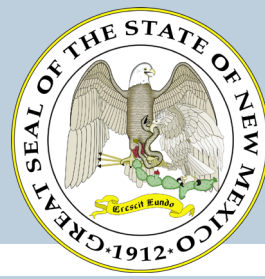


# The Hydrogen Hub Act



## Why hydrogen?

The need for clean, domestically produced energy has never been greater. Climate experts agree that the energy challenges facing the world cannot be solved by any single approach – that’s why New Mexico is developing a portfolio of clean energy solutions: solar, wind, geothermal and now hydrogen.

Hydrogen is already a global multi-billion-dollar industry and integral to decarbonizing transportation, manufacturing, the power sector and more. Around the world, government and industry are partnering to produce, distribute, and use hydrogen to reduce greenhouse gas emissions. While expanding wind and solar energy will continue to reduce emissions from businesses, homes and passenger vehicles, hydrogen can reduce emissions from industrial sectors (i.e. cement manufacturing, chemical manufacturing, global logistics, mining, petroleum refining,

transportation industry (i.e. aviation, tractor-trailer trucks, trains). Emissions from these sources often disproportionately affect frontline and environmental justice communities. Using hydrogen to decarbonize these sources would reduce and/or eliminate emissions of harmful air pollutants that adversely affect human health (i.e. particulate matter like soot, heavy metals like lead and cadmium, organic carcinogens like benzene and formaldehyde).

The Hydrogen Hub Act will incentivize the production, distribution and use of low carbon-intensity hydrogen. The Act will drive technological innovation, create clean energy jobs, and diversify our economy – all while accelerating New Mexico’s efforts to reach net-zero carbon emissions by no later than 2050.

## Highlights of the Hydrogen Hub Act



**Provides tax incentives to attract capital investment in clean hydrogen infrastructure across multiple sectors of the economy**

- ✓ A comprehensive menu of tax credits and deductions to incentivize the production, distribution, and use of clean hydrogen.
- ✓ Income tax credits equal to 5 percent of eligible costs related to hydrogen electric generation and production, as well as gross receipts tax deductions related to hydrogen production, distribution, equipment, and refueling stations.



**Aggressively reduces carbon emissions in less than a decade while protecting natural resources**

- ✓ Tax incentives are only available for hydrogen produced below the carbon intensity levels within the Act.
- ✓ The carbon intensity limit in the Act decreases every two years.
- ✓ Tax incentives not available for hydrogen made using fresh water.



**Creates a safe, thriving and equitable clean hydrogen workforce**

- ✓ Requires the adoption of safety standards to protect workers, communities and the industry.
- ✓ Will establish workforce training programs in New Mexico.
- ✓ Ensures communities in hydrogen hub areas reap the most benefits from the industry.

This stakeholder discussion draft of the New Mexico Hydrogen Hub Act is intended for review and comment. Please provide suggested edits and/or feedback to [hydrogen.feedback@state.nm.us](mailto:hydrogen.feedback@state.nm.us).

1 **Title:** Hydrogen Hub Act

2 **Section 1. Short Title.** Sections 1 through 10 of this Act may be cited as the “Hydrogen Hub  
3 Act.”

4 **Section 2. Definitions.** As used in the hydrogen hub act.

- 5 1. “carbon intensity” means the quantity of carbon dioxide-equivalent produced at the site  
6 of production per kilogram of hydrogen produced, expressed in grams of carbon dioxide  
7 equivalent per megajoule;  
8
- 9 2. “clean hydrogen” means hydrogen as defined in Section 3 of this Act. Clean hydrogen  
10 production is not a form of processing of natural resources for purposes of interpreting  
11 the Local Economic Development Act, and clean hydrogen production companies are  
12 “qualifying entities” for purposes of the Local Economic Development Act.  
13
- 14 3. “consumer” means a natural person, who is a resident of New Mexico, and who  
15 purchases, leases or otherwise contracts for products, goods or services within New  
16 Mexico.  
17
- 18 4. “distribution” means the transportation of hydrogen to any point between the point of  
19 production and any consumer or other user.  
20
- 21 5. “diversity” means the cultural, ethnic, economic, gender-based, and geographic  
22 diversity of the state of New Mexico;  
23
- 24 6. “fresh water” means groundwater or surface water containing less than 1,000  
25 milligrams per liter of dissolved solids.  
26
- 27 7. “hydrogen production cycle emissions” means the aggregate quantity of direct and  
28 indirect greenhouse gas emissions across the production cycle of the hydrogen,  
29 including delivery and use of the feedstocks, the feedstocks, and production method,  
30 where the mass values for all greenhouse gases are adjusted to account for their  
31 relative global warming potential;  
32
- 33 8. “hydrogen” means the gaseous chemical element designated atomic number one that  
34 can condense to a liquid or combine with other elements to form a solid or other liquids  
35 or gases. For purposes of this act, hydrogen shall be measured in kilograms, and energy  
36 units, heating values or any other form of measurement shall be converted to mass and

1 expressed in kilograms.

2  
3 9. “New Mexico Energy, Minerals and Natural Resources Department” means the  
4 secretary or any employee of that department exercising authority lawfully delegated to  
5 that employee by the secretary.

6  
7 10. “New Mexico Environment Department” means the secretary or any employee of that  
8 department exercising authority lawfully delegated to that employee by the secretary.

9  
10 11. “qualifying hydrogen” means hydrogen as defined in Section 3 of this Act. Qualifying  
11 hydrogen production is not a form of processing of natural resources for purposes of  
12 interpreting the Local Economic Development Act, and qualifying hydrogen production  
13 companies are “qualifying entities” for purposes of the Local Economic Development  
14 Act.

15  
16 12. “New Mexico taxation and revenue department” means the secretary or any employee  
17 of that department exercising authority lawfully delegated to that employee by the  
18 secretary.

19 **Section 3. Hydrogen Hub Act – Standards.**

20 1. For the purpose of compliance with this Act, qualifying hydrogen and clean hydrogen  
21 shall meet the following carbon intensities:

- 22  
23 a. Upon the effective date of the Act, qualifying hydrogen means hydrogen  
24 produced with a carbon intensity equal to or less than nine kilograms of carbon  
25 dioxide equivalent per kilogram of hydrogen produced. As of July 1, 2024,  
26 qualifying hydrogen means hydrogen produced with a carbon intensity equal to  
27 or less than seven kilograms of carbon dioxide equivalent per kilogram of  
28 hydrogen produced. As of July 1, 2026, qualifying hydrogen means hydrogen  
29 produced with a carbon intensity equal to or less than five kilograms of carbon  
30 dioxide equivalent per kilogram of hydrogen produced. As of July 1, 2028,  
31 qualifying hydrogen means hydrogen produced with a carbon intensity equal to  
32 or less than three kilograms of carbon dioxide equivalent per kilogram of  
33 hydrogen produced. After July 1, 2030, the secretary of the Environment  
34 Department may, through administrative rule, lower the carbon intensity of  
35 qualifying hydrogen for a period of two years. Hydrogen meeting the definition  
36 set forth herein shall qualify for certain incentives as set forth in this Act  
37 provided the hydrogen molecule is not directly derived from fresh water.

