Bill 39 (2021), CD1
Testimony

MISC. COM. 591

BUD

From: CLK Council Info
Sent: Monday, November 15, 2021 5:33 PM
Subject: Budget Testimony

Written Testimony

Name	Kawai Scanlan
Phone	
Email	kawaiscanlan@yahoo.com
Meeting Date	11-17-2021
Council/PH Committee	Budget
Agenda Item	Green Fee
Your position on the matter	Support
Representing	Self
Organization	
Written Testimony	Climate change is not a problem for 2050. It's happening now. It's time to hold the industry responsible for a lot of degradation to our ʻāina accountable. This seems like a no brainer.
Testimony Attachment	
Accept Terms and Agreement	1

IP: 192.168.200.67

Testimony of Laurence R. Greene,
Ho'ohana Solar I, LLC

Committee on Budget
City Council
City and County of Honolulu

Wednesday, November 17, 2021

Bill 39 CD2 (Proposed)
Relating to Real Property Taxation

Ho'ohana Solar 1, LLC offers these **comments.**

Chair Calvin Say, and Members of the Committee,

Ho'ohana Solar 1, LLC ("Ho'ohana") is deeply concerned with potentially significant and enormous increases in real property taxes for commercial utility scale solar PV projects.

We understand that for real property tax assessment purposes, the City and County of Honolulu has started to change the classification of land that is used for solar PV projects to Industrial from other classifications such as Agricultural, due to the use of the land for solar PV projects.

- The potential additional real property taxes that would be due upon changing the classification of the land used for solar PV projects from Agricultural to Industrial would be unreasonably enormous and unexpected.
- Such unexpected and substantial increases in real property taxes would put utility scale solar PV projects in jeopardy.
- We have been working on the Ho'ohana project for several years, proposed it through a competitive process overseen by the PUC, and entered a binding PPA with HECO, which was approved by the PUC after a thorough review.
- Ho'ohana proposed its pricing based on expected real property taxes, and Ho'ohana does not have a mechanism or opportunity to increase its pricing if real property taxes are substantially increased by changing the classification to Industrial.

300 Spectrum Center Drive, Suite 1020 | Irvine , California, 92694 | Telephone: 949.748.5970

- Existing projects or projects that are in development with locked-in pricing should be provided with a 100% exemption because these projects do not have an opportunity to build higher real property taxes into its financial analysis and pricing proposals.

Commercial utility-scale renewable energy projects are important to the state's stated 2045 100% clean energy goal. Substantially increasing real property taxes without warning creates several unfortunate scenarios: (1) there is a risk that the projects may not be financeable, and therefore, may not be built, (2) ratepayers are denied the benefits originally contracted for and approved by the PUC, and (3) the state runs a risk of endangering its progress towards its 2045 goal.

Bill 39 CD2 (Proposed) provides for an 80% exemption for renewable energy project. However, the exemption should be established at 100% for all existing projects and for all projects already under development with existing Power Purchase Agreements for commercial utility scale projects.

Thank you for this opportunity to provide testimony on this important issue.

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Clearwayenergygroup.com

Clearway

November 17, 2021

Councilmember Calvin Say, Chair Budget Committee
Councilmember Radiant Cordero, Vice-Chair Budget Committee
Honolulu City Council
530 S. King Street, Room 202
Honolulu, Hawaii 96813

RE: Bill 39 (2021) CD2 Relating to Real Property Tax Exemption
Testimony IN SUPPORT WITH REQUESTED AMENDMENTS

Dear Chair Say, Vice Chair Cordero, and Members of the Budget Committee:

My name is Nicola Park, Origination Manager for Clearway Energy Group (Clearway). Two of Clearway's operating projects were the first to be reassessed under a new approach by the Real Property Assessment Division ("RPAD") whereby the area underneath the projects' solar panels was reclassified from Agricultural to Industrial for tax purposes, even though industrial uses are not permitted on either site.

The Waipio and Lanikuhana solar projects are both located on agricultural land and incorporate compatible agriculture into their ongoing operations. Solar energy generation is an allowable use on agricultural zoned land under the city's Land Use Ordinance. However, in tax year 2021/2022, the projects received tax bills that totaled $835,710 for the 2021/2022 tax year versus the $30,154 total tax was paid in the 2020/2021 tax year. Table 1 illustrates this change in detail for the primary parcel where solar panels are sited at the Waipio project site.

The impact of reassessment with industrial assessed values and at industrial tax rates is catastrophic for Clearway's operating solar projects, which operate under low, fixed price power sale contracts with Hawaiian Electric that benefit all Oahu ratepayers for decades to come. This issue is also creating significant risk for Clearway's two projects under construction and could derail our efforts to complete those projects in 2022.

Table 1. Waipio Solar, Parcel 950030170000: Compare Tax Year 2020/2021 to Tax Year 2021/2022
Note that Clearway pays property tax on other parcels associated with the Waipio Solar Project that do not include panels. Table 1 shows only the primary solar energy parcel for illustration purposes.

