

JAN 17 2013

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# A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

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

1           SECTION 1. Section 196-6.5, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3           "(a) On or after January 1, 2010, no building permit shall  
4 be issued for a new single-family dwelling that does not include  
5 a solar water heater system that meets the standards established  
6 pursuant to section 269-44, unless the coordinator approves a  
7 variance. A variance application shall only be accepted if  
8 submitted by an architect or mechanical engineer licensed under  
9 chapter 464, who attests that:

10           (1) Installation is impracticable due to poor solar  
11 resource;

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



1 (3) A renewable energy technology system [~~as defined in~~  
2 ~~section 235-12.5,~~] is substituted for use as the  
3 primary energy source for heating water; or

4 (4) A demand water heater device approved by Underwriters  
5 Laboratories, Inc., is installed; provided that at  
6 least one other gas appliance is installed in the  
7 dwelling. For the purposes of this paragraph, "demand  
8 water heater" means a gas-tankless instantaneous water  
9 heater that provides hot water only as it is needed."

10 SECTION 2. Section 235-12.5, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 **"§235-12.5 Renewable energy technologies; income tax**

13 **credit.** (a) [~~When the requirements of subsection (d) are met,~~  
14 ~~each individual or corporate taxpayer that files an individual~~  
15 ~~or corporate net income tax return for a taxable year may claim~~  
16 ~~a tax credit under this section against the Hawaii state~~  
17 ~~individual or corporate net income tax. The tax credit may be~~  
18 ~~claimed for every eligible renewable energy technology system~~  
19 ~~that is installed and placed in service in the State by a~~  
20 ~~taxpayer during the taxable year. The tax credit may be claimed~~  
21 ~~as follows:}] There is hereby allowed as a credit against the tax  
22 imposed by this chapter for the taxable year:~~



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- 1           (1) For ~~[each] solar energy [system: thirty five per~~  
2           ~~cent]~~ property that is placed in service in the State  
3           by a taxpayer during the taxable year, and that is not  
4           part of a utility scale solar energy facility, and for  
5           which no credit has been claimed under paragraph (4):  
6           the percentage set forth in subsection (b) of the  
7           ~~[actual cost or the cap amount determined in~~  
8           ~~subsection (b), whichever is less;]~~ basis of such  
9           solar energy property as described in subsection (d);  
10          or  
11          (2) For ~~[each wind powered energy system: twenty per cent~~  
12          ~~of the actual cost or the cap amount determined in~~  
13          ~~subsection (b), whichever is less;]~~ wind energy  
14          property that is placed in service in the State by a  
15          taxpayer during the taxable year: the percentage set  
16          forth in subsection (b) of the basis of such wind  
17          energy property as described in subsection (d); or  
18          (3) For utility scale solar energy facilities placed in  
19          service in the State by a taxpayer, for the ten-year  
20          period beginning on the date the facility was  
21          originally placed in service: the relevant rate  
22          specified in subsection (b) multiplied by the number



1 of kilowatt hours produced by the facility and sold by  
2 the taxpayer to an unrelated person during the taxable  
3 year; or

4 (4) For solar energy property that is placed in service in  
5 the State by a taxpayer during the taxable year that  
6 is not part of a utility scale solar energy facility,  
7 and for which no credit has been claimed under  
8 paragraph (1), for the ten-year period beginning on  
9 the date the property was originally placed in  
10 service: the relevant rate specified in subsection  
11 (b) multiplied by the number of kilowatt hours  
12 produced by the property during the taxable year;

13 provided that multiple owners of a single [~~system~~] solar energy  
14 property, wind energy property, or utility scale solar energy  
15 facility shall be entitled to a single tax credit[~~;~~ and provided  
16 ~~further that the tax credit shall be apportioned between the~~  
17 ~~owners in proportion to their contribution to the cost of the~~  
18 ~~system.] for that property or facility.~~

19 In the case of a partnership, S corporation, estate, or  
20 trust, the tax credit allowable is for [~~every~~] all eligible  
21 [~~renewable~~] solar and wind energy [~~technology system~~] property  
22 [~~that is~~] installed and placed in service in the State by the



1 entity[-] and is allowable for all energy produced by solar  
2 energy property or produced and sold by a utility scale solar  
3 energy facility during that taxable year. The ~~[cost upon which]~~  
4 amount of the tax credit [is computed] shall be determined at  
5 the entity level. Distribution and share of credit shall be  
6 determined pursuant to section ~~[235-110.7(a)-.]~~ 704(b) of the  
7 Internal Revenue Code.

