DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR

RONA M. SUZUKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
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To: The Honorable Nicole E. Lowen, Chair;
The Honorable Tina Wildberger, Vice Chair;
and Members of the House Committee on Energy & Environmental Protection

From: Rona M. Suzuki, Director
Department of Taxation

Re: **H.B. 2653, Relating to Taxation**
Date: Thursday, February 13, 2020
Time: 8:30 A.M.
Place: Conference Room 325, State Capitol

The Department of Taxation (Department) appreciates the intent of H.B. 2653 and offers the following comments.

H.B. 2653 amends section 243-3.5, Hawaii Revised Statutes (HRS) by revamping the environmental response, energy, and food security tax to address carbon emissions. Mainly, it amends barrel tax rates on several petroleum products to effectively set a price of $18 per metric ton of carbon dioxide equivalent emissions on all fossil fuels sold by a distributor to any retail dealer or end user of fuel, other than a refiner. H.B. 2653 repeals the fossil fuel tax under section 243-3.5(b), HRS, and changes the statute's allocation of tax revenue to various funds from percentage-based to fixed dollar amounts and clarifies that although the new tax will not apply to coal used to fulfill an existing power purchase agreement (PPA), that exemption will not apply to any extension of an existing PPA or to any subsequently-agreed PPA.

With respect to the barrel tax, the Department suggests the definition of "barrel" in section 5, subsection (i) not be deleted. This definition is still useful because "barrel" is used in numerous places in the section.

With respect to the new tax credit created by this measure, the Department notes that restricting tax credit eligibility only to State residents may create an issue under the Commerce Clause of the U.S. Constitution. Notwithstanding the protentional constitutional issue, the Department suggests amending the credit to specify that the income thresholds apply to federal adjusted gross income. The term "gross annual household income" in not defined by this measure or in existing income tax law.

H.B. 2653 takes effect on January 1, 2021, with the establishment of the new income tax credit and the repeal of the fuel tax credit for commercial fishers applying to taxable years beginning after December 31, 2020.

The Department anticipates that it will be able to administer the bill by changing forms, instructions, and the computer system by the current effective date. This measure will also require taxpayer education as it represents a significant change to this tax.

Finally, the Department looks forward to the completion of the carbon study being done by the University of Hawaii as it should further inform the rates proposed in this bill and assist the Department of Business, Economic Development, and Tourism in recommending annual updates to the tax rates.

Thank you for the opportunity to provide comments.

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020

ON THE FOLLOWING MEASURE:
HB **2653**, RELATING TO TAXATION.

BEFORE THE:
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

DATE: Thursday, February 13, 2020 **TIME:** **8:30** a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Cynthia M. Johiro, 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.

This bill replaces the environmental response, energy, and food security tax with a carbon emissions tax, repeals the state fuel tax, and establishes a refundable income tax credit for individuals earning sixty percent or less of the area median income. A ”qualified taxpayer” under this bill is defined as a “resident taxpayer” who either files an individual income tax return, a married individual filing a separate return, a married couple filing a joint return, or a surviving spouse, and has a gross annual household income within the ranges listed in subsection (b)(1) or (2) of the bill. *See* page 8, lines 18-21, and page 9, lines 1-6. (Emphasis added).

This bill may be subject to a challenge under the Privileges and Immunities Clause and the Commerce Clause of the United States Constitution.

Privileges and Immunities Clause

The Privileges and Immunities Clause provides that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const. art. IV, § 2, cl. 1. The Clause "prohibits a State from denying nonresidents a general tax exemption provided to residents." *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287, 302 (1998) (holding state law that allowed residents to take income tax deduction for alimony payments but disallowed deduction for nonresidents violated Privileges and Immunities Clause).

A challenge under the Privileges and Immunities Clause, however, may be overcome where there is a "substantial reason for the difference in treatment" and the discrimination against nonresidents "bears a substantial relationship to the State's objective." *Lunding*, 522 U.S. at 298; *see, e.g., United Bldg. & Constr. Trades Council v. Mayor & Council of Camden*, 465 U.S. 208, 222 (1984) (indicating a hiring preference for residents may be justified by evidence of "spiraling unemployment, a sharp decline in population, and a dramatic reduction in the number of businesses located in the city" resulting in the city's depleted tax base from eroded property values and "middle class flight"); *but see, e.g.*, *Hicklin v. Orbeck*, 437 U.S. 518, 526-27 (1978) (holding a hiring preference for residents lacked substantial reason for discrimination where there was no evidence that nonresidents caused high unemployment among residents and where many residents were unemployed due to lack of education and job training).

Under this bill, only residents will be eligible to claim the income tax credit. Further, the stated purpose of the income tax credit, to offset the burden of the carbon tax on low-income households, does not address the reason for the different treatment between residents and nonresidents. Accordingly, this bill may be subject to a constitutional challenge under the Privileges and Immunities Clause.

