

House Bill 146

By: Representatives McKillip of the 115<sup>th</sup>, Stephens of the 164<sup>th</sup>, Jacobs of the 80<sup>th</sup>, Harbin of the 118<sup>th</sup>, and Kaiser of the 59<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,  
2 relating to imposition, rate, computation, and exemptions regarding income tax, so as to  
3 revise and change the income tax credit for clean energy property; to change certain  
4 definitions, procedures, conditions, and limitations; to provide for an effective date; to  
5 provide for applicability; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
9 imposition, rate, computation, and exemptions regarding income tax, is amended by revising  
10 Code Section 48-7-29.14, relating to the income tax credit for clean energy property, as  
11 follows:

12 "48-7-29.14.

13 (a) As used in this Code section, the term:

14 (1) 'Authority' means the Georgia Environmental Finance Authority.

15 (2) 'Business property' means tangible personal property that is used by the taxpayer in  
16 connection with a business or for the production of income and is capitalized by the  
17 taxpayer for federal income tax purposes. The term does not include, however, a luxury  
18 passenger automobile taxable under Section 4001 of the Internal Revenue Code or a  
19 watercraft used principally for entertainment and pleasure outings for which no admission  
20 is charged.

21 (3) 'Clean energy property' includes any of the following:

22 (A) Solar energy equipment that uses solar radiation as a substitute for traditional  
23 energy for water heating, active space heating and cooling, passive heating, daylighting,  
24 generating electricity, distillation, desalinization, or the production of industrial or  
25 commercial process heat, as well as related devices necessary for collecting, storing,  
26 exchanging, conditioning, or converting solar energy to other useful forms of energy;

- 27 (B) Energy Star certified geothermal heat pump systems;
- 28 (C) Energy efficient projects as follows:
- 29 (i) Lighting retrofit projects. 'Lighting retrofit project' means a lighting retrofit  
30 system that employs dual switching (ability to switch roughly half the lights off and  
31 still have fairly uniform light distribution), delamping, daylighting, relamping, or  
32 other controls or processes which reduce annual energy and power consumption by  
33 30 percent compared to the American Society of Heating, Refrigerating, and Air  
34 Conditioning Engineers ~~2004~~ 2009 standard (ASHRAE 90.1.~~2004~~ 2009); and
- 35 (ii) Energy efficient buildings. 'Energy efficient building' means for other than  
36 single-family residential property new or retrofitted buildings that are designed,  
37 constructed, and certified to exceed the standards set forth in the American Society  
38 of Heating, Refrigerating, and Air Conditioning Engineers ~~2004~~ 2009 standard  
39 (ASHRAE 90.1.~~2004~~ 2009) by 30 percent;
- 40 (D) Wind equipment required to capture and convert wind energy into electricity or  
41 mechanical power as well as related devices that may be required for converting,  
42 conditioning, and storing the electricity produced by wind equipment; and
- 43 (E) Biomass equipment to convert wood residuals into electricity through gasification  
44 and pyrolysis.
- 45 (4) 'Cost' means:
- 46 (A) In the case of clean energy property owned by the taxpayer, cost is the aggregate  
47 funds actually invested and expended by a taxpayer to put into service the clean energy  
48 property; and
- 49 (B) In the case of clean energy property the taxpayer leases from another, cost is eight  
50 times the net annual rental rate, which is the annual rental rate paid by the taxpayer less  
51 any annual rental rate received by the taxpayer from subrentals.
- 52 (5) 'Installation' means the year in which the clean energy property is put into service and  
53 becomes eligible for a tax credit allowed by this Code section.
- 54 (6) 'Renewable biomass qualified facility' means a renewable biomass qualified facility  
55 as defined by the Federal Energy Regulatory Commission which facility meets the open  
56 loop biomass standards promulgated pursuant to Section 45 of the Internal Revenue  
57 Code.
- 58 (7) 'Wood residuals' means wood residuals that include land-clearing residue, urban  
59 wood residue, and pellets and do not include wood from any United States national forest.
- 60 (b) A tax credit under this Code section is subject to the following limits:
- 61 (1) A tax credit is allowed against the tax imposed under this article to a taxpayer for the  
62 construction, purchase, or lease of clean energy property that is placed into service in this

63 state between July 1, 2008, and December 31, ~~2012~~ 2014; provided, however, this credit  
64 shall be further subject to the following conditions and limitations:

65 (A) A credit allowed by this Code section shall be taken for the taxable year in which  
66 the clean energy property is installed and may be taken against income tax or, if the  
67 taxpayer is an insurance company, against gross premium tax; provided, however, that  
68 for any credit under this Code section which is allowed for calendar year 2012, 2013,  
69 or 2014, the entire credit may not be taken for the year in which the property is placed  
70 in service but must be taken in four equal installments over four successive taxable  
71 years beginning with the taxable year in which the credit is allowed;

72 (B) A taxpayer that claims a credit allowed under this subsection shall not be eligible  
73 to claim any other credit under this subsection with respect to the same clean energy  
74 property;

75 (C) A taxpayer may not take the credit allowed in this subsection for clean energy  
76 property the taxpayer leases from another unless the taxpayer obtains the lessor's  
77 written certification that the lessor will not claim a credit under this subsection with  
78 respect to the same clean energy property; and

79 (D) In no event shall the amount of the tax credits allowed by this Code section for a  
80 taxable year exceed the taxpayer's liability for such taxes. Any unused credit amount  
81 shall be allowed to be carried forward for five years from the close of the taxable year  
82 in which the ~~installment of the clean energy property occurred~~ credit was allowed. No  
83 such credit shall be allowed the taxpayer against prior years' tax liability.

