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## A BILL FOR AN ACT

RELATING TO PUBLIC UTILITIES.

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

1           SECTION 1. The legislature finds that the undergrounding  
2 of electric utilities can help to protect our electricity  
3 infrastructure by developing systems that are less prone to  
4 failure due to accidents, acts of terrorism, and natural  
5 disasters.

6           The legislature also finds that the high cost of converting  
7 to underground utilities has prevented many communities from  
8 receiving these benefits. Therefore, overhead electric  
9 utilities have been continually maintained and even  
10 reconstructed while adjacent public improvements are built.  
11 Underground conversion will take significant financial  
12 resources, however, it is a necessary undertaking to enhance the  
13 public's safety and welfare.

14           The purpose if this Act is to provide a financial incentive  
15 for undergrounding electric utilities by creating a tax credit  
16 for qualified costs of placing electric utility facilities  
17 underground.



1 SECTION 2. The legislature further finds and declares that  
2 the tax credit established under this Act is in the public  
3 interest and for the public health, safety, and general welfare  
4 of the people of Hawaii.

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

8 **"§235- Underground electric utility facility tax credit.**

9 (a) There shall be allowed to each qualified taxpayer subject  
10 to the taxes imposed by this chapter or chapter 237, 237D, 238,  
11 239, 241, or 431, a tax credit that may be claimed for taxable  
12 years beginning after December 31, 2010, for qualified costs in  
13 the planning, design, or construction of new electric utility  
14 facilities to be placed underground, or the planning, design,  
15 and construction necessary to convert existing electric utility  
16 facilities for placement underground. The tax credit shall be  
17 deductible from the taxpayer's net income tax liability, if any,  
18 imposed by this chapter and, at the election of the taxpayer,  
19 from the tax liability imposed by chapters 237, 237D, 238, 239,  
20 241, and 431.

21 (b) The tax credit earned shall be equal to the qualified  
22 costs incurred from June 1, 2009, through May 31, 2014, up to a



1 maximum of \$75,000,000 of credits in the aggregate for all  
2 qualified taxpayers for all years; provided that notwithstanding  
3 the amount of tax credits earned in any year, a maximum of  
4 \$15,000,000 of tax credits in the aggregate for all qualified  
5 taxpayers may be used in any one taxable year. The credits over  
6 \$15,000,000 shall be used as provided in subsection (d).

7 (c) To qualify for the tax credit, a taxpayer shall:

8 (1) Have expended qualified costs on planning, design, or  
9 construction of new electric utility facilities to be  
10 placed underground;

11 (2) Have expended qualified costs on planning, design, or  
12 construction related to converting existing electric  
13 utility facilities to be placed underground; or

14 (3) Both.

15 (d) If the tax credit under this section exceeds  
16 \$15,000,000 in the aggregate for all qualified taxpayers for any  
17 taxable year or exceeds the taxpayer's tax liability under this  
18 chapter or chapters 237, 237D, 238, 239, 241, and 431 for any  
19 year for which the credit is taken, the excess of the tax credit  
20 may be used as a credit against the taxpayer's tax liability for  
21 the taxes set forth in this section in subsequent years until  
22 exhausted; provided that the taxpayer may continue to claim the



1 credit provided in this section if the qualified costs are  
2 incurred before June 1, 2014, subject to the monetary ceilings  
3 in subsection (b).

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

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



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

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

11        Every qualified taxpayer, no later than March 31 of each  
12 year in which qualified costs were expended in the previous  
13 taxable year, shall submit a written, certified statement to the  
14 public utilities commission, in the form specified by the  
15 chairperson of the public utilities commission, identifying:

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

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

20        (3) The tax liability under this chapter and chapters 237,  
21 237D, 238, 239, 241, and 431 against which the tax  
22 credits are claimed.



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

3 (i) The public utilities commission shall maintain records  
4 of the names of taxpayers eligible for the credits and the total  
5 amount of qualified costs incurred from June 1, 2009, through  
6 May 31, 2014. The public utilities commission shall verify all  
7 qualified costs and, upon each determination, shall issue a  
8 certificate to the taxpayer certifying:

9 (1) The amount of the qualified costs; and

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

12 The public utilities commission shall certify no more than  
13 \$15,000,000 in credits in the aggregate for all taxpayers for  
14 each taxable year; provided that the commission may verify  
15 qualified costs of no more than \$75,000,000 from June 1, 2009,  
16 through May 31, 2014. The taxpayer shall file the certificate  
17 with the taxpayer's return with the department of taxation.

18 (j) As used in this section:

19 "Electric utility facility" means any structure or  
20 equipment for the production, conveyance, transmission,  
21 delivery, or furnishing of light or power within the State.



1       "Qualified costs" means any costs for plans, design, and  
2 construction, costs for equipment that is permanently affixed to  
3 a building or structure, and acquisition of facilities as  
4 necessary, up to a total of \$75,000,000 in the aggregate,  
5 incurred after May 31, 2009, and before June 1, 2014, for:

- 6       (1) New electric utility facilities to be placed  
7       underground;  
8       (2) Conversion of existing electric utility facilities to  
9       be placed underground; or  
10       (3) Both;

11 provided that "qualified costs" shall not include land  
12 acquisition costs.

13       "Qualified taxpayer" means a person or entity subject to  
14 the general supervision of the public utilities commission  
15 pursuant to chapter 269, and involved in the production,  
16 conveyance, transmission, delivery, or furnishing of light or  
17 power."

18       SECTION 4. Section 235-2.45, Hawaii Revised Statutes, is  
19 amended by amending subsection (d) to read as follows:

20       "(d) Section 704 of the Internal Revenue Code (with  
21 respect to a partner's distributive share) shall be operative



1 for purposes of this chapter; except that section 704(b)(2)  
2 shall not apply to:

3 (1) Allocations of the high technology business investment  
4 tax credit allowed by section 235-110.9;

5 (2) Allocations of net operating loss pursuant to section  
6 235-111.5;

7 (3) Allocations of the attractions and educational  
8 facilities tax credit allowed by section 235-110.46;  
9 [~~or~~]

10 (4) Allocations of low-income housing tax credits among  
11 partners under section 235-110.8[-]; or


12 (5) Allocations of underground electric utility facility  
13 tax credits allowed by section 235- ."

14 SECTION 5. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 6. This Act, upon its approval, shall apply to  
17 qualified costs, as defined in section 3 of this Act, incurred  
18 after May 31, 2009.

19

INTRODUCED BY:

  
JAN 21 2008





**Report Title:**

Public Utilities; Tax Credits; Undergrounding

**Description:**

Creates a tax credit for electric utilities for undergrounding facilities.

