NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Wednesday, March 20, 2013
2:30 p.m.
State Capitol, Conference Room 325

in consideration of

SB 623, SD2, HD1
RELATING TO RENEWABLE ENERGY.

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee.

The Department of Business, Economic Development & Tourism (DBEDT) supports SB 623, SD2, HD1 to create an appropriate legislative solution regarding the renewable energy income tax credit to provide a predictable investment stimulus for renewable energy deployment. Continuing to support clean energy development is critical to Hawaii's economy: a prime example is that, in 2012, 26 percent of all construction-related spending was attributed to the solar industry; in a time of declining construction spending, solar construction has helped provide welcomed relief to Hawaii's construction industry.

DBEDT recognizes that the framework proposed in SB 623, SD2, HD1 will bring clarity and ease of administration of the credit; and reducing the level of incentive in a predictable and transparent manner will provide support for continued clean energy development. We respectfully defer to the Department of Budget and Finance on budgetary impacts to ensure a fiscally responsible solution.

DBEDT offers a proposed amendment on the reporting required of the Department. Because data is unavailable, DBEDT would propose to delete Section 1, (o)(3)(A)(ii).

Thank you for the opportunity to offer testimony in support of SB 623, SD2, HD1.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR

FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1530
FAX NO: (808) 587-1584

To: The Honorable Angus L.K. McKelvey, Chair
The Honorable Derek S.K. Kawakami, Vice Chair
and Members of the House Committee on Consumer Protection & Commerce

Date: Wednesday, March 20, 2013
Time: 2:30 p.m.
Place: Conference Room 325, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. 623 S.D.2 H.D.1 Relating to Renewable Energy

The Department of Taxation (Department) **appreciates the intent** of S.B. 623 S.D.2, H.D.1, and provides the following summary and comments for your consideration.

Section 1 of this bill amends Hawaii Revised Statutes (HRS) section 235-12.5 by:

- Providing a renewable energy credit for solar water heaters at a rate of 35% with caps of unspecified amounts for single-family residential applications, multi-family residential applications, and commercial application.

- Providing a renewable energy tax credit for solar energy property that has an alternating current capacity which is less than one megawatt at an unspecified rate for solar energy property placed in service between January 1, 2013 and December 31, 2013, an unspecified rate between January 1, 2014 and December 31, 2015, an unspecified rate between January 1, 2016 and December 31, 2017, and an unspecified rate thereafter.

  For this type and size of energy property installed and placed into service, the Department prefers the language of H.B. 967, which offers the credit at a lower rate but removes the cap on the tax credit. Removal of the cap without a concurrent reduction in the percentage of tax credit allowed will result in a much greater revenue loss to the State.

  Additionally, the Department prefers that the tax credit be a fixed percentage, rather than a sliding scale, as it will be substantially easier for the Department to administer and for taxpayers to properly claim the tax credit. The Department notes that declining rates for

each year will create an unnecessary rush for energy property be installed and placed into service at the end of each year. This rush will cause compliance and enforcement issues for both the Department and taxpayers, who have an incentive to claim the tax credit in the earlier year.

Based on inquiries to the Department at the end of each calendar year, the Department has serious concerns about the accuracy of tax information some renewable energy installers have provided to taxpayers with respect to the taxable year in which the tax credit may be properly claimed. The Department's primary concern is that the taxpayer, not the installer, will be required to substantiate that they claimed the tax credit in the correct taxable year.

Additionally, the Department recommends the following amendment to section 235-12.5(a)(2), in order to clarify that solar energy property cannot be broken up to qualify for the credit under section (a)(2) and (a)(3):

> 2) For each solar energy property that is used primarily to generate electricity, is less than one megawatt in alternating current capacity, is not part of a larger solar energy property that in the aggregate qualifies for the credit under paragraph (a)(3), and is installed and first placed in service in the State by a taxpayer during the taxable year; provided that no energy property that receives a tax credit under this paragraph may later receive a production tax credit even if the property is one megawatt or greater:

- Providing a renewable energy production tax credit at an unspecified number of cents per kilowatt hour produced and sold for projects with an alternating current capacity of one megawatt or higher. This production credit can be claimed by the taxpayer for the first 10 years after the project is placed in service. H.D.1 provides separate rates for solar energy property placed in service on or before December 31, 2016, after December 31, 2016 but on or before December 31, 2020, and after December 31, 2020.

  The Department estimates that for each megawatt of capacity installed, at a rate of 8 cents per kilowatt hour produced and sold, the production credit amount will be $128,000 per year and $1.28 million over a ten year period. This means that if a megawatt of capacity costs $3 million to place in service the total credit received is approximately 42.67% of the cost to place in service per megawatt of capacity. The Department additionally notes that the federal production tax credit only provides 2.2 cents per kilowatt hour produced and sold – approximately one-fourth the 8 cents proposed in this measure.

  The Department estimates that for each megawatt of capacity installed, at a rate of 4 cents per kilowatt hour produced and sold, the production credit amount will be $64,000 per year and $640,000 over a ten year period. This means that if one megawatt of capacity costs $3 million to place in service, the total credit received is approximately

21.33% of the cost to place in service per megawatt of capacity.

- Providing a renewable energy tax credit for wind energy property at a rate of 20% with an unspecified cap for wind energy property that has less than one megawatt in output. The Department notes that the cap will be difficult to administer, similar to the current statute, as the measure does not define the cap or provide guidance as to its application.

- Allowing full refundability of the production tax credit claimed for solar energy property with an alternating current capacity of one megawatt or higher.

- Allowing taxpayers not currently regulated by the Public Utilities Commission, that have by December 31, 2012, entered into an agreement with a public sector agency pursuant to a public solicitation and procurement process for the sale of electrical energy from non-residential solar energy property with less than one megawatt of alternating current capacity, to claim the tax credit as if the solar energy property was placed in service prior to January 1, 2013, provided that the property is placed in service prior to January 1, 2014.

  The Department is opposed to the grandfathering aspect of this provision due to the difficulty in compliance and enforcement of the tax credit prior to the issuance of the administrative rules which went into effect on January 1, 2013.

- Allowing taxpayers who received an administrative extension, for a previously-issued Department letter ruling, to claim the tax credit as it existed on December 31, 2012, provided that the energy property is placed in service on or before December 31, 2012.

- Disallowing the claiming of the tax credit by any governmental agency.

- Requiring the Department along with the Department of Business, Economic Development, and Tourism (DBEDT) to compile a detailed joint report and submit the report to the legislature no later than 20 days prior to the convening of each regular session.

  The Department notes that this type of detailed reporting is difficult with the Department's current computer system. In order to meet this requirement, it is likely that the Department will need to require mandatory electronic filing of the information by each taxpayer claiming the credit, as well as additional resources to develop the mandatory filing process.

- The Department importantly notes that for a ten-year production credit, assuming the same amount of capacity is installed each year starting in 2014 and ending in 2019, the amount of the tax credits that show up in the budget window will be only 35% of the actual total cost of the tax credit to the State's taxpayers. This is true, regardless of the

amount of the production tax credit per kilowatt hour. For example, for the systems installed in 2014, 60% of the total cost of the credit will be paid out in the budget window, whereas for systems installed in 2019, only 10% of the total cost of the credit will be paid in the budget window. In other words, any proposed revenue estimate for the production tax credit will account for only about one third of its total cost; the rest of the cost is an unfunded liability in future years.

Thank you for the opportunity to provide comments.

Hawaii Solar Energy Association
Serving Hawaii Since 1977

Before the House Committee Commerce and Consumer Protection
Wednesday, March 20, 2013, 2 p.m., Conference Room 325
SB 623 SD 2 HD 1: RELATING TO RENEWABLE ENERGY

Aloha Chair McKelvey, Vice-Chair Kawakami and members of the House Committee on Commerce and Consumer Protection,

On behalf of the Hawaii Solar Energy Association (HSEA), I would like to testify **in support of SB 623 SD 2 HD 1**, which calls for a gradual ramp down of credits on photovoltaic (PV) installs on homes and small businesses under 1 MW (ITC), and for a production tax credit (PTC) for PV projects of 1 MW or more. SB 623 SD 2 HD 1 also holds steady the credit for solar hot water, and requires DBEDT and the department of taxation to report on both the costs and benefits of the renewable energy tax credit 20 days before each legislative session.

This legislation is key to continuing to progress towards our clean energy goals, and for keeping solar affordable for Hawaii's homes and businesses. Should reform of the current tax credit statute not pass this legislative session, Hawaii's tax credit statute will be back to the status quo with the flawed law and temporary administrative rules that only half-address the loopholes in the current law. The status quo simply should not stand, and HSEA wants to do all it can to support legislation that will create clear, transparent, and fair tax incentives that benefit all parties.

HSEA supports SB 623 SD 2 HD 1 and respectfully suggests the following amendments to fine-tune the new tax credit framework.

<u>Stop ramp down at 20% for ITC</u>
Although a ramp down of the ITC will slow the speed and scale of installations for Hawaiian homes and businesses, HSEA has conceded to a gradual ramp down in the spirit of compromise, and an acknowledgment of budgetary concerns. However, recent data compiled by DBEDT using City and County of Honolulu permitting data has shown that permits issued for 2013 are already down 7.7% from the same period last year, which is most likely the result of the reduced credit currently available under the temporary administrative rules. As incentives are reduced, fewer consumers can afford PV, and history has shown that once incentives drop below 20%, participation abruptly drops off. HSEA therefore asks that legislature stop the gradual reduction at 20%, rather than allowing it to drop to 15% as previously suggested

<u>Chose a PTC equitable with ITC</u>
HSEA supports residential, commercial, and utility scale projects, and recognizes the importance of having a wide variety of energy strategies. However, installations of less than 1 MW have several benefits that utility scale projects do not. ITC or "roof-top" installations immediately

reduce the customer's electric bill, do not suffer from grid losses as the power is generated on site, and usually do not add to grid saturation due to the small size of the installations. Although it is true that utility scale projects incur expenses unique to large scale projects, utility scale projects also benefit from being able to deduct depreciation and other expenses, a benefit that homeowners are not able to apply.

Therefore, HSEA respectfully recommends that the legislature choose a rate for the production tax credit (PTC) that is comparable with the ITC. In addition, HSEA recommends that the PTC credit gradually ramp down to reflect increasingly reduced install costs for utility scale projects, and to keep the ITC and PTC incentives equitable.

Apply the discount for the refundable credit to both ITC and PTC

HSEA also respectfully recommends that a discount on the refundable credit be equally applied to both ITC and PTC projects. Allowing a refundable credit without discount for PTC gives an unwarranted advantage to PTC, and further encourages a framework that will send Hawaii dollars out of state. By applying the 30% discount to both ITC and PTC, the tax credit is applied more fairly, and companies which benefit from the PTC would be encouraged to hire local contractors and incur local tax liability.

Thank you for the opportunity to testify.

Leslie Cole-Brooks
Executive Director
Hawaii Solar Energy Association

AET, LLC
Alternate Energy
Bonterra Solar
C & J Solar Solutions
Conergy
Energy Industries
Dependable Hawaii Express
Ferguson
Giant Solar
Hawaii Energy Connection
Hawaii Island Solar
Hoku Scientific
Island Pacific Energy
Ku'oko'a
Maui Pacific Solar
Pacific Basin
Poncho's Solar
Rheem Manufacturing
Smart Energy Hawaii
SolarWave Hawaii
Sun Earth, Inc.
Talent HR Solutions
Enecsys Micro-inverters
Affordable Solar Contracting
American Electric Company, LLC
Bureau Veritas North America
Coffman Engineers, Inc.
DHX
Enphase
Energy Unlimited, Inc.
Forest City Residential Group
Grand Solar
Hawaii Home Expo & Marbelhaus Trading
Hi-Tech Plumbing
Honeywell Utility Solutions
Island Solar Service
Kyocera Solar Inc.
Mercury Solar
Phoenix Solar
R & R Solar Supply
Schenk's Specialized Services LLC
Solar Services Hawaii
SolarWorld California
Sunectric
WESCO Distribution
Allana Buick & Bers
B. Bautista Electrical
Cano Electric
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Dr. Stephen Allen
Energy Industries
EnergyPro Hawaii
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Haleakala Solar
Hawaii Electric Company
HNU Energy
Inter-Island Solar Supply
Kheiron Partners
Lumen Solar, LLC
Morikawa & Associates
PhotonWorks Engineering
REC Solar, Inc.
Schlissel & Associates
SolarCity
Sun King
SunHedge
Unirac

3/20/2013	**House Committee on Consumer Protection and Commerce**	**CPC**
2:30 p.m.		**SB 623**

TESTIMONY IN SUPPORT

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

Hawaii PV Coalition **supports** SB 623, HD1, which will reform the Renewable Energy Technologies Income Tax Credit ("RETITC") while maintaining the viability of the solar industry. SB 623, HD1 will save the State tens of millions of dollars in tax credit related outlays, while continuing to promote solar energy technologies that will allow Hawai'i to reach its clean energy goals and reduce our depends on imported fossil fuels.

However, there are two critical areas in which SB 623, HD1 should be amended before it can move forward as a viable bill: **first**, the tax credit percentages which were left blank in this version of the bill must be filled in; **second**, three critical technical amendments must be made to avoid fatal implementation problems with the bill. We respectfully offer suggestions for these three areas below.

1. **Tax Credit Percentages and Cap Amounts Must Be Filled In**

The current version of SB 623 contains blanks in section (a) that must be filled in. We recommend that the Committee re-insert the percentages and cap amounts contained in HB 497 HD3, which closely track the percentages and cap amounts contained in prior versions of SB 623. Specifically, we recommend the following numbers be used:

- For section (a)(1), solar thermal tax credit caps in the amounts of:
  - **$2,500** per property for single-family residential property;
  - **$500** per unit per property for multi-family residential property;
  - **$250,000** per property for commercial property
- For section (a)(2), solar tax credit percentages in the amounts of:
  - **30%** for property placed in service after December 31, 2012 and before January 1, 2014;
  - **25%** for property placed in service after December 31, 2013 and before January 1, 2016;
  - **20%** for property placed in service after December 31, 2015 and before January 1, 2018;
  - **15%** for property placed in service after December 31, 2017.
- For section (a)(3), production tax credit amounts of:
  - **8 cents/kWh** for solar energy property installed and placed in service on or before December 21, 2016;
  - **6 cents/kWh** for solar energy property installed and placed in service on or before December 31, 2020;
  - **4 cents/kWh** for solar energy property installed and placed in service after December 31, 2020.
- For section (a)(4), a cap on the utility-scale wind energy credit of **$500,000**.

2. Critical Technical Revisions

There are three critical technical revisions that must be made in order to avoid potentially serious or even fatal implementation problems with the legislation. These three technical amendments are: (a) to the definition of "Property"; (b) to the definition of "Basis"; and, (c) to clarify the availability of the credit for utility-scale wind energy property.

(a) Definition of "Property"

SB 623 rightly attempts to rely on the federal definition of energy "property" in its reform of HRS § 235-12.5 by defining "property" as having "the same meaning as in section 25D, 45, or section 48 of the Internal Revenue Code." Unfortunately, however, "property" is not defined as a stand-alone term in any of those three sections of the IRC, and to the extent it is defined in conjunction with other terms — e.g., "energy property" and "qualified solar electric property expenditure"—the definitions are inconsistent and/or contradictory. For example, "energy property" in Sec. 48 is defined so as to exclude property that is not depreciable, since Sec. 48 only applies to commercial property. This won't work for HRS § 235-12.5, where the definition of property is intended to apply to both residential and commercial property. In any case, SB 623, HD1 maintains a tie-in to the federal IRC for interpretation of these terms via its section (j), which provides that "The tax credits provided for in this section shall be construed in accordance with Treasury Regulations and judicial interpretations of similar provisions in sections 25D, 45, and 48 of the Internal Revenue Code."

