**South Carolina General Assembly**

119th Session, 2011-2012

**H. 3930**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Erickson, Sandifer, Brady, Herbkersman, Crosby, Bowers, Long, Pinson, Bales, Hayes and Hart

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Introduced in the House on March 15, 2011

Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: Commercial and Industrial Imported Fuels Reduction Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/15/2011 House Introduced and read first time ([House Journal‑page 7](file:///h:\hj%20archive\2011\03-15-11.docx))

3/15/2011 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 7](file:///h:\hj%20archive\2011\03-15-11.docx))

3/29/2011 House Member(s) request name added as sponsor: Crosby, Bowers

3/30/2011 House Member(s) request name added as sponsor: Long, Pinson

3/31/2011 House Member(s) request name added as sponsor: Bales

4/5/2011 House Member(s) request name added as sponsor: Hayes

1/31/2012 House Member(s) request name added as sponsor: Hart

**VERSIONS OF THIS BILL**

[3/15/2011](file:///p:\pprever\2011-12\3930_20110315.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 39 TO TITLE 6 SO AS TO CREATE THE “SOUTH CAROLINA COMMERCIAL AND INDUSTRIAL IMPORTED FUELS REDUCTION ACT”; TO PROVIDE DEFINITIONS; TO AUTHORIZE A GOVERNING BODY TO ESTABLISH A DISTRICT TO PROMOTE, ENCOURAGE, AND FACILITATE RENEWABLE ENERGY AND ENERGY EFFICIENCY DEVELOPMENT WITHIN THE TERRITORY SERVED; TO AUTHORIZE THE IMPOSITION OF AN ASSESSMENT FOR THE PURPOSE OF FINANCING PROJECTS THAT FACILITATE RENEWABLE ENERGY TECHNOLOGY AND ENERGY EFFICIENCY IMPROVEMENTS; TO AUTHORIZE THE ISSUANCE OF SPECIAL DISTRICT BONDS OR REVENUE BONDS; AND TO REQUIRE CERTAIN PROVISIONS IN ORDINANCES AUTHORIZING THE CREATION OF A DISTRICT.

Whereas, it is in the best interest of the State and its citizens and a public purpose to enable and encourage the owners of eligible real property to invest in energy improvements, including new energy efficiency improvements and renewable energy improvements; and

Whereas, a vast percentage of our state’s energy needs are derived from sources outside the State and outside our nation, thus depriving the state’s economy of a significant amount of financial resources that could be used to stimulate growth through capital investment and job creation; and

Whereas, new energy improvements, including energy efficiency improvements and renewable energy improvements, help protect owners of eligible real property from the financial impact of the rising cost of electricity produced from nonrenewable fuels. New energy improvements can provide positive cash flow in many instances in which the cost of the improvements are spread out over a long enough period that the owners’ utility savings exceed the assessments levied on the eligible real property to pay for the improvements; and

Whereas, energy efficiency improvements and renewable energy improvements increase the value of the real property improved; and

Whereas, the commitment of a significant amount of sustainable funding for increased construction of energy improvements will stimulate the state’s economy. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 6 of the 1976 Code is amended by adding:

“CHAPTER 39

South Carolina Commercial and Industrial

Imported Fuels Reduction Act

Section 6‑39‑10. This chapter may be cited the ‘South Carolina Commercial and Industrial Imported Fuels Reduction Act’.

Section 6‑39‑20. As used in this chapter:

(1) ‘Assessment’ means a charge against the real property belonging to an owner within a district created pursuant to this chapter. The assessment must be made only upon real property located within the district. An assessment imposed in this chapter remains valid and enforceable even if there is a later sale or transfer of property, or a part of it. The rates of assessment within a district need not be uniform. The owners and the governing body shall agree upon the rates of assessment across different sections of, or uses within, the district.

(2) ‘District’ means a renewable energy and energy financing district formed pursuant to this chapter by a municipality or county that lies within the local unit of government’s jurisdictional boundaries. A district may be comprised of noncontiguous parcels of land. A county or municipality may create more than one district under this program and districts may be separate, overlapping, or coterminous.

