



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

H.B. NO. 1637, RELATING TO RENEWABLE ENERGY.

BEFORE THE:

HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

DATE: Tuesday, February 1, 2022 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 325, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Patrick K. Kelly, Deputy Attorney General

Chair Lowen and Members of the Committee:

The Department of the Attorney General has concerns regarding this bill and provides the following comments.

The bill adds a new section to chapter 46, which provides in subsection (a) that "[n]o county shall impose a real property tax on land or improvements on that land that are used for the production or storage of renewable energy . . ." and which in subsection (b) permits a county to "impose an annual fee of up to \$1,000 per megawatt of nameplate AC capacity generated by a renewable energy project that is actively producing energy and selling it to an electric utility" sited on real property within the county. (page 4, lines 10-21.) The bill also includes a provision that "[i]f any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable." (page 5, lines 3-8.)

The bill may be subject to challenge under section 3 of article VIII of the Constitution of the State of Hawaii, which provides:

The taxing power shall be reserved to the State, except so much thereof as may be delegated by the legislature to the political subdivisions, and *except that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties*, with the exception of the county of

Kalawao. The legislature shall have the power to apportion state revenues among the several political subdivisions.

(Emphasis added.)

Therefore, it appears that the prohibition of county real property tax on renewable energy production or storage lands may violate section 3 of article VIII of the Constitution of the State of Hawaii. If the prohibition of county real property tax is found to be in violation of the Constitution of the State of Hawaii and therefore invalid, that provision would be severable. However, the provision permitting the county to impose an annual fee per megawatt may survive, thereby allowing additional fees on energy production and storage.

We respectfully ask the Committee to hold this bill. Thank you for the opportunity to offer these comments.

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

TO THE
HOUSE COMMITTEE ON
ENERGY AND ENVIRONMENTAL PROTECTION

February 1, 2022
9:00 a.m.

Chair Lowen and Members of the Committee:

MEASURE: H.B. No. 1637

TITLE: RELATING TO RENEWABLE ENERGY.

DESCRIPTION: Prohibits the counties from imposing a real property tax on land or land improvements used for the production or storage of renewable energy that is sold to an electric utility. Permits a county to impose an annual fee of up to \$1,000 per megawatt of nameplate AC capacity generated by a renewable energy project that is actively producing and selling energy to an electric utility and sited on real property within that county.

POSITION:

The Public Utilities Commission (“Commission”) offers the following comments for consideration.

COMMENTS:

The Commission supports the intent of this measure to encourage renewable energy generation projects and increase clarity around applicable tax treatment.

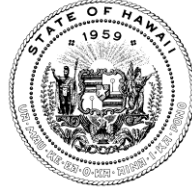
As noted in the measure, in late 2021, the City and County of Honolulu changed its tax treatment of some parcels of land on which renewable energy projects are sited from agriculture to industrial for tax purposes. This resulted in very large, unanticipated tax increases for some projects, which could jeopardize the viability of those projects, and increases 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 ensure that this measure constitutes a long-term solution to this issue.

Thank you for the opportunity to testify on this measure.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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

335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
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cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Energy & Environmental Protection
Tuesday, February 1, 2022
9:00 AM
Via Videoconference**

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

Chair Lowen 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.

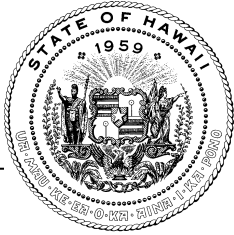
The purpose of this bill is to prohibit the counties from imposing a real property tax on land or land improvements used for the production or storage of renewable energy that is sold to an electric utility and permits a county to impose an annual fee of up to \$1,000 per megawatt of nameplate alternating current capacity generated by a renewable energy project that is actively producing and selling energy to an electric utility and sited on real property within that county.

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. Therefore, the Department believes that this bill's proposal to treat land owned or leased for the production or storage of renewable energy similar to the current treatment of land owned or leased and actually used by a public utility under ROH § 8-10.27 may help to address the Department's enduring concerns with the current county tax regime.

The Department appreciates the measure's effort to balance the risk that renewable energy development – especially on Oahu, with its large load – may still need significant amounts of additional land to meet that load and the County's real property tax revenues needs. There may need to be additional analysis and discussion to determine how the proposed offset affects existing and future projects. In addition, additional analysis and discussion to determine whether the proposed qualifier of "...actively producing energy and selling it to an electric utility.." may introduce ambiguity as it relates to which projects would or would not qualify.

