



GOV. MSG. NO. 1398

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 12, 2022

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty-First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty-First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith SB2511 SD2 HD2 CD1, without my approval and with the statement of objections relating to the measure.

SB2511 SD2 HD2 CD1

RELATING TO TAXATION.

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

EXECUTIVE CHAMBERS

HONOLULU

July 12, 2022

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2511

Honorable Members
Thirty-First Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I am returning herewith, without my approval, Senate Bill No. 2511, entitled "A Bill for an Act Relating to Taxation."

The purposes of this bill are to expand the Renewable Energy Technologies Income Tax Credit (RETITC) to include new categories of renewable energy technology systems that are eligible for the RETITC and to impose caps on the amount of credit that may be claimed by a taxpayer and the total amount of tax credits for certain renewable energy technology systems that may be claimed in a taxable year. The bill would apply to taxable years after December 31, 2021.

This bill is objectionable for several reasons. First, this bill has a significant administrative flaw in that it creates an aggregate \$20 million cap without designating a certifying agency to ensure that the aggregate cap is not exceeded. Further, the bill requires tax credits to be prorated if the cap is exceeded, but because the tax credits are processed when received, taxpayer's claims for credit after the cap is exceeded will have to be denied, prorated, or adjusted due to the aggregate cap having been exceeded, and those taxpayers may incur a tax liability with penalties and interest. The uncertainty about whether a credit will actually be available when claimed could have a chilling effect on the willingness of the public to install new renewable energy systems. Second, while the measure attempts to define what a "system" is for purposes of calculating the credit, the Department of Taxation has indicated a problem with calculating the allowable credit for "storage systems" because it is to be calculated based on output as opposed to storage capacity. Finally, even though the bill's intention appears to incentivize installation of firm renewable energy systems and long-duration

STATEMENT OF OBJECTIONS
SENATE BILL NO. 2511
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renewable energy storage systems, it retroactively applies to the entire tax year of 2022. As a result, the bill would allow a taxpayer who already installed a renewable energy technology system before the enactment of this bill to also receive the tax credit, thus failing to incentivize installation of additional systems.

For the foregoing reasons, I am returning Senate Bill No. 2511 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "David Y. Ige". The signature is fluid and cursive, with a large loop at the end.

DAVID Y. IGE
Governor of Hawai'i

A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 235-12.5, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (a) to read:

4 "(a) Each individual or corporate taxpayer that files an
5 individual or corporate net income tax return for a taxable year
6 may claim a tax credit under this section against the Hawaii
7 state individual or corporate net income tax. The tax credit
8 may be claimed for every eligible renewable energy technology
9 system that is installed and placed in service in the State by a
10 taxpayer during the taxable year. The tax credit may be claimed
11 as follows:

12 (1) For each solar energy system: thirty-five per cent of
13 the actual cost or the cap amount determined in
14 subsection (b); provided that:

15 (A) For taxable years beginning after December 31,
16 2019, and except as provided in subparagraphs (B)
17 and (C), no tax credit may be claimed for a solar
18 energy system that is five megawatts in total



1 output capacity or larger and requires a power
2 purchase agreement approved by the public
3 utilities commission;

4 (B) A solar energy system that is five megawatts in
5 total output capacity or larger, installed and
6 placed in service pursuant to a power purchase
7 agreement approved or pending approval by a
8 decision and order by the public utilities
9 commission prior to December 31, 2019, shall
10 continue to receive a tax credit equal to thirty-
11 five per cent of the actual cost, or \$500,000 per
12 solar energy system that has a total output
13 capacity of at least one thousand kilowatts per
14 system of direct current, whichever is less; and

15 (C) For each solar energy system integrated with a
16 pumped hydroelectric energy storage system, the
17 tax credit may be claimed for thirty-five per
18 cent of the actual cost or the cap amount
19 determined in subsection (b), whichever is less;
20 provided that applicable project approval filings



1 have been made to the public utilities commission
2 by December 31, 2021; [~~or~~]

3 (2) For each wind-powered energy system: twenty per cent
4 of the actual cost or the cap amount determined in
5 subsection (b), whichever is less;

6 (3) For each firm renewable energy system: twenty per cent
7 of the actual cost or the cap amount of \$750,000 per
8 firm renewable energy system that has a total output
9 of at least one thousand kilowatts per system of
10 alternating current, whichever is less; or

11 (4) For each long-duration renewable energy storage
12 system: twenty per cent of the actual cost or the cap
13 amount of \$750,000 per long-duration renewable energy
14 storage system that has a total output of at least one
15 thousand kilowatts per system of alternating current,
16 whichever is less;

17 provided further that multiple owners of a single system shall
18 be entitled to a single tax credit; [~~and~~] provided further that
19 the tax credit shall be apportioned between the owners in
20 proportion to their contribution to the cost of the system.



1 The amount of the tax credit claimed under paragraphs (3)
2 and (4) by a taxpayer shall not exceed \$3,500,000 per taxable
3 year. The total amount of tax credits allowed under paragraphs
4 (3) and (4) shall not exceed \$20,000,000 for all eligible
5 taxpayers in any calendar year. If the credit claims under
6 these paragraphs exceed \$20,000,000 for all eligible taxpayers
7 in any given calendar year, the \$20,000,000 shall be divided
8 between all eligible taxpayers for that year in proportion to
9 their rated capacities.

