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HOUSE BILL 242

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

George Dodge, Jr.

AN ACT

RELATING TO UTILITIES; INCREASING THE AMOUNT OF ELECTRICITY THAT MAY BE PRODUCED BY QUALIFIED ENERGY GENERATORS THAT WILL BE ELIGIBLE FOR THE RENEWABLE ENERGY PRODUCTION TAX CREDIT; EXTENDING THE DATE THAT A QUALIFIED ENERGY GENERATOR MUST FIRST PRODUCE ELECTRICITY TO QUALIFY FOR THE RENEWABLE ENERGY PRODUCTION TAX CREDIT; DECREASING THE AMOUNT OF CREDIT PER KILOWATT-HOUR FOR CERTAIN TAXABLE YEARS; LIMITING THE PERIOD FOR WHICH A TAXPAYER MAY CLAIM THE RENEWABLE ENERGY PRODUCTION TAX CREDIT; MAKING GEOTHERMAL ENERGY A QUALIFIED ENERGY SOURCE.

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

SECTION 1. Section 7-2-18.18 NMSA 1978 (being Laws 2007, Chapter 204, Section 2) is amended to read:

"7-2-18.18. RENEWABLE ENERGY PRODUCTION TAX CREDIT.--

A. Prior to January 1, 2032, a taxpayer who is not

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1 a dependent of another individual and who holds title to a
2 qualified energy generator or leases property upon which a
3 qualified energy generator operates from a county or
4 municipality under authority of an industrial revenue bond may
5 claim a tax credit against the taxpayer's tax liability imposed
6 pursuant to the Income Tax Act. The tax credit provided in
7 this section may be referred to as the "renewable energy
8 production tax credit". The tax credit provided in this
9 section may not be claimed with respect to the same electricity
10 production for which a tax credit pursuant to Section 7-2A-19
11 NMSA 1978 has been claimed.

12 ~~[B. A taxpayer who files an individual New Mexico~~
13 ~~income tax return and who is not a dependent of another~~
14 ~~taxpayer is eligible for the renewable energy production tax~~
15 ~~credit if the taxpayer:~~

16 ~~(1) holds title to a qualified energy~~
17 ~~generator that first produced electricity on or before January~~
18 ~~1, 2018; or~~

19 ~~(2) leases property upon which a qualified~~
20 ~~energy generator operates from a county or municipality under~~
21 ~~authority of an industrial revenue bond and if the qualified~~
22 ~~energy generator first produced electricity on or before~~
23 ~~January 1, 2018.~~

24 ~~G.]~~ B. The amount of the tax credit shall equal one
25 cent (\$.01) per kilowatt-hour of the first four hundred

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1 thousand megawatt-hours of electricity produced by the
2 qualified energy generator in the taxable year using a wind-,
3 geothermal- or biomass-derived qualified energy resource;
4 provided that the total amount of tax credits claimed by all
5 taxpayers for a single qualified energy generator in a taxable
6 year using a wind-, geothermal- or biomass-derived qualified
7 energy resource shall not exceed one cent (\$.01) per kilowatt-
8 hour of the first four hundred thousand megawatt-hours of
9 electricity produced by the qualified energy generator.

10 ~~[D-]~~ C. The amount of the tax credit for
11 electricity produced by a qualified energy generator [~~in the~~
12 ~~taxable year~~] using a solar-light-derived or solar-heat-derived
13 qualified energy resource shall [~~be at~~] equal the following
14 amounts [~~specified in Paragraphs (1) through (10) of this~~
15 ~~subsection~~] in the following taxable years for which the tax
16 credit is claimed and in which the qualified energy generator
17 produces electricity using a solar-light-derived or solar-heat-
18 derived qualified energy resource; provided that the total
19 amount of tax credits claimed for a taxable year by all
20 taxpayers for a single qualified energy generator using a
21 solar-light-derived or solar-heat-derived qualified energy
22 resource shall be limited to the first two hundred thousand
23 megawatt-hours of electricity produced by the qualified energy
24 generator in the taxable year:

25 (1) for a taxpayer that receives a certificate

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1 of eligibility pursuant to Subsection F of this section prior
2 to January 1, 2015:

3 (a) one and one-half cents (\$.015) per
4 kilowatt-hour in the first taxable year; ~~[in which the~~
5 ~~qualified energy generator produces electricity using a solar-~~
6 ~~light-derived or solar-heat-derived qualified energy resource;~~

7 ~~(2)]~~ (b) two cents (\$.02) per kilowatt-hour in
8 the second taxable year; ~~[in which the qualified energy~~
9 ~~generator produces electricity using a solar-light-derived or~~
10 ~~solar-heat-derived qualified energy resource;~~

11 ~~(3)]~~ (c) two and one-half cents (\$.025) per
12 kilowatt-hour in the third taxable year; ~~[in which the~~
13 ~~qualified energy generator produces electricity using a~~
14 ~~solar-light-derived or solar-heat-derived qualified energy~~
15 ~~resource;~~

16 ~~(4)]~~ (d) three cents (\$.03) per kilowatt-hour
17 in the fourth taxable year; ~~[in which the qualified energy~~
18 ~~generator produces electricity using a solar-light-derived or~~
19 ~~solar-heat-derived qualified energy resource;~~

20 ~~(5)]~~ (e) three and one-half cents (\$.035) per
21 kilowatt-hour in the fifth taxable year; ~~[in which the~~
22 ~~qualified energy generator produces electricity using a solar-~~
23 ~~light-derived or solar-heat-derived qualified energy resource;~~

24 ~~(6)]~~ (f) four cents (\$.04) per kilowatt-hour
25 in the sixth taxable year; ~~[in which the qualified energy~~

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1 ~~generator produces electricity using a solar-light-derived or~~
2 ~~solar-heat-derived qualified energy resource;~~

3 ~~(7)] (g) three and one-half cents (\$.035) per~~
4 ~~kilowatt-hour in the seventh taxable year; [in which the~~
5 ~~qualified energy generator produces electricity using a~~
6 ~~solar-light-derived or solar-heat-derived qualified energy~~
7 ~~resource;~~

8 ~~(8)] (h) three cents (\$.03) per kilowatt-hour~~
9 ~~in the eighth taxable year; [in which the qualified energy~~
10 ~~generator produces electricity using a solar-light-derived or~~
11 ~~solar-heat-derived qualified energy resource;~~

12 ~~(9)] (i) two and one-half cents (\$.025) per~~
13 ~~kilowatt-hour in the ninth taxable year [in which the qualified~~
14 ~~energy generator produces electricity using a solar-light-~~
15 ~~derived or solar-heat-derived qualified energy resource]; and~~

16 ~~[(10)] (j) two cents (\$.02) per kilowatt-hour~~
17 ~~in the tenth taxable year [in which the qualified energy~~
18 ~~generator produces electricity using a solar-light-derived or~~
19 ~~solar-heat-derived qualified energy resource.~~

20 ~~E. A taxpayer eligible for a renewable energy~~
21 ~~production tax credit pursuant to Subsection B of this section~~
22 ~~shall be eligible for the renewable energy production tax~~
23 ~~credit for ten consecutive years, beginning on the date the~~
24 ~~qualified energy generator begins producing electricity.~~

25 ~~F. As used in this section:~~

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1 ~~(1) "biomass" means organic material that is~~
2 ~~available on a renewable or recurring basis, including:~~

3 ~~(a) forest-related materials, including~~
4 ~~mill residues, logging residues, forest thinnings, slash,~~
5 ~~brush, low-commercial-value materials or undesirable species,~~
6 ~~salt cedar and other phreatophyte or woody vegetation removed~~
7 ~~from river basins or watersheds and woody material harvested~~
8 ~~for the purpose of forest fire fuel reduction or forest health~~
9 ~~and watershed improvement;~~

10 ~~(b) agricultural-related materials,~~
11 ~~including orchard trees, vineyard, grain or crop residues,~~
12 ~~including straws and stover, aquatic plants and agricultural~~
13 ~~processed co-products and waste products, including fats, oils,~~
14 ~~greases, whey and lactose;~~

15 ~~(c) animal waste, including manure and~~
16 ~~slaughterhouse and other processing waste;~~

17 ~~(d) solid woody waste materials,~~
18 ~~including landscape or right-of-way tree trimmings, rangeland~~
19 ~~maintenance residues, waste pallets, crates and manufacturing,~~
20 ~~construction and demolition wood wastes, excluding~~
21 ~~pressure-treated, chemically treated or painted wood wastes and~~
22 ~~wood contaminated with plastic;~~

23 ~~(e) crops and trees planted for the~~
24 ~~purpose of being used to produce energy;~~

25 ~~(f) landfill gas, wastewater treatment~~

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1 ~~gas and biosolids, including organic waste byproducts generated~~
2 ~~during the wastewater treatment process; and~~

