THE SENATE TWENTY-SIXTH LEGISLATURE, 2011 STATE OF HAWAII S.B. NO. ⁷⁵⁶ S.D. 2 H.D. 1

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A BILL FOR AN ACT

RELATING TO TAXATION.

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

| 1 | | PART I |
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| 2 | SECI | YION 1. The purpose of this Act is to make various |
| 3 | amendment | s to tax laws. Part II establishes an excise tax on |
| 4 | direct br | coadcast satellite service providers. Part III modifies |
| 5 | the renew | wable energy technologies income tax credit by: |
| 6 | (1) | Requiring a renewable energy technology system to be |
| 7 | | placed in service prior to January 1, 2015, to be |
| 8 | | eligible for the tax credit; |
| 9 | (2) | Providing that tax credits claimed during the 2012 |
| 10 | | taxable year will be paid out beginning July 1, 2013; |
| 11 | | and |
| 12 | (3) | Requiring the department of business, economic |
| 13 | | development, and tourism to complete an assessment by |
| 14 | | October 1, 2013, on the efficacy and ongoing need for |
| 15 | | the tax credit after December 31, 2014. |
| 16 | Part IV r | epeals the income tax exemption for income derived from |
| 17 | stock opt | ions or stocks from a qualified high technology |

18 business.

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| 1 | PART II |
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| 2 | SECTION 2. The purpose of this part is to establish an |
| 3 | excise tax on direct broadcast satellite service providers. |
| 4 | SECTION 3. The Hawaii Revised Statutes is amended by |
| 5 | adding a new chapter to be appropriately designated and to read |
| 6 | as follows: |
| 7 | "CHAPTER |
| 8 | DIRECT BROADCAST SATELLITE SERVICE PROVIDERS EXCISE TAX |
| 9 | § -1 Definitions. For the purposes of this chapter: |
| 10 | "Department" means the department of taxation. |
| 11 | "Direct broadcast satellite service" means the distribution |
| 12 | or broadcasting of video programming or services by satellite |
| 13 | directly to a subscriber's or paying customer's receiving |
| 14 | equipment. |
| 15 | "Gross revenue" means revenues derived from supplying |
| 16 | regular subscriber direct broadcast satellite service, including |
| 17 | installation fees, disconnect and reconnect fees, and fees for |
| 18 | regular direct broadcast satellite service benefits. "Gross |
| 19 | revenue" shall not include per-program or per-channel charges, |
| 20 | leased channel revenues, advertising revenues, and other income |
| 21 | not derived from the supplying of regular subscriber direct |
| 22 | broadcast satellite service. |

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"Provider" means a provider of direct broadcast satellite
 service.

3 S -2 Imposition of tax. (a) There is hereby levied and
4 shall be assessed and collected quarterly privilege taxes
5 against providers on account of their business and other
6 activities in the State in the amount of the provider's gross
7 revenue derived from the sale of direct broadcast satellite
8 services, multiplied by four per cent.

9 (b) The tax imposed by subsection (a) shall not apply to
10 internet access services, including services purchased, used, or
11 sold to provide direct broadcast satellite services.

12 § -3 Remittance. The tax imposed by this chapter is due
13 and payable to the department on or before the last day of the
14 first month following the end of each calendar quarter.

15 § -4 Report. (a) A provider subject to the tax imposed
16 by this chapter shall file a quarterly report with the
17 department on a form prescribed by the department. The report
18 shall be due on the date the tax is due under section -3.

19 (b) The report shall include a statement of the gross
20 revenues received from the provision of direct broadcast
21 satellite services and tax due during the preceding quarterly
22 period and any other information required by the department.



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1 **Records.** (a) A provider subject to the tax S -5 2 imposed by this chapter shall maintain the necessary records and any other information required by the department to determine 3 4 the amount of the tax that the provider is required to remit and 5 any credit that the provider is entitled to claim under this 6 chapter. 7 (b) The records shall be open at all times to inspection 8 by the department. 9 -6 Information shown on subscriber bill. A provider S 10 may show, as a separate line item on each bill for each 11 subscriber, the amount of the total bill resulting from any tax 12 imposed under this chapter. 13 S -7 Rules. The department may adopt rules under 14 chapter 91 necessary to effectuate this chapter. -8 Allocation of revenue. The revenue from the tax 15 S 16 imposed by this chapter shall be deposited to the credit of the 17 general fund." 18 PART III SECTION 4. The legislature supports the use of renewable 19 20 energy technologies and understands the need to encourage 21 greater use of renewable energy technology systems. In 2003, an

22 income tax credit was established to offset the cost of



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installing and placing renewable energy technology systems into
 service in Hawaii. The credit has been successful in
 encouraging the development of renewable technologies and
 helping to establish an important new industry in the State's
 economy.

