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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

TESTIMONY OF THE CHAIRPERSON OF THE BOARD OF LAND AND NATURAL RESOURCES

ON

House Bill 3410– RELATING TO BIODIESEL

BEFORE THE HOUSE COMMITTEES ON ENERGY AND ENVIRONMENTAL PROTECTION and WATER, LAND, OCEAN RESOURCES AND HAWAIIAN AFFAIRS And AGRICULTURE

February 12, 2008

House Bill 3410 provides various market stimulation incentives for the development of biodiesel, including making state agricultural lands available for biodiesel fuel crops; establishing a state biodiesel feedstock crop and biodiesel fuel purchasing program; and creating tax exemptions for biomass crushing facilities and lands used for biodiesel feedstock crops. The Department of Land and Natural Resources (Department) supports the intent of this legislation but prefers that the Legislature consider and pass Senate Bill 3101, a similar measure proposed by the Administration that amends the definition of "renewable energy producer" to include growers and producers of organic materials used primarily for the production of biofuels or other fuels, so that they will be eligible for direct leases of public land.

Section 171-95, Hawaii Revised Statutes (HRS), currently authorizes the Department to issue leases for public lands to renewable energy producers by direction negotiation. Due to the Department's public trust obligations to maximize returns on the disposition of public land whenever possible and appropriate, such leases are subject to fair market value rent. Nominal rent is offered only to nonprofit organizations and other persons in special circumstances that warrant such favorable treatment pursuant to the State's public trust responsibilities. While the Department believes biofuel feedstock growers should be entitled to lease public lands by direct negotiation, we do not support the issuance of those leases at nominal rent.

The Department is also concerned by the limitation of the bill only to agricultural lands with a productivity rating of A or B. A and B rated agricultural lands are the best overall agricultural lands and most state lands with that designation are already encumbered by long term leases or

permits while vast acreages of C, D and E rated lands remain fallow and unencumbered. Displacing other diversified agriculture from such lands could adversely impact the State's constitutionally mandated mission of protecting and promoting agriculture. Moreover, crops used in the production of biodiesel fuel can be grown economically on C, D and E rated lands.

Lastly, page 3, lines 1 to 3 allowing the Board of Land and Natural Resources (Board) to adopt rules should be deleted. Adopting rules is not necessary as stated above because the Board can authorize long-term leases pursuant to Section 171-95, HRS and general rulemaking authority for the chapter is already provided by Section 171-6(4), HRS.

Should the Committee be inclined to pass this measure, the Department recommends that it consider the amendments of Senate Bill No. 3215, Senate Draft 1, incorporated by the Senate Committees on Energy and Environment and Agriculture and Hawaiian Affairs that omitted the requirement that that Board lease the public agricultural lands at nominal consideration and omitted the restriction mandating that the state agricultural lands made available for biodiesel fuel crops be soil classified by the Land Study Bureau's detailed land classification as productivity rating class A or B, making all public agricultural lands available for biodiesel fuel crops. In addition, the Department recommends eliminating the unnecessary provision allowing the Board to adopt rules.

To: House Sergeant-at-Arms—Please provide provide 25 copies.

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Hermina Morita, Chair
Rep. Mele Carroll, Vice Chair

COMMITTEE ON WATER, LAND, OCEAN RESCOURCES & HAWAIIAN AFFAIRS

Rep. Ken Ito, Chair
Rep. Jon Karamatsu, Vice Chair

COMMITTEE ON AGRICULTURE

Rep. Clift Tsuji, Chair
Rep. Tom Brower, Vice Chair

DATE: Tuesday, December 12, 2008
TIME: 8:30 am
PLACE:Conference Room 312

RE: HB 3410 Relating to Biodiesel

FROM: Bryan Collins, Pacific Biodiesel

Aloha Honorable Senators,

I am writing in support of HB 3410 which will provide much needed incentives for farmers to begin growing crops here in Hawaii to be utilized for truly local and sustainable biodiesel production. A similar bill, HB2210, was passed last year in Oregon in cooperation with an Oregon based company which Pacific Biodiesel partially owns and operates. In its' first year, The bill has successfully stimulated Oregon farmers to produce canola crops which are converted into biodiesel and used in all state owned vehicles within the city of Portland. Furthermore, the success of the program has stimulated additional farmers to plant canola as a feedstock for the coming year. By creating an initially guaranteed market the State of Oregon has successfully begun to develop a statewide network of biodiesel production which is grown, refined and consumed locally. We hope that this bill will generate even greater successes in Hawaii.

