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DIGEST

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## DIGEST

Morrell (SB 63)

Proposed law creates the crime of solar tax credit fraud.

Proposed law makes it unlawful for any person who has received money from a contract for the sale, installation, maintenance, or repair of a solar electric system or solar thermal system, as defined in present law, to claim a tax credit provided by present law against taxes owed to the state if the person:

- (1) Fails to perform or complete the installation of the system or fails to maintain or repair the system under the terms of the contract.
- (2) Fails to maintain or repair the system under the terms of the contract subsequent to claiming the tax credit.

Provides the following penalties for violating proposed law:

- (1) When the aggregate amount of the tax credit claimed is \$1,000 or less, the person is to be fined not less than \$100 nor more than \$500, or imprisoned for not more than six months.
- (2) When the aggregate amount of the tax credit claimed is greater than \$1,000, the person is to be fined not less than \$100 nor more than \$500, or imprisoned, with or without hard labor, for not less than 90 days nor more than six months, or both, for each \$1,000 of the tax credit claimed, provided that the aggregate imprisonment cannot exceed five years.

Proposed law provides that the knowing material failure by a contractor to perform or complete the installation of a solar electric or solar thermal system or maintain or repair the system under the terms of the applicable contract shall constitute the crime of solar installation fraud.

Proposed law provides that whoever commits the crime of solar installation fraud shall be subject to penalty provisions provided in the present law crime of home improvement fraud.

Requires the district attorney to notify the Dept. of Revenue (DOR) in writing of any prosecution under proposed law.

Provides that nothing contained in proposed law is to be construed to prevent the state, through the attorney general, from asserting a cause of action to recover damages or penalties, or assess or collect a penalty, resulting from a violation of proposed law.

Proposed law provides that the remedies and rights provided under proposed law are in addition to and do not preclude any remedy otherwise available under present law.

Proposed law provides that any person who is found liable under a civil action brought by the attorney general resulting from a violation of proposed law is liable to the attorney general for all costs, expenses and fees related to investigations and proceedings associated with the violation, including attorney fees. Proposed law further provides that an action to recover costs, expenses, fees, and attorney fees is ancillary to, and is to be brought and heard in the same court as, the civil action resulting from a violation of proposed law.

Proposed law provides that the attorney general may examine, or cause to be examined, by agents thereof, without notice, the conditions and affairs of any person who has received

money from a contract for the sale, installation, maintenance, or repair of a solar electric system or solar thermal system and who has claimed a tax credit.

Proposed law provides that in connection with an examination authorized by proposed law, the attorney general, or his agents, may examine under oath any person concerning the affairs and business of the person who has received money from a contract for the sale, installation, maintenance, or repair of a solar electric system or solar thermal system and who has claimed a tax credit.

States that the provisions of proposed law shall be applicable to entities engaging in the business of selling, leasing, installing, servicing, or monitoring solar energy equipment.

Proposed law is not to be construed to impose civil or criminal liability on homeowners or on any third party whose involvement is financing to the homeowner, financing for installation, or purchasing the tax credits. Proposed law states that entities engaged in the business of arranging for the lease or sale of solar energy systems or acquiring customers for financing entities shall not be exempt from the provisions of proposed law.

Present law provides that except as otherwise provided by law, the records and files of the secretary of DOR are confidential and privileged.

Proposed law amends present law to provide an exception to the confidentiality of such records and authorizes the secretary of DOR to disclose certain information to the office of the attorney general in order to implement the provisions of proposed law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 14:202.2 and R.S. 47:1508(B)(35))

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Adds provisions relative to solar electric and solar thermal systems to present law relative to the crime of home improvement fraud.
2. Deletes certain affirmative defenses to home improvement fraud from present law.
3. Adds provisions relative to the authority of the attorney general.
4. Adds provision exempting homeowners and third parties from civil and criminal liability.
5. Changes penalty for lowest grade offense from felony to misdemeanor.

##### Senate Floor Amendments to engrossed bill

1. Removes provisions from the bill dealing with home improvement fraud.
2. Removes proposed law that deals with the person who received money from a contract for the sale, installation, maintenance or repair of a solar electric system or solar thermal system and claimed a tax credit for such receipts shall pay the reasonable cost of examination authorized by the proposed law.
3. Removes from proposed law that nothing in the proposed law shall be construed to impose civil or criminal liability on any homeowner arising out of the contractor's failure to perform or on any third party purchasing the tax credits.

4. Adds provision that proposed law shall be applicable to entities engaging in the business of selling, leasing, servicing, or monitoring solar energy equipment.
5. Adds that nothing in proposed law shall be construed to impose civil or criminal liability on homeowners or on any third party whose involvement is financing to the homeowner, financing for installation, or purchasing the tax credits.
6. Adds provisions that entities engaged in the business of arranging for the lease or sale of solar energy systems or acquiring customers for financing entities shall not be exempt from the provisions of proposed law.
7. Technical amendments.

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the reengrossed bill.

1. Added an exception to the confidentiality of taxpayer records authorizing the secretary to disclose certain information to the office of the attorney general certain information for the purposes of proposed law.