

JAN 23 2009

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# A BILL FOR AN ACT

RELATING TO ENERGY.

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

1           SECTION 1. Chapter 201N, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "~~§201N-~~    Geothermal energy pilot program.    (a) Not later  
5 than July 1, 2009, the energy resources coordinator shall  
6 establish and implement a pilot program to:

7           (1) Develop new energy infrastructure necessary to  
8           maximize the production of electricity from geothermal  
9           energy sources;

10          (2) Modify or expand existing energy infrastructure to  
11          maximize the production of electricity from geothermal  
12          energy sources;

13          (3) Develop a sufficient workforce within the county to  
14          maximize production of electricity from geothermal  
15          energy sources; and

16          (4) Develop incentives that will encourage and facilitate  
17          the development of infrastructure for the deployment



1           of renewable energy resources, including geothermal  
2           energy resources.

3 The pilot program shall terminate no later than December 31,  
4 2019.

5           (b) The geothermal energy pilot program shall first be  
6 implemented in the county with the largest land mass in the  
7 State.

8           (c) The energy resources coordinator shall adopt rules  
9 pursuant to chapter 91 necessary for the purposes of this  
10 section."

11       SECTION 2. 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- Geothermal energy pilot program tax credit.** (a)

15 There shall be allowed to each taxpayer subject to the taxes  
16 imposed by this chapter, an income tax credit which shall be  
17 deductible from the taxpayer's net income tax liability, if any,  
18 imposed by this chapter for the taxable year in which the credit  
19 is properly claimed.

20       (b) The amount of the credit shall be thirty per cent of  
21 the allowable construction, renovation, or workforce development  
22 costs incurred during the taxable year for each geothermal



1 energy infrastructure project developed pursuant to section  
2 201N- and located in the county with the largest contiguous  
3 land mass in the State.

4 (c) In case of a partnership, S corporation, estate,  
5 trust, or any commercial developer of a geothermal energy  
6 infrastructure project, the tax credit allowable is for  
7 construction or renovation costs incurred by the entity for the  
8 taxable year. The cost upon which the tax credit is computed  
9 shall be determined at the entity level. Distribution and share  
10 of credit shall be determined pursuant to section 235-110.7(a).

11 (d) If a deduction is taken under section 179 (with  
12 respect to election to expense depreciable business assets) of  
13 the Internal Revenue Code, section 611 (with respect to  
14 allowance of deduction for depletion) of the Internal Revenue  
15 Code, section 616 (with respect to development expenditures) of  
16 the Internal Revenue Code, or section 617 (with respect to  
17 deduction and recapture of certain mining exploration expenses)  
18 of the Internal Revenue Code, as applicable, no deduction shall  
19 be allowed for that portion of the construction or renovation  
20 cost for which the deduction is taken.

21 (e) The basis of eligible property for depreciation or  
22 accelerated cost recovery system purposes for state income taxes



1 shall be reduced by the amount of credit allowable and claimed.  
2 In the alternative, the taxpayer shall treat the amount of the  
3 credit allowable and claimed as a taxable income item for the  
4 taxable year in which it is properly recognized under the method  
5 of accounting used to compute taxable income.

6 (f) The credit allowed under this section shall be claimed  
7 against the net income tax liability for the taxable year.

8 (g) If the tax credit under this section exceeds the  
9 taxpayer's income tax liability, the excess of credit over  
10 liability may be carried forward until exhausted.

11 (h) The tax credit allowed under this section shall be  
12 available for taxable years beginning after December 31, 2008,  
13 and shall not be available for taxable years beginning after  
14 December 31, 2019.

15 (i) The director of taxation shall prepare such forms as  
16 may be necessary to claim a credit under this section, may  
17 require proof of the claim for the tax credit, and may adopt  
18 rules pursuant to chapter 91.

19 (j) All of the provisions relating to assessments and  
20 refunds under this chapter and under section 231-23(c)(1) shall  
21 apply to the tax credit under this section.



1        (k) Claims for the tax credit under this section,  
2 including any amended claims, shall be filed on or before the  
3 end of the twelfth month following the taxable year for which  
4 the credit may be claimed.

5        (l) As used in this section:

6        "Allowable construction, renovation, or workforce  
7 development costs" means the costs of building new geothermal  
8 energy infrastructure, modifying or expanding existing energy  
9 infrastructure, or developing a sufficient workforce for a  
10 geothermal energy infrastructure project as determined by the  
11 energy resource coordinator pursuant to section 201N- (b).

12        "Geothermal energy infrastructure project" means the  
13 development of new geothermal energy infrastructure, the  
14 modification or expansion of existing energy infrastructure, or  
15 the development of a sufficient workforce to maximize the use of  
16 geothermal energy sources undertaken pursuant to section  
17 201N- ."

18        SECTION 3. Section 269-27.2, Hawaii Revised Statutes, is  
19 amended to read as follows:

20        **"§269-27.2 Utilization of electricity generated from**  
21 **nonfossil fuels.** (a) The public utilities commission shall  
22 investigate and determine the extent to which electricity



1 generated from nonfossil fuel sources is available to public  
2 utilities that supply electricity to the public, which  
3 electricity is in excess of that utilized or otherwise needed by  
4 the producers for their internal uses and which the producers  
5 are willing to make available to the electric public utilities.

