

SB 2738

RELATING TO
RENEWABLE
ENERGY

DAVID Y. IGE
GOVERNOR

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LT. GOVERNOR



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To: The Honorable Lorraine R. Inouye, Chair
and Members of the Senate Committee on Transportation and Energy

Date: February 2, 2016
Time: 2:50 P.M.
Place: Conference Room 229, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 2738, Relating to Taxation

The Department of Taxation (Department) appreciates the intent of S.B. 2738, and offers the following comments for your consideration.

S.B. 2738 makes amendments to sections 196-6.5 and 235-12.5, Hawaii Revised Statutes. Among other changes, it makes the Renewable Energy Technologies Income Tax Credit (RETITC) applicable to solar or wind energy "property" rather than solar or wind energy "systems," and bases the amount of credit on the basis of property rather than on the "actual cost" of the system. S.B. 2738 also removes cap amounts on credit available for solar energy property used primarily to generate electricity. The measure is effective upon approval and applies to taxable years beginning after December 31, 2015.

The Department notes that the renewable energy technologies income tax credit (RETITC) has historically been very difficult to administer, primarily due to the fact that the statute contains no definition for the word "system." One of the outcomes has been a much larger than anticipated number of RETITC claims made and the corresponding tax credit amounts claimed. The ambiguity in the statute was addressed by the Department's enactment of administrative rules pertaining to this tax credit in November 2012. Although the changes proposed by S.B. 2738 address many of these historical challenges to effective administration, they do not entirely resolve the ambiguity in the statute.

The terms "solar energy property" and "wind energy property" are defined in federal regulations pertaining to federal income tax incentives for renewable energy. (See 26 C.F.R. 1.48-9 "Definition of energy property.") These definitions are applied to federal tax incentives pertaining to renewable energy. As they are used in the federal regulations, these terms are descriptive of a class of property rather than a discrete item, i.e. they refer to all solar energy property installed by the taxpayer during a taxable year, rather than to an "identifiable facility,

equipment, apparatus, or the like," and therefore do not present the issue of multiple tax credits claimed by a single taxpayer during the taxable year. The Department, therefore, suggests that these definitions be incorporated and that the words "each" and "every" be deleted from references to solar or wind energy properties.

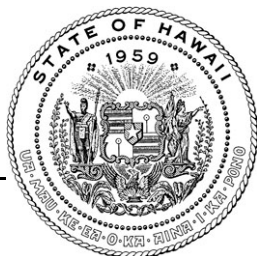
If the intention of the Legislature is to make Hawaii's tax credit more similar with the federal tax credit, the Department suggests simply allowing taxpayers to claim a credit equal to a percentage of the federal tax credit available for renewable energy property without applying a cap. As explained above, the caps have caused confusion for taxpayers and administrative difficulty for the Department, and resulted in unintended revenue losses for the State.

The Department notes that subsections (f) and (g) are inconsistent regarding separate elections per property and whether a taxpayer's election to have the credit refunded is revocable. Since subsection (f) applies to water heater, photovoltaic and wind-energy property the Department suggests clarification on whether a taxpayer can make separate elections where more than one type of property has been installed and placed in service. For the purposes of consistency and ease of administration the Department suggests that the following provision be added to subsections (f) and (g) regarding the refundable credit election:

"An election under this subsection may only be changed on or before the end of the twelfth month following the close of the taxable year for which the credit is claimed."

Subsection (l) of this measure requires an annual report to the legislature. Paragraph (2)(C) of this subsection requires a report on tax credit type (investment or production). This paragraph needs clarification, as the RETITC, as currently drafted, provides no credit for production. Additionally, Paragraph (3) requires a report on the estimated economic benefit that may be attributable to the RETITC. The Department defers to the Department of Business, Economic Development, and Tourism regarding its ability to generate the information required by this Paragraph; the Department is not able to generate dynamic economic estimates.