Commerce Clause

The Commerce Clause provides that "[t]he Congress shall have Power . . . [t]o regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cl. 3. "Though phrased as a grant of regulatory power to Congress, the clause has long been understood to have a 'negative' aspect that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce." *Oregon Waste Sys., Inc. v. Dep't of Envtl. Quality*, 511 U.S. 93, 98 (1994).

A tax on interstate commerce will be sustained "when the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State." *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977). If a tax discriminates against interstate commerce by providing "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter," the tax will be *per se* invalid unless the tax "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Oregon Waste*, 511 U.S. at 99, 101.

The taxing of income earned across state lines will be struck down under the Commerce Clause if it has the effect of impeding interstate transactions. *See e.g., Comptroller of Treasury of Md. v. Wynne*, 135 S.Ct. 1787 (2015) (Maryland's income tax scheme struck down as unconstitutional because it taxed income earned in the state at a lower rate than income earned outside the state thereby creating an incentive for taxpayers to opt for intrastate rather than interstate economic activity). The Commerce Clause applies equally to individuals and corporations, and there is no distinction between gross receipts and net income taxes when analyzing its effect on interstate transactions. *Id.* at 1794. Here, the income tax credit is only available to resident taxpayers; nonresident taxpayers subject to Hawaii income tax are not eligible for the tax credit. Accordingly, there could be a challenge under the Commerce Clause because this may create a disincentive for nonresidents to conduct income-earning activities in this State.

H.B. No. 2653

To avoid a constitutional challenge, we respectfully ask that these concerns be addressed. One way to do so is to amend H.B. No. 2653 by deleting the word "resident" on page 8, line 19. Thank you for the opportunity to provide comments.

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor

PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

LATE

TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

FEBRUARY 13, 2020
8:30 A.M.
CONFERENCE ROOM 325

HOUSE BILL NO. 2653
RELATING TO TAXATION

Chairperson Lowen and Members of the Committee:

Thank you for the opportunity to testify on House Bill 2653. This measure replaces the Environmental Response, Energy, and Food Security Tax with a carbon emissions tax. Repeals state fuel taxes under the fuel tax law. In amending the Environmental Response, Energy and Food Security Tax, the amount distributed to the Agricultural Development and Food Security Special Fund (Food Security Special Fund) (Section 141-10) is capped at a maximum amount of $3,872,000. (Bill, page 14, lines 11-14) The Department of Agriculture has concerns and offers comments.

This measure provides for a proportionate reduction to the maximum amount of $3,782,000 going into the Food Security Special Fund if the total carbon emissions taxes collected is less than $95,117,000. (Bill, page 15, lines 6-16) All affected funds will be treated in the same manner. This feature adds an unknown degree of instability to the amount from the Food Security Special Fund that the Department can safely and responsibly rely upon to properly fund its nine programmatic purposes set forth in HRS §141-10(c). These purposes directly target agricultural production and processing such as agricultural resources, agricultural research, agricultural equipment, plant quarantine, promotion and marketing of agricultural products, water testing, and other activities that are "...intended to increase agricultural production or processing that may lead to reduced importation of food, fodder, or feed from outside the State." These purposes also directly support the doubling of local food production by 2030 and increasing food self-sufficiency, both initiatives of the Legislature set in Act 151 SLH 2019. The increased uncertainty to the funding source for our important programmatic objectives introduced by this measure may jeopardize our ability to conduct those departmental priorities in an effective manner.

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

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

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Testimony of
SCOTT J. GLENN, Chief Energy Officer

before the
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
Thursday, February 13, 2020
8:30 AM
State Capitol, Conference Room 325

Comments in consideration of
HB 2653
RELATING TO TAXATION.

Chair Lowen, Vice Chair Wildberger, and Members of the Committee, the Hawaii State Energy Office (HSEO) offers comments on HB 2653, which provides a tax credit to lower income taxpayers; replaces the environmental response, energy, and food security tax with a carbon emissions tax; repeals the state fuel taxes; deposits fixed amounts into the special funds currently funded by the barrel tax; deposits a fixed amount into the highway fund; and establishes other substantial changes to, and exemptions from, current fuel taxes.

HSEO appreciates the intent of the bill to establish a fee that is based on carbon emissions, and notes the Hawaii Climate Change Mitigation and Adaption Commission's position that putting a price on carbon is the most effective single action that will achieve Hawaii's ambitious and necessary carbon emission reduction goals. For Hawaii to meet its target to sequester more greenhouse gases than we emit as soon as practicable but no later than 2045, measures such as a carbon tax, with mechanisms to balance and support the variety of economic, social, and environmental challenges faced by our state, must be discussed.