	Acres with Agricultural Assessment (with ag dedication)	Acres with Industrial Assessment	Assessed Value, Agricultural Dedication	Assessed Value, Industrial	Agricultural Tax Rate	Industrial Tax Rate	Agricultural Dedication Taxes	Industrial Taxes	**Total Taxes for This Parcel**
Tax Year 2020-21	343.64	N/A	$168,000	N/A	5.7	12.4	$958	N/A	**$958**
Tax Year 2021-22	163.64	180	$21,500	$35,283,600	5.7	12.4	$123	$437,517	**$437,639**

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While we appreciate the intent of Bill 39 CD2, we still have real concerns about the ambiguity that the language leaves with respect to the area under the solar panels (or 'renewable energy improvements'). In the assessment for Tax Year 2021-22, RPAD assessed the area under Clearway's Waipio and Lanikuhaha projects' solar panels as Industrial. As currently written, Bill 39 CD2 does not specify how this land would be assessed. Since the area under the panels is much larger than the area physically touching the solar equipment, this leaves significant uncertainty for the projects' tax bills.

Clearway requests that CD2 be amended to clarify that all other portions of land associated with the project, including the area under the panels or renewable energy improvements, shall receive the same tax treatment as existed prior to the project's operations (in the case of Clearway's projects, Agricultural). Clearway understands that this may be the intention of Bill 39 CD2, but without legislative language to confirm it, financing parties will continue to view the classification of land as an open question.

Table 2 illustrates the property taxes that would be charged to the same parcel at the Waipio project site under a range of exemption scenarios, if the parcel continued to be classified as primarily industrial. This table illustrates why it is important to ensure that no land other than the area physically touching the solar equipment is subject to industrial classification. Even with an exemption over 90%, the property taxes would continue to be many times the level that was paid in prior years and would be very sensitive to changes in the assessed value or tax rate.

Table 2. Waipio Solar Parcel 950030170000 with Industrial Tax Treatment at Varying Exemption Levels

Exemption	Acres with Agricultural Assessment	Acres with Industrial Assessment	Assessed Value, Ag	Assessed Value, Industrial	Ag Rate	Industrial Rate	Ag Taxes	Industrial Taxes	**Total Taxes on This Parcel**	**Percentage Increase from 2020 Taxes**
0%	163.64	180	$21,500	$35,283,600	5.7	12.4	$122.55	$437,516.64	**$437,639.19**	**45602%**
50%	163.64	180	$21,500	$35,283,600	5.7	12.4	$122.55	$218,758.32	**$218,880.87**	**22757%**
55%	163.64	180	$21,500	$35,283,600	5.7	12.4	$122.55	$196,882.49	**$197,005.04**	**20473%**
60%	163.64	180	$21,500	$35,283,600	5.7	12.4	$122.55	$175,006.66	**$175,129.21**	**18188%**
65%	163.64	180	$21,500	$35,283,600	5.7	12.4	$122.55	$153,130.82	**$153,253.37**	**15904%**
70%	163.64	180	$21,500	$35,283,600	5.7	12.4	$122.55	$131,254.99	**$131,377.54**	**13619%**
75%	163.64	180	$21,500	$35,283,600	5.7	12.4	$122.55	$109,379.16	**$109,501.71**	**11335%**
80%	163.64	180	$21,500	$35,283,600	5.7	12.4	$122.55	$87,503.33	**$87,625.88**	**9051%**
85%	163.64	180	$21,500	$35,283,600	5.7	12.4	$122.55	$65,627.50	**$65,750.05**	**6766%**
90%	163.64	180	$21,500	$35,283,600	5.7	12.4	$122.55	$43,751.67	**$43,874.21**	**4482%**
95%	163.64	180	$21,500	$35,283,600	5.7	12.4	$122.55	$21,875.83	**$21,998.38**	**2197%**
96%	163.64	180	$21,500	$35,283,600	5.7	12.4	$122.55	$17,500.67	**$17,623.22**	**1740%**
97%	163.64	180	$21,500	$35,283,600	5.7	12.4	$122.55	$13,125.50	**$13,248.05**	**1283%**
98%	163.64	180	$21,500	$35,283,600	5.7	12.4	$122.55	$8,750.33	**$8,872.88**	**827%**
99%	163.64	180	$21,500	$35,283,600	5.7	12.4	$122.55	$4,375.17	**$4,497.72**	**370%**
100%	163.64	180	$21,500	$35,283,600	5.7	12.4	$122.55	$0.00	**$122.55**	**-87%**

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In addition, we respectfully request that Bill 39 Section 4, which currently references 2022, be modified to reference the 2021 real property tax year to address RPAD's re-classifications for the 2021/22 real property tax year (thus avoiding an additional ~$400k tax bill that will otherwise be due for Waipio and Lanikuhana in February 2022). The classification decision was formally rendered October 1, 2020, though Clearway was not aware of the impact of such decision until the following year.

