

1 SENATE BILL 173

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Gerald Ortiz y Pino and Ron Griggs and Pat Woods and
5 Mimi Stewart
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10 AN ACT

11 RELATING TO TAXATION; CREATING THE GEOTHERMAL ELECTRICITY
12 GENERATION INCOME TAX CREDIT, THE GEOTHERMAL ELECTRICITY
13 GENERATION CORPORATE INCOME TAX CREDIT AND GROSS RECEIPTS TAX
14 AND COMPENSATING TAX DEDUCTIONS FOR GEOTHERMAL ELECTRICITY
15 GENERATION FACILITY CONSTRUCTION COSTS; DISTRIBUTING THE LOSS
16 OF LOCAL OPTION GROSS RECEIPTS TAX REVENUE ATTRIBUTABLE TO THE
17 DEDUCTIONS TO LOCAL GOVERNMENTS.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. A new section of the Tax Administration Act is
21 enacted to read:

22 "[NEW MATERIAL] DISTRIBUTION--OFFSET FOR GEOTHERMAL
23 ELECTRICITY GENERATION-RELATED SALES AND USE DEDUCTIONS.--

24 A. A distribution pursuant to Section 7-1-6.1 NMSA
25 1978 shall be made to a municipality in an amount, subject to
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1 any increase or decrease made pursuant to Section 7-1-6.15 NMSA
2 1978, equal to the sum of the deductions claimed pursuant to
3 Section 4 of this 2023 act for the month by taxpayers from
4 business locations attributable to the municipality multiplied
5 by the sum of the combined rate of all municipal local option
6 gross receipts taxes in effect in the municipality on January
7 1, 2023 plus one and two hundred twenty-five thousandths
8 percent.

9 B. A distribution pursuant to Section 7-1-6.1 NMSA
10 1978 shall be made to a county in an amount, subject to any
11 increase or decrease made pursuant to Section 7-1-6.15 NMSA
12 1978, equal to the sum of the total deductions claimed pursuant
13 to Section 4 of this 2023 act for the month by taxpayers from
14 business locations:

15 (1) within a municipality in the county
16 multiplied by the combined rate of all county local option
17 gross receipts taxes in effect on January 1, 2023 that are
18 imposed in the county; and

19 (2) in the county but not within a
20 municipality multiplied by the combined rate of all county
21 local option gross receipts taxes in effect on January 1, 2023
22 that are imposed in the county area not within a municipality.

23 C. A distribution pursuant to this section may be
24 adjusted for a distribution made to a tax increment development
25 district with respect to a portion of a gross receipts tax

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1 increment dedicated by a municipality pursuant to the Tax
2 Increment for Development Act.

3 D. For the purposes of this section, "business
4 locations attributable to the municipality" means business
5 locations:

6 (1) within the municipality;

7 (2) on land owned by the state, commonly known
8 as the "state fairgrounds", within the exterior boundaries of
9 the municipality;

10 (3) outside the boundaries of the municipality
11 on land owned by the municipality; and

12 (4) on an Indian reservation or pueblo grant
13 in an area that is contiguous to the municipality and in which
14 the municipality performs services pursuant to a contract
15 between the municipality and the Indian tribe or Indian pueblo
16 if:

17 (a) the contract describes an area in
18 which the municipality is required to perform services and
19 requires the municipality to perform services that are
20 substantially the same as the services the municipality
21 performs for itself; and

22 (b) the governing body of the
23 municipality has submitted a copy of the contract to the
24 secretary."

25 SECTION 2. A new section of the Income Tax Act is enacted

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1 to read:

2 "[NEW MATERIAL] GEOTHERMAL ELECTRICITY GENERATION INCOME
3 TAX CREDIT.--

4 A. For taxable years prior to January 1, 2031, a
5 taxpayer who is not a dependent of another individual and who
6 holds an interest in a geothermal electricity generation
7 facility may apply for, and the department may allow, a credit
8 against the taxpayer's tax liability imposed pursuant to the
9 Income Tax Act. The tax credit provided by this section may be
10 referred to as the "geothermal electricity generation income
11 tax credit".

12 B. The amount of a tax credit allowed pursuant to
13 this section shall be an amount equal to one and one-half cents
14 (\$0.015) per kilowatt-hour of electricity generated in New
15 Mexico in a taxable year by the geothermal electricity
16 generation facility for which the taxpayer holds an interest.

17 C. A taxpayer shall apply for certification of
18 eligibility for the credit provided by this section from the
19 energy, minerals and natural resources department on forms and
20 in the manner prescribed by that department. The aggregate
21 amount of credits that may be certified pursuant to this
22 section and Section 3 of this 2023 act in any calendar year is
23 five million dollars (\$5,000,000). Completed applications
24 shall be considered in the order received. Applications for
25 certification received after this limitation has been met in a

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1 calendar year shall not be approved. For taxpayers eligible to
2 receive the credit, the energy, minerals and natural resources
3 department shall issue a certificate of eligibility stating the
4 amount of credit to which the taxpayer is entitled for the
5 taxable year. The certificate of eligibility shall be numbered
6 for identification and declare the date of issuance and the
7 amount of the tax credit allowed.

8 D. To receive the credit provided by this section,
9 a taxpayer shall apply to the department on forms and in the
10 manner prescribed by the department. The application shall
11 include a certification made pursuant to Subsection C of this
12 section.

13 E. That portion of a credit that exceeds a
14 taxpayer's tax liability in the taxable year in which the
15 credit is claimed may be carried forward for up to seven
16 consecutive years; provided the total credits claimed pursuant
17 to this section shall not exceed the annual aggregate amount
18 pursuant to Subsection C of this section.

19 F. Married individuals filing separate returns for
20 a taxable year for which they could have filed a joint return
21 may each claim only one-half of the credit that would have been
22 claimed on a joint return.

23 G. A taxpayer may be allocated the right to claim a
24 credit provided by this section in proportion to the taxpayer's
25 ownership interest if the taxpayer owns an interest in a

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1 business entity that is taxed for federal income tax purposes
2 as a partnership or limited liability company and that business
3 entity has met all of the requirements to be eligible for the
4 credit. The total credit claimed by all members of the
5 partnership or limited liability company shall not exceed the
6 maximum amount of the credit allowed pursuant to this section.

7 H. A taxpayer allowed a tax credit pursuant to this
8 section shall report the amount of the credit to the department
9 in a manner required by the department.

10 I. The department shall compile an annual report on
11 the credit provided by this section that shall include the
12 number of taxpayers approved by the department to receive the
13 credit, the aggregate amount of credits approved and any other
14 information necessary to evaluate the credit. The department
15 shall present the report to the revenue stabilization and tax
16 policy committee and the legislative finance committee with an
17 analysis of the cost of the tax credit.

18 J. As used in this section:

19 (1) "geothermal electricity generation
20 facility" means a facility located in New Mexico that generates
21 electricity from geothermal resources and:

22 (a) for new facilities, begins
23 construction on or after July 1, 2023; or

24 (b) for existing facilities, on or after
25 July 1, 2023, increases the amount of electricity generated

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1 from geothermal resources the facility generated prior to that
2 date by at least one hundred percent;

3 (2) "geothermal resources" means the natural
4 heat of the earth in excess of two hundred fifty degrees
5 Fahrenheit or the energy, in whatever form, below the surface
6 of the earth present in, resulting from, created by or that may
7 be extracted from this natural heat in excess of two hundred
8 fifty degrees Fahrenheit and all minerals in solution or other
9 products obtained from naturally heated fluids, brines,
10 associated gases and steam, in whatever form, found below the
11 surface of the earth, but excluding oil, hydrocarbon gas and
12 other hydrocarbon substances and excluding the heating and
13 cooling capacity of the earth not resulting from the natural
14 heat of the earth in excess of two hundred fifty degrees
15 Fahrenheit as may be used for the heating and cooling of
16 buildings through an on-site geexchange heat pump or similar
17 on-site system; and

18 (3) "interest in a geothermal electricity
19 generation facility" means title to a geothermal electricity
20 generation facility; a leasehold interest in such facility; an
21 ownership interest in a business or entity that is taxed for
22 federal income tax purposes as a partnership that holds title
23 to or a leasehold interest in such facility; or an ownership
24 interest, through one or more intermediate entities that are
25 each taxed for federal income tax purposes as a partnership, in

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1 a business that holds title to or a leasehold interest in such
2 facility."

