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# A BILL FOR AN ACT

RELATING TO ACT 204, SESSION LAWS OF HAWAII 2008.

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

1           SECTION 1. The legislature finds that Act 204, Session  
2   Laws of Hawaii 2008, was a controversial bill that created  
3   unintended consequences. While the intent of Act 204 was to  
4   mandate solar water heater installation on new homes being  
5   constructed, and that intent was undeniably an effort to move  
6   Hawaii towards energy independence by reducing electrical demand  
7   of new homes, Act 204 attempted to effectuate this intent  
8   through a combination of prohibiting the issuing of building  
9   permits and restricting tax credits.

10           However, the language restricting the tax credits for solar  
11   energy systems and restricting building permits was drafted  
12   ambiguously. A possible interpretation of the newly drafted  
13   language of Act 204 is to also deny tax credits and building  
14   permits for renovation projects of single-family dwellings where  
15   solar water heaters are to be installed. Clearly, Act 204 was  
16   not meant to mandate solar water heater installation on the one  
17   hand, and remove incentives for older single-family dwellings to  
18   install solar water heaters.



1           The legislature also finds that in the waning days of the  
2 2008 legislative session, language was inserted into Act 204  
3 that allowed an exception for demand water heater devices  
4 powered by natural gas. The legislature finds that while  
5 natural gas is pumped to homes on the mainland through a network  
6 of pipes that can cross state lines, in Hawaii, natural gas is  
7 refined just like gasoline or airline fuel is. In short,  
8 whether the demand water heater located in the state is powered  
9 by natural gas or electricity, both use fossil fuel, but both  
10 represent a more efficient use of that fossil fuel and deserve  
11 to remain as legitimate variances under the scheme of Act 204.

12           The purpose of this Act is to clarify ambiguities of Act  
13 204, Session Laws of Hawaii 2008, to effect the original intent,  
14 to mandate solar water heater installation on new construction  
15 while allowing older dwellings to switch to solar water heating  
16 as a cost-efficient means to reduce electric bills.

17           SECTION 2. Section 196-6.5, Hawaii Revised Statutes, is  
18 amended to read as follows:

19           "**[§196-6.5] Solar water heater system required for new**  
20 **single-family residential construction.** (a) On or after  
21 January 1, 2010, no building permit shall be issued for the  
22 construction of a single-family dwelling that does not include a



1 solar water heater system that meets the standards established  
2 pursuant to section 269-44, unless the energy resources  
3 coordinator approves a variance. A variance shall only be  
4 approved if an architect or engineer licensed under chapter 464  
5 attests that:

6 (1) Installation is impracticable due to poor solar  
7 resource;

8 (2) Installation is cost-prohibitive based upon a life  
9 cycle cost-benefit analysis that incorporates the  
10 average residential utility bill and the cost of the  
11 new solar water heater system with a life cycle that  
12 does not exceed fifteen years;

13 (3) A substitute renewable energy technology system, as  
14 defined in section 235-12.5, is used as the primary  
15 energy source for heating water; or

16 (4) A demand water heater device approved by Underwriters  
17 Laboratories, Inc., is installed[~~; provided that at~~  
18 ~~least one other gas appliance is installed in the~~  
19 ~~dwelling~~]. For the purposes of this paragraph,  
20 "demand water heater" means a gas-tankless  
21 instantaneous water heater or an electric demand water  
22 heater that provides hot water only as it is needed.



1           In the case of a gas-tankless instantaneous water  
2           heater, the variance under this subparagraph shall  
3           apply only if at least one other gas appliance is  
4           installed in the dwelling.

5           (b) A request for a variance shall be submitted to the  
6 energy resources coordinator on an application prescribed by the  
7 energy resources coordinator and shall include, but not be  
8 limited to, a description of the location of the property and  
9 justification for the approval of a variance using the criteria  
10 established in subsection (a). A variance shall be deemed  
11 approved if not denied within thirty working days after receipt  
12 of the variance application.

13           (c) Nothing in this section shall preclude any county from  
14 establishing procedures and standards required to implement this  
15 section.

16           (d) Nothing in this section shall preclude participation  
17 in any utility demand-side management program or public benefits  
18 fund under part VII of chapter 269.

19           (e) The prohibition against the issuance of a building  
20 permit in subsection (a) of this chapter shall not include  
21 renovations of single-family dwellings."



1 SECTION 3. Section 235-12.5, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 **"§235-12.5 Renewable energy technologies; income tax**  
4 **credit.** (a) When the requirements of subsection (c) are met,  
5 each individual or corporate taxpayer that files an individual  
6 or corporate net income tax return for a taxable year may claim  
7 a tax credit under this section against the Hawaii state  
8 individual or corporate net income tax. The tax credit may be  
9 claimed for every eligible renewable energy technology system  
10 that is installed and placed in service in the State by a  
11 taxpayer during the taxable year. This credit shall be  
12 available for systems installed and placed in service in the  
13 State after June 30, 2003. The tax credit may be claimed as  
14 follows:

- 15 (1) Solar thermal energy systems for:
  - 16 (A) Single-family residential property [~~for which a~~  
17 ~~building permit was issued prior to January 1,~~  
18 ~~2010~~]: thirty-five per cent of the actual cost  
19 or \$2,250, whichever is less;
  - 20 (B) Multi-family residential property: thirty-five  
21 per cent of the actual cost or \$350 per unit,  
22 whichever is less; and

1 (C) Commercial property: thirty-five per cent of the  
2 actual cost or \$250,000, whichever is less;

3 (2) Wind-powered energy systems for:

4 (A) Single-family residential property: twenty per  
5 cent of the actual cost or \$1,500, whichever is  
6 less;

7 (B) Multi-family residential property: twenty per  
8 cent of the actual cost or \$200 per unit,  
9 whichever is less; and

10 (C) Commercial property: twenty per cent of the  
11 actual cost or \$500,000, whichever is less; and

12 (3) Photovoltaic energy systems for:

13 (A) Single-family residential property: thirty-five  
14 per cent of the actual cost or \$5,000, whichever  
15 is less;

16 (B) Multi-family residential property: thirty-five  
17 per cent of the actual cost or \$350 per unit,  
18 whichever is less; and

19 (C) Commercial property: thirty-five per cent of the  
20 actual cost or \$500,000, whichever is less;

21 provided that multiple owners of a single system shall be  
22 entitled to a single tax credit; and provided further that the

1 tax credit shall be apportioned between the owners in proportion  
2 to their contribution to the cost of the system.

3 In the case of a partnership, S corporation, estate, or  
4 trust, the tax credit allowable is for every eligible renewable  
5 energy technology system that is installed and placed in service  
6 in the State by the entity. The cost upon which the tax credit  
7 is computed shall be determined at the entity level.

8 Distribution and share of credit shall be determined pursuant to  
9 section 235-110.7(a)."

10 SECTION 4. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act shall take effect upon its approval.

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**Report Title:**

Act 204, Session Laws of Hawaii 2008

**Description:**

Clarifies ambiguities in Act 204, Session Laws of Hawaii 2008.

