SB 780

DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
LUIS P. SALAVERIA
Director
Department of Business, Economic Development, and Tourism
Before the

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT AND ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY AND TRANSPORTATION AND ENERGY

Wednesday, February 8, 2017
2:50p.m.
State Capitol, Conference Room 225

In consideration of
SB 780
RELATING TO ENTERPRISE ZONES.

Chairs Gabbard, Wakai, and Inouye, Vice-Chairs Riviere, Taniguchi, and Dela Cruz, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports the intent of this bill, provided it does not displace the Administration's priorities. Furthermore, we have the following comments.

First, this bill would extend the tax credit eligibility periods in enterprise zones for agricultural producers and for businesses providing renewable energy infrastructure to agricultural producers until the Hawaii constitutional mandate of "self-sufficiency" is fulfilled – a conceivably unidentifiable end date. Enterprise Zone benefits currently provide only manufacturers and agricultural producers an additional thirty-six (36) months of eligibility in addition to their original eighty-four (84) months of enrollment.

Second, this bill allows for "certification" for benefits based upon a two (2) percent increase in "gross volume production" for both agricultural production businesses and businesses that provide renewable energy infrastructures to agricultural producers within the same county. Agricultural producers already may combine "retail sales" revenue, an ineligible activity to all other enterprise zone companies, with eligible "wholesale" revenue in order to gain department "certification" to claim Enterprise Zone benefits. Increasing volume would not necessarily mean an increase in sales revenue or an increase in job creation.

Third, this bill adds retail service activity to the Enterprise Zone Program as an eligible activity of businesses that provide "renewable energy infrastructure" to agricultural producers.

Retail activity is not currently an eligible activity given its potential impact on the State's tax receipts. However, general and sub-contractors, licensed under Section 444, Hawaii Revised Statutes, who provide contractor services to enrolled Enterprise Zone companies, are already exempted from the General Excise Tax (GET) for work done for an Enterprise Zone company at the company's Enterprise Zone site.

The objective of the Enterprise Zone Program is to bring new business activities and employment to areas of the State with high unemployment. The income and unemployment tax credits taper off over time. Each enrolled business must send in an annual report to DBEDT where we verify increases in the company's full-time employee count. Objectives are clearly known and the credit recipients commit to the objectives. Initial tax relief may be substantial, but tapers off and stops at a specific time.

Passage of this bill would significantly alter the compromise and efficiency DBEDT has in accomplishing the goals and objectives of the Enterprise Zone Program.

Thank you for the opportunity to testify.

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor

SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

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LATE

TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON AGRICULTURE & ENVIRONMENT, ECONOMIC DEVELOPMENT, TOURISM & TECHNOLOGY, & TRANSPORTATION & ENERGY

FEBRUARY 8, 2017
2:50 P.M.
CONFERENCE ROOM 225

SENATE BILL NO. 780
RELATING TO ENTERPRISE ZONES

Chairpersons Gabbard, Wakai, and Inouye and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill No. 780 that amends Chapter 209E (State Enterprise Zone) as it affects qualified producers or processors of agricultural products and installation of renewable energy infrastructure for agricultural producers. The Department of Agriculture supports the intent of the measure that is specific to agricultural producers, has concerns about our responsibilities in the State business tax credit and the determination of a standard for agricultural self-sufficiency for the State, and offers comments.

To qualify for enterprise zone benefits, agricultural producers have to earn at least 50 percent of their gross income from agricultural or aquacultural activities. The enterprise zones for agricultural producers are to remain in effect until the constitutional mandate to increase agricultural self-sufficiency has been achieved. The Department of Agriculture and the Department of Business, Economic Development and Tourism (DBEDT) are responsible for defining the standards for agricultural self-sufficiency. The director of DBEDT is to recommend to the Governor up to 6 areas in each county as agricultural enterprise zones.

The State Business Tax Credit for agricultural producers is 80 percent of the tax credits claimed for investments in water infrastructure, farm labor housing, investments in mechanization, food processing and value added production infrastructure. The Department of Agriculture is responsible for evaluating and determining whether an agricultural producer's investments are qualified. There is no further guidance on the full extent of the Department's responsibilities with respect to this tax credit. The Department has the responsible for qualifying two existing tax credits with existing personnel. Adding a third tax credit without resources will have adverse effects upon the duties and responsibilities of the Department.