Our company has worked for over a decade to create a market for biodiesel in Hawaii and as a result, a demand for locally grown feedstocks now exists. Over the years, we have been approached by numerous Hawaiian farmers interested in growing biodiesel crops, but the uncertainty inherent in an untested agricultural market has proved to be too risky for them to proceed. The absence of a mature and diverse agricultural system combined with the uncertainty regarding crop yields and cultivation practices has prevented local farmers from planting crops for use in biodiesel production. This bill will create a small but secure scenario for local farmers to plant biodiesel crops and take the first steps towards acquiring the practical knowledge and experience needed in order to effectively create a sustainable biodiesel industry based on local agricultural production. We hope that this 'on the ground' experience and knowledge will be used in tandem with the excellent scientific research already being

conducted within the state to rapidly generate a wealth of information which will encourage diverse, locally owned small farming operations throughout Hawaii.

We are committed to expanding our community based model to involve more local farmers and community ownership which will result in biodiesel grown, produced and consumed within the Hawaiian Islands in harmony with our other needs such as food and adequate water supplies. This model optimizes energy security and local economic benefits while minimizing the environmental impacts of the entire biodiesel production cycle. Additionally, the design scale of this model is more adaptable to the needs, capabilities and resources of the community in which a biodiesel plant will operate.

In conclusion, this bill presents the state with an opportunity to actively increase the use and availability of renewable energy in Hawaii, and is a crucial first step towards increasing the involvement of local farmers in the renewable energy economy we all want for Hawaii

Mahalo,

Bryan Collins

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40 Hobron Avenue
Kahului, Hawaii 96732
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www.biodiesel.com

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, Exclusion for oil seed crushing facility for biodiesel

BILL NUMBER: SB 3215; HB 3410 (Identical)

INTRODUCED BY: SB by Tsutsui and Hooser; HB by Carroll and Hanohano

STAFF COMMENTS: Amends HRS section 235-7 to exclude from state income taxation amounts derived from an oil seed crushing facility that processes oil seed produced or grown in the state for biodiesel production in the state.

Makes amendments to HRS section 141-9 that includes a provision that lands used for the production of biodiesel feedstock crops shall be exempted from the real property tax. This provision shall be applicable to tax years beginning on January 1, 2009 and repealed on December 31, 2018.

Makes other amendments relating to establishing incentives for the production of biodiesel in the state.

EFFECTIVE DATE: July 1, 2008

STAFF COMMENTS: This measure proposes various incentives to encourage the production of biodiesel in the state which include an income tax exclusion for an oil seed crushing facility which is used to produce the biomass necessary to produce biodiesel.

It should be noted that the use of the tax system to provide financial assistance in the form of an income tax exclusion is an inefficient use of the tax system. This exclusion amounts to nothing more than a subsidy as there is no obvious undue burden of taxes. If one project is blessed with a preferential tax treatment, why shouldn't the next proposal be just as serious a consideration? As such, project specific tax credit proposals violate the integrity of the tax system, setting a precedent with bad tax policy.

It should be remembered that giving tax breaks to one select group of taxpayers comes at the expense of all other taxpayers. As such, it is an insult to all other taxpayers that they are not deserving of such tax preferences. Rather than singling out a particular area for tax relief, concurrent efforts must be made to improve Hawaii's business climate to enhance the economic prospects for all businesses.

If lawmakers want to subsidize this specific project, then an appropriation of funds is far more accountable as taxpayers will then know who is to receive the subsidy, how much is being spent and then they can then judge whether or not this is an appropriate use of state taxpayer dollars.

While the measure also proposes that lands used for the production of biodiesel feedstock crops shall be exempted from the real property tax, this is a matter that has to be requested by the respective county governments as the real property taxation powers have been transferred to the respective counties.