8 (b) The amount of credit allowed ~~[for each eligible~~  
9 ~~renewable energy technology system shall not exceed the~~  
10 ~~applicable cap amount, which is determined]~~ under this section  
11 shall be as follows:

12 ~~[(1) If the primary purpose of the solar energy system is~~  
13 ~~to use energy from the sun to heat water for household~~  
14 ~~use, then the cap amounts shall be:~~

15 ~~(A) \$2,250 per system for single family residential~~  
16 ~~property;~~

17 ~~(B) \$350 per unit per system for multi-family~~  
18 ~~residential property; and~~

19 ~~(C) \$250,000 per system for commercial property;~~

20 ~~(2) For all other solar energy systems, the cap amounts~~  
21 ~~shall be:~~



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- 1           ~~(A) \$5,000 per system for single family residential~~
- 2           ~~property, provided that if all or a portion of~~
- 3           ~~the system is used to fulfill the substitute~~
- 4           ~~renewable energy technology requirement pursuant~~
- 5           ~~to section 196 6.5(a)(3), the credit shall be~~
- 6           ~~reduced by thirty five per cent of the actual~~
- 7           ~~system cost or \$2,250, whichever is less,~~
- 8           ~~(B) \$350 per unit per system for multi family~~
- 9           ~~residential property, and~~
- 10           ~~(C) \$500,000 per system for commercial property, and~~
- 11         ~~(3) For all wind powered energy systems, the cap amounts~~
- 12         ~~shall be:~~
- 13           ~~(A) \$1,500 per system for single family residential~~
- 14           ~~property, provided that if all or a portion of~~
- 15           ~~the system is used to fulfill the substitute~~
- 16           ~~renewable energy technology requirement pursuant~~
- 17           ~~to section 196 6.5(a)(3), the credit shall be~~
- 18           ~~reduced by twenty per cent of the actual system~~
- 19           ~~cost or \$1,500, whichever is less,~~
- 20           ~~(B) \$200 per unit per system for multi family~~
- 21           ~~residential property, and~~
- 22           ~~(C) \$500,000 per system for commercial property.]~~



- 1        (1) For solar energy property:
- 2            (A) Thirty per cent of the basis of the solar energy
- 3            property placed in service on or after July 1,
- 4            2013, and on or before December 31, 2014;
- 5            (B) Twenty-five per cent of the basis of the solar
- 6            energy property placed in service on or after
- 7            January 1, 2015, and on or before December 31,
- 8            2015;
- 9            (C) Twenty per cent of the basis of the solar energy
- 10           property placed in service on or after January 1,
- 11           2016, and on or before December 31, 2016;
- 12           (D) Fifteen per cent on the basis of the solar energy
- 13           property placed in service on or after January 1,
- 14           2017, and on or before December 31, 2017; and
- 15           (E) Ten per cent of the basis of the solar energy
- 16           property placed in service on or after January 1,
- 17           2018;
- 18        (2) For wind energy property: twenty per cent of the
- 19        basis of wind energy property placed in service on or
- 20        after July 1, 2013;
- 21        (3) For a utility scale solar energy facility:



1           (A) 11.5 cents per kilowatt hour for ordinary utility  
2           scale solar energy facilities placed in service  
3           on or after July 1, 2013, and on or before  
4           December 31, 2019; and

5           (B) 5.75 cents per kilowatt hour for competitively-  
6           bid utility scale solar energy facilities placed  
7           in service on or after July 1, 2013, and on or  
8           before December 31, 2019; and

9           (4) For solar energy property for which no credit is  
10           claimed under subsection (a)(1): 11.5 cents per  
11           kilowatt hour for energy property placed in service on  
12           or after July 1, 2013, and on or before December 31,  
13           2019.

