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May 20, 2010

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 – This section is repealed effective for facilities placed in service on or after January 1, ~~2011-2013.~~"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 – This section is repealed for taxable years beginning on or after January 1, ~~2010-2013.~~"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

...



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- 1 (2) Cost. – In the case of property owned by the taxpayer, cost is determined
2 pursuant to regulations adopted under section 1012 of the Code, subject to
3 the limitation on cost provided in section 179 of the Code. In the case of
4 property the taxpayer leases from another, cost is value as determined
5 pursuant to ~~G.S. 105-130.4(j)(2)~~. G.S. 105-130.4(j)(2), unless the property is
6 renewable energy property for which the taxpayer claims either a federal
7 energy credit under section 48 of the Code or a federal grant in lieu of that
8 credit and makes a lease pass-through election under the Code. In this
9 circumstance, the cost of the leased renewable energy property is the cost
10 determined under the Code.
- 11 ...
- 12 (4b) Installation of renewable energy property. – Renewable energy property that,
13 standing alone or in combination with other machinery, equipment, or real
14 property, is able to produce usable energy on its own.
- 15 ...
- 16 (7) Renewable energy property. – Any of the following machinery and
17 equipment or real property:
- 18 a. Biomass equipment that uses renewable biomass resources for
19 biofuel production of ethanol, methanol, and biodiesel; anaerobic
20 biogas production of methane utilizing agricultural and animal waste
21 or garbage; or commercial thermal or electrical generation. The term
22 also includes related devices for converting, conditioning, and storing
23 the liquid fuels, gas, and electricity produced with biomass
24 equipment.
- 25 b. Combined heat and power system property. – Defined in section 48
26 of the Code.
- 27 c. Geothermal equipment that meets either of the following
28 descriptions:
- 29 1. It is a heat pump that uses the ground or groundwater as a
30 thermal energy source to heat a structure or as a thermal
31 energy sink to cool a structure.
- 32 2. It uses the internal heat of the earth as a substitute for
33 traditional energy for water heating or active space heating or
34 cooling.
- 35 b.d. Hydroelectric generators located at existing dams or in free-flowing
36 waterways, and related devices for water supply and control, and
37 converting, conditioning, and storing the electricity generated.
- 38 e.e. Solar energy equipment that uses solar radiation as a substitute for
39 traditional energy for water heating, active space heating and
40 cooling, passive heating, daylighting, generating electricity,
41 distillation, desalination, detoxification, or the production of
42 industrial or commercial process heat. The term also includes related
43 devices necessary for collecting, storing, exchanging, conditioning,
44 or converting solar energy to other useful forms of energy.
- 45 d.f. Wind equipment required to capture and convert wind energy into
46 electricity or mechanical power, and related devices for converting,
47 conditioning, and storing the electricity ~~produced~~. produced or
48 relaying the electricity by cable from the turbine motor to the power
49 grid.

- 1 e. ~~Geothermal heat pumps that use the ground or groundwater as a~~
2 ~~thermal energy source to heat a structure or as a thermal energy sink~~
3 ~~to cool a structure.~~
4 f. ~~Geothermal equipment that uses the internal heat of the earth as a~~
5 ~~substitute for traditional energy for water heating or active space~~
6 ~~heating and cooling."~~

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

8 "**§ 105-129.16A. Credit for investing in renewable energy property.**

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

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

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

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

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

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

50 (d) No Double Credit. – A taxpayer that claims any other credit allowed under this
51 Chapter with respect to renewable energy property may not take the credit allowed in this

1 section with respect to the same property. A taxpayer may not take the credit allowed in this
2 section for renewable energy property the taxpayer leases from another unless the taxpayer
3 obtains the lessor's written certification that the lessor will not claim a credit under this Chapter
4 with respect to the property.