- 1           b. Upon the effective date of the Act, clean hydrogen means the lesser of hydrogen  
2           produced with a carbon intensity of at least one percent below the current  
3           carbon intensity for qualifying hydrogen or hydrogen meeting the standards for  
4           clean hydrogen developed pursuant to Section 822 of the Energy Policy Act of  
5           2005, 42 U.S.C. 16151 et seq., as amended by the Infrastructure Investment and  
6           Jobs Act provided the hydrogen molecule is not directly derived from fresh  
7           water.  
8
- 9           2. For the purpose of compliance with this Act, qualifying hydrogen and clean hydrogen  
10          projects must:  
11
- 12           a. Negotiate project-labor agreements that include provisions requiring the parties  
13           to the agreement to work together to establish diversity threshold requirements  
14           and to ensure best efforts to meet diversity targets, improve diversity at the  
15           applicable job site, create diverse apprenticeship opportunities, and create  
16           opportunities to employ workers from disproportionately impacted communities  
17           as defined in the Sustainable Economy Task Force (NMSA 1978 9-15-58) for:  
18
- 19                   i. Construction activities associated with hydrogen production facilities;  
20                   and  
21
- 22                   ii. Operation and management of a hydrogen production facility.  
23
- 24           b. Pay not less than the prevailing wage to the employees of the hydrogen  
25           production facility and the employees of contractors engaged in construction  
26           activities associated with the hydrogen production facility.

#### 27   **Section 4. Hydrogen Hub Act – Natural Gas Utilities.**

- 28   1. Gas utilities shall use available tools, including, without limitation, hydrogen to achieve  
29   greenhouse gas emission reductions, cost-effectiveness, and equity. The incentives available  
30   under this act shall be available to all persons, including Public Utilities (as that term is  
31   defined in NMSA 1978, Section 62-3-3), for the development of or use of hydrogen in New  
32   Mexico. Such development may include the following:  
33
- 34           A. Construction of hydrogen production from any fuel source, consistent with  
35           utilizing New Mexico’s abundant natural resources and resulting in reducing overall  
          emissions intensity of the fuel;

1 B. Construction of dedicated hydrogen pipeline infrastructure to serve users of  
2 hydrogen in New Mexico including but not limited to residential and business use,  
3 power generation, transportation, manufacturing, mining, etc.;

4 C. Construction of facilities that result in the blending of hydrogen into existing  
5 natural gas transmission and distribution systems that serve residential, commercial,  
6 and industrial customers in New Mexico; and

7 D. Construction of dedicated pipeline infrastructure to export hydrogen to  
8 jurisdictions outside New Mexico.

### 9 **Section 5. Hydrogen Hub Act – Additional Requirements**

10 1. The New Mexico energy, minerals and natural resources shall evaluate existing laws and  
11 regulations to determine if additional legislation or regulation is necessary related to the  
12 production or distribution of hydrogen and the following issues:

- 13 a. Carbon capture and sequestration, including, without limitation, questions  
14 related to long-term liability and responsibility for sequestered carbon and the  
15 regulation of any underground injection of same;
- 16 b. Enhanced oil recovery; and,
- 17 c. Any other issues that the New Mexico energy, minerals and natural resources  
18 deems necessary or appropriate.

19  
20 2. The New Mexico energy, minerals and natural resources shall develop such  
21 recommendations in consultation with:

- 22 a. the New Mexico Environment Department;
- 23 b. the state land office;
- 24 c. the united states department of interior, bureau of land management;
- 25 d. the New Mexico public regulation commission, pipeline safety bureau;
- 26 e. New Mexico nations, tribes; and
- 27 f. other stakeholders the New Mexico energy, minerals and natural resources  
28 determines necessary or appropriate.

29  
30 3. Such recommendations, if any, shall be provide to the legislature, including any  
31 proposed legislation, no later than December 2, 2022.

### 32 **Section 6. Hydrogen Hub Act – Safety Standards and Worker Training.**

33 1. Safety standards regarding the production, transportation and use of hydrogen shall be  
34 reviewed and, as necessary and consistent with the purposes of this act, amended or  
35 adopted by state agencies within their respective areas of jurisdiction, including, without  
36 limitation, the following agencies: the New Mexico Regulation and Licensing Department,

1 Construction Industries Division; the Department of Homeland Security and Emergency  
2 Management, State Fire Marshal; and the Energy, Minerals and Natural Resources  
3 Department, Energy Conservation and Management Division. Agencies shall take into  
4 consideration applicable adopted international and national codes, regulations and  
5 standards, including, without limitation, those codes, regulations and standards from the  
6 following: American Institute of Aeronautics and Astronautics; American National Standards  
7 Institute; American Society of Mechanical Engineers; ASTM International; Compressed Gas  
8 Association; CSA America; International Code Council’s International Building, Fire,  
9 Mechanical, and Fuel Gas Codes; National Fire Protection Association NFPA2 Hydrogen  
10 Technologies Code; National Fire Protection Association Fire NFPA1 Uniform Fire Code;  
11 Society of Automotive Engineers; and Underwriters Laboratories.

12

13 2. Placeholder for academic institution funding to develop and promote workforce training to  
14 support and expand the clean hydrogen workforce;

15 **Section 7. Hydrogen Hub Act – Amended State Laws – Tax and Revenue Department**  
16 **Qualifying and Clean Hydrogen Tax Credits and Deductions.**

17 **PIT Credit for Electric Generation Equipment (based on 7-2-18.25)**

18 **New section 7-2-xxx**

19 A. The tax credit that may be claimed pursuant to this section may be referred to as the  
20 “hydrogen energy income tax credit”.

21 B. A taxpayer who holds an interest in a qualified hydrogen electric generating facility  
22 located in New Mexico and who files an individual New Mexico income tax return may claim an  
23 hydrogen energy income tax credit in an amount equal to five percent of the eligible generation  
24 plant costs of a qualified hydrogen electric generating facility, subject to the limitations  
25 imposed in this section. The tax credit claimed shall be verified and approved by the taxation  
26 and revenue department.

27 C. An entity that holds an interest in a qualified hydrogen electric generating facility may  
28 request a certificate of eligibility from the department of environment to enable the requester  
29 to apply for a hydrogen energy income tax credit. The department of environment:

30 (1) shall determine if the facility is a qualified hydrogen electric generating facility;

31 (2) shall require that the requester provide the department of environment with the  
32 information necessary to assess whether the requester's facility meets the criteria to be  
33 a qualified hydrogen electric generating facility;

1 (3) shall issue a certificate to the requester stating that the facility is or is not a qualified  
2 hydrogen electric generating facility within one hundred eighty days after receiving all  
3 information necessary to make a determination;

4 (4) shall:

5 (a) issue a schedule of fees in which no fee exceeds one hundred fifty thousand  
6 dollars (\$150,000); and

7 (b) deposit fees collected pursuant to this paragraph in the state air quality  
8 permit fund created pursuant to Section 74-2-15 NMSA 1978; and

9 (5) shall report annually to the revenue stabilization and tax policy committee  
10 information that will allow the committee to analyze the effectiveness of the hydrogen  
11 energy tax credit, including the identity of qualified hydrogen electric generating  
12 facilities, the energy production means used, and the amount of emissions identified in  
13 this section reduced and removed by those qualified generating facilities.

14 D. A taxpayer who holds an interest in a qualified hydrogen electric generating facility may  
15 be allocated the right to claim the hydrogen energy income tax credit without regard to the  
16 taxpayer's relative interest in the qualified hydrogen electric generating facility if:

17 (1) the business entity making the allocation provides notice of the allocation and the  
18 taxpayer's interest in the qualified hydrogen electric generating facility to the  
19 department on forms prescribed by the department;

20 (2) allocations to the taxpayer and all other taxpayers allocated a right to claim the  
21 hydrogen energy income tax credit shall not exceed one hundred percent of the  
22 hydrogen energy income tax credit allowed for the qualified hydrogen electric  
23 generating facility; and

24 (3) the taxpayer and all other taxpayers allocated a right to claim the hydrogen energy  
25 income tax credits collectively own at least a five percent interest in the qualified  
26 hydrogen electric generating facility.