We are available to answer any questions or provide any additional information.

Mahalo,

Nicola Park
Clearway Energy Group

HAWAII STATE ENERGY OFFICE
STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

SCOTT J. GLENN
CHIEF F ENERGY OFFICER

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Testimony of the
Hawai'i State Energy Office

before the
Honolulu City Council
Committee on Budget

Wednesday, November 17, 2021
9:00 AM
Via Videoconference

Comments in consideration of
BILL 039 (2021), CD2 Proposed
RELATING TO REAL PROPERTY TAXATION

Chair Say and Members of the Committee, the Hawai'i State Energy Office (HSEO) offers the following comments on Bill 39 (2021), CD2 Proposed, which amends Section 8-10.15, Revised Ordinances of Honolulu (ROH) 1990 (Real Property Tax) relating to the real property tax exemption for alternate energy improvements.

HSEO's comments are guided by its statutory purpose under Hawai'i Revised Statutes Section 196-71 and its mission to promote energy efficiency, renewable energy, and clean transportation to help achieve a resilient, clean energy, and carbon negative economy by 2045.

The island of O'ahu achieved just under 31% electricity generation from renewable energy in 2020. The execution of the City and County of Honolulu's climate action policy to transition to 100% renewable energy and achieve net negative carbon emissions by 2045 will require replacing 69% of Oahu's remaining electricity with non-fossil sources over the next 23 years.

As stated in previous testimony, the solutions proposed to mitigate the sudden large increase in real property tax assessments on renewable energy projects must address the impacts on: (1) projects currently operating; (2) projects now under development and undergoing regulatory review; and, (3) future projects.

HSEO supports a solution that does not increase the tax liability that was in place at the time existing and under development projects were financed, competitively bid, and approved by the Public Utilities Commission (PUC). Any increase in tax liability will significantly impact project finances and could affect project viability and timelines, particularly because already executed power purchase agreements require renegotiations with the utility and renewed PUC approvals; neither of which are guaranteed.

Future projects will also be impacted by Bill 39, CD2 Proposed. If the land property tax increases, future proposed projects will likely seek higher energy unit prices from Hawaiian Electric. Increased prices would ultimately be passed down to the electricity rate payer, impacting the electric bill of all O'ahu residents, with low and middle income residents bearing a higher energy cost burden.

Under Hawaiian Electric's latest procurement of renewable energy on O'ahu (Stage 1 and 2), there are eight (8) utility-scale solar plus battery storage projects now being built or permitted that would be impacted by a change in real property taxes.[1] These projects total 359 megawatts (MW), which is a significant amount of renewable energy needed to retire O'ahu's fossil fuel generation units. In addition, there are at least four (4) utility-scale solar projects on Agriculture-zoned land on O'ahu now producing a collective 137 MW that would be impacted.

HSEO suggests amending the Proposed CD2 by:

1. Increasing the exemption from 80% to 100%. HSEO is concerned the financial and administrative impacts of the process proposed to tax only the "portions of land actually used" is unknown.
2. Clarifying how the portion of the renewable energy projects in contact with the land will be calculated to avoid inconsistencies and unpredictability.
3. Clarifying the area subject to the higher rate of tax does <u>not include the area under the solar panels</u>.

An alternative approach, which HSEO notes has support from the State and developers, is in SECTION 2, to revise Sec. 8-10.15(b) to read as follows:

"<u>Any land used or permitted to be used for the production or storage of renewable energy, and any transmission, distribution, substation, and telecommunications equipment related to the renewable energy improvement, shall be exempt from any tax assessments, classifications, or valuations based on the renewable energy improvements or the use or permitted use of the land for renewable energy</u>".

The alternative approach does not change property tax assessments as a result of renewable energy improvements. This would ensure there is no change to existing financial agreements and regulatory approvals and would be revenue neutral to the City, i.e., if the land is zoned as Agriculture, it is taxed as Agriculture; if the land is zoned as Commercial, it is taxed as Commercial; and, if the land is zoned as Industrial, it is taxed as Industrial.

The alternative approach also aligns with all the county ordinances and Hawai'i Revised Statutes regarding exemptions for renewable energy improvements and would enable projects in existence or now being developed to be taxed according to their original tax treatment and would provide the long-term consistency and predictability for future projects. This is needed to help Hawai'i reach its clean energy and security goals.

HSEO believes this is an important issue that could have repercussions for all O'ahu residents. and believes this alternative amendment to "Sec. 8-10.15 Exemption—Renewable energy" provides a long-term solution to achieve appropriate taxation for renewable energy projects.

HSEO appreciates the opportunity to offer these comments for the Committee's consideration.

