

# HAWAII STATE ENERGY OFFICE STATE OF HAWAII

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

DAVID Y. IGE  
GOVERNOR

SCOTT J. GLENN  
CHIEF ENERGY OFFICER

(808) 587-3807

## Testimony of **SCOTT J. GLENN, Chief Energy Officer**

before the  
**SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM**  
Friday, February 7, 2020  
2:50 PM  
State Capitol, Conference Room 414

### Comments in consideration of **SB 2556** **RELATING TO ENERGY.**

Chair Wakai, Vice Chair Taniguchi, and members of the Committee. The Hawaii State Energy Office (HSEO) offers comments on SB 2556, which amends the renewable energy technologies income tax credit by adding a new definition for “eligible utility-scale renewable energy project,” changes the phrasing for the commercial photovoltaic credit from “...per system for commercial property” to “...per megawatt direct current for systems installed on commercial property,” and establishes that an “eligible utility-scale renewable energy project” shall be eligible for a tax credit based on the credit percentage and cap in effect on July 1, 2020. HSEO defers to appropriate agencies regarding administration of the provisions contained in this bill.

HSEO notes that there are several bills this session that propose to phase out or discontinue the renewable energy technologies income tax credit for commercial-scale projects, and several approaches to mitigate the potentially negative disruption caused by uncertainty of tax credits available for projects currently under development.

As we understand it, the problem is that before a project is built, a contract is signed between the supplier of the energy and the user of the energy. This bill references Public Utilities Commission Order Number 35286 under Docket Number 2017-0352, which are projects providing power to the electric utility for use on the grid.

Since it is not until after the project is placed in service that the tax credit will be available, there is a risk that the tax credit may be cancelled after the contract is signed and before the project is placed in service. From the Hawaii Revised Statutes, Section 235-12.5(a):

The tax credit may be claimed for every eligible renewable energy technology system that is installed and placed in service in the State by a taxpayer during the taxable year.

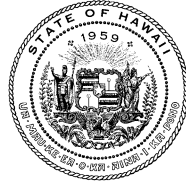
For large projects (and sometimes even smaller projects), this “placed in service” date is often unknown. Even at this time, for projects that have received major approvals and have begun construction, delays may occur, so projecting an end date is speculative.

It appears that one approach to addressing the issue may be to add a provision in the statute that states that the level of tax credit that will be available to a project will be based on the level of credit in place at the time the contract was signed.

Changes to underlying definitions might have broader impacts or unintended consequences. HSEO appreciates efforts to minimize disruptive effects on current energy markets and project plans in the state.

Thank you for the opportunity to testify.

DAVID Y. IGE  
GOVERNOR  
JOSH GREEN M.D.  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
Phone: (808) 587-1540 / Fax: (808) 587-1560  
Email: Tax.Directors.Office@hawaii.gov

RONA M. SUZUKI  
DIRECTOR OF TAXATION  
DAMIEN A. LEE  
DEPUTY DIRECTOR

**LATE**

To: The Honorable Glenn Wakai, Chair;  
The Honorable Brian T. Taniguchi, Vice Chair;  
and Members of the Senate Committee on Energy, Economic Development, and  
Tourism

From: Rona M. Suzuki, Director  
Department of Taxation

Re: **S.B. 2556, Relating to Energy**  
Date: Friday, February 7, 2020  
Time: 2:50 P.M.  
Place: Conference Room 414, State Capitol

The Department of Taxation (Department) has concerns about its ability to administer S.B. 2556 and offers the following comments.

S.B. 2556 amends section 235-12.5, Hawaii Revised Statutes (HRS), which governs the Renewable Energy Technologies Income Tax Credit (RETTIC). It changes the cap on not-primarily-water-heating solar energy systems from \$500,000 per system for commercial property to \$500,000 per megawatt direct current (MWdc) for systems installed on commercial property, and adds a new definition for “eligible utility-scale renewable energy project,” which means “a renewable energy project that was selected prior to December 31, 2018, under the Hawaiian Electric Companies' final variable renewable dispatchable generation request for proposal pursuant to public utilities commission order number 35286, docket 2017-0352, and that is placed in service no later than December 31, 2023.” It also sets the tax credit for eligible utility-scale renewable energy projects as based on the credit value and cap that were in effect as of July 1, 2020, and prohibits those projects from receiving the tax credit if they entered into a contract after December 31, 2018. The measure would apply to taxable years beginning after December 31, 2019.

