

JAN 18 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 235-12.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

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

13           (1) For each solar energy [~~system~~] property that is used  
14 exclusively to heat water and is installed and placed  
15 in service in the State by a taxpayer during the  
16 taxable year: thirty-five per cent of the [actual  
17 ~~cost or the cap amount determined in subsection (b),~~



1 ~~whichever is less; or~~ basis up to the applicable cap  
2 amount, which is determined as follows:  
3 (A) \$2,250 per property for single-family residential  
4 property;  
5 (B) \$350 per unit per property for multi-family  
6 residential property; and  
7 (C) \$250,000 per property for commercial property; or  
8 (2) For each solar energy property that is used primarily  
9 to generate electricity and is installed and placed in  
10 service in the State by a taxpayer during the taxable  
11 year and is not part of a larger competitive bid solar  
12 energy property: twenty per cent of the basis or  
13 \$500,000, whichever is less, provided that the solar  
14 energy property is placed in service on or before  
15 December 31, 2020; or  
16 (3) For each competitive bid solar energy property that is  
17 used to generate electricity: 4 cents per kilowatt-  
18 hour produced and either sold or used to displace  
19 electricity from the electric utility for the first  
20 one hundred twenty months of operations; provided that  
21 eligibility for tax credits under this paragraph shall  
22 apply only to solar energy properties placed in



1           service in the State on or before December 31, 2020;  
 2           but further provided that, if a solar energy property  
 3           under this paragraph is placed in service on or before  
 4           December 31, 2020, the taxpayer may continue to  
 5           collect tax credits earned on kilowatt-hours produced  
 6           and sold for the first one hundred twenty months of  
 7           operation; or

8           ~~[-(2)-]~~ (4) For each ~~[wind-powered]~~ wind energy ~~[system-]~~  
 9           property that is not part of a larger competitive bid  
 10           wind energy property: twenty per cent of the [actual  
 11           ~~cost or the cap amount determined in subsection (b),~~  
 12           ~~whichever is less; provided that multiple]~~ basis or  
 13           \$500,000, whichever is less; provided that the wind-  
 14           powered energy property is placed in service in the  
 15           State by the taxpayer on or before December 31, 2020.

16           Multiple owners of a single ~~[system]~~ property shall be entitled  
 17           to a single tax credit~~[+]~~, and ~~[provided further that]~~ the tax  
 18           credit shall be apportioned between the owners in proportion to  
 19           their contribution to the cost of the ~~[system-]~~ property.

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]~~ property that is installed and placed



1 in service in the State by the entity. The cost upon which the  
2 tax credit 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 property;~~

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

18 ~~(A) \$5,000 per system for single family residential~~  
19 ~~property, provided that if all or a portion of~~  
20 ~~the system is used to fulfill the substitute~~  
21 ~~renewable energy technology requirement pursuant~~  
22 ~~to section 196-6.5(a)(3), the credit shall be~~



1                   ~~reduced by thirty five per cent of the actual~~  
2                   ~~system cost or \$2,250, whichever is less,~~

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

5           ~~(C) \$500,000 per system for commercial property; and~~

6       ~~(3) For all wind powered energy systems, the cap amounts~~  
7       ~~shall be:~~

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

15           ~~(B) \$200 per unit per system for multi family~~  
16           ~~residential property; and~~

17           ~~(C) \$500,000 per system for commercial property.~~

18       ~~(e)]~~ (b) For the purposes of this section:

19           ~~["Actual cost" means costs related to the renewable energy~~  
20       ~~technology systems under subsection (a), including accessories~~  
21       ~~and installation, but not including the cost of consumer~~  
22       ~~incentive premiums unrelated to the operation of the system or~~



1 ~~offered with the sale of the system and costs for which another~~  
2 ~~credit is claimed under this chapter.~~

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

6 "Basis" means costs related to the energy property under  
7 subsection (a), including accessories and installation, but  
8 does not include the cost of consumer incentive premiums  
9 unrelated to the operation of the energy property or offered  
10 with the sale of the energy property and costs for which another  
11 credit is claimed under this chapter. Any cost incurred and paid  
12 for the repair, construction, or reconstruction of a structure in  
13 conjunction with the installation and placing in service of solar  
14 or wind energy property shall not constitute a part of the basis  
15 for the purpose of this section. The basis used under this  
16 chapter shall be consistent with the use of basis in section 25D  
17 or section 48 of the Internal Revenue Code; provided that, for  
18 the purposes of calculating the credit allowed under this  
19 chapter, the basis of the solar energy property or the wind  
20 energy property shall not be reduced by the amount of any  
21 federal tax credit or other federally subsidized energy  
22 financing received by the taxpayer.



1       "Competitive bid solar energy property" means a solar  
2 energy property installed and placed in service pursuant to a  
3 competitive bidding process, required by the public utilities  
4 commission or statute, and conducted by or on behalf of an  
5 electric utility regulated by the public utilities commission.