Thank you for the opportunity to testify on this bill.



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 ENERGY & ENVIRONMENTAL PROTECTION

Tuesday, February 1, 2022
9:00 AM
State Capitol, Conference Room 325

in SUPPORT of
HB 1637
RELATING TO RENEWABLE ENERGY.

Chair Lowen, Vice Chair Marten, and Members of the Committee, the Hawai'i State Energy Office (HSEO) supports HB 1637, which prohibits the counties from imposing a real property tax on land or land improvements used for the production or storage of renewable energy that is sold to an electric utility, and permits a county to impose an annual fee of up to \$1,000 per megawatt of nameplate AC capacity generated by a renewable energy project that is actively producing and selling energy to an electric utility and sited on real property within that county.

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.

The State of Hawai'i achieved a 36% renewable portfolio standard in 2020. The goals of transitioning to 100% renewable energy and achieving net negative carbon emissions by 2045 will require replacing the remaining majority of Hawai'i's electricity generation facilities with numerous renewable energy projects.

A recent situation occurred where county property tax assessments were suddenly and dramatically increased on certain renewable energy projects, existing and under development.

Such increases in tax liability significantly impact renewable energy project finances, in turn affecting project viability. In such situations, the developer of the project must either absorb the cost or seek to re-negotiate the contract terms with the electric utility and seek approval from the Public Utilities Commission (PUC). Due to the successful nature of competitive bidding, projects are not able to absorb such sudden and dramatic tax liability increases. This creates a chilling effect on renewable energy project development.

If projects were able to re-negotiate contracts and receive approvals for the cost increases, increased prices would ultimately be passed on to the electricity customer, impacting the electric bills of a given county's residents. Low- and middle-income residents bear a higher burden because they use a greater percentage of their limited funds on electricity and have limited ability to reduce electricity expenses. Moreover, developers are now requesting de-risking of such tax liability in requests for proposals and power purchase agreement negotiations outside of the county in which the sudden tax increase occurred, which translates into higher prices throughout the state. In effect, these types of tax increases on renewable energy projects are regressive taxes on our most vulnerable people throughout Hawai'i.

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. This bill's approach provides predictability for all parties involved.

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 is grateful to everyone involved in these efforts for their support and collaboration to achieve appropriate taxation for renewable energy projects.

Thank you for the opportunity to testify.



P.O. Box 37158, Honolulu, Hawai`i 96837-0158
Phone: 927-0709 henry.lifeoftheland@gmail.com

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Nicole E. Lowen, Chair
Rep. Lisa Marten, Vice Chair

DATE: Tuesday, February 1, 2022
TIME: 9:00AM

HB 1637 Relating to Renewable Energy

Support

Aloha Chair Lowen, Vice Chair Marten, and Members of the Committee

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 52 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

Renewable energy companies determined their costs, worked out terms of power purchase agreements with utilities, received PUC approval, only to find that Honolulu county jacked up their land tax based on industrializing the land, therefore risking that the renewable energy company projects are no longer financially viable. This bill sets a predetermined small cap that gives renewable energy companies a viable financial solution.

Mahalo
Henry Curtis,
Executive Director



**Hawaiian
Electric**

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON
ENERGY & ENVIRONMENTAL PROTECTION**

HB 1637

Relating to Renewable Energy

February 1, 2022

9:00 a.m., Agenda Item #8

State Capitol, Conference Room 325, via Videoconference

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

Dear Chair Lowen, Vice Chair Marten, 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 with suggested amendments** to HB 1637, Relating to Renewable Energy.

HB 1637 proposes to amend Chapter 46, Hawai'i Revised Statutes, by adding a new section that: (1) prohibits the counties from imposing real property taxes on land or land improvements used to produce or store renewable energy that is sold to an electric utility; and (2) authorizes a county to impose an annual fee of up to \$1,000 per megawatt of nameplate AC capacity generated by a renewable energy project sited on real property within that county that is actively producing and selling energy to an electric utility.

Hawaiian Electric strongly supports the aspect of this bill that strives to provide a clear and simple calculation of the annual fee a developer may pay for a renewable energy project in lieu of real property tax. The clearness and clarity of this calculation should eliminate any need for complex calculations, debates on land use and land

classifications, and special permitting and approvals that could arise, as was the case for the process leading up to the recently passed Honolulu City Council Ordinance 21-32 (Bill 39 (2021), CD2).