27 E. To claim the hydrogen energy income tax credit, a taxpayer shall submit with the  
28 taxpayer's New Mexico income tax return a certificate of eligibility from the department of  
29 environment stating that the taxpayer may be eligible for hydrogen energy income tax credits.  
30 The taxation and revenue department shall provide credit claims forms. A credit claim form  
31 shall accompany any return in which the taxpayer wishes to apply for a certified credit, and the  
32 claim shall specify the amount of credit intended to apply to each return. The taxation and  
33 revenue department shall determine the amount of hydrogen energy income tax credit for  
34 which the taxpayer may apply.

1 F. Upon receipt of the notice of an allocation of the right to claim all or a portion of the  
2 hydrogen energy income tax credit, the department shall verify the allocation due to the  
3 recipient.

4 G. Married persons who file separate returns for a taxable year in which they could have  
5 filed a joint return may each claim only one-half of the hydrogen energy income tax credit that  
6 would have been allowed on a joint return.

7 H. If the hydrogen energy income tax credit exceeds the amount of the taxpayer's tax  
8 liabilities pursuant to the Income Tax Act in the taxable year in which it is claimed, the balance  
9 of the unpaid credit may be carried forward for seven years and claimed as a hydrogen energy  
10 income tax credit. The hydrogen energy income tax credit is not refundable.

11 I. A taxpayer claiming the hydrogen energy income tax credit pursuant to this section is  
12 ineligible for credits pursuant to the Investment Credit Act or any other credit that may be  
13 taken pursuant to the Income Tax Act or credits that may be taken against the gross receipts  
14 tax, compensating tax or withholding tax for the same expenditures.

15 L. As used in this section:

16 (1) "eligible generation plant costs" means expenditures for the development and  
17 construction of a qualified hydrogen electric generating facility, including permitting;  
18 site characterization and assessment; engineering; design; carbon dioxide capture,  
19 treatment, compression, transportation and sequestration; site and equipment  
20 acquisition; and fuel supply development used directly and exclusively in a qualified  
21 hydrogen electric generating facility;

22 (2) "entity" means an individual, estate, trust, receiver, cooperative association, club,  
23 corporation, company, firm, partnership, limited liability company, limited liability  
24 partnership, joint venture, syndicate or other association or a gas, water or electric  
25 utility owned or operated by a county or municipality;

26 (3) "hydrogen electric generating facility" means a facility with a name-plate capacity of  
27 one megawatt or more that uses hydrogen to generate electricity, including a facility  
28 that uses energy to generate electricity from a preexisting electric generating facility  
29 using other fuels in part;

30 (4) "interest in a qualified hydrogen electric generating facility" means title to a qualified  
31 hydrogen electric generating facility; a leasehold interest in a qualified hydrogen electric  
32 generating facility; an ownership interest in a business or entity that is taxed for federal  
33 income tax purposes as a partnership that holds title to or a leasehold interest in a  
34 qualified hydrogen electric generating facility; or an ownership interest, through one or  
35 more intermediate entities that are each taxed for federal income tax purposes as a



1 partnership, in a business that holds title to or a leasehold interest in a qualified  
2 hydrogen electric generating facility;

3 (5) “name-plate capacity” means the maximum rated output of the facility measured as  
4 alternating current or the equivalent direct current measurement;

5 (8) “qualified hydrogen electric generating facility” means a facility that begins  
6 construction not later than December 31, 2032.

## 7 **PIT Credit for Hydrogen Production Equipment**

### 8 **New Section 7-2-xxx**

9 A. The tax credit that may be claimed pursuant to this section may be referred to as the  
10 “hydrogen production income tax credit”.

11 B. (1) A taxpayer who holds an interest in a certified clean hydrogen production facility  
12 located in New Mexico and who files an individual New Mexico income tax return may claim a  
13 hydrogen production income tax credit in an amount equal to five percent of the eligible  
14 production plant costs of a certified clean hydrogen production facility, subject to the limitations  
15 imposed in this section. The tax credit claimed shall be verified and approved by the taxation and  
16 revenue department.

17 (2) A taxpayer who holds an interest in a certified qualifying hydrogen production facility  
18 located in New Mexico and who filed an individual New Mexico income tax return may claim a  
19 hydrogen production income tax credit in an amount equal to three percent of the eligible  
20 production plant costs of a certified qualifying hydrogen production facility, subject to the  
21 limitations imposed in this section. The tax credit claimed shall be verified and approved by the  
22 taxation and revenue department.

23 C. An entity that holds an interest in a certified hydrogen production facility may request a  
24 certificate of eligibility from the department of environment to enable the requester to apply for  
25 a hydrogen production income tax credit. The department of environment:

26 (1) shall determine if the facility is a certified clean or qualifying hydrogen production  
27 facility;

28 (2) shall require that the requester provide the department of environment with the  
29 information necessary to assess whether the requester's facility meets the criteria to be  
30 a certified clean or qualifying hydrogen production facility;

31 (3) shall issue a certificate to the requester stating that the facility is or is not a certified  
32 clean or qualifying hydrogen production facility within one hundred eighty days after  
33 receiving all information necessary to make a determination;

- 1 (4) shall:
- 2 (a) issue a schedule of fees in which no fee exceeds one hundred fifty thousand  
3 dollars (\$150,000); and
- 4 (b) deposit fees collected pursuant to this paragraph in the state climate fund; and
- 5 (5) shall report annually to the revenue stabilization and tax policy committee information  
6 that will allow the committee to analyze the effectiveness of the hydrogen production  
7 income tax credits, including the identity of certified hydrogen production facilities, the  
8 amount of emissions identified in this section produced by those certified hydrogen  
9 production facilities, and whether any requests for certificates of eligibility could not be  
10 approved due to program limits.
- 11 D. A taxpayer who holds an interest in a certified hydrogen production facility may be  
12 allocated the right to claim the hydrogen production income tax credit without regard to the  
13 taxpayer's relative interest in the certified hydrogen production facility if:
- 14 (1) the business entity making the allocation provides notice of the allocation and the  
15 taxpayer's interest in the certified hydrogen production facility to the department on  
16 forms prescribed by the department;
- 17 (2) allocations to the taxpayer and all other taxpayers allocated a right to claim the  
18 hydrogen production income tax credit shall not exceed one hundred percent of the  
19 hydrogen production income tax credit allowed for the certified hydrogen production  
20 facility; and
- 21 (3) the taxpayer and all other taxpayers allocated a right to claim the hydrogen production  
22 income tax credits collectively own at least a five percent interest in the certified  
23 hydrogen production facility.
- 24 E. To claim the hydrogen production income tax credit, a taxpayer shall submit with the  
25 taxpayer's New Mexico income tax return a certificate of eligibility from the department of  
26 environment stating that the taxpayer may be eligible for hydrogen production income tax  
27 credits. The taxation and revenue department shall provide credit claims forms. A credit claim  
28 form shall accompany any return in which the taxpayer wishes to apply for an approved credit,  
29 and the claim shall specify the amount of credit intended to apply to each return. The taxation  
30 and revenue department shall determine the amount of hydrogen production income tax credit  
31 for which the taxpayer may apply.
- 32 F. Upon receipt of the notice of an allocation of the right to claim all or a portion of the  
33 hydrogen production income tax credit, the department shall verify the allocation due to the  
34 recipient.

1 G. Married persons who file separate returns for a taxable year in which they could have  
2 filed a joint return may each claim only one-half of the hydrogen production income tax credit  
3 that would have been allowed on a joint return.

4 I. If the hydrogen production income tax credit exceeds the amount of the taxpayer's tax  
5 liabilities pursuant to the Income Tax Act in the taxable year in which it is claimed, the balance of  
6 the unpaid credit may be carried forward for seven years and claimed as a hydrogen production  
7 income tax credit. The hydrogen production income tax credit is not refundable.

