRD assumes that Arcosa is the first company that will seek certification. With a planned investment of $60 million, the lessor of 20 percent or $25 million would apply. TRD assumes a credit amount of $15 million assuming delays, and capital inputs and labor costs will increase the estimated investment. TRD assumes that Hota will seek certification next with the fiscal impact hitting in FY2028. Hota's planned investment of $99 million would place 20 percent at $20 million. TRD assumes that final costs will place the credit at $25 million. Maxeon is assumed to be the next company after Hota with the credit hitting beyond FY2028. It is reported that Maxeon is still waiting financial closure under the U.S. Department of Energy's (DOE) Title 17 Clean Energy Financing Program.[1] This is assumed to push back the start date of construction and production.

The bill only caps the credit that may be claimed by each taxpayer per project; it is therefore possible that, if more than one taxpayer claims a credit in any year, the fiscal impact could be higher in one fiscal year over the other. TRD also assumes that any taxpayer receiving the credit that is not immediately able to use the full value of the credit in the initial taxable year will sell or transfer the credit to take immediate advantage of its full value and will not carry forward any amount of the credit.

Although the fiscal impact is based on three known projects, these projects will potentially support other manufacturing suppliers in New Mexico, expanding the numbers of taxpayers eligible for the credit during the lifetime of the credit's availability.

EMNRD expects modest impacts:
CS/Senate Bill 316/STBTC does not contain an appropriation for the staff and IT resources for EMNRD to administer this new credit. Because it does not anticipate a high volume of applications EMNRD believes it can support work with existing resources; however, if uptake is great it may need to seek additional resources in the future.

SIGNIFICANT ISSUES

[1] https://mediaroom.maxeon.com/2023-08-10-Maxeon-Solar-Technologies-Selects-Albuquerque,-New-Mexico-as-Site-for- New-3-Gigawatt-Solar-Cell-and-Panel-Manufacturing-Facility.

TRD notes the following policy issues:

The federal advanced manufacturing production credit in the Federal Inflation Reduction Act (IRA) of 2022 and the proposed bill CS/Senate Bill 316/STBTC: Advanced Energy Equipment Credit

The proposed bill is a companion to the federal Advanced Manufacturing Production Credit, which is available to taxpayers involved in the manufacturing of specific components or systems related to renewable energy, energy conservation, or carbon capture and storage. The federal credit aims to incentivize the domestic production and sales of advanced energy technologies.

While the specific criteria can vary, examples of productions that are commonly considered eligible for the federal tax credit under 26 USC Section 45X and relevant to the state proposed bill are:

1. Wind Turbine Components: Manufacturing components of wind turbines, such as blades, towers, nacelles, and hubs.
2. Solar Panel Production: Manufacturing solar panels and associated components, including photovoltaic cells, modules, frames, and inverters.
3. Energy Storage Systems: Productions related to energy storage technologies, such as advanced batteries, fuel cells, and thermal storage systems.

The state credit proposed in this bill aims to complement the federal credit by offsetting the costs to equip the facilities and provide tax relief before the federal credit is available with the sale of the final products.

Executive Order 2019-003 and the proposed bill CS/Senate Bill 316/STBTC: Advanced Energy Equipment Credit

Executive Order 2019-003, titled "Addressing Climate Change and Energy Waste Reduction," 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:

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.

The proposed bill can contribute to the achievement of the objectives outlined in Governor Luján Grisham's Executive Order 2019-003 by offering financial incentives to businesses and industries that produce clean and sustainable products. Some of the ways in which this can be beneficial include:

1. Promoting investment: The proposed bill offers a tax credit to businesses engaged in advanced manufacturing of renewable energy production tangible components, battery production, and the capture and storage of carbon dioxide (CO_2) or that utilize CO_2 for enhanced oil recovery. By providing this tax credit, the policy encourages businesses to invest in technologies and processes that reduce carbon emissions and promote sustainable manufacturing practices.
2. Fostering innovation: The tax credit creates an economic incentive for businesses to develop and implement new technologies for carbon capture and storage. This can lead to innovation in clean energy and manufacturing, driving economic growth and creating new job opportunities in the energy sector.
3. Reducing greenhouse gas emissions: The objective of Executive Order 2019-003 is to advance renewable energy and energy efficiency goals. By incentivizing the production of renewable energy components, and the capture and utilization of CO_2, the proposed tax credit indirectly contributes to reducing greenhouse gas emissions. This aligns with the broader objective of transitioning to a cleaner and more sustainable energy system.
4. Attracting businesses: Tax incentives proposed in the bill can make New Mexico a more attractive destination for businesses in the advanced energy manufacturing sector. By offering financial benefits to companies adopting clean energy practices, the state can encourage businesses to establish or expand their operations in New Mexico. This can lead to economic growth, job creation, and a more sustainable industrial ecosystem.