Nonetheless, as with all measures intended to help support
a nascent industry to achieve scale and become self-sustaining,
the legislature is concerned that the incentive provided by
section 235-12.5, Hawaii Revised Statutes, will remain in place
after the industries it supports no longer require it for
financial viability.

12 To send a clear signal about the State's commitment to 13 these industries and about the State's concern over their 14 longer-term need to be self-sustaining while also addressing 15 challenges facing the State during the current fiscal biennium, 16 this part establishes provisions to evaluate and adjust these 17 tax credits.

18 Accordingly, the purpose of this part is to:

19 (1) Require a renewable energy technology system to be
20 placed in service prior to January 1, 2015, to be
21 eligible for the tax credit;

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1 (2) Provide that tax credits claimed during the 2012 2 taxable year shall be paid out beginning July 1, 2013; 3 and Conduct an evaluation of the effectiveness and ongoing 4 (3) 5 need for the credit beyond December 31, 2014. 6 SECTION 5. Section 235-12.5, Hawaii Revised Statutes, is 7 amended as follows: 8 1. By amending subsection (a) to read: 9 "(a) When the requirements of subsection (d) are met, each 10 individual or corporate taxpayer that files an individual or 11 corporate net income tax return for a taxable year may claim a 12 tax credit under this section against the Hawaii state 13 individual or corporate net income tax. The tax credit may be 14 claimed for every eligible renewable energy technology system 15 that is installed and placed in service in the State by a 16 taxpayer during the taxable year. The tax credit may be claimed 17 as follows: 18 (1) For each solar energy system: thirty-five per cent of 19 the actual cost or the cap amount determined in 20 subsection (b), whichever is less; or

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| 1 | (2) For each wind-powered energy system: twenty per cent |
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| 2 | of the actual cost or the cap amount determined in |
| 3 | subsection (b), whichever is less; |
| 4 | provided that refundable credits claimed during the 2012 taxable |
| 5 | year shall be paid beginning July 1, 2013; provided further that |
| 6 | multiple owners of a single system shall be entitled to a single |
| 7 | tax credit; and provided further that the tax credit shall be |
| 8 | apportioned between the owners in proportion to their |
| 9 | contribution to the cost of the system. |
| 10 | In the case of a partnership, S corporation, estate, or |
| 11 | trust, the tax credit allowable is for every eligible renewable |
| 12 | energy technology system that is installed and placed in service |
| 13 | in the State by the entity. 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 pursuant to |
| 16 | section 235-110.7(a)." |
| 17 | 2. By amending subsections (j) and (k) to read: |
| 18 | "(j) To the extent feasible, using existing resources [to |
| 19 | assist the energy efficiency policy review and evaluation], the |
| 20 | department of business, economic development, and tourism shall |

21 [assist with data collection on the following for each taxable

22 year:



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| 1 | (1) | The number of renewable energy technology systems that |
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| 2 | | have qualified for a tax credit during the calendar |
| 3 | | year by: |
| 4 | | (A) Technology type; and |
| 5 | | (B) Taxpayer type (corporate and individual); and |
| 6 | -(2) - | The total cost of the tax credit to the State during |
| 7 | | the taxable year by: |
| 8 | | (A) Technology type;—and |
| 9 | | (B) Taxpayer type.] |
| 10 | complete | an assessment, by October 1, 2013, of the impact of the |
| 11 | tax credi | t on the State's energy sector for the period 2003-2013 |
| 12 | and of th | e continued need for the tax credit after December 31, |
| 13 | <u>2014. In</u> | conducting the assessment, the department shall report |
| 14 | <u>on:</u> | |
| 15 | (1) | The total number of renewable energy technology |
| 16 | | systems that were subject to claim for credit under |
| 17 | | this section by year and technology; |
| 18 | (2) | The total megawatts generated or offset by renewable |
| 19 | | energy technology systems that were subject to a claim |
| 20 | | for credit under this section by year and technology; |
| 21 | (3) | The total reduction in barrels of oil imported as a |
| 22 | | result of the deployment of renewable energy |
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| 1 | | technology systems that were subject to a claim for |
|----|-------------|--|
| 2 | | credit under this section by year and technology; |
| 3 | (4) | The dollar value of savings resulting from reduced oil |
| 4 | | exports by year and technology; |
| 5 | <u>(5)</u> | Trends in the cost of electricity provided by the |
| 6 | | State's electric utilities, fuel oil, biofuels used in |
| 7 | | the State for electricity production, and the |
| 8 | | installed cost of renewable energy technology systems |
| 9 | | that qualify for the tax credit; and |
| 10 | (6) | Its recommendations regarding the continued need for |
| 11 | | the tax credit with respect to the costs and benefits |
| 12 | | it brings to the State. |
| 13 | (k) | This section shall apply to eligible renewable energy |
| 14 | technolog | y systems that are installed and placed in service on |
| 15 | or after d | July 1, 2009[-] <u>, and before January 1, 2015.</u> " |
| 16 | | PART IV |
| 17 | SECT | ION 6. The purpose of this part is to repeal the |
| 18 | income ta: | x exemption for income derived from stock options or |
| 19 | stocks fro | om a qualified high technology business. |
| 20 | The | legislature finds that the State can no longer afford |
| 21 | the cost of | of this tax exemption. |

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SECTION 7. Section 235-9.5, Hawaii Revised Statutes, is
 repealed.

| 3 | [" §235-9.5 Stock options from qualified high technology |
|----|---|
| 4 | businesses excluded from taxation. (a) Notwithstanding any law |
| 5 | to-the contrary, all income carned and proceeds derived from |
| 6 | stock options or stock, including stock issued through the |
| 7 | exercise of stock options or warrants, from a qualified high |
| 8 | technology business or from a holding company of a qualified |
| 9 | high technology business by an employee, officer, or director of |
| 10 | the qualified high technology business, or investor who |
| 11 | qualifies for the credit under section 235 110.9, that would |
| 12 | otherwise be taxed as ordinary income or as capital gains to |
| 13 | those persons shall be excluded from taxation under this |
| 14 | chapter. |
| 15 | Similar provisions shall apply to options to acquire equity |
| 16 | interests-and-to-equity interests themselves with regard to |
| 17 | entities other than corporations. |
| 18 | (b) For the purposes of this section: |
| 19 | "Holding company of a qualified high technology business" |
| 20 | means-any business-entity that possesses: |
| 21 | (1) At-least eighty per cent of the total voting power of |
| 22 | the stock or other interest; and |



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| 1 | (2) | At least eighty per cent of the total value of the |
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| 2 | | stock or other interest; |
| 3 | in the qualified high technology-business. | |
| 4 | "Inc | ome carned and proceeds derived from stock options or |
| 5 | stock" in | cludes income from: |
| 6 | (1) | Dividends from stock or stock received through the |
| 7 | | exercise of stock-options or warrants; |
| 8 | (2) | The receipt or the exercise of stock options or |
| 9 | | warrants; or |
| 10 | (3) | The sale of stock options or stock, including stock |
| 11 | | issued through the exercise of stock options or |
| 12 | | warrants. |
| 13 | "Qua | lified high technology business means the same as |
| 14 | defined i | n section 235 7.3."] |
| 15 | | PART V |
| 16 | SECT | ION 8. If any provision of this Act, or the |
| 17 | application thereof to any person or circumstance is held | |
| 18 | invalid, the invalidity does not affect other provisions or | |
| 19 | applications of the Act, which can be given effect without the | |
| 20 | invalid provision or application, and to this end the provisions | |
| 21 | of this A | ct are severable. |

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SB756 HD1 HMS 2011-3619

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SECTION 9. Statutory material to be repealed is bracketed
 and stricken. New statutory material is underscored.
 SECTION 10. This Act shall take effect on July 1, 2011;
 provided that parts III and IV shall apply to taxable years

5 beginning after December 31, 2010.





Report Title:

Taxation; Omnibus

Description:

Establishes an excise tax on direct broadcast satellite service providers. Modifies the renewable energy technologies income tax credit. Repeals the income tax exemption for stocks and stock options from a qualified high technology business. Effective July 1, 2011. (SB756 HD1)

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