Regarding the appropriateness of the annual fee calculation that determines the amount a developer may be required to pay, Hawaiian Electric currently stands **neutral** on this aspect of the bill. However, Hawaiian Electric stresses that tax liabilities of projects currently contracted should not change, as changes to the economics after a project is contracted for may cause the project to no longer be viable. If these costs increase, developers may try to pass on this financial burden to Hawaiian Electric's customers through a request to amend a project's PPA. 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. Hawaiian Electric is aware that some developers have indicated that the success of their projects are in jeopardy due to such increased costs.

Concerning the calculation that determines the annual fee, HB 1637 states "...an annual fee of up to \$1,000 per megawatt of nameplate AC capacity **generated by** a renewable energy project..." Hawaiian Electric would like to propose slightly modified language to align with how its more recent renewable PPAs are structured. Under those PPAs, Hawaiian Electric contracts for the dispatchability of a renewable energy project, and not the generation. Accordingly, **the Company recommends that the language on page 4, lines 17-19 be revised as follows:** "an annual fee of up to \$1,000 per megawatt of nameplate AC capacity ~~generated by~~ **of** a renewable energy project..."

Lastly, Hawaiian Electric would like to request an amendment to the preamble which misstates a utility's tax liability to the county. In the preamble, page three, lines

11-16, it says the bill's purpose is to ensure that renewable energy developers "are allowed the same tax exemptions that are already provided to utility-owned energy projects under county law." The preamble points out that Hawaiian Electric is exempt from real property tax, while independent power producers are not. It goes on to say that this same tax exemption should also apply to renewable energy developers. While it is technically correct that Hawaiian Electric is not subject to real property tax for properties they own, in lieu of such real property tax, it is subject to a Public Service Company Tax, which energy developers are not, a portion of which is paid to the county. This tax, which is included in the cost of company-owned generation, does not apply to independent power producers. Therefore, **we request that Lines 11-16 on page 3 be deleted in its entirety.**

Thank you for this opportunity to support HB 1637, Relating to Renewable Energy, and thank you for considering our requested amendments.

Tawhiri Power LLC



TESTIMONY OF TAWHIRI POWER LLC
ON HB 1637 BEFORE THE HOUSE COMMITTEE ON
ENERGY & ENVIRONMENTAL PROTECTION
TUESDAY, FEBRUARY 1, 2022 AT 9 a.m.

TO THE HONORABLE CHAIR LOWEN, VICE CHAIR MARTEN AND MEMBERS OF
THE COMMITTEE:

Tawhiri Power LLC (“TPL”)¹ supports HB 1637 but would like to offer a friendly amendment that is aligned with HB1595. Tawhiri suggests that language be added to prohibit counties from imposing an additional annual fee of for AC capacity generated by a renewable energy project that is actively producing and selling energy to end users of renewable energy, that are not a public utility.

Thank you for the opportunity to testify.

¹ TPL is an Independent Power Producer (“IPP”) that owns and operates Pakini Nui Wind Farm located in the South Point Area on the Island of Hawaii.



Testimony to the Committee on Energy, Economic Development, and Tourism

Tuesday, February 1, 2022

9:00 AM

VIA Video Conference

Conference Room 325, Hawaii State Capitol

HB 1637

Chair Lowen, Vice Chair Marten, and members of the committee,

Hawaii Clean Power Alliance (HCPA) **offers comments on** SB HB 1637, which prohibits the counties from imposing a real property tax on land or land improvements used for the production or storage of renewable energy that is sold to an electric utility. Permits a county to impose an annual fee of up to \$1000 per megawatt of nameplate AC capacity generated by a renewable energy project that is actively producing and selling energy to an electric utility and sited on real property within that county.

Hawaii Clean Power Alliance is a nonprofit alliance organized to advance and sustain the development of clean energy in Hawaii. Our goal is to support the state's policy goal of 100 percent renewable energy by 2045. We advocate for utility-scale renewable energy, which is critical to meeting the state's clean energy and carbon reduction goals.

Renewable energy projects are time-consuming projects to site, develop and build, and RFP responses and Power Purchase Agreements (PPA) are premised on known costs at the time of development. Changes to those known costs, once the project's PPA has been approved by the PUC, can be catastrophic to the project's viability. While the property tax adjustments that have already been made by the City and County of Honolulu have included an exemption that could help contain those cost escalations, this bill's passage could have tremendous unintended impacts on other counties.

