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SENATE BILL 18

**54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

INTRODUCED BY

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AN ACT

RELATING TO TAXATION; ENACTING THE RENEWABLE ENERGY PRODUCTION  
TAX ACT; IMPOSING AN EXCISE TAX ON ELECTRICITY GENERATED FROM  
RENEWABLE ENERGY RESOURCES; DISTRIBUTING REVENUE FROM THE TAX  
TO THE EARLY CHILDHOOD PROGRAM FUND; CREATING THE EARLY  
CHILDHOOD PROGRAM FUND.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 5 of this act may be cited as the "Renewable Energy  
Production Tax Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Renewable Energy Production Tax Act:

A. "department" means the taxation and revenue  
department;

B. "generating facility" means a facility that

1 produces electricity by the use of renewable energy resources;  
2 and

3 C. "renewable energy resource" means solar, wind,  
4 hydropower, geothermal or biomass used as an energy resource.  
5 As used in this subsection, "biomass" includes agriculture or  
6 animal waste, small diameter timber, salt cedar and other  
7 phreatophyte or woody vegetation removed from river basins or  
8 watersheds in New Mexico, landfill gas and anaerobically  
9 digested waste biomass.

10 SECTION 3. [NEW MATERIAL] IMPOSITION OF TAX--RATE--  
11 TAXABLE VALUE--DENOMINATION AS "RENEWABLE ENERGY PRODUCTION  
12 TAX".--

13 A. For the privilege of generating electricity from  
14 renewable energy resources, there is imposed on a generating  
15 facility an excise tax on the taxable value of electricity  
16 generated from renewable energy resources in this state.

17 B. The rate of the renewable energy production tax  
18 shall be two and one-half percent of the taxable value of each  
19 megawatt-hour, or portion thereof, of electricity generated  
20 from renewable energy resources in this state.

21 C. The taxable value for electricity generated from  
22 renewable energy resources shall be the wholesale value of  
23 electricity established by the United States energy information  
24 administration for the southwest regional wholesale market.  
25 The taxable event occurs when the electricity is generated.

1 The wholesale value shall be the monthly average wholesale  
2 price for the month in which the taxable event occurs.

3 D. The tax imposed by this section shall be known  
4 as the "renewable energy production tax".

5 SECTION 4. [NEW MATERIAL] EXEMPTIONS.--

6 A. Exempted from the renewable energy production  
7 tax is electricity produced from renewable energy resources by:

8 (1) the United States or any agency,  
9 department or instrumentality thereof;

10 (2) the state of New Mexico or any political  
11 subdivision thereof;

12 (3) any Indian nation, tribe or pueblo from  
13 activities or transactions occurring on its sovereign  
14 territory; or

15 (4) any foreign nation or agency,  
16 instrumentality or political subdivision thereof, but only when  
17 required by a treaty in force to which the United States is a  
18 party.

19 B. Exempted from the renewable energy production  
20 tax is electricity produced from renewable energy resources for  
21 the personal consumption of the producer, including any excess  
22 production of electricity not consumed by the producer that  
23 does not exceed five hundred kilowatt-hours in a twenty-four-  
24 hour period.

25 SECTION 5. [NEW MATERIAL] DATE PAYMENT DUE.--The tax

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1 imposed by the Renewable Energy Production Tax Act is to be  
2 paid on or before the twenty-fifth day of the month following  
3 the month in which the taxable event occurs.

4 SECTION 6. Section 7-1-2 NMSA 1978 (being Laws 1965,  
5 Chapter 248, Section 2, as amended by Laws 2019, Chapter 47,  
6 Section 1 and by Laws 2019, Chapter 53, Section 10 and also by  
7 Laws 2019, Chapter 270, Section 1) is amended to read:

8 "7-1-2. APPLICABILITY.--The Tax Administration Act  
9 applies to and governs:

10 A. the administration and enforcement of the  
11 following taxes or tax acts as they now exist or may hereafter  
12 be amended:

- 13 (1) Income Tax Act;  
14 (2) Withholding Tax Act;  
15 (3) Oil and Gas Proceeds and Pass-Through  
16 Entity Withholding Tax Act;  
17 (4) Gross Receipts and Compensating Tax Act,  
18 Interstate Telecommunications Gross Receipts Tax Act and Leased  
19 Vehicle Gross Receipts Tax Act;  
20 (5) Liquor Excise Tax Act;  
21 (6) Local Liquor Excise Tax Act;  
22 (7) any municipal local option gross receipts  
23 tax or municipal compensating tax;  
24 (8) any county local option gross receipts tax  
25 or county compensating tax;

