

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

To: The Honorable Chris Lee, Chair
and Members of the House Committee on Energy & Environmental Protection

Date: Tuesday, March 24, 2015

Time: 8:30 A.M.

Place: Conference Room 325, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 1295, S.D. 1, H.D. 1, Relating to the Natural Energy Laboratory of Hawaii Authority

The Department of Taxation (Department) provides the following comments regarding S.B. 1295, S.D. 1, H.D. 1 for your consideration.

S.B. 1295, S.D. 1, H.D. 1 allows the Department of Business, Economic Development, and Tourism (DBEDT) to enter into inter-agency agreements with the Natural Energy Laboratory of Hawaii Authority without entering into a memorandum of agreement or memorandum of understanding. S.B. 1295, S.D. 1, H.D. 1 additionally provides the same incentives as are offered to enterprise zone participants to entities whose business activity is located within the enterprise zone controlled by the Authority, and includes the research, development, and commercialization of renewable energy technology. H.D. 1 has a defective effective date of February 19, 2025.

The Department notes that the Enterprise Zone program is administered by DBEDT and the Department retains authority over the tax filings. Qualifying Enterprise Zone activities qualify for a General Excise Tax (GET) exemption and substantial income tax credits for seven years.

S.B. 1295, S.D. 1, H.D. 1 provides these Enterprise Zone tax benefits to taxpayers without DBEDT oversight. DBEDT oversight is very important to enforcing compliance with the requirements of the Enterprise Zone program. Since wind energy is already an eligible business activity for the purposes of the Enterprise Zone program, the Department suggests that the renewable energy activities proposed in the measure be added as an "eligible business activity" under the Enterprise Zone statutes, or in the alternative, restate the tax benefits offered in these new laws rather than making references to the Enterprise Zone program.

Finally, the Department notes that the Renewable Energy Technologies Income Tax Credit (RETITC) at section 235-12.5, Hawaii Revised Statutes, provides a tax credit for installing and placing in service systems that convert sources of renewable energy into electricity or thermal heat. If the activities being contemplated in this measure include the placing in service of renewable energy systems, then multiple tax benefits would become available. This means that the RETITC would be provided at the outset of the project, GET would not be imposed on any revenues for seven years, and substantial income tax credits would also be provided for seven years.

Thank you for the opportunity to provide comments.



NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY

An Authority of the State of Hawaii attached to the Department of Business, Economic Development & Tourism

Statement of
Gregory P. Barbour
Executive Director
Natural Energy Laboratory of Hawaii Authority
before the

COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

Tuesday, March 24, 2015
8:30 am
State Capitol, Conference Room 325

in consideration of
SB 1295 SD1 HD1
RELATING TO THE NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY.

The Natural Energy Laboratory of Hawaii Authority (NELHA) strongly supports S.B. 1295 SD1 HD1 that amends Chapter 227D, Hawaii Revised Statutes, by adding language that would make businesses operating within research and technology parks established by NELHA eligible for the State's enterprise zone program. This measure would assist NELHA in attracting new projects to our technology park.

This measure will broaden the scope of businesses eligible for EZ benefits within our technology park. We recently adopted a new Master Plan for the Hawaii Ocean Science and Technology Park. Much of the remaining lands available for lease are in zones designated for renewable energy and applied technology. Chapter 209E currently allows businesses engaged in producing wind energy only to be qualified as eligible for EZ benefits. Many new businesses and projects that we are targeting may not qualify for EZ status given the current narrow

definition. It is also important to note that we also support adding this language to Chapter 209E.

We have been successful because the Legislature has given us the “tools” to allow us to succeed. This measure will add an additional tool to help us realize the goals of growing our economic development project and increasing the \$5M in annual State tax revenue that the park already generates.

Thank you for the opportunity to offer these comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Expand enterprise zone eligibility

BILL NUMBER: SB 1295, HD-1

INTRODUCED BY: House Committee on Economic Development and Business

EXECUTIVE SUMMARY: This bill proposes to extend tax credits and benefits similar to those in the enterprise zone laws to research, development and commercialization of renewable energy technology. It would be preferable for the bill to name this activity as an eligible activity under the enterprise zone program in order to ensure accountability; in other words, take an approach similar to that in HB 240, HD-1.