Digested 1/30/08

LIFE OF THE LAND

Ua Mau Ke Ea O Ka 'Aina I Ka Pono

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Phone: (808) 533-3454 * E-Mail: henry.lifeoftheland@gmail.com

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COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
Chair: Rep. Hermina M. Morita
Vice Chair: Rep. Mele Carroll

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS
Chair: Rep. Ken Ito
Vice Chair: Rep. Jon Riki Karamatsu

COMMITTEE ON AGRICULTURE
Chair: Rep. Clift Tsuji
Vice Chair: Rep. Tom Brower

Tuesday, February 12, 2008
8:30 a.m.
Room 312

HB 3410 Biofuel

Aloha Chairs Morita, Ito, Tsuji, Vice Chairs Carroll, Karamatsu, Brower, and Members of the Committee,

Life of the Land is Hawai`i's own environmental and community action group advocating for the people and the `aina since 1970. Our mission is to preserve and protect the life of the land through sustainable land use and energy policies and by promoting open government through research, education, advocacy, and litigation.

HB3410 *Provides various market stimulation incentives for the development of biodiesel, including making state agricultural lands available for biodiesel fuel crops; establishing a state biodiesel feedstock crop and biodiesel fuel purchasing program; and creating tax exemptions for biomass crushing facilities and lands used for biodiesel feedstock crops.*

The bill states that the Board of Land and Natural Resource (BLNR) shall approve bioenergy proposals through direct negotiation rather than leases. Qualifying crops are any crop which can be converted into biofuel, which is every crop, assuming that the manufacturer has enough coal to do it with. The resulting biofuel is defined under Hawai`i state law to be green energy, regardless of its life cycle greenhouse gas emissions. This proposed bill would give a local price preference to state crops irregardless of whether they would do far more climatic damage than some imported crop from a state with stronger greenhouse gas regulations. Another problem with the proposed law is that it probably violates the federal Commerce

Clause.

What if climate change is a very serious threat to the world, and we in Hawai`i were going away from the solution? What if we were making things worse, more dire? And what if we knew it, but cared more about money than surviving the coming catastrophe? Then what?

Alternatively, we could support energy proposals that stand up to critiques including peer reviewed life cycle analysis.

HB 3410 promotes biofuels without evaluating their environmental and climatic impacts. Unfortunately, neither does existing state law, which actually defines a fuel to be green if it has any biomass in it and no matter how much fossil fuel was needed to grow and process the biomass, or used to convert it into ethanol or biodiesel.

New York Times (February 8, 2008): Biofuels Deemed a Greenhouse Threat By Elisabeth Rosenthal
Almost all biofuels used today cause more greenhouse gas emissions than conventional fuels if the full emissions costs of producing these "green" fuels are taken into account, two studies being published Thursday have concluded. ...
Together the two studies offer sweeping conclusions: It does not matter if it is rain forest or scrubland that is cleared, the greenhouse gas contribution is significant. More important, they discovered that, taken globally, the production of almost all biofuels resulted, directly or indirectly, intentionally or not, in new lands being cleared, either for food or fuel. ...
The clearance of grassland releases 93 times the amount of greenhouse gas that would be saved by the fuel made annually on that land, said Joseph Fargione, lead author of the second paper, and a scientist at the **Nature Conservancy**. "So for the next 93 years you're making climate change worse, just at the time when we need to be bringing down carbon emissions."
http://www.nytimes.com/2008/02/08/science/earth/08wbiofuels.html?hp

Asia Times (Nov 29, 2007) More bad rap on Asian biofuels, By Marwaan Macan-Markar. "European Union (EU) demand for Asian-produced biofuels, particularly palm oil, is coming at a high social and environmental cost, a report released on Tuesday by the United Nations Development Program (UNDP) warns. The UN agency in its annual "Human Development Report 2007/2008" cautioned countries in the region against following the lead taken by Indonesia and Malaysia, the main producers of palm oil as a biofuel.
http://www.atimes.com/atimes/Southeast_Asia/IK29Ae01.html

Wall Street Journal (November 28, 2007) Ethanol Craze Cools As Doubts Multiply: Claims for Environment, Energy Use Draw Fire; Fighting on the Farm By Lauren Etter. "Little over a year ago, ethanol was winning the hearts and wallets of both Main Street and Wall Street, with promises of greater U.S. energy independence, fewer greenhouse gases and help for the farm economy. Today, the corn-based biofuel is under siege."
http://online.wsj.com/public/article/SB119621238761706021.html

