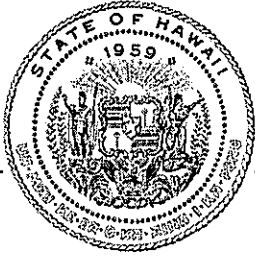


SB 2764

Measure Title: RELATING TO STATE ENTERPRISE ZONES.

Report Title: State Enterprise Zones; Renewable Energy; Sustainable Business Corporations

Description: Expands eligible business activity in the state enterprise zones to include the development of various types of renewable energy by sustainable business corporations, as defined in section 420D-2, Hawaii Revised Statutes.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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AMENDED 1/29/2014

Statement of
RICHARD C. LIM
Director

Department of Business, Economic Development, and Tourism
before the

**SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, GOVERNMENT
OPERATIONS AND HOUSING**

Wednesday, February 5, 2014
2:50 PM
State Capitol, Conference Room 016

in consideration of
SB 2764
RELATING TO STATE ENTERPRISE ZONES

Chairs Gabbard and Dela Cruz, Vice-Chairs Slom and Ruderman and Members
of the Committees.

The Department of Business, Economic Development, and Tourism (DBEDT) offers these comments on SB 2764, which expands eligible business activity in the State Enterprise Zones (EZ) to include the development or production of various types of renewable energy.

It is current government policy to encourage the development of renewable energy in Hawaii. The primary mission of the Enterprise Zone program is to encourage the development of long-term, full-time jobs for local residents in Hawaii's economically disadvantaged areas. At this time, more research needs to be done to understand the job creation dynamics of these various subsectors of the renewable energy industry to ascertain which subsectors are most appropriate for this program.



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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KEALI'I S. LOPEZ
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

**TO THE SENATE COMMITTEES ON ENERGY & ENVIRONMENT
AND ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS & HOUSING
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014**

Date: Wednesday, February 5, 2014

Time: 2:50 p.m.

Conference Room: 016

**PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
BUSINESS REGISTRATION DIVISION**

**TESTIMONY ON SENATE BILL NO. 2764
RELATING TO STATE ENTERPRISE ZONES**

TO THE HONORABLE MIKE GABBARD, CHAIR, THE HONORABLE DONOVAN M. DELA CRUZ
AND MEMBERS OF THE COMMITTEES:

Thank you for the opportunity to testify. My name is Tung Chan, Commissioner of Securities and head of the Business Registration Division ("Division") of the Department of Commerce and Consumer Affairs.

While we support the intent of the bill to promote local businesses that engage in renewable energy, we have technical concerns with the portion of this measure that restricts the state enterprise zone ("EZ") program-eligibility to renewable energy businesses that are organized as sustainable business corporation ("SBC"). We suggest an amendment to remove the corporate restriction.

The bill proposes a new category of "eligible business activity" for renewable energy but appears to limit the corporate structure of the businesses to SBCs.

By way of background, SBCs were established by Act 208, Session Laws of Hawaii 2011, and codified as HRS chapter 420D. SBCs are organized as "regular" C corporations under HRS chapter 414, however, they further agree to comply with additional requirements that render them a SBC. These requirements can be cumbersome and would greatly limit the field of businesses that might qualify for the renewable energy activity category in EZ programs to about 8 companies that are currently registered with the Department as SBCs, instead of the many renewable energy companies in Hawaii. For instance, an established solar company that has already structured its entity as an LLC for pass-through federal tax incentives for renewable energy would have to incur expense and possible loss of incentives to change its entire operation into an SBC. For smaller start ups, these companies would have to spend limited resources on the ongoing SBC requirements instead of on their business. All businesses would have to forgo pass-through tax structures and limited liability features found in LLC's or LLP's in order to participate in the EZ program. The SBC requirement means essentially that the EZ program, meant to be expansive, would make it difficult for many Hawaii companies to participate.

For another example, SBCs also require an extra independent director on the board and an independent officer. Both positions are required to be independent of and can have no material relationship with the SBC. See HRS §§420D-7 and -9. For established companies to remain as nimble and flexible as possible, an extra board member would be a serious corporate inefficiency, making it harder for our home grown

companies to expand and eventually compete globally. For a small owner or start up of a renewable energy business, the cost of the extra director and officer would be burdensome and could be even prohibitive. In either instance, these business restrictions discourage businesses to find their most efficient corporate structures and make it difficult for businesses to participate in the EZ program.

It should be noted that no other eligible business activities in Chapter 209E restricts a company and its leaders to only one business structure. This seems arbitrary and unfair to the businesses in renewable energy. Hawaii businesses that are meant to be assisted by the EZ program so that they can grow and compete should be encouraged to choose the most efficient structure for their business model and not be corralled into only one corporate model.