3 ~~(g) segregated municipal solid waste,~~
4 ~~excluding tires and medical and hazardous waste;~~

5 ~~(2) "qualified energy generator" means a~~
6 ~~facility with at least one megawatt generating capacity located~~
7 ~~in New Mexico that produces electricity using a qualified~~
8 ~~energy resource and that sells that electricity to an unrelated~~
9 ~~person; and~~

10 ~~(3) "qualified energy resource" means a~~
11 ~~resource that generates electrical energy by means of a~~
12 ~~fluidized bed technology or similar low-emissions technology or~~
13 ~~a zero-emissions generation technology that has substantial~~
14 ~~long-term production potential and that uses only the following~~
15 ~~energy sources:~~

16 ~~(a) solar light;~~

17 ~~(b) solar heat;~~

18 ~~(c) wind; or~~

19 ~~(d) biomass]; and~~

20 (2) for a taxpayer that receives a certificate
21 of eligibility pursuant to Subsection F of this section on or
22 after January 1, 2015:

23 (a) one and one-half cents (\$.015) per
24 kilowatt-hour produced in the first taxable year; and

25 (b) two cents (\$.02) per kilowatt-hour

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1 produced in the second through tenth taxable years.

2 D. A taxpayer may claim a renewable energy
3 production tax credit for ten consecutive taxable years
4 beginning in the first taxable year that the taxpayer claims
5 the tax credit; provided that no taxpayer may claim the tax
6 credit for electricity produced on or after January 1, 2032. A
7 taxpayer shall claim a renewable energy production tax credit
8 within one year following the end of the calendar year in which
9 the taxpayer received a certificate of eligibility pursuant to
10 Subsection F of this section.

11 E. Once a taxpayer has received a certificate of
12 eligibility pursuant to Subsection F of this section for a
13 given facility, that taxpayer shall be allowed to retain the
14 facility's original date of certification for tax credits for
15 that facility until either the generator goes out of production
16 for more than six consecutive months in a year or until the
17 facility's ten-year eligibility has expired.

18 ~~[G.] F. A [person that holds title to a facility~~
19 ~~generating electricity from a qualified energy resource or a~~
20 ~~person that leases such a facility from a county or~~
21 ~~municipality pursuant to an industrial revenue bond may request~~
22 ~~certification of eligibility for the renewable energy~~
23 ~~production tax credit] taxpayer may apply for a certificate of~~
24 ~~eligibility for a qualified energy generator from the energy,~~
25 ~~minerals and natural resources department [which shall~~

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1 ~~determine if the facility is a qualified energy generator~~].
2 The energy, minerals and natural resources department may
3 ~~[certify the]~~ issue a certificate of eligibility ~~[of an]~~ for a
4 qualified energy generator only if the total amount of
5 electricity that may be produced annually by all qualified
6 energy generators using a wind-, geothermal- or biomass-derived
7 qualified energy resource that are certified pursuant to this
8 section and pursuant to Section 7-2A-19 NMSA 1978 will not
9 exceed a total of ~~[two million]~~ three million megawatt-hours
10 plus an additional ~~[five hundred thousand]~~ one million
11 megawatt-hours produced by qualified energy generators using a
12 solar-light-derived or solar-heat-derived qualified energy
13 resource. Completed applications shall be considered in the
14 order received. The energy, minerals and natural resources
15 department may estimate the annual power-generating potential
16 of a generating facility for the purposes of this section.
17 ~~[The energy, minerals and natural resources department shall~~
18 ~~issue]~~ A certificate ~~[to the applicant stating whether]~~ of
19 eligibility shall state that the facility is ~~[an eligible]~~ a
20 qualified energy generator and shall include the estimated
21 annual production potential of the generating facility, which
22 shall be the limit of that facility's energy production
23 eligible for the tax credit for the taxable year. The energy,
24 minerals and natural resources department may issue rules
25 governing the procedure for administering the provisions of

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1 this subsection and shall report annually to the appropriate
2 interim legislative committee information that will allow the
3 legislative committee to analyze the effectiveness of the
4 renewable energy production tax credit, including the identity
5 of qualified energy generators, the energy production means
6 used, the amount of energy produced by those qualified energy
7 generators and whether any applications could not be approved
8 due to program limits.

