



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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

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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

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DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Finance
Friday, February 25, 2022
1:30 PM
Via Videoconference**

**On the following measure:
H.B. 1637, HD1, RELATING TO RENEWABLE ENERGY**

Chair Luke and Members of the Committee:

My name is Dean Nishina, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Division of Consumer Advocacy. The Department supports the intent of this bill.

The purpose of this bill is to authorize a county to impose an annual in-lieu fee on land or improvements on land that are actively used to produce or store renewable energy that is sold to an electric utility, under certain conditions.

The Department supported the intent of the newly adopted Revised Ordinance of Honolulu (ROH) 21-32 to reduce the property tax burden of renewable energy projects brought on by the changes in the Real Property Assessment Division's (RPAD) interpretation of how relevant sections of ROH should be applied to renewable energy projects. Further, while the Department generally defers to the Department of Taxation on tax related measures, the Department has remaining concerns with the potential impact and remaining ambiguity of how RPAD may apply the partial exemption and the resulting assessments on current and future renewable projects, the viability of existing

and future renewable energy projects, and, ultimately, the impacts on ratepayers. The Department observes that current power purchase agreements may still experience a significant increase in tax liability despite the new ordinance's attempt to alleviate the burden created through RPAD's recent interpretation and that this will likely affect the cost of future renewable energy projects and will, thus, increase the customers' bills.

The Department appreciates the HD1 modifications to avoid potential constitutional issues that were raised by the Attorney General's office on the original version. The Department is concerned, however, that without specifying the in-lieu fee, there will be uncertainty regarding the magnitude of the fee as well as whether a county may choose to apply the in-lieu fee or not. Thus, the Department is concerned that HD1 will leave us back at "square one", where existing and future renewable energy projects may face unanticipated cost increases in the form of real property taxes or in-lieu fees that will ultimately adversely affect electric customers and Hawaii's clean energy transition.

Thank you for the opportunity to testify on this bill.

TESTIMONY OF
JAMES P. GRIFFIN, Ph.D.
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII

TO THE
HOUSE COMMITTEE ON
FINANCE

February 25, 2022
1:30 p.m.

Chair Luke and Members of the Committee:

MEASURE: H.B. No. 1637, HD1

TITLE: RELATING TO RENEWABLE ENERGY.

DESCRIPTION: Authorizes a county to impose an annual in-lieu fee on land or improvements on land that are actively used to produce or store renewable energy that is sold to an electric utility, under certain conditions. Effective 7/1/2100. (HD1)

POSITION:

The Public Utilities Commission (“Commission”) supports this measure and offers the following comments for consideration.

COMMENTS:

The Commission supports this measure, which would encourage renewable energy generation projects and increase clarity around applicable tax treatment.

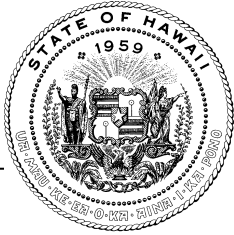
As noted in the measure, in late 2021, the City and County of Honolulu changed its tax treatment of some parcels of land on which renewable energy projects are sited from agriculture to industrial for tax purposes. This resulted in very large, unanticipated tax increases for some projects, which could jeopardize the viability of those projects, as well as increase risks and costs for projects that may be developed in the future.

The Commission worked with other public agencies and stakeholders to create a short-term solution through the Honolulu City Council’s Bill 39 (2021), with a stated intent to continue the dialogue among stakeholders in constructing a long-term solution.

The Commission stresses the importance of stability in tax policy in encouraging renewable energy projects in the state. When project pricing is determined during the competitive procurement process, the electric company and project developers make agreements based on certain assumptions about federal, state, and county tax policies. Because these projects often have established contracts with fixed prices, significant changes to the interpretation or application of real property tax provisions could result in delays to projects, and possibly cancellation of projects, due to the potential for requests to renegotiate prices. Additionally, tax uncertainty casts a shadow that could deter renewable energy development and financing in the state.

The Commission supports the intent of this measure to prevent future incidents such as this and to create a stable tax environment that encourages progress toward the State's renewable energy goals. The Commission will continue the dialogue with other agencies and stakeholders to develop and implement complementary county tax policy changes as a long-term solution to this issue.

Thank you for the opportunity to testify on this measure.



HAWAII STATE ENERGY OFFICE STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

SCOTT J. GLENN
CHIEF ENERGY OFFICER

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Testimony of
SCOTT J. GLENN, Chief Energy Officer

before the
HOUSE COMMITTEE ON FINANCE

Friday, February 25, 2022
1:30 PM

State Capitol, Conference Room 308 & Videoconference

**SUPPORT
HB 1637 HD1
RELATING TO RENEWABLE ENERGY.**

Chair Luke, Vice Chair Yamashita, and Members of the Committee, the Hawai'i State Energy Office (HSEO) supports HB 1637, HD1, which authorizes counties to impose an annual in-lieu fee on land or improvements on land that are actively used to produce or store renewable energy that is sold to an electric utility, under certain conditions.

HSEO's comments are guided by its mission to promote energy efficiency, renewable energy, and clean transportation to help achieve a resilient, clean energy, decarbonized economy.

A recent situation occurred where county property tax assessments were suddenly and dramatically increased on certain renewable energy projects on O'ahu. Such increases in tax liability significantly impact renewable energy project finances, in turn affecting project viability for renewable energy projects that are currently operational and projects under-development which were selected during a competitive procurement process.

While the situation was partially remedied by the City and County of Honolulu's adoption of [Ordinance 21-32](#), HSEO has outstanding concerns due to the ordinance's ambiguity. Therefore, HSEO supports a long-term solution that provides for tax predictability and does not increase the tax liability that was in place at the time the

existing and under-development projects were financed, competitively bid, and approved by the Public Utilities Commission. HB 1637, HD1's approach provides predictability for all parties involved if adopted by each of the counties. Additionally, if adopted by the counties, the bill provides tax certainty that will encourage more renewable energy development throughout the state in the future.

HSEO has been and will continue to work with all parties to develop long-term solutions that provide consistency and predictability for both the counties' finances as well as for the contracting and financing of existing and future renewable energy projects needed to replace the fossil fueled electricity generation facilities, protect Hawai'i's most vulnerable ratepayers, and advance the state's renewable energy goals.

HSEO looks forward to working with the counties to adopt an appropriate in-lieu fee for renewable energy projects within their respective real property tax ordinances. This bill will provide the first step in adoption at the county level across the state.

Thank you for the opportunity to testify.

HB-1637-HD-1

Submitted on: 2/25/2022 10:14:48 AM

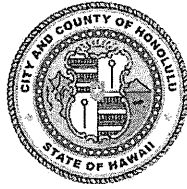
Testimony for FIN on 2/25/2022 1:30:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kirsten Baumgart Turner	Hawaii State Energy Office	Support	Yes

Comments:

Scott Glenn is listed as the testifier for the Hawaii State Energy Office, I would like to participate in the hearing along with Scott. (HB1637, HB 1801, HB2255, HB1809, HB2278)

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
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RICK BLANGIARDI
MAYOR

ANDREW T. KAWANO
DIRECTOR

CARRIE CASTLE
DEPUTY DIRECTOR

February 24, 2022

The Honorable Chair, Sylvia Luke
and Members of the Committee on Finance
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke and Committee Members:

Re: Testimony in Opposition to House Bill No. 1637 H.D.1 with Comments
Hearing: Friday, February 24, 2022, 1:30 p.m., Rm. 308 via videoconference

The City and County of Honolulu ("City") supports the State's goal of reaching a one hundred (100) percent renewable portfolio standard by December 31, 2045, and believes there may be alternate ways of increasing the production and development of renewable energy in the State. Aside from the fact that House Bill 1637 H.D.1's ("HB1637 HD1's") preamble misstates the facts surrounding the City's enforcement of the agriculture dedication program requirements upon parcels of land used for the commercial production of renewable energy, the City opposes HB1637 HD1 because the amended bill conflicts with its stated purpose to "provide more certainty for renewable energy developers and ratepayers . . . while also mitigating any potential revenue loss for the county." The City supports an "in lieu of" program and offers amendments that would achieve the stated purpose of the bill.