The Department supports the development of renewable energy technologies that directly reduce the electricity costs to agricultural producers. However, the proposed amendments to Chapter 209E regarding "renewable energy infrastructure for agricultural producers by renewable energy production businesses" do not establish this direct linkage of the renewable energy infrastructure to agricultural producers. The 50 percent cap on gross annual income to the agricultural producer from sources other than agricultural or aquacultural activities appears to place a limit on the renewable energy infrastructure for each agricultural producer. Since 2008, the legislature has approved measures that have expanded the use of renewable energy facilities on agricultural lands throughout the State and in some cases, becomes the primary activity on agricultural lands, or is allowed without any connection to agricultural activity. The Department advises caution of allowing the development of more renewable energy facilities on agricultural lands.

Thank you for the opportunity to submit our testimony.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR

MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

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To: The Honorable Mike Gabbard, Chair
and Members of the Senate Committee on Agriculture and Environment

The Honorable Glen Wakai, Chair
and Members of the Senate Committee on Economic Development, Tourism, and Technology

The Honorable Lorraine R. Inouye, Chair
and Members of the Senate Committee on Transportation and Energy

Date: Wednesday, February 8, 2017
Time: 2:50 P.M.
Place: Conference Room 225, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 780, Relating to Enterprise Zones

The Department of Taxation (Department) appreciates the intent of S.B. 780, which seeks to incentivize the constitutional mandate of increased agricultural self-sufficiency by expanding the definition of “eligible business activity” to include businesses that provide renewable energy infrastructure to agricultural producers and extending the tax credit eligibility period for such businesses. However, the Department has serious concerns regarding S.B. 780 due to the open-ended tax credit period for such businesses and substantial ambiguities contained in the measure. The Department otherwise defers to the Department of Business, Economic Development, and Tourism (DBEDT) on the merits of this bill, and provides the following comments for your consideration.

S.B. 780 expands the definition of an eligible business activity to include businesses that provide renewable energy infrastructure to agricultural producers, extends the tax credit eligibility periods for such businesses the Hawaii constitutional mandate of "self-sufficiency" is fulfilled, allows such a qualified business to be eligible for tax incentives by increasing the gross volume of agricultural products or gross volume of renewable energy infrastructures to agricultural producers within enterprise zones located within the same county by two percent annually, and specifies that certain kinds of agricultural investments are eligible for the business tax credit. The measure is effective upon approval, and is applies to tax years beginning after December 31, 2016.

First, the Department notes that the Enterprise Zone (EZ) program was created to provide incentives for new and established businesses to locate and expand in economically distressed areas of the State. These incentives were limited to seven years, except for qualified businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products, which the Legislature extended to ten years in 2009.

S.B. 780 would reduce the period back to seven years for the manufacturing of tangible personal property and make the period for the income tax incentives open-ended for qualified businesses engaged in providing renewable energy infrastructure to agricultural producers, as well as agricultural producers. This exemption will continue to apply to these businesses until the State's mandate of increased agricultural self-sufficiency is achieved, as jointly determined by DBEDT and the Department of Agriculture. This is true even if the area falls out of the economically distressed category. The Department has serious concerns over such an open-ended tax credit, which will effectively reduce the income tax rate for such businesses by 20 percent annually and eliminate the General Excise Tax (GET) on all qualified sales.

Second, although the measure states that it is expanding the definition of "qualified business activity", in reality this measure is creating a new "agricultural zone" program. The measure creates up to six new "agricultural enterprise zones" in each EZ. Once designated, the zones remain until the State's agricultural self-sufficiency has been attained. These zones do not necessarily correspond to existing enterprise zones.

Third, the definition of "agricultural producer" has the same meaning as in section 155-5.6, Hawaii Revised Statutes, which provides that it "means a farmer, cooperative association, or landowner who derives at least fifty per cent of its gross income from agricultural or aquacultural activities." Currently, DBEDT qualifies an agricultural business based on whether the business has more than 50% of its gross revenues from the wholesale sale of agricultural products. Under this measure, all agricultural sales, whether retail or wholesale, will be exempt from the GET, a significant expansion from the current policy.

