

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO ZONING.

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

1 SECTION 1. Many acres of roof tops in the urban districts  
2 of the State are covered with roof top space that is more often  
3 than not covered with tar paper, tar and gravel, or some other  
4 equally unsightly material. Very few examples are available in  
5 the State, one being a portion of the parking structure of the  
6 Topa Financial Center in downtown Honolulu, where a roof top or  
7 portion thereof is landscaped for purely aesthetic purposes or  
8 for use as a social amenity.

9 The purpose of this Act is to:

- 10 (1) Require each county to adopt zoning ordinances  
11 requiring all new structures to maintain a portion of  
12 its roof top as a landscaped area providing a social  
13 amenity or aesthetic asset; and
- 14 (2) Provide a tax credit against the tax imposed by  
15 chapter 235 equal to a portion of the added cost to  
16 the construction of a structure to develop the  
17 landscaped area.



1 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended  
2 by adding a new section to be appropriately designated and to  
3 read as follows:

4 "§46-A Roof top landscaping. (a) Each county shall adopt  
5 ordinances to require a developer, as a condition of obtaining a  
6 building permit for a structure in a commercial, hotel, multi-  
7 family, industrial, or other mixed use district with a  
8 commercial component, to develop the structure in such a manner  
9 that at least \_\_\_\_\_ per cent of the roof top of the structure  
10 is developed and maintained as a landscaped amenity.

11 (b) The permitted uses of the landscaped portion of the  
12 roof top may include, in the following order of priority:

- 13 (1) Commercial agricultural operations;
- 14 (2) Produce gardens for cultivation by residents or users  
15 of the structure;
- 16 (3) An aesthetic amenity;
- 17 (4) Garden or playground for use by the structure's  
18 residents or users;
- 19 (5) An amenity for use in conjunction with the operation  
20 of a pre-school, school, or senior facility; or
- 21 (6) Other similar use.

1        (c) The owner of the structure shall be responsible for  
2 maintaining the required roof top landscaping for the life of  
3 the structure.

4        (d) These ordinances shall be adopted within twenty-four  
5 months of the effective date of this Act; provided that the  
6 ordinances shall provide that any structures that received a  
7 building permit after the effective date of this Act that would  
8 have been required to comply with the ordinance, had it been in  
9 effect at the effective date of this Act, shall be required to  
10 retro-fit the structure to comply with the ordinance."

11        SECTION 3. Chapter 235, Hawaii Revised Statutes, is  
12 amended by adding a new section to be appropriately designated  
13 and to read as follows:

14        "§235-        **Roof top landscaping tax credit.** (a) There  
15 shall be allowed to each taxpayer who is the owner, developer,  
16 or lessee of any structure that is required to develop a roof  
17 top landscaping amenity required by section 46-A, subject to the  
18 taxes imposed by this chapter, a roof top landscaping tax credit  
19 that shall be deductible from the taxpayer's net income tax  
20 liability, if any, imposed by this chapter for the taxable year  
21 in which the credit is properly claimed. The amount of the tax  
22 credit claimed under this section by the taxpayer in all years



1 for which the credit is available shall be limited to per  
2 cent of the added landscaping costs incurred during the taxable  
3 year for which the credit is claimed; provided that the costs  
4 shall not exceed \$ in the aggregate for each  
5 structure.

6 In the case of a partnership, S corporation, estate, trust,  
7 or association of apartment owners, the tax credit allowable is  
8 for the added landscaping costs incurred by the entity for the  
9 taxable year. The cost upon which the tax credit is computed  
10 shall be determined at the entity level. Distribution and share  
11 of credit shall be determined pursuant to section 235-110.7(a).

12 If a deduction is taken under section 179 (with respect to  
13 election to expense depreciable business assets) of the Internal  
14 Revenue Code, no tax credit shall be allowed for that portion of  
15 the added landscaping costs for which the deduction is taken.

16 The basis of eligible property for depreciation or  
17 accelerated cost recovery system purposes for state income taxes  
18 shall be reduced by the amount of credit allowable and claimed.

19 In the alternative, the taxpayer shall treat the amount of the  
20 credit allowable and claimed as a taxable income item for the  
21 taxable year in which it is properly recognized under the method  
22 of accounting used to compute taxable income.

1        (b) The credit allowed under this section shall be claimed  
2 against the net income tax liability, if any, imposed by this  
3 chapter for the taxable year in which the tax credit is properly  
4 claimed.

5        (c) If the tax credit under this section exceeds the  
6 taxpayer's income tax liability, the excess of credit over  
7 liability may be used as a credit against the taxpayer's income  
8 tax liability in subsequent years until exhausted. All claims,  
9 including amended claims, for a tax credit under this section  
10 shall be filed on or before the end of the twelfth month  
11 following the close of the taxable year for which the credit may  
12 be claimed. Failure to comply with the foregoing provision  
13 shall constitute a waiver of the right to claim the credit.

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

20        (e) The tax credit allowed under this section shall be  
21 available for taxable years beginning after December 31, 2007.





**Report Title:**

Zoning; Landscaping

**SB. NO. 3039**

**Description:**

Requires counties to adopt zoning ordinance to require a minimum per cent of all roof tops on structures in multi-family, hotel, and industrial districts to be landscaped; provides tax credit for added cost of roof top landscaping for taxable years beginning after 12/31/07.