6       "Competitive bid wind energy property" means a wind energy  
7 property installed and placed in service pursuant to a  
8 competitive bidding process, required by the public utilities  
9 commission or statute, and conducted by or on behalf of an  
10 electric utility regulated by the public utilities commission.

11       "Placed in service" has the same meaning as in Treasury  
12 Regulation 1.167(a)-11(e)(1).

13       "Property" has the same meaning as in section 25D, 45, or  
14 section 48 of the Internal Revenue Code.

15       "Public sector agency" means any political subdivision,  
16 agency, or instrumentality of the State or of the federal  
17 government.

18       "Renewable energy technology system" means a new system  
19 that captures and converts a renewable source of energy, such as  
20 solar or wind energy, into:

- 21       (1) A usable source of thermal or mechanical energy;
- 22       (2) Electricity; or



1 (3) Fuel.

2 "Solar or wind energy system" means any identifiable  
3 facility, equipment, apparatus, or the like that converts solar  
4 or wind energy to useful thermal or electrical energy for  
5 heating, cooling, or reducing the use of other types of energy  
6 that are dependent upon fossil fuel for their generation.

7 [~~(d)~~] (c) For taxable years beginning after December 31,  
8 2005, the dollar amount of any utility rebate shall be deducted  
9 from the cost of the qualifying system and its installation  
10 before applying the state tax credit.

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

19 [~~(f)~~] (e) If the tax credit under [~~this section~~]  
20 subsections (a) (1), (2), and (4) exceeds the taxpayer's income  
21 tax liability, the excess of the credit over liability may be  
22 used as a credit against the taxpayer's income tax liability in





1 subsequent years until exhausted, unless otherwise elected by  
2 the taxpayer pursuant to subsection (f) or (g) [~~or (h)~~]. All  
3 claims for the tax credit under this section, including amended  
4 claims, shall be filed on or before the end of the twelfth month  
5 following the close of the taxable year for which the credit may  
6 be claimed. Failure to comply with this subsection shall  
7 constitute a waiver of the right to claim the credit.

8 [~~(g)~~] (f) For solar energy [~~systems,~~] properties under  
9 subsections (a) (1) and (2) or for any wind energy property under  
10 subsection (a) (4), a taxpayer may elect to reduce the eligible  
11 credit amount by thirty per cent and if this reduced amount  
12 exceeds the amount of income tax payment due from the taxpayer,  
13 the excess of the credit amount over payments due shall be  
14 refunded to the taxpayer; provided that tax credit amounts  
15 properly claimed by a taxpayer who has no income tax liability  
16 shall be paid to the taxpayer; and provided further that no  
17 refund on account of the tax credit allowed by this section  
18 shall be made for amounts less than \$1.

19 The election required by this subsection shall be made in a  
20 manner prescribed by the director on the taxpayer's return for  
21 the taxable year in which the system is installed and placed in  
22 service. A separate election may be made for each separate



1 system that generates a credit. An election once made is  
2 irrevocable.

3 ~~[(h)]~~ (g) Notwithstanding subsection ~~[(g)]~~ (f), for any  
4 ~~[renewable energy technology system]~~ solar energy property  
5 under subsections (a)(1) and (2) or for any wind energy property  
6 under subsection (a)(4), an individual taxpayer may elect to  
7 have any excess of the credit over payments due refunded to the  
8 taxpayer~~]~~ without discount, if:

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

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

14 provided that tax credits properly claimed by a taxpayer who has  
15 no income tax liability shall be paid to the taxpayer; ~~[and]~~  
16 provided further that no refund on account of the tax credit  
17 allowed by this section shall be made for amounts less than \$1.

18 A husband and wife who do not file a joint tax return shall  
19 only be entitled to make this election to the extent that they  
20 would have been entitled to make the election had they filed a  
21 joint tax return.



1           The election required by this subsection shall be made in a  
2 manner prescribed by the director on the taxpayer's return for  
3 the taxable year in which the system is installed and placed in  
4 service. A separate election may be made for each separate  
5 system that generates a credit. An election once made is  
6 irrevocable.

7           ~~[(i)]~~ (h) No taxpayer shall be allowed a credit under this  
8 section for the portion of the renewable energy technology  
9 system required by section 196-6.5 that is installed and placed  
10 in service on any newly constructed single-family residential  
11 property authorized by a building permit issued on or after  
12 January 1, 2010.

13           (i) For solar energy properties under subsection (a)(3),  
14 if the tax credit exceeds the amount of income tax payment due  
15 from the taxpayer, the excess of the credit amount over payments  
16 due shall be refunded to the taxpayer; provided that tax credit  
17 amounts properly claimed by a taxpayer who has no income tax  
18 liability shall be paid to the taxpayer; provided further that  
19 no refund on account of the tax credit allowed by this section  
20 shall be made for amounts less than \$1.