3 SECTION 3. A new section of the Corporate Income and
4 Franchise Tax Act is enacted to read:

5 "[NEW MATERIAL] GEOTHERMAL ELECTRICITY GENERATION
6 CORPORATE INCOME TAX CREDIT.--

7 A. For taxable years prior to January 1, 2031, a
8 taxpayer that holds an interest in a geothermal electricity
9 generation facility may apply for, and the department may
10 allow, a credit against the taxpayer's tax liability imposed
11 pursuant to the Corporate Income and Franchise Tax Act. The
12 tax credit provided by this section may be referred to as the
13 "geothermal electricity generation corporate income tax
14 credit".

15 B. The amount of a tax credit allowed pursuant to
16 this section shall be an amount equal to one and one-half cents
17 (\$0.015) per kilowatt-hour of electricity generated in New
18 Mexico in a taxable year by the geothermal electricity
19 generation facility for which the taxpayer holds an interest.

20 C. A taxpayer shall apply for certification of
21 eligibility for the credit provided by this section from the
22 energy, minerals and natural resources department on forms and
23 in the manner prescribed by that department. The aggregate
24 amount of credits that may be certified pursuant to this
25 section and Section 2 of this 2023 act in any calendar year is

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1 five million dollars (\$5,000,000). Completed applications
2 shall be considered in the order received. Applications for
3 certification received after this limitation has been met in a
4 calendar year shall not be approved. For taxpayers eligible to
5 receive the credit, the energy, minerals and natural resources
6 department shall issue a certificate of eligibility stating the
7 amount of credit to which the taxpayer is entitled for the
8 taxable year. The certificate of eligibility shall be numbered
9 for identification and declare the date of issuance and the
10 amount of the tax credit allowed.

11 D. To receive the credit provided by this section,
12 a taxpayer shall apply to the department on forms and in the
13 manner prescribed by the department. The application shall
14 include a certification made pursuant to Subsection C of this
15 section.

16 E. That portion of a credit that exceeds a
17 taxpayer's tax liability in the taxable year in which the
18 credit is claimed may be carried forward for up to seven
19 consecutive years; provided the total credits claimed pursuant
20 to this section shall not exceed the annual aggregate amount
21 pursuant to Subsection C of this section.

22 F. A taxpayer allowed a tax credit pursuant to this
23 section shall report the amount of the credit to the department
24 in a manner required by that department.

25 G. The department shall compile an annual report on

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1 the credit provided by this section that shall include the
2 number of taxpayers approved by the department to receive the
3 credit, the aggregate amount of credits approved and any other
4 information necessary to evaluate the credit. The department
5 shall present the report to the revenue stabilization and tax
6 policy committee and the legislative finance committee with an
7 analysis of the cost of the tax credit.

8 H. As used in this section:

9 (1) "geothermal electricity generation
10 facility" means a facility located in New Mexico that generates
11 electricity from geothermal resources and:

12 (a) for new facilities, begins
13 construction on or after July 1, 2023; or

14 (b) for existing facilities, on or after
15 July 1, 2023, increases the amount of electricity generated
16 from geothermal resources the facility generated prior to that
17 date by at least one hundred percent;

18 (2) "geothermal resources" means the natural
19 heat of the earth in excess of two hundred fifty degrees
20 Fahrenheit or the energy, in whatever form, below the surface
21 of the earth present in, resulting from, created by or that may
22 be extracted from this natural heat in excess of two hundred
23 fifty degrees Fahrenheit and all minerals in solution or other
24 products obtained from naturally heated fluids, brines,
25 associated gases and steam, in whatever form, found below the

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1 surface of the earth, but excluding oil, hydrocarbon gas and
2 other hydrocarbon substances and excluding the heating and
3 cooling capacity of the earth not resulting from the natural
4 heat of the earth in excess of two hundred fifty degrees
5 Fahrenheit as may be used for the heating and cooling of
6 buildings through an on-site geexchange heat pump or similar
7 on-site system; and

8 (3) "interest in a geothermal electricity
9 generation facility" means title to a geothermal electricity
10 generation facility; a leasehold interest in such facility; an
11 ownership interest in a business or entity that is taxed for
12 federal income tax purposes as a partnership that holds title
13 to or a leasehold interest in such facility; or an ownership
14 interest, through one or more intermediate entities that are
15 each taxed for federal income tax purposes as a partnership, in
16 a business that holds title to or a leasehold interest in such
17 facility."