The Department of Budget and Fiscal Services ("BFS") would like to clarify that the City did not unilaterally change its tax treatment of the parcels of land ("Parcels") referenced in HB1637 HD1. The Parcels are located in the State's agriculture district and in the county's AG-1 restricted agricultural zoning district. Prior to 2020, the owners of these Parcels filed petitions to dedicate the Parcels for agricultural use for real property tax purposes under Section 8-7.3 of the Revised Ordinance of Honolulu 1990, as amended ("ROH"). In order to qualify for the agricultural use dedication, the owners certified that at least seventy-five (75) percent of the dedicated land was in active, substantial and continuous use for the business of raising and producing agricultural products during the dedication period, and that no land use change was initiated by the owners. The petitions were granted, thereby reducing real property taxes to one (1) percent of the assessed value. In 2020, the City discovered that during the agricultural dedication period, large portions of the Parcels were actually and primarily used for the production and sale of renewable energy products under approved owner-initiated State use permit (SUP) and county conditional use permits which changed the strictly agriculture use permitted under the Parcels' AG-1 restricted agricultural zoning to a use allowing both agriculture and utility production. For the 2021 tax year, the Parcels were assessed on October 1, 2020 based upon their highest and best use, as mandated by ROH Section 8-7.1. Portions of the Parcels not used for the production of renewable energy products maintained the

agricultural classification and the agriculture use dedications. The remaining portions primarily and actually used for the production, storage and sale of renewable energy products were classified industrial pursuant to ROH Sections 8-7.1 and 8-7.3.

BFS favors a payment in lieu of taxes (PILOT) program which would promote renewable energy production by: (1) setting a fixed annual payment based upon the maximum dispatchable megawatt AC nameplate capacity stated in the power purchase agreement with the electric utility, and (2) minimizing potential lost revenues to the counties. In contrast, HB1637 HD1 proposes to create an annual fee in lieu of taxes, which, as drafted, is not workable.

First, the annual fee is neither a regulatory fee nor a user fee, and therefore, is susceptible to legal challenges. The payment in lieu of real property taxes should not be referred to as a "fee."

Second, the PILOT program should be limited to production and/or storage of utility-scale, dispatchable renewable energy that is sold to an electric utility under a power purchase agreement. This would result in an annual fixed payment for the duration of the power purchase agreement with the electric utility, thereby eliminating the risk and concerns expressed by the Hawaii State Energy Office (HSEO) and Hawaiian Electric Company of fluctuating payments over time.

Third, following the adoption of Ordinance 21-32 (2021), BFS notified all renewable energy producers identified by the HSEO of the availability of and deadline to apply for an eighty (80) percent renewable energy real property tax exemption for the 2022-23 tax year. BFS granted the exemption to a significant number of the renewable energy producers that applied. The provisos in subparagraphs (3) and (4) of HB1637 HD1 could be interpreted to either (1) exclude a significant number of renewable energy producers from participating in the PILOT program to fix their tax liability payments, or (2) result in lost revenues to the counties if the renewable energy producers elect to participate in the PILOT program and qualify for the exemption under HB1637 HD1, thereby ignoring the purpose of the "in lieu of" provision and permitting renewable energy producers to avoid paying both real property taxes and the annual "fee." This would clearly defeat a critical element of the stated purpose of the bill to mitigate any potential revenue loss for the counties.