In order to address this technical flaw, we recommend that the definition of "Property" used in SB 623, HD1 be replaced with the following definition:

> "Property" means (i) equipment which uses wind or solar energy to generate electricity; (ii) the construction, reconstruction, or erection of which is completed by the taxpayer, or which is acquired by the taxpayer if the original use of such property commences with the taxpayer.

This proposed definition takes key elements of the federal law definition and applies them to HRS § 235-12.5 in a workable manner. Specifically, the proposed definition above:

- Copies language from Section 48(a)(3)(A)(i) to define solar and wind property as equipment that makes electricity from these resources;
- Copies language from Section 48(a)(3)(B)(i) to limit the credit to activities (construction, reconstruction, or erection) completed by the taxpayer; and,
- Copies language from Section 48(a)(3)(B)(ii) to clarify the taxpayer must be the original user of the property to qualify for the credit.

The proposed definition accomplishes the objective of following the federal law while allowing the definition to apply to both commercial and residential property. If the definition of "Property" in SB 623, HD1 is not amended, the definition will be meaningless since "property" is not, by itself, a defined term in any of the referenced federal statutes.

(b) Definition of "Basis"

SB 623 also rightly attempts to rely on federal law for the definition of "Basis." The third sentence of the definition of "Basis" fully accomplishes this goal of "following the federal" by stating:

> "The basis used under this part shall be consistent with the use of basis in section 25D or section 48 of the Internal Revenue Code of 1986, as amended; provided that for the purposes of calculating the credit allowed under this chapter, the basis of the solar energy property or the wind energy property shall not be reduced by the amount of any federal tax credit or other federally subsidized energy financing received by the taxpayer."

However, this approach is jeopardized by the preceding sentence in the definition of "Basis," which states that: "Any cost incurred and paid for the repair, construction, or reconstruction of a structure in conjunction with the installation and placing in service of solar or wind energy property shall not constitute a part of the basis for the purpose of this section." In fact, both federal law and the existing language of HRS § 235-12.5 allow for the repair, construction, or reconstruction of certain "structures," such as racking and mounting equipment used to support photovoltaic panels.

In order to include as part of the basis those costs which are legitimately necessary to and a part of the renewable energy installation while still preventing abuses, we suggest the following sentence be inserted between the second and third sentence of the definition:

> <u>For the purposes of this section, the term "structure" shall not apply to facilities, equipment, mounting or support apparatus used primarily to support or to provide services for solar or wind energy property.</u>

This added sentence will ensure that the Hawaii definition of "Basis" is consistent with federal law and allows taxpayers to legitimately claim racking and mounting equipment and other support apparatus while still prohibiting re-roofing and other abuses.

(c) Clarification of the Credit for Utility Scale Wind Energy Property

It is our understanding that the intent of SB 623, HD1 is not to include a wind tax credit for projects larger than 1 MW. As drafted, however, a larger wind energy project comprised of turbines whose individual rated capacities are below 1 MW would arguably be eligible for an investment tax credit because it is possible that each turbine would be considered separate "property." If the intent of the Committee is to limit the investment tax credit's availability to solar and wind developments in which the overall project is less than one MW in size, the Committee may wish to substitute "not part of a larger wind energy property" in section (a)(4) with "not part of a larger wind energy development". A similar change could be made in section (a)(2) by replacing "not part of a larger solar energy property" with "not part of a larger solar energy development" or "not part of a larger solar energy facility."

Once again we support this bill, and we hope that the technical recommendations offered above may be of some use to the Committee. Thank you for the opportunity to provide this testimony.

Sincerely,

Mark Duda
President, Hawaii PV Coalition

The Hawaii PV Coalition was formed in 2005 to support the greater use and more rapid diffusion of solar electric applications across the state. Working with business owners, homeowners and local and national stakeholders in the PV industry, the Coalition has been active during the state legislative sessions supporting pro-PV and renewable energy bills and helping inform elected representatives about the benefits of Hawaii-based solar electric applications.

The Pacific Resource PARTNERSHIP

Comments by Cindy McMillan
The Pacific Resource Partnership

House Committee on Consumer Protection & Commerce
Representative Angus L.K. McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair

SB 623, SD2, HD1 – Relating to Renewable Energy
Wednesday, March 20, 2013
2:30 pm
Conference Room 325

Aloha Chair McKelvey, Vice Chair Kawakami and Members of the Committee:

The Pacific Resource Partnership (PRP) is a labor-management consortium representing over 240 signatory contractors and the Hawaii Regional Council of Carpenters.

PRP **supports** SB 623 SD2 HD1, Relating to Renewable Energy, which will reform the Renewable Energy Technologies Income Tax Credit ("RETITC") while maintaining the viability of the solar industry. This bill will save the State tens of millions of dollars in tax credit related outlays, while continuing to promote solar energy technologies that will allow Hawaii to reach its clean energy goals and reduce our depends on imported fossil fuels.

However, there are two critical areas in which SB 623 SD2 HD1 should be amended before it can move forward as a viable bill: **first**, the tax credit percentages which were left blank in this version of the bill must be filled in; **second**, three critical technical amendments must be made to avoid fatal implementation problems with the bill. We respectfully offer suggestions for these three areas below:

1. Tax Credit Percentages and Cap Amounts Must Be Filled In

The current version of SB 623 contains blanks in section (a) that must be filled in. We recommend that the Committee re-insert the percentages and cap amounts contained in HB 497 HD3, which closely track the percentages and cap amounts contained in prior versions of SB 623. Specifically, we recommend the following numbers be used:

- For section (a)(1), solar thermal tax credit caps in the amounts of:
  - **$2,500** per property for single-family residential property;
  - **$500** per unit per property for multi-family residential property;
  - **$250,000** per property for commercial property
- For section (a)(2), solar tax credit percentages in the amounts of:

  - **30%** for property placed in service after December 31, 2012 and before January 1, 2014;
  - **25%** for property placed in service after December 31, 2013 and before January 1, 2016;
  - **20%** for property placed in service after December 31, 2015 and before January 1, 2018;
  - **15%** for property placed in service after December 31, 2017.
- For section (a)(3), production tax credit amounts of:
  - **8 cents/kWh** for solar energy property installed and placed in service on or before December 21, 2016;
  - **6 cents/kWh** for solar energy property installed and placed in service on or before December 31, 2020;
  - **4 cents/kWh** for solar energy property installed and placed in service after December 31, 2020.
- For section (a)(4), a cap on the utility-scale wind energy credit of **$500,000**.

2. Critical Technical Revisions

There are three critical technical revisions that must be made in order to avoid potentially serious or even fatal implementation problems with the legislation. These three technical amendments are: (a) to the definition of "Property"; (b) to the definition of "Basis"; and, (c) to clarify the availability of the credit for utility-scale wind energy property.

(a) Definition of "Property"

SB 623 rightly attempts to rely on the federal definition of energy "property" in its reform of HRS § 235-12.5 by defining "property" as having "the same meaning as in section 25D, 45, or section 48 of the Internal Revenue Code." Unfortunately, however, "property" is not defined as a stand-alone term in any of those three sections of the IRC, and to the extent it is defined in conjunction with other terms — e.g., "energy property" and "qualified solar electric property expenditure" — the definitions are inconsistent and/or contradictory. For example, "energy property" in Sec. 48 is defined so as to exclude property that is not depreciable, since Sec. 48 only applies to commercial property. This won't work for HRS § 235-12.5, where the definition of property is intended to apply to both residential and commercial property. In any case, SB 623 SD2 HD1 maintains a tie-in to the Federal IRC for interpretation of these terms via its section (j), which provides that "The tax credits provided for in this section shall be construed in accordance with Treasury Regulations and judicial interpretations of similar provisions in sections 25D, 45, and 48 of the Internal Revenue Code."

In order to address this technical flaw, we recommend that the definition of "Property" used in SB 623 SD2 HD1 be replaced with the following definition:

> <u>"Property" means (i) equipment which uses wind or solar energy to generate electricity; (ii) the construction, reconstruction, or erection of which is completed by the taxpayer, or which is acquired by the taxpayer if the original use of such property commences with the taxpayer.</u>

This proposed definition takes key elements of the federal law definition and applies them to HRS § 235-12.5 in a workable manner. Specifically, the proposed definition above:

- Copies language from Section 48(a)(3)(A)(i) to define solar and wind property as equipment that makes electricity from these resources;
- Copies language from Section 48(a)(3)(B)(i) to limit the credit to activities (construction, reconstruction, or erection) completed by the taxpayer; and,
- Copies language from Section 48(a)(3)(B)(ii) to clarify the taxpayer must be the original user of the property to qualify for the credit.

The proposed definition accomplishes the objective of following the federal law while allowing the definition to apply to both commercial and residential property. If the definition of "Property" in SB 623 SD2 HD1 is not amended, the definition will be meaningless since "property" is not, by itself, a defined term in any of the referenced federal statutes.

(b) Definition of "Basis"

SB 623 also rightly attempts to rely on federal law for the definition of "Basis." The third sentence of the definition of "Basis" fully accomplishes this goal of "following the federal" by stating:

> "The basis used under this part shall be consistent with the use of basis in section 25D or section 48 of the Internal Revenue Code of 1986, as amended; provided that for the purposes of calculating the credit allowed under this chapter, the basis of the solar energy property or the wind energy property shall not be reduced by the amount of any federal tax credit or other federally subsidized energy financing received by the taxpayer."

However, this approach is jeopardized by the preceding sentence in the definition of "Basis," which states that: "Any cost incurred and paid for the repair, construction, or reconstruction of a structure in conjunction with the installation and placing in service of solar or wind energy property shall not constitute a part of the basis for the purpose of this section." In fact, both federal law and the existing language of HRS § 235-12.5 allow for the repair, construction, or reconstruction of certain "structures," such as racking and mounting equipment used to support photovoltaic panels.

In order to include as part of the basis those costs which are legitimately necessary to and a part of the renewable energy installation while still preventing abuses, we suggest the following sentence be inserted between the second and third sentence of the definition:

> <u>For the purposes of this section, the term "structure" shall not apply to facilities, equipment, mounting or support apparatus used primarily to support or to provide services for solar or wind energy property.</u>

This added sentence will ensure that the Hawai‘i definition of "Basis" is consistent with federal law and allows taxpayers to legitimately claim racking and mounting equipment and other support apparatus while still prohibiting re-roofing and other abuses.

(c) Clarification of the Credit for Utility Scale Wind Energy Property

It is our understanding that the intent of SB 623 SD2 HD1 is not to include a wind tax credit for projects larger than 1 MW. As drafted, however, a larger wind energy project comprised of turbines whose individual rated capacities are below 1 MW would arguably be eligible for an investment tax credit because it is possible that each turbine would be considered separate "property." If the intent of the

Committee is to limit the investment tax credit's availability to solar and wind developments in which the overall project is less than 1 MW in size, the Committee may wish to substitute "not part of a larger wind energy property" in section (a)(4) with "not part of a larger wind energy development." A similar change could be made in section (a)(2) by replacing "not part of a larger solar energy property" with "not part of a larger solar energy development" or "not part of a larger solar energy facility."

PRP supports this bill, and we hope that the technical recommendations offered above may be of some use to the Committee. Thank you for the opportunity to provide this testimony.

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Renewable energy technology tax credit

BILL NUMBER: SB 623, HD-1

INTRODUCED BY: House Committee on Energy and Environmental Protection

BRIEF SUMMARY: Amends HRS section 235-12.5 to provide that a solar energy property that is used to heat water shall be eligible for a tax credit of 35% of the basis and shall not exceed: (1) $_____ per property for single-family residential property; (2) $_____ per unit per property for multi-family residential property; and (3) $_____ per property for commercial property.

A solar energy property that is used primarily to generate electricity, is less than one megawatt in alternating current capacity shall be eligible for a tax credit of: (1) ___% of the basis for solar energy property placed in service after December 31, 2012 and before January 1, 2014; (2) ___% of the basis for solar energy property placed in service after December 31, 2013 and before January 1, 2016; (3) ___% of the basis for solar energy property placed in service after December 31, 2015 and before January 1, 2018; and (4) ___% of the basis for solar energy property placed in service after December 31, 2017. An energy property that receives a tax credit under this paragraph shall not be eligible for another tax credit even if the property is one megawatt or greater.

A solar energy property that is used primarily to generate electricity that is greater than one megawatt in alternating current capacity shall be eligible for a tax credit of: (1) on or before December 31, 2016, _____ cents multiplied by the number of kilowatt-hours produced by the solar energy property and sold by the taxpayer to an unrelated entity during the taxable year, or produced by the solar energy property and used on-site to offset the site's demand for electricity during the taxable year, for the first 10 years that the solar energy property is in service; (2) after December 31, 2016, but on or before December 31, 2020, ____ cents multiplied by the number of kilowatt-hours produced by the solar energy property and sold by the taxpayer to an unrelated entity during the taxable year or produced by the solar energy property and used on-site to offset the site's demand for electricity during the taxable year, for the first 10 years that the solar energy property is in service; and (3) after December 31, 2020, ____ cents multiplied by the number of kilowatt-hours produced by the solar energy property and sold by the taxpayer to an unrelated entity during the taxable year or produced by the solar energy property and used on-site to offset the site's demand for electricity during the taxable year, for the first 10 years that the solar energy property is in service.

A wind energy property that is less than one megawatt in output and is not part of a larger wind energy property shall be eligible for a tax credit of 20% of the basis or $_____, whichever is less.

Defines "basis" as costs related to the energy property, including accessories, energy storage, and installation, not including the cost of consumer incentive premiums unrelated to the operation of the energy property or offered with the sale of the energy property and costs for which another credit is claimed under this chapter. Any cost incurred and paid for the repair, construction, or installation and

placing in service of solar or wind energy property shall not constitute a part of the basis for the purpose of this section. The basis used under this part shall be consistent with the use of basis in section 25D or section 48 of the Internal Revenue Code. For the purposes of calculating the credit allowed under this chapter, the basis of the solar energy property or the wind energy property shall not be reduced by the amount of any federal tax credit or other federally subsidized energy financing received by the taxpayer.

Defines "placed in service," "property" and "public sector agency" for purposes of the measure.

For a solar energy property that is used primarily to generate electricity that is greater than one megawatt in alternating current capacity, if the tax credit exceeds a taxpayer's tax liability, the excess of the credit amount over payments due shall be refunded to the taxpayer. Tax credit amounts properly claimed by a taxpayer who has no income liability shall be paid to the taxpayer provided that no refund on account of the tax credit allowed by this section shall be made for less than $1.

In lieu of the credits described above, an individual or corporate taxpayer not currently regulated by the public utilities commission that had by December 31, 2012 entered into an agreement with a public sector agency pursuant to a public solicitation and procurement process for the sale of electrical energy from non-residential solar energy property with less than one megawatt of alternating current capacity may elect to receive tax credits for energy properties placed into service prior to January 1, 2014, on the same basis as if the energy property had been placed into service prior to January 1, 2013; provided that the taxpayer provides a copy of the agreement to the department of taxation.

Permits an association of apartment owners to claim the credit in its own name for property or facilities placed in service and located on common areas.

The credit may not be claimed by any federal, state, or local government or any political subdivision, agency, or instrumentality thereof.

Requires the department of taxation and the department of business, economic development, and tourism (DBEDT) to collaborate to issue a joint report to the legislature prior to each regular session. Delineates what shall be included in the report.

Requires DBEDT to commence a study by July 1, 2016 on the costs incurred and benefits gained, as well as the extent to which the tax credits under HRS section 235-12.5 have helped the state achieve its energy goals. DBEDT shall consult with the department of taxation and industry trade groups and may consult with other stakeholders and shall submit a report to the legislature by December 31, 2017 which shall include the results of its study and recommendations on whether the various tax credits under HRS section 235-12.5 should be continued, eliminated, or revised.