New Mexico's transition towards renewable energy from its oil-based economy and the proposed bill CS/Senate Bill 316/STBTC: Advanced Energy Equipment Credit

The state has set ambitious goals for clean energy development and has implemented various strategies to promote renewable energy adoption. Specifically:

1. Renewable Portfolio Standard (RPS): New Mexico has implemented a Renewable Portfolio Standard, which requires utilities to obtain a certain percentage of their electricity from renewable sources. The state aims to achieve 100% carbon-free electricity generation by 2045. This policy provides a clear market signal for renewable energy development and encourages investment in renewable projects.
2. Tax Incentives and Credits: New Mexico offers tax incentives and credits to promote renewable energy adoption. The state provides a Production Tax Credit (PTC) for renewable energy projects, including wind and solar, which incentivizes the development and production of renewable energy. Additionally, tax credits like the Advanced Energy Equipment Tax Credit, can be utilized by companies involved in renewable energy manufacturing, supporting the growth of the renewable energy industry within the state.

3. Wind and Solar Energy Development: New Mexico has abundant wind and solar resources, making it an attractive location for renewable energy development. The state has seen significant growth in wind and solar installations in recent years, attracting investments and creating jobs. Tax credits proposed in the can incentivize advanced manufacturing activities related to wind turbine and solar panel production, further supporting the growth of these sectors within the state.
4. Energy Transition Act: New Mexico passed the Energy Transition Act in 2019, which sets a goal of achieving 100% carbon-free electricity generation by 2045 and mandates the closure of coal- fired power plants. This act also established a fund to support economic diversification and workforce training for communities affected by the coal plant closures, ensuring a just transition for impacted workers and communities.

The proposed tax credits can play a role in supporting New Mexico's transition to renewable energy by incentivizing advanced manufacturing activities in the renewable energy sector. By providing tax benefits to companies engaged in manufacturing components for renewable energy projects, the proposed tax credits encourage the growth of the renewable energy industry within the state. This, in turn, promotes job creation, economic development, and technological advancements in renewable energy manufacturing While TRD often has concerns about the proliferation of tax credits and deductions in the Tax Code, the use of such incentives to encourage new and developing industries is one situation where their use is warranted. The success of incentives in developing other alternative and renewable energy sources and systems, especially solar energy systems and wind power, is evidence that tax incentives can be an important element in growing new businesses and industries in the state. Furthermore, most of the credits contained in the bill are of limited duration, and so are designed to support the growth of the industry in New Mexico.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is <u>not</u> met because TRD is <u>not</u> required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the credit and other information to determine whether the credit is meeting its purpose. Even if the bill is amended to require TRD to include the costs of this credit in the annual *Tax Expenditure Report*, the sparsity of claims and claimants would require redacting the data for confidentiality. There may be a means of disclosing costs and benefits on a regular basis, but disclosure is not required in the bill. (See Section 7-1-29(G) NMSA 1978 which allows public inspection of records of refunds or rebates in excess of $10 thousand.)

ADMINISTRATIVE IMPLICATIONS

Despite the modest estimated utilization of this credit in terms of claimants, a number of features of the bill, including possible clawback and transferability of the credits render the provisions of this bill administratively challenging. TRD reports it would need to update forms and instructions and train staff, implement changes to information technology systems at a cost of $145.5 thousand for contracts and personnel hours, implement and test new systems at a cost of about $15 thousand, and establish processes and procedures.

Estimated Additional Operating Budget Impact*	R or NR**	Fund(s) or Agency Affected

FY24	FY25	FY26	3 Year Total Cost		
--	$35.5	--	$35.5	NR	TRD – ITD Staff workload
--	$110.0	--	$110.0	NR	TRD – ITD Contractual
--	$2.9	--	$2.9	NR	TRD – ASD Staff workload
--	$12.0	--	$12.0	NR	TRD – RPD Staff workload
	$160.4		$160.4	NR	TRD Total

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

EMNRD expands on the administrative issues involved in implementing this proposal:

> The bill will require EMNRD to initiate a rulemaking process to establish forms and procedures for certifying qualified expenditures and qualified manufacturing facilities, as well as require an initial stand-up investment to establish online materials for applicants.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates House Bill 274, may be included in the Omnibus Tax Package per action in STBTC on 2/6/24.

TECHNICAL ISSUES

Notably, the annual costs of this credit may be redacted because few taxpayers will qualify, making it difficult to conceal the taxpayer's identity. Because of a breach of confidentiality in the Tax Administration Act for refunds or rebates in excess of $25 thousand, a newspaper or other media outlet could file an Inspection of Public Records Act, to which TRD would probably respond. However, if the bill were to be amended to require disclosure of any credits in excess of the refund and rebate limit, then that information would be available at least for the larger claims and on an annal basis. (Section 7-1-29(G) NMSA 1978 sets the disclosure floor at $10 thousand.)

TRD suggests a number of amendments to assist TRD, the Economic Development Department (EDD), and EMNRD in administering these credits:

> Subsection E, on page 3, lines 23 and 24, states the taxpayer shall claim the credit within one "taxable year" of the end of the calendar year. Rather than say taxable year, TRD recommends saying "one year" as that provides more clarity. This is similar to language on the statute of limitations for credits set out in 7-1-24 NMSA 1978.
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> Subsection E, TRD recommends adding language on page 4, line 1 after the word "credit." and before the next sentence "Any portion . . . ", "A taxpayer may (shall) claim the amount of the approved credit against the taxpayer's income tax liability."
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> In addition, page 4, lines 1 through 3, states any credit that "remains unused at the end of the taxpayer's reporting period" may be carried forward. What the reporting period is and when it stops, and the carry forward count should begin is unclear in this language. TRD recommends the following common language used in other credits "any amount of credit that exceeds the taxpayer's liability may be carried forward…"
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> Subsection E, page 4, lines 1 through 3, allows a carry forward of five years. The carry-forward could therefore extend five years after 2032, the last year of applicability, and extend beyond the delayed repeal date of January 1, 2034 in Section 3. TRD suggests that

the credit remain in statute until the carry forward could be claimed on a tax return and move the delayed repeal date to January 1, 2038.

Subsection H, page 4, provides a recapture mechanism. The bill does not impose a reporting requirement on the taxpayer. See, e.g., Section 7-9F-13 NMSA 1978:
A taxpayer claiming a credit pursuant to the Advanced Energy Equipment Income Tax Credit Act shall file reports with the department. The reports shall be submitted on or before June 30 of the year following a calendar year in which the taxpayer claims the credit and by June 30 of each of the two succeeding years. The reports shall contain information describing the taxpayer's business operations in New Mexico that is sufficient for the department to enforce the recapture provision pursuant to Section 7-2-XXX NMSA 1978. If a taxpayer fails to submit a required report, the amount of any credit claimed for that year shall be subject to the recapture provision.

In addition, under the recapture provision included in subsection H on page 4, line 17 through page 5 line 7, if the credit is transferred or sold to another entity this section imposes the liability against the taxpayer who claimed the certified tax credit. When a taxpayer has purchased a tax credit from the original certification source, they are out the amount paid for the credit and the reversal of applied credit and the assessment of penalty and interest. To mitigate this, the reporting requirement above will also aid in ensuring that the taxpayer who was originally certified for the credit is assessed for the tax credit balance, rather than the purchaser of the credit.

Subsection C states that a preliminary certification shall be applied for before incurring a qualified expenditure, but the definition of a "qualified expenditure" in Subsection I(4), "means an expenditure made on or after January 1, 2025." The definition for "qualified expenditure" should include language to state it is incurred after the preliminary certification for consistency.

OTHER SUBSTANTIVE ISSUES

The federal credit has language for anti-abuse under § 1.45X–1(i)(1) of the Code of Federal Regulations. TRD suggests referring to this anti-abuse clause in this credit.

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

- **Adequacy**: Revenue should be adequate to fund needed government services.
- **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity**: Different taxpayers should be treated fairly.
- **Simplicity**: Collection should be simple and easily understood.
- **Accountability**: Preferences should be easy to monitor and evaluate.

In addition, staff reviews whether the bill meets principles specific to tax expenditures. Those policies and how this bill addresses those issues:

Tax Expenditure Policy Principle	Met?	Comments
Vetted: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.	✓	
Targeted: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals. Clearly stated purpose Long-term goals Measurable targets		Implicit purpose to support the federal advanced manufacturing efforts.
Transparent: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies	✗	
Accountable: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date. Public analysis Expiration date	 ✗ ✓	
Effective: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure. Fulfills stated purpose Passes "but for" test	 ? ?	
Efficient: The tax expenditure is the most cost-effective way to achieve the desired results.	?	
Key: ✓ Met ✗ Not Met ? Unclear		

LG/hg/ss/al/ne