9 ~~[H.]~~ G. A taxpayer may be allocated all or a
10 portion of the right to claim a renewable energy production tax
11 credit without regard to proportional ownership interest if:

12 (1) the taxpayer owns an interest in a
13 business entity that is taxed for federal income tax purposes
14 as a partnership;

15 (2) the business entity:
16 (a) would qualify for the renewable
17 energy production tax credit pursuant to ~~[Paragraph (1) or (2)~~
18 ~~of Subsection B of]~~ this section;

19 (b) owns an interest in a business
20 entity that is also taxed for federal income tax purposes as a
21 partnership and that would qualify for the renewable energy
22 production tax credit pursuant to ~~[Paragraph (1) or (2) of~~
23 ~~Subsection B of]~~ this section; or

24 (c) owns, through one or more
25 intermediate business entities that are each taxed for federal

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1 income tax purposes as a partnership, an interest in the
2 business entity described in Subparagraph (b) of this
3 paragraph;

4 (3) the taxpayer and all other taxpayers
5 allocated a right to claim the renewable energy production tax
6 credit pursuant to this subsection own collectively at least a
7 five percent interest in a qualified energy generator;

8 (4) the business entity provides notice of the
9 allocation and the taxpayer's interest to the energy, minerals
10 and natural resources department on forms prescribed by that
11 department; and

12 (5) the energy, minerals and natural resources
13 department certifies the allocation in writing to the taxpayer.

14 [~~F.~~] H. Upon receipt of notice of an allocation of
15 the right to claim all or a portion of the renewable energy
16 production tax credit, the energy, minerals and natural
17 resources department shall promptly certify the allocation in
18 writing to the recipient of the allocation.

19 [~~J. A husband and wife who file~~] I. Married
20 individuals filing separate returns for a taxable year in which
21 they could have filed a joint return may each claim only
22 one-half of the credit that would have been allowed on a joint
23 return.

24 [~~K.~~] J. A taxpayer may claim the renewable energy
25 production tax credit by submitting to the taxation and revenue

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1 department the certificate of eligibility issued by the energy,
2 minerals and natural resources department, pursuant to
3 Subsection [~~G or H~~] F of this section, documentation showing
4 the taxpayer's interest in the facility, documentation of the
5 amount of electricity produced by the facility in the taxable
6 year and any other information the taxation and revenue
7 department may require to determine the amount of the tax
8 credit due the taxpayer.

9 [~~L~~] K. If the requirements of this section have
10 been complied with, the department shall approve the renewable
11 energy production tax credit. The credit may be deducted from
12 a taxpayer's New Mexico income tax liability for the taxable
13 year for which the credit is claimed. If the amount of tax
14 credit exceeds the taxpayer's income tax liability for the
15 taxable year:

16 (1) the excess may be carried forward for a
17 period of five consecutive taxable years; or

18 (2) if the tax credit was issued with respect
19 to a qualified energy generator that first produced electricity
20 using a qualified energy resource on or after October 1, 2007,
21 the excess shall be refunded to the taxpayer.

22 [~~M. Once a taxpayer has been granted a renewable~~
23 ~~energy production tax credit for a given facility, that~~
24 ~~taxpayer shall be allowed to retain the facility's original~~
25 ~~date of application for tax credits for that facility until~~

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1 ~~either the facility goes out of production for more than six~~
2 ~~consecutive months in a year or until the facility's ten-year~~
3 ~~eligibility has expired.]~~

4 L. As used in this section:

5 (1) "biomass" means organic material that is
6 available on a renewable or recurring basis, including:

7 (a) forest-related materials, including
8 mill residues, logging residues, forest thinnings, slash,
9 brush, low-commercial-value materials or undesirable species,
10 salt cedar and other phreatophyte or woody vegetation removed
11 from river basins or watersheds and woody material harvested
12 for the purpose of forest fire fuel reduction or forest health
13 and watershed improvement;

14 (b) agricultural-related materials,
15 including orchard trees, vineyard, grain or crop residues,
16 including straws and stover, aquatic plants and agricultural
17 processed co-products and waste products, including fats, oils,
18 greases, whey and lactose;

19 (c) animal waste, including manure and
20 slaughterhouse and other processing waste;

21 (d) solid woody waste materials,
22 including landscape or right-of-way tree trimmings, rangeland
23 maintenance residues, waste pallets, crates and manufacturing,
24 construction and demolition wood wastes, excluding pressure-
25 treated, chemically treated or painted wood wastes and wood

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1 contaminated with plastic;

2 (e) crops and trees planted for the
3 purpose of being used to produce energy;

