SB 2294

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

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TO THE SENATE COMMITTEE ON
ENERGY AND ENVIRONMENT

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Thursday, January 28, 2010
3:00 p.m.

TESTIMONY ON SENATE BILL NO. 2294 – RELATING TO TAXATION.

TO THE HONORABLE MIKE GABBARD, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is J.P. Schmidt, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department limits its testimony to section 2 of the bill. The Department supports section 2 of the bill.

Section 2 of the bill adds a new section to Article 7 of the Insurance Code, Hawaii Revised Statutes ("HRS") chapter 431, which allows insurers to claim the renewable energy technologies income tax credit for renewable energy systems installed and placed in service after December 31, 2009.

The Department supports this bill based on several facts. The premium tax that insurers in Hawaii pay is the highest premium tax of any state in the nation. Insurers must retain significant funds and these funds are subject to extensive conservative restrictions on their investment and preservation. Nevertheless, there are significant funds available for investment in worthy projects in Hawaii. Insurers have participated substantially in the high technology business investment tax credit in the past. This tax credit also provides for two separate goods: a mitigation of the high premium tax and an incentive for investment in important areas of Hawaii's economy.

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SENATE COMMITTEE ON ENERGY & ENVIRONMENT

TESTIMONY REGARDING SB 2294
RELATING TO TAXATION

*****WRITTEN TESTIMONY ONLY*****

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: JANUARY 28, 2010
TIME: 3PM
ROOM: 225

This measure modifies the renewable energy technologies income tax credit by expanding the credit to insurance premiums taxpayers and also by increasing the commercial system credit to 50% of costs.

The Department of Taxation **has strong concerns with this measure**.

I. THE DEPARTMENT SUPPORTS RENEWABLE ENERGY REFORM POLICY.

The Department recognizes the importance of this legislation because this bill provides an attractive incentive that serves as another step in the right direction for minimizing Hawaii's dependence on fossil fuels. The Department and the Administration both recognize the importance of Hawaii's energy independence and are in strong support of policies to that effect. The Administration is committed to energy conservation and promoting alternative energy production, including reducing Hawaii's fuel dependency.

II. DEFERRAL TO DBEDT ON THE MERITS.

Because these amendments address technology innovation and related incentives, the Department defers to the Department of Business, Economic Development and Tourism on the impact of these amendments to the energy industry.

III. EXISTING INCENTIVES ARE EXTREMELY GENEROUS DURING THE CURERNT FISCAL CRISES.

Notwithstanding the Department's support for renewable energy and clean energy technologies, the existing tax incentives provided for renewable energy are very generous and need no further increase. The State would effectively be paying 50% of commercial energy systems. However, commercial systems are the ones being installed for profit. The State simply should not be financing half the costs of a commercial system where private investors will profit from the system many years into the future. Coupled with federal incentives, private commercial investors would have more than half of the cost of a renewable energy system paid for by the State.

Moreover, during this current budget crisis, increasing the renewable energy tax incentives is competing with other priorities like maintaining basic government services. Now is not the time to increase commercial, private investment tax incentives.

The Department does not object to allowing insurance companies to claim the renewable energy credit; however this will increase the costs to the general fund.

IV. THE DEPARTMENT OPPOSES THE AMENDMENT TO ALLOW TRANSFER OF CREDIT.

The Department is strongly opposed to any provision that allows Hawaii tax credits to be sold, assigned, or transferred. Allowing taxpayers to market or sell their tax credits is fundamentally poor tax policy. Selling tax credits can be subject to abuse and suspect motivation by parties involved.