Thank you for the opportunity to provide comments.



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

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Statement of
LUIS P. SALAVERIA
Director
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON TRANSPORTATION AND ENERGY

Tuesday, February 2, 2016
2:50 PM
State Capitol, Conference Room 229

in consideration of
SB 2738
RELATING TO RENEWABLE ENERGY.

Chair Inouye, Vice Chair Gabbard, and Members of the Committee.

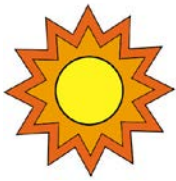
The Department of Business, Economic Development & Tourism (DBEDT) offers comments on SB 2738, which, among other provisions, reduces the Hawaii Renewable Energy Technologies Income Tax Credit (REITC) for solar energy properties used to generate electricity from 35% (currently) to 15% after December 31, 2017, and requires DBEDT to conduct a cost-benefit analysis and provide recommendations to the Legislature on the tax credit.

While acknowledging the success of the REITC in decreasing Hawaii's reliance on fossil fuels, stimulating our economy, and driving innovation, DBEDT would support a ramp-down of the tax credit for traditional solar electrical generation systems if it was done in a way to make room in the State budget for other grid-supportive renewable energy resources. This is important given the limited State budgetary resources. DBEDT is further concerned with the removal of cap amounts and the potential impact of the aggregate tax credit provided by this bill.

DBEDT also notes that the financial and human resources required to administer the duties of this bill are not fully addressed in its current budget. Also, should this measure advance, we prefer the online survey approach taken in Act 270 (13) for the Research Activities Tax Credit for the monitoring and data collection component.

Finally, we defer to the Department of Budget and Finance on the impact of the State budget from this bill and the Department of Taxation on its ability to administer its duties under this bill.

Thank you for the opportunity to offer these comments.



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February 2, 2016

Testimony Before the Senate Committee on Transportation and Energy

Senator Lorraine Inouye, Chair

In Regard to S.B. 2738, Relating to Renewable Energy

Chair Inouye, Vice Chair Gabbard and members of the committee I am Rick Reed, the president of Inter-Island Solar Supply. Our company was founded in 1973 and is now one of the largest distributors of renewable energy equipment in the United States, with branches on each of the primary Hawaiian Islands and a manufacturing facility in California.

Inter-Island Solar Supply supports the intent of S.B. 2738 and we offer the following comments.

S.B. 2236 is a forward looking bill. It assumes that both the solar industry and solar technologies, including battery storage, are now, or will soon be, sufficiently robust to withstand a significant step-down in the incentive levels over a three year period (2017 – 2019). The proposed step down from 35% to 15% over three years is more acute than the federal renewable energy income tax credit statute. It is also out of sync with the federal credit in regard to when the step downs begin and end. This may be intentional. Perhaps not. In either case, we would like to better understand the logic of the step-downs as proposed in this bill.

Given that the federal tax incentives revert to a commercial only credit (which includes third-party owned systems) in 2022, the step-down regime defined in S.B. 2738 will provide greater incentives to commercial (and lease/PPA) projects in the future than residential systems. We disagree with this approach and logic. In 2022, for example, the combined federal and state credits for commercial projects (or aggregated residential lease systems) in Hawaii will total 25%, while the residential credit will be 15%. It is our belief that residential and commercial projects are of equal value and should be incentivized at the same credit levels. Both markets must remain robust and on equal footing for Hawaii to reach its 100% RPS goal.

In accordance with the implicit assumption that DG PV incorporating battery storage represents the long-term successor to NEM, H.B. 2236 eliminates the system cap level for new PV systems that include or add battery storage. This is most welcome. The measure also appears to grant tax incentives for battery storage only, which could be important for retrofit NEM systems, but this should be clarified and the intent of the bill made explicit.

