SB 678

RELATING TO THE CAPITAL INFRASTRUCTURE TAX CREDIT.

Includes structures, machinery, equipment, and capital assets in the definition of capital infrastructure costs. Sets a new maximum amount of capital infrastructure tax credits that may be issued in any taxable year per qualified infrastructure tenant. Specifies that excess tax credits may be carried forward. Specifies that special purpose entities may qualify as a qualified infrastructure tenant.

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

Date: Friday, February 10, 2017
Time: 1:15 P.M.
Place: Conference Room 225, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 678, Relating to the Capital Infrastructure Tax Credit

The Department of Taxation (Department) appreciates the intent of the measure, opposes the provision that allows a qualified infrastructure tenant to create Special Purpose Entity (SPE) as it allows the credit cap to be easily manipulated, and provides the following comments for your consideration on S.B. 678.

S.B. 678 redefines “capital infrastructure costs” to include structures, machinery, equipment, and capital assets; allows a qualified infrastructure tenant to create SPEs with each SPE qualifying as a capital infrastructure tenant; provides that costs which cannot be used in any tax year due to the credit cap may carry such costs over to the following years until exhausted; increases the maximum amount of capital infrastructure tax credits that may be issued in any taxable year to an unspecified amount; adds as an event of recapture for qualified infrastructure tenant who fails to relocate within 90 days after executing a lease with the Department of Transportation; and adds a taxpayer reporting requirement. The measure takes effect on July 1, 2017 and applies to taxable years beginning after December 31, 2016.

First, the Department notes that S.B. 678 increases the maximum amount of capital infrastructure tax credit from $1.25 million per year to an unstated amount. Currently, the credit is set at 50% of the capital infrastructure costs, up to a maximum of $2.5 million of costs paid or incurred during the taxable year.

Second, this measure redefines "capital infrastructure costs" under section 235-17.5, Hawaii Revised Statutes (HRS), to include every capital asset purchased by the business, thereby vastly expanding the types of property eligible for the credit. This is very important because this measure allows a taxpayer to front load all costs in the years in early years, and still be able to claim the credit in subsequent years.

Third, the Department notes that a qualified infrastructure tenant already has the ability to create as many SPEs as it deems necessary for the purpose of raising capital, and it is not necessary to include such language specifically in this measure. Although the measure provides that an SPE cannot generate any additional credits beyond the limits set for the qualified infrastructure tenant, this limitation is not effective because each SPE can also be a qualified infrastructure tenant. As drafted, each SPE may claim the credit up to the $2.5 million cap.

The Department notes that a qualified infrastructure tenant already has the ability to create as many SPEs as it deems necessary for the purpose of raising capital, and therefore it is not necessary to include such language specifically in this measure. However, if the Committee believes that language regarding a SPE is needed to assist in the raising of capital, the Department strongly believes that it should be made clear that the credit generated by the qualified infrastructure tenant and all of the SPEs created to raise capital cannot together exceed the maximum credit specified. The Department strongly recommends that subsection (b)(2) be deleted, and the following language be added to end of subsection (c):

> The qualified infrastructure tenant, together with all special purpose entities, shall not claim any credit in any one year that exceeds $2,500,000;

Fourth, the Department the Department suggests adding a penalty provision for noncompliance with the new reporting requirement in subsection (i). The Department suggests language for a penalty as follows:

> Failure to timely submit the information required by this subsection shall result in a reduction of the credit amount otherwise allowable under this section. The penalty shall be $5,000 per month or fraction thereof that the failure continues, not to exceed $25,000.

Finally, the Department is able to implement this measure by the current effective date because it is a modification of an existing credit that will only require form and instruction changes.

Thank you for the opportunity to provide comments.

Testimony to the Senate Committee on Transportation and Energy
Friday, February 10, 2017 at 1:15 P.M.
Conference Room 225, State Capitol

RE: SENATE BILL 678 RELATING TO CAPITAL INFRASTRUCTURE TAX CREDIT

Chair Inouye, Vice Chair Dela Cruz, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** SB 678, which includes structures, machinery, equipment, and capital assets in the definition of capital infrastructure costs; sets a new maximum amount of capital infrastructure tax credits that may be issued in any taxable year per qualified infrastructure tenant; specifies that excess tax credits may be carried forward; specifies that special purpose entities may qualify as a qualified infrastructure tenant.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ 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 members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The original bill was passed in 2014 with the intent to help displaced waterfront tenants from the Kapalama Container Terminal site secure financing to move and build out. Some tenants are being forced by the State to move out of Pier 41 and relocate to other State-owned lands that are essentially "bare lands" or empty piers that require full infrastructure build-out including sewers, electrical, parking, and other site improvements. These displaced tenants have had major disruptions and negative impacts to current operations due to the projected move and have spent millions of dollars on relocation planning and consultants. The proposed changes to the definition of capital infrastructure costs will enable tenants to enlist the credit as originally intended by the legislature.

This bill supports the growth of commerce in the State and supports maritime jobs. This credit helps displaced tenants raise financing and improve state-owned lands from which the State will also receive significant lease rents.

Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 7, 2017 2:23 PM
To: TRE Testimony
Cc: achung@navatekltd.com
Subject: Submitted testimony for SB678 on Feb 10, 2017 13:15PM

SB678
Submitted on: 2/7/2017
Testimony for TRE on Feb 10, 2017 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
ann chung	Pacific Shipyards	Support	Yes

Comments: We strongly support SB678. The original bill, now Act 200, was passed in 2014 by the Legislature with the intent to help displaced waterfront tenants from the Kapalama Container Terminal site secure financing to move and build out. The purpose of these amendments to the bill is to clarify the definition of capital infrastructure costs based on discussions with DoTAX. Some tenants are being forced by the State to move out of Pier 41 and relocate to other State-owned lands that are essentially “bare lands” or empty piers that require full infrastructure build-out including sewers, electrical, parking, and other site improvements. These displaced tenants have had major disruptions and negative impacts to current operations due to the projected move and have spent millions of dollars on relocation planning and consultants. The proposed changes to the definition of capital infrastructure costs will enable tenants to enlist the credit as originally intended by the legislature. Supporting the displaced waterfront tenants of the Kapalama Container Terminal project supports the growth of commerce in the State and supports maritime jobs. This credit helps displaced tenants raise financing and IMPROVE STATE-OWNED LANDS from which the State will also receive significant lease rents.

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TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Increase Capital Infrastructure Tax Credit

BILL NUMBER: SB 678

INTRODUCED BY: KIDANI, INOUYE, NISHIHARA, Dela Cruz, K. Kahele, K. Rhoads, Shimabukuro

EXECUTIVE SUMMARY: This measure substantially expands the definition of creditable costs to include machinery, equipment, and other personal property. The credit as originally enacted was awarded for costs of real property infrastructure, and that credit was justifiable because the State would ultimately own that infrastructure. The justification is much less apparent with tangible personal property because the tenant, rather than the State, will own it and will be able to remove it at will.

BRIEF SUMMARY: Amends HRS section 235-17.5 to allow structures, machinery, equipment or capital assets to be included as "capital infrastructure costs" which trigger the credit. Excludes from such costs "any amounts received in any form from the State."

Provides that the credit maximum is $_____ per qualified infrastructure tenant per taxable year. Provides that if the capital infrastructure costs paid or incurred by a tenant results in a tax credit more than $_____, the excess capital infrastructure costs shall be applied to a subsequent tax year until exhausted for calculation of the credit. In no event shall a qualified infrastructure tenant or taxpayer generate a credit after December 31, 2019.

Allows a qualified infrastructure tenant to form a special purpose entity to raise investor capital and claim the credit on behalf of the qualified infrastructure tenant. The credit limit of $_____ million applies to a qualified infrastructure tenant together with all special purpose entities.

Provides that the credit may be recaptured if the tenant fails to relocate within __ days of the execution of a lease.

Requires any taxpayer claiming a tax credit within 90 days of the end of the taxable year in which the credit is claimed, shall submit the following information to the legislature: (1) the amount of the eligible costs for which the tax credit may be claimed; and (2) the qualified infrastructure tenant incurring the costs.

EFFECTIVE DATE: July 1, 2017, applies to tax years beginning after December 31, 2016.

STAFF COMMENTS: Act 200, SLH 2014, allows investors who make an investment in a qualified infrastructure tenant displaced by the Kapalama terminal modernization project to claim a capital infrastructure tax credit equal to 50% of the capital infrastructure costs, up to $2.5 million in infrastructure costs per year.

As enacted, the credit was limited to improvements made to the real property infrastructure. We previously commented that the credit was justifiable to that extent because the state will own those improvements under the terms of the revocable permits issued by the department of transportation. The present bill substantially expands the expenses eligible for the credit to machinery, equipment, and other capital items that will not become part of the real property infrastructure. Presumably, the tenant will own these items and will be able to remove them from the real property when the tenant's lease ends. There is much less justification for allowing these kinds of expenses to be creditable.

Tax credits generally are designed to reduce the tax burdens of certain groups by refunding a portion of taxes paid on purchases of essential items and services. The capital infrastructure tax credit adopted last year provides financial assistance to displaced tenants, and it is, of course, arguable that some financial assistance is justifiable given the circumstances. Now it appears obvious that the revenue hit is going to be more than $20 million, although possibly spread over several years.

In any event, this credit amounts to nothing more than a subsidy of state funds. As with any subsidy, this one needs to be paid for. Either government needs to shrink, or the cost of government must be borne by all other taxpayers who do not qualify for the subsidy.

Digested 2/8/2017

From:	mailinglist@capitol.hawaii.gov
Sent:	Tuesday, February 7, 2017 2:34 PM
To:	TRE Testimony
Cc:	gary@navatekltd.com
Subject:	*Submitted testimony for SB678 on Feb 10, 2017 13:15PM*

SB678
Submitted on: 2/7/2017
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Submitted By	Organization	Testifier Position	Present at Hearing
Gary Shimozono	Individual	Support	No

Comments:

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Submitted By	Organization	Testifier Position	Present at Hearing
Kacey Lock	Individual	Support	No

Comments:

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Submitted By	Organization	Testifier Position	Present at Hearing
Susan Matsuura	Individual	Support	No

Comments:

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Submitted By	Organization	Testifier Position	Present at Hearing
Eric Schiff	Individual	Support	No

Comments: I strongly support SB678.

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SB678

Submitted on: 2/7/2017
Testimony for TRE on Feb 10, 2017 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Audra White	Individual	Support	No

Comments:

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