As noted in the bill itself, increases in real property taxes for renewable energy project would significantly impact the viability of existing and future renewable energy projects. With 2045 just over 20 years away, changes like those proposed could significantly chill the appetite of project developers already here and/or considering Hawaii for development. Renewable energy projects, by their very nature, come with significant risk and uncertainty for the developers. Additional uncertainties such as changes in real property tax could further heighten those risks and uncertainties.

When developers choose to not come to Hawaii or choose to leave the market, competition is lessened, often leaving the ratepayers with higher rates.

If such a proposal is to move forward, we highly recommend that existing projects be grandfathered to continue their tax rate as it was zoned at the time the project was approved. For example, the projects already underway under RFP 1 and RFP 2 could see significant adverse impact, which might well not be sustainable and cause Hawaii to lose a significant amount of renewable energy.

The discussion surrounding a shift to a flat fee per megawatt is perhaps viable and the discussion should be continued. Unintended consequences to ratepayers and existing projects around the state, however, must be part of that conversation before any statutory changes are made.

Thank you for the opportunity to testify.

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

clearwayenergygroup.com



February 1, 2022

Via Electronic Submittal

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Nicole E. Lowen, Chair

Rep. Lisa Marten, Vice Chair

Rep. Mark J. Hashem

Rep. Chris Todd

Rep. Scot Z. Matayoshi

Rep. James Kunane Tokioka

Rep. Amy A. Perruso

Rep. Lauren Matsumoto

Tuesday, February 1, 2022, 9:00 am

State Capitol, Via Videoconference

Nicola Park

Origination Manager, Clearway Energy Group

In support of HB 1637

Relating to Renewable Energy Real Property Taxation

Chair Lowen, Vice Chair Marten, and Members of the Committee:

Clearway Energy Group supports HB 1637. This bill provides much-needed certainty as to the long-term real property taxation of utility-scale renewable energy projects across the State. Such certainty is essential to developing and financing such projects, advancing the State's renewable energy goals and providing energy bill savings for ratepayers.

HB 1637 would allow utility-scale renewable projects in development and planning to enter into Power Purchase Agreements with Hawaiian Electric in the coming years to move forward with the necessary confidence to bid the lowest possible pricing to Hawaiian Electric in upcoming renewable energy procurements (such as the Hawaii Island RFP expected to commence in 2022). HB 1637 also provides the certainty required by lenders to secure construction financing for these projects and start construction in the future.

Importantly, all renewable projects benefitting from HB 1637 will pass through the full value of such long-term, fixed real property taxes in the form of low, fixed, long-term power prices for ratepayers. These low prices are locked in under Power Purchase Agreements with Hawaiian Electric, so that once projects are completed and come online, ratepayers will benefit from the certainty and consistency of real property taxation across the State. The

fixed annual capacity payment will create a level playing field across the Counties in contributing towards lower rates, as well as leveling the playing field for all renewable energy technologies.

HB 1637 would also allow utility-scale renewable projects that are in construction and due to commence operations this year, including Clearway's Mililani I and Waiawa solar plus battery storage projects on Oahu, to advance with certainty on real property taxation in line with the projects' existing construction and long-term financing agreements. These solar plus storage projects totaling 75 MW AC with 300 MWh of battery storage are coming online at a critical time for Oahu, when reliability is expected to otherwise decrease following the retirement of the 180 MW coal plant in September 2022.

Finally, related to Clearway's operational projects on Oahu, including Kawailoa Solar (49 MW), Waipio Solar (45.6 MW) and Lanikuhana Solar (14.7 MW), Clearway was supportive of Honolulu City and County action under Bill 39 to create certainty on the application of appropriate use classifications for solar on agricultural land. Since the passing of Bill 39, Clearway has successfully worked with Honolulu City and County to finalize the property tax exemptions for all three of its operational projects on Oahu, which result in real property tax certainty in line with the projects' original underwriting. Since any change in property tax methodology can be disruptive for operating projects with a complex ownership structure, Clearway would like to see changes to the language in HB 1637 to allow owners of operating projects with existing exemptions to maintain their current arrangements (see proposed language below).

Clearway hopes that these comments are helpful in informing consideration of HB 1637, and we look forward to answering any questions you might have on our projects or our testimony.

"§46- Renewable energy projects; property tax prohibition; optional annual fee. (a) No county shall impose a real property tax on land or improvements on that land that are used for the production or storage of renewable energy, as defined in section 269-91, that is sold to an electric utility; provided that this section shall not apply to any portion of the property that is not used for the primary purpose of the production or storage of renewable energy and shall not apply to any property for which a county has previously granted an application for a real property exemption on both land and improvements prior to the Effective Date of this Act.