TESTIMONY OF
JAMES P. GRIFFIN, Ph.D.
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAIʻI

TO THE
CITY COUNCIL
CITY AND COUNTY OF HONOLULU
COMMITTEE ON BUDGET

Wednesday, November 17, 2021
9:00 AM

Chair Calvin Say and Members of the Committee:

MEASURE: BILL 39 (2021), Proposed CD 2

TITLE: RELATING TO REAL PROPERTY TAXATION

DESCRIPTION: The purpose of this ordinance is to amend the provisions relating to the renewable energy improvements real property tax exemption.

POSITION:

The Public Utilities Commission offers the following comments for consideration.

COMMENTS:

The Public Utilities Commission ("Commission") supports the intent of this measure to encourage renewable energy generation projects and increase clarity around applicable tax treatment. The Commission appreciates the changes in the Proposed CD2 to clarify the treatment of energy storage and the term of the exemption but remains concerned that the net impact may still result in unsustainable tax increases and continued uncertainty for renewable energy project developers.

Specifically, the Commission remains concerned that the proposed 80% exemption level, combined with potential ambiguity in interpretation of subsection (b), will not provide sufficient certainty to act as the necessary near-term fix while stakeholders work out a longer-term, comprehensive solution to tax treatment of renewable projects. Renewable project developers have proposed further clarifications to subsection (b) in stakeholder discussions, and the Commission asks your favorable consideration of their proposed amendments.

In addition, the Commission requests that projects in the community-based renewable energy ("CBRE") and feed-in tariff programs qualify for the exemption. These projects also rely on long-term agreements to sell electricity to Hawaiian Electric and uncertainty over tax treatment could undermine current and future projects. The Proposed CD2 posted on 11/15 appears to now include these projects, and the Commission respectfully asks that this treatment be maintained.

The Commission appreciates the considerable efforts by stakeholders in developing compromise language reflected in the Proposed CD2 and proposed amendments. The Commission will continue working with this group to solidify a near-term solution and will support future discussion to comprehensively address this issue. To initiate these long-term discussions, the Hawaii State Energy Office has included draft language in its testimony.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
Committee on Budget
November 17, 2021
9:00 AM
Via Videoconference**

**On the following measure:
BILL 039 (2021), CD1, RELATING TO REAL PROPERTY TAXATION**

Chair Say and Members of the Committee:

My name is Dean Nishina, and I am the Executive Director of the Department of Commerce and Consumer Affairs' ("Department") Division of Consumer Advocacy. The Department offers comments on this bill.

The stated purpose of this ordinance is to amend the provisions relating to the alternate energy improvements real property tax exemption. CD 2 clarifies that a renewable energy installation with ongoing active production shall be exempt from 80 percent of the value imposed by the chapter if the renewable energy production is "primarily for use, distribution, or sale to public utilities or for public consumption under a power purchase agreement or power purchase contract with a utility." This exemption is available if a timely claim for exemption is filed.

The Department supports the intent to reduce the property tax burden of renewable energy projects brought on by recent changes in the Real Property Assessment Division's ("RPAD") interpretation of how relevant sections of Revised Ordinances of Honolulu ("ROH") should be applied to renewable energy projects. The Department appreciates how CD 2 has clarified that the taxes apply to land area in physical contact with the renewable energy structures. CD 2 also makes clear that, once the exemption claim is allowed, it will last throughout the period of the power purchase agreement. This language clarifies some of the ambiguity in earlier versions of Bill 39.

However, there remain concerns with the potential impact and remaining ambiguity of how RPAD may apply Section 8-10.15 ROH and the resulting assessments on current and future renewable projects and, ultimately, the impacts on ratepayers. Thus, the Department offers the following comments for the Committee's consideration.

Among the Department's primary objectives are affordable and reliable utility services. Thus, the Department has concerns with the recent RPAD interpretations related to the real property tax assessments for certain renewable energy projects and how those interpretations have created significant increases in the property taxes for certain renewable energy projects. These actions create the likelihood that similar significant increases for other existing and future projects will occur and increases in customers' electricity bills. Even with the proposed modifications in CD2 to Section 8-10.15 ROH, it is likely that there will be increases in customers' electricity bills since even an 80 percent exemption (under the current RPAD interpretation using the industrial rate) will increase the tax liability for affected renewable energy projects.

The Department respectfully points out that, without changes to offset the recently adopted administrative policy or a change to the ROH to make clear that real property assessment for renewable projects will not experience significant increases in the anticipated real property taxes, developers will likely be reluctant to move forward with current proposals and to proposed new projects. In the alternative, the imposition of higher property taxes will simply be passed on to utility customers since the costs associated with higher property taxes will be built into the power purchase prices charged to the utility companies. Thus, it is the customers that will ultimately suffer and bear the burden with these significant increases in property taxes. It should be pointed out, unlike how the real property taxes are assessed, utility bills are generally based on usage and will ultimately be a very regressive form of taxation since the most vulnerable customers, who are unable to reduce their utility usage in the same ways that more affluent customers are able to offset their usage, will suffer the most.

