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Short Title: Renewable Energy Incentives.

(Public)

Sponsors:

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A BILL TO BE ENTITLED

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 CONSTRUCTING 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 ENSURING THAT HOMEOWNERS ASSOCIATION RESTRICTIONS DO NOT PREVENT THE USE OF SOLAR ENERGY SYSTEMS.

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 – This section is repealed effective for facilities placed in service on or after January 1, ~~2011, 2013.~~"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 – This section is repealed for taxable years beginning on or after January 1, ~~2010, 2013.~~"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



1 property the taxpayer leases from another, cost is value as determined
2 pursuant to ~~G.S. 105-130.4(j)(2)~~. G.S. 105-130.4(j)(2), unless the property is
3 renewable energy property for which the taxpayer claims either a federal
4 energy credit under section 48 of the Code or a federal grant in lieu of that
5 credit and makes a lease pass-through election under the Code. In this
6 circumstance, the cost of the leased renewable energy property is the cost
7 determined under the Code.

8 ...

9 (4b) Installation of renewable energy property. – Renewable energy property that,
10 standing alone or in combination with other machinery, equipment, or real
11 property, is able to produce usable energy on its own.

12 ...

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

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

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

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

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

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

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

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

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

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

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

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

5 **"§ 105-129.16A. Credit for investing in renewable energy property.**

6 (a) Credit. – If a taxpayer that has constructed, purchased, or leased renewable energy
7 property places it in service in this State during the taxable year, the taxpayer is allowed a
8 credit equal to thirty-five percent (35%) of the cost of the property. In the case of renewable
9 energy property that serves a ~~single family dwelling, nonbusiness purpose,~~ the credit must be
10 taken for the taxable year in which the property is placed in service. For all other renewable
11 energy property, the entire credit may not be taken for the taxable year in which the property is
12 placed in service but must be taken in five equal installments beginning with the taxable year in
13 which the property is placed in service. Upon request of a taxpayer that leases renewable
14 energy property, the lessor of the property must give the taxpayer a statement that describes the
15 renewable energy property and states the cost of the property.

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

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

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

32 (2) ~~Residential Property. Nonbusiness.~~ – The following ceilings apply to each
33 installation of renewable energy property placed in service for residential
34 purposes: a nonbusiness purpose. The ceiling applies to each residence:

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

47 (d) No Double Credit. – A taxpayer that claims any other credit allowed under this
48 Chapter with respect to renewable energy property may not take the credit allowed in this
49 section with respect to the same property. A taxpayer may not take the credit allowed in this
50 section for renewable energy property the taxpayer leases from another unless the taxpayer

1 obtains the lessor's written certification that the lessor will not claim a credit under this Chapter
2 with respect to the property.

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

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

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

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

12 13 **REINSTATE AND EXPAND CREDIT FOR A RENEWABLE ENERGY PROPERTY** 14 **FACILITY**

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

17 **"§ 105-129.16I. Credit for a renewable energy property facility.**

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

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

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

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

39 40 **CLARIFY LOCAL GOVERNMENT AUTHORITY TO FINANCE ENERGY** 41 **PROGRAMS**

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

43 **"§ 153A-455. Revolving loan program for energyProgram to finance energy** 44 **improvements.**

45 (a) Purpose. – The General Assembly finds it is in the best interest of the citizens of
46 North Carolina to promote and encourage renewable energy and energy efficiency within the
47 State in order to conserve energy, promote economic competitiveness, and expand employment
48 in the State. The General Assembly also finds that a county has an integral role in furthering
49 this purpose by promoting and encouraging renewable energy and energy efficiency within the
50 county's territorial jurisdiction. In furtherance of this purpose, a county may establish a
51 program to finance the purchase and installation of distributed generation renewable energy

1 sources or energy efficiency improvements that are permanently affixed to residential,
2 commercial, or other real property.

3 (b) ~~Revolving Loan Fund Financing Assistance~~ – A county may establish a revolving
4 loan fund and a loan loss reserve fund for the purpose of ~~providing loans to finance~~ financing or
5 assisting in the financing of the purchase and installation of distributed generation renewable
6 energy sources or energy efficiency improvements that are permanently fixed to residential,
7 commercial, or other real property. A county may establish other local government energy
8 efficiency and distributed generation renewable energy source finance programs funded
9 through federal grants. A county may use ~~Energy Efficiency and Conservation Block Grant~~
10 ~~Funds State and federal grants and loans~~ and its ~~unrestricted general revenue to fund the~~
11 ~~revolving loan fund~~ for this financing. The annual interest rate charged for the use of funds
12 from the revolving fund may not exceed eight percent (8%) per annum, excluding other fees for
13 loan application review and origination. The term of any loan originated under this section may
14 not be greater than ~~45 years.~~ 20 years.

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

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

19 "(10c) Energy Financing. – To provide financing for renewable energy and energy
20 efficiency in accordance with a program established under G.S. 153A-455."

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

22 "**§ 160A-459.1. Revolving loan program for Program to finance energy improvements.**

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

32 (b) ~~Revolving Loan Fund Financing Assistance.~~ – A city may establish a revolving loan
33 fund and a loan loss reserve fund for the purpose of ~~providing loans to finance~~ financing or
34 assisting in the financing of the purchase and installation of distributed generation renewable
35 energy sources or energy efficiency improvements that are permanently fixed to residential,
36 commercial, or other real property. A city may establish other local government energy
37 efficiency and distributed generation renewable energy source finance programs funded
38 through federal grants. A city may use ~~Energy Efficiency and Conservation Block Grant Funds~~
39 ~~State and federal grants and loans~~ and its ~~unrestricted general revenue to fund the revolving~~
40 ~~loan fund~~ for this financing. The annual interest rate charged for the use of funds from the
41 revolving fund may not exceed eight percent (8%) per annum, excluding other fees for loan
42 application review and origination. The term of any loan originated under this section may not
43 be greater than ~~45 years.~~ 20 years.

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

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

48 "(10b) Energy Financing. – To provide financing for renewable energy and energy
49 efficiency in accordance with a program established under
50 G.S. 160A-459.1."

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

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

4 "(a) Any C Corporation that makes a qualified donation of an interest in real property
5 located in North Carolina during the taxable year that is useful for (i) public beach access or
6 use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, (iv)
7 forestland or farmland conservation, (v) watershed protection, (vi) conservation of natural areas
8 as that term is defined in G.S. 113A-164.3(3), (vii) conservation of natural or scenic river areas
9 as those terms are used in G.S. 113A-34, (viii) conservation of predominantly natural parkland,
10 or (ix) historic landscape conservation is allowed a credit against the tax imposed by this Part
11 equal to twenty-five percent (25%) of the fair market value of the donated property interest. To
12 be eligible for this credit, the interest in real property must be donated in perpetuity ~~to and~~
13 ~~accepted by~~ for one of the qualifying uses listed in this subsection and accepted in perpetuity
14 for the qualifying use for which the property is donated. The person to whom the property is
15 donated must be the State, a local government, or a body that is both organized to receive and
16 administer lands for conservation purposes and qualified to receive charitable contributions
17 pursuant to G.S. 105-130.9. Lands required to be dedicated pursuant to local governmental
18 regulation or ordinance and dedications made to increase building density levels permitted
19 under a regulation or ordinance are not eligible for this credit.

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

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

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

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

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

- 3 (1) A certification by the Department of Environment and Natural Resources
4 that the property donated is suitable for one or more of the valid public
5 benefits set forth in this subsection. The certification for a qualified donation
6 made by a pass-through entity must be filed by the pass-through entity.
7 (2) A self-contained or summary appraisal report as defined in Standards Rule
8 2-2 in the latest edition of the Uniform Standards of Professional Appraisal
9 Practice as promulgated by the Appraisal Foundation for the property. For
10 fee simple absolute donations of real property, a taxpayer may submit
11 documentation of the county's appraised value of the donated property, as
12 adjusted by the sales assessment ratio, in lieu of an appraisal report."
13

