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# A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

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

PART I.

1  
2 SECTION 1. The legislature finds that the development of  
3 renewable energy in Hawaii is crucial to the energy security and  
4 energy independence of Hawaii. In addition, the renewable  
5 energy technology industry will evolve into an important  
6 component of a diversified economy. The legislature further  
7 finds that incentives for investment in renewable energy will  
8 create positive economic impacts and environmental benefits for  
9 the State.

10 The purpose of this Act is to:

- 11 (1) Increase tax incentives for investment in renewable  
12 energy in Hawaii;
- 13 (2) Increase the State's renewable energy portfolio goals;  
14 and
- 15 (3) Allow individual schools in Hawaii to enter into  
16 agreements to purchase electricity from renewable  
17 energy facilities.



PART II.

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

"§235- Renewable energy facility tax credit. (a) For each taxable year during the credit period, there shall be allowed, to each taxpayer subject to the taxes imposed by this chapter, a renewable energy facility tax credit that shall be applied to the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

For each qualified ethanol production facility, the annual amount of the renewable energy facility tax credit during the eight-year period shall be equal to thirty per cent of the taxpayer's qualifying investment in the facility made during the taxable year. A taxpayer may claim this credit for each qualifying renewable energy facility; provided that:

- (1) The claim for this credit by any taxpayer of a qualifying renewable energy facility shall not exceed one hundred per cent of the total of all investments made by the taxpayer in the qualifying renewable energy facility during the credit period;



1       (2) The qualifying renewable energy facility operated at a  
2       level of production of at least seventy-five per cent  
3       of its nameplate capacity on an annualized basis;

4       (3) The qualifying renewable energy facility is in  
5       production on or before January 1, 2015; and

6       (4) No taxpayer that claims the credit under this section  
7       shall claim any other tax credit under this chapter  
8       for the same taxable year, including sections 235-  
9       110.3 or 235-110.9.

10       (b) As used in this section:

11       "Biofuels" means liquid or gaseous fuels produced from  
12       organic sources such as biomass crops, agricultural residues and  
13       oil crops, such as palm oil, canola oil, soybean oil, waste  
14       cooking oil, grease, and food wastes, animal residues and  
15       wastes, and sewage and landfill wastes.

16       "Credit period" means a maximum period of eight years  
17       beginning from the first taxable year in which the qualifying  
18       renewable energy facility begins production, even if actual  
19       production is not at seventy-five per cent of nameplate  
20       capacity.

21       "Investment" means a nonrefundable capital expenditure  
22       related to the development and construction of any qualifying



1 renewable energy facility. Capital expenditures shall be those  
2 direct and certain indirect costs determined in accordance with  
3 section 263A of the Internal Revenue Code, relating to uniform  
4 capitalization costs, but shall not include expenses for  
5 compensation paid to officers of the taxpayer, pension and other  
6 related costs, rent for land, the costs of repairing and  
7 maintaining the equipment or facilities, training of operating  
8 personnel, utility costs during construction, property taxes,  
9 costs relating to negotiation of commercial agreements not  
10 related to development or construction, or service costs that  
11 can be identified specifically with a service department or  
12 function or that directly benefit or are incurred by reason of a  
13 service department or function. For the purposes of determining  
14 a capital expenditure under this section, the provisions of  
15 section 263A of the Internal Revenue Code shall apply as it read  
16 on March 1, 2004. For purposes of this section, investment  
17 excludes land costs and includes any investment for which the  
18 taxpayer is at risk, as that term is used in section 465 of the  
19 Internal Revenue Code (with respect to deductions limited to  
20 amount at risk).

21 "Nameplate capacity" means the qualifying renewable energy  
22 facility's production design capacity.



1       "Net income tax liability" means net income tax liability  
2 reduced by all other credits allowed under this chapter.

3       "Qualifying renewable energy facility" or "facility" means  
4 a facility located in Hawaii with the capacity to produce from  
5 renewable energy at least two hundred megawatts of electricity

6       "Renewable energy" means energy generated or produced using  
7 the following sources:

8       (1) Wind;

9       (2) The sun;

10      (3) Falling water;

11      (4) Biogas, including landfill and sewage-based digester  
12      gas;

13      (5) Geothermal;

14      (6) Ocean water, currents, and waves, including ocean  
15      thermal energy conversion;

16      (7) Biomass, including biomass crops, agricultural and  
17      animal residues and wastes, and municipal solid waste  
18      and other solid waste;

19      (8) Biofuels; and

20      (9) Hydrogen produced from renewable energy sources.

21      (c) In the case of a taxable year in which the cumulative  
22 claims for the credit by the taxpayer of a qualifying renewable



1 energy facility exceeds the cumulative investment made in the  
2 qualifying renewable energy facility by the taxpayer, only that  
3 portion that does not exceed the cumulative investment shall be  
4 claimed and allowed.

5 (d) The department of business, economic development, and  
6 tourism shall:

7 (1) Maintain records of the total amount of investment  
8 made by each taxpayer in a facility;

9 (2) Verify the amount of the qualifying investment;

10 (3) Total all qualifying and cumulative investments that  
11 the department of business, economic development, and  
12 tourism certifies; and

13 (4) Certify the total amount of the tax credit for each  
14 taxable year and the cumulative amount of the tax  
15 credit during the credit period.