There are remaining questions and concerns about the application of the current language as well as the proposed modifications. The Department believes that additional analysis and discussion would facilitate a better mutual understanding of the likely ramifications. To provide the opportunity for that analysis and discussion, the Department believes that additional modification to subsection (b) as proposed by the Hawaii State Energy Office should be considered. The Department also respectfully suggests that the reference to hydrogen in CD 2 should be clarified to mean hydrogen produced from renewable energy sources to be consistent with the relevant statutes and to avoid the possibility that hydrogen produced from fossil fuels might qualify for an exemption. The Department has been working with other State agencies, the RPAD, and other stakeholders and is willing to continue working with other stakeholders to address this matter.

The Department appreciates the opportunity to offer these comments for the Committee's consideration.

TESTIMONY BEFORE THE HONOLULU CITY COUNCIL
COMMITTEE ON BUDGET

Comments regarding BILL 39, Proposed CD 2

A REQUEST FOR AMENDMENTS TO SECTION 8-10.15, REVISED ORDINANCES OF HONOLULU 1990, RELATING TO REAL PROPERTY TAXATION

Wednesday, November 17, 2021
9:00 a.m.
City Council Chamber

Rebecca Dayhuff Matsushima
Director, Renewable Acquisition
Hawaiian Electric Company, Inc.

Chair Say, Vice Chair Cordero, and Members of the Committee,

My name is Rebecca Dayhuff Matsushima and I am submitting testimony on behalf of Hawaiian Electric Company, Inc. ("Hawaiian Electric") **commenting on** Bill 39, Proposed CD 2, Relating to Real Property Taxation.

Hawaiian Electric supports the intent of Bill 39, Proposed CD 2 and is continuing to work with stakeholders on how to best move forward. Hawaiian Electric appreciates the current revisions to the bill contained in the Proposed CD 2, including the inclusion of "power purchase agreements or contract with the utility" so that the Community Based Renewable Energy and Feed-In Tariff programs are now covered. Hawaiian Electric also appreciates the added language in renumbered subsection (f) that secures the land classification for tax purposes for the life of a renewable energy project as this helps to provide certainty both for existing and future projects. However, Hawaiian Electric remains uncertain that the current version of the bill addresses the issues currently surrounding real property tax ("RPT") assessments, as there is still some uncertainty as to what land is covered by the exemption for solar projects and also whether the 80% exemption would result in similar tax treatment for renewable energy projects before the reclassification to industrial use.

First and foremost, despite the amendments to subsection (b) and other revisions, the bill still does not appear to address the land reclassification issue (e.g., changing land classified as agricultural to industrial use). The 2021 RPT assessment for two renewable projects increased 345 times due to tax reclassification, and there are numerous other projects that could be similarly affected in the absence of clarity on this issue. Even with an exemption from 80 percent for "the portions of land actually used for the active production or storage of renewable energy," the uncertainty this reclassification issue creates will affect how developers look at the renewable energy landscape in Hawaii. The pricing for renewable projects is set by contract between the developers and Hawaiian Electric. Significant changes in a developers tax liability, or even the ability to assert significant changes in a developers tax liability without the opportunity to debate such changes may result in unintended consequences to the State's renewable energy goals. Developers may choose to not participate in future renewable procurements, could withdraw projects currently under development, and may even walk away from existing projects. Providing for a greater exemption and further clarifying that the land under solar panels would also fall under the exemption may provide further certainty to developers and ensure that developers tax treatment is similar to when the pricing was set for their projects.

Hawaiian Electric urges further consideration of the effects and potential unintended consequences of Bill 39, Proposed CD 2, and emphasizes that cost certainty for developers and renewable project owners is important for continuing progress towards the State's 100% renewable energy goals, with projects that will maximize benefits to all customers. Hawaiian Electric will continue to work with other interested parties to address the concerns underlying the intent of Bill 39.

Thank you for this opportunity to comment.

EXECUTIVE CHAMBERS

HONOLULU

DAVID Y. IGE
GOVERNOR

Testimony of
Governor David Y. Ige

before the
Honolulu City Council
Committee on Budget

Wednesday, November 17, 2021
9:00 AM
Via Videoconference

Comments in consideration of
BILL 039 (2021), Proposed CD2
RELATING TO REAL PROPERTY TAXATION

WRITTEN ONLY

Chair Say and Members of the City Council's Committee on Budget, Governor David Y. Ige offers the following comments on Bill 39 (2021), Proposed CD2, which amends Section 8-10.15, Revised Ordinances of Honolulu 1990 (Real Property Tax) relating to the real property tax exemption for alternate energy improvements.

Hawai'i has ambitious clean energy goals. Pursuant to Hawai'i Revised Statutes (HRS) Section 196-71, Hawai'i must become a carbon negative economy by 2045. Hawaii's Renewable Portfolio Standards, found at HRS Section 269-92, require 100% of Hawaii's electric utilities' net electricity sales to be produced by renewable resources by the same year, 2045. The island of O'ahu achieved just under 31% electricity generation from renewable energy in 2020. The execution of the City and County of Honolulu's climate action policy to transition to 100% renewable energy and achieve net negative carbon emissions by 2045 will require replacing 69% of Oahu's remaining electricity with non-fossil sources over the next 23 years.