EFFECTIVE DATE: July 1, 2050; applicable to tax years beginning after December 31, 2012

STAFF COMMENTS: The existing renewable energy technologies income tax credit is 35% for solar energy systems or 20% for wind energy systems with dollar limits on the amount of credit that may be claimed depending on whether the system is used to heat water or generate electricity and whether the system is installed on a single or multi-family residential property or commercial property.

This measure reduces the amount of credit for solar energy property that produces less than 1 megawatt of electricity from 35% to ___% for systems placed in service for the 2013 tax year; ___% for the 2014-2015 tax year; ___% for the 2016-2017 tax year, and ___% for the 2018 tax year and thereafter. This measure would also extend the renewable energy technology tax credit to solar energy properties that generate over 1 megawatt of electricity at the rate of ____ cents per kilowatt hour for the first 10 years the property is placed in service for tax years beginning on or before December 31, 2016 and thereafter.

Although this slow weaning of the taxpaying public from its dependence on the tax incentive may sound like a great idea, it ignores the phenomenon that occurred this past year when taxpayers were given notice that there would be new rules for the ball game beginning with the first of the year. Instead, consideration should be given to setting the tax incentive rate at a more modest level and then warning taxpayers that it will disappear in three or five years. This will help to even out the demand for installations as taxpayers assess the cost benefit of installing such devices. As proposed, as each year of the phase out occurs, there will, no doubt, be a rush to beat the expiring deadline, creating spikes of activity and therefore uneven impact of revenue losses.

While it appears that this measure is proposed to reduce the outflow of tax credits due to the misinterpretation of the existing tax credit provisions, it is questionable why the proposed measure expands the renewable energy technologies income tax credits to include larger solar energy facilities. As advocates argue, the cost of fossil-fuel generated electricity will continue to rise and therefore create a natural demand for these alternate energy generating devices.

While some may consider an incentive necessary to encourage the use of alternate energy devices, it should be noted that the high cost of these energy systems limits the benefits to those who have the initial capital to make the purchase. If it is the intent of the legislature to encourage a greater use of renewable energy systems by increasing and expanding the existing system of energy tax credits, as an alternative, consideration should be given to a program of low-interest loans. However, if the taxpayer avails himself of the loan program, the renewable energy credit should not be granted for projects utilizing the loan program as the project would be granted a double subsidy by the taxpayers of the state.

Such low-interest loans that can be repaid with energy savings, would have a much more broad-based application than a credit which amounts to nothing more than a "free monetary handout" or subsidy by state government. A program of low or no-interest loans would do much more to increase the acquisition of these devices. It should be noted that the state is again attempting to establish such a loan program. There is no doubt that such a loan program would not only make the devices available to those who cannot afford the up-front costs, but also be far less expensive than the current system of tax credits. It would also allow a more close monitoring of the quality and efficiency as well as the actual costs of such devices, which, because of the current system of tax credits, may be wildly over-inflated.

Instead of providing tax incentives for the purchase of existing technology, lawmakers may want to take advantage of Hawaii's natural environment which lends itself to all sorts of possibilities to explore and develop more efficient means of harnessing the natural resources that pervade the Islands, from wind to sun to geothermal to hydrogen from Hawaii's vast resources, all of which could be further developed with the assistance and cooperation of government in Hawaii.

The current statute providing these tax incentives for renewable energy technologies reflects the lack of due diligence and good hard research on the part of lawmakers. Apparently the caps imposed on the tax

incentive for the solar electric generating systems are far from being realistic. For example, the $5,000 cap for residential installations translates into about $15,000 of "actual cost." Anything greater than that amount would exceed the cap of the 35% tax credit. On the commercial side, the half million-dollar cap may be insufficient for a commercial building to generate a net-zero status that would avoid a stand-by charge by the local electric company. Those stand-by charges have been reported to sometimes exceed the bills had the building owner not installed such solar electric generating systems. Thus, the law, as currently written, does not take into account these resulting contradictions.

While this and other measures demand serious consideration in order to stem the abuse of the current tax credit provisions, lawmakers and staff need to spend time during the interim researching and honing the tax incentive to be a more reasonable incentive that is forged in a good understanding of the developing technology. What is currently on the books reflects a technology long deemed archaic and, therefore, the tax incentive is less than efficient.

Finally, while alternate energy businesses claim that the loss of the tax credit will have a severe negative impact on their industry and create the loss of jobs, lawmakers have to ask "at what price?" Lawmakers have to acknowledge that every taxpayer who has not been able to take advantage of such installations has subsidized those who have been able to avail themselves of these installations and, therefore, the credit. Similarly, like other targeted business tax credits, taxpayers have been asked to subsidize one industry at the expense of not only families but other businesses in the community, some of whom because of the heavy burden of taxes have had to close their doors during the recent downturn in the state's economy. Since tax credits are a dollar-for-dollar reduction of those tax dollars that are needed to underwrite state programs and services, unless those programs and services are reduced or eliminated, the dollars needed to keep them running must come from other taxpayers who are not so favored. Thus, the alternate energy tax credits are not only a subsidy of those businesses but also of their employees. Again, a subsidy that is paid out while other businesses are going out of business and their workers are being laid off.

Thus, while this proposal calls for the collaborative efforts of the department of taxation and DBEDT to evaluate the effectiveness and efficiency of the alternate energy tax credits, the same mandate should be applied to all other tax credit programs currently available as well as those that have expired in recent years like the high technology tax credits and those for construction and renovation. Beneficiaries have touted the benefits of these credits but little has been said about the negative impact those credits have had on all other taxpayers and the programs the foregone tax dollars affected. Questions must be posed about the foregone opportunities to reduce the heavy tax burden on the state's taxpayers and more importantly on the impact it has had on the growth of the state's overall economy and potential prosperity.

Digested 3/19/13

Sovereign Councils
of the
Hawaiian Homelands
Assembly

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Hawai'i

Jared Aiwohi
Executive Officer
Maui

Renee Plunkett
Director
Lanai

Annie Au Hoon
Executive Director

March 18, 2013

To: **Rep. McKelvey, Chair**
Rep. Kawakami, Vice Chair & Members of the House Committee on Consumer Protection & Commerce

From: **Kali Watson**
Chairman of Statewide Economic/Housing Development
SCHHA
Honolulu, Hawaii 96792

Re: **Hearing on Renewable Energy SB 623, SD2 HD1**
March 20, 2013 at 2:30 pm
Hawaii State Capitol

TESTIMONY IN SUPPORT

Dear Chair McKelvey, Vice Chair Kawakami and Members:

Thank you for the opportunity to provide testimony in support of SB 623 SD2 HD1 regarding renewable energy. It will make needed reforms to the Renewable Energy Technologies Income Tax Credit ("RETITC") to reduce the credit's cost to the State. Specifically, SB 623 SD2 HD1 takes a reasonable approach towards reforming the RETITC by reducing the tax credit's cost to the State while maximizing the amount of solar that will be installed, and by preserving all sectors of the solar photovoltaic industry, especially utility sized projects.

There is a critical area in which SB 623 SD2 HD1 should be amended before it can move forward as a viable bill: the tax credit percentages which were left blank in this version of the bill must be filled in.

We respectfully offer a suggestion for this below.

1. Tax Credit Percentages and Cap Amounts Must Be Filled In

The current version of SB 623 contains blanks in sections (a) which must be filled in. We recommend that the Committee re-insert the percentages and cap amounts contained in HB 497 HD3, which closely track the percentages and cap amounts contained in prior versions of SB 623. Specifically, we recommend the following numbers be used:

For section (a)(2), solar tax credit percentages in the amounts of::

- **30%** for property placed in service after December 31, 2012 and before January 1, 2014;
- **25%** for property placed in service after December 31, 2013 and before January 1, 2016;
- **20%** for property placed in service after December 31, 2015 and before January 1, 2018;
- **15%** for property placed in service after December 31, 2017.

- For section (a)(3), production tax credit amounts of:
  - **8 cents/kWh** for solar energy property installed and placed in service on or before December 21, 2016;
  - **6 cents/kWh** for solar energy property installed and placed in service on or before December 31, 2020;
  - **4 cents/kWh** for solar energy property installed and placed in service after December 31, 2020.

For the past several years, we have been developing two 5 MW utility sized projects on Oahu in the Kalaeloa area. Failure to make the changes proposed will be devastating to these projects. Financing will be very difficult. The whole concept is to develop state trust lands in a way in which will generate significant revenues for native Hawaiian community programs and projects. The proposed changes will facility the financing, development and construction of these pending projects. The present language eliminates the limiting and somewhat ambiguous HECO milestones and allows our projects to proceed with certain acceptable specific yearly deadlines.

The Sovereign Councils of the Hawaiian Homelands Assembly, formerly the State Council of Hawaiian Homestead Associations was founded more than 25 years ago to unite homestead communities and to advocate for the beneficiaries of the Hawaiian Homes Commission Act of 1921. The SCHHA is the oldest statewide advocacy organization representing the interests of more than 30,000 beneficiaries and families residing in the communities of the Hawaiian Home Land Trust. Its mission is to promote the self determination of native Hawaiians and the well-being of homestead communities. As Chairman of Economic/Housing /Committee, it's critical that we have a more conducive and viable approach to financing of our solar projects.

Once again we support this bill, and we hope that the recommendation offered above may be of some use to the Committee. Thank you for the opportunity to provide this testimony.

Sincerely,

Kali Watson
Chairman of Economic Development

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Wednesday, March 20, 2013 — 2:30 p.m.

TESTIMONY SUPPORTING
SB 623, HD1 RELATING TO RENEWABLE ENERGY

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

Distributed Energy Partners **supports** SB 623, HD1, which will reform the Renewable Energy Technologies Income Tax Credit ("RETITC") while maintaining the viability of the solar industry. SB 623, HD1 will save the State tens of millions of dollars in tax credit related outlays, while continuing to promote solar energy technologies that will allow Hawai'i to reach its clean energy goals and reduce our depends on imported fossil fuels.

However, there are two critical areas in which SB 623, HD1 should be amended before it can move forward as a viable bill: **first**, the tax credit percentages which were left blank in this version of the bill must be filled in; **second**, three critical technical amendments must be made to avoid fatal implementation problems with the bill. We respectfully offer suggestions for these three areas below.

1. **Tax Credit Percentages and Cap Amounts Must Be Filled In**

The current version of SB 623 contains blanks in section (a) that must be filled in. We recommend that the Committee re-insert the percentages and cap amounts contained in HB 497 HD3, which closely track the percentages and cap amounts contained in prior versions of SB 623. Specifically, we recommend the following numbers be used:

- For section (a)(1), solar thermal tax credit caps in the amounts of:
  - **$2,500** per property for single-family residential property;
  - **$500** per unit per property for multi-family residential property;
  - **$250,000** per property for commercial property
- For section (a)(2), solar tax credit percentages in the amounts of:
  - **30%** for property placed in service after December 31, 2012 and before January 1, 2014;
  - **25%** for property placed in service after December 31, 2013 and before January 1, 2016;
  - **20%** for property placed in service after December 31, 2015 and before January 1, 2018;
  - **15%** for property placed in service after December 31, 2017.
- For section (a)(3), production tax credit amounts of:
  - **8 cents/kWh** for solar energy property installed and placed in service on or before December 21, 2016;

- **6 cents/kWh** for solar energy property installed and placed in service on or before December 31, 2020;
- **4 cents/kWh** for solar energy property installed and placed in service after December 31, 2020.

- For section (a)(4), a cap on the utility-scale wind energy credit of **$500,000**.

2. Critical Technical Revisions

There are three critical technical revisions that must be made in order to avoid potentially serious or even fatal implementation problems with the legislation. These three technical amendments are: (a) to the definition of "Property"; (b) to the definition of "Basis"; and, (c) to clarify the availability of the credit for utility-scale wind energy property.

(a) Definition of "Property"

SB 623 rightly attempts to rely on the federal definition of energy "property" in its reform of HRS § 235-12.5 by defining "property" as having "the same meaning as in section 25D, 45, or section 48 of the Internal Revenue Code." Unfortunately, however, "property" is not defined as a stand-alone term in any of those three sections of the IRC, and to the extent it is defined in conjunction with other terms — e.g., "energy property" and "qualified solar electric property expenditure"—the definitions are inconsistent and/or contradictory. For example, "energy property" in Sec. 48 is defined so as to exclude property that is not depreciable, since Sec. 48 only applies to commercial property. This won't work for HRS § 235-12.5, where the definition of property is intended to apply to both residential and commercial property. In any case, SB 623, HD1 maintains a tie-in to the federal IRC for interpretation of these terms via its section (j), which provides that "The tax credits provided for in this section shall be construed in accordance with Treasury Regulations and judicial interpretations of similar provisions in sections 25D, 45, and 48 of the Internal Revenue Code."

In order to address this technical flaw, we recommend that the definition of "Property" used in SB 623, HD1 be replaced with the following definition:

> <u>"Property" means (i) equipment which uses wind or solar energy to generate electricity; (ii) the construction, reconstruction, or erection of which is completed by the taxpayer, or which is acquired by the taxpayer if the original use of such property commences with the taxpayer.</u>

This proposed definition takes key elements of the federal law definition and applies them to HRS § 235-12.5 in a workable manner. Specifically, the proposed definition above:

- Copies language from Section 48(a)(3)(A)(i) to define solar and wind property as equipment that makes electricity from these resources;
- Copies language from Section 48(a)(3)(B)(i) to limit the credit to activities (construction, reconstruction, or erection) completed by the taxpayer; and,
- Copies language from Section 48(a)(3)(B)(ii) to clarify the taxpayer must be the original user of the property to qualify for the credit.

The proposed definition accomplishes the objective of following the federal law while allowing the definition to apply to both commercial and residential property. If the definition of "Property" in SB 623, HD1 is not amended, the definition will be meaningless since "property" is not, by itself, a defined term in any of the referenced federal statutes.

(b) Definition of "Basis"

SB 623 also rightly attempts to rely on federal law for the definition of "Basis." The third sentence of the definition of "Basis" fully accomplishes this goal of "following the federal" by stating:

> "The basis used under this part shall be consistent with the use of basis in section 25D or section 48 of the Internal Revenue Code of 1986, as amended; provided that for the purposes of calculating the credit allowed under this chapter, the basis of the solar energy property or the wind energy property shall not be reduced by the amount of any federal tax credit or other federally subsidized energy financing received by the taxpayer."

However, this approach is jeopardized by the preceding sentence in the definition of "Basis," which states that: "Any cost incurred and paid for the repair, construction, or reconstruction of a structure in conjunction with the installation and placing in service of solar or wind energy property shall not constitute a part of the basis for the purpose of this section." In fact, both federal law and the existing language of HRS § 235-12.5 allow for the repair, construction, or reconstruction of certain "structures," such as racking and mounting equipment used to support photovoltaic panels.

In order to include as part of the basis those costs which are legitimately necessary to and a part of the renewable energy installation while still preventing abuses, we suggest the following sentence be inserted between the second and third sentence of the definition:

> <u>For the purposes of this section, the term "structure" shall not apply to facilities, equipment, mounting or support apparatus used primarily to support or to provide services for solar or wind energy property.</u>

This added sentence will ensure that the Hawaii definition of "Basis" is consistent with federal law and allows taxpayers to legitimately claim racking and mounting equipment and other support apparatus while still prohibiting re-roofing and other abuses.

(c) Clarification of the Credit for Utility Scale Wind Energy Property

It is our understanding that the intent of SB 623, HD1 is not to include a wind tax credit for projects larger than 1 MW. As drafted, however, a larger wind energy project comprised of turbines whose individual rated capacities are below 1 MW would arguably be eligible for an investment tax credit because it is possible that each turbine would be considered separate “property.” If the intent of the Committee is to limit the investment tax credit's availability to solar and wind developments in which the overall project is less than one MW in size, the Committee may wish to substitute "not part of a larger wind energy property" in section (a)(4) with "not part of a larger wind energy development". A similar change could be made in section (a)(2) by replacing "not part of a larger solar energy property" with "not part of a larger solar energy development" or "not part of a larger solar energy facility."