4 (f) landfill gas, wastewater treatment
5 gas and biosolids, including organic waste byproducts generated
6 during the wastewater treatment process; and

7 (g) segregated municipal solid waste,
8 excluding tires and medical and hazardous waste;

9 (2) "qualified energy generator" means a
10 facility with at least one megawatt generating capacity located
11 in New Mexico that:

12 (a) produces electricity using a
13 qualified energy resource;

14 (b) sells that electricity to an
15 unrelated person; and

16 (c) first produced electricity on or
17 before January 1, 2021; and

18 (3) "qualified energy resource" means a
19 resource that generates electrical energy by means of a
20 fluidized bed technology or similar low-emissions technology or
21 a zero-emissions generation technology that has substantial
22 long-term production potential and that uses only the following
23 energy sources:

24 (a) solar light;

25 (b) solar heat;

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(c) wind;

(d) geothermal; or

(e) biomass."

SECTION 2. Section 7-2A-19 NMSA 1978 (being Laws 2002, Chapter 59, Section 1, as amended) is amended to read:

"7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--
LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

A. Prior to January 1, 2032, a taxpayer that holds title to a qualified energy generator or leases property upon which a qualified energy generator operates from a county or municipality under authority of an industrial revenue bond may claim a tax credit against the taxpayer's tax liability imposed pursuant to the Corporate Income and Franchise Tax Act. The tax credit provided in this section may be referred to as the "renewable energy production tax credit". The tax credit provided in this section may not be claimed with respect to the same electricity production for which [the renewable energy production] a tax credit [provided in the Income Tax Act] pursuant to Section 7-2-18.18 NMSA 1978 has been claimed.

~~[B. A person is eligible for the renewable energy production tax credit if the person:~~

~~(1) holds title to a qualified energy generator that first produced electricity on or before January 1, 2018; or~~

~~(2) leases property upon which a qualified~~

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1 ~~energy generator operates from a county or municipality under~~
2 ~~authority of an industrial revenue bond and if the qualified~~
3 ~~energy generator first produced electricity on or before~~
4 ~~January 1, 2018.~~

5 ~~G.]~~ B. The amount of the tax credit shall equal one
6 cent (\$.01) per kilowatt-hour of the first four hundred
7 thousand megawatt-hours of electricity produced by the
8 qualified energy generator in the taxable year using a wind-,
9 geothermal- or biomass-derived qualified energy resource;
10 provided that the total amount of tax credits claimed by all
11 taxpayers for a single qualified energy generator in a taxable
12 year using a wind-, geothermal- or biomass-derived qualified
13 energy resource shall not exceed one cent (\$.01) per kilowatt-
14 hour of the first four hundred thousand megawatt-hours of
15 electricity produced by the qualified energy generator.

16 ~~[D.]~~ C. The amount of the tax credit for
17 electricity produced by a qualified energy generator [~~in the~~
18 ~~taxable year~~] using a solar-light-derived or solar-heat-derived
19 qualified energy resource shall [~~be at~~] equal the following
20 amounts [~~specified in Paragraphs (1) through (10) of this~~
21 ~~subsection~~] in the following taxable years for which the tax
22 credit is claimed and in which the qualified energy generator
23 produces electricity using a solar-light-derived or solar-heat-
24 derived qualified energy resource; provided that the total
25 amount of tax credits claimed for a taxable year by all

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1 taxpayers for a single qualified energy generator using a
2 solar-light-derived or solar-heat-derived qualified energy
3 resource shall be limited to the first two hundred thousand
4 megawatt-hours of electricity produced by the qualified energy
5 generator in the taxable year:

6 (1) for a taxpayer that receives a certificate
7 of eligibility pursuant to Subsection F of this section on or
8 after January 1, 2015:

9 (a) one and one-half cents (\$.015) per
10 kilowatt-hour in the first taxable year; [~~in which the~~
11 ~~qualified energy generator produces electricity using a solar-~~
12 ~~light-derived or solar-heat-derived qualified energy resource;~~

13 ~~(2)] (b) two cents (\$.02) per kilowatt-hour in~~
14 the second taxable year; [~~in which the qualified energy~~
15 ~~generator produces electricity using a solar-light-derived or~~
16 ~~solar-heat-derived qualified energy resource;~~

17 ~~(3)] (c) two and one-half cents (\$.025) per~~
18 kilowatt-hour in the third taxable year; [~~in which the~~
19 ~~qualified energy generator produces electricity using a solar-~~
20 ~~light-derived or solar-heat-derived qualified energy resource;~~