As written, the proposed CD 2 version of Bill 39 contains higher rates of tax and enough uncertainty that it will hamper Hawaii's ability to meet these ambitious goals at a critical time when reasonably priced renewable projects must be timely developed to replace fossil fuel energy sources that will be taken offline, beginning in 2022.

The Hawai'i State Energy Office (HSEO), the Hawai'i Public Utilities Commission (PUC), and the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs (collectively the State stakeholders) have worked with the City and County of Honolulu's Department of Budget and Fiscal Services, Hawaiian Electric Company, and renewable project developers to formulate a version that will address many of the State stakeholders' concerns. The State stakeholders support the amendments proposed by HSEO.

Applicability to Existing Projects

Currently, there are at least eleven (11) solar photovoltaic (PV) projects each exceeding 0.5 megawatts (MW) on City zoned agricultural land. In total, these projects provide approximately 154 MW of production capacity on Oahu's grid and play an important role in producing renewable energy for the community.

A change in tax liability will significantly impact project finances, which may have a ripple effect on power purchase agreements, requiring renegotiations with the utility and renewed PUC approvals, and affecting project viability and timelines.

Applicability to Projects Now Under Development

There are currently eight (8) utility-scale solar PV plus storage projects under Hawaiian Electric's Stage 1 and Stage 2 Requests for Proposals (RFP) that have already completed the necessary financing analysis and have been approved by the PUC. For these projects, the approved monthly payment does not change for the entire term of the contract (20-25 years). Pricing for these projects is based on the past precedent of real property taxes, which prior to 2021, assessed the land property tax at the rate in which the project parcel(s) were zoned according to the City's general plan and zoning ordinance. These projects were competitively bid through Hawaiian Electric's procurement process and the proposed unit price was a primary determining factor in their selection over other projects. The competitive bidding process began in 2017 for Stage 1 projects and 2018 for Stage 2 projects. Significant changes to property taxes would impact the financing of these projects and could ultimately result in the need to renegotiate their contracted prices or, in the most extreme case, discontinue the projects altogether.

Collectively, the approved Stage 1 and 2 projects will contribute over 356 MW of energy, equivalent to powering over 139,000 homes. The paired storage components provide 1,563 MWh of energy storage capacity which will increase grid reliability, provide needed renewable energy during periods of intermittency or non-sunlight hours, and increase Oahu's overall energy resiliency. These projects collectively represent cost savings of over $866 million net present value in 2022 dollars over their contract term. These savings benefit all utility rate payers. These projects will also contribute to an estimated 1,500 construction and skilled labor jobs over the next two to three years and approximately 30 permanent jobs on O'ahu.

In addition to the PUC-approved Stage 1 and 2 projects there are other large solar PV projects planned on O'ahu that could be impacted by Bill 39 such as those under the community-based renewable energy program and Hawaiian Electric's Feed-in-Tariff program.

<u>Applicability to Future Projects</u>

The project financing for projects that will be developed in the future will also be impacted by Bill 39. If land property tax increases, future proposed projects will likely seek higher energy unit prices from Hawaiian Electric. Increased prices would ultimately be passed down to the electricity rate payer, impacting the electric bill of all O'ahu residents, with low and middle income residents bearing a higher energy burden.

Should the City Council decide to increase real property taxes for future renewable energy projects, the State stakeholders recommend that increases be modest to lessen the burden on ratepayers, and that significant advance notice be provided for prospective project developers.

This is an important issue that could have repercussions for all O'ahu residents and looks forward to the discussions of appropriate taxation for renewable energy projects.

Thank you for the opportunity to offer these comments for the Committee's consideration.

Email: communications@ulupono.com

HONOLULU CITY COUNCIL COMMITTEE ON BUDGET
Wednesday, November 17, 2021 — 9:00 a.m.

Ulupono Initiative supports the intent and offers comments on Bill 39 (2021) Proposed CD 2, Relating to Real Property Taxation.

Dear Chair Say and Members of the Committee:

My name is Micah Munekata, and I am the Director of Government Affairs at Ulupono Initiative. We are a Hawai'i-focused impact investment firm that strives to improve the quality of life throughout the islands by helping our communities become more resilient and self-sufficient through locally produced food, renewable energy, and clean transportation, and better management of freshwater and waste.

Ulupono supports the intent and offers comments on Bill 39 (2021) Proposed CD 2, which amends the provisions relating to the alternate energy improvements real property tax exemption.

Ulupono supports the State's commitment to generate 100% of its electricity from renewable energy sources by 2045. To achieve this goal, O'ahu will undoubtedly need to rely on commercial-scale renewable energy projects. As such, regardless of the process that derived such significant increases in property taxes on certain renewable energy projects, Ulupono supports the intent of this measure to ease the newly created tax burden on certain renewable energy projects.