8 J. A taxpayer claiming the hydrogen production income tax credit pursuant to this section  
9 is ineligible for credits pursuant to the Investment Credit Act or any other credit that may be  
10 taken pursuant to the Income Tax Act or credits that may be taken against the gross receipts tax,  
11 compensating tax or withholding tax for the same expenditures.

12 L. As used in this section:

13 (1) "certified hydrogen production facility" means a hydrogen production facility that  
14 begins construction not later than December 31, 2032.

15 (2) "clean hydrogen production facility" means a facility that produces clean hydrogen, as  
16 that term is defined in Section [x] of the Hydrogen Hub Act.

17 (3) "eligible production plant costs" means expenditures for the development and  
18 construction of a qualified hydrogen production facility, including permitting; lease  
19 payments; site characterization and assessment; engineering; design; carbon dioxide  
20 capture, treatment, compression, transportation and sequestration; site and equipment  
21 acquisition; and fuel supply development used directly and exclusively in a qualified  
22 hydrogen production facility;

23 (4) "entity" means an individual, estate, trust, receiver, cooperative association, club,  
24 corporation, company, firm, partnership, limited liability company, limited liability  
25 partnership, joint venture, syndicate or other association or a gas, water or electric utility  
26 owned or operated by a county or municipality;

27 (5) "hydrogen production facility" means a clean hydrogen production facility or a  
28 qualifying hydrogen production facility;

29 (6) "interest in a certified hydrogen production facility" means title to a certified hydrogen  
30 production facility; a lessee's interest in a certified hydrogen production facility; and a  
31 county or municipality's interest in a certified hydrogen production facility when the  
32 county or municipality issues an industrial revenue bond for construction of the certified  
33 hydrogen production facility;

1 (7) “qualifying hydrogen production facility” means a facility that produces qualifying  
2 hydrogen, as that term is defined in Section [x] of the Hydrogen Hub Act.

3 (8) “sequester” means to store, or chemically convert, carbon dioxide in a manner that  
4 prevents its release into the atmosphere and may include the use of geologic formations  
5 and coaled methane or natural gas recovery techniques.

## 6 **CIT Credit for Electric Generation Equipment**

### 7 **New Section 7-2A-xxx**

8 A. The tax credit that may be claimed pursuant to this section may be referred to as the  
9 “hydrogen energy corporate income tax credit”.

10 B. A taxpayer that holds an interest in a qualified hydrogen electric generating facility  
11 located in New Mexico and that files a New Mexico corporate income tax return may claim a  
12 hydrogen energy corporate income tax credit in an amount equal to five percent of the eligible  
13 generation plant costs of a qualified hydrogen electric generating facility, subject to the  
14 limitations imposed in this section. The tax credit claimed shall be verified and approved by the  
15 taxation and revenue department.

16 C. An entity that holds an interest in a qualified hydrogen electric generating facility may  
17 request a certificate of eligibility from the department of environment to enable the requester  
18 to apply for a hydrogen energy corporate income tax credit. The department of environment:

19 (1) shall determine if the facility is a certified hydrogen electric generating facility;

20 (2) shall require that the requester provide the department of environment with the  
21 information necessary to assess whether the requester's facility meets the criteria to be  
22 a qualified hydrogen electric generating facility;

23 (3) shall issue a certificate to the requester stating that the facility is or is not a qualified  
24 hydrogen electric generating facility within one hundred eighty days after receiving all  
25 information necessary to make a determination;

26 (4) shall:

27 (a) issue a schedule of fees in which no fee exceeds one hundred fifty thousand  
28 dollars (\$150,000); and

29 (b) deposit fees collected pursuant to this paragraph in the state climate fund;  
30 and

31 (5) shall report annually to the revenue stabilization and tax policy committee  
32 information that will allow the committee to analyze the effectiveness of the hydrogen

1 energy corporate income tax credits, including the identity of qualified hydrogen electric  
2 generating facilities, the energy production means used, the amount of emissions  
3 identified in this section produced by those qualified hydrogen electric generating  
4 facilities, and whether any requests for certificates of eligibility could not be approved  
5 due to program limits.

6 D. A taxpayer that holds an interest in a qualified hydrogen electric generating facility may  
7 be allocated the right to claim the hydrogen energy corporate income tax credit without regard  
8 to the taxpayer's relative interest in the qualified hydrogen electric generating facility if:

9 (1) the business entity making the allocation provides notice of the allocation and the  
10 taxpayer's interest in the qualified hydrogen electric generating facility to the  
11 department on forms prescribed by the department;

12 (2) allocations to the taxpayer and all other taxpayers allocated a right to claim the  
13 hydrogen energy corporate income tax credit shall not exceed one hundred percent of  
14 the hydrogen energy corporate income tax credit allowed for the qualified hydrogen  
15 electric generating facility; and

16 (3) the taxpayer and all other taxpayers allocated a right to claim the hydrogen energy  
17 corporate income tax credits collectively own at least a five percent interest in the  
18 qualified hydrogen electric generating facility.

19 E. Upon receipt of the notice of an allocation of the right to claim all or a portion of the  
20 hydrogen energy corporate income tax credit, the department shall verify the allocation due to  
21 the recipient.

22 F. To claim the hydrogen energy corporate income tax credit, a taxpayer shall submit with  
23 the taxpayer's New Mexico corporate income tax return a certificate of eligibility from the  
24 department of environment stating that the taxpayer may be eligible for hydrogen energy  
25 corporate income tax credits. The taxation and revenue department shall provide credit claim  
26 forms. A credit claim form shall accompany any return in which the taxpayer wishes to apply for  
27 an approved credit, and the claim shall specify the amount of credit intended to apply to each  
28 return. The taxation and revenue department shall determine the amount of hydrogen energy  
29 corporate income tax credit for which the taxpayer may apply.

30 G. If the hydrogen energy corporate income tax credit exceeds the amount of the  
31 taxpayer's tax liabilities pursuant to the Corporate Income and Franchise Tax Act in the taxable  
32 year in which it is claimed, the balance of the unpaid credit may be carried forward for seven  
33 years and claimed as a hydrogen energy corporate income tax credit. The hydrogen energy  
34 corporate income tax credit is not refundable.

1 H. A taxpayer claiming the hydrogen energy corporate income tax credit pursuant to this  
2 section is ineligible for credits pursuant to the Investment Credit Act or any other credit that  
3 may be taken pursuant to the Corporate Income and Franchise Tax Act or credits that may be  
4 taken against the gross receipts tax, compensating tax or withholding tax for the same  
5 expenditures.

6 K. As used in this section:

7 (1) "eligible generation plant costs" means expenditures for the development and  
8 construction of a qualified hydrogen electric generating facility, including permitting;  
9 lease payments; site characterization and assessment; engineering; design; carbon  
10 dioxide capture, treatment, compression, transportation and sequestration; site and  
11 equipment acquisition; and fuel supply development used directly and exclusively in a  
12 qualified generating facility;

13 (2) "entity" means an individual, estate, trust, receiver, cooperative association, club,  
14 corporation, company, firm, partnership, limited liability company, limited liability  
15 partnership, joint venture, syndicate or other association or a gas, water or electric  
16 utility owned or operated by a county or municipality;

17 (3) "hydrogen electric generating facility" means a facility with a name-plate capacity of  
18 one megawatt or more that uses hydrogen to generate electricity including a facility  
19 that uses energy to generate electricity from a preexisting electric generating facility  
20 using other fuels in part;

21 (4) "interest in a qualified hydrogen electric generating facility" means title to a qualified  
22 hydrogen electric generating facility; a lessee's interest in a qualified hydrogen electric  
23 generating facility; and a county or municipality's interest in a qualified hydrogen  
24 electric generating facility when the county or municipality issues an industrial revenue  
25 bond for construction of the qualified hydrogen electric generating facility;

26 (5) "name-plate capacity" means the maximum rated output of the facility measured as  
27 alternating current or the equivalent direct current measurement;

28 (6) "qualified hydrogen electric generating facility" means a facility that begins  
29 construction not later than December 31, 2032.