84 To claim a credit allowed by this paragraph, the taxpayer shall provide any information  
85 required by the authority or department. Every taxpayer claiming a credit under this  
86 Code section shall maintain and make available for inspection by the authority or  
87 department any records that either entity considers necessary to determine and verify the  
88 amount of the credit to which the taxpayer is entitled. The burden of proving eligibility  
89 for a credit and the amount of the credit rests upon the taxpayer, and no credit may be  
90 allowed to a taxpayer that fails to maintain adequate records or to make them available  
91 for inspection;

92 (2) A taxpayer who transports or diverts wood residuals to a renewable biomass qualified  
93 facility shall be allowed a credit against the tax imposed by this article in an amount not  
94 to exceed the actual amount certified by the Georgia State Forestry Commission to the  
95 taxpayer. The value of such credit shall be determined on a per tonnage basis. Such  
96 certification shall be based upon vouchers provided to the taxpayer by the renewable  
97 biomass qualified facility to whom the wood residuals are provided for the purpose of  
98 providing bioelectric power to a third party. The Georgia State Forestry Commission  
99 shall calculate and attribute a dollar value to such wood residuals;

- 100 (3) In no event shall the total amount of tax credits allowed by this subsection exceed:
- 101 (A) For calendar year 2008, \$2.5 million;
- 102 (B) For calendar year 2009, \$2.5 million;
- 103 (C) For calendar year 2010, \$2.5 million;
- 104 (D) For calendar year 2011, \$2.5 million; ~~and~~
- 105 (E) For calendar year 2012, ~~\$2.5~~ \$10 million;
- 106 (F) For calendar year 2013, \$10 million; and
- 107 (G) For calendar year 2014, \$10 million.
- 108 (4)(A) A taxpayer seeking to claim any tax credit provided for under this Code section
- 109 must submit an application to the commissioner for tentative approval of such tax
- 110 credit. The commissioner shall promulgate the rules and forms on which the
- 111 application is to be submitted. The commissioner shall review such application and
- 112 shall tentatively approve such application upon determining that it meets the
- 113 requirements of this Code section within 60 days after receiving such application.
- 114 ~~(B) The commissioner shall allow the tax credits on a first come, first served basis. In~~
- 115 ~~no event shall the aggregate amount of tax credits approved by the commissioner for~~
- 116 ~~all taxpayers under this Code section in a calendar year exceed the limitations specified~~
- 117 ~~in paragraph (3) of this subsection. In the event a taxpayer filed a timely application~~
- 118 ~~for such credit but is not allowed all or part of the credit amount to which such taxpayer~~
- 119 ~~would be authorized to receive because the limitations specified in paragraph (3) of this~~
- 120 ~~subsection have reached, such taxpayer may reapply in the following taxable year for~~
- 121 ~~a tax credit for those same eligible costs, and in such event, that taxpayer shall have~~
- 122 ~~priority over other taxpayers for credit allocation in the year of such reapplication. The~~
- 123 ~~commissioner shall allow the tax credits on a first come, first served basis. In no event~~
- 124 ~~shall the aggregate amount of tax credits approved by the commissioner for all~~
- 125 ~~taxpayers under this Code section in a calendar year exceed the limitations specified in~~
- 126 ~~paragraph (3) of this subsection. In the event a taxpayer filed a timely application for~~
- 127 ~~such credit but is not allowed all or part of the credit amount which such taxpayer~~
- 128 ~~would be authorized to receive because the limitations specified in paragraph (3) of this~~
- 129 ~~subsection have been reached, the commissioner shall add such taxpayer to a priority~~
- 130 ~~waiting list of timely filed applications, prioritized by the date of the taxpayer's first~~
- 131 ~~timely filed application. Any taxpayer on the priority waiting list shall be eligible to~~
- 132 ~~reapply within the first 30 days of the following taxable year for a tax credit for those~~
- 133 ~~same eligible costs, and, in such event, that taxpayer shall have priority over other~~
- 134 ~~taxpayers for credit allocation in the year of such reapplication as well as other~~
- 135 ~~taxpayers behind such taxpayer on the priority waiting list. If a taxpayer on the priority~~
- 136 ~~waiting list does not reapply within the first 30 days of the following taxable year in~~

137 accordance with this subparagraph, that taxpayer shall forfeit its application for the tax  
 138 credit;

139 (5) The credit allowed by this subsection shall not exceed the following amounts:

140 (A) For all types of clean energy property placed into service for any purpose other  
 141 than ~~single family~~ single-family residential, the credit allowed by this subsection may  
 142 not exceed the lesser of 35 percent of the cost of the clean energy property described  
 143 in subparagraphs (a)(3)(A) through (a)(3)(C) of this Code section or the following  
 144 credit amounts for any clean energy property:

145 (i) A ceiling of \$500,000.00 per installation applies to solar energy equipment for  
 146 solar electric (photovoltaic), other solar thermal electric applications, and active space  
 147 heating, wind equipment, and biomass equipment as described in subparagraphs  
 148 (a)(3)(A), (a)(3)(D), and (a)(3)(E) of this Code section;

149 (ii) The sum of \$100,000.00 per installation applies to clean energy property related  
 150 to solar energy equipment for domestic water heating as described in subparagraph  
 151 (a)(3)(A) of this Code section which is certified for performance by the Solar Rating  
 152 Certification Corporation, Florida Solar Energy Center, or by a comparable entity  
 153 approved by the authority to have met the certification of Solar Rating Certification  
 154 Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar thermal  
 155 collectors;

156 (iii) For Energy Star certified geothermal heat pump systems as described in  
 157 subparagraph (a)(3)(B) of this Code section, the sum of \$100,000.00;

158 (iv) For a lighting retrofit project as described in division (a)(3)(C)(i) of this Code  
 159 section, the sum of \$0.60 per square foot of the building with a maximum of  
 160 \$100,000.00; and

161 (v) For an energy efficient building as described in division (a)(3)(C)(ii) of this Code  
 162 section, the sum of the cost of energy efficient products installed during construction  
 163 at \$1.80 per square foot of the building, with a maximum of \$100,000.00; and

164 (B) The following ceilings apply to clean energy property placed in service for ~~single~~  
 165 ~~family~~ single-family residential purposes, the lesser of 35 percent of the cost or:

166 (i) The sum of \$2,500.00 per dwelling unit applies for clean energy property related  
 167 to solar energy equipment for domestic water heating as described in subparagraph  
 168 (a)(3)(A) of this Code section which is certified for performance by the Solar Rating  
 169 Certification Corporation, Florida Solar Energy Center, or by a comparable entity  
 170 approved by the authority to have met the certification of Solar Rating Certification  
 171 Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar thermal  
 172 collectors, Solar Rating Certification Corporation certification OG-300 or Florida  
 173 Solar Energy Center-GP-5-80 for solar thermal residential systems, or both;

- 174 (ii) The sum of \$10,500.00 per dwelling unit applies for clean energy property related  
175 to solar energy equipment for solar electric (photovoltaic), other solar thermal electric  
176 applications, and active space heating as described in subparagraph (a)(3)(A) of this  
177 Code section, or to wind as described in subparagraph (a)(3)(B) of this Code section;  
178 and
- 179 (iii) The sum of \$2,000.00 per installation for Energy Star certified geothermal heat  
180 pump systems applies as described in subparagraph (a)(3)(B) of this Code section;  
181 and
- 182 (6)(A) Where the amount of any credits allowed by this Code section except for the  
183 credit under paragraph (2) of subsection (b) of this Code section exceeds the taxpayer's  
184 liability for such taxes in a taxable year, the excess may be taken as a credit against  
185 such taxpayer's quarterly or monthly payment under Code Section 48-7-103. Each  
186 employee whose employer receives credit against such taxpayer's quarterly or monthly  
187 payment under Code Section 48-7-103 shall receive credit against his or her income tax  
188 liability under Code Section 48-7-20 for the corresponding taxable year for the full  
189 amount which would be credited against such liability prior to the application of the  
190 credit provided for in this subsection. Credits against quarterly or monthly payments  
191 under Code Section 48-7-103 and credits against liability under Code Section 48-7-20  
192 established by this subsection shall not constitute income to the taxpayer.
- 193 (B) In no event shall the total amount of the tax credit under paragraph (2) of  
194 subsection (b) of this Code section for a taxable year exceed the taxpayer's income tax  
195 liability. Any unused tax credit shall be allowed the taxpayer against succeeding years'  
196 tax liability. No such credit shall be allowed the taxpayer against prior years' tax  
197 liability.
- 198 (c) The authority and department shall be authorized to adopt rules and regulations to  
199 provide for the administration of any tax credit provided by this Code section. Specifically,  
200 the authority and department shall create a mechanism to track and report the status and  
201 availability of credits for the public to review at a minimum on a quarterly basis.
- 202 (d) The authority and the department shall provide an annual report of:
- 203 (1) The number of taxpayers that claimed the credits allowed in this Code section;  
204 (2) The cost of business property and clean energy property with respect to which credits  
205 were claimed;  
206 (3) The type of clean energy property installed and the location;  
207 (4) A determination of associated energy and economic benefits to the state; and  
208 (5) The total amount of credits allowed."

209

**SECTION 2.**

210 This Act shall become effective upon its approval by the Governor or upon its becoming law  
211 without such approval and shall be applicable to all taxable years beginning on or after  
212 January 1, 2011.

213

**SECTION 3.**

214 All laws and parts of laws in conflict with this Act are repealed.