(b) A county may impose an annual fee of up to \$1,000 per megawatt of nameplate AC capacity generated by a renewable energy project that is actively producing energy and selling it to an electric utility, and is sited on real property within that county; provided that any renewable energy project that sells electricity to a not-for-profit utility shall be exempt from these fees, and provided that a county shall not impose these new fees or increase existing fees for a renewable energy project for which the county has previously granted an application for a real property tax exemption on both the land underlying and the improvements relating to the renewable energy project.

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; SB 2722

INTRODUCED BY: HB by LOWEN, MARTIN; SB by LEE, KEITH-AGARAN, MISALUCHA, Wakai

EXECUTIVE SUMMARY: Prohibits the counties from imposing a real property tax on land or land improvements used for the production or storage of renewable energy that is sold to an electric utility. Permits a county to impose an annual fee of up to \$1,000 per megawatt of nameplate AC capacity generated by a renewable energy project that is actively producing and selling energy to an electric utility and sited on real property within that county. Our view is that the prohibition of real property taxation is not valid under the Hawaii Constitution.

SYNOPSIS: Adds a new section to chapter 46, HRS, to prohibit the counties from imposing a real property tax on land or land improvements used for the production or storage of renewable energy that is sold to an electric utility and to permit a county to impose an annual fee of up to \$1,000 per megawatt of nameplate AC capacity generated by a renewable energy project that is actively producing and selling energy to an electric utility and sited on real property within that county.

EFFECTIVE DATE: July 1, 2022.

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. 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 property tax that the state government

Re: HB 1637

Page 2

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. This bill suffers from the same problem.

Digested: 1/30/2022

HB-1637

Submitted on: 1/29/2022 9:07:59 AM

Testimony for EEP on 2/1/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Anthony Orozco	Individual	Oppose	No

Comments:

This waste of money won't stop climate change. Until major countries like China make big cuts which is unlikely, all this local climate stuff is in vain.

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Gabe Johnson
Kelly Takaya King
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Traci N. T. Fujita, Esq.

Deputy Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

January 30, 2022

TO: Honorable Nicole E. Lowen, Chair
House Committee on Energy and Environmental Protection

FROM: Alice L. Lee
Council Chair

DATE: January 30, 2022

SUBJECT: **OPPOSE HB 1637, RELATING TO RENEWABLE ENERGY**

Thank you for the opportunity to testify in **OPPOSITION** to this measure. The purpose of this measure is to prohibit the counties from imposing a real property tax on land or land improvements used for the production or storage of renewable energy that is sold to an electric utility.

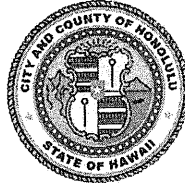
The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I **OPPOSE** this measure for the following reasons:

1. At the 1978 Constitutional Convention, it was recognized that counties should have more home rule. Real property taxes were established to be exclusively for county government use, and it remains the only mechanism where counties have the sole authority to generate revenue to fund county services.
2. This measure deprives the counties of self-rule and fails to appreciate the different challenges facing the different counties.
3. The impacts of property development are diverse, and the counties need the flexibility to respond as necessary. I urge the Legislature not to infringe on home rule; please leave the decision making on county property taxes to the counties.
4. Although the stated purpose of the bill is to provide more certainty for renewable energy developers, I feel that local authorities are best able to encourage such conformity rather than the State.

For the foregoing reasons, I **OPPOSE** this measure.

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov



RICK BLANGIARDI
MAYOR

ANDREW T. KAWANO
DIRECTOR

CARRIE CASTLE
DEPUTY DIRECTOR

January 31, 2022

The Honorable Chair, Nicole E. Lowen
and Members of the Committee on Energy
and Environmental Protection
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Lowen and Committee Members:

Re: Testimony in Opposition to House Bill No. 1637
Hearing: Tuesday, February 1, 2022, 9:00 a.m., 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. However, the City opposes House Bill 1637 ("H.B. 1637") because the bill attempts to interfere with the exclusive authority of the counties for real property taxes as established in Article VIII, Section 3 of the Hawaii Constitution.