30 (7) "sequester" means to store, or chemically convert, carbon dioxide in a manner that  
31 prevents its release into the atmosphere and may include the use of geologic formations  
32 and coaled methane or natural gas recovery techniques.

### 33 CIT Credit for Hydrogen Production Equipment

### 34 New Section 7-2A-xxx

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*Email your comments by 5 pm on Friday, 12/10 to:  
hydrogen.feedback@state.nm.us*

- 1 A. The tax credit that may be claimed pursuant to this section may be referred to as the  
2 “hydrogen production corporate income tax credit”.
- 3 B. (1) A taxpayer that holds an interest in a certified clean hydrogen production facility  
4 located in New Mexico and that files a New Mexico corporate income tax return may claim a  
5 hydrogen production corporate income tax credit in an amount equal to five percent of the  
6 eligible production plant costs of a certified clean hydrogen production facility, subject to the  
7 limitations imposed in this section. The tax credit claimed shall be verified and approved by the  
8 taxation and revenue department.
- 9 (2) A taxpayer that holds an interest in a certified qualifying hydrogen production facility  
10 located in New Mexico and that files a New Mexico corporate income tax return may claim a  
11 hydrogen production corporate income tax credit in an amount equal to three percent of the  
12 eligible production plant costs of a certified qualifying hydrogen production facility, subject to  
13 the limitations imposed in this section. The tax credit claimed shall be verified and approved by  
14 the taxation and revenue department.
- 15 C. An entity that holds an interest in a certified hydrogen production facility may request a  
16 certificate of eligibility from the department of environment to enable the requester to apply  
17 for a hydrogen production corporate income tax credit. The department of environment:
- 18 (1) shall determine if the facility is a certified clean or qualifying hydrogen production  
19 facility;
- 20 (2) shall require that the requester provide the department of environment with the  
21 information necessary to assess whether the requester's facility meets the criteria to be  
22 a certified clean or qualifying hydrogen production facility;
- 23 (3) shall issue a certificate to the requester stating that the facility is or is not a certified  
24 clean or qualifying hydrogen production facility within one hundred eighty days after  
25 receiving all information necessary to make a determination;
- 26 (4) shall:
- 27 (a) issue a schedule of fees in which no fee exceeds one hundred fifty thousand  
28 dollars (\$150,000); and
- 29 (b) deposit fees collected pursuant to this paragraph in the state climate fund;  
30 and
- 31 (5) shall report annually to the revenue stabilization and tax policy committee  
32 information that will allow the committee to analyze the effectiveness of the hydrogen  
33 production corporate income tax credits, including the identity of certified hydrogen  
34 production facilities, the amount of emissions identified in this section produced by

1 those certified hydrogen production facilities, and whether any requests for certificates  
2 of eligibility could not be approved due to program limits.

3 D. A taxpayer that holds an interest in a certified hydrogen production facility may be  
4 allocated the right to claim the hydrogen production corporate income tax credit without  
5 regard to the taxpayer's relative interest in the certified hydrogen production facility if:

6 (1) the business entity making the allocation provides notice of the allocation and the  
7 taxpayer's interest in the certified hydrogen production facility to the department on  
8 forms prescribed by the department;

9 (2) allocations to the taxpayer and all other taxpayers allocated a right to claim the  
10 hydrogen production corporate income tax credit shall not exceed one hundred percent  
11 of the hydrogen production corporate income tax credit allowed for the certified  
12 hydrogen production facility; and

13 (3) the taxpayer and all other taxpayers allocated a right to claim the hydrogen  
14 production corporate income tax credits collectively own at least a five percent interest  
15 in the certified hydrogen production facility.

16 E. Upon receipt of the notice of an allocation of the right to claim all or a portion of the  
17 hydrogen production corporate income tax credit, the department shall verify the allocation  
18 due to the recipient.

19 F. To claim the hydrogen production corporate income tax credit, a taxpayer shall submit  
20 with the taxpayer's New Mexico corporate income tax return a certificate of eligibility from the  
21 department of environment stating that the taxpayer may be eligible for hydrogen production  
22 corporate income tax credits. The taxation and revenue department shall provide credit claim  
23 forms. A credit claim form shall accompany any return in which the taxpayer wishes to apply for  
24 an approved credit, and the claim shall specify the amount of credit intended to apply to each  
25 return. The taxation and revenue department shall determine the amount of hydrogen  
26 production corporate income tax credit for which the taxpayer may apply.

27 G. If the hydrogen production corporate income tax credit exceeds the amount of the  
28 taxpayer's tax liabilities pursuant to the Corporate Income and Franchise Tax Act in the taxable  
29 year in which it is claimed, the balance of the unpaid credit may be carried forward for seven  
30 years and claimed as a hydrogen production corporate income tax credit. The hydrogen  
31 production corporate income tax credit is not refundable.

32 H. A taxpayer claiming the hydrogen production corporate income tax credit pursuant to  
33 this section is ineligible for credits pursuant to the Investment Credit Act or any other credit  
34 that may be taken pursuant to the Corporate Income and Franchise Tax Act or credits that may



1 be taken against the gross receipts tax, compensating tax or withholding tax for the same  
2 expenditures.

3 K. As used in this section:

4 (1) “certified hydrogen production facility” means a hydrogen production facility that  
5 begins construction not later than December 31, 2032.

6 (2) “clean hydrogen production facility” means a facility that produces clean hydrogen,  
7 as that term is defined in Section [x] of the Hydrogen Hub Act.

8 (3) “eligible production plant costs” means expenditures for the development and  
9 construction of a qualified hydrogen production facility, including permitting; lease  
10 payments; site characterization and assessment; engineering; design; carbon dioxide  
11 capture, treatment, compression, transportation and sequestration; site and equipment  
12 acquisition; and fuel supply development used directly and exclusively in a qualified  
13 generating facility;

14 (4) “entity” means an individual, estate, trust, receiver, cooperative association, club,  
15 corporation, company, firm, partnership, limited liability company, limited liability  
16 partnership, joint venture, syndicate or other association or a gas, water or electric  
17 utility owned or operated by a county or municipality;

18 (5) “hydrogen production facility” means a clean hydrogen production facility or a  
19 qualifying hydrogen production facility;

20 (6) “interest in a certified hydrogen production facility” means title to a certified  
21 hydrogen production facility; a lessee's interest in a certified hydrogen production  
22 facility; and a county or municipality's interest in a certified hydrogen production facility  
23 when the county or municipality issues an industrial revenue bond for construction of  
24 the certified hydrogen production facility;

25 (7) “qualifying hydrogen production facility” means a facility that produces qualifying  
26 hydrogen, as that term is defined in Section [x] of the Hydrogen Hub Act.

27 (8) “sequester” means to store, or chemically convert, carbon dioxide in a manner that  
28 prevents its release into the atmosphere and may include the use of geologic formations  
29 and coaled methane or natural gas recovery techniques.

30 **Deduction for construction of hydrogen filling stations for vehicles**

31 **New section 7-9-xxx**

1 A. Receipts from selling equipment tangible personal property, and services, including  
2 construction services for the purpose of constructing and equipping hydrogen refueling stations  
3 may be deducted from gross receipts.

4 B. The taxation and revenue department shall annually report to the revenue stabilization  
5 and tax policy committee aggregate amounts of deductions taken pursuant to this section, the  
6 number of taxpayers claiming the deduction, and any other information that is necessary to  
7 determine that the deduction is performing a purpose that is beneficial to the state.