Fourth, as currently drafted, a business engaged in providing renewable energy infrastructure for agricultural producers need not be located in an EZ or in an agricultural EZ. Such a business can be situated anywhere and only need to provide power from a renewable source to an agricultural producer in an agricultural EZ.

Fifth, the Department is seriously concerned over the provision on line 17 of page 11 which may be read to remove the Department of Taxation's authority to audit, examine and/or adjust any claim. The Department of Taxation suggests that the provision be clarified to state that the Department of Agriculture shall certify that the credit claim is proper, but that the Department of Taxation retains the authority to audit, examine and/or adjust such claims.

Finally, the Department notes that for agricultural producers and businesses engaged in producing renewable energy infrastructure for agricultural producers, the business tax credit is claimable only provided that the business makes any kind of investments in the following areas during the taxable year:

(1) Water infrastructure;
(2) Farm labor housing;
(3) Investments in mechanization;
(4) Food processing and value added production infrastructure, including infrastructure for food safety compliance; and
(5) Renewable energy production capacity

It is not clear how much of the investment must be made in the enumerated types of investments to claim the credit. For example, as drafted, the provision could be read so that a business that only made a $1 investment in water infrastructure during the year could qualify for the credit, so long as 50% of its revenues were derived from agricultural or aquacultural activities, or providing energy from renewable sources to an agricultural producer.

Thank you for the opportunity to provide comments.

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017

ON THE FOLLOWING MEASURE:
S.B. NO. 780, RELATING TO ENTERPRISE ZONES.

BEFORE THE:
SENATE COMMITTEES ON AGRICULTURE AND ENVIRONMENT, ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY, AND TRANSPORTATION AND ENERGY

DATE: Wednesday, February 8, 2017 **TIME:** 2:50 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Margaret S. Ahn, Deputy Attorney General

Chairs Gabbard, Wakai, and Inouye and Members of the Committees:

The Department of the Attorney General provides the following comments.

1. Page 4, lines 1-2, adds a definition of "agricultural producer" to section 209E-2, Hawaii Revised Statutes (HRS). However, section 209E-2 already defines agricultural producer as that "as defined in section 237-5 [HRS]." These two definitions are inconsistent, and we recommend this bill be amended either by deleting the new definition or the existing definition, or by reconciling the definitions to a new single definition of "agricultural producer."
2. Page 6, lines 8-18, adds to section 209E-4, HRS, a new subsection (c) that authorizes the designation of up to six areas in each county as "agricultural enterprise zones." This wording indicates that "agricultural enterprise zones" are separate and distinct from regular enterprise zones. Therefore, we recommend this bill be amended to add a definition of "agricultural enterprise zones," and to clarify whether they are subject to the same requirements for the designation of regular enterprise zones contained in section 209E-4, HRS, and, if not, what requirements must be met in order for a tract of land to be designated an "agricultural enterprise zone."
3. Page 8, lines 8-13, adds to section 209E-9(b)(3), HRS, a new subparagraph (C) to provide that a business may qualify for enterprise zone tax benefits if the

business increases its "gross volume of renewable energy infrastructure installed for agricultural producers . . . by two per cent annually." We recommend this bill be amended to add a definition of "renewable energy infrastructure for agricultural producers," and to clarify how the "volume" of infrastructure shall be quantified and measured to determine the annual percentage increase.

4. This bill alternates between references to the "installation" of renewable energy infrastructure, to the "providing" of renewable energy infrastructure, and to the "producing and processing" of renewable energy infrastructure. These varying terms, coupled with the lack of a definition of "renewable energy infrastructure for agricultural producers," create an ambiguity as to what renewable energy infrastructure businesses will qualify for the enterprise zone tax benefits. We recommend this bill be amended to add a definition of "renewable energy infrastructure for agricultural producers," and to clarify whether the qualifying business activity is "installing," "providing," or "producing and processing" the infrastructure.
5. Page 11, lines 4-16, adds to section 209E-10, HRS, a new subsection (e) to authorize a tax credit equal to 80 percent of the tax credit claimable under section 209E-10, as long as investments are made in certain enumerated areas. As no minimum amounts for these investments are provided in order to qualify for this tax credit, a taxpayer investing $1 in each of the enumerated areas would feasibly qualify for the tax credit. If this is not the Legislature's intent, we recommend this bill be amended to include minimum investment amounts and any other requirements which the Legislature deems appropriate.
6. Page 11, lines 6-7, the new subsection (e) of section 209E-10, HRS, provides, "the amount of the business tax credit" for agricultural producers and firms engaged in producing renewable energy infrastructure for agricultural producers shall be equal to 80 percent of the tax credit claimable under section 209E-10. However, page 9, lines 7-8, also amends section 209E-10(a), HRS, and provides that businesses engaged in the producing or processing of agricultural products or renewable energy infrastructure shall be entitled to the business tax credit