The Department appreciates the effort to bring clarity and specificity to the RETTIC by amending the cap for not-primarily-water-heating solar energy systems on commercial property and making it calculated based on a quantifiable amount of energy capacity. However, if the intent is to preserve the RETTIC as it exists today, the Department suggests amending section 235-12.5(b)(2)(C) to read:

- (C) \$500,000 per system for commercial property;  
provided that each system shall have a total  
output capacity of at least one megawatt direct  
current;

Additionally, allowing certain taxpayers to claim a past version of the credit essentially means

that Department must administer two versions of the credit. Even if a small number of taxpayers would qualify for the grandfathering, the Department would need to maintain the previous version of the credit like it does with any other credit. As such, the Department respectfully requests that the definition of “eligible utility-scale projects” be amended so that the project is placed in service on or before December 31, 2021.

Finally, the Department notes that it is able to administer this measure with its current effective date.

Thank you for the opportunity to provide comments.



Sen. Glenn Wakai, Chair  
Hawaii State Senate  
Energy, Economic Development and Tourism Committee  
Hawaii State Capitol  
415 S. Beretania Street  
Honolulu, HI 96813

SB2556, Relating to Energy  
IN SUPPORT  
Energy, Economic Development and Tourism Committee  
Friday, February 7, 2020  
Room 414

Aloha Chair Wakai, Vice Chair Taniguchi and Members of the Committee:

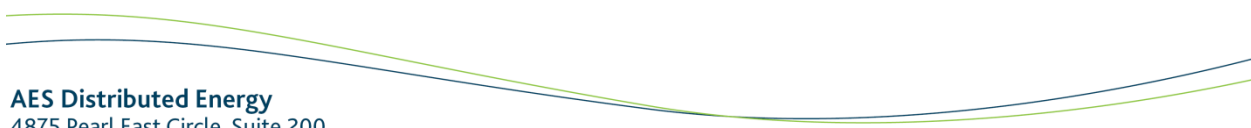
My name is Kirstin Punu, Project Manager for AES Distributed Energy. We appreciate the opportunity to testify in SUPPORT of SB2556.

AES Distributed Energy (AES DE) develops, owns and operates solar and solar plus storage projects throughout Hawaii with 47 MW of solar plus storage in operation on the island of Kauai, 8.8 MW of solar in operation on Oahu and Maui, and multiple projects in various stages of development on Oahu, Maui and Hawaii island.

We recognize and support the legislature's desire to revisit the renewable energy tax credit program. However, we believe it is important to protect the slate of utility-scale solar and battery storage projects that relied on these tax credits prior to December 31, 2019 when their Power Purchase Agreements (PPA's) were approved or filed and pending approval by the Public Utilities Commission. At the time of PPA execution and filing with the PUC, project developers were required to utilize these tax credits in their financial plans and pass through the tax credit value in the form of lower PPA rates.

Collectively, these projects have the potential to generate over 11 percent of our state's current energy needs with locally produced renewable energy. Without these tax credits, however, these projects would be at risk of failure thus setting Hawaii back in its efforts to achieve its clean energy future.

AES Distributed Energy believes it is important to ensure the tax credits can be protected for the aforementioned projects through the passage of SB2556 and also supports the legislature as it continues to examine its tax credit policies for the future.



# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Renewable Energy Technologies Credit for Utility-Scale Systems

BILL NUMBER: SB 2556

INTRODUCED BY: WAKAI, KIDANI, Baker

EXECUTIVE SUMMARY: Provides that the value of the renewable energy technologies income tax credit for eligible utility-scale renewable energy projects shall be based on the credit value and cap that are in effect as of 7/1/2020. Provides that an eligible utility-scale renewable energy project shall not be eligible to collect the tax credit if they entered into a contract after 12/31/2018.