Once again we support this bill, and we hope that the technical recommendations offered above may be of some use to the Committee. Thank you for the opportunity to provide this testimony.

Sincerely,

Joshua Powell
Principal & RME

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Wednesday, March 20, 2013 — 2:30 p.m.

TESTIMONY SUPPORTING
SB 623, HD1 RELATING TO RENEWABLE ENERGY

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

RevoluSun **supports** SB 623, HD1, which will reform the Renewable Energy Technologies Income Tax Credit ("RETITC") while maintaining the viability of the solar industry. SB 623, HD1 will save the State tens of millions of dollars in tax credit related outlays, while continuing to promote solar energy technologies that will allow Hawai'i to reach its clean energy goals and reduce our depends on imported fossil fuels.

However, there are two critical areas in which SB 623, HD1 should be amended before it can move forward as a viable bill: **first**, the tax credit percentages which were left blank in this version of the bill must be filled in; **second**, three critical technical amendments must be made to avoid fatal implementation problems with the bill. We respectfully offer suggestions for these three areas below.

1. **Tax Credit Percentages and Cap Amounts Must Be Filled In**

The current version of SB 623 contains blanks in section (a) that must be filled in. We recommend that the Committee re-insert the percentages and cap amounts contained in HB 497 HD3, which closely track the percentages and cap amounts contained in prior versions of SB 623. Specifically, we recommend the following numbers be used:

- For section (a)(1), solar thermal tax credit caps in the amounts of:
  - **$2,500** per property for single-family residential property;
  - **$500** per unit per property for multi-family residential property;
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- For section (a)(2), solar tax credit percentages in the amounts of:
  - **30%** for property placed in service after December 31, 2012 and before January 1, 2014;
  - **25%** for property placed in service after December 31, 2013 and before January 1, 2016;
  - **20%** for property placed in service after December 31, 2015 and before January 1, 2018;
  - **15%** for property placed in service after December 31, 2017.
- For section (a)(3), production tax credit amounts of:

- **8 cents/kWh** for solar energy property installed and placed in service on or before December 21, 2016;
- **6 cents/kWh** for solar energy property installed and placed in service on or before December 31, 2020;
- **4 cents/kWh** for solar energy property installed and placed in service after December 31, 2020.

- For section (a)(4), a cap on the utility-scale wind energy credit of **$500,000**.

2. Critical Technical Revisions

There are three critical technical revisions that must be made in order to avoid potentially serious or even fatal implementation problems with the legislation. These three technical amendments are: (a) to the definition of "Property"; (b) to the definition of "Basis"; and, (c) to clarify the availability of the credit for utility-scale wind energy property.

(a) Definition of "Property"

SB 623 rightly attempts to rely on the federal definition of energy "property" in its reform of HRS § 235-12.5 by defining "property" as having "the same meaning as in section 25D, 45, or section 48 of the Internal Revenue Code." Unfortunately, however, "property" is not defined as a stand-alone term in any of those three sections of the IRC, and to the extent it is defined in conjunction with other terms — e.g., "energy property" and "qualified solar electric property expenditure"—the definitions are inconsistent and/or contradictory. For example, "energy property" in Sec. 48 is defined so as to exclude property that is not depreciable, since Sec. 48 only applies to commercial property. This won't work for HRS § 235-12.5, where the definition of property is intended to apply to both residential and commercial property. In any case, SB 623, HD1 maintains a tie-in to the federal IRC for interpretation of these terms via its section (j), which provides that "The tax credits provided for in this section shall be construed in accordance with Treasury Regulations and judicial interpretations of similar provisions in sections 25D, 45, and 48 of the Internal Revenue Code."

In order to address this technical flaw, we recommend that the definition of "Property" used in SB 623, HD1 be replaced with the following definition:

> <u>"Property" means (i) equipment which uses wind or solar energy to generate electricity; (ii) the construction, reconstruction, or erection of which is completed by the taxpayer, or which is acquired by the taxpayer if the original use of such property commences with the taxpayer.</u>

This proposed definition takes key elements of the federal law definition and applies them to HRS § 235-12.5 in a workable manner. Specifically, the proposed definition above:

- Copies language from Section 48(a)(3)(A)(i) to define solar and wind property as equipment that makes electricity from these resources;
- Copies language from Section 48(a)(3)(B)(i) to limit the credit to activities (construction, reconstruction, or erection) completed by the taxpayer; and,
- Copies language from Section 48(a)(3)(B)(ii) to clarify the taxpayer must be the original user of the property to qualify for the credit.

The proposed definition accomplishes the objective of following the federal law while allowing the definition to apply to both commercial and residential property. If the definition of "Property" in SB 623, HD1 is not amended, the definition will be meaningless since "property" is not, by itself, a defined term in any of the referenced federal statutes.

(b) Definition of "Basis"

SB 623 also rightly attempts to rely on federal law for the definition of "Basis." The third sentence of the definition of "Basis" fully accomplishes this goal of "following the federal" by stating:

> "The basis used under this part shall be consistent with the use of basis in section 25D or section 48 of the Internal Revenue Code of 1986, as amended; provided that for the purposes of calculating the credit allowed under this chapter, the basis of the solar energy property or the wind energy property shall not be reduced by the amount of any federal tax credit or other federally subsidized energy financing received by the taxpayer."

However, this approach is jeopardized by the preceding sentence in the definition of "Basis," which states that: "Any cost incurred and paid for the repair, construction, or reconstruction of a structure in conjunction with the installation and placing in service of solar or wind energy property shall not constitute a part of the basis for the purpose of this section." In fact, both federal law and the existing language of HRS § 235-12.5 allow for the repair, construction, or reconstruction of certain "structures," such as racking and mounting equipment used to support photovoltaic panels.

In order to include as part of the basis those costs which are legitimately necessary to and a part of the renewable energy installation while still preventing abuses, we suggest the following sentence be inserted between the second and third sentence of the definition:

> <u>For the purposes of this section, the term "structure" shall not apply to facilities, equipment, mounting or support apparatus used primarily to support or to provide services for solar or wind energy property.</u>

This added sentence will ensure that the Hawaii definition of "Basis" is consistent with federal law and allows taxpayers to legitimately claim racking and mounting equipment and other support apparatus while still prohibiting re-roofing and other abuses.

(c) Clarification of the Credit for Utility Scale Wind Energy Property

It is our understanding that the intent of SB 623, HD1 is not to include a wind tax credit for projects larger than 1 MW. As drafted, however, a larger wind energy project comprised of turbines whose individual rated capacities are below 1 MW would arguably be eligible for an investment tax credit because it is possible that each turbine would be considered separate "property." If the intent of the Committee is to limit the investment tax credit's availability to solar and wind developments in which the overall project is less than one MW in size, the Committee may wish to substitute "not part of a larger wind energy property" in section (a)(4) with "not part of a larger wind energy development". A similar change could be made in section (a)(2) by replacing "not part of a larger solar energy property" with "not part of a larger solar energy development" or "not part of a larger solar energy facility."

Once again we support this bill, and we hope that the technical recommendations offered above may be of some use to the Committee. Thank you for the opportunity to provide this testimony.

Sincerely,

Colin Yost
Principal & General Counsel

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Wednesday, March 20, 2013 — 2:30 p.m.

TESTIMONY SUPPORTING SB 623 SD2 HD1 RELATING TO RENEWABLE ENERGY

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

Kairos Energy Capital supports SB 623 SD2 HD1, which will reform the Renewable Energy Technologies Income Tax Credit ("RETITC") while maintaining the viability of the solar industry. SB 623 SD2 HD1 will save the State tens of millions of dollars in tax credit related outlays, while continuing to promote solar energy technologies that will allow Hawai'i to reach its clean energy goals and reduce our depends on imported fossil fuels.

Kairos Energy Capital is a Hawai'i merchant bank that focuses entirely on providing and arranging funding for renewable energy projects. We have become one of the leading experts in Hawai'i in solar project financing.

There are two important areas in which SB 623 SD2 should be amended:

- first, the tax credit percentages which were left blank in this version of the bill must be filled in; and

- second, three critical technical amendments must be made to avoid fatal implementation problems with the bill. We respectfully offer suggestions for these three areas below.

1. Tax Credit Percentages and Cap Amounts Must Be Filled In

The current version of SB 623 contains blanks in sections (a)(1), (a)(2), (a)(3) and (a)(4) that must be filled in. We recommend that the Committee re-insert the percentages and cap amounts contained in HB 497 HD3, which closely track the percentages and cap amounts contained in prior versions of SB 623. Specifically, we recommend the following numbers be used:

- **Solar thermal** (hot water) tax credit caps For section (a)(1) should be set at:
    - **$2,500** per property for single-family residential property;
    - **$500** per unit per property for multi-family residential property;
    - **$250,000** per property for commercial property
- **Solar PV** tax credit percentages in section (a)(2) should be set at:
    - **30%** for property placed in service after December 31, 2012 and before January 1, 2014;
    - **25%** for property placed in service after December 31, 2013 and before January 1, 2016;

- **20%** for property placed in service after December 31, 2015 and before January 1, 2018;
- **15%** for property placed in service after December 31, 2017.

- **Utility scale PV** in section (a)(3), production tax credit amounts of:
  - **8 cents/kWh** for solar energy property installed and placed in service on or before December 21, 2016;
  - **6 cents/kWh** for solar energy property installed and placed in service on or before December 31, 2020;
  - **4 cents/kWh** for solar energy property installed and placed in service after December 31, 2020.
- **Utility-scale wind energy** in section (a)(4) should have a cap on the credit of **$500,000**.

2. Critical Technical Revisions

There are three critical technical revisions that must be made in order to avoid potentially serious or even fatal implementation problems with the legislation. These three technical amendments are: (a) to the definition of "Property"; (b) to the definition of "Basis"; and, (c) to clarify the availability of the credit for utility-scale wind energy property.

(a) Definition of "Property"

This draft of SB 623 rightly attempts to rely on the federal definition of energy "property" in its reform of HRS § 235-12.5 by defining "property" as having "the same meaning as in section 25D, 45, or section 48 of the Internal Revenue Code." Unfortunately, however, "property" is not defined as a stand-alone term in any of those three sections of the IRC, and to the extent it is defined in conjunction with other terms — e.g., "energy property" and "qualified solar electric property expenditure" — the definitions are inconsistent and/or contradictory. For example, "energy property" in Sec. 48 is defined so as to exclude property that is not depreciable, since Sec. 48 only applies to commercial property. This won't work for HRS § 235-12.5, where the definition of property is intended to apply to both residential and commercial property. In any case, SB 623 SD 2 maintains a tie-in to the federal IRC for interpretation of these terms via its section (j), which provides that "The tax credits provided for in this section shall be construed in accordance with Treasury Regulations and judicial interpretations of similar provisions in sections 25D, 45, and 48 of the Internal Revenue Code."

In order to address this technical flaw, we recommend that the definition of "Property" used in SB 623 SD2 be replaced with the following definition:

> <u>"Property" means (i) equipment which uses wind or solar energy to generate electricity or heat water; (ii) the construction, reconstruction, or erection of</u>

which is completed by the taxpayer, or which is acquired by the taxpayer if the original use of such property commences with the taxpayer.

This proposed definition adopts the key elements of the federal law definitions and applies them to HRS § 235-12.5 in a workable manner. Specifically, the proposed definition above:

- Copies language from Section 48(a)(3)(A)(i) to define solar and wind property as equipment that makes electricity from these resources;
- Copies the language from Section 25D(d)(i) to define equipment that heats water;
- Copies language from Section 48(a)(3)(B)(i) to limit the credit to activities (construction, reconstruction, or erection) completed by the taxpayer; and,
- Copies language from Section 48(a)(3)(B)(ii) to clarify the taxpayer must be the original user of the property to qualify for the credit.

The proposed definition accomplishes the objective of following the federal law while allowing the definition to apply to both commercial and residential property. If the definition of "Property" in SB 623 SD2 HD1 is not amended, the definition will be meaningless since "property" is not, by itself, a defined term in any of the referenced federal statutes.

(b) Definition of "Basis"

SB 623 also rightly attempts to rely on federal law for the definition of "Basis." The third sentence of the definition of "Basis" fully accomplishes this goal of "following the federal" by stating:

> "The basis used under this part shall be consistent with the use of basis in section 25D or section 48 of the Internal Revenue Code of 1986, as amended; provided that for the purposes of calculating the credit allowed under this chapter, the basis of the solar energy property or the wind energy property shall not be reduced by the amount of any federal tax credit or other federally subsidized energy financing received by the taxpayer."

However, this approach is jeopardized by the preceding sentence in the definition of "Basis," which states that: "Any cost incurred and paid for the repair, construction, or reconstruction of a structure in conjunction with the installation and placing in service of solar or wind energy property shall not constitute a part of the basis for the purpose of this section." In fact, both federal law and the existing language of HRS § 235-12.5 allow for the repair, construction, or reconstruction of certain "structures," such as racking and mounting equipment used to support photovoltaic panels.

In order to include as part of the basis those costs which are legitimately necessary to and a part of the renewable energy installation while still preventing abuses, we suggest the following sentence be inserted between the second and third sentence of the definition:

For the purposes of this section, the term "structure" shall not apply to facilities, equipment, mounting or support apparatus used primarily to support or to provide services for solar or wind energy property.

This added sentence will ensure that the Hawai'i definition of "Basis" is consistent with federal law and allows taxpayers to legitimately claim racking and mounting equipment and other support apparatus while still prohibiting re-roofing and other abuses.

(c) Clarification of the Credit for Utility Scale Wind Energy Property

It is our understanding that the intent of SB 623 SD2 HD1 is not to include a wind tax credit for projects larger than 1 MW. As drafted, however, a larger wind energy project comprised of turbines whose individual rated capacities are below 1 MW would arguably be eligible for an investment tax credit because it is possible that each turbine would be considered separate "property." If the intent of the Committee is to limit the investment tax credit's availability to solar and wind developments in which the overall project is less than 1 MW in size, the Committee may wish to substitute "not part of a larger wind energy property" in section (a)(4) with "not part of a larger wind energy development." A similar change could be made in section (a)(2) by replacing "not part of a larger solar energy property" with "not part of a larger solar energy development" or "not part of a larger solar energy facility."

Kairos Energy Capital supports this bill, and we hope that the technical recommendations offered above may be of some use to the Committee. Thank you for the opportunity to provide this testimony.

Larry Gilbert
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SUNPOWER

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Wednesday, March 20, 2013 — 2:30 p.m.

TESTIMONY SUPPORTING
SB 623, SD2 HD1 RELATING TO RENEWABLE ENERGY

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee

Introduction: My name is Riley Saito Senior Manager, Hawaii Projects, for SunPower Systems Corporation. SunPower is a dedicated supporter for over 15 years, in Hawaii, as and active participant of the renewable energy initiatives. Including Member (charter) of Hawaii Energy Policy Forum; Hawaii Clean Energy Initiative-Steering Committee and Energy Generation Working Group; Participant in energy related PUC dockets.

SunPower **supports** SB 623 SD2 HD1, which will reform the Renewable Energy Technologies Income Tax Credit ("RETITC") while maintaining the viability of the solar industry. SB 623 SD2 HD1 will save the State tens of millions of dollars in tax credit related outlays, while continuing to promote solar energy technologies that will allow Hawai'i to reach its clean energy goals and reduce our depends on imported fossil fuels.