If retrofit storage is intended to be covered by this legislation, then the proposal must be further vetted to ensure that it does not void or conflict with any current provisions of the NEM contract between the HECO companies and the ratepayer. Clearly, any provision that voids existing NEM agreements is neither beneficial nor will it provide those system level benefits that both the PUC and HECO profess to find in battery storage systems.

We also would like to take a closer analytical look at the actual market implications of this bill, at the credit levels proposed, should it move forward this session. Thank you for the opportunity to present these comments.



Before the Senate Committee on Transportation and Energy
Tuesday, February 2, 2016, 2:50 p.m., Room 229
SB 2738: Relating to Renewable Energy

Aloha Chair Inouye, Vice Chair Gabbard, and members of the Committee,

On behalf of the Distributed Energy Resources Council of Hawaii (“DER Council”), I would like to testify in partial support for SB 2738 which replaces the current renewable energy technology tax credit (“REITC”) with an incentive that ramps down over time and removes the current cap. The DER Council is a nonprofit trade organization formed to assist with the development of distributed energy resources and smart grid technologies to support an affordable, reliable, and sustainable energy supply for Hawaii.

Hawaii has recently experienced many significant changes with its distributed energy market and the choices now available to consumers. Last year, the Public Utilities Commission (“Commission”) closed the net energy metering program, and replaced the NEM program with two new tariffs: grid-supply and self-supply systems. Grid supply systems can still export energy onto the grid like net energy metering, but the rate paid to customers for exported energy is significantly reduced. The Commission has further limited this grid-supply tariff by placing a cap of 35 MW for all HECO Companies. We estimate that the subscription to the grid-supply program will be full by the end of this year. The self-supply tariff sets up an expedited route for customers to install a distributed energy system, with or without storage. Self-supply systems do not export onto the grid and instead serve the customer’s load, and has the potential of participating in new tariffs and grid services such as time of use and various ancillary services which stand to provide significant value to both the electrical grid and all utility customers.

The DER Council supports SB 2738 because SB 2738 incentivizes technologies that will best support our continued progress towards an affordable, reliable, and sustainable energy supply for Hawaii. However, the DER Council believes that some cap should remain in place, and that an increase in the cap should only apply to residential grid connected systems with storage. The DER Council respectfully offers the following comments with several suggested amendments for SB 2738.

Removing the cap will encourage customers to install storage

As the REITC currently stands, the tax payer may apply for a tax credit on 35% of the cost of the system, up to \$5,000 cap with a system size of 5kW. Energy storage may be included in the system cost, but since the cost of storage easily exceeds the cap amount, a tax payer would not get credit for storage with the exception of a very small system.

However, the DER Council recommends that the current REITC cap stay in place at \$5,000/system for systems without storage, or for systems that are not grid connected. In addition, the DER Council recommends that the cap be increased to \$10,000 for grid connected systems with storage, and for legacy systems which customers later update with energy storage. Caps for commercial renewable energy systems should stay in place as they currently apply. Our recommended amendments to SB 2738 will

still provide an incentive for rooftop solar, but by increasing the cap for residential grid connected systems with storage and by allowing customers with grid connected legacy systems to update their systems with storage, the incentive will be applied to best support the systems of the future.

SB 2738 incentivizes the right technology

Energy storage is the missing link that will allow Hawaii to make the best use of our many indigenous resources, and to greatly reduce our dependence upon imported fossil fuels. Unlike other jurisdictions, Hawaii's load and renewable generation do not necessarily occur at the same. This means that excess energy generated from renewable resources is wasted and results in our continued reliance upon fossil fuels to provide energy when renewables are not available. Energy storage fixes this issue, by providing the means to store excess energy for later use—thus helping to shift peak load.

In addition, customer-sited energy storage would serve to off-set or reduce the need for grid improvements and upgrades, as energy produced locally could be stored and consumed locally as needed, thus lessening the impact on distribution level infrastructure. Energy storage can also play a key role in providing grid services such as voltage and var support on the distribution level, in addition to system wide services such as frequency support and emergency backup. For these reasons, the DER Council believes that incentivizing customers to include storage makes sense.