Pursuant to Act 122 (2019), HSEO initiated a carbon pricing study, the final results of which are anticipated by the next legislative session. Meanwhile, we are ready to assist the Legislature should it decide to move forward. We anticipate the general areas of discussion to include: how it will work; what is a necessary and sufficient level to achieve the objectives; how to mitigate anticipated impacts; how to measure effectiveness; and how to respond to and mitigate unintended consequences.

We look forward to working with the Legislature, agencies, and stakeholders to support the State's decarbonization goals.

Thank you for the opportunity to testify.

Testimony Presented to the
House Committee on Energy & Environmental Protection
Thursday, February 13, 2020 at 8:30 a.m.
By
Richard Rocheleau, Director
Hawaiʻi Natural Energy Institute
And
Michael Bruno, PhD
Vice Chancellor for Research
University of Hawai at Mānoa

HB 2653 – RELATING TO TAXATION

Chair Lowen, Vice Chair Wildberger, and members of the committees:

The Hawaiʻi Natural Energy Institute (HNEI) supports the intent of this bill and provides the following comments.

HB 2653 would replace the environmental response, energy, and food security tax with a carbon emissions tax.

HNEI notes that the amount of the tax proposed would be a significant increase over the current level, and could result in some unintended consequences and inequities.

HNEI also notes that few if any available energy sources are "carbon free" when full life-cycle emissions are considered. Although they have lower GHG emissions than fossil fueled generation; technologies like wind and solar especially when combined with battery storage, can have a significant GHG footprint. The entire life-cycle carbon impacts of the fully integrated energy system used to power our islands should be assessed, considered, and balanced to make informed decisions that impact our economy and climate.

Thank you for the opportunity to comment on HB 2653.

HB-2653
Submitted on: 2/9/2020 6:32:31 PM
Testimony for EEP on 2/13/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ted Bohlen	Climate Protectors Coalition	Support	No

Comments:

Aloha Chair Lowen,Vice Chair Wildberger and Energy and Environmental Protection Committee members:

The Climate Protectors Coalition **strongly supports HB 2701!**

The Climate Protectors Coalition is a new group inspired by the Mauna Kea Protectors but focused on reversing the climate crisis. As a tropical island State, Hawaii will be among the first places harmed by the global climate crisis, with more intense storms, loss of protective coral reefs, and rising sea levels.

We must do all we can to reduce our carbon footprint and become at least carbon neutral as soon as possible. This bill provides one way to achieve this--by substituting a use-based carbon emissions tax on all carbon dioxide emitting fuels, such as petroleum, natural gas and coal. This will substitute more accurate price signals for the less precise "barrel tax" and fuel taxes. As noted by the Hawaii Climate Change Mitigation and Adaption Commission, putting a price on carbon is the single most effective means of reducing greenhouse gas emissions. The bill also helps avoid disproportionate impacts on lower income households by providing them a refundable tax credit. This is one way to offset costs to low income households. If the Legislators prefer another option, that likely would be acceptable to the Climate Protectors. What is crucial is that a bill be passed this session to shift to more accurate price signals to limit carbon emissions. Please pass this bill! Mahalo!

HAWAI'I GAS
THE CLEAN ENERGY COMPANY

Testimony to the Committee on Energy and Environmental Protection

Thursday, February 13, 2020
8:30 AM
Conference Room 325, Hawaii State Capitol

House Bill 2653

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

Hawaii Gas **provides these comments** on HB 2653, which replaces the environmental response, energy, and food security tax (commonly called the "barrel tax") with a carbon emission tax on the sale of all fuels having carbon content.

This bill wisely acknowledges the carbon pricing study currently underway, but moves forward with HB 2653 without the knowledge from the ongoing study that would better inform this proposal. We believe the more prudent approach would be to allow the study's completion before taking any action.

We find the measure's methodology defining the tax rates across product lines to be inconsistent and ill-defined. We urge the committee to consider the need for transparency in the methodology so that any such tax is distributed appropriately across all products.

The bill also notes that the climate change experts recommend the increase in tax amounts. However, this may impact global consumers and Hawaii consumers differently.

It's critically important that the impact on our ratepayers and consumers be considered, especially given the financial hardships so many of Hawaii residents currently experience. While this bill takes steps to mitigate the additional costs on low-income households, the reality remains that the credit only partially addresses that impact and that residents across the state will still face that additional financial burden. Before imposing additional costs on the people of Hawaii, it's critically important that the legislature know that the tax will have its intended impact in order to justify that additional burden.

Thank you for the opportunity to testify.

Chamber of Commerce HAWAII
The Voice of Business

Testimony to the House Committee on Energy and Environmental Protection
Thursday, February 13, 2020 at 8:30 A.M.
Conference Room 325, State Capitol

RE: HB 2653, RELATING TO TAXATION

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

The Chamber of Commerce Hawaii ("The Chamber") **opposes** HB 2653, which replaces the environmental response, energy, and food security tax with a carbon emissions tax. This bill would also repeal state fuel taxes under the fuel tax law and would take effect on January 1, 2021; provided that repeal of the fuel tax credit for commercial fishers takes effect beginning with taxable years after December 31, 2020.

The Chamber is Hawaii's leading statewide business advocacy organization, representing 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

Hawaii continues to play a leading role in protecting our environment and increasing energy efficiency. We believe in the benefits of a sustainable future, but we must ensure that solutions that would affect the business community do not impede or create unintended burdens on entrepreneurs. Policies need to be shaped to create common ground, especially so that businesses can have the flexibility to develop and create practical, reasonable and rational solutions to address these important issues. Furthermore, rather than mandates, we encourage innovation and technology to finding solutions.

Additionally, the Chamber would note that Act 122, which was signed into law last year by Governor Ige established the Hawaii State Energy Office and included a provision for the office to conduct a study of carbon pricing. This study would help to determine "whether and how a carbon pricing policy shall be implemented in Hawaii." We feel that until this study has been completed, this bill would be premature. This study will help to provide lawmakers with valuable data for future policies and ensure that there are no unintended consequences to businesses and consumers across the state.

Thank you for this opportunity to provide testimony on HB 2653.

733 Bishop Street, Suite 1200 • Honolulu, Hawaii 96813 • Phone: (808) 545-4300 • Facsimile: (808) 545-4369

blue planet

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
February 13, 2020, 8:30 A.M.
Room 325
(Testimony is 4 pages long)

TESTIMONY IN STRONG SUPPORT OF HB 2653

Aloha Chair Lowen, Vice Chair Wildberger, and members of the Committee:

Blue Planet Foundation **strongly supports HB 2653**, a measure establishing a price on climate-changing carbon emissions for Hawaii. We believe that such a policy is one of the single most effective actions that the state can take to reduce its contribution to climate change and demonstrate clean energy leadership.

Blue Planet Foundation appreciates that SB 3150 contemplates expanding the existing “barrel tax” as the mechanism to establish a carbon emissions tax. **We believe, however, that the carbon emissions tax should be at least $40 per metric ton, increasing incrementally to $80 per metric ton or more in 2030. Further, we support increasing the proposed tax credit amount to reduce the potentially regressive nature of the carbon emissions tax.**

Climate change will have devastating, long-term consequences on Hawaii's environment, economy, and quality of life. For these reasons and others, the State of Hawaii has committed to a decisive and irreversible transition away from fossil fuels, and a swift transition to a clean energy economy powered by one hundred percent renewable energy. The legislature has passed aggressive carbon reduction goals, including the goal to be net carbon neutral by 2045 (Act 15 of 2018) and strive to achieve the objectives of the Paris Climate Agreement (Act 32 of 2017). Setting these bold targets is important, but alone it is insufficient. Despite a growing portfolio of standards, incentives, and

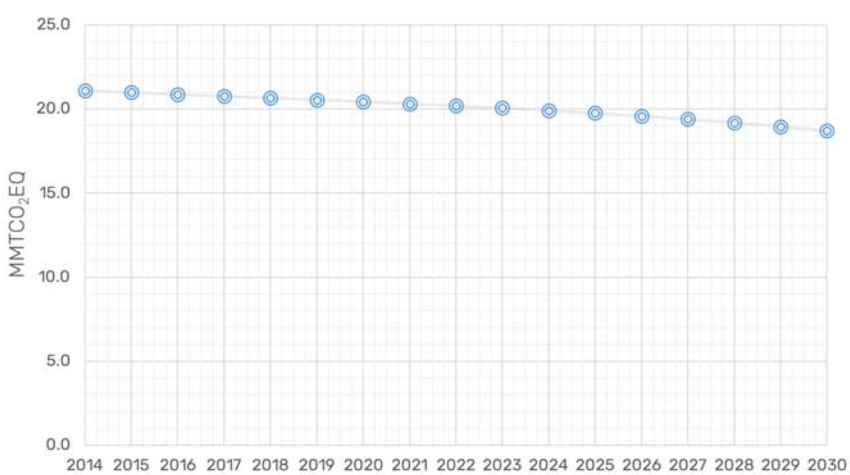

Figure 1. ***Best-case*** *Hawaii greenhouse gas emissions trend with current state policies*

targets, Hawaii's current policies will not succeed in significantly reducing Hawaii's current overall carbon emissions over the next few decades.

