

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

**January 22, 2024**

**Bill:** HB-92

**Sponsor:** Representatives Patricia Roybal Caballero and Tara L. Lujan and  
 Senator Gerald Ortiz y Pino

**Short Title:** Geothermal Electricity Generation Tax Credits

**Description:** This bill creates personal income tax (PIT) and corporate income tax (CIT) credits for investments in geothermal electricity generation facilities, and gross receipts tax (GRT) and compensating tax deductions for costs of constructing and equipping a geothermal electricity generation facility.

Section 1 mandates the distribution of funds to counties and municipalities in an amount equivalent to the GRT and compensating tax deductions claimed in Section 4. The purpose is to compensate, or “hold harmless”, local governments for the cost of the new deductions, as any deductions from GRT or compensating tax impacts local governments’ local option revenue, as well as the state’s General Fund. Tribal governments are not held harmless from the Section 4 deductions.

Sections 2 and 3 introduce the Geothermal Electricity Generation Income Tax Credit. The credit amount is \$0.015 per kilowatt-hour of electricity generated in New Mexico by a geothermal electric generating facility during a taxable year. To claim this credit, the taxpayer applies to the Energy, Minerals, and Natural Resources Department (EMNRD). There is a cap on this credit, set at \$5 million per calendar year. If a credit is approved, EMNRD will issue a certificate to the individual or corporation. This credit has a 3-year carry forward, meaning any unused credit can be applied to the taxpayer's tax liability in future years. The Taxation and Revenue Department (Tax & Rev) will provide an annual report on this credit.

Section 4 introduces new deductions from gross receipts tax (GRT) and compensating tax. These deductions are for the sale of tangible personal property and services in connection with constructing and equipping a geothermal electricity generation facility; tangible personal property installed as part of the system used for the distribution of the electricity from the facility; and construction plant costs purchased by a person who hold an interest in a facility. Each deduction from GRT has a mirrored deduction for compensating tax. Taxpayers will report these 6 new deductions separately to Tax & Rev. Tax & Rev will provide an annual report on these deductions.

**Effective Date:** January 1, 2025; Applicable to taxable years 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		
--	(\$1,000) - (\$5,000)	(\$1,000) - (\$5,000)	(\$1,000) - (\$5,000)	(\$1,000) - (\$5,000)	R	Section 2 and 3 - General Fund – PIT and CIT
--	(\$115)	(\$118)	(\$127)	(\$125)	R	Section 1- General Fund hold harmless
--	\$115	\$118	\$122	\$125	R	Section 1 - Local Government hold harmless
--	(\$119)	(\$123)	(\$127)	(\$130)	R	Section 4 – General Fund

						- GRT and comp
--	(\$80)	(\$82)	(\$84)	(\$87)	<b>R</b>	Section 4 - Local Governments – GRT and comp

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

**Methodology for Estimated Revenue Impact:** New Mexico is home to several geothermal electricity generation facilities that harness the state's substantial geothermal resources. These facilities utilize the heat from underground reservoirs to generate electricity, providing a renewable and sustainable energy source. Lightning Dock Geothermal Power Plant, located in Animas Valley, Hidalgo County, is one of the largest geothermal power plants in New Mexico. It has a capacity of 4.7 megawatts (MW) and utilizes binary cycle technology to generate electricity. At least two other plants are also in operation, the Jemez Mountains Electric Cooperative (JMEC) Geothermal Plant, situated in the Valles Caldera National Preserve near Jemez Springs, and the Gila Hot Springs Geothermal Power Plant, located near the town of Silver City.

New Mexico has a growing geothermal energy sector, but the total electricity generation from geothermal sources in the state is relatively small compared to other renewable energy sources.

**Installed Capacity:** According to the U.S. Energy Information Administration (EIA) data from 2020, New Mexico had a total installed capacity of approximately 34 megawatts (MW) from geothermal power plants.

**Geothermal Energy Contribution:** Geothermal energy accounts for a small percentage of New Mexico's total electricity generation. In 2020, geothermal sources in the state produced around 175,000 megawatt-hours<sup>1</sup> (MWh) of electricity. To put this into perspective, New Mexico's total electricity generation that year was over 55 million MWh, indicating that geothermal energy made up a small fraction of the overall generation mix.

Due to the geothermal electricity generating industry being in a developing phase and the absence of published expansion plans by major companies, it is challenging to determine the precise fiscal impact of this legislation. However, given the presence of three operating plants generating geothermal electricity, it is assumed they will apply for and claim the income tax credits in Sections 2 and 3 of the bill.