10 In the case of a partnership, S corporation, estate, or
11 trust, the tax credit allowable is for every eligible renewable
12 energy technology system that is installed and placed in service
13 in the State by the entity. The cost upon which the tax credit
14 is computed shall be determined at the entity level.
15 Distribution and share of credit shall be determined pursuant to
16 administrative rule."

17 2. By amending subsection (c) to read:

18 "(c) For the purposes of this section:

19 "Actual cost" means costs related to the renewable energy
20 technology systems under subsection (a), including accessories
21 and installation, but not including the cost of consumer



1 incentive premiums unrelated to the operation of the system or
2 offered with the sale of the system and costs for which another
3 credit is claimed under this chapter.

4 "Firm renewable energy system" means a renewable energy
5 technology system that is always available and capable of
6 continually producing energy, twenty-four hours per day, three
7 hundred sixty-five days per year, on the demand of the energy
8 system's operator, at its rated capacity, subject only to
9 routine maintenance and emergency repairs.

10 "Household use" means any use to which heated water is
11 commonly put in a residential setting, including commercial
12 application of those uses.

13 "Long-duration renewable energy storage system" means a
14 renewable energy storage technology system that:

- 15 (1) Is charged at a minimum of seventy-five per cent by
16 renewable energy on an annual measuring period;
17 (2) Is available and dispatchable by the energy system's
18 operator; and
19 (3) Can discharge continuously at its rated capacity over
20 at least a six-hour period within a twenty-four hour
21 period,



1 subject only to routine maintenance and emergency repairs.

2 "Renewable energy technology system" means a new system
3 that captures and converts a renewable source of energy, such as
4 solar or wind energy, into:

5 (1) A usable source of thermal or mechanical energy;

6 (2) Electricity; or

7 (3) Fuel.

8 "Solar or wind energy system" means any identifiable
9 facility, equipment, apparatus, or the like that converts solar
10 or wind energy to useful thermal or electrical energy for
11 heating, cooling, or reducing the use of other types of energy
12 that are dependent upon fossil fuel for their generation."

13 3. By amending subsections (g) through (i) to read:

14 "(g) For solar energy systems, firm renewable energy
15 systems, and long-duration renewable energy storage systems, a
16 taxpayer may elect to reduce the eligible credit amount by
17 thirty per cent and if this reduced amount exceeds the amount of
18 income tax payment due from the taxpayer, the excess of the
19 credit amount over payments due shall be refunded to the
20 taxpayer; provided that tax credit amounts properly claimed by a
21 taxpayer who has no income tax liability shall be paid to the



1 taxpayer; [and] provided further that no refund on account of
2 the tax credit allowed by this section shall be made for amounts
3 less than \$1.

4 The election required by this subsection shall be made in a
5 manner prescribed by the director on the taxpayer's return for
6 the taxable year in which the system is installed and placed in
7 service. A separate election may be made for each separate
8 system that generates a credit. An election once made is
9 irrevocable.

10 (h) Notwithstanding subsection (g), for any renewable
11 energy technology system, firm renewable energy system, or long-
12 duration renewable energy storage system, an individual taxpayer
13 may elect to have any excess of the credit over payments due
14 refunded to the taxpayer, if:

15 (1) All of the taxpayer's income is exempt from taxation
16 under section 235-7(a)(2) or (3); or

17 (2) The taxpayer's adjusted gross income is \$20,000 or
18 less (or \$40,000 or less if filing a tax return as
19 married filing jointly);

20 provided that tax credits properly claimed by a taxpayer who has
21 no income tax liability shall be paid to the taxpayer; [and]



1 provided further that no refund on account of the tax credit
2 allowed by this section shall be made for amounts less than \$1.

3 A [~~husband and wife~~] married couple who do not file a joint
4 tax return shall only be entitled to make this election to the
5 extent that they would have been entitled to make the election
6 had they filed a joint tax return.

7 The election required by this subsection shall be made in a
8 manner prescribed by the director on the taxpayer's return for
9 the taxable year in which the system is installed and placed in
10 service. A separate election may be made for each separate
11 system that generates a credit. An election once made is
12 irrevocable.

13 (i) No other tax credit may be claimed under this chapter
14 for the costs incurred to produce the renewable energy
15 technology systems that are used to properly claim a tax credit
16 under this section for the taxable year. No taxpayer shall be
17 allowed a credit under this section for the portion of the
18 renewable energy technology system required by section 196-6.5
19 that is installed and placed in service on any newly constructed
20 single-family residential property authorized by a building
21 permit issued on or after January 1, 2010."



1 4. By amending subsection (k) to read:

2 "(k) This section shall apply to eligible renewable energy
3 technology systems that are installed and placed in service on
4 or after July 1, 2009[-] and before January 1, 2046."

5 SECTION 2. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 3. This Act shall take effect upon its approval
8 and shall apply to taxable years beginning after December 31,
9 2021.



S.B. NO. 2511
S.D. 2
H.D. 2
C.D. 1

APPROVED this day of , 2022

GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: May 3, 2022
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-First Legislature of the State of Hawai'i, Regular Session of 2022.


President of the Senate


Clerk of the Senate

SB No. 2511, SD 2, HD 2, CD 1

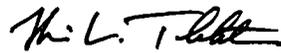
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 3, 2022
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives