

HOUSE BILL 538

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Meredith A. Dixon and Nathan P. Small and Mark Duncan
and William E. Sharer

AN ACT

RELATING TO TAXATION; CREATING THE INDUSTRIAL DECARBONIZATION
PRODUCTION CORPORATE INCOME TAX CREDIT; CREATING THE INDUSTRIAL
DECARBONIZATION INVESTMENT CORPORATE INCOME TAX CREDIT.

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

SECTION 1. A new section of the Corporate Income and
Franchise Tax Act is enacted to read:

"~~[NEW MATERIAL]~~ INDUSTRIAL DECARBONIZATION PRODUCTION
CORPORATE INCOME TAX CREDIT.--

A. Prior to taxable year 2031, a taxpayer that owns
or operates a qualified industrial facility and reduces the net
carbon dioxide equivalent emissions of the product produced by
the facility to at least forty percent below the industrial
benchmark of a comparable product in the same product category
may claim a tax credit against the taxpayer's tax liability

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1 imposed pursuant to the Corporate Income and Franchise Tax Act
2 in an amount provided in Subsection B of this section. The tax
3 credit provided in this section may be referred to as the
4 "industrial decarbonization production corporate income tax
5 credit".

6 B. The industrial decarbonization production
7 corporate income tax credit shall be in an amount equal to
8 eighty-five dollars (\$85.00) per metric ton of net carbon
9 dioxide equivalent that is reduced below the industrial
10 benchmark in a taxable year, up to a maximum of ten million
11 dollars (\$10,000,000) per qualified industrial facility per
12 taxable year; provided that if the department of energy
13 determines that a qualified industrial facility has a high
14 likelihood of creating new jobs, bringing significant new
15 investment to the state and reducing the net carbon dioxide
16 equivalent emissions of the product produced by the facility to
17 at least fifty percent below the industrial benchmark of a
18 comparable product in the same product category, that
19 department may certify up to fifteen million dollars
20 (\$15,000,000) per facility per taxable year.

21 C. A taxpayer that seeks to claim the tax credit
22 provided by this section shall apply for certification of
23 eligibility from the department of environment on forms and in
24 the manner prescribed by that department. The application
25 shall include evidence that the taxpayer owns or operates a

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1 qualified industrial facility and reduces the net carbon
2 dioxide equivalent emissions of the product produced by the
3 facility to at least forty percent below the industrial
4 benchmark of carbon dioxide equivalent emissions of a
5 comparable product in the same product category. The evidence
6 shall include:

7 (1) a life cycle assessment of the facility's
8 production prepared and documented in conformance with the
9 requirements of Section 45Q of the Internal Revenue Code, as
10 that section may be amended or renumbered, and standards of the
11 international organization for standardization;

12 (2) an industrial benchmark of carbon dioxide
13 equivalent emissions of a comparable product in the same
14 product category as the taxpayer's product; and

15 (3) any other evidence required by the
16 department of environment.

17 D. If the department of environment determines that
18 a taxpayer meets the requirements to claim a tax credit
19 pursuant to this section, that department shall issue to the
20 taxpayer a dated certificate of eligibility providing the
21 amount of the tax credit for which the taxpayer is eligible and
22 the taxable year in which the credit may be claimed. The
23 department of environment shall provide the taxation and
24 revenue department with the certificates of eligibility issued
25 pursuant to this subsection in an electronic format at

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1 regularly agreed-upon intervals.

2 E. A taxpayer shall not be eligible to claim the
3 industrial decarbonization production corporate income tax
4 credit if the taxpayer claims in the same taxable year for the
5 same facility a federal carbon dioxide sequestration tax credit
6 pursuant to Section 45Q of the Internal Revenue Code, as that
7 section may be amended or renumbered.

8 F. The total annual aggregate amount of industrial
9 decarbonization production corporate income tax credits that
10 may be certified in a calendar year is thirty million dollars
11 (\$30,000,000) in 2026, fifty million dollars (\$50,000,000) in
12 2027 and one hundred million dollars (\$100,000,000) in each
13 year thereafter. Completed applications shall be considered in
14 the order received. The department of environment shall
15 publish on the department of environment's website on a regular
16 basis the number of industrial decarbonization production
17 corporate income tax credits that have been certified in each
18 calendar year.

19 G. To receive a tax credit provided by this
20 section, a taxpayer shall claim the credit on forms and in the
21 manner prescribed by the department within twelve months
22 following the calendar year in which the certificate of
23 eligibility was issued.

24 H. A certificate of eligibility issued pursuant to
25 this section may either be submitted by the taxpayer with that

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1 taxpayer's return or be sold, exchanged or otherwise
2 transferred to another taxpayer for the full value of the
3 credit. The parties to such a transaction shall notify the
4 department of the sale, exchange or transfer within ten days of
5 the sale, exchange or transfer in a format prescribed by the
6 department.

7 I. That portion of an industrial decarbonization
8 production corporate income tax credit that exceeds a
9 taxpayer's tax liability in the taxable year in which the tax
10 credit is claimed shall not be refunded but may be carried
11 forward for three consecutive taxable years.

12 J. The credit provided by this section shall be
13 included in the tax expenditure budget pursuant to Section
14 7-1-84 NMSA 1978, including the total annual aggregate cost of
15 the credit.

16 K. As used in this section:

17 (1) "industrial benchmark" means the average
18 carbon dioxide equivalent emissions on a per unit basis of a
19 product system from a federally recognized and used metric,
20 such as the greenhouse gases, regulated emissions and energy
21 use in technologies life cycle assessment suite of models;

22 (2) "qualified industrial facility" means an
23 industrial facility located in New Mexico that produces:

24 (a) concrete, cement, asphalt, iron,
25 steel, glass, hydrogen or a critical mineral as designated by

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1 the United States department of the interior; or

2 (b) a product through refinement; and

3 (3) "refinement" means a chemical or physical
4 process to remove impurities from a substance or form."