For the foregoing reasons, the Department expresses technical concerns with this bill in its current form. If the Committee wishes to pass the bill, we respectfully ask that the limitation on corporate structure be removed. Thank you for the opportunity to testify. I would be happy to answer any questions the Committee may have.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

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To: The Honorable Mike Gabbard, Chair
and Members of the Senate Committee on Energy and Environment

The Honorable Donovan M. Dela Cruz, Chair
and Members of the Senate Committee on Economic Development, Government
Operations and Housing

Date: Wednesday, February 5, 2014
Time: 2:50 P.M.
Place: Conference Room 016, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. No. 2764, Relating to Economic Development

The Department of Taxation (Department) provides the following comments regarding S.B. 2764 for your consideration, and defers to the Department of Business, Economic Development, and Tourism regarding the merits of S.B. 2764.

S.B. 2764 would expand the definition of "eligible business activity" in section 209E-2, Hawaii Revised Statutes (HRS), allowing more types of businesses to take advantage of the Enterprise Zones described in Chapter 209E, HRS.

The current definition of "eligible business activity" for the purposes of State Enterprise Zones includes the production of electric power from wind energy for certain purposes. The inclusion of wind energy in the definition excludes other types of energy production from being eligible business activity. If the Legislature intends to allow other types of energy production businesses to take part in the Enterprise Zone program, these changes to the definition of "eligible business activity" are necessary.

The Department additionally notes that the original inclusion of wind energy applied only to energy sold primarily to a public utility for resale to the public, whereas the additions proposed by S.B. 2764 do not include this qualification.

Thank you for the opportunity to provide comments.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Renewable energy enterprise zone

BILL NUMBER: SB 2764; HB 2049 (Identical)

INTRODUCED BY: Keith-Agaran, Baker, Dela Cruz, English, Espero, Galuteria, Ige, Kidani, Solomon, Tokuda and 1 Democrat; HB by McKelvey, Brower, Oshiro, Tsuji

BRIEF SUMMARY: Amends HRS section 209E-2 to amend the definition of “eligible business activity” to include the development, production, or energy storage by a sustainable business corporation of fuels, thermal energy, or electrical energy from renewable resources including: (1) wind; (2) the sun; (3) falling water; (4) biogas; (5) geothermal; (6) ocean water, currents and waves; (7) biomass; (8) biofuels; and (9) hydrogen.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: Act 160, SLH 2000, expanded the enterprise zone laws by revising the definition of qualified businesses to include businesses engaged in producing electric power from wind energy which is subsequently sold to a public utility for resale, making the business eligible for enterprise zone benefits. This measure would further extend enterprise zone benefits to businesses engaged in the development or production of electric power from various renewable energy sources.

In an enterprise zone, businesses are attracted and encouraged to relocate to the zone through tax incentives, bonds, and other appropriate measures. Businesses located in an enterprise zone may claim a credit against taxes paid for a period of seven years and the sale of items sold by such businesses are exempt from the general excise tax.

If it is the intent of the legislature to encourage new and existing businesses to expand their employment bases and increase their marketing territories, enterprise zones merely exacerbate what is already considered a poor climate in which to do business. Singling out specific areas of the state merely confers preferences for those businesses located within those geographic areas at the expense of all other taxpayers who are not so favored. It should be remembered that those taxpayers who live and work in the zone will demand the same public services as those who are not as fortunate to be located in the zone. Who then will pay for these services?

Concurrent efforts must be made to improve Hawaii’s business climate to enhance the economic prospects for all businesses. A more appropriate focus of government should be to create a nurturing and supportive business climate so that all businesses can thrive in Hawaii and provide the jobs the people of Hawaii need.

Digested 2/4/14



**Testimony to the Senate Committee on Energy and Environment and
Committee on Economic Development, Government Operations and Housing
Wednesday, February 5, 2014 at 2:50 P.M.
State Capitol – Conference Room 016**

RE: SENATE BILL 2764 RELATING TO STATE ENTERPRISE ZONES

Chairs Gabbard and Dela Cruz, Vice Chairs Ruderman and Slom, and Members of the Committees:

The Chamber of Commerce of Hawaii **supports** SB 2764 Relating to State Enterprise Zones.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the “Voice of Business” in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state’s economic climate and to foster positive action on issues of common concern.

Enterprise zones were designed to attract investment into an area to stimulate the economy and create jobs. Many of these businesses have done so very successfully. To include corporations invested in renewable energy will provide exponential growth and development to these areas and provide further support to the state’s economy.

Thank you for this opportunity to express our views.

From: mailinglist@capitol.hawaii.gov
To: [EGHTestimony](#)
Cc: michaelsnyder@hevn.net
Subject: *Submitted testimony for SB2764 on Feb 5, 2014 14:50PM*
Date: Tuesday, February 04, 2014 7:31:39 AM

SB2764

Submitted on: 2/4/2014

Testimony for EGH/ENE on Feb 5, 2014 14:50PM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|-----------------------------------|---------------------------|---------------------------|
| Michael Snyder | Hawaiian Electric Vehicle Network | Support | Yes |

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND
HOUSING

Wednesday, February 05, 2014 — 2:15 p.m. — Conference Room 016

Testimony Commenting on SB 2764, Relating to State Enterprise Zones

Chairs Gabbard and Dela Cruz, Vice Chairs Ruderman and Slom, and Members of the Committees:

Thank you for the opportunity to provide testimony regarding SB 2764.

