

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2010-167
HOUSE BILL 1829

AN ACT TO PROMOTE THE USE OF RENEWABLE ENERGY BY EXTENDING THE CREDIT FOR CONSTRUCTING RENEWABLE FUEL FACILITIES AND THE CREDIT FOR BIODIESEL PRODUCERS, REVISING THE TAX CREDIT FOR INVESTING IN RENEWABLE ENERGY PROPERTY, REINSTATING AND EXPANDING THE TAX CREDIT FOR A RENEWABLE ENERGY PROPERTY FACILITY, CLARIFYING THE AUTHORITY OF LOCAL GOVERNMENTS TO FINANCE ENERGY PROGRAMS, CLARIFYING THAT REAL PROPERTY DONATED FOR A CONSERVATION PURPOSE CAN BE USED ONLY FOR THAT PURPOSE, AND TO DESIGNATE THE APPROPRIATE PERSON TO PROVIDE A WRITTEN ALLOCATION OF THE FEDERAL §179D TAX DEDUCTION FOR ENERGY EFFICIENT COMMERCIAL BUILDINGS OWNED BY A GOVERNMENTAL ENTITY.

The General Assembly of North Carolina enacts:

TO EXTEND THE CREDIT FOR CONSTRUCTING RENEWABLE FUEL FACILITIES AND THE CREDIT FOR BIODIESEL PRODUCERS

SECTION 1.(a) G.S. 105-129.16D(d) reads as rewritten:

"§ 105-129.16D. Credit for constructing renewable fuel facilities.

...

(d) Sunset. – This section is repealed effective for facilities placed in service on or after January 1, ~~2011-2013.~~"

SECTION 1.(b) G.S. 105-129.16F(b) reads as rewritten:

"§ 105-129.16F. Credit for biodiesel producers.

...

(b) Sunset. – This section is repealed for taxable years beginning on or after January 1, ~~2010-2013.~~"

CHANGES TO CREDIT FOR INVESTING IN RENEWABLE ENERGY PROPERTY

SECTION 2.(a) G.S. 105-129.15 reads as rewritten:

"§ 105-129.15. Definitions.

The following definitions apply in this Article:

...

(2) Cost. – In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to ~~G.S. 105-130.4(j)(2)~~-G.S. 105-130.4(j)(2), unless the property is renewable energy property for which the taxpayer claims either a federal energy credit under section 48 of the Code or a federal grant in lieu of that credit and makes a lease pass-through election under the Code. In this



circumstance, the cost of the leased renewable energy property is the cost determined under the Code.

...

(4b) Installation of renewable energy property. – Renewable energy property that, standing alone or in combination with other machinery, equipment, or real property, is able to produce usable energy on its own.

...

(7) Renewable energy property. – Any of the following machinery and equipment or real property:

a. Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

b. Combined heat and power system property. – Defined in section 48 of the Code.

c. Geothermal equipment that meets either of the following descriptions:

1. It is a heat pump that uses the ground or groundwater as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure.

2. It uses the internal heat of the earth as a substitute for traditional energy for water heating or active space heating or cooling.

~~b.d.~~ Hydroelectric generators located at existing dams or in free-flowing waterways, and related devices for water supply and control, and converting, conditioning, and storing the electricity generated.

~~e.e.~~ Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. The term also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.

~~d.f.~~ Wind equipment required to capture and convert wind energy into electricity or mechanical power, and related devices for converting, conditioning, and storing the electricity ~~produced~~ produced or relaying the electricity by cable from the turbine motor to the power grid.

~~e.~~ ~~Geothermal heat pumps that use the ground or groundwater as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure.~~

~~f.~~ ~~Geothermal equipment that uses the internal heat of the earth as a substitute for traditional energy for water heating or active space heating and cooling."~~

SECTION 2.(b) G.S. 105-129.16A reads as rewritten:

"§ 105-129.16A. Credit for investing in renewable energy property.

(a) Credit. – If a taxpayer that has constructed, purchased, or leased renewable energy property places it in service in this State during the taxable year, the taxpayer is allowed a

credit equal to thirty-five percent (35%) of the cost of the property. In the case of renewable energy property that serves a ~~single family dwelling, nonbusiness purpose~~, the credit must be taken for the taxable year in which the property is placed in service. For all other renewable energy property, the entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. Upon request of a taxpayer that leases renewable energy property, the lessor of the property must give the taxpayer a statement that describes the renewable energy property and states the cost of the property.