SB 2738 works in conjunction with the public utilities commission to incentivize technology for a better electrical grid

As mentioned above, the Commission closed the NEM program in Hawaii last year, and offered two new tariffs in its place for roof top customers. However, the grid-supply tariff will likely reach the 35 MW cap by the end of the year, and the only option for continued investment for residential and commercial customers at that point will be self-supply systems. Although storage is not a requirement of self-supply systems, many systems will include storage, depending upon the customer's use of energy during the day. More importantly, distributed energy systems with storage can provide the network of distributed energy resources which the Commission has envisioned as being a key part of our renewable development and progress.¹ SB 2738 bridges the gap between the policy direction provided by the Commission and the current choices available to customers by updating our renewable energy investment tax credit to reflect the next generation systems which customers need to install to remain relevant and serve as a resource for the entire electrical grid.

New tax credit should not be active until tax year 2017

SB 2738 reduces the tax credit amount from 35% to 25% for all systems installed and placed in service starting January 1, 2016. The DER Council respectfully requests that the new rule go into effect January 1, 2017 out of fairness for those who have already installed smaller systems this year with the expectation

¹ See the Commission's Inclinations in Docket No. 2012-0036 Exhibit A where they state that a critical component of distributed energy will be an DER utilization plan put forth by the utility that identifies how customers "will install, and the utility will utilize as an integrated DER portfolio advanced inverters, distributed energy storage, demand response, and electric vehicles to mitigate adverse grid impacts on utility distribution circuits and the system as a whole" at 15.

of receiving a 35% tax credit. The DER Council believes that attempting to apply any new rule retroactively will only cause confusion, and would likely be delayed through legal challenges.

SB 2738 with amendments would be fiscally prudent

SB 2738 with the recommended amendments of still keeping some cap in place is fiscally prudent and a sound investment in our state's future as we strive to reduce our dependence upon imported fossil fuels. SB 2738 updates our tax incentives in a fiscally prudent manner by ramping down the incentive from 35% to 15% over a three year period, and by increasing the cap only for grid connected residential systems with storage. This structure ensures that the credit will provide a clear incentive for the right technology while recognizing that costs will likely come down over the next three years.

Thank you for the opportunity to testify. We would be happy to provide language for the amendments which we have recommended in this testimony.

Leslie Cole-Brooks
Executive Director
Distributed Energy Resources Council of Hawaii

From: [Rick Reed](#)
To: [Mailing List: TRE Testimony](#)
Cc: hajime.alabanza@hsea.org
Subject: RE: Submitted testimony for SB2738 on Feb 2, 2016 14:50PM
Date: Monday, February 01, 2016 10:21:15 AM

Support is incorrect. We support the intent – with comments. The box seems to allow for you to say this.

This bill can be either good or way bad depending on how it rolls. Support would imply that reducing the credits is groovy with us. Not so unless done with overall benefit.

From: mailinglist@capitol.hawaii.gov [mailto:mailinglist@capitol.hawaii.gov]
Sent: Monday, February 01, 2016 9:47 AM
To: TREtestimony@capitol.hawaii.gov
Cc: hajime.alabanza@hsea.org
Subject: Submitted testimony for SB2738 on Feb 2, 2016 14:50PM

SB2738

Submitted on: 2/1/2016

Testimony for TRE on Feb 2, 2016 14:50PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Hajime	Hawaii Solar Energy Association	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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Hawaii Solar Energy Association

Serving Hawaii Since 1977

**TESTIMONY OF THE HAWAII SOLAR ENERGY ASSOCIATION
IN REGARD TO SB 2738, RELATING TO RENEWABLE ENERGY
BEFORE THE
SENATE COMMITTEE ON TRANSPORTATION AND ENERGY
ON
TUESDAY, FEBRUARY 2, 2016**