RevoluSun is a locally-owned solar company committed to Hawaii's sustainable and clean energy future. RevoluSun has installed more than 4,500 residential, commercial and utility-scale photovoltaic solar systems in Hawaii, and continues to integrate renewable energy systems into our local infrastructure every day. RevoluSun has residential, commercial and utility-scale operations, aggressive intellectual property development and licensing endeavors, and a solar franchise offering. To accommodate the specific business needs and attributes of each business line, RevoluSun has employed a variety of entity types.

RevoluSun generally supports the intent of SB 2764, which is aimed attracting renewable energy businesses to State Economic Zones (SEZs) by extending SEZ benefits to companies with qualified clean energy activities. However, we feel SB 2764 is too restrictive as drafted because it extends the SEZ benefits only to sustainable business corporations, as defined by HRS Chapter 420D.

Currently, there are very few HRS Chapter 420D sustainable business corporations. This may be because this particular entity proves too restrictive or structurally unfeasible with regard to many renewable energy endeavors. For example, the RevoluSun brand spans over fifty related yet distinct entities and we have elected to utilize the corporate, limited liability company, joint venture and various other structures across our portfolio for various business and tax reasons. Additionally, we have formed our entities not only in Hawaii, but also Delaware and other states, depending upon the objectives and location of each particular business line. Entity choice is a practical business-driven decision and making SEZ benefits contingent upon existing as one particular entity type hinders this decision-making process and, in fact, would dilute the effectiveness of SB 2764.

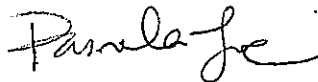
Additionally, as a general matter, given the nature of federal and state renewable energy incentives, the corporate entity form (whether under HRS Chapter 414 or 420D) is often

unfeasible as its tax structure makes renewable energy incentives unavailable to the entity's ownership. As a result, certain clean energy generating activities become economically unviable and thus, unsustainable.

For the reasons stated above, RevoluSun recommends that the definition of an "Eligible business activity" proposed by SB 2764 be revised to remove reference to "sustainable business corporation" and rather make SEZ benefits generally available for "Development, production, or energy storage ~~by a sustainable business corporation, as defined in section 420-D,~~ of fuels, thermal energy, or electrical energy from renewable resources ..." This revision makes subsection (5) consistent with the rest of the "Eligible business activity" definition and would serve to make this legislation more effective.

We support the intent of SB 2657, but respectfully request that you consider the proposed revision we have suggested. Thank you for the opportunity to provide this testimony.

Sincerely,



Pamela Joe, Esq.
VP & General Counsel
RevoluSun Solar Corp.



**Testimony in Support of SB2764
Sustainable Business Corps & State Enterprise Zones**

I am writing to support the inclusion of companies organized using Hawaii's new "sustainable business corporation" legal entity (SBCs) as qualified businesses for the benefits of locating in a State Enterprise Zone. Currently these benefits are restricted to businesses involved in manufacturing, processing agricultural products, wind power, or doing GMO R&D.

SBCs are required to benefit all their stakeholders including the community, environment, and workforce as well as investors. Furthermore they are required to set goals, have metrics and report publicly on an annual basis. In other parts of the U.S. these are known as "B-Corporations".

While SBC's were created in 2011, Hawaii has yet to contribute any incentives for SBC's outside of making the entity available. Of course, those choosing this entity already have a public service motivation, and most "impact investors" by definition are motivated to invest in these entities. However, there are investors who would like to see other incentives in place. Given the existence of the State Enterprise Zone program, adding SBC's seems like a small but reasonable approach.

I am currently working with the Hawaii Electric Vehicle Network (HEVN), one of Hawaii's first SBCs, which is raising a second round of financing to launch an electric vehicle car rental operation integrated with a market and technology R&D program that will accelerate the development and commercialization of additional renewable energy products and services.

My background includes the honor of launching and operating the State and Federal tax-payer funded Small Business Development Center (SBDC) on Maui between 1990 to 2009 which helped over 3,000 businesses raise money or increase revenues over \$100 million. Prior to moving to Hawaii in 1989, I served as the Director for Industrial Development for Queens County in NYC, served as a management consultant to financial service companies, and operated the NYU Business School's Urban Business Assistance Corp.

I encourage you to support SB2764

Aloha

David B. Fisher

From: mailinglist@capitol.hawaii.gov
To: [EGHTestimony](#)
Cc: ronrod@hawaii.rr.com
Subject: *Submitted testimony for SB2764 on Feb 5, 2014 14:50PM*
Date: Tuesday, February 04, 2014 1:32:03 PM

SB2764

Submitted on: 2/4/2014

Testimony for EGH/ENE on Feb 5, 2014 14:50PM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Ron Rod | Individual | Support | Yes |

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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