BRIEF SUMMARY: Adds a new section to HRS section 227D to provide that a qualified person whose business activity: (1) is located on or within real property under the control of the authority; and (2) includes the research, development, and commercialization of renewable energy technology shall be entitled to enterprise zone benefits. Provides that the benefits shall only be available to a renewable energy technology business activity located within the enterprise zone controlled by the natural energy laboratory of Hawaii authority after July 1, 2015. No other tax credit may be claimed under chapter 235 for renewable energy technology for which a credit is claimed under this section for the taxable year.

Provides that “renewable energy technology” includes hydrogen research and development and the use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design and daylighting.

EFFECTIVE DATE: February 19, 2025

STAFF COMMENTS: This measure proposes to extend tax credits and benefits similar to those in the enterprise zone laws to research, development and commercialization of renewable energy technology. However, the bill proposes to do so without placing the industry within the enterprise zone program. Therefore, it appears that businesses in this industry will be entitled to the benefits without committing to job retention or creation as other enterprise zone businesses do; that such businesses will not have to report to DBEDT annually as other enterprise zone businesses do; and although there are criteria in the enterprise zone program that the business will have to meet to continue to qualify for the tax credits and benefits, it is unclear whether these businesses will have to meet any criteria in order to continue qualifying for benefits. These issues will need to be clarified.

By way of background, the enterprise zone program was enacted in 1986 as a cooperative program between the state and the counties to promote jobs in areas of high unemployment. Certain areas are designated as enterprise zones through joint action of the state and counties. In a zone, the state offers an income tax credit for the tax attributable to the eligible business conducted in the zone, which is normally applied on a sliding scale – 80% for the first year, 70% for the second, and so on until the credit is 20% for the seventh and last year in the program. It also offers an unemployment tax credit for the tax attributable to employees doing the eligible business in the zone, on the same sliding scale.

Finally, the state offers a general excise tax exemption for the eligible business attributed to the zone. The counties also offer incentives, which vary by county. In return, the business commits to either maintain or increase the number of employees in the zone doing the eligible activity, depending on whether it was already in the zone upon designation or moved to the zone.

As business incentives go, the enterprise zone program is better than most. The incentive applies to a specific activity (here, creating and maintaining employment) targeted to the problem the program seeks to address. The incentive tapers off over time and then stops. It requires accountability, namely required reports to DBEDT for a business to retain its eligibility. The business itself may need a different kind of assistance, such as financing, but the state is here focusing on creating and maintaining jobs in areas that need them.

As applied to the businesses under consideration here, however, they appear to be getting the benefits without the accountability. For that reason it would be preferable to name these businesses as eligible for the enterprise zone program instead of cherry-picking the benefits as is done in this version of the bill. HB 240, HD-1 does this for seawater air conditioning. We would recommend a similar approach.

Digested 3/23/15



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2015

ON THE FOLLOWING MEASURE:

S.B. NO. 1295, S.D. 1, H.D. 1, RELATING TO THE NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY.

BEFORE THE:

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

DATE: Tuesday, March 24, 2015

TIME: 8:30 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General or
Bryan C. Yee, Deputy Attorney General

LATE

Chair Lee and Members of the Committee:

The Department of the Attorney General takes no position on this bill, except to inform you of our concerns with the wording of this bill.

From page 1, line 4, through page 2, line 4, this bill proposes to allow the Natural Energy Laboratory of Hawaii Authority (NELHA) to enter into and implement interagency agreements with the Department of Business, Economic Development, and Tourism (DBEDT). This bill also sets forth certain minimal requirements for these interagency agreements. NELHA and DBEDT, however, currently have the authority to enter into contracts and agreements, whether between themselves or with others. See section 201-4 and 227D-3(6) and (23), Hawaii Revised Statutes (HRS). Consequently, this portion of the bill is unnecessary.

The bill also proposes to amend chapter 227D, HRS, to allow enterprise zone incentives for certain NELHA businesses. These provisions, however, are more appropriately placed in chapter 209E, HRS, which sets forth the enterprise zone incentive program. We suggest simply amending the definition of “eligible business activity” in section 209E-2, HRS, to include: “Production of energy from solar, ocean thermal energy conversion, or hydrogen on real property under the control of the natural energy laboratory of Hawaii authority and pursuant to a new lease executed on or after July 1, 2015.”

Thank you for giving us the opportunity to testify.