(b) Expiration. – If, in one of the years in which the installment of a credit accrues, the renewable energy property with respect to which the credit was claimed is disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17. No credit is allowed under this section to the extent the cost of the renewable energy property was provided by public funds.

(c) Ceilings. – The credit allowed by this section may not exceed the applicable ceilings provided in this subsection.

(1) ~~Nonresidential Property: Business.~~ – A ceiling of two million five hundred thousand dollars (\$2,500,000) ~~per installation~~ applies to each installation of renewable energy property placed in service for any purpose other than residential. a business purpose. Renewable energy property is placed in service for a business purpose if the useful energy generated by the property is offered for sale or is used on-site for a purpose other than providing energy to a residence.

(2) ~~Residential Property: Nonbusiness.~~ – The following ceilings apply to renewable energy property placed in service for ~~residential purposes: a nonbusiness purpose:~~

- a. One thousand four hundred dollars (\$1,400) per dwelling unit for solar energy equipment for domestic water heating, including pool heating.
- b. Three thousand five hundred dollars (\$3,500) per dwelling unit for solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating.
- c. ~~Ten thousand five hundred dollars (\$10,500) per installation for any other renewable energy property for residential purposes.~~ Eight thousand four hundred dollars (\$8,400) for each installation of geothermal equipment.
- d. ~~Eight thousand four hundred dollars (\$8,400) per installation for a geothermal heat pump or geothermal equipment.~~ Ten thousand five hundred dollars (\$10,500) for each installation of any other renewable energy property.

(d) No Double Credit. – A taxpayer that claims any other credit allowed under this Chapter with respect to renewable energy property may not take the credit allowed in this section with respect to the same property. A taxpayer may not take the credit allowed in this section for renewable energy property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit under this Chapter with respect to the property.

(e) Sunset. – This section is repealed effective for renewable energy property placed into service on or after January 1, 2016."

SECTION 2.(c) G.S. 105-259(b) is amended by adding the following new subdivision to read:

"(40) To furnish to a taxpayer claiming a credit under G.S. 105-129.16A information used by the Secretary to adjust the amount of the credit claimed by the taxpayer."

SECTION 2.(d) This section is effective for taxable years beginning on or after January 1, 2010.

REINSTATE AND EXPAND CREDIT FOR A RENEWABLE ENERGY PROPERTY FACILITY

SECTION 3.(a) Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-129.16I. Credit for a renewable energy property facility.

(a) Credit. – A taxpayer that places in service in this State a commercial facility for the manufacture of renewable energy property or a major component subassembly for a solar array or a wind turbine is allowed a credit. A taxpayer places a facility in service if it constructs the facility or converts its existing manufacturing facility to change the product it manufactures. For a taxpayer that constructs a facility, the credit is twenty-five percent (25%) of the taxpayer's cost to construct and equip the facility. For a taxpayer that converts a facility, the credit is twenty-five percent (25%) of the taxpayer's cost to convert and equip the existing facility. A taxpayer that claims any other credit allowed under this Chapter with respect to the facility may not take the credit allowed in this section with respect to that facility.

(b) Installments. – The entire credit may not be taken for the taxable year in which the facility is placed in service but must be taken in five equal annual installments beginning with the taxable year in which the facility is placed in service. If, in one of the years in which the installment of a credit accrues, the facility with respect to which the credit was claimed is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(c) Sunset. – This section is repealed effective for a renewable energy property facility placed in service on or after January 1, 2014."

SECTION 3.(b) This section is effective for taxable years beginning on or after January 1, 2011.

CLARIFY LOCAL GOVERNMENT AUTHORITY TO FINANCE ENERGY PROGRAMS

SECTION 4.(a) G.S. 153A-455 reads as rewritten:

"§ 153A-455. ~~Revolving loan program for energy~~Program to finance energy improvements.

(a) Purpose. – The General Assembly finds it is in the best interest of the citizens of North Carolina to promote and encourage renewable energy and energy efficiency within the State in order to conserve energy, promote economic competitiveness, and expand employment in the State. The General Assembly also finds that a county has an integral role in furthering this purpose by promoting and encouraging renewable energy and energy efficiency within the county's territorial jurisdiction. In furtherance of this purpose, a county may establish a program to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently affixed to residential, commercial, or other real property.

(b) ~~Revolving Loan Fund~~Financing Assistance – A county may establish a revolving loan fund and a loan loss reserve fund for the purpose of ~~providing loans to finance~~financing or assisting in the financing of the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential,

commercial, or other real property. A county may establish other local government energy efficiency and distributed generation renewable energy source finance programs funded through federal grants. A county may use ~~Energy Efficiency and Conservation Block Grant Funds State and federal grants and loans~~ and its ~~unrestricted general revenue to fund the revolving loan fund.~~ for this financing. The annual interest rate charged for the use of funds from the revolving fund may not exceed eight percent (8%) per annum, excluding other fees for loan application review and origination. The term of any loan originated under this section may not be greater than ~~15 years.~~ 20 years.

(c) Definition. – As used in this Article, "renewable energy source" has the same meaning as "renewable energy resource" in G.S. 62-133.8."

SECTION 4.(b) G.S. 153A-149(c) is amended by adding a new subdivision to read:

"(10c) Energy Financing. – To provide financing for renewable energy and energy efficiency in accordance with a program established under G.S. 153A-455."

SECTION 4.(c) G.S. 160A- 459.1 reads as rewritten:

"§ 160A-459.1. Revolving loan program for Program to finance energy improvements.

(a) Purpose. – The General Assembly finds it is in the best interest of the citizens of North Carolina to promote and encourage renewable energy and energy efficiency within the State in order to conserve energy, promote economic competitiveness, and expand employment in the State. The General Assembly also finds that a city has an integral role in furthering this purpose by promoting and encouraging renewable energy and energy efficiency within the city's territorial jurisdiction. In furtherance of this purpose, a city may establish a program to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently affixed to residential, commercial, or other real property.

(b) ~~Revolving Loan Fund Financing Assistance.~~ – A city may establish a revolving loan fund and a loan loss reserve fund for the purpose of ~~providing loans to finance financing or assisting in the financing of~~ the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, or other real property. A city may establish other local government energy efficiency and distributed generation renewable energy source finance programs funded through federal grants. A city may use ~~Energy Efficiency and Conservation Block Grant Funds State and federal grants and loans~~ and its ~~unrestricted general revenue to fund the revolving loan fund.~~ for this financing. The annual interest rate charged for the use of funds from the revolving fund may not exceed eight percent (8%) per annum, excluding other fees for loan application review and origination. The term of any loan originated under this section may not be greater than ~~15 years.~~ 20 years.

(c) Definition. – As used in this Article, "renewable energy source" has the same meaning as "renewable energy resource" in G.S. 62-133.8."

SECTION 4.(d) G.S. 160A-209(c) is amended by adding a new subdivision to read:

"(10b) Energy Financing. – To provide financing for renewable energy and energy efficiency in accordance with a program established under G.S. 160A-459.1."

CLARIFY THAT REAL PROPERTY DONATED FOR A CONSERVATION PURPOSE CAN BE USED ONLY FOR THAT PURPOSE

SECTION 5.(a) G.S. 105-130.34(a) reads as rewritten:

"(a) Any C Corporation that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, (iv)

forestland or farmland conservation, (v) watershed protection, (vi) conservation of natural areas as that term is defined in G.S. 113A-164.3(3), (vii) conservation of natural or scenic river areas as those terms are used in G.S. 113A-34, (viii) conservation of predominantly natural parkland, or (ix) historic landscape conservation is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated in perpetuity ~~to and accepted by~~ for one of the qualifying uses listed in this subsection and accepted in perpetuity for the qualifying use for which the property is donated. The person to whom the property is donated must be the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions pursuant to G.S. 105-130.9. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit.

The credit allowed under this section for one or more qualified donations made in a taxable year may not exceed five hundred thousand dollars (\$500,000). To support the credit allowed by this section, the taxpayer must file with the income tax return for the taxable year in which the credit is claimed the following:

- (1) A certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection.
- (2) A self-contained appraisal report or summary appraisal report as defined in Standards Rule 2-2 in the latest edition of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation for the property. For fee simple absolute donations of real property, a taxpayer may submit documentation of the county's appraised value of the donated property, as adjusted by the sales assessment ratio, in lieu of an appraisal report."

SECTION 5.(b) G.S. 105-151.12(a) reads as rewritten:

"(a) An individual or pass-through entity that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, (iv) forestland or farmland conservation, (v) watershed protection, (vi) conservation of natural areas as that term is defined in G.S. 113A-164.3(3), (vii) conservation of natural or scenic river areas as those terms are used in G.S. 113A-34, (viii) conservation of predominantly natural parkland, or (ix) historic landscape conservation is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated in perpetuity ~~to and accepted by~~ for one of the qualifying uses listed in this subsection and accepted in perpetuity for the qualifying use for which the property is donated. The person to whom the property is donated must be the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions under the Code. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit.

To support the credit allowed by this section, the taxpayer must file with the income tax return for the taxable year in which the credit is claimed the following:

- (1) A certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection. The certification for a qualified donation made by a pass-through entity must be filed by the pass-through entity.

- (2) A self-contained or summary appraisal report as defined in Standards Rule 2-2 in the latest edition of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation for the property. For fee simple absolute donations of real property, a taxpayer may submit documentation of the county's appraised value of the donated property, as adjusted by the sales assessment ratio, in lieu of an appraisal report."

ALLOCATION OF FEDERAL SECTION 179D TAX DEDUCTION FOR ENERGY EFFICIENT COMMERCIAL BUILDINGS OWNED BY A GOVERNMENTAL ENTITY

SECTION 6. G.S. 143-341(3) reads as rewritten:

"§ 143-341. Powers and duties of Department.

The Department of Administration has the following powers and duties:

...

- (3) Architecture and Engineering:
 - a. To examine and approve all plans and specifications for the construction or renovation of:
 1. All State buildings or buildings located on State lands, except those buildings over which a local building code inspection department has and exercises jurisdiction; and
 2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129 prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.
 - a1. To organize and schedule, within three weeks of designer selection and before the design contract is let, a meeting of the stakeholders for each State capital improvement project to discuss plan review requirements and to define the terms of the memorandum of understanding developed by the State Building Commission pursuant to G.S. 143-135.26(2). The stakeholders shall include the funded agency, each State agency having plan review responsibilities for the project, and the selected designer. Notwithstanding the foregoing, the meeting need not be scheduled if the funded agency so requests.
 - b. To assist, as necessary, all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.
 - b1. To certify that a statement of needs pursuant to G.S. 143C-3-3 is feasible. For purposes of this sub-subdivision, "feasible" means that the proposed project is sufficiently defined in overall scope; building program; site development; detailed design, construction, and equipment budgets; and comprehensive project scheduling so as to reasonably ensure that it may be completed with the amount of funds requested. At the discretion of the General Assembly, advanced planning funds may be appropriated in support of this certification. This sub-subdivision shall not apply to requests for appropriations of less than one hundred thousand dollars (\$100,000).
 - c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings

whose plans and specifications must be examined and approved under a.2. of this subdivision.

- d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; to act as the appropriate official inspector or inspection department for purposes of G.S. 143-143.2; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.
- e. To require all State agencies to use existing plans and specifications for construction projects, where feasible. Prior to designing a project, State agencies shall consult with the Department of Administration on the availability of appropriate existing plans and specifications and the feasibility of using them for a project.
- f. To provide written allocation of the deduction allowed under section 179D of the Code, as defined in G.S. 105-228.90, for designing energy efficient commercial building property that is installed on or in property owned by the State. The allocation must be made in accordance with section 179D of the Code.

Except for sub-subdivisions b., b1., ~~and e.,~~ and f. of this subdivision, this subdivision does not apply to the design, construction, or renovation of projects by The University of North Carolina pursuant to G.S. 116-31.11.

...."

EFFECTIVE DATE

SECTION 7. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 2010.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 2:23 p.m. this 2nd day of August, 2010