

JAN 23 2014

## A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

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

SECTION 1. Section 235-12.5, Hawaii Revised Statutes, is amended to read as follows:

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

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



1        the applicable cap amount, which is determined as  
2        follows:

3        (A) \$2,500 per property for single-family residential  
4        property;

5        (B) \$500 per unit per property for multi-family  
6        residential property; and

7        (C) \$250,000 per property for commercial property;

8        ~~[(2) For each wind powered energy system: twenty per cent~~  
9        ~~of the actual cost or the cap amount determined in~~  
10       ~~subsection (b), whichever is less,]~~

11       (2) For each renewable energy property that is located on  
12       the premises of a metered residential or commercial  
13       customer of an electric utility, is used primarily to  
14       generate or store energy to offset part or all of the  
15       customer's own electrical requirements, and is  
16       installed and first placed in service in the State by  
17       a taxpayer during the taxable year:

18       (A) Thirty per cent of the basis for renewable energy  
19       property first placed in service after  
20       December 31, 2013, and before January 1, 2015;



1        (B) Twenty-five per cent of the basis for renewable  
2        energy property first placed in service after  
3        December 31, 2014, and before January 1, 2017;

4        (C) Twenty per cent of the basis for renewable energy  
5        property first placed in service after December  
6        31, 2016, and before January 1, 2019; and

7        (D) Fifteen per cent of the basis for renewable  
8        energy property first placed in service after  
9        December 31, 2018;

10       provided that no renewable energy property that  
11       receives a tax credit under this paragraph may later  
12       receive a production tax credit under paragraph (3);

13       (3) For each renewable energy property that is used  
14       primarily to generate or store electricity, does not  
15       receive a tax credit under paragraph (2), and is first  
16       placed in service in the State by a taxpayer during  
17       the taxable year:

18       (A) On or before December 31, 2016, 8 cents  
19       multiplied by the number of kilowatt-hours  
20       generated or stored by the renewable energy  
21       property and delivered and sold to a customer for  
22       such electricity during the first ten taxable



1           years that the renewable energy property is in  
2           service;

3           (B) After December 31, 2016, and before January 1,  
4           2021, 6 cents multiplied by the number of  
5           kilowatt-hours generated or stored by the  
6           renewable energy property and delivered and sold  
7           to a customer for such electricity during the  
8           first ten taxable years that the renewable energy  
9           property is in service; and

10          (C) After December 31, 2020, 4 cents multiplied by  
11          the number of kilowatt-hours generated or stored  
12          by the renewable energy property and delivered  
13          and sold to a customer for such electricity  
14          during the first ten taxable years that the  
15          renewable energy property is in service.

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

21           In the case of a partnership, S corporation, estate, or  
22   trust, the tax credit allowable is for every eligible renewable



1 energy [~~technology system~~] property that is installed and placed  
2 in service in the State by the entity. The cost upon which the  
3 tax credit is computed shall be determined at the entity level.  
4 Distribution and share of credit shall be determined pursuant to  
5 section [~~235-110.7(a).~~] 704(b) of the Internal Revenue Code, as  
6 amended.

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

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

13 ~~(A) \$2,250 per system for single-family residential~~  
14 ~~property;~~

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

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

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

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



1 ~~renewable energy technology requirement pursuant~~  
2 ~~to section 196-6.5(a)(3), the credit shall be~~  
3 ~~reduced by thirty five per cent of the actual~~  
4 ~~system cost or \$2,250, whichever is less;~~  
5 ~~(B) \$350 per unit per system for multi-family~~  
6 ~~residential property; and~~  
7 ~~(C) \$500,000 per system for commercial 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 property.~~  
20 ~~(e)] (b) For the purposes of this section:~~  
21 ~~["Actual cost" means costs related to the renewable energy~~  
22 ~~technology systems under subsection (a), including accessories~~



1 ~~and installation, but not including the cost of consumer~~  
2 ~~incentive premiums unrelated to the operation of the system or~~  
3 ~~offered with the sale of the system and costs for which another~~  
4 ~~credit is claimed under this chapter.~~

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

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

- 11 ~~(1) A usable source of thermal or mechanical energy;~~  
12 ~~(2) Electricity; or~~  
13 ~~(3) Fuel.~~

14 ~~"Solar or wind energy system" means any identifiable~~  
15 ~~facility, equipment, apparatus, or the like that converts solar~~  
16 ~~or wind energy to useful thermal or electrical energy for~~  
17 ~~heating, cooling, or reducing the use of other types of energy~~  
18 ~~that are dependent upon fossil fuel for their generation.]~~

