

JAN 21 2010

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Following the 2009 legislative session, the
2 chairs of the senate committee on economic development and
3 technology and the house committee on economic revitalization,
4 business and military affairs convened a technology caucus work
5 group to bring together industry stakeholders and interested
6 policymakers to develop recommendations for legislation to
7 enhance Hawaii's struggling economy. The work group provided a
8 forum to review the current status of Hawaii's
9 science/technology industry, identify state or county actions
10 that impede long-term growth and expansion of technology
11 companies, and develop recommendations to address these
12 impediments. The work group also identified best practices
13 supporting the growth and development of science/technology
14 industries in other jurisdictions to aid in developing proposed
15 suggestions for future legislation.

16 The legislature finds that with respect to commercial
17 renewable energy project developments, a number of industry



1 members have been faced with difficulties in raising sufficient
2 investment capital and construction financing. Some commercial
3 renewable energy projects in this State have also not been
4 financially feasible or practical for investors to engage into
5 because of the current limitations to the federal and State
6 renewable energy tax incentives. Further complicating
7 commercial projects in this State are the unique characteristics
8 of Hawaii, such as the high cost and scarcity of land, high
9 construction and labor costs, difficulties in engaging
10 specialized service providers (resulting in engagement of
11 mainland service providers), and higher shipping and freight
12 costs. Moreover, companies frequently cited experiences with
13 investors who believe Hawaii's regulatory agencies and
14 legislative branch are not consistent and certain laws of the
15 State are not applied with absolute certainty on a going forward
16 basis.

17 These concerns have been fueled by recent legislative and
18 judicial activities, such as Act 178, Session Laws of Hawaii
19 2009 (affecting the high technology business investment tax
20 credit), and the Superferry case, which have led to a perceived
21 high political risk associated with making large financial
22 investments in Hawaii.



1 In order for Hawaii to be a leader in the renewable energy
2 industry and to also meet the objectives of the Hawaii Clean
3 Energy Initiative, the State needs to revise its tax incentives
4 related to the renewable energy technologies income tax credit
5 so that the State can strive to be at the forefront of the
6 competition. Tax incentives that are financially sensible for
7 the State but still generous to investors will help to attract
8 much needed capital from local, mainland, and international
9 investors that will help to stimulate renewable energy activity
10 in Hawaii.

11 The purpose of this Act is to implement recommendations of
12 the technology caucus work group by revising the existing
13 renewable energy technologies income tax credit to provide tax
14 incentives that make financial sense for investors to develop
15 large commercial renewable energy projects in this State.

16 SECTION 2. Chapter 431, Hawaii Revised Statutes, is
17 amended by adding a new section to article 7 to be appropriately
18 designated and to read as follows:

19 **"§431:7- Renewable energy technologies; income tax**
20 **credit.** The renewable energy technologies income tax credit
21 provided under section 235-12.5 shall be operative for all
22 taxpayers subject to this chapter for taxable years beginning



1 after December 31, 2009; provided that the renewable energy
2 system was installed and placed in service after December 31,
3 2009."

4 SECTION 3. Section 235-12.5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§235-12.5 Renewable energy technologies; income tax**

7 **credit.** (a) When the requirements of subsection (d) are met,
8 each individual or corporate taxpayer that files an individual
9 or corporate net income tax return for a taxable year may claim
10 a tax credit under this section against the Hawaii state
11 individual or corporate net income tax. The tax credit may be
12 claimed for every eligible renewable energy technology system
13 that is installed and placed in service in the State by a
14 taxpayer during the taxable year. The tax credit may be claimed
15 as follows:

16 (1) For each solar energy system installed and operated on
17 residential property: thirty-five per cent of the
18 actual cost or the cap amount determined in subsection
19 (b), whichever is less; [~~or~~]

20 (2) For each solar energy system installed and operated on
21 commercial property:



1 (A) Thirty-five per cent of the actual cost or the
 2 cap amount determined in subsection (b),
 3 whichever is less, in the year the solar energy
 4 system is placed in service;

5 (B) Ten per cent of the actual cost or the cap amount
 6 determined in subsection (b), whichever is less,
 7 in the second year following the year the solar
 8 energy system is placed in service; and

9 (C) Five per cent of the actual cost or the cap
 10 amount determined in subsection (b), whichever is
 11 less, in the third year following the year the
 12 solar energy system is placed in service; or

13 ~~[(2)]~~ (3) For each wind-powered energy system: twenty per
 14 cent of the actual cost or the cap amount determined
 15 in subsection (b), whichever is less;

16 provided that multiple owners of a single system shall be
 17 entitled to a single tax credit; and provided further that the
 18 tax credit shall be apportioned between the owners in proportion
 19 to their contribution to the cost of the system.