(3) ‘Energy efficiency improvement’ means equipment, devices, or materials intended to decrease energy consumption, including, but not limited to, the following:

(a) insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems, storm windows and doors;

(b) multi‑glazed windows and doors;

(c) heat‑absorbing or heat‑reflective glazed and coated window and door systems;

(d) additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(e) automated energy control systems;

(f) heating, ventilating, air‑conditioning, and distribution system modifications, or replacements;

(g) caulking, weather‑stripping, and air sealing;

(h) replacement or modification of lighting fixtures to reduce the energy use of the lighting system;

(i) energy recovery systems;

(j) day lighting systems;

(k) installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity;

(l) measures to reduce the usage of water or increase the efficiency of water usage; and

(m) any other installation or modification of equipment, devices, or materials approved as a utility cost‑savings measure by the governing body.

An improvement that is not permanently affixed to the real property must be conveyed with the property if a transfer of ownership occurs. Technologies and procedures must be approved by the governing body in conjunction with a member of the staff or an outside consultant hired by the body. Costs incurred during this process may be included in the amount requested from the district. These costs must not exceed what is ‘fair and reasonable’ for a property of similar size and complexity.

(4) ‘Governing body’ or ‘board’ means, as appropriate, the county council or the municipal council or councils with authority over the geographic area in which the district lies and acting pursuant to the provisions of this chapter. A school board is not included within the definition of governing body as provided by this chapter.

(5) ‘Owner’ means a person who is eighteen years of age or older, or the proper legal representative for a:

(a) person who is younger than eighteen years of age;

(b) person who is incapacitated;

(c) firm or corporation that owns legal title to a present possessory interest in real estate equal to a life estate or greater, expressly excluding leaseholds, easements, equitable interests, inchoate rights, dower rights, future interests, and that owns, at the date of the petition, and whose name appears on the county tax records as an owner of real estate; or

(d) duly organized group who’s total interest is equal to at least a one‑tenth interest in a single tract.

(6) ‘Private placement’ means a loan or debt arrangement with a private financial institution that may reside or be based in or out of the State.

(7) ‘Qualifying real property’ means a commercial or industrial building or buildings that the governing body has determined, after review, can be benefited by installation of energy efficiency improvements or renewable energy systems.

(8) ‘Renewable energy resource’ means a resource that naturally replenishes over a human, not a geological, time frame. Renewable energy resource does not include petroleum, nuclear, natural gas, or coal. A renewable energy resource comes from the sun or from thermal inertia of the earth and minimizes the output of toxic material in the conversion of the energy. It includes, but is not limited to, the following:

(a) biomass;

(b) solar and solar thermal energy;

(c) wind energy;

(d) geothermal energy; or

(e) methane gas captured from a landfill.

(9) ‘Renewable energy system’ means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer’s side of the meter that use one or more renewable energy resources to generate electricity. Renewable energy system includes a biomass stove or a biomass digester, but does not include an incinerator.

(10) ‘Renewable energy technologies’ includes technologies, fixtures, products, systems, devices, or groups of devices that produce energy from resources including, but not limited to, solar, wind, geothermal, biomass, and tidal as authorized by the governing body.

(11) ‘Senior lien’ means the assessment on the real property has precedence over all claims, including a mortgage.

Section 6‑39‑30. (A) The governing body may establish a district in order to promote, encourage, and facilitate renewable energy and energy efficiency development within its geographic area. The governing body shall define the scope or limitations of projects to be considered under this ordinance. The district shall include only the qualifying real property whose owners have voluntarily executed an agreement consenting to the inclusion of their property within the district, in addition to the imposition of a special assessment on their property for the purpose of financing renewable energy technologies and energy efficiency improvements.

(B) Nothing contained in this chapter may be construed to limit or restrict the existing powers of an owner or governing body. The authorization contained in this chapter is in addition to their powers and is provided as an additional means for the provision of improvements related to new development of renewable energy and energy efficiency.

(C) The district has the authority to impose a special assessment on all district members for the purpose of financing renewable energy technologies and energy efficiency improvements.