21           (j) For solar energy properties placed in service after  
22 December 31, 2012, and before January 1, 2014, a taxpayer may



1 elect tax credits under this section or under the department's  
2 temporary administrative rules that became effective on  
3 January 1, 2013.

4 (k) The tax credits provided for in this section shall be  
5 construed in accordance with Treasury Regulations and judicial  
6 interpretations of similar provisions in sections 25D, 45, and  
7 48 of the Internal Revenue Code.

8 (l) Notwithstanding the foregoing, and in lieu of the  
9 credits described above, an individual or corporate taxpayer not  
10 currently regulated by the public utilities commission that had  
11 by December 31, 2012, entered into an agreement for the sale of  
12 electrical energy from non-residential non-utility-scale solar  
13 energy property with a public sector agency pursuant to a public  
14 solicitation and procurement process shall be allowed to elect  
15 to receive tax credits for energy properties placed into service  
16 prior to January 1, 2014, on the same basis as if the energy  
17 property had been placed into service prior to January 1, 2013.

18 (m) Taxpayers who have received letters from the  
19 department extending the department's letter rulings or  
20 determination letters to December 31, 2013, and have submitted  
21 the requested status update may qualify for the tax credits as



1 they existed on December 31, 2012; provided that the energy  
2 property is placed in service on or before December 31, 2013.

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

7 (o) No credit under this section shall be allowed to:

8 (1) Any federal, state, or local government or any  
9 political subdivision, agency, or instrumentality  
10 thereof;

11 (2) Any organization described in section 501(c) of the  
12 Internal Revenue Code and exempt from tax under  
13 section 501(a) of the Internal Revenue Code;

14 (3) Any entity referred to in section 54(j)(4) of the  
15 Internal Revenue Code; or

16 (4) Any partnership or other pass-thru entity that has as  
17 a partner or other holder of an equity or profits  
18 interest that is described in paragraph (1), (2), or  
19 (3).

20 ~~[(j) To the extent feasible, using existing resources to~~  
21 ~~assist the energy efficiency policy review and evaluation, the~~



1 ~~department shall assist with data collection on the following~~  
2 ~~for each taxable year:]~~

3 (p) The department of taxation and the department of  
4 business, economic development, and tourism shall collaborate to  
5 issue a joint report to the legislature annually no later than  
6 twenty days prior to the convening of each regular session on  
7 the following for each previous 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 (C) Tax credit type (investment or production); and

18 (D) Refundability type (refundable or nonrefundable);

19 and

20 (3) The estimated economic benefit that may be

21 attributable to the renewable energy tax credits,

22 including:



- 1           (A) Impact on the economy, including:
- 2                (i) Economic boost;
- 3                (ii) Net flow of money into or out of the State;
- 4                       and
- 5                (iii) General excise and income tax revenue
- 6                       generated; and
- 7           (B) Jobs, including:
- 8                (i) Number of jobs maintained;
- 9                (ii) Number of jobs created and the number of
- 10                       jobs lost; and
- 11                (iii) Average pay.
- 12           (q) The department of business, economic development, and
- 13 tourism shall commence a study no later than July 1, 2016, on
- 14 the costs incurred and benefits generated by this section, as
- 15 well as the extent to which the tax credits under this section
- 16 has helped the State to achieve its energy goals. In conducting
- 17 this study, the department of business, economic development,
- 18 and tourism shall consult with the department of taxation and
- 19 industry trade groups and may consult with other stakeholders.
- 20 The department shall issue a report to the legislature no later
- 21 than December 31, 2017. This report to the legislature shall
- 22 include, at a minimum, the elements in subsection (p) and the

1 results of its study and shall include recommendations on  
 2 whether the various tax credits under this section should be  
 3 revised, eliminated as soon as possible, extended beyond 2020,  
 4 or allowed to expire at the end of 2020.

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

8 SECTION 2. If any provision of this Act, or the  
 9 application thereof to any person or circumstance, is held  
 10 invalid, the invalidity does not affect other provisions or  
 11 applications of the Act that can be given effect without the  
 12 invalid provision or application, and to this end the provisions  
 13 of this Act are severable.

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

16 SECTION 4. This Act, upon its approval, shall apply to  
 17 taxable years beginning after December 31, 2012.

18

INTRODUCED BY: *Mike Hubbard*





# S.B. NO. 623

**Report Title:**

Renewable Energy; Solar Energy Property; Tax Credit

**Description:**

Establishes tax credits for solar energy property, wind energy property, competitive bid solar energy property, and competitive bid wind energy property. Requires the department of taxation and department of business, economic development, and tourism to report tax credits claimed under section 235-12.5, Hawaii Revised Statutes.

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