20 In the case of a partnership, S corporation, estate, or
 21 trust, the tax credit allowable is for every eligible renewable
 22 energy technology system that is installed and placed in service



1 in the State by the entity. The cost upon which the tax credit
2 is computed shall be determined at the entity level.
3 Distribution and share of credit shall be determined pursuant to
4 section 235-110.7(a).

5 (b) The amount of credit allowed for each eligible
6 renewable energy technology system shall not exceed the
7 applicable cap amount, which is determined as follows:

8 (1) If the primary purpose of the solar energy system is
9 to use energy from the sun to heat water for household
10 use, then the cap amounts shall be:

11 (A) \$2,250 per system for single-family residential
12 property;

13 (B) \$350 per unit per system for multi-family
14 residential property; and

15 (C) [~~\$250,000~~] _____ per system for commercial
16 property;

17 (2) For all other solar energy systems, the cap amounts
18 shall be:

19 (A) \$5,000 per system for single-family residential
20 property; provided that if all or a portion of
21 the system is used to fulfill the substitute
22 renewable energy technology requirement pursuant



1 to section 196-6.5(a)(3), the credit shall be
2 reduced by thirty-five per cent of the actual
3 system cost or \$2,250, whichever is less;

4 (B) \$350 per unit per system for multi-family
5 residential property; and

6 (C) [~~\$500,000~~] _____ per system for commercial
7 property; and

8 (3) For all wind-powered energy systems, the cap amounts
9 shall be:

10 (A) \$1,500 per system for single-family residential
11 property; provided that if all or a portion of
12 the system is used to fulfill the substitute
13 renewable energy technology requirement pursuant
14 to section 196-6.5(a)(3), the credit shall be
15 reduced by twenty per cent of the actual system
16 cost or \$1,500, whichever is less;

17 (B) \$200 per unit per system for multi-family
18 residential property; and

19 (C) [~~\$500,000~~] _____ per system for commercial
20 property.

21 (c) For the purposes of this section:



1 "Actual cost" means costs related to the renewable energy
2 technology systems under subsection (a), including accessories
3 and installation, but not including the cost of consumer
4 incentive premiums unrelated to the operation of the system or
5 offered with the sale of the system and costs for which another
6 credit is claimed under this chapter.

7 "Commercial property" means real property that is zoned for
8 business or industrial use and includes a building or structure
9 that operates a service, or retail-oriented, business or
10 organization for public consumers.

11 "Household use" means any use to which heated water is
12 commonly put in a residential setting, including commercial
13 application of those uses.

14 "Renewable energy technology system" means a new system
15 that captures and converts a renewable source of energy, such as
16 solar or wind energy, into:

- 17 (1) A usable source of thermal or mechanical energy;
18 (2) Electricity; or
19 (3) Fuel.

20 "Solar or wind energy system" means any identifiable
21 facility, equipment, apparatus, or the like that converts solar
22 or wind energy to useful thermal or electrical energy for



1 heating, cooling, or reducing the use of other types of energy
2 that are dependent upon fossil fuel for their generation.

3 (d) For taxable years beginning after December 31, 2005,
4 the dollar amount of any utility rebate shall be deducted from
5 the cost of the qualifying system and its installation before
6 applying the state tax credit.

7 (e) The director of taxation shall prepare any forms that
8 may be necessary to claim a tax credit under this section,
9 including forms identifying the technology type of each tax
10 credit claimed under this section, whether for solar or wind.
11 The director may also require the taxpayer to furnish reasonable
12 information to ascertain the validity of the claim for credit
13 made under this section and may adopt rules necessary to
14 effectuate the purposes of this section pursuant to chapter 91.

