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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.