Pricing carbon emissions via a tax on fossil fuels has emerged as a broadly supported, economically efficient, and effective policy tool to reduce climate-changing carbon emissions. Economists and leaders from across the political spectrum—including Nobel-prize winning economists, four former chairs of the U.S. Federal Reserve, and 15 former chairs of the U.S. Council of Economic Advisers—have endorsed a carbon tax as a necessary market-based solution to our climate challenge. In fact, over 3500 economists signed a statement last year in the Wall Street Journal—the largest public statement of economists in history—calling for a carbon tax (please see the last page of this testimony)[1]. Locally, economist Paul Brewbaker was recently quoted in the *Honolulu Star-Advertiser* expressing strong support for a carbon tax:

> *"The optimal mix of lower atmospheric carbon-loading and higher atmospheric carbon-sequestration never will be revealed as long as carbon is costless to emit and unremunerative to sequester. For that you need an actual price, not omniscience. We need a market for atmospheric carbon in which you pay to emit (and to guide carbon taxation) and in which you get paid to sequester."*[2]

Currently, the prices of electricity, gasoline, and other fuels reflect little or none of the long-term costs from climate change or even the near-term health costs of burning fossil fuels. This immense "market failure" suppresses incentives to develop and deploy carbon-reducing measures such as energy efficiency, renewable energy, low-carbon fuels, and conservation-based behavior such as bicycling, recycling, and overall mindfulness toward energy consumption. Taxing fuels according to their carbon content will infuse these incentives at every link in the chain of decision and action—from individuals' choices and uses of vehicles, appliances, and housing, to businesses' choices of product design, capital investment, and facilities.

Other jurisdictions have successfully implemented an effective carbon tax. For example, British Columbia currently has a carbon tax of $30 per metric ton ($40 CAD). The BC carbon tax started in 2008 at $7.50 per ton ($10 CAD) and has increased a number of times to its current level. Remarkably, business community—who was initially opposed to the tax—supported expansion of the tax during the last review. According to the BC government, between 2007 and 2016, BC's real GDP grew by 19%, while net emissions declined by 3.7%[3]. BC also provides direct rebate checks to residents from a portion of the carbon tax revenues: the current "Climate Action Tax Credit" to $154.50 (CAD) per adult and $45.50 (CAD) per child. Other revenues go to clean energy programs and income tax reductions.

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[1] Greenspan, A., et. al. (2019, January 16). Economists' Statement on Carbon Dividends. *The Wall Street Journal*.
[2] O'Connell, Maureen. (2020, February 7). Paul Brewbaker: The economist speaks plainly about challenges facing Hawaii — and how to manage them. *Honolulu Star-Advertiser.*
[3] British Columbia's Carbon Tax government website: https://www2.gov.bc.ca/gov/content/environment/climate-change/planning-and-action/carbon-tax

Blue Planet Foundation recognizes, however, that a carbon tax—if not designed correctly—could disproportionately impact low- to moderate-income residents. Most low- to moderate-income households spend a larger percentage of their income on gasoline, other fuels, and electricity than do higher-income households. For example, in 2014, the wealthiest 20% of U.S. households spent just 2.7% of their after-tax income on gasoline; the percentage for the lowest quintile, 10.8%, was four times as high. When viewed in absolute dollar terms, however, the bulk of carbon taxes will be paid, directly or indirectly, by households and visitors of above-average means. Researchers at the University of Hawaii at Manoa have found that the carbon intensity of visitor activities is much higher than those of residents.

A variety of mechanisms exist to reduce the regressive nature of a carbon tax. In addition to the tax credit contemplated in HB 2653, the legislature could consider increasing the state-level match of the Earned Income Tax Credit and making the match refundable; reducing existing taxes (particularly those that are disproportionately paid by lower income residents, such as the General Excise Tax on food and medicine); or providing a direct dividend to residents. Blue Planet Foundation would welcome the opportunity to work with legislators on developing an appropriate mechanism to reduce the potential regressive nature of carbon emissions tax.

Blue Planet Foundation strongly supports advancing a tax on carbon emissions to reduce our contribution to catastrophic climate change.

Thank you for the opportunity to testify.

ECONOMISTS' STATEMENT ON CARBON DIVIDENDS

The Largest Public Statement of Economists in History

#

As appeared in

THE WALL STREET JOURNAL.

THURSDAY, JANUARY 17, 2019

#

Global climate change is a serious problem calling for immediate national action. Guided by sound economic principles, we are united in the following policy recommendations.

I. A carbon tax offers the most cost-effective lever to reduce carbon emissions at the scale and speed that is necessary. By correcting a well-known market failure, a carbon tax will send a powerful price signal that harnesses the invisible hand of the marketplace to steer economic actors towards a low-carbon future.

II. A carbon tax should increase every year until emissions reductions goals are met and be revenue neutral to avoid debates over the size of government. A consistently rising carbon price will encourage technological innovation and large-scale infrastructure development. It will also accelerate the diffusion of carbon-efficient goods and services.

III. A sufficiently robust and gradually rising carbon tax will replace the need for various carbon regulations that are less efficient. Substituting a price signal for cumbersome regulations will promote economic growth and provide the regulatory certainty companies need for long- term investment in clean-energy alternatives.