8 C. A taxpayer deducting gross receipts pursuant to this section shall report the amount  
9 deducted separately and attribute the amount of the deduction to the authorization provided  
10 in this section in a manner required by the taxation and revenue department that facilitates the  
11 evaluation by the legislature for the benefit to the state of this deduction.

12 D. The value of equipment installed as part of a hydrogen refueling station may be  
13 deducted in computing compensating tax due.

14 E. "Hydrogen refueling station" means a refueling station that:

15 (1) supplies hydrogen suitable for use as a transportation fuel;

16 (2) is located along a federal or state highway as defined in Section 67-2-4 and is  
17 accessible to the public.

#### 18 **Deduction for sales of Hydrogen (based on 7-9-90 and 7-9-110.1)**

#### 19 **New section 7-9-xxx**

20 A. Receipts from selling clean hydrogen as defined in Section [x] of this Act may be deducted  
21 from gross receipts.

22 B. Fifty percent of the receipts from selling qualifying hydrogen as defined in Section [x] of  
23 this Act may be deducted from gross receipts.

24 C. The taxation and revenue department shall annually report to the revenue stabilization  
25 and tax policy committee aggregate amounts of deductions taken pursuant to this section, the  
26 number of taxpayers claiming the deduction, and any other information that is necessary to  
27 determine that the deduction is performing a purpose that is beneficial to the state.

28 D. A taxpayer deducting gross receipts pursuant to this section shall report the amount  
29 deducted separately and attribute the amount of the deduction to the authorization provided  
30 in this section in a manner required by the Taxation and Revenue department that facilitates  
31 the evaluation by the legislature for the benefit to the state of this deduction.

#### 32 **Deduction for Generating Equipment (based on 7-9-79.2 and 7-9-114)**

1 **New section 7-9-xxx**

- 2 A. Receipts from selling or leasing tangible personal property or services that are eligible  
3 generation plant costs to a person that holds an interest in a qualified hydrogen electric  
4 generating facility may be deducted from gross receipts if the holder of the interest delivers an  
5 appropriate nontaxable transaction certificate to the seller or lessor or provides alternative  
6 evidence pursuant to Section 7-9-43 NMSA 1978. The taxation and revenue department shall  
7 issue nontaxable transaction certificates to a person who holds an interest in a qualified  
8 hydrogen electric generating facility upon presentation to the taxation and revenue  
9 department of a certificate of eligibility obtained from the department of the environment  
10 pursuant to subsection G of this section for the deduction created in this section or a certificate  
11 of eligibility pursuant to new section of statute creating credit for similar costs, as set out  
12 below. The deduction created in this section may referred to as the “hydrogen energy  
13 deduction”.
- 14 B. The purpose of the hydrogen energy deduction is to encourage the construction and  
15 development of qualified hydrogen electric generating facilities in New Mexico and to  
16 sequester or control carbon dioxide emissions.
- 17 C. The value of eligible generation plant costs from the sale or lease of tangible personal  
18 property to a person that holds an interest in a qualified hydrogen electric generating facility  
19 for which the department of the environment has issued a certificate of eligibility pursuant to  
20 subsection G of this section may be deducted in computing the compensating tax.
- 21 E. Deductions taken pursuant to this section shall be reported separately on a form  
22 approved by the taxation and revenue department. The nontaxable transaction certificates  
23 used to obtain tax-deductible tangible personal property or services shall display clearly a  
24 notice to the taxpayer that the deduction shall be reported separately from any other  
25 deductions claimed from gross receipts. A taxpayer deducting eligible generation plant costs  
26 from the costs on which compensating tax is imposed shall report those eligible generation  
27 plant costs that are being deducted separately from any other deductions.
- 28 F. The deductions allowed for a qualified hydrogen electric generating facility pursuant to  
29 this section shall be available for a ten-year period for purchases and a twenty-five-year period  
30 for leases from the year development of the qualified hydrogen electric generating facility  
31 begins and expenditures are made for which nontaxable transaction certificates authorized  
32 pursuant to this section are submitted to sellers or lessors for eligible generation plant costs or  
33 deductions from the costs on which compensating tax are calculated are first taken for eligible  
34 generation plant costs.
- 35 G. An entity that holds an interest in a qualified hydrogen electric generating facility may  
36 request a certificate of eligibility from the department of environment to enable the requester

1 to obtain a nontaxable transaction certificate for the hydrogen energy deduction. The  
2 department of environment shall:

- 3 (1) determine if the facility is a qualified hydrogen electric generating facility;
- 4 (2) require that the requester provide the department of environment with the  
5 information necessary to assess whether the requester's facility meets the criteria to be  
6 a qualified hydrogen electric generating facility;
- 7 (3) issue a certificate from sequentially numbered certificates to the requester stating  
8 that the facility is or is not a qualified hydrogen electric generating facility within one  
9 hundred eighty days after receiving all information necessary to make a determination;
- 10 (4) issue:
  - 11 (a) rules governing the procedures for administering the provisions of this  
12 subsection; and
  - 13 (b) a schedule of fees in which no fee exceeds one hundred fifty thousand dollars  
14 (\$150,000);
- 15 (5) deposit fees collected pursuant to this subsection in the state climate fund; and
- 16 (6) report annually to the revenue stabilization and tax policy committee information  
17 that will allow the committee to analyze the effectiveness of the hydrogen energy  
18 deduction, including the identity of qualified hydrogen electric generating facilities, the  
19 amount of emissions identified in this section reduced and removed by those qualified  
20 hydrogen electric generating facilities, and whether any requests for certificates of  
21 eligibility could not be approved due to program limits.

22 H. The economic development department shall keep a record of temporary and  
23 permanent jobs at all qualified hydrogen electric generating facilities in New Mexico. The  
24 economic development department and the taxation and revenue department shall measure  
25 the amount of state revenue that is attributable to activity at each qualified hydrogen electric  
26 generating facility in New Mexico. The economic development department shall coordinate  
27 with the department of environment to report annually to the appropriate interim legislative  
28 committee on the effectiveness of the hydrogen energy deduction. A taxpayer who claims a  
29 hydrogen energy deduction shall provide the economic development department, the  
30 department of environment and the taxation and revenue department with the information  
31 required to compile the report required by this section. Notwithstanding any other section of  
32 law to the contrary, the economic development department, the department of environment  
33 and the taxation and revenue department may disclose the number of applicants for the  
34 hydrogen energy deduction, the amount of the deduction approved, the number of employees

1 of the taxpayer and any other information required by the legislature or the taxation and  
2 revenue department to aid in evaluating the effectiveness of that deduction.

3 I. If the department of environment issues a certificate of eligibility to a taxpayer stating that  
4 the taxpayer holds an interest in a qualified hydrogen electric generating facility and the  
5 taxpayer does not commence electric generation using clean/qualifying hydrogen by the later  
6 of January 1, 2023 or eighteen months after the commercial operation date of the qualified  
7 generating facility, the taxpayer's certification as a qualified hydrogen electric generating  
8 facility shall be revoked by the department of environment and the taxpayer shall repay to the  
9 state tax deductions granted pursuant to this section; provided that, if the taxpayer  
10 demonstrates to the department of environment that the taxpayer made every effort to  
11 generate electricity using hydrogen as fuel or feedstock to the extent feasible and the facility's  
12 inability to meet the electric production requirements of a qualified hydrogen electric  
13 generating facility was beyond the facility's control, the department of environment shall  
14 determine, after a public hearing, the amount of tax deduction that should be repaid to the  
15 state. The department of environment, in its determination, shall consider the environmental  
16 performance of the facility and the extent to which the inability to meet the production  
17 requirements of a qualified hydrogen generating facility was in the control of the taxpayer. The  
18 repayment as determined by the department of environment shall be paid within one hundred  
19 eighty days following a final order by the department of environment.