The Department of Budget and Fiscal Services ("BFS") would like to clarify that the City did not unilaterally change tax policy regarding the parcels of land ("Parcels") referenced in H.B. 1637. The Parcels are located in the State's agriculture district and in the county agriculture zoning district. Prior to 2020, a petition to dedicate the Parcels for agricultural use for real property tax purposes was granted under Section 8-7.3 of the Revised Ordinance of Honolulu 1990, as amended ("ROH"), which reduced real property taxes to one (1) percent of the assessed value, provided 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. In 2020, the City discovered that large portions of the Parcels were actually and primarily used for the commercial production of renewable energy products under an approved owner-initiated State use permit (SUP) to change the use of the Parcels. For the 2021 tax year, the Parcels were assessed on October 1, 2020 under the highest and best use analysis, as mandated by ROH Section 8-7.1, and approved for partial agriculture use dedications under ROH Sections 8-7.1 and 8-7.3.

As indicated above, the City supports the State's renewable energy goals as evident in its support of Ordinance 21-32, which provides an eighty (80) percent tax exemption from real property taxes on certain portions of land used to produce renewable energy. However, H.B. 1637's interference with the counties' power to tax real property based on the City's enforcement of conditions required under its agriculture dedication program, a program designed to promote a competing State goal to strengthen the agriculture industry within the State, is misplaced.

The Honorable Chair, Nicole E. Lowen
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Moreover, H.B. 1637's interference with the counties' power to assess real property tax directly contravenes the constitutional grant of the exclusive power over real property taxation to the counties. Article VIII, Section 3 of the Hawaii Constitution states in relevant part:

The taxing power shall be reserved to the State, except so much thereof as may be delegated by the legislature to the political subdivisions, and **except that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties**, with the exception of the county of Kalawao.

For these reasons, the City opposes H.B. 1637. However, the City believes that there may be other available alternatives or options to incentivize and increase the production and development of renewable energy in the State, and therefore the City is open to discuss other possible options to promote the development of renewable energy.

Sincerely,



Andrew T. Kawano, Director
Budget and Fiscal Services

AES Clean Energy

HB1637 RELATING TO RENEWABLE ENERGY

SUPPORT

Hawaii State House of Representatives
Committee on Energy and Environmental Protection
Tuesday, February 1, 2022
9:00 a.m.

Aloha Chair Lowen and committee members:

Mahalo for the opportunity to provide testimony in support of HB1637. AES shares Hawai'i's vision for a 100% renewable energy future. We are working to accelerate and support Hawai'i's transition toward a carbon-free energy future with renewable projects across the Hawaiian Islands totaling over 200 MW of solar, solar plus storage, hydro and wind resources in operation or under contract, with 102.5 MW of Stage 1 and 37 MW of Stage 2 projects.

HB1637 seeks to provide an exemption from real property taxes ("RPT") for improvements and land where renewable energy projects are sited. In lieu of RPT, the measure proposes a county fee based on MWs generated by these projects.

Recently, counties across the state have begun to revisit RPT rates for utility scale renewable energy projects in an effort to increase revenues. In doing so, counties have reclassified lands from agriculture to industrial and reassessed values based on this new industrial classification. Unfortunately, this action has caused an exponential increase in RPT costs for some renewable energy projects. Furthermore, this practice has been inconsistently applied, leading to broad disparities in the RPT rates applied for each project. In addition, these RPT changes have the potential to be applied years after projects have been in operation. The uncertainty and price swings associated with changing RPT policies pose a significant risk to the viability of renewable energy projects that cannot easily absorb significant spikes in cost.

AES understands the need for counties to generate revenue. However, given that the price of renewable energy projects are fixed under Power Purchase Agreements approved by the Public Utilities Commission, it is difficult to sustain volatility in RPT rates. Instead, AES supports a fee that would be based on the MWs generated for each project, except any projects sited on state land, which should be exempt. Such an arrangement would provide certainty and greater stability in costs for renewable energy projects while also enabling counties to generate revenue fairly and reliably.

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Considerable increases to RPT liabilities substantially affect the viability of existing and planned renewable energy projects, the job creation associated with such projects and jeopardize the ability of the state to meet its 100% renewable energy goals.

As Hawaii continues to advance towards its renewable energy goals, we hope the legislature will act to insulate projects from risks associated with a changing landscape in RPT policy.

Mahalo for your consideration.

Sandra Larsen
AES Hawaii Market Business Leader



Testimony Before the House Committee on Energy and Environmental Protection

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

Tuesday, February 1, 2022; 9:00 am
Conference Room #325 & Videoconference

House Bill No. 1637 - RELATING TO RENEWABLE ENERGY

To the Honorable Representative Nicole Lowen, Chair, Representative Lisa Marten, 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.