IV. To prevent carbon leakage and to protect U.S. competitiveness, a border carbon adjustment system should be established. This system would enhance the competitiveness of American firms that are more energy-efficient than their global competitors. It would also create an incentive for other nations to adopt similar carbon pricing.

V. To maximize the fairness and political viability of a rising carbon tax, all the revenue should be returned directly to U.S. citizens through equal lump-sum rebates. The majority of American families, including the most vulnerable, will benefit financially by receiving more in "carbon dividends" than they pay in increased energy prices.

SIGNATORIES INCLUDE

3558 **U.S. Economists**

4 **Former Chairs of the Federal Reserve (All)**

27 **Nobel Laureate Economists**

15 **Former Chairs of the Council of Economic Advisers**

Airlines for America®

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February 11, 2020

Hon. Nicole Lowen, Chair
Hon. Tina Wildberger, Vice Chair
House Committee on Energy and Environmental Protection
State Capitol
415 South Beretania St
Honolulu, HI 96813

Re: Federal preemption issues in HB 2653 and SB 3150

Dear Chair Lowen and Vice Chair Wildberger:

As your Committee continues the important task of considering legislative responses to the challenges posed by emissions contributing to climate change, we want to take this opportunity to highlight the U.S. airlines' strong record in this regard. Further, while states are precluded from imposing carbon taxes, emissions trading systems and other emissions measures on aircraft fuel and aircraft, we note that additional carbon regulation of the airlines and their fuel is unnecessary given our industry's commitments to climate action and federal law and international agreements already addressing aircraft greenhouse gas (GHG) emissions.

Airlines for America® (A4A) is the principal trade and service organization of the U.S. airline industry.[1] As the record of the A4A carriers demonstrates, we take our role in GHG emissions very seriously. Indeed, the U.S. airlines have a tremendous fuel and GHG emissions record, accounting for only 2 percent of the nation's GHG emissions inventory while driving 5 percent of its GDP, over 10 million U.S. jobs and $1.5 trillion in economic activity. In fact, between 1978 and year-end 2018, the U.S. airlines improved their fuel efficiency by more than 130 percent, saving nearly 5 billion metric tons of carbon dioxide (CO_2) – equivalent to taking more than 26 million cars off the road on average in each of those years. Further, data from the Bureau of Transportation Statistics confirms that U.S. airlines carried 42 percent more passengers and cargo in 2018 than in 2000, while emitting only 3 percent more CO_2.

These numbers are not happenstance. As an industry, we have achieved this record by driving and deploying technology, operations and infrastructure advances to provide safe and vital air transport as efficiently as possible within the constraints of our air traffic management system. Indeed, for the past several decades, airlines have dramatically improved fuel efficiency and reduced CO_2 emissions by investing billions in fuel-saving aircraft and engines, innovative technologies like winglets (which improve aerodynamics), and cutting-edge route-optimization software. But, despite our strong record to date, A4A and our member airlines are not stopping there.

[1] The members of the association are Alaska Airlines, Inc.; American Airlines Group, Inc.; Atlas Air, Inc.; Delta Air Lines, Inc.; Federal Express Corporation; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines Holdings, Inc.; and United Parcel Service Co. Air Canada is an associate member.

Since 2009, A4A and our members have been active participants in a global aviation coalition that committed to 1.5 percent annual average fuel efficiency improvements through 2020 and to achieving carbon neutral growth from 2020 onward, subject to critical aviation infrastructure, technology, operations and sustainable fuels advances by government and industry. Further, over the long term, we have committed to achieving a 50 percent net reduction in CO_2 emissions in 2050, relative to 2005 levels.

The initiatives the U.S. airlines are undertaking to further reduce their GHG emissions are designed to responsibly and effectively limit their fuel consumption, GHG contribution and potential climate change impacts while allowing commercial aviation to continue to serve as a key contributor to the U.S. economy. A4A and our members are keenly focused on these initiatives. Our primary focus is on getting further fuel efficiency[2] and emissions savings through new aircraft technology, operations and infrastructure improvements and sustainable alternative jet fuel (referred to as "sustainable aviation fuel," or "SAF"). In addition, A4A and our member airlines have supported two significant international fuel efficiency and GHG savings agreements adopted in 2016 under the auspices of the United Nations body that sets standards and recommended practices for international aviation, the International Civil Aviation Organization (ICAO).

The two ICAO agreements have been embraced by the U.S. federal government and their implementation is underway. The first, which established a fuel efficiency and CO_2 certification standard for new aircraft, will go into effect for large, new-type design aircraft at the end of this year and then will apply to newly manufactured airplanes of existing types starting in 2023. The second agreement established an international carbon offsetting system (the "Carbon Offsetting and Reduction Scheme for International Aviation" or "CORSIA") to help the industry work towards achieving carbon neutral growth in international aviation from 2020. The CORSIA agreement has two parts. First, beginning on January 1, 2019, it required that all aircraft operators with international flights emitting more than 10,000 metric tons of CO_2 monitor and report their emissions under a common set of rules. (Although US aircraft operators have reported fuel burn and emissions to the US government for many years, the ICAO agreement made such reporting a global requirement). Second, CORSIA includes a carbon offsetting obligation, which will commence in 2021 and continue through 2035. This obligation will ensure that should international aviation emissions rise over 2020 levels, those increases will be offset by investment in emissions reductions achieved elsewhere.