In order to achieve the stated purpose of HB1637 HD1, BFS offers the following amendments for the Committee's consideration:

"§46-__ Renewable energy projects; in-lieu payment. A county may enact an ordinance, and may amend the same from time to time, to establish a program which allows an annual payment in lieu of real property taxes (PILOT) on land or improvements thereon that are used to produce or store utility-scale renewable energy that is actively sold to an electric utility; provided that:

(1) The ordinance also exempts renewable energy projects from one hundred per cent of real property taxes; and

(2) The payment shall be determined by the county on a per megawatt basis up to the maximum dispatchable nameplate AC capacity stated in the power purchase agreement with an electric utility.


The Honorable Chair, Sylvia Luke
and Members of the Committee on Finance
February 24, 2022
Page 3

~~(3) Any renewable energy project that sells electricity to a not-for-profit utility shall be exempt from the fee;~~

~~(4) The county shall not impose the fee or increase existing fees for a renewable energy project to which the county has previously granted an application for a real property tax exemption on the land underlying and improvements relating to the renewable energy project."~~

The proposed wording, which provides for the implementation of the PILOT program, is more aligned with the bill's stated purpose of fixing an amount to be paid in lieu of real property taxes while minimizing revenue losses to the counties. Accordingly, the City opposes HB1637 HD1 and respectfully requests that the Committee consider amending the bill as proposed herein.

Sincerely,


Andrew T. Kawano, Director
Department of Budget and Fiscal Services



Testimony Before the House Committee on Finance

By David Bissell
President and Chief Executive Officer
Kaua'i Island Utility Cooperative
4463 Pahe'e Street, Suite 1, Līhu'e, Hawai'i, 96766-2000

Friday, February 25, 2022; 1:30 pm
Conference Room #308 & Videoconference

House Bill No. 1637 HD1 - RELATING TO RENEWABLE ENERGY

To the Honorable Representative Sylvia Luke, Chair, Representative Kyle T. Yamashita, Vice Chair and Members of the Committee:

Kaua'i Island Utility Cooperative (KIUC) is a not-for-profit utility providing electrical service to more than 34,000 commercial and residential members.

KIUC supports this measure.

Over the past 10 years, KIUC has made great strides in achieving the State of Hawai'i mandate of 100% renewable generation by the year 2045. In 2020, KIUC's energy mix included 67% renewable generation: the highest percentage in the state. We expect to report a similar percentage for 2021.

Achieving the 100% renewable mandate, as well as the benchmarks that have been set between now and 2045, is an extremely challenging task. Our success in reaching nearly 70% renewable a full ten years ahead of the State of Hawai'i's established benchmark is largely attributable to our ability to engage leading renewable companies in power purchase agreements (PPA) that are beneficial for them as well as our members.

Much of KIUC's current renewable portfolio includes hydro, solar and solar/BESS resources that are purchased from third parties via long-term PPA's. These agreements have helped us stabilize rates significantly, as they decouple us from the volatility of oil pricing.

Significant unforeseen additional costs for our renewable energy partners, such as those that created the impetus for this bill, could impact existing PPAs and drive costs up, which will ultimately be borne by members. This bill would minimize that possibility for KIUC.

We encourage you to support HB1637 HD1.



Hawaii Solar Energy Association
Serving Hawaii Since 1977

**Testimony of The Hawaii Solar Energy Association Regarding HB 1637 HD1, Relating to
Renewable Energy, Before the House Committee on Finance**

Friday, February 25, 2022

Chair Luke, Vice-Chair Yamashita, and members of the Committee, my name is Rocky Mould and I am the Executive Director of the Hawaii Solar Energy Association (HSEA). We **support HB 1637 HD1** which authorizes a county to impose an annual in-lieu fee on land or improvements on land that are actively used to produce or store renewable energy that is sold to an electric utility, under certain conditions.