19 "Basis" means costs related to the renewable energy  
20 property under subsection (a), including accessories, energy  
21 storage, and installation, but does not include the cost of  
22 consumer incentive premiums unrelated to the operation of the



1 property or offered with the sale of the renewable energy  
2 property and costs for which another credit is claimed under  
3 this chapter. Any cost incurred and paid for the repair,  
4 construction, or reconstruction of a structure in conjunction  
5 with the installation and placing in service of renewable energy  
6 property, such as the re-roofing of a single-family residential  
7 property, multi-family residential property, or commercial  
8 property, shall not constitute a part of the basis for the  
9 purposes of this section; provided that costs incurred for the  
10 physical support of the renewable energy property, such as  
11 racking and mounting equipment and costs incurred to seal or  
12 otherwise return a roof to its pre-installation condition, shall  
13 constitute part of the basis for the purposes of this section.

14 The basis used under this section shall be consistent with  
15 the use of basis in section 25D or section 48 of the Internal  
16 Revenue Code; provided that, for the purposes of calculating the  
17 credit allowed under this section, the basis of the renewable  
18 energy property shall not be reduced by the amount of any  
19 federal tax credit or other federally subsidized energy  
20 financing received by the taxpayer.

21 "First placed in service" has the same meaning as in  
22 Treasury Regulation section 1.167(a)-11(e)(1).



1       "Installed and first placed in service" means the taxable  
2       year in which the property is placed in a condition or state of  
3       readiness and availability for a specifically assigned function,  
4       whether in a trade or business, in the production of income, in  
5       a tax-exempt activity, or in a personal activity.

6       "Public sector agency" means any political subdivision,  
7       agency, or instrumentality of the State or of the federal  
8       government.

9       "Renewable energy property" means equipment that uses solar  
10       energy, wind energy, biomass, hydropower, ocean wave energy,  
11       ocean thermal energy, or geothermal energy to generate  
12       electricity, or that stores and delivers electricity, the  
13       construction, reconstruction, or erection of which is completed  
14       by the taxpayer, or which is acquired by the taxpayer if the  
15       original use of the property commences with the taxpayer.

16       ~~[(d)]~~ (c) For taxable years beginning after December 31,  
17       2005, the dollar amount of any utility rebate shall be deducted  
18       from the ~~[cost]~~ basis of the qualifying ~~[system]~~ renewable  
19       energy property and its installation before applying the state  
20       tax credit.

21       ~~[(e)]~~ (d) The director of taxation shall prepare any forms  
22       that may be necessary to claim a tax credit under this section,



1 including forms identifying the ~~[technology]~~ property type of  
2 each tax credit claimed under this section~~[, whether for solar~~  
3 ~~or wind]~~. The director may also require the taxpayer to furnish  
4 reasonable information to ascertain the validity of the claim  
5 for credit made under this section and may adopt rules necessary  
6 to effectuate the purposes of this section pursuant to chapter  
7 91.

8 ~~[(f)]~~ (e) If the tax credit under ~~[this section]~~  
9 subsection (a)(1) and (2) exceeds the taxpayer's income tax  
10 liability, the excess of the credit over liability may be used  
11 as a credit against the taxpayer's income tax liability in  
12 subsequent years until exhausted, unless otherwise elected by  
13 the taxpayer pursuant to subsection (f) or (g) ~~[or (h)]~~. All  
14 claims for the tax credit under this section, including amended  
15 claims, shall be filed on or before the end of the twelfth month  
16 following the close of the taxable year for which the credit may  
17 be claimed. Failure to comply with this subsection shall  
18 constitute a waiver of the right to claim the credit.

19 ~~[(g)]~~ (f) For ~~[solar]~~ any renewable energy ~~[systems,]~~  
20 property under subsection (a)(1) or (2), a taxpayer may elect to  
21 reduce the eligible credit amount by thirty per cent and if this  
22 reduced amount exceeds the amount of income tax payment due from



1 the taxpayer, the excess of the credit amount over payments due  
2 shall be refunded to the taxpayer; provided that tax credit  
3 amounts properly claimed by a taxpayer who has no income tax  
4 liability shall be paid to the taxpayer; and provided further  
5 that no refund on account of the tax credit allowed by this  
6 section shall be made for amounts less than \$1.

7 The election required by this subsection shall be made in a  
8 manner prescribed by the director on the taxpayer's return for  
9 the taxable year in which the ~~[system]~~ renewable energy property  
10 is installed and placed in service. A separate election may be  
11 made for each separate ~~[system]~~ property that generates a  
12 credit. An election once made is irrevocable.