under section 209E-10(a). It is unclear, therefore, whether the 80 percent tax credit for agricultural businesses is in addition to, or in lieu of, the rest of the tax credits claimable under section 209E-10. We recommend that the bill be clarified.

7. Page 11, lines 17-18, provides that the Department of Agriculture shall evaluate and determine the qualification for the above-mentioned tax credit. However, the enterprise zone program and chapter 209E, HRS, are administered by the Department of Business, Economic Development, and Tourism. We recommend that this provision be amended to read, "The department may consult the department of agriculture in determining a business' qualification under this subsection."

We respectfully recommend that this bill be amended to clarify the foregoing ambiguities.

LEGISLATIVE TAX BILL SERVICE

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Expand enterprise zone eligibility

BILL NUMBER: HB 784; SB 780 (Identical)

INTRODUCED BY: HB by CREAGAN, LOPRESTI, TAKAYAMA; SB by GABBARD, ESPERO, S. Chang, Riviere

EXECUTIVE SUMMARY: This bill proposes to significantly expand enterprise zone benefits to agricultural businesses and those that sell them clean energy. The expansion of benefits from ten years to an indefinite period of time is of concern. The benefits to providers of renewable energy infrastructure may already claim significant benefits because contractors providing infrastructure to an enterprise zone business are already exempt from GET.

BRIEF SUMMARY: Amends HRS section 209E-1 to add to the purpose of the chapter enabling investments to meet the constitutional mandate of agricultural self-sufficiency.

Amends HRS section 209E-2 to amend the definition of "eligible business activity" in an enterprise zone to include the installation of renewable energy infrastructure for agricultural producers by renewable energy production businesses.

Amends HRS section 209E-4 to provide that the usual twenty-year limit for enterprise zones doesn't apply to agricultural producers and those businesses engaged in providing renewable energy infrastructure for agricultural products. Provides that up to six areas in each county shall be designated as agricultural enterprise zones until the constitutional mandate of agricultural self-sufficiency has been fulfilled. Requires the department of agriculture in consultation with DBEDT to define the standards for agricultural self-sufficiency.

Amends HRS section 209E-9 to add, as a condition of continuing to qualify for enterprise zone benefits, increase in s its gross volume of agricultural products processed or gross volume of renewable energy infrastructure installed for agricultural producers within agricultural enterprise zones located within the same county by two per cent annually.

Amends HRS section 209E-10 to repeal the extended eligibility for enterprise zone benefits for manufacturers, instead giving them a seven-year benefits period; extend eligibility for agricultural producers from ten years to "until the State's mandate of increased agricultural self-sufficiency is achieved," and grants eligibility for businesses engaged in renewable energy infrastructure for agricultural producers for the same indefinite period as for agricultural producers.

Also provides that any unused credit may be carried to future tax years. Unused credit cannot be carried forward under current law.

Also provides that while most eligible businesses can take a credit of 80% of eligible taxes the first year, 70% the second year, and so on until it reaches 20% for the seventh (and subsequent) years, agricultural businesses and renewable energy businesses servicing them are entitled to 80% as long as investments in the following areas are made during the taxable year: (1) water infrastructure; (2) farm labor housing; (3) investments in mechanization; (4) food processing and value added production infrastructure, including infrastructure for food safety compliance; and (5) renewable energy production capacity.

EFFECTIVE DATE: Upon approval, applies to taxable years beginning after December 31, 2016.

STAFF COMMENTS: This measure proposes to expand enterprise zone laws as they relate to agricultural businesses and providers of renewable energy infrastructure.