HSEA members include the majority of locally owned and operated renewable energy companies in the State of Hawaii, employing thousands of local individuals in a diverse set of well-paying jobs including, but not limited to, contractors, designers, electricians, engineers, financiers, installers, salespeople, and service technicians.

HSEA advocates for policies that provide cost-effective, equitable, and impactful solutions to achieve Hawaii's climate and resilience goals by enabling residents and businesses to invest in and benefit from the transition to clean energy. Distributed energy resources (DERs) are the leading contributor to Hawaii's clean energy transition with 45.7% of Hawaii's renewable energy coming from customer-sited, grid-connected solar PV.¹ And now, Hawaii leads the nation, by far, in pairing solar PV with energy storage at 79% of all residential and 38% of all small-scale commercial installations.² These investments in resilient power systems not only save energy costs for residents and businesses, but also provide energy security and reliability for the entire electricity system as we retire fossil fuel power plants such the AES coal plant.

HSEA appreciates efforts to clarify and ensure consistent and fair tax treatment of renewable energy projects that sell energy to public utilities. These projects sell energy at predetermined rates under long term contracts approved by the Public Utilities Commission. As a result, project owners are highly exposed to cost changes outside of their control. A recent

¹ See Hawaiian Electric's "Key Performance Metrics, Renewable Portfolio Standard compliance" available at <https://www.hawaiianelectric.com/about-us/key-performance-metrics/renewable-energy>.

² See Lawrence Berkeley National Laboratory, *Tracking the Sun, Pricing and Design Trends for Distributed Photovoltaic Systems in the United States* (2021 Edition) at Slide 14 (finding that "Hawaii has, by far, the highest storage attachment rates of any state").



Hawaii Solar Energy Association
Serving Hawaii Since 1977

reclassification of projects on agricultural lands by the City and County of Honolulu to the industrial class had the combined impact of shifting these projects to a higher tax rate and increasing the assessed property values to which those higher rates are applied. If this drastic and unexpected increase in cash costs had remained intact, it would have put many renewable energy projects and businesses in jeopardy and impaired the market for these projects going forward contrary to State and City economic and public policy goals. City Council, working with the City Administration, State Public Utilities Commission, State Energy Office, and other stakeholders crafted an interim solution to this problem by passing Bill 39 (2021). While supporting Bill 39 for reducing harm, HSEA believes it does not go far enough to ensure appropriate, consistent, and fair tax treatment of renewable energy projects. HSEA stands ready to work with stakeholders on a more permanent remedy for this unexpected burden on achieving Hawaii's renewable energy and climate goals. This bill offers a viable solution and path forward, if enacted.

HSEA **supports Bill 1637 HD1** and humbly asks the Committee to advance the measure.

Thank you for the opportunity to testify.

Clearway Energy Group
100 California Street, Suite 400
San Francisco, CA 94111

clearwayenergygroup.com



February 25, 2022

Via Electronic Submittal – **Written Testimony Only**

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair
Rep. Kyle T. Yamashita, Vice Chair

Friday, February 25, 2022, 1:30 pm
State Capitol, via videoconference

Nicola Park
Origination Manager, Clearway Energy Group
In support of the intent of HB 1637
Relating to Renewable Energy

Chair Luke, Vice Chair Yamashita, and Members of the Committee:

Thank you for the opportunity to testify on HB 1637. Clearway Energy Group (“Clearway”) supports the intent of this bill, which highlights the importance of policy certainty in enabling the financing, construction, and operation of renewable energy projects in Hawaii. Long-term certainty about the structure and expense of property taxation for renewable energy projects is essential for the State to be able to achieve its ambitious renewable energy goals.

Clearway operates three solar projects on Oahu totaling 110 MW and has two new solar and battery storage projects currently under construction. Clearway’s Mililani I and Waiawa projects, totaling 75 MW AC of solar generating capacity with 300 MWh of battery storage, are coming online at a critical time for Oahu, when generation and reliability are expected to otherwise decrease following the retirement of the 180 MW coal plant in September 2022.