However, there are two critical areas in which SB 623 SD2 HD1 should be amended before it can move forward as a viable bill: **first**, the tax credit percentages which were left blank in this version of the bill must be filled in; **second**, three critical technical amendments must be made to avoid fatal implementation problems with the bill. We respectfully offer suggestions for these three areas below:

1. Tax Credit Percentages and Amounts Must Be Filled In

The current version of SB 623 contains blanks in section (a) that must be filled in. We recommend that the Committee re-insert the percentages and cap amounts contained in HB 497 HD3, which closely track the percentages and cap amounts contained in prior versions of SB 623. Specifically, we recommend the following numbers be used:

- For section (a)(1), solar thermal tax credit caps in the amounts of:
  - **$2,500** per property for single-family residential property;
  - **$500** per unit per property for multi-family residential property;
  - **$250,000** per property for commercial property
- For section (a)(2), solar tax credit percentages in the amounts of:
  - **30%** for property placed in service after December 31, 2012 and before January 1, 2014;
  - **25%** for property placed in service after December 31, 2013 and before January 1, 2016;
  - **20%** for property placed in service after December 31, 2015 and before January 1, 2018;
  - **15%** for property placed in service after December 31, 2017.
- For section (a)(3), production tax credit amounts of:
  - **8 cents/kWh** for solar energy property installed and placed in service on or before December 21, 2016;
  - **6 cents/kWh** for solar energy property installed and placed in service on or before December 31, 2020;
  - **4 cents/kWh** for solar energy property installed and placed in service after December 31, 2020.

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2. Critical Technical Revisions

There are three critical technical revisions that must be made in order to avoid potentially serious or even fatal implementation problems with the legislation. These three technical amendments are: (a) to the definition of "Property"; (b) to the definition of "Basis"; and, (c) to clarify the availability of the credit for utility-scale wind energy property.

(a) Definition of "Property"

SB 623 rightly attempts to rely on the federal definition of energy "property" in its reform of HRS § 235-12.5 by defining "property" as having "the same meaning as in section 25D, 45, or section 48 of the Internal Revenue Code." Unfortunately, however, "property" is not defined as a stand-alone term in any of those three sections of the IRC, and to the extent it is defined in conjunction with other terms — e.g., "energy property" and "qualified solar electric property expenditure" — the definitions are inconsistent and/or contradictory. For example, "energy property" in Sec. 48 is defined so as to exclude property that is not depreciable, since Sec. 48 only applies to commercial property. This won't work for HRS § 235-12.5, where the definition of property is intended to apply to both residential and commercial property. In any case, SB 623 SD2 HD1 maintains a tie-in to the Federal IRC for interpretation of these terms via its section (j), which provides that "The tax credits provided for in this section shall be construed in accordance with Treasury Regulations and judicial interpretations of similar provisions in sections 25D, 45, and 48 of the Internal Revenue Code."

In order to address this technical flaw, we recommend that the definition of "Property" used in SB 623 SD2 HD1 be replaced with the following definition:

> <u>"Property" means (i) equipment which uses wind or solar energy to generate electricity; (ii) the construction, reconstruction, or erection of which is completed by the taxpayer, or which is acquired by the taxpayer if the original use of such property commences with the taxpayer.</u>

This proposed definition takes key elements of the federal law definition and applies them to HRS § 235-12.5 in a workable manner. Specifically, the proposed definition above:

- Copies language from Section 48(a)(3)(A)(i) to define solar and wind property as equipment that makes electricity from these resources;
- Copies language from Section 48(a)(3)(B)(i) to limit the credit to activities (construction, reconstruction, or erection) completed by the taxpayer; and,
- Copies language from Section 48(a)(3)(B)(ii) to clarify the taxpayer must be the original user of the property to qualify for the credit.

The proposed definition accomplishes the objective of following the federal law while allowing the definition to apply to both commercial and residential property. If the definition of "Property" in SB 623 SD2 HD1 is not amended, the definition will be meaningless since "property" is not, by itself, a defined term in any of the referenced federal statutes.

(b) Definition of "Basis"

SB 623 also rightly attempts to rely on federal law for the definition of "Basis." The third sentence of the

definition of "Basis" fully accomplishes this goal of "following the federal" by stating:

> "The basis used under this part shall be consistent with the use of basis in section 25D or section 48 of the Internal Revenue Code of 1986, as amended; provided that for the purposes of calculating the credit allowed under this chapter, the basis of the solar energy property or the wind energy property shall not be reduced by the amount of any federal tax credit or other federally subsidized energy financing received by the taxpayer."

However, this approach is jeopardized by the preceding sentence in the definition of "Basis," which states that: "Any cost incurred and paid for the repair, construction, or reconstruction of a structure in conjunction with the installation and placing in service of solar or wind energy property shall not constitute a part of the basis for the purpose of this section." In fact, both federal law and the existing language of HRS § 235-12.5 allow for the repair, construction, or reconstruction of certain "structures," such as racking and mounting equipment used to support photovoltaic panels.

In order to include as part of the basis those costs which are legitimately necessary to and a part of the renewable energy installation while still preventing abuses, we suggest the following sentence be inserted between the second and third sentence of the definition:

> <u>For the purposes of this section, the term "structure" shall not apply to facilities, equipment, mounting or support apparatus used primarily to support or to provide services for solar or wind energy property.</u>

This added sentence will ensure that the Hawai'i definition of "Basis" is consistent with federal law and allows taxpayers to legitimately claim racking and mounting equipment and other support apparatus while still prohibiting re-roofing and other abuses.

Once again we support this bill, and we hope that the technical recommendations offered above may be of some use to the Committee. Thank you for the opportunity to provide this testimony.
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Mahalo for the opportunity to testify.

Riley Saito
Senior Manager, Hawaii Projects
SunPower Systems, Corporation

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HOUSE COMMITTEE ON CONSUMER PROTECTION

TESTIMONY IN SUPPORT OF SB623 SB2 HD1 RELATING TO RENEWABLE ENERGY

Testimony of Sarah Bertram, Sr. Manager, Policy & New Markets, Sunrun

Wednesday, March 20, 2013

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

Sunrun supports SB 623 SD2 HD1, which will reform the Renewable Energy Technologies Income Tax Credit ("RETITC") while maintaining the viability of the solar industry. SB 623 SD2 HD1 will save the State tens of millions of dollars in tax credit related outlays, while continuing to promote solar energy technologies that will allow Hawai'i to reach its clean energy goals and reduce our depends on imported fossil fuels.

However, there are two critical areas in which SB 623 SD2 HD1 should be amended before it can move forward as a viable bill: first, the tax credit percentages which were left blank in this version of the bill must be filled in; second, 3 critical technical amendments must be made to avoid fatal implementation problems with the bill including potential negative retroactive impacts to residential solar projects in 2013. We respectfully offer suggestions for these areas below:

1. Tax Credit Percentages and Cap Amounts Must Be Filled In

The current version of SB 623 contains blanks in sections (a)(1), (a)(2), and (a)(4) that must be filled in. We recommend that the Committee re-insert the percentages and cap amounts contained in HB 497 HD3, which closely track the percentages and cap amounts contained in prior versions of SB 623. Specifically, we recommend the following numbers be used:

- For section (a)(1), solar thermal tax credit caps in the amounts of:
  - **$2,500** per property for single-family residential property;
  - **$500** per unit per property for multi-family residential property;
  - **$250,000** per property for commercial property
- For section (a)(2), solar tax credit percentages in the amounts of:
  - **30%** for property placed in service after December 31, 2012 and before January 1, 2014;
  - **25%** for property placed in service after December 31, 2013 and before January 1, 2016;
  - **20%** for property placed in service after December 31, 2015 and before January 1, 2018;
  - **15%** for property placed in service after December 31, 2017.
- For section (a)(4), a cap on the utility-scale wind energy credit of **$500,000**.

2. Critical Technical Revisions

There are three critical technical revisions that must be made in order to avoid potentially serious or even fatal implementation problems with the legislation. These three technical amendments are: (a) to clarify how this new legislation would be phased in relative to the

existing administrative rules for 2013 to avoid retroactive impacts for residential solar projects place in service in 2013; (b) to the definition of "Property"; and, (c) to the definition of "Basis."

(a) Clarification to avoid retroactive impacts for residential solar projects place in service in 2013.

SB 623 SD2 HD1 is currently written to apply to taxable years beginning after December 31, 2012. In its current form, the bill modifies the RETITC for systems placed in service between December 31, 2012 and January 1, 2014 relative to the existing Temporary Administrative Rules (published by DoTax in November 2012). As a result, this bill creates risk that there will be retroactive impacts to solar projects placed in service during 2013. Residential systems sold in to date in 2013 have assumed they would qualify for the tax credit amounts provided by existing DoTax temporary administrative rules. When those systems are built and placed in service later this year, if they qualify for a different amount of tax credit under the terms in this bill, it could have a negative impact on homeowners, and create confusion for both homeowners and DoTax.

Sunrun suggests two possible solutions to completely avoid negative retroactive impacts, and one possible solution that would minimize the impact.

1. The legislature could provide solar customers transparent visibility by enacting this law to apply to systems placed in service after December 31, 2013. The existing temporary administrative rules would continue to apply to systems place in service in the 2013 tax year. By providing forward visibility, this would avoid retroactive impacts.

2. Tax filers for systems placed in service during 2013 could have the ability to choose to claim the RETITC under the temporary administrative rules currently in effect or under the rules resulting from passage of SB 623. This also completely avoids retroactive impacts. The following language from the initial version of SB 623 could be re-inserted into the bill draft to provide this choice:

   "For solar energy properties placed in service after December 31, 2012, and before January 1, 2014, a taxpayer may elect tax credits under this section or under the department's temporary administrative rules that became effective on January 1, 2013."

3. The legislature could minimize – but not entirely avoid – retroactive impacts associated with this legislation by enacting the law to apply to systems placed in service after June 30, 2013. This potential solution does not entirely avoid retroactive impact because of the sales and build cycle for residential solar. In Hawaii, it takes approximately 4 months from the time a homeowner signs a contract to adopt rooftop solar to the time their solar system is placed in service (there is a natural variation here - sometimes it takes 6+ months, sometimes it takes 2 months – but 4 months is an average based on Sunrun's experience). There are a variety of reasons for this delay, including time associated with county and utility permitting and inspection requirements that is often outside of the control of both homeowners and solar installers. The homeowner

considers their potential tax credit value at the time of sale; it is a fundamental input to assessing the economic value proposition of a rooftop solar investment. As a result, if SB 623 were to be signed into law in early May with an effective date of July 1, 2013, systems sold in the prior two months will be retroactively impacted because they will likely get placed in service after July, but they were sold before changes to the tax credit could be understood. This will either result in some market disruption or confusion, which will likely have an administrative cost on the Department of Taxation.

It is worth noting that the scenarios #2 and #3 above both require DoTax to receive tax credit filings for 2013 that fall under two different methodologies. Sunrun believes that the methodology for each filer could be clearly indicated on tax forms. As a result, Sunrun does not have a clear understanding of how or why option #2 would be more administratively burdensome on DoTax relative to option #3. Sunrun is interested in better understanding the nature of the administrative burden associated with these options. **Sunrun will support a solution that seeks to balance the avoidance of retroactive impacts for residential customers with minimizing the administrative burden for DoTax.**

(b) Definition of "Property"

This draft of SB 623 rightly attempts to rely on the federal definition of energy "property" in its reform of HRS § 235-12.5 by defining "property" as having "the same meaning as in section 25D, 45, or section 48 of the Internal Revenue Code." Unfortunately, however, "property" is not defined as a stand-alone term in any of those three sections of the IRC, and to the extent it is defined in conjunction with other terms — e.g., "energy property" and "qualified solar electric property expenditure" — the definitions are inconsistent and/or contradictory. For example, "energy property" in Sec. 48 is defined so as to exclude property that is not depreciable, since Sec. 48 only applies to commercial property. This won't work for HRS § 235-12.5, where the definition of property is intended to apply to both residential and commercial property. In any case, SB 623 SD 2 HD 1 maintains a tie-in to the federal IRC for interpretation of these terms via its section (j), which provides that "The tax credits provided for in this section shall be construed in accordance with Treasury Regulations and judicial interpretations of similar provisions in sections 25D, 45, and 48 of the Internal Revenue Code."

In order to address this technical flaw, we recommend that the definition of "Property" used in SB 623 SD2 HD 1 be replaced with the following definition:

> <u>"Property" means (i) equipment which uses wind or solar energy to generate electricity; (ii) the construction, reconstruction, or erection of which is completed by the taxpayer, or which is acquired by the taxpayer if the original use of such property commences with the taxpayer.</u>

This proposed definition takes the key elements of the federal law definitions and applies them to HRS § 235-12.5 in a workable manner.

(c) Definition of "Basis"

The second sentence of the definition of "Basis" in SB 623 SD2 HD1 should be deleted in order to avoid any conflict with federal law. SB 623 SD2 HD1 rightly attempts to follow the existing federal law definitions where possible. The third sentence of the definition of "Basis" fully accomplishes this goal of "following the federal" by stating:

> "The basis used under this part shall be consistent with the use of basis in section 25D or section 48 of the Internal Revenue Code of 1986, as amended; provided that for the purposes of calculating the credit allowed under this chapter, the basis of the solar energy property or the wind energy property shall not be reduced by the amount of any federal tax credit or other federally subsidized energy financing received by the taxpayer."

However, this approach is jeopardized by the preceding sentence in the definition of "Basis," which states that: "Any cost incurred and paid for the repair, construction, or installation and placing in service of solar or wind energy property shall not constitute a part of the basis for the purpose of this section." In fact, federal law – as well as the existing Hawai'i RETITC – allows for costs associated with the construction, installation, and placing in service of the solar or wind energy property to constitute part of the basis. Therefore the second sentence of the definition of "Basis" contradicts the "follow the federal" approach, is contrary to the third sentence of the definition of "Basis," and would severely limit the use of the credit. To resolve this issue, the second sentence of the definition of "Basis" should be deleted.

Once again we support this bill, and we hope that the technical recommendations offered above may be of some use to the Committee. Thank you for the opportunity to provide this testimony.

Sincerely,
Sarah Bertram

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

TESTIMONY IN SUPPORT OF
SB 623 SD2 HD1 RELATING TO RENEWABLE ENERGY

Testimony of
SunEdison
Wednesday, March 20, 2013 — 2:30 p.m.

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

Thank you for the opportunity to provide testimony in **support** of SB 623 SD2 HD1 relating to renewable energy. SB 623 SD2 HD1 will make needed reforms to the Renewable Energy Technologies Income Tax Credit ("RETITC") to reduce the credit's cost to the State.

However, there are three critical areas in which SB 623 SD2 HD1 should be amended before it can move forward as a viable bill: **first**, the tax credit amounts which were left blank in this version of the bill must be filled in; **second**, the effective date for changes to the tax credit for projects less than 1MW must not be retroactive; **third**, two critical technical amendments must be made to avoid fatal implementation problems with the bill. We respectfully offer suggestions for these issues below.

SunEdison is one of the largest solar PV energy service providers in the United States. In Hawaii, SunEdison has been active in developing and operating commercial and utility-scale solar PV systems since 2006.

1. Tax Credit Percentages and Cap Amounts Must Be Filled In

The current version of SB 623 contains blanks in section (a) that must be filled in. We recommend that the Committee re-insert the percentages and cap amounts contained in HB 497 HD3, which closely track the percentages and cap amounts contained in prior versions of SB 623. Specifically, we recommend the following numbers be used:

- For section (a)(1), solar thermal tax credit caps in the amounts of:
  - **$2,500** per property for single-family residential property;
  - **$500** per unit per property for multi-family residential property;
  - **$250,000** per property for commercial property
- For section (a)(2), solar tax credit percentages in the amounts of:
  - **30%** for property placed in service after June 30, 2013 and before January 1, 2014;
  - **25%** for property placed in service after December 31, 2013 and before January 1, 2016;
  - **20%** for property placed in service after December 31, 2015 and before January 1, 2018;
  - **15%** for property placed in service after December 31, 2017.
- For section (a)(3), production tax credit amounts of:
  - **8 cents/kWh** for solar energy property installed and placed in service on or before December 21, 2016;

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- **6 cents/kWh** for solar energy property installed and placed in service on or before December 31, 2020;
- **4 cents/kWh** for solar energy property installed and placed in service after December 31, 2020.