18 SECTION 4. A new section of the Gross Receipts and
19 Compensating Tax Act is enacted to read:

20 "[NEW MATERIAL] DEDUCTIONS--GROSS RECEIPTS TAX--
21 COMPENSATING TAX--GEOTHERMAL ELECTRICITY GENERATION-RELATED
22 SALES AND USE.--

23 A. Prior to July 1, 2031, receipts from:

24 (1) selling tangible personal property
25 installed as part of, or services rendered in connection with,

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1 constructing and equipping a geothermal electricity generation
2 facility may be deducted from gross receipts;

3 (2) selling tangible personal property
4 installed as part of a system used for the distribution of
5 electricity generated from a geothermal electricity generation
6 facility may be deducted from gross receipts; and

7 (3) selling or leasing tangible personal
8 property or selling services that are construction plant costs
9 to a person who holds an interest in a geothermal electricity
10 generation facility may be deducted from gross receipts if the
11 holder of the interest delivers an appropriate nontaxable
12 transaction certificate to the seller or lessor or provides
13 alternative evidence pursuant to Section 7-9-43 NMSA 1978.

14 B. Prior to July 1, 2031, the value of:

15 (1) tangible personal property installed as
16 part of, or services rendered in connection with, constructing
17 and equipping a geothermal electricity generation facility may
18 be deducted in computing compensating tax due;

19 (2) tangible personal property installed as
20 part of a system used for the distribution of electricity
21 generated from a geothermal electricity generation facility may
22 be deducted in computing compensating tax due; and

23 (3) construction plant costs purchased by a
24 person who holds an interest in a geothermal electricity
25 generation facility may be deducted in computing the

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1 compensating tax due.

2 C. A taxpayer allowed a deduction pursuant to this
3 section shall report the amount of the deduction separately in
4 a manner required by the department.

5 D. The department and the energy, minerals and
6 natural resources department shall compile an annual report on
7 the deductions provided by this section that shall include the
8 number of taxpayers that claimed the deductions, the aggregate
9 amount of deductions claimed and any other information
10 necessary to evaluate the effectiveness of the deductions. The
11 departments shall present the annual report to the revenue
12 stabilization and tax policy committee and the legislative
13 finance committee with an analysis of the effectiveness and
14 cost of the deductions.

15 E. As used in this section:

16 (1) "construction plant costs" means actual
17 expenditures for the development and construction of a
18 geothermal electricity generation facility, including the
19 drilling of wells to at least twelve thousand feet; permitting;
20 site characterization and assessment; engineering; design; site
21 and equipment acquisition; raw materials; and fuel supply
22 development used directly and exclusively in the facility;

23 (2) "geothermal electricity generation
24 facility" means a facility located in New Mexico that generates
25 electricity from geothermal resources and:

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1 (a) for a new facility, begins
2 construction on or after July 1, 2023; or

3 (b) for an existing facility, on or
4 after July 1, 2023, increases the amount of electricity
5 generated from geothermal resources the facility generated
6 prior to that date by at least one hundred percent;

7 (3) "geothermal resources" means the natural
8 heat of the earth in excess of two hundred fifty degrees
9 Fahrenheit or the energy, in whatever form, below the surface
10 of the earth present in, resulting from, created by or that may
11 be extracted from this natural heat in excess of two hundred
12 fifty degrees Fahrenheit and all minerals in solution or other
13 products obtained from naturally heated fluids, brines,
14 associated gases and steam, in whatever form, found below the
15 surface of the earth, but excluding oil, hydrocarbon gas and
16 other hydrocarbon substances and excluding the heating and
17 cooling capacity of the earth not resulting from the natural
18 heat of the earth in excess of two hundred fifty degrees
19 Fahrenheit as may be used for the heating and cooling of
20 buildings through an on-site geexchange heat pump or similar
21 on-site system; and

22 (4) "interest in a geothermal electricity
23 generation facility" means title to a geothermal electricity
24 generation facility; a leasehold interest in such facility; an
25 ownership interest in a business or entity that is taxed for

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1 federal income tax purposes as a partnership that holds title
2 to or a leasehold interest in such facility; or an ownership
3 interest, through one or more intermediate entities that are
4 each taxed for federal income tax purposes as a partnership, in
5 a business that holds title to or a leasehold interest in such
6 facility."

7 SECTION 5. APPLICABILITY.--The provisions of Sections 2
8 and 3 of this act apply to taxable years beginning on or after
9 January 1, 2023.

10 SECTION 6. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2023.