To make both investment and sustainable operation viable, renewable energy projects must be able to maintain relatively stable expenses and revenues over time. All of Clearway’s projects, as well as other utility-scale renewable energy projects, are contracted under long-term, fixed-price power purchase agreements. These fixed-price contracts provide 100% of the ongoing revenue to the projects during the duration of the contracts and must cover all operating expenses along with the projects’ debt service. The cost and availability of financing for renewable energy projects is dependent upon the risk and variability in the projects’ revenues and expenses. Fixed-price contracts typically enable low financing costs,

reducing the total cost of the project and enabling greater ratepayer savings – but this is only possible if variability in expenses, including property tax, can also be controlled.

Because it takes years to develop and construct a utility-scale renewable energy project, developers must estimate the property taxes to be paid over the term of the contract at the time they submit bids into a competitive solicitation. While project budgets are set to accommodate normal variability in property taxes over time, they cannot accommodate a change in land classification for real property tax purposes or a change in the assessment method for land or equipment that would result in taxes being substantially different from the status quo as of the time the projects were contracted.

If the Counties had the authority to and were to, in fact, provide a fixed option such as a payment in lieu of taxes (PILOT) that could be reliably calculated upfront for the duration of the project's contract, this would reduce uncertainty and would enable even lower-cost financing for renewable energy projects, which would translate to lower power prices for utility ratepayers.

Clearway hopes that these comments are helpful in informing consideration of HB 1637, and we look forward to working with the Legislature and providing any needed information on our projects.

Thank you for this opportunity to testify.



**TESTIMONY BEFORE THE HOUSE COMMITTEE ON
FINANCE**

H.B. 1637 H.D.1

Relating to Renewable Energy

February 25, 2022

1:30 p.m., Agenda Item #5

State Capitol, Conference Room 308, via Videoconference

Rebecca Dayhuff Matsushima
Vice President, Resource Procurement
Hawaiian Electric Company, Inc.

Dear Chair Luke, Vice Chair Yamashita, and Members of the Committee,

My name is Rebecca Dayhuff Matsushima and I am testifying on behalf of Hawaiian Electric Company, Inc. (“Hawaiian Electric” or the “Company”) in **support** of H.B. 1637 H.D.1, Relating to Renewable Energy, with requested amendments.

H.B. 1637 H.D.1 proposes to amend Chapter 46, Hawai‘i Revised Statutes, by adding a new section that allows a county the option to impose an annual in-lieu fee on land or improvements on land that are actively used to produce or store renewable energy that is sold to an electric utility, provided that: (1) the county, by ordinance, exempts the renewable energy project from 100% of real property tax (“RPT”); (2) said in-lieu annual fee is determined by the county on a per megawatt nameplate AC capacity basis; (3) any renewable energy project that sells electricity to a not-for-profit utility shall be exempt from the fee; and (4) the county shall not impose the fee or increase existing fees for a renewable energy project to which the county has previously granted an application for RPT exemption on the land underlying and improvements relating to the renewable energy project.

Hawaiian Electric supports H.B. 1637 H.D.1, as it is a creative solution that offers an option that will allow Counties to avoid the Honolulu RPT issues that arose in 2021. It sets forth a clear and simple calculation of the annual in-lieu fee that will be determined on a per megawatt nameplate AC capacity basis. In addition, the proposed annual in-lieu fee option contains stipulations that protect renewable energy project developers from future cost increases.

However, there are still some areas in the bill that Hawaiian Electric would like to address.

On page 4, starting on line 4, the term “...land or improvements on land that are actively used to produce or store renewable energy...” is not clear and should be defined if this this bill were to advance. For example, it is unclear whether land under solar panels or wind turbines would be considered “actively used”.