To estimate the fiscal impact of developing additional geothermal plants and associated GRT deductions, Tax & Rev used data published at the University of Michigan. Capital costs for conventional geothermal power plants in the U.S. are approximately \$2,500 per installed kilowatt of capacity<sup>2</sup>. The U.S. has tapped less than 0.7% of geothermal electricity resources; the majority can become available with Enhanced Geothermal System technology. In 2021, there were 3,692 MW of geothermal electricity plants in operation in the U.S.—the most of any country—and development has been growing at a rate of 3% per year<sup>3, 4</sup>. Tax & Rev assumed New Mexico's geothermal electricity market will expand and grow at a rate of the national average for the next five years. The calculation of yearly capital costs eligible for GRT deductions involves multiplying the annual growth in geothermal electricity production in New Mexico by \$2,500 per kilowatt. The fiscal impact is based on the statewide effective GRT rate. The hold harmless distributions in Section 1 assume that some portion of new construction will occur in municipalities and thus those municipalities will receive the additional 1.225% in distributions.

<sup>1</sup> A megawatt hour (Mwh) is equal to 1,000 Kilowatt hours (Kwh). It is equal to 1,000 kilowatts of electricity used continuously for one hour. It is about equivalent to the amount of electricity used by about 330 homes for one hour.

<sup>2</sup> <https://css.umich.edu/publications/factsheets/energy/geothermal-energy-factsheet>

<sup>3</sup> U.S. Geological Survey (2008) Assessment of Moderate- and High-Temperature Geothermal Resources of the United States.

<sup>4</sup> U.S. Department of Energy, IEA Geothermal (2022) 2021 United States Country Report.

**Policy Issues:** Tax incentives, while intended to support specific industries or behaviors, complicate the tax code. This leads to: (1) special treatment and exceptions, reducing the general fund and narrowing the tax base; and (2) increased compliance burden for taxpayers and the Tax & Rev department. Adding complexity and exceptions to the tax code is generally not considered good tax policy.

The tax credit provided in this legislation has a sunset date. Sunset dates allow policymakers to review the impact of tax expenditures before deciding whether to extend them. It might be wise to impose a cap on the credit per individual facility to prevent a single taxpayer from utilizing the entire credit limit.

The hold harmless payments to local governments contained in this bill complicate Tax & Rev's distributions extensively in an effort to shift a relatively immaterial amount of revenue to local governments. The proliferation of new distributions required to be automated in Gentax puts Tax & Rev's mission at risk. Errors in distributions can create costly litigation between the State and local governments. Similarly, local hold harmless payments make filing tax returns more complex for GRT taxpayers, adding risk that taxpayers will file incorrectly and eventually cause revenue clawbacks that can be disastrous to local governments.

The state General Fund currently transfers payments to local governments. Under Section 7-1-6.4 NMSA 1978, State gross receipts tax revenues are already shared with all municipalities. Section 7-1-6.5 NMSA 1978 provides a distribution to the small county's assistance fund; Section 7-1-6.16 NMSA 1978 provides for a county equalization distribution; and pursuant to Sections 7-1-6.46 and 7-1-6.47 NMSA 1978, distributions are made to certain municipalities and counties, respectively, to offset the cost of food and health care practitioner deductions. In addition, local governments have their own GRT and compensating taxing authority.

**Technical Issues: Sections 1:** certain language in these sections could be interpreted to still be using origin-based sourcing for purposes of calculating the GRT and compensating tax deductions and the adjustment to the distribution under Section 7-1-6.1 NMSA 1978 that is referred to in Section 1. Section 1(A) provides that a distribution shall be made to each municipality in an amount "equal to the sum of the deductions" claimed under this new bill "from business locations attributable to the municipality..." Section 1(D) of the bill defines "business locations attributable to the municipality" as locations within the municipality, state-owned land within a municipality, land outside the exterior boundaries of the municipality that is owned by the municipality, and certain tribal lands contiguous with a municipality. The term "business location" is not defined in the bill, and the ordinary taxpayer might take that to refer to the physical location of the business. "Business location" is properly defined in Section 7-1-14 NMSA 1978, and Tax & Rev suggests defining "business location" by reference to that section of the Tax Administration Act, to make clear that "business location" refers to the sourcing of the receipts, and not the physical location of the business. Furthermore, rather than using the extensive definition provided in Section 1(D), Tax & Rev suggests using the language in Section 7-1-14(K)(1) NMSA 1978, and stating instead "'business locations attributable to the municipality' means business locations using the code required by the department to be used to report the gross receipts for a municipality, or used for purchases subject to the compensating tax, and deductions related to those receipts or that use."