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- 1 (9) Special Fuels Supplier Tax Act;
- 2 (10) Gasoline Tax Act;
- 3 (11) petroleum products loading fee, which fee
- 4 shall be considered a tax for the purpose of the Tax
- 5 Administration Act;
- 6 (12) Alternative Fuel Tax Act;
- 7 (13) Cigarette Tax Act;
- 8 (14) Estate Tax Act;
- 9 (15) Railroad Car Company Tax Act;
- 10 (16) Investment Credit Act, rural job tax
- 11 credit, Laboratory Partnership with Small Business Tax Credit
- 12 Act, Technology Jobs and Research and Development Tax Credit
- 13 Act, Film Production Tax Credit Act, Affordable Housing Tax
- 14 Credit Act and high-wage jobs tax credit;
- 15 (17) Corporate Income and Franchise Tax Act;
- 16 (18) Uniform Division of Income for Tax
- 17 Purposes Act;
- 18 (19) Multistate Tax Compact;
- 19 (20) Tobacco Products Tax Act;
- 20 (21) the telecommunications relay service
- 21 surcharge imposed by Section 63-9F-11 NMSA 1978, which
- 22 surcharge shall be considered a tax for the purposes of the Tax
- 23 Administration Act; ~~[and]~~
- 24 (22) the Insurance Premium Tax Act;
- 25 (23) the Health Care Quality Surcharge Act;

1 and

2 (24) the Renewable Energy Production Tax Act;

3 B. the administration and enforcement of the  
4 following taxes, surtaxes, advanced payments or tax acts as  
5 they now exist or may hereafter be amended:

6 (1) Resources Excise Tax Act;

7 (2) Severance Tax Act;

8 (3) any severance surtax;

9 (4) Oil and Gas Severance Tax Act;

10 (5) Oil and Gas Conservation Tax Act;

11 (6) Oil and Gas Emergency School Tax Act;

12 (7) Oil and Gas Ad Valorem Production Tax Act;

13 (8) Natural Gas Processors Tax Act;

14 (9) Oil and Gas Production Equipment Ad  
15 Valorem Tax Act;

16 (10) Copper Production Ad Valorem Tax Act;

17 (11) any advance payment required to be made  
18 by any act specified in this subsection, which advance payment  
19 shall be considered a tax for the purposes of the Tax  
20 Administration Act;

21 (12) Enhanced Oil Recovery Act;

22 (13) Natural Gas and Crude Oil Production  
23 Incentive Act; and

24 (14) intergovernmental production tax credit  
25 and intergovernmental production equipment tax credit;

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1 C. the administration and enforcement of the  
2 following taxes, surcharges, fees or acts as they now exist or  
3 may hereafter be amended:

4 (1) Weight Distance Tax Act;

5 (2) the workers' compensation fee authorized  
6 by Section 52-5-19 NMSA 1978, which fee shall be considered a  
7 tax for purposes of the Tax Administration Act;

8 (3) Uniform Unclaimed Property Act (1995);

9 (4) 911 emergency surcharge and the network  
10 and database surcharge, which surcharges shall be considered  
11 taxes for purposes of the Tax Administration Act;

12 (5) the solid waste assessment fee authorized  
13 by the Solid Waste Act, which fee shall be considered a tax for  
14 purposes of the Tax Administration Act;

15 (6) the water conservation fee imposed by  
16 Section 74-1-13 NMSA 1978, which fee shall be considered a tax  
17 for the purposes of the Tax Administration Act; and

18 (7) the gaming tax imposed pursuant to the  
19 Gaming Control Act; and

20 D. the administration and enforcement of all other  
21 laws, with respect to which the department is charged with  
22 responsibilities pursuant to the Tax Administration Act, but  
23 only to the extent that the other laws do not conflict with the  
24 Tax Administration Act."

25 SECTION 7. A new section of the Tax Administration Act is

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1 enacted to read:

2 "[NEW MATERIAL] DISTRIBUTION--RENEWABLE ENERGY PRODUCTION  
3 TAX.--A distribution pursuant to Section 7-1-6.1 NMSA 1978  
4 shall be made to the early childhood program fund equal to the  
5 net receipts attributable to the renewable energy production  
6 tax."

7 SECTION 8. [NEW MATERIAL] EARLY CHILDHOOD PROGRAM FUND.--  
8 The "early childhood program fund" is created as a nonreverting  
9 fund in the state treasury. The fund consists of  
10 distributions, appropriations, gifts, grants, donations and  
11 income from investment of the fund. The early childhood  
12 education and care department shall administer the fund. Money  
13 in the fund is subject to appropriation by the legislature for  
14 early childhood education and care services and programs.  
15 Expenditures from the fund shall be by warrant of the secretary  
16 of finance and administration pursuant to vouchers signed by  
17 the secretary of early childhood education and care or the  
18 secretary's authorized representative.

19 SECTION 9. APPLICABILITY.--The provisions of this act  
20 apply to the production of electricity from renewable energy  
21 resources beginning on and after January 1, 2021.

22 SECTION 10. EFFECTIVE DATE.--The effective date of the  
23 provisions of this act is January 1, 2021.