The enterprise zone program was enacted 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 and for construction contractors building infrastructure for such businesses. 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 *as it now exists* 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.

One criticism of the program is that the designated eligible activities do not seem to have a common thread running through them except that the various activities seem to have been the Flavor of the Month at one time or other. Eligible activities at present are:

- Agricultural production or processing
- Manufacturing
- Wholesaling/Distribution
- Aviation or maritime repair or maintenance
- Telecommunications switching and delivery systems
- Information technology design and production
- Medical research, clinical trials, and telemedicine

- For-profit training programs in international business management or environmental remediation
- Biotechnology research, development, production, or sales
- Repair or maintenance of assisted technology equipment
- Certain types of call centers
- Wind energy producers

The changes proposed by this bill fundamentally change the character of the program, not only for the renewable energy installers and agricultural businesses, but for most if not all of the businesses in the program.

All qualified businesses could potentially benefit from the change in the credit to one that can be carried forward.

Manufacturers seem to get the short end of the stick because their ten-year credit is reduced to seven years.

Agricultural producers and renewable energy installers appear to be the big winners, getting a credit of indefinite duration at an amount that can stay at 80% of covered taxes for multiple years.

None of these effects appear to have anything to do with the policy justification of the credit in the first place, which was to encourage businesses to hire workers in areas with high unemployment.

In addition, for agricultural producers and renewable energy installers, there is an added alternative criterion for continuation of the credit, namely a 2% increase in installed capacity or production volume, that has little to do with employment either.

Finally, we question whether extension of all the enterprise zone benefits to renewable energy installers are necessary in light of the existing provision exempting contractors from the GET for contracting activity for a qualified business within the zone (HRS section 209E-11).

Digested 1/30/2017

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February 8, 2017

HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM AND TECHNOLOGY
SENATE COMMITTEE ON TRANSPORTATION AND ENERGY

TESTIMONY ON SB 780
RELATING TO ENTERPRISE ZONES

Room 225
2:50 PM

Aloha Chair Gabbard, Chair Wakai, Chair Inouye, and Members of the Committees:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

HFB strongly support SB 780, which expands the Enterprise Zone Program incentives related to agriculture.

In 2008, amendments were made to the Enterprise Zone (EZ) program, making it agriculture friendly. Thus, many of our farmers and ranchers have utilized the program to expand their operations. As State of Hawaii seeks to increase agricultural production, it is timely to reevaluate the program to meet our changing needs.

A basic practice of our farmers is to evolve the crops they grow based on markets and other variables. The gross price for crops may differ significantly. Flowers per unit area may yield greater gross income than cabbage. As a result, the current income based metric for agriculture may be a challenge. We have proposed a volume based metric as a reasonable alternative to be added as a basis for qualification.

We know it will take focus and investments to move the needle on Hawaii's agricultural production. We propose a timeframe determined by HDOH and DBEDT to reach production goals in place of the current 7 years. This will be consistent with the policy of growing Hawaii agriculture.

Other amendments are proposed to increase agricultural production and viability, suggested by our commercial growers. We are willing to work with HDOA, DBEDT and DoTax to develop a workable measure to facility Hawaii's policy to support agriculture.

Thank you for the opportunity to provide testimony on this measure.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 7, 2017 8:38 AM
To: AEN Testimony
Cc: warrenmcfb@gmail.com
Subject: *Submitted testimony for SB780 on Feb 8, 2017 14:50PM*

SB780
Submitted on: 2/7/2017
Testimony for AEN/ETT/TRE on Feb 8, 2017 14:50PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Warren Watanabe	Maui County Farm Bureau	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 3, 2017 5:32 PM
To: AEN Testimony
Cc: gordines@kauaiflowers.com
Subject: *Submitted testimony for SB780 on Feb 8, 2017 14:50PM*

SB780
Submitted on: 2/3/2017
Testimony for AEN/ETT/TRE on Feb 8, 2017 14:50PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
John R. Gordines	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 7, 2017 1:16 PM
To: AEN Testimony
Cc: gregf@haleakalaranch.com
Subject: *Submitted testimony for SB780 on Feb 8, 2017 14:50PM*

SB780
Submitted on: 2/7/2017
Testimony for AEN/ETT/TRE on Feb 8, 2017 14:50PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Gregory Friel	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.