SYNOPSIS: Amends section 235-12.5, HRS, to provide that the commercial property cap for “other solar” (e.g., photovoltaic) renewable energy systems is \$500,000 per MW direct current.

Defines “eligible utility-scale renewable energy project” as a renewable energy project that was selected prior to December 31, 2018, under the Hawaiian Electric Companies' final variable renewable dispatchable generation request for proposal pursuant to public utilities commission order number 35286, docket 2017-0352, and that is placed in service no later than December 31, 2023.

Specifies that for an eligible utility-scale renewable energy project, the tax credit shall be based on the credit value and cap that were in effect as of July 1, 2020; but adds a further proviso that an eligible utility-scale renewable energy project shall not be eligible to receive the tax credit pursuant to subsection (b)(2)(C) if they entered into a contract after December 31, 2018.

EFFECTIVE DATE: Taxable years beginning after December 31, 2019.

STAFF COMMENTS: This measure is designed to “grandfather” tax treatment for utility-scale renewable energy projects that were selected in 2018 or earlier, and that are placed in service no later than 2023.

The way the bill is presently worded:

- If a utility-scale project is **selected** by the utility in 2018 or earlier, and the contract is **entered into** in 2018 or earlier, then the credit value and cap on July 1, 2020, apply. (Note that there is time left for this to change.)
- If a utility-scale project is **selected** by the utility in 2018 or earlier, and the contract is **entered into** in 2019 or later, then **no credit at all is allowed**.
- If a utility-scale project is **selected** by the utility in 2019 or later, regardless of when the contract is **entered into**, then the credit value and cap under present law apply. (This could change now or in the future.)

- If a utility-scale project is **not selected** by the utility in response to the referenced RFP, regardless of when the contract is **entered into**, then the credit value and cap under present law apply. (This could change now or in the future.)

The tax results, especially in the first two cases, are difficult to reconcile with a coherent policy rationale. Some technical amendments may be required to ensure that the credit works properly.

Digested 2/4/2020



**Hawaiian  
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEE ON  
ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM**

**S.B. 2556**

**Relating to Energy**

Friday, February 7, 2020

2:50PM

State Capitol, Conference Room 414

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

Dear Chair Wakai, Vice Chair Taniguchi, and Members of the Committee,

My name is Rebecca Dayhuff Matsushima and I am testifying on behalf of Hawaiian Electric Company, Inc. (Hawaiian Electric) with **comments on S.B. 2556**, Relating to Energy.

S.B. 2556 proposes to amend Section 235-12.5 of the Hawaii Revised Statutes to define and clarify a qualifying “eligible utility-scale renewable energy project” for the purposes of a renewable energy technologies income tax credit, in order to ensure the inclusion of the eight projects selected under a solicitation authorized by the Public Utilities Commission (PUC) in its order 35286. These were the eight projects selected by Hawaiian Electric in its first phase of its request for proposals for variable renewable dispatchable generation (the “Phase 1 Projects”).

Hawaiian Electric is in favor of a change to the tax credit law to include a grandfathering provision, but suggest modifications to S.B. 2556 to provide for broader definition of “eligible utility-scale renewable energy project” and to revise and clarify Subsection (k), as further explained below. Hawaiian Electric supports the overall



concept of grandfathering as proposed by S.B. 2556, as the bill would reduce the risk to the Phase 1 Projects and help ensure that the projects receive the credits contemplated by the parties involved. The Phase 1 Projects were required to pass through the full value of the renewable energy technologies income tax credit to ratepayers in the form of lower power prices. If the Phase 1 Projects are unable to claim the tax credit, which they currently cannot secure until after project completion and reaching commercial operations, there is a risk that these projects may become uneconomical, unfinanceable, and ultimately, may not be developed. The tax credit allows for the procurement of lower cost energy in the state of Hawaii.