14           (c) For the purposes of this section:

15           ~~["Actual cost" means costs related to the renewable energy~~  
16           ~~technology systems under subsection (a), including accessories~~  
17           ~~and installation, but not including the cost of consumer~~  
18           ~~incentive premiums unrelated to the operation of the system or~~  
19           ~~offered with the sale of the system and costs for which another~~  
20           ~~credit is claimed under this chapter.~~





1       ~~"Household use" means any use to which heated water is~~  
2 ~~commonly put in a residential setting, including commercial~~  
3 ~~application of those uses.~~

4       ~~"Renewable energy technology system" means a new system~~  
5 ~~that captures and converts a renewable source of energy, such as~~  
6 ~~solar or wind energy, into:~~

- 7       ~~(1) A usable source of thermal or mechanical energy;~~  
8       ~~(2) Electricity; or~~  
9       ~~(3) Fuel.]~~

10       "Competitively-bid utility scale solar energy facility"  
11 means a utility scale solar energy facility that is installed  
12 and placed in service pursuant to a competitive bidding process,  
13 required by the public utilities commission or statute, and  
14 conducted by or on behalf of an electric utility regulated by  
15 the public utilities commission.

16       "Ordinary utility scale solar energy facility" means a  
17 utility scale solar energy facility that is not installed and  
18 placed in service pursuant to a competitive bidding process  
19 conducted by or on behalf of an electric utility regulated by  
20 the public utilities commission.

21       "Placed in service" shall have the same meaning as in  
22 Treasury Regulation 1.167(a)-11(e)(1).



1           ~~"Solar [or wind] energy [system] property" means [any~~  
2 ~~identifiable facility, equipment, apparatus, or the like that~~  
3 ~~converts solar or wind energy to useful thermal or electrical~~  
4 ~~energy for heating, cooling, or reducing the use of other types~~  
5 ~~of energy that are dependent upon fossil fuel for their~~  
6 ~~generation.] equipment that uses solar energy to generate~~  
7 ~~electricity, to heat or cool or provide hot water for use in a~~  
8 ~~structure, or to provide solar process heat, the construction,~~  
9 ~~reconstruction, or erection of which is completed by the~~  
10 ~~taxpayer or acquired by the taxpayer if the original use of such~~  
11 ~~property commences with the taxpayer.~~

12           "Sub-transmission or transmission voltage" means a voltage  
13 level that the applicable electric utility has filed with the  
14 public utilities commission as a nominal primary or transmission  
15 voltage level, allowing however for variations in voltage levels  
16 that the public utilities commission deems acceptable for  
17 primary or transmission voltage.

18           "Utility scale solar energy facility" means solar energy  
19 property that is:

- 20           (1) Designed, installed, and placed into service to  
21           produce electricity; and



1       (2) Interconnected to a utility grid at sub-transmission  
2           or transmission voltage.

3       "Wind energy property" means equipment that uses wind  
4 energy to generate electricity, the construction,  
5 reconstruction, or erection of which is completed by the  
6 taxpayer or acquired by the taxpayer if the original use of such  
7 property commences with the taxpayer, and that is not  
8 interconnected to a utility grid at sub-transmission or  
9 transmission voltage.

10       (d) [~~For taxable years beginning after December 31, 2005,~~  
11 ~~the dollar amount of any utility rebate shall be deducted from~~  
12 ~~the cost of the qualifying system and its installation before~~  
13 ~~applying the state tax credit.] For purposes of calculating the  
14 credit allowed under this chapter:~~

15       (1) The basis of the solar or wind energy property shall  
16 include all costs related to the solar or wind energy  
17 property, including accessories and installation, but  
18 shall not include the cost of consumer incentive  
19 premiums unrelated to the operation of the property or  
20 offered with the sale of the property. The basis used  
21 for claiming the credit allowed under this chapter  
22 shall be consistent with the basis used by the



1           taxpayer for claiming the federal energy credit  
2           described in section 48 of the Internal Revenue Code  
3           or the qualified solar electric property expenditure  
4           used by the taxpayer in claiming the federal  
5           residential energy property credit described in  
6           section 25D of the Internal Revenue Code; provided  
7           that for the purposes of calculating the credit  
8           allowed under this chapter, the basis of the solar or  
9           wind energy property shall not be reduced by the  
10           amount of any federal tax credits or other subsidized  
11           energy financing received by the taxpayer; and  
12           (2) The number of kilowatt hours produced by solar energy  
13           property shall be determined by a meter or metering  
14           system installed on the property which allows the  
15           taxpayer to determine the amount of solar energy  
16           production accurate to within two per cent of actual  
17           system output. The installed meter must be a separate  
18           interval data recording meter, or a complete system  
19           that is functionally equivalent to an interval data  
20           recording meter recording data no less frequently than  
21           every fifteen minutes. The type of meter installed on



1           the solar energy property must be listed with the  
2           California energy commission.