**Sections 2 and 3:** In Subsection C on pages 4 through 5 and 9 through 10, Tax & Rev suggests including on the certificate of eligibility the tax year the credit is eligible to be claimed. In the following subsection D, Tax & Rev suggests stating a limit on when the credit that is certified must be claimed.

**Section 4:** Subsection (A)(3) allows the GRT deduction for "selling or leasing tangible personal property or selling services that are construction plant costs to a person who holds an interest in a geothermal electricity generation facility..." This language does not require that the construction plant costs relate to

the facility in which the person holds an interest. Tax & Rev suggests adding “for which the construction plant costs were incurred” after “geothermal electricity generation facility” to make this connection necessary and explicit.

In Subsection A, page 13, lines 8 through 11, the language for the deduction and delivery of a nontaxable transaction certificate (NTTC) says that the holder of the interest in a geothermal electricity generation facility will be the one to issue the NTTC. This deduction is taken by taxpayers selling tangible property to a geothermal facility and it is that taxpayer who issues a NTTC. The bill language should clarify the taxpayer may issue a NTTC or alternative evidence. Furthermore, it is unclear why only Subsection 3 receipts defined as deductible require a NTTC while the other two subsections do not. Tax & Rev suggests consistent language for all deductible receipts or language to state why a NTTC will not be accepted. Alternatively, the NTTC language could be broken out into a separate subsection, to make clear that it applies to all three types of deduction.

**Sections 4 and 5:** Tax & Rev suggests adding a specific applicability date to Section 4 to clarify when the deductions can be taken and thus claimed on returns. Section 5 language should add. “The provisions of Section 4 of this act apply to sales occurring after [a specific date].” To align with semi-annual GRT updates, Tax & Rev suggests an effective date of July 1, 2024, or January 1, 2025.

Tax & Rev is now required by Section 7-1-84 NMSA 1978 to compile and present a tax expenditure budget, which includes the number of taxpayers that claim and the amount of claims for a tax expenditure. Credits and deductions are seen as a tax expenditure and will be included on this report. For that reason, Tax & Rev recommends that on page 6, lines 22 through 25 through page 7, lines 1 through 4, page 10 lines 23 through 25 through page 11, lines 1 through 5, and page 14 lines 3 through 11 are stricken in full.

**Other Issues:** Tax & Rev recommends the addition of language in Section 2 on page 5, line 17 and Section 3, on page 10 line 6 after “credit allowed” to include: “The energy, minerals and natural resources department shall provide the department certificates of eligibility issued in an electronic format at regularly agreed upon intervals.”

**Administrative & Compliance Impact:** Tax & Rev will need to make information system changes and update forms, instructions, and publications. Staff training to administer the credit will need to take place. It will be necessary to either modify the existing NTTC form or create a new one to accommodate the deductions in Section 4.

Tax & Rev’s Administrative Services Division (ASD) will test credit sourcing and perform other systems testing. In addition, ASD will need to define and test requirements for new GRT distributions to local governments. These new distributions will also require changes to revenue reports and audit financial statements. It is anticipated this work will take approximately 140 hours split between 2 Full-Time Equivalent (FTE) of a pay band 70, pay band 80 and a pay band 90 at a cost of approximately \$9,000.

Implementing this bill will have a high impact on Tax & Rev’s Information Technology Division (ITD), approximately 1,500 hours or about 9 months and an estimated \$330,000 in contractual costs. Much of this cost is the result of the hold harmless distributions to local governments required in Section 1. This implementation will be included in the annual tax year changes.

Tax & Rev’s Revenue Processing Division (RPD) will review certifications to assure compliance of credits. Currently, all certifications must be entered manually, so increasing the number of claims would increase the administrative workload for RPD. Tax & Rev is currently in discussion with EMNRD to share certification information electronically but has not agreed upon terms of the interagency data sharing. Tax & Rev assumes that electronic transfer of credit information will not occur before the

effective date of the bill. Without required statutory language, RPD will need to add one FTE, an Accountant Auditor-A, to process the addition of another credit.

<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>	<b>3 Year Total Cost</b>	<b>R or NR</b>	<b>Fund(s) or Agency Affected</b>
--	\$9	--	\$9	NR	Tax & Rev – ASD – staff workload
--	\$330	--	\$330	NR	Tax & Rev- ITD – contractual
--	\$83	\$83	\$166	R	Tax & Rev- RPD – FTE
--	\$10	--	\$10	NR	Tax & Rev- RPD – one time FTE costs

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

**Related Bills:** Similar to: SB-173 (2023 Legislative Session), Duplicate of: SB-58 (2024 Legislative Session)]