The Department's fundamental and primary concerns regarding credit transfers are the following:

- The transferability rewards a separate taxpayer unrelated to the taxpayer that generated the credit, which is fundamentally poor tax policy for encouraging behavior and directly rewarding that behavior;
- Transferability will create great hardships for those that claim the credit when another taxpayer's activity generates the credit when the latter taxpayer is audited. For example, if taxpayer A's activity generates the credit and transfers the credit to taxpayer B, and subsequently taxpayer A's activities are audited; the Department will be forced to track down B, advise them that the credit is being rejected, and taxpayer B will now have a deficiency with the Department due to A's actions. This will cause contract and warranty disputes between taxpayers.
- The Department is not setup to regulate credit transfers. Will the Department be required to establish a "Bureau of Credit Conveyances" in order to track transfers? If this is the case, resources will have to be dedicated to this.
- And, abuse relating tax credit transfer prices will be problematic. The State will be out a $1 when taxpayers will be transferring this $1 for pennies.

V. REVENUE IMPACT

This measure will result in an indeterminate general fund revenue loss because the amounts are blank.

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, INSURANCE PREMIUMS, Energy conservation tax credits

BILL NUMBER: SB 2294

INTRODUCED BY: Fukunaga, Baker, 4 Democrats and 1 Republican

BRIEF SUMMARY: Amends HRS section 235-12.5 to provide that each solar energy system installed and operated on a commercial property shall be eligible to a credit of: (1) 35% of the actual cost or the cap amount determined in HRS section 235-12.5(b), whichever is less, in the year the solar energy system is placed in service; (2) 10% of the actual cost or the cap amount determined in HRS section 235-12.5(b), whichever is less, in the second year following the year the solar energy system is placed in service; and (3) 5% of the actual cost or the cap amount determined in HRS section 235-12.5(b), whichever is less, in the third year following the year the solar energy system is placed in service.

Amends HRS section 235-12.5(b) proposing to replace the specific dollar amount limit of energy tax credits for commercial properties with an unspecified amount. Defines "commercial property" for purposes of the measure.

Amend HRS section 235-12.5(g) which allows low income taxpayers to claim a refundable credit provided that the credit is reduced. The bill proposes that the reduction be only 10% instead of the current 30% reduction in the amount of the credit.

Amends HRS section 235-12 by adding a new paragraph (j) to allow a taxpayer to transfer the energy tax credit to another taxpayer for a cash payment on a dollar-to-dollar basis equal to the present value of the tax credit.

This act shall be applicable to tax years beginning after December 31, 2009; provided that the renewable energy system was installed and placed in service after December 31, 2009.

Adds a new section to HRS chapter 431 to provide that the renewable energy technologies tax credit under HRS section 235-12.5 shall be operative for all taxpayers subject to HRS chapter 431 for tax years beginning after December 31, 2009; provided that the system was installed and placed in service after December 31, 2009.

EFFECTIVE DATE: Upon approval as noted

STAFF COMMENTS: It appears that this measure is proposed to encourage investors to develop commercial renewable energy projects in the state by increasing the income tax credits granted to commercial renewable energy systems to 50% of the cost of the system with the credit taken over a three-year period following installation.

The legislature by Act 154, SLH 2009, allows taxpayers to claim a refundable tax credit for a solar energy or solar electric energy system if the taxpayer has no taxable income or income of $20,000/$40,000 or less. The amount of the credit is then reduced by 10% instead of 30% providing these select low-income taxpayers a larger dollar amount of credit. The measure also allows any taxpayer who claims the renewable energy technologies tax credit to transfer the credit to another taxpayer and also allows insurance companies to be eligible to claim the renewable energy technologies income tax credit.

This measure acknowledges the high cost of renewable energy technologies and proposes to increase tax credits for commercial systems. While some may consider an incentive necessary to encourage the use of energy conservation devices, it should be noted that the high cost of these energy systems limits the benefit to those who have the initial capital to make the purchase. If it is the intent of the legislature to encourage a greater use of renewable energy systems by increasing and expanding the existing system of energy tax credits, as an alternative, consideration should be given to a program of low-interest loans. However, if the taxpayer avails himself of the loan program, the renewable energy credit should not be granted for projects utilizing the loan program as the project would be granted a double subsidy by the taxpayers of the state.