21 ~~(4)] (d) three cents (\$.03) per kilowatt-hour~~
22 in the fourth taxable year; [~~in which the qualified energy~~
23 ~~generator produces electricity using a solar-light-derived or~~
24 ~~solar-heat-derived qualified energy resource;~~

25 ~~(5)] (e) three and one-half cents (\$.035) per~~

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1 kilowatt-hour in the fifth taxable year; ~~[in which the~~
2 ~~qualified energy generator produces electricity using a solar-~~
3 ~~light-derived or solar-heat-derived qualified energy resource;~~

4 ~~(6)]~~ (f) four cents (\$.04) per kilowatt-hour
5 in the sixth taxable year; ~~[in which the qualified energy~~
6 ~~generator produces electricity using a solar-light-derived or~~
7 ~~solar-heat-derived qualified energy resource;~~

8 ~~(7)]~~ (g) three and one-half cents (\$.035) per
9 kilowatt-hour in the seventh taxable year; ~~[in which the~~
10 ~~qualified energy generator produces electricity using a solar-~~
11 ~~light-derived or solar-heat-derived qualified energy resource;~~

12 ~~(8)]~~ (h) three cents (\$.03) per kilowatt-hour
13 in the eighth taxable year; ~~[in which the qualified energy~~
14 ~~generator produces electricity using a solar-light-derived or~~
15 ~~solar-heat-derived qualified energy resource;~~

16 ~~(9)]~~ (i) two and one-half cents (\$.025) per
17 kilowatt-hour in the ninth taxable year ~~[in which the qualified~~
18 ~~energy generator produces electricity using a solar-light-~~
19 ~~derived or solar-heat-derived qualified energy resource]; and~~

20 ~~(10)]~~ (j) two cents (\$.02) per kilowatt-hour
21 in the tenth taxable year ~~[in which the qualified energy~~
22 ~~generator produces electricity using a solar-light-derived or~~
23 ~~solar-heat-derived qualified energy resource.~~

24 E. ~~A taxpayer eligible for a renewable energy~~
25 ~~production tax credit pursuant to Subsection B of this section~~

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1 shall be eligible for the renewable energy production tax
2 credit for ten consecutive years, beginning on the date the
3 qualified energy generator begins producing electricity.

4 F. As used in this section:

5 (1) "biomass" means organic material that is
6 available on a renewable or recurring basis, including:

7 (a) forest-related materials, including
8 mill residues, logging residues, forest thinnings, slash,
9 brush, low-commercial value materials or undesirable species,
10 salt cedar and other phreatophyte or woody vegetation removed
11 from river basins or watersheds and woody material harvested
12 for the purpose of forest fire fuel reduction or forest health
13 and watershed improvement;

14 (b) agricultural-related materials,
15 including orchard trees, vineyard, grain or crop residues,
16 including straws and stover, aquatic plants and agricultural
17 processed co-products and waste products, including fats, oils,
18 greases, whey and lactose;

19 (c) animal waste, including manure and
20 slaughterhouse and other processing waste;

21 (d) solid woody waste materials,
22 including landscape or right-of-way tree trimmings, rangeland
23 maintenance residues, waste pallets, crates and manufacturing,
24 construction and demolition wood wastes, excluding pressure-
25 treated, chemically treated or painted wood wastes and wood

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1 ~~contaminated with plastic;~~

2 ~~(e) crops and trees planted for the~~
3 ~~purpose of being used to produce energy;~~

4 ~~(f) landfill gas, wastewater treatment~~
5 ~~gas and biosolids, including organic waste byproducts generated~~
6 ~~during the wastewater treatment process; and~~

7 ~~(g) segregated municipal solid waste,~~
8 ~~excluding tires and medical and hazardous waste;~~

9 ~~(2) "qualified energy generator" means a~~
10 ~~facility with at least one megawatt generating capacity located~~
11 ~~in New Mexico that produces electricity using a qualified~~
12 ~~energy resource and that sells that electricity to an unrelated~~
13 ~~person; and~~

14 ~~(3) "qualified energy resource" means a~~
15 ~~resource that generates electrical energy by means of a~~
16 ~~fluidized bed technology or similar low-emissions technology or~~
17 ~~a zero-emissions generation technology that has substantial~~
18 ~~long-term production potential and that uses only the following~~
19 ~~energy sources:~~

20 ~~(a) solar light;~~

21 ~~(b) solar heat;~~

22 ~~(c) wind; or~~

23 ~~(d) biomass]; and~~

24 ~~(2) for a taxpayer that receives a certificate~~
25 ~~of eligibility pursuant to Subsection F of this section on or~~

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1 after January 1, 2015:

2 (a) one and one-half cents (\$.015) per
3 kilowatt-hour produced in the first taxable year; and

4 (b) two cents (\$.02) per kilowatt-hour
5 produced in the second through tenth taxable years.