6 (b) The public utilities commission shall direct public  
7 utilities that supply electricity to the public in the county  
8 with the largest contiguous land mass in the State to arrange  
9 for the acquisition of and to acquire electricity generated from  
10 geothermal sources at the maximum capacity that it is available  
11 from producers of geothermal energy. The public utilities  
12 commission shall direct public utilities that supply electricity  
13 to the public in the county with the largest contiguous land  
14 mass in the State to employ and dispatch the electricity  
15 generated from geothermal sources in a manner consistent with  
16 the availability thereof to maximize the reduction in fossil  
17 fuel consumption in the generation of electricity and to achieve  
18 energy self-sufficiency by no later than January 1, 2020.

19 To assist the energy resources coordinator in effectuating  
20 the purposes of chapter 201N, the public utilities commission  
21 shall develop reasonable guidelines and timetables for the  
22 creation and implementation of power purchase agreements.



1        [~~(b)~~] (c) The public utilities commission may direct  
2 public utilities that supply electricity to the public in any  
3 county that does not require maximum geothermal energy  
4 production as provided in subsection (b) to arrange for the  
5 acquisition of and to acquire electricity generated from  
6 nonfossil fuel sources as it is [~~available from and the~~  
7 ~~producers are willing and able to make~~] available to the public  
8 utilities, and to employ and dispatch the nonfossil fuel  
9 generated electricity in a manner consistent with the  
10 availability thereof to maximize the reduction in consumption of  
11 fossil fuels in the generation of electricity to be provided to  
12 the public. To assist the energy resources coordinator in  
13 effectuating the purposes of chapter 201N, the public utilities  
14 commission may develop reasonable guidelines and timetables for  
15 the creation and implementation of power purchase agreements.

16        [~~(e)~~] (d) The rate payable by the public utility to the  
17 producer for the nonfossil fuel generated electricity supplied  
18 to the public utility shall be as agreed between the public  
19 utility and the supplier and as approved by the public utilities  
20 commission; provided that in the event the public utility and  
21 the supplier fail to reach an agreement for a rate, the rate



1 shall be as prescribed by the public utilities commission  
2 according to the powers and procedures provided in this chapter.

3 In the exercise of its authority to determine the just and  
4 reasonable rate for the nonfossil fuel generated electricity  
5 supplied to the public utility by the producer, the commission  
6 shall establish that the rate for purchase of electricity by a  
7 public utility shall not be more than one hundred per cent of  
8 the cost avoided by the utility when the utility purchases the  
9 electrical energy rather than producing the electrical energy.

10 The commission's determination of the just and reasonable  
11 rate shall be accomplished by establishing a methodology that  
12 removes or significantly reduces any linkage between the price  
13 of fossil fuels and the rate for the nonfossil fuel generated  
14 electricity to potentially enable utility customers to share in  
15 the benefits of fuel cost savings resulting from the use of  
16 nonfossil fuel generated electricity. As the commission deems  
17 appropriate, the just and reasonable rate for nonfossil fuel  
18 generated electricity supplied to the public utility by the  
19 producer may include mechanisms for reasonable and appropriate  
20 incremental adjustments, such as adjustments linked to consumer  
21 price indices for inflation or other acceptable adjustment  
22 mechanisms.





1            [~~(d)~~] (e) Upon application of a public utility that  
2 supplies electricity to the public, and notification [~~of~~] to its  
3 customers, the commission, after an evidentiary hearing, may  
4 allow payments made by the public utility to nonfossil fuel  
5 producers for firm capacity and related revenue taxes to be  
6 recovered by the public utility through an interim increase in  
7 rates until the effective date of the rate change approved by  
8 the commission's final decision in the public utility's next  
9 general rate proceeding under section 269-16, notwithstanding  
10 any requirements to the contrary of any other provision in this  
11 chapter or in the commission's rules or practices; provided the  
12 amount recovered by the utility and the amount of increase in  
13 rates due to the payments for firm capacity and related revenue  
14 taxes to be charged to the consumers of the electricity are  
15 found by the commission to be:

- 16            (1) Just and reasonable;
- 17            (2) Not unduly prejudicial to the customers of the public  
18            utility;
- 19            (3) Promotional of Hawaii's long-term objective of energy  
20            self-sufficiency;
- 21            (4) Encouraging to the maintenance or development of  
22            nonfossil fueled sources of electrical energy; and



1           (5) In the overall best interest of the general public.  
2 The evidentiary hearing provided for in this subsection shall be  
3 conducted expeditiously and shall be limited to evidence related  
4 to the above findings. Notwithstanding section 269-16, no  
5 public hearing shall be required, except as the commission in  
6 its discretion may require."

7           SECTION 4. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9           SECTION 5. This Act shall take effect on July 1, 2009.

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INTRODUCED BY: Josh Yee  
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**Report Title:**

Geothermal Energy; Energy Self-Sufficiency; Tax Incentive

**Description:**

Requires maximum use of geothermal energy on the island of Hawaii to achieve energy self-sufficiency and reduced reliance on imported fossil fuels. Establishes a pilot program and a tax credit to facilitate the development of infrastructure for the deployment of renewable energy resources, including geothermal resources.