Because commercial aircraft cross state (and national) borders and, therefore, cannot be subject to overlapping or conflicting state and local requirements, federal law preempts state and local government regulation of aircraft emissions and the content of and emissions related to jet fuel.[3] Thus, the State of Hawaii would be precluded from adopting legislation along these lines. However, as your Committee considers legislation in the coming days, we urge you to keep the

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[2] Indeed, with fuel being one of the highest and most volatile cost centers for airlines – and every penny of increased fuel price equating to an additional $200 million fuel bill per year – the U.S. airlines' environmental and economic interests in saving fuel and reducing emissions align.

[3] Federal preemption is established both under the federal Clean Air Act (CAA) and federal aviation law. For example, Section 233 of the CAA explicitly preempts states and their political subdivisions from "adopt[ing] or attempt[ing] to enforce any standard respecting emissions of any air pollution from any aircraft or engine thereof unless such standard is identical to a standard" established by the EPA. 42 U.S.C. § 7573. Further, courts have long held that the Federal Aviation Act of 1958 creates a "uniform and exclusive system of federal regulation" of aircraft that preempts state and local regulation. *Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 639 (1973); see also *American Airlines v. Department of Transp*., 202 F.3d 788, 801 (5th Cir. 2000) (aviation regulation is an area where "[f]ederal control is intensive and exclusive") (quoting *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 3030 (1944)). This pervasive federal regulatory scheme extends not only to aircraft in flight, but also to aircraft-related operations on the ground. In addition, the Airline Deregulation Act (ADA) precludes states from "enact[ing] or enforce[ing] a law, regulation, or other provision having the force and effect of law related to a price, route or service." 49 U.S.C. § 41713(b)(1).

federal provisions addressing aviation GHG emissions, our industry's continual drive for greater fuel efficiency, and our commitments for further GHG emissions reduction in mind.

Thank you for your consideration.

Sincerely,

Sean Williams
VP. State and Local Government Affairs
swilliams@airlines.org

HB-2653
Submitted on: 2/9/2020 12:20:20 PM
Testimony for EEP on 2/13/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ron Dellinger	Individual	Oppose	No

Comments:

I strongly object to HB2653, in particular the removal of Section 235.110.6 Credit for fuel taxes paid by a Commercial Fisherman. It is imperative that you, our elected officials, fully understand and reflect on the importance of fishermen to our local economy and not institue obstacles and financial hardships that could force us out of business.

HB-2653
Submitted on: 2/9/2020 5:04:43 PM
Testimony for EEP on 2/13/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kurt Kawamoto	Individual	Oppose	No

Comments:

Strongly oppose the repeal of the commercial fisherman fuel tax credit.

HB-2653
Submitted on: 2/9/2020 5:28:02 PM
Testimony for EEP on 2/13/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Shyla Moon	Individual	Oppose	No

Comments:

Why is the state targeting commercial fishermen? Makes no sense as these are hard working individuals who barely exist in our state of Hawaii. Do not include commercial fishermen in your taxation.

HB-2653
Submitted on: 2/8/2020 1:03:51 PM
Testimony for EEP on 2/13/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
William K. Chang	Individual	Oppose	No

Comments:

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
Rep. Nicole E. Lowen, Chair
Rep. Tina Wildberger, Vice Chair

Rep. Sharon E. Har	Rep. Ryan I. Yamane
Rep. David A. Tarnas	Rep. Cynthia Thielen
Rep. Chris Todd	

NOTICE OF HEARING

DATE: Thursday, February 13, 2020
TIME: 8:30AM
PLACE: Conference Room 325
State Capitol
415 South Beretania Street

RE: HB2653 Relating to Taxation

Honorable Chair Lowen, Vice Chair Wildberger and Members of the Houser Committee on Energy and Environmental Protection:

I write to strongly oppose HB2653 as it repeals the tax credit provided to commercial fishermen. This tax credit was provided as fuel used on our boats are exempted as the majority of the fuel taxes collected goes to State and County highway funds. I also find it curious that agricultural uses of fuel remain exempted and will receive current tax credits,

Then I read on Page 14 Line 15:
" (5) $83,500,000 shall be deposited into the state highway fund established under section 248-8; provided that this amount shall not include taxes collected on gasoline or other aviation fuel sold for use in or used for airplanes or liquid fuel sold for use in or used for small boats."

