

LFC Requester:

Brendon Grey

AGENCY BILL ANALYSIS  
2024 REGULAR SESSION

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{Analysis must be uploaded as a PDF}

**SECTION I: GENERAL INFORMATION**

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original  Amendment   
Correction  Substitute

Date 1/18/2024

Bill No: SB 40

Sponsor: Senator Soules  
Short Title: Geothermal Heat Pump Tax Credit

Agency Name and Code: EMNRD 521  
Number:  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
	(16,000)	(16,000)	Recurring	GF

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	30.0	75.0	75.0	180.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act - Unknown

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: Senate Bill 40 (SB 40) amends the Income Tax Act, §7-2-18.24 NMSA 1978, and the Corporate Income and Franchise Tax Act, §7-2A-24 NMSA 1978, to reauthorize the issuance of the Geothermal Ground-Coupled Heat Pump Tax Credit for the period January 1<sup>st</sup>, 2024, to December 31<sup>st</sup>, 2034. This credit previously expired in 2020. SB 40 gives the Energy, Minerals and Natural Resources Department (EMNRD) the authority to develop rules and implement the tax credit.

The geothermal ground-coupled heat pump tax credit is a credit against personal and corporate income tax liability for 30 percent of the purchase and installation of heating, cooling, or domestic hot water system which “directly or indirectly utilizes available heat below the surface of the earth” with a maximum claim of up to \$9,000. If an individual taxpayer lacks sufficient tax burden, the credit can be refunded to that taxpayer. Members of a partnership may claim the credit in proportion to the taxpayer’s interest in the geothermal project. A corporate income tax credit that remains unused in a taxable year can be carried forward for a maximum of 10 consecutive years. The credits are capped at \$16 million annually.

SB 40 requires a taxpayer who files an individual or a corporate income tax return to report the amount of the credit to the department in a manner required by EMNRD.

A taxpayer who claims the 2021 Sustainable Building Tax Credit for a geothermal ground-coupled heat pump shall not be eligible for this tax credit.

**FISCAL IMPLICATIONS**

SB 40’s renewal of the geothermal ground-coupled heat pump tax credit does not include an appropriation to EMNRD for staff and IT resources to administer the program. While the geothermal heat pump tax credit program was formerly active and administered by the Energy Conservation and Management Division (ECMD) at EMNRD, that credit expired on December 31, 2020, and the staff who provided the technical review and certification for this program were subsequently reassigned to work on the reinstated and very popular Solar Market Development Tax Credit and the 2021 Sustainable Building Tax Credit programs.

EMNRD estimates that \$75,000 in recurring funding would be necessary to hire one (1) FTE to develop rules for the program, administer it, and evaluate certification applications – that is, to effectively provide system reviews, certify systems for tax credit eligibility, collect data, and

maintain a database of certifications.

In addition, EMNRD would require \$30,000 in one-time IT, legal, and administrative expenditures to develop an electronic submission process for the applications and shepherd the new rule through the rulemaking process.

## **SIGNIFICANT ISSUES**

Geothermal heat pumps, when installed correctly, can provide very efficient, low-cost, and low-carbon heating and cooling to buildings, often reducing the utility burden of the resident or business owner significantly. They are a necessary and critical part of transitioning New Mexico to a just and sustainable energy future in which all New Mexicans can afford to heat and cool their residences and businesses without being subject to fluctuations in the price of natural gas or contributing to carbon emissions. In light of this, a tax credit to incentivize and make more affordable the adoption of geothermal heat pump systems is a valuable policy goal for the state, and one which aligns with commitments New Mexico, along with the other 25 states in the U.S. Climate Alliance, has made nationally to support heat pump adoption.

However, EMNRD notes several key issues with respect to SB 40.

### **Standards**

SB 40 does not describe any nationally accepted standards that should be used to determine the energy efficiency requirements of eligible heat pumps. Instead, SB 40 merely requires the heat pump to be installed by a nationally accredited installer. Under the prior instance of the geothermal ground-coupled heat pump tax credit, nationally accredited installers installed equipment in New Mexico that was not tested by a third-party independent testing laboratory such as the Air-Conditioning, Heating and Refrigeration Institute (AHRI<sup>1</sup>). Some of these systems were self-certified and did not provide adequate (nor promised) benefits to the taxpayer who paid for the system's installation on their property. EMNRD strongly encourages the bill sponsor to require third-party certification for tax credit eligibility.