We respectfully suggest that a broader definition of “eligible utility-scale renewable energy project” be considered. The current proposed language is narrowly defined to include a project selected from Hawaiian Electric’s Phase 1 request for proposals as long as such project is in service by December 31, 2023. We suggest instead that a definition of “eligible utility-scale renewable energy project” include all renewable energy projects that are 1 MW or larger, with an executed power purchase agreement (PPA). This would allow other current utility scale projects and future projects to benefit from the tax credit. Providing for a broader grandfathering provision would help the state to reach its aggressive 100% renewable portfolio standards with lower cost projects. For example, bidders who submitted proposals for Hawaiian Electric’s current Phase 2 request for proposals are not required to assume the risk of changes to the state tax law, but will be required to pursue the maximum available tax credit available to be ultimately passed through directly to the customers. A grandfathering provision that includes projects upon execution of a power purchase

agreement with the utility would allow more certainty as to the actual cost of a project to customers.

Further, we also suggest that the proposed Subsection (k) of Section 235-12.5 of the Hawaii Revised Statutes be revised to align with the federal investment tax credit (ITC). Under the federal ITC statute and related regulations, a developer is able to grandfather the tax credit at the credit amount in place at the time the developer spends 5% of the total project cost. This could lead to lower PPA pricing without locking the State into guarantying years of large tax credits, as it would provide flexibility to change tax credits applicable for future projects, but still allow a developer to know what tax credit it is eligible to receive. We also note that as currently written, Subsection (k) would exclude one of the eight projects as it was not executed until after December 31, 2018. It is also unclear as currently drafted whether the intent of the revisions to Subsection (k) is to disallow future projects from claiming the tax credit. If this is the intent, Hawaiian Electric opposes such a change. As noted above, the tax credit allows for the procurement of lower cost energy, which is needed if we are to reach our 100% renewable energy goals in a cost-effective manner.

Hawaiian Electric also notes that revisions were proposed to Hawaii Revised Statutes Section 235-12.5(b)(2)(c). Hawaiian Electric has no concerns with these revisions and believe them to be essentially consistent with the current administrative rules in Hawaii Administrative Rules Section 18-235-12.5.

Thank you for this opportunity to testify.



Email: [communications@ulupono.com](mailto:communications@ulupono.com)

SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM  
Friday, February 7, 2020 — 2:50 p.m. — Room 414

**Ulupono Initiative offers comments on SB 2556, Relating to Energy.**

Dear Chair Wakai and Members of the Committee:

My name is Amy Hennessey, and I am the Senior Vice President of Communications & External Affairs at Ulupono Initiative. We are a Hawai'i-based impact investment firm that strives to improve our community's quality of life by creating more locally produced food; increasing affordable clean renewable energy and transportation options; and better managing waste and fresh water resources.

**Ulupono offers comments on SB 2556**, which defines an eligible utility scale renewable energy project for purposes of the renewable energy technologies income tax credit and established other criteria for the tax credit.

Ulupono supports the expansion of all renewable energy technologies to meet the State's 100% RPS goal by 2045. While utility-scale solar projects will continue to support Hawai'i's efforts to increase renewables, there are other options that should also be considered in moving the needle toward clean energy. We would like to note that retroactively placing a deadline on projects at 12/31/2018 may affect those planned and developed projects moving their way through the approval process currently. We recommend that a date of 7/1/2020 or later would be less problematic for project planning purposes.

Thank you for this opportunity to testify.

Respectfully,

Amy Hennessey, APR  
Senior Vice President, Communications & External Affairs

*Investing in a Sustainable Hawai'i*

DATE: February 6, 2020

TO: Senator Glenn Wakai  
Chair, Committee on Energy, Economic Development, and Tourism  
*Submitted Via Capitol Website*

FROM: Mihoko Ito

RE: **S.B. 2556 Relating to Energy**  
**Hearing Date: Friday, February 7, 2020 at 2:50pm**  
**Conference Room: 414**

---

Dear Chair Wakai and Members of the Committee:

We submit this testimony regarding SB 2556 Relating to Energy on behalf of Innergex Renewables USA, LLC (Innergex). Innergex is an independent renewable power producer which develops, acquires, owns and operates renewable energy utility scale facilities. As a global corporation, Innergex conducts operations in Canada, the United States, France, and Chile.