(D) The amount of the assessment must be based on actual costs of the technologies and improvements or reasonable estimates of those costs, to include, but not be limited to, interest expense, bond issuance costs, architectural and engineering costs and costs associated with the administration of the district.

(E) The assessment must be levied and collected at the same time and in the same manner as property taxes are levied and collected. The assessment must be secured by a senior lien on the property for the amount of money borrowed.

(F) A governing body that has not adopted a comprehensive plan pursuant to Chapter 29 of this title may not impose an assessment. A governing body that has adopted a comprehensive plan only may impose an assessment pursuant to this chapter.

(G) A governing body shall prepare and publish an annual report describing for each district the amount of all assessments collected, appropriated, or spent during the preceding year. An annual summary must be available to the public at the time property tax bills are disseminated to property owners within the district.

(H) Bonds issued by the governing body pursuant to this chapter do not count for the purposes of calculating the bond‑borrowing limit pursuant to Article X of the Constitution of this State.

(I)(1) The governing body of a government entity may issue its special district bonds or revenue bonds of the government entity under the terms and conditions that the governing body determines by ordinance, subject to the following:

(a) the bonds may be sold at a public or private sale for a price determined by the governing body;

(b) the bonds may be secured by a pledge of and be payable from the assessments authorized in this chapter or another source of funds not constituting a general tax which may be available and authorized by the governing body;

(c) the bonds may be issued pursuant to and secured under the terms of a trust agreement of indenture with a corporate trustee and the ordinance authorizing the bonds or trust agreement or indenture pertaining to it must contain provisions for the establishment of a reserve fund; and

(d) other funds or accounts may be used which are determined by the governing body to be appropriate to be held by the governing body or the trustee.

(2) The proceeds of the bonds may be applied to the payment of the costs of renewable energy technologies or energy efficiency improvements, or both, including capitalized interest, expenses associated with the issuance and sale of the bonds, and costs for planning and designing the improvements or planning or arranging for the financing, and any engineering, architectural surveying, or similar cost or expense necessary or appropriate for the planning, designing, construction, or implementation of a plan in connection with the improvements.

(J) The governing body may provide by resolution for the payment of the cost of the technologies installed and improvements performed by assessments, by the issuance of special district bonds, or other obligations secured by assessments, from general revenues from a source not restricted from the use by law, or from a combination of the financing sources that may be provided in the improvement plan.

(K) An ordinance authorizing the creation of a district must:

(1) impose requirements and conditions on financing arrangements to ensure timely repayment;

(2) require a description of technologies and improvements proposed for each property;

(3) require disclosures to owners by the governing body of the risks involved in borrowing, including the risk of foreclosure if a tax delinquency results from a default;

(4) provide that the owner of the qualifying real property subject to a mortgage obtain written consent from the mortgage holder before participating in the program. If the mortgage holder has established a payment schedule to accrue property taxes throughout the year, he also may establish a repayment of the principal and interest under this program on the same schedule;

(5) provide financing only to those who demonstrate an ability to repay;

(6) not provide financing for a qualifying real property in which the owner is not current on an existing mortgage or real property tax payments;

(7) provide that payments and assessments are not accelerated due to a default, and that a tax delinquency exists only for assessments not paid when due;

(8) require that liability for special assessments related to the financing runs with the qualifying real property; and

(9) provide a methodology for the imposition, apportionment, adjustment, and termination of the assessment.

(L) If necessary, applicants shall provide documentation of approval for proposed technologies and improvements by all historical and architectural review boards with jurisdiction over the qualifying real property.

(M) Financing provided under this section must have:

(1) a term not to exceed the weighted average of the useful life of the energy improvements installed, as determined by the governing body, but in no event may a term exceed twenty years; and

(2) an interest rate sufficient to pay the financing costs of the program, including the issuance of bonds and any financing delinquencies.

(N) Financing programs established under this act must include cooperation and coordination with the conservation improvement activities of the utility serving the qualifying real property and other public and private energy improvement programs.”

SECTION 2. This act takes effect upon approval by the Governor.

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