13 ~~[(h)]~~ (g) Notwithstanding subsection ~~[(g)]~~ (f), for any  
14 renewable energy ~~[technology-system,]~~ property under subsection  
15 (a)(1) or (2) an individual taxpayer may elect to have any  
16 excess of the credit over payments due refunded to the  
17 taxpayer~~[,]~~ without discount if:

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

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



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

5 A husband and wife who do not file a joint tax return shall  
6 only be entitled to make this election to the extent that they  
7 would have been entitled to make the election had they filed a  
8 joint tax return.

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

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

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



~~department shall assist with data collection on the following  
for each taxable year.]~~

(i) For any renewable energy property under subsection  
(a)(3), if the tax credit under subsection (a)(3) exceeds the  
taxpayer's income tax liability, the excess of the credit over  
liability shall be refunded to the taxpayer; provided that no  
refund on account of the tax credit allowed by this section  
shall be made for amounts less than \$1. No property placed in  
service pursuant to subsection (a)(3) shall be subject to  
reduction in refund payments for any subsequent year by any  
legislative act or executive decision.

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

(k) Notwithstanding the foregoing, and in lieu of the  
credit described above, an individual or corporate taxpayer not  
currently regulated by the public utilities commission that, by  
December 31, 2012, had entered into an agreement with a public  
sector agency pursuant to a public solicitation and procurement  
process for the sale of electrical energy from non-residential  
renewable energy property with less than one megawatt of



1 alternating current capacity shall be allowed to elect to  
2 receive the tax credit for a renewable energy property placed in  
3 service prior to January 1, 2014, on the same basis as if the  
4 renewable energy property had been placed in service prior to  
5 January 1, 2013; provided that the taxpayer shall provide a copy  
6 of the agreement to the department of taxation.

7 (l) Taxpayers who have received letters from the  
8 department of taxation extending the department's letter rulings  
9 or determination letters prior to December 31, 2013, and have  
10 submitted the requested status update shall qualify for the tax  
11 credit as it existed on December 31, 2012; provided that the  
12 renewable energy property is first placed in service on or  
13 before December 31, 2013.

14 (m) An association of owners under chapter 421I, 421J,  
15 514A, or 514B may claim the credit allowed under this section in  
16 its own name for renewable energy property and facilities placed  
17 in service and located on common areas.

18 (n) No credit under this section shall be allowed to any  
19 federal, state, or local government or any political  
20 subdivision, agency, or instrumentality thereof.

21 (o) The department of taxation, in collaboration with the  
22 department of business, economic development, and tourism, shall



1 submit a joint report to the legislature annually no later than  
2 twenty days prior to the convening of each regular session on  
3 the following for the preceding taxable year:

4 (1) The number of renewable energy [~~technology systems~~]  
5 properties that have qualified for a tax credit during  
6 the calendar year by:

7 (A) [~~Technology~~] Property type; and

8 (B) Taxpayer type (corporate and individual); [~~and~~]

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

11 (A) [~~Technology~~] Property type; [~~and~~]

12 (B) Taxpayer type[~~-~~];

13 (C) Tax credit type (investment or production); and

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

15 and

16 (3) The estimated economic benefit that may be  
17 attributable to the renewable energy tax credit,  
18 including:

19 (A) Impact on the economy, including:

20 (i) Economic stimulation;

21 (ii) Net flow of money into or out of the State;

22 and



1                    (iii) General excise and income tax revenue

2                    generated; and

3                    (B) Jobs, including:

4                    (i) Number of jobs maintained;

5                    (ii) Number of jobs created; and

6                    (iii) Average pay.

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

10                    SECTION 2. The department of business, economic  
11 development, and tourism shall commence a study no later than  
12 July 1, 2016, on the costs incurred and benefits generated by  
13 this Act, as well as the extent to which the tax credit under  
14 this section has helped the State to achieve its energy goals.  
15 In conducting this study, the department of business, economic  
16 development, and tourism shall consult with the department of  
17 taxation and industry trade groups and may consult with other  
18 stakeholders. The department of business, economic development,  
19 and tourism shall submit a report to the legislature no later  
20 than December 31, 2017. This report to the legislature shall  
21 include, at a minimum, the following:



- (1) The elements in section 235-12.5(o), Hawaii Revised Statutes, as amended pursuant to this Act;
- (2) The results of its study; and
- (3) Recommendations on whether the tax credit under this section should be wholly or partially continued, eliminated, or revised.

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

SECTION 5. This Act shall take effect on July 1, 2014, and shall apply to taxable years beginning after December 31, 2013.

INTRODUCED BY:

*Randy H. Beh*

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# S.B. NO. 3018

**Report Title:**

Income Tax; Renewable Energy

**Description:**

Amends renewable energy technologies income tax credit to renewable energy properties 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.*