20 J. The hydrogen energy deduction allowed pursuant to this section shall not be claimed for  
21 the same qualified expenses for which a taxpayer claims a credit pursuant to [new section  
22 granting credits for the same costs, as set out below.

23 L. As used in this section:

24 (1) "eligible generation plant costs" means expenditures for the development and  
25 construction of a qualified hydrogen electric generating facility, including permitting;  
26 lease payments; site characterization and assessment; engineering; design; carbon  
27 dioxide capture, treatment, compression, transportation and sequestration; site and  
28 equipment acquisition; and fuel supply development used directly and exclusively in a  
29 qualified generating facility;

30 (2) "entity" means an individual, estate, trust, receiver, cooperative association, club,  
31 corporation, company, firm, partnership, limited liability company, limited liability  
32 partnership, joint venture, syndicate or other association or a gas, water or electric  
33 utility owned or operated by a county or municipality;

34 (3) "hydrogen electric generating facility" means a facility with a name-plate capacity of  
35 one megawatt or more that uses hydrogen to generate electricity, including a facility a  
36 preexisting electric generating facility using other fuels;

1 (4) “interest in a qualified hydrogen electric generating facility” means title to a qualified  
2 hydrogen electric generating facility; a lessee's interest in a qualified hydrogen electric  
3 generating facility; and a county or municipality's interest in a qualified generating  
4 facility when the county or municipality issues an industrial revenue bond for  
5 construction of the qualified hydrogen electric generating facility;

6 (5) “name-plate capacity” means the maximum rated output of the facility measured as  
7 alternating current or the equivalent direct current measurement;

8 (6) “qualified hydrogen electric generating facility” means a hydrogen electric  
9 generating facility that begins construction not later than December 31, 2032.

10 (7) “sequester” means to store, or chemically convert, carbon dioxide in a manner that  
11 prevents its release into the atmosphere and may include the use of geologic formations  
12 and enhanced oil, coaled methane or natural gas recovery techniques.

### 13 **Deduction for Production Equipment**

#### 14 **New Section 7-9-xxx**

15 A. One hundred percent of the receipts from selling or leasing tangible personal property  
16 or services that are eligible production plant costs to a person that holds an interest in a  
17 certified clean hydrogen production facility and fifty percent of the receipts from selling or  
18 leasing tangible personal property or services that are eligible production plant costs to a  
19 person that holds an interest in a certified qualifying hydrogen production facility may be  
20 deducted from gross receipts if the holder of the interest delivers an appropriate nontaxable  
21 transaction certificate to the seller or lessor. The taxation and revenue department shall issue  
22 nontaxable transaction certificates to a person who holds an interest in a certified hydrogen  
23 production facility upon presentation to the taxation and revenue department of a certificate of  
24 eligibility obtained from the department of the environment pursuant to subsection G of this  
25 section for the deduction created in this section or a certificate of eligibility pursuant to [new  
26 section of statute creating credit for similar costs, as set out below. The deduction created in  
27 this section may referred to as the “hydrogen production deduction”.

28 B. The purpose of the hydrogen production deduction is to encourage the construction  
29 and development of hydrogen production facilities in New Mexico and to sequester or control  
30 carbon dioxide emissions.

31 C. One hundred percent of the value of eligible production plant costs from the sale or  
32 lease of tangible personal property to a person that holds an interest in a certified clean  
33 hydrogen production facility for which the department of the environment has issued a  
34 certificate of eligibility pursuant to subsection [G] of this section may be deducted in computing  
35 the compensating tax. Fifty percent of the value of eligible production plant costs from the sale

1 or lease of tangible personal property to a person that holds an interest in a certified qualifying  
2 hydrogen production facility for which the department of the environment has issued a  
3 certificate of eligibility pursuant to subsection [G] of this section may be deducted in computing  
4 the compensating tax.

5 E. Deductions taken pursuant to this section shall be reported separately on a form  
6 approved by the taxation and revenue department. The nontaxable transaction certificates  
7 used to obtain tax-deductible tangible personal property or services shall display clearly a  
8 notice to the taxpayer that the deduction shall be reported separately from any other  
9 deductions claimed from gross receipts. A taxpayer deducting eligible production plant costs  
10 from the costs on which compensating tax is imposed shall report those eligible production  
11 plant costs that are being deducted separately from any other deductions.

12 F. The deductions allowed for a certified hydrogen production facility pursuant to this  
13 section shall be available for a ten-year period for purchases and a twenty-five-year period for  
14 leases from the year development of the certified hydrogen production facility begins and  
15 expenditures are made for which nontaxable transaction certificates authorized pursuant to  
16 this section are submitted to sellers or lessors for eligible production plant costs or deductions  
17 from the costs on which compensating tax are calculated are first taken for eligible production  
18 plant costs.

19 G. An entity that holds an interest in a certified hydrogen production facility may request a  
20 certificate of eligibility from the department of environment to enable the requester to obtain a  
21 nontaxable transaction certificate for the hydrogen production deduction. The department of  
22 environment shall:

23 (1) determine if the facility is a certified clean or qualifying production generating  
24 facility;

25 (2) require that the requester provide the department of environment with the  
26 information necessary to assess whether the requester's facility meets the criteria to be  
27 a certified clean or qualifying hydrogen production facility;

28 (3) issue a certificate from sequentially numbered certificates to the requester stating  
29 that the facility is or is not a certified clean or qualifying hydrogen electric production  
30 facility within one hundred eighty days after receiving all information necessary to make  
31 a determination;

32 (4) issue:

33 (a) rules governing the procedures for administering the provisions of this  
34 subsection; and

1 (b) a schedule of fees in which no fee exceeds one hundred fifty thousand dollars  
2 (\$150,000);

3 (5) deposit fees collected pursuant to this subsection in the state climate fund; and

4 (6) report annually to the revenue stabilization and tax policy committee information  
5 that will allow the committee to analyze the effectiveness of the hydrogen production  
6 deduction, including the identity of certified clean and qualifying hydrogen production  
7 facilities, the amount of emissions identified in this section reduced and removed by  
8 those qualified clean or qualifying hydrogen production facilities, and whether any  
9 requests for certificates of eligibility could not be approved due to program limits.

10 H. The economic development department shall keep a record of temporary and  
11 permanent jobs at all certified hydrogen production facilities in New Mexico. The economic  
12 development department and the taxation and revenue department shall measure the amount  
13 of state revenue that is attributable to activity at each certified hydrogen production facility in  
14 New Mexico. The economic development department shall coordinate with the department of  
15 environment to report annually to the appropriate interim legislative committee on the  
16 effectiveness of the hydrogen production deduction. A taxpayer who claims a hydrogen  
17 production deduction shall provide the economic development department, the department of  
18 environment, and the taxation and revenue department with the information required to  
19 compile the report required by this section. Notwithstanding any other section of law to the  
20 contrary, the economic development department, the department of environment, and the  
21 taxation and revenue department may disclose the number of applicants for the hydrogen  
22 production deduction, the amount of the deduction approved, the number of employees of the  
23 taxpayer and any other information required by the legislature or the taxation and revenue  
24 department to aid in evaluating the effectiveness of that deduction.