16 Upon each determination, the department of business,  
17 economic development, and tourism shall issue a certificate to  
18 the taxpayer verifying the qualifying investment amounts, the  
19 credit amount certified for each taxable year, and the  
20 cumulative amount of the tax credit during the credit period.

21 The taxpayer shall file the certificate with the taxpayer's tax  
22 return with the department of taxation. Notwithstanding the



1 department of business, economic development, and tourism's  
2 certification authority under this section, the director of  
3 taxation may audit and adjust certification to conform to the  
4 facts.

5 If in any year, the annual amount of certified credits  
6 reaches \$ \_\_\_\_\_ in the aggregate, the department of  
7 business, economic development, and tourism shall immediately  
8 discontinue certifying credits and notify the department of  
9 taxation. In no instance shall the total amount of certified  
10 credits exceed \$ \_\_\_\_\_ per year. Notwithstanding any other  
11 law to the contrary, any information generated pursuant to this  
12 subsection shall be available for public inspection and  
13 dissemination under chapter 92F.

14 (e) If the credit under this section exceeds the  
15 taxpayer's income tax liability, the excess of credit over  
16 liability shall be refunded to the taxpayer; provided that no  
17 refunds or payments on account of the tax credit allowed by this  
18 section shall be made for amounts less than \$1. All claims for  
19 a credit under this section must be properly filed on or before  
20 the end of the twelfth month following the close of the taxable  
21 year for which the credit may be claimed. Failure to comply



1 with the foregoing provision shall constitute a waiver of the  
2 right to claim the credit.

3 (f) If a qualifying renewable energy facility or an  
4 interest therein is acquired by a taxpayer prior to the  
5 expiration of the credit period, the credit allowable under  
6 subsection (a) for any period after the acquisition shall be  
7 equal to the credit that would have been allowable under  
8 subsection (a) to the prior taxpayer had the taxpayer not  
9 disposed of the interest. If an interest is disposed of during  
10 any year for which the credit is allowable under subsection (a),  
11 the credit shall be allowable between the parties on the basis  
12 of the number of days during the year the interest was held by  
13 each taxpayer. In no case shall the credit allowed under  
14 subsection (a) be allowed after the expiration of the credit  
15 period.

16 (g) Prior to construction of any new qualifying renewable  
17 energy facility, the taxpayer shall provide written notice of  
18 the taxpayer's intention to begin construction of a qualifying  
19 renewable energy facility. The information shall be provided to  
20 the department of taxation and the department of business,  
21 economic development, and tourism on forms provided by the  
22 department of business, economic development, and tourism, and





1 shall include information on the taxpayer, facility location,  
2 facility production capacity, anticipated production start date,  
3 and the taxpayer's contact information. Notwithstanding any  
4 other law to the contrary, this information shall be available  
5 for public inspection and dissemination under chapter 92F.

6 (h) The taxpayer shall provide written notice to the  
7 director of taxation and the director of business, economic  
8 development, and tourism within thirty days following the start  
9 of production. The notice shall include the production start  
10 date and expected electricity production of the facility for the  
11 next twenty-four months. Notwithstanding any other law to the  
12 contrary, the information required by this subsection shall be  
13 available for public inspection and dissemination under chapter  
14 92F.

15 (i) If a qualifying renewable energy facility fails to  
16 achieve an average annual production of at least seventy-five  
17 per cent of its nameplate capacity for two consecutive years,  
18 the stated capacity of that facility may be revised by the  
19 director of business, economic development, and tourism to  
20 reflect actual production and allowable credits for that  
21 facility under subsection (a). Notwithstanding any other law to  
22 the contrary, any information generated by this subsection shall



1 be available for public inspection and dissemination under  
2 chapter 92F.

3 (j) Each calendar year during the credit period, the  
4 taxpayer shall provide information to the director of business,  
5 economic development, and tourism on the number of megawatts of  
6 electricity produced from the qualifying renewable energy  
7 facility during the previous calendar year, how much was sold,  
8 the number of employees of the facility, and the projected  
9 number of megawatts of electricity production from the facility  
10 for the succeeding year.

11 (k) In the case of a partnership, S corporation, estate,  
12 or trust, the tax credit allowable is for every qualifying  
13 renewable energy facility. The cost upon which the tax credit  
14 is computed shall be determined at the entity level.  
15 Distribution and share of credit shall be determined by rules  
16 adopted under chapter 91.

17 (l) Following each year in which a credit under this  
18 section has been claimed, the director of business, economic  
19 development, and tourism shall submit a written report to the  
20 governor and legislature regarding the production and sale of  
21 electricity produced from renewable energy in the State. The  
22 report shall include:







1 deny the request within thirty days, the request shall be deemed  
2 to be approved.

3 For the purposes of this section, "renewable energy  
4 facility" shall have the same meaning as defined in section  
5 201N-1."

6 PART V.

7 SECTION 5. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 6. This Act shall take effect on its approval;  
10 provided that section 3 shall apply to taxable years beginning  
11 after December 31, 2009.

12

INTRODUCED BY: \_\_\_\_\_



Jyfa B. Berg



Mike Carroll

JAN 20 2010



**Report Title:**

Renewable Energy

**Description:**

Creates the renewable energy facility tax credit. Increases the State's renewable energy portfolio goals. Authorizes public schools to contract with renewable energy facilities to purchase electricity.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