Chair Inouye, Vice-Chair Gabbard and members of the committee, my name is Hajime Alabanza and I represent the Hawaii Solar Energy Association, Inc. (HSEA)

HSEA supports SB 2738 with some comments. This measure seeks to amend §196-6.5 and §235-12.5 in light of changes in both the overall state of clean energy technology as well as recent alterations in state policy. This bill is similar in language and intent to HB 2236 and follows a similar take step-down structure although without cap amounts. The exclusion of cap amounts in SB 2738 is preferable to the cap amounts included in HB2236.

Broadly, tax incentives for solar energy should be adopted by the state to advance the growth of renewable energy and, at a state level, accelerate progress towards a 100% renewable energy goal by 2045. A Bloomberg New Energy Finance study published in September of 2015 found that extending the Federal Solar Investment Tax credit to 2022 is likely to add 22GW of solar energy to the United States' energy infrastructure. Removal of the credit would have only led to 8GW of added PV.

Amending §235-12.5 to allow tax credits to incentivize both traditional grid connected solar systems and energy storage systems will bolster renewable energy in Hawaii. With recent changes in solar policy there will be a greater emphasis within the market for energy storage systems. These tax incentives will accelerate the innovation and adoption of energy storage and benefit customers, the utility, and the state.

An additional amendment should explicitly be stated to incentivize battery storage, much like a similar incentive found in HB 2236. The 25%, 20%, 15% step-down tax credit should be explicitly stated for new grid tied systems that include battery storage as well as old solar systems that are to be modified with energy storage. In essence, this language would follow the same structure as the language found in SB 2738, page 5, lines 4-17.

Additionally, according to the U.S. Census data, Hawaii issued 2356 new housing single-family building permits, of which 781 solar water heater variances were applied for and approved. This represents 33% of all new single-family homes built. It was not the original intention of the variance outlined in §196-6.5 of the Hawaii Revised Statutes to be used so frequently. We request additional amendments to §196-6.5 to further clarify when a variance should be allowed and close the loop hole allowing such a high percentage of approved variance applications.



Hawaii Solar Energy Association
Serving Hawaii Since 1977

Thank you for the opportunity to testify.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Tax Credit for Renewable Energy

BILL NUMBER: SB 2738

INTRODUCED BY: INOUYE, Dela Cruz, Galuteria, Kidani, Nishihara, Shimabukuro

EXECUTIVE SUMMARY: Amends the renewable energy technologies income tax credit to change limitations for certain technology types, and to make the credit caps apply per energy property rather than per system. Provides increased caps for photovoltaic property that is grid-connected and incorporates energy storage property. Generally the credit is being phased down, perhaps in recognition that the technology involved is no longer new. Tightens up definitions to ensure greater conformity with the Internal Revenue Code.

BRIEF SUMMARY: Amends HRS section 235-12.5, the renewable energy technologies income tax credit, to allow credits for each energy property, as follows:

For each solar energy property used exclusively to heat water and is installed and first placed in service in the State by a taxpayer during the taxable year: 35% of the basis up to the applicable cap amount, which is determined as follows: (A) \$2,250 per solar energy property for single-family residential property; (B) \$350 per unit per solar energy property for multi-family residential property; and (C) \$250,000 per solar energy property for commercial property.

For each solar energy property used primarily to generate electricity and is installed and first placed in service in the State by a taxpayer during the taxable year: 25% of the basis for calendar year 2016, 20% for calendar year 2017, and 15% thereafter. (The per-system caps under existing law are deleted.)

Wind energy property is also creditable, and the credit amount is 20% of basis or \$_____, whichever is less.

Provides that the tax credit under this section shall be construed in accordance with Treasury Regulations and judicial interpretations of similar provisions in sections 25D, 45, and 48 of the Internal Revenue Code.

