Bill 39, CD2
Testimony

MISC. COM. 612

TESTIMONY OF
JAMES P. GRIFFIN, Ph.D.
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAI'I

TO THE
CITY COUNCIL
CITY AND COUNTY OF HONOLULU

Wednesday, December 1, 2021
10:00 AM

Chair Waters and Members of the Council:

MEASURE: BILL 39 (2021), CD2

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 improvements made by the Budget Committee, which are reflected in the CD2, and will continue working with stakeholders on longer-term solutions.

Thank you for the opportunity to testify on this measure.

james.p.griffin@hawaii.gov

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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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
Honolulu City Council
December 1, 2021
10:00 AM
Via Videoconference

On the following measure:
BILL 039 (2021), CD2, RELATING TO REAL PROPERTY TAXATION

Chair Waters and Members of the Council:

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. Additionally, it appears that current PPAs will still experience a significant increase in tax liability despite CD 2's attempt to alleviate the burden created through RPAD's recent interpretation. Thus, the Department offers the following comments for the Committee's consideration:

- Renewable energy projects currently operating do not have a way to renegotiate price terms of their PPAs and, if the tax increase forces the projects into failure, this would raise reliability concerns for Oahu;
- Future projects will need to pass on the higher than expected tax liability to utility customers, which will increase customers' costs during the ongoing pandemic and recovery;
- Increased tax liability to energy projects is ultimately a regressive form of taxation because utility bills are based on usage and puts more burden on the most vulnerable customers who are unable to reduce their energy consumption in the same ways that more affluent customers can;
- The increase in tax liability created through RPAD's recent interpretation, if not adequately addressed, reduces the incentive for developers of renewable projects to invest on Oahu; thus, this will adversely affect the State and County's objectives of transitioning to renewable energy production and a clean energy economy.

Due to the 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 references to hydrogen 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 the remaining concerns on this matter.

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

100 California Street, Floor 4
San Francisco, CA 94111

Clearwayenergygroup.com

Clearway

December 1, 2021

Honolulu City Council
530 S. King Street, Room 202
Honolulu, Hawaii 96813

RE: Bill 39 (2021) CD2 CS1 Relating to Real Property Tax Exemption
Testimony IN SUPPORT WITH REQUESTED AMENDMENTS

Dear Chair Waters and Members of the Council,

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.

Clearway greatly appreciates the improvements to the ordinance made by Bill 39 CD2 and understands that, based on the record, the legislative intent is for the area under the solar panels (or 'renewable energy improvements') to remain within its original tax category (in the case of our projects, Agricultural), and only the portions of land in physical contact with the renewable energy improvements shall be classified as Industrial for tax purposes and be eligible for an 80% exemption. Assuming we reach agreement as to the calculation of these portions of land with RPAD, as we have already proposed such calculations for their review, this outcome results in property tax bills which are within the operating budgets of Clearway's projects.

However, Clearway still has some concerns with respect to whether this tax treatment, once approved for the life of the power purchase agreement, will then be subject to change again if new legislation is enacted in 2022. Our understanding is that once approved these exemptions would apply for the life of the projects' power purchase contracts, and that our investors should rest assured that this issue has been addressed. However, we would like to confirm that in considering legislation to address property taxation of future solar projects, this Council does not intend to revoke the treatment provided by Bill 39 or otherwise increase taxation of the land where operating or contracted projects are sited. Instead, we would hope that this Council would only consider changes which apply to not-yet-contracted renewable energy projects on a going-forward basis. Clearway continues to believe that, consistent with the existing property tax exemption for renewable energy equipment, the exempted renewable energy improvements should not change the tax basis or tax category of the underlying land.

In addition, we continue to 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 by Clearway for Waipio and Lanikuhana in February 2022). Alternatively, we seek the support of this Council in reversing the applicable bills due in February 2022 by administrative means, given that they are at odds with the intent of this Council as evidenced by Bill 39 CD2.

100 California Street, Floor 4
San Francisco, CA 94111

Clearwayenergygroup.com

Clearway

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

Mahalo,

Nicola Park
Clearway Energy Group

nicola.park@clearwayenergy.com

HAWAII STATE ENERGY OFFICE
STATE OF HAWAII

235 South Beretania Street, 5TH Floor, Honolulu, HI 96813 | energy.hawaii.gov

DAVID Y. IGE
GOVERNOR

SCOTT J. GLENN
CHIEF ENERGY OFFICER

(808) 587-3807

Testimony of the
Hawai'i State Energy Office

before the
Honolulu City Council

Wednesday, December 1, 2021
10:00 AM
Via Videoconference

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

Chair Waters and Members of the Honolulu City Council, the Hawai'i State Energy Office (HSEO) offers the following comments on Bill 39 (2021), CD2, 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 supports Bill 39, CD2 and requests the Bill be passed, with the understanding that a longer-term solution will be introduced in the next session.

HSEO's comments and suggestions 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.

HSEO supports a long-term 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 renewable energy 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.

Without implementation of Bill 39 CD2, however, all renewable energy projects will immediately experience significantly greater land property tax bills, and 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.

HSEO believes the resulting higher energy costs would have repercussions for all O'ahu residents and believes a longer-term solution can be developed after the immediate huge tax increases are addressed in this bill. HSEO will continue working with the PUC, the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, the City and County of Honolulu 's Department of Budget and Fiscal Services, Hawaiian Electric, and industry stakeholders to develop a longer-term solution that provides consistency and predictability for both the City's finances as well as for the contracting and financing of existing and future renewable energy projects needed to replace the coal plant and advance our renewable energy goals.

HSEO is grateful to everyone involved in these efforts for their support and collaboration to achieve appropriate taxation for renewable energy projects.

HSEO appreciates the opportunity to offer these comments in support of Bill 39 CD2.

Kirsten Baumgart Turner
kirsten.b.turner@hawaii.gov

ulupono INITIATIVE

Email: communications@ulupono.com

HONOLULU CITY COUNCIL REGULAR MEETING
Wednesday, December 1, 2021 — 10:00 a.m.

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

Dear Chair Waters and Members of the Council:

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) 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) 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.

ulupono
INITIATIVE

As provided, Bill 39 (2021) 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) 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
mmunekata@ulupono.com

*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.

From: CLK Council Info
Sent: Tuesday, November 30, 2021 12:05 PM
Subject: Council Testimony

Written Testimony

Name	Sandra Larsen
Phone	
Email	sandra.larsen@aes.com
Meeting Date	12-01-2021
Council/PH Committee	Council
Agenda Item	CR-222 Bill 39, CD2
Your position on the matter	Support
Representing	Organization
Organization	AES
Written Testimony	
Testimony Attachment	
Accept Terms and Agreement	1

IP: 192.168.200.67

Hawaiian Electric

TESTIMONY BEFORE THE HONOLULU CITY COUNCIL

Written Comments Only Regarding Bill 39, CD2

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

Wednesday, December 1, 2021
10:00 a.m.
City Council Chamber

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

Chair Waters, Vice Chair Kia'aina, and Members of the Council,

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

Hawaiian Electric supports the intent of Bill 39, CD 2 and appreciates the work with stakeholders and the commitment to work toward a long term solution to address these real property tax matters going forward. Hawaiian Electric appreciates the revisions of the CD2 version, 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 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.

Hawaiian Electric looks forward to discussions on a longer term solution, 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. If CD2 version of Bill 39 passes Hawaiian Electric will continue to work with other all parties to seek a long term solution.

Thank you for this opportunity to comment.

Shannon Alivado
shannon.alivado@hawaiianelectric.com