5 SECTION 2. A new section of the Corporate Income and
6 Franchise Tax Act is enacted to read:

7 "[NEW MATERIAL] INDUSTRIAL DECARBONIZATION INVESTMENT
8 CORPORATE INCOME TAX CREDIT.--

9 A. Prior to taxable year 2031, a taxpayer that owns
10 or operates a qualified industrial facility that makes
11 qualified expenditures for the facility may claim a tax credit
12 against the taxpayer's tax liability imposed pursuant to the
13 Corporate Income and Franchise Tax Act in an amount provided in
14 Subsection B of this section. The tax credit provided in this
15 section may be referred to as the "industrial decarbonization
16 investment corporate income tax credit".

17 B. The industrial decarbonization investment
18 corporate income tax credit shall be in an amount equal to the
19 lesser of ten percent of the cost of qualified expenditures
20 made by the taxpayer in a taxable year for a qualified
21 industrial facility or five million dollars (\$5,000,000) per
22 facility; provided that if the department of environment
23 determines a qualified industrial facility has a high
24 likelihood of creating new jobs, bringing significant new
25 investment to the state and reducing the net carbon dioxide

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1 equivalent emissions of the product produced by the facility to
2 at least fifty percent below the industrial benchmark of a
3 comparable product in the same product category, that
4 department may certify up to seven million five hundred
5 thousand dollars (\$7,500,000) per facility per taxable year.

6 C. A taxpayer that seeks to claim the tax credit
7 provided by this section shall, within twelve months of
8 claiming an industrial decarbonization production corporate
9 income tax credit provided pursuant to Section 1 of this 2025
10 act, apply for certification from the department of environment
11 on forms and in the manner prescribed by that department. An
12 application for certification shall include information
13 required by the department of environment to determine
14 eligibility for the tax credit, including evidence that the
15 taxpayer is a qualified industrial facility, substantiating
16 qualified expenditures and that the equipment purchased with
17 the qualified expenditures was installed and a certificate of
18 eligibility for an industrial decarbonization production
19 corporate income tax credit provided for the same taxpayer and
20 facility pursuant to Section 1 of this 2025 act.

21 D. If the department of environment determines that
22 a taxpayer meets the requirements of this section, that
23 department shall issue to the taxpayer a dated certificate of
24 eligibility providing the amount of the tax credit for which
25 the taxpayer is eligible and the taxable year in which the

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1 credit may be claimed. Only one certificate of eligibility
2 shall be issued for all activities performed at a qualified
3 industrial facility, regardless of ownership of the facility.
4 The department of environment shall provide the taxation and
5 revenue department with the certificates of eligibility issued
6 pursuant to this subsection in an electronic format at
7 regularly agreed-upon intervals.

8 E. The total annual aggregate amount of industrial
9 decarbonization investment corporate income tax credits that
10 may be certified in a calendar year is thirty million dollars
11 (\$30,000,000) in 2026, fifty million dollars (\$50,000,000) in
12 2027 and one hundred million dollars (\$100,000,000) in each
13 year thereafter. Completed applications shall be considered in
14 the order received. The department of environment shall
15 publish on the department of environment's website on a regular
16 basis the number of industrial decarbonization investment
17 corporate income tax credits that have been certified in each
18 calendar year.

19 F. To receive a tax credit provided by this
20 section, a taxpayer shall claim the credit on forms and in the
21 manner prescribed by the department within twelve months
22 following the calendar year in which the certificate of
23 eligibility was issued.

24 G. A certificate of eligibility issued pursuant to
25 this section may either be submitted by the taxpayer with that

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1 taxpayer's return or be sold, exchanged or otherwise
2 transferred to another taxpayer for the full value of the
3 credit. The parties to such a transaction shall notify the
4 department of the sale, exchange or transfer within ten days of
5 the sale, exchange or transfer in a format prescribed by the
6 department.

7 H. That portion of an industrial decarbonization
8 investment corporate income tax credit that exceeds a
9 taxpayer's tax liability in the taxable year in which the tax
10 credit is claimed shall not be refunded but may be carried
11 forward for three consecutive taxable years.

12 I. The credit provided by this section shall be
13 included in the tax expenditure budget pursuant to Section
14 7-1-84 NMSA 1978, including the total annual aggregate cost of
15 the credit.

16 J. As used in this section:

17 (1) "industrial benchmark" means the typical
18 carbon dioxide equivalent emissions of a product system from a
19 federally recognized and used metric, such as the greenhouse
20 gases, regulated emissions, and energy use in technologies life
21 cycle assessment suite of models;

22 (2) "qualified expenditure" means an
23 expenditure made on or after January 1, 2025 and prior to
24 January 1, 2031 for the purchase of that portion of the costs
25 of equipment dedicated to and necessary for producing a

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1 qualified industrial facility's product in a way that reduces
2 the product's net carbon dioxide equivalent emissions;

3 (3) "qualified industrial facility" means an
4 industrial facility located in New Mexico that produces:

5 (a) concrete, cement, asphalt, iron,
6 steel, glass, hydrogen or a critical mineral as designated by
7 the United States department of the interior; or

8 (b) a product through refinement; and

9 (4) "refinement" means a chemical or physical
10 process to remove impurities from a substance or form."

11 SECTION 3. DELAYED REPEAL.--Sections 1 and 2 of this act
12 are repealed effective January 1, 2033.

13 SECTION 4. APPLICABILITY.--The provisions of this act
14 apply to taxable years beginning on or after January 1, 2025.