- For section (a)(4), a cap on the utility-scale wind energy credit of **$500,000**.

2. Clarification to Avoid Retroactive Impacts for Solar Projects Placed in Service in 2013

In its current form, SB 623 modifies the RETITC for systems less than 1MW placed in service after December 31, 2012 relative to the existing Temporary Administrative Rules (TAR) published by the Department of Taxation in November 2012. As a result, this bill would have retroactive impacts on commercial and residential systems placed in service since January 1, 2013. These projects have been developed, sold and financed on the basis of the tax credits in existing statute and under the TAR. A retroactive change to the tax credit for these projects would have a material negative impact on solar customers and their investments. Instead of applying changes to the tax credit for projects less than 1 MW retroactively, SunEdison suggests two options for eliminating or reducing the retroactive impacts of this bill:

a) For systems placed in service during 2013, tax filers could have the ability to choose to claim the RETITC under the temporary administrative rules currently in effect or under the rules resulting from passage of SB 623. This option exists in the current draft of SB 623 in section (k) for solar projects with public sector agencies. We recommend that this same option be extended to all projects less than 1MW. This would completely avoid retroactive impacts. We suggest the following language:

> "For solar energy properties placed in service after December 31, 2012, and before January 1, 2014, a taxpayer may elect tax credits under this section or under the department's temporary administrative rules that became effective on January 1, 2013."

b) As an alternative, the legislature could minimize – but not entirely avoid – retroactive impacts associated with this legislation by enacting the law to apply to systems placed in service after June 30, 2013. This would ensure that projects placed in service in the first half of the year would not be harmed by a retroactive change in law.

3. Critical Technical Revisions

There are three critical technical revisions that must be made in order to avoid potentially serious or even fatal implementation problems with the legislation. These three technical amendments are: (a) to the definition of "Property"; (b) to the definition of "Basis"; and, (c) to clarify the availability of the credit for utility-scale wind energy property.

(a) Definition of "Property"

SB 623 rightly attempts to rely on the federal definition of energy "property" in its reform of HRS § 235-12.5 by defining "property" as having "the same meaning as in section 25D, 45, or section 48 of the Internal Revenue Code." Unfortunately, however, "property" is not defined as a stand-alone term in any

of those three sections of the IRC, and to the extent it is defined in conjunction with other terms — e.g., "energy property" and "qualified solar electric property expenditure" — the definitions are inconsistent and/or contradictory. For example, "energy property" in Sec. 48 is defined so as to exclude property that is not depreciable, since Sec. 48 only applies to commercial property. This won't work for HRS § 235-12.5, where the definition of property is intended to apply to both residential and commercial property. In any case, SB 623 SD2 HD1 maintains a tie-in to the Federal IRC for interpretation of these terms via its section (j), which provides that "The tax credits provided for in this section shall be construed in accordance with Treasury Regulations and judicial interpretations of similar provisions in sections 25D, 45, and 48 of the Internal Revenue Code."

In order to address this technical flaw, we recommend that the definition of "Property" used in SB 623 SD2 HD1 be replaced with the following definition:

> "Property" means (i) equipment which uses wind or solar energy to generate electricity; (ii) the construction, reconstruction, or erection of which is completed by the taxpayer, or which is acquired by the taxpayer if the original use of such property commences with the taxpayer.

This proposed definition takes key elements of the federal law definition and applies them to HRS § 235-12.5 in a workable manner. Specifically, the proposed definition above:

- Copies language from Section 48(a)(3)(A)(i) to define solar and wind property as equipment that makes electricity from these resources;
- Copies language from Section 48(a)(3)(B)(i) to limit the credit to activities (construction, reconstruction, or erection) completed by the taxpayer; and,
- Copies language from Section 48(a)(3)(B)(ii) to clarify the taxpayer must be the original user of the property to qualify for the credit.

The proposed definition accomplishes the objective of following the federal law while allowing the definition to apply to both commercial and residential property. If the definition of "Property" in SB 623 SD2 HD1 is not amended, the definition will be meaningless since "property" is not, by itself, a defined term in any of the referenced federal statutes.

(b) Definition of "Basis"

SB 623 also rightly attempts to rely on federal law for the definition of "Basis." The third sentence of the definition of "Basis" fully accomplishes this goal of "following the federal" by stating:

> "The basis used under this part shall be consistent with the use of basis in section 25D or section 48 of the Internal Revenue Code of 1986, as amended; provided that for the purposes of calculating the credit allowed under this chapter, the basis of the solar energy property or the wind energy property shall not be reduced by the amount of any federal tax credit or other federally subsidized energy financing received by the taxpayer."

However, this approach is jeopardized by the preceding sentence in the definition of "Basis," which states that: "Any cost incurred and paid for the repair, construction, or reconstruction of a structure in conjunction with the installation and placing in service of solar or wind energy property shall not constitute a part of the basis for the purpose of this section." In fact, both federal law and the existing language of HRS § 235-12.5 allow for the repair, construction, or reconstruction of certain "structures,"

such as racking and mounting equipment used to support photovoltaic panels.

In order to include as part of the basis those costs which are legitimately necessary to and a part of the renewable energy installation while still preventing abuses, we suggest the following sentence be inserted between the second and third sentence of the definition:

> For the purposes of this section, the term "structure" shall not apply to facilities, equipment, mounting or support apparatus used primarily to support or to provide services for solar or wind energy property.

This added sentence will ensure that the Hawai'i definition of "Basis" is consistent with federal law and allows taxpayers to legitimately claim racking and mounting equipment and other support apparatus while still prohibiting re-roofing and other abuses.

Once again we support the intent of this bill, and we urge the committee to pass this measure with the suggested amendments.

Thank you for the opportunity to provide this testimony.

Sincerely,

Curtis Seymour
Director of Government Affairs
SunEdison

Keahole Solar Power

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Wednesday, March 20, 2013 — 2:30 p.m.

TESTIMONY SUPPORTING SB 623 SD2 HD1 RELATING TO RENEWABLE ENERGY

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

Keahole Solar Power, LLC **supports** SB 623 SD2 HD1, which will reform the Renewable Energy Technologies Income Tax Credit ("RETITC") while maintaining the viability of the solar industry. SB 623 SD2 HD1 will save the State tens of millions of dollars in tax credit related outlays, while continuing to promote solar energy technologies that will allow Hawai'i to reach its clean energy goals and reduce our depends on imported fossil fuels.

However, there are two critical areas in which SB 623 SD2 HD1 should be amended before it can move forward as a viable bill: **first**, the tax credit percentages which were left blank in this version of the bill must be filled in; **second**, three critical technical amendments must be made to avoid fatal implementation problems with the bill. We respectfully offer suggestions for these three areas below:

1. Tax Credit Percentages and Cap Amounts Must Be Filled In

The current version of SB 623 contains blanks in section (a) that must be filled in. We recommend that the Committee re-insert the percentages and cap amounts contained in HB 497 HD3, which closely track the percentages and cap amounts contained in prior versions of SB 623. Specifically, we recommend the following numbers be used:

- For section (a)(1), solar thermal tax credit caps in the amounts of:
  - **$2,500** per property for single-family residential property;
  - **$500** per unit per property for multi-family residential property;
  - **$250,000** per property for commercial property
- For section (a)(2), solar tax credit percentages in the amounts of:
  - **30%** for property placed in service after December 31, 2012 and before January 1, 2014;
  - **25%** for property placed in service after December 31, 2013 and before January 1, 2016;

  - **20%** for property placed in service after December 31, 2015 and before January 1, 2018;
  - **15%** for property placed in service after December 31, 2017.
- For section (a)(3), production tax credit amounts of:
  - **8 cents/kWh** for solar energy property installed and placed in service on or before December 21, 2016;
  - **6 cents/kWh** for solar energy property installed and placed in service on or before December 31, 2020;
  - **4 cents/kWh** for solar energy property installed and placed in service after December 31, 2020.
- For section (a)(4), a cap on the utility-scale wind energy credit of **$500,000**.

2. Critical Technical Revisions

There are three critical technical revisions that must be made in order to avoid potentially serious or even fatal implementation problems with the legislation. These three technical amendments are: (a) to the definition of "Property"; (b) to the definition of "Basis"; and, (c) to clarify the availability of the credit for utility-scale wind energy property.

(a) Definition of "Property"

SB 623 rightly attempts to rely on the federal definition of energy "property" in its reform of HRS § 235-12.5 by defining "property" as having "the same meaning as in section 25D, 45, or section 48 of the Internal Revenue Code." Unfortunately, however, "property" is not defined as a stand-alone term in any of those three sections of the IRC, and to the extent it is defined in conjunction with other terms — e.g., "energy property" and "qualified solar electric property expenditure" — the definitions are inconsistent and/or contradictory. For example, "energy property" in Sec. 48 is defined so as to exclude property that is not depreciable, since Sec. 48 only applies to commercial property. This won't work for HRS § 235-12.5, where the definition of property is intended to apply to both residential and commercial property. In any case, SB 623 SD2 HD1 maintains a tie-in to the Federal IRC for interpretation of these terms via its section (j), which provides that "The tax credits provided for in this section shall be construed in accordance with Treasury Regulations and judicial interpretations of similar provisions in sections 25D, 45, and 48 of the Internal Revenue Code."

In order to address this technical flaw, we recommend that the definition of "Property" used in SB 623 SD2 HD1 be replaced with the following definition:

> "Property" means (i) equipment which uses wind or solar energy to generate electricity; (ii) the construction, reconstruction, or erection of which is completed by the taxpayer, or which is acquired by the taxpayer if the original use of such property commences with the taxpayer.

This proposed definition takes key elements of the federal law definition and applies them to HRS § 235-12.5 in a workable manner. Specifically, the proposed definition above:

- Copies language from Section 48(a)(3)(A)(i) to define solar and wind property as equipment that makes electricity from these resources;
- Copies language from Section 48(a)(3)(B)(i) to limit the credit to activities (construction, reconstruction, or erection) completed by the taxpayer; and,
- Copies language from Section 48(a)(3)(B)(ii) to clarify the taxpayer must be the original user of the property to qualify for the credit.

The proposed definition accomplishes the objective of following the federal law while allowing the definition to apply to both commercial and residential property. If the definition of "Property" in SB 623 SD2 HD1 is not amended, the definition will be meaningless since "property" is not, by itself, a defined term in any of the referenced federal statutes.

(b) Definition of "Basis"

SB 623 also rightly attempts to rely on federal law for the definition of "Basis." The third sentence of the definition of "Basis" fully accomplishes this goal of "following the federal" by stating:

> "The basis used under this part shall be consistent with the use of basis in section 25D or section 48 of the Internal Revenue Code of 1986, as amended; provided that for the purposes of calculating the credit allowed under this chapter, the basis of the solar energy property or the wind energy property shall not be reduced by the amount of any federal tax credit or other federally subsidized energy financing received by the taxpayer."

However, this approach is jeopardized by the preceding sentence in the definition of "Basis," which states that: "Any cost incurred and paid for the repair, construction, or reconstruction of a structure in conjunction with the installation and placing in service of solar or wind energy property shall not constitute a part of the basis for the purpose of this section." In fact, both federal law and the existing language of HRS § 235-12.5

allow for the repair, construction, or reconstruction of certain "structures," such as racking and mounting equipment used to support photovoltaic panels.

In order to include as part of the basis those costs which are legitimately necessary to and a part of the renewable energy installation while still preventing abuses, we suggest the following sentence be inserted between the second and third sentence of the definition:

> For the purposes of this section, the term "structure" shall not apply to facilities, equipment, mounting or support apparatus used primarily to support or to provide services for solar or wind energy property.

This added sentence will ensure that the Hawai'i definition of "Basis" is consistent with federal law and allows taxpayers to legitimately claim racking and mounting equipment and other support apparatus while still prohibiting re-roofing and other abuses.

(c) Clarification of the Credit for Utility Scale Wind Energy Property

It is our understanding that the intent of SB 623 SD2 HD1 is not to include a wind tax credit for projects larger than 1 MW. As drafted, however, a larger wind energy project comprised of turbines whose individual rated capacities are below 1 MW would arguably be eligible for an investment tax credit because it is possible that each turbine would be considered separate "property." If the intent of the Committee is to limit the investment tax credit's availability to solar and wind developments in which the overall project is less than 1 MW in size, the Committee may wish to substitute "not part of a larger wind energy property" in section (a)(4) with "not part of a larger wind energy development." A similar change could be made in section (a)(2) by replacing "not part of a larger solar energy property" with "not part of a larger solar energy development" or "not part of a larger solar energy facility."

Once again we support this bill, and we hope that the technical recommendations offered above may be of some use to the Committee. Thank you for the opportunity to provide this testimony.

Sincerely,

Harry Jackson
President

FOREST CITY
HAWAII

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Wednesday, March 20, 2013 — 2:30 p.m. — Room 325

Testimony in Support SB 623, SD2, HD 1 Relating to Renewable Energy

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

My name is Jon Wallenstrom and I am the President of Forest City Hawaii. Forest City Hawaii is principally engaged in the ownership, development, management and acquisition of commercial and residential real estate and land in Hawaii. It is currently involved in a partnership with the Hawaii Housing Finance and Development Corporation (HHFDC) to develop Kamakana Villages, a mixed-use community of 2,206 homes on the Big Island, of which more than 50% will affordably priced. We have also put in place six photovoltaic farms on Oahu and are one of the largest owners of clean, renewable energy assets in the State. Forest City is one of the largest residential community and renewable energy developers in the state. At Forest City we leverage our real estate experience to create renewable energy projects. These developments help offset the high cost of energy in Hawaii for both our community as a whole, while also decreasing the state's dependence on fossil fuels.

Forest City **supports** SB 623 SD2, HD1 which will reform the Renewable Energy Technologies Income Tax Credit ("RETITC") while maintaining the viability of the solar industry. SB 623, SD2 will save the State tens of millions of dollars in tax credit related outlays, while continuing to promote solar energy technologies that will allow Hawai'i to reach its clean energy goals and reduce our dependency on imported fossil fuels.

However, there are two critical areas in which SB 623 SD2 HD1 should be amended before it can move forward as a viable bill: first, the tax credit percentages which were left blank in this version of the bill must be filled in; **second**, three critical technical amendments must be made to avoid fatal implementation problems with the bill. We respectfully offer suggestions for these three areas below:

1. Tax Credit Percentages and Cap Amounts Must Be Filled In

The current version of SB 623 contains blanks in section (a) that must be filled in. We recommend that the Committee re-insert the percentages and cap amounts contained in HB 497 HD3, which closely track the percentages and cap amounts contained in prior versions of SB 623. Specifically, we recommend the following numbers be used:

- For section (a)(1), solar thermal tax credit caps in the amounts of:
  - **$2,500** per property for single-family residential property;
  - **$500** per unit per property for multi-family residential property;
  - **$250,000** per property for commercial property
- For section (a)(2), solar tax credit percentages in the amounts of:
  - **30%** for property placed in service after December 31, 2012 and before January 1, 2014;
  - **25%** for property placed in service after December 31, 2013 and before January 1, 2016;
  - **20%** for property placed in service after December 31, 2015 and before January 1, 2018;
  - **15%** for property placed in service after December 31, 2017.
- For section (a)(3), production tax credit amounts of:

5173 NIMITZ ROAD HONOLULU, HI 96818
(808) 839-8771 fax: (808) 836-7008

- **8 cents/kWh** for solar energy property installed and placed in service on or before December 21, 2016;
- **6 cents/kWh** for solar energy property installed and placed in service on or before December 31, 2020;
- **4 cents/kWh** for solar energy property installed and placed in service after December 31, 2020.

- For section (a)(4), a cap on the utility-scale wind energy credit of **$500,000**.