While we acknowledge the economic stress the County has endured since the pandemic and the current budget challenges, recent actions by the Real Property Assessment Division (RPAD) actively contradict a number of the long-term plans and goals of the County, such as the O'ahu General Plan. Therefore, Ulupono reiterates the need to carefully consider the effect of the determined exemption under the new "industrial use" zoning classification.

Upon review of Bill 39 (2021) Proposed CD 2, Ulupono believes the language used creates ambiguity regarding how the land is assessed, as well as the "portion of land actually used" and eligible to claim the exemption. More specifically, Ulupono is unclear as to:

(1) How "physical contact" with the renewable energy structure is defined by the Council;
(2) Whether land not in physical contact with the renewable energy structure is therefore not exempt; and
(3) The tax treatment applied to the remainder of land not in physical contact with the renewable energy structure.

As provided, Bill 39 (2021) Proposed CD 2 could be interpreted to mean that the limited area of land in direct contact with renewable energy structure would receive the 80% exemption, making the remainder of land associated with the renewable energy project assessed as either (1) industrial-use or (2) agricultural use, and not eligible for the exemption. If the remainder of land not in physical contact with the renewable energy structure is not eligible for the exemption, Ulupono asks the Council to consider a higher exemption rate, such as 90% or higher as previously recommended in prior testimony. If, however, Bill 39 (2021) Proposed CD 2 clarifies, among other things, that land not in physical contact with the renewable energy structure retains its prior agricultural tax classification, then Ulupono finds the 80% exemption to be more reasonable.

Nevertheless, without further clarification on the aforementioned issues, Ulupono remains concerned of the potential tax implications to renewable energy developers.

Until these issues are addressed, Ulupono is supportive of the least amount of land utilized for certain renewable energy projects to be assessed as industrial-use and thereby qualify for the exemption, if the current tax treatment (i.e., agricultural use) is no longer applicable. In the event the agricultural use can still be applied, Ulupono recommends that all other lands determined to not be in "physical contact" with the renewable energy project continue to be assessed as such , removing the need for the exemption. As indicated above, additional clarity on these issues will only help to better inform this exemption and limit the unintended consequences associated with such action.

Ulupono also reiterates that while this measure does provide more clarity on the applicable tax treatment for renewable energy projects, the Council should also be cognizant of the process by which renewable energy developers establish their pricing, and note that increasing property taxes for existing and future renewable energy projects will almost certainly increase the cost of renewable energy and affect the viability/timeline of renewable energy projects in development, slowing the pace at which Hawai'i can achieve its 2045 clean energy goal.

With the above in mind, Ulupono appreciates the Council's efforts to react so quickly to provide this measure as a support mechanism for renewable energy projects.

In brief, while we appreciate the need to increase revenue and the difficult decisions that rest with the Council, Ulupono asks the Council to urge the City Administration to amend the current industrial use land assessment for renewable energy projects on agricultural land and to reconsider raising the proposed exemption. Both of these recommendations align with, and support, the City's clean energy and sustainability goals which directly support a more resilient and sustainable future for our community.

Respectfully,

Micah Munekata
Director of Government Affairs

*Note: Ulupono Initiative values this measure before the Council today and appreciates the opportunity to testify; however, we are unable to attend in person due to concerns around COVID-19. Thank you for your understanding.

Hawaii Solar Energy Association
Serving Hawaii Since 1977

Testimony in Support of Bill 39 (2021) CD2 Relating to Real Property Taxation before the City and County of Honolulu Council Budget Committee

Wednesday, November 17, 2021

Dear Chair Say and Members of the Committee:

My name is Brian Gold, President of the Hawaii Solar Energy Association (HSEA), and I am testifying in support of Bill 39 (2021) CD2.

HSEA includes the majority of locally owned and operated renewable energy companies in the State of Hawaii, employing thousands of local individuals in a diverse set of well-paying jobs including, but not limited to, contractors, designers, electricians, engineers, financiers, installers, salespeople, and service technicians.

HSEA appreciates the Council's effort to clarify the applicability of Bill 39 and to reduce the impact of recent changes to the tax treatment of renewable energy projects that sell energy to public utilities. As the Council Members may know, these projects sell energy at predetermined rates under long term contracts approved by the public utilities commission. As a result, project owners are highly exposed to cost changes outside their control such as those enacted by the combined impact of the recent shift to higher tax rates and simultaneous increase in assessed property values to which those higher rates are applied. If this drastic and unexpected increase in cash costs remains intact, this puts many renewable energy projects and businesses in jeopardy and will impair the market for these projects going forward contrary to City economic and public policy goals. The current draft of Bill 39 helps mitigate the impacts of these changes for an important subset of renewable energy projects.