15 (f) If the tax credit under this section exceeds the
16 taxpayer's income tax liability, the excess of the credit over
17 liability may be used as a credit against the taxpayer's income
18 tax liability in subsequent years until exhausted, unless
19 otherwise elected by the taxpayer pursuant to subsection (g) or
20 (h). All claims for the tax credit under this section,
21 including amended claims, shall be filed on or before the end of
22 the twelfth month following the close of the taxable year for



1 which the credit may be claimed. Failure to comply with this
2 subsection shall constitute a waiver of the right to claim the
3 credit.

4 (g) For solar energy systems, a taxpayer may elect to
5 reduce the eligible credit amount by [~~thirty~~] ten per cent and
6 if this reduced amount exceeds the amount of income tax payment
7 due from the taxpayer, the excess of the credit amount over
8 payments due shall be refunded to the taxpayer; provided that
9 tax credit amounts properly claimed by a taxpayer who has no
10 income tax liability shall be paid to the taxpayer; and provided
11 further that no refund on account of the tax credit allowed by
12 this section shall be made for amounts less than \$1.

13 The election required by this subsection shall be made in a
14 manner prescribed by the director on the taxpayer's return for
15 the taxable year in which the system is installed and placed in
16 service. A separate election may be made for each separate
17 system that generates a credit. An election once made is
18 irrevocable.

19 (h) Notwithstanding subsection (g), for any renewable
20 energy technology system, an individual taxpayer may elect to
21 have any excess of the credit over payments due refunded to the
22 taxpayer, if:



1 (1) All of the taxpayer's income is exempt from taxation
2 under section 235-7(a)(2) or (3); or

3 (2) The taxpayer's adjusted gross income is \$20,000 or
4 less (or \$40,000 or less if filing a tax return as
5 married filing jointly);

6 provided that tax credits properly claimed by a taxpayer who has
7 no income tax liability shall be paid to the taxpayer; and
8 provided further that no refund on account of the tax credit
9 allowed by this section shall be made for amounts less than \$1.

10 A husband and wife who do not file a joint tax return shall
11 only be entitled to make this election to the extent that they
12 would have been entitled to make the election had they filed a
13 joint tax return.

14 The election required by this subsection shall be made in a
15 manner prescribed by the director on the taxpayer's return for
16 the taxable year in which the system is installed and placed in
17 service. A separate election may be made for each separate
18 system that generates a credit. An election once made is
19 irrevocable.

20 (i) No taxpayer shall be allowed a credit under this
21 section for the portion of the renewable energy technology
22 system required by section 196-6.5 that is installed and placed



1 in service on any newly constructed single-family residential
2 property authorized by a building permit issued on or after
3 January 1, 2010.

4 (j) Any taxpayer eligible to claim a credit under this
5 section may transfer the credit to another taxpayer for a cash
6 payment on a dollar-for-dollar basis that is equal to the
7 present value of the tax credit the taxpayer is eligible to
8 claim.

9 ~~[(j)]~~ (k) To the extent feasible, using existing resources
10 to assist the energy-efficiency policy review and evaluation,
11 the department shall assist with data collection on the
12 following for each taxable year:

13 (1) The number of renewable energy technology systems that
14 have qualified for a tax credit during the calendar
15 year by:

- 16 (A) Technology type; and
- 17 (B) Taxpayer type (corporate and individual); and

18 (2) The total cost of the tax credit to the State during
19 the taxable year by:

- 20 (A) Technology type; and
- 21 (B) Taxpayer type.



1 [~~(k)~~] (1) This section shall apply to eligible renewable
2 energy technology systems that are installed and placed in
3 service on or after July 1, 2009."

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

6 SECTION 5. This Act, upon its approval, shall apply to
7 taxable years beginning after December 31, 2009; provided that
8 the renewable energy system that is subject to this Act was
9 installed and placed in service after December 31, 2009.

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INTRODUCED BY:

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Report Title:

Renewable Energy Tax Credit; Commercial Property; Transfer

Description:

Amends section 235-12.5, HRS, to expand the credit for renewable energy projects installed on commercial properties, reduces the credit reduction for taxpayers seeking a refundable credit, allows the tax credit to be transferred between taxpayers, and amends chapter 431, HRS, to expressly allow insurance companies to be eligible to claim a renewable energy technologies income tax credit.

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

