HOUSE OF REPRESENTATIVES
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

H.B. NO. 3097

A BILL FOR AN ACT

RELATING TO PETROLEUM STORAGE FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 39A-151, Hawaii Revised Statutes, is amended by amending the definition of "project party" to read as follows:

""Project party" means a person, firm, or corporation qualified to do business in this State and conducting or proposing to conduct an industrial enterprise in this State. For the purposes of this part, an industrial enterprise shall include a person, firm, or corporation qualified to do business in this State who constructs or proposes to construct a petroleum storage facility or facilities in a county with a population of less than five hundred thousand."

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§235- Petroleum storage facilities tax credit.** (a) There shall be allowed to each qualified taxpayer subject to the taxes imposed by this chapter or chapter 237, 237D, 238, 239, 241, or 431, a tax credit that may be claimed for taxable years beginning after December 31, 2005, for qualified costs in the development of a petroleum storage facility or facilities in a county with a population of less than five hundred thousand. The tax credit shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter and, at the election of the taxpayer, from the tax liability imposed by chapters 237, 237D, 238, 239, 241, or 431.

(b) The tax credit earned shall be equal to the qualified costs incurred from January 1, 2006, through December 31, 2012, up to a maximum of $75,000,000 of credits in the aggregate for all qualified taxpayers for all years; provided that notwithstanding the amount of tax credits earned in any year, a maximum of $7,500,000 of tax credits in the aggregate for all qualified taxpayers may be used in any one taxable year. The credits over $7,500,000 shall be used as provided in subsection (d). In the case of a partnership, limited liability company, S corporation, estate, trust, or association of apartment owners, the tax credit allowable is for qualified costs incurred by the entity. The costs upon which the tax credit is computed shall be determined at the entity level.

(c) To qualify for the tax credit, a taxpayer shall have expended qualified costs on and be developing a petroleum storage facility or facilities in a county with a population of less than five hundred thousand.

(d) If the tax credit under this section exceeds $7,500,000 in the aggregate for all qualified taxpayers for any taxable year or exceeds the taxpayer's tax liability under this chapter or chapter 237, 237D, 238, 239, 241, or 431 for any year for which the credit is taken, the excess of the tax credit may be used as a credit against the taxpayer's tax liability for the taxes set forth in this section in subsequent years until exhausted; provided that the taxpayer may continue to claim the credit provided in this section if the qualified costs are incurred before December 31, 2012, subject to the monetary ceilings in subsection (b).

(e) Every claim, including amended claims, for a tax credit under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(f) If, at any time during the six-year period in which tax credits are earned under this section, the costs incurred no longer meet the definition of qualified costs, the credits claimed under this section shall be recaptured. The recapture shall be equal to one hundred per cent of the total tax credits claimed under this section for the preceding taxable year; provided that the amount of the credits recaptured shall apply only to those costs that no longer meet the definition of qualified costs. The amount of the recaptured tax credits determined under this subsection shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs under this subsection.

(g) If any credit is claimed under this section, then no taxpayer shall claim a credit under any chapter identified in this section for the same qualified costs for which a credit is claimed under this section.

(h) The director of taxation shall prepare any forms that may be necessary to claim a credit under this section. The director may also require the taxpayer to furnish information to ascertain the validity of the claims for credits made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

Every qualified taxpayer, no later than March 31 of each year in which qualified costs were expended in the previous taxable year, shall submit a written, certified statement to the director of business, economic development, and tourism, in the form specified by the director of business, economic development, and tourism, identifying:

(1) Qualified costs, if any, expended in the previous taxable year;

(2) The amount of tax credits claimed pursuant to this section, if any, in the previous taxable year; and

(3) The tax liability under this chapter or chapter 237, 237D, 238, 239, 241, and 431 against which the tax credits are claimed.

Any other law to the contrary notwithstanding, a statement submitted under this subsection shall be a public document.

(i) The department of business, economic development, and tourism shall maintain records of the names of taxpayers eligible for the credits and the total amount of qualified costs incurred from January 1, 2006, through December 31, 2012. The department of business, economic development, and tourism shall verify all qualified costs and, upon each determination, shall issue a certificate to the taxpayer certifying:

(1) The amount of the qualified costs; and

(2) The amount of tax credit that the taxpayer is allowed to use for the taxable year.

The department of business, economic development, and tourism shall certify no more than $7,500,000 in credits in the aggregate for all taxpayers for each taxable year; provided that the department may verify qualified costs of no more than $75,000,000 from January 1, 2006, through December 31, 2012. The taxpayer shall file the certificate with the taxpayer's return with the department of taxation.

(j) As used in this section:

"Motor vehicle fuel" has the same meaning as that term is defined in section 486H-1.

"Petroleum products" has the same meaning as that term is defined in section 486H-1.

"Petroleum storage facility or facilities" means a storage facility or facilities constructed and utilized for the purpose of storing and dispensing, at wholesale, motor vehicle fuel or petroleum products used by motor vehicles in the State.

"Qualified costs" means any costs for plans, design, and construction, costs for equipment that is permanently affixed to a building or structure, and acquisition of facilities for a petroleum storage facility or facilities in a county with a population of less than five hundred thousand, up to a total of $75,000,000 in the aggregate, incurred after December 31, 2005.

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"Qualified taxpayer" means a person who fulfills the requirements of subsection (c)."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that section 2 of this Act shall apply to taxable years beginning after December 31, 2005.

INTRODUCED BY: Kirk Caldwell

JAN 25 2006

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Report Title:
Petroleum Storage Facilities; Financing; Incentives

Description:
Allows special purpose revenue bonds to be issued for the purpose of constructing petroleum storage facilities in counties with populations of less than 500,000. Establishes a tax credit for persons or entities who construct petroleum storage facilities in counties with populations of less than 500,000.