Hawaiian Electric would like to request the following deletion of language page 3, starting on line 11 in the preamble, as the language misstates a utility’s tax liability to the county: “The purpose of this Act is to provide more certainty for renewable energy developers and ratepayers ~~and ensure that these projects are allowed the same tax exemptions that are already provided to utility-owned energy projects under county law,~~ while also mitigating any potential revenue loss for the county, by authorizing a county to impose an annual in-lieu fee on land or improvements on land that are actively used to produce or store renewable energy that is sold to an electric utility, under certain conditions.”

Hawaiian Electric would like to continue to stress that the liabilities of projects currently contracted should not change, as changes to the economics after a project is contracted may cause the project to no longer be viable. If project costs increase, developers may try to pass on this financial burden to customers through a request to

amend a project's power purchase agreement. Additionally, Hawaiian Electric has seen the impacts of increased cost on renewable energy projects currently in development for materials as well as shipping due to the COVID-19 pandemic. Some developers have indicated that the success of their projects are in jeopardy due to such increased costs.

Thank you for this opportunity to support H.B. 1637 H.D.1, Relating to Renewable Energy, and thank you for considering our requested amendments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: REAL PROPERTY, Prohibits Taxation of Renewable Energy Farms

BILL NUMBER: HB 1637 HD 1

INTRODUCED BY: House Committee on Energy & Environmental Protection

EXECUTIVE SUMMARY: Authorizes a county to impose an annual in-lieu fee on land or improvements on land that are actively used to produce or store renewable energy that is sold to an electric utility, under certain conditions.

SYNOPSIS: Adds a new section to chapter 46, HRS, providing that a county may impose an annual in-lieu fee on land or improvements on land that are actively used to produce or store renewable energy that is sold to an electric utility; provided that: (1) The county, by ordinance, exempts renewable energy projects from one hundred per cent of real property taxes; (2) The fee shall be determined by the county on a per megawatt nameplate AC capacity basis; (3) Any renewable energy project that sells electricity to a not-for-profit utility shall be exempt from the fee; and (4) The county shall not impose the fee or increase existing fees for a renewable energy project to which the county has previously granted an application for a real property tax exemption on the land underlying and improvements relating to the renewable energy project.

EFFECTIVE DATE: July 1, 2100.

STAFF COMMENTS: Apparently, this bill was prompted by concern that in late 2021, the city and county of Honolulu real property assessment division unilaterally changed their tax treatment of some parcels of land on which renewable energy projects are sited from agriculture to industrial for tax purposes. This change resulted in a drastic increase in property taxes for affected projects, resulting in some renewable energy project operators receiving bills that were hundreds of times higher than their prior bills.

We in the Foundation covered that change in “Tax Isn’t a Peanut Butter Cup,” available at <https://www.tfhawaii.org/wordpress/blog/2021/11/tax-isnt-a-peanut-butter-cup/>.

This bill, however, doesn’t provide the answer. Any county can simply decline to impose the in-lieu fee and then becomes free to apply its property tax to such projects as it wishes.

Article VIII, section 3 of the Hawaii Constitution exclusively and directly gives power to the counties to impose real property tax. *State ex rel. Anzai v. City and County of Honolulu*, 99 Hawai‘i 508, 57 P.3d 433 (2002), established that for at least the past twenty years, any county is “free to exercise its exclusive authority to increase, diminish, enact, or repeal any exemptions involving real property taxes without interference by the legislature.” *Id.*, 57 P.3d at 446. The real property tax is imposed by county ordinance, it is imposed on those under the jurisdiction of the county and not of the state, and the money raised belongs to the county imposing it. Particularly, the *Anzai* case involved a state statute purporting to renew the exemption from real

Re: HB 1637 HD 1

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property tax that the state government enjoyed when it was administering the real property tax. Our supreme court said that the state couldn't tell the counties what not to tax. What the bill apparently seeks to achieve is contrary to this principle.

Digested: 2/23/2022