Furthermore, during the expired program, more than 95% of applications came from the service territory of El Paso Electric (EPE). EPE provides a rebate for ground source heat pump systems, but EPE does not recognize ground source heat pump systems as eligible for their rebates if the systems are not AHRI certified<sup>2</sup>.

### **Duplication**

Since the previous geothermal ground-coupled heat pump tax credit's expiry, New Mexicans have gained access to other tax incentives to install heat pumps. There is a provision for ground-coupled heat pumps in the 2021 Sustainable Building Tax Credit, as well as in federal energy tax credits. There are also rebates offered by several New Mexico utilities. EMNRD also expects to be able to offer rebates for heat pump systems through several upcoming programs authorized by the federal Inflation Reduction Act. See table below.

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<sup>1</sup> <https://www.ahridirectory.org/NewSearch?programId=1&searchTypeId=3>

<sup>2</sup> EPE's requirements can be found at [Refrigerated Cooling - EPE \(epesaver.com\)](https://www.epesaver.com).

<b>Program Duplication, Companionship, Relationship</b>	<b>Incentive for Low-Income Residents</b>	<b>Incentive for Non Low-Income Residents</b>
<b>New Mexico Tax Credits:</b>		
A. Energy Star Certified equipment is eligible.		
B. Applicants with adjusted gross income of less than 200% of the federal poverty can receive a refund for the amount that exceeds their tax liability		
Sustainable Building Tax Credit-Ground Source Heat Pump	\$2,000	\$1,000
Sustainable Building Tax Credit-Air Source Heat Pump	\$2,000	\$1,000
Sustainable Building Tax Credit-Heat Pump Water Heater	\$700	\$ 350
<b>Federal Tax Credits:</b>		
Energy Star Certified equipment is eligible		
Geothermal heat pump – 30% up to \$2,000	\$2,000	\$ 2,000
Heat pump water heaters	\$300	\$300
Heat Pump for space heating and cooling	\$8,000	n/a
Heat Pump water heating	\$1,750	n/a

**PERFORMANCE IMPLICATIONS**

Adding another tax credit program to EMNRD’s certification responsibilities without adding additional FTE and IT resources will slow down processing for *all* tax credit certifications, particularly the reinstated New Solar Market Development Tax Credit, the reinstated Sustainable Buildings tax credit and other tax credits that are administered by EMNRD.

In addition, the department must compile and present an annual report to the Revenue Stabilization and Tax Policy Committee and Legislative Finance Committee with an analysis of the cost of the tax credit. The report shall include the cost of the tax credit that includes the number of taxpayers approved to receive the credit, the aggregate amount of credits approved, and any other information necessary to evaluate the credit.

**ADMINISTRATIVE IMPLICATIONS**

EMNRD’s Energy Conservation and Management Division will be required to develop and adopt rules, establish the program certification and administrative certification processes. In addition, EMNRD, possibly through the division’s IT, would need to design an online application portal.

EMNRD is required to establish rules to meet safety, building codes and standards compliance, minimums system sizes, system applications and lists of eligible components. EMNRD will need to develop definitions for eligible geothermal heat pumps which are industry-wide acceptable definitions.

EMNRD must certify heat pump installers which must, first, be nationally accredited ground source heat pump installers.

EMNRD is also required to provide the Taxation and Revenue Department certification

information for all taxpayers in a secure and regular manner.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

## **TECHNICAL ISSUES**

EMNRD recommends clarification of the heat pump definition to meet industry standards and clarification on the number of heat pump systems that can be installed per applicant or address.

## **OTHER SUBSTANTIVE ISSUES**

It is unclear from the text of SB 40 how many tax credits an individual taxpayer may claim for systems installed on the same property (i.e., can a taxpayer claim a credit for both a heat pump water heater and a heat pump heating and cooling system at the same address?) and also how many tax credits an individual taxpayer may claim in any one tax year (i.e. a tax credit for installing a heat pump water heater at multiple addresses).

## **ALTERNATIVES**

N/A

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

While not enacting SB 40 would mean that a tax credit specifically for geothermal ground source heat pumps would not exist, other geothermal ground source heat pump tax credits would remain available to New Mexico taxpayers available via the 2021 Sustainable Building Tax Credit, existing Federal tax credits, and possibly programs created by the federal Inflation Reduction Act.

## **AMENDMENTS**

EMNRD recommends that SB 40 allow only systems that are certified under EPA's Energy Star program to be eligible for the tax credit. The requirement would make this tax credit consistent with the New Mexico 2021 Sustainable Building Tax Credit, all federal tax credits and the programs created by the Inflation Reduction Act.