Commercial fishermen buy liquid fuel (gasoline or diesel) for our small boats. The majority of commercial fishermen in Hawai`i use trailered small boats and wonder how the State will determine what portion of the fuel taxes collected are from fuel purchased for use in or by small boats used by commercial fishermen?

I find it egregious that HB2653 and its companion SB3149 seeks to penalize a small sector of our community that does not use State or County highways without considering the economic impact to these small businesses. This is another blatant example of the vilification of fishermen in this State. We fishermen are proud community members of our State and our contribution to the State's economy, fish consumers, customs and traditions following the heritage of the indigenous community that fed its people farming the land and fishing the sea.

Please reconsider the repeal of credit for fuel taxes paid by commercial fishers. As a Rotarian I am reminded of our Four Way Test. "Is it fair to all concerned?" In my humble opinion, HB2653 and its companion SB3149 are NOT!

Thank you for this opportunity to provide testimony sharing my concerns on a measure that I find extremely unjustified and unfair.

Sincerely,

Roy N. Morioka – Commercial Smallboat Fisherman

HB-2653
Submitted on: 2/8/2020 12:26:48 PM
Testimony for EEP on 2/13/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Brian F. Funai	Individual	Oppose	No

Comments:

HB-2653
Submitted on: 2/11/2020 2:40:34 PM
Testimony for EEP on 2/13/2020 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members:

Please support HB2653. Carbon tax measures have been enacted from Germany to China to Zimbabwe and across the US. The tax increases revenue without significantly altering the economy and promotes a proactive climate change policy in the process.

Climate change is already occurring, and Hawaii coastlines are eroding due to rising sea levels which, at 3mm/year, is unprecedented in the geologic record.

Thank you for the opportunity to present my testimony.

Sincerely,

Andrea Quinn

Kihei, Maui

DAVID Y. IGE
GOVERNOR

TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 13, 2020
8:30 A.M.
State Capitol, Room 325

H.B. 2653
RELATING TO TAXATION

House Committee on Energy & Environmental Protection

The Department of Transportation (DOT) offers **comments and concerns** with this bill that proposes to replace the environmental response, energy, and food security tax with a carbon emissions tax; repeal the state fuel taxes under the fuel tax law; would take effect 1/1/2021; provided that repeal of the fuel tax credit for commercial fishers takes effect beginning with taxable years after 12/31/2020.

While we understand that the intent of this bill supports the State's clean energy policy and goals, the proposed $83,500,000 to be deposited into the state highway fund does not take into consideration any future projections. Further, it is unclear that the overall amount deposited into the State Highways Special fund will remain revenue neutral from the current sixteen (16) cents per gallon amount. The sixteen (16) cents per gallon State fuel tax is one of our largest revenue component, and in State fiscal year 2019, this generated over $83.1 million[1] in highway revenues.

Moreover, the current State fuel tax is identified as a pledged revenue source for Highways Revenue Bond debt service. This will have negative implications to pledged revenues as it implicates our past disclosures in our Official Statements for our past Highways Revenue Bond sales. Highways has a current balance of nearly $449.9 million outstanding revenue bonds that would be affected. This will have to be disclosed to bondholders and may negatively affect our bond rating. Other agencies with revenue bonds may similarly be affected.

The DOT is legally obligated to pay for Revenue Bond debt service first, remaining funds would then be used to pay for costs to operate and maintain the highway system.

We respectfully recommend that supporting calculations be provided to aid affected agencies in understanding the anticipated revenue generation and collections from the various sources. A mere proposal of the gas tax revenue from the previous fiscal year

[1] FY 2019 Unaudited; FY 2018 generated $8.2 million (audited).

without further projections and other considerations may prove detrimental. Therefore, we respectfully request that if this form of tax is established, the Highway's share of revenues from this bill remain equivalent to the current collection of sixteen (16) cent per gallon state fuel tax and that this bill does not adversely impact the State Highway Special Fund.

Additionally, the DOT, as part of the Hawaii Climate Change Mitigation and Adaptation Commission, recognizes the urgency to combat climate threats and the need to act quickly. The State's infrastructure is already impacted by sea level rise and extreme weather events and storms. The DOT also supports legislation that funds State programs to meet Hawaii's ambitious and necessary emissions reduction goals.

It is important to consider for the carbon emissions tax revenues be used in an equitable way to further transition our state to a green, sustainable future, to support those who will be most adversely affected by climate change, and to support those who may potentially bear an undue burden from the implementation of the tax.

The DOT respectfully requests for more discussion, including considering the final results of the carbon pricing study currently underway pursuant to Act 122/2019 by the Hawaii State Energy Office. It may be judicious for a gradual tax schedule to allow for sufficient time for DOT to evaluate and study the economic impacts to DOT's multiple sources of revenues, to meet current bond covenants, satisfy existing debt service obligations, and identify potential initiatives to address a carbon dioxide emissions tax over time.

Thank you for the opportunity to provide testimony.