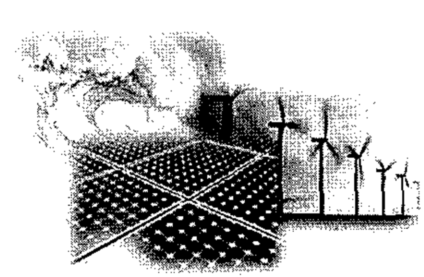
Low-interest loans, which can be repaid with energy savings, would have a much more broad-based application than a credit which amounts to nothing more than a "free monetary handout" or subsidy by state government. A program of low or no-interest loans would do much more to increase the acquisition of these devices.

That said, it is curious that the proponents of this measure would believe that increasing the amount of the credit for commercial applications will be an added incentive to these taxpayers to make the switch from conventional energy resources to alternate energy especially with the rising cost of traditional sources of energy. As taxpayers learned when oil soared to more than $150 a barrel of oil, habits changed dramatically. As the cost of electricity rises, consumers, both families and businesses, will alter their choices. Utilizing tax incentives, such as these, amounts to nothing more than a subsidy by all other taxpayers for those who have the initial capital to make the investment. The current state program of tax credits combined with those available at the federal level have already encouraged many businesses and families to make the switch. As noted above, those who do not have the initial capital investment should be the focus of other strategies to encourage their conversion to alternate energy. A proposal such as this also ignores the fiscal crisis currently faced by the state and its taxpayers. One must ask who will be asked to pick up the tab for the more generous incentive embodied in this proposal as the state general fund budget shortfall widens?

Finally, instead of providing tax incentives for the purchase of existing technology, lawmakers may want to take advantage of Hawaii's natural environment which lends itself to all sorts of possibilities to explore and develop more efficient means of harnessing the natural resources that pervade the Islands, from wind to sun to geothermal to hydrogen from Hawaii's vast resources, all of which could be further developed with the assistance and cooperation of government in Hawaii.

Digested 1/27/10

blue planet FOUNDATION



SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
January 28, 2010, 3:00 P.M.
Room 225

(Testimony is 2 pages long)

TESTIMONY IN SUPPORT OF SB 2294

Chair Gabbard and members of the Committee:

The Blue Planet Foundation supports Senate Bill 2294, a measure to expand the existing commercial renewable energy technologies income tax credit to allow insurance companies to claim the credit, allow the credit to be transferred between taxpayers, and amends how the credit can be claimed over multiple years, and increases the size of the refund allowed.

Blue Planet supports this and other measures which seek to expand the ability for investors to use the clean energy investment tax credit. This measure will help to accelerate the investment in Hawaii's clean energy future by encouraging more private investment in solar thermal, photovoltaic, and wind energy technologies. By leveraging private investment in clean energy, state tax incentives will yield numerous benefits through job creation, reduced dependency on imported fossil fuel, reduced greenhouse gas emissions, and economic development.

While current law provides for a tax credit for various renewable energy devices, some investors have found it to be lacking meaningful incentive to invest in Hawai'i renewable energy projects. The problem is that the current incentive excludes certain classes of taxable income. Senate Bill 2294 wisely expands the types of taxpayers who can take the credits.

<u>Blue Planet suggests that this measure also amend the cap for the multi-family residential properties.</u> When the caps for residential and commercial solar and wind energy were increased in 2006, multi-family caps remained ($350 for solar; $200 for wind). We recommend that the caps be increased to $1000 per unit per system for both solar and wind installations.

Jeff Mikulina, executive director • jeff@blueplanetfoundation.org
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The suggested amendments are as follows:

Page 6, Line 13:	(B) [~~$350~~] $1000 per unit per system for multi-family
Page 7, Line 4:	(B) [~~$350~~] $1000 per unit per system for multi-family
Page 7, Line 17:	(B) [~~$200~~] $1000 per unit per system for multi-family

Please forward SB 2294 to encourage private investors to make a down payment on Hawaii's clean energy future.

Thank you for the opportunity to testify.