While supporting Bill 39's harm reduction, HSEA also notes that it does leave intact various aspects of the recent administrative actions that undermine the viability of investments in the renewables sector. This includes the retroactive increase in tax exposure for owners of projects that do not sell energy to Hawaii's public utilities. This includes, for instance, private power purchase agreements that reduce energy usage or sell energy to agricultural operations and/or renewable energy systems owned by agriculturalists that do not export power to the public grid. In failing to undo the retroactive administrative actions, Bill 39 still leaves many Hawaii renewable project investors without the project economics that induced them to invest in the first place.

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HSEA additionally notes that the intent of Section (d)(2) is unclear. The section appears not to exempt entities that reduce the intensity of their energy usage without actually generating energy by renewable means from the recent administrative tax increases. As an example, if as part of its operations, a firm switched from heating a fluid with propane to doing so with solar water heating technologies (aka "solar thermal"), the value of the solar thermal system would not benefit from the exemption and thereby increase the property tax obligations of the firm. This seems at odds with both overarching City policy priorities and common sense.

Finally, HSEA notes that the process by which qualifying projects realize the exemption provided for in Bill 39 may in practice be administratively opaque and/or burdensome and therefore difficult for many project owners to become aware of, much less comply with. HSEA suggests, instead, that all parcel owners that receive a reclassification by virtue of hosting a renewable energy project are by default deemed to qualify for the exemption provided here if they sell energy to the public utilities.

In conclusion, the current draft of Bill 39 is an important improvement on the newly-established status quo, which would tax and value renewable energy projects on agricultural lands at a significantly higher industrial rate. HSEA believes the issue would nonetheless benefit from a more thoughtful and comprehensive approach, and suggests including provisions for a longer term process involving all key stakeholders that would look comprehensively at the issue of renewable energy project contributions to City & County property tax revenues.

Thank you for giving me the opportunity to testify on this important matter in support of Bill 39 (2021) CD2.

Sincerely,

/s/

Brian Gold, HSEA President

TESTIMONY BEFORE THE HONOLULU CITY COUNCIL
COMMITTEE ON BUDGET

Comments regarding BILL 39, Proposed CD 2

A REQUEST FOR AMENDMENTS TO SECTION 8-10.15, REVISED ORDINANCES OF HONOLULU 1990, RELATING TO REAL PROPERTY TAXATION

Wednesday, November 17, 2021
9:00 a.m.
City Council Chamber

Rebecca Dayhuff Matsushima
Director, Renewable Acquisition
Hawaiian Electric Company, Inc.

Chair Say, Vice Chair Cordero, and Members of the Committee,

My name is Rebecca Dayhuff Matsushima and I am submitting testimony on behalf of Hawaiian Electric Company, Inc. ("Hawaiian Electric") **commenting on** Bill 39, Proposed CD 2, Relating to Real Property Taxation.

Hawaiian Electric supports the intent of Bill 39, Proposed CD 2 and is continuing to work with stakeholders on how to best move forward. Hawaiian Electric appreciates the current revisions to the bill contained in the Proposed CD 2, including the inclusion of "power purchase agreements or contract with the utility" so that the Community Based Renewable Energy and Feed-In Tariff programs are now covered. Hawaiian Electric also appreciates the added language in renumbered subsection (f) that secures the land classification for tax purposes for the life of a renewable energy project as this helps to provide certainty both for existing and future projects. However, Hawaiian Electric remains uncertain that the current version of the bill addresses the issues currently surrounding real property tax ("RPT") assessments, as there is still some uncertainty as to what land is covered by the exemption for solar projects and also whether the 80% exemption would result in similar tax treatment for renewable energy projects before the reclassification to industrial use.

First and foremost, despite the amendments to subsection (b) and other revisions, the bill still does not appear to address the land reclassification issue (e.g., changing land classified as agricultural to industrial use). The 2021 RPT assessment for two renewable projects increased 345 times due to tax reclassification, and there are numerous other projects that could be similarly affected in the absence of clarity on this issue. Even with an exemption from 80 percent for "the portions of land actually used for the active production or storage of renewable energy," the uncertainty this reclassification issue creates will affect how developers look at the renewable energy landscape in Hawaii. The pricing for renewable projects is set by contract between the developers and Hawaiian Electric. Significant changes in a developers tax liability, or even the ability to assert significant changes in a developers tax liability without the opportunity to debate such changes may result in unintended consequences to the State's renewable energy goals. Developers may choose to not participate in future renewable procurements, could withdraw projects currently under development, and may even walk away from existing projects. Providing for a greater exemption and further clarifying that the land under solar panels would also fall under the exemption may provide further certainty to developers and ensure that developers tax treatment is similar to when the pricing was set for their projects.

Hawaiian Electric urges further consideration of the effects and potential unintended consequences of Bill 39, Proposed CD 2, and emphasizes that cost certainty for developers and renewable project owners is important for continuing progress towards the State's 100% renewable energy goals, with projects that will maximize benefits to all customers. Hawaiian Electric will continue to work with other interested parties to address the concerns underlying the intent of Bill 39.

Thank you for this opportunity to comment.