6 D. A taxpayer may claim a renewable energy
7 production tax credit for ten consecutive taxable years
8 beginning in the first taxable year that the taxpayer claims
9 the tax credit; provided that no taxpayer may claim the tax
10 credit for electricity produced on or after January 1, 2032. A
11 taxpayer shall claim a renewable energy production tax credit
12 within one year following the end of the calendar year in which
13 the taxpayer received a certificate of eligibility pursuant to
14 Subsection F of this section.

15 E. Once a taxpayer has received a certificate of
16 eligibility pursuant to Subsection F of this section for a
17 given facility, that taxpayer shall be allowed to retain the
18 facility's original date of certification for tax credits for
19 that facility until either the generator goes out of production
20 for more than six consecutive months in a year or until the
21 facility's ten-year eligibility has expired.

22 ~~[G.] F. A [person that holds title to a facility~~
23 ~~generating electricity from a qualified energy resource or a~~
24 ~~person that leases such a facility from a county or~~
25 ~~municipality pursuant to an industrial revenue bond may request~~

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1 ~~certification of eligibility for the renewable energy~~
2 ~~production tax credit] taxpayer may apply for a certificate of~~
3 eligibility for a qualified energy generator from the energy,
4 minerals and natural resources department ~~[which shall~~
5 ~~determine if the facility is a qualified energy generator]~~.
6 The energy, minerals and natural resources department may
7 ~~[certify the]~~ issue a certificate of eligibility ~~[of an]~~ for a
8 qualified energy generator only if the total amount of
9 electricity that may be produced annually by all qualified
10 energy generators using a wind-, geothermal- or biomass-derived
11 qualified energy resource that are certified pursuant to this
12 section and pursuant to ~~[the Income Tax Act]~~ Section 7-2-18.18
13 NMSA 1978 will not exceed a total of ~~[two million]~~ three
14 million megawatt-hours plus an additional ~~[five hundred~~
15 ~~thousand]~~ one million megawatt-hours produced by qualified
16 energy generators using a solar-light-derived or solar-heat-
17 derived qualified energy resource. Completed applications
18 shall be considered in the order received. The energy,
19 minerals and natural resources department may estimate the
20 annual power-generating potential of a generating facility for
21 the purposes of this section. ~~[The energy, minerals and~~
22 ~~natural resources department shall issue]~~ A certificate ~~[to the~~
23 ~~applicant stating whether]~~ of eligibility shall state that the
24 facility is ~~[an eligible]~~ a qualified energy generator and
25 shall include the estimated annual production potential of the

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1 generating facility, which shall be the limit of that
2 facility's energy production eligible for the tax credit for
3 the taxable year. The energy, minerals and natural resources
4 department may issue rules governing the procedure for
5 administering the provisions of this subsection and shall
6 report annually to the appropriate interim legislative
7 committee information that will allow the legislative committee
8 to analyze the effectiveness of the renewable energy production
9 tax credit, including the identity of qualified energy
10 generators, the energy production means used, the amount of
11 energy produced by those qualified energy generators and
12 whether any applications could not be approved due to program
13 limits.

14 ~~[H.]~~ G. A taxpayer may be allocated all or a
15 portion of the right to claim a renewable energy production tax
16 credit without regard to proportional ownership interest if:

17 (1) the taxpayer owns an interest in a
18 business entity that is taxed for federal income tax purposes
19 as a partnership;

20 (2) the business entity:
21 (a) would qualify for the renewable
22 energy production tax credit pursuant to ~~[Paragraph (1) or (2)~~
23 ~~of Subsection B of]~~ this section;

24 (b) owns an interest in a business
25 entity that is also taxed for federal income tax purposes as a

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1 partnership and that would qualify for the renewable energy
2 production tax credit pursuant to [~~Paragraph (1) or (2) of~~
3 ~~Subsection B of~~] this section; or

4 (c) owns, through one or more
5 intermediate business entities that are each taxed for federal
6 income tax purposes as a partnership, an interest in the
7 business entity described in Subparagraph (b) of this
8 paragraph;

9 (3) the taxpayer and all other taxpayers
10 allocated a right to claim the renewable energy production tax
11 credit pursuant to this subsection own collectively at least a
12 five percent interest in a qualified energy generator;

13 (4) the business entity provides notice of the
14 allocation and the taxpayer's interest to the energy, minerals
15 and natural resources department on forms prescribed by that
16 department; and

17 (5) the energy, minerals and natural resources
18 department certifies the allocation in writing to the taxpayer.