Innergex was awarded a power purchase agreement (PPA) through Hawaiian Electric Companies first round RFP. The PPA approval by the Public Utilities Commission (PUC) is pending and in the process of a contested hearing before the PUC. There is also the possibility of an appeal to the PUC decision, further extending the time frame for PUC approval.

Innergex **supports the intent** of this measure. However, we respectfully request modifying the language to include projects that have a PPA approved or ***filed and pending*** approval before the PUC. The amendment would read (page 7, lines 1-9) as follows:

"(k) This section shall apply to eligible renewable energy technology systems that are installed and placed in service on or after July 1, 2009[-]; provided that for an eligible utility-scale renewable energy project, the tax credit shall be based on the credit value and cap that were in effect as of July 1, 2020; provided further that an eligible utility-scale renewable energy project shall **not** only be eligible to receive the tax credit pursuant to subsection (b)(2)(C) if they **entered into a contract after December 31, 2018, have a power purchase agreement either approved by a decision or order by the public utilities commission or filed or pending approval prior to December 31, 2019.**"

This language provides all RFP1 projects to utilize the intended state tax credits to bring down electricity costs in the selected renewable energy projects.

Thank you very much for the opportunity to testify on this bill.

**Clearway Energy Group**  
100 California Street, Floor 4  
San Francisco, CA 94111

clearwayenergygroup.com

**LATE**



February 7, 2020

Via Electronic Submittal

**Committee on Energy, Economic Development and Tourism**

Senator Glenn Wakai, Chair

Senator Brian T. Taniguchi, Vice Chair

Friday, February 7, 2020

2:50 pm

State Capitol, Room 414

Nicola Park

Origination Manager, Clearway Energy Group

In support of SB 2556

Relating to Energy

Chair Wakai, Vice Chair Taniguchi and Members of the Committee:

Clearway Energy Group supports SB 2556, which provides much-needed certainty as to the value of the state tax credit for utility-scale renewable energy projects already in development to support the State's renewable energy goals.

Clearway Energy Group is one of the largest clean energy companies in the United States. On Oahu, Clearway has constructed three utility-scale solar projects that were completed and began delivering carbon-free electricity to the grid in 2019, with a total generating capacity of 110 MW AC.

Additionally, Clearway has two utility-scale solar projects in development for which the Public Utilities Commission (PUC) has approved 20-year PPAs with Hawaiian Electric. The two projects – Waiawa Solar Power and Mililani I Solar – incorporate battery storage that will provide flexibility and resiliency to the electric grid. The two new projects will generate 75 megawatts (MW) of low-cost renewable energy, advancing the State's renewable energy goal of 100% by 2045 while saving ratepayers on their electric bills.

### *Tax Credit Eligibility for Projects with Signed Power Purchase Agreements*

Clearway supports the provision of SB 2556 that locks in the value of the state tax credit for utility-scale projects that were selected and filed PPAs with the PUC before the end of 2019 (“eligible utility-scale renewable energy projects”).

This provision of SB 2556 would allow eligible utility-scale renewable energy projects to move forward with the certainty required to secure construction financing and start construction later this year. For these projects, all project developers were required to pass through the full value of the tax credit to ratepayers in the form of lower power prices, based on the assumption that projects would continue to be eligible for the state tax credit as it exists today. However, project owners cannot apply to receive the state tax credit until after the projects are commercially operational. SB 2556 would bridge this gap by confirming the value of the state tax credit that has already been assumed and passed along to ratepayers.

The timely completion of these projects will help to advance broader state policy goals. With estimated completion dates between 2021 and 2023, eligible utility-scale renewable energy projects are needed to meet the planned timelines for retirement of fossil fuel power plants and achievement of Renewable Portfolio Standard targets. Given the long lead time needed to develop utility-scale projects in Hawai‘i, it would not be feasible to develop and complete new projects by 2023.

### *Technical Clarification*

Clearway also supports the provision of SB 2556 that clarifies that the existing cap on the tax credit for commercial property applies on a per-megawatt basis. This provision codifies existing Department of Taxation guidance on the application of the tax credit, creating greater certainty for market participants.

Clearway hopes that these comments are helpful in informing consideration of SB 2556, and we look forward to answering any questions you might have on our testimony.