2. Critical Technical Revisions

There are three critical technical revisions that must be made in order to avoid potentially serious or even fatal implementation problems with the legislation. These three technical amendments are: (a) to the definition of "Property"; (b) to the definition of "Basis"; and, (c) to clarify the availability of the credit for utility-scale wind energy property.

(a) Definition of "Property"

SB 623 rightly attempts to rely on the federal definition of energy "property" in its reform of HRS § 235-12.5 by defining "property" as having "the same meaning as in section 25D, 45, or section 48 of the Internal Revenue Code." Unfortunately, however, "property" is not defined as a stand-alone term in any of those three sections of the IRC, and to the extent it is defined in conjunction with other terms — e.g., "energy property" and "qualified solar electric property expenditure" — the definitions are inconsistent and/or contradictory. For example, "energy property" in Sec. 48 is defined so as to exclude property that is not depreciable, since Sec. 48 only applies to commercial property. This won't work for HRS § 235-12.5, where the definition of property is intended to apply to both residential and commercial property. In any case, SB 623 SD2 HD1 maintains a tie-in to the Federal IRC for interpretation of these terms via its section (j), which provides that "The tax credits provided for in this section shall be construed in accordance with Treasury Regulations and judicial interpretations of similar provisions in sections 25D, 45, and 48 of the Internal Revenue Code."

In order to address this technical flaw, we recommend that the definition of "Property" used in SB 623 SD2 HD1 be replaced with the following definition:

> "Property" means (i) equipment which uses wind or solar energy to generate electricity; (ii) the construction, reconstruction, or erection of which is completed by the taxpayer, or which is acquired by the taxpayer if the original use of such property commences with the taxpayer.

This proposed definition takes key elements of the federal law definition and applies them to HRS § 235-12.5 in a workable manner. Specifically, the proposed definition above:

- Copies language from Section 48(a)(3)(A)(i) to define solar and wind property as equipment that makes electricity from these resources;
- Copies language from Section 48(a)(3)(B)(i) to limit the credit to activities (construction, reconstruction, or erection) completed by the taxpayer; and,
- Copies language from Section 48(a)(3)(B)(ii) to clarify the taxpayer must be the original user of the property to qualify for the credit.

The proposed definition accomplishes the objective of following the federal law while allowing the definition to apply to both commercial and residential property. If the definition of "Property" in SB 623 SD2 HD1 is not amended, the definition will be meaningless since "property" is not, by itself, a defined term in any of the referenced federal statutes.

(b) Definition of "Basis"

SB 623 also rightly attempts to rely on federal law for the definition of "Basis." The third sentence of the definition of "Basis" fully accomplishes this goal of "following the federal" by stating:

> "The basis used under this part shall be consistent with the use of basis in section 25D or section 48 of the Internal Revenue Code of 1986, as amended; provided that for the purposes of calculating the credit allowed under this chapter, the basis of the solar energy property or the wind energy property shall not be reduced by the amount of any federal tax credit or other federally subsidized energy financing received by the taxpayer."

However, this approach is jeopardized by the preceding sentence in the definition of "Basis," which states that: "Any cost incurred and paid for the repair, construction, or reconstruction of a structure in conjunction with the installation and placing in service of solar or wind energy property shall not constitute a part of the basis for the purpose of this section." In fact, both federal law and the existing language of HRS § 235-12.5 allow for the repair, construction, or reconstruction of certain "structures," such as racking and mounting equipment used to support photovoltaic panels.

In order to include as part of the basis those costs which are legitimately necessary to and a part of the renewable energy installation while still preventing abuses, we suggest the following sentence be inserted between the second and third sentence of the definition:

> <u>For the purposes of this section, the term "structure" shall not apply to facilities, equipment, mounting or support apparatus used primarily to support or to provide services for solar or wind energy property.</u>

This added sentence will ensure that the Hawai'i definition of "Basis" is consistent with federal law and allows taxpayers to legitimately claim racking and mounting equipment and other support apparatus while still prohibiting re-roofing and other abuses.

(c) Clarification of the Credit for Utility Scale Wind Energy Property

It is our understanding that the intent of SB 623 SD2 HD1 is not to include a wind tax credit for projects larger than 1 MW. As drafted, however, a larger wind energy project comprised of turbines whose individual rated capacities are below 1 MW would arguably be eligible for an investment tax credit because it is possible that each turbine would be considered separate "property." If the intent of the Committee is to limit the investment tax credit's availability to solar and wind developments in which the overall project is less than 1 MW in size, the Committee may wish to substitute "not part of a larger wind energy property" in section (a)(4) with "not part of a larger wind energy development." A similar change could be made in section (a)(2) by replacing "not part of a larger solar energy property" with "not part of a larger solar energy development" or "not part of a larger solar energy facility."

Once again we support this bill, and we hope that the technical recommendations offered above may be of some use to the Committee. Thank you for the opportunity to provide this testimony.

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Green Power Projects LLC

Alan Lennard
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alan.lennard@greenpowerprojects.com

March 20, 2013 2:30 PM

HOUSE OF REPRESENTATIVES
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Rep. Angus L.K. McKelvey, Chair
Rep. Derek S.K. Kawakami, Vice Chair

SB 623 SD 2 **(SSCR762)**

TESTIMONY IN SUPPORT

Aloha Chair McKelvey and Vice Chair Kawakami and committee members,

My name is Alan Lennard and I work in renewables.

I support the intention of this bill. It has the best tax credit version proposed to continue solar penetration statewide. Please support this language.

Please consider including in this bill language that will maintain parity between PTC and ITC discounts. And if ramp-down is shown to impact penetration maintain the incentives (both PTC & ITC) at current level if increased ramp-down impacts the compliance with the Hawaii Renewable Portfolio Standard (ie. unable to achieve or exceed required milestones).

Additionally, it should be described in the legislation that the ramp-down of the renewable incentives (both PTC & ITC) should be halted and reversed if a reduction in continued renewable penetration is shown.

Furthermore, Stop ramp down at 20% for ITC not 15%.

Please refer to the updated economic analysis of solar economic returns to the State of Hawai'i by Dr. Thomas Loudat. This report models the effective return of monetized incentives back into the state economy.

Thank you so very much for your consideration regarding this important issue.

Alan Lennard

alan

Managing Director

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Wednesday, March 20, 2013 — 2:30 p.m.

TESTIMONY SUPPORTING SB 623 SD2 HD1 RELATING TO RENEWABLE ENERGY

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

Sunetric **supports** SB 623 SD2 HD1, which will reform the Renewable Energy Technologies Income Tax Credit ("RETITC") while maintaining the viability of the solar industry. SB 623 SD2 HD1 will save the State tens of millions of dollars in tax credit related outlays, while continuing to promote solar energy technologies that will allow Hawai'i to reach its clean energy goals and reduce our depends on imported fossil fuels.

However, there are two critical areas in which SB 623 SD2 HD1 should be amended before it can move forward as a viable bill: **first**, the tax credit percentages which were left blank in this version of the bill must be filled in; **second**, three critical technical amendments must be made to avoid fatal implementation problems with the bill. We respectfully offer suggestions for these three areas below:

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The current version of SB 623 contains blanks in section (a) that must be filled in. We recommend that the Committee re-insert the percentages and cap amounts contained in HB 497 HD3, which closely track the percentages and cap amounts contained in prior versions of SB 623. Specifically, we recommend the following numbers be used:

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  - **$2,500** per property for single-family residential property;
  - **$500** per unit per property for multi-family residential property;
  - **$250,000** per property for commercial property
- For section (a)(2), solar tax credit percentages in the amounts of:
  - **30%** for property placed in service after December 31, 2012 and before January 1, 2014;
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- For section (a)(3), production tax credit amounts of:
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  - **6 cents/kWh** for solar energy property installed and placed in service on or before December 31, 2020;

- **4 cents/kWh** for solar energy property installed and placed in service after December 31, 2020.

- For section (a)(4), a cap on the utility-scale wind energy credit of **$500,000**.

2. Critical Technical Revisions

There are three critical technical revisions that must be made in order to avoid potentially serious or even fatal implementation problems with the legislation. These three technical amendments are: (a) to the definition of "Property"; (b) to the definition of "Basis"; and, (c) to clarify the availability of the credit for utility-scale wind energy property.

(a) Definition of "Property"

SB 623 rightly attempts to rely on the federal definition of energy "property" in its reform of HRS § 235-12.5 by defining "property" as having "the same meaning as in section 25D, 45, or section 48 of the Internal Revenue Code." Unfortunately, however, "property" is not defined as a stand-alone term in any of those three sections of the IRC, and to the extent it is defined in conjunction with other terms — e.g., "energy property" and "qualified solar electric property expenditure" — the definitions are inconsistent and/or contradictory. For example, "energy property" in Sec. 48 is defined so as to exclude property that is not depreciable, since Sec. 48 only applies to commercial property. This won't work for HRS § 235-12.5, where the definition of property is intended to apply to both residential and commercial property. In any case, SB 623 SD2 HD1 maintains a tie-in to the Federal IRC for interpretation of these terms via its section (j), which provides that "The tax credits provided for in this section shall be construed in accordance with Treasury Regulations and judicial interpretations of similar provisions in sections 25D, 45, and 48 of the Internal Revenue Code."

In order to address this technical flaw, we recommend that the definition of "Property" used in SB 623 SD2 HD1 be replaced with the following definition:

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(b) Definition of "Basis"

SB 623 also rightly attempts to rely on federal law for the definition of "Basis." The third sentence of the definition of "Basis" fully accomplishes this goal of "following the federal" by stating:

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Committee is to limit the investment tax credit's availability to solar and wind developments in which the overall project is less than 1 MW in size, the Committee may wish to substitute "not part of a larger wind energy property" in section (a)(4) with "not part of a larger wind energy development." A similar change could be made in section (a)(2) by replacing "not part of a larger solar energy property" with "not part of a larger solar energy development" or "not part of a larger solar energy facility."

Once again we support this bill, and we hope that the technical recommendations offered above may be of some use to the Committee. Thank you for the opportunity to provide this testimony.

Mahalo,

Alex Tiller, CEO, Sunetric

March 19, 2013

To: **HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**
Wednesday, March 20, 2013 — 2:30 p.m.

Re: **TESTIMONY SUPPORTING SB 623 SD2 RELATING TO RENEWABLE ENERGY**

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

AlphaStream Capital Management LLC **supports** SB 623 SD2 HD1, which will reform the Renewable Energy Technologies Income Tax Credit ("RETITC") while maintaining the viability of the solar industry. SB 623 SD2 HD1 will save the State tens of millions of dollars in tax credit related outlays, while continuing to promote solar energy technologies that will allow Hawai'i to reach its clean energy goals and reduce our depends on imported fossil fuels.

However, there are two critical areas in which SB 623 SD2 HD1 should be amended before it can move forward as a viable bill: **first**, the tax credit percentages which were left blank in this version of the bill must be filled in; **second**, three critical technical amendments must be made to avoid fatal implementation problems with the bill. We respectfully offer suggestions for these three areas below:

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- For section (a)(4), a cap on the utility-scale wind energy credit of **$500,000**.

2. Critical Technical Revisions

There are three critical technical revisions that must be made in order to avoid potentially serious or even fatal implementation problems with the legislation. These three technical amendments are: (a) to the definition of "Property"; (b) to the definition of "Basis"; and, (c) to clarify the availability of the credit for utility-scale wind energy property.

(a) Definition of "Property"

SB 623 rightly attempts to rely on the federal definition of energy "property" in its reform of HRS § 235-12.5 by defining "property" as having "the same meaning as in section 25D, 45, or section 48 of the Internal Revenue Code." Unfortunately, however, "property" is not defined as a stand-alone term in any of those three sections of the IRC, and to the extent it is defined in conjunction with other terms — e.g., "energy property" and "qualified solar electric property expenditure" — the definitions are inconsistent and/or contradictory. For example, "energy property" in Sec. 48 is defined so as to exclude property that is not depreciable, since Sec. 48 only applies to commercial property. This won't work for HRS § 235-12.5, where the definition of property is intended to apply to both residential and commercial property. In any case, SB 623 SD2 HD1 maintains a tie-in to the Federal IRC for interpretation of these terms via its section (j), which provides that "The tax credits provided for in this section shall be construed in accordance with Treasury Regulations and judicial interpretations of similar provisions in sections 25D, 45, and 48 of the Internal Revenue Code."

In order to address this technical flaw, we recommend that the definition of "Property" used in SB 623 SD2 HD1 be replaced with the following definition:

<u>"Property" means (i) equipment which uses wind or solar energy to generate electricity; (ii) the construction, reconstruction, or erection of which is completed by the taxpayer, or which is acquired by the taxpayer if the original use of such property commences with the taxpayer.</u>

This proposed definition takes key elements of the federal law definition and applies them to HRS § 235-12.5 in a workable manner. Specifically, the proposed definition above:

- Copies language from Section 48(a)(3)(A)(i) to define solar and wind property as equipment that makes electricity from these resources;
- Copies language from Section 48(a)(3)(B)(i) to limit the credit to activities (construction, reconstruction, or erection) completed by the taxpayer; and,
- Copies language from Section 48(a)(3)(B)(ii) to clarify the taxpayer must be the original user of the property to qualify for the credit.

The proposed definition accomplishes the objective of following the federal law while allowing the definition to apply to both commercial and residential property. If the definition of "Property" in SB 623 SD2 HD1 is not amended, the definition will be meaningless since "property" is not, by itself, a defined term in any of the referenced federal statutes.

(b) Definition of "Basis"

SB 623 also rightly attempts to rely on federal law for the definition of "Basis." The third sentence of the definition of "Basis" fully accomplishes this goal of "following the federal" by stating:

"The basis used under this part shall be consistent with the use of basis in section 25D or section 48 of the Internal Revenue Code of 1986, as amended; provided that for the purposes of calculating the credit allowed under this chapter, the basis of the solar energy property or the wind energy property shall not be reduced by the amount of any federal tax credit or other federally subsidized energy financing received by the taxpayer."

However, this approach is jeopardized by the preceding sentence in the definition of "Basis," which states that: "Any cost incurred and paid for the repair, construction, or reconstruction of a structure in conjunction with the installation and placing in service of solar or wind energy property shall not constitute a part of the basis for the purpose of this section." In fact, both federal law and the existing language of HRS § 235-12.5 allow for the repair, construction, or reconstruction of certain "structures," such as racking and mounting equipment used to support photovoltaic panels.

In order to include as part of the basis those costs which are legitimately necessary to and a part of the renewable energy installation while still preventing abuses, we suggest the following sentence be inserted between the second and third sentence of the definition:

<u>For the purposes of this section, the term "structure" shall not apply to facilities, equipment, mounting or support apparatus used primarily to support or to provide services for solar or wind energy property.</u>

This added sentence will ensure that the Hawai'i definition of "Basis" is consistent with federal

law and allows taxpayers to legitimately claim racking and mounting equipment and other support apparatus while still prohibiting re-roofing and other abuses.

(c) Clarification of the Credit for Utility Scale Wind Energy Property

It is our understanding that the intent of SB 623 SD2 HD1 is not to include a wind tax credit for projects larger than 1 MW. As drafted, however, a larger wind energy project comprised of turbines whose individual rated capacities are below 1 MW would arguably be eligible for an investment tax credit because it is possible that each turbine would be considered separate "property." If the intent of the Committee is to limit the investment tax credit's availability to solar and wind developments in which the overall project is less than 1 MW in size, the Committee may wish to substitute "not part of a larger wind energy property" in section (a)(4) with "not part of a larger wind energy development." A similar change could be made in section (a)(2) by replacing "not part of a larger solar energy property" with "not part of a larger solar energy development" or "not part of a larger solar energy facility."