25 I. If the department of environment issues a certificate of eligibility to a taxpayer stating that  
26 the taxpayer holds an interest in a certified clean or qualifying hydrogen production facility and  
27 the taxpayer does not produce, and continue to produce by the later of January 1, 2023 or  
28 eighteen months after the commercial operation date of the certified clean or qualifying  
29 hydrogen production facility hydrogen that qualifies as clean or qualifying hydrogen as defined  
30 by this Act, depending on whether taxpayer has sought certification of clean hydrogen  
31 production facility or a qualifying hydrogen production facility, as applicable, the taxpayer's  
32 certification as a certified clean or qualifying hydrogen production facility shall be revoked by  
33 the department of environment and the taxpayer shall repay to the state tax deductions  
34 granted pursuant to this section; provided that, if the taxpayer demonstrates to the  
35 department of environment that the taxpayer made every effort to product clean or qualifying  
36 hydrogen, as applicable, to the extent feasible and the facility's inability to meet the  
37 requirement to produce clean or qualifying hydrogen was beyond the facility's control, the



1 department of environment shall determine, after a public hearing, the amount of tax  
2 deduction that should be repaid to the state. The department of environment, in its  
3 determination, shall consider the environmental performance of the facility and the extent to  
4 which the inability to produce clean or qualifying hydrogen was in the control of the taxpayer.  
5 The repayment as determined by the department of environment shall be paid within one  
6 hundred eighty days following a final order by the department of environment.

7 J. The hydrogen production deduction allowed pursuant to this section shall not be  
8 claimed for the same qualified expenses for which a taxpayer claims a credit pursuant to new  
9 section granting credits for the same costs, as set out below.

10 L. As used in this section:

11 (1) "certified hydrogen production facility" means a hydrogen production facility that  
12 begins construction not later than December 31, 2032.

13 (2) "clean hydrogen production facility" means a facility that produces clean hydrogen,  
14 as that term is defined in Section [x] of the Hydrogen Hub Act.

15 (3) "eligible production plant costs" means expenditures for the development and  
16 construction of a certified hydrogen production facility, including permitting; lease  
17 payments; site characterization and assessment; engineering; design; carbon dioxide  
18 capture, treatment, compression, transportation and sequestration; site and equipment  
19 acquisition; and fuel supply development used directly and exclusively in a certified  
20 hydrogen production facility;

21 (4) "entity" means an individual, estate, trust, receiver, cooperative association, club,  
22 corporation, company, firm, partnership, limited liability company, limited liability  
23 partnership, joint venture, syndicate or other association or a gas, water or electric  
24 utility owned or operated by a county or municipality;

25 (5) "hydrogen production facility" means a clean hydrogen production facility or a  
26 qualifying hydrogen production facility;

27 (6) "interest in a qualified hydrogen production facility" means title to a qualified  
28 hydrogen production facility; a lessee's interest in a qualified hydrogen production  
29 facility; and a county or municipality's interest in a qualified hydrogen production facility  
30 when the county or municipality issues an industrial revenue bond for construction of  
31 the qualified hydrogen production facility;

32 (7) "qualifying hydrogen production facility" means a facility that produces qualifying  
33 hydrogen, as that term is defined in Section [x] of the Hydrogen Hub Act.

1 (8) “sequester” means to store, or chemically convert, carbon dioxide in a manner that  
2 prevents its release into the atmosphere and may include the use of geologic formations  
3 and coaled methane or natural gas recovery techniques.

#### 4 **Deduction for Construction of Distribution Infrastructure (based on 7-9-101)**

##### 5 **New section 7-9-xxx**

6 A. Receipts from selling equipment, tangible personal property, and services, including  
7 construction services to the New Mexico renewable energy transmission authority or an agent  
8 or lessee of the authority may be deducted from gross receipts if the equipment is installed as  
9 part of a pipeline [any other modes?] used for the distribution of clean hydrogen and qualifying  
10 hydrogen.

11 B. The taxation and revenue department shall annually report to the revenue stabilization  
12 and tax policy committee aggregate amounts of deductions taken pursuant to this section, the  
13 number of taxpayers claiming the deduction, and any other information that is necessary to  
14 determine that the deduction is performing a purpose that is beneficial to the state.

15 C. A taxpayer deducting gross receipts pursuant to this section shall report the amount  
16 deducted separately and attribute the amount of the deduction to the authorization provided  
17 in this section in a manner required by the taxation and revenue department that facilitates the  
18 evaluation by the legislature for the benefit to the state of this deduction.

19 D. The value of equipment installed as part of a pipeline used for the distribution of clean  
20 hydrogen and qualifying hydrogen may be deducted in computing compensating tax due.

#### 21 **Section 8. Hydrogen Hub Act – Amended State Laws – New Mexico Environment Department.**

22 1. Section X. Section 74-1-8 NMSA 1978 (being Laws 1971, Chapter 277, Section 11, as  
23 amended) is amended to read:

24 "74-1-8. BOARD--DUTIES. -- A. The board is responsible for environmental management and  
25 consumer protection. In that respect, the board shall promulgate rules and standards in the  
26 following areas:

27 (1) food protection;

28 ...

29 (14) solid waste as provided in the Solid Waste Act; ~~and~~

30 (15) transportation fuels as provided in the Clean Fuel Standard Act; and

31 (16) the Hydrogen Hub Act.

1 **Section 9. Hydrogen Hub Act – Rulemaking.**

2 For all rules developed pursuant to this section, the responsible agency shall, in developing such  
3 rules, shall consider co-benefits from the hydrogen production and end use, including, but not  
4 limited to: job creation; economic development; electrical grid integration; management of  
5 water; support of disadvantaged communities; the equitable distribution of environmental  
6 benefits; the reduction of environmental and health harms; maintaining affordable public utility  
7 rates and transportation fuels for New Mexico residents and businesses, and progress toward  
8 meeting other state goals.

9 New Mexico Environment Department

- 10 1. The environmental improvement board shall adopt rules to allow the New Mexico  
11 Environment Department to issue a certificate of eligibility to a taxpayer.  
12
- 13 2. No later than one year after the effective date of the Hydrogen Hub Act, the New  
14 Mexico Environment Department shall petition the environmental improvement board  
15 to promulgate to:  
16
- 17 a. establish procedures for administering the provisions of Section 3, including a  
18 process to determine carbon intensity values for qualifying and clean hydrogen;  
19
  - 20 b. require the use of nationally or regionally recognized models or protocols for  
21 determining qualifying and clean hydrogen production emissions and indirect  
22 land use changes in establishing the carbon intensity for qualifying and clean  
23 hydrogen production;  
24
  - 25 c. require the assessment of annual fees from persons seeking a determination of  
26 the carbon intensity of qualifying or clean hydrogen production or seeking tax  
27 credits under this Act sufficient to cover the reasonable costs of the  
28 department's administration and enforcement of the Hydrogen Hub Act and  
29 implementation of rules. Monies collected pursuant to this paragraph shall be  
30 deposited in the climate fund;  
31
  - 32 d. establish requirements for third-party certifications of qualifying and clean  
33 hydrogen production, carbon intensity pathways, and require annual third-party  
34 certifications from persons seeking tax credits under this Act;  
35
  - 36 e. require persons to demonstrate compliance with the Act and implementing rules  
37 on an annual basis or a deemed necessary by the Secretary.

1 **Section 10. Hydrogen Hub Act – Climate Fund Created.**

- 2 1. The “Climate Fund” is created in the state treasury. The fund consists of monies  
3 collected from the implementation of the Hydrogen Hub Act. Money in the fund may be  
4 appropriated to and administered by:  
5  
6 a. the New Mexico Environment Department for staffing and resources needed for  
7 administration and enforcement of rules pertaining to the Act and provide  
8 technical assistance to local and tribal governments; or  
9  
10 b. the New Mexico Energy, Minerals and Natural Resources Department for staffing  
11 and resources needed for obtaining primacy for Class VI underground injection  
12 control wells from the United States Environmental Protection Agency pursuant  
13 to the Safe Drinking Water Act (42 U.S.C. § 300f, *et. seq.*).  
14  
15 2. Disbursements from the fund shall be by warrant drawn by the secretary of finance and  
16 administration pursuant to vouchers signed by the appropriate secretary or the  
17 designee. Any unexpended or unencumbered balance in the climate fund remaining at  
18 the end of any fiscal year shall not revert to the general fund.

19