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

11           (f) If the tax credit under this section exceeds the  
12 taxpayer's income tax liability, the excess of the credit over  
13 liability may be used as a credit against the taxpayer's income  
14 tax liability in subsequent years until exhausted, unless  
15 otherwise elected by the taxpayer pursuant to subsection (g) [~~or~~  
16 ~~(h)~~]. All claims for the tax credit under this section,  
17 including amended claims, shall be filed on or before the end of  
18 the twelfth month following the close of the taxable year for  
19 which the credit may be claimed. Failure to comply with this  
20 subsection shall constitute a waiver of the right to claim the  
21 credit.



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

11           The election required by this subsection shall be made in a  
12 manner prescribed by the director on the taxpayer's return for  
13 the taxable year in which the system is installed and placed in  
14 service. A separate election may be made for each separate  
15 [~~system~~] solar energy property and utility scale solar energy  
16 facility that generates a credit. An election once made is  
17 irrevocable.

18           ~~[(h) Notwithstanding subsection (g), for any renewable~~  
19 ~~energy technology system, an individual taxpayer may elect to~~  
20 ~~have any excess of the credit over payments due refunded to the~~  
21 ~~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) To the extent feasible, using existing resources to~~  
5 ~~assist the energy efficiency policy review and evaluation, the~~  
6 ~~department shall assist with data collection on the following~~  
7 ~~for each taxable year:~~

8 ~~(1) The number of renewable energy technology systems that~~  
9 ~~have qualified for a tax credit during the calendar~~  
10 ~~year by:~~

11 ~~(A) Technology type; and~~

12 ~~(B) Taxpayer type (corporate and individual); and~~

13 ~~(2) The total cost of the tax credit to the State during~~  
14 ~~the taxable year by:~~

15 ~~(A) Technology type; and~~

16 ~~(B) Taxpayer type.~~

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

20 (h) Coordination with other laws:





- 1        (1) Solar energy property shall not include any renewable  
2        energy technology property installed to comply with  
3        the requirements of section 196-6.5;
- 4        (2) The basis of solar or wind energy property shall not  
5        include any amount for which another credit is claimed  
6        under this chapter;
- 7        (3) A utility scale solar energy facility shall not  
8        include any facility for which another credit is  
9        claimed under this chapter;
- 10       (4) No credit under this section shall be allowed to:
  - 11       (A) Any federal, state, or local government or any  
12       political subdivision, agency, or instrumentality  
13       thereof;
  - 14       (B) Any organization described in section 501(c) of  
15       the Internal Revenue Code and exempt from tax  
16       under section 501(a) of the Internal Revenue  
17       Code;
  - 18       (C) Any entity referred to in section 54(j)(4) of the  
19       Internal Revenue Code; or
  - 20       (D) Any partnership or other pass-thru entity or any  
21       partner or other holder of an equity or profits



1                   interest of which is described in subparagraph  
2                   (A), (B) or (C); and

3       (5) An association of owners under chapter 514A, 514B,  
4       421I, or 421J may claim the credit allowed under this  
5       section in its own name for property or facilities  
6       placed in service and located on common areas.

7       (i) The department of business, economic development, and  
8       tourism shall collect data regarding tax credits claimed under  
9       this section, and shall report to the legislature no later than  
10      December 31 of each year the following information received by  
11      the department as of August 31 of that year, for the immediately  
12      preceding tax year:

13      (1) The dollar amount of tax credits claimed for solar  
14      energy facilities under subsection (a) (1) of this  
15      section;

16      (2) The dollar amount of tax credits claimed for utility  
17      scale solar energy facilities under subsection (a) (3)  
18      of this section;

19      (3) The dollar amount of tax credits claimed for  
20      competitively-bid utility scale solar energy  
21      facilities;



- 1       (4) The dollar amount of tax credits claimed for ordinary  
2       utility scale solar energy facilities;
- 3       (5) The dollar amount of tax credits claimed for wind  
4       energy property;
- 5       (6) The total dollar amount of tax credits claimed under  
6       this section; and
- 7       (7) The dollar amount of tax credits taken as refundable  
8       tax credits for each of the reporting categories  
9       above.

