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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 utility lines 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 utility lines has prevented many communities from  
8 receiving these benefits. Therefore, overhead electric utility  
9 lines have been continually maintained and even reconstructed  
10 while adjacent public improvements are built. Underground  
11 conversion will take significant financial resources, however,  
12 it is a necessary undertaking to enhance the public's safety and  
13 welfare.

14           The purpose of this Act is to provide a financial incentive  
15 for undergrounding electric utility lines by creating a tax  
16 credit for the qualified costs of placing electric utility lines  
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  
9 credit. (a) There shall be allowed to each qualified taxpayer  
10 subject to the taxes imposed by this chapter or chapter 237,  
11 237D, 238, 239, 241, or 431, a tax credit that may be claimed  
12 for taxable years beginning after December 31, 2013, for  
13 qualified costs in the planning, design, or construction of new  
14 electric utility facilities to be placed underground, or the  
15 planning, design, and construction necessary to convert existing  
16 electric utility facilities for placement underground. The tax  
17 credit shall be deductible from the taxpayer's net income tax  
18 liability, if any, imposed by this chapter and, at the election  
19 of the taxpayer, from the tax liability imposed by chapters 237,  
20 237D, 238, 239, 241, and 431.

21       (b) The tax credit earned shall be equal to the qualified  
22 costs incurred from June 1, 2012, through May 31, 2017, up to a



1 maximum of \$75,000,000 of tax 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 claimed in any one taxable year. Any tax  
6 credit earned that is in excess of the \$15,000,000 ceiling in  
7 any one taxable year may be claimed as provided in subsection  
8 (d).

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

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

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

16 (3) Both.

17 (d) If a tax credit is earned under this section but is  
18 not claimed in the taxable year in which the tax credit is  
19 earned because the \$15,000,000 aggregate tax credit ceiling has  
20 been reached for all qualified taxpayers for the taxable year or  
21 exceeds the taxpayer's tax liability under this chapter or  
22 chapters 237, 237D, 238, 239, 241, and 431 for any year for



1 which the credit is claimed, the tax credit in excess of  
2 \$15,000,000 may be used as a credit against the taxpayer's tax  
3 liability for the taxes set forth in this section in subsequent  
4 years until exhausted; provided that the taxpayer may continue  
5 to claim the credit provided in this section if the qualified  
6 costs are incurred before June 1, 2017, subject to the monetary  
7 ceilings in subsection (b).

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

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



1 credits determined under this subsection shall be added to the  
2 taxpayer's tax liability for the taxable year in which the  
3 recapture occurs under this subsection.

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

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

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

19 (1) Qualified costs, if any, expended in the previous  
20 taxable year;

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



1       (3) The tax liability under this chapter and chapters 237,  
2           237D, 238, 239, 241, and 431 against which the tax  
3           credits are claimed.

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

6       (i) The public utilities commission shall maintain records  
7       of the names of taxpayers eligible for the tax credits and the  
8       total amount of qualified costs incurred from June 1, 2012,  
9       through May 31, 2017. The public utilities commission shall  
10       verify all qualified costs and, upon each determination, shall  
11       issue a certificate to the taxpayer certifying:

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

13           (2) The amount of tax credit that the taxpayer is allowed  
14           to claim for the taxable year.

15       The public utilities commission shall certify no more than  
16       \$15,000,000 in tax credits in the aggregate for all taxpayers  
17       for each taxable year; provided that the commission may verify  
18       qualified costs of no more than \$75,000,000 from June 1, 2012,  
19       through May 31, 2017. The taxpayer shall file the certificate  
20       with the taxpayer's return to the department of taxation.

21       (j) As used in this section:



1       "Electric utility facility" means any structure or  
2 equipment for the production, conveyance, transmission,  
3 delivery, or furnishing of light or power within the State.

4       "Qualified costs" means any costs for plans, design, and  
5 construction, costs for equipment that is permanently affixed to  
6 a building or structure, and acquisition of facilities as  
7 necessary, up to a total of \$75,000,000 in the aggregate,  
8 incurred after May 31, 2012, and before June 1, 2017, for:

9       (1) New electric utility facilities to be placed  
10 underground;

11       (2) Conversion of existing electric utility facilities to  
12 be placed underground; or

13       (3) Both;

14 provided that "qualified costs" shall not include land  
15 acquisition costs.

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

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



1           "(d) Section 704 of the Internal Revenue Code (with  
2 respect to a partner's distributive share) shall be operative  
3 for purposes of this chapter; except that section 704(b)(2)  
4 shall not apply to:

5           (1) Allocations of the high technology business investment  
6 tax credit allowed by section 235-110.9 for  
7 investments made before May 1, 2009;

8           (2) Allocations of net operating loss pursuant to section  
9 235-111.5;

10           (3) Allocations of the attractions and educational  
11 facilities tax credit allowed by section 235-110.46;  
12 [~~or~~]

13           (4) Allocations of low-income housing tax credits among  
14 partners under section 235-110.8~~[+]~~; or

15           (5) Allocations of underground electric utility facility  
16 tax credits allowed by section 235-\_\_\_\_\_."

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





1 SECTION 6. This Act, upon its approval, shall apply to  
2 qualified costs, as defined in section 3 of this Act, incurred  
3 after May 31, 2012.  
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**Report Title:**

Public Utilities; Tax Credits; Undergrounding

**Description:**

Creates a tax credit for electric utilities for undergrounding utility lines.

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