It is our desire to fund and construct several utility-scale and dozens of commercial-scale renewable energy projects in Hawaii, providing immediate and substantial benefits to the State and its citizens and businesses. Your efforts to provide clarification and simplification of SB 623 SD2 and related matters is of paramount importance, and will pave the way for significant investment in the State.

Once again we support this bill, and we hope that the technical recommendations offered above may be of some use to the Committee. Thank you for the opportunity to provide this testimony.

Signed,

Henry Amado
Managing Partner for AlphaStream Capital Management LLC
CFO of the California Wind Energy Association

INTER-ISLAND SOLAR SUPPLY

761 Ahua St., Honolulu, HI 96819 **OAHU** Phone (808) 523-0711 Fax 536-5586
73-5569 Kauhola St., Kailua-Kona, HI 96740 **BIG ISLAND** Phone (808) 329-7890 Fax 329-5753
400 Ala Makani St., Unit 103, Kahului, HI 96732 **MAUI** Phone (808) 871-1030 Fax 873-7825

Wednesday, March 20, 2013 (2:30 PM)
Testimony Before the House Committee
on
Consumer Protection and Commerce
In Regard To:

S.B. 623 SD 2, HD 1, RELATING TO RENEWABLE ENERGY

Chair McKelvey, Vice Chair Kawakami and members of the committee, my name is Richard Reed and I am the President of Inter-Island Solar Supply. Our company was founded in 1973, incorporated in 1975, and is one of the oldest and largest distributors of renewable energy equipment in the United States.

Inter-Island Solar Supply **supports** the passage of S.B. 623, SD2, HD 1 with amendments.

HRS 235-12.5, despite its inadequacies and ambiguous language, has been extremely successful in inducing home and business owners to purchase solar water heating and PV systems. The recent uptake, particularly for net-energy metered systems, has been breathtaking. According to documents recently filed by the Hawaiian Electric group of companies with the PUC, over 73 MW (megawatts) of new net-metered PV were installed in their service territories in 2012. This is precisely the speed, scale and traction required for Hawaii to meet its statutory renewable energy obligations under the Hawaii Clean Energy Initiative.

By redefining eligible renewable energy property, S.B. 623, SD 2, HD 1, closes the loophole that has allowed for a single individual or business to claim multiple PV tax credits, thus avoiding the artificially low cap levels imposed by a previous legislature. This key definitional change will lead to increased fairness and much greater transparency. The change, moreover, will not lead to over-sized PV systems since there is absolutely no economic incentive or rationale to do so within the utility regulations and rules for net-energy metered systems. In short, ratepayers seeking an off-ramp from unsustainable high utility costs will continue to purchase properly sized PV systems for their homes and businesses.

One of the most important provisions provided by S.B. 623, SD 2, HD 1, is the annual reporting requirement. There is simply no excuse for not knowing the real time cost and benefit of any State of Hawaii tax credit or incentive, especially those incentives that are linked by statute to an essential public purpose or objective. Do not be swayed by DoTax or DBEDT claims that do not have the technical or human resources to provide real-time fiscal and economic information. The public debate surrounding the renewable energy investment tax credits has been much poorer for the lack of current and accurate information on both the costs and the full fiscal and economic benefits associated with this credit.

Comments Specific to the Proposed Changes to HRS 235-12.5

We respectfully propose the following amendments and recommendations for the committee's consideration:

Section 1, paragraph (a):

(1) Solar water heating *(fill in the blanks)*
   (A) $2,500
   (B) $500
   (C) $250,000

Despite this recommendation, it is incongruous to continue to impose caps on solar water heating systems that are not imposed on PV systems. Again, there is no technical or economic incentive to over-size a solar water heating system for tax credit purposes alone. Systems will continue to be sized to load, not available tax credits. Solar water heating systems historically have not been subject to multiple credit claims or abuse.

(2) Solar electricity < 1 MW *(change the dates)*
   (A) 35% before Jan. 1, 2014 *(avoid ex post facto challenges*)
   (B) 30% after Dec. 31, 2013 and before Jan. 1, 2016
   (C) 25% after Dec. 31, 2015 and before Jan. 1, 2018
   (D) 20% after Dec. 31, 2017

(3) Solar electricity ≥ 1 MW
   Ensure that the incentives for distributed generation (rooftop) and large scale systems are equitable.

Section 1, paragraph (h):
Clarify that allowed variances to "mandated" solar water heating systems are covered.

Thank you for the opportunity to testify on this measure.

Email: communications@uluponoinitiative.com

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Wednesday, March 20, 2013 — 2:30 p.m.– Room 325

TESTIMONY SUPPORTING SB 623 SD2 HD1 RELATING TO RENEWABLE ENERGY

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

My name is Murray Clay, Managing Partner of the Ulupono Initiative, a Hawai'i-based impact investment firm that strives to improve the quality of life for the people of Hawai'i by working toward solutions that create more locally grown food, increase renewable energy, and reduce/recycle waste.

Ulupono Initiative supports SB 623 SD2 HD1, which will reform the Renewable Energy Technologies Income Tax Credit ("RETITC") while maintaining the viability of the solar industry. SB 623 SD2 HD1 will save the State tens of millions of dollars in tax credit related outlays, while continuing to promote solar energy technologies that will allow Hawai'i to reach its clean energy goals and reduce our dependence on imported fossil fuels.

However, there are two critical areas in which SB 623 SD2 HD1 should be amended before it can move forward as a viable bill: **first**, the tax credit percentages which were left blank in this version of the bill must be filled in; **second**, three critical technical amendments must be made to avoid fatal implementation problems with the bill. We respectfully offer suggestions for these three areas below:

1. Tax Credit Percentages and Cap Amounts Must Be Filled In

The current version of SB 623 contains blanks in section (a) that must be filled in. We recommend that the Committee re-insert the percentages and cap amounts contained in HB 497 HD3, which closely track the percentages and cap amounts contained in prior versions of SB 623. Specifically, we recommend the following numbers be used:

- For section (a)(1), solar thermal tax credit caps in the amounts of:
  - **$2,500** per property for single-family residential property;
  - **$500** per unit per property for multi-family residential property;
  - **$250,000** per property for commercial property
- For section (a)(2), solar tax credit percentages in the amounts of:
  - **30%** for property placed in service after December 31, 2012 and before January 1, 2014;
  - **25%** for property placed in service after December 31, 2013 and before January 1, 2016;
  - **20%** for property placed in service after December 31, 2015 and before January 1, 2018;
  - **15%** for property placed in service after December 31, 2017.
- For section (a)(3), production tax credit amounts of:
  - **8 cents/kWh** for solar energy property installed and placed in service on or before December 21, 2016;
  - **6 cents/kWh** for solar energy property installed and placed in service on or before December 31, 2020;

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- **4 cents/kWh** for solar energy property installed and placed in service after December 31, 2020.

- For section (a)(4), a cap on the utility-scale wind energy credit of **$500,000**.

2. Critical Technical Revisions

There are three critical technical revisions that must be made in order to avoid legislation that may be impossible to implement. These three technical amendments are: (a) to the definition of "Property"; (b) to the definition of "Basis"; and, (c) to clarify the availability of the credit for utility-scale wind energy property.

(a) Definition of "Property"

This draft of SB 623 rightly attempts to rely on the federal definition of energy "property" in its reform of HRS § 235-12.5 by defining "property" as having "the same meaning as in section 25D, 45, or section 48 of the Internal Revenue Code." Unfortunately, however, "property" is not defined as a stand-alone term in any of those three sections of the IRC, and to the extent it is defined in conjunction with other terms — e.g., "energy property" and "qualified solar electric property expenditure" — the definitions are inconsistent and/or contradictory. For example, "energy property" in Sec. 48 is defined so as to exclude property that is not depreciable, since Sec. 48 only applies to commercial property. This won't work for HRS § 235-12.5, where the definition of property is intended to apply to both residential and commercial property. In any case, SB 623 SD 2 HD1 maintains a tie-in to the federal IRC for interpretation of these terms via its section (j), which provides that "The tax credits provided for in this section shall be construed in accordance with Treasury Regulations and judicial interpretations of similar provisions in sections 25D, 45, and 48 of the Internal Revenue Code." In order to address this technical flaw, we recommend that the definition of "Property" used in SB 623 SD2 HD1 be replaced with the following definition:

"Property" means (i) equipment which uses wind or solar energy to generate electricity or heat water; (ii) the construction, reconstruction, or erection of
which is completed by the taxpayer, or which is acquired by the taxpayer if the original use of such property commences with the taxpayer.

This proposed definition adopts the key elements of the federal law definitions and applies them to HRS § 235-12.5 in a workable manner. Specifically, the proposed definition above:

- Copies language from Section 48(a)(3)(A)(i) to define solar and wind property as equipment that makes electricity from these resources;
- Copies the language from Section 25D(d)(i) to define equipment that heats water;
- Copies language from Section 48(a)(3)(B)(i) to limit the credit to activities (construction, reconstruction, or erection) completed by the taxpayer; and,
- Copies language from Section 48(a)(3)(B)(ii) to clarify the taxpayer must be the original user of the property to qualify for the credit.
  The proposed definition accomplishes the objective of following the federal law while allowing the definition to apply to both commercial and residential property. If the definition of "Property" in SB 623 SD2 HD1 is not amended, the definition will be meaningless since "property" is not, by itself, a defined term in any of the referenced federal statutes.

(b) Definition of "Basis"

SB 623 also rightly attempts to rely on federal law for the definition of "Basis." The third sentence of the definition of "Basis" fully accomplishes this goal of "following the federal" by stating:

> "The basis used under this part shall be consistent with the use of basis in section 25D or section 48 of the

> Internal Revenue Code of 1986, as amended; provided that for the purposes of calculating the credit allowed under this chapter, the basis of the solar energy property or the wind energy property shall not be reduced by the amount of any federal tax credit or other federally subsidized energy financing received by the taxpayer."

However, this approach is jeopardized by the preceding sentence in the definition of "Basis," which states that: "Any cost incurred and paid for the repair, construction, or reconstruction of a structure in conjunction with the installation and placing in service of solar or wind energy property shall not constitute a part of the basis for the purpose of this section." In fact, both federal law and the existing language of HRS § 235-12.5 allow for the repair, construction, or reconstruction of certain "structures," such as racking and mounting equipment used to support photovoltaic panels.

In order to include as part of the basis those costs which are legitimately necessary to and a part of the renewable energy installation while still preventing abuses, we suggest the following sentence be inserted between the second and third sentence of the definition:

> <u>For the purposes of this section, the term "structure" shall not apply to facilities, equipment, mounting or support apparatus used primarily to support or to provide services for solar or wind energy property.</u>

This added sentence will ensure that the Hawai'i definition of "Basis" is consistent with federal law and allows taxpayers to legitimately claim racking and mounting equipment and other support apparatus while still prohibiting re-roofing and other abuses.

(c) Clarification of the Credit for Utility Scale Wind Energy Property

It is our understanding that the intent of SB 623 SD2 HD1 is not to include a wind tax credit for projects larger than 1 MW. As drafted, however, a larger wind energy project composed of turbines whose individual rated capacities are below 1 MW would arguably be eligible for an investment tax credit because it is possible that each turbine would be considered separate "property." If the intent of the Committee is to limit the investment tax credit's availability to solar and wind developments in which the overall project is less than 1 MW in size, the Committee may wish to substitute "not part of a larger wind energy property" in section (a)(4) with "not part of a larger wind energy development." A similar change could be made in section (a)(2) by replacing "not part of a larger solar energy property" with "not part of a larger solar energy development" or "not part of a larger solar energy facility."

Once again we support this bill, and we hope that the technical recommendations offered above may be of some use to the Committee. Thank you for the opportunity to provide this testimony.

Respectfully,

Murray Clay
Managing Partner

Hunt Alternative Energy Investments, LLC
228 Hamilton Ave, 3rd Floor
Palo Alto, CA 94301

March 18th, 2013

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Wednesday, March 20, 2013 — 2:30 p.m.

TESTIMONY SUPPORTING SB 623 SD2 HD1 RELATING TO RENEWABLE ENERGY

Dear Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

Hunt Alternative Energy Investments, LLC **supports** SB 623 SD2 HD1, which will reform the Renewable Energy Technologies Income Tax Credit ("RETITC") while maintaining the viability of the solar industry. SB 623 SD2 HD1 will save the State tens of millions of dollars in tax credit related outlays, while continuing to promote solar energy technologies that will allow Hawai'i to reach its clean energy goals and reduce our depends on imported fossil fuels.

However, there are two critical areas in which SB 623 SD2 HD1 should be amended before it can move forward as a viable bill: **first**, the tax credit percentages which were left blank in this version of the bill must be filled in; **second**, three critical technical amendments must be made to avoid fatal implementation problems with the bill. We respectfully offer suggestions for these three areas below:

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  - **$2,500** per property for single-family residential property;
  - **$500** per unit per property for multi-family residential property;
  - **$250,000** per property for commercial property
- For section (a)(2), solar tax credit percentages in the amounts of:
  - **30%** for property placed in service after December 31, 2012 and before January 1, 2014;
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  - **20%** for property placed in service after December 31, 2015 and before January 1, 2018;
  - **15%** for property placed in service after December 31, 2017.

- For section (a)(3), production tax credit amounts of:
    - **8 cents/kWh** for solar energy property installed and placed in service on or before December 21, 2016;
    - **6 cents/kWh** for solar energy property installed and placed in service on or before December 31, 2020;
    - **4 cents/kWh** for solar energy property installed and placed in service after December 31, 2020.
- For section (a)(4), a cap on the utility-scale wind energy credit of **$500,000**.

2. Critical Technical Revisions

There are three critical technical revisions that must be made in order to avoid potentially serious or even fatal implementation problems with the legislation. These three technical amendments are: (a) to the definition of "Property"; (b) to the definition of "Basis"; and, (c) to clarify the availability of the credit for utility-scale wind energy property.

(a) Definition of "Property"

SB 623 rightly attempts to rely on the federal definition of energy "property" in its reform of HRS § 235-12.5 by defining "property" as having "the same meaning as in section 25D, 45, or section 48 of the Internal Revenue Code." Unfortunately, however, "property" is not defined as a stand-alone term in any of those three sections of the IRC, and to the extent it is defined in conjunction with other terms — e.g., "energy property" and "qualified solar electric property expenditure" — the definitions are inconsistent and/or contradictory. For example, "energy property" in Sec. 48 is defined so as to exclude property that is not depreciable, since Sec. 48 only applies to commercial property. This won't work for HRS § 235-12.5, where the definition of property is intended to apply to both residential and commercial property. In any case, SB 623 SD2 HD1 maintains a tie-in to the Federal IRC for interpretation of these terms via its section (j), which provides that "The tax credits provided for in this section shall be construed in accordance with Treasury Regulations and judicial interpretations of similar provisions in sections 25D, 45, and 48 of the Internal Revenue Code."

In order to address this technical flaw, we recommend that the definition of "Property" used in SB 623 SD2 HD1 be replaced with the following definition:

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- Copies language from Section 48(a)(3)(B)(i) to limit the credit to activities (construction, reconstruction, or erection) completed by the taxpayer; and,
- Copies language from Section 48(a)(3)(B)(ii) to clarify the taxpayer must be the original user of the property to qualify for the credit.

The proposed definition accomplishes the objective of following the federal law while allowing the definition to apply to both commercial and residential property. If the definition of "Property" in SB 623 SD2 HD1 is not amended, the definition will be meaningless since "property" is not, by itself, a defined term in any of the referenced federal statutes.

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This added sentence will ensure that the Hawai'i definition of "Basis" is consistent with federal law and allows taxpayers to legitimately claim racking and mounting equipment and other support apparatus while still prohibiting re-roofing and other abuses.

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Once again we support this bill, and we hope that the technical recommendations offered above may be of some use to the Committee. Thank you for the opportunity to provide this testimony.

HUNT ALTERNATIVE ENERGY

INVESTMENTS, LLC

Eric Perreca
Managing Director