Provides that a planned community association, condominium association of owners, or cooperative housing corporation may claim the tax credit under this section in its own name for property or facilities placed in service and located on common areas.

States that no credit shall be allowed to any federal, state, or local government or any political subdivision, agency, or instrumentality thereof.

Also requires the Department of Taxation, in collaboration with DBEDT, to submit an annual report to the legislature on utilization of the credit, impact on the economy, and jobs.

Requires DBEDT to commence a study no later than July 1, 2017, on the costs incurred and benefits generated by this credit.

EFFECTIVE DATE: Applies to taxable years beginning after December 31, 2015.

STAFF COMMENTS: While some may consider an incentive necessary to encourage the use of alternate energy devices, it should be noted that the high cost of these energy systems limits the benefits 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 through the use of tax credits, as an alternative, consideration should be given to strengthening or fixing the existing program of low-interest loans known as GEMS. Such low-interest loans, that 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.

While this and other measures demand serious consideration in order to stem the abuse of the current tax credit provisions, lawmakers and staff need to spend time during the interim researching and honing the tax incentive to be a more reasonable incentive that is forged in a good understanding of the developing technology. What is currently on the books reflects a handout for existing technology, and might not be efficient to encourage innovation.

In any event, lawmakers need to keep in mind two things. First, the tax system is the device that raises the money that they, lawmakers, like to spend. Using the tax system to shape social policy merely throws the revenue raising system out of whack, making the system less than reliable as there is no way to determine how many taxpayers will avail themselves of the credit and in what amount. The second point to remember about tax credits is that they are nothing more than the expenditure of public dollars, but out the back door. If, in fact, these dollars were subject to the appropriation process, would taxpayers be as kind about the expenditure of these funds when our children are roasting in the schools, there isn't enough money for social service programs, or our state hospitals are on the verge of collapse?

Utilizing tax credits other than to alleviate an excessive tax burden cannot be justified and is of a questionable benefit relative to the cost for all taxpayers. If lawmakers want to subsidize the purchase of this type of technology, then a direct appropriation would be more accountable and transparent.

Furthermore, the additional credit would require changes to tax forms and instructions, reprogramming, staff training, and other costs that could be massive in amount. A direct appropriation may be a far less costly method to accomplish the same thing.



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Testimony of ERIK KVAM
Director of Renewable Energy Action Coalition of Hawaii
e-mail: Erik.Kvam@REACHhawaii.org

In SUPPORT of SB 2738 RELATING TO RENEWABLE ENERGY

**Before the
SENATE COMMITTEE ON TRANSPORTATION AND ENERGY**

Tuesday, February 2, 2016 2:50 p.m.

Aloha, Chair Inouye, Vice-Chair Gabbard and members of the Committee.

My name is Erik Kvam. I am a Director of Renewable Energy Action Coalition of Hawaii (REACH). REACH is a trade association whose vision is a Hawaiian energy economy based 100% on renewable sources indigenous to Hawaii.

REACH is in **SUPPORT** of SB 2738.

Right now, Hawaii's renewable energy technologies income tax (RETIT) credit applies only to intermittent solar and wind generation. It does not apply to energy storage or any forms of dispatchable renewable generation.

Without large amounts of energy storage, the large amounts of intermittent solar and wind generation that have been and will be installed in Hawaii will be undispachable and unusable when imported fuels stop flowing to Hawaii.

REACH **SUPPORTS** SB 2738 – extending the RETIT credit to include energy storage related to solar or wind generation -- to encourage development of the dispatchable renewable generation that Hawaii needs when imported fuels stop flowing to Hawaii.

REACH **SUPPORTS** SB2738, which would limit the cost of the tax credit to the State Treasury by replacing the existing statute's "per system" cap for solar energy systems (\$5,000 per system for single-family residential property; \$500,000 per system for commercial property) with a declining tax credit rate (from 25% to 15%) over a period of 3 years.

Thank you for allowing me to testify.