19 [~~F.~~] H. Upon receipt of notice of an allocation of
20 the right to claim all or a portion of the renewable energy
21 production tax credit, the energy, minerals and natural
22 resources department shall promptly certify the allocation in
23 writing to the recipient of the allocation.

24 [~~J.~~] I. A taxpayer may claim the renewable energy
25 production tax credit by submitting to the taxation and revenue

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1 department the certificate of eligibility issued by the energy,
2 minerals and natural resources department, pursuant to
3 Subsection [~~G or H~~] F of this section, documentation showing
4 the taxpayer's interest in the facility, documentation of the
5 amount of electricity produced by the facility in the taxable
6 year and any other information the taxation and revenue
7 department may require to determine the amount of the tax
8 credit due the taxpayer.

9 [~~K-~~] J. If the requirements of this section have
10 been complied with, the department shall approve the renewable
11 energy production tax credit. The credit may be deducted from
12 a taxpayer's New Mexico corporate income tax liability for the
13 taxable year for which the credit is claimed. If the amount of
14 tax credit exceeds the taxpayer's corporate income tax
15 liability for the taxable year:

16 (1) the excess may be carried forward for a
17 period of five consecutive taxable years; or

18 (2) if the tax credit was issued with respect
19 to a qualified energy generator that first produced electricity
20 using a qualified energy resource on or after October 1, 2007,
21 the excess shall be refunded to the taxpayer.

22 [~~L.~~ ~~Once a taxpayer has been granted a renewable~~
23 ~~energy production tax credit for a given facility, that~~
24 ~~taxpayer shall be allowed to retain the facility's original~~
25 ~~date of application for tax credits for that facility until~~

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1 ~~either the facility goes out of production for more than six~~
2 ~~consecutive months in a year or until the facility's ten-year~~
3 ~~eligibility has expired.]~~

4 K. As used in this section:

5 (1) "biomass" means organic material that is
6 available on a renewable or recurring basis, including:

7 (a) forest-related materials, including
8 mill residues, logging residues, forest thinnings, slash,
9 brush, low-commercial-value materials or undesirable species,
10 salt cedar and other phreatophyte or woody vegetation removed
11 from river basins or watersheds and woody material harvested
12 for the purpose of forest fire fuel reduction or forest health
13 and watershed improvement;

14 (b) agricultural-related materials,
15 including orchard trees, vineyard, grain or crop residues,
16 including straws and stover, aquatic plants and agricultural
17 processed co-products and waste products, including fats, oils,
18 greases, whey and lactose;

19 (c) animal waste, including manure and
20 slaughterhouse and other processing waste;

21 (d) solid woody waste materials,
22 including landscape or right-of-way tree trimmings, rangeland
23 maintenance residues, waste pallets, crates and manufacturing,
24 construction and demolition wood wastes, excluding pressure-
25 treated, chemically treated or painted wood wastes and wood

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1 contaminated with plastic;

2 (e) crops and trees planted for the
3 purpose of being used to produce energy;

4 (f) landfill gas, wastewater treatment
5 gas and biosolids, including organic waste byproducts generated
6 during the wastewater treatment process; and

7 (g) segregated municipal solid waste,
8 excluding tires and medical and hazardous waste;

9 (2) "qualified energy generator" means a
10 facility with at least one megawatt generating capacity located
11 in New Mexico that:

12 (a) produces electricity using a
13 qualified energy resource;

14 (b) sells that electricity to an
15 unrelated person; and

16 (c) first produced electricity on or
17 before January 1, 2021; and

18 (3) "qualified energy resource" means a
19 resource that generates electrical energy by means of a
20 fluidized bed technology or similar low-emissions technology or
21 a zero-emissions generation technology that has substantial
22 long-term production potential and that uses only the following
23 energy sources:

24 (a) solar light;

25 (b) solar heat;

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(c) wind;

(d) geothermal; or

(e) biomass."

SECTION 3. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2015.