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

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

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

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

14 15 **REINSTATE AND EXPAND CREDIT FOR A RENEWABLE ENERGY PROPERTY** 16 **FACILITY**

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

19 **"§ 105-129.16I. Credit for a renewable energy property facility.**

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

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

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

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

41 42 **CLARIFY LOCAL GOVERNMENT AUTHORITY TO FINANCE ENERGY** 43 **PROGRAMS**

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

45 **"§ 153A-455. Revolving loan program for energyProgram to finance energy** 46 **improvements.**

47 (a) Purpose. – The General Assembly finds it is in the best interest of the citizens of
48 North Carolina to promote and encourage renewable energy and energy efficiency within the
49 State in order to conserve energy, promote economic competitiveness, and expand employment
50 in the State. The General Assembly also finds that a county has an integral role in furthering
51 this purpose by promoting and encouraging renewable energy and energy efficiency within the

1 county's territorial jurisdiction. In furtherance of this purpose, a county may establish a
2 program to finance the purchase and installation of distributed generation renewable energy
3 sources or energy efficiency improvements that are permanently affixed to residential,
4 commercial, or other real property.

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

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

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

21 "(10c) Energy Financing. – To provide financing for renewable energy and energy
22 efficiency in accordance with a program established under G.S. 153A-455."

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

24 "**§ 160A-459.1. Revolving loan program for Program to finance energy improvements.**

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

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

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

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

1 "(10b) Energy Financing. – To provide financing for renewable energy and energy
2 efficiency in accordance with a program established under
3 G.S. 160A-459.1."
4

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

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

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

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

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

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

39 "(a) An individual or pass-through entity that makes a qualified donation of an interest in
40 real property located in North Carolina during the taxable year that is useful for (i) public beach
41 access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation,
42 (iv) forestland or farmland conservation, (v) watershed protection, (vi) conservation of natural
43 areas as that term is defined in G.S. 113A-164.3(3), (vii) conservation of natural or scenic river
44 areas as those terms are used in G.S. 113A-34, (viii) conservation of predominantly natural
45 parkland, or (ix) historic landscape conservation is allowed a credit against the tax imposed by
46 this Part equal to twenty-five percent (25%) of the fair market value of the donated property
47 interest. To be eligible for this credit, the interest in property must be donated in perpetuity ~~to~~
48 ~~and accepted by~~ for one of the qualifying uses listed in this subsection and accepted in
49 perpetuity for the qualifying use for which the property is donated. The person to whom the
50 property is donated must be the State, a local government, or a body that is both organized to
51 receive and administer lands for conservation purposes and qualified to receive charitable

1 contributions under the Code. Lands required to be dedicated pursuant to local governmental
2 regulation or ordinance and dedications made to increase building density levels permitted
3 under a regulation or ordinance are not eligible for this credit.

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

- 6 (1) A certification by the Department of Environment and Natural Resources
7 that the property donated is suitable for one or more of the valid public
8 benefits set forth in this subsection. The certification for a qualified donation
9 made by a pass-through entity must be filed by the pass-through entity.
- 10 (2) A self-contained or summary appraisal report as defined in Standards Rule
11 2-2 in the latest edition of the Uniform Standards of Professional Appraisal
12 Practice as promulgated by the Appraisal Foundation for the property. For
13 fee simple absolute donations of real property, a taxpayer may submit
14 documentation of the county's appraised value of the donated property, as
15 adjusted by the sales assessment ratio, in lieu of an appraisal report."
16

17 **ENSURE THAT HOMEOWNERS ASSOCIATION RESTRICTIONS DO NOT**
18 **PREVENT THE USE OF SOLAR ENERGY SYSTEMS**

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

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

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

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

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

1 maintenance, repair, replacement, or removal of solar collectors unless expressly agreed in a
2 written agreement that is recorded in the office of the register of deeds in the county or counties
3 in which the property is situated. As used in this section, "owners' association" has the same
4 meaning as in G.S. 47F-1-103.

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

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

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

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

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

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

20
21 **EFFECTIVE DATE**

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