10 The department shall also, in its annual report to the  
11 legislature, update its previous year's annual report to the  
12 legislature regarding tax credits claimed under this section.

13       (j) The tax credits provided for in this section shall be  
14 construed in accordance with Treasury Regulations and judicial  
15 interpretations of similar provisions in sections 25D, 45, and  
16 48 of the Internal Revenue Code.

17       (k) Notwithstanding the foregoing, and in lieu of the  
18 credits described above, an individual or corporate taxpayer not  
19 currently regulated by the public utilities commission that had  
20 by December 31, 2012, entered into an agreement for the sale of  
21 electrical energy from non-residential non-utility scale solar  
22 energy property with a public sector agency pursuant to a public



1 solicitation and procurement process shall be allowed to elect  
2 to receive tax credits for energy properties placed into service  
3 prior to January 1, 2014, on the same basis as if the energy  
4 property had been placed into service prior to January 1, 2013.

5 For the purposes of this section, "public sector agency"  
6 shall mean the government of the United States of America or of  
7 the State of Hawaii or any political subdivision, agency or  
8 instrumentality thereof.

9 (1) Taxpayers may claim credits under this section as it  
10 existed on January 1, 2013, for renewable energy technology  
11 systems, as that term is defined in this section as it existed  
12 on January 1, 2013, which were installed and placed in service  
13 prior to July 1, 2013."

14 SECTION 3. The department of business, economic  
15 development, and tourism shall conduct a study in the 2017  
16 calendar year to determine:

17 (1) The extent to which renewable energy technology income  
18 tax credits have benefitted the State by advancing the  
19 State's renewable energy goals, reducing the energy  
20 costs of homeowners and business owners, and  
21 generating economic growth;



- 1           (2) The net cost to the State of the renewable energy
- 2           technology income tax credits;
- 3           (3) The extent to which the State will be able to achieve
- 4           its renewable energy goals without further
- 5           modification to the existing renewable energy
- 6           technology income tax credit; and
- 7           (4) Whether the renewable energy technologies income tax
- 8           credit should be extended, eliminated, or otherwise
- 9           revised for tax years beginning January 1, 2020.

10 In conducting this study, the department of business, economic  
11 development, and tourism shall consult with, at minimum,  
12 representatives of the following groups:

- 13           (1) The department of taxation;
- 14           (2) The Blue Planet Foundation;
- 15           (3) The Ulupono Initiative;
- 16           (4) The Sierra Club;
- 17           (5) The Hawaii Solar Energy Association;
- 18           (6) The Hawaii Renewable Energy Association; and
- 19           (7) The Hawaii Photovoltaic Coalition.

20 The department of business, economic development, and tourism  
21 shall submit a report of its findings to the legislature no



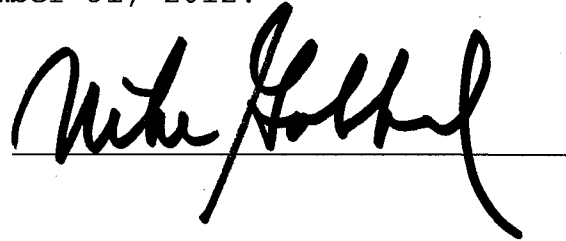
1 later than twenty days prior to the convening of the regular  
2 session of 2018.

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

5 SECTION 5. This Act, upon its approval, shall apply to  
6 taxable years beginning after December 31, 2012.

7

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Mike Gohmert", is written over a horizontal line. The signature is cursive and extends above and below the line.

# S.B. NO. //

**Report Title:**

Renewable Energy; Solar Energy Property; Tax Credit

**Description:**

Defines solar energy property and wind energy property and classifies utility scale solar energy facility, competitively-big utility scale solar energy facility, and ordinary utility scale solar energy facility. Establishes a method for calculating tax credits for solar or wind energy property. Requires department of business, economic development, and tourism to monitor and report tax credits claimed under section 235-12.5, Hawaii Revised Statutes.

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