14 **ENSURE THAT HOMEOWNERS ASSOCIATION RESTRICTIONS DO NOT**
15 **PREVENT THE USE OF SOLAR ENERGY SYSTEMS**

16 **SECTION 6.(a)** G.S. 22B-20 reads as rewritten:

17 **"§ 22B-20. Deed restrictions and other agreements prohibiting solar collectors.**

18 (a) The intent of the General Assembly is to protect the public health, safety, and
19 welfare by encouraging the development and use of solar resources and by prohibiting deed
20 restrictions, covenants, and other similar agreements that could have the ultimate effect of
21 driving the costs of owning and maintaining a residence beyond the financial means of most
22 owners.

23 (b) ~~Except as provided in subsection (d) of this section, any~~A deed restriction,
24 covenant, or similar binding agreement that runs with the land that would prohibit, or have the
25 effect of prohibiting, the installation of a solar collector that gathers solar radiation as a
26 substitute for traditional energy for water heating, active space heating and cooling, passive
27 heating, or generating electricity for a residential property on land subject to the deed
28 restriction, covenant, or agreement is void and unenforceable. As used in this section, the term
29 "residential property" means property where the predominant use is for residential purposes.
30 The term "residential property" does not include any condominium created under Chapter 47A
31 or 47C of the General Statutes located in a multi-story building containing units having
32 horizontal boundaries described in the declaration. As used in this section, the term
33 "declaration" has the same meaning as in G.S. 47A-3 or G.S. 47C-1-103, depending on the
34 chapter of the General Statutes under which the condominium was created.

35 (c) ~~This section does not prohibit a~~A deed restriction, covenant, or similar binding
36 agreement that runs with the land ~~that would regulate~~may not place unreasonable restrictions
37 on the location or screening of solar collectors as described in subsection (b) of this section,
38 ~~provided the deed restriction, covenant, or similar binding agreement does not have the effect~~
39 ~~of preventing the reasonable use of a solar collector for a residential property. section. As used~~
40 in this subsection, "unreasonable restrictions" means any restriction that would increase the
41 installation costs of a solar collector by more than ten percent (10%) of the total initial
42 installation costs, including labor and equipment. If an owners' association is responsible for
43 exterior maintenance of a structure containing individual residences, a deed restriction,
44 covenant, or similar binding agreement that runs with the land may provide that (i) the title
45 owner of the residence shall be responsible for all damages caused by the installation,
46 existence, or removal of solar collectors; (ii) the title owner of the residence shall hold harmless
47 and indemnify the owners' association for any damages caused by the installation, existence, or
48 removal of solar collectors; and (iii) the owners' association shall not be responsible for
49 maintenance, repair, replacement, or removal of solar collectors unless expressly agreed in a
50 written agreement that is recorded in the office of the register of deeds in the county or counties

1 in which the property is situated. As used in this section, "owners' association" has the same
2 meaning as in G.S. 47F-1-103.

3 ~~(d) This section does not prohibit a deed restriction, covenant, or similar binding~~
4 ~~agreement that runs with the land that would prohibit the location of solar collectors as~~
5 ~~described in subsection (b) of this section that are visible by a person on the ground:~~

6 ~~(1) On the facade of a structure that faces areas open to common or public~~
7 ~~access;~~

8 ~~(2) On a roof surface that slopes downward toward the same areas open to~~
9 ~~common or public access that the facade of the structure faces; or~~

10 ~~(3) Within the area set off by a line running across the facade of the structure~~
11 ~~extending to the property boundaries on either side of the facade, and those~~
12 ~~areas of common or public access faced by the structure.~~

13 (e) In any civil action arising under this section, the court may award costs and
14 reasonable attorneys' fees to the prevailing party."

15 **SECTION 6.(b)** This section becomes effective December 1, 2010, and applies to
16 deed restrictions, covenants, or similar binding agreements that run with the land and that are
17 recorded on or after that date.

18 **EFFECTIVE DATE**

19 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes
20 law.
21