Smithsonian Magazine (November 2007) Who's Fueling Whom? Why the biofuels movement could run out of gas. By Richard Conniff. "So what's the hitch? Partly it's that bit about doing a little planning. The move to biofuels thus far looks more like a stampede than a considered program to wean ourselves from fossil fuels. Critics in the financial community have used words like "gold rush" and even the dreaded "bubble," fretting that "biofool" investors are putting too much money into new refineries, which could go bust as markets and subsidies shift or as technologies and feedstocks become obsolete.
http://www.smithsonianmag.com/science-nature/presence-biofuel-200711.html

The **Christian Science Monitor (May 21, 2007):** Hidden costs of corn-based ethanol: Diverting corn from food to fuel could create unprecedented turmoil By Colin A. Carter and Henry I. Miller. "**Policymakers and legislators often fail to consider the law of unintended consequences**. The latest example is their attempt to reduce the United States' dependence on imported oil by shifting a big share of the nation's largest crop – corn – to the production of ethanol for fueling automobiles."
http://www.csmonitor.com/2007/0521/p09s02-coop.html

Wall Street Journal (December 5, 2006, Page 1) "Among the world's most fabled islands, Borneo --which is divided between Indonesia and Malaysia --is considered by environmentalists to be one of the last great tropical wildernesses. It's home to rare and unusual species, including the wild orangutan, the clouded leopard and the Sumatran rhinoceros. ... Now, the palm-oil boom threatens what's left.
As fires burn deep into the dry peat soil beneath Indonesia's forests, centuries of carbon trapped in the biomass are released into the atmosphere. A study presented last month at a U.N. Climate Change Conference in Nairobi showed that Indonesia is the world's third biggest carbon emitter behind the U.S. and China, when emissions from fires and other factors are considered."
http://online.wsj.com/article/SB116501541088338547-search.html?KEYWORDS=palm+oil+burning&COLLECTION=wsjie/6month

Henry Curtis
Executive Director

Testimony before the House Committees on

Energy & Environmental Protection
Water, Land, Ocean Resources & Hawaiian Affairs
Agriculture

H.B. 3410 – Relating to Biodiesel

Tuesday, February 12, 2008
8:30 am, Conference Room 312

By Arthur Seki
Director of Technology
Hawaiian Electric Company, Inc.

Chairs Morita, Ito and Tsuji, and Members of the Committees:

My name is Arthur Seki – I am the Director of Technology in the Energy Solutions & Technology Department at Hawaiian Electric Company. I am testifying on behalf of Hawaiian Electric Company (HECO) and its subsidiary utilities, Maui Electric Company (MECO) and Hawaii Electric Light Company (HELCO), hereby referred to collectively as the HECO Utilities.

We support H.B. 3410 that would provide incentives for biodiesel development in Hawaii.

As you may know, HECO Utilities are committed to exploring and using biofuels in its existing and planned generating units. The use of biofuels can reduce the State's dependence on imported oil and increase the amount of renewable energy from sustainable resources. This commitment by the HECO Utilities is demonstrated by the following initiatives:

- HECO's next power plant (100 MW) on Oahu (located at Campbell Industrial Park) will be 100% biofueled;

- MECO tested biodiesel in its diesel engines and combustion turbine at Maalaea power plant and will conduct further tests;
- HECO and MECO are partnering with BlueEarth Biofuels to build a 40 million gallon per year biodiesel production plant on Maui;
- HECO is developing test plans for a biofuel blend demonstration in a steam boiler generating unit on Oahu;
- HELCO will be testing biodiesel blends in a diesel engine on the Big Island;
- MECO will be testing glycerin (biodiesel by-product) in a Kahului steam boiler on Maui; and
- HECO is providing seed funding to the Hawaii Agriculture Research Center (HARC) and the agriculture departments at the University of Hawaii's Manoa and Hilo campuses to conduct biofuel crop research.

In conclusion, HECO Utilities support H.B. 3410 as a way to stimulate